



# Migration Regulations 1994

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

made under the

*Migration Act 1958*

---

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

## Contents

<b>Schedule 2</b>	<b>Provisions with respect to the grant of Subclasses of visas</b>	<b>4</b>
Subclass 010	Bridging A	4
Subclass 020	Bridging B	11
Subclass 030	Bridging C	19
Subclass 040	Bridging (Prospective Applicant)	24
Subclass 041	Bridging (Non-applicant)	25
Subclass 050	Bridging (General)	27
Subclass 051	Bridging (Protection Visa Applicant)	47
Subclass 060	Bridging F	51
Subclass 070	Bridging (Removal Pending)	55
Subclass 100	Partner	57
Subclass 101	Child	66
Subclass 102	Adoption	71
Subclass 103	Parent	78
Subclass 105	Skilled — Australian-linked	85
Subclass 106	Regional-linked	90
Subclass 114	Aged Dependent Relative	97
Subclass 115	Remaining Relative	101
Subclass 116	Carer	105
Subclass 117	Orphan Relative	109
Subclass 118	Designated Parent	113
Subclass 119	Regional Sponsored Migration Scheme	118
Subclass 120	Labour Agreement	124
Subclass 121	Employer Nomination	130
Subclass 124	Distinguished Talent	136
Subclass 126	Independent	140
Subclass 132	Business Talent	144
Subclass 134	Skill Matching	149
Subclass 135	State/Territory-nominated Independent	158
Subclass 136	Skilled – Independent	162
Subclass 137	Skilled – State/Territory- nominated Independent	171
Subclass 138	Skilled – Australian-sponsored	183
Subclass 139	Skilled – Designated Area-sponsored	192

		Page
Subclass 143	Contributory Parent	201
Subclass 151	Former Resident	215
Subclass 155	Five Year Resident Return	222
Subclass 157	Three Month Resident Return	226
Subclass 159	Provisional Resident Return	229
Subclass 160	Business Owner (Provisional)	231
Subclass 161	Senior Executive (Provisional)	236
Subclass 162	Investor (Provisional)	241
Subclass 163	State/Territory Sponsored Business Owner (Provisional)	247
Subclass 164	State/Territory Sponsored Senior Executive (Provisional)	252
Subclass 165	State/Territory Sponsored Investor (Provisional)	257
Subclass 173	Contributory Parent (Temporary)	263
Subclass 175	Skilled — Independent	271
Subclass 176	Skilled — Sponsored	276
Subclass 200	Refugee	283
Subclass 201	In-country Special Humanitarian	288
Subclass 202	Global Special Humanitarian	294
Subclass 203	Emergency Rescue	300
Subclass 204	Woman at Risk	304
Subclass 300	Prospective Marriage	310
Subclass 302	Emergency (Permanent Visa Applicant)	316
Subclass 303	Emergency (Temporary Visa Applicant)	320
Subclass 309	Partner (Provisional)	325
Subclass 405	Investor Retirement	332
Subclass 406	Government Agreement	341
Subclass 410	Retirement	348
Subclass 411	Exchange	353
Subclass 415	Foreign Government Agency	359

## **Schedule 2      Provisions with respect to the grant of Subclasses of visas**

### **Subclass 010      Bridging A**

#### **010.1      Interpretation**

010.111      In this Part:

*review authority* includes the Administrative Appeals Tribunal.

*Note* *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

#### **010.2      Primary criteria**

*Note* All applicants must satisfy the primary criteria.

#### **010.21      Criteria to be satisfied at the time of application**

- 010.211      (1) The applicant meets the requirements of subclause (2), (3), (4), (5) or (6).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
- (b) that application has not been finally determined; and
- (c) he or she held a substantive visa at the time that application was made; and
- (d) either:
- (i) he or she has applied for a bridging visa in respect of that application; or
- (ii) a bridging visa can be granted in respect of that application under regulation 2.21B.

- 
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant:
    - (i) has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
    - (ii) held a substantive visa when he or she made the application; and
  - (aa) that application was refused; and
  - (b) either:
    - (i) the applicant, or the Minister, has applied, within statutory time limits, for judicial review of a decision in relation to the applicant's substantive visa application; or
    - (ii) the applicant:
      - (A) is a member of the family unit of a person whose substantive visa application is the subject of the judicial review proceedings mentioned in subparagraph (i); and
      - (B) made a substantive visa application that was combined with the substantive visa application mentioned in subparagraph (i); and
  - (c) at the time of that application, he or she held a Bridging A (Class WA) or Bridging B (Class WB) visa; and
  - (d) the judicial review proceedings (including proceedings on appeal, if any) are not completed.
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant:
    - (i) holds a Bridging A (Class WA) or Bridging B (Class WB) visa that:
      - (A) was granted as a result of a valid application, made in Australia, for a substantive visa of a kind that could be granted if the applicant was in Australia; and

- (B) is subject to conditions 8101, 8102, 8103, 8104, 8105, 8107, 8108, 8111, 8112 or 8547; and
  - (ii) held a substantive visa when he or she made the substantive visa application; and
- (b) he or she has not applied for a Protection (Class AZ) or Protection (Class XA) visa; and
- (c) the Minister is satisfied that the applicant has a compelling need to work.
- (5) An applicant meets the requirements of this subclause if:
  - (a) the applicant has made a valid application for:
    - (i) a Spouse (Migrant) (Class BC) visa; or
    - (ii) an Interdependency (Migrant) (Class BI) visa; or
    - (iii) a Partner (Migrant) (Class BC) visa; or
    - (iv) an Aged Parent (Residence) (Class BP) visa; or
    - (v) a Contributory Aged Parent (Residence) (Class DG) visa; or
    - (vi) a Contributory Aged Parent (Temporary) (Class UU) visa; and
  - (b) the application has not been finally determined; and
  - (c) the applicant has applied for a bridging visa in respect of that application; and
  - (d) the applicant holds, or has previously held, a Bridging A (Class WA) visa granted under regulation 2.21A in respect of the visa referred to in paragraph (a).
- (6) An applicant meets the requirements of this subclause if:
  - (a) the applicant has made a valid application for:
    - (i) a Spouse (Migrant) (Class BC) visa; or
    - (ii) an Interdependency (Migrant) (Class BI) visa; or
    - (iii) a Partner (Migrant) (Class BC) visa; or
    - (iv) an Aged Parent (Residence) (Class BP) visa; or
    - (v) a Contributory Aged Parent (Residence) (Class DG) visa; or
    - (vi) a Contributory Aged Parent (Temporary) (Class UU) visa; and

- (b) that application was refused; and
- (c) either:
  - (i) the applicant, or the Minister, has applied, within statutory time limits, for judicial review of a decision in relation to the applicant's substantive visa application as the holder of a Bridging A (Class WA) or Bridging B (Class WB) visa; or
  - (ii) the applicant:
    - (A) is a member of the family unit of a person whose substantive visa application is the subject of the judicial review proceedings mentioned in subparagraph (i); and
    - (B) made a substantive visa application that was combined with the substantive visa application mentioned in subparagraph (i); and
- (d) the judicial review proceedings (including proceedings on appeal, if any) are not completed; and
- (e) the applicant holds, or has previously held, a Bridging A (Class WA) visa granted under regulation 2.21A in respect of the visa referred to in paragraph (a).

**010.22 Criteria to be satisfied at the time of decision**

010.221 The applicant continues to satisfy the criterion set out in clause 010.211.

**010.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

**010.4 Circumstances applicable to grant**

010.411 The applicant must be in Australia, but not in immigration clearance.

*Note 1* The applicant must be an eligible non-citizen at the time of grant: see Act, s 73.

*Note 2* The Minister must grant a Bridging A (Class WA) visa in the circumstances set out in regulation 2.21A.

## **010.5 When visa is in effect**

010.511 In the case of a visa granted to a non-citizen who has applied for a substantive visa — bridging visa:

- (a) coming into effect:
  - (i) on grant; or
  - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
  - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa — the grant of the visa; or
  - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa — 28 days after the holder is notified of that refusal; or
  - (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal — 28 days after notification of the decision of:
    - (A) the review authority; or
    - (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies — 28 days after notification of the decision of that other review authority; or
  - (iv) the grant of another bridging visa to the holder in respect of the same substantive visa application; or
  - (v) if the holder withdraws his or her application for a substantive visa or an application to a review authority — 28 days after that withdrawal; or
  - (vi) if the substantive visa (if any) held by the holder is cancelled — that cancellation; or
  - (vii) if the holder is notified by Immigration that the substantive visa application is invalid — 28 days after the notification; or



- 
- (viii) if a review authority remits the application for the substantive visa to the Minister for reconsideration — permitting the holder of the bridging visa to remain in Australia in accordance with the relevant provision of this paragraph.
- 010.513 In the case of a visa granted to a non-citizen on the basis of judicial review of a decision — bridging visa:
- (a) coming into effect:
    - (i) on grant; or
    - (ii) when the substantive visa (if any) held by the holder ceases; and
  - (b) permitting the holder to remain in Australia until:
    - (i) subject to paragraph (c), 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
    - (ii) the grant of another bridging visa to the holder in respect of the same application for judicial review; or
    - (iii) if the holder withdraws his or her application for judicial review — 28 days after that withdrawal; or
    - (iv) if the substantive visa (if any) held by the holder is cancelled — that cancellation; and
  - (c) if a court remits a matter to which the judicial review proceedings relate to a review authority, or to the Minister, for reconsideration — permitting the holder to remain in Australia in accordance with the relevant provision of paragraph 010.511 (b).
- 010.514 In the case of a visa granted to a non-citizen on the basis that the non-citizen is a member of the family unit of a party to judicial review proceedings — bridging visa:
- (a) coming into effect:
    - (i) on grant; or
    - (ii) when the substantive visa (if any) held by the holder ceases; and
  - (b) permitting the holder to remain in Australia until the expiry of the bridging visa held by the party to the judicial review proceedings.

## **010.6      Conditions**

- 010.611      (1) In the case of a visa granted to a non-citizen who:
- (a) satisfies the criterion in subclause 010.211 (4); or
  - (b) is an applicant for a Protection (Class AZ) or Protection (Class XA) visa who:
    - (i) is not a person described in subclause (2); or
    - (ii) satisfies the criterion in subclause 010.211 (2); or
  - (c) is a person in a class of persons specified by the Minister by an instrument in writing for this paragraph;
- Nil.
- (2) In the case of a visa granted to a non-citizen who:
- (a) applies for a Protection (Class AZ) or Protection (Class XA) visa; and
  - (b) satisfies the criterion in subclause 010.211 (3);
- condition 8101, if that condition applied to the last visa held by the holder.
- (3) In the case of a visa granted under regulation 2.21A to a person mentioned in subregulation 2.21A (1): Nil.
- (3A) In the case of a visa granted to a non-citizen who meets the requirements of subclause 010.211 (2) or (3) on the basis of a valid application for:
- (a) a Graduate — Skilled (Temporary) (Class UQ) visa; or
  - (d) a Skilled — Independent Regional (Provisional) (Class UX) visa in relation to which the applicant met the requirements for subitem 1218A (5) of Schedule 1; or
  - (e) a Skilled (Provisional) (Class VC) visa in relation to which the applicant met the requirements for subitem 1229 (4) of Schedule 1;
- 8501.
- (3B) In the case of a visa granted to a non-citizen who meets the requirements of subclause 010.211 (2) or (3) on the basis of a valid application for:

- (a) a Skilled — Independent Overseas Student (Class DD) visa; or
- (b) a Skilled — Australian-sponsored Overseas Student (Class DE) visa; or
- (c) a Skilled (Residence) (Class VB) visa in relation to which the applicant met the requirements for subitem 1136 (4), (5) or (6) of Schedule 1;

Nil.

(4) In any other case: whichever of conditions 8101, 8102, 8103, 8104, 8105, 8107, 8108, 8111, 8112, 8114, 8539, 8547 and 8549 applies to:

- (a) the visa held by the holder:
  - (i) at the time of application; or
  - (ii) if the bridging visa is granted under regulation 2.21A to a person mentioned in subregulation 2.21A (2) or (3), or under regulation 2.21B — at the time of grant; or
- (b) if the visa mentioned in subparagraph (a) (i) has ceased, or no visa is held by the holder at the time of grant — the last Bridging A (Class WA) or Bridging B (Class WB) visa held by the holder.

## 010.7 Way of giving evidence

010.711 No evidence need be given.

010.712 If evidence is given, to be given by a label affixed to a valid passport.

## Subclass 020 Bridging B

### Interpretation

020.111 In this Part:

*review authority* includes the Administrative Appeals Tribunal.

*Note* *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

## **020.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

### **020.21 Criteria to be satisfied at the time of application**

020.211 The applicant is the holder of:

- (a) a Bridging A (Class WA) visa; or
- (b) a Bridging B (Class WB) visa.

020.212 (1) The applicant meets the requirements of subclause (2), (3), (4) or (5).

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

- (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
- (b) that application has not been finally determined; and
- (c) the applicant wishes to leave and re-enter Australia during the processing of that application; and
- (d) the Minister is satisfied that the applicant's reasons for wishing to do so are substantial.

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

- (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
- (b) that application was refused; and
- (c) either:
  - (i) the applicant, or the Minister, has applied, within statutory time limits, for judicial review of a decision in relation to the applicant's substantive visa application, and the judicial review proceedings (including proceedings on appeal, if any) have not been completed; or
  - (ii) the applicant:
    - (A) is a member of the family unit of a person whose substantive visa application is the subject of the judicial review proceedings mentioned in subparagraph (i); and

- 
- (B) made a substantive visa application that was combined with the substantive visa application mentioned in subparagraph (i); and
- (d) the applicant wishes to leave and re-enter Australia during the judicial proceedings; and
- (e) the Minister is satisfied that the applicant's reasons for wishing to do so are substantial.
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant has made a valid application for a Spouse (Migrant) (Class BC) visa, an Interdependency (Migrant) (Class BI) visa or a Partner (Migrant) (Class BC) visa; and
- (b) the application has not been finally determined; and
- (c) the applicant wishes to leave and re-enter Australia during the processing of that application; and
- (d) the Minister is satisfied that the applicant's reasons for wishing to do so are substantial.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant has made a valid application for a Spouse (Migrant) (Class BC) visa, an Interdependency (Migrant) (Class BI) visa or a Partner (Migrant) (Class BC) visa; and
- (b) that application was refused; and
- (c) either:
- (i) the applicant, or the Minister, has applied, within statutory time limits, for judicial review of a decision in relation to the applicant's substantive visa application; or
- (ii) the applicant:
- (A) is a member of the family unit of a person whose substantive visa application is the subject of the judicial review proceedings mentioned in subparagraph (i); and

- (B) made a substantive visa application that was combined with the substantive visa application mentioned in subparagraph (i); and
  - (d) the judicial review proceedings (including proceedings on appeal, if any) are not completed; and
  - (e) the applicant wishes to leave and re-enter Australia during those proceedings; and
  - (f) the Minister is satisfied that the applicant's reasons for wishing to do so are substantial.
- 020.213 The applicant's return to Australia would not be contrary to the public interest.

**020.22 Criteria to be satisfied at the time of decision**

- 020.221 The applicant continues to satisfy the criteria set out in clauses 020.211 and 020.212.
- 020.222 If the applicant meets the requirements of subclause 020.212 (2) or (3) on the basis of a valid application for a Graduate — Skilled (Temporary) (Class UQ) visa, the applicant wishes to leave and re-enter Australia because:
- (a) a close relative of the applicant is seriously ill, or has recently died, overseas; or
  - (b) the applicant's Australian employer requires the applicant to travel overseas in the course of the applicant's employment.
- Note* **close relative** is defined in regulation 1.03.
- 020.223 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

---

### **020.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

### **020.4 Circumstances applicable to grant**

020.411 The applicant must be in Australia, but not in immigration clearance.

*Note* The applicant must be an eligible non-citizen at the time of grant: see the Act, s 73.

### **020.5 When visa is in effect**

020.511 In the case of a visa granted to a non-citizen who has applied for a substantive visa — bridging visa:

- (a) coming into effect:
  - (i) on grant; or
  - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
  - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa — the grant of the visa; or
  - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa — 28 days after the holder is notified of that refusal; or
  - (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal — 28 days after notification of the decision of:
    - (A) the review authority; or
    - (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies — 28 days after notification of the decision of that other review authority; or
  - (iv) if the holder withdraws his or her application for a substantive visa or an application to a review authority — 28 days after that withdrawal; or

- (v) the grant of another bridging visa to the holder in respect of the same application for a substantive visa; or
    - (vi) if the substantive visa (if any) held by the holder is cancelled — that cancellation; or
    - (vii) if the holder is notified by Immigration that the substantive visa application is invalid — 28 days after the notification; or
    - (viii) if a review authority remits the application for the substantive visa to the Minister for reconsideration — permitting the holder of the bridging visa to remain in Australia in accordance with the relevant provision of this paragraph; and
  - (c) permitting the holder to travel to and enter Australia until the time set by paragraph (b), unless the Minister has specified an earlier time for the purpose.
- 020.512 In the case of a visa granted to a non-citizen on the basis of judicial review of a decision — bridging visa:
- (a) coming into effect:
    - (i) on grant; or
    - (ii) when the substantive visa (if any) held by the holder ceases; and
  - (b) permitting the holder to remain in Australia until:
    - (i) subject to paragraph (ba), 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
    - (ii) if the holder withdraws his or her application for judicial review — 28 days after that withdrawal; or
    - (iii) the grant of another bridging visa in respect of the same application for judicial review; or
    - (iv) if the substantive visa (if any) held by the holder is cancelled — that cancellation; and
  - (ba) if a court remits a matter to which the judicial review proceedings relate to a review authority, or to the Minister, for reconsideration — permitting the holder to remain in Australia in accordance with the relevant provision of paragraph 020.511 (b); and



- (c) permitting the holder to travel to and enter Australia until the time set by paragraph (b), unless the Minister has specified an earlier time for the purpose.
- 020.513 In the case of a visa granted to a non-citizen on the basis that the non-citizen is a member of the family unit of a party to judicial review proceedings — bridging visa:
- (a) coming into effect:
    - (i) on grant; or
    - (ii) when the substantive visa (if any) held by the holder ceases; and
  - (b) permitting the holder to remain in Australia until the expiry of the bridging visa held by the party to the judicial review proceedings.

## **020.6 Conditions**

- 020.611 (1) In the case of a visa granted to a non-citizen who is either:
- (a) an applicant for a Protection (Class AZ) or Protection (Class XA) visa who:
    - (i) is not a person described in subclause (2) or (2A); or
    - (ii) satisfies the criterion in subclause 020.212 (2); or
  - (b) a person in a class of persons specified by the Minister by an instrument in writing for this paragraph;
- Nil.
- (2) In the case of a visa granted to a non-citizen who:
- (a) applies for a Protection (Class AZ) or Protection (Class XA) visa; and
  - (b) satisfies the criterion in subclause 020.212 (3);
- condition 8101, if that condition applied to the last visa held by the holder.
- (2A) In the case of a visa granted to a person who is an applicant for a Subclass 462 (Work and Holiday) visa, condition 8540.

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

- (a) a Graduate — Skilled (Temporary) (Class UQ) visa; or
- (b) a Skilled — Independent Regional (Provisional) (Class UX) visa in relation to which the applicant met the requirements for subitem 1218A (5) of Schedule 1; or
- (c) a Skilled (Provisional) (Class VC) visa in relation to which the applicant met the requirements for subitem 1229 (4) of Schedule 1;

8501.

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

- (a) a Skilled — Independent Overseas Student (Class DD) visa; or
- (b) a Skilled — Australian-sponsored Overseas Student (Class DE) visa; or
- (c) a Skilled (Residence) (Class VB) visa in relation to which the applicant met the requirements for subitem 1136 (4), (5) or (6) of Schedule 1;

Nil.

(5) In any other case — whichever of conditions 8101, 8102, 8103, 8104, 8105, 8107, 8108, 8111, 8112, 8114, 8539, 8547 and 8549 applies to the bridging visa held by the holder at the time of application.

## **020.7      Way of giving evidence**

020.711      No evidence need be given.

020.712      If evidence is given, to be given by a label affixed to a valid passport.

---

## Subclass 030                      Bridging C

### 030.1      Interpretation

030.111      In this Part:

*review authority* includes the Administrative Appeals Tribunal.

*Note* *Criminal detention* and *compelling need to work* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

### 030.2      Primary criteria

*Note* All applicants must satisfy the primary criteria.

#### 030.21      Criteria to be satisfied at time of application

030.211      The applicant does not hold a Bridging E (Class WE) visa and has not held such a visa since last holding a substantive visa.

030.212      (1) The applicant meets the requirements of subclause (2), (2A), (3) or (5).

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

- (a) the applicant is not the holder of a substantive visa; and
- (b) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
- (ba) either:
  - (i) the bridging visa can be granted in respect of that application under regulation 2.21B; or
  - (ii) that application was made at the same time, and on the same form, as the bridging visa application; and
- (c) that application has not been finally determined.

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

- (a) he or she is not the holder of a substantive visa; and

- (b) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
  - (c) that application has not been finally determined; and
  - (d) he or she has previously been granted a Bridging C (Class WC) visa in respect of that application.
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant holds a Bridging C (Class WC) visa that:
    - (i) was granted as a result of a valid application, made in Australia, for a substantive visa of a kind that could be granted to an applicant who was in Australia; and
    - (ii) is subject to condition 8101; and
  - (b) the Minister is satisfied that the applicant has a compelling need to work.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
  - (aa) that application was refused; and
  - (b) either:
    - (i) the applicant, or the Minister, has applied, within statutory time limits, for judicial review of a decision in relation to the applicant's substantive visa application; or
    - (ii) the applicant:
      - (A) is a member of the family unit of a person whose substantive visa application is the subject of the judicial review proceedings mentioned in subparagraph (i); and
      - (B) made a substantive visa application that was combined with the substantive visa application mentioned in subparagraph (i); and
  - (c) at the time of that application, he or she held a Bridging C (Class WC) visa; and

- (d) the judicial review proceedings (including proceedings on appeal, if any) are not completed.

## **030.22 Criteria to be satisfied at the time of decision**

- 030.221 The applicant continues to satisfy the criteria in clauses 030.211 to 030.212.

## **030.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

## **030.4 Circumstances applicable to grant**

- 030.411 The applicant must be in Australia, but not in immigration clearance.

*Note* The applicant must be an eligible non-citizen at the time of grant: see the Act, s 73.

## **030.5 When visa is in effect**

- 030.511 In the case of a visa granted to a non-citizen who has applied for a substantive visa — bridging visa:

- (a) coming into effect:
  - (i) on grant; or
  - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
  - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa — the grant of the visa; or
  - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa — 28 days after the holder is notified of that refusal; or
  - (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal — 28 days after notification of the decision of:
    - (A) the review authority; or

- (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies — 28 days after notification of the decision of that other review authority; or
  - (iv) the grant of another bridging visa to the holder in respect of the same application for a substantive visa; or
  - (v) if the holder withdraws his or her application for a substantive visa or an application to a review authority — 28 days after that withdrawal; or
  - (vi) if the holder is notified by Immigration that the substantive visa application is invalid — 28 days after the notification; or
  - (vii) if a review authority remits the application for the substantive visa to the Minister for reconsideration — permitting the holder of the bridging visa to remain in Australia in accordance with the relevant provision of this paragraph; or
  - (viii) if the substantive visa (if any) held by the holder is cancelled — that cancellation.
- 030.512 In the case of a visa granted to a non-citizen on the basis of judicial review of a decision — bridging visa:
- (a) coming into effect:
    - (i) on grant; or
    - (ii) when the substantive visa (if any) held by the holder ceases; and
  - (b) permitting the holder to remain in Australia until:
    - (i) subject to paragraph (c), 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
    - (ii) if the holder withdraws his or her application for judicial review — 28 days after that withdrawal; or
    - (iii) the grant of another bridging visa to the holder in respect of the same application for judicial review; or
    - (iv) if the substantive visa (if any) held by the holder is cancelled — that cancellation; and

- 
- (c) if a court remits a matter to which the judicial review proceedings relate to a review authority, or to the Minister, for reconsideration — permitting the holder to remain in Australia in accordance with the relevant provision of paragraph 030.511 (b).
- 030.513 In the case of a visa granted to a non-citizen on the basis that the non-citizen is a member of the family unit of a party to judicial review proceedings — bridging visa:
- (a) coming into effect:
    - (i) on grant; or
    - (ii) when the substantive visa (if any) held by the holder ceases; and
  - (b) permitting the holder to remain in Australia until the expiry of the bridging visa held by the party to the judicial review proceedings.

## **030.6 Conditions**

- 030.611 In the case of a visa granted to an applicant who meets the requirements of subclause 030.212 (3): Nil.
- 030.612 In the case of a visa granted to a non-citizen who:
- (a) applies for a Protection (Class AZ) or Protection (Class XA) visa; and
  - (b) meets the requirements of subclause 030.212 (5);
- condition 8101 if that condition applied to the last visa held by the holder.
- 030.613 In any other case: condition 8101.

## **030.7 Way of giving evidence**

- 030.711 No evidence need be given.
- 030.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 040                      Bridging (Prospective Applicant)**

### **040.1      Interpretation**

*Note* **Criminal detention** is defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20. No interpretation provisions specific to this Part.

### **040.2      Primary criteria**

*Note* All applicants must satisfy the primary criteria.

#### **040.21      Criteria to be satisfied at time of application**

*Note* In circumstances set out in regulation 2.22, a non-citizen is taken under that regulation to have applied for a Bridging D (Class WD) visa.

040.211      The applicant is:

- (a) an unlawful non-citizen; or
- (b) the holder of a visa that will cease within the next 3 working days after the day of application.

040.213      The Minister is satisfied that the applicant:

- (a) has attempted to make, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia and is unable to do so; and
- (b) will, within 5 working days, be able to make, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia.

040.214      The applicant has not previously been granted 2 bridging visas of Subclass 040 since he or she last held a substantive visa.

#### **040.22      Criteria to be satisfied at time of decision**

040.221      The applicant continues to satisfy the criteria set out in subdivision 040.21.

### **040.3      Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.



---

## **040.4 Circumstances applicable to grant**

040.411 The applicant must be in Australia but not in immigration clearance.

*Note* The applicant must be an eligible non-citizen at the time of grant: see the Act, s 73.

## **040.51 When visa is in effect**

040.511 Bridging visa coming into effect:

- (a) on grant; or
- (b) when the substantive visa (if any) held by the holder ceases;

and remaining in effect for 5 working days after date of grant.

## **040.6 Conditions**

040.611 Condition 8101.

## **040.7 Way of giving evidence**

040.711 No evidence is to be given.

# **Subclass 041 Bridging (Non-applicant)**

## **041.1 Interpretation**

*Note* **Criminal detention** is defined in regulation 1.03. For **eligible non-citizen** see regulation 2.20. No interpretation provisions specific to this Part.

## **041.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

## **041.21 Criteria to be satisfied at time of application**

041.211 The applicant is an unlawful non-citizen.

041.212 The applicant is unable, or does not want, to apply for a substantive visa.

041.213      An officer who is an authorised officer for the purposes of clause 050.222 is not available to interview the applicant.

**041.22      Criteria to be satisfied at time of decision**

041.221      The applicant continues to satisfy the criteria in Subdivision 041.21.

**041.3      Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

**041.4      Circumstances applicable to grant**

041.411      The applicant must be in Australia, but not in immigration clearance.

*Note* The applicant must be an eligible non-citizen at the time of grant: see the Act, s 73.

**041.51      When visa is in effect**

041.511      Bridging visa coming into effect upon grant and remaining in effect until:

- (a) the end of the fifth working day after the date of grant;  
or
- (b) if the applicant is granted a Subclass 050 (Bridging (General)) visa before the end of that day — the date of grant of the Subclass 050 (Bridging (General)) visa.

**041.6      Conditions**

041.611      Conditions 8101 and 8401.

**041.7      Way of giving evidence**

041.711      No evidence is to be given.

---

## Subclass 050                      Bridging (General)

### 050.1      Interpretation

050.111      In this Part:

*review authority* includes the Administrative Appeals Tribunal.

*Note* *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

### 050.2      Primary criteria

*Note* All applicants must satisfy the primary criteria.

#### 050.21      Criteria to be satisfied at time of application

050.211      (1) The applicant is:

- (a) an unlawful non-citizen; or
- (b) the holder of a Bridging E (Class WE) visa; or
- (c) the holder of a Subclass 041 (Bridging (Non-applicant)) visa.

(2) The applicant is not an eligible non-citizen of the kind set out in subregulation 2.20 (7), (8), (9), (10) or (11).

050.212      (1) The applicant meets the requirements of subclause (2), (3), (3A), (4), (4AAA), (4AA), (4AB), (5), (5A), (5B), (6), (6AA), (6A), (6B), (7), (8) or (9).

(2) An applicant meets the requirements of this subclause if the Minister is satisfied that the applicant is making, or is the subject of, acceptable arrangements to depart Australia.

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

- (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia and that application has not been finally determined; or

- (b) the Minister is satisfied that the applicant will apply, in Australia, within a period allowed by the Minister for the purpose, for a substantive visa of a kind that can be granted if the applicant is in Australia.
- (3A) An applicant meets the requirements of this subclause if:
  - (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
  - (b) either:
    - (i) the applicant has applied for judicial review of a decision to refuse to grant the visa and the judicial proceedings (including any proceedings on appeal) have not been completed; or
    - (ii) the Minister has applied for judicial review of a decision in relation to a refusal to grant the applicant's substantive visa, and the judicial review proceedings (including any proceedings on appeal) have not been completed.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant has applied for judicial review of a decision in relation to a substantive visa, other than a decision to refuse to grant a visa; or
  - (aa) the Minister has applied for judicial review of a decision in relation to the applicant's substantive visa application, other than a decision relating to a refusal to grant the substantive visa; or
  - (b) the applicant has applied for merits review of a decision to cancel a visa; or
  - (ba) the applicant has applied under section 137K of the Act for revocation of the cancellation of a visa; or
  - (bb) the applicant has applied for merits review of a decision under section 137L of the Act not to revoke the cancellation of a visa; or
  - (c) the Minister is satisfied that the applicant will make an application of a kind referred to in paragraph (b), (ba) or (bb); or

- (d) the applicant has applied for judicial review of the validity of a law that affects:
  - (i) the applicant's eligibility to apply for a substantive visa; or
  - (ii) the applicant's entitlement to be granted or to continue to hold a substantive visa.

(4AAA) An applicant meets the requirements of this subclause if the applicant has applied for:

- (a) a declaration from a court that the Act does not apply to the applicant; or
- (b) judicial review or merits review of a decision made in relation to the applicant under the *Australian Citizenship Act 1948* or the *Australian Citizenship Act 2007*;

and the proceedings for the declaration or review have not been completed.

(4AA) An applicant meets the requirements of this subclause if:

- (a) the applicant is a member of the family unit of a person whose substantive visa application is the subject of the judicial review proceedings mentioned in:
  - (i) paragraph (3A) (b); or
  - (ii) paragraph (4) (a); or
  - (iii) paragraph (4) (aa); or
  - (iv) paragraph (4) (d); and
- (b) the person whose substantive visa application is the subject of the judicial review proceedings is not a party to a representative proceeding; and
- (c) the applicant made a substantive visa application that was combined with the substantive visa application mentioned in:
  - (i) paragraph (3A) (a); or
  - (ii) subclause (4).

(4AB) An applicant meets the requirements of this subclause if the applicant is:

- (a) a member of the immediate family of a person who meets the requirements of subclause (4AAA); or
- (b) a brother or sister who has not turned 18, of a person who:
  - (i) meets the requirements of subclause (4AAA); and
  - (ii) has not turned 18.

*Note* Regulation 1.12AA defines *member of the immediate family*.

(4A) For the purposes of subclauses (3A), (4) and (4AAA), the applicant is taken to have applied for judicial review if the applicant:

- (a) is described or identified, in an application or document filed for the purposes of section 33H of the *Federal Court of Australia Act 1976*, as a group member to whom a representative proceeding relates; or
- (b) is a person on whose behalf or for whose benefit a person sues under Order 16 Rule 12 of the *High Court Rules*.

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

- (a) he or she held a visa that was cancelled under subsection 140 (1) or (3) of the Act (which deals with cancellation because of the cancellation of a visa held by another person); and
- (b) either:
  - (i) the other person whose visa was cancelled has applied for review of the decision to cancel his or her visa; or
  - (ii) the Minister is satisfied that that other person will make an application of that kind.

(5A) An applicant meets the requirements of this subclause if:

- (a) the applicant held a visa that was cancelled under subsection 140 (1), (2) or (3) of the Act because another person's visa was cancelled under section 137J of the Act; and

- 
- (b) one of the following applies in relation to the person whose visa was cancelled under section 137J of the Act:
- (i) he or she has applied under section 137K of the Act for revocation of the cancellation of the visa;
  - (ii) he or she has applied for merits review of a decision under section 137L of the Act not to revoke the cancellation of the visa;
  - (iii) the Minister is satisfied that he or she will make an application of a kind mentioned in subparagraph (i) or (ii).
- (5B) An applicant meets the requirements of this subclause if the applicant:
- (a) is a person to whom section 48A of the Act applies; and
  - (b) has made a request to the Minister to determine under section 48B of the Act that section 48A of the Act does not apply to prevent an application for a protection visa by the applicant; and
  - (c) has not previously sought, or been the subject of a request by another person for:
    - (i) a determination under section 48B of the Act; or
    - (ii) the exercise of the Minister's power under section 345, 351, 391, 417 or 454 of the Act.
- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant is the subject of:
    - (i) a decision in relation to an application made in Australia for a visa; or
    - (ii) a decision to cancel a visa; and
  - (b) in relation to the decision mentioned in paragraph (a), the applicant:
    - (i) is the subject of a decision for which the Minister has the power to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act; and
    - (ii) has made a request to the Minister to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act; and

- (c) the applicant has not previously sought, or been the subject of a request by another person for:
  - (i) the exercise of the Minister's power under section 345, 351, 391, 417 or 454 of the Act; or
  - (ii) a determination under section 48B of the Act.

(6AA) An applicant meets the requirements of this subclause if the Minister has decided, under section 345, 351, 391, 417 or 454 of the Act, to substitute a more favourable decision for the decision of a review authority but the applicant cannot, for the time being, be granted a substantive visa because of a determination under section 85 of the Act.

(6A) An applicant meets the requirements of this subclause if:

- (a) the applicant holds a Bridging E (Class WE) visa granted on the basis of the applicant meeting the requirements of subclause (6AA); and
- (b) the Minister has decided, under section 345, 351, 391, 417 or 454 of the Act, to substitute a more favourable decision for the decision of a review authority but the applicant cannot, for the time being, be granted a substantive visa because of a determination under section 85 of the Act; and
- (c) the Minister is satisfied that the applicant has a compelling need to work.

(6B) An applicant meets the requirements of this subclause if:

- (a) the applicant holds, or has held, a Bridging E (Class WE) visa granted before 1 July 2009 on the basis of the applicant meeting the requirements of subclause (6) or (6A); and
- (b) the applicant is the subject of a decision for which the Minister has the power to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act; and
- (c) before 1 July 2009, the applicant made a request to the Minister to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act; and



- 
- (d) the Minister has not yet made a decision to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act.
- (7) An applicant meets the requirements of this subclause if he or she:
- (a) is in criminal detention; and
  - (b) if he or she has been sentenced to imprisonment or periodic detention, has actually served a period of imprisonment; and
  - (c) no criminal justice stay certificate or criminal justice stay warrant about the non-citizen is in force.
- (8) An applicant meets the requirements of this subclause if:
- (a) the applicant holds a Bridging E (Class WE) visa that:
    - (i) was granted as a result of a valid application, made in Australia, for a substantive visa of a kind that could be granted if the applicant was in Australia; and
    - (ii) is subject to condition 8101; and
  - (b) the Minister is satisfied that the applicant has a compelling need to work; and
  - (c) in the case of an applicant who was an applicant for a Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999, or for a Protection (Class XA) visa on or after 20 October 1999 — either:
    - (i) the reasons for the delay in making the application for a protection visa are acceptable to the Minister; or
    - (ii) the applicant is in a class of persons specified by the Minister by instrument in writing for this subparagraph.
- (9) An applicant meets the requirements of this subclause if:
- (a) the applicant has made a valid application for a Spouse (Migrant) (Class BC) visa, an Interdependency (Migrant) (Class BI) visa or a Partner (Migrant) (Class BC) visa; and
  - (b) that application was refused; and

- (c) either:
  - (i) the applicant, or the Minister, has applied, within statutory time limits, for judicial review of a decision in relation to the applicant's substantive visa application; or
  - (ii) the applicant:
    - (A) is a member of the family unit of a person whose substantive visa application is the subject of the judicial review proceedings mentioned in subparagraph (i); and
    - (B) made a substantive visa application that was combined with the substantive visa application mentioned in subparagraph (i);and the applicant or family unit member does not satisfy the criterion in paragraph 010.211 (6) (c) for the grant of a Bridging A (Class WA) visa; and
- (d) the judicial review proceedings (including proceedings on appeal, if any) are not completed.

**050.22 Criteria to be satisfied at time of decision**

050.221 The applicant continues to satisfy the criteria set out in clauses 050.211 and 050.212.

050.222 (1) Unless subclause (2), (3) or (4) applies, the applicant has been interviewed by an officer who is authorised by the Secretary for the purposes of this clause.

(2) This subclause applies if:

- (a) the applicant is not in immigration detention; and
- (b) the applicant has made a valid application for a substantive visa; and
- (c) the applicant holds a Bridging E (Class WE) visa; and
- (d) the applicant is not seeking to be granted a further Bridging E (Class WE) visa that is subject to conditions other than those that apply to the Bridging E (Class WE) visa that the applicant currently holds.

(3) This subclause applies if:

- (a) an officer who is authorised by the Secretary for the purposes of this clause was not available to interview the applicant:
  - (i) at the time of application; or
  - (ii) if the bridging visa could be granted under regulation 2.21B, at the time of decision; and
- (b) the applicant is not in immigration detention; and
- (c) the applicant has made a valid application for a substantive visa; and
- (d) the applicant has previously held, but does not currently hold, a Bridging E (Class WE) visa.

*Note* For subclauses (2) and (3) — in certain circumstances, a Bridging E (Class WE) visa may also be taken to have been granted without application to a non-citizen who is in immigration detention. See the Act, s 73. In addition the Minister may grant a Bridging E (Class WE) visa to non-citizens who are in criminal detention or are unwilling or unable to make a valid application: see r 2.25.

- (4) This subclause applies if the applicant is a person:
  - (a) to whom subclause 050.212 (4AAA) applies; or
  - (b) to whom subclause 050.212 (4AB) continues to apply.

050.223 The Minister is satisfied that, if a bridging visa is granted to the applicant, the applicant will abide by the conditions (if any) imposed on it.

050.224 If an authorised officer has required a security for compliance with any conditions that the officer has indicated to the applicant will be imposed on the visa if it is granted, the security has been lodged.

### **050.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

### **050.4 Circumstances applicable to grant**

050.411 The applicant must be in Australia but not in immigration clearance.

*Note* The applicant must be an eligible non-citizen at the time of grant: see the Act, s 73.

## **050.5 When visa is in effect**

050.511 In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) who has applied for a substantive visa — bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia until:
  - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa — the grant of the visa; or
  - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa — 28 days after the holder is notified of that refusal; or
  - (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal — 28 days after notification of the decision of:
    - (A) the review authority; or
    - (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies — that other review authority; or
  - (iv) if the holder withdraws his or her application for a substantive visa or an application to a review authority — 28 days after that withdrawal; or
  - (v) the grant of a further bridging visa to the holder in respect of his or her substantive visa application; or
  - (vi) if the holder is notified by Immigration that the substantive visa application is invalid — 28 days after the notification; or
  - (vii) if a review authority remits the application for the substantive visa to the Minister for reconsideration — permitting the holder of the bridging visa to remain in Australia in accordance with the relevant provision of this paragraph.

- 
- 050.511A In the case of a visa granted to a non-citizen on the basis that the non-citizen is a member of the family unit of a party to judicial review proceedings — bridging visa:
- (a) coming into effect on grant; and
  - (b) permitting the holder to remain in Australia until the bridging visa held by the party to the judicial review proceedings ceases to be in effect.
- 050.511B In the case of a visa granted to a non-citizen on the basis that the non-citizen is a person who has applied for a declaration mentioned in paragraph 050.212 (4AAA) (a) — bridging visa:
- (a) coming into effect on grant; and
  - (b) permitting the holder to remain in Australia until 28 days after the proceedings for the declaration are completed.
- 050.511C In the case of a visa granted to a non-citizen on the basis that the non-citizen has applied for judicial review of a decision under the *Australian Citizenship Act 1948* or the *Australian Citizenship Act 2007*, mentioned in paragraph 050.212 (4AAA) (b) — bridging visa:
- (a) coming into effect on grant; and
  - (b) permitting the holder to remain in Australia until 28 days after the latest of the following:
    - (i) the day the judicial review proceedings are completed;
    - (ii) if the court remits the matter to the Minister or a review authority for reconsideration — the day the non-citizen is notified of the decision of the Minister or review authority;
    - (iii) if the non-citizen withdraws his or her application for judicial review — the day the application is withdrawn;
    - (iv) if the non-citizen is taken to have applied for judicial review under subclause 050.212 (4A), and either withdraws from or is struck out of the representative proceedings for judicial review — the day the non-citizen withdraws or is struck out.

050.511D In the case of a visa granted to a non-citizen on the basis that the non-citizen has applied for merits review of a decision under the *Australian Citizenship Act 1948* or the *Australian Citizenship Act 2007*, mentioned in paragraph 050.212 (4AAA) (b) — bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia until 28 days after the latest of the following:
  - (i) the day the non-citizen is notified of the merits review decision;
  - (ii) if a review authority remits the matter to the Minister for reconsideration — the day the non-citizen is notified of the Minister’s decision;
  - (iii) if the non-citizen withdraws his or her application for merits review — the day the application is withdrawn.

*Note* Merits review of certain decisions made under the *Australian Citizenship Act 1948* or the *Australian Citizenship Act 2007* is available under the *Administrative Appeals Tribunal Act 1975* (the AAT Act). Regulation 18A of the *Administrative Appeals Tribunal Regulations 1976* provides for service of documents under the AAT Act for notification of decisions and other matters.

050.511E In the case of a visa granted to a non-citizen on the basis that the non-citizen is a person to whom subclause 050.212 (4AB) applies — bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia until the bridging visa held by the person who meets the requirements of subclause 050.212 (4AAA) ceases to be in effect.

050.512 In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) to whom paragraph 050.212 (3A) (b), paragraph 050.212 (4) (a) or (d) or subclause 050.212 (9) applies — bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia until:
  - (i) if another bridging visa is granted to the holder in respect of his or her judicial review application — the grant of that bridging visa; or

- 
- (ii) subject to paragraph (c), 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
    - (iii) if the holder withdraws his or her application for judicial review — 28 days after that withdrawal; or
    - (iv) if the holder opts out of, or is struck out of, the representative proceeding for judicial review — 28 days after so opting out or being struck out; and
  - (c) if a court remits a matter to which the judicial review proceedings relate to a review authority, or to the Minister, for reconsideration — permitting the holder to remain in Australia in accordance with the relevant provision of paragraph 050.511 (b), clause 050.513 or clause 050.513B.
- 050.513 In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) who has applied for merits review of a decision to cancel a visa — visa coming into effect on grant permitting the holder to remain in Australia until:
- (a) 28 days after notification of the review decision; or
  - (b) if another bridging visa is granted to the holder in respect of his or her merits review application — the grant of that bridging visa; or
  - (c) if the holder withdraws his or her application for merits review — 28 days after that withdrawal.
- 050.513A In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) who has applied under section 137K of the Act for revocation of the cancellation of a visa — bridging visa:
- (a) coming into effect on grant; and
  - (b) permitting the holder to stay in Australia until:
    - (i) 7 working days after the holder is notified of the decision on the revocation application; or
    - (ii) if another bridging visa is granted to the holder in respect of his or her revocation application — the grant of that bridging visa; or

- (iii) if the holder withdraws his or her revocation application — 7 working days after that withdrawal; and
  - (c) if the decision on the revocation application is not to revoke the cancellation and the holder applies for merits review of that decision — permitting the holder to remain in Australia in accordance with the relevant paragraph of clause 050.513B.
- 050.513B In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) who has applied for merits review of a decision under section 137L of the Act not to revoke the cancellation of a visa — bridging visa coming into effect on grant permitting the holder to stay in Australia until:
- (a) 28 days after the holder is notified of the review decision; or
  - (b) if another bridging visa is granted to the holder in respect of his or her review application — the grant of that bridging visa; or
  - (c) if the holder withdraws his or her application for merits review — 28 days after that withdrawal.
- 050.514 In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) to whom subsection 140 (1) or (3) of the Act (which deal with cancellation as a result of cancellation of a visa held by another non-citizen) applies, if the other person whose visa was cancelled has applied for review of that cancellation decision — visa coming into effect on grant permitting the holder to remain in Australia until:
- (a) 28 days after notification of the review decision; or
  - (b) if another bridging visa is granted to the holder in respect of that merits review application — the grant of that bridging visa; or
  - (c) if the other person whose visa was cancelled withdraws his or her application for merits review — 28 days after that withdrawal.



---

050.514AA In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) to whom subsection 140 (1), (2) or (3) of the Act applies, if the person whose visa was cancelled under section 137J of the Act has applied under section 137K of the Act for revocation of the cancellation — bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to stay in Australia until:
  - (i) 7 working days after the person whose visa was cancelled under section 137J of the Act is notified of the decision on the revocation application; or
  - (ii) if another bridging visa is granted to the holder in respect of the revocation application — the grant of that bridging visa; or
  - (iii) if the person whose visa was cancelled under section 137J of the Act withdraws his or her revocation application — 7 working days after that withdrawal; and
- (c) if the decision on the revocation application is not to revoke the cancellation and the person whose visa was cancelled applies for merits review of that decision — permitting the holder to remain in Australia in accordance with the relevant paragraph of clause 050.514AB.

050.514AB In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) to whom subsection 140 (1), (2) or (3) of the Act applies, if the person whose visa was cancelled under section 137J of the Act has applied for merits review of a decision under section 137L of the Act not to revoke the cancellation — bridging visa coming into effect on grant permitting the holder to stay in Australia until:

- (a) 28 days after the person whose visa was cancelled under section 137J of the Act is notified of the review decision; or
- (b) if another bridging visa is granted to the holder in respect of the review application — the grant of that bridging visa; or

- (c) if the person whose visa was cancelled under section 137J of the Act withdraws his or her application for merits review — 28 days after that withdrawal.
- 050.514A In the case of a visa granted to a non-citizen to whom subclause 050.222 (3) applies — bridging visa:
- (a) coming into effect on grant; and
  - (b) permitting the holder to remain in Australia for 5 working days from date of grant.
- 050.515 (1) In the case of a visa granted, or taken to have been granted, to a non-citizen who is in criminal detention — visa coming into effect on grant and ceasing on:
- (a) the non-citizen's unconditional release from criminal detention; or
  - (b) the non-citizen's release on bail; or
  - (c) if the non-citizen is in prison:
    - (i) the non-citizen's completing a sentence of imprisonment; or
    - (ii) subject to subclause (2), the non-citizen's release on parole; or
    - (iv) the non-citizen's escaping from prison; or
  - (ca) subject to subclause (2), in the case of a non-citizen who is subject to an order for periodic detention — the completion of the period of periodic detention imposed by that order; or
  - (d) the signing of a deportation order against the non-citizen; or
  - (e) the grant of another visa to the holder; or
  - (f) if the non-citizen is subject to an order for periodic detention — the non-citizen's breaching a condition of that order.
- (2) Subparagraph (1) (c) (ii) and paragraph (1) (ca) apply only in the case of a non-citizen who has actually served a part of a term of imprisonment.

- 050.516 In the case of a visa that is taken to have been granted by operation of section 75 of the Act (which deals with applications for bridging visas which the Minister does not decide within a short period) — visa coming into effect on grant permitting the applicant to remain in Australia for:
- (a) 5 working days from date of grant; or
  - (b) if the Minister is satisfied, within 5 days from the date of grant, that the visa holder has made acceptable arrangements to depart Australia within 14 days from the date of grant — 14 days from the date of grant.
- 050.517 In any other case — visa coming into effect on grant and ceasing on a date specified by the Minister for the purpose.

## **050.6 Conditions**

- 050.611 In the case of a visa granted to a non-citizen who:
- (a) either:
    - (i) applied for a substantive visa at the same time and on the same form as he or she applied for the bridging visa; or
    - (ii) applied for a substantive visa in respect of which the bridging visa is granted under regulation 2.21B; and
  - (b) is not in immigration detention; and
  - (c) held a Bridging E (Class WE) visa at the time when he or she made the application for the substantive visa;
- whichever of conditions 8101, 8104, 8201, 8207, 8401, 8402, 8505, 8506 and 8548 apply to that bridging visa.
- 050.611B In the case of a visa granted to an unlawful non-citizen to whom subclause 050.222 (3) applies:
- (a) condition 8401 must be imposed; and
  - (b) any 1 or more of conditions 8101, 8104, 8201, 8207, 8505, 8506 and 8548 may be imposed.
- 050.612 In the case of a visa that is taken to have been granted by operation of section 75 of the Act — conditions 8101, 8201, 8402, 8506, 8509 and 8548.

- 050.612A (1) This clause applies to a visa that is granted to an applicant who:
- (a) meets the requirements of 1 or more of the following:
    - (i) subparagraph 050.212 (3A) (b) (i);
    - (ii) subparagraph 050.212 (3A) (b) (ii);
    - (iii) paragraph 050.212 (4) (a);
    - (iv) paragraph 050.212 (4) (aa);
    - (v) paragraph 050.212 (4) (d);
    - (vi) subclause 050.212 (4AA);
    - (vii) subclause 050.212 (6AA);
    - (viii) subclause 050.212 (9); and
  - (b) does not meet the requirements of subclause 050.212 (5B), (6) or (6A).
- (2) Condition 8101 must be imposed.
- (3) Any 1 or more of conditions 8201, 8207, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511, 8512 and 8548 may be imposed.
- 050.612B In the case of a visa granted to an applicant who meets the requirements of subclause 050.212 (4AAA) or (4AB): Nil.
- 050.613 In the case of a visa granted to an applicant (whether or not the applicant is an applicant to whom another clause in this Division would otherwise apply) who meets the requirements of subclause 050.212 (6A) or (8) — any 1 or more of conditions 8201, 8207, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511, 8512 and 8548 may be imposed.
- 050.613A (1) In the case of a visa granted to an applicant (whether or not the applicant is an applicant to which any other clause in this Division applies) who:
- (a) applies for:
    - (i) a Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999; or
    - (ii) a Protection (Class XA) visa on or after 20 October 1999; or

- (b) is not in a class of persons specified by the Minister by instrument in writing for this paragraph;

Condition 8101.

- (2) If the applicant is an applicant to whom subclause (1) applies, any 1 or more of conditions 8201, 8207, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511, 8512 and 8548 may be imposed.

050.614 (1) In the case of a visa granted to an applicant who:

- (a) is:

- (i) an applicant for a Protection (Class AZ) visa in the period starting on 1 July 1997 and ending at the end of 19 October 1999; or  
(ii) an applicant for a Protection (Class XA) visa on or after 20 October 1999; and

- (b) meets the requirements of subclause 050.212 (3A), (4), (4AA) or (4A);

condition 8101, if that condition applied to the last visa held by the holder.

- (2) Any 1 or more of conditions 8104, 8201, 8207, 8401, 8402, 8403, 8505, 8506, 8507, 8508, 8509, 8510, 8511, 8512 and 8548 may be imposed.

050.615 (1) In the case of a visa granted to an applicant who:

- (a) meets the requirements of subclause 050.212 (5B) or (6); and  
(b) was not an unlawful non-citizen after the application for a substantive visa was finally determined up until the time of the request for the Minister:  
(i) to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act; or  
(ii) to make a determination under section 48B of the Act;

condition 8101, if that condition applied to the last visa held by the holder.

(2) Any 1 or more of conditions 8201, 8207, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511, 8512 and 8548 may be imposed.

050.615A (1) In the case of a visa granted to an applicant who:

- (a) meets the requirements of subclause 050.212 (5B) or (6); and
- (b) was an unlawful non-citizen for all or part of the period after the application for a substantive visa was finally determined until the time of the request for the Minister:
  - (i) to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act; or
  - (ii) to make a determination under section 48B of the Act;

condition 8101.

(2) Any 1 or more of conditions 8201, 8207, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511, 8512 and 8548 may be imposed.

050.616 (1) In the case of a visa granted to an applicant (whether or not the applicant is an applicant to whom another clause in this Division would otherwise apply) who meets the requirements of subclause 050.212 (6B) — condition 8101, if that condition applied to the last visa held by the holder.

(2) Any 1 or more of conditions 8104, 8201, 8207, 8401, 8402, 8403, 8505, 8506, 8507, 8508, 8509, 8510, 8511, 8512 and 8548 may be imposed.

050.617 In any other case — any 1 or more of conditions 8101, 8104, 8201, 8207, 8401, 8402, 8403, 8505, 8506, 8507, 8508, 8510, 8511, 8512 and 8548 may be imposed.

## **050.7      Way of giving evidence**

050.711 No evidence need be given.

050.712 If evidence is given, to be given by a label affixed to a valid passport.

---

## Subclass 051                      Bridging (Protection Visa Applicant)

### 051.1      Interpretation

051.111      In this Part:

*review authority* includes the Administrative Appeals Tribunal.

*Note 1* *Compelling need to work* and *criminal detention* are defined in regulation 1.03.

*Note 2* For *eligible non-citizen* see regulation 2.20.

*Note 3* For the meaning of *finally determined*, see subsection 5 (9) of the Act.

*Note 4* A Subclass 051 visa may also be granted without application.

### 051.2      Primary criteria

*Note* All applicants must satisfy the primary criteria.

#### 051.21      Criteria to be satisfied at time of application

051.211      The applicant is an eligible non-citizen referred to in subregulation 2.20 (7), (8), (9), (10) or (11).

051.212      The applicant, or a person acting on behalf of the applicant, has signed an undertaking acceptable to the Minister that:

- (a) if the applicant withdraws the application for a protection visa, the applicant will depart Australia, or present himself or herself to Immigration for removal, within 28 days after the applicant withdraws the application; and
- (b) if the application for a protection visa is finally determined and refused, the applicant will depart Australia, or present himself or herself to Immigration for removal, within 28 days after the latest of the following:
  - (i) the applicant is notified that the protection visa application has been finally determined and refused;

- (ii) the applicant withdraws an application for judicial review of the decision to refuse the protection visa application (the *visa decision*);
- (iii) proceedings for judicial review of the visa decision are completed, and the outcome is that the visa decision is maintained;
- (iv) the applicant withdraws an appeal against the outcome of judicial review of the visa decision;
- (v) proceedings on an appeal against the outcome of judicial review of the visa decision are completed, and the outcome is that the visa decision is maintained.

- 051.213 The Minister is satisfied that the applicant satisfies:
- (a) the public interest criteria 4001, 4002 and 4003; and
  - (b) the health criteria in clauses 866.223, 866.224, 866.224A and 866.224B.

**051.22 Criteria to be satisfied at time of decision**

- 051.221 The applicant continues to satisfy the criteria in clauses 051.211, 051.212 and 051.213.

**051.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

**051.4 Circumstances applicable to grant**

- 051.411 The applicant must be in Australia but not in immigration clearance.

**051.5 When visa is in effect**

- 051.511 In the case of a visa granted to a non-citizen who has applied for a protection visa — bridging visa coming into effect on grant, permitting the holder to remain in Australia until:
- (a) either:



- 
- (i) if the Minister's decision in respect of the protection visa application is to grant a visa — the grant of the protection visa; or
    - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa — 28 days after the holder is notified of that refusal; or
  - (b) if that application is refused and the holder applies for merits review of that decision — 28 days after notification of the decision of the final review authority appealed to; or
  - (c) the grant of a further bridging visa to the holder in respect of his or her protection visa application; or
  - (d) if the holder withdraws the application for the protection visa or for review — 28 days after that withdrawal; or
  - (e) if the holder is notified by Immigration that the protection visa application is invalid — 28 days after the notification; or
  - (f) if a review authority remits the application for the protection visa to the Minister for reconsideration — permitting the holder of the bridging visa to remain in Australia in accordance with the relevant provision of this clause.
- 051.512 In the case of a visa granted to a non-citizen on the basis of judicial review of a decision to refuse a protection visa application — bridging visa coming into effect on grant and permitting the applicant to remain in Australia until:
- (a) if another bridging visa is granted to the holder in respect of his or her application for judicial review — the grant of that bridging visa; or
  - (b) subject to paragraph (d), 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
  - (c) if the applicant withdraws the application for judicial review — 28 days after that withdrawal; or
  - (d) if a court remits a matter to which the judicial review proceedings relate to a review authority, or to the Minister, for reconsideration — permitting the holder to remain in Australia in accordance with the relevant provision of clause 051.511.

- 051.513 In the case of a visa that is taken to have been granted by operation of section 75 of the Act — bridging visa coming into effect on grant and permitting the applicant to remain in Australia until:
- (a) either:
    - (i) if the Minister's decision in respect of the protection visa application is to grant a visa — the grant of the visa; or
    - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa — 28 days after the holder is notified of that refusal; or
  - (b) if the protection visa application is refused and the holder applies for merits review of that decision — 28 days after notification of the decision of the final review authority appealed to; or
  - (c) the grant of a further bridging visa to the holder in respect of his or her protection visa application; or
  - (d) if the holder withdraws the application for the protection visa or for review — 28 days after that withdrawal.

## **051.6 Conditions**

- 051.611 In the case of a visa that is taken to have been granted by operation of section 75 of the Act — conditions 8101, 8201, 8402, 8506 and 8513.
- 051.611A (1) In the case of a visa granted to an applicant (whether or not the applicant is an applicant to which any other clause in this Division applies) who:
- (a) applies for:
    - (i) a Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999; or
    - (ii) a Protection (Class XA) visa on or after 20 October 1999; and
  - (b) has been in Australia for a period of 45 days or more, or for periods totalling 45 days or more, (not including any day for part of which the applicant was not in Australia) in the 12 months immediately before the date of that application; and

- (c) is not within a class of persons specified by Gazette Notice for the purposes of this paragraph:

Condition 8101.

(2) If the applicant is an applicant to whom subclause (1) and clause 051.611 applies — conditions 8101, 8201, 8402, 8506 and 8513.

(3) In addition, if the applicant is an applicant to whom subclause (1) applies, any 1 or more of conditions 8104, 8201, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511 and 8512 may be imposed.

051.612 In any other case — any 1 or more of conditions 8101, 8104, 8201, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511 and 8512 may be imposed.

## **051.7 Way of giving evidence**

051.711 No evidence need be given.

051.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 060 Bridging F**

### **060.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

### **060.2 Primary criteria**

#### **060.21 [No criteria to be satisfied at time of application]**

#### **060.22 Criteria to be satisfied at time of decision**

060.221 The Minister is satisfied that the applicant has been identified as a suspected victim of human trafficking.

060.222 The Minister is satisfied that suitable arrangements have been made for the care, safety and welfare of the applicant in Australia for the proposed period of the visa.

060.223      The Minister is satisfied that, if the bridging visa is granted, the applicant will abide by the conditions imposed on it.

### **060.3      Secondary criteria**

#### **060.31      [No criteria to be satisfied at time of application]**

#### **060.32      Criteria to be satisfied at time of decision**

060.321      The applicant is a member of the immediate family of, and made a combined application with, a person in relation to whom the primary criteria in Subdivision 060.22 are satisfied.

060.322      The Minister is satisfied that the applicant continues to be a member of the immediate family of a person who has been identified as a suspected victim of human trafficking.

060.323      The Minister is satisfied that suitable arrangements have been made for the care, safety and welfare of the applicant in Australia for the proposed period of the visa.

060.324      The Minister is satisfied that, if the bridging visa is granted, the applicant will abide by the conditions imposed on it.

### **060.4      Circumstances applicable to grant**

- 060.411      (1) An applicant:
- (a) to whom subregulation 2.20 (14) applies; and
  - (b) who applied for the visa using the application process described in subregulation 2.20B (2);
- must be outside Australia when the visa is granted.
- (2) An applicant:
- (a) to whom subregulation 2.20 (15) applies; and
  - (b) who applied for the visa using the application process described in subregulation 2.20B (2);
- must be in Australia, but not in immigration clearance, when the visa is granted.

- (3) An applicant:
  - (a) to whom subregulation 2.20 (15) applies except that he or she has been immigration cleared; and
  - (b) who applied for the visa using the application process described in subregulation 2.20B (2);must be in Australia when the visa is granted.
- (4) In any other case, an applicant must be in Australia when the visa is granted.

## **060.5 When visa is in effect**

- 060.511
- (1) For a person to whom subregulation 2.20 (14) applies, and who made an application in accordance with subregulation 2.20B (2) — bridging visa:
    - (a) coming into effect on grant; and
    - (b) permitting the holder to travel to, and enter, Australia on 1 occasion until a date specified by the Minister; and
    - (c) permitting the holder to remain in Australia until a date specified by the Minister.
  - (2) For a person to whom subregulation 2.20 (15) applies regardless of whether the person has been immigration cleared, and who made an application in accordance with subregulation 2.20B (2) — bridging visa:
    - (a) coming into effect on grant; and
    - (b) permitting the holder to travel to, and enter, Australia on 1 occasion until a date specified by the Minister; and
    - (c) permitting the holder to remain in Australia until the earliest of the following:
      - (i) a date specified by the Minister;
      - (ii) the date on which the holder is granted a new criminal justice stay visa in accordance with Division 4 of Part 2 of the Act;
      - (iii) the date on which a criminal justice certificate issued to the holder in accordance with that Division is cancelled.

- (3) In any other case — bridging visa:
- (a) coming into effect on grant; and
  - (b) permitting the holder to remain in Australia until the earliest of the following:
    - (i) a date specified by the Minister;
    - (ii) the end of 45 days after the date of the grant;
    - (iii) if:
      - (A) an officer of the Australian Federal Police, or of a police force of a State or Territory, has told Immigration, in writing, under paragraph 1306 (3) (d) of Schedule 1 that the holder has been identified as a suspected victim of human trafficking; and
      - (B) an officer of that police force tells Immigration, in writing, that the holder is no longer identified as a suspected victim;when the Minister gives a written notice to the holder, by one of the methods specified in section 494B of the Act, that the holder is no longer identified as a suspected victim;
    - (iv) if:
      - (A) a holder is a member of the immediate family of a person; and
      - (B) an officer of the Australian Federal Police, or of a police force of a State or Territory, has told Immigration, in writing, under paragraph 1306 (3) (d) of Schedule 1 that the person has been identified as a suspected victim of human trafficking; and
      - (C) an officer of that police force tells Immigration, in writing, that the person is no longer identified as a suspected victim;when the Minister gives a written notice to the holder, by one of the methods specified in section 494B of the Act, that the person is no longer identified as a suspected victim.

---

## **060.6 Conditions**

- 060.611 In the case of a visa that is taken to have been granted by operation of section 75 of the Act — conditions 8101 and 8402.
- 060.612 In any other case:
- (a) conditions 8101 and 8401 must be imposed; and
  - (b) any 1 or more of conditions 8403, 8505, 8506, 8507, 8510 and 8511 may be imposed.
- 060.613 In addition to clauses 060.611 and 060.612, in the case of a visa that has been granted to a person who:
- (a) made the application for the visa in accordance with subregulation 2.20B (2); and
  - (b) is the holder of the visa on the basis of satisfying the secondary criteria for the grant of the visa;
- condition 8502 must be imposed.

## **060.7 Way of giving evidence**

- 060.711 No evidence need be given.
- 060.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 070 Bridging (Removal Pending)**

### **070.1 Interpretation**

- 070.111 In this Part:
- eligible non-citizen* has the meaning given in regulation 2.20.
- Note* See regulation 2.20A for how an application for a Bridging R (Class WR) visa is taken to have been validly made.

### **070.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

**070.21      Criteria to be satisfied at time of application**

070.211      The applicant is an eligible non-citizen referred to in subregulation 2.20 (12) who is taken to have made an application in accordance with subregulation 2.20A (2).

**070.22      Criteria to be satisfied at time of decision**

070.221      The applicant continues to satisfy the criterion set out in clause 070.211.

070.222      The Minister is satisfied that, if the bridging visa is granted, the applicant will abide by the conditions to which the visa is subject.

070.223      The applicant satisfies public interest criteria 4001 and 4002.

**070.3      Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

**070.4      Circumstances applicable to grant**

070.411      The applicant must be in immigration detention when the visa is granted.

**070.5      When visa is in effect**

070.511      Bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia; and
- (c) ceasing at the time when the Minister gives a notice in writing to the holder, by one of the methods specified in section 494B of the Act, stating that:
  - (i) the Minister is satisfied that the holder's removal from Australia is reasonably practicable; or
  - (ii) the holder has breached a condition to which the visa is subject.



---

## 070.6 Conditions

070.611 Conditions 8303, 8401, 8506, 8513, 8514, 8541, 8542 and 8543 must be imposed.

## 070.7 Way of giving evidence

070.711 No evidence need be given.

070.712 If evidence is given, to be given by a label affixed to a valid passport or an approved form.

## Subclass 100 Partner

### 100.1 Interpretation

100.111 In this Part:

*sponsoring partner*, in relation to an applicant, means:

- (a) an Australian citizen, Australian permanent resident, or eligible New Zealand citizen who was specified as the applicant's spouse, intended spouse or de facto partner in the application that resulted in the grant of:
  - (i) the Subclass 309 (Spouse (Provisional)) visa as mentioned in paragraph 100.221 (2) (a), (2A) (a), (3) (a), (4) (a) or (4A) (a); or
  - (ii) the Subclass 309 (Partner (Provisional)) visa mentioned in subparagraph 100.221 (2) (a) (i), or paragraph (2A) (a), (3) (a), (4) (a) or (4A) (a); or
- (b) for a person to whom the Minister has decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa — the Australian citizen, Australian permanent resident or eligible New Zealand citizen who was the spouse or de facto partner of that person at the time the visa was granted.

*Note* *Australian permanent resident*, *eligible New Zealand citizen*, *long-term partner relationship* and *permanent humanitarian visa* are defined in regulation 1.03, *de facto partner* is defined in section 5CB of the Act, and *spouse* is defined in section 5F of the Act.

## **100.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

### **100.21 [No criteria to be satisfied at time of application]**

### **100.22 Criteria to be satisfied at time of decision**

- 100.221 (1) The applicant meets the requirements of subclause (2), (2A), (3), (4) or (4A).
- (2) The applicant meets the requirements of this subclause if:
- (a) the applicant:
- (i) is the holder of a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa; or
  - (ii) was the holder of a Subclass 309 (Spouse (Provisional)) visa granted before 1 November 1999 that has ceased to be in effect because the applicant:
    - (A) was outside Australia at the end of the 30 month period specified in the Subclass 309 visa for travelling to and entering Australia; or
    - (B) left Australia after the end of the 30 month period specified in that visa for travelling to and entering Australia; and
- (b) the applicant is the spouse or de facto partner of the sponsoring partner; and
- (c) subject to subclauses (5), (6) and (7), at least 2 years have passed since the application was made.
- (2A) The applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa which the Minister has decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant to the applicant; and

- 
- (b) the applicant is the spouse or de facto partner of the sponsoring partner; and
  - (c) subject to subclauses (5), (6) and (7), at least 2 years have passed since the Minister made the decision mentioned in paragraph (a).
- (3) The applicant meets the requirements of this subclause if the applicant:
- (a) first entered Australia as the holder of a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa and either:
    - (i) continues to be the holder of that visa; or
    - (ii) is no longer the holder of that visa because the visa:
      - (A) was granted before 1 November 1999; and
      - (B) has ceased to be in effect because the applicant:
        - (I) was outside Australia at the end of the 30 month period specified in the Subclass 309 visa for travelling to and entering Australia; or
        - (II) left Australia after the end of the 30 month period specified in that visa for travelling to and entering Australia; and
  - (b) would meet the requirements of subclause (2) or (2A) except that, after the applicant first entered Australia as the holder of the visa mentioned in paragraph (a), the sponsoring partner has died; and
  - (c) satisfies the Minister that the applicant would have continued to be the spouse or de facto partner of the sponsoring partner if the sponsoring partner had not died.
- (4) The applicant meets the requirements of this subclause if:
- (a) the applicant first entered Australia as the holder of a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa and either:
    - (i) continues to be the holder of that visa; or

- (ii) is no longer the holder of that visa because the visa:
  - (A) was granted before 1 November 1999; and
  - (B) has ceased to be in effect because the applicant:
    - (I) was outside Australia at the end of the 30 month period specified in the Subclass 309 visa for travelling to and entering Australia; or
    - (II) left Australia after the end of the 30 month period specified in that visa for travelling to and entering Australia; and
- (b) the applicant would meet the requirements of subclause (2) or (2A) except that the relationship between the applicant and the sponsoring partner has ceased; and
- (c) after the applicant first entered Australia as the holder of the visa mentioned in paragraph (a) — either or both of the following circumstances applies:
  - (i) either or both of the following:
    - (A) the applicant;
    - (B) a member of the family unit of the sponsoring partner or of the applicant or of both of them; has suffered family violence committed by the sponsoring partner;
  - (ii) the applicant:
    - (A) has custody or joint custody of, or access to; or
    - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the sponsoring partner:
    - (C) has been granted joint custody or access by a court; or
    - (D) has a residence order or contact order made under the *Family Law Act 1975*; or

- (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

*Note* For special provisions relating to family violence, see Division 1.5.

(4A) The applicant meets the requirements of this subclause:

- (a) if the applicant held a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa that ceased on notification of a decision of the Minister to refuse a Subclass 100 visa; and
- (b) if the Tribunal:
  - (i) has remitted that decision for reconsideration and, as a result, the Minister decides that the applicant satisfies the criteria for the grant of a Subclass 100 visa apart from the criterion that the applicant hold a Subclass 309 visa; or
  - (ii) has determined that the applicant satisfies the criteria for the grant of a Subclass 100 visa apart from the criterion that the applicant hold a Subclass 309 visa.

(5) Paragraphs (2) (c) and (2A) (c) do not apply to an applicant who at the time of making the application was in a long-term partner relationship with the sponsoring partner.

(6) Paragraphs (2) (c) and (2A) (c) do not apply to an applicant whose sponsoring partner:

- (a) is, or was, the holder of a permanent humanitarian visa; and
- (b) before that permanent visa was granted, was in a married relationship or de facto relationship with the applicant of which Immigration was informed before that permanent visa was granted.

(7) Nothing in paragraphs (2) (c) and (2A) (c) prevents the Minister, less than 2 years after the application is made, from:

- (a) refusing to grant a Subclass 100 visa; or

- (b) granting a Subclass 100 visa to an applicant who meets the requirements of subclause (3) or (4).
- 100.222 The applicant:
  - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (b) if the applicant had turned 18 at the time of application — public interest criterion 4019.
- 100.223 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 100.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 100 visa is a person who:
  - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (b) if the person had turned 18 at the time of application — satisfies public interest criterion 4019.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 100 visa is a person who:

  - (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 100.225 If a person (in this clause called the ***additional applicant***):
  - (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 100.226 If:
  - (a) at least 2 years have passed since the application was made; and

- (b) the applicant does not meet the requirements of subclause 100.221 (2A), (3) or (4);

the applicant is nominated for the grant of the Subclass 100 visa by the sponsoring partner.

100.227 The Minister is satisfied that:

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

### 100.3 Secondary criteria

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### 100.31 Criteria to be satisfied at time of application

100.311 The applicant is a member of the family unit of a person who has applied for a Partner (Migrant) (Class BC) visa, and the Minister has not decided to grant or refuse to grant a visa to the person.

#### 100.32 Criteria to be satisfied at time of decision

100.321 The applicant:

- (a) is the holder of a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa that was granted on the basis that the applicant was a member of the family unit of another person who was the holder of a Subclass 309 visa, and that other person has been granted a Subclass 100 visa; or
- (b) was the holder of a Subclass 309 (Spouse (Provisional)) visa granted before 1 November 1999 that:
  - (i) has ceased to be in effect because the applicant:
    - (A) was outside Australia at the end of the 30 month period specified in the Subclass 309 visa for travelling to and entering Australia; or

- (B) left Australia after the end of the 30 month period specified in that visa for travelling to and entering Australia; and
- (ii) was granted on the basis that the applicant was a member of the family unit of another person who was the holder of a Subclass 309 visa, and that other person has been granted a Subclass 100 visa; or
- (c) is the holder of a Subclass 445 (Dependent Child) visa that was granted on the basis that the applicant was the dependent child of a parent who was the holder of a Subclass 309 or 445 visa and who has been granted a Subclass 100 visa; or
- (d) is a person:
  - (i) who holds:
    - (A) a Subclass 445 (Dependent Child) visa; or
    - (B) a Subclass 309 (Spouse (Provisional)) visa; or
    - (C) a Subclass 309 (Partner (Provisional)) visa; which the Minister has decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant to the applicant; and
  - (ii) who, at the time the visa mentioned in subparagraph (i) was granted, was the dependent child, or a member of the family unit, as the case requires, of another person:
    - (A) who, at the time mentioned in subparagraph (ii), was the holder of a Subclass 445 (Dependent Child), a Subclass 309 (Spouse (Provisional)) visa or a Subclass 309 (Partner (Provisional)) visa; and
    - (B) who, since the time mentioned in subparagraph (ii), has been granted a Subclass 100 visa.

100.322 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.



- 
- 100.323 If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 100.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 100.325 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **100.4 Circumstances applicable to grant**

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

#### **100.5 When visa is in effect**

- 100.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

#### **100.6 Conditions**

- 100.611 If the applicant is outside Australia at the time of grant, first entry must be made before a date specified by the Minister for the purpose.

100.612      If the applicant meets the primary criteria and is outside Australia at the time of the grant, condition 8502 may be imposed before the applicant's first entry to Australia as the holder of the visa.

100.613      If the applicant meets the secondary criteria and is outside Australia at the time of the grant, either or both of conditions 8502 and 8515 may be imposed before the applicant's first entry to Australia as the holder of the visa.

## **100.7      Way of giving evidence**

100.711      No evidence need be given.

100.712      If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 101                  Child**

### **101.1      Interpretation**

*Note* **eligible New Zealand citizen, dependent child and step-child** are defined in regulation 1.03, **adoption** is defined in regulation 1.04, **de facto partner** is defined in section 5CB of the Act (also see regulation 1.09A), and **spouse** is defined in section 5F of the Act (also see regulation 1.15A).

There are no interpretation provisions specific to this Part.

### **101.2      Primary criteria**

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

#### **101.21      Criteria to be satisfied at time of application**

- 101.211      (1) The applicant:
- (a) is a dependent child of:
    - (i) an Australian citizen; or
    - (ii) the holder of a permanent visa; or
    - (iii) an eligible New Zealand citizen; and

- (b) subject to subclause (2), has not turned 25; and
- (c) either:
  - (i) is:
    - (A) the child (other than an adopted child); or
    - (B) the step-child within the meaning of paragraph (b) of the definition of ***step-child***; of the Australian citizen, holder of a permanent visa or eligible New Zealand citizen mentioned in paragraph (a); or
  - (ii) was adopted overseas by a person who, at the time of adoption, was not an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen, but later became an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen.

(2) Paragraph (1) (b) does not apply to an applicant who, at the time of making the application, was a dependent child within the meaning of subparagraph (b) (ii) of the definition of ***dependent child***.

101.212 The applicant is sponsored by a person who:

- (a) has turned 18; and
- (b) is an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen; and
- (c) is:
  - (i) the Australian citizen, holder of a permanent visa or eligible New Zealand citizen mentioned in subclause 101.211 (1); or
  - (ii) the cohabiting spouse or de facto partner of the Australian citizen, holder of a permanent visa or eligible New Zealand citizen mentioned in subclause 101.211 (1).

101.213 (1) If the applicant has turned 18:

- (a) the applicant:
  - (i) is not engaged to be married; and
  - (ii) does not have a spouse or de facto partner; and
  - (iii) has never had a spouse or de facto partner; and

- (b) the applicant is not engaged in full-time work; and
- (c) subject to subclause (2), the applicant has, since turning 18, or within 6 months or a reasonable time after completing the equivalent of year 12 in the Australian school system, been undertaking a full-time course of study at an educational institution leading to the award of a professional, trade or vocational qualification.

(2) Paragraph (1) (c) does not apply to an applicant who, at the time of making the application, is a dependent child within the meaning of subparagraph (b) (ii) of the definition of *dependent child*.

## **101.22 Criteria to be satisfied at time of decision**

- 101.221 (1) In the case of an applicant who had not turned 18 at the time of application, the applicant:
- (a) continues to satisfy the criterion in clause 101.211; or
  - (b) does not continue to satisfy that criterion only because the applicant has turned 18.
- (2) In the case of an applicant who had turned 18 at the time of application:
- (a) the applicant:
    - (i) continues to satisfy the criterion in clause 101.211; or
    - (ii) does not continue to satisfy that criterion only because the applicant has turned 25; and
  - (b) the applicant continues to satisfy the criterion in clause 101.213.
- 101.222 The sponsorship referred to in clause 101.212 has been approved by the Minister and is still in force.
- Note* Regulation 1.20KB limits the Minister's discretion to approve sponsorships.
- 101.223 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

- 
- 101.225 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 101.226 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 101.227 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 101 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (b) if the person had turned 18 at the time of application — satisfies public interest criterion 4019.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 101 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 101.228 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 101.229 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **101.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **101.31 Criteria to be satisfied at the time of application**

- 101.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 101.21.
- 101.312 The sponsorship referred to in clause 101.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### **101.32 Criteria to be satisfied at time of decision**

- 101.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 101 visa.
- 101.322 The sponsorship referred to in clause 101.312 has been approved by the Minister and is still in force.
- 101.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 101.325 If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 101.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

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

## **101.4 Circumstances applicable to grant**

- 101.411 The applicant must be outside Australia when the visa is granted.

## **101.5 When visa is in effect**

- 101.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## **101.6 Conditions**

- 101.611 First entry must be made before a date specified by the Minister for the purpose.
- 101.612 Either or both of conditions 8502 and 8515 may be imposed.

## **101.7 Way of giving evidence**

- 101.711 No evidence need be given.
- 101.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 102 Adoption**

## **102.1 Interpretation**

- 102.111 In this Part:
- adoptive parent*, in relation to an applicant, means the person referred to in paragraph 102.211 (2) (b) or 102.211 (5) (b).

***child for adoption*** means an applicant referred to in subclause 102.211 (3) or (4).

***prospective adoptive parent***, in relation to an applicant, means:

- (a) the unmarried person referred to in subparagraph 102.211 (3) (c) (i); or
- (b) each of the spouses or de facto partners referred to in subparagraph 102.211 (3) (c) (ii); or
- (c) the Australian citizen, holder of a permanent visa or eligible New Zealand citizen referred to in paragraph 102.211 (4) (c);

as the case requires.

*Note* ***eligible New Zealand citizen*** is defined in regulation 1.03, and ***adoption*** is defined in regulation 1.04.

## **102.2 Primary criteria**

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

### **102.21 Criteria to be satisfied at time of application**

- 102.211
- (1) The applicant meets the requirements of subclause (2), (3), (4) or (5).
  - (2) An applicant meets the requirements of this subclause if:
    - (a) the applicant has not turned 18; and
    - (b) the applicant was adopted overseas by a person who:
      - (i) was, at the time of the adoption, an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen; and
      - (ii) had been residing overseas for more than 12 months at the time of the application; and
  - (c) the Minister is satisfied that the residence overseas by the adoptive parent was not contrived to circumvent the requirements for entry to Australia of children for adoption; and



- 
- (d) the adoptive parent has lawfully acquired full and permanent parental rights by the adoption.
  - (3) An applicant meets the requirements of this subclause if:
    - (a) the applicant has not turned 18; and
    - (b) the applicant is resident in an overseas country; and
    - (c) either:
      - (i) a person who is not in a married relationship or de facto relationship, and who is an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen has undertaken in writing to adopt the applicant; or
      - (ii) spouses or de facto partners, at least one of whom is an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen, have undertaken in writing to adopt the applicant; and
    - (d) a competent authority in Australia:
      - (i) has approved the prospective adoptive parent as a suitable adoptive parent for the applicant; or
      - (ii) has approved the prospective adoptive parent and the spouse or de facto partner of the prospective adoptive parent as suitable adoptive parents for the applicant.
  - (4) An applicant meets the requirements of this subclause if:
    - (a) the applicant has not turned 18; and
    - (b) the applicant is resident in an overseas country; and
    - (c) a competent authority in the overseas country has allocated the applicant for prospective adoption by a person who is an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen, or such a person and that person's spouse or de facto partner; and
    - (d) either:
      - (i) arrangements for the adoption are in accordance with the Adoption Convention; or

- 
- (ii) the adoption is of a kind that may be accorded recognition by regulation 5 of the *Family Law (Bilateral Arrangements — Intercountry Adoption) Regulations 1998*; and
- (e) a competent authority in Australia:
- (i) has approved the prospective adoptive parent as a suitable adoptive parent for the applicant; or
  - (ii) has approved the prospective adoptive parent and the spouse or de facto partner of the prospective adoptive parent as suitable adoptive parents for the applicant.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant has not turned 18; and
  - (b) the applicant was adopted in accordance with the Adoption Convention, in an Adoption Convention country, by a person who was an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen when the adoption took place, or by such a person and that person's spouse or de facto partner.
- 102.212 The applicant is sponsored by a person who is:
- (a) an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen; and
  - (b) in the case of an applicant who is a child for adoption — a prospective adoptive parent of the child; and
  - (c) in the case of an applicant who is an adopted child — an adoptive parent of the child.
- 102.213 The laws relating to adoption of the country in which the child is normally resident have been complied with.
- 102.22 Criteria to be satisfied at time of decision**
- 102.221 The applicant continues to satisfy the criteria in clauses 102.211 and 102.213.
- 102.222 The sponsorship referred to in clause 102.212 has been approved by the Minister and is still in force.
- Note* Regulation 1.20KB limits the Minister's discretion to approve sponsorships.

- 
- 102.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- 102.225 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 102.226 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 102 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 102 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 102.227 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 102.227A If the applicant has met the requirements of subclause 102.211 (3), a competent authority in the overseas country has approved the departure of the applicant:
- (a) for adoption in Australia; or
- (b) in the custody of the prospective adoptive parent or parents.
- 102.228 (1) If:
- (a) the applicant has met the requirements of subclause 102.211 (4) or (5); and
- (b) the adoption of the applicant took place overseas —

an adoption compliance certificate is in force in relation to the adoption.

(2) If:

- (a) the applicant has met the requirements of subclause 102.211 (4); and
- (b) the adoption of the applicant is to take place in Australia —

the Minister is satisfied that a competent authority in the overseas country has given permission for the child to leave the overseas country in the care of a prospective adoptive parent for the purpose of adoption in Australia.

102.229 The Minister is satisfied that:

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

### **102.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **102.31 Criteria to be satisfied at time of application**

102.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 102.21.

102.312 The sponsorship referred to in clause 102.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### **102.32 Criteria to be satisfied at time of decision**

102.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 102 visa.

- 
- 102.322 The sponsorship referred to in clause 102.312 has been approved by the Minister and is still in force.
- 102.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- 102.325 If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 102.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 102.327 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

## **102.4 Circumstances applicable to grant**

- 102.411 The applicant must be outside Australia when the visa is granted.

## **102.5 When visa is in effect**

- 102.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## **102.6 Conditions**

- 102.611 First entry must be made before a date specified by the Minister for the purpose.

102.612 Either or both of conditions 8502 and 8515 may be imposed.

## **102.7 Way of giving evidence**

102.711 No evidence need be given.

102.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 103 Parent**

### **103.1 Interpretation**

*Note* **eligible New Zealand citizen**, **aged parent**, **close relative**, **guardian** and **settled** are defined in regulation 1.03, **balance of family test** is defined in regulation 1.05, **parent** is defined in subsection 5 (1) of the Act, **de facto partner** is defined in section 5CB of the Act (also see regulation 1.09A) , and **spouse** is defined in section 5F of the Act (also see regulation 1.15A).

### **103.2 Primary criteria**

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

#### **103.21 Criteria to be satisfied at time of application**

103.211 The applicant is a parent of a person who is:

- (a) a settled Australian citizen; or
- (b) a settled Australian permanent resident; or
- (c) a settled eligible New Zealand citizen.

103.212 (1) The applicant is sponsored in accordance with subclause (2) or (3).

(2) If the child has turned 18, the applicant is sponsored by:

- (a) the child; or
- (b) the child's cohabiting spouse or de facto partner, if that spouse or de facto partner:
  - (i) has turned 18; and

- 
- (ii) is:
    - (A) a settled Australian citizen; or
    - (B) a settled Australian permanent resident; or
    - (C) a settled eligible New Zealand citizen.
  - (3) If the child has not turned 18, the applicant is sponsored by:
    - (a) the child's cohabiting spouse, if that spouse:
      - (i) has turned 18; and
      - (ii) is:
        - (A) a settled Australian citizen; or
        - (B) a settled Australian permanent resident; or
        - (C) a settled eligible New Zealand citizen; or
    - (b) a person who:
      - (i) is a relative or guardian of the child; and
      - (ii) has turned 18; and
      - (iii) is:
        - (A) a settled Australian citizen; or
        - (B) a settled Australian permanent resident; or
        - (C) a settled eligible New Zealand citizen; or
    - (c) if the child has a cohabiting spouse but the spouse has not turned 18 — a person who:
      - (i) is a relative or guardian of the child's spouse; and
      - (ii) has turned 18; and
      - (iii) is:
        - (A) a settled Australian citizen; or
        - (B) a settled Australian permanent resident; or
        - (C) a settled eligible New Zealand citizen; or
    - (d) a community organisation.
  - (4) In this clause, *the child* means the settled Australian citizen, settled Australian permanent resident or settled eligible New Zealand citizen referred to in clause 103.211.

103.213 The applicant satisfies the balance of family test.

**103.22      Criteria to be satisfied at time of decision**

103.221      The applicant continues to satisfy the criterion in clause 103.211.

103.222      A sponsorship of the kind mentioned in clause 103.212, approved by the Minister, is in force, whether or not the sponsor was the sponsor at the time of application.

*Note* The applicant may seek the Minister's approval for a change of sponsor as long as the new sponsor meets the description in clause 103.212.

103.224      The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

103.225      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

103.226      The Minister is satisfied that an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.

103.227      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 103 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 103 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.



- 
- 103.228 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —  
public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 103.229 If the applicant has previously made a valid application for another parent visa:
- (a) the application has been:
    - (i) finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*); or
    - (ii) withdrawn; and
  - (b) any of the following has occurred in relation to the application for that visa:
    - (i) each decision that has been made in respect of the application is not, or is no longer, subject to any form of:
      - (A) review by the Administrative Appeals Tribunal; or
      - (B) judicial review proceedings (including proceedings on appeal);
    - (ii) a decision that has been made in respect of the application was subject to:
      - (A) review by the Administrative Appeals Tribunal; or
      - (B) judicial review proceedings (including proceedings on appeal);but the period within which such a review or such review proceedings could be instituted has ended without a review or review proceedings having been instituted as prescribed;
    - (iii) if the applicant has applied for:
      - (A) review by the Migration Review Tribunal; or
      - (B) review by the Administrative Appeals Tribunal; or

(C) judicial review proceedings (including proceedings on appeal);  
the applicant has withdrawn all applications for the review or review proceedings.

103.230 The Minister is satisfied that:

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

### **103.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **103.31 Criteria to be satisfied at time of application**

103.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 103.21.

103.312 A sponsorship of the kind mentioned in clause 103.212 of the person who satisfies the primary criteria, approved by the Minister:

- (a) is in force; and
- (b) includes sponsorship of the applicant.

#### **103.32 Criteria to be satisfied at time of decision**

103.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 103 visa.

103.322 A sponsorship of the kind mentioned in clause 103.212 of the person who satisfies the primary criteria, approved by the Minister:

- (a) is in force; and

- 
- (b) includes sponsorship of the applicant;  
whether or not the sponsor was the sponsor when the Minister first approved a sponsorship.
- 103.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 103.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 103.325 The Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to the person who satisfies the primary criteria, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 103.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 103.327 If the applicant has previously made a valid application for another parent visa:
- (a) the application has been:
    - (i) finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*); or
    - (ii) withdrawn; and
  - (b) any of the following has occurred in relation to the application for that visa:
    - (i) each decision that has been made in respect of the application is not, or is no longer, subject to any form of:
      - (A) review by the Administrative Appeals Tribunal; or

- (B) judicial review proceedings (including proceedings on appeal);
- (ii) a decision that has been made in respect of the application was subject to:
  - (A) review by the Administrative Appeals Tribunal; or
  - (B) judicial review proceedings (including proceedings on appeal);but the period within which such a review or such review proceedings could be instituted has ended without a review or review proceedings having been instituted as prescribed;
- (iii) if the applicant has applied for:
  - (A) review by the Migration Review Tribunal; or
  - (B) review by the Administrative Appeals Tribunal; or
  - (C) judicial review proceedings (including proceedings on appeal);the applicant has withdrawn all applications for the review or review proceedings.

103.328 The Minister is satisfied that:

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

#### **103.4 Circumstances applicable to grant**

103.411 The applicant must be outside Australia when the visa is granted.

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

---

### **103.5 When visa is in effect**

- 103.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

### **103.6 Conditions**

- 103.611 First entry must be made before a date specified by the Minister for the purpose.
- 103.612 Either or both of conditions 8502 and 8515 may be imposed.

### **103.7 Way of giving evidence**

- 103.711 No evidence need be given.
- 103.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 105 Skilled — Australian-linked**

### **105.1 Interpretation**

- 105.111 In this Part:
- usual occupation*, in relation to an applicant, has the meaning set out in subregulation 2.26 (5).
- Note Occupations Requiring English List* is defined in regulation 1.19. For *vocational English*, see regulation 1.15B.

### **105.2 Primary criteria**

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

### **105.21 Criteria to be satisfied at time of application**

- 105.211 The applicant:
- (a) is a brother, sister, nephew, niece or parent; or

(b) is a child (other than a dependent child);

of a person (in this clause called *the sponsor*) who has turned 18 and who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

105.212 The applicant is sponsored by the sponsor.

105.213 The applicant is of working age.

**105.22 Criteria to be satisfied at time of decision**

105.221 The sponsorship referred to in clause 105.212 has been approved by the Minister and is still in force.

105.222 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* The Subdivision mentioned (ss 92 to 96) provides for the application of a *points* system, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.6 (regulations 2.26 and 2.27), and Schedule 6, of these Regulations. In certain circumstances, attributes of the spouse or de facto partner of an applicant may be taken into account (regulation 2.27). Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (s 96).

105.223 If the applicant satisfies the criterion specified in clause 105.222 by reason of the operation of regulation 2.27, the spouse or de facto partner of the applicant was, at the time of application, of working age.

105.224 (1) Subject to subclause (2), if the usual occupation of the applicant is an occupation included in the Occupations Requiring English List, the applicant has vocational English.

(2) If:

(a) the applicant satisfies the criterion specified in clause 105.222 by reason of the operation of regulation 2.27; and

- (b) the usual occupation of the spouse or de facto partner of the applicant is an occupation included in the Occupations Requiring English List;

the spouse or de facto partner of the applicant has vocational English.

(3) For this clause, if an applicant is a person to whom subregulation 2.08D (1) applies, the Occupations Requiring English List for the applicant's further application under regulation 2.08D, means the list that, under regulation 1.19, was published in the *Gazette* on 31 August 1994.

- 105.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 105.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 105.227 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 105.228 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 105 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 105 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 105.229 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and

- (c) made a combined application with the applicant —  
public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

105.230 Approval of the application would not result in either:

- (a) the number of Subclass 105 visas granted in a financial year exceeding the maximum number of Subclass 105 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including Subclass 105) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

### **105.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **105.31 Criteria to be satisfied at time of application**

- 105.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 105.21.
- 105.312 The sponsorship referred to in clause 105.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### **105.32 Criteria to be satisfied at time of decision**

- 105.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 105 visa.
- 105.322 The sponsorship referred to in clause 105.312 has been approved by the Minister and is still in force.
- 105.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4009 and 4010.



- 
- 105.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 105.325 If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 105.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **105.4 Circumstances applicable to grant**

- 105.411 The applicant must be outside Australia when the visa is granted.

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

#### **105.5 When visa is in effect**

- 105.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

#### **105.6 Conditions**

- 105.611 First entry must be made before a date specified by the Minister for the purpose.
- 105.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.
- 105.613 Condition 8515 may be imposed.

#### **105.7 Way of giving evidence**

- 105.711 Visa label affixed to a valid passport.

## Subclass 106      Regional-linked

### 106.1 Interpretation

106.111 In this Part:

*degree* has the meaning given in subregulation 2.26 (5).

*diploma* has the meaning given in subregulation 2.26 (5).

*medical practitioner* includes a specialist medical practitioner.

*relevant Australian authority* has the meaning given in subregulation 2.26 (5).

*trade certificate* has the meaning given in subregulation 2.26 (5).

*usual occupation* has the meaning given in subregulation 2.26 (5).

*Note 1A* For *designated area*, see regulation 1.03.

*Note 1* For *Occupations Requiring English List*, see r 1.19.

*Note 2* For *vocational English*, see r 1.15B.

### 106.2 Primary criteria

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

#### 106.21 Criteria to be satisfied at time of application

106.211 The applicant:

- (a) is a brother, sister, nephew, niece or parent; or
- (b) is a child (other than a dependent child); or
- (c) is a grandchild or first cousin;

of a person (in this Division called *the sponsor*) who has turned 18 and who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

106.212 The applicant is sponsored by the sponsor.

---

106.213 The sponsor:

- (a) is resident in a designated area; and
- (b) was resident in one or other of the designated areas throughout the period of 12 months immediately before Immigration receives the relevant sponsorship (except for short absences for the purposes of recreation or business); and
- (c) is not, at the time Immigration receives the relevant sponsorship, receiving a benefit under the *Student and Youth Assistance Act 1973* or any form of Australian social security benefit, allowance or pension, other than:
  - (i) an age pension under the *Social Security Act 1991*; or
  - (ii) a family allowance, or family allowance supplement, under that Act; or
  - (iii) a pension under the *Seamen's War Pensions and Allowances Act 1940* or the *Veterans' Entitlements Act 1986*; and
- (d) is either:
  - (i) a person who:
    - (A) is financially independent, engaged in paid employment or receiving a pension referred to in subparagraph (c) (i) or (iii); and
    - (B) has not received, in respect of a period or periods amounting to more than 2 weeks during that period of 12 months, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*; or
  - (ii) a person who:
    - (A) is not financially independent, engaged in paid employment or receiving a pension referred to in subparagraph (c) (i) or (iii); and
    - (B) does not have a spouse or de facto partner who has received, in respect of a period or periods amounting to more than 2 weeks during that period of 12 months, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*.

- 106.214      (1) The applicant meets the requirements of subclause (2) or (3).
- (2) The applicant meets the requirements of this subclause if the applicant:
- (a) is less than 45 years of age; and
- (b) does not have a usual occupation as a medical practitioner; and
- (c) has not obtained a medical qualification within the period of 5 years immediately before the time of application.
- (3) The applicant meets the requirements of this subclause if the spouse or de facto partner of the applicant:
- (a) is an applicant for a Subclass 106 visa; and
- (b) is less than 45 years of age; and
- (c) does not have a usual occupation as a medical practitioner; and
- (d) has not obtained a medical qualification within the period of 5 years immediately before the time of application.

**106.22      Criteria to be satisfied at time of decision**

- 106.221      The sponsorship referred to in clause 106.212 has been approved by the Minister and is still in force.
- 106.222      The sponsor is still resident in a designated area.
- 106.223      (1) The applicant:
- (a) meets the requirements of subclause (2); or
- (b) does not meet those requirements but meets the requirements of subclause (3).
- (2) The applicant meets the requirements of this subclause if the applicant:
- (a) met the requirements of subclause 106.214 (2) at the time of the applicant's application; and
- (b) has a usual occupation, other than as a medical practitioner, being an occupation for which, in

---

Australia, a degree, diploma or trade certificate is required; and

- (c) holds a degree, diploma or trade certificate that:
    - (i) is relevant to that usual occupation; and
    - (ii) is assessed by the relevant Australian authority as equivalent to the Australian standards for the occupation; and
  - (d) has English-language skills that meet the requirements of subclause (4).
- (3) The applicant meets the requirements of this subclause if:
- (a) the applicant met the requirements of subclause 106.214 (3) at the time of the applicant's application; and
  - (b) the applicant's spouse or de facto partner continues to meet the requirement of paragraph 106.214 (3) (a); and
  - (c) the applicant's spouse or de facto partner has a usual occupation, other than as a medical practitioner, being an occupation for which, in Australia, a degree, diploma or trade certificate is required; and
  - (d) the applicant's spouse or de facto partner holds a degree, diploma or trade certificate that:
    - (i) is relevant to that usual occupation; and
    - (ii) is assessed by the relevant Australian authority as equivalent to the Australian standards for the occupation; and
  - (e) the applicant's spouse or de facto partner has English-language skills that meet the requirements of subclause (4).
- (4) The English-language skills of the applicant or the applicant's spouse or de facto partner, as relevant, meet the requirements of this subclause if:
- (a) the applicant or the applicant's spouse or de facto partner:
    - (i) has a usual occupation that is an occupation included in the Occupations Requiring English List; and
    - (ii) has vocational English; or

- (b) the applicant or the applicant's spouse or de facto partner does not have a usual occupation that is an occupation included in the Occupations Requiring English List but has proficiency in English of at least the standard required for the award of 10 points on the language skill factor of the general points test specified in Part 3 of Schedule 6.
- 106.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 106.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 106.226 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 106.227 Each member of the family unit of the applicant who is an applicant for a Subclass 106 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 106.228 Each member of the family unit of the applicant who is not an applicant for a Subclass 106 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 106.229 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

- 
- 106.230 Approval of the application would not result in either:
- (a) the number of Subclass 106 visas granted in a financial year exceeding the maximum number of Subclass 106 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Subclass 106) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

### **106.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **106.31 Criteria to be satisfied at time of application**

- 106.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 106.21.
- 106.312 The sponsorship referred to in clause 106.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### **106.32 Criteria to be satisfied at time of decision**

- 106.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 106 visa.
- 106.322 The sponsorship referred to in clause 106.312 has been approved by the Minister and is still in force.
- 106.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 106.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

- 106.325      If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a)      the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b)      an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 106.326      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **106.4      Circumstances applicable to grant**

- 106.411      The applicant must be outside Australia when the visa is granted.
- Note*      The second instalment of the visa application charge must be paid before the visa can be granted.

#### **106.5      When visa is in effect**

- 106.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

#### **106.6      Conditions**

- 106.611      First entry must be made before a date specified by the Minister for the purpose.
- 106.612      If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.
- 106.613      Condition 8515 may be imposed.

#### **106.7      Way of giving evidence**

- 106.711      Visa label affixed to a valid passport



---

## Subclass 114                      Aged Dependent Relative

### 114.1      Interpretation

*Note* *aged dependent relative*, *dependent child*, *eligible New Zealand citizen* and *settled* are defined in regulation 1.03, *de facto partner* is defined in section 5CB of the Act (also see regulation 1.09A), and *spouse* is defined in section 5F of the Act (also see regulation 1.15A).

### 114.2      Primary criteria

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

#### 114.21      Criteria to be satisfied at time of application

114.211      The applicant is an aged dependent relative of a person who is:

- (a)    an Australian citizen; or
- (b)    an Australian permanent resident; or
- (c)    an eligible New Zealand citizen.

114.212      (1) The applicant is sponsored:

- (a)    if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen — by the Australian relative; or
- (b)    by the spouse or de facto partner of the Australian relative, if the spouse or de facto partner:
  - (i)    cohabits with the Australian relative; and
  - (ii)   is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and
  - (iii)   has turned 18.

(2) In this clause, *the Australian relative* means the person mentioned in clause 114.211 of whom the applicant is an aged dependent relative.

**114.22      Criteria to be satisfied at time of decision**

- 114.221      The applicant continues to satisfy the criterion in clause 114.211.
- 114.222      The sponsorship referred to in clause 114.212 has been approved by the Minister and is still in force.
- 114.223      The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4019.
- 114.224      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 114.225      The Minister is satisfied that an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 114.226      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 114 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b) if the member has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 114 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 114.227      If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

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

### **114.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **114.31 Criteria to be satisfied at time of application**

- 114.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 114.21.
- 114.312 The sponsorship referred to in clause 114.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### **114.32 Criteria to be satisfied at time of decision**

- 114.321 The applicant continues to be a member of the family unit of a person who is the holder of a Subclass 114 visa.
- 114.322 The sponsorship referred to in clause 114.312 has been approved by the Minister and is still in force.
- 114.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 114.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

114.325      The Minister is satisfied that:

- (a)    the applicant is included in the assurance of support given in relation to the person who satisfies the primary criteria, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
- (b)    an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.

114.326      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

114.327      The Minister is satisfied that:

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

#### **114.4      Circumstances applicable to grant**

114.411      The applicant must be outside Australia when the visa is granted.

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

#### **114.5      When visa is in effect**

114.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

#### **114.6      Conditions**

114.611      First entry must be made before a date specified by the Minister for the purpose.

114.612      Either or both of conditions 8502 and 8515 may be imposed.

---

## 114.7 Way of giving evidence

114.711 No evidence need be given.

114.712 If evidence is given, to be given by a label affixed to a valid passport.

## Subclass 115 Remaining Relative

### 115.1 Interpretation

*Note* **Australian relative**, **dependent child**, **eligible New Zealand citizen** and **settled** are defined in regulation 1.03. **Remaining relative** is defined in regulation 1.15. **De facto partner** is defined in section 5CB of the Act (also see regulations 1.09A and 2.03A) and **spouse** is defined in section 5F of the Act (also see regulation 1.15A).

### 115.2 Primary criteria

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

#### 115.21 Criteria to be satisfied at time of application

115.211 The applicant is a remaining relative of an Australian relative for the applicant.

115.212 The applicant is sponsored:

- (a) if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen — by the Australian relative; or
- (b) by the spouse or de facto partner of the Australian relative if:
  - (i) the spouse or de facto partner cohabits with the relative; and
  - (ii) the spouse or de facto partner is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and
  - (iii) the spouse or de facto partner has turned 18.

**115.22      Criteria to be satisfied at time of decision**

115.221      The applicant continues to satisfy the criterion in clause 115.211.

115.222      A sponsorship of the kind mentioned in clause 115.212, approved by the Minister, is in force, whether or not the sponsor was the sponsor at the time of application.

*Note* The applicant may seek the Minister's approval for a change of sponsor as long as the new sponsor meets the description in clause 115.212.

115.223      The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

115.224      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

115.225      The Minister is satisfied that an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.

115.226      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 115 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the member had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the member has previously been in Australia, satisfies special return criteria 5001 and 5002.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 115 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

- 
- 115.227 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 115.228 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **115.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **115.31 Criteria to be satisfied at time of application**

- 115.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 115.21.
- 115.312 A sponsorship of the kind mentioned in clause 115.212 of the person who satisfies the primary criteria, approved by the Minister:
- (a) is in force; and
  - (b) includes sponsorship of the applicant.

#### **115.32 Criteria to be satisfied at time of decision**

- 115.321 The applicant continues to be a member of the family unit of a person who is the holder of a Subclass 115 visa.
- 115.322 A sponsorship of the kind mentioned in clause 115.212 of the person who satisfies the primary criteria, approved by the Minister:
- (a) is in force; and

- (b) includes sponsorship of the applicant;  
whether or not the sponsor was the sponsor at the time of application.
- 115.323 The applicant:
  - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 115.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 115.325 The Minister is satisfied that:
  - (a) the applicant is included in the assurance of support given in relation to the person who satisfies the primary criteria, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 115.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 115.327 The Minister is satisfied that:
  - (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

## **115.4 Circumstances applicable to grant**

- 115.411 The applicant must be outside Australia when the visa is granted.

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



---

## 115.5 When visa is in effect

- 115.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## 115.6 Conditions

- 115.611 First entry must be made before a date specified by the Minister for the purpose.
- 115.612 Either or both of conditions 8502 and 8515 may be imposed.

## 115.7 Way of giving evidence

- 115.711 No evidence need be given.
- 115.712 If evidence is given, to be given by a label affixed to a valid passport.

## Subclass 116 Carer

### 116.1 Interpretation

*Note* *dependent child* and *eligible New Zealand citizen* are defined in regulation 1.03, *carer* is defined in regulation 1.15AA, *de facto partner* is defined in section 5CB of the Act (also see regulation 1.09A), and *spouse* is defined in section 5F of the Act (also see regulation 1.15A).

### 116.2 Primary criteria

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

#### 116.21 Criteria to be satisfied at time of application

- 116.211 (1) The applicant claims to be a carer of an Australian relative of the applicant.
- (2) In this clause, *Australian relative*, in relation to an applicant, means a relative of the applicant who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

- 116.212      The applicant is sponsored:
- (a)    by the Australian relative mentioned in clause 116.211 if that relative has turned 18; or
  - (b)    by the spouse or de facto partner of the Australian relative if:
    - (i)    the spouse or de facto partner cohabits with the relative; and
    - (ii)   the spouse or de facto partner is an Australian citizen or an Australian permanent resident or an eligible New Zealand citizen; and
    - (iii)   the spouse or de facto partner has turned 18.

**116.22      Criteria to be satisfied at time of decision**

- 116.221      The applicant is a carer of the Australian relative mentioned in clause 116.211.
- 116.222      The sponsorship referred to in clause 116.212 has been approved by the Minister and is still in force.
- 116.223      The applicant:
- (a)    satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b)    if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 116.224      If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.
- 116.226      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 116 visa is a person who:
- (a)    satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (aa)   if the member had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b)    if the member has previously been in Australia, satisfies special return criterion 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 116 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

116.227 If a person (in this clause called the *additional applicant*):

- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

116.228 The Minister is satisfied that:

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

### 116.3 Secondary criteria

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### 116.31 Criteria to be satisfied at time of application

116.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 116.21.

116.312 The sponsorship referred to in clause 116.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### 116.32 Criteria to be satisfied at time of decision

116.321 The applicant continues to be a member of the family unit of a person who is the holder of a Subclass 116 visa.

- 116.322      The sponsorship referred to in clause 116.312 has been approved by the Minister and is still in force.
- 116.323      The applicant:
- (a)      satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b)      if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 116.324      If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.
- 116.326      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 116.327      The Minister is satisfied that:
- (a)      the applicant is the holder of a valid passport that:
    - (i)      was issued to the applicant by an official source; and
    - (ii)     is in the form issued by the official source; or
  - (b)      it would be unreasonable to require the applicant to be the holder of a passport.

#### **116.4      Circumstances applicable to grant**

- 116.411      The applicant must be outside Australia when the visa is granted.

*Note*      The second instalment of the visa application charge must be paid before the visa can be granted, unless the applicant is a person in relation to whom the Minister has determined that the second instalment of the visa application charge should not be paid because the Minister is satisfied that payment of the instalment has caused, or is likely to cause, severe financial hardship to the applicant or to the person of whom the applicant is a carer.

#### **116.5      When visa is in effect**

- 116.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

---

## 116.6 Conditions

- 116.611 First entry must be made before a date specified by the Minister for the purpose.
- 116.612 Either or both of conditions 8502 and 8515 may be imposed.

## 116.7 Way of giving evidence

- 116.711 No evidence need be given.
- 116.712 If evidence is given, to be given by a label affixed to a valid passport.

## Subclass 117 Orphan Relative

### 117.1 Interpretation

- 117.111 In this Part:

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

*Note* *dependent child*, *eligible New Zealand citizen*, *relative* and *settled* are defined in regulation 1.03, *orphan relative* is defined in regulation 1.14, *de facto partner* is defined in section 5CB of the Act (also see regulation 1.09A), and *spouse* is defined in section 5F of the Act (also see regulation 1.15A).

### 117.2 Primary criteria

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

#### 117.21 Criteria to be satisfied at time of application

- 117.211 The applicant:
- (a) is an orphan relative of an Australian relative of the applicant; or
  - (b) is not an orphan relative only because the applicant has been adopted by the Australian relative mentioned in paragraph (a).

117.212      The applicant is sponsored:

- (a)    by the Australian relative, if the relative:
  - (i)    has turned 18; and
  - (ii)   is a settled Australian citizen, a settled Australian permanent resident, or a settled eligible New Zealand citizen; or
- (b)    by the spouse or de facto partner of the Australian relative, if the spouse or de facto partner:
  - (i)    has turned 18; and
  - (ii)   is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and
  - (iii)   cohabits with the Australian relative.

**117.22      Criteria to be satisfied at time of decision**

117.221      The applicant:

- (a)    continues to satisfy the criterion in clause 117.211; or
- (b)    does not continue to satisfy that criterion only because the applicant has turned 18.

117.222      The sponsorship referred to in clause 117.212 has been approved by the Minister and is still in force.

*Note* Regulation 1.20KB limits the Minister's discretion to approve sponsorships.

117.223      The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

117.224      If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.

117.225      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 117 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 117 visa is a person who:

- 
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 117.226 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 117.227 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 117.228 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **117.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **117.31 Criteria to be satisfied at time of application**

- 117.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 117.21.
- 117.312 The sponsorship referred to in clause 117.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

**117.32      Criteria to be satisfied at time of decision**

- 117.321      The applicant continues to be a member of the family unit of a person who is the holder of a Subclass 117 visa.
- 117.322      The sponsorship referred to in clause 117.312 has been approved by the Minister and is still in force.
- 117.323      The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 117.324      If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a)    the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b)    an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 117.325      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 117.326      The Minister is satisfied that:
- (a)    the applicant is the holder of a valid passport that:
    - (i)    was issued to the applicant by an official source; and
    - (ii)   is in the form issued by the official source; or
  - (b)    it would be unreasonable to require the applicant to be the holder of a passport.

**117.4      Circumstances applicable to grant**

- 117.411      The applicant must be outside Australia when the visa is granted.

**117.5      When visa is in effect**

- 117.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.



---

## **117.6 Conditions**

- 117.611 First entry must be made before a date specified by the Minister for the purpose.
- 117.612 Either or both of conditions 8502 and 8515 may be imposed.

## **117.7 Way of giving evidence**

- 117.711 No evidence need be given.
- 117.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 118 Designated Parent**

## **118.1 Interpretation**

*Note* *aged parent, close relative, dependent child, eligible New Zealand citizen, guardian, settled* and *working age parent* are defined in regulation 1.03, *balance of family test* is defined in regulation 1.05, *de facto partner* is defined in section 5CB of the Act (also see regulation 1.09A), and *spouse* is defined in section 5F of the Act (also see regulation 1.15A).

## **118.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

### **118.21 Criteria to be satisfied at time of application**

- 118.211 (1) The applicant:
- (a) made a valid application for a Parent (Migrant) (Class AX) visa in the period from 1 November 1998 to the end of 30 March 1999; and
  - (b) meets the requirements of subclauses (2) and (3); and
  - (c) meets the requirements of subclause (4) or (5).
- (2) A decision to grant, or to refuse to grant, the Parent (Migrant) (Class AX) visa was not made in the period from 1 November 1998 to the end of 30 March 1999.

(3) The application for the Parent (Migrant) (Class AX) visa has not been withdrawn.

(4) The applicant meets the requirements of this subclause if the applicant:

- (a) is a working age parent; and
- (b) has a dependent child in Australia who:
  - (i) has not turned 18; and
  - (ii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

(5) The applicant meets the requirements of this subclause if the applicant is an aged parent of a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

118.212 (1) If the applicant meets the requirements of subclause 118.211 (4), the applicant is sponsored:

- (a) by a person who:
  - (i) is a close relative or guardian of a settled dependent child of the applicant who has not turned 18; and
  - (ii) has turned 18; and
  - (iii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or
- (b) by a community organisation.

(2) In this clause:

***settled dependent child*** means a dependent child of the applicant who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

118.213 (1) If the applicant meets the requirements of subclause 118.211 (5), the applicant is sponsored in accordance with subclause (2) or (3).

(2) If the relevant child has turned 18, the applicant is sponsored by:

- 
- (a) that child; or
  - (b) that child's cohabiting spouse or de facto partner, if that spouse or de facto partner:
    - (i) has turned 18; and
    - (ii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.
- (3) If the relevant child has not turned 18, the applicant is sponsored:
- (a) by that child's cohabiting spouse, if that spouse:
    - (i) has turned 18; and
    - (ii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or
  - (b) by a person who:
    - (i) is a close relative or guardian of the relevant child; and
    - (ii) has turned 18; and
    - (iii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or
  - (c) if the relevant child has a cohabiting spouse but the spouse has not turned 18 — by a person who:
    - (i) is a close relative or guardian of the relevant child's spouse; and
    - (ii) has turned 18; and
    - (iii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or
  - (d) by a community organisation.

(4) In this clause:

**relevant child** means a settled Australian citizen, settled Australian permanent resident or settled eligible New Zealand citizen.

118.214 The applicant satisfies the balance of family test.

**118.22      Criteria to be satisfied at time of decision**

- 118.221      The applicant continues to satisfy the criteria specified in clause 118.211.
- 118.222      The sponsorship referred to in clause 118.212 or 118.213 has been approved by the Minister and is still in force.
- 118.223      The applicant continues to satisfy the balance of family test.
- 118.224      The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 118.225      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 118.226      The Minister is satisfied that an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 118.227      (1) Each member of the family unit of the applicant who is an applicant is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if the member has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 118.228      If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

---

## **118.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

### **118.31 Criteria to be satisfied at time of application**

- 118.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 118.21.
- 118.312 The sponsorship referred to in clause 118.212 or 118.213 of the person who satisfies the primary criteria includes sponsorship of the applicant.

### **118.32 Criteria to be satisfied at time of decision**

- 118.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 118 visa.
- 118.322 The sponsorship referred to in clause 118.312 has been approved by the Minister and is still in force.
- 118.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 118.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 118.325 The Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to the person who satisfies the primary criteria, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 118.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

## **118.4      Circumstances applicable to grant**

118.411      The applicant must be outside Australia when the visa is granted.

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

## **118.5      When visa is in effect**

118.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## **118.6      Conditions**

118.611      First entry must be made before a date specified by the Minister for the purpose.

118.612      Either or both of conditions 8502 and 8515 may be imposed.

## **118.7      Way of giving evidence**

118.711      Visa label affixed to a valid passport.

# **Subclass 119                      Regional Sponsored Migration Scheme**

## **119.1      Interpretation**

119.111      In this Part:

*regional Australia* has the same meaning as in regulation 5.19.

*Note 1* For *approved appointment*, see regulation 5.19.

*Note 2* For *functional English*, see regulation 5.17.

## **119.2      Primary criteria**

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

---

**119.21 Criteria to be satisfied at time of application**

- 119.211 (1) The applicant has been nominated by an employer, in accordance with subregulation 5.19 (4), for an appointment in the business of that employer.
- (2) For an applicant who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa:
- (a) if the applicant applied for an Independent (Migrant) (Class AT) visa, the applicant:
- (i) had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa; and
  - (ii) has functional English; and
  - (iii) has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; or
- (b) if the applicant applied for a Skilled — Independent (Migrant) (Class BN) visa, the applicant:
- (i) had not turned 45 at the time of the application for a Skilled — Independent (Migrant) (Class BN) visa; and
  - (ii) has vocational English; and
  - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; or
- (c) if the applicant applied for a Skilled — Australian-sponsored (Migrant) (Class BQ) visa, the applicant:
- (i) had not turned 45 at the time of the application for a Skilled — Australian-sponsored (Migrant) (Class BQ) visa; and
  - (ii) has vocational English; and
  - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; or

- (d) if the applicant applied for a Skill Matching (Migrant) (Class BR) visa, the applicant:
  - (i) had not turned 45 at the time of the application for a Skill Matching (Migrant) (Class BR) visa; and
  - (ii) has functional English; and
  - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment.
- (3) If subclause (2) does not apply, either:
  - (a) if the applicant is mentioned in subparagraph 1114 (2) (a) (ii) of Schedule 1 — the applicant:
    - (i) is less than 45 at the time of the application for a Skilled (Migrant) (Class VE) visa; and
    - (ii) has competent English; and
    - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; or
  - (b) in any other case — unless exceptional circumstances apply, the applicant:
    - (i) has not turned 45; and
    - (ii) has functional English; and
    - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification, that is relevant to the appointment.
- (4) If it is mandatory in Australia that a person:
  - (a) hold a licence of a particular kind; or
  - (b) hold registration of a particular kind; or
  - (c) be a member (or a member of a particular kind) of a particular professional body;to perform tasks of the kind to be performed under the appointment, the applicant is, or is eligible to become, the holder of the licence, the holder of the registration, or a member of the body.



- 119.212 If the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.

**119.22 Criteria to be satisfied at time of decision**

- 119.221 The appointment mentioned in subclause 119.211 (1):

- (a) has been approved; and
- (b) has not been withdrawn; and
- (c) continues to satisfy the criteria for approval; and
- (d) is still available to the applicant.

*Note* See regulation 5.19 for the criteria for approval of the appointment.

- 119.222 The Minister is satisfied that the approved appointment will provide the employment referred to in the relevant employer nomination.

- 119.223 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the applicant had turned 18 at the time of application, public interest criterion 4019; and
- (b) if the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

- 119.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 119 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 119 visa is a person who:

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

- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

119.226 If a person (in this clause called the *additional applicant*):

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —  
public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

119.227 The Minister is satisfied that:

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

### **119.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **119.31 Criteria to be satisfied at time of application**

119.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies, or has satisfied, the primary criteria in Subdivision 119.21.

119.312 Any nomination given in respect of the other person mentioned in clause 119.311 includes the applicant.

#### **119.32 Criteria to be satisfied at time of decision**

119.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 119 visa.

- 
- 119.322 The applicant satisfies:
- (a) public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010; and
  - (b) public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the applicant to undergo assessment in relation to that criterion; and
  - (c) if the applicant had turned 18 at the time of application — public interest criterion 4019.
- 119.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 119.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 119.326 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **119.4 Circumstances applicable to grant**

- 119.411 The applicant must be outside Australia when the visa is granted.

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

#### **119.5 When visa is in effect**

- 119.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

#### **119.6 Conditions**

- 119.611 First entry must be made before a date specified by the Minister for the purpose.

119.612 Condition 8502 may be imposed.

## **119.7 Way of giving evidence**

119.711 No evidence need be given.

119.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 120 Labour Agreement**

### **120.1 Interpretation**

*Note 1* For **IASS agreement**, see regulation 1.16B.

*Note 2* For **labour agreement**, see regulation 1.03.

*Note 3* For **RHQ agreement**, see regulation 1.16A.

There are no interpretation provisions specific to this Part

### **120.2 Primary criteria**

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

#### **120.21 Criteria to be satisfied at time of application**

120.211 (1) For an applicant, other than an applicant mentioned in subclause (5) or (6), the applicant meets the requirements of subclause (2), (3) or (4).

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

- (a) the applicant has been nominated to work in Australia, in accordance with a labour agreement that is in effect, by an employer that is a party to that labour agreement; and
- (b) the applicant has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and
- (c) unless exceptional circumstances apply, the applicant has not turned 45; and

- 
- (d) the requirements of the labour agreement have been met in relation to the application.
  - (3) An applicant meets the requirements of this subclause if:
    - (a) the applicant has been nominated to work in Australia, in accordance with an RHQ agreement that is in effect, by an employer that is a party to that RHQ agreement; and
    - (b) the requirements of the RHQ agreement have been met in relation to the application.
  - (4) An applicant meets the requirements of this subclause if:
    - (a) the applicant has been nominated to work in Australia, in accordance with an IASS agreement that is in effect, by an employer that is a party to that IASS agreement; and
    - (b) the applicant has qualifications and experience that are suitable for the position to be taken by the applicant under the IASS agreement; and
    - (c) unless exceptional circumstances apply, the applicant has not turned 45; and
    - (d) the requirements of the IASS agreement have been met in relation to the application.
  - (5) For an applicant who, under regulation 2.08C, is taken to have applied for a Labour Agreement (Migrant) (Class AU) visa, and who seeks to enter Australia to work in accordance with a labour agreement:
    - (a) the applicant has been nominated to work in Australia, in accordance with a labour agreement that is in effect, by an employer that is a party to that labour agreement; and
    - (b) the applicant has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and
    - (c) the applicant had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa, a Skilled — Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class BR) visa; and

- (d) the requirements of the labour agreement have been met in relation to the application.
- (6) For an applicant who seeks to enter Australia to work in accordance with a labour agreement, and who is mentioned in subparagraph 1121 (2) (a) (ii) of Schedule 1:
  - (a) the applicant has been nominated to work in Australia, in accordance with a labour agreement that is in effect, by an employer that is a party to that labour agreement; and
  - (b) the applicant has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and
  - (c) the applicant was less than 45 at the time of the application for a Skilled (Residence) (Class VE) visa; and
  - (d) the requirements of the labour agreement have been met in relation to the application; and
  - (e) the applicant has competent English; and
  - (f) the applicant has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is relevant to the appointment.

**120.22      Criteria to be satisfied at time of decision**

120.221      The Minister is satisfied that the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions under relevant Australian legislation and awards.

120.222      The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the applicant had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

- 
- 120.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 120 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 120 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 120.225 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 120.226 (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) An applicant meets the requirements of this subclause if:
- (a) the employer mentioned in subclause 120.211 (2) or (5) is a party to a labour agreement that is in effect; and
  - (b) the nomination mentioned in subclause 120.211 (2) or (5):
    - (i) has been approved; and
    - (ii) has not been withdrawn; and
  - (c) the position specified in the nomination is still available to the applicant.

- (3) An applicant meets the requirements of this subclause if:
  - (a) the employer mentioned in subclause 120.211 (3) is a party to an RHQ agreement that is in effect; and
  - (b) the nomination mentioned in subclause 120.211 (3):
    - (i) has been approved; and
    - (ii) has not been withdrawn; and
  - (c) the position specified in the nomination is still available to the applicant.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the employer mentioned in subclause 120.211 (4) is a party to an IASS agreement that is in effect; and
  - (b) the nomination mentioned in subclause 120.211 (4):
    - (i) has been approved; and
    - (ii) has not been withdrawn; and
  - (c) the position specified in the nomination is still available to the applicant.

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

### **120.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **120.31 Criteria to be satisfied at time of application**

- 120.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in Subdivision 120.21.
- 120.312 Any nomination given in respect of the other person mentioned in clause 120.311 includes the applicant.



---

**120.32 Criteria to be satisfied at time of decision**

120.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 120 visa.

120.322 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

120.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

120.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

120.326 The Minister is satisfied that:

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

**120.4 Circumstances applicable to grant**

120.411 The applicant must be outside Australia when the visa is granted.

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

**120.5 When visa is in effect**

120.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from date of grant.

## **120.6      Conditions**

- 120.611      First entry must be made before a date specified by the Minister for the purpose.
- 120.612      Condition 8502 may be imposed.

## **120.7      Way of giving evidence**

- 120.711      No evidence need be given.
- 120.712      If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 121                      Employer Nomination**

## **121.1      Interpretation**

*Note 1*      **approved appointment** is defined in regulation 5.19.

*Note 2*      For **vocational English**, see regulation 1.15B.

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

## **121.2      Primary criteria**

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

### **121.21      Criteria to be satisfied at time of application**

- 121.210      For an applicant who has been nominated by an employer for an appointment in the business of that employer, and who is mentioned in subparagraph 1114 (2) (a) (ii):
- (a)      the applicant was less than 45 at the time of the application for a Skilled (Migrant) (Class VE) visa; and
  - (b)      the applicant has competent English; and
  - (c)      the applicant has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment.

- 
- 121.211A For an applicant who has been nominated by an employer for an appointment in the business of that employer and who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa:
- (a) if the applicant applied for an Independent (Migrant) (Class AT) visa, the applicant:
    - (i) had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa; and
    - (ii) has functional English; and
    - (iii) has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; and
  - (b) if the applicant applied for a Skilled — Independent (Migrant) (Class BN) visa, the applicant:
    - (i) had not turned 45 at the time of the application for a Skilled — Independent (Migrant) (Class BN) visa; and
    - (ii) has vocational English; and
    - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; and
  - (c) if the applicant applied for a Skilled — Australian-sponsored (Migrant) (Class BQ) visa, the applicant:
    - (i) had not turned 45 at the time of the application for a Skilled — Australian-sponsored (Migrant) (Class BQ) visa; and
    - (ii) has vocational English; and
    - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; and
  - (d) if the applicant applied for a Skill Matching (Migrant) (Class BR) visa, the applicant:
    - (i) had not turned 45 at the time of the application for a Skill Matching (Migrant) (Class BR) visa; and

- (ii) has functional English; and
  - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment.
- 121.211 If clauses 121.210 and 121.211A do not apply, each of the following is satisfied:
  - (a) the applicant has been nominated by an employer, in accordance with subregulation 5.19 (2), for an appointment in the business of that employer;
  - (b) either:
    - (i) both of the following are met:
      - (A) an assessing authority specified by the Minister in a Gazette Notice for this sub-paragraph as the assessing authority for the occupation to which the appointment relates has assessed the applicant's skills as suitable;
      - (B) unless exceptional circumstances apply, the applicant has been employed in the occupation to which the appointment relates for at least 3 years before making the application; or
    - (ii) the applicant will be paid a salary in the nominated position that is at least the amount of salary specified in a Gazette Notice for this subparagraph;
  - (c) the applicant:
    - (i) unless exceptional circumstances apply, has not turned 45; and
    - (ii) unless exceptional circumstances apply, has vocational English.
- 121.212 If the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.
- 121.213 If it is mandatory in Australia that a person:
  - (a) hold a licence of a particular kind; or
  - (b) hold registration of a particular kind; or

- (c) be a member (or a member of a particular kind) of a particular professional body;  
to perform tasks of the kind to be performed under the appointment, the applicant is, or is eligible to become, the holder of the licence, the holder of the registration, or a member of the body.

**121.22 Criteria to be satisfied at time of decision**

121.221 The appointment mentioned in paragraph 121.211 (a):

- (a) has been approved; and
- (b) has not been withdrawn; and
- (c) continues to satisfy the criteria for approval; and
- (d) is still available to the applicant.

*Note* See regulation 5.19 for the criteria for approval of the appointment.

121.223 The Minister is satisfied that the approved appointment will provide the employment referred to in the relevant employer nomination.

121.224 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the applicant had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

121.226 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 121 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 121 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

121.227 If a person (in this clause called the *additional applicant*):

- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

121.228 The Minister is satisfied that:

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

### **121.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **121.31 Criteria to be satisfied at time of application**

121.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in Subdivision 121.21.

121.312 Any nomination given in respect of the other person mentioned in clause 121.311 includes the applicant.

#### **121.32 Criteria to be satisfied at time of decision**

121.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 121 visa.

- 
- 121.322 The applicant satisfies:
- (a) public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010; and
  - (b) public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the applicant to undergo assessment in relation to that criterion; and
  - (c) public interest criterion 4019, if the applicant had turned 18 at the time of application.
- 121.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 121.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 121.326 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

## **121.4 Circumstances applicable to grant**

- 121.411 The applicant must be outside Australia when the visa is granted.

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

## **121.5 When visa is in effect**

- 121.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## **121.6 Conditions**

- 121.611 First entry must be made before a date specified by the Minister for the purpose.

121.612 Condition 8502 may be imposed.

## **121.7 Way of giving evidence**

121.711 No evidence need be given.

121.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 124 Distinguished Talent**

### **124.1 Interpretation**

*Note* **eligible New Zealand citizen** is defined in regulation 1.03. No interpretation provisions specific to this Part.

### **124.2 Primary criteria**

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

#### **124.21 Criteria to be satisfied at time of application**

- 124.211 (1) The applicant meets the requirements of subclause (2) or (4).
- (2) The applicant:
- (a) has an internationally recognised record of exceptional and outstanding achievement in one of the following areas:
    - (i) a profession;
    - (ii) a sport;
    - (iii) the arts;
    - (iv) academia and research; and
  - (b) is still prominent in the area; and
  - (c) would be an asset to the Australian community; and
  - (d) would have no difficulty in obtaining employment, or in becoming established independently, in Australia in the area; and



- (e) produces a completed approved form 1000; and

*Note* An approved form 1000 requires the applicant's record of achievement in an area (as mentioned in paragraph (a)) to be attested to by:

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen; or
- (d) an Australian organisation;

who has a national reputation in relation to the area.

- (f) if the applicant has not turned 18, or is at least 55 years old, at the time of application — would be of exceptional benefit to the Australian community.

(4) The applicant meets the requirements of this subclause if, in the opinion of the Minister, acting on the advice of:

- (a) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
- (b) the Director-General of Security;

the applicant has provided specialised assistance to the Australian Government in matters of security.

## **124.22 Criteria to be satisfied at time of decision**

124.221 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

124.222 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

124.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 124 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and

- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 124 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004 and 4010; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

124.225 If a person (in this clause called the ***additional applicant***):

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —  
public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

124.226 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

124.227 The Minister is satisfied that:

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

### 124.3 Secondary criteria

*Note 1* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

*Note 2* For an applicant for a Distinguished Talent (Migrant) (Class AL) visa who has not turned 18, subregulation 1.12 (6) sets out a specific definition of ***member of the family unit*** in addition to the operation of subregulation 1.12 (1). For an applicant who has turned 18, see subregulation 1.12 (1).

---

**124.31 Criteria to be satisfied at time of application**

- 124.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in Subdivision 124.21.

**124.32 Criteria to be satisfied at time of decision**

- 124.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 124 visa.
- 124.322 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 124.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 124.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 124.326 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

**124.4 Circumstances applicable to grant**

- 124.411 The applicant must be outside Australia when the visa is granted.

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

## **124.5 When visa is in effect**

- 124.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from date of grant.

## **124.6 Conditions**

- 124.611 First entry must be made before a date specified by the Minister for the purpose.
- 124.612 Condition 8502 may be imposed.

## **124.7 Way of giving evidence**

- 124.711 No evidence need be given.
- 124.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 126 Independent**

## **126.1 Interpretation**

- 126.111 In this Part:

*usual occupation*, in relation to an applicant, has the meaning set out in subregulation 2.26 (5).

*Note* *working age* is defined in regulation 1.03. For *vocational English*, see regulation 1.15B.

## **126.2 Primary criteria**

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

### **126.21 Criteria to be satisfied at time of application**

- 126.211 The applicant is of working age.

---

**126.22 Criteria to be satisfied at time of decision**

126.221 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* The Subdivision of the Act mentioned (ss 92 to 96) provides for the application of a *points* system under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.6 (see regulation 2.26) and Schedule 6 of these Regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (s 96 of the Act).

126.222 If the usual occupation of the applicant is an occupation included in the Occupations Requiring English List, the applicant has vocational English.

126.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

126.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

126.225 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.

126.226 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 126 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 126 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

- 126.227 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 126.228 Approval of the application would not result in either:
- (a) the number of Subclass 126 visas granted in a financial year exceeding the maximum number of Subclass 126 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Subclass 126) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

### **126.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **126.31 Criteria to be satisfied at time of application**

- 126.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 126.21.

#### **126.32 Criteria to be satisfied at time of decision**

- 126.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 126 visa.
- 126.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 126.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

- 
- 126.324 If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 126.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **126.4 Circumstances applicable to grant**

- 126.411 The applicant must be outside Australia when the visa is granted.
- Note* The second instalment of the visa application charge must be paid before the visa can be granted.

#### **126.5 When visa is in effect**

- 126.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

#### **126.6 Conditions**

- 126.611 First entry must be made before a date specified by the Minister for the purpose.
- 126.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.
- 126.613 Condition 8515 may be imposed.

#### **126.7 Way of giving evidence**

- 126.711 Visa label affixed to a valid passport.

## **Subclass 132                      Business Talent**

### **132.1      Interpretation**

*Note 1* *AUD, fiscal year, ownership interest* and *qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

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

### **132.2      Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

#### **132.21      Criteria to be satisfied at time of application**

132.211      The applicant has overall had a successful business career.

132.212      For at least 2 of the 4 fiscal years immediately before the application is made:

- (a) the net value of the assets of:
  - (i) the applicant; or
  - (ii) the applicant's spouse or de facto partner; or
  - (iii) the applicant and his or her spouse or de facto partner together;in a qualifying business or qualifying businesses in which the applicant had an ownership interest was at least AUD400 000; and
- (b) if a qualifying business mentioned in paragraph (a) was operated by a publicly listed company, the shareholding of:
  - (i) the applicant; or
  - (ii) the applicant's spouse or de facto partner; or
  - (iii) the applicant and his or her spouse or de facto partner together;was at least 10% of the total issued capital of the company.



- 
- 132.213 For at least 2 of the 4 fiscal years immediately before the application is made, the applicant's main business, or the applicant's main businesses together, had an annual turnover of at least AUD3 000 000.
- 132.214 The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:
- (a) have a net value of at least AUD1 500 000; and
  - (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 132 visa.
- 132.215 The applicant:
- (a) is less than 55 years old; or
  - (b) is proposing to establish or participate in a business that the sponsoring State or Territory has determined is of exceptional economic benefit to the State or Territory.
- 132.216 Neither the applicant nor his or her spouse or de facto partner (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 132.217 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 132 visa:
- (a) either:
    - (i) to establish a qualifying business in Australia; or
    - (ii) to participate in an existing qualifying business in Australia; and
  - (b) to maintain a substantial ownership interest in that business; and
  - (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 132.218 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 132 visa.

**132.22      Criteria to be satisfied at time of decision**

- 132.221      The applicant continues to satisfy the criteria in clauses 132.211, 132.214, 132.216 and 132.217.
- 132.222      The applicant:
- (a)      satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b)      if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 132.223      (1) The applicant is sponsored by a State or Territory.
- (2) Form 1224 is signed by the Premier or Chief Minister, or by a person authorised to do so by the Premier or Chief Minister, of that State or Territory.
- 132.224      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 132.225      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 132 visa:
- (a)      satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (aa)     if the member had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b)      if the member has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 132 visa:
- (a)      satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b)      satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 132.226      If a person:
- (a)      is a member of the family unit of the applicant; and
  - (b)      has not turned 18; and

- (c) made a combined application with the applicant;  
public interest criteria 4015 and 4016 are satisfied in relation to the person.

132.227 The Minister is satisfied that:

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

### **132.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **132.31 Criteria to be satisfied at time of application**

132.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 132.21.

#### **132.32 Criteria to be satisfied at time of decision**

132.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 132 visa.

132.322 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

132.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

132.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

132.325      The Minister is satisfied that:

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

#### **132.4      Circumstances applicable to grant**

132.411      The applicant may be in or outside Australia, but not in immigration clearance.

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

#### **132.5      When visa is in effect**

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

#### **132.6      Conditions**

132.611      If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.

132.612      If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

#### **132.7      Way of giving evidence**

132.711      No evidence need be given.

132.712      If evidence is given, to be given by a label affixed to a valid passport.

---

## Subclass 134                      Skill Matching

### 134.1      Interpretation

134.111      In this Part:

***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 this clause, before the award is formally conferred.

***course of study*** has the meaning given by subregulation 2.26A (7A).

***degree*** and ***diploma*** have the meanings given in subregulation 2.26A (6).

***employed*** has the meaning given in subregulation 2.26A (7).

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

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

*Note 2* For ***vocational English***, see regulation 1.15B.

### 134.2      Primary criteria

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

#### 134.21      Criteria to be satisfied at time of application

134.210      The application must be made before 1 September 2007.

134.212      The applicant has functional English.

134.213      The applicant has nominated a skilled occupation in his or her application.

- 134.214      (1) The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.
- (2) If the assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of full time study of a registered course.
- 134.215      (1) Subject to subclause (2), the applicant has been employed in a skilled occupation for a period of, or for periods totalling, at least 6 months in the period of 12 months immediately before the day on which the application was made.
- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
- (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
- (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
- (b) each of the following subparagraphs applies in relation to the applicant:
- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that

---

institution while the applicant was present in Australia;

- (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
- (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

134.216 The applicant has provided the personal and occupational information required for inclusion in Immigration's skill matching database.

**134.22 Criteria to be satisfied at time of decision**

134.221 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128AA (3) (c) of Schedule 1 is false or misleading in a material particular.

- 134.222      (1) The applicant has been nominated by a State or Territory government agency and the nomination has been accepted by the Minister within 2 years after it was established that the applicant satisfies the primary criteria in Subdivision 134.21.
- (2) A nomination made under subclause (1) must be:
- (a) made on Form 1100; and
- (b) lodged at an office of Immigration in the relevant State or Territory.
- (3) The Minister must not accept a nomination if its acceptance would result in the number of Subclass 134 visa nominations made in a financial year, for a State or Territory, exceeding the maximum number of Subclass 134 visa nominations, as determined by an instrument in writing for this subclause, that may be accepted, for that State or Territory, in that financial year.
- 134.222A      (1) The applicant has been employed in a skilled occupation for at least 6 months in the 12 months immediately before the day when the application was made.
- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
- (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
- (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
- (b) each of the following subparagraphs applies in relation to the applicant:



- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;
- (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
- (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

134.222B (3) In determining whether the applicant satisfies a criterion that he or she 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.
- 134.222C (1) The applicant:
- (a) has vocational English; or
  - (b) has functional English and meets the requirements of subclause (2).
- (2) The requirements are that:
- (a) the applicant has been nominated under clause 134.222 by a State or Territory specified by an instrument in writing for this paragraph as a State or Territory in which arrangements are established for suitable English language training for applicants to whom this paragraph applies; and
  - (b) the Minister is satisfied that the applicant has paid any fee or charge for that training.
- 134.222D If:
- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
  - (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;
- the applicant must have lived for at least 2 years in total, as the holder of 1 or more:
- (c) Skilled — Independent Regional (Provisional) (Class UX) visas; and
  - (d) Bridging A (Class WA) visas, or Bridging B (Class WB) visas, granted because the applicant made a valid application for a Skilled — Independent Regional (Provisional) (Class UX) visa;
- in a part of Australia that, at the time when a visa mentioned in paragraph (c) or a bridging visa mentioned in paragraph (d) was granted, was specified in an instrument in writing for item 6A1001 of Schedule 6A.

---

134.222E If:

- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;

the applicant must have worked full time for at least 12 months in total, as the holder of 1 or more:

- (c) Skilled — Independent Regional (Provisional) (Class UX) visas; and
- (d) Bridging A (Class WA) visas, or Bridging B (Class WB) visas, granted because the applicant made a valid application for a Skilled — Independent Regional (Provisional) (Class UX) visa;

in a part of Australia that, at the time when a visa mentioned in paragraph (c) or a bridging visa mentioned in paragraph (d) was granted, was specified in an instrument in writing for item 6A1001 of Schedule 6A.

134.222F If:

- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;

the applicant has complied with the conditions of that visa.

134.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

134.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

134.226 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 134 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and

- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 134 visa is a person who:
  - (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 134.227 If a person (in this clause called the *additional applicant*):
  - (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 134.228 Approval of the application would not result in either:
  - (a) the number of Subclass 134 visas granted in a financial year exceeding the maximum number of Subclass 134 visas, as determined by an instrument in writing for this paragraph, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Subclass 134) granted in a financial year exceeding the maximum number of visas of those classes, as determined by an instrument in writing for this paragraph, that may be granted in a financial year.
- 134.229 The Minister is satisfied that:
  - (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

---

## **134.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

### **134.31 Criteria to be satisfied at time of application**

- 134.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 134.21.

### **134.32 Criteria to be satisfied at time of decision**

- 134.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 134 visa.
- 134.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 134.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 134.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 134.326 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

## **134.4 Circumstances applicable to grant**

- 134.411 The applicant must be outside Australia when the visa is granted.

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

### **134.5 When visa is in effect**

- 134.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

### **134.6 Conditions**

- 134.611 First entry must be made before a date specified by the Minister for the purpose.
- 134.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.
- 134.613 Condition 8515 may be imposed.

### **134.7 Way of giving evidence**

- 134.711 No evidence need be given.
- 134.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 135 State/Territory-nominated Independent**

### **135.1 Interpretation**

- 135.111 In this Part:
- medical practitioner* includes a specialist medical practitioner.
- usual occupation*, in relation to an applicant, has the meaning set out in subregulation 2.26 (5).
- Note* *working age* is defined in regulation 1.03 and *vocational English* is defined in regulation 1.15B.

### **135.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

---

**135.21 Criteria to be satisfied at time of application**

135.211 The applicant is less than 45 years of age.

**135.22 Criteria to be satisfied at time of decision**

135.221 The applicant has a degree, diploma or trade certificate (within the meaning of subregulation 2.26 (5)) or a higher qualification, but:

- (a) does not have a usual occupation as a medical practitioner; and
- (b) has not obtained a medical qualification within a period of 5 years immediately before the time of application.

135.222 (1) The applicant has been nominated by a State or Territory government agency and the nomination has been accepted by the Minister.

(2) A nomination made under subclause (1) must be:

- (a) made on the approved form; and
- (b) lodged at an office of Immigration in the relevant State or Territory.

(3) The Minister must not accept a nomination if its acceptance would result in the number of Subclass 135 visa nominations made in a financial year, for a State or Territory, exceeding the maximum number of Subclass 135 visa nominations, as determined by Gazette Notice, that may be accepted, for that State or Territory, in that financial year.

135.223 The applicant has a score that is equal to, or more than, the pool mark specified in relation to this Subclass when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* The Subdivision of the Act mentioned (ss 92 to 96) provides for the application of a “points” system under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.6 (see regulation 2.26) and Schedule 6 of these Regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (s 96 of the Act).

- 135.224      (1) If the usual occupation of the applicant is an occupation included in the Occupations Requiring English List, the applicant has vocational English.
- (2) If the usual occupation of the applicant is an occupation that is not included in the Occupations Requiring English List, the applicant has functional English.
- 135.225      The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 135.226      If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 135.227      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 135 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 135 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 135.228      If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.



- 135.229 Approval of the application would not result in the number of visas of particular classes (including Subclass 135) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

### **135.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **135.31 Criteria to be satisfied at time of application**

- 135.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 135.21.

#### **135.32 Criteria to be satisfied at time of decision**

- 135.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 135 visa.
- 135.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 135.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 135.324 If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 135.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

## **135.4 Circumstances applicable to grant**

135.411 The applicant must be outside Australia when the visa is granted.

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

## **135.5 When visa is in effect**

135.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## **135.6 Conditions**

135.611 First entry must be made before a date specified by the Minister for the purpose.

135.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

135.613 Condition 8515 may be imposed.

## **135.7 Way of giving evidence**

135.711 Visa label affixed to a valid passport.

# **Subclass 136                      Skilled – Independent**

## **136.1 Interpretation**

136.111 In this Part:

***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 this clause, before the award is formally conferred.

***course of study*** has the meaning given by subregulation 2.26A (7A).

---

*degree* and *diploma* have the meanings given in subregulation 2.26A (6).

*employed* has the meaning given in subregulation 2.26A (7).

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

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

*Note 2* For *vocational English*, see regulation 1.15B.

## **136.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

### **136.21 Criteria to be satisfied at time of application**

136.210 The application must be made before 1 September 2007.

136.212 The applicant has nominated a skilled occupation in his or her application.

136.213 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:

- (a) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or
- (b) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day on which the application was made.

(2) Subclause (1) does not apply to an applicant if:

- (a) each of the following subparagraphs applies in relation to the applicant:

- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
  - (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
  - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
- (b) each of the following subparagraphs applies in relation to the applicant:
  - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;
  - (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
  - (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
  - (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and

(ii) was completed at the institution at which it was commenced;

(v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;

(vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

136.214 If:

(a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or

(b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;

the applicant has complied with the conditions of that visa.

## **136.22 Criteria to be satisfied at time of decision**

136.221 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).

136.222 If the assessment mentioned in paragraph 1128C (3) (c) of Schedule 1 was made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of full-time study of a registered course.

136.223 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* That Subdivision of the Act provides in ss 92 to 96 for the application of a **points system**, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.2 (see regulation 2.26A), and Schedule 6A, of these regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, s 96).

- 136.223A (1) The applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 12 months in the 18 months immediately before the day when the application was made; or
  - (b) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 24 months in the 36 months immediately before the day when the application was made.
- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
    - (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
    - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
  - (b) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;

- (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
- (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

136.223B In determining whether the applicant satisfies a criterion that he or she 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.

136.224 The applicant has vocational English.

- 136.225      No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128C (3) (c) of Schedule 1 is false or misleading in a material particular.
- 136.226      The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 136.227      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 136.229      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 136 visa is a person who:  
                  (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and  
                  (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.  
                  (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 136 visa is a person who:  
                  (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and  
                  (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 136.230      If a person (in this clause called the *additional applicant*):  
                  (a) is a member of the family unit of the applicant; and  
                  (b) has not turned 18; and  
                  (c) made a combined application with the applicant —  
                  public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 136.231      Approval of the application would not result in either:  
                  (a) the number of Subclass 136 visas granted in a financial year exceeding the maximum number of Subclass 136 visas, as determined by an instrument in writing for this paragraph, that may be granted in that financial year; or



- 
- (b) the number of visas of particular classes (including Subclass 136) granted in a financial year exceeding the maximum number of visas of those classes, as determined by an instrument in writing for this paragraph, that may be granted in that financial year.
- 136.232 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.
- 136.233 If the applicant's qualifying score when assessed for the visa under Subdivision B of Division 3 of Part 2 of the Act included (or, under subregulation 2.26A (5A), was taken to have included) the bonus points relating to a designated security mentioned in paragraph (a) of item 6A82 of Part 8 of Schedule 6A, the applicant has deposited at least AUD100 000 in a designated security for a term of not less than 12 months.

### **136.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **136.31 Criteria to be satisfied at time of application**

- 136.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 136.21.
- 136.312 If:
- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;
- the applicant has complied with the conditions of that visa.

**136.32      Criteria to be satisfied at time of decision**

- 136.321      The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 136 visa.
- 136.322      The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 136.323      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 136.325      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 136.326      The Minister is satisfied that:
- (a)    the applicant is the holder of a valid passport that:
    - (i)    was issued to the applicant by an official source; and
    - (ii)   is in the form issued by the official source; or
  - (b)    it would be unreasonable to require the applicant to be the holder of a passport.

**136.4      Circumstances applicable to grant**

- 136.411      The applicant must be outside Australia when the visa is granted.

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

**136.5      When visa is in effect**

- 136.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

**136.6      Conditions**

- 136.611      First entry must be made before a date specified by the Minister for the purpose.
- 136.612      If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

---

136.613 Condition 8515 may be imposed.

## **136.7 Way of giving evidence**

136.711 No evidence need be given.

136.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 137 Skilled – State/Territory-nominated Independent**

### **137.1 Interpretation**

137.111 In this Part:

***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 this clause, before the award is formally conferred.

***course of study*** has the meaning given by subregulation 2.26A (7A).

***degree*** and ***diploma*** have the meanings given in subregulation 2.26A (6).

***employed*** has the meaning given in subregulation 2.26A (7).

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

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

*Note 2* For ***member of the family unit***, see regulation 1.12.

*Note 3* For ***vocational English***, see regulation 1.15B.

## **137.2      Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

### **137.21      Criteria to be satisfied at time of application**

137.210      The application must be made before 1 September 2007.

137.213      If the assessment mentioned in paragraph 1128C (3) (c) of Schedule 1 was made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of full-time study of a registered course.

137.214      (1) Subject to subclause (2), if the applicant:

- (a) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa; and
- (b) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa, but is the spouse or de facto partner, or former spouse or former de facto partner, of a person who is or was the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa;

the applicant has been employed in a skilled occupation:

- (c) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or
- (d) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day on which the application was made.

- 
- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
  - (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
  - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
- (b) each of the following subparagraphs applies in relation to the applicant:
- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;
  - (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
  - (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;

- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

137.215 If:

- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;

the applicant must have lived for at least 2 years in total, as the holder of 1 or more:

- (c) Skilled — Independent Regional (Provisional) (Class UX) visas; and
- (d) Bridging A (Class WA) visas, or Bridging B (Class WB) visas, granted because the applicant made a valid application for a Skilled — Independent Regional (Provisional) (Class UX) visa;

in a part of Australia that, at the time when a visa mentioned in paragraph (c) or a bridging visa mentioned in paragraph (d) was granted, was specified in an instrument in writing for item 6A1001 of Schedule 6A.

137.215A If:

- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;

the applicant must have worked full time for at least 12 months in total, as the holder of 1 or more:

- (c) Skilled — Independent Regional (Provisional) (Class UX) visas; and
- (d) Bridging A (Class WA) visas, or Bridging B (Class WB) visas, granted because the applicant made a valid application for a Skilled — Independent Regional (Provisional) (Class UX) visa;

in a part of Australia that, at the time when a visa mentioned in paragraph (c) or a bridging visa mentioned in paragraph (d) was granted, was specified in an instrument in writing for item 6A1001 of Schedule 6A.

137.216 If:

- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;

the applicant has complied with the conditions of that visa.

## **137.22 Criteria to be satisfied at time of decision**

137.221 If the applicant:

- (a) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa; and
- (b) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa, but is the spouse or de facto partner, or former spouse or former de facto partner, of a person who is or was the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa;

the applicant has a score that is equal to, or more than, the pool mark when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* That Subdivision of the Act provides in sections 92 to 96 for the application of a **points system**, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are

provided for in Division 2.2 of Part 2 (see regulation 2.26A), and Schedule 6A, of these Regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, section 96).

137.221A (1) If the applicant:

- (a) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa; and
- (b) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa, but is the spouse or de facto partner, or former spouse or former de facto partner, of a person who is or was the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa;

the applicant has been employed in a skilled occupation:

- (c) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 12 months in the 18 months immediately before the day when the application was made; or
- (d) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 24 months in the 36 months immediately before the day when the application was made.

(2) Subclause (1) does not apply to an applicant if:

- (a) each of the following subparagraphs applies in relation to the applicant:
  - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;



- 
- (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
  - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
  - (b) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;
    - (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
    - (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
    - (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
    - (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;

- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

137.221B In determining whether the applicant satisfies a criterion that he or she 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.

137.222 If the applicant:

- (a) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa; and
- (b) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa, but is the spouse or de facto partner, or former spouse or former de facto partner, of a person who is or was the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa on the basis of satisfying the primary criteria for the grant of that visa;

the applicant has vocational English.

137.223 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128C (3) (c) of Schedule 1 is false or misleading in a material particular.

137.224 (1) The applicant has been nominated by a State or Territory government agency and the nomination has been accepted by the Minister.

(2) A nomination made under subclause (1) must be:

- (a) made on Form 1100; and

(b) lodged at an office of Immigration in the relevant State or Territory.

(3) The Minister must not accept a nomination if its acceptance would result in the number of Subclass 137 visa nominations made in a financial year, for a State or Territory, exceeding the maximum number of Subclass 137 visa nominations, as determined by an instrument in writing for this subclause, that may be accepted, for that State or Territory, in that financial year.

137.225 The applicant satisfies:

- (a) if the applicant was, at the time of application, the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa — public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; or
- (b) in any other case — public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

137.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

137.228 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 137 visa is a person who:

- (a) either:
  - (i) if the member was, at the time of application, the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa — satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; or
  - (ii) in any other case — satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 137 visa is a person who:

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

- (b) if, at the time of application, the member of the family unit was not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa — satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion; and
  - (c) if, at the time of application, the member of the family unit was the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa — satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 137.229 If a person (in this clause called the *additional applicant*):
  - (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 137.230 Approval of the application would not result in either:
  - (a) the number of Subclass 137 visas granted in a financial year exceeding the maximum number of Subclass 137 visas, as determined by an instrument in writing for this paragraph, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Subclass 137) granted in a financial year exceeding the maximum number of visas of those classes, as determined by an instrument in writing for this paragraph, that may be granted in a financial year.
- 137.231 The Minister is satisfied that:
  - (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

- 137.232 If the applicant's qualifying score when assessed for the visa under Subdivision B of Division 3 of Part 2 of the Act included (or, under subregulation 2.26A (5A), was taken to have included) the bonus points relating to a designated security mentioned in paragraph (a) of item 6A82 of Part 8 of Schedule 6A, the applicant has deposited at least AUD100 000 in a designated security for a term of not less than 12 months.

### **137.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **137.31 Criteria to be satisfied at time of application**

- 137.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 137.21.
- 137.312 If:
- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
  - (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;
- the applicant has complied with the conditions of that visa.

#### **137.32 Criteria to be satisfied at time of decision**

- 137.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 137 visa.
- 137.322 The applicant satisfies:
- (a) if the applicant was, at the time of application, the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa — public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; or
  - (b) in any other case — public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

- 137.323      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 137.325      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 137.326      The Minister is satisfied that:
- (a)    the applicant is the holder of a valid passport that:
    - (i)    was issued to the applicant by an official source; and
    - (ii)   is in the form issued by the official source; or
  - (b)    it would be unreasonable to require the applicant to be the holder of a passport.

#### **137.4      Circumstances applicable to grant**

- 137.411      If the applicant:
- (a)    was the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa at the time of application; or
  - (b)    is a member of the family unit of an applicant who was the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa at the time of application;
- the applicant may be in Australia (but not in immigration clearance) or outside Australia when the visa is granted.
- 137.412      In any other case, the applicant must be outside Australia at the time of grant.

#### **137.5      When visa is in effect**

- 137.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

#### **137.6      Conditions**

- 137.611      First entry must be made before a date specified by the Minister for the purpose.

137.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

137.613 Condition 8515 may be imposed.

### **137.7 Way of giving evidence**

137.711 No evidence need be given.

137.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 138 Skilled – Australian-sponsored**

### **138.1 Interpretation**

138.111 In this Part:

***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 this clause, before the award is formally conferred.

***course of study*** has the meaning given by subregulation 2.26A (7A).

***degree*** and ***diploma*** have the meanings given in subregulation 2.26A (6).

***employed*** has the meaning given in subregulation 2.26A (7).

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

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

*Note 2* For ***vocational English***, see regulation 1.15B.

## 138.2      **Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

### 138.21      **Criteria to be satisfied at time of application**

138.210      The application must be made before 1 September 2007.

138.211      The applicant, or the applicant's spouse or de facto partner, if the applicant's spouse or de facto partner is an applicant for a Subclass 138 visa, has one of the following relationships to a person (*the sponsor*) who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:

- (a) a parent;
- (b) a child or a step-child who is not a dependent child of the sponsor;
- (c) a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- (ca) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle;
- (d) a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece.

138.212      The applicant is sponsored by the sponsor.

138.215      The applicant has nominated a skilled occupation in his or her application.

138.216      (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:

- (a) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or
- (b) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the



---

period of 36 months immediately before the day on which the application was made.

- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
  - (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
  - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
- (b) each of the following subparagraphs applies in relation to the applicant:
- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;
  - (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;

- (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

**138.22 Criteria to be satisfied at time of decision**

- 138.221 The sponsorship referred to in clause 138.212 has been approved by the Minister and is still in force.
- 138.223 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).
- 138.224 If the assessment mentioned in paragraph 1128B (3) (c) of Schedule 1 was made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of full-time study of a registered course.
- 138.225 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* That Subdivision of the Act provides in ss 92 to 96 for the application of a **points system**, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.2 (regulation 2.26A), and Schedule 6A, of these regulations. In certain circumstances, attributes of the spouse or de facto partner of an applicant may be taken into account (regulation

2.27A). Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, s 96).

- 138.225A (1) The applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 12 months in the 18 months immediately before the day when the application was made; or
  - (b) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 24 months in the 36 months immediately before the day when the application was made.
- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
    - (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
    - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
  - (b) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that

institution while the applicant was present in Australia;

- (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
- (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

138.225B In determining whether the applicant satisfies a criterion that he or she 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.

138.226 The applicant has vocational English.

- 
- 138.227 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128B (3) (c) of Schedule 1 is false or misleading in a material particular.
- 138.228 If the applicant does not satisfy the criteria in clauses 138.223, 138.224, 138.226 and 138.227:
- (a) the applicant satisfies the criterion specified in clause 138.225 because of regulation 2.27A; and
  - (b) the applicant's spouse or de facto partner:
    - (i) continues to satisfy the criteria in each of clauses 138.214, 138.215 and 138.216; and
    - (ii) satisfies the criteria in clauses 138.223, 138.224, 138.225A, 138.225B, 138.226 and 138.227.
- 138.229 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 138.230 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 138.231 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 138 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 138 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 138.232 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and

- (c) made a combined application with the applicant —  
public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

138.233 Approval of the application would not result in either:

- (a) the number of Subclass 138 visas granted in a financial year exceeding the maximum number of Subclass 138 visas, as determined by an instrument in writing for this paragraph, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including Subclass 138) granted in a financial year exceeding the maximum number of visas of those classes, as determined by an instrument in writing for this paragraph, that may be granted in that financial year.

138.234 The Minister is satisfied that:

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

### **138.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **138.31 Criteria to be satisfied at time of application**

138.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 138.21.

138.312 The sponsorship referred to in clause 138.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

---

**138.32 Criteria to be satisfied at time of decision**

- 138.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 138 visa.
- 138.322 The sponsorship referred to in clause 138.312 has been approved by the Minister and is still in force.
- 138.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 138.325 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 138.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 138.327 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

**138.4 Circumstances applicable to grant**

- 138.411 The applicant must be outside Australia when the visa is granted.

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

**138.5 When visa is in effect**

- 138.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

**138.6 Conditions**

- 138.611 First entry must be made before a date specified by the Minister for the purpose.

138.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

138.613 Condition 8515 may be imposed.

### **138.7 Way of giving evidence**

138.711 No evidence need be given.

138.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 139                      Skilled – Designated Area-sponsored**

### **139.1 Interpretation**

139.111 In this Part:

***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 this clause, before the award is formally conferred.

***course of study*** has the meaning given by subregulation 2.26A (7A).

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

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

***employed*** has the meaning given in subregulation 2.26A (7).

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

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

*Note 2* For ***vocational English***, see regulation 1.15B.



---

## 139.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

### 139.21 Criteria to be satisfied at time of application

139.211 Application must be made before 1 July 2006.

139.211A The applicant has 1 of the following relationships to a person (the *sponsor*) who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:

- (a) a parent;
- (b) a child or a step-child who is not a dependent child of the sponsor;
- (c) a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- (d) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle;
- (e) a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece;
- (f) a grandchild or first cousin.

139.212 The applicant is sponsored by the sponsor.

139.213 The sponsor:

- (a) is resident in a designated area; and
- (b) was resident in one or other of the designated areas throughout the period of 12 months immediately before Immigration receives the relevant sponsorship (except for short absences for the purposes of business or recreation).

139.215 The applicant is less than 45 years of age.

139.216 The applicant has nominated a skilled occupation in his or her application.

139.217 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:

- (a) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 6 months in the period of 12 months immediately before the day on which the application was made; or
  - (b) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made.
- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
    - (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
    - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
  - (b) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;

- (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
- (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

139.218 Despite clauses 139.215, 139.216 and 139.217, the applicant satisfies the criteria in each of those clauses if the applicant's spouse or de facto partner is an applicant for a Subclass 139 visa who satisfies each of those criteria.

**139.22 Criteria to be satisfied at time of decision**

139.221 The sponsorship referred to in clause 139.212 has been approved by the Minister and is still in force.

139.222 The sponsor is still resident in a designated area.

139.224 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).

- 139.225 (1) The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.
- (2) If the assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of full time study of a registered course.
- 139.225A (1) The applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 6 months in the 12 months immediately before the day when the application was made; or
  - (b) if 40 or 50 points are specified by an instrument in writing for this paragraph as available for the skilled occupation nominated in the application — for at least 12 months in the 18 months immediately before the day when the application was made.
- (2) Subclause (1) does not apply to an applicant if:
- (a) each of the following subparagraphs applies in relation to the applicant:
    - (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
    - (ii) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
    - (iii) all instruction for that degree, diploma or trade qualification was conducted in English; or
  - (b) each of the following subparagraphs applies in relation to the applicant:

- (i) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;
- (ii) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
- (iii) the 2 or more degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
- (iv) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was completed at the institution at which it was commenced;
- (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
- (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English.

139.225B In determining whether the applicant satisfies a criterion that he or she 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.
- 139.226 Either the applicant has vocational English, or:
- (a) he or she has proficiency in English of at least the standard required for the award of 10 points for the language skill factor of the general points test specified in item 6311 of Schedule 6; and
  - (b) his or her sponsor lives in a State or Territory specified by an instrument in writing for this paragraph as a State or Territory in which arrangements are established for suitable English-language training for applicants to whom this paragraph applies; and
  - (c) the Minister is satisfied that he or she has paid any fee or charge for that training.
- 139.227 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128B (3) (c) of Schedule 1 is false or misleading in a material particular.
- 139.228 Despite clauses 139.224, 139.225, 139.225A, 139.225B, 139.226 and 139.227, the applicant satisfies the criteria in each of those clauses if:
- (a) the applicant satisfied the criteria in clause 139.218 at the time of application; and
  - (b) the applicant's spouse or de facto partner continues to satisfy the criteria in each of clauses 139.215, 139.216 and 139.217; and
  - (c) the applicant's spouse or de facto partner satisfies the criteria in each of clauses 139.224, 139.225, 139.225A, 139.225B, 139.226 and 139.227.
- 139.229 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 139.230 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

- 
- 139.231 Each member of the family unit of the applicant who is an applicant for a Subclass 139 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 139.232 Each member of the family unit of the applicant who is not an applicant for a Subclass 139 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 139.233 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 139.234 Approval of the application would not result in either:
- (a) the number of Subclass 139 visas granted in a financial year exceeding the maximum number of Subclass 139 visas, as determined by an instrument in writing for this paragraph, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Subclass 139) granted in a financial year exceeding the maximum number of visas of those classes, as determined by an instrument in writing for this paragraph, that may be granted in that financial year.
- 139.235 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or

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

### **139.3      Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **139.31      Criteria to be satisfied at time of application**

- 139.311      The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 139.21.
- 139.312      The sponsorship referred to in clause 139.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### **139.32      Criteria to be satisfied at time of decision**

- 139.321      The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 139 visa.
- 139.322      The sponsorship referred to in clause 139.312 has been approved by the Minister and is still in force.
- 139.324      The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 139.325      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 139.326      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 139.327      The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.



---

## **139.4 Circumstances applicable to grant**

139.411 The applicant must be outside Australia when the visa is granted.

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

## **139.5 When visa is in effect**

139.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## **139.6 Conditions**

139.611 First entry must be made before a date specified by the Minister for the purpose.

139.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

139.613 Condition 8515 may be imposed.

## **139.7 Way of giving evidence**

139.711 No evidence need be given.

139.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 143 Contributory Parent**

## **143.1 Interpretation**

143.111 In this Part, a reference to an applicant who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa means a person:

- (a) who, at the time of application, holds a Subclass 173 (Contributory Parent (Temporary)) visa; or
- (b) who has held a Subclass 173 (Contributory Parent (Temporary)) visa at any time in the 28 days immediately before making the application; or

- (c) in relation to whom the Minister is satisfied that compassionate and compelling circumstances exist for the person to be considered to have been the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of the application.

*Note* **Australian permanent resident, aged parent, eligible New Zealand citizen, close relative, guardian, parent visa** and **settled** are defined in regulation 1.03, **balance of family test** is defined in regulation 1.05, **parent** is defined in subsection 5 (1) of the Act (also see regulation 1.14A), **de facto partner** is defined in section 5CB of the Act (also see regulation 1.09A), and **spouse** is defined in section 5F of the Act (also see regulation 1.15A).

## 143.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

### 143.21 Criteria to be satisfied at time of application

- 143.211 (1) The applicant is
- (a) a parent of a person (the **child**) who is:
- (i) a settled Australian citizen; or
  - (ii) a settled Australian permanent resident; or
  - (iii) a settled eligible New Zealand citizen; or
- (b) a person who:
- (i) either:
    - (A) is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application; or
    - (B) both:
      - (I) was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa; and
      - (II) is the holder of a substituted Subclass 676 visa at the time of application; and
  - (ii) is no longer the parent of a child described in paragraph (a) because the child has died; and

(iii) is not the parent of another child described in paragraph (a).

(2) If the applicant:

- (a) is in Australia at the time of application; and
  - (b) is not the holder of a substantive visa;
- the applicant satisfies criterion 3002.

143.212 (1) The applicant is:

- (a) sponsored in accordance with subclause (2) or (3); or
- (b) taken, under subclause (4), to be sponsored in accordance with this clause.

(2) If the child has turned 18, the applicant is sponsored by:

- (a) the child; or
- (b) the child's cohabiting spouse or de facto partner, if that spouse or de facto partner:
  - (i) has turned 18; and
  - (ii) is:
    - (A) a settled Australian citizen; or
    - (B) a settled Australian permanent resident; or
    - (C) a settled eligible New Zealand citizen.

(3) If the child has not turned 18, the applicant is sponsored by:

- (a) the child's cohabiting spouse, if that spouse:
  - (i) has turned 18; and
  - (ii) is:
    - (A) a settled Australian citizen; or
    - (B) a settled Australian permanent resident; or
    - (C) a settled eligible New Zealand citizen; or
- (b) a person who:
  - (i) is a relative or guardian of the child; and
  - (ii) has turned 18; and
  - (iii) is:
    - (A) a settled Australian citizen; or
    - (B) a settled Australian permanent resident; or

- (C) a settled eligible New Zealand citizen; or
    - (c) if the child has a cohabiting spouse but the spouse has not turned 18 — a person who:
      - (i) is a relative or guardian of the child's spouse; and
      - (ii) has turned 18; and
      - (iii) is:
        - (A) a settled Australian citizen; or
        - (B) a settled Australian permanent resident; or
        - (C) a settled eligible New Zealand citizen; or
    - (d) a community organisation.
  - (4) The applicant is taken to be sponsored in accordance with this clause if:
    - (a) the applicant:
      - (i) is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application; or
      - (ii) both:
        - (A) was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa; and
        - (B) is the holder of a substituted Subclass 676 visa at the time of application; and
    - (b) the person who sponsored the applicant for the Subclass 173 (Contributory Parent (Temporary)) visa dies before the Subclass 173 (Contributory Parent (Temporary)) visa ceases to be in effect; and
    - (c) there is no other sponsor available who could meet the requirements set out in subclause (2) or (3).
- 143.213 For an applicant who, at the time of application, is neither:
- (a) the holder of a Subclass 173 (Contributory Parent (Temporary)) visa; nor
  - (b) the holder of a substituted Subclass 676 visa;
- the applicant satisfies the balance of family test.

---

**143.22 Criteria to be satisfied at time of decision**

143.221 The applicant continues to meet the requirements set out in clause 143.211.

143.222 If a sponsorship of the kind mentioned in subclause 143.212 (2) or (3) was in force in relation to the applicant at the time of application, a sponsorship of that kind, approved by the Minister, is in force in relation to:

- (a) the sponsor at the time of application; or
- (b) another sponsor who meets the requirements set out in subclause 143.212 (2) or (3);

whether or not the sponsor was the sponsor at the time of application.

*Note* The applicant may seek the Minister's approval for a change of sponsor as long as the new sponsor meets the description in subclause 143.212 (2) or (3).

143.222A If clause 143.222 does not apply:

- (a) the applicant was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application; and
- (b) a sponsor of the applicant who usually resides in Australia dies before a decision is made to grant, or to refuse to grant, the Subclass 143 (Contributory Parent) visa; and
- (c) there is no other sponsor available who meets the requirements set out in subclause 143.212 (2) or (3).

143.224 The applicant:

- (a) satisfies public interest criteria 4001, 4002 and 4003; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

143.225 If the applicant was not the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, the applicant satisfies the public interest criteria mentioned for the applicant in the item in the table that relates to the applicant.

	<b>Item</b>	<b>If the applicant was ...</b>	<b>the public interest criteria to be satisfied by the applicant are ...</b>
	1	not the holder of a substituted Subclass 676 visa at the time of application	4004, 4005, 4009 and 4010
	2	the holder of a substituted Subclass 676 visa at the time of application	(a) 4009 and 4010; and (b) 4007 or, if the applicant has previously held a Subclass 173 visa, such health checks as the Minister considers appropriate
143.226	If the applicant was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, the applicant has undergone any health checks that the Minister considers appropriate.		
143.227	If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.		
143.228	The Minister is satisfied that an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.		
143.229	If the applicant was not the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, each member of the family unit of the applicant who is an applicant for a Subclass 143 (Contributory Parent) visa:		
	(a)	must satisfy the public interest criteria mentioned in the item in the table that relates to the applicant; and	
	(b)	if the member of the family unit has previously been in Australia — must satisfy the special return criteria mentioned in the item in the table that relates to the applicant.	

Item	If the applicant ...	the public interest criteria to be satisfied by the member of the family unit are ...	and if the member of the family unit has previously been in Australia, the special return criteria are ...
1	was not the holder of a substituted Subclass 676 visa at the time of application	(a) 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and (b) if the applicant had turned 18 at the time of application — 4019	5001, 5002 and 5010
2	was the holder of a substituted Subclass 676 visa at the time of application	(a) 4001, 4002, 4003, 4009 and 4010; and (b) either: (i) 4007; or (ii) if the member of the family unit has previously held a Subclass 173 visa — such health checks as the Minister considers appropriate; and (c) if the applicant had turned 18 at the time of application — 4019	5001, 5002 and 5010

143.230 If the applicant was not the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, each member of the family unit of the applicant who is not an applicant for a Subclass 143 (Contributory Parent) visa must satisfy the public interest criteria mentioned in the item in the table that relates to the applicant.

Item	If the applicant was ...	the public interest criteria to be satisfied by the member of the family unit are ...
1	not the holder of a substituted Subclass 676 visa at the time of application	(a) 4001, 4002, 4003 and 4004; and (b) 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion
2	the holder of a substituted Subclass 676 visa at the time of application	(a) 4001, 4002 and 4003; and (b) 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion

143.231 If a person (the ***additional applicant***):

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

143.232 If the applicant has previously made a valid application for another parent visa:

- (a) the application has been:
  - (i) finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*); or
  - (ii) withdrawn; and
- (b) any of the following has occurred in relation to the application for that visa:
  - (i) each decision that has been made in respect of the application is not, or is no longer, subject to any form of:
    - (A) review by the Administrative Appeals Tribunal; or



- 
- (B) judicial review proceedings (including proceedings on appeal);
  - (ii) a decision that has been made in respect of the application was subject to:
    - (A) review by the Administrative Appeals Tribunal; or
    - (B) judicial review proceedings (including proceedings on appeal);but the period within which such a review or such review proceedings could be instituted has ended without a review or review proceedings having been instituted as prescribed;
  - (iii) if the applicant has applied for:
    - (A) review by the Migration Review Tribunal; or
    - (B) review by the Administrative Appeals Tribunal; or
    - (C) judicial review proceedings (including proceedings on appeal);the applicant has withdrawn all applications for the review or review proceedings.
- 143.233 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **143.3 Secondary criteria**

#### **143.31 Criteria to be satisfied at time of application**

- 143.311 Either:
- (a) the applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 143.21; or

- (b) each of the following applies:
  - (i) the applicant is a member of the family unit of a person (the *other applicant*) who:
    - (A) has applied for a Contributory Parent (Migrant) (Class CA) visa; and
    - (B) was in Australia at the time of application; and
    - (C) on the basis of the information provided in his or her application, appears to satisfy the criteria in Subdivision 143.21;
  - (ii) the other applicant is the holder of:
    - (A) a Subclass 173 (Contributory Parent (Temporary)) visa; or
    - (B) a substituted Subclass 676 visa;
  - (iii) the Minister has not decided to grant or refuse to grant the visa to the other applicant;
  - (iv) the applicant was in Australia at the time at which the applicant made the application for the Contributory Parent (Migrant) (Class CA) visa.

143.312 One of the following applies:

- (a) the sponsorship mentioned in subclause 143.212 (2) or (3) of the person who satisfies the primary criteria includes sponsorship of the applicant;
- (b) the person who satisfies the primary criteria, and the applicant, meet the requirements of subclause 143.212 (4);
- (c) the applicant is a contributory parent newborn child who was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of the application and:
  - (i) the contributory parent newborn child's parent was granted a Subclass 143 (Contributory Parent) visa on the basis of meeting paragraph 143.222 (b); or
  - (ii) the person who sponsored the contributory parent newborn child's parent for the Subclass 143 (Contributory Parent) visa died after that visa was granted.

## **143.32 Criteria to be satisfied at time of decision**

- 143.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 143 visa.
- 143.322 One of the following applies:
- (a) the sponsorship, mentioned in paragraph 143.222 (a), that includes sponsorship of the applicant:
    - (i) has been approved by the Minister in relation to the applicant; and
    - (ii) is still in force in relation to the applicant;
  - (b) the person who satisfied the primary criteria at the time of decision met the requirements of paragraph 143.222 (b) at the time of decision, and the applicant meets those requirements at the time of decision;
  - (c) the applicant is a contributory parent newborn child who meets the requirements of paragraph 143.312 (c).
- 143.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002 and 4003; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 143.324 If the applicant was not the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, the applicant satisfies the public interest criteria mentioned for the applicant in the item in the table that relates to the applicant.

<b>Item</b>	<b>If the applicant is a member of the family unit of a person who is mentioned in clause 143.321, and the person was ...</b>	<b>the public interest criteria to be satisfied by the applicant are ...</b>
1	not the holder of a substituted Subclass 676 visa at the time of application	4004, 4005, 4009 and 4010

Item	If the applicant is a member of the family unit of a person who is mentioned in clause 143.321, and the person was ...	the public interest criteria to be satisfied by the applicant are ...
2	the holder of a substituted Subclass 676 visa at the time of application	(a) 4009 and 4010; and (b) 4007 or, if the applicant has previously held a Subclass 173 visa, such health checks as the Minister considers appropriate
143.325	For an applicant who was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, the applicant has undergone any health checks that the Minister considers appropriate.	
143.326	If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.	
143.327	The Minister is satisfied that: (a) the applicant is included in the assurance of support given in relation to the person who satisfies the primary criteria, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.	
143.328	If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.	
143.329	If the applicant has previously made a valid application for another parent visa: (a) the application has been: (i) finally determined (within the meaning of subsection 5 (9) of the <i>Migration Act 1958</i> ); or (ii) withdrawn; and	

- 
- (b) any of the following has occurred in relation to the application for that visa:
- (i) each decision that has been made in respect of the application is not, or is no longer, subject to any form of:
    - (A) review by the Administrative Appeals Tribunal; or
    - (B) judicial review proceedings (including proceedings on appeal);
  - (ii) a decision that has been made in respect of the application was subject to:
    - (A) review by the Administrative Appeals Tribunal; or
    - (B) judicial review proceedings (including proceedings on appeal);but the period within which such a review or such review proceedings could be instituted has ended without a review or review proceedings having been instituted as prescribed;
  - (iii) if the applicant has applied for:
    - (A) review by the Migration Review Tribunal; or
    - (B) review by the Administrative Appeals Tribunal; or
    - (C) judicial review proceedings (including proceedings on appeal);the applicant has withdrawn all applications for the review or review proceedings.

143.330 The Minister is satisfied that:

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

#### **143.4      Circumstances applicable to grant**

- 143.411      If the applicant is, at the time of application:
- (a)      the holder of a Subclass 173 (Contributory Parent (Temporary)) visa; or
  - (b)      the holder of a substituted Subclass 676 visa; or
  - (c)      a member of the family unit of an applicant who holds a substituted Subclass 676 visa; or
  - (d)      an applicant:
    - (i)      who is a member of the family unit of a person who is the holder of a Contributory Parent (Temporary) (Class UT) visa; and
    - (ii)      to whom paragraph 143.311 (b) applies;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- 143.412      If clause 143.411 does not apply to the applicant at the time of application, the applicant must be outside Australia when the visa is granted.

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

#### **143.5      When visa is in effect**

- 143.511      Permanent visa permitting the holder to travel to and enter Australia for 5 years after the date of grant.

#### **143.6      Conditions**

- 143.611      If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 143.612      Either or both of conditions 8502 and 8515 may be imposed.

#### **143.7      Way of giving evidence**

- 143.711      No evidence need be given.
- 143.712      If evidence is given, to be given by a label affixed to a valid passport.

---

## Subclass 151                      Former Resident

*Note* This Subclass applies in relation to an application for a visa made on or after 1 November 2005.

Subclass 151 visas that relate to the former Special Eligibility (Migrant) (Class AR) visa will not be available to applicants who apply on or after 1 November 2005.

### 151.1 Interpretation

In this Part:

***Australian defence service*** means:

- (a) service in the Military Forces of the Commonwealth under a notice served under section 26 of the *National Service Act 1951* as in force at any time before 26 November 1964; or
- (b) service before 19 January 1981:
  - (i) in the Permanent Forces; or
  - (ii) by a member of the armed forces of a foreign country on secondment to, or duty with, the Permanent Forces if the member was a permanent resident of Australia during the period of service.

***defence service applicant*** means an applicant who satisfies the Minister that he or she:

- (a) has completed at least 3 months continuous Australian defence service; or
- (b) was discharged before completing 3 months of Australian defence service because the applicant was medically unfit for service, or further service, and became medically unfit because of the applicant's Australian defence service.

***long residence applicant*** means an applicant who satisfies the Minister that he or she:

- (a) spent the greater part of his or her life before the age of 18 in the migration zone as an Australian permanent resident; and
- (b) did not at any time acquire Australian citizenship; and
- (c) has maintained business, cultural or personal ties with Australia; and

(d) has not turned 45 at the time of application.

*the Permanent Forces* has the same meaning as it has in the *Defence Act 1903*.

## **151.2 Primary criteria**

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

### **151.21 Criteria to be satisfied at time of application**

151.211 If the applicant is in Australia, either:

- (a) the applicant is the holder of a substantive visa, other than a Subclass 771 (Transit) visa; or
- (b) the applicant:
  - (i) is not the holder of a substantive visa, and immediately before ceasing to hold a substantive visa, was not the holder of a Subclass 771 (Transit) visa; and
  - (ii) satisfies Schedule 3 criterion 3002.

151.212 The applicant is a long residence applicant or a defence service applicant.

### **151.22 Criteria to be satisfied at time of decision**

151.221 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

151.222 If the applicant is a long residence applicant who is outside Australia, the applicant also satisfies public interest criterion 4005.

151.223 If the applicant is:

- (a) a long residence applicant who is in Australia; or
  - (b) a defence service applicant;
- the applicant also satisfies public interest criterion 4007.



- 
- 151.224 If the applicant is under 18, the applicant also satisfies public interest criteria 4017 and 4018.
- 151.225 If the applicant is a long residence applicant who is outside Australia:
- (a) each member of the family unit of the applicant, who is not an applicant for a Special Eligibility (Class CB) visa, is a person who satisfies public interest criteria 4001, 4002, 4003, 4004 and 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to criterion 4005; and
  - (b) each member of the family unit of the applicant who is an applicant for a Special Eligibility (Class CB) visa is a person who:
    - (i) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
    - (ii) if the person had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (c) each member of the family unit of the applicant, who is an applicant for a Special Eligibility (Class CB) visa and who has previously been in Australia, is a person who satisfies special return criteria 5001, 5002 and 5010.
- 151.226 If the applicant is a long residence applicant who is in Australia:
- (a) each member of the family unit of the applicant, who is not an applicant for a Special Eligibility (Class CB) visa, is a person who satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to criterion 4007; and
  - (b) each member of the family unit of the applicant who is an applicant for a Special Eligibility (Class CB) visa is a person who:
    - (i) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and

- (ii) if the person had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (c) each member of the family unit of the applicant, who is an applicant for a Special Eligibility (Class CB) visa and who has previously been in Australia, is a person who satisfies special return criteria 5001 and 5002.
- 151.227 If the applicant is a defence service applicant:
- (a) each member of the family unit of the applicant, who is not an applicant for a Special Eligibility (Class CB) visa, is a person who satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to criterion 4007; and
  - (b) each member of the family unit of the applicant, who is an applicant for a Special Eligibility (Class CB) visa, is a person who:
    - (i) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
    - (ii) if the person had turned 18 at the time of application — satisfies public interest criterion 4019.
- 151.227A If the applicant is a defence service applicant who is outside Australia, each member of the family unit of the applicant, who is an applicant for a Special Eligibility (Class CB) visa and who has previously been in Australia, is a person who satisfies special return criteria 5001, 5002 and 5010.
- 151.227B If the applicant is a defence service applicant who is in Australia, each member of the family unit of the applicant, who is an applicant for a Special Eligibility (Class CB) visa and who has previously been in Australia, is a person who satisfies special return criteria 5001 and 5002.
- 151.228 If a person (an *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) is also an applicant for a Special Eligibility (Class CB) visa; and

- (c) has not turned 18;  
public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

151.229 If the applicant:

- (a) is in Australia; and
  - (b) has previously been in Australia;
- the applicant satisfies special return criteria 5001 and 5002.

151.229A If the applicant:

- (a) is outside Australia; and
  - (b) has previously been in Australia;
- the applicant satisfies special return criteria 5001, 5002 and 5010.

151.229B If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.

151.229C The Minister is satisfied that:

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

### **151.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **151.31 Criteria to be satisfied at time of application**

151.311 The applicant is a member of the family unit of a person who:

- (a) has applied for a Special Eligibility (Class CB) visa; and

- (b) on the basis of the information provided in that application, appears to satisfy the criteria in Subdivision 151.21;

and the Minister has not decided to grant or refuse to grant a visa to the person.

**151.32 Criteria to be satisfied at time of decision**

151.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria in this Part, is the holder of a Subclass 151 visa.

151.322 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

151.323 If the applicant is a member of the family unit of a person who:

- (a) was a long residence applicant who, having satisfied the primary criteria in this Part, is the holder of a Subclass 151 visa; and
- (b) was outside Australia at the time of the person's application;

the applicant also satisfies public interest criterion 4005.

151.324 If the applicant is a member of the family unit of a person who:

- (a) was a long residence applicant in Australia who, having satisfied the primary criteria in this Part, is the holder of a Subclass 151 visa; or
- (b) was a defence service applicant who, having satisfied the primary criteria in this Part, is the holder of a Subclass 151 visa;

the applicant also satisfies public interest criterion 4007.

151.325 If the applicant has not turned 18, the applicant also satisfies public interest criteria 4017 and 4018.

- 
- 151.326 If the applicant:
- (a) is in Australia; and
  - (b) has previously been in Australia;
- the applicant satisfies special return criteria 5001 and 5002.
- 151.327 If the applicant:
- (a) is outside Australia; and
  - (b) has previously been in Australia;
- the applicant satisfies special return criterion 5001, 5002 and 5010.
- 151.328 If the Minister has requested an assurance of support in relation to the person who satisfied the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 151.329 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **151.4 Circumstances applicable to grant**

- 151.411 If the applicant is outside Australia at the time of application, the applicant must be outside Australia at the time of grant.
- 151.412 If the applicant is in Australia at the time of application, the applicant must be in Australia at the time of grant.

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

## **151.5      When visa is in effect**

151.511      Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

## **151.6      Conditions**

151.611      For an applicant who was outside Australia at the time of application:

- (a)      first entry must be made before a date specified by the Minister for the purpose; and
- (b)      condition 8502 may be imposed.

*Note*      No conditions have been prescribed for other applicants.

## **151.7      Way of giving evidence**

151.711      No evidence need be given.

151.712      If evidence is given, to be given by way of visa label affixed to a valid passport.

## **Subclass 155                      Five Year Resident Return**

### **155.1      Interpretation**

*Note*      *Australian permanent resident* is defined in regulation 1.03.

### **155.2      Primary criteria**

*Note*      All applicants must meet the primary criteria.

#### **155.21      Criteria to be satisfied at time of application**

155.211      The applicant:

- (a)      is an Australian permanent resident; or
- (b)      was an Australian citizen but has subsequently lost or renounced Australian citizenship; or
- (c)      is a former Australian permanent resident, other than a former Australian permanent resident whose most recent permanent visa was cancelled.

- 
- 155.212 (1) The applicant meets the requirements of subclause (2), (3), (3A) or (4).
- (2) The applicant meets the requirements of this subclause if the applicant was lawfully present in Australia for a period of, or periods that total, not less than 2 years in the period of 5 years immediately before the application for the visa and, during that time, the applicant:
- (a) was:
    - (i) the holder of a permanent visa or a permanent entry permit; or
    - (ii) an Australian citizen; and
  - (b) was not the holder of:
    - (i) a temporary visa (other than a Subclass 773 Border visa, Subclass 956 Electronic Travel Authority (Business Entrant — Long Validity) visa, Subclass 976 Electronic Travel Authority (Visitor) visa or Subclass 977 Electronic Travel Authority (Business Entrant — Short Validity) visa held concurrently with the permanent visa or the permanent entry permit); or
    - (ii) a bridging visa.
- (3) The applicant meets the requirements of this subclause if the applicant is outside Australia, and the Minister is satisfied that the applicant has substantial business, cultural, employment or personal ties with Australia which are of benefit to Australia, and the applicant:
- (a) has not been absent from Australia for a continuous period of 5 years or more immediately before the application for the visa, unless there are compelling reasons for the absence, and the applicant:
    - (i) holds a permanent visa; or
    - (ii) last departed Australia as an Australian permanent resident; or
    - (iii) last departed Australia as an Australian citizen, but has subsequently lost or renounced Australian citizenship; or

- (b) was an Australian citizen, or an Australian permanent resident, less than 10 years before the application, and has not been absent from Australia for a period of, or periods that total, more than 5 years in the period from the date that the applicant last departed Australia as an Australian citizen or Australian permanent resident to the date of the application, unless there are compelling reasons for the absence.

(3A) The applicant meets the requirements of this subclause if the applicant is in Australia, and the Minister is satisfied that the applicant:

- (a) has substantial business, cultural, employment or personal ties with Australia which are of benefit to Australia; and
- (b) has not been absent from Australia for a continuous period of 5 years or more since:
  - (i) the date of grant of the applicant's most recent permanent visa, unless there are compelling reasons for the absence; or
  - (ii) the date on which the applicant ceased to be a citizen, unless there are compelling reasons for the absence.

(4) The applicant meets the requirements of this subclause if the applicant is a member of the family unit of a person who:

- (a) has been granted a Subclass 155 visa and that visa is still in effect; or
- (b) meets the requirements of subclause (2), (3) or (3A) and has lodged either:
  - (i) a combined application for a Return (Residence) (Class BB) visa with the applicant; or
  - (ii) a separate application for a Return (Residence) (Class BB) visa.

*Note* The period of a visa granted under paragraph 155.212 (4) (a) can be no greater than the period of the Subclass 155 visa granted to the other family member, and mentioned in paragraph 155.212 (4) (a): see clause 155.511.



---

**155.22 Criteria to be satisfied at time of decision**

155.221 If the application is made outside Australia, the applicant satisfies special return criterion 5001.

155.222 The Minister is satisfied that:

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

**155.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

**155.4 Circumstances applicable to grant**

155.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

155.412 If the application is made in Australia, the applicant must be in Australia, but not in immigration clearance, at the time of grant.

**155.5 When visa is in effect**

155.511 Permanent visa permitting the holder to travel to and enter Australia for:

- (a) if paragraph 155.212 (4) (a) applies to the applicant:
  - (i) the period of the Subclass 155 visa mentioned in paragraph 155.212 (4) (a); or
  - (ii) a shorter period determined by the Minister; or
- (b) if:
  - (i) the visa is granted pursuant to an Internet application; and

- (ii) the applicant met the requirements of clause 155.211 and subclause 155.212 (2) at the time of application;
- a period of 5 years from the date of grant; or
- (c) in any other case:
  - (i) a period of 5 years from the date of the grant; or
  - (ii) a shorter period determined by the Minister.

## **155.6 Conditions: Nil.**

## **155.7 Way of giving evidence**

155.711 No evidence need be given.

155.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 157 Three Month Resident Return**

### **157.1 Interpretation**

*Note* *Australian permanent resident* is defined in regulation 1.03.

### **157.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

#### **157.21 Criteria to be satisfied at time of application**

157.211 The applicant:

- (a) is an Australian permanent resident; or
- (b) was an Australian citizen but has subsequently lost or renounced Australian citizenship; or
- (c) is a former Australian permanent resident, other than a former Australian permanent resident whose most recent permanent visa was cancelled.

157.212 (1) The applicant meets the requirements of subclause (2) or (3).

- 
- (2) The applicant meets the requirements of this subclause if the applicant:
- (a) was lawfully present in Australia for a period of, or periods that total, not less than 1 day but less than 2 years in the period of 5 years immediately before the application for the visa and, during that time, the applicant:
    - (i) was:
      - (A) the holder of a permanent visa or a permanent entry permit; or
      - (B) an Australian citizen; and
    - (ii) was not the holder of:
      - (A) a temporary visa (other than a Subclass 773 Border visa, Subclass 956 Electronic Travel Authority (Business Entrant — Long Validity) visa, Subclass 976 Electronic Travel Authority (Visitor) visa or Subclass 977 Electronic Travel Authority (Business Entrant — Short Validity) visa held concurrently with the permanent visa or the permanent entry permit); or
      - (B) a bridging visa; and
  - (b) either:
    - (i) has compelling and compassionate reasons for departing Australia; or
    - (ii) if outside Australia, had compelling and compassionate reasons for his or her last departure from Australia.
- (3) The applicant meets the requirements of this subclause if the applicant is a member of the family unit of a person who:
- (a) has been granted a Subclass 157 visa and that visa is still in effect; or
  - (b) meets the requirements of subclause (2) and has lodged either:
    - (i) a combined application for a Return (Residence) (Class BB) visa with the applicant; or

- (ii) a separate application for a Return (Residence) (Class BB) visa.

157.213 If the applicant is outside Australia, the applicant has not been absent from Australia for a continuous period of more than 3 months immediately before making the application for the visa, unless the Minister is satisfied that there are compelling and compassionate reasons for the absence.

**157.22 Criteria to be satisfied at time of decision**

157.221 If the application is made outside Australia, the applicant satisfies special return criterion 5001.

157.222 The Minister is satisfied that:

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

**157.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

**157.4 Circumstances applicable to grant**

157.411 If the application is made outside Australia, the applicant must be outside Australia at time of grant.

157.412 If the application is made in Australia, the applicant must be in Australia, but not in immigration clearance, at time of grant.

**157.5 When visa is in effect**

157.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 3 months from the date of grant.

---

**157.6 Conditions: Nil.**

**157.7 Evidence of grant**

157.711 No evidence need be given.

157.712 If evidence is given, to be given by a label affixed to a valid passport.

**Subclass 159 Provisional Resident Return**

**159.1 Interpretation**

*Note* *Australian permanent resident* is defined in regulation 1.03.

**159.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

**159.21 Criteria to be satisfied at time of application**

159.211 The applicant claims, but is unable to prove, that immediately before going overseas he or she was:

- (a) an Australian permanent resident; or
- (b) an Australian citizen who was usually resident in Australia.

159.212 If the applicant could prove that claim, the applicant would satisfy the criteria for the grant of a Subclass 155 or 157 visa.

159.212A The Minister is satisfied that the applicant is not an Australian citizen.

159.213 The applicant gives the Minister a written statement that satisfies the Minister that:

- (a) the applicant has urgent and compelling reasons for travelling to Australia before proving the claim; and
- (b) entry of the applicant to Australia before the claim is proved will not prejudice the interests of Australia; and
- (c) there are reasonable grounds for believing that the claim can be proved.

**159.22      Criteria to be satisfied at time of decision**

159.221      There is no evidence that the applicant does not satisfy special return criteria 5001, 5002 and 5010.

159.222      The Minister is satisfied that:

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

**159.3      Secondary criteria: Nil.**

*Note*    All applicants must satisfy the primary criteria.

**159.4      Circumstances applicable to grant**

159.411      The applicant must be outside Australia when the visa is granted.

**159.5      When visa is in effect**

159.511      Temporary visa permitting the holder to travel to and enter Australia once only within 3 months of grant and to remain in Australia for 3 months.

**159.6      Conditions**

159.611      The holder must travel to and enter Australia within 3 months of grant of the visa.

**159.7      Way of giving evidence**

159.711      No evidence need be given.

159.712      If evidence is given, to be given by a label affixed to a valid passport.

---

## Subclass 160                      Business Owner (Provisional)

### 160.1      Interpretation

*Note 1* *appropriate regional authority, AUD, fiscal year, ownership interest* and *qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

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

### 160.2      Primary criteria

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

#### 160.21      Criteria to be satisfied at time of application

160.211      The applicant has overall had a successful business career.

160.212      For at least 2 of the 4 fiscal years immediately before the application is made:

- (a) the net value of the assets of:
  - (i) the applicant; or
  - (ii) the applicant's spouse or de facto partner; or
  - (iii) the applicant and his or her spouse or de facto partner together;in a qualifying business or qualifying businesses in which the applicant had an ownership interest was at least AUD200 000; and
- (b) if a qualifying business mentioned in paragraph (a) was operated by a publicly listed company, the shareholding of:
  - (i) the applicant; or
  - (ii) the applicant's spouse or de facto partner; or
  - (iii) the applicant and his or her spouse or de facto partner together;was at least 10% of the total issued capital of the company.

- 160.213      For at least 2 of the 4 fiscal years immediately before the application is made, the applicant's main business, or the applicant's main businesses together, had an annual turnover of at least AUD500 000.
- 160.214      (1) The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:
- (a)    have a net value of at least AUD800 000; and
  - (b)    are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 160 visa.
- (2) The applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the Minister is satisfied are of a sufficient net value to settle in Australia.
- 160.215      The applicant is less than 45 years old.
- 160.216      The applicant has vocational English within the meaning given by regulation 1.15B.
- 160.217      If the applicant was engaged, for at least 2 of the 4 fiscal years immediately before the application is made, in a business providing professional, technical or trade services, the applicant was directly engaged in the provision of the services, as distinct from the general direction of the operation of the business, for no more than half the time spent by the applicant from day to day in the conduct of the business.
- 160.218      Neither the applicant nor his or her spouse or de facto partner (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 160.219      The applicant has notified the appropriate regional authority of a State or Territory of:
- (a)    the applicant's business history; and
  - (b)    the applicant's intention to develop a business in that State or Territory.



- 
- 160.219A The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 160 visa:
- (a) either:
    - (i) to establish a qualifying business in Australia; or
    - (ii) to participate in an existing qualifying business in Australia; and
  - (b) to maintain a substantial ownership interest in that business; and
  - (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 160.219B The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.
- 160.219C The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 160 visa.

**160.22 Criteria to be satisfied at time of decision**

- 160.221 The applicant continues to satisfy the criteria in clauses 160.211, 160.214, 160.218, 160.219A and 160.219B.
- 160.222 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 160.223 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 160.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 160 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and

- (aa) if the member had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b) if the member has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 160 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

160.225 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

160.226 The Minister is satisfied that:

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

### **160.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **160.31 Criteria to be satisfied at time of application**

160.311 The applicant is a member of the family unit of a person who:

- (a) satisfies the primary criteria in Subdivision 160.21; or
- (b) holds a Subclass 160 visa.

---

**160.32 Criteria to be satisfied at time of decision**

- 160.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 160 visa.
- 160.322 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 160.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 160.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 160.325 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

**160.4 Circumstances applicable to grant**

- 160.411 (1) If the applicant:
- (a) satisfies the secondary criteria; and
  - (b) holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.
- Note* The second instalment of the visa application charge must be paid before the visa can be granted.

## **160.5      When visa is in effect**

- 160.511      Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

## **160.6      Conditions**

- 160.611      If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 160.612      If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **160.7      Way of giving evidence**

- 160.711      No evidence need be given.
- 160.712      If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 161                      Senior Executive (Provisional)**

## **161.1      Interpretation**

- 161.111      In this Part:

*major business* means a business (other than a government business enterprise) the annual turnover of which was at least AUD50 000 000 for at least 2 of the 4 fiscal years immediately before the application is made.

*Note 1 appropriate regional authority, AUD, fiscal year, ownership interest* and *qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

## **161.2      Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

---

**161.21 Criteria to be satisfied at time of application**

- 161.211 The applicant has overall had a successful business career.
- 161.212 For a total of at least 2 years in the 4 years immediately before the application is made, the applicant:
- (a) occupied a position in the 3 highest levels of the management structure of a major business; and
  - (b) was responsible for strategic policy development affecting a major component or a wide range of operations of that major business.
- 161.213 (1) The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:
- (a) have a net value of at least AUD800 000; and
  - (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 161 visa to the applicant.
- (2) The applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the Minister is satisfied are of a sufficient net value to settle in Australia.
- 161.214 The applicant is less than 45 years old.
- 161.215 The applicant has vocational English within the meaning given by regulation 1.15B.
- 161.216 Neither the applicant nor his or her spouse or de facto partner (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 161.217 The applicant has notified the appropriate regional authority of a State or Territory of:
- (a) the applicant's business history; and
  - (b) the applicant's intention to develop a business in that State or Territory.

- 161.218      The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 161 visa:
- (a)    either:
    - (i)    to establish a qualifying business in Australia; or
    - (ii)   to participate in an existing qualifying business in Australia; and
  - (b)    to maintain a substantial ownership interest in that business; and
  - (c)    to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 161.219      The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.
- 161.219A      The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 161 visa.

**161.22      Criteria to be satisfied at time of decision**

- 161.221      The applicant continues to satisfy the criteria in clauses 161.211, 161.213, 161.216, 161.218 and 161.219.
- 161.222      The applicant:
- (a)    satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b)    if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 161.223      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 161.224      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 161 visa:
- (a)    satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and

- (aa) if the member had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b) if the member has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 161 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

161.225 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

161.226 The Minister is satisfied that:

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

### **161.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **161.31 Criteria to be satisfied at time of application**

161.311 The applicant is a member of the family unit of a person who:

- (a) satisfies the primary criteria in Subdivision 161.21; or
- (b) holds a Subclass 161 visa.

**161.32      Criteria to be satisfied at time of decision**

- 161.321      The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 161 visa.
- 161.322      The applicant:
- (a)      satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b)      if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 161.323      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 161.324      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 161.325      The Minister is satisfied that:
- (a)      the applicant is the holder of a valid passport that:
    - (i)      was issued to the applicant by an official source; and
    - (ii)     is in the form issued by the official source; or
  - (b)      it would be unreasonable to require the applicant to be the holder of a passport.

**161.4      Circumstances applicable to grant**

- 161.411      (1) If the applicant:
- (a)      satisfies the secondary criteria; and
  - (b)      holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.
- Note* The second instalment of the visa application charge must be paid before the visa can be granted.



---

## **161.5 When visa is in effect**

- 161.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

## **161.6 Conditions**

- 161.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 161.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **161.7 Way of giving evidence**

- 161.711 No evidence need be given.
- 161.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 162 Investor (Provisional)**

### **162.1 Interpretation**

- 162.111 In this Part:
- designated investment* means an investment in a security specified by the Minister under regulation 5.19A for this Part.
- eligible investment*, for a person, means:
- (a) an ownership interest in a business; or
  - (b) a loan to a business; or
  - (c) cash on deposit; or
  - (d) stocks and bonds; or
  - (e) real estate; or
  - (f) gold or silver bullion;
- that is owned by the person for the purpose of producing a return by way of income or capital gain and is not held for personal use.

*Note 1 appropriate regional authority, AUD, fiscal year, ownership interest and qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset, eligible investment or ownership interest, see regulation 1.11A.

## **162.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

### **162.21 Criteria to be satisfied at time of application**

162.211 The applicant has demonstrated overall a successful record of eligible investment activity or qualifying business activity.

162.212 (1) The applicant has had a total of at least 3 years experience of direct involvement in managing 1 or more qualifying businesses or eligible investments.

(2) Throughout at least 1 of the 5 fiscal years immediately before the application is made:

(a) the applicant maintained direct involvement in managing a qualifying business in which:

(i) the applicant; or

(ii) the applicant and his or her spouse or de facto partner together;

had an ownership interest of at least 10% of the total value of the business; or

(b) the applicant maintained direct involvement in managing eligible investments of:

(i) the applicant; or

(ii) the applicant's spouse or de facto partner; or

(iii) the applicant and his or her spouse or de facto partner together;

the total net value of which was at least AUD1 500 000.

(3) Throughout the 2 fiscal years immediately before the application is made, the net value of the business and personal assets of the applicant, the applicant's spouse or

- 
- de facto partner, or the applicant and his or her spouse or de facto partner together, was at least AUD2 250 000.
- 162.213 The applicant has demonstrated a high level of management skill in relation to an eligible investment or qualifying business activity.
- 162.214 The applicant is less than 45 years old.
- 162.215 The applicant has vocational English within the meaning given by regulation 1.15B.
- 162.216 Neither the applicant nor his or her spouse or de facto partner (if any) has a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.
- 162.217 The applicant has notified the appropriate regional authority of a State or Territory of:
- (a) the applicant's business and investment history; and
  - (b) the applicant's intention to lodge a designated investment in that State or Territory.
- 162.218 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 162 visa, to continue to maintain business or investment activity in Australia after the designated investment made by the applicant, or by the applicant and his or her spouse or de facto partner, has matured.
- 162.219 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 162 visa.
- 162.22 Criteria to be satisfied at time of decision**
- 162.221 The applicant continues to satisfy the criteria in clauses 162.211, 162.213, 162.216 and 162.218.
- 162.222 (1) The applicant has made a designated investment of an amount of AUD1 500 000 in the name of the applicant or in the names of the applicant and his or her spouse or de facto partner.

(2) The Minister is satisfied that the funds mentioned in subclause (1) were:

- (a) legally owned by:
  - (i) the applicant; or
  - (ii) the applicant's spouse or de facto partner; or
  - (iii) the applicant and his or her spouse or de facto partner together; and
- (b) unencumbered; and
- (c) accumulated from the qualifying business or eligible investment activities of:
  - (i) the applicant; or
  - (ii) the applicant's spouse or de facto partner; or
  - (iii) the applicant and his or her spouse or de facto partner together.

162.223      The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

162.224      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

162.225      (1) Each member of the family unit of the applicant who is an applicant for a Subclass 162 visa:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
- (aa) if the member had turned 18 at the time of application — satisfies public interest criterion 4019; and
- (b) if the member has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 162 visa:

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

- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

162.226 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

162.227 The Minister is satisfied that:

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

### **162.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **162.31 Criteria to be satisfied at time of application**

162.311 The applicant is a member of the family unit of a person who:

- (a) satisfies the primary criteria in Subdivision 162.21; or
- (b) holds a Subclass 162 visa.

#### **162.32 Criteria to be satisfied at time of decision**

162.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 162 visa.

162.322 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and

- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

162.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

162.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

162.325 The Minister is satisfied that:

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

#### **162.4      Circumstances applicable to grant**

162.411 (1) If the applicant:

- (a) satisfies the secondary criteria; and
- (b) holds a student visa at the time of application;

the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

(2) In any other case, the applicant must be outside Australia when the visa is granted.

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

#### **162.5      When visa is in effect**

162.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **162.6      Conditions**

162.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.

- 162.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **162.7 Way of giving evidence**

- 162.711 No evidence need be given.
- 162.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 163 State/Territory Sponsored Business Owner (Provisional)**

### **163.1 Interpretation**

*Note 1* *appropriate regional authority, AUD, fiscal year, ownership interest* and *qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

### **163.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

#### **163.21 Criteria to be satisfied at time of application**

- 163.211 The applicant has overall had a successful business career.
- 163.212 The applicant has, for at least 2 of the 4 fiscal years immediately before the application is made, had an ownership interest in a main business or businesses that had an annual turnover of at least AUD300 000.
- 163.213 (1) The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:
- (a) have a net value of at least AUD500 000 that is available for the conduct or establishment of a business in Australia; and

(b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 163 visa.

(2) The applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the appropriate regional authority is satisfied are of a sufficient net value to settle in Australia.

163.214 The applicant:

- (a) is less than 55 years old; or
- (b) is proposing to establish or participate in a business that the appropriate regional authority has determined is of exceptional economic benefit to the State or Territory where the authority is located.

163.215 If the applicant was engaged, for at least 2 of the 4 fiscal years immediately before the application is made, in a business providing professional, technical or trade services, the applicant was directly engaged in the provision of the services, as distinct from the general direction of the operation of the business, for no more than half the time spent by the applicant from day to day in the conduct of the business.

163.216 Neither the applicant nor his or her spouse or de facto partner (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.

163.217 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 163 visa:

- (a) either:
  - (i) to establish a qualifying business in Australia; or
  - (ii) to participate in an existing qualifying business in Australia; and
- (b) to maintain a substantial ownership interest in that business; and



- (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.

163.218 The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.

163.219 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 163 visa.

**163.22 Criteria to be satisfied at time of decision**

163.221 The applicant continues to satisfy the criteria in clauses 163.211, 163.213 and 163.216 to 163.218.

163.222 (1) The applicant is sponsored by an appropriate regional authority.

(2) Form 949 is signed by an officer of the authority who is authorised to sign a sponsorship of that kind.

163.223 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

163.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

163.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 163 visa:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
- (aa) if the member had turned 18 at the time of application — satisfies public interest criterion 4019; and
- (b) if the member has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 163 visa:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

163.226 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

163.227 The Minister is satisfied that:

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

### **163.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **163.31 Criteria to be satisfied at time of application**

163.311 The applicant is a member of the family unit of a person who:

- (a) satisfies the primary criteria in Subdivision 163.21; or
- (b) holds a Subclass 163 visa.

#### **163.32 Criteria to be satisfied at time of decision**

163.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 163 visa.

- 
- 163.322 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 163.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 163.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 163.325 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **163.4 Circumstances applicable to grant**

- 163.411 (1) If the applicant:
- (a) satisfies the secondary criteria; and
  - (b) holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.
- Note* The second instalment of the visa application charge must be paid before the visa can be granted.

#### **163.5 When visa is in effect**

- 163.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

## **163.6 Conditions**

- 163.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 163.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **163.7 Way of giving evidence**

- 163.711 No evidence need be given.
- 163.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 164 State/Territory Sponsored Senior Executive (Provisional)**

## **164.1 Interpretation**

- 164.111 In this Part:

*major business* means a business (other than a government business enterprise) the annual turnover of which was at least AUD10 000 000 in at least 2 of the 4 fiscal years immediately before the application is made.

*Note 1 appropriate regional authority, AUD, fiscal year, ownership interest and qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

## **164.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

### **164.21 Criteria to be satisfied at time of application**

- 164.211 The applicant has overall had a successful business career.

- 
- 164.212 For a total of at least 2 years in the 4 years immediately before the application is made, the applicant:
- (a) occupied a position in the 3 highest levels of the management structure of a major business; and
  - (b) was responsible for strategic policy development affecting a major component or a wide range of operations of that major business.
- 164.213 (1) The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:
- (a) have a net value of at least AUD500 000 that is available for the conduct or establishment of a business in Australia; and
  - (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 164 visa to the applicant.
- (2) The applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the appropriate regional authority is satisfied are of a sufficient net value to settle in Australia.
- 164.214 The applicant:
- (a) is less than 55 years old; or
  - (b) is proposing to establish or participate in a business that the appropriate regional authority has determined is of exceptional economic benefit to the State or Territory where the authority is located.
- 164.215 Neither the applicant nor his or her spouse or de facto partner (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 164.216 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 164 visa:
- (a) either:
    - (i) to establish a qualifying business in Australia; or

- (ii) to participate in a qualifying business in Australia; and
  - (b) to maintain a substantial ownership interest in that business; and
  - (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 164.217 The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.
- 164.218 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 164 visa.
- 164.22 Criteria to be satisfied at time of decision**
- 164.221 The applicant continues to satisfy the criteria in clauses 164.211, 164.213 and 164.215 to 164.217.
- 164.222 (1) The applicant is sponsored by an appropriate regional authority.
- (2) Form 949 is signed by an officer of the authority who is authorised to sign a sponsorship of that kind.
- 164.223 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 164.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 164.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 164 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and

- (aa) if the member had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b) if the member has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 164 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

164.226 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

164.227 The Minister is satisfied that:

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

### **164.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **164.31 Criteria to be satisfied at time of application**

164.311 The applicant is a member of the family unit of a person who:

- (a) satisfies the primary criteria in Subdivision 164.21; or

- (b) holds a Subclass 164 visa.

**164.32 Criteria to be satisfied at time of decision**

- 164.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 164 visa.
- 164.322 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 164.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 164.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 164.325 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

**164.4 Circumstances applicable to grant**

- 164.411 (1) If the applicant:
- (a) satisfies the secondary criteria; and
  - (b) holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.

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



---

## **164.5 When visa is in effect**

- 164.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

## **164.6 Conditions**

- 164.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 164.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **164.7 Way of giving evidence**

- 164.711 No evidence need be given.
- 164.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 165 State/Territory Sponsored Investor (Provisional)**

## **165.1 Interpretation**

- 165.111 In this Part:
- designated investment* means an investment in a security specified by the Minister under regulation 5.19A for this Part.
- eligible investment*, for a person, means:
- (a) an ownership interest in a business; or
  - (b) a loan to a business; or
  - (c) cash on deposit; or
  - (d) stocks and bonds; or
  - (e) real estate; or
  - (f) gold or silver bullion;
- that is owned by the person for the purpose of producing a return by way of income or capital gain and is not held for personal use.

*Note 1* **appropriate regional authority, AUD, fiscal year, ownership interest** and **qualifying business** are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset, eligible investment or ownership interest, see regulation 1.11A.

## **165.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

### **165.21 Criteria to be satisfied at time of application**

165.211 The applicant has demonstrated overall a successful record of eligible investment activity or qualifying business activity.

165.212 (1) The applicant has had a total of at least 3 years experience of direct involvement in managing 1 or more qualifying businesses or eligible investments.

(2) Throughout at least 1 of the 5 fiscal years immediately before the application is made:

(a) the applicant maintained direct involvement in managing a qualifying business in which:

(i) the applicant; or

(ii) the applicant and his or her spouse or de facto partner together;

had an ownership interest of at least 10% of the total value of the business; or

(b) the applicant maintained direct involvement in managing eligible investments of:

(i) the applicant; or

(ii) the applicant's spouse or de facto partner; or

(iii) the applicant and his or her spouse or de facto partner together;

the total net value of which was at least AUD750 000.

(3) Throughout the 2 fiscal years immediately before the application is made, the net value of the business and personal assets of the applicant, the applicant's spouse or

- 
- de facto partner, or the applicant and his or her spouse or de facto partner together, was at least AUD1 125 000.
- 165.213 The applicant has demonstrated a high level of management skill in relation to the eligible investment or qualifying business activity.
- 165.214 The applicant:
- (a) is less than 55 years old; or
  - (b) is proposing to establish or participate in business or investment activity that the appropriate regional authority has determined is of exceptional economic benefit to the State or Territory where the authority is located.
- 165.215 Neither the applicant nor his or her spouse or de facto partner (if any) has a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.
- 165.216 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 165 visa, to continue to maintain business or investment activity in Australia after the designated investment made by the applicant, or by the applicant and his or her spouse or de facto partner, has matured.
- 165.217 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 165 visa.
- 165.22 Criteria to be satisfied at time of decision**
- 165.221 The applicant continues to satisfy the criteria in clauses 165.211, 165.213, 165.215 and 165.216.
- 165.222 (1) The applicant has made a designated investment of an amount of AUD750 000, in the name of the applicant or in the names of the applicant and his or her spouse or de facto partner, in the State or Territory in which the appropriate regional authority that sponsored the applicant is located.

- (2) The Minister is satisfied that the funds mentioned in subclause (1) were:
- (a) legally owned by:
    - (i) the applicant; or
    - (ii) the applicant's spouse or de facto partner, or
    - (iii) the applicant and his or her spouse or de facto partner together; and
  - (b) unencumbered; and
  - (c) accumulated from the qualifying business or eligible investment activities of:
    - (i) the applicant; or
    - (ii) the applicant's spouse or de facto partner; or
    - (iii) the applicant and his or her spouse or de facto partner together.
- 165.223 (1) The applicant is sponsored by an appropriate regional authority.
- (2) Form 949 is signed by an officer of the authority who is authorised to sign a sponsorship of that kind.
- 165.224 The applicant has a genuine intention to reside, for at least 2 years, in the State or Territory where he or she has lodged the designated investment.
- 165.225 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 165.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 165.227 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 165 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and

- (aa) if the member had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b) if the member has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 165 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

165.228 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

165.229 The Minister is satisfied that:

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

### **165.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **165.31 Criteria to be satisfied at time of application**

165.311 The applicant is a member of the family unit of a person who:

- (a) satisfies the primary criteria in Subdivision 165.21; or
- (b) holds a Subclass 165 visa.

**165.32      Criteria to be satisfied at time of decision**

- 165.321      The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 165 visa.
- 165.322      The applicant:
- (a)      satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b)      if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 165.323      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 165.324      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 165.325      The Minister is satisfied that:
- (a)      the applicant is the holder of a valid passport that:
    - (i)      was issued to the applicant by an official source; and
    - (ii)     is in the form issued by the official source; or
  - (b)      it would be unreasonable to require the applicant to be the holder of a passport.

**165.4      Circumstances applicable to grant**

- 165.411      (1) If the applicant:
- (a)      satisfies the secondary criteria; and
  - (b)      holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.

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

---

## **165.5 When visa is in effect**

- 165.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

## **165.6 Conditions**

- 165.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 165.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **165.7 Way of giving evidence**

- 165.711 No evidence need be given.
- 165.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 173                      Contributory Parent (Temporary)**

## **173.1 Interpretation**

*Note* *Australian permanent resident, aged parent, eligible New Zealand citizen, close relative, guardian, parent visa* and *settled* are defined in regulation 1.03, *balance of family test* is defined in regulation 1.05, *parent* is defined in subsection 5 (1) of the Act (also see regulation 1.14A), *de facto partner* is defined in section 5CB of the Act (also see regulation 1.09A), and *spouse* is defined in section 5F of the Act (also see regulation 1.15A).

## **173.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

**173.21      Criteria to be satisfied at time of application**

- 173.211      The applicant is a parent of a person (the *child*) who is:
- (a)    a settled Australian citizen; or
  - (b)    a settled Australian permanent resident; or
  - (c)    a settled eligible New Zealand citizen.
- 173.212      (1) The applicant is sponsored in accordance with subclause (2) or (3).
- (2) If the child has turned 18, the applicant is sponsored by:
- (a)    the child; or
  - (b)    the child's cohabiting spouse or de facto partner, if that spouse or de facto partner:
    - (i)    has turned 18; and
    - (ii)   is:
      - (A)   a settled Australian citizen; or
      - (B)   a settled Australian permanent resident; or
      - (C)   a settled eligible New Zealand citizen.
- (3) If the child has not turned 18, the applicant is sponsored by:
- (a)    the child's cohabiting spouse, if that spouse:
    - (i)    has turned 18; and
    - (ii)   is:
      - (A)   a settled Australian citizen; or
      - (B)   a settled Australian permanent resident; or
      - (C)   a settled eligible New Zealand citizen; or
  - (b)    a person who:
    - (i)    is a relative or guardian of the child; and
    - (ii)   has turned 18; and
    - (iii)  is:
      - (A)   a settled Australian citizen; or
      - (B)   a settled Australian permanent resident; or
      - (C)   a settled eligible New Zealand citizen; or



- (c) if the child has a cohabiting spouse but the spouse has not turned 18 — a person who:
  - (i) is a relative or guardian of the child's spouse; and
  - (ii) has turned 18; and
  - (iii) is:
    - (A) a settled Australian citizen; or
    - (B) a settled Australian permanent resident; or
    - (C) a settled eligible New Zealand citizen; or
- (d) a community organisation.

173.213 The applicant satisfies the balance of family test.

**173.22 Criteria to be satisfied at time of decision**

173.221 The applicant continues to satisfy the criterion in clause 173.211.

173.222 A sponsorship of the kind mentioned in clause 173.212, approved by the Minister, is in force, whether or not the sponsor was the sponsor at the time of application.

*Note* The applicant may seek the Minister's approval for a change of sponsor as long as the new sponsor meets the description in clause 173.212.

173.224 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

173.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

173.226 Each member of the family unit of the applicant who is an applicant for a Subclass 173 (Contributory Parent (Temporary)) visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and

- (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 173.227 Each member of the family unit of the applicant who is not an applicant for a Subclass 173 (Contributory Parent (Temporary)) visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.
- 173.228 If a person (the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 173.229 If the applicant has previously made a valid application for another parent visa:
- (a) the application has been:
    - (i) finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*); or
    - (ii) withdrawn; and
  - (b) any of the following has occurred in relation to the application for that visa:
    - (i) each decision that has been made in respect of the application is not, or is no longer, subject to any form of:
      - (A) review by the Administrative Appeals Tribunal; or
      - (B) judicial review proceedings (including proceedings on appeal);
    - (ii) a decision that has been made in respect of the application was subject to:
      - (A) review by the Administrative Appeals Tribunal; or

(B) judicial review proceedings (including proceedings on appeal);

but the period within which such a review or such review proceedings could be instituted has ended without a review or review proceedings having been instituted as prescribed;

(iii) if the applicant has applied for:

(A) review by the Migration Review Tribunal; or

(B) review by the Administrative Appeals Tribunal; or

(C) judicial review proceedings (including proceedings on appeal);

the applicant has withdrawn all applications for the review or review proceedings.

173.230 The Minister is satisfied that:

(a) the applicant is the holder of a valid passport that:

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

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

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

### **173.3 Secondary criteria**

#### **173.31 Criteria to be satisfied at time of application**

173.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 173.21.

173.312 A sponsorship of the kind mentioned in clause 173.212 of the person who satisfies the primary criteria, approved by the Minister:

(a) is in force; and

(b) includes sponsorship of the applicant.

**173.32      Criteria to be satisfied at time of decision**

- 173.321      Unless the applicant is a contributory parent newborn child, the applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa.
- 173.322      A sponsorship of the kind mentioned in clause 173.212 of the person who satisfies the primary criteria, approved by the Minister:
- (a)    is in force; and
  - (b)    includes sponsorship of the applicant;  
whether or not the sponsor was the sponsor at the time of application.
- 173.322A    A contributory parent newborn child is taken to be sponsored if:
- (a)    the contributory parent newborn child's parent is taken to be sponsored in accordance with subclause 143.212 (4); or
  - (b)    the following criteria apply in relation to the contributory parent newborn child's parent:
    - (i)    the parent is the holder of a Subclass 143 (Contributory Parent) visa at the time of the contributory parent newborn child's application;
    - (ii)   the person who sponsored the parent for the Subclass 143 (Contributory Parent) visa has died; or
  - (c)    the following criteria apply in relation to the contributory parent newborn child's parent:
    - (i)    at the time of the contributory parent newborn child's application, the parent is the holder of:
      - (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;

- 
- (ii) the person who sponsored the parent for the Subclass 173 (Contributory Parent (Temporary)) visa has died.
- 173.323 If the applicant is not a contributory parent newborn child, the applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 173.324 If the applicant:
- (a) is not a contributory parent newborn child; and
  - (b) has previously been in Australia;
- the applicant satisfies special return criteria 5001, 5002 and 5010.
- 173.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 173.326 If the applicant has previously made a valid application for another parent visa:
- (a) the application has been:
    - (i) finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*); or
    - (ii) withdrawn; and
  - (b) any of the following has occurred in relation to the application for that visa:
    - (i) each decision that has been made in respect of the application is not, or is no longer, subject to any form of:
      - (A) review by the Administrative Appeals Tribunal; or
      - (B) judicial review proceedings (including proceedings on appeal);
    - (ii) a decision that has been made in respect of the application was subject to:
      - (A) review by the Administrative Appeals Tribunal; or
-

(B) judicial review proceedings (including proceedings on appeal);

but the period within which such a review or such review proceedings could be instituted has ended without a review or review proceedings having been instituted as prescribed;

(iii) if the applicant has applied for:

(A) review by the Migration Review Tribunal; or

(B) review by the Administrative Appeals Tribunal; or

(C) judicial review proceedings (including proceedings on appeal);

the applicant has withdrawn all applications for the review or review proceedings.

173.327 If the applicant is a contributory parent newborn child, the applicant has undergone any health checks that the Minister considers appropriate.

173.328 The Minister is satisfied that:

(a) the applicant is the holder of a valid passport that:

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

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

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

#### **173.4 Circumstances applicable to grant**

173.411 If the applicant is not a contributory parent newborn child, the applicant must be outside Australia when the visa is granted.

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

173.412 If the applicant is a contributory parent newborn child, the applicant may be in or outside Australia when the visa is granted.

---

### 173.5 When visa is in effect

- 173.511 If the applicant is not a contributory parent newborn child: temporary visa permitting the holder to travel to, enter and remain in Australia for 2 years from a date specified by the Minister for the purpose.
- 173.512 If the applicant is a contributory parent newborn child: temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

### 173.6 Conditions

- 173.611 First entry must be made before a date specified by the Minister for the purpose.
- 173.612 Either or both of conditions 8502 and 8515 may be imposed.

### 173.7 Way of giving evidence

- 173.711 No evidence need be given.
- 173.712 If evidence is given, to be given by a label affixed to a valid passport.

## Subclass 175 Skilled — Independent

### 175.1 Interpretation

- 175.111 In this Part:
- degree* has the same meaning as in subregulation 2.26A (6).
- diploma* has the same meaning as in subregulation 2.26A (6).
- employed* has the same meaning as in subregulation 2.26A (7).
- trade qualification* has the same meaning as in subregulation 2.26A (6).
- Note 1* Regulation 1.03 provides that *Australian study requirement* has the meaning set out in regulation 1.15F.
- Note 2* Regulation 1.03 provides that *competent English* has the meaning set out in regulation 1.15C.
- Note 3* For *registered course*, see regulation 1.03.

*Note 4* For **relevant assessing authority**, see regulation 1.03.

*Note 5* For **skilled occupation**, see regulation 1.03.

## **175.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 applicant. Other applicants who are members of the family unit of the applicant who satisfies the primary criteria need satisfy only the secondary criteria.

### **175.21 Criteria to be satisfied at time of application**

- 175.211 (1) If the applicant has nominated a skilled occupation which is specified by the Minister in an instrument in writing for this subclause, the applicant has been employed in the skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made.
- (2) If the applicant has not nominated a skilled occupation as described in subclause (1):
- (a) the applicant has been employed in a skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made; or
- (b) the following requirements are met:
- (i) the applicant satisfied the Australian study requirement in the period of 6 months ending immediately before the day on which the application was made;
- (ii) each degree, diploma or trade qualification used to satisfy the Australian study requirement is closely related to the applicant's nominated skilled occupation.
- 175.212 (1) The skills of the applicant have been assessed by the relevant assessing authority as suitable for the applicant's nominated skilled occupation.
- (2) If the assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of studying a registered course.



---

175.213 The applicant has competent English.

**175.22 Criteria to be satisfied at time of decision**

175.221 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* That Subdivision of the Act provides in sections 92 to 96 for the application of a points system, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark.

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

175.222 No evidence has become available since the time of application that the information given or used:

- (a) to meet the requirements of item 1135 of Schedule 1; or
  - (b) to obtain the skills assessment mentioned in subclause 175.212 (1); or
  - (c) to satisfy Subdivision 175.21; or
  - (d) to satisfy clause 175.221;
- was false or misleading in a material particular.

175.223 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

175.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

175.225 Each person who is a member of the family unit of the applicant, and who is also an applicant for a Subclass 175 visa, is a person who:

- (d) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and

- (da) if the person had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (e) if the person has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- 175.226 Each member of the family unit of the applicant, who is not an applicant for a Subclass 175 visa, is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 175.227 If a person (the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) is less than 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied for the additional applicant.
- 175.228 Grant of the visa would not result in either:
- (a) the number of Subclass 175 visas granted in a financial year exceeding the maximum number of Subclass 175 visas, as determined by the Minister in an instrument in writing for this paragraph, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Subclass 175) granted in a financial year exceeding the maximum number of visas of those classes, as determined by the Minister in an instrument in writing for this paragraph, that may be granted in that financial year.
- 175.229 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

---

## **175.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of an applicant who satisfies the primary criteria.

### **175.31 Criteria to be satisfied at time of application**

- 175.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 175.21 and made a combined application with that person.

### **175.32 Criteria to be satisfied at time of decision**

- 175.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 175 visa.
- 175.322 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 175.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 175.324 If the applicant is less than 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 175.325 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

## **175.4 Circumstances applicable to grant**

- 175.411 If the applicant who satisfied the primary criteria for the grant of the visa is also the holder of a Subclass 444 (Special

Category) visa, each applicant included in the application may be in or outside Australia when the visa is granted.

175.412 In any other case, each applicant included in the application must be outside Australia when the visa is granted.

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

### **175.5 When visa is in effect**

175.511 Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

### **175.6 Conditions**

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

- (a) first entry must be made before a date specified by the Minister for the purpose; and
- (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8502 may be imposed; and
- (c) condition 8515 may be imposed.

### **175.7 Way of giving evidence**

175.711 No evidence need be given.

175.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 176                      Skilled — Sponsored**

### **176.1 Interpretation**

176.111 In this Part:

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

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

*employed* has the same meaning as in subregulation 2.26A (7).

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

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

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

*Note 3* For **registered course**, see regulation 1.03.

*Note 4* For **relevant assessing authority**, see regulation 1.03.

*Note 5* For **skilled occupation**, see regulation 1.03.

## 176.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 applicant. Other applicants who are members of the family unit of the applicant who satisfies the primary criteria need satisfy only the secondary criteria.

### 176.21 Criteria to be satisfied at time of application

- 176.211 (1) If the applicant has nominated a skilled occupation which is specified by the Minister in an instrument in writing for this subclause, the applicant has been employed in the skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made.
- (2) If the applicant has not nominated a skilled occupation as described in subclause (1):
- (a) the applicant has been employed in a skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made; or
  - (b) the following requirements are met:
    - (i) the applicant satisfied the Australian study requirement in the period of 6 months ending immediately before the day on which the application was made;
    - (ii) each degree, diploma or trade qualification used to satisfy the Australian study requirement is closely related to the applicant's nominated skilled occupation.

176.212      (1) The skills of the applicant have been assessed by the relevant assessing authority as suitable for the applicant's nominated skilled occupation.

(2) If the assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of studying a registered course.

176.213      The applicant has competent English.

**176.22      Criteria to be satisfied at time of decision**

176.221      The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* That Subdivision of the Act provides in sections 92 to 96 for the application of a points system, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark.

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

176.222      (1) Either:

- (a) if the applicant was nominated by a State or Territory government agency in accordance with subitem 1135 (3A) of Schedule 1 at the time of making the application — the requirements of subclause (2) are met; or
- (b) if the applicant was sponsored in accordance with subitem 1135 (3B) at the time of making the application — the requirements of subclause (3) are met.

(2) The Minister has accepted the nomination of the applicant by a State or Territory government agency mentioned in subitem 1135 (3A).

- 
- (3) All of the following apply:
- (a) the applicant, and all persons included in the application, are sponsored by a person who:
- (i) has turned 18; and
  - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
  - (iii) is usually resident in Australia; and
  - (iv) is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is also an applicant for a Subclass 176 visa), as:
    - (A) a parent; or
    - (B) a child or a step-child; or
    - (C) a brother or sister, an adoptive brother or sister, or a step-brother or step-sister; or
    - (D) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle; or
    - (E) a nephew or niece, an adoptive nephew or niece, or a step-nephew or step-niece;
- (b) either:
- (i) the sponsorship was made on Form 1277 (Internet), and the Minister has accepted the sponsorship; or
  - (ii) if the sponsorship was made on Form 1277 — the sponsorship was made:
    - (A) by posting the form (with the correct pre-paid postage) to the post office box address or other address specified by the Minister in an instrument in writing for this sub-subparagraph; or
    - (B) by having the form delivered by a courier service to the address specified by the Minister in an instrument in writing for this sub-subparagraph;
- and the Minister has accepted the sponsorship.

- 176.223 No evidence has become available since the time of application that the information given or used:
- (a) to meet the requirements of item 1135 of Schedule 1; or
  - (b) to obtain the skills assessment mentioned in subclause 176.212 (1); or
  - (c) to satisfy Subdivision 176.21; or
  - (d) to satisfy clause 176.221;
- was false or misleading in a material particular.
- 176.224 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 176.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 176.226 Each person who is a member of the family unit of the applicant, and who is also an applicant for a Subclass 176 visa, is a person who:
- (d) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (da) if the person had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (e) if the person has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- 176.227 Each member of the family unit of the applicant, who is not an applicant for a Subclass 176 visa, is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 176.228 If a person (the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) is less than 18; and



- (c) made a combined application with the applicant;  
public interest criteria 4015 and 4016 are satisfied for the additional applicant.

176.229 Grant of the visa would not result in either:

- (a) the number of Subclass 176 visas granted in a financial year exceeding the maximum number of Subclass 176 visas, as determined by the Minister in an instrument in writing for this paragraph, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including Subclass 176) granted in a financial year exceeding the maximum number of visas of those classes, as determined by the Minister in an instrument in writing for this paragraph, that may be granted in that financial year.

176.230 The Minister is satisfied that:

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

### **176.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of an applicant who satisfies the primary criteria.

#### **176.31 Criteria to be satisfied at time of application**

176.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 176.21 and made a combined application with that person.

#### **176.32 Criteria to be satisfied at time of decision**

176.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 176 visa.

- 176.322      The applicant:
- (a)      satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b)      if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 176.323      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 176.324      If the applicant is less than 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 176.325      The Minister is satisfied that:
- (a)      the applicant is the holder of a valid passport that:
    - (i)      was issued to the applicant by an official source; and
    - (ii)     is in the form issued by the official source; or
  - (b)      it would be unreasonable to require the applicant to be the holder of a passport.

#### **176.4      Circumstances applicable to grant**

- 176.411      If the applicant who satisfied the primary criteria for the grant of the visa is also the holder of a Subclass 444 (Special Category) visa, each applicant included in the application may be in or outside Australia when the visa is granted.

- 176.412      In any other case, each applicant included in the application must be outside Australia when the visa is granted.

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

#### **176.5      When visa is in effect**

- 176.511      Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

#### **176.6      Conditions**

- 176.611      If the applicant is outside Australia when the visa is granted:

- (a) first entry must be made before a date specified by the Minister for the purpose; and
- (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8502 may be imposed; and
- (c) condition 8515 may be imposed.

## **176.7 Way of giving evidence**

176.711 No evidence need be given.

176.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 200 Refugee**

### **200.1 Interpretation**

*Note member of the family unit and member of the immediate family are defined in regulation 1.03.*

200.111 In this Part:

**relevant Minister** means any of the following:

- (a) the Attorney-General;
- (b) the Minister for Defence;
- (c) the Minister for Foreign Affairs;
- (d) the Minister for Home Affairs;
- (e) the Minister for Immigration and Citizenship.

**Subclass 200 visa** means:

- (a) a Subclass 200 (Refugee) visa; or
- (b) a Class 200 (refugee) visa within the meaning of the Migration (1993) Regulations; or
- (c) a refugee visa (code number 200) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

## 200.2 Primary criteria

*Note* The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.

### 200.21 Criteria to be satisfied at time of application

- 200.211 (1) The applicant:
- (a) is subject to persecution in the applicant's home country and is living in a country other than the applicant's home country; or
  - (aa) meets the requirements of subclause (1A); or
  - (b) meets the requirements of subclause (2).
- (1A) The applicant meets the requirements of this subclause if:
- (a) the Minister has specified, in an instrument in writing, one or more classes of persons for this paragraph; and
  - (b) a relevant Minister has certified that the applicant is:
    - (i) in one of those classes; and
    - (ii) at risk of harm for a reason, or reasons, that relate to the applicant being in that class of persons.
- (1B) Before making the instrument mentioned in paragraph (1A) (a), the Minister must consult:
- (a) the Prime Minister; and
  - (b) the Minister for Finance and Deregulation; and
  - (c) any other relevant Minister that has an interest in the specification of that class of persons or that is affected by the specification.
- (2) The applicant meets the requirements of this subclause if:
- (a) the applicant's entry to Australia has been proposed in accordance with approved form 681 by an Australian citizen or an Australian permanent resident (in this subclause called *the proposer*) who is, or has been, the holder of a Subclass 200 visa; and

- (aa) the application is made within 5 years of the grant of that visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) before the grant of that visa, that relationship was declared to Immigration.

**200.22 Criteria to be satisfied at time of decision**

- 200.221 The applicant continues to satisfy the criterion in clause 200.211.
- 200.222 The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:
- (a) the degree of persecution to which the applicant is subject in the applicant's home country; and
  - (b) the extent of the applicant's connection with Australia; and
  - (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant's settlement and protection from persecution; and
  - (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.
- 200.223 The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.
- 200.224 The Minister is satisfied that permanent settlement in Australia:
- (a) is the appropriate course for the applicant; and
  - (b) would not be contrary to the interests of Australia.
- 200.225 Grant of the visa would not result in either:
- (a) the number of Subclass 200 visas granted in a financial year exceeding the maximum number of Subclass 200

visas, as determined by Gazette Notice, that may be granted in that financial year; or

- (b) the number of visas of particular classes (including Subclass 200) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

200.226 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

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

200.228 If a person (in this clause called the ***additional applicant***):

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —  
public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

200.229 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 200 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the person has previously been in Australia, satisfies special return criterion 5001.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 200 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

---

## **200.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.

### **200.31 Criteria to be satisfied at time of application**

200.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraphs 200.211 (1) (a) or (aa); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 200.211 (1) (b).

### **200.32 Criteria to be satisfied at time of decision**

200.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of either paragraph 200.211 (1) (a) or (aa)), is the holder of a Subclass 200 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 200.211 (1) (b)), is the holder of a Subclass 200 visa.

200.322 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

200.323 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (aa) if the applicant had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the applicant has previously been in Australia, satisfies special return criterion 5001.

## **200.4      Circumstances applicable to grant**

200.411      The applicant must be outside Australia when the visa is granted.

## **200.5      When visa is in effect**

200.511      Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

## **200.6      Conditions**

200.611      Entry must be made before the date specified by the Minister for the purpose.

200.612      Condition 8502 may be imposed.

## **200.7      Way of giving evidence**

200.711      No evidence need be given.

200.712      If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

# **Subclass 201                      In-country Special Humanitarian**

## **201.1      Interpretation**

*Note* **member of the family unit** and **member of the immediate family** are defined in regulation 1.03.

201.111      In this Part:

**relevant Minister** means any of the following:

- (a) the Attorney-General;
- (b) the Minister for Defence;
- (c) the Minister for Foreign Affairs;
- (d) the Minister for Home Affairs;
- (e) the Minister for Immigration and Citizenship.



---

***Subclass 201 visa*** means:

- (a) a Subclass 201 (In-country Special Humanitarian) visa; or
- (b) a Class 201 (in-country special humanitarian) visa within the meaning of the Migration (1993) Regulations; or
- (c) an in-country special humanitarian program visa (code number 201) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

## **201.2 Primary criteria**

*Note* The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.

### **201.21 Criteria to be satisfied at time of application**

- 201.211 (1) The applicant:
- (a) is subject to persecution in the applicant's home country and is living in the applicant's home country; or
  - (aa) meets the requirements of subclause (1A); or
  - (b) meets the requirements of subclause (2).
- (1A) The applicant meets the requirements of this subclause if:
- (a) the Minister has specified, in an instrument in writing, one or more classes of persons for this paragraph; and
  - (b) a relevant Minister has certified that the applicant is:
    - (i) in one of those classes; and
    - (ii) at risk of harm for a reason, or reasons, that relate to the applicant being in that class of persons.
- (1B) Before making the instrument mentioned in paragraph (1A) (a), the Minister must consult:
- (a) the Prime Minister; and

- (b) the Minister for Finance and Deregulation; and
- (c) any other relevant Minister that has an interest in the specification of that class of persons or that is affected by the specification.

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

- (a) the applicant's entry to Australia has been proposed in accordance with approved form 681 by an Australian citizen or an Australian permanent resident (in this subclause called *the proposer*) who is, or has been, the holder of a Subclass 201 visa; and
- (aa) the application is made within 5 years of the grant of that visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) before the grant of that visa, that relationship was declared to Immigration.

#### **201.22 Criteria to be satisfied at time of decision**

201.221 The applicant continues to satisfy the criterion in clause 201.211.

201.222 The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa having regard to:

- (a) the degree of persecution to which the applicant is subject in the applicant's home country; and
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant's settlement and protection from persecution; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

- 
- 201.223 The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.
- 201.224 The Minister is satisfied that permanent settlement in Australia:
- (a) is the appropriate course for the applicant; and
  - (b) would not be contrary to the interests of Australia.
- 201.225 Grant of the visa would not result in either:
- (a) the number of Subclass 201 visas granted in a financial year exceeding the maximum number of Subclass 201 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes, including Subclass 201 visas, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.
- 201.226 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 201.227 If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.
- 201.228 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 201.229 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 201 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and

- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b) if the person has previously been in Australia, satisfies special return criterion 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 201 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

### **201.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.

#### **201.31 Criteria to be satisfied at time of application**

201.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraphs 201.211 (1) (a) or (aa); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 201.211 (1) (b).

#### **201.32 Criteria to be satisfied at time of decision**

201.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of either paragraph 201.211 (a) or (aa)), is the holder of a Subclass 201 visa; or

- 
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 201.211 (1) (b)), is the holder of a Subclass 201 visa.
- 201.322 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 201.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (aa) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b) if the applicant has previously been in Australia — satisfies special return criterion 5001.

#### **201.4 Circumstances applicable to grant**

- 201.411 The applicant must be outside Australia when the visa is granted.

#### **201.5 When visa is in effect**

- 201.511 Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

#### **201.6 Conditions**

- 201.611 Entry must be made before the date specified by the Minister for the purpose.
- 201.612 Condition 8502 may be imposed.

#### **201.7 Way of giving evidence**

- 201.711 No evidence need be given.
- 201.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

## Subclass 202                      Global Special Humanitarian

### 202.1      Interpretation

*Note* *eligible New Zealand citizen, member of the family unit* and *member of the immediate family* are defined in regulation 1.03.

#### 202.111      In this Part:

***special assistance visa*** means any of the following:

- (a) Burmese in Burma (Special Assistance) (Class AB) visa;
- (b) Burmese in Thailand (Special Assistance) (Class AC) visa;
- (c) Cambodian (Special Assistance) (Class AE) visa;
- (d) Citizens of the Former Yugoslavia (Special Assistance) (Class AI) visa;
- (e) East Timorese in Portugal, Macau or Mozambique (Special Assistance) (Class AM) visa;
- (f) Minorities of the Former USSR (Special Assistance) (Class AV) visa;
- (g) Sudanese (Special Assistance) (Class BD) visa;
- (h) Sri Lankan (Special Assistance) (Class BG) visa;
- (i) Ahmadi (Special Assistance) (Class BJ) visa;
- (j) Vietnamese (Special Assistance) (Class BK) visa.

***Subclass 202 visa*** means:

- (a) a Subclass 202 (Global Special Humanitarian) visa; or
- (b) a Class 202 (global special humanitarian program) visa within the meaning of the Migration (1993) Regulations; or
- (c) a global special humanitarian visa (code number 202) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

***Subclass 866 visa*** means:

- (a) a Subclass 866 (Protection) visa; or

- (b) a Class 817 (protection (permanent)) entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b).

## 202.2 Primary criteria

*Note* The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.

### 202.21 Criteria to be satisfied at time of application

- 202.211
- (1) The applicant:
    - (a) is subject to substantial discrimination, amounting to gross violation of human rights, in the applicant's home country and is living in a country other than the applicant's home country; or
    - (b) meets the requirements of subclause (2).
  - (2) The applicant meets the requirements of this subclause if:
    - (a) the applicant's entry to Australia has been proposed in accordance with approved form 681 by an Australian citizen or an Australian permanent resident (in this subclause called *the proposer*); and
    - (b) either:
      - (i) the proposer is, or has been, the holder of a Subclass 202 visa, and the applicant was a member of the immediate family of the proposer on the date of grant of that visa; or
      - (ii) the proposer is, or has been, the holder of a Subclass 866 (Protection) visa, and the applicant was a member of the immediate family of the proposer on the date of application for that visa; or
      - (ia) the proposer is, or has been, the holder of a Resolution of Status (Class CD) visa, and the

applicant was a member of the immediate family of the proposer on the date of application for that visa; or

- (iii) the proposer is, or has been, the holder of a special assistance visa, and the applicant was a member of the immediate family of the proposer on the date of the application for that visa; and
- (ba) the application is made within 5 years of the grant of that visa; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) before the grant of that visa, that relationship was declared to Immigration.

## **202.22 Criteria to be satisfied at time of decision**

202.221 The applicant continues to satisfy the criterion in clause 202.211.

202.222 The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa, having regard to:

- (a) the degree of discrimination to which the applicant is subject in the applicant's home country; and
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant settlement and protection from discrimination; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

202.223 The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.

202.224 The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and



- 
- (b) would not be contrary to the interests of Australia.
- 202.225 The applicant is proposed for entry to Australia, in accordance with approved form 681, by:
- (a) a person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or
  - (b) a body operating in Australia.
- 202.226 Grant of the visa would not result in either:
- (a) the number of Subclass 202 visas granted in a financial year exceeding the maximum number of Subclass 202 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes, including Subclass 202, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.
- 202.227 (1) The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- (2) If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.
- 202.228 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 202.229 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 202 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and

- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b) if the person has previously been in Australia, satisfies special return criterion 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 202 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

## **202.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.

### **202.31 Criteria to be satisfied at time of application**

202.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 202.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 202.211 (1) (b).

202.312 The proposal made under clause 202.225 in respect of the relevant person who satisfies the primary criteria includes the applicant.

### **202.32 Criteria to be satisfied at time of decision**

202.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 202.211 (1) (a)), is the holder of a Subclass 202 visa; or

- 
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 202.211 (1) (b)), is the holder of a Subclass 202 visa.
- 202.322 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 202.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (aa) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b) if the applicant has previously been in Australia — satisfies special return criterion 5001.

## **202.4 Circumstances applicable to grant**

- 202.411 The applicant must be outside Australia when the visa is granted.

## **202.5 When visa is in effect**

- 202.511 Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

## **202.6 Conditions**

- 202.611 Entry must be made before the date specified by the Minister for the purpose.
- 202.612 Condition 8502 may be imposed.

## **202.7 Way of giving evidence**

- 202.711 No evidence need be given.
- 202.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

## Subclass 203                      Emergency Rescue

### 203.1      Interpretation

*Note* *member of the family unit* and *member of the immediate family* are defined in regulation 1.03.

#### 203.111      In this Part:

***Subclass 203 visa*** means:

- (a) a Subclass 203 (Emergency Rescue) visa; or
- (b) a Class 203 (emergency rescue) visa within the meaning of the Migration (1993) Regulations; or
- (c) an emergency rescue visa (code number 203) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

### 203.2      Primary criteria

*Note* The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.

#### 203.21      Criteria to be satisfied at time of application

- 203.211      (1) The applicant:
- (a) is subject to persecution in the applicant's home country, whether the applicant is living in the applicant's home country or in another country; or
  - (b) meets the requirements of subclause (2).
- (2) The applicant meets the requirements of this subclause if:
- (a) the applicant's entry to Australia has been proposed in accordance with approved form 681 by an Australian citizen or an Australian permanent resident (in this subclause called ***the proposer***) who is, or has been, the holder of a Subclass 203 visa; and

- (aa) the application is made within 5 years of the grant of that visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) before the grant of that visa, that relationship was declared to Immigration.

**203.22 Criteria to be satisfied at time of decision**

- 203.221 The applicant continues to satisfy the criterion in clause 203.211.
- 203.222 The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa, having regard to:
- (a) the degree of persecution to which the applicant is subject in the applicant's home country; and
  - (b) the extent of the applicant's connection with Australia; and
  - (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant settlement and protection from persecution; and
  - (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.
- 203.223 The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.
- 203.224 The Minister is satisfied that:
- (a) there are urgent and compelling reasons for the applicant to travel to Australia; and
  - (b) permanent settlement in Australia:
    - (i) is the appropriate course for the applicant; and
    - (ii) would not be contrary to the interests of Australia.

- 203.225 Grant of the visa would not result in either:
- (a) the number of Subclass 203 visas granted in a financial year exceeding the maximum number of Subclass 203 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes, including Subclass 203, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.
- 203.226 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 203.227 If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.
- 203.228 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant — public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 203.229
- (1) Each member of the family unit of the applicant who is an applicant for a Subclass 203 visa is a person who:
    - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
    - (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
    - (b) if the person has previously been in Australia, satisfies special return criterion 5001.
  - (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 203 visa is a person who:
    - (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and

- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

### **203.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.

#### **203.31 Criteria to be satisfied at time of application**

203.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 203.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 203.211 (1) (b).

#### **203.32 Criteria to be satisfied at time of decision**

203.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 203.211 (1) (a)), is the holder of a Subclass 203 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 203.211 (1) (b)), is the holder of a Subclass 203 visa.

203.322 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

203.323 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (aa) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019; and

- (b) if the applicant has previously been in Australia — satisfies special return criterion 5001.

#### **203.4 Circumstances applicable to grant**

- 203.411 The applicant must be outside Australia when the visa is granted.

#### **203.5 When visa is in effect**

- 203.511 Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

#### **203.6 Conditions**

- 203.611 Entry must be made before the date specified by the Minister for the purpose.
- 203.612 Condition 8502 may be imposed.

#### **203.7 Way of giving evidence**

- 203.711 No evidence need be given.
- 203.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

### **Subclass 204 Woman at Risk**

#### **204.1 Interpretation**

*Note* *member of the family unit* and *member of the immediate family* are defined in regulation 1.03.

- 204.111 In this Part:

***Subclass 204 visa*** means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or



- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

## 204.2 Primary criteria

*Note* The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.

### 204.21 Criteria to be satisfied at time of application

- 204.211 (1) The applicant:
  - (a) is a female person who is:
    - (i) subject to persecution or registered as being of concern to the United Nations High Commissioner for Refugees; and
    - (ii) living in a country other than her home country; or
  - (b) is a person who meets the requirements of subclause (2).
- (2) The applicant meets the requirements of this subclause if:
  - (a) the applicant's entry to Australia has been proposed in accordance with approved form 681 by an Australian citizen or an Australian permanent resident (in this subclause called *the proposer*) who is, or has been, the holder of a Subclass 204 visa; and
  - (aa) the application is made within 5 years of the grant of that visa; and
  - (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
  - (c) the applicant continues to be a member of the immediate family of the proposer; and
  - (d) before the grant of that visa, that relationship was declared to Immigration.
- 204.212 (1) The spouse or de facto partner of the applicant is not prohibited by subclause (2) from proposing the applicant's entry to Australia.

(2) For subclause (1), the spouse or de facto partner is prohibited from proposing the applicant's entry to Australia if:

- (a) the spouse or de facto partner is a woman who was granted a Subclass 204 visa within the 5 years immediately preceding the application; and
- (b) on the date of grant of that visa:
  - (i) the applicant was a former spouse or former de facto partner of that woman, having been divorced or permanently separated from that woman; or
  - (ii) the applicant was the spouse or de facto partner of that woman and that relationship had not been declared to Immigration.

#### **204.22 Criteria to be satisfied at time of decision**

204.221 The applicant continues to satisfy the criterion in clause 204.211.

204.222 If the applicant meets the requirements of paragraph 204.211 (1) (a), the Minister is satisfied that the applicant does not have the protection of a male relative and is in danger of victimisation, harassment or serious abuse because of her sex.

204.222A The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

204.223 The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.

204.224 The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa, having regard to:

- (a) the degree of persecution to which the applicant is subject in the applicant's home country; and

- 
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant settlement and protection from persecution; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.
- 204.225 Grant of the visa would not result in either:
- (a) the number of Subclass 204 visas granted in a financial year exceeding the maximum number of Subclass 204 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including Subclass 204 granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.
- 204.226 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 204.227 If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.
- 204.228 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 204.229 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 204 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and

- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b) if the person has previously been in Australia, satisfies special return criterion 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 204 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criteria criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

### **204.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.

#### **204.31 Criteria to be satisfied at time of application**

204.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 204.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 204.211 (1) (b).

#### **204.32 Criteria to be satisfied at time of decision**

204.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 204.211 (1) (a)), is the holder of a Subclass 204 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 204.211 (1) (b)), is the holder of a Subclass 204 visa.

- 
- 204.322 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 204.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (aa) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (b) if the applicant has previously been in Australia — satisfies special return criterion 5001.

#### **204.4 Circumstances applicable to grant**

- 204.411 The applicant must be outside Australia when the visa is granted.

#### **204.5 When visa is in effect**

- 204.511 Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

#### **204.6 Conditions**

- 204.611 Entry must be made before a date specified by the Minister for the purpose.
- 204.612 Condition 8502 may be imposed.

#### **204.7 Way of giving evidence**

- 204.711 No evidence need be given.
- 204.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

## Subclass 300                      Prospective Marriage

### 300.1      Interpretation

300.111      In this Part:

*prospective spouse* means the Australian citizen, Australian permanent resident or eligible New Zealand citizen referred to in clause 300.211.

*the parties* means the applicant and the prospective spouse.

*woman-at-risk visa* means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

*Note* *eligible New Zealand citizen* and *guardian* are defined in regulation 1.03, and *parent* is defined in subsection 5 (1) of the Act (also see regulation 1.14A).

### 300.2      Primary criteria

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

#### 300.21      Criteria to be satisfied at time of application

300.211      The applicant intends to marry a person who is:

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen.

300.212      (1) The prospective spouse of the applicant is not prohibited by subclause (2) from being a sponsor.

- 
- (2) The prospective spouse is prohibited from being a sponsor if:
- (a) the prospective spouse is a woman who was granted a woman-at-risk visa within the 5 years immediately preceding the application; and
  - (b) on the date of grant of that visa:
    - (i) the applicant was a former spouse or former de facto partner of that woman, having been divorced or permanently separated from that woman; or
    - (ii) the applicant was the spouse or de facto partner of that woman and that relationship had not been declared to Immigration.
- 300.213 The applicant is sponsored by:
- (a) if the prospective spouse has turned 18 — the prospective spouse; or
  - (b) if the prospective spouse has not turned 18 — a person who:
    - (i) is:
      - (A) an Australian citizen; or
      - (B) an Australian permanent resident; or
      - (C) an eligible New Zealand citizen; and
    - (ii) is a parent or guardian of the prospective spouse; and
    - (iii) has turned 18.
- 300.214 The parties have met and are known to each other personally.
- 300.215 The applicant establishes:
- (a) that the parties genuinely intend to marry; and
  - (b) that the marriage is intended by the parties to take place within the visa period.
- 300.216 The Minister is satisfied that the parties genuinely intend to live together as spouses.

**300.22      Criteria to be satisfied at time of decision**

300.221      The applicant continues to satisfy the criteria in clause 300.211 and clauses 300.214 to 300.216.

300.221A      Subject to clause 300.221B, there is no impediment to the marriage in Australian law.

300.221B      (1) If the applicant or the prospective spouse is under 18:

- (a) the Minister is satisfied that the applicant or the prospective spouse, as the case requires, is due to turn 18 before the end of the period within which the intended marriage is to take place; or
- (b) a Judge or magistrate has made an order under section 12 of the *Marriage Act 1961* authorising the applicant to marry the prospective spouse, or the prospective spouse to marry the applicant, as the case requires, and that order is in force.

(2) If paragraph (1) (b) applies, the Minister is satisfied that the marriage will take place.

*Note* Under s 12 (5) of the *Marriage Act 1961*, an order made under section 12 of that Act ceases to be in force 3 months after it is made, if the marriage contemplated by the order has not taken place.

300.222      The sponsorship of the applicant under clause 300.213 has been approved by the Minister and is still in force.

*Note* Regulations 1.20J, 1.20KA and 1.20KB limit the Minister's discretion to approve sponsorships.

300.223      The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

300.224      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

300.225      If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.



- 
- 300.226 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 300 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b) if the person has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 300 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 300.227 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 300.228 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### 300.3 Secondary criteria

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

**300.31      Criteria to be satisfied at time of application**

- 300.311      The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in clauses 300.211 to 300.212 and 300.214 to 300.216.
- 300.312      The sponsorship referred to in clause 300.213 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

**300.32      Criteria to be satisfied at time of decision**

- 300.321      The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 300 visa.
- 300.322      The sponsorship referred to in clause 300.312 has been approved by the Minister and is still in force.
- 300.323      The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 300.324      If the applicant has previously been in Australia, the applicant satisfies the special return criteria 5001 and 5002.
- 300.325      If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 300.326      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

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

### **300.4 Circumstances applicable to grant**

- 300.411 (1) Subclause (2) applies to an applicant who:
- (a) holds a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; and
  - (b) has applied for a Prospective Marriage (Temporary) (Class TO) visa.
- (2) The applicant must be:
- (a) in Australia, but not in immigration clearance; or
  - (b) outside Australia;
- when the visa is granted.
- 300.412 In any other case, the applicant must be outside Australia when the visa is granted.

### **300.5 When visa is in effect**

- 300.511 Temporary visa permitting the holder to travel to, enter and remain in Australia for 9 months from date of grant.

### **300.6 Conditions**

- 300.611 First entry must be made before a date specified by the Minister for the purpose.
- 300.612 If the applicant satisfies the primary criteria, conditions 8515 and 8519.
- 300.613 If the applicant satisfies the primary criteria, condition 8502 may be imposed.

300.614      If the applicant satisfies the secondary criteria, condition 8520.

300.615      If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8515 may be imposed.

### **300.7      Way of giving evidence**

300.711      No evidence need be given.

300.712      If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 302                      Emergency (Permanent Visa Applicant)**

### **302.1      Interpretation**

302.111      (1) In this Part:

*principal visa*, in relation to an applicant for a Subclass 302 visa, means the visa for which he or she originally applied.

*remaining criteria*, in relation to an applicant for, or holder of, a Subclass 302 visa, means:

- (a) the public interest criteria (except public interest criteria 4015, 4016, 4017 and 4018); and
- (b) the criteria requiring, or providing for the Minister to request, an assurance of support;

applicable to the class of permanent entry visa for which the applicant originally applied that have not been satisfied at the time of his or her application for a Subclass 302 visa.

(2) In subclause (1), a reference to an applicant for a Subclass 302 visa is a reference to an applicant for an Emergency (Temporary) (Class TI) visa who is also an applicant for a permanent visa of a class for which applications must be made outside Australia.

---

## **302.2 Primary criteria**

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

### **302.21 Criteria to be satisfied at time of application**

- 302.211 (1) If the application is made outside Australia:
- (a) the principal visa is a permanent visa of a class for which applications must be made outside Australia; and
  - (b) the applicant has satisfied all of the criteria for the grant of the principal visa other than the remaining criteria.

*Note* One of the primary criteria for the grant of a permanent visa is that all members of the family unit satisfy the relevant public interest criteria. Therefore, the applicant who must satisfy the primary criteria for the permanent visa can satisfy those criteria only if he or she and all members of the family unit satisfy the remaining criteria.

- 302.212 If the applicant is in Australia, the applicant is the holder of a Subclass 302 visa, and has not yet satisfied the remaining criteria.

### **302.22 Criteria to be satisfied at time of decision**

- 302.221 The applicant continues to satisfy the criterion in clause 302.211.
- 302.222 If the application is made outside Australia, the Minister is satisfied that the applicant has urgent and compelling reasons for travelling to Australia before the remaining criteria have been satisfied.
- 302.223 If the application is made in Australia, the Minister is satisfied that it was not possible for the applicant to satisfy the remaining criteria before the expiry of the period specified in the Subclass 302 visa held by the applicant.
- 302.224 If the application is made in Australia, the Minister is satisfied that it would be unreasonable to require the person to leave Australia.

- 302.225 The Minister is satisfied that it is likely that the remaining criteria will be satisfied by the applicant and all members of the applicant's family unit after entry to Australia or during a further period of temporary stay in Australia.
- 302.226 The Minister is satisfied that the entry to, or continued stay in Australia of, the applicant before the remaining criteria have been satisfied would not be contrary to the interests of Australia.
- 302.227 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **302.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **302.31 Criteria to be satisfied at time of application**

- 302.311 The applicant is a member of the family unit of, and has made a combined application with, a person who satisfies or has satisfied the primary criteria in Subdivision 302.21.
- 302.312 If the application is made in Australia, the applicant has substantially complied with the conditions to which the visa held by the applicant was granted.

#### **302.32 Criteria to be satisfied at time of decision**

- 302.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 302 visa.

- 
- 302.322 If the application is lodged outside Australia:
- (a) the principal visa is a permanent visa of a class for which applications must be lodged outside Australia; and
  - (b) the applicant:
    - (i) has satisfied all criteria for the grant of that visa; or
    - (ii) has satisfied all criteria for the grant of that visa other than the remaining criteria.
- 302.323 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 302.324 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

## **302.4 Circumstances applicable to grant**

- 302.411 If the application is made outside Australia, the applicant must be outside Australia at time of grant.
- 302.412 If the application is made in Australia, the applicant must be in the migration zone at time of grant.

## **302.5 When visa is in effect**

- 302.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

## **302.6 Conditions**

- 302.611 Condition 8301 or 8302 may be imposed.
- 302.612 Any other condition may be imposed that could be applied to the principal visa.

### **302.7      Way of giving evidence**

302.711      No evidence need be given.

302.712      If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 303                      Emergency (Temporary Visa Applicant)**

### **303.1      Interpretation**

303.111      In this Part:

*principal visa*, in relation to an applicant for a Subclass 303 visa, means the visa referred to in paragraph 303.212 (a); and

*remaining criteria*, in relation to an applicant for a Subclass 303 visa, means the criteria referred to in paragraph 303.212 (b) as not having been satisfied.

### **303.2      Primary criteria**

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

### **303.21      Criteria to be satisfied at time of application**

303.211      The applicant is not an Australian permanent resident.

303.212      The applicant:

(a)      is:

(i)      an applicant for a visa of one of the following classes:

(A)      Business (Temporary) (Class TB);

(B)      Cultural/Social (Temporary) (Class TE);

(C)      Domestic Worker (Temporary) (Class TG);

(D)      Educational (Temporary) (Class TH);

(E)      Expatriate (Temporary) (Class TJ);

(F)      Family Relationship (Temporary) (Class TL);

(G)      Interdependency (Temporary) (Class TM);



- 
- (H) Medical Practitioner (Temporary) (Class UE);
  - (I) Retirement (Temporary) (Class TQ);
  - (J) Student (Temporary) (Class TU);
  - (K) Supported Dependant (Temporary) (Class TW);
  - (L) Working Holiday (Temporary) (Class TZ);
  - (M) Partner (Provisional) (Class UF);
  - (N) Prospective Marriage (Temporary) (Class TO); or
  - (ii) 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
- (b) has satisfied all of the criteria for the grant of that visa other than:
- (i) public interest criteria; or
  - (ii) criteria that can be satisfied only after the applicant has entered Australia.
- 303.213 If the application is made in the migration zone, either:
- (a) the applicant is the holder of a Subclass 303 visa; or
  - (b) the applicant is not the holder of a substantive visa, and:
    - (i) the last substantive visa held was of a kind specified in paragraph (a); and
    - (ii) the applicant satisfies whichever of Schedule 3 criteria 3002, 3004 and 3005 applies to the principal visa.
- 303.22 Criteria to be satisfied at time of decision**
- 303.221 (1) The applicant seeks, by request to the Minister in accordance with subclause (2), to travel to Australia before the remaining criteria (except those listed in clause 303.227) have been satisfied.
- (2) The request referred to in subclause (1):
- (a) must be in writing; and
-

- (b) must include a written statement of the applicant's urgent and compelling reasons for travelling to Australia before the remaining criteria have been satisfied.
- 303.222 The Minister, on consideration of the request referred to in clause 303.221, is satisfied that the applicant has urgent and compelling reasons for travelling to Australia before the remaining criteria are satisfied for the purposes of granting the principal visa.
- 303.223 The Minister is satisfied that the applicant's entry to Australia before the remaining criteria have been satisfied would not be contrary to the interests of Australia.
- 303.224 The Minister is satisfied that the applicant is reasonably likely to satisfy the remaining criteria for the purposes of granting the principal visa after the applicant's entry to Australia.
- 303.225 If the application was made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 303.226 If the application was made in the migration zone:
  - (a) the applicant establishes that it was not possible to satisfy the remaining criteria before the visa that he or she holds ceases; and
  - (b) the applicant applies to remain in Australia in circumstances where the remaining criteria have not been satisfied; and
  - (c) the Minister is satisfied that it would be unreasonable to require the applicant to leave Australia.
- 303.227 The applicant satisfies public interest criteria 4012, 4013 and 4014.
- 303.228 The Minister is satisfied that:
  - (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

---

### **303.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **303.31 Criteria to be satisfied at time of application**

- 303.311 The applicant is a member of the family unit of a person who has applied for a Subclass 303 visa.
- 303.312 If the application is made outside Australia and the application is made separately from that of the person satisfying the primary criteria:
- (a) the person satisfying the primary criteria is, or is expected soon to be, in Australia; and
  - (b) the applicant intends to stay temporarily in Australia as a member of the family unit of the person satisfying the primary criteria.
- 303.313 If the application is made in the migration zone the applicant has complied substantially with the conditions that apply to:
- (a) any visa held by the applicant; or
  - (b) any visa held by the applicant before becoming an unlawful non-citizen.

#### **303.32 Criteria to be met at time of decision**

- 303.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 303 visa.
- 303.322 The person who satisfies the primary criteria produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that person and the applicant.
- 303.323 The applicant:
- (a) has satisfied all criteria for the grant of a visa of one of the classes mentioned in paragraph 303.212 (a); or
  - (b) has satisfied all criteria (including public interest criteria 4012, 4013 and 4014) for the grant of a visa of one of those classes, other than the remaining criteria.

- 303.324      If the application is made outside Australia and if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.
- 303.325      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 303.326      The Minister is satisfied that:
- (a)    the applicant is the holder of a valid passport that:
    - (i)    was issued to the applicant by an official source; and
    - (ii)   is in the form issued by the official source; or
  - (b)    it would be unreasonable to require the applicant to be the holder of a passport.

### **303.4      Circumstances applicable to grant**

- 303.411      If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.
- 303.412      If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

### **303.5      When visa is in effect**

- 303.511      Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

### **303.6      Conditions**

- 303.611      Any 1 or more of conditions 8106, 8107, 8301, 8302, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

### **303.7      Way of giving evidence**

- 303.711      No evidence need be given.
- 303.712      If evidence is given, to be given by a label affixed to a valid passport.

---

## Subclass 309                      Partner (Provisional)

### 309.1      Interpretation

309.111      In this Part:

*intended spouse* means the person referred to in subparagraph 309.211 (3) (a) (i), (ii) or (iii).

*woman-at-risk visa* means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

*Note* *eligible New Zealand citizen* and *guardian* are defined in regulation 1.03, *parent* is defined in subsection 5 (1) of the Act (also see regulation 1.14A), *de facto partner* is defined in section 5CB of the Act (also see regulation 1.09A), and *spouse* is defined in section 5F of the Act (also see regulation 1.15A).

### 309.2      Primary criteria

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

#### 309.21      Criteria to be satisfied at time of application

- 309.211      (1) The applicant meets the requirements of subclause (2) or (3).
- (2) The applicant meets the requirements of this subclause if the applicant is the spouse or de facto partner of:
- (a) an Australian citizen; or
  - (b) an Australian permanent resident; or
  - (c) an eligible New Zealand citizen.

(3) The applicant meets the requirements of this subclause if:

- (a) the applicant intends to marry:
  - (i) an Australian citizen; or
  - (ii) an Australian permanent resident; or
  - (iii) an eligible New Zealand citizen; and
- (b) the intended marriage will, if it takes place, be a valid marriage for the purposes of section 12 of the Act.

*Note* If the applicant is an applicant referred to in subclause 309.211 (3), the marriage must have taken place before the applicant can be granted a visa of this subclass: see clause 309.224.

309.212 (1) The spouse, de facto partner or intended spouse of the applicant is not prohibited by subclause (2) from being a sponsor.

(2) The spouse, de facto partner or intended spouse is prohibited from being a sponsor if:

- (a) the applicant is a male person; and
- (b) the spouse, de facto partner or intended spouse is a woman who was granted a woman-at-risk visa within the 5 years immediately preceding the application; and
- (c) on the date of grant of that visa:
  - (i) the applicant was a former spouse or former de facto partner of that woman, having been divorced or permanently separated from that woman; or
  - (ii) the applicant was the spouse or de facto partner of that woman and that relationship had not been declared to Immigration.

309.213 (1) If the applicant is an applicant referred to in subclause 309.211 (2), the applicant is sponsored:

- (a) if the applicant's spouse or de facto partner has turned 18 — by that spouse or de facto partner; or
- (b) if the applicant's spouse has not turned 18 — by a parent or guardian of that spouse who:
  - (i) has turned 18; and
  - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

- (2) If the applicant is an applicant referred to in subclause 309.211 (3), the applicant is sponsored:
- (a) if the applicant's intended spouse has turned 18 — by that intended spouse; or
  - (b) if the applicant's intended spouse has not turned 18 — by a parent or guardian of that intended spouse who:
    - (i) has turned 18; and
    - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

**309.22 Criteria to be satisfied at time of decision**

- 309.221 The applicant continues to satisfy the criterion in clause 309.211.
- 309.222 The sponsorship referred to in clause 309.213 has been approved by the Minister and is still in force.
- Note* Regulations 1.20J, 1.20KA and 1.20KB limit the Minister's discretion to approve sponsorships.
- 309.223 In the case of an applicant who meets the requirements of subclause 309.211 (2), the applicant continues to be the spouse or de facto partner of the person referred to in paragraph 309.211 (2) (a), (b) or (c) who was the applicant's spouse or de facto partner at the time of the application.
- 309.224 If the applicant is an applicant referred to in subclause 309.211 (3), the marriage referred to in that subclause has taken place and the applicant continues to be the spouse of the intended spouse.
- 309.225 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 309.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

- 309.227 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 309.228 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 309 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
  - (b) if the person has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 309 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 309.229 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 309.230 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.



---

### 309.3 Secondary criteria

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### 309.31 Criteria to be satisfied at time of application

309.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 309.21.

309.312 The sponsorship referred to in clause 309.213 of the person who satisfies the primary criteria includes sponsorship of the applicant.

#### 309.32 Criteria to be satisfied at time of decision

309.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 309 (Partner (Provisional)) visa (the *person who satisfies the primary criteria*); or
- (b) is a person to whom each of the following applies:
  - (i) the person made a combined application with the person who satisfies the primary criteria;
  - (ii) subsequent to the combined application being made, the person was found by the Minister not to be a member of the family unit of the person who satisfies the primary criteria;
  - (iii) subsequent to the person who satisfies the primary criteria being granted a Subclass 309 (Partner (Provisional)) visa and Subclass 100 (Partner) visa — the Migration Review Tribunal found the person to be a member of the family unit of the person who satisfies the primary criteria.

309.322 The sponsorship referred to in clause 309.312 has been approved by the Minister and is still in force.

*Note* For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.

- 309.323      The applicant:
- (a)      satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
  - (b)      if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- 309.324      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 309.325      If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:
- (a)      the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or
  - (b)      an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.
- 309.326      If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 309.327      The Minister is satisfied that:
- (a)      the applicant is the holder of a valid passport that:
    - (i)      was issued to the applicant by an official source; and
    - (ii)     is in the form issued by the official source; or
  - (b)      it would be unreasonable to require the applicant to be the holder of a passport.

#### **309.4      Circumstances applicable to grant**

- 309.411      (1) Subclause (2) applies to an applicant who:
- (a)      holds a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; and
  - (b)      has applied for:
    - (i)      a Partner (Provisional) (Class UF) visa; or
    - (ii)     a Prospective Marriage (Temporary) (Class TO) visa.

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

309.412 In any other case, the applicant must be outside Australia at the time of grant.

### **309.5 When visa is in effect**

- 309.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until the end of the day on which:
- (a) the holder is notified that the holder's application for a Spouse (Migrant) (Class BC) visa or a Partner (Migrant) (Class BC) visa has been decided; or
  - (b) that application is withdrawn.

### **309.6 Conditions**

- 309.611 First entry must be made before a date specified by the Minister for the purpose.
- 309.612 If the applicant meets the primary criteria, condition 8502 may be imposed.
- 309.613 If the applicant meets the secondary criteria, either or both of conditions 8502 and 8515 may be imposed.

### **309.7 Way of giving evidence**

- 309.711 No evidence need be given.
- 309.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 405                      Investor Retirement**

### **405.1      Interpretation**

405.111      In this Part:

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

*Note* For *appropriate regional authority*, see regulation 1.03.

### **405.2      Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. Any other member of the family unit who is an applicant for a visa of this subclass need satisfy only the secondary criteria.

#### **405.21      Criteria to be satisfied at time of application**

*Note 1* No criteria to be satisfied at time of application if applicant is outside Australia at that time.

*Note 2* The requirements for making a valid application for an Investor Retirement (Class UY) visa are set out in item 1212B of Schedule 1.

405.211      If the applicant is in Australia, the applicant:

- (a) must be the holder of a substantive visa; or
- (b) must:
  - (i) have held a substantive visa since last entering Australia; and
  - (ii) satisfy Schedule 3 criteria 3002, 3004 and 3005.

#### **405.22      Criteria to be satisfied at time of decision**

405.221      The family unit of the applicant does not include:

- (a) if the applicant has a spouse or de facto partner — any other person dependent on the applicant or the applicant's spouse or de facto partner; or
- (b) if the applicant does not have a spouse or de facto partner — any person dependent on the applicant.

405.222      If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

- 
- 405.223 If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 405.224 If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- 405.225 The Minister may waive the requirement of clause 405.224 if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 405.226 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 405.227 (1) This clause applies to an applicant other than an applicant to whom clause 405.228 applies.
- (2) If the appropriate regional authority that sponsors the applicant indicates that the applicant and his or her spouse or de facto partner (if any) intend to live in a part of Australia the postcode of which was specified, at the time of application, in the instrument in writing for item 6A1001 of Schedule 6A:
- (a) the net value of the applicant's assets, or (if the applicant has a spouse or de facto partner) the combined net value of the assets of the applicant and of his or her spouse or de facto partner, that are available for transfer, and capable of being transferred, to Australia is at least AUD500 000; and
  - (b) the applicant has access to, or (if the applicant has a spouse or de facto partner) the applicant and his or her spouse or de facto partner collectively have access to, an annual net income of at least AUD50 000; and

- (c) the applicant has made a designated investment of an amount of at least AUD500 000, in the applicant's name or in the names of the applicant and his or her spouse or de facto partner, in the State or Territory in which the appropriate regional authority that sponsors the applicant is located.
- (3) If the appropriate regional authority that sponsors the applicant indicates that the applicant and his or her spouse or de facto partner (if any) do not intend to live in a part of Australia the postcode of which was specified, at the time of application, in the instrument in writing for item 6A1001 of Schedule 6A:
  - (a) the net value of the applicant's assets, or (if the applicant has a spouse or de facto partner) the combined net value of the assets of the applicant and of his or her spouse or de facto partner, that are available for transfer, and capable of being transferred, to Australia is at least AUD750 000; and
  - (b) the applicant has access to, or (if the applicant has a spouse or de facto partner) the applicant and his or her spouse or de facto partner collectively have access to, an annual net income of at least AUD65 000; and
  - (c) the applicant has made a designated investment of an amount of at least AUD750 000, in the applicant's name or in the names of the applicant and his or her spouse or de facto partner, in the State or Territory in which the appropriate regional authority that sponsors the applicant is located.
- (4) The Minister is satisfied that the resources required to satisfy subclause (2) or (3) (being the assets mentioned in paragraph (2) (a) or (3) (a), any assets from which the annual income is derived and any rights to the income, and the assets by which the designated investment is funded):
  - (a) are legally owned and lawfully acquired by:
    - (i) the applicant; or
    - (ii) the applicant's spouse or de facto partner; or

- 
- (iii) the applicant and his or her spouse or de facto partner together; and
- (b) other than resources relating to inheritance, or to the applicant's, the spouse's or the de facto partner's superannuation or pension — have been held by any combination of:
- (i) the applicant; and
  - (ii) the applicant's spouse or de facto partner; and
  - (iii) the applicant and his or her spouse or de facto partner together;
- throughout the 2 years immediately before the application for an Investor Retirement (Class UY) visa is made.
- (5) The Minister is satisfied that the applicant and his or her spouse or de facto partner (if any) have adequate health insurance cover in Australia for the period of:
- (a) the applicant's intended stay in Australia as the holder of a Subclass 405 visa; and
  - (b) if the applicant has a spouse or de facto partner — the spouse's or de facto partner's intended stay in Australia as the holder of a Subclass 405 visa.
- (6) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013, 4014 and 4019.
- (7) The applicant's spouse or de facto partner (if any) satisfies:
- (a) public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013, 4014; and
  - (b) if the applicant's spouse or de facto partner had turned 18 at the time of application — public interest criterion 4019.
- 405.228 (1) This clause applies to an applicant if:
- (a) the applicant is the holder of a Subclass 405 visa; or
  - (b) the last substantive visa held by the applicant since last entering Australia was a Subclass 405 visa.

(2) If the appropriate regional authority that sponsors the applicant indicates that the applicant and his or her spouse or de facto partner (if any) intend to live in a part of Australia the postcode of which was specified, at the time of application, in the instrument in writing for item 6A1001 of Schedule 6A:

- (a) the applicant has access to, or (if the applicant has a spouse or de facto partner) the applicant and his or her spouse or de facto partner collectively have access to, an annual net income of at least AUD50 000; and
- (b) the applicant has made and maintained a designated investment of an amount of at least AUD250 000, in the applicant's name or in the names of the applicant and his or her spouse or de facto partner, in the State or Territory in which the appropriate regional authority that sponsors the applicant is located.

(3) If the appropriate regional authority that sponsors the applicant indicates that the applicant and his or her spouse or de facto partner (if any) do not intend to live in a part of Australia the postcode of which was specified, at the time of application, in the instrument in writing for item 6A1001 of Schedule 6A:

- (a) the applicant has access to, or (if the applicant has a spouse or de facto partner) the applicant and his or her spouse or de facto partner collectively have access to, an annual net income of at least AUD65 000; and
- (b) the applicant has made and maintained a designated investment of an amount of at least AUD500 000, in the applicant's name or in the names of the applicant and his or her spouse or de facto partner, in the State or Territory in which the appropriate regional authority that sponsors the applicant is located.

(4) The Minister is satisfied that the resources required to satisfy subclause (2) or (3) (being any assets from which the annual income is derived and any rights to the income, and the assets by which the designated investment is funded) are legally owned and lawfully acquired by:

- (a) the applicant; or
- (b) the applicant's spouse or de facto partner; or



- 
- (c) the applicant and his or her spouse or de facto partner together.
- (5) The Minister is satisfied that the applicant and his or her spouse or de facto partner (if any):
- (a) have had adequate health insurance cover in Australia for the period of:
- (i) the applicant's stay in Australia as the holder of a Subclass 405 visa; and
- (ii) if the applicant has a spouse or de facto partner — the spouse's or de facto partner's stay in Australia as the holder of a Subclass 405 visa; and
- (b) continue to have adequate health insurance cover in Australia for the period of:
- (i) the applicant's intended stay in Australia as the holder of a Subclass 405 visa; and
- (ii) if the applicant has a spouse or de facto partner — the spouse's or de facto partner's intended stay in Australia as the holder of a Subclass 405 visa.
- (6) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4013, 4014 and 4019.
- (6A) The applicant's spouse or de facto partner (if any) satisfies:
- (a) public interest criteria 4001, 4002, 4003, 4004, 4013 and 4014; and
- (b) if the applicant's spouse or de facto partner had turned 18 at the time of application — public interest criterion 4019.
- (7) The applicant and the applicant's spouse or de facto partner (if any) are free from tuberculosis.
- (8) The applicant and the applicant's spouse or de facto partner (if any) are free from a disease or condition that is, or may result in the applicant or the applicant's spouse or de facto partner being, a threat to public health in Australia or a danger to the Australian community.

(9) If the applicant is a person from whom a Medical Officer of the Commonwealth has requested a signed undertaking to present himself or herself to a health authority in the State or Territory of intended residence in Australia for a follow-up medical assessment — the applicant has provided such an undertaking.

405.229 The Minister is satisfied that:

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

### **405.3 Secondary criteria**

*Note* These criteria must be satisfied by any applicant who is a member of the family unit of a person who satisfies the primary criteria.

#### **405.31 Criteria to be satisfied at time of application**

405.311 The applicant is the spouse or de facto partner of a person who satisfies the primary criteria for the grant of a Subclass 405 visa.

405.312 If the applicant is outside Australia and the application is made separately from that of the applicant's spouse or de facto partner:

- (a) the spouse or de facto partner is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia with the spouse or de facto partner.

#### **405.32 Criteria to be satisfied at time of decision**

405.321 The applicant continues to be the spouse or de facto partner of a person who, having satisfied the primary criteria, is the holder of a Subclass 405 visa.

405.322 The applicant continues to satisfy the criteria in clause 405.312.

- 
- 405.323 The family unit of the applicant does not include any person (other than the applicant's spouse or de facto partner) dependent on the applicant or the applicant's spouse or de facto partner.
- 405.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 405.325 If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 405.326 If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- 405.327 The Minister may waive the requirement of clause 405.326 if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 405.328 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 405.329 (1) This clause applies to an applicant other than an applicant to whom clause 405.330 applies.
- (2) The Minister is satisfied that the applicant has adequate health insurance cover in Australia for the period of the applicant's intended stay in Australia as the holder of a Subclass 405 visa.
- (3) The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.

- 405.330 (1) This clause applies to an applicant if:
- (a) the applicant is the holder of a Subclass 405 visa; or
  - (b) the last substantive visa held by the applicant since last entering Australia was a Subclass 405 visa.
- (2) The Minister is satisfied that the applicant:
- (a) has had adequate health insurance cover in Australia for the period of the applicant's stay in Australia as the holder of a Subclass 405 visa; and
  - (b) continues to have adequate health insurance cover in Australia for the period of the applicant's intended stay in Australia as the holder of a Subclass 405 visa.
- (3) The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4013 and 4014; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019.
- (4) The applicant is free from tuberculosis.
- (5) The applicant is free from 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.
- (6) If the applicant is a person from whom a Medical Officer of the Commonwealth has requested a signed undertaking to present himself or herself to a health authority in the State or Territory of intended residence in Australia for a follow-up medical assessment — the applicant has provided such an undertaking.
- 405.331 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

---

#### **405.4 Circumstances applicable to grant**

- 405.411 If the applicant was in Australia at the time of application, the applicant must be in Australia, but not in immigration clearance, at the time of grant.
- 405.412 If the applicant was outside Australia at the time of application, the applicant must be outside Australia at the time of grant.

#### **405.5 When visa is in effect**

- 405.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **405.6 Conditions**

- 405.611 Conditions 8104, 8501 and 8516 must be imposed.
- 405.612 Any 1 or more of conditions 8301, 8303, 8502, 8522, 8525 and 8526 may be imposed.

#### **405.7 Way of giving evidence**

- 405.711 No evidence need be given.
- 405.712 If evidence is given, to be given by a label affixed to a valid passport.

### **Subclass 406 Government Agreement**

#### **406.1 Interpretation**

- 406.111 In this Part:

*Australian signatory* is a department or agency of:

- (a) the Commonwealth; or
  - (b) a State or Territory;
- that is a signatory to the relevant agreement.

*foreign signatory* means a government, of a foreign country, that is a signatory to the relevant agreement.

***relevant agreement*** means a written agreement that:

- (a) is in effect; and
- (b) is between:
  - (i) a department or agency of:
    - (A) the Commonwealth; or
    - (B) a State or Territory; and
  - (ii) a government of a foreign country; and
- (c) is at least partly for the purpose of facilitating the temporary entry of people to Australia; and
- (d) is not an agreement or arrangement, or a type of agreement or arrangement, that is specified by the Minister in an instrument in writing for this paragraph.

## **406.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

### **406.21 Criteria to be satisfied at time of application**

*Note* No criteria to be satisfied at time of application if the application is made outside Australia.

406.211 If the application is made in the migration zone:

- (a) the applicant holds a substantive visa, other than 1 of the following:
  - (i) a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa;
  - (ii) a Subclass 771 (Transit) visa;
  - (iii) a Subclass 995 (Diplomatic (Temporary)) visa;
  - (iv) a special purpose visa; or
- (b) the applicant:
  - (i) does not hold a substantive visa; and
  - (ii) the last substantive visa held by the applicant was not a visa mentioned in paragraph (a); and
  - (iii) the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

---

**406.22 Criteria to be satisfied at time of decision**

- 406.221 The Minister is satisfied that the applicant:
- (a) will be engaged in work or an activity in Australia in accordance with the terms and conditions of a relevant agreement; or
  - (b) will direct the national operations in Australia of 1 of the following:
    - (i) the British Council;
    - (ii) the Alliance Française;
    - (iii) the Goethe-Institut;
    - (iv) the Istituto Italiano di Cultura.
- 406.222 (1) If paragraph 406.221 (a) applies to the applicant, the criteria in subclauses (2) and (3) must be satisfied.
- (2) The Minister is satisfied:
- (a) that the applicant meets the requirements of the relevant agreement; and
  - (b) that an Australian signatory agrees to the applicant's stay in Australia; and
  - (c) that the foreign signatory agrees to the applicant's stay in Australia.
- (3) If the foreign signatory is not the national government of the relevant foreign country, the Minister is satisfied that the national government of the foreign country does not oppose the applicant's stay in Australia.
- 406.223 If paragraph 406.221 (a) applies to the applicant, the Minister may require the applicant to provide:
- (a) a copy of the relevant agreement written in English; or
  - (b) a letter from an Australian signatory stating that the Australian signatory is satisfied that:
    - (i) the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards; and
    - (ii) the applicant has complied with any licensing, registration or equivalent requirements associated with the applicant's employment or engagement.

- 406.224      If paragraph 406.221 (b) applies to the applicant, the applicant gives to the Minister a statement supporting the application from the foreign ministry of the relevant foreign government.
- 406.225      The Minister is satisfied that the employment or engagement of the applicant would be of benefit to Australia.
- 406.226      The Minister is satisfied that the applicant genuinely intends to stay temporarily in Australia to engage in the work or activity mentioned in clause 406.221.
- 406.227      The Minister is satisfied that the applicant:  
                  (a)    has adequate means to support himself or herself; or  
                  (b)    has access to adequate means to support himself or herself;  
  
                  taking into account the applicant's work rights during the period of the applicant's stay in Australia.
- 406.228      The Minister is satisfied that the applicant has made adequate arrangements in Australia for health insurance during the period of the applicant's stay in Australia.
- 406.229      If the application is made in the migration zone, the applicant has substantially complied with the conditions that apply or applied to:  
                  (a)    the last substantive visa (if any) held by the applicant; and  
                  (b)    any subsequent bridging visa held by the applicant.
- 406.230      If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 406.231      The applicant:  
                  (a)    in all cases — satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and  
                  (b)    in the case of an applicant who has not turned 18 — satisfies public interest criteria 4012, 4017 and 4018; and  
                  (c)    in the case of an applicant who had turned 18 at the time of application — satisfies public interest criterion 4019.



- 
- 406.232 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 406.233 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirement in subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 406.234 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **406.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **406.31 Criteria to be satisfied at time of application**

- 406.311 The applicant is a member of the family unit of a person who has applied for an Educational (Temporary) (Class TH) visa on the basis of seeking to satisfy the criteria for the grant of a Subclass 406 visa.
- 406.312 If the application is made outside Australia and is made separately from that of the person satisfying the primary criteria:
- (a) the person satisfying the primary criteria is, or is expected soon to be, in Australia; and

- (b) the applicant intends to stay temporarily in Australia as a member of that family unit.

**406.32 Criteria to be satisfied at time of decision**

406.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 406 visa.

406.322 If paragraph 406.221 (a) applies to the person satisfying the primary criteria, the Minister is satisfied that:

- (a) the relevant agreement permits the applicant to enter Australia as a member of the family unit of the person satisfying the primary criteria; and
- (b) an Australian signatory has agreed to the applicant's stay in Australia.

406.323 If:

- (a) paragraph 406.221 (a) applies to the person satisfying the primary criteria; and
- (b) the relevant agreement contains terms and conditions that apply to a member of the family unit of the person satisfying the primary criteria;

the Minister is satisfied that the applicant meets the requirements of the terms and conditions.

406.324 The Minister is satisfied that the applicant:

- (a) has adequate means to support himself or herself; or
- (b) has access to adequate means to support himself or herself;

taking into account the applicant's work rights during the period of the applicant's stay in Australia.

406.325 The applicant:

- (a) in all cases — satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
- (b) in the case of an applicant who has not turned 18 — satisfies public interest criteria 4012, 4017 and 4018; and
- (c) in the case of an applicant who had turned 18 at the time of application — satisfies public interest criterion 4019.

- 
- 406.326 The Minister is satisfied that the applicant has made adequate arrangements in Australia for health insurance during the period of the applicant's stay in Australia.
- 406.327 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 406.328 If the application was made in the migration zone, the applicant has substantially complied with the conditions that apply or applied to:
- (a) the last substantive visa (if any) held by the applicant; and
  - (b) any subsequent bridging visa held by the applicant.
- 406.329 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirement in subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 406.330 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **406.4 Circumstances applicable to grant**

- 406.411 If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.

- 406.412 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

#### **406.5 When visa is in effect**

- 406.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **406.6 Conditions**

- 406.611 If the applicant meets the primary criteria, condition 8107 must be imposed.
- 406.612 If the applicant meets the primary or secondary criteria, conditions 8501 and 8516 must be imposed.
- 406.613 If the applicant meets the primary or secondary criteria, any 1 or more of conditions 8101, 8102, 8103, 8106, 8109, 8111, 8203, 8301, 8303, 8502, 8503, 8522, 8525 and 8526 may be imposed.

#### **406.7 Way of giving evidence**

- 406.711 No evidence need be given.
- 406.712 If evidence is given, to be given by a label affixed to a valid passport.

### **Subclass 410 Retirement**

#### **410.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

#### **410.2 Primary criteria**

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

---

**410.21 Criteria to be satisfied at time of application**

*Note* No criteria to be satisfied at time of application if applicant is outside Australia at that time.

- 410.211 (1) If the applicant is in Australia, the applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if the applicant is the holder of a Retirement (Temporary) (Class TQ) visa.
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is not the holder of a substantive visa; and
  - (b) the last substantive visa held by the applicant was a Retirement (Temporary) (Class TQ) visa; and
  - (c) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005.

**410.22 Criteria to be satisfied at the time of decision**

- 410.221 (1) Either:
- (a) the applicant is a person to whom subparagraph 1217 (2) (a) (i) of Schedule 1 applies; or
  - (b) if paragraph (a) does not apply, the applicant satisfies subclauses (2) to (8).
- (2) The applicant has turned 55.
- (3) If the applicant intends to reside in Australia with his or her spouse or de facto partner, the family unit of the applicant does not include any other person dependent on the applicant or the applicant's spouse or de facto partner.
- (4) If the applicant intends to reside in Australia without a spouse or de facto partner, the family unit of the applicant does not include a person dependent on the applicant.
- (5) If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

(6) If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

(7) The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.

(8) The applicant satisfies this subclause if:

- (a) the applicant and the applicant's spouse or de facto partner (if any) satisfy public interest criteria 4001, 4002, 4003, 4004, 4013, 4014 and 4019; and
- (b) the applicant and the applicant's spouse or de facto partner (if any) are free from tuberculosis; and
- (c) the applicant and the applicant's spouse or de facto partner (if any) are free from a disease or condition that is, or may result in the applicant or the applicant's spouse or de facto partner being, a threat to public health in Australia or a danger to the Australian community; and
- (d) if the applicant is a person from whom a Medical Officer of the Commonwealth has requested a signed undertaking to present himself or herself to a health authority in the State or Territory of intended residence in Australia for a follow-up medical assessment — the applicant has provided such an undertaking.

410.222 The Minister is satisfied that:

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

### **410.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

---

**410.31 Criteria to be satisfied at time of application**

- 410.311 The applicant is the spouse or de facto partner of a person who has applied for a Retirement (Temporary) (Class TQ) visa.
- 410.312 If the applicant is outside Australia and the application is made separately from that of the applicant's spouse or de facto partner:
- (a) the spouse or de facto partner is, or is expected soon to be, in Australia; and
  - (b) the applicant intends to stay temporarily in Australia with the spouse or de facto partner.

**410.32 Criteria to be satisfied at the time of decision**

- 410.321 (1) Either:
- (a) the applicant is the spouse or de facto partner of a person to whom subparagraph 1217 (2) (a) (i) of Schedule 1 applies; or
  - (b) if paragraph (a) does not apply, the applicant satisfies subclauses (2) to (7).
- (2) The applicant continues to be the spouse or de facto partner of a person who, having satisfied the primary criteria, is the holder of a Subclass 410 visa.
- (3) The applicant satisfies this subclause if:
- (a) the applicant:
    - (i) satisfies public interest criteria 4001, 4002, 4003, 4004, 4013 and 4014; and
    - (ii) satisfies public interest criterion 4019, if he or she had turned 18 at the time of application; and
  - (b) the applicant is free from tuberculosis; and
  - (c) the applicant is free from 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; and
  - (d) if the applicant is a person from whom a Medical Officer of the Commonwealth has requested a signed undertaking to present himself or herself to a health

authority in the State or Territory of intended residence in Australia for a follow-up medical assessment — the applicant has provided such an undertaking.

(5) If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

(6) If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

(7) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(8) The Minister may waive the requirements of subclause (7) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

410.322 The Minister is satisfied that:

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

#### **410.4 Circumstances applicable to grant**

410.411 If the applicant was in Australia at the time of application, the applicant must be in Australia, but not in immigration clearance, at the time of grant.

410.412 If the applicant was outside Australia at the time of application, the applicant must be outside Australia at the time of grant.



---

## **410.5 When visa is in effect**

410.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:

- (a) in the case of a visa granted to an applicant (other than an applicant mentioned in paragraph 410.221 (1) (a) or 410.321 (1) (a)) — until a date specified by the Minister; or
- (b) in the case of a visa granted to an applicant to whom subparagraph 1217 (2) (a) (i) of Schedule 1 applies — until the day on which the earlier visa mentioned in that subparagraph would have expired.

## **410.6 Conditions**

410.612 Any 1 or more of conditions 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

*Note* There are no mandatory conditions.

## **410.7 Way of giving evidence**

410.711 No evidence need be given.

410.712 If evidence is given, to be given by a label affixed to a valid passport.

# **Subclass 411 Exchange**

## **411.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

## **411.2 Primary criteria**

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

## **411.21 Criteria to be satisfied at time of application**

*Note* No criteria to be satisfied at time of application outside Australia.

- 411.211 If the applicant is in the migration zone at the time of application:
- (a) the applicant holds a substantive visa that is not:
    - (i) a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa; or
    - (ii) a Subclass 771 (Transit) visa; or
    - (iii) a Subclass 995 (Diplomatic (Temporary)) visa; or
    - (iv) a special purpose visa; or
  - (b) the applicant:
    - (i) does not hold a substantive visa; and
    - (ii) the last substantive visa held by the applicant was not a visa mentioned in paragraph (a); and
    - (iii) the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

**411.22 Criteria to be satisfied at time of decision**

- 411.222 The Minister is satisfied that:
- (a) the applicant is identified in a nomination of an occupation, a program or an activity approved under section 140GB of the Act; and
  - (b) the nomination was made by a person who was an exchange sponsor at the time the nomination was approved; and
  - (c) the approval of the nomination has not ceased under regulation 2.75A; and
  - (d) the applicant seeks to enter or remain in Australia to work for the exchange sponsor in the nominated occupation, program or activity in relation to which the applicant is identified; and
  - (e) the exchange agreement between the exchange sponsor and a reciprocating foreign organisation is still in place; and
  - (f) either:
    - (i) there is no adverse information known to Immigration about the person who made the approved nomination mentioned in paragraph (a) or a person associated with that person; or

- 
- (ii) it is reasonable to disregard any adverse information known to Immigration about the person who made the approved nomination mentioned in paragraph (a) or a person associated with that person.
- 411.222A The Minister is satisfied that the applicant genuinely intends to stay temporarily in Australia to carry out the work for which the applicant was identified in the nomination.
- 411.222B The Minister is satisfied that the applicant has:
- (a) adequate means to support himself or herself; or
  - (b) access to adequate means to support himself or herself;
- taking into account the applicant's work rights during the period of the applicant's intended stay in Australia.
- 411.224 If the application is made in the migration zone, the applicant has substantially complied with the conditions that apply or applied to:
- (a) the last substantive visa (if any) held by the applicant; and
  - (b) any subsequent bridging visa held by the applicant.
- 411.225 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 411.226 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
  - (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion 4019; and
  - (c) if the applicant has not turned 18 — satisfies public interest criteria 4012, 4017 and 4018.
- 411.226A The applicant has given to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 411.228 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

411.229 The Minister is satisfied that:

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

### **411.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **411.31 Criteria to be satisfied at time of application**

411.311 The applicant is a member of the family unit of a person who has applied for a Subclass 411 visa.

411.312 If the application is made outside Australia and the application is made separately from that of the member of the family unit satisfying the primary criteria:

- (a) that member of the family unit is, or is expected soon to be, in Australia; and
- (b) that applicant intends to stay temporarily in Australia as a member of the family unit of the person.

#### **411.32 Criteria to be met at time of decision**

411.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 411 visa.

- 
- 411.322 The Minister is satisfied that the applicant:
- (a) has adequate means to support himself or herself; or
  - (b) has access to adequate means to support himself or herself;
- taking into account the applicant's work rights during the period of the applicant's stay in Australia.
- 411.322A Subject to clause 411.322AB, the Minister is satisfied that the exchange sponsor who has most recently identified the member of the family unit who satisfies the primary criteria in a nomination has agreed in writing to be the exchange sponsor in relation to the applicant.
- 411.322AB Clause 411.322A does not apply to an applicant who is a member of the family unit of the person who satisfies the primary criteria, and that person made his or her application before 14 September 2009.
- 411.322B The applicant has given to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 411.324 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) in the case of an applicant who had turned 18 at the time of application, satisfies public interest criterion 4019.
- 411.325 If the application is made outside Australia and if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 411.325A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 411.326 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

411.327 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

411.328 The Minister is satisfied that:

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

#### **411.4 Circumstances applicable to grant**

411.411 If the application is made in the migration zone, the applicant must be in the migration zone at time of grant.

411.412 If the application is made outside Australia, the applicant must be outside Australia at time of grant.

#### **411.5 When visa is in effect**

411.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **411.6 Conditions**

411.611 If the applicant meets the primary criteria, condition 8107.

411.611A If the applicant meets the primary or secondary criteria, condition 8501.

- 411.612 Any 1 or more of conditions 8106, 8301, 8303, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

## **411.7 Way of giving evidence**

- 411.711 No evidence need be given.
- 411.712 If evidence is given, to be given by a label affixed to a valid passport.

## **Subclass 415 Foreign Government Agency**

### **415.1 Interpretation**

*Note* *foreign government agency* is defined in regulation 2.57.

### **415.2 Primary criteria**

#### **415.21 Criteria to be satisfied at time of application**

*Note* No criteria to be satisfied at time of application outside Australia.

- 415.211 If the applicant is in the migration zone at the time of application:
- (a) the applicant holds a substantive visa that is not:
    - (i) a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa; or
    - (ii) a Subclass 771 (Transit) visa; or
    - (iii) a Subclass 995 (Diplomatic (Temporary)) visa; or
    - (iv) a special purpose visa; or
  - (b) the applicant:
    - (i) does not hold a substantive visa; and
    - (ii) the last substantive visa held by the applicant was not a visa mentioned in paragraph (a); and
    - (iii) the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

**415.22      Criteria to be satisfied at time of decision**

415.222      The applicant is:

- (a)    a person who:
  - (i)    seeks to enter Australia to be employed as a representative of a foreign government agency that does not enjoy official status in Australia; and
  - (ii)   would not, as a representative of that kind, enjoy official status in Australia; or
- (c)    a foreign language teacher intending to work in an Australian school but as an employee of a foreign government.

415.223      The Minister is satisfied that:

- (a)    a foreign government agency sponsor has agreed in writing to be the foreign government agency sponsor in relation to the applicant; and
- (b)    the foreign government agency sponsor is not barred from sponsoring the applicant under paragraph 140M (1) (c) of the Act; and
- (c)    either:
  - (i)    there is no adverse information known to Immigration about the foreign government agency sponsor mentioned in paragraph (a) or a person associated with that foreign government agency sponsor; or
  - (ii)   it is reasonable to disregard any adverse information known to Immigration about the foreign government agency sponsor mentioned in paragraph (a) or a person associated with that foreign government agency sponsor.

415.223A    The Minister is satisfied that the applicant genuinely intends to stay temporarily in Australia to carry out the work mentioned in clause 415.222.

415.223B    The Minister is satisfied that the applicant has:

- (a)    adequate means to support himself or herself; or



- 
- (b) access to adequate means to support himself or herself;  
taking into account the applicant's work rights during the  
period of the applicant's intended stay in Australia.
- 415.223C The applicant has given to the Minister evidence of adequate  
arrangements in Australia for health insurance during the  
period of the applicant's intended stay in Australia.
- 415.225 The applicant produces a statement which satisfies the  
Minister that the employment of the applicant in Australia  
would be of benefit to Australia.
- 415.226 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004,  
4005, 4010, 4013 and 4014; and
  - (b) if the applicant had turned 18 at the time of  
application — satisfies public interest criterion 4019.
- 415.227 The Minister is satisfied that the applicant intends to comply  
with any conditions subject to which the visa is granted.
- 415.228 If the application is made outside Australia and if the  
applicant has previously been in Australia, the applicant  
satisfies special return criteria 5001 and 5002.
- 415.230 If the application is made in the migration zone, the applicant  
has complied substantially with the conditions that apply or  
applied to the last of any substantive visas held by the  
applicant, and to any subsequent bridging visa.
- 415.232 (1) For all applications, if the applicant is an AusAID  
student or an AusAID recipient, the applicant has the support  
of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of  
subclause (1) if the Minister is satisfied that, in the particular  
case, waiver is justified by:
- (a) compelling circumstances that affect the interests of  
Australia; or
  - (b) compassionate or compelling circumstances that affect  
the interests of an Australian citizen, an Australian  
permanent resident or an eligible New Zealand citizen.

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

### **415.3      Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **415.31      Criteria to be satisfied at time of application**

- 415.311      The applicant is a member of the family unit of a person who has applied for a Subclass 415 visa.
- 415.312      If the application is made outside Australia and is made separately from that of the family unit member satisfying the primary criteria:
- (a)    that family unit member is, or is expected soon to be, in Australia; and
  - (b)    the applicant intends to stay temporarily in Australia as a member of that family unit.

#### **415.32      Criteria to be satisfied at time of decision**

- 415.321      The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 415 visa.
- 415.322      The following criteria are satisfied:
- (a)    if the member of the family unit who satisfies the primary criteria (the *primary member*) made his or her application on or after 14 September 2009 — the Minister is satisfied that the foreign government agency sponsor of the primary member has agreed in writing to be the foreign government agency sponsor in relation to the applicant;

- 
- (b) if the primary member made his or her application before 14 September 2009 — the applicant is included in any sponsorship required in respect of the primary member.
- 415.323 The Minister is satisfied that the applicant has:
- (a) adequate means to support himself or herself; or
  - (b) access to adequate means to support himself or herself; taking into account the applicant's work rights during the period of the applicant's stay in Australia.
- 415.323A The applicant has given to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 415.324 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) in the case of an applicant who had turned 18 at the time of application, satisfies public interest criterion 4019.
- 415.325 If the application is made outside Australia and if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 415.325A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 415.326 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or

- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 415.327 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 415.328 The Minister is satisfied that:
  - (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **415.4 Circumstances applicable to grant**

- 415.411 If the application is made in the migration zone, the applicant must be in the migration zone at time of grant.
- 415.412 If the application is made outside Australia, the applicant must be outside Australia at time of grant.

#### **415.5 When visa is in effect**

- 415.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **415.6 Conditions**

- 415.611 If the applicant meets the primary criteria, condition 8107.
- 415.611A If the applicant meets the primary or secondary criteria, condition 8501.
- 415.612 Any 1 or more of conditions 8106, 8301, 8303, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **415.7 Way of giving evidence**

- 415.711 No evidence need be given.

---

415.712 If evidence is given, to be given by a label affixed to a valid passport.