



Migration Regulations 1994

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made under the

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Volume 1: regulations 1.01–5.45

Schedule 1

Volume 2: Schedule 2 (Subclasses 010–801)

Volume 3: Schedule 2 (Subclasses 802–995)

Schedules 3–5, 6D, 7A, 8–10 and 13

Volume 4: Endnotes

Each volume has its own contents

This compilation includes commenced amendments made by F2016L01904.

Amendments made by F2016L01926 and Act No. 89, 2016 have not commenced but are noted in the endnotes.

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About this compilation

This compilation

This is a compilation of the *Migration Regulations 1994* that shows the text of the law as amended and in force on 13 December 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

Division 1.1—Introductory

1.01 Name of Regulations

These Regulations are the *Migration Regulations 1994*.

Division 1.2—Interpretation

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

1.03 Definitions

In these Regulations, unless the contrary intention appears:

AASES form, for a secondary exchange student, means an Acceptance Advice of Secondary Exchange Student form from the relevant State or Territory education authority, containing the following declarations:

- (a) a declaration made by the student's exchange organisation, accepting the student;
- (b) a declaration made by the student's parents, or the person or persons having custody of the student, agreeing to the exchange.

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

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

additional applicant charge means the charge explained in subregulation 2.12C(4).

adoption has the meaning set out in regulation 1.04.

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

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

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

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

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

adverse information has the meaning given by regulation 1.13A.

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

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

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

aircraft safety inspector means a person who:

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

airline crew member means:

- (a) a person who:
 - (i) is employed by an international air carrier as an aircrew member; and
 - (ii) travels to Australia in the course of his or her employment as a member of the crew of an aircraft; and
 - (iii) will depart Australia in the course of his or her employment as a member of the crew of, or a passenger on, an aircraft; or
- (b) an aircraft safety inspector.

airline positioning crew member means a person who:

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

ANZSCO has the meaning specified by the Minister in an instrument in writing for this definition.

APEC means Asia-Pacific Economic Co-operation.

APEC economy means each of the following:

- (a) Australia;
- (b) Brunei Darussalam;
- (c) Canada;
- (d) Chile;
- (e) PRC;
- (f) Hong Kong;
- (g) Indonesia;

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- (h) Japan;
- (i) the Republic of Korea;
- (j) Malaysia;
- (k) Mexico;
- (l) New Zealand;
- (m) Papua New Guinea;
- (n) Peru;
- (o) the Republic of the Philippines;
- (p) the Russian Federation;
- (q) Singapore;
- (r) Taiwan;
- (s) Thailand;
- (t) the United States of America;
- (u) Vietnam.

appropriate regional authority, in relation to a State or Territory and applications for visas of a particular class, means a Department or authority of that State or Territory that is specified in a legislative instrument made by the Minister in relation to the grant of visas of that class.

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

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

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

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

Asia-Pacific forces member means a person who:

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

assistance notice means a notice in writing, issued by the Attorney-General, the Secretary of the Attorney-General's Department or an SES employee or acting SES employee of the Attorney-General's Department, in relation to a non-citizen, advising that:

- (a) the non-citizen is required in Australia to assist in the administration of criminal justice in relation to human trafficking, slavery or slavery-like practices; and

- (b) satisfactory arrangements have been made to meet the cost of keeping the non-citizen in Australia.

associated entity has the same meaning as in section 50AAA of the *Corporations Act 2001*.

associated with has the meaning given by regulation 1.13B.

assurance of support, in relation to an application for the grant of a visa, means an assurance of support under Chapter 2C of the *Social Security Act 1991*.

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

AusAID means the body that was known as the Australian Agency for International Development.

AusAID Minister means a Minister who was responsible for administering AusAID.

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

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

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

Australian International Shipping Register means the Register established by subsection 56(2) of the *Shipping Registration Act 1981*.

Australian permanent resident means:

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

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

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

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

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

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

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

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

base application charge means the charge explained in subregulation 2.12C(3).

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

business innovation and investment points test means the test set out in Schedule 7A.

Note: This test relates to Business Skills (Provisional) (Class EB) visas.

business visitor activity:

- (a) means any of the following activities undertaken by a person:
- (i) making a general business or employment enquiry;
 - (ii) investigating, negotiating, entering into, or reviewing a business contract;
 - (iii) an activity carried out as part of an official government to government visit;
 - (iv) participation in a conference, trade fair or seminar in Australia unless the person is being paid by an organiser for participation; but
- (b) does not include either of the following activities:
- (i) an activity that is, or includes, undertaking work for, or supplying services to, an organisation or other person based in Australia;
 - (ii) an activity that is, or includes, the sale of goods or services directly to the general public.

Note: An example for paragraph (b) is making a general business enquiry of an organisation based in Australia and also undertaking work for the organisation as part of investigating a business opportunity.

carer has the meaning given by regulation 1.15AA.

CEO of Austrade means the Chief Executive Officer of the Australian Trade and Investment Commission referred to in section 7B of the *Australian Trade and Investment Commission Act 1985*.

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

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

client number means a client identification number generated by an electronic system maintained by or on behalf of Immigration.

close relative, in relation to a person, means:

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

CNI number means a central names index number generated by the National Automated Fingerprint Identification System maintained by or on behalf of the Australian Crime Commission.

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

Commonwealth country means each of the following countries:

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

Commonwealth forces member means a person who:

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

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

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

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

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

- (a) for Australia:
 - (i) in the case of an adoption to which the Adoption Convention applies—a State Central Authority within the meaning of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*; and

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

competent English has the meaning given by regulation 1.15C.

complying entrepreneur activity: see regulation 5.19E.

complying investment—see regulation 5.19B.

complying premium investment: see regulation 5.19D.

complying significant investment: see regulation 5.19C.

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

confirmation of enrolment, in relation to a student and a registered provider, means a confirmation by the registered provider that the student is enrolled in a registered course provided by the registered provider, as required by section 19 of the *Education Services for Overseas Students Act 2000*.

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

contributory parent newborn child means:

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

criminal detention has the meaning set out in regulation 1.09.

custody, in relation to a child, means:

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

Defence means the Department of Defence.

Defence Minister means the Minister for Defence.

Defence student has the meaning given in regulation 1.04B.

dependent has the meaning given by regulation 1.05A.

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

- (a) has not turned 18; or
- (b) has turned 18 and:
 - (i) is dependent on that person; or
 - (ii) is incapacitated for work due to the total or partial loss of the child's or step-child's bodily or mental functions.

designated APEC economy means an APEC economy specified in a legislative instrument made by the Minister for the purposes of this definition.

designated area means an area specified as a designated area by the Minister in an instrument in writing for this definition.

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

Education means the Department administered by the Education Minister.

Education Minister means the Minister administering the *Australian Education Act 2013*.

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

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

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

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

eligible New Zealand citizen means a New Zealand citizen who:

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

Employment Minister means the Minister administering the *Fair Entitlements Guarantee Act 2012*.

entertainment sponsor means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the entertainment sponsor class by the Minister under subsection 140E(1) of the Act, on the basis of an application made before 19 November 2016.

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

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

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

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

financial institution means a body corporate that, as part of its normal activities, takes money on deposit and makes advances of money:

- (a) under a regulatory regime:
 - (i) governed by the central bank (or its equivalent) of the country in which the body corporate operates; and
 - (ii) that the Minister is satisfied provides effective prudential assurance; and
- (b) in a way that the Minister is satisfied complies with effective prudential assurance requirements.

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

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

Foreign Affairs means the Department of Foreign Affairs and Trade.

Foreign Affairs recipient: see subregulation 1.04A(2).

Foreign Affairs student: see subregulation 1.04A(3).

foreign armed forces dependant means a person who:

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

Foreign Minister means the Minister for Foreign Affairs.

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

gateway airport has the meaning given by subregulation 5.41C(3).

General Skilled Migration visa means a Subclass 175, 176, 189, 190, 475, 476, 485, 487, 489, 885, 886 or 887 visa, granted at any time.

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

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

guest of Government means:

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

home country, in relation to a person, means:

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

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

human trafficking includes activities such as trafficking in persons, organ trafficking and debt bondage.

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IELTS test means the International English Language Testing System test.

Immigration means the Department administered by the Minister administering the *Migration Act 1958*.

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

international traveller has the meaning given by subregulation 5.41C(3).

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

in Australia means in the migration zone.

labour agreement means a formal agreement entered into between:

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

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

long stay activity sponsor means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the long stay activity sponsor class by the Minister under subsection 140E(1) of the Act, on the basis of an application made before 19 November 2016.

Note: **Approved sponsor** is defined in subsection 5(1) of the Act.

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

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

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

main business has the meaning set out in regulation 1.11.

managed fund means an investment to which all of the following apply:

- (a) the investment is made by a member:
 - (i) acquiring interests in a managed investment scheme (within the meaning of the *Corporations Act 2001*); or
 - (ii) acquiring a financial product mentioned in paragraph 764A(1)(d), (e) or (f) of the *Corporations Act 2001* that may result in a payment from an approved benefit fund (within the meaning of the *Life Insurance Act 1995*), or a statutory fund maintained under the *Life Insurance Act 1995*;

- (b) the investment is not able to be traded on a financial market (within the meaning of section 767A of the *Corporations Act 2001*);
- (c) if the investment is interests in a managed investment scheme—no representation has been made to any member of the scheme that the interests will be able to be traded on a financial market;
- (d) the issue of the interest or the financial product is covered by an Australian financial services licence issued under section 913B of the *Corporations Act 2001*.

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

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

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

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

Note: For **member of the same family unit**, see subsection 5(1) of the Act.

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

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

member of the Royal party includes:

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

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

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

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

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

nominator has the meaning given by regulation 1.13.

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

non-Internet application charge means the charge explained in subregulations 2.12C(7) to (9).

non-military ship:

- (a) means a ship:
 - (i) that is engaged in:
 - (A) commercial trade; or
 - (B) the carriage of passengers for reward; or
 - (ii) that is owned and operated by a foreign government for the purposes of scientific research; or
 - (iii) that has been accorded public vessel status by Foreign Affairs; or
 - (iv) that:
 - (A) has been imported under section 49A of the *Customs Act 1901*; and
 - (B) is registered in the Australian International Shipping Register; or
 - (v) that:
 - (A) has been entered for home consumption under section 71A of that Act; and
 - (B) is registered in the Australian International Shipping Register; and
- (b) does not include a ship:
 - (i) that:
 - (A) has been imported under section 49A of the *Customs Act 1901*; and
 - (B) is not registered in the Australian International Shipping Register; or
 - (ii) that:
 - (A) has been entered for home consumption under section 71A of that Act; and

(B) is not registered in the Australian International Shipping Register.

office of Immigration includes an office occupied by an officer of Immigration at an airport or a detention centre.

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

orphan relative has the meaning set out in regulation 1.14.

outside Australia means outside the migration zone.

outstanding: a parent visa application is outstanding if none of the following has occurred:

- (a) the application has been withdrawn;
- (b) each decision that has been made in respect of the application is not, or is no longer, subject to any form of review by the Tribunal or judicial review proceedings (including proceedings on appeal);
- (c) a decision that has been made in respect of the application was subject to review by the Tribunal or 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.

overseas flight has the meaning given by subregulation 5.41C(3).

overseas passenger means:

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

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

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

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

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

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

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

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

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

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

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

permanent humanitarian visa means:

- (a) a Subclass 200, 201, 202, 203, 204, 209, 210, 211, 212, 213, 215, 216, 217 or 866 visa; or
- (aa) a Resolution of Status (Class CD) visa; or
- (b) a Group 1.3 or Group 1.5 (Permanent resident (refugee and humanitarian)) visa or entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a humanitarian visa, or equivalent entry permit, within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa, within the meaning of the Migration Reform (Transitional Provisions) Regulations, being:
 - (i) such a visa granted on the basis of an application for a visa, or entry permit, of a kind specified in paragraph (b) or (c); or
 - (ii) a visa or entry permit of a kind specified in paragraph (b) or (c) having effect under those Regulations as a transitional (permanent) visa.

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

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

PRC means the People's Republic of China.

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

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

professional development sponsor means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the professional development sponsor class by the Minister under subsection 140E(1) of the Act, on the basis of an application made before 19 November 2016.

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

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

proficient English has the meaning given by regulation 1.15D.

program of seasonal work means arrangements for the performance of seasonal work in Australia that have been approved, in writing, by the Secretary of a Commonwealth Department as a program of seasonal work for the purposes of this definition.

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

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

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

protection visa has the meaning given by section 35A of the Act.

Note: Section 35A of the Act covers the following:

- (a) permanent protection visas (classified by these Regulations as Protection (Class XA) visas when this definition commenced);
- (b) other protection visas formerly provided for by subsection 36(1) of the Act;
- (c) temporary protection visas (classified by these Regulations as Temporary Protection (Class XD) visas when this definition commenced);
- (d) any additional classes of permanent or temporary visas that are prescribed as protection visas by the regulations.

See also section 36 and Subdivision AL of Division 3 of Part 2 of the Act.

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

qualifying business means an enterprise that:

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

registered course means a course of education or training provided by an institution, body or person that is registered, under Division 3 of Part 2 of the *Education Services for Overseas Students Act 2000*, to provide the course to overseas students.

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

relative, in relation to a person, means:

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

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

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

religious institution means a body:

- (a) the activities of which reflect that it is a body instituted for the promotion of a religious object; and
- (b) the beliefs and practices of the members of which constitute a religion due to those members:
 - (i) believing in a supernatural being, thing or principle; and
 - (ii) accepting the canons of conduct that give effect to that belief, but that do not offend against the ordinary laws; and
- (c) that meets the requirements of section 50-50 of the *Income Tax Assessment Act 1997*; and
- (d) the income of which is exempt from income tax under section 50-1 of that Act.

remaining relative has the meaning set out in regulation 1.15.

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

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

score, in relation to a language test, means any score or result, however described, from the test, including any combination of scores or results from the test or components of the test.

secondary exchange student means an overseas secondary school student participating in a secondary school student exchange program approved by the State or Territory education authority that administers the program.

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

Secretary of Social Services means the Secretary of the Department that is administered by the Minister administering section 1061ZZGD of the *Social Security Act 1991*.

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

skilled occupation has the meaning given by regulation 1.15I.

SOFA forces civilian component member means a person who:

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

SOFA forces member means a person who:

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

special processing area has the meaning given by subregulation 5.41C(3).

special program sponsor means a person who:

- (a) is an approved sponsor; and

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- (b) is approved as a sponsor in relation to the special program sponsor class by the Minister under subsection 140E(1) of the Act, on the basis of an application made before 19 November 2016.

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

specified Subclass 462 work means work that:

- (a) was carried out in one or more areas of Australia specified for the purposes of this definition by the Minister under regulation 1.15FA; and
- (b) was of one or more kinds specified for the purposes of this definition by the Minister under regulation 1.15FA.

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

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

standard business sponsor means a person who:

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

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

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

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

statutory function has the meaning given by subregulation 5.41C(3).

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

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

- (B) guardianship or custody, whether jointly or otherwise, under a Commonwealth, State or Territory law or a law in force in a foreign country.

student visa means any of the following subclasses of visa:

- (aa) a Subclass 500 (Student) visa;
- (a) a Subclass 570 (Independent ELICOS Sector) visa;
- (b) a Subclass 571 (Schools Sector) visa;
- (c) a Subclass 572 (Vocational Education and Training Sector) visa;
- (d) a Subclass 573 (Higher Education Sector) visa;
- (e) a Subclass 574 (Postgraduate Research Sector) visa;
- (f) a Subclass 575 (Non-Award Sector) visa;
- (g) a Subclass 576 (Foreign Affairs or Defence Sector) visa.

Subclass 420 (Entertainment) visa includes a Subclass 420 (Temporary Work (Entertainment)) visa.

Note: Amendments of these Regulations that commenced on 24 November 2012 renamed the Subclass 420 (Entertainment) visa.

Subclass 457 (Business (Long Stay)) visa includes a Subclass 457 (Temporary Work (Skilled)) visa.

Note: Amendments of these Regulations that commenced on 24 November 2012 renamed the Subclass 457 (Business (Long Stay)) visa.

Subclass 457 (Temporary Work (Skilled)) visa includes a Subclass 457 (Business (Long Stay)) visa.

Note: Amendments of these Regulations that commenced on 24 November 2012 renamed the Subclass 457 (Business (Long Stay)) visa.

Subclass 576 (Foreign Affairs or Defence Sector) visa includes a Subclass 576 (AusAID or Defence Sector) visa.

Note: Amendments of these Regulations that commenced on 1 July 2014 renamed the Subclass 576 (AusAID or Defence Sector) visa.

subsequent temporary application charge means the charge explained in subregulations 2.12C(5) and (6).

substituted Subclass 600 visa means:

- (a) a Subclass 600 (Visitor) visa that was granted following a decision by the Minister to substitute a more favourable decision under section 345, 351, 417 or 501J of the Act; or
- (b) a Subclass 676 (Tourist) visa that was granted, before 23 March 2013, following a decision by the Minister to substitute a more favourable decision under section 345, 351, 417 or 501J of the Act.

Note: Before these Regulations were amended on 23 March 2013, a visa described in paragraph (b) was referred to as a “substituted Subclass 676 visa”.

superior English has the meaning given by regulation 1.15EA.

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

superyacht crew sponsor means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the superyacht crew sponsor class by the Minister under subsection 140E(1) of the Act, on the basis of an application made before 19 November 2016.

temporary activities sponsor means a person who:

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

Note: *Approved sponsor* is defined in subsection 5(1) of the Act.

temporary work sponsor means any of the following:

- (a) a special program sponsor;
- (b) an entertainment sponsor;
- (c) a superyacht crew sponsor;
- (d) a long stay activity sponsor;
- (e) a training and research sponsor.

the Act means the *Migration Act 1958*.

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

training and research sponsor means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the training and research sponsor class by the Minister under subsection 140E(1) of the Act, on the basis of an application made before 19 November 2016.

Note: *Approved sponsor* is defined in subsection 5(1) of the Act.

transit passenger means a person who:

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

vocational English has the meaning given in regulation 1.15B.

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

working age means:

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

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

1.04 Adoption

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

1.04A Foreign Affairs recipients and Foreign Affairs students

- (1) In this regulation:

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

Foreign Affairs student visa means a student visa granted to a person who, as an applicant:

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

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

1.04B Defence student

A person is a *Defence student* if:

- (a) the person has been approved by the Defence Minister to undertake a full-time course of study or training under a scholarship scheme or training program approved by the Defence Minister; and
- (b) the person is:
 - (i) the holder of a student visa granted in circumstances where the person intended to undertake the course of study or training; or
 - (ii) an applicant for a student visa whose application shows an intention to undertake the course of study or training; and

- (c) in the case of a person mentioned in subparagraph (b)(i)—the person has not ceased, completed, withdrawn from, or been excluded from:
 - (i) the course of study or training to which the visa relates; or
 - (ii) another course approved by the Defence Minister in substitution for that course.

1.05 Balance of family test

- (1) For the purposes of this regulation:
 - (a) a person is a child of another person (the *parent*) if the person is a child or step-child of:
 - (i) the parent; or
 - (ii) a current spouse or current de facto partner of the parent; and
 - (b) if the whereabouts of a child of the parent are unknown, the child is taken to be resident in the child's last known usual country of residence.
 - (2) For this regulation:
 - (a) a child of the parent is an *eligible child* if the child is:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident usually resident in Australia; or
 - (iii) an eligible New Zealand citizen usually resident in Australia; and
 - (b) any other child of the parent is an *ineligible child*.
 - (2A) An ineligible child is taken to be resident overseas.
 - (2B) The overseas country in which an ineligible child is taken to reside is:
 - (a) the overseas country in which the child is usually resident; or
 - (b) the last overseas country in which the child was usually resident; or
 - (c) if the child no longer has a right of return to the country mentioned in paragraph (a) or (b)—the child's country of citizenship.
 - (2C) A parent satisfies the balance of family test if the number of eligible children is greater than or equal to the number of ineligible children.
 - (2D) However, if the greatest number of children who are:
 - (a) ineligible children; and
 - (b) usually resident in a particular overseas country;is less than the number of eligible children, then the parent satisfies the balance of family test.
 - (3) In applying the balance of family test, no account is to be taken of a child of the parent:
 - (a) if the child has been removed by court order, by adoption or by operation of law (other than in consequence of marriage) from the exclusive custody of the parent; or
 - (b) if the child is resident in a country where the child suffers persecution or abuse of human rights and it is not possible to reunite the child and the parent in another country; or
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- (c) if the child:
 - (i) is resident in a refugee camp operated by the United Nations High Commissioner for Refugees; and
 - (ii) is registered by the Commissioner as a refugee.

1.05A Dependent

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

1.06 References to classes of visas

A class of visas may be referred to:

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

Note: For example, a Special Program (Temporary) (Class TE) visa may be referred to as a Class TE visa.

1.07 References to subclasses of visas

- (1) A reference to a visa of a particular subclass (for example, 'a visa of Subclass 414') is a reference to a visa granted on satisfaction of the criteria for the grant of

the visa, or the grant of the visa in a stream, set out in the Part of Schedule 2 that bears the number of the subclass.

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

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

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

1.08 Compelling need to work

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

- (a) he or she is in financial hardship; or
- (d) he or she:
 - (i) is an applicant for a Temporary Business Entry (Class UC) visa who seeks to satisfy the criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (ii) is identified in an approved nomination of an occupation made by:
 - (A) a standard business sponsor; or
 - (B) a former standard business sponsor; or
 - (C) a party to a labour agreement;who is specified in the application for that visa; and
 - (iii) appears to the Minister, on the basis of information contained in the application, to satisfy the criteria for the grant of that visa.

1.09 Criminal detention

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

- (a) serving a term of imprisonment (including periodic detention) following conviction for an offence; or
- (b) in prison on remand;

but not if he or she is:

- (c) subject to a community service order; or
- (d) on parole after serving part of a term of imprisonment; or
- (e) on bail awaiting trial.

1.09A De facto partner and de facto relationship

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

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

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

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

- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;
- the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

1.11 Main business

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

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

- (1) Subject to subregulation (4), for Parts 132, 188, 888, 890, 891, 892 and 893 of Schedule 2, ownership by an applicant, or the applicant's spouse or de facto partner, of an asset, an eligible investment or an ownership interest, includes beneficial ownership only if the beneficial ownership is evidenced in accordance with subregulation (2).
- (2) To evidence beneficial ownership of an asset, eligible investment or ownership interest, the applicant must show to the Minister:
 - (a) a trust instrument; or
 - (b) a contract; or
 - (c) any other document capable of being used to enforce the rights of the applicant, or the applicant's spouse or de facto partner, as the case requires, in relation to the asset, eligible investment or ownership interest; stamped or registered by an appropriate authority under the law of the jurisdiction where the asset, eligible investment or ownership interest is located.

Regulation 1.11B

- (3) A document shown under subregulation (2) does not evidence beneficial ownership, for subregulation (1), for any period earlier than the date of registration or stamping by the appropriate authority.
- (4) Beneficial ownership is not required to be evidenced in accordance with subregulation (2) if the person who has legal ownership of the asset, eligible investment or ownership interest in relation to which the applicant, or the applicant's spouse or de facto partner, has beneficial ownership:
 - (a) is a dependent child of the applicant; and
 - (b) made a combined application with the applicant; and
 - (c) has not reached the age at which, in the jurisdiction where the asset, eligible investment or ownership interest is located, he or she can claim the benefits of ownership of the asset, eligible investment or ownership interest.

1.11B *ETA-eligible passport*

- (1) A passport is an ETA-eligible passport in relation to an application for a visa if:
 - (a) it is a valid passport of a kind specified in a legislative instrument made by the Minister as an ETA-eligible passport; and
 - (b) the conditions (if any) specified in a legislative instrument made by the Minister for passports of that kind are satisfied in relation to that application.
- (2) A passport is an ETA-eligible passport in relation to a visa of a particular Subclass if:
 - (a) it is an ETA-eligible passport in accordance with subregulation (1); and
 - (b) it is specified in a legislative instrument made by the Minister to be an ETA-eligible passport for that Subclass.
- (3) A passport is an ETA-eligible passport for the purposes of regulation 1.15J if it is a valid passport of a kind specified for paragraph (1)(a).

1.11C *eVisitor eligible passport*

A passport is an eVisitor eligible passport if:

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

1.12 Member of the family unit

Scope

- (1) This regulation has effect for the purposes of the definition (the ***main definition***) of ***member of the family unit*** in subsection 5(1) of the Act.

General rule

- (2) A person is a member of the family unit of another person (the **family head**) if the person:
- (a) is a spouse or de facto partner of the family head; or
 - (b) is a child or step-child of the family head or of a spouse or de facto partner of the family head (other than a child or step-child who is engaged to be married or has a spouse or de facto partner) and:
 - (i) has not turned 18; or
 - (ii) has turned 18, but has not turned 23, and is dependent on the family head or on the spouse or de facto partner of the family head; or
 - (iii) has turned 23 and is under paragraph 1.05A(1)(b) dependent on the family head or on the spouse or de facto partner of the family head; or
 - (c) is a dependent child of a person who meets the conditions in paragraph (b).
- This subregulation has effect subject to the later subregulations of this regulation.

Protection, refugee and humanitarian visas

- (3) Subregulation (4) has effect for the purposes of the main definition so far as it is relevant to a provision of the Act or these Regulations applying in relation to any of the following visas:
- (a) a Protection (Class XA) visa;
 - (b) a Refugee and Humanitarian (Class XB) visa;
 - (c) a Temporary Protection (Class XD) visa;
 - (d) a Safe Haven Enterprise (Class XE) visa;
 - (e) a Resolution of Status (Class CD) visa;
 - (f) a Temporary Safe Haven (Class UJ) visa;
 - (g) a Temporary (Humanitarian Concern) (Class UO) visa;
 - (h) a Territorial Asylum (Residence) (Class BE) visa.
- (4) A person is a member of the family unit of another person (the **family head**) if the person is:
- (a) a spouse or de facto partner of the family head; or
 - (b) a dependent child of:
 - (i) the family head; or
 - (ii) a spouse or de facto partner of the family head; or
 - (c) a dependent child of a dependent child of:
 - (i) the family head; or
 - (ii) a spouse or de facto partner of the family head; or
 - (d) a relative, of the family head or of a spouse or de facto partner of the family head, who:
 - (i) does not have a spouse or de facto partner; and
 - (ii) is usually resident in the family head's household; and
 - (iii) is dependent on the family head.

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Member of the family unit of applicant for a new visa on the basis of earlier status as member of the family unit

- (5) In addition to subregulation (2), a person is a member of the family unit, of an applicant for a visa (the **new visa**) described in column 1 of an item of the following table who seeks to satisfy the primary criteria for the new visa, if, at the time of the application for the new visa, the person:
- (a) is included in the application for the new visa; and
 - (b) holds a visa (the **old visa**) described in column 2 of the item granted on the basis that the person was a member of the family unit of a person who held a visa of the same kind as the old visa.

Members of the family units of applicants for new visas	
Column 1 New visa applied for	Column 2 Old visa person holds at time of application for new visa
1 Contributory Parent (Migrant) (Class CA) visa	Contributory Parent (Temporary) (Class UT) visa
2 Contributory Aged Parent (Residence) (Class DG) visa	Contributory Aged Parent (Temporary) (Class UU) visa
3 Business Skills (Residence) (Class DF) visa	Business Skills (Provisional) (Class UR) visa
4 Business Skills (Permanent) (Class EC) visa	Business Skills (Provisional) (Class EB) visa
5 Employer Nomination (Permanent) (Class EN) visa	Subclass 457 (Temporary Work (Skilled)) visa
6 Regional Employer Nomination (Permanent) (Class RN) visa	Subclass 457 (Temporary Work (Skilled)) visa
7 Skilled (Residence) (Class VB) visa	Any of the following visas: (a) Skilled—Independent Regional (Provisional) (Class UX) visa; (b) Bridging A (Class WA) visa or Bridging B (Class WB) visa granted on the basis of a valid application for: (i) a Skilled—Independent Regional (Provisional) (Class UX) visa; or (ii) a Skilled (Provisional) (Class VC) visa; or (iii) a Skilled—Regional Sponsored (Provisional) (Class SP) visa; (c) Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa; (d) Subclass 475 (Skilled—Regional Sponsored) visa; (e) Subclass 487 (Skilled—Regional Sponsored) visa; (f) Skilled—Regional Sponsored (Provisional) (Class SP) visa

Members of the family units of applicants for new visas	
Column 1 New visa applied for	Column 2 Old visa person holds at time of application for new visa
8 Subclass 457 (Temporary Work (Skilled)) visa	Subclass 457 (Temporary Work (Skilled)) visa

Student (Temporary) (Class TU) visas

- (6) A person is a member of the family unit of an applicant for, or of a holder of, a Student (Temporary) (Class TU) visa if the person is:
- (a) a spouse or de facto partner of the applicant or holder; or
 - (b) a dependent child of the applicant or holder, or of that spouse or de facto partner of the applicant or holder, who is unmarried and has not turned 18.

Distinguished talent visas

- (7) A person is a member of the family unit of an applicant for a Distinguished Talent (Migrant) (Class AL) visa or a Distinguished Talent (Residence) (Class BX) visa who has not turned 18 at the time of application if:
- (a) the person is:
 - (i) a parent of the applicant who has made a combined application with the applicant for the visa; or
 - (ii) under subregulation (2), a member of the family unit of a parent of the applicant who has made a combined application with the applicant for the visa; and
 - (b) no person is being treated under subregulation (2) as a member of the family unit of the applicant, in relation to the applicant's application for the visa; and
 - (c) no other parent of the applicant is being treated as a member of the family unit of the applicant in accordance with this subregulation.

1.12AA Member of the immediate family

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

1.13 Meaning of *nominator*

- (1) The ***nominator*** of an applicant for a visa is a person who, on the relevant approved form, nominates another person as an applicant for a visa of a particular class.

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- (2) However, a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa is not the *nominator* of the other person.

1.13A Meaning of *adverse information*

- (1) *Adverse information* is any adverse information relevant to a person's suitability as:
- (a) an approved sponsor; or
 - (b) a nominator (within the meaning of regulation 5.19); or
 - (c) a maker of a nomination in accordance with a labour agreement;
- and includes information that the person, or a person associated with the person:
- (d) has been found guilty by a court of an offence under a Commonwealth, State or Territory law that relates to one or more of the matters referred to in subregulation (2); or
 - (e) has, to the satisfaction of a competent authority, acted in contravention of such a law; or
 - (f) has been the subject of administrative action (including being issued with a warning), by a competent authority, for a possible contravention of such a law; or
 - (g) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to an alleged contravention of such a law; or
 - (h) has become insolvent within the meaning of subsections 5(2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*.
- (2) The matters are the following:
- (a) discrimination;
 - (b) immigration;
 - (c) industrial relations;
 - (d) occupational health and safety;
 - (e) people smuggling and related offences;
 - (f) slavery, sexual servitude and deceptive recruiting;
 - (g) taxation;
 - (h) terrorism;
 - (i) trafficking in persons and debt bondage.
- (3) The conviction, contravention, administrative action, investigation, disciplinary action, legal proceedings or insolvency mentioned in paragraphs (1)(d) to (h) must have occurred within the previous 3 years.
- (4) In this regulation:

competent authority has the meaning given by subregulation 2.57(1).

1.13B Meaning of *associated with*

- (1) A person (the *associated person*) is *associated with* another person that is a corporation if the associated person is an officer of the corporation, a related body corporate or an associated entity.
- (2) A person (the *associated person*) is *associated with* another person that is a partnership if the associated person is a partner of the partnership.
- (3) A person (the *associated person*) is *associated with* another person that is an unincorporated association if the associated person is a member of the association's committee of management.
- (4) A person (the *associated person*) is *associated with* another person that is an entity not mentioned in subregulations (1) to (3) if the associated person is an officer of the entity.
- (5) In this regulation:

entity, in relation to an associated entity, includes:

- (a) an entity within the meaning of section 9 of the *Corporations Act 2001*; and
- (b) a body of the Commonwealth, a State or a Territory.

officer:

- (a) for a corporation—has the same meaning as in section 9 of the *Corporations Act 2001*; and
- (b) for an entity that is neither an individual nor a corporation—has the same meaning as in section 9 of the *Corporations Act 2001*.

related body corporate has the same meaning as in section 50 of the *Corporations Act 2001*.

1.14 Orphan relative

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

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

1.14A Parent and child

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

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

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

1.15 Remaining relative

- (1) An applicant for a visa is a **remaining relative** of another person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen if the applicant satisfies the Minister that:
- (a) the other person is a parent, brother, sister, step-brother or step-sister of the applicant; and
 - (b) the other person is usually resident in Australia; and
 - (c) the applicant, and the applicant's spouse or de facto partner (if any), have no near relatives other than near relatives who are:
 - (i) usually resident in Australia; and
 - (ii) Australian citizens, Australian permanent residents or eligible New Zealand citizens; and
 - (d) if the applicant is a child who:
 - (i) has not turned 18; and
 - (ii) has been adopted by an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen (the **adoptive parent**) while overseas:
at the time of making the application, the adoptive parent has been residing overseas for a period of at least 12 months.

- (2) In this regulation:

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

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

1.15AA Carer

- (1) An applicant for a visa is a *carer* of a person who is an Australian citizen usually resident in Australia, an Australian permanent resident or an eligible New Zealand citizen (*the resident*) if:
 - (a) the applicant is a relative of the resident; and
 - (b) according to a certificate that meets the requirements of subregulation (2):
 - (i) a person (being the resident or a member of the family unit of the resident) has a medical condition; and
 - (ii) the medical condition is causing physical, intellectual or sensory impairment of the ability of that person to attend to the practical aspects of daily life; and
 - (iii) the impairment has, under the Impairment Tables (within the meaning of subsection 23(1) of the *Social Security Act 1991*), the rating that is specified in the certificate; and
 - (iv) because of the medical condition, the person has, and will continue for at least 2 years to have, a need for direct assistance in attending to the practical aspects of daily life; and
 - (ba) the person mentioned in subparagraph (b)(i) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (c) the rating mentioned in subparagraph (b)(iii) is equal to, or exceeds, the impairment rating specified in a legislative instrument made by the Minister for this paragraph; and
 - (d) if the person to whom the certificate relates is not the resident, the resident has a permanent or long-term need for assistance in providing the direct assistance mentioned in subparagraph (b)(iv); and
 - (e) the assistance cannot reasonably be:
 - (i) provided by any other relative of the resident, being a relative who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or
 - (ii) obtained from welfare, hospital, nursing or community services in Australia; and
 - (f) the applicant is willing and able to provide to the resident substantial and continuing assistance of the kind needed under subparagraph (b)(iv) or paragraph (d), as the case requires.
- (2) A certificate meets the requirements of this subregulation if:
 - (a) it is a certificate:
 - (i) in relation to a medical assessment carried out on behalf of a health service provider specified by the Minister in an instrument in writing; and
 - (ii) signed by the medical adviser who carried it out; or
 - (b) it is a certificate issued by a health service provider specified by the Minister in an instrument in writing in relation to a review of an opinion in a certificate mentioned in paragraph (a), that was carried out by the health services provider in accordance with its procedures.

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- (3) The Minister is to take the opinion in a certificate that meets the requirements of subregulation (2) on a matter mentioned in paragraph (1)(b) to be correct for the purposes of deciding whether an applicant satisfies a criterion that the applicant is a carer.

1.15A Spouse

- (1) For subsection 5F(3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F(2)(a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;
- the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.

- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

1.15B Vocational English

- (1) A person has *vocational English* if:
- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
 - (b) the person is an applicant for a visa; and
 - (ba) for a person who was invited by the Minister under these Regulations, in writing, to apply for the visa—the test was conducted in the 3 years immediately before the date of the invitation; and
 - (bb) for a person to whom paragraph (ba) does not apply—the test was conducted in the 3 years immediately before the day on which the application was made; and
 - (c) the person achieved a score specified in the instrument.
- (2) A person also has *vocational English* if the person holds a passport of a type specified by the Minister in an instrument in writing for this subregulation.

1.15C Competent English

- (1) A person has *competent English* if:
- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
 - (b) the person is an applicant for a visa; and
 - (ba) for a person who was invited (or whose spouse or de facto partner was invited) by the Minister under these Regulations, in writing, to apply for the visa—the test was conducted in the 3 years immediately before the date of the invitation; and
 - (bb) for a person to whom paragraph (ba) does not apply—the test was conducted in the 3 years immediately before the day on which the application was made; and
 - (c) the person achieved a score specified in the instrument.
- (2) A person also has *competent English* if the person holds a passport of a type specified by the Minister in an instrument in writing for this subregulation.

1.15D Proficient English

A person has *proficient English* if:

- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
 - (aa) the person is an applicant for a visa; and
 - (b) the test was conducted in the 3 years immediately before the day on which the Minister invited the person under these Regulations, in writing, to apply for the visa; and
-

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

1.15EA Superior English

A person has *superior English* if:

- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
- (aa) the person is an applicant for a visa; and
- (b) the test was conducted in the 3 years immediately before the day on which the Minister invited the person under these Regulations, in writing, to apply for the visa; and
- (c) the person achieved a score specified in the instrument.

1.15F Australian study requirement

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

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

- (2) In this regulation:

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

Note: The academic requirements for the award of a degree, diploma or trade qualification do not include the formal conferral of the degree, diploma or trade qualification. Therefore, a person can *complete* a degree, diploma or trade qualification, for subregulation (2), before the award is formally conferred.

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

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

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

1.15FA Specified Subclass 462 work

The Minister may, by legislative instrument, specify areas of Australia and kinds of work for the purposes of the definition of *specified Subclass 462 work* in regulation 1.03.

1.15G Superyachts

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

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

1.15I Skilled occupation

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

1.15J Excluded maritime arrival

For paragraph 5AA(3)(c) of the Act, the following classes of persons are prescribed:

- (a) persons who:
 - (i) enter Australia on or after the day this regulation commences; and
 - (ii) hold and produce an ETA-eligible passport;
- (b) persons who:
 - (i) enter Australia on or after the day this regulation commences; and
 - (ii) at the time of entry into Australia, are accompanied by another person who holds and produces an ETA-eligible passport; and
 - (iii) are included in that ETA-eligible passport.

Note 1: A person who is in one of these classes is an excluded maritime arrival and is not an unauthorised maritime arrival: see section 5AA of the Act.

Note 2: Subregulation 1.11B(3) sets out which passports are ETA-eligible passports for the purposes of this regulation.

Division 1.3—Administration

1.16 Delegation

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

1.16AA Appointment of Medical Officer of the Commonwealth

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

1.18 Approved forms

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

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

1.20 Sponsorship undertakings

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

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- (ii) if the applicant is outside Australia—during the period of 2 years immediately following the applicant’s first entry into Australia after the grant of the provisional or temporary visa;
 - (d) if the application is for a Resolution of Status (Temporary) (Class UH) visa made by an applicant who is outside Australia—the sponsor undertakes to assist the applicant, to the extent necessary, financially and in respect of accommodation, during the period of 2 years immediately following the applicant’s entry into Australia as the holder of the visa;
 - (e) if the application is for an Extended Eligibility (Temporary) (Class TK) visa, the sponsor undertakes to assist the applicant, to the extent necessary, financially and in relation to accommodation:
 - (i) if the applicant is in Australia—for the 2 years immediately after the visa is granted; or
 - (ii) if the applicant is outside Australia—for the 2 years immediately after the applicant’s first entry into Australia after the visa is granted.
- (3) A person (other than a person who is a sponsor of an applicant for a visa mentioned in subregulation (3A), or a Skilled—Regional Sponsored (Provisional) (Class SP) visa) who has been approved by the Minister as the sponsor of an applicant for a visa must enter into the sponsorship by completing the relevant approved form and give it to the Minister not later than a reasonable period after the Minister approves the person as a sponsor.
- (3A) A person who is a sponsor of an applicant for:
 - (a) a Skilled (Migrant) (Class VE) visa; or
 - (b) a Skilled (Residence) (Class VB) visa; or
 - (c) a Skilled (Provisional) (Class VF) visa; or
 - (d) a Skilled (Provisional) (Class VC) visa;must complete the relevant approved form and give it to the Minister prior to the Minister approving the person as a sponsor.
- (4) This regulation does not apply to a visa in the following classes or subclasses:
 - (b) Business Skills—Business Talent (Migrant) (Class EA);
 - (c) Business Skills—Established Business (Residence) (Class BH);
 - (e) Business Skills (Residence) (Class DF);
 - (f) Business Skills (Provisional) (Class UR);
 - (fb) Superyacht Crew (Temporary) (Class UW);
 - (ga) Special Program (Temporary) (Class TE);
 - (gb) Subclass 401 (Temporary Work (Long Stay Activity));
 - (gc) Subclass 402 (Training and Research);
 - (gca) Subclass 407 (Training);
 - (gcb) Subclass 408 (Temporary Activity);
 - (gd) Subclass 420 (Temporary Work (Entertainment));
 - (h) Subclass 457 (Temporary Work (Skilled)).

Division 1.4B—Limitation on certain sponsorships under Division 1.4

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

- (1AA) This regulation applies in relation to an application for:
- (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Prospective Marriage (Temporary) (Class TO) visa; or
 - (e) an Extended Eligibility (Temporary) (Class TK) visa; or
 - (f) a Partner (Temporary) (Class UK) visa.
- (1) Subject to subregulations (2) and (3), if a person applies for a visa mentioned in subregulation (1AA) as the spouse, de facto partner or prospective spouse of the sponsor, the Minister must not approve the sponsorship of the applicant unless the Minister is satisfied that:
- (a) not more than 1 other person has been granted a relevant permission as:
 - (i) the spouse, de facto partner or prospective spouse of the sponsor on the basis of a sponsorship or nomination; or
 - (ii) a person who ceased a relationship of a kind mentioned in subparagraph (i) with the sponsor after the person, or another person mentioned in the prescribed criteria for the visa, had suffered family violence committed by the sponsor; and
 - (b) if another person has been granted a relevant permission in the circumstances referred to in paragraph (a)—not less than 5 years has passed since the date of making the application for that relevant permission; and
 - (c) if the sponsor was granted a relevant permission as the spouse, de facto partner or prospective spouse of another person on the basis of a sponsorship or nomination—not less than 5 years has passed since the date of making the application for that relevant permission.

(1A) In subregulation (1):

relevant permission means:

- (a) in relation to an application for a visa referred to in subregulation (1AA) made during the period from 1 November 1996 to 30 June 1997 (inclusive)—a visa; and
 - (b) in relation to an application for a visa referred to in subregulation (1AA) made on or after 1 July 1997—permission (other than a visa or entry permit) granted under the Act to remain indefinitely in Australia, a visa or an entry permit.
- (2) Despite subregulation (1), the Minister may approve the sponsorship of an applicant for a visa if the Minister is satisfied that there are compelling circumstances affecting the sponsor.

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1.20K Limitation on sponsorships—remaining relative visas

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

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

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

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

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

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

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

- (4) In this regulation:

relevant applicant means the applicant for:

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

specified visa means:

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

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

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

Sponsor charged with registrable offence

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

Sponsor convicted of registrable offence

- (3) Subject to subregulations (4) and (5), if the sponsor has been convicted of a registrable offence, the Minister must refuse to approve the sponsorship of all of the applicants for the visa unless:
 - (a) none of the applicants is under 18 at the time of the decision on the application for approval of the sponsorship; or
 - (b) the conviction has been quashed or otherwise set aside.

- (4) Despite subregulation (3), the Minister may decide to approve the sponsorship if:
- (a) the sponsor completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the sponsorship; and
 - (b) the sponsor has not been charged with a registrable offence since the sponsor completed that sentence; and
 - (c) there are compelling circumstances affecting the sponsor or the applicant.
- (5) Despite subregulation (3), the Minister may decide to approve the sponsorship if:
- (a) the sponsor completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the sponsorship; and
 - (b) if the sponsor has been charged with a registrable offence since the sponsor completed that sentence—the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction; and
 - (c) there are compelling circumstances affecting the sponsor or the applicant.
- (6) Subregulations (7) to (10) do not apply in relation to an application for any of the following visas:
- (a) a Partner (Temporary) (Class UK) visa;
 - (b) a Prospective Marriage (Temporary) (Class TO) visa;
 - (c) a Partner (Provisional) (Class UF) visa.

Spouse or de facto partner charged with registrable offence

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

Spouse or de facto partner convicted of registrable offence

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

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

Evidence of charge or conviction

- (11) To determine whether a sponsor, or the spouse or de facto partner of a sponsor, has been charged with, or convicted of, a registrable offence, the Minister may request the sponsor, or the spouse or de facto partner of the sponsor, to provide a police check from:
- (a) a jurisdiction in Australia specified in the request; or
 - (b) a country, specified in the request, in which the sponsor or the spouse or de facto partner has lived for a period, or a total period, of at least 12 months.
- (12) In addition to other reasons set out in this regulation for refusing to approve a sponsorship, the Minister may refuse to approve the sponsorship of all applicants for a visa if:
- (a) the Minister has requested a police check for the sponsor or the sponsor's spouse or de facto partner; and
 - (b) the sponsor or the sponsor's spouse or de facto partner does not provide the police check within a reasonable time.
- (13) In this regulation:

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

registrable offence means any of the following:

- (a) an offence that is a registrable offence within the meaning of any of the following Acts:
 - (i) the *Child Protection (Offenders Registration) Act 2000* (NSW);
 - (ii) the **Sex Offenders Registration Act 2004** (Vic);
 - (iii) the *Child Sex Offenders Registration Act 2006* (SA);
 - (iv) the *Crimes (Child Sex Offenders) Act 2005* (ACT);

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

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

1.20KC Limitation on approval of sponsorship—prospective marriage and partner visas

Applications for which visas?

- (1) This regulation applies in relation to the approval of a sponsorship for one or more applications for any of the following visas:
 - (a) a Prospective Marriage (Temporary) (Class TO) visa;
 - (b) a Partner (Provisional) (Class UF) visa;
 - (c) a Partner (Temporary) (Class UK) visa.

Relevant offences

- (2) This regulation applies in relation to an offence (a **relevant offence**) against a law of the Commonwealth, a State, a Territory or a foreign country, involving any of the following matters:
 - (a) violence against a person, including (without limitation) murder, assault, sexual assault and the threat of violence;
 - (b) the harassment, molestation, intimidation or stalking of a person;
 - (c) the breach of an apprehended violence order, or a similar order, issued under a law of a State, a Territory or a foreign country;
 - (d) firearms or other dangerous weapons;
 - (e) people smuggling;
 - (f) human trafficking, slavery or slavery-like practices (including forced marriage), kidnapping or unlawful confinement;
 - (g) attempting to commit an offence involving any of the matters mentioned in paragraphs (a) to (f), or paragraph (h);
 - (h) aiding, abetting, counselling or procuring the commission of an offence involving any of the matters mentioned in paragraphs (a) to (g).

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Sponsor has significant criminal record in relation to relevant offence

- (3) The Minister must refuse to approve the sponsorship of each applicant for the visa if:
- (a) the sponsor has been convicted of a relevant offence or relevant offences; and
 - (b) the sponsor has a significant criminal record in relation to the relevant offence or relevant offences (see regulation 1.20KD).
- (4) Despite subregulation (3), the Minister may decide to approve the sponsorship if the Minister considers it reasonable to do so, having regard to matters including the following (without limitation):
- (a) the length of time since the sponsor completed the sentence (or sentences) for the relevant offence or relevant offences;
 - (b) the best interests of the following:
 - (i) any children of the sponsor;
 - (ii) any children of the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned;
 - (c) the length of the relationship between the sponsor and the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned.

Police check

- (5) To determine whether a sponsor has been convicted of a relevant offence, and whether the sponsor has a significant criminal record in relation to a relevant offence, the Minister may, on one or more occasions, request the sponsor to provide a police check relating to the sponsor from any, or all, of the following:
- (a) a jurisdiction in Australia specified in the request;
 - (b) a foreign country, specified in the request, in which the sponsor has lived for a period, or a total period, of at least 12 months since the latest of the following dates:
 - (i) 10 years before the date of the request;
 - (ii) the date the sponsor turned 16.
- (6) In addition to subregulation (3), the Minister may refuse to approve the sponsorship of each applicant for the visa if:
- (a) the Minister has requested a police check from the sponsor under subregulation (5); and
 - (b) the sponsor does not provide the police check within a reasonable time.

1.20KD Prospective marriage and partner visas—definition of *significant criminal record*

- (1) For the purposes of regulation 1.20KC, a sponsor has a ***significant criminal record*** in relation to a relevant offence or relevant offences if, for that offence or those offences:
- (a) the sponsor has been sentenced to death; or
 - (b) the sponsor has been sentenced to imprisonment for life; or

- (c) the sponsor has been sentenced to a term of imprisonment of 12 months or more; or
- (d) the sponsor has been sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more.

Concurrent sentences

- (2) For the purposes of subregulation (1), if a sponsor has been sentenced to 2 or more terms of imprisonment to be served concurrently (whether in whole or in part), the whole of each term is to be counted in working out the total of the terms.

Example: A sponsor is sentenced to 2 terms of 3 months imprisonment for 2 offences, to be served concurrently. For the purposes of subregulation (1), the total of those terms is 6 months.

Periodic detention

- (3) For the purposes of subregulation (1), if a sponsor has been sentenced to periodic detention, the sponsor's term of imprisonment is taken to be equal to the number of days the sponsor is required under that sentence to spend in detention.

Residential schemes or programs

- (4) For the purposes of subregulation (1), if a sponsor has been convicted of a relevant offence, and the court orders the sponsor to participate in:
 - (a) a residential drug rehabilitation scheme; or
 - (b) a residential program for the mentally ill;the sponsor is taken to have been sentenced to a term of imprisonment equal to the number of days the sponsor is required to participate in the scheme or program.

Pardons etc.

- (5) For the purposes of subregulation (1), a sentence imposed on a sponsor for a relevant offence, or the conviction of a sponsor for a relevant offence, is to be disregarded if:
 - (a) the conviction concerned has been quashed or otherwise nullified; or
 - (b) both:
 - (i) the sponsor has been pardoned in relation to the conviction concerned; and
 - (ii) the effect of that pardon is that the sponsor is taken never to have been convicted of the offence.

1.20L Limitation on approval of sponsorship—Subclass 600 (Visitor) visas

- (1) The Minister must not approve the sponsorship by a sponsor of an applicant for a Subclass 600 (Visitor) visa if:
 - (a) the sponsor has previously sponsored the applicant, or another applicant, for:

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- (i) a Subclass 600 (Visitor) visa; or
 - (ii) a Sponsored (Visitor) (Class UL) visa; and
 - (b) the visa mentioned in paragraph (a) was granted; and
 - (c) either:
 - (i) subject to subregulation (3)—the visa is still in effect; or
 - (ii) subject to subregulation (4)—each of the following applies:
 - (A) the visa has ceased to be in effect;
 - (B) the previous applicant did not comply with a condition of the visa;
 - (C) a period of 5 years has not passed since the grant of the visa.
- (3) Despite subparagraph (1)(c)(i), the Minister may approve the sponsorship by the sponsor of the applicant if:
 - (a) the previous applicant holds a Subclass 600 (Visitor) visa; and
 - (b) the Minister is satisfied that the applicant:
 - (i) is a member of the family unit of the previous applicant; and
 - (ii) is proposing to travel to Australia for the same purpose as the previous applicant.
- (4) Despite subparagraph (1)(c)(ii), the Minister may approve the sponsorship by the sponsor of the applicant if:
 - (a) the previous applicant was the holder of a Subclass 600 (Visitor) visa; and
 - (b) the Minister has, at any time, determined in writing that he or she is satisfied that:
 - (i) the previous applicant did not comply with condition 8531; and
 - (ii) the previous applicant exceeded the period of stay permitted by the visa due to circumstances:
 - (A) beyond the previous applicant's control; and
 - (B) that occurred after the previous applicant entered Australia as the holder of a visa mentioned in paragraph (a).

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

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

- (1) This regulation applies to the following visas:
 - (a) a Subclass 103 (Parent) visa;
 - (b) a Subclass 114 (Aged Dependent Relative) visa;
 - (c) a Subclass 143 (Contributory Parent) visa;
 - (d) a Subclass 173 (Contributory Parent (Temporary)) visa;
 - (e) a Subclass 804 (Aged Parent) visa;
 - (f) a Subclass 838 (Aged Dependent Relative) visa;
 - (g) a Subclass 864 (Contributory Aged Parent) visa;
 - (h) a Subclass 884 (Contributory Aged Parent (Temporary)) visa.

- (2) The Minister must not approve a sponsorship for a subclass of visa to which this regulation applies if:
- (a) the Minister is satisfied that the sponsor of the applicant for the visa is:
 - (i) a holder or former holder of a Subclass 802 (Child) visa whose application for that visa was supported by a letter of support from a State or Territory government welfare authority; or
 - (ii) a cohabitating spouse or de facto partner of that holder or former holder; or
 - (iii) a guardian of that holder or former holder; or
 - (iv) a guardian of a person who is a cohabitating spouse or de facto partner of that holder or former holder; or
 - (v) a community organisation; and
 - (b) the Minister is satisfied that the applicant for the visa is or was a parent of a holder or former holder of a Subclass 802 (Child) visa whose application for that visa was supported by a letter of support from a State or Territory government welfare authority.
- (3) Despite subregulation (2), the Minister may approve a sponsorship for a subclass of visa mentioned in subregulation (1) if the Minister is satisfied that there are compelling circumstances affecting the sponsor or the applicant to justify the approval of the sponsorship of the applicant for the visa.
- (4) In this regulation:

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

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

Division 1.5—Special provisions relating to family violence

1.21 Interpretation

In this Division:

independent expert means a person who:

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

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

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

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

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

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

violence includes a threat of violence.

1.22 References to person having suffered or committed family violence

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

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

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

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

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

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

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

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

Circumstances in which family violence is suffered and committed—conviction

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

Regulation 1.23

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

- (8) For these Regulations, an application for a visa is taken to include a ***non-judicially determined claim of family violence*** if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a ***non-judicially determined claim of family violence*** if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim is:
 - (i) a spouse or de facto partner of the alleged perpetrator; or
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse or de facto partner of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
 - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
 - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant family violence; and
 - (ii) the alleged perpetrator committed that relevant family violence.
- (10) If an application for a visa includes a non-judicially determined claim of family violence:
- (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
 - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
 - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
 - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and

- (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.
- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.
 - (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
 - (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
 - (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

1.24 Evidence

The evidence mentioned in paragraph 1.23(9)(c) is:

- (a) a statutory declaration under regulation 1.25 (which deals with statutory declarations by or on behalf of alleged victims); and
- (b) the type and number of items of evidence specified by the Minister by instrument in writing for this paragraph.

1.25 Statutory declaration by alleged victim etc

- (1) A statutory declaration under this regulation must be made by the spouse or de facto partner of the alleged perpetrator.
- (2) A statutory declaration under this regulation that is made by a person mentioned in subregulation 1.25(1) who alleges that he or she is the victim of relevant family violence (within the meaning of regulation 1.21) must:
 - (a) set out the allegation; and

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Division 1.5 Special provisions relating to family violence

Regulation 1.27

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

1.27 Documents not admissible in evidence

A document mentioned in the table is not admissible in evidence before a court or tribunal otherwise than in:

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

Item	Document
1	A statutory declaration that is a type of evidence specified by the Minister under paragraph 1.24(b)
2	A statutory declaration under regulation 1.25
3	An opinion of an independent expert mentioned in subparagraph 1.23(10)(c)(i)

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

1.30 Prescribed non-citizen

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

Part 2 Visas

Division 2.1 Classes, criteria, conditions etc

Regulation 2.01

Part 2—Visas

Division 2.1—Classes, criteria, conditions etc

2.01 Classes of visas

Classes of visas prescribed by section 31 of the Act

- (1) For the purposes of section 31 of the Act, the prescribed classes of visas are:
- (a) such classes (other than those identified by an item in the table in subregulation (2)) as are set out in the respective items in Schedule 1; and
 - (b) the following classes:
 - (i) transitional (permanent); and
 - (ii) transitional (temporary).

Classes of visas provided for by the Act

- (2) A class of visas provided for by the Act that is identified by an item in the following table is classified under these Regulations, by Class and Subclass, as indicated in the item.

Classes of visas provided for by the Act				
Item	Provision of the Act	Class of visa provided for by the Act	Classification by Class under these Regulations	Classification by Subclass under these Regulations
1	section 32	special category visas	Special Category (Temporary) (Class TY)	Subclass 444 (Special Category)
2	subsection 35A(2)	permanent protection visas	Protection (Class XA)	Subclass 866 (Protection)
3	subsection 35A(3)	temporary protection visas	Temporary Protection (Class XD)	Subclass 785 (Temporary Protection)
3A	subsection 35A(3A)	safe haven enterprise visas	Safe Haven Enterprise (Class XE)	Subclass 790 (Safe Haven Enterprise)
4	section 37	bridging visas	Bridging A (Class WA)	Subclass 010 (Bridging A)
5	section 37	bridging visas	Bridging B (Class WB)	Subclass 020 (Bridging B)
6	section 37	bridging visas	Bridging C (Class WC)	Subclass 030 (Bridging C)
7	section 37	bridging visas	Bridging D (Class WD)	Subclass 040 (Bridging (Prospective Applicant))

Regulation 2.02

Classes of visas provided for by the Act				
Item	Provision of the Act	Class of visa provided for by the Act	Classification by Class under these Regulations	Classification by Subclass under these Regulations
8	section 37	bridging visas	Bridging D (Class WD)	Subclass 041 (Bridging (Non-applicant))
9	section 37	bridging visas	Bridging E (Class WE)	Subclass 050 (Bridging (General))
10	section 37	bridging visas	Bridging E (Class WE)	Subclass 051 (Bridging (Protection Visa Applicant))
11	section 37	bridging visas	Bridging F (Class WF)	Subclass 060 (Bridging F)
12	section 37	bridging visas	Bridging R (Class WR)	Subclass 070 (Bridging (Removal Pending))
13	section 37A	temporary safe haven visas	Temporary Safe Haven (Class UJ)	Subclass 449 (Humanitarian Stay (Temporary))
14	section 38B	maritime crew visas	Maritime Crew (Temporary) (Class ZM)	Subclass 988 (Maritime Crew)

Note 1: Subsection 35A(4) of the Act provides that additional classes of permanent and temporary visas may be prescribed as protection visas for the purposes of section 31.

Note 2: For table items 4-12, section 37 provides that there are classes of temporary visas, to be known as bridging visas.

2.02 Subclasses

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

2.03 Criteria applicable to classes of visas

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

Regulation 2.03

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

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

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

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

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

- (2) If a criterion in Schedule 2 refers to a criterion in Schedule 3, 4 or 5 by number, a criterion so referred to must be satisfied by an applicant as if it were set out at length in the first-mentioned criterion.
- (3) If a criterion in Schedule 2 specifies that a person is to be the holder of, or have held, a visa of a particular class or subclass, that criterion is taken to be satisfied:
 - (a) if:
 - (i) before 1 September 1994, the person held a visa or entry permit that was granted under the Migration (1993) Regulations, the Migration (1989) Regulations or the Act as in force before 19 December 1989; and
 - (ii) the criteria that were applicable to, or the grounds for the grant of, that visa or entry permit are the same in effect as the criteria applicable to the new visa; and
 - (iii) the visa or entry permit was continued in force as a transitional visa on 1 September 1994 by the Migration Reform (Transitional Provisions) Regulations; or
 - (b) if:
 - (i) before 1 September 1994, the person applied for a visa or entry permit under the Migration (1993) Regulations, the Migration (1989) Regulations or the Act as in force before 19 December 1989; and
 - (ii) the criteria that were applicable to, or the grounds for the grant of, that visa or entry permit are the same in effect as the criteria applicable to the new visa; and
 - (iii) either:

- (A) in the case of an application made before 19 December 1989—the Minister had not made a decision on the application; or
- (B) in any other case—the application had not been finally determined;
before 1 September 1994; and
- (iv) on or after 1 September 1994 the person was granted a transitional visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she had satisfied the criteria, or the grounds, applicable to the visa or entry permit referred to in subparagraph (i).

2.03A Criteria applicable to de facto partners

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

Regulation 2.03AA

- (5) Subregulation (3) does not apply if the de facto relationship is a relationship that is registered under a law of a State or Territory prescribed in the *Acts Interpretation (Registered Relationships) Regulations 2008* as a kind of relationship prescribed in those Regulations.

2.03AA Criteria applicable to character tests and security assessments

- (1) In addition to the criteria prescribed by regulations 2.03 and 2.03A, if a person is required to satisfy public interest criteria 4001 or 4002 for the grant of a visa, the criterion in subregulation (2) is prescribed.
- (2) If the Minister has requested the following documents or information, the person has provided the documents or information:
- (a) a statement (however described) provided by an appropriate authority in a country where the person resides, or has resided, that provides evidence about whether or not the person has a criminal history;
 - (b) a completed approved form 80.
- Note: For paragraph (a), an example of an appropriate authority is a police force.
- (3) The Minister may waive the requirement in paragraph (2)(a) if the Minister is satisfied that it is not reasonable for the applicant to provide the statement.

2.03B Protection visas—international instruments

For paragraph 5H(2)(a) and subparagraph 36(2C)(a)(i) of the Act, each international instrument that defines a crime against peace, a war crime or a crime against humanity is prescribed.

Examples of Instruments that may define crimes against peace, war crimes or crimes against humanity

- 1 Rome Statute of the International Criminal Court, done at Rome on 17 July 1998.
- 2 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed at London on 8 August 1945.
- 3 Charter of the International Military Tribunal, signed at London on 8 August 1945.
- 4 Convention on the Prevention and Punishment of the Crime of Genocide, approved in New York on 9 December 1948.
- 5 The First Convention within the meaning of the *Geneva Conventions Act 1957*.
- 6 The Second Convention within the meaning of the *Geneva Conventions Act 1957*.
- 7 The Third Convention within the meaning of the *Geneva Conventions Act 1957*.
- 8 The Fourth Convention within the meaning of the *Geneva Conventions Act 1957*.
- 9 Protocol I within the meaning of the *Geneva Conventions Act 1957*.
- 10 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977.
- 11 Statute of the International Criminal Tribunal for the former Yugoslavia, adopted by the United Nations Security Council on 25 May 1993.
- 12 Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994; adopted by the United Nations Security Council on 8 November 1994.

2.04 Circumstances in which a visa may be granted

For subsection 40(1) of the Act, a visa may be granted to a person who has satisfied the criteria in the relevant Part of Schedule 2 only if:

- (a) the circumstances set out in that Part exist; and
- (b) if the person has been required under section 257A of the Act to provide one or more personal identifiers—the person has complied with the requirement, or the requirement has been withdrawn.

2.05 Conditions applicable to visas

- (1) For subsection 41(1) of the Act, a visa is subject to any conditions specified for that Subclass of visa in Schedule 2, subject to subregulation (2).

Note: Regulation 2.40A prescribes conditions in relation to special purpose visas taken to have been granted to airline positioning crew members and airline crew members.

- (2) For subsection 41(3) of the Act, the conditions that the Minister is permitted to impose on a visa are the conditions (if any) specified as permitted for that Subclass of visa in Schedule 2.

Note: Conditions referred to by number in Schedule 2 are set out in Schedule 8: see the definition of *condition* in regulation 1.03.

- (3) For the purposes of subsections 29(2) and (3) of the Act (which deal with the period during which the holder of a visa may travel to, enter and remain in Australia), the limits on the period within which a person may:

- (a) remain in Australia; or
- (b) travel to, enter, and remain in Australia;

as the case requires, under the authority of a visa of a particular subclass are specified in the relevant Part of Schedule 2.

- (4) For subsection 41(2A) of the Act, the circumstances in which the Minister may waive a condition of a kind described in paragraph 41(2)(a) of the Act are that:

- (a) since the person was granted the visa that was subject to the condition, compelling and compassionate circumstances have developed:
 - (i) over which the person had no control; and
 - (ii) that resulted in a major change to the person's circumstances; and
- (b) if the Minister has previously refused to waive the condition, the Minister is satisfied that the circumstances mentioned in paragraph (a) are substantially different from those considered previously; and
- (c) if the person asks the Minister to waive the condition, the request is in writing.

- (4AA) For subsection 41(2A) of the Act, and subject to subregulation(4A), a further circumstance in which the Minister may waive condition 8503 in relation to a visa is that the holder of the visa has a genuine intention to apply for:

- (a) a General Skilled Migration visa; or
- (b) a Subclass 132 (Business Talent) visa; or
- (c) a Subclass 186 (Employer Nomination Scheme) visa; or

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- (d) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (e) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.
- (4AB) For subsection 41(2A) of the Act, further circumstances in which the Minister may waive condition 8503 in relation to a visa are that the holder of the visa:
- (a) either:
 - (i) holds a safe haven enterprise visa; or
 - (ii) is a lawful non-citizen who has ever held a safe haven enterprise visa; and
 - (b) satisfies the requirements of subregulation 2.06AAB(2).
- (4AC) For paragraph 41(2B)(b) of the Act, the following visas are prescribed:
- (a) a Subclass 400 (Temporary Work (Short Stay Specialist)) visa;
 - (b) a Subclass 457 (Temporary Work (Skilled)) visa.
- (5A) For subsection 41(2A) of the Act, further circumstances in which the Minister may waive condition 8534 in relation to a visa are that the holder of the visa:
- (a) has completed the course for which the visa was granted; and
 - (b) has a genuine intention to apply for:
 - (i) a General Skilled Migration visa; or
 - (ii) a Subclass 132 (Business Talent) visa; or
 - (iii) a Subclass 186 (Employer Nomination Scheme) visa; or
 - (iv) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (v) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.
- (6) For subsection 41(2A) of the Act, further circumstances in which the Minister may waive condition 8534 in relation to a visa are that the holder of the visa is a registered nurse, or satisfies the requirements for registration as a registered nurse, in Australia.

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

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

For subsection 42(3) of the Act (which deals with the classes of person who may travel to Australia without a visa that is in effect), the class of New Zealand citizens who hold and produce New Zealand passports that are in force is prescribed.

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

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

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- (a) the holder is on a non-military ship; and
- (b) the ship enters Australia at an excised offshore place that is:
 - (i) a proclaimed port; or
 - (ii) a place for which permission has been given, in advance under section 58 of the *Customs Act 1901*, for the ship to be brought to that place; and
- (c) before the holder enters Australia, the operator of the ship has complied with the reporting requirements in sections 64, 64ACA and 64ACB of the *Customs Act 1901* in accordance with those sections and the *Customs Regulation 2015*.

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

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

The Customs Act and the *Customs Regulation 2015* specify time limits within which the reporting is to be done.

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

2.06AAB Visa applications by holders and certain former holders of safe haven enterprise visas

- (1) For paragraph 46A(1A)(b) of the Act, visas of the subclasses listed in the following table are prescribed:

Visas for which holders and certain former holders of safe haven enterprise visas may apply	
Item	Visa subclass
1	Subclass 132 (Business Talent)
2	Subclass 143 (Contributory Parent)
3	Subclass 186 (Employer Nomination Scheme)
4	Subclass 187 (Regional Sponsored Migration Scheme)
5	Subclass 188 (Business Innovation and Investment (Provisional))
6	Subclass 189 (Skilled—Independent)
7	Subclass 190 (Skilled—Nominated)
8	Subclass 402 (Training and Research)

Part 2 Visas

Division 2.1 Classes, criteria, conditions etc

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Visas for which holders and certain former holders of safe haven enterprise visas may apply

Item	Visa subclass
9	Subclass 405 (Investor Retirement)
11	Subclass 445 (Dependent Child)
12	Subclass 457 (Temporary Work (Skilled))
13	Subclass 476 (Skilled—Recognised Graduate)
14	Subclass 489 (Skilled—Regional (Provisional))
15	Subclass 500 (Student)
16	Subclass 590 (Student Guardian)
22	Subclass 801 (Partner)
23	Subclass 802 (Child)
24	Subclass 804 (Aged Parent)
25	Subclass 820 (Partner)
26	Subclass 835 (Remaining Relative)
27	Subclass 836 (Carer)
28	Subclass 837 (Orphan Relative)
29	Subclass 838 (Aged Dependent Relative)
30	Subclass 858 (Distinguished Talent)
31	Subclass 864 (Contributory Aged Parent)
32	Subclass 884 (Contributory Aged Parent (Temporary))

(2) For the purposes of paragraph 46A(1A)(c) of the Act, an applicant for a visa of a class mentioned in subregulation (1), who currently holds, or has ever held, a safe haven enterprise visa must:

- (a) for a period or periods totalling 42 months (which need not be continuous), as the holder of one or more safe haven enterprise visas, satisfy one of the following requirements:
 - (i) the applicant does not receive any social security benefits determined under subregulation (3), and is engaged in employment, as determined under that subregulation, in a regional area specified under subitem 1404(4) of Schedule 1;
 - (ii) the applicant is enrolled in full-time study at an educational institution, as determined under subregulation (3), in a regional area specified under subitem 1404(4) of Schedule 1;
 - (iii) the applicant satisfies a combination of the requirements in subparagraph (i) and subparagraph (ii), at different times; or
- (b) be the member of the same family unit of, and have made a combined application with, a non-citizen who:
 - (i) is an applicant for the same class of visa; and
 - (ii) meets the requirements of paragraphs 46A(1A)(a) and (b) of the Act; and
 - (iii) meets the requirements of paragraph (a) of this subregulation.

- (3) The Minister may, by legislative instrument, make a determination for the purposes of subparagraphs (2)(a)(i) and (ii).

2.06AAC Entry to Australia—persons entering to participate in, or support, offshore resources activities

For paragraph 43(1)(c) of the Act, the following reason is prescribed:

- (a) the visa held by the visa holder is:
- (i) a permanent visa; or
 - (ii) a Subclass 400 (Temporary Work (Short Stay Specialist)) visa; or
 - (iii) a Subclass 457 (Temporary Work (Skilled)) visa; and
- (b) the holder is a person who will be in an area to participate in, or to support, an offshore resources activity in relation to that area.

Note 1: Paragraph 43(1)(c) of the Act provides that if the holder of a visa that is in effect travels to Australia on a vessel, and a prescribed reason makes it necessary to enter Australia in a way other than at a port, or on a pre-cleared flight, the visa is permission for the holder to enter Australia in that other way.

Note 2: Paragraph (b)—for the definition of *offshore resources activity*, see subsection 9A(5) of the Act.

Division 2.2—Applications

2.06A Definition

In this Division:

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

2.07 Application for visa—general

- (1) For sections 45 and 46 of the Act (which deal with applications for visas), if an application is required for a particular class of visa:
 - (a) the relevant item of Schedule 1 sets out the approved form (if any) to be completed by an applicant; and
 - (b) regulation 2.12C and the relevant item of Schedule 1 set out:
 - (i) the visa application charge (if any) payable in relation to an application; and
 - (ii) the components that may be applicable to a particular application for the visa; and
 - (c) the relevant item of Schedule 1 sets out other matters relating to the application.

Note: An item of Schedule 1 may provide for matters to be specified by the Minister in a legislative instrument made under subregulation (5).

- (3) An applicant must complete an approved form in accordance with any directions on it.
- (4) An application for a visa that is made using an approved form is not a valid application if the applicant does not set out his or her residential address:
 - (a) in the form; or
 - (b) in a separate document that accompanies the application.
- (5) If an item of Schedule 1 prescribes criteria or requirements by reference to a legislative instrument made under this subregulation, the Minister may, by legislative instrument, specify any of the following matters for the purposes of such a criterion or requirement:
 - (a) an approved form for making an application for a visa of a specified class;
 - (b) the way in which an application for a visa of a specified class must be made;
 - (c) the place at which an application for a visa of a specified class must be made;
 - (d) any other matter.

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Note 1: For paragraph (b), examples of the way in which an application must be made include by the internet, orally, or by posting, faxing or emailing the application to a specified number or address.

Note 2: Regulation 2.10 sets out where an application for a visa must be made if no location for making the application is prescribed in relation to the visa in Schedule 1.

- (6) The legislative instrument may specify different matters for:
- (a) different kinds of visa (however described); and
 - (b) different classes of applicant.

2.07A Certain applications not valid bridging visa applications

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

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

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

2.07AA Applications for certain visitor visas

- (2) Despite anything in regulation 2.07, for sections 45 and 46 of the Act, an application for a Subclass 600 (Visitor) visa in the Business Visitor stream is taken to have been validly made if:
- (a) the applicant is:
 - (i) the holder of a valid passport issued by a designated APEC economy; or
 - (ii) in the case of an applicant who is a permanent resident of Hong Kong—the holder of any valid passport; and
 - (b) the applicant:
 - (i) has applied to the Government of the designated APEC economy for an APEC Business Travel Card under arrangements in force between Australia and designated APEC economies; or
 - (ii) in the case of an applicant who is a permanent resident of Hong Kong—has applied to the Government of Hong Kong for an APEC Business Travel Card under arrangements in force between Australia and designated APEC economies; and
 - (c) that Government has sent to an office of Immigration that is approved in writing by the Minister as an office to which an application for a Temporary Business Entry (Class UC) visa may be made:
 - (i) that application, or a copy of that application, by written communication (including facsimile message); or
 - (ii) the information contained in that application by electronic transmission using a computer; or
-

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(iii) that application, or a copy of that application, in any other manner approved in writing by the Minister.

(3) If:

- (a) an applicant for a Subclass 600 (Visitor) visa in the Business Visitor stream is described in paragraphs (2)(a) and (b); and
- (b) the Government of the designated APEC economy or the Government of Hong Kong has sent the material required under paragraph (2)(c) to an office of Immigration that is approved in writing by the Minister as an office to which an application for a Subclass 600 (Visitor) visa in the Business Visitor stream may be made;

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

2.07AB Applications for Electronic Travel Authority visas

(1) For the purposes of sections 45 and 46 of the Act, an application for an Electronic Travel Authority (Class UD) visa that is made in Australia (except in immigration clearance), or outside Australia, is taken to have been validly made if the applicant, when seeking the grant of the visa, whether:

- (a) in person; or
- (b) by telephone; or
- (c) by written communication (including facsimile message or email); or
- (d) by electronic transmission using a computer; or
- (e) in any other manner approved in writing by the Minister;

provides his or her passport details to:

- (f) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
- (g) an office of an agent mentioned in paragraph (3)(b).

(2) For the purposes of sections 45 and 46 of the Act, an application for an Electronic Travel Authority (Class UD) visa that is made by the applicant, in person, while in immigration clearance, is taken to have been validly made if:

- (a) the applicant presents to an officer an ETA-eligible passport; and
- (c) after reasonable enquiries, the officer does not find that the applicant is the holder of a visa that is in effect; and
- (d) the applicant asks an officer for an Electronic Travel Authority (Class UD) visa.

(3) If a person makes an application for an Electronic Travel Authority (Class UD) to:

- (a) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
- (b) an office of an agent who is approved in writing by the Minister as an agent with whom an application for an Electronic Travel Authority (Class UD) visa may be made;

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by telephone, in writing (including by fax), by electronic transmission using a computer or in any other manner approved in writing by the Minister for this subregulation, the person is taken to have made the application at that office.

- (4) For sections 45 and 46 of the Act, and despite paragraph (1)(d), an application for an Electronic Travel Authority (Class UD) visa made by an eVisitor eligible passport holder is taken not to have been made validly if it is made by electronic transmission using a computer.

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

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

2.07AF Applications for Student (Temporary) (Class TU) visas

- (1) This regulation applies in respect of an application for a Student (Temporary) (Class TU) visa.
- (2) Despite anything in regulation 2.07, an application may be made on behalf of an applicant.
- (3) An application by a person who seeks to satisfy the primary criteria (the *primary applicant*) must include:
 - (a) the name, date of birth and citizenship of each person who is a member of the family unit of the applicant at the time of the application; and
 - (b) the relationship between the person and the applicant.
- (4) If a person becomes a member of the family unit of the primary applicant after the time of application and before the time of decision, the primary applicant must inform the Minister, in writing, of:
 - (a) the name, date of birth and citizenship of the person and
 - (b) the relationship between the person and the primary applicant.
- (5) Subregulations (3) and (4) apply:

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- (a) whether or not the member of the family unit is an applicant for a Student (Temporary) (Class TU) visa; and
- (b) if the member of the family unit is not an applicant for a Student (Temporary) (Class TU) visa—whether or not the member of the family unit intends to become an applicant for a Student (Temporary) (Class TU) visa.

Note: *member of the family unit* of an applicant for a Student (Temporary) (Class TU) visa is defined in subregulation 1.12(6).

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

- (1) For section 46 of the Act, an application for a substantive visa by a person for whom condition 8503 has been waived under subregulation 2.05(4AA) is a valid application only if the application is for:
 - (a) a General Skilled Migration visa; or
 - (b) a Subclass 132 (Business Talent) visa; or
 - (c) a Subclass 186 (Employer Nomination Scheme) visa; or
 - (d) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (e) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.
- (2) For section 46 of the Act, an application for a substantive visa by a person for whom condition 8534 has been waived under subregulation 2.05(5A) is a valid application only if the application is for:
 - (a) a General Skilled Migration visa; or
 - (b) a Subclass 132 (Business Talent) visa; or
 - (c) a Subclass 186 (Employer Nomination Scheme) visa; or
 - (d) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (e) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.

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

For section 46 of the Act, if:

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

the application is taken to have been validly made only if it is an application for a Subclass 457 (Temporary Work (Skilled)) visa.

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

- (1) For section 46 of the Act, an application for a substantive visa by a person in Australia who has, at any time since last entering Australia, held a Subclass 173

(Contributory Parent (Temporary)) visa is a valid application only if the application is for:

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

2.07AK Applications for Referred Stay (Permanent) (Class DH) visas

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

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

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

- (2) An application for a visa of a class mentioned in subregulation (1) is taken to have been validly made by a person (a *referred stay applicant*) only if the requirements of subregulation (3) or (5) are met.
- (3) The requirements of this subregulation are met for a referred stay applicant if:
- (a) the referred stay applicant is in Australia; and
 - (b) the Attorney-General has, after taking into account information provided by a member of the Australian Federal Police of the substantive rank of Commander, or above, issued a certificate in relation to the referred stay applicant; and
 - (c) the Attorney-General's certificate is to the effect that the referred stay applicant made a contribution to, and cooperated closely with, an investigation in relation to another person who was alleged to have engaged in human trafficking, slavery or slavery-like practices; and
 - (d) the Attorney-General's certificate is in force; and
 - (e) the referred stay applicant:
 - (i) is not a subject of the investigation mentioned in the Attorney-General's certificate; and
 - (ii) is not a subject of a prosecution that commenced directly as a result of that investigation; and
 - (f) the Minister is satisfied that the referred stay applicant would be in danger if he or she returned to his or her home country; and
 - (g) an offer of stay in Australia is made to the referred stay applicant by an authorised officer; and

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- (h) the referred stay applicant indicates in writing that he or she accepts the offer, not later than:
 - (i) 28 days after the referred stay applicant is taken to have received the offer; or
 - (ii) a later date determined by an authorised officer.

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

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

2.07AL Applications for certain visas by contributory parent newborn children

- (1) For section 46 of the Act, an application by a contributory parent newborn child for a Subclass 173 (Contributory Parent (Temporary)) visa is a valid application only if the parent holds or held:
 - (a) a Subclass 173 (Contributory Parent (Temporary)) visa; or
 - (b) a bridging visa, and the last substantive visa held by that parent was a Subclass 173 (Contributory Parent (Temporary)) visa.
- (2) For section 46 of the Act, an application by a contributory parent newborn child for a Subclass 884 (Contributory Aged Parent (Temporary)) visa is a valid application only if the parent holds or held:
 - (a) a Subclass 884 (Contributory Aged Parent (Temporary)) visa; or
 - (b) a bridging visa, and the last substantive visa held by that parent was a Subclass 884 (Contributory Aged Parent (Temporary)) visa.

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

- (1) For subsection 46(2) of the Act, a Refugee and Humanitarian (Class XB) visa is a prescribed class of visa.
- (2) An application for a Refugee and Humanitarian (Class XB) visa is taken to have been validly made by a person only if the requirements in subregulation (3) or item 1402 of Schedule 1 have been met.
- (3) The requirements are that:
 - (a) the person is a person mentioned in subregulation (5); and

- (b) the Minister has invited the person to make an application for a Refugee and Humanitarian (Class XB) visa; and
 - (c) the person indicates to an authorised officer that he or she accepts the invitation; and
 - (d) the authorised officer endorses, in writing, the person's acceptance of the invitation.
- (4) An application made under paragraph 1402(3)(a) of Schedule 1 is taken to have been made outside Australia.
- (5) For paragraph (3)(a), the person is:
- (a) a person who:
 - (i) between 13 August 2012 and before the commencement of this subparagraph, entered Australia at an excised offshore place after the excision time for that place; and
 - (ii) became an unlawful non-citizen because of that entry; or
 - (b) a person who, on or after 13 August 2012, was taken to a place outside Australia under paragraph 245F(9)(b) of the Act; or
 - (c) a person who, on or after the commencement of this paragraph, is an unauthorised maritime arrival.

Note: For paragraph (c), see section 5AA of the Act.

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

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

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

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

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

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Item	Criterion 1	Criterion 2	Criterion 3	Criterion 4
1	The person makes a valid application for a Protection (Class XA) visa	The person holds: (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or (c) a Subclass 695 (Return Pending) visa	Nil	Nil
2	The person makes a valid application for a protection visa	The person held, but no longer holds, a visa of a kind mentioned in criterion 2 of item 1, or a Subclass 785 (Temporary Protection) visa granted before 9 August 2008, and the visa was not cancelled	The person: (a) has not left Australia; or (b) while holding a visa that permits re-entry to Australia, has left and re-entered Australia	The person does not hold a permanent visa
3	The person holds: (a) a Temporary Safe Haven (Class UJ) visa; or (b) a Temporary (Humanitarian Concern) (Class UO) visa	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer
4	The person is a member of the family unit of a person who is taken to have made a valid application as a result of satisfying the criteria in item 3	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer

(4) If:

- (a) the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 1 or 2 of the table in subregulation (3) have been satisfied; and
 - (b) the application for the Protection (Class XA) visa mentioned in the item was made before 9 August 2008;
- the application is taken to have been made on 9 August 2008.

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

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

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

2.08 Application by newborn child

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

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

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2.08AA Application by contributory parent newborn child

- (1) Despite any provision in Schedule 2, a contributory parent newborn child who applies for a Contributory Parent (Temporary) (Class UT) visa or a Contributory Aged Parent (Temporary) (Class UU) visa:
 - (a) does not have to satisfy the secondary criteria in Schedule 2 that would, but for this subregulation, need to be satisfied at the time of application; and
 - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.
- (2) Despite any provision in Schedule 1, a contributory parent newborn child:
 - (a) who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa or a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and
 - (b) whose parent has applied for a Contributory Parent (Migrant) (Class CA) visa or a Contributory Aged Parent (Residence) (Class DG) visa, and either:
 - (i) that application has not been finally determined; or
 - (ii) the parent has been granted the permanent visa;is taken to have made a combined application for the permanent visa, mentioned in paragraph (b), with the parent.
- (3) For subregulation (2), the contributory parent newborn child is taken to have made the application:
 - (a) if the child was in Australia when the temporary visa was granted—on the grant of the temporary visa to the child; or
 - (b) if the child was outside Australia when the temporary visa was granted—immediately after the child is immigration cleared.

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

- (1) If:
 - (a) a person (in this regulation called *the original applicant*) applies for a permanent visa of a class for which Schedule 1, including Schedule 1 as it applies in relation to a particular class of visa, permits combined applications; and
 - (b) after the application is made, but before it is decided, the Minister receives, in writing and in accordance with Division 2.3, a request from the original applicant to have:
 - (i) the spouse or de facto partner; or
 - (ii) a dependent child;of the original applicant (the *additional applicant*) added to the original applicant's application; and
 - (c) the request includes a statement that the original applicant claims that the additional applicant is:
 - (i) the spouse or de facto partner; or
 - (ii) a dependent child;as the case requires, of the original applicant; and

- (d) the additional applicant charge (if any) has been paid in relation to the additional applicant; and
 - (da) at the time when:
 - (i) the Minister has received the request; and
 - (ii) the additional applicant charge (if any) has been paid;the additional applicant satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class;
- then:
- (e) the additional applicant is taken to have applied for a visa of the same class; and
 - (f) the application of the additional applicant:
 - (i) is taken to have been made on the later of:
 - (A) the Minister receiving the request; and
 - (B) the additional applicant charge (if any) being paid; and
 - (ii) is taken to be combined with the application of the original applicant; and
 - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.
- (2) Despite any provision in Schedule 2, the additional applicant:
- (a) must be, at the time when the application is taken to be made under subparagraph (1)(f)(i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and
 - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.
- (2A) Subregulations (1) and (2) do not apply to an applicant for a Skilled (Residence) (Class VB) visa.
- Note 1: Regulations 2.07AL and 2.08AA apply in relation to an application by a contributory parent newborn child.
- Note 2: Past amendments of these Regulations may have amended or repealed provisions of Schedule 1 but included transitional provisions by which a former version of Schedule 1 continues to apply in specified cases.

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

- (1) If:
 - (a) a person (*the original applicant*) applies for:
 - (i) an Extended Eligibility (Temporary) (Class TK) visa; or
 - (iii) a Prospective Marriage (Temporary) (Class TO) visa; or
 - (vi) a Partner (Provisional) (Class UF) visa; or
 - (vii) a Partner (Temporary) (Class UK) visa; or
 - (viii) a Business Skills (Provisional) (Class UR) visa; or
 - (viiiia) a Business Skills (Provisional) (Class EB) visa; or

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- (x) a Skilled (Provisional) (Class VC) visa; or
 - (xi) a Skilled (Provisional) (Class VF) visa; or
 - (xiii) a Skilled—Regional Sponsored (Provisional) (Class SP) visa; and
 - (b) the Minister receives, in writing and in accordance with Division 2.3, a request from the original applicant to have a dependent child of the original applicant added to the original applicant's application; and
 - (ba) the request is received after the application is made but before it is decided; and
 - (c) the request includes a statement that the original applicant claims that the dependent child is the dependent child of the original applicant; and
 - (d) the additional applicant charge (if any) and the subsequent temporary application charge (if any) have been paid in relation to the dependent child; and
 - (daa) at the time when:
 - (i) the Minister has received the request; and
 - (ii) the additional applicant charge (if any) and the subsequent temporary application charge (if any) have been paid in relation to the additional applicant;the dependent child satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class;
- then:
- (e) the dependent child is taken to have applied for a visa of the same class; and
 - (f) the application of the dependent child:
 - (i) is taken to have been made on the latest of:
 - (A) the Minister receiving the request; and
 - (B) the additional applicant charge (if any) being paid; and
 - (C) the subsequent temporary application charge (if any) being paid; and
 - (ii) is taken to be combined with the application of the original applicant; and
 - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.
- (2) Despite any provision in Schedule 2, the dependent child:
- (a) must be, at the time when the application is taken to be made under subparagraph (1)(f)(i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and
 - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.

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

- (1) For subsection 46(2) of the Act, the Partner (Migrant) (Class BC) visa and the Partner (Provisional) (Class UF) visa are prescribed classes of visa.
- (2) If:
 - (a) a person (the **applicant**) applies for a Prospective Marriage (Temporary) (Class TO) visa; and
 - (b) after the application is made, but before it is decided, the applicant marries the person who was specified as the applicant's prospective spouse in the application for that visa; and
 - (c) the marriage is recognised as valid for the purposes of the Act;then:
 - (d) the applicant is taken also to have applied for a Partner (Migrant) (Class BC) visa and a Partner (Provisional) (Class UF) visa on the day Immigration receives notice of the marriage; and
 - (e) the applications are taken to be validly made.
- (2A) Subregulation (2B) applies if:
 - (a) a person (the **applicant**) applies for a Prospective Marriage (Temporary) (Class TO) visa (the **visa application**); and
 - (b) the Minister refuses to grant the visa; and
 - (c) the applicant or the sponsor of the applicant makes an application for review of the Minister's decision to the Tribunal (the **review application**); and
 - (d) the review application is made in accordance with the Act; and
 - (e) in the period after the Minister's decision is made and before the review application is finally determined, the applicant marries the person who was specified, in the application for the visa, as the applicant's prospective spouse; and
 - (f) the applicant notifies the Tribunal of the marriage; and
 - (g) the marriage is recognised as valid for the purposes of the Act.
- (2B) For paragraph 349(2)(c) of the Act, the Tribunal must remit the visa application to the Minister for reconsideration, with the direction that the application be taken also to be an application:
 - (a) for:
 - (i) a Partner (Migrant) (Class BC) visa; and
 - (ii) for a Partner (Provisional) (Class UF) visa; and
 - (b) that is made on the day that the visa application is remitted to the Minister.
- (3) The amount paid by the applicant as the first instalment of the visa application charge for the Prospective Marriage (Temporary) (Class TO) visa application is taken to be payment of the first instalment of the visa application charge for the Partner (Migrant) (Class BC) visa application.

Regulation 2.08F

2.08F Certain applications for Protection (Class XA) visas taken to be applications for Temporary Protection (Class XD) visas

Conversion regulation

- (1) For section 45AA of the Act, despite anything else in the Act, a valid application (a **pre-conversion application**) for a Protection (Class XA) visa made before the commencement of this regulation by an applicant prescribed by subregulation (2) is, immediately after this regulation starts to apply in relation to the application under subregulation (3):
- (a) taken not to be, and never to have been, a valid application for a Protection (Class XA) visa; and
 - (b) taken to be, and always to have been, a valid application for a Temporary Protection (Class XD) visa, made by the prescribed applicant.

Note 1: As a result, the Minister is required to make a decision on the pre-conversion application as if it were a valid application for a Temporary Protection (Class XD) visa.

Note 2: If the first instalment of visa application charge for the pre-conversion application had been paid before this regulation starts to apply, the first instalment of visa application charge for an application for a Temporary Protection (Class XD) visa (if any) is taken to have been paid. See section 45AA of the Act.

Prescribed applicants

- (2) The following are prescribed applicants:
- (a) an applicant who holds, or has ever held, any of the following visas:
 - (i) a Subclass 785 (Temporary Protection) visa granted before 2 December 2013;
 - (ii) a Temporary Safe Haven (Class UJ) visa;
 - (iii) a Temporary (Humanitarian Concern) (Class UO) visa;
 - (b) an applicant who did not hold a visa that was in effect on the applicant's last entry into Australia;
 - (c) an applicant who is an unauthorised maritime arrival;
 - (d) an applicant who was not immigration cleared on the applicant's last entry into Australia.

When this regulation starts to apply

- (3) This regulation starts to apply in relation to a pre-conversion application immediately after the occurrence of whichever of the following events is applicable to the application:
- (a) if, before the commencement of this regulation, the Minister had not made a decision in relation to the pre-conversion application under section 65 of the Act—the commencement of this regulation;
 - (b) in a case in which the Minister had made such a decision before the commencement of this regulation—one of the following events, if the event occurs on or after the commencement of this regulation:

- (i) the Administrative Appeals Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 415(2)(c) of the Act;
 - (ii) the Administrative Appeals Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 43(1)(c) of the *Administrative Appeals Tribunal Act 1975*;
 - (iii) a court orders the Minister to reconsider the pre-conversion application in accordance with the law;
 - (iv) a court declares or concludes (with or without formal declaration) that a decision of the Minister in relation to the pre-conversion application is invalid, void or of no effect;
 - (v) a court quashes a decision of the Minister in relation to the pre-conversion application.
- (4) To avoid doubt, for the purposes of subregulation (3), the Minister is taken not to have made a decision in relation to a pre-conversion visa application under section 65 of the Act if, before 16 December 2014:
- (a) the Minister had made a decision in relation to the pre-conversion application under section 65 of the Act; and
 - (b) one of the following events occurred after the Minister made that decision:
 - (i) the Refugee Review Tribunal remitted a matter in relation to the pre-conversion application in accordance with paragraph 415(2)(c) of the Act;
 - (ii) the Administrative Appeals Tribunal remitted a matter in relation to the pre-conversion application in accordance with paragraph 43(1)(c) of the *Administrative Appeals Tribunal Act 1975*;
 - (iii) a court ordered the Minister to reconsider the pre-conversion application in accordance with the law;
 - (iv) a court declared or concluded (with or without formal declaration) that a decision of the Minister in relation to the pre-conversion application was invalid, void or of no effect;
 - (v) a court quashed a decision of the Minister in relation to the pre-conversion application; and
 - (c) after the occurrence of the event mentioned in paragraph (b), the Minister had not made another decision in relation to the pre-conversion application.

Note: This regulation commenced on 16 December 2014.

2.09 Oral applications for visas

- (1) If an item in Schedule 1 authorises oral application for a class of visa by a person in a specified class of persons, a person in that class may apply for a visa of that class by telephone to, or attendance at, an office of Immigration in Australia specified by the Minister in an instrument in writing as an office at which an oral application may be made, but only at a time, or during a period, specified by the Minister in an instrument in writing as a time at which, or period during which, an oral application may be made at that office.

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(4) In this regulation:

office of Immigration does not include an office occupied by an officer of Immigration at an airport or a detention centre.

2.10 Where application must be made

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

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

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

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

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

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

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

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

2.10AA Where application must be made for certain visas

- (1) This regulation applies to:
 - (a) a person who is:
 - (i) outside Australia; and

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

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

- (1) This regulation applies in the case of an application for a Bridging E (Class WE) visa that is made by a person who is in immigration detention (*the applicant*).
- (2) For section 46 of the Act, the person lodging the application (whether or not the person is the applicant) must give written notice of the application to an officer of Immigration appointed by the Secretary to be a detention review officer in the State or Territory in which the applicant is detained.

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

- (1) This regulation applies in the case of an application for a Bridging F (Class WF) visa that is made by a person who is in immigration detention (*the applicant*).
- (2) For section 46 of the Act, the person lodging the application (whether or not the person is the applicant) must give written notice of the application to an officer of Immigration appointed by the Secretary to be an authorised officer for this regulation.

2.10C Time of making Internet application

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

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

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Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made.

2.11 Special provisions for certain visa applications that are refused

- (1) If:
 - (a) an application for a visa by a non-citizen made outside Australia (a **first application**) has been made; and
 - (b) the first application has been refused; and
 - (c) it appears to the Minister, on the basis of the information available to the Minister, that, if the non-citizen had applied for a visa of a different class, the visa would be likely to have been granted;the Minister may invite the non-citizen to make an application (a **further application**) for a visa of the different class.
- (2) An invitation made under subregulation (1) is to be an invitation:
 - (a) if the first application was for a permanent visa—to make an application for a permanent visa; or
 - (b) if the first application was for a temporary visa—to make an application for a temporary visa.
- (2A) However:
 - (a) if the first application was for a Prospective Marriage (Temporary) (Class TO) visa, the Minister may invite the applicant to make a further application for both:
 - (i) a Partner (Provisional) (Class UF) visa; and
 - (ii) a Partner (Migrant) (Class BC) visa; and
 - (b) if the first application was for both:
 - (i) a Partner (Provisional) (Class UF) visa; and
 - (ii) a Partner (Migrant) (Class BC) visa;the Minister may invite the applicant to make a further application for a Prospective Marriage (Temporary) (Class TO) visa; and
 - (c) if the first application was for a Return (Residence) (Class BB) visa, the Minister may invite the applicant to make a further application for a Resident Return (Temporary) (Class TP) visa.
- (3) The Tribunal is not to invite a further application under subregulation (1).
- (4) The non-citizen must make the further application within 28 days (or, if the Minister in the circumstances of the case so decides, 70 days) after the day on which the non-citizen is notified of the invitation to make that application.

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- (5) The actual amount that is payable by the applicant by way of the visa application charge in relation to the further application is the amount (if any) by which liability for the visa application charge in relation to the further application exceeds the actual amount of the visa application charge paid on the first application.
- (6) If the first instalment of the visa application charge payable in relation to the further application is less than the actual amount paid in relation to the first application, no refund is payable in respect of the difference.

2.11A Visa applications by unauthorised maritime arrivals

For subparagraph 46A(1)(b)(ii) of the Act, the following kinds of visas are prescribed:

- (a) Temporary Safe Haven (Class UJ) visas;
- (b) Temporary (Humanitarian Concern) (Class UO) visas;
- (c) Subclass 785 visas granted before 2 December 2013;
- (d) Safe Haven Enterprise (Class XE) visas.

Note: Section 46A of the Act prevents the making of a valid visa application by an unauthorised maritime arrival who is an unlawful non-citizen or holds a bridging visa or a temporary protection visa, or a temporary visa of a prescribed kind.

2.11B Visa applications by transitory persons

For subparagraph 46B(1)(b)(ii) of the Act, the following kinds of visas are prescribed:

- (a) Temporary Safe Haven (Class UJ) visas;
- (b) Temporary (Humanitarian Concern) (Class UO) visas;
- (c) Subclass 785 visas granted before 2 December 2013;
- (d) Safe Haven Enterprise (Class XE) visas.

Note: Section 46B of the Act prevents the making of a valid visa application by a transitory person who is an unlawful non-citizen or holds a bridging visa or a temporary protection visa, or a temporary visa of a prescribed kind.

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

- (1) For section 48 of the Act the following classes of visas are prescribed:
 - (a) Partner (Temporary) (Class UK);
 - (b) Partner (Residence) (Class BS);
 - (c) protection visas;
 - (ca) Medical Treatment (Visitor) (Class UB);
 - (e) Territorial Asylum (Residence) (Class BE);
 - (f) Border (Temporary) (Class TA);
 - (g) Special Category (Temporary) (Class TY);
 - (h) Bridging A (Class WA);
 - (j) Bridging B (Class WB);
 - (k) Bridging C (Class WC);

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- (l) Bridging D (Class WD);
- (m) Bridging E (Class WE);
- (ma) Bridging F (Class WF);
- (mb) Bridging R (Class WR);
- (o) Resolution of Status (Class CD);
- (p) Child (Residence) (Class BT).

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

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

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

Division 2.2A—Visa application charge

2.12C Amount of visa application charge

- (1) For subsection 45B(1) of the Act, the visa application charge (if any) in relation to an application for a visa of a class to which an item of Schedule 1 relates is the sum of:
- (a) the first instalment (which is payable when the application is made), consisting of the following components:
 - (i) the base application charge or the additional applicant charge;
 - (ii) any subsequent temporary application charge;
 - (iii) any non-Internet application charge; and
 - (b) the second instalment (which is payable before the grant of the visa).

Note 1: The first instalment may include one or more of the components explained in this regulation.

Note 2: See regulation 5.36 in relation to the countries and currencies in which payment of an instalment of the visa application charge may be made.

- (2) For the first instalment of visa application charge, the components mentioned in paragraph (1)(a) that are applicable to a particular application for a visa are worked out as follows:
- (a) unless paragraph (b), (c) or (d) applies, the components are:
 - (i) the base application charge; and
 - (ii) the subsequent temporary application charge (if any); and
 - (iii) the non-Internet application charge (if any);
 - (b) if:
 - (i) the base application charge for the application is nil; or
 - (ii) the base application charge for another application, with which the application is combined in a way permitted by Schedule 1, or is sought to be combined in a way permitted by regulation 2.08A or 2.08B, is nil;no other components are applicable;
 - (c) if:
 - (i) the application is combined with another application in a way permitted by Schedule 1, or is sought to be combined with another application in a way permitted by regulation 2.08A or 2.08B; and
 - (ii) the first instalment (if any) of visa application charge (including the base application charge) has been paid for the other application;the components are the additional applicant charge (if any) and the subsequent temporary application charge (if any);
 - (d) if the application is combined with another application in a way permitted by regulation 2.08 or 2.08AA, no components are applicable.

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Base application charge

- (3) For the first instalment of visa application charge, base application charge is payable by an applicant for a visa if the additional applicant charge is not payable in relation to the application.

Note 1: Base application charge and additional applicant charge are alternatives. An applicant does not pay both components for the one application.

Note 2: The amount of base application charge varies according to the visa involved, and is set out in the item of Schedule 1 that applies to the visa.

Additional applicant charge

- (4) For the first instalment of visa application charge:
- (a) if the application is combined with another application in a way permitted by Schedule 1, additional applicant charge is payable by an applicant for a visa; and
 - (b) if an application is sought to be combined with another application in a way permitted by regulation 2.08A or 2.08B, additional applicant charge is payable by the applicant whose application is being sought to be combined with the other application.

Note 1: Base application charge and additional applicant charge are alternatives. An applicant does not pay both components for the one application.

Note 2: The amount of additional applicant charge varies according to the visa involved. The amount is set out in:

- (a) the item of Schedule 1 that applies to the visa, including Schedule 1 as it applies in relation to a particular class of visa; or
- (b) subregulation (4A).

Note 3: For paragraph (b), additional applicant charge must be paid before a person is taken, under regulation 2.08A or 2.08B, to have applied for a visa.

- (4A) If the applications referred to in paragraph (4)(b) relate to a visa of a class specified by the Minister in an instrument in writing for this subregulation, the amount of additional applicant charge is the amount specified in the instrument.

Subsequent temporary application charge

- (5) Subsequent temporary application charge is payable by an applicant for a visa if:
- (a) the visa is specified by the Minister in an instrument in writing for this paragraph; and
 - (b) the applicant is in Australia at the time of application; and
 - (c) the applicant holds, or the last substantive visa held by the applicant was, a visa specified by the Minister in an instrument in writing for this paragraph (the *previous visa*); and
 - (d) the applicant was in Australia at the time of application for the previous visa; and
 - (e) the previous visa was not granted:
 - (i) as the result of an application that was taken, under regulation 2.08, to have been made; or

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- (ii) as the result of an application that was taken to have been made by operation of law; or
 - (iii) by the Minister exercising his or her power under section 195A, 345, 351, 417 or 501J of the Act; or
 - (iv) without the applicant making an application (unless the application is taken to be made in a way permitted by regulation 2.08B).
- (6) The amount of subsequent temporary application charge is \$700.

Non-Internet application charge

- (7) Non-Internet application charge is payable by an applicant for a visa if:
- (a) the visa is specified by the Minister in an instrument in writing for this paragraph; and
 - (b) these Regulations provide that the application may be made as an Internet application; and
 - (c) the application is not made as an Internet application; and
 - (d) the base application charge is payable in relation to the application.

Note: The base application charge and the additional applicant charge are alternatives. The non-Internet application charge is payable if the base application charge is payable.

- (8) However, non-Internet application charge is not payable by an applicant for a visa in a circumstance specified by the Minister in an instrument in writing for this subregulation.
- (9) The amount of non-Internet application charge is \$80.

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

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

- (a) if the notice given by the Minister under subsection 64(2) is sent from a place in Australia to an address in Australia—the period beginning on the day on which the applicant is taken to have received notice and ending at the end of the 28th day after that day;
- (b) if the notice given by the Minister under subsection 64(2) is sent from:
 - (i) a place outside Australia to an address in Australia; or
 - (ii) a place in Australia to an address outside Australia; or
 - (iii) a place outside Australia to an address outside Australia;the period beginning on the day on which the applicant is taken to have received notice and ending at the end of the 70th day after that day.

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

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2.12F Refund of first instalment of visa application charge

- (1) The Minister must refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
 - (a) either of the following circumstances exists:
 - (i) a circumstance mentioned in subregulation (2);
 - (ii) a circumstance specified by the Minister in an instrument in writing for this subparagraph; and
 - (b) the Minister:
 - (i) receives a written request for a refund from a person mentioned in subregulation (2A); or
 - (ii) considers it is reasonable in the circumstances to refund the amount to a person mentioned in subregulation (2A) without receiving a written request for a refund.
- (2) For subparagraph (1)(a)(i), each of the following is a circumstance:
 - (a) the application is unnecessary at the time that it is made;
 - (b) the application is made because of a mistake made by Immigration;
 - (c) the applicant dies before a decision is made on the application;
 - (d) the application is an application made in Australia for a Tourist (Class TR) visa by an applicant who:
 - (i) satisfies the Minister that the applicant meets the requirements of subclause 676.221(3) of Schedule 2; and
 - (ii) is granted the further visa referred to in that subclause;
 - (db) the application is an application made in Australia, on or after 23 March 2013, for a Subclass 600 (Visitor) visa or a Medical Treatment (Visitor) (Class UB) visa by an applicant:
 - (i) in relation to whom the requirements of subclause 600.611(4), subclause 602.212(7) or clause 602.314 of Schedule 2 have been satisfied; and
 - (ii) who is granted the visa to which the requirements relate;
 - (ii) is granted the further visa referred to in that subclause;
 - (f) the applicant's application for a class of visa mentioned in subregulation (2B) was withdrawn because there was not an approved nomination that identified the applicant;
 - (g) in relation to an application for a class of visa mentioned in subregulation (2B), the applicant's application was withdrawn because the applicant:
 - (i) was not required to be identified in an approved nomination; and
 - (ii) did not have an approved sponsor;
 - (h) in relation to an application for a Subclass 408 (Temporary Activity) visa that met the requirement in item 3 of the table in subitem 1237(3) of Schedule 1, the applicant's application was withdrawn because the applicant did not have an approved sponsor.

- (2A) For subparagraph (1)(b)(i), the written request must be from:
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- (a) the person who paid the amount (the *payer*); or
- (b) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
- (c) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

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

- (2B) For paragraphs (2)(f) and (g), the classes or subclasses of visa are as follows:
 - (a) Subclass 407 (Training);
 - (d) Subclass 457 (Temporary Work (Skilled));
 - (e) Subclass 488 (Superyacht Crew);
 - (g) Subclass 416 (Special Program);
 - (h) Subclass 401 (Temporary Work (Long Stay Activity));
 - (i) Subclass 402 (Training and Research);
 - (j) Subclass 420 (Temporary Work (Entertainment)).
- (3) The Minister may refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
 - (a) the application was made because of a mistake by the applicant; and
 - (b) the applicant withdraws the application in writing; and
 - (c) after the withdrawal, the Minister receives a written request for a refund from:
 - (i) the person who paid the amount (the *payer*); or
 - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
 - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.
- (3A) The Minister may refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
 - (a) the application is for a Temporary Business Entry (Class UC) visa; and
 - (b) the applicant withdraws the application because the criterion in paragraph 457.223(4)(aa) of Schedule 2 cannot be satisfied; and
 - (c) the applicant withdraws the application in writing; and
 - (d) after the withdrawal, the Minister receives a written request for a refund from:
 - (i) the person who paid the amount (the *payer*); or
 - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
 - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.
- (4) The Minister must not make a refund on the basis that the applicant has died unless the request for the refund is accompanied by satisfactory evidence of the applicant's death.

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- (5) The Minister must not make a refund to the legal personal representative of a payer who has died unless the request for the refund is accompanied by satisfactory evidence of the payer's death.
- (6) A refund under this regulation must be:
 - (a) paid to the person who made the request for the refund; or
 - (b) if the refund is to be paid under subparagraph (1)(b)(ii)—paid to a person mentioned in subregulation (2A); or
 - (c) provided to a person mentioned in paragraph (a) or (b) for payment to the applicant's deceased estate.
- (7) If:
 - (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
 - (b) the Minister pays the amount of the refund to:
 - (i) the payer; or
 - (ii) a person mentioned in paragraph (2A)(b) or (c); or
 - (iii) a person mentioned in subparagraph (3)(c)(ii) or (iii); or
 - (iv) a person mentioned in subparagraph (3A)(d)(ii) or (iii);a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.
- (8) A refund under this regulation may be paid:
 - (a) in Australian currency; or
 - (b) if the amount of the instalment in respect of which the refund is being paid was paid in another currency, in that other currency.

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

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

2.12H Refund of second instalment of visa application charge

- (1) The Minister must refund the amount paid by way of the second instalment of the visa application charge in relation to an application for a visa if:
 - (a) any of the circumstances mentioned in subregulation (2) exists; and
-

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- (b) the Minister receives a written request for a refund from:
 - (i) the person who paid the amount (the *payer*); or
 - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
 - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

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

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

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- (a) the applicant died before first entering Australia as the holder of the visa;
or
- (b) the applicant died before commencing a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*;

the request must be accompanied by satisfactory evidence of the applicant's death.

- (5) If the request for the refund is made by the legal personal representative of a payer who has died, the request must be accompanied by satisfactory evidence of the payer's death.
- (7) If:
 - (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
 - (b) the Minister pays the amount of the refund to the payer or to a person mentioned in subparagraph (1)(b)(ii) or (iii);a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.
- (8) A refund under this regulation may be paid:
 - (a) in Australian currency; or
 - (b) if the amount of the instalment in respect of which the refund is being paid was paid in another currency, in that other currency.

2.12JA Payment of visa application charge for Internet application

- (1) The visa application charge in relation to an Internet application must be paid by:
 - (a) credit card, in accordance with the instructions given to the applicant as part of making the Internet application; or
 - (b) funds transfer, in accordance with the instructions given to the applicant as part of making the Internet application; or
 - (c) the PayPal system, in accordance with the instructions given to the applicant as part of making the Internet application.

Note 1: A credit card surcharge is payable if an instalment, or part of an instalment, of visa application charge is paid by credit card: see regulation 5.41A.

Note 2: A PayPal surcharge is payable if an instalment, or part of an instalment, of visa application charge is paid by the PayPal system: see regulation 5.41B.

- (2) If the visa application charge is paid in accordance with paragraph (1)(a), the charge is taken not to have been received until the payment has been confirmed by the issuer of the credit card.
- (3) If the visa application charge is paid in accordance with paragraph (1)(b), the charge is taken not to have been received until the payment is electronically matched to the applicant's Internet application form.

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- (4) If the visa application charge is paid in accordance with paragraph (1)(c), the charge is taken not to have been received until the payment has been confirmed by the operator of the PayPal system.

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

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

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

2.12L Legal personal representative

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

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

Division 2.2B—Priority consideration of certain visa applications on request

2.12M Priority consideration of certain visa applications on request

- (1) On a request made in accordance with this regulation in relation to a valid application for a visa, the Minister may prioritise the consideration of the application.
- (2) An applicant for a visa may make a request under this regulation only if:
 - (a) the visa is of a kind specified by the Minister under subregulation (7); and
 - (b) the applicant:
 - (i) holds a valid passport of a kind specified by the Minister under subregulation (7) in relation to that kind of visa; and
 - (ii) meets any other requirements specified by the Minister under subregulation (7) in relation to that kind of visa and that kind of valid passport; and
 - (c) the application is made:
 - (i) using an approved form specified by the Minister under subregulation (7) in relation to that kind of visa and that kind of valid passport; and
 - (ii) in a way specified by the Minister under subregulation (7) in relation to that kind of visa, that kind of valid passport and that approved form.
- (3) The request must be made:
 - (a) as permitted by subregulation (4); or
 - (b) in a form approved by the Minister under regulation 1.18 for the purposes of this paragraph.
- (4) If the approved form for the application enables the making of the request, the request may be made as enabled by the approved form.
- (5) A request made as mentioned in paragraph (3)(b) must be made:
 - (a) using an approved form specified by the Minister under subregulation (7) in relation to the kind of visa applied for and the kind of valid passport held by the applicant; and
 - (b) in a way specified by the Minister under subregulation (7) in relation to that kind of visa, that kind of valid passport and that approved form.
- (6) The fee for the request prescribed under regulation 2.12N must be paid in accordance with that regulation.
- (7) The Minister may, by legislative instrument, specify matters for subregulations (2) and (5).
- (8) The legislative instrument may specify different matters for different classes of applicant.

2.12N Fee for request for priority consideration of visa applications

- (1) The fee for a request for priority consideration of a visa application under regulation 2.12M is \$1 000.
- (2) The fee must be paid to the Commonwealth at, or before, the time the request is made.
- (3) If the request is made on the internet (whether the request is made in the approved form for the application or made separately), the fee must be paid by:
 - (a) credit card, in accordance with the instructions given to the applicant as part of making the request; or
 - (b) funds transfer, in accordance with the instructions given to the applicant as part of making the request; or
 - (c) the Paypal system, in accordance with the instructions given to the applicant as part of making the request.

Note 1: A credit card surcharge is payable if a fee, or part of a fee, is paid by credit card: see regulation 5.41A.

Note 2: A PayPal surcharge is payable if a fee, or part of a fee, is paid by the PayPal system: see regulation 5.41B.

2.12P Refund of fee for request for priority consideration of visa applications

- (1) The Minister must refund the fee for a request for priority consideration of a visa application if the Minister decides, under regulation 2.12F, to refund the visa application charge paid in relation to that application.
- (2) The refund under this regulation must be paid to the person who paid the fee.
- (3) A refund under this regulation may be paid:
 - (a) in Australian currency; or
 - (b) if the amount of the fee in respect of which the refund is being paid was paid in another currency, in that other currency.

Division 2.3—Communication between applicant and Minister

2.13 Communication with Minister

- (1) For the purposes of section 52 of the Act (which deals with the way in which an applicant or interested person must communicate with the Minister), an applicant or interested person must communicate with the Minister about a visa application in the way provided by this regulation.
- (2) Except as provided by subregulation (3), the communication must be in writing.
- (3) The communication may be oral if it is:
 - (a) a communication about an application for a bridging visa; or
 - (b) an enquiry about the stage reached in the consideration of a visa application; or
 - (c) an oral application; or
 - (d) a communication about an application for an Electronic Travel Authority (Class UD) visa.
- (4) A written communication must include:
 - (a) the applicant's full name, as set out in the application; and
 - (b) the applicant's date of birth; and
 - (c) one of the following:
 - (i) the applicant's client number;
 - (ii) the Immigration file number;
 - (iii) the number of the receipt issued by Immigration when the visa application was made; and
 - (d) if the application was made outside Australia, the name of the office at which the application was given to the Minister.
- (5) Subject to subregulation (6), a document accompanying a written communication must be:
 - (a) the original; or
 - (b) a copy of the original certified in writing to be a true copy by:
 - (i) a Justice of the Peace; or
 - (ii) a Commissioner for Declarations; or
 - (iii) a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*; or
 - (iv) a registered migration agent whose registration is not:
 - (A) suspended; or
 - (B) subject to a caution; or
 - (v) if the copy is certified in a place outside Australia:
 - (A) a registered migration agent mentioned in subparagraph (iv);or

(B) a person who is the equivalent of a Justice of the Peace or Commissioner for Declarations in that place.

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

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

Note: This regulation is subject to sections 56 and 58 of the Act, which provide that the Minister may specify the way in which additional information or comments about an application may be given by an applicant. If the Minister specifies a way in which further information or comments must be given for the purposes of either of those sections, the information or comments must be given in that way. Regulation 2.13 then does not apply.

2.14 Where written communication must be sent

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

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

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

- (1) For the purposes of subsection 58(2) of the Act (which deals with invitations to give additional information or comments), and subject to subregulation (2), the prescribed period for giving additional information or comments in response to an invitation is:
 - (a) in the case of an application for a substantive visa that was made by an applicant who is in immigration detention—3 working days after the applicant is notified of the invitation; or
 - (b) in the case of an application made by a person who is in Australia, other than a person referred to in paragraph (a):
 - (i) if the invitation is given at an interview—7 days after the interview; or
 - (ia) if the invitation is given in a telephone conversation—7 days after the invitation is given; or
 - (ii) if the invitation is given otherwise than in a way mentioned in paragraph (i) or (ia):
 - (A) in the case of an application for a Tourist (Class TR) visa, a Subclass 600 (Visitor) visa or a Medical Treatment (Visitor) (Class UB) visa—7 days after the applicant is notified of the invitation; or
 - (B) in the case of a fast track applicant—14 days after the applicant is notified of the invitation; or
 - (C) in any other case—28 days after the applicant is notified of the invitation; or
 - (d) in the case of an application made by an applicant for a Visitor (Class TV) visa:
 - (i) 7 days after the applicant is notified of the invitation; or
 - (ii) if the Minister so decides in the circumstances of the case—70 days after the applicant is notified of the invitation.
- (2) Subregulation (1) does not apply to a request for information or comments to be obtained from a third party regarding the following matters:
 - (a) the applicant's health;
 - (b) the satisfaction by the applicant of public interest criteria;
 - (c) the satisfaction of criteria relating to the applicant's capacity to communicate in English;
 - (d) assessment of the applicant's skills or qualifications.
- (3) For the purposes of paragraph 58(3)(b) of the Act (which deals with the time in which an interview is to take place), the prescribed period is:
 - (a) in the case of an application for a substantive visa that was made by an applicant who is in immigration detention—3 working days after the applicant is notified of the invitation; or
 - (b) in the case of an application made by an applicant who is in Australia, other than a person referred to in paragraph (a):

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- (i) in the case of an application for a Tourist (Class TR) visa, a Subclass 600 (Visitor) visa or a Medical Treatment (Visitor) (Class UB) visa—7 days after the applicant is notified of the invitation; or
 - (ii) in the case of a fast track applicant—14 days after the applicant is notified of the invitation; or
 - (iii) in any other case—28 days after the applicant is notified of the invitation; or
 - (c) in the case of an application made by an applicant who is not in Australia:
 - (i) 28 days; or
 - (ii) if the Minister so decides in the circumstances of the case—70 days; after the applicant is notified of the invitation.
- (4) For the purposes of subsection 58(4) or (5) of the Act (dealing with extending the period to respond to an invitation or attend for interview), the prescribed further period is:
- (a) if the applicant is in immigration detention—2 working days; or
 - (b) if the applicant is in Australia but is not in immigration detention—7 days; or
 - (c) if the applicant is not in Australia:
 - (i) 7 days; or
 - (ii) if the Minister so decides in the circumstances of the case—28 days; after the applicant is notified of the invitation.

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

2.16 Notification of decision on visa application

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

Grant of visa

- (2) If the visa is a bridging visa granted at the same time as a substantive visa, the Minister must notify the applicant of the grant of the bridging visa by notifying the applicant of the grant of the substantive visa.
- (2A) If the visa:
- (a) is a special category visa; and
 - (b) has been granted using an authorised system in accordance with an arrangement made under subsection 495A(1) of the Act;
- the Minister must notify the applicant of the grant of the visa by a general notice in immigration clearance.
- (2B) If the visa:
- (a) is a special category visa; and

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(b) has not been granted using an authorised system in accordance with an arrangement made under subsection 495A(1) of the Act;

the Minister must notify the applicant of the grant of the visa by an imprint stamped in the applicant's passport by an officer.

(2D) If none of subregulations (2) to (2B) applies, the Minister must notify the applicant of the grant of the visa by:

(a) telling the applicant orally that the visa has been granted; or

(b) notifying the applicant by one of the methods specified in section 494B of the Act.

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

Refusal to grant visa

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

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

Division 2.5—Bridging visas

2.20 Eligible non-citizen (Act, s 72)

- (1) For the purposes of the definition of *eligible non-citizen* in section 72 of the Act (which deals with persons eligible to be granted a bridging visa), the classes of persons described in subregulations (6) to (12) and (14) to (17) are prescribed.
- (6) This subregulation applies to a non-citizen who:
 - (a) either:
 - (i) bypassed immigration clearance on or after 1 September 1994 and has not subsequently been granted a substantive visa; or
 - (ii) entered Australia without authority before 1 September 1994 and has not subsequently been granted a substantive visa or entry permit; and
 - (d) has not come to the notice of Immigration as an illegal entrant or an unlawful non-citizen within 45 days of entering Australia.
- (6A) This subregulation applies to a non-citizen who:
 - (a) last held a student visa that was cancelled under section 137J of the Act; and
 - (b) has been refused immigration clearance.
- (7) This subregulation applies to a non-citizen:
 - (a) who:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) if:
 - (i) the non-citizen made a protection visa application that is not finally determined; or
 - (ii) the non-citizen applied for judicial review of a decision to refuse a protection visa; or
 - (iii) the Minister has applied for judicial review of a decision in relation to the non-citizen's protection visa application; and
 - (c) who has not turned 18; and
 - (d) in respect of whom a child welfare authority of a State or Territory has certified that release from detention is in the best interests of the non-citizen; and
 - (e) in respect of whom the Minister is satisfied that:
 - (i) arrangements have been made between the non-citizen and an Australian citizen, Australian permanent resident or eligible New Zealand citizen for the care and welfare of the non-citizen; and
 - (ii) those arrangements are in the best interests of the non-citizen; and

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- (iii) the grant of a visa to the non-citizen would not prejudice the rights and interests of any person who has, or may reasonably be expected to have, custody or guardianship of, or access to, the non-citizen.
- (8) This subregulation applies to a non-citizen:
 - (a) who:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) if:
 - (i) the non-citizen made a protection visa application that is not finally determined; or
 - (ii) the non-citizen applied for judicial review of a decision to refuse a protection visa; or
 - (iii) the Minister has applied for judicial review of a decision in relation to the non-citizen's protection visa application; and
 - (c) who has turned 75; and
 - (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.
- (9) This subregulation applies to a non-citizen:
 - (a) who:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) if:
 - (i) the non-citizen made a protection visa application that is not finally determined; or
 - (ii) the non-citizen applied for judicial review of a decision to refuse a protection visa; or
 - (iii) the Minister has applied for judicial review of a decision in relation to the non-citizen's protection visa application; and
 - (c) who has a special need (based on health or previous experience of torture or trauma) in respect of which a medical specialist appointed by Immigration has certified that the non-citizen cannot properly be cared for in a detention environment; and
 - (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.
- (10) This subregulation applies to a non-citizen:
 - (a) who:
 - (i) was refused immigration clearance; or

- (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) if:
 - (i) the non-citizen made a protection visa application that is not finally determined; or
 - (ii) the non-citizen applied for judicial review of a decision to refuse a protection visa; or
 - (iii) the Minister has applied for judicial review of a decision in relation to the non-citizen's substantive visa application; and
 - (c) who is the spouse or de facto partner of an Australian citizen, Australian permanent resident or eligible New Zealand citizen; and
 - (d) in relation to whom the Minister is satisfied that the non-citizen's relationship with that Australian citizen, Australian permanent resident or eligible New Zealand citizen is genuine and continuing; and
 - (e) who is nominated by that Australian citizen, Australian permanent resident or eligible New Zealand citizen.
- (11) This subregulation applies to a non-citizen who is a member of the family unit of a non-citizen to whom subregulation (10) applies.
- (11A) This subregulation applies to a non-citizen if:
- (a) the non-citizen is an unauthorised maritime arrival because of subsection 5AA(1A) of the Act (which is about a non-citizen born in the migration zone with a parent who is at the time of the birth an unauthorised maritime arrival because of subsection 5AA(1) of the Act); and
 - (b) a parent of the non-citizen is or was an eligible non-citizen.
- Note 1: A non-citizen born on or after the day this subregulation commences becomes an eligible non-citizen because of this subregulation:
- (a) at birth, if at least one of his or her parents is an eligible non-citizen then or had been an eligible non-citizen before then; or
 - (b) at the time after birth when at least one of the non-citizen's parents first becomes an eligible non-citizen, if none of the non-citizen's parents was an eligible non-citizen before that time.
- Note 2: A non-citizen who was born before the day this subregulation commences becomes an eligible non-citizen because of this subregulation:
- (a) on that day, if at least one of his or her parents is an eligible non-citizen then or had been an eligible non-citizen before then; or
 - (b) at the time after that day when at least one of the non-citizen's parents first becomes an eligible non-citizen, if none of the non-citizen's parents was an eligible non-citizen before that time.
- (12) This subregulation applies to a non-citizen if:
- (a) the non-citizen is in immigration detention; and
 - (b) the Minister is satisfied that the non-citizen's removal from Australia is not reasonably practicable at that time; and
 - (c) the Minister is satisfied that the non-citizen will do everything possible to facilitate the non-citizen's removal from Australia; and
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- (e) any visa applications made by the non-citizen, other than an application made following the exercise of the Minister's power under section 48B of the Act, have been finally determined.
- (13) For paragraph (12)(b), a non-citizen's removal from Australia is not to be taken to be not reasonably practicable only because the non-citizen is a party to proceedings in a court or tribunal related to an issue in connection with a visa.
- (14) This subregulation applies to:
 - (a) a non-citizen:
 - (i) who is outside Australia; and
 - (ii) in relation to whom an officer of:
 - (A) the Australian Federal Police; or
 - (B) a police force of a State or Territory; or
 - (C) the office of the Director of Public Prosecutions of the Commonwealth, a State or a Territory; or
 - (D) a body of the Commonwealth, a State or a Territory that has functions similar to those of an office of a Director of Public Prosecutions;has told Immigration in writing that:
 - (E) the non-citizen has been identified as a suspected victim of human trafficking, slavery or slavery-like practices; and
 - (F) suitable arrangements have been made for the care, safety and welfare of the non-citizen in Australia for the proposed period of the bridging visa; and
 - (b) a non-citizen (a *family member*):
 - (i) who is outside Australia; and
 - (ii) who is a member of the immediate family of a non-citizen mentioned in paragraph (a); and
 - (iii) in relation to whom the Minister has been told in writing, by an officer of the authority that told Immigration for the purposes of paragraph (a), that suitable arrangements have been made for the care, safety and welfare of the family member in Australia for the proposed period of the bridging visa.
- (15) This subregulation applies to:
 - (a) a non-citizen:
 - (i) who is in Australia; and
 - (ii) is the subject of a valid criminal justice stay certificate under Division 4 of Part 2 of the Act or an assistance notice that has not been revoked; and
 - (iii) whom the Minister is satisfied needs to travel outside Australia for compelling and compassionate reasons; and
 - (iv) in relation to whom an officer of:
 - (A) the Australian Federal Police; or
 - (B) a police force of a State or Territory; or

- (C) the office of the Director of Public Prosecutions of the Commonwealth, a State or a Territory; or
 - (D) a body of the Commonwealth, a State or a Territory that has functions similar to those of an office of a Director of Public Prosecutions;
- has told Immigration in writing that suitable arrangements have been made for the care, safety and welfare of the non-citizen in Australia for the proposed period of the bridging visa; and
- (b) a non-citizen (a *family member*):
 - (i) who is a member of the immediate family of a non-citizen mentioned in paragraph (a); and
 - (ii) in relation to whom the Minister has been told in writing, by an officer of the authority that told Immigration for the purposes of subparagraph (a)(iv), that suitable arrangements have been made for the care, safety and welfare of the family member in Australia for the proposed period of the bridging visa.
- (16) This subregulation applies to a non-citizen:
- (a) who held an enforcement visa that has ceased to be in effect; and
 - (b) who is an unlawful non-citizen; and
 - (d) who is in criminal detention.
- (17) This subregulation applies to a non-citizen if:
- (a) the non-citizen is an unlawful non-citizen; and
 - (b) section 195A of the Act is not available to the Minister in relation to the grant of a visa to the non-citizen; and
 - (c) the Minister is satisfied that the non-citizen's removal from Australia is not reasonably practicable at that time.

2.20A Applications for Bridging R (Class WR) visas

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

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

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2.20B Applications for Bridging F (Class WF) visas

- (1) For subsection 46(2) of the Act, a Bridging F (Class WF) visa is a prescribed class of visa.
- (2) Despite regulation 2.07 and Schedule 1, and as an alternative to item 1306 of Schedule 1, an application for a Bridging F (Class WF) visa is taken to have been validly made by a non-citizen to whom subregulation 2.20(14) applies, or a non-citizen to whom subregulation 2.20(15) applies regardless of whether the non-citizen has been immigration cleared, if:
 - (a) the non-citizen has been given an invitation in writing by the Minister, by one of the methods specified in section 494B of the Act, to apply for the visa; and
 - (b) the non-citizen indicates in writing to Immigration, not later than 7 days after the non-citizen is taken to have received that invitation, that he or she accepts the invitation.

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

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

- (1) For the purposes of subparagraph 68(4)(b)(ii) of the Act (which deals with the order in which bridging visas are reactivated), if a non-citizen holds more than 1 bridging visa, the bridging visa that is the most beneficial is to be determined as set out in this regulation.
- (2) The order of classes from most beneficial to least beneficial is:
 - (a) Bridging B (Class WB) visa;
 - (b) Bridging A (Class WA) visa;
 - (c) Bridging C (Class WC) visa;
 - (d) Bridging D (Class WD) visa;
 - (da) Bridging R (Class WR) visa;
 - (e) Bridging E (Class WE) visa;
 - (f) Bridging F (Class WF) visa.
- (3) A bridging visa of Class WA, WB or WC that confers an unlimited right to work is taken to be more beneficial than another bridging visa of the same class that confers a limited right to work, and a bridging visa of one of those classes that confers a limited right to work is taken to be more beneficial than one of the same class that confers no right to work.
- (4) A bridging visa of Class WA, WB or WC is taken to be more beneficial than another bridging visa of the same class that is subject to the same work conditions if the first-mentioned visa was granted before the second-mentioned visa.
- (5) If a non-citizen holds 2 or more Bridging E visas, the one that is granted later or latest is taken to be the more or most beneficial.

2.21A Grant of Bridging A (Class WA) visas without application

- (1) This regulation applies to a person:
 - (a) who is in Australia, but not in immigration clearance; and
 - (b) whose application for a Spouse (Migrant) (Class BC) visa, a Partner (Migrant) (Class BC) visa or an Interdependency (Migrant) (Class BI) visa was withdrawn, or refused (except under section 501, 501A or 501B of the Act), when the person was in Australia; and
 - (c) who was, immediately before that withdrawal or refusal, the holder of a Subclass 309 (Spouse (Provisional)) visa, a Subclass 309 (Partner (Provisional)) visa or a Subclass 310 (Interdependency (Provisional)) visa; and
 - (d) who has not already been granted a visa under this regulation in relation to the withdrawal or refusal.

- (2) This regulation also applies to a person:
 - (a) who is in Australia, but not in immigration clearance; and
 - (b) whose application for an Aged Parent (Residence) (Class BP) visa was withdrawn:
 - (i) while the person was in Australia; and
 - (ii) at the same time as the person applied for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa; and
 - (c) who was, immediately before that withdrawal, the holder of a Subclass 010 (Bridging A) visa or a Subclass 020 (Bridging B) visa that was granted in association with the application for an Aged Parent (Residence) (Class BP) visa mentioned in paragraph (b); and
 - (d) who does not hold a substantive visa; and
 - (e) who has not already been granted a Subclass 010 (Bridging A) visa under this regulation in relation to:
 - (i) the withdrawal of the application for an Aged Parent (Residence) (Class BP) visa mentioned in paragraph (b); and
 - (ii) the application for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa mentioned in paragraph (b).

- (3) This regulation also applies to a person:
 - (a) who is in Australia, but not in immigration clearance; and
 - (b) whose application for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa was withdrawn:
 - (i) while the person was in Australia; and
 - (ii) at the same time as the person applied for an Aged Parent (Residence) (Class BP) visa; and
 - (c) who was, immediately before that withdrawal, the holder of a Subclass 010 (Bridging A) visa or a Subclass 020 (Bridging B) visa that was granted in association with the application for a Contributory Aged Parent

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- (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa mentioned in paragraph (b); and
- (d) who does not hold a substantive visa; and
- (e) who has not already been granted a Subclass 010 (Bridging A) visa under this regulation in relation to:
- (i) the withdrawal of the application for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa mentioned in paragraph (b); and
 - (ii) the application for an Aged Parent (Residence) (Class BP) visa mentioned in paragraph (b).
- (4) Despite Schedule 1, the Minister must grant a Bridging A (Class WA) visa in relation to the person mentioned in subregulation (1), (2) or (3).

2.21B Grant of Bridging A (Class WA), Bridging C (Class WC) and Bridging E (Class WE) visas without application

- (1) This regulation applies if a non-citizen who is in Australia, but not in immigration clearance, has made:
- (a) a valid application for a visa on form 601E, form 48ME, form 1419 or form 1419 (Internet); or
 - (b) a valid oral application for a Tourist (Class TR) visa or a Subclass 600 (Visitor) visa; or
 - (c) a valid application under regulation 2.07AK;
- and the application has not been finally determined.
- (2) Despite anything in Schedule 1, the Minister may grant the non-citizen a Bridging A (Class WA) visa, a Bridging C (Class WC) visa or a Bridging E (Class WE) visa if the Minister is satisfied that:
- (a) at the time of decision, the non-citizen meets:
 - (i) the criteria to be satisfied by an applicant for the visa at the time of application; and
 - (ii) the criteria to be satisfied by an applicant for the visa at the time of decision; and
 - (b) the circumstances applicable to the grant exist in relation to the non-citizen.

2.22 Invalid application for substantive visa

- (1) Subject to subregulation (2), a non-citizen is taken to have applied for a Bridging D (Class WD) visa if:
- (a) the non-citizen is in Australia but is not in immigration or criminal detention; and
 - (b) he or she applies for a substantive visa of a class that may be granted in Australia; and
 - (c) the application:
 - (i) is given to the Minister in a way other than by personal attendance at an office of Immigration; and

- (ii) is invalid as an application for a substantive visa of that class; and
 - (d) the invalidity of the application is not by reason of its purporting to have been made contrary to section 48 or 48A of the Act (whether or not the Minister has made a determination under subsection 48B(1) of the Act in relation to the application or action has been taken by any person to seek the making of such a determination).
- (2) A reference in subregulation (1) to an application does not include the following:
- (a) an oral application, or an oral communication that purports to be an oral application;
 - (b) an Internet application, or an electronic communication that purports to be an Internet application.

2.23 Further application for bridging visa (Act, s 74)

For the purposes of subsection 74(2) of the Act (which deals with a further application for a bridging visa), the prescribed circumstances are that the Minister is satisfied that, although the non-citizen has not made a further application for a Bridging E (Class WE) visa after being refused a visa of that class, the non-citizen now satisfies the criteria for the grant of a visa of that class.

2.24 Eligible non-citizen in immigration detention

- (1) For paragraph 75(1)(a) of the Act (which deals with the class of bridging visa that may be granted to a non-citizen in immigration detention), the prescribed classes of bridging visa are:
- (a) Bridging E (Class WE) visa; and
 - (b) Bridging F (Class WF) visa.
- (2) For a Bridging E (Class WE) visa:
- (a) if the applicant is an eligible non-citizen of the kind mentioned in subregulation 2.20(7), (8), (9), (10) or (11), the subclass to be granted is a Subclass 051 Bridging (Protection Visa Applicant) visa; and
 - (b) if paragraph (a) does not apply, the subclass to be granted is a Subclass 050 Bridging (General) visa.
- (3) For paragraph 75(1)(b) of the Act (which deals with the time in which the Minister must make a decision on a bridging visa application), if the application is for a Bridging E (Class WE) visa, each item in the table sets out a period for the circumstances mentioned in the item.

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Division 2.5 Bridging visas

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Item	Circumstances	Period
1	The application is made by a non-citizen who has been immigration cleared An officer appointed under subregulation 2.10A(2) as a detention review officer for the State or Territory in which the applicant is detained (a <i>detention review officer</i>) has signed a declaration, within 2 working days after the application is made, that the detention review officer believes that the applicant may not pass the character test under subsection 501 (6) of the Act	90 days
2	The application is made by a non-citizen who has been immigration cleared A detention review officer has not signed a declaration mentioned in item 1 within 2 working days after the application is made	2 working days
3	The application is made by a non-citizen who is an eligible non-citizen mentioned in subregulation 2.20(6) A detention review officer has signed a declaration, within 2 working days after the application is made, that the detention review officer believes that the applicant may not pass the character test under subsection 501(6) of the Act	90 days
4	The application is made by a non-citizen who is an eligible non-citizen mentioned in subregulation 2.20(6) A detention review officer has not signed a declaration mentioned in item 3 within 2 working days after the application is made	2 working days
5	The applicant is not described in items 1 to 4 A detention review officer has signed a declaration, within 28 days after the application is made, that the detention review officer believes that the applicant may not pass the character test under subsection 501(6) of the Act	90 days
6	The applicant is not described in items 1 to 4 A detention review officer has not signed a declaration mentioned in item 5 within 28 days after the application is made	28 days

(4) For paragraph 75(1)(b) of the Act (which deals with the time in which the Minister must make a decision on a bridging visa application), if the application is for a Bridging F (Class WF) visa, each item in the table sets out a period for the circumstances mentioned in the item.

Item	Circumstances	Period
1	The application is made by a non-citizen who has been immigration cleared	2 working days
2	The application is made by a non-citizen who is an eligible non-citizen referred to in subregulation 2.20(6)	2 working days
3	The applicant is not described in item 1 or 2	28 days

Note: The prescribed conditions for the purposes of section 75 of the Act are set out in:
(a) clause 050.612 of Schedule 2 (for a Subclass 050—Bridging (General) visa); and
(b) clause 051.611 of Schedule 2 (for a Subclass 051—Bridging (Protection Visa Applicant) visa); and
(c) clause 060.611 of Schedule 2 (for a Subclass 060—Bridging F visa).

2.25 Grant of Bridging E (Class WE) visas without application

- (1) This regulation applies to:
 - (a) a non-citizen who is in criminal detention; or
 - (b) a non-citizen who:
 - (i) is unwilling or unable to make a valid application for a Bridging E (Class WE) visa; and
 - (ii) is not barred from making a valid application for a Bridging E (Class WE) visa by a provision in the Act or these Regulations, other than in item 1305 of Schedule 1.
- (2) Despite anything in Schedule 1, the Minister may grant the non-citizen a Bridging E (Class WE) visa if the Minister is satisfied that, at the time of decision:
 - (a) the non-citizen satisfies:
 - (i) the criteria set out in clauses 050.211, 050.212, 050.223, 050.224 and 050.411 of Schedule 2; and
 - (ii) the interview criterion; or
 - (b) the non-citizen satisfies the criteria set out in clauses 051.211, 051.212, 051.213, 051.221 and 051.411 of Schedule 2.
- (3) The non-citizen satisfies the *interview criterion* if an officer who is authorised by the Secretary for the purposes of subclause 050.222(1) of Schedule 2 has either:
 - (a) interviewed the non-citizen; or
 - (b) decided that it is not necessary to interview the non-citizen.

2.25AA Grant of Bridging R (Class WR) visa without application

- (1) This regulation applies to an eligible non-citizen if:
 - (a) the eligible non-citizen is an unlawful non-citizen; and
 - (b) section 195A of the Act is not available to the Minister in relation to the grant of a visa to the eligible non-citizen; and
 - (c) the Minister is satisfied that the eligible non-citizen's removal from Australia is not reasonably practicable at that time.
- (2) Despite anything in Schedule 1, the Minister may grant the eligible non-citizen a Bridging R (Class WR) visa if the Minister is satisfied that, at the time of decision, the eligible non-citizen satisfies the criteria set out in clause 070.222 of Schedule 2.

Division 2.5A—Special provisions relating to certain health criteria

2.25A Referral to Medical Officers of the Commonwealth

- (1) In determining whether an applicant satisfies the criteria for the grant of a visa, the Minister must seek the opinion of a Medical Officer of the Commonwealth on whether a person (whether the applicant or another person) meets the requirements of paragraph 4005(1)(a), 4005(1)(b), 4005(1)(c), 4006A(1)(a), 4006A(1)(b), 4006A(1)(c), 4007(1)(a), 4007(1)(b) or 4007(1)(c) of Schedule 4 unless:
 - (a) the application is for a temporary visa and there is no information known to Immigration (either through the application or otherwise) to the effect that the person may not meet any of those requirements; or
 - (b) the application is for a permanent visa that is made from a country (whether Australia or a foreign country) specified in a legislative instrument made by the Minister for the purposes of this paragraph and there is no information known to Immigration (either through the application or otherwise) to the effect that the person may not meet any of those requirements.

Note: For *foreign country*, see section 2B of the *Acts Interpretation Act 1901*.

- (2) In determining whether an applicant satisfies the criteria for the grant of a Medical Treatment (Visitor) (Class UB) visa, if there is information known to Immigration (either through the application or otherwise) to the effect that the requirement in subclause 602.212(2)(d) has not been met, the Minister must seek the opinion of a Medical Officer of the Commonwealth on whether the requirement has been met.
- (3) The Minister is to take the opinion of the Medical Officer of the Commonwealth on a matter referred to in subregulation (1) or (2) to be correct for the purposes of deciding whether a person meets a requirement or satisfies a criterion.

Division 2.6—Prescribed qualifications—application of points system

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

- (1) For subsection 93(1) of the Act, this regulation applies to an application for:
 - (a) a Skilled—Independent (Permanent) (Class SI) visa; or
 - (b) a Skilled—Nominated (Permanent) (Class SN) visa; or
 - (c) a Skilled—Regional Sponsored (Provisional) (Class SP) visa.
 - (2) Each qualification specified in an item of Schedule 6D is prescribed as a qualification in relation to the grant, to the applicant, of:
 - (a) a Subclass 189 (Skilled—Independent) visa; or
 - (b) a Subclass 190 (Skilled—Nominated) visa; or
 - (c) a Subclass 489 (Skilled—Regional (Provisional)) visa.
 - (3) The number of points prescribed for a qualification specified in an item in Schedule 6D is specified in the item.
 - (4) For Schedule 6D:
 - (a) The Minister must not give the applicant a prescribed number of points for more than one prescribed qualification in each Part of the Schedule; and
 - (b) if the applicant's circumstances satisfy more than one prescribed qualification in a Part of the Schedule, the Minister must give the applicant points for the qualification that has been satisfied that attracts the highest number of points.
- Note: Part 6D.5 of Schedule 6D (Aggregating points for employment experience qualifications) recalculates an applicant's points if the applicant has qualifications specified in Part 6D.3 of Schedule 6D (Overseas employment experience qualifications) and Part 6D.4 of Schedule 6D (Australian employment experience qualifications).
- (5) For items 6D71 and 6D72 of Part 6D.7 of Schedule 6D, in determining whether an educational qualification is of a recognised standard, the Minister must have regard to:
 - (a) whether, at the time of invitation to apply for the visa, the educational qualification had been recognised by the relevant assessing authority for the applicant's nominated skilled occupation as being suitable for the occupation; and
 - (b) whether the educational qualification is recognised by a body specified by the Minister in an instrument in writing for this paragraph; and
 - (c) the duration of the applicant's study towards the educational qualification; and
 - (d) any other relevant matter.
 - (5A) For Schedule 6D, a person meets the requirements for the award of a *specialist educational qualification* if the person satisfies the Minister that:

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- (a) the person has met the requirements for the award, by an Australian educational institution, of:
 - (i) a masters degree by research; or
 - (ii) a doctoral degree; and
- (b) the degree included study for at least 2 academic years at the institution in a field of education specified in an instrument under subregulation (5B).

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

- (5B) The Minister may, by legislative instrument, specify a field or fields of education for the purposes of paragraph (5A)(b).

- (6) In Schedule 6D and this regulation:

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

- (a) the entry level to the course leading to the qualification is:
 - (i) in the case of a bachelor's degree—satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
 - (ii) in the case of a master's degree—satisfactory completion of a bachelor's degree awarded at an Australian tertiary educational institution or of an equivalent award; and
 - (iii) in the case of a doctoral degree—satisfactory completion of a bachelor's degree awarded with honours, or a master's degree, at an Australian tertiary educational institution or of an equivalent award; and
 - (iv) in the case of a postgraduate diploma—satisfactory completion of a bachelor's degree or diploma awarded at an Australian tertiary educational institution or of an equivalent award; and
- (b) in the case of a bachelor's degree, not less than 3 years of full-time study, or the equivalent period of part-time study, is required.

diploma means:

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

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

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

trade qualification means:

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

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

2.26B Relevant assessing authorities

- (1) Subject to subregulation (1A), the Minister may, by an instrument in writing for this subregulation, specify a person or body as the relevant assessing authority for:
 - (a) a skilled occupation; and
 - (b) one or more countries;for the purposes of an application for a skills assessment made by a resident of one of those countries.
- (1A) The Minister must not make an instrument under subregulation (1) unless the person or body has been approved in writing as the relevant assessing authority for the occupation by:
 - (a) the Education Minister; or
 - (b) the Employment Minister.
- (2) The standards against which the skills of a person are assessed by a relevant assessing authority for a skilled occupation must be the standards set by the relevant assessing authority for the skilled occupation.
- (3) A relevant assessing authority may set different standards for assessing a skilled occupation for different visa classes or subclasses.

2.27C Skilled occupation in Australia

In determining whether an applicant satisfies a criterion that the applicant has been employed in a skilled occupation for a certain period, a period of employment in Australia must not be counted unless the applicant:

- (a) held:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 Bridging A visa; or
-

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- (iii) a Subclass 020 Bridging B visa;
authorising him or her to work during that period; and
- (b) complied with the conditions of that visa.

2.27D Study in Australia

In determining whether an applicant satisfies a criterion for the grant of a General Skilled Migration visa that the applicant has studied in Australia for a certain period, a period of study cannot be counted unless the applicant:

- (a) held:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 (Bridging A) visa; or
 - (iii) a Subclass 020 (Bridging B) visa;
authorising him or her to study during that period; and
- (b) complied with the conditions of that visa.

2.28 Notice of putting application aside

- (1) If the Minister puts an application aside under paragraph 94(3)(a) of the Act, he or she must notify the applicant in writing that he or she has done so.
- (2) A notification under subregulation (1) must set out:
 - (a) the decision of the Minister; and
 - (b) the reason for the decision; and
 - (c) that the decision can be reviewed; and
 - (d) the time in which an application for review may be made; and
 - (e) who can apply for the review; and
 - (f) where the application for review can be made.

Division 2.8—Special purpose visas

2.40 Persons having a prescribed status—special purpose visas (Act, s 33(2)(a))

Persons who hold prescribed status

- (1) For the purposes of paragraph 33(2)(a) of the Act (which deals with persons who are taken to have been granted special purpose visas), and subject to this regulation, each non-citizen who is included in one of the following classes of person has a prescribed status:
- (a) members of the Royal Family;
 - (b) members of the Royal party;
 - (c) guests of Government;
 - (d) SOFA forces members;
 - (e) SOFA forces civilian component members;
 - (f) Asia-Pacific forces members;
 - (g) Commonwealth forces members;
 - (h) foreign armed forces dependants;
 - (j) foreign naval forces members;
 - (l) airline positioning crew members;
 - (m) airline crew members;
 - (n) transit passengers who belong to a class of persons specified in a legislative instrument made by the Minister for the purposes of this paragraph;
 - (p) persons visiting Macquarie Island;
 - (q) children born in Australia:
 - (i) of a mother who at the time of the birth holds a special purpose visa, if only the mother is in Australia at that time; or
 - (ii) to parents both of whom, at the time of the birth, hold special purpose visas, if at that time both parents are in Australia;
 - (t) Indonesian traditional fishermen visiting the Territory of Ashmore and Cartier Islands.

Note: the terms used in paragraphs (1)(a) to (n) are defined in regulation 1.03.

Armed forces members

- (2) A person included in a class of persons specified in paragraph (1)(d), (e), (f), (g) or (j) has a prescribed status only while he or she is not absent without leave.

Armed forces dependants

- (3) A person included in a class of persons specified in paragraph (1)(h) has a prescribed status only while the person of whom he or she is a spouse or de facto partner, or on whom he or she is dependent, is not absent without leave.

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Persons must not work in Australia

- (4) A person included in a class of persons specified in paragraph (1)(d), (e), (f), (g), (j), (l) or (m) has a prescribed status only while he or she does not perform work in Australia (other than work of a kind that he or she normally performs during the course of his or her duties as a person of a kind referred to in the relevant paragraph).

Note: Regulation 2.40A sets out further restrictions on the work airline positioning crew members and airline crew members may perform in Australia.

Foreign naval forces members

- (5) A person included in a class of persons specified in paragraph (1)(j) has a prescribed status if and only if the vessel on which he or she enters the migration zone has the prior approval of the Australian government to do so.

Airline positioning crew members

- (9) A person included in a class of persons specified in paragraph (1)(l) has a prescribed status for the period of 5 working days beginning when he or she disembarks from the aircraft on which he or she travelled to Australia if and only if he or she:
- (a) holds a passport that is in force; and
 - (b) carries a letter from his or her employer certifying aircrew status and setting out the purpose of the person's travel to Australia and the arrangements for the person to leave Australia.

Airline crew members

- (10) A person included in a class of persons mentioned in paragraph (1)(m) has a prescribed status for 30 days, beginning when he or she disembarks from the aircraft on which he or she travelled to Australia, if and only if he or she:
- (a) holds a passport that is in force; and
 - (b) holds:
 - (i) a valid airline identity card issued by his or her employer; or
 - (ii) for a person who is an aircraft safety inspector:
 - (A) a valid government identity document showing that he or she is employed by a foreign government; or
 - (B) an ICAO Safety Inspector Certificate; and
 - (c) is included in a list of members of the crew of the aircraft provided to Immigration by or for the international air carrier that operates the aircraft.

Transit passengers

- (11) A person included in a class of persons specified in paragraph (1)(n) has a prescribed status only while he or she remains in the airport transit lounge.

Macquarie Island visitors

- (12) A person included in a class of persons specified in paragraph (1)(p) has a prescribed status:
- (a) only while he or she remains on Macquarie Island; and
 - (b) only if the Secretary of the Department of Primary Industries, Parks, Water and Environment of the State of Tasmania has granted written permission in advance for the person to visit that Island.

Children born in Australia

- (13) A person included in a class of persons specified in paragraph (1)(q) has a prescribed status:
- (a) in the case of a child referred to in subparagraph (1)(q)(i)—until the child's mother ceases to have a prescribed status; or
 - (b) in the case of a child referred to in subparagraph (1)(q)(ii)—until whichever of the child's parents last ceases to have a prescribed status ceases to have that status.

Indonesian traditional fishermen

- (16) A person included in the class of persons specified in paragraph (1)(t) has a prescribed status only if the person:
- (a) is a traditional fisherman within the meaning of the Memorandum of Understanding made at Jakarta on 7 November 1974 between Australia and the Republic of Indonesia regarding the operations of Indonesian fishermen in areas of the Australian Exclusive Fishing Zone and Continental Shelf; and
 - (b) when visiting the Territory of Ashmore and Cartier Islands, is engaged in an activity described in the Memorandum of Understanding, as varied by the 1989 Practical Guidelines for Implementation contained in the Annex to the Agreed Minutes of Meeting between officials of Australia and Indonesia on fisheries of 29 April 1989.

Note: The Memorandum, as varied by the Guidelines, has the general effect of accommodating a traditional fisherman engaged in taking fish or marine sedentary organisms by a method that has been a traditional method over decades of time, who is:

- (a) actually taking fish or marine sedentary organisms; or
- (b) sheltering within the territorial sea of the Territory; or
- (c) on shore at the island known as West Islet, for the purpose only of getting fresh water.

Expressly excluded is fishing using a motorised, or motor-assisted, vessel or method.

2.40A Conditions applicable to special purpose visas

For subsection 41(1) of the Act:

- (a) a special purpose visa taken to be granted to an airline positioning crew member is subject to condition 8117; and
- (b) a special purpose visa taken to be granted to an airline crew member is subject to condition 8118.

Division 2.9—Cancellation or refusal to grant visas

Subdivision 2.9.1—Cancellation under Subdivision C of Division 3 of Part 2 of the Act

Note: The obligations of a visa holder under Subdivision C of Division 3 of Part 2 of the Act are: to supply correct information on his or her application form (s 101), including answers on passenger cards (s 102); not to give bogus documents (s 103); to notify changes in circumstances (s 104); and, if incorrect information is given, to correct it (s 105). The obligation is not affected by other sources of information being available (s 106). If the Minister gives a visa holder a notice under s 107(1) stating that there may have been non-compliance and asking the visa holder for a response, the answers must be correct (s 107(2)).

2.41 Whether to cancel visa—incorrect information or bogus document (Act, s 109(1)(c))

For the purposes of paragraph 109(1)(c) of the Act, the following circumstances are prescribed:

- (a) the correct information;
- (b) the content of the genuine document (if any);
- (c) whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document;
- (d) the circumstances in which the non-compliance occurred;
- (e) the present circumstances of the visa holder;
- (f) the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act;
- (g) any other instances of non-compliance by the visa holder known to the Minister;
- (h) the time that has elapsed since the non-compliance;
- (j) any breaches of the law since the non-compliance and the seriousness of those breaches;
- (k) any contribution made by the holder to the community.

Note: Under s. 109 of the Act, the Minister may cancel a visa if there was non-compliance by the holder of a kind set out in Subdivision C of Division 3 of Part 2 of the Act. The Minister is to have regard to the prescribed circumstances in considering whether to cancel the visa.

2.42 Notice of decision to cancel visa under s 109

- (1) If the Minister cancels a visa under section 109 of the Act, the Minister must notify the former holder of the visa in writing that the visa has been cancelled.
- (2) A notification under subregulation (1) must set out the ground for the cancellation.

Note 1: Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or

- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

Subdivision 2.9.2—Cancellation generally

2.43 Grounds for cancellation of visa (Act, s 116)

- (1) For the purposes of paragraph 116(1)(g) of the Act (which deals with circumstances in which the Minister may cancel a visa), the grounds prescribed are:
- (a) that the Foreign Minister has personally determined that:
- (i) in the case of a visa other than a relevant visa—the holder of the visa is a person whose presence in Australia:
- (A) is, or would be, contrary to Australia’s foreign policy interests; or
- (B) may be directly or indirectly associated with the proliferation of weapons of mass destruction; or
- (ii) in the case of a relevant visa—the holder of the visa is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction;

Note: A *relevant visa* is explained in subregulation (3).

- (aa) in the case of a person who is the holder of a visa other than a relevant visa, the person:
- (i) is declared under paragraph 6(1)(b) or (2)(b) of the *Autonomous Sanctions Regulations 2011* for the purpose of preventing the person from travelling to, entering or remaining in Australia; and
- (ii) is not a person for whom the Foreign Minister has waived the operation of the declaration in accordance with regulation 19 of the *Autonomous Sanctions Regulations 2011*;
- (b) that the holder of the visa has been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*;
- (e) in the case of:
- (i) the holder of an Electronic Travel Authority (Class UD) visa who is under 18; or
- (iii) the holder of a Tourist (Class TR) visa, that was applied for using form 601E, who is under 18; or
- (iv) the holder of a Visitor (Class TV) visa who is under 18; or
- (iva) the holder of a Subclass 600 (Visitor) visa in the Tourist stream, that was applied for using form 1419 (Internet), who is under 18;
- that either:
- (v) both of the following apply:

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- (A) the law of the visa holder's home country did not permit the removal of the visa holder;
- (B) at least 1 of the persons who could lawfully determine where the additional applicant is to live did not consent to the grant of the visa; or
- (vi) the grant of the visa was inconsistent with any Australian child order in force in relation to the visa holder;
- (ea) in the case of a Subclass 601 (Electronic Travel Authority) visa—that, despite the grant of the visa, the Minister is satisfied that the visa holder:
 - (i) did not have, at the time of the grant of the visa, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted; or
 - (ii) has ceased to have that intention;
- (f) in the case of:
 - (i) the holder of an Electronic Travel Authority (Class UD) visa who is under 18 and is not accompanied by his or her parent or guardian; or
 - (iii) the holder of a Tourist (Class TR) visa, that was applied for using a form 601E, who:
 - (A) is under 18; and
 - (B) is not accompanied by his or her parent or guardian; or
 - (iv) the holder of a Visitor (Class TV) visa who is under 18 and is not accompanied by his or her parent or guardian; or
 - (v) the holder of a Subclass 600 (Visitor) visa in the Tourist stream, that was applied for using form 1419 (Internet), who is under 18 and is not accompanied by his or her parent or guardian;that the holder of that visa does not have adequate funds, or adequate arrangements have not been made, for the holder's maintenance, support and general welfare during the holder's proposed visit in Australia;
- (g) in the case of a temporary visa held by a person other than a visa holder mentioned in paragraph (h)—that the visa holder asks the Minister, in writing, to cancel the visa;
- (h) in the case of a temporary visa held by a person who is under the age of 18 years and is not a spouse, a former spouse or engaged to be married—that:
 - (i) a person who is at least 18 years of age, and who can lawfully determine where the visa holder is to live, asks the Minister, in writing, to cancel the visa; and
 - (ii) the Minister is satisfied that there is no compelling reason to believe that the cancellation of the visa would not be in the best interests of the visa holder;
- (i) in the case of the holder of:
 - (i) a Subclass 456 (Business (Short Stay)) visa; or
 - (ia) a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa; or
 - (ib) a Subclass 600 (Visitor) visa in the Business Visitor stream; or
 - (ii) a Subclass 956 (Electronic Travel Authority (Business Entrant—Long Validity)) visa; or

- (iii) a Subclass 977 (Electronic Travel Authority (Business Entrant—Short Validity)) visa—
that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for business purposes;
- (ia) in the case of a holder of:
- (i) a Subclass 400 (Temporary Work (Short Stay Specialist)) visa; or
 - (ia) a Subclass 401 (Temporary Work (Long Stay Activity)) visa; or
 - (ib) a Subclass 402 (Training and Research) visa; or
 - (ic) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (id) a Subclass 407 (Training) visa; or
 - (ie) a Subclass 408 (Temporary Activity) visa; or
 - (iii) a Subclass 416 (Special Program) visa; or
 - (v) a Subclass 420 (Entertainment) visa; or
 - (xi) a Subclass 488 (Superyacht Crew) visa;
- that the grounds in subregulation (1A) are met; or
- (j) in the case of the holder of:
- (i) a Subclass 600 (Visitor) visa that is not in the Business Visitor stream;
or
 - (ii) a Subclass 676 (Tourist) visa; or
 - (iii) a Subclass 679 (Sponsored Family Visitor) visa;
- that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to visit, or remain in, Australia as a visitor temporarily for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, de facto partner, child, brother or sister of the visa holder or for another purpose, other than a purpose related to business or medical treatment;
- (k) in the case of the holder of a Subclass 976 (Electronic Travel Authority (Visitor)) visa—that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to visit Australia temporarily for tourism purposes;
- (ka) in the case of a holder of a Subclass 651 (eVisitor) visa—that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted;
- (kb) in the case of the holder of a Subclass 457 (Temporary Work (Skilled)) visa that was granted on the basis that the applicant met the requirements of subregulation 457.223(4)—that, despite the grant of the visa, the Minister is satisfied that:
- (i) the holder did not have a genuine intention to perform the occupation mentioned in paragraph 457.223(4)(d) at the time of grant of the visa;
or

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- (ii) the holder has ceased to have a genuine intention to perform that occupation; or
- (iii) the position associated with the nominated occupation is not genuine;
- (l) in the case of the holder of a Subclass 457 (Temporary Work (Skilled)) visa who is a primary sponsored person in relation to a person who is, or was, a standard business sponsor or party to a labour agreement (the *sponsor*)—that:
 - (i) the sponsor has not complied, or is not complying, with the undertaking given by the business sponsor in accordance with approved form 1067, 1196 or 1196 (Internet); or
 - (ii) the sponsor has given false or misleading information to Immigration or the Tribunal; or
 - (iii) the sponsor has failed to satisfy a sponsorship obligation; or
 - (iv) the sponsor has been cancelled or barred under section 140M of the Act; or
 - (v) the labour agreement has been terminated, has been suspended or has ceased;
- (la) in the case of the holder of a Subclass 457 (Temporary Work (Skilled)) visa who was granted the visa on the basis of a nomination of an activity under regulation 1.20GA as in force immediately before 14 September 2009—that the holder is living or working within an area specified by the Minister in an instrument in writing for this paragraph;
- (lc) in the case of a holder of:
 - (i) a Subclass 401 (Temporary Work (Long Stay Activity)) visa; or
 - (ia) a Subclass 402 (Training and Research) visa; or
 - (ib) a Subclass 407 (Training) visa; or
 - (ic) a Subclass 408 (Temporary Activity) visa; or
 - (iii) a Subclass 416 (Special Program) visa; or
 - (xi) a Subclass 488 (Superyacht Crew) visa;who is a primary sponsored person in relation to a person who is or was an approved sponsor—that 1 of the grounds specified in subregulation (1B) is met;
- (ld) in the case of a holder of:
 - (i) a Subclass 401 (Temporary Work (Long Stay Activity)) visa; or
 - (ia) a Subclass 402 (Training and Research) visa; or
 - (ib) a Subclass 407 (Training) visa; or
 - (iii) a Subclass 420 (Entertainment) visa; or
 - (ix) a Subclass 457 (Temporary Work (Skilled)) visa;who is a secondary sponsored person in relation to a person who is or was an approved sponsor—that the person who is or was an approved sponsor of the primary sponsored person to whom the secondary sponsored person is related has not listed the secondary sponsored person in the latest nomination in which the primary sponsored person is identified;
- (le) in the case of a holder of:
 - (i) a Subclass 401 (Temporary Work (Long Stay Activity)) visa; or

- (ia) a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) or 408.224 (domestic worker) of Schedule 2; or
- (iv) a Subclass 457 (Temporary Work (Skilled)) visa;
who is a primary sponsored person or a secondary sponsored person in relation to a person who is or was an approved sponsor—that the person who is or was an approved sponsor has paid the return travel costs of the holder in accordance with the sponsorship obligation mentioned in regulation 2.80 or 2.80A;
- (m) that the Minister reasonably suspects that the holder of the visa has committed an offence under section 232A, 233, 233A, 234 or 236 of the Act;
- (n) that:
 - (i) a certificate is in force under paragraph 271(1)(l) of the Act, stating that a computer program was not functioning correctly; and
 - (ii) both of the following apply:
 - (A) the visa was granted at the time, or during the period, that is specified in the certificate;
 - (B) the grant of the visa is an outcome from the operation of that program, under an arrangement made under subsection 495A(1) of the Act, that is specified in the certificate;
- (o) that the Minister reasonably suspects that the visa has been obtained as a result of the fraudulent conduct of any person;
- (oa) in the case of the holder of a temporary visa (other than a Subclass 050 (Bridging (General)) visa, a Subclass 051 (Bridging (Protection Visa Applicant)) visa or a Subclass 444 (Special Category) visa)—that the Minister is satisfied that the holder has been convicted of an offence against a law of the Commonwealth, a State or Territory (whether or not the holder held the visa at the time of the conviction and regardless of the penalty imposed (if any));
- (ob) in the case of the holder of a temporary visa (other than a Subclass 050 (Bridging (General)) visa, a Subclass 051 (Bridging (Protection Visa Applicant)) visa or a Subclass 444 (Special Category) visa)—that the Minister is satisfied that the holder is the subject of a notice (however described) issued by Interpol for the purpose of providing a warning or intelligence that:
 - (i) the holder has committed an offence against a law of another country and is likely to commit a similar offence; or
 - (ii) the holder is a serious and immediate threat to public safety;
- (p) in the case of the holder of a Subclass 050 (Bridging (General)) visa or a Subclass 051 (Bridging (Protection Visa Applicant)) visa—that the Minister is satisfied that the holder:
 - (i) has been convicted of an offence against a law of the Commonwealth, a State, a Territory or another country (other than if the conviction resulted in the holder's last substantive visa being cancelled under paragraph (oa)); or

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- (ii) has been charged with an offence against a law of the Commonwealth, a State, a Territory or another country; or
 - (iii) is the subject of a notice (however described) issued by Interpol for the purposes of locating the holder or arresting the holder; or
 - (iv) is the subject of a notice (however described) issued by Interpol for the purpose of providing either or both of a warning or intelligence that the holder:
 - (A) has committed an offence against a law of another country; and
 - (B) is likely to commit a similar offence; or
 - (v) is the subject of a notice (however described) issued by Interpol for the purpose of providing a warning that the holder is a serious and immediate threat to public safety;
 - (q) in the case of the holder of a Subclass 050 (Bridging (General)) visa or a Subclass 051 (Bridging (Protection Visa Applicant)) visa—that:
 - (i) an agency responsible for the regulation of law enforcement or security in Australia has advised the Minister that the holder is under investigation by that agency; and
 - (ii) the head of that agency has advised the Minister that the holder should not hold a Subclass 050 (Bridging (General)) visa or a Subclass 051 (Bridging (Protection Visa Applicant)) visa;
 - (r) in the case of the holder of a Subclass 771 (Transit) visa—that, despite the grant of the visa, the Minister reasonably suspects that the holder of the visa:
 - (i) did not have, at the time of the grant of the visa, an intention to transit Australia; or
 - (ii) has ceased to have that intention.
- (1A) For paragraph (1)(ia), the grounds are that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have at the time of grant of the visa, or has ceased to have, a genuine intention to stay temporarily in Australia to carry out the work or activity in relation to which:
- (a) the visa holder's visa was granted; or
 - (b) if the visa holder is identified in a nomination after the visa is granted—the visa holder was identified in a nomination.
- (1B) For paragraph (1)(lc), the grounds are the following:
- (a) the approval of the person as a sponsor has been cancelled, or the approved sponsor has been barred, under section 140M of the Act;
 - (c) if the primary sponsored person is required to be identified in a nomination—the criteria for approval of the latest nomination in which the primary sponsored person is identified are no longer met;
 - (d) the person who is or was an approved sponsor has failed to satisfy a sponsorship obligation.

- (1C) For subsection 116(1A) of the Act, the Minister may have regard to the matter mentioned in subregulation (1D) in determining whether he or she is satisfied as mentioned in paragraph 116(1)(fa) of the Act.
- (1D) For subregulation (1C), the matter is that participation in a course of study by the holder of a student visa has been deferred or temporarily suspended by the provider of the course of study:
- (a) because of the conduct of the holder; or
 - (b) because of the circumstances of the holder, other than compassionate or compelling circumstances; or
 - (c) because of compassionate or compelling circumstances of the holder, if the Minister is satisfied that the circumstances have ceased to exist; or
 - (d) on the basis of evidence or a document given to the provider about the holder's circumstances, if the Minister is satisfied that the evidence or document is fraudulent or misrepresents the holder's circumstances.
- (2) For subsection 116(3) of the Act, the circumstances in which the Minister must cancel a visa are:
- (a) in the case of a visa other than a relevant visa—each of the circumstances comprising the grounds set out in:
 - (i) sub-subparagraphs (1)(a)(i)(A) and (B); and
 - (ii) paragraph (1)(aa); and
 - (iii) paragraph (1)(b); and
 - (aa) in the case of a relevant visa—the circumstance comprising the grounds set out in subparagraph (1)(a)(ii).
- (3) In this regulation:

relevant visa means a visa of any of the following subclasses:

- (aa) Subclass 050;
- (aaa) Subclass 070;
- (a) Subclass 200;
- (b) Subclass 201;
- (c) Subclass 202;
- (d) Subclass 203;
- (e) Subclass 204;
- (g) Subclass 449;
- (i) Subclass 785, including a Subclass 785 visa granted before 2 December 2013;
- (j) Subclass 786;
- (k) Subclass 866.

2.44 Invitation to comment—response

- (1) For the purposes of subsection 121(2) of the Act (which deals with the time in which a holder must give comments, other than at interview), the periods set out in subregulation (2) are prescribed.

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- (2) The periods referred to in subregulation (1) begin when the visa holder is notified under subsection 119(2), or receives an invitation under subsection 120(2), as the case requires, and are:
- (a) if the visa holder is in Australia—5 working days; or
 - (b) if the visa holder is outside Australia:
 - (i) where the cancellation of his or her visa is being considered in Australia—28 days; or
 - (ii) where the cancellation of his or her visa is being considered at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth in the country in which the visa holder is present—5 working days; or
 - (iii) where the cancellation of his or her visa is being considered at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth in another country than the country in which the visa holder is present—28 days.
- (3) For the purposes of subsection 121(4) of the Act (which deals with extension of time to give comments), 5 working days is prescribed.

Note 1: Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

2.45 Notification of decision (Act, s 127)

For the purposes of section 127 of the Act (which deals with notification of decisions to cancel a visa), the way of notifying the visa holder of a decision is in writing.

Note 1: Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

2.46 Time to respond to notice of cancellation (Act, s 129(1)(c))

For the purposes of paragraph 129(1)(c) of the Act (which deals with response to cancellation of a visa), the following periods are prescribed:

- (a) if the former holder of the visa is outside Australia when he or she is given a notice of the cancellation—28 days;
- (b) if he or she is in Australia when he or she is given notice of the cancellation:
 - (i) if he or she wishes the cancellation to be reconsidered while he or she is in Australia—5 minutes; or

(ii) if he or she wishes the cancellation to be reconsidered while he or she is outside Australia, and he or she departs Australia as soon as possible after being given a notice of the cancellation—28 days; beginning when the former holder of the visa is given a notice of the cancellation.

2.47 Notice of cancellation (Act, s 129)

For the purposes of subsection 129(2) of the Act (which deals with giving notice of cancellation of a visa), the way of giving the former holder of the visa a notice of the cancellation is in writing.

Note 1: Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

2.48 Revocation of cancellation (Act, s 131(2))

For the purposes of subsection 131(2) of the Act (which deals with the circumstances in which cancellation of a visa must not be revoked), the circumstance is that the visa was cancelled on a ground prescribed under subsection 116(3).

Note: The grounds prescribed under subsection 116 (3) are grounds on which a visa **must** be cancelled. For those grounds, see subregulation 2.39(2).

2.49 Notice of decision whether to revoke cancellation (Act, s 132)

For the purposes of section 132 of the Act (which deals with notification of a decision about cancellation of a visa), the way of notifying the visa holder of a decision is in writing.

Note 1: Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

2.49A Additional personal powers for Minister to cancel visas—period to submit information, material and representations

- (1) For section 133D of the Act, information or material submitted by or on behalf of a person to satisfy the Minister that a ground for cancelling the person's visa does not exist must not be considered by the Minister unless the information or material:
- (a) is in writing; and
 - (b) is submitted within 28 days after the information or material is requested.
-

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- (2) For paragraph 133F(3)(b) of the Act, a representation must:
- (a) be in writing; and
 - (b) be made within 28 days after the person is given the notice and information under paragraph 133F(3)(a) of the Act.

2.50 Cancellation of business visas

- (2) For paragraph (a) of the definition of **business visa** in subsection 134(10) of the Act, the following classes of visas are prescribed:
- (b) Business Skills—Business Talent (Permanent) (Class EA);
 - (c) Business Skills—Established Business (Residence) (Class BH);
 - (d) Business Skills (Provisional) (Class EB);
 - (e) Business Skills (Provisional) (Class UR);
 - (f) Business Skills (Permanent) (Class EC).

- (4) For the definition of **return visa** in subsection 134(10) of the Act:

return visa means:

- (a) a Return (Residence) (Class BB) visa; or
- (b) a Resident Return (Temporary) (Class TP) visa.

2.50AA Cancellation of regional sponsored employment visas

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

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

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

Subdivision 2.9.3—Refusal or cancellation on character grounds

2.52 Refusal or cancellation of visa—representations in respect of revocation of decision by Minister (Act, s 501C and 501CA)

- (1) This regulation applies to representations made to the Minister under paragraphs 501C(3)(b) and 501CA(3)(b) of the Act.
- (2) The representations must be made:
 - (a) for a representation under paragraph 501C(3)(b) of the Act—within 7 days after the person is given the notice under subparagraph 501C(3)(a)(i) of the Act; and
 - (b) for a representation under paragraph 501CA(3)(b) of the Act—within 28 days after the person is given the notice and the particulars of relevant information under paragraph 501CA(3)(a) of the Act.
- (3) The representations must be in writing, and:
 - (a) in English; or
 - (b) if the representations are in a language other than English—accompanied by an accurate English translation.
- (4) The representations must include the following information:
 - (a) the full name of the person to whom the representations relate;
 - (b) the date of birth of that person;
 - (c) one of the following:
 - (i) the applicant's client number;
 - (ii) the Immigration file number;
 - (iii) the number of the receipt issued by Immigration when the visa application was made;
 - (d) if the visa application was made outside Australia—the name of the Australian mission or Immigration office at which the visa application was given to the Minister;
 - (e) a statement of the reasons on which the person relies to support the representations.
- (5) A document accompanying the representations must be:
 - (a) the original document; or
 - (b) a copy of the original document that is certified in writing to be a true copy by:
 - (i) a Justice of the Peace; or
 - (ii) a Commissioner for Declarations; or
 - (iii) a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*; or
 - (iv) if the copy is certified in a place outside Australia:
 - (A) a person who is the equivalent of a Justice of the Peace or a Commissioner for Declarations in that place; or
 - (B) a Notary Public.

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- (6) If a document accompanying the representations is in a language other than English, the document must be accompanied by an accurate English translation.
- (7) For section 501C of the Act (see subsection (10)), a person is not entitled to make representations about revocation of an original decision if:
 - (a) the person is not a detainee; and
 - (b) the person is a non-citizen in Australia; and
 - (c) either:
 - (i) the person has been refused a visa under section 501 or 501A of the Act; or
 - (ii) the last visa held by the person has been cancelled under either of those sections.

2.53 Submission of information or material (Act, s 501D)

- (1) For section 501D of the Act, information or material must be:
 - (a) in writing; and
 - (b) received by the Minister or Immigration within 28 days after the person is invited by the Minister or Immigration to submit information or material.
- (2) A document containing the information or material must be:
 - (a) the original document; or
 - (b) a copy of the original document that is certified in writing to be a true copy by:
 - (i) a Justice of the Peace; or
 - (ii) a Commissioner for Declarations; or
 - (iii) a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*; or
 - (iv) if the copy is certified in a place outside Australia:
 - (A) a person who is the equivalent of a Justice of the Peace or a Commissioner for Declarations in that place; or
 - (B) a Notary Public.
- (3) The document must contain, or be accompanied by, the following written information:
 - (a) the full name of the person who is the subject of the decision to which the information or material contained in the document relates;
 - (b) the date of birth of that person;
 - (c) one of the following:
 - (i) the applicant's client number;
 - (ii) the Immigration file number;
 - (iii) the number of the receipt issued by Immigration when the visa application was made;
 - (d) if the visa application was made outside Australia—the name of the Australian mission or Immigration office at which the visa application was given to the Minister.

- (4) If the document is submitted in a language other than English, it must be accompanied by an accurate English translation.

Division 2.10—Documents relating to cancellation of visas

2.54 Definitions for Division 2.10

In this Division:

carer of the minor means an individual:

- (a) who is at least 18 years of age; and
- (b) who the Minister reasonably believes:
 - (i) has day-to-day care and responsibility for the minor; or
 - (ii) works in or for an organisation that has day-to-day care and responsibility for the minor and whose duties, whether alone or jointly with another person, involve care and responsibility for the minor.

document includes:

- (a) a letter; and
- (b) an invitation, notice, notification, statement or summons, if it is in writing.

2.55 Giving of documents relating to proposed cancellation, cancellation or revocation of cancellation

- (1) This regulation applies to:
 - (a) the giving of a document to a holder or former holder of a visa relating to the proposed cancellation or the cancellation of a visa under the Act; and
 - (ab) the giving of a document under subsection 133E(2) of the Act relating to a decision to cancel a visa under subsection 133A(1) or 133C(1) of the Act; and
 - (b) the giving of a document under subsection 501G(3) of the Act relating to a decision to:
 - (i) cancel a visa under section 501, 501A, 501B, 501BA or 501F of the Act; or
 - (ii) not revoke a decision to cancel a visa under section 501CA of the Act; and
 - (c) the giving of a document to a holder or former holder of a visa relating to the revocation of the cancellation of a visa under the Act.
- (2) However, this regulation does not apply in relation to:
 - (a) a notice to which section 137J of the Act relates; or
 - (b) a person who is in immigration detention.

Note: See regulation 5.02.

- (3) Subject to subregulation (3A), for a document mentioned in paragraph (1)(a) or (c), the Minister must give the document in one of the following ways:
 - (a) by handing it to the person personally;
 - (b) by handing it to another person who:

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- (i) is at the person's last residential or business address known to the Minister; and
- (ii) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
- (iii) appears to be at least 16 years of age;
- (c) by dating it, and then dispatching it:
 - (i) within 3 working days (in the place of dispatch) of the date of the document; and
 - (ii) by prepaid post or by other prepaid means;
to the person's last residential address, business address or post box address known to the Minister;
- (d) by transmitting the document by:
 - (i) fax; or
 - (ii) email; or
 - (iii) other electronic means;
to the last fax number, email address or other electronic address known to the Minister.

Note: Subregulation (3A) deals with giving documents mentioned in paragraphs (1)(a) and (c) to minors.

- (3A) If the person is a minor, the Minister must give a document mentioned in paragraph (1)(a) or (c) in 1 of the following ways:
- (a) by handing it to the minor personally;
 - (b) by handing it to another person who:
 - (i) is at the last residential or business address for the minor that is known to the Minister; and
 - (ii) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
 - (iii) appears to be at least 16 years of age;
 - (c) by dating and then dispatching the document:
 - (i) within 3 working days (in the place of dispatch) of the date of the document; and
 - (ii) by prepaid post or by other prepaid means;
to the minor's last residential address, business address or post box address known to the Minister;
 - (d) by transmitting the document by:
 - (i) fax; or
 - (ii) email; or
 - (iii) other electronic means;
to the minor's last fax number, email address or other electronic address known to the Minister;
 - (e) by dating and then dispatching the document:
 - (i) within 3 working days (in the place of dispatch) of the date of the document; and
 - (ii) by prepaid post or by other prepaid means;

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to a carer of the minor at the last residential address, business address or post box address for the carer of the minor that is known to the Minister;

(f) by transmitting the document by:

- (i) fax; or
- (ii) email; or
- (iii) other electronic means;

to a carer of the minor at the last fax number, email address or other electronic address for the carer of the minor that is known to the Minister.

- (4) Subject to subregulation (4A), for a document mentioned in paragraph (1)(ab) or (b):
- (a) if the person has held the visa for less than 1 year when the document is to be given, the Minister must give the document in one of the ways mentioned in subregulation (3); and
 - (b) if the person has held the visa for at least 1 year when the document is to be given:
 - (i) Immigration must try to find the person; and
 - (ii) the Minister must give the document in one of the ways mentioned in subregulation (3).

Note: Subregulation (4A) deals with giving documents mentioned in paragraph (1)(b) to minors.

- (4A) If the person is a minor:
- (a) the Minister must give a document mentioned in paragraph (1)(ab) or (b) in 1 of the ways mentioned in subregulation (3A); and
 - (b) if the minor has held the visa for at least 1 year when the document is to be given, Immigration must try to find the minor.
- (4B) If the Minister gives a document to a carer of the minor in accordance with this regulation, the Minister is taken to have given the document to the minor.
- (4C) Nothing in subregulation (4B) prevents the Minister giving the minor a copy of the document.
- (5) If the Minister gives a document to a person by handing it to the person, the person is taken to have received the document when it is handed to the person.
- (6) If the Minister gives a document to a person by handing it to another person at a residential or business address, the person is taken to have received the document when it is handed to the other person.
- (7) If the Minister gives a document to a person by dispatching it by prepaid post or by other prepaid means, the person is taken to have received the document:
- (a) if the document was dispatched from a place in Australia to an address in Australia—7 working days (in the place of that address) after the date of the document; or
 - (b) in any other case—21 days after the date of the document.

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- (8) If the Minister gives a document to a person by transmitting it by fax, email or other electronic means, the person is taken to have received the document at the end of the day on which the document is transmitted.
- (9) If:
- (a) the Minister purports to give a document to a person by a method specified in this regulation but makes an error in doing so; and
 - (b) the person nonetheless receives the document or a copy of the document; the Minister is taken to have given the document to the person and the person is taken to have received the document:
 - (c) at the time specified by this regulation for that method; or
 - (d) if the person can show that he or she received the document at a later time—at that later time.

Part 2A—Sponsorship applicable to Division 3A of Part 2 of the Act

Division 2.11—Introductory

2.56 Application

For section 140A of the Act, Division 3A of Part 2 of the Act applies to the following kinds of visa:

- (a) the Subclass 401 (Temporary Work (Long Stay Activity)) visa;
- (aa) the Subclass 402 (Training and Research) visa;
- (b) the Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream;
- (ba) the Subclass 407 (Training) visa;
- (bb) the Subclass 408 (Temporary Activity) visa;
- (c) the Subclass 416 (Special Program) visa;
- (e) the Subclass 420 (Entertainment) visa;
- (k) the Subclass 457 (Temporary Work (Skilled)) visa;
- (m) the Subclass 488 (Superyacht Crew) visa.

2.57 Interpretation

- (1) In this Part:

Australian organisation means a body corporate, a partnership or an unincorporated association (other than an individual or a sole trader) that is lawfully established in Australia.

base rate of pay means the rate of pay payable to an employee for his or her ordinary hours of work, but not including any of the following:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

Note: This definition is based on the definition of **base rate of pay** in section 16 of the *Fair Work Act 2009*.

competent authority means a Department or regulatory authority that administers or enforces a law that is alleged to have been contravened.

discriminatory recruitment practice means a recruitment practice that directly or indirectly discriminates against a person based on the immigration status or citizenship of the person, other than a practice engaged in to comply with a Commonwealth, State or Territory law.

foreign government agency includes the following:

- (a) an organisation:
 - (i) that is conducted under the official auspices of a foreign national government; and
 - (ii) that is operating in Australia;
including foreign tourist and media bureaus, trade offices and other foreign government entities;
- (b) a foreign diplomatic or consular mission in Australia;
- (c) an organisation:
 - (i) that is conducted under the official auspices of an international organisation recognised by Australia; and
 - (ii) that is operating in Australia.

government agency means an agency of the Commonwealth or of a State or Territory.

information and communication technology activity means any of the following occupations mentioned in the ASCO:

- (a) 1224-11 Information Technology Manager – Computer Services Manager;
- (b) 2231-11 Systems Manager;
- (c) 2231-13 Systems Designer;
- (d) 2231-15 Software Designer;
- (e) 2231-17 Applications and Analyst Programmer;
- (f) 2231-19 Systems Programmer;
- (g) 2231-21 Computer Systems Auditor;
- (h) 2231-79 Computing Professionals (not elsewhere classified).

overseas employer, in relation to a person who applies, or proposes to apply, for a Training and Research (Class GC) visa, means:

- (a) a body corporate, or an unincorporated association (other than an individual or sole trader), that conducts activities under the auspices of the government of a foreign country or a province, territory or state of a foreign country; and
- (b) a multilateral agency that:
 - (i) is operating; and
 - (ii) has operated for a continuous period of 12 months before the date of the application; or
- (c) a registered business that:
 - (i) is conducted by a body corporate or unincorporated association (other than an individual or sole trader) outside Australia; and
 - (ii) is actively and lawfully operating outside Australia; and
 - (iii) has actively and lawfully operated outside Australia for a continuous period of 12 months before the date of application; and
 - (iv) employs the person.

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participant costs, for a primary sponsored person in a professional development program conducted by a professional development sponsor, means the costs of:

- (a) the primary sponsored person's travel and entry to Australia; and
- (b) the primary sponsored person's tuition for the professional development program; and
- (c) the primary sponsored person's accommodation in Australia; and
- (d) the primary sponsored person's living expenses in Australia; and
- (e) the primary sponsored person's health insurance in Australia; and
- (f) the primary sponsored person's return travel from Australia.

primary sponsored person:

- (a) in relation to a person who is or was approved as a sponsor in a class of sponsor (the **approved sponsor**) under subsection 140E(1) of the Act—means:
 - (i) a person:
 - (A) who holds a visa prescribed for the purpose of section 140A of the Act; and
 - (B) who:
 - (I) was last identified in an approved nomination by the approved sponsor; or
 - (II) satisfied the primary criteria for the grant of the visa on the basis of the approved sponsor having agreed, in writing, to be the approved sponsor in relation to the person; or
 - (ii) a person:
 - (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and
 - (C) whose last substantive visa was a visa prescribed for section 140A of the Act; and
 - (D) who:
 - (I) was last identified in an approved nomination by the approved sponsor; or
 - (II) satisfied the primary criteria for the grant of the visa on the basis of the approved sponsor having agreed, in writing, to be the approved sponsor in relation to the person; or
- (b) in relation to a party to a work agreement (other than a Minister) or a former party to a work agreement (other than a Minister)—means:
 - (i) a person:
 - (A) who holds a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (B) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or
 - (ii) a person:

- (A) who is in the migration zone; and
- (B) who does not hold a substantive visa; and
- (C) whose last substantive visa was a Subclass 457 (Temporary Work (Skilled)) visa; and
- (D) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement.

professional development agreement means a written agreement between:

- (a) a person applying for approval as a professional development sponsor; and
- (b) an overseas employer of the person who is intended to be a primary sponsored person.

professional development program means a program that meets the requirements mentioned in subregulation 2.60(2).

secondary sponsored person:

- (a) in relation to a person who is or was approved as a sponsor in a class of sponsor (the ***approved sponsor***) under subsection 140E(1) of the Act— means:
 - (i) a person:
 - (A) who holds a visa prescribed for the purposes of section 140A of the Act; and
 - (B) who was granted the visa on the basis of having satisfied the secondary criteria for the grant of the visa; and
 - (C) either:
 - (I) who was last identified in an approved nomination by the approved sponsor; or
 - (II) in relation to whom the approved sponsor was the last person to have agreed, in writing, to the person being a secondary sponsored person in relation to the approved sponsor; or
 - (ii) a person:
 - (A) who holds a visa prescribed for the purposes of section 140A of the Act; and
 - (B) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
 - (C) who is a member of the family unit of:
 - (I) a primary sponsored person who was last identified in an approved nomination by the approved sponsor; or
 - (II) a primary sponsored person whom the approved sponsor has agreed in writing to be the approved sponsor of; or
 - (iii) a person:
 - (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and

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- (C) whose last substantive visa was a visa prescribed for the purposes of section 140A of the Act; and
 - (D) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
 - (E) who is a member of the family unit of:
 - (I) a primary sponsored person who was last identified in an approved nomination by the approved sponsor; or
 - (II) a primary sponsored person whom the approved sponsor has agreed in writing to be the approved sponsor of; or
- (iv) a person:
- (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and
 - (C) whose last substantive visa was a visa prescribed for the purposes of section 140A of the Act; and
 - (D) who was granted the visa on the basis of satisfying the secondary criteria for the grant of the visa; and
 - (E) either:
 - (I) who was last identified in an approved nomination by the approved sponsor; or
 - (II) in relation to whom the approved sponsor was the last person to have agreed in writing to the person being a secondary sponsored person in relation to the approved sponsor; or
- (b) in relation to a party to a work agreement (other than a Minister) or a former party to a work agreement (other than a Minister)—means:
- (i) a person:
 - (A) who holds a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (B) who was granted the visa on the basis of having satisfied the secondary criteria for the grant of the visa; and
 - (C) either:
 - (I) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or
 - (II) in relation to whom the party to a work agreement or the former party to a work agreement was the last person to have agreed, in writing, to the person being a secondary sponsored person in relation to the party to a work agreement or the former party to a work agreement; or
 - (ii) a person:
 - (A) who holds a Subclass 457 (Temporary Work (Skilled)) visa; and

- (B) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
 - (C) who is a member of the family unit of a primary sponsored person who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or
- (iii) a person:
- (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and
 - (C) whose last substantive visa was a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (D) who was granted the visa on the basis of satisfying the secondary criteria for the grant of the visa; and
 - (E) either:
 - (I) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or
 - (II) in relation to whom the party to a work agreement or the former party to a work agreement was the last person to have agreed, in writing, to the person being a secondary sponsored person in relation to the party to a work agreement or the former party to a work agreement; or
- (iv) a person:
- (A) who is in the migration zone; and
 - (B) who does not hold a substantive visa; and
 - (C) whose last substantive visa was a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (D) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
 - (E) who is a member of the family unit of a primary sponsored person who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement.

sporting organisation means:

- (a) an Australian organisation that administers or promotes sport or sporting events; or
- (b) a government agency that administers or promotes sport or sporting events; or
- (c) a foreign government agency that administers or promotes sport or sporting events.

Note: ***Approved sponsor*** is defined in subsection 5(1) of the Act.

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- (3A) In this Part, a set of terms and conditions of employment for a person (the *first set*) is *less favourable* than another set of terms and conditions of employment for a person if:
- (a) the earnings provided for in the first set are less than the earnings provided for in the other set; and
 - (b) there is no substantial contrary evidence that the first set is not less favourable than the other set.
- (5) In this Part, a person will perform a *volunteer role* if:
- (a) the person will not receive remuneration for performing the duties of the position, other than the following:
 - (i) reimbursement for reasonable expenses incurred by the person in performing the duties;
 - (ii) prize money; and
 - (b) the duties would not otherwise be carried out by an Australian citizen or an Australian permanent resident in return for wages.

2.57A Meaning of *earnings*

- (1) In this Part, a person's *earnings* include:
- (a) the person's wages; and
 - (b) amounts applied or dealt with in any way on the person's behalf or as the person directs; and
 - (c) the agreed money value of non-monetary benefits.
- (2) However, an employee's *earnings* do not include the following:
- (a) payments the amount of which cannot be determined in advance;
 - (b) reimbursements;
 - (c) contributions to a superannuation fund to the extent that they are contributions to which subregulation (4) applies.
- Note: Some examples of payments covered by paragraph (a) are commissions, incentive-based payments and bonuses, and overtime (unless the overtime is guaranteed).
- (3) *Non-monetary benefits* are benefits other than an entitlement to a payment of money:
- (a) to which the employee is entitled in return for the performance of work; and
 - (b) for which a reasonable money value has been agreed by the employee and the employer.
- (4) This subregulation applies to contributions that the employer makes to a superannuation fund to the extent that 1 or more of the following applies:
- (a) the employer would have been liable to pay a superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* in relation to the person if the amounts had not been so contributed;

- (b) the employer is required to contribute to the fund for the employee's benefit in relation to a defined benefit interest (within the meaning of section 292-175 of the *Income Tax Assessment Act 1997*) of the employee;
- (c) the employer is required to contribute to the fund for the employee's benefit under a law of the Commonwealth, or of a State or a Territory.

Note: This definition is based on the definition of *earnings* in section 332 of the *Fair Work Act 2009*.

Division 2.12—Classes of sponsor

2.58 Classes of sponsor

For subsection 140E(2) of the Act, the following are classes of sponsor in relation to which a person may be approved as a sponsor:

- (a) a standard business sponsor;
- (b) a temporary activities sponsor.

Note: The definition of *approved sponsor* in subsection 5(1) of the Act provides that an approved sponsor includes a person (other than a Minister) who is a party to a work agreement. A party to a work agreement is not required to apply for approval as a sponsor, and is not required to be approved as a sponsor in relation to a class of sponsor.

Division 2.13—Criteria for approval of sponsor

Note: A party to a work agreement is not required to apply for approval as a sponsor, and is not required to be approved as a sponsor in relation to a class of sponsor.

2.59 Criteria for approval as a standard business sponsor

For subsection 140E(1) of the Act, the criterion that must be satisfied for the Minister to approve an application by a person (the *applicant*) for approval as a standard business sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for approval as a standard business sponsor in accordance with the process set out in regulation 2.61; and
- (b) the applicant is not a standard business sponsor; and
- (c) the applicant is lawfully operating a business (whether in or outside Australia); and
- (d) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or more—the applicant meets the benchmarks for the training of Australian citizens and Australian permanent residents specified in an instrument in writing made for this paragraph; and
- (e) if the applicant is lawfully operating a business in Australia, and has traded in Australia for less than 12 months—the applicant has an auditable plan to meet the benchmarks specified in the instrument made for paragraph (d); and
- (f) if the applicant is lawfully operating a business in Australia:
 - (i) the applicant has attested, in writing, that the applicant has a strong record of, or a demonstrated commitment to, employing local labour; and
 - (ii) the applicant has declared, in writing, that the applicant will not engage in discriminatory recruitment practices; and
- (g) either:
 - (i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or
 - (ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and
- (h) if the applicant is lawfully operating a business outside Australia and does not lawfully operate a business in Australia—the applicant is seeking to be approved as a standard business sponsor in relation to a holder of, or an applicant or a proposed applicant (the *visa applicant*) for, a Subclass 457 (Temporary Work (Skilled)) visa, and the applicant intends for the visa holder or visa applicant to:
 - (i) establish, or assist in establishing, on behalf of the applicant, a business operation in Australia with overseas connections; or
 - (ii) fulfil, or assist in fulfilling, a contractual obligation of the applicant; and

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- (i) the applicant has provided to the Minister the number of persons who the applicant proposes to nominate during the period of the applicant's approval as a standard business sponsor, and:
 - (i) the proposed number is reasonable, having regard to the information provided to the Minister; or
 - (ii) if the Minister proposes another number of persons as part of considering the application—the applicant has agreed, in writing, to nominate no more than the other number of persons during the period of the applicant's approval as a standard business sponsor; and
- (j) if the applicant has previously been a standard business sponsor:
 - (i) the applicant:
 - (A) fulfilled any commitments the applicant made relating to meeting the applicant's training requirements during the period of the applicant's most recent approval as a standard business sponsor; and
 - (B) complied with the applicable obligations under Division 2.19 relating to the applicant's training requirements during the period of the applicant's most recent approval as a standard business sponsor; or
 - (ii) it is reasonable to disregard subparagraph (i).

Note: For paragraph (b), a person approved as a standard business sponsor before 14 September 2009 can make a new application to become a standard business sponsor on or after 14 September 2009. A person approved as a standard business sponsor on or after 14 September 2009, and who has not ceased to be a standard business sponsor, can apply under section 140GA of the Act for a variation of the terms of approval as a sponsor to extend the duration of the sponsorship approval—see regulation 2.68.

2.60 Criterion for approval as a temporary activities sponsor

For the purposes of subsection 140E(1) of the Act, the criterion that must be satisfied for the Minister to approve a person (the *applicant*) as a temporary activities sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for approval as a temporary activities sponsor in accordance with the process referred to in regulation 2.61; and
- (b) the applicant is not already a temporary activities sponsor; and
- (c) the applicant is:
 - (i) an Australian organisation that is lawfully operating in Australia; or
 - (ii) a government agency; or
 - (iii) a foreign government agency; or
 - (iv) a sporting organisation that is lawfully operating in Australia; or
 - (v) a religious institution that is lawfully operating in Australia; or
 - (vi) a person who is the captain or owner of a superyacht, or an organisation that operates a superyacht; or
 - (vii) a foreign organisation that is lawfully operating in Australia; and
- (d) either:
 - (i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or

- (ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and
- (e) the applicant has the capacity to comply with the sponsorship obligations applicable to a person who is or was a temporary activities sponsor.

2.60S Additional criteria for all classes of sponsor—transfer, recovery and payment of costs

- (1) For subsection 140E(1) of the Act, the criteria in this regulation are in addition to the criteria in regulations 2.59 and 2.60.
- (2) The criteria that must be satisfied for the Minister to approve an application by a person (the **applicant**) for approval as a sponsor mentioned in any of regulations 2.59 and 2.60 include a criterion that the Minister is satisfied that:
 - (a) the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, associated with the applicant becoming an approved sponsor; and
 - (b) the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, associated with the applicant becoming an approved sponsor; and
 - (c) the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (d) the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (e) if the applicant has agreed to be the sponsor of an applicant for, a proposed applicant for, or a holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder; and
 - (f) if the applicant has agreed to be the sponsor of an applicant for, a proposed applicant for, or a holder of:
 - (i) a Subclass 402 (Training and Research) visa; or

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- (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;
- the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder.
- (3) The criteria that must be satisfied for the Minister to approve an application by a person (the **applicant**) for approval as a sponsor mentioned in any of regulations 2.59 and 2.60 include a criterion that the Minister is satisfied that:
- (a) the applicant has not recovered from another person some or all of the costs, including migration agent costs:
 - (i) associated with the person becoming an approved sponsor; or
 - (ii) that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (b) the applicant has not sought to recover from another person some or all of the costs, including migration agent costs:
 - (i) associated with the person becoming an approved sponsor; or
 - (ii) that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (c) if the applicant has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;the applicant has not recovered from another person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder; and
 - (d) if the applicant has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;the applicant has not sought to recover from another person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder.
- (4) However, the Minister may disregard a criterion referred to in subregulation (2) or (3) if the Minister considers it reasonable to do so.

Division 2.14—Application for approval as a sponsor

2.61 Application for approval as a sponsor

- (1) For subsection 140F(1) of the Act, a person may apply to the Minister for approval as a sponsor in relation to a class of sponsor in accordance with the process set out in this Division.

Note: A party to a work agreement is not required to apply for approval as a sponsor, and is not required to apply for approval as a sponsor in relation to a class of sponsor.

- (3A) If a person makes an application for approval as a standard business sponsor or a temporary activities sponsor:

- (a) the application must be made using the internet; and
- (b) the application must be made using the form specified by the Minister in an instrument in writing for this paragraph; and
- (c) the application must be accompanied by the fee specified by the Minister in an instrument in writing for this paragraph.

- (3B) For subregulation (3A):

- (a) if the Minister specifies in an instrument in writing for this subregulation a different way of making an application for approval as a standard business sponsor or a temporary activities sponsor, in circumstances specified in the instrument, the application may be made in that way; and
- (b) if the Minister specifies in the instrument a form for the different way of making the application, the application must be made using that form; and
- (c) if the Minister specifies in the instrument a different application fee for making the application, the application must be accompanied by that fee.

Note: Subregulation (3A) relates to making applications on the internet. It may be necessary for the Minister to specify arrangements other than those in subregulation (3A) if special circumstances exist.

2.62 Notice of decision

- (1) The Minister must notify an applicant for approval as a sponsor, in writing, of a decision under subsection 140E(1) of the Act:
- (a) within a reasonable period after making the decision; and
 - (b) by attaching a written copy of the approval or refusal; and
 - (c) if the decision is a refusal—by attaching a statement of reasons for the refusal.
- (2) If the application was made using approved form 1196 (Internet) or 1478 (Internet), the Minister may provide the notification to the applicant in an electronic form.

Division 2.15—Terms of approval of sponsorship

2.63 Standard business sponsor, temporary activities sponsor or temporary work sponsor

- (1) For subsection 140G(2) of the Act, a kind of term of an approval as a standard business sponsor, temporary activities sponsor or temporary work sponsor is the duration of the approval.
- (2) The duration of the approval may be specified:
 - (a) as a period of time; or
 - (b) as ending on a particular date; or
 - (c) as ending on the occurrence of a particular event.

2.64 Professional development sponsor

- (1) For subsection 140G(3) of the Act, the terms of approval as a professional development sponsor are prescribed in this regulation.
- (2) An approval as a professional development sponsor has effect only in relation to:
 - (a) the professional development program specified in the application for approval, as varied from time to time by agreement between the professional development sponsor and the Secretary; and
 - (b) the professional development agreement or agreements specified in the application for approval; and
 - (c) the overseas employer or employers specified in the application for approval.
- (3) An approval as a professional development sponsor ceases on the earlier of:
 - (a) 3 years after the day on which the approval is granted; and
 - (b) the day on which the professional development agreement specified in the application for approval ends.

2.64A Special program sponsor

- (1) For subsection 140G(3) of the Act, the terms of approval as a special program sponsor are prescribed in this regulation.
- (2) An approval as a special program sponsor has effect only in relation to:
 - (a) the special program specified in the application for approval, as varied from time to time by agreement between the special program sponsor and the Secretary; and
 - (b) the special program agreement or agreements specified in the application for approval, as varied from time to time by agreement between the special program sponsor and the Secretary; and
 - (c) the employer or employers specified in the application for approval; and

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- (d) if a special program is agreed by the sponsor and the Secretary subsequent to the approval—the special program that will operate for the duration of the approval, as varied from time to time by agreement between the special program sponsor and the Secretary; and
- (e) if a special program agreement is agreed by the sponsor and the Secretary subsequent to the approval—the agreement that will operate within the duration of the approval, as varied from time to time by agreement between the special program sponsor and the Secretary.

Division 2.16—Variation of terms of approval of sponsorship

2.65 Application

This Division applies in relation to an approval as:

- (a) a standard business sponsor; or
- (b) a temporary activities sponsor.

Note: Amendments of these Regulations that commenced on 19 November 2016 closed the sponsorship categories of long stay activity sponsor, training and research sponsor, special program sponsor, entertainment sponsor and superyacht crew sponsor. The terms of an approval as one of those sponsors are no longer able to be varied.

2.66 Process to apply for variation of terms of approval

- (1) For subsection 140GA(1) of the Act, a person may apply to the Minister for a variation of a term of an approval as a standard business sponsor or a temporary activities sponsor in accordance with the process set out in this regulation.
- (2) The application must be made using the internet.
- (3) The application must be made using the form specified by the Minister in an instrument in writing for this subregulation.
- (4) The application must be accompanied by the fee specified by the Minister in an instrument in writing for this subregulation.
- (5) For subregulations (2) to (4):
 - (a) if the Minister specifies in an instrument in writing for this subregulation a different way of making an application for a variation of a term of an approval as a standard business sponsor or a temporary activities sponsor, in circumstances specified in the instrument, the application may be made in that way; and
 - (b) if the Minister specifies in the instrument a form for the different way of making the application, the application must be made using that form; and
 - (c) if the Minister specifies in the instrument a different application fee for making the application, the application must be accompanied by that fee.

Note: Subregulation (2) relates to making applications on the internet. It may be necessary for the Minister to specify arrangements other than those in subregulations (2) to (4) if special circumstances exist.

2.67 Terms of approval that may be varied

For paragraph 140GA(2)(a) of the Act, a term of approval as a standard business sponsor or a temporary activities sponsor that may be varied is the duration of the approval.

2.68 Criteria for variation of terms of approval—standard business sponsor

For paragraph 140GA(2)(b) of the Act, the criterion that must be satisfied for the Minister to vary a term of an approval of a person (the *applicant*) as a standard business sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for the variation in accordance with the process set out in regulation 2.66; and
- (b) the applicant is a standard business sponsor; and
- (d) the applicant is lawfully operating a business (whether in or outside Australia); and
- (e) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or more—the applicant meets the benchmarks for the training of Australian citizens and Australian permanent residents specified in an instrument in writing made for this paragraph; and
- (f) if the applicant is lawfully operating a business in Australia, and has traded in Australia for less than 12 months—the applicant has an auditable plan to meet the benchmarks specified in the instrument in writing made for paragraph (e); and
- (g) if the applicant is lawfully operating a business in Australia:
 - (i) the applicant has attested, in writing, that the applicant has a strong record of, or a demonstrated commitment to, employing local labour; and
 - (ii) the applicant has declared, in writing, that the applicant will not engage in discriminatory recruitment practices; and
- (h) either:
 - (i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or
 - (ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and
- (i) if the applicant is lawfully operating a business outside Australia and does not lawfully operate a business in Australia—the applicant is seeking to vary the terms of approval as a standard business sponsor in relation to a holder of, or an applicant or a proposed applicant (the *visa applicant*) for, a Subclass 457 (Temporary Work (Skilled)) visa, and the applicant intends for the visa holder or visa applicant to:
 - (i) establish, or assist in establishing, on behalf of the applicant, a business operation in Australia with overseas connections; or
 - (ii) fulfil, or assist in fulfilling, a contractual obligation of the applicant; and
- (j) the applicant has provided to the Minister the number of persons who the applicant proposes to nominate during the period of the applicant's approval as a standard business sponsor, as varied, and:
 - (i) the proposed number is reasonable, having regard to the information provided to the Minister; or

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- (ii) if the Minister proposes another number of persons as part of considering the application—the applicant has agreed, in writing, to nominate no more than the other number of persons during the period of the applicant’s approval as a standard business sponsor; and
- (k) either:
 - (i) the applicant:
 - (A) fulfilled any commitments the applicant made relating to meeting the applicant’s training requirements during the period of the applicant’s most recent approval as a standard business sponsor; and
 - (B) complied with the applicable obligations under Division 2.19 relating to the applicant’s training requirements during the period of the applicant’s most recent approval as a standard business sponsor; or
 - (ii) it is reasonable to disregard subparagraph (i).

Note: The criteria in regulation 2.68J, relating to transfer, recovery and payment of costs, must also be satisfied.

2.68A Criteria for variation of terms of approval—temporary activities sponsor

For the purposes of paragraph 140GA(2)(b) of the Act, the criteria that must be satisfied for the Minister to vary a term of a person’s approval as a temporary activities sponsor are that the Minister is satisfied that:

- (a) the person satisfies the criterion for approval as a temporary activities sponsor set out in regulation 2.60; and
- (b) the person has applied for the variation in accordance with the process referred to in regulation 2.61.

Note: The criteria in regulation 2.68J, relating to transfer, recovery and payment of costs, must also be satisfied.

2.68J Additional criteria for variation of terms of approval for all classes of sponsor—transfer, recovery and payment of costs

- (1) For paragraph 140GA(2)(b) of the Act, the criteria in this regulation are in addition to the criteria in regulations 2.68 and 2.68A.
- (2) The criteria that must be satisfied for the Minister to vary a term of an approval of a person (the *applicant*) as a sponsor mentioned in regulation 2.68 or 2.68A include a criterion that the Minister is satisfied that:
 - (a) the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, associated with the applicant becoming an approved sponsor; and
 - (b) the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, associated with the applicant becoming an approved sponsor; and

- (c) the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (d) the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (e) if the applicant has agreed to be the sponsor of an applicant for, a proposed applicant for, or a holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder; and
 - (f) if the applicant has agreed to be the sponsor of an applicant for, a proposed applicant for, or a holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder.
- (3) The criteria that must be satisfied for the Minister to vary a term of an approval of a person (the **applicant**) as a sponsor mentioned in regulation 2.68 or 2.68A include a criterion that the Minister is satisfied that:
- (a) the applicant has not recovered from another person some or all of the costs, including migration agent costs:
 - (i) associated with the person becoming an approved sponsor; or
 - (ii) that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (b) the applicant has not sought to recover from another person some or all of the costs, including migration agent costs:
 - (i) associated with the person becoming an approved sponsor; or
 - (ii) that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
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- (c) if the applicant has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;the applicant has not recovered from another person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder;
 - (d) if the applicant has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;the applicant has not sought to recover from another person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder.
- (4) However, the Minister may disregard a criterion referred to in subregulation (2) or (3) if the Minister considers it reasonable to do so.

2.69 Notice of decision

- (1) The Minister must notify an applicant for a variation of a term of an approval, in writing, of a decision under subsection 140GA(2) of the Act:
 - (a) within a reasonable period after making the decision; and
 - (b) by attaching a written copy of the decision to vary or not to vary the term of the approval; and
 - (c) if the decision is not to vary the term of the approval—by attaching a statement of reasons for the decision.
- (2) If the application was made using approved form 1196 (Internet) or 1478 (Internet), the Minister may provide the notification to the applicant in an electronic form.

Division 2.17—Nominations

2.70 Application

This Division applies to a person who is:

- (a) a standard business sponsor; or
- (b) a party to a work agreement (other than a Minister); or
- (c) a temporary work sponsor (other than a special program sponsor or a superyacht crew sponsor); or
- (d) a temporary activities sponsor.

2.72 Criteria for approval of nomination—Subclass 457 (Temporary Work (Skilled)) visa

- (1) This regulation applies to a person who is:
 - (a) a standard business sponsor; or
 - (b) a party to a work agreement (other than a Minister);who, under paragraph 140GB(1)(b) of the Act, has nominated an occupation in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Temporary Work (Skilled)) visa.
- (2) For subsection 140GB(2) of the Act, the criteria that must be satisfied for the Minister to approve a nomination by a person are set out in subregulations (3) to (12).
- (3) The Minister is satisfied that the person has made the nomination in accordance with the process set out in regulation 2.73.
- (4) The Minister is satisfied that the person is:
 - (a) a standard business sponsor; or
 - (b) a party to a work agreement (other than a Minister).
- (5) The Minister is satisfied that the person has identified in the nomination the visa holder, or the applicant or proposed applicant for the visa, who will work in the nominated occupation.
- (6) If the person identifies a holder of a Subclass 457 (Temporary Work (Skilled)) visa (the **visa holder**) for subregulation (5), the Minister is satisfied that the person:
 - (a) has listed on the nomination each other holder of a visa of that kind who was granted the visa on the basis of having the necessary relationship with the visa holder as mentioned in clause 457.321 of Schedule 2; and
 - (b) if the Minister requires the visa holder to demonstrate that he or she has the skills necessary to perform the occupation—the visa holder demonstrates that he or she has those skills in the manner specified by the Minister.

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- (7) For paragraph (6)(a), the Minister may disregard the fact that 1 or more persons required to be listed on the nomination are not listed, if the Minister is satisfied it is reasonable in the circumstances to do so.
- (7A) In addition to subregulation (6):
- (a) if:
- (i) the person identifies a holder of a Subclass 457 (Temporary Work (Skilled)) visa (the *visa holder*) for subregulation (5); and
 - (ii) the Subclass 457 (Temporary Work (Skilled)) visa was granted after the Minister had waived the requirements of paragraph 4006A (1)(c) of Schedule 4 on the basis of a written undertaking made by the current sponsor of the visa holder (as set out in subclause 4006A(2) of that Schedule);
- the Minister is satisfied that the person has provided, in writing, an undertaking that is equivalent to the undertaking made by the current sponsor of the visa holder; and
- (b) if:
- (i) the person identifies a holder of a Subclass 457 (Temporary Work (Skilled)) visa (the *visa holder*) for subregulation (5); and
 - (ii) the person has listed on the nomination a person described in paragraph (6)(a); and
 - (iii) the Subclass 457 (Temporary Work (Skilled)) visa was granted to the person described in paragraph (6)(a) after the Minister had waived the requirements of paragraph 4006A (1)(c) of Schedule 4 on the basis of a written undertaking made by the current sponsor of the visa holder (as set out in subclause 4006A(2) of that Schedule);
- the Minister is satisfied that the person has provided, in writing, an undertaking that is equivalent to the undertaking made by the current sponsor of the visa holder.
- (8) If the nomination was made before 1 July 2010—the Minister is satisfied that the person has provided the following information as part of the nomination:
- (a) if there is a 6-digit ASCO code for the nominated occupation—the 6-digit ASCO code;
 - (b) if there is no 6-digit ASCO code for the occupation, and the person is a standard business sponsor—the name of the occupation as it appears in the instrument in writing made for the purposes of paragraph (10)(a);
 - (c) if there is no 6-digit ASCO code for the occupation and the person is a party to a work agreement—the name of the occupation as it appears in the work agreement;
 - (d) the location or locations at which the nominated occupation is to be carried out.
- (8A) If the nomination is made on or after 1 July 2010—the Minister is satisfied that the person has provided the following information as part of the nomination:
- (a) if there is a 6-digit ANZSCO code for the nominated occupation—the name of the occupation and the corresponding 6-digit ANZSCO code;

- (b) if:
 - (i) there is no 6-digit ANZSCO code for the nominated occupation; and
 - (ii) the person is a standard business sponsor;the name of the occupation and the corresponding 6-digit code as they are specified in the instrument in writing made for paragraph (10)(aa);
 - (c) if:
 - (i) there is no 6-digit ANZSCO code for the nominated occupation; and
 - (ii) the person is a party to a work agreement;the name of the occupation and the corresponding 6-digit code (if any) as they are specified in the work agreement;
 - (d) the location or locations at which the nominated occupation is to be carried out.
- (8B) The Minister is satisfied that the person has, in writing, certified as part of the nomination whether or not the person has engaged in conduct, in relation to the nomination, that constitutes a contravention of subsection 245AR(1) of the Act.
- (9) The Minister is satisfied that either:
- (a) there is no adverse information known to Immigration about the person or a person associated with the person; or
 - (b) it is reasonable to disregard any adverse information known to Immigration about the person or a person associated with the person.
- (10) If the person is a standard business sponsor—the Minister is satisfied that:
- (a) if the nomination was made before 1 July 2010—the nominated occupation corresponds to an occupation specified by the Minister in an instrument in writing for this paragraph; and
 - (aa) if the nomination is made on or after 1 July 2010—the nominated occupation and its corresponding 6-digit code correspond to an occupation and its corresponding 6-digit code specified by the Minister in an instrument in writing for this paragraph; and
 - (b) if required by the instrument mentioned in paragraph (a) or (aa)—the nomination of an occupation mentioned in the instrument is supported, in writing to the Minister, by an organisation specified by the Minister in an instrument in writing for this paragraph; and
 - (c) the terms and conditions of employment of the person identified in the nomination will be no less favourable than the terms and conditions (including, if applicable, the terms and conditions provided by an enterprise agreement under the *Fair Work Act 2009*) that are provided or would be provided to an Australian citizen or an Australian permanent resident for performing equivalent work at the same location; and
 - (cc) the base rate of pay, under the terms and conditions of employment mentioned in paragraph (c), that:
 - (i) are provided; or
 - (ii) would be provided;

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- to an Australian citizen or an Australian permanent resident, will be greater than the temporary skilled migration income threshold specified by the Minister in an instrument in writing for this paragraph; and
- (d) if the nomination was made before 1 July 2010—the person has certified as part of the nomination, in writing, that:
- (i) the tasks of the position include a significant majority of the tasks of:
 - (A) the nominated occupation listed in the ASCO; or
 - (B) the nominated occupation specified in an instrument in writing for paragraph (a); and
 - (ii) if the person is lawfully operating a business outside Australia but does not lawfully operate a business in Australia:
 - (A) the nominated occupation is a position in the business of the standard business sponsor; or
 - (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
 - (iii) if the person lawfully operates a business in Australia:
 - (A) the nominated occupation is a position with a business, or an associated entity, of the person; or
 - (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
 - (iv) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified:
 - (A) for the occupation in the ASCO; or
 - (B) if there is no ASCO code for the nominated occupation—for the occupation in the instrument in writing made for the purpose of paragraph (a); and
- (e) if the nomination is made on or after 1 July 2010—the person has certified as part of the nomination, in writing, that:
- (i) the tasks of the position include a significant majority of the tasks of:
 - (A) the nominated occupation listed in the ANZSCO; or
 - (B) the nominated occupation specified in an instrument in writing for paragraph (aa); and
 - (ii) if the person is lawfully operating a business outside Australia but does not lawfully operate a business in Australia:
 - (A) the nominated occupation is a position in the business of the standard business sponsor; or
 - (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
 - (iii) if the person lawfully operates a business in Australia:

- (A) the nominated occupation is a position with a business, or an associated entity, of the person; or
- (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
- (iv) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified:
 - (A) for the occupation in the ANZSCO; or
 - (B) if there is no ANZSCO code for the nominated occupation—for the occupation in the instrument in writing made for paragraph (aa); and
- (f) the position associated with the nominated occupation is genuine; and
- (g) if the person has identified in the nomination the holder of a Subclass 457 (Temporary Work (Skilled)) visa in relation to whom the requirements in subclause 457.223(6) of Schedule 2 were met—one of the following applies:
 - (i) the requirements in subclause 457.223(6) of Schedule 2 continue to be met;
 - (ii) if:
 - (A) the holder would be required to hold a licence, registration or membership that is mandatory to perform the occupation nominated in relation to the holder; and
 - (B) in order to obtain the licence, registration or membership, the holder would need to demonstrate that the holder has undertaken a language test specified by the Minister under subparagraph 457.223(4)(eb)(iv) of Schedule 2 and achieved a score that is better than the score specified for the test by the Minister under subparagraph 457.223(4)(eb)(v) of Schedule 2;
the holder demonstrates that he or she has proficiency in English of at least the standard required for the grant (however described) of the licence, registration or membership;
 - (iii) the holder is an exempt applicant within the meaning of subclause 457.223(4) of Schedule 2;
 - (iv) unless subparagraph (ii) applies—the holder:
 - (A) has undertaken a language test specified by the Minister under subparagraph 457.223(4)(eb)(iv) of Schedule 2; and
 - (B) achieved within the period specified by the Minister in a legislative instrument for this subparagraph, in a single attempt at the test, the score specified by the Minister under subparagraph 457.223(4)(eb)(v) of Schedule 2; and
- (h) either:
 - (i) the person will:

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- (A) engage the visa holder, the applicant for a visa or the proposed applicant for a Subclass 457 (Temporary Work (Skilled)) visa only as an employee under a written contract of employment; and
 - (B) give a copy of that contract to the Minister; or
 - (ii) the nominated occupation is an occupation specified by the Minister in an instrument in writing for sub-subparagraph (e)(iii)(B).
- (10AA) For paragraphs (10)(c) and (cc), if no Australian citizen or Australian permanent resident performs equivalent work in the person's workplace at the same location, the person must determine, using the method specified by the Minister in an instrument in writing for this subregulation:
 - (a) the terms and conditions of employment; and
 - (b) the base rate of pay, under the terms and conditions of employment; that would be provided to an Australian citizen or an Australian permanent resident to perform equivalent work in the person's workplace at the same location.
- (10AB) Paragraphs (10)(c) and (cc) do not apply if the annual earnings of the person identified in the nomination are equal to or greater than the amount specified by the Minister in an instrument in writing for this subregulation.
- (10A) The Minister may disregard the criterion in paragraph (10)(cc) for the purpose of subregulation (2) if:
 - (a) the base rate of pay will not be greater than the temporary skilled migration income threshold specified for that paragraph; and
 - (b) the annual earnings are equal to or greater than the temporary skilled migration income threshold; and
 - (c) the Minister considers it reasonable to do so.
- (11) If the person is a party to a work agreement (other than a Minister)—the Minister is satisfied that:
 - (a) the nominated occupation is specified in the work agreement as an occupation that the person may nominate; and
 - (b) if the nomination was made before 1 July 2010—the person has certified as part of the nomination, in writing, that:
 - (i) the tasks of the position include a significant majority of the tasks of:
 - (A) if the nomination is made using an ASCO code—the nominated occupation listed in the ASCO; or
 - (B) if the nomination is not made using an ASCO code—the nominated occupation specified in the work agreement; and
 - (ii) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified for the occupation in the work agreement; and
 - (c) if the nomination is made on or after 1 July 2010—the person has certified as part of the nomination, in writing, that:
 - (i) the tasks of the position include a significant majority of the tasks of:

- (A) if the nomination is made using an ANZSCO code—the nominated occupation listed in the ANZSCO; or
 - (B) if the nomination is not made using an ANZSCO code—the nominated occupation specified in the work agreement; and
 - (ii) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified for the occupation in the work agreement.
- (12) If the person is a party to a work agreement and the work agreement specifies requirements that must be met by the party to the work agreement—the Minister is satisfied that the requirements of the work agreement have been met.

2.72AA Labour market testing

For paragraph 140GBA(1)(a) of the Act, the class of standard business sponsors is a prescribed class of sponsor.

2.72A Criteria for approval of nomination—Subclass 407 (Training) visa

- (1) This regulation applies to a person (the *sponsor*):
- (a) who is:
 - (i) a temporary activities sponsor; or
 - (ii) if the nomination referred to in paragraph (b) is made on or before 18 May 2017—a professional development sponsor or a training and research sponsor; and
 - (b) who has nominated, under paragraph 140GB(1)(b) of the Act, a program of occupational training (the *nominated program*) in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa (the *nominee*).
- (2) For the purposes of subsection 140GB(2) of the Act, the criteria that must be satisfied for the Minister to approve the nomination are the criteria set out in this regulation.

Criteria

- (3) The Minister is satisfied that the sponsor is:
- (a) a temporary activities sponsor; or
 - (b) if the nomination is made on or before 18 May 2017—a professional development sponsor or a training and research sponsor.
- (4) The Minister is satisfied that the sponsor made the nomination in accordance with regulation 2.73A.
- (5) The Minister is satisfied that the nominee will participate in the nominated program.
- (6) If the nominee holds a visa, the Minister is satisfied that the sponsor has listed on the nomination each secondary sponsored person who holds the same visa as the

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nominee on the basis of the secondary sponsored person's relationship to the nominee.

- (7) However, the Minister may disregard the fact that one or more secondary sponsored persons are not listed on the nomination if the Minister is satisfied that it is reasonable in the circumstances to do so.
- (8) The Minister is satisfied that the sponsor has provided the following:
 - (a) information that identifies the employer or employers in relation to the nominated program, including:
 - (i) the location and contact details of each employer; and
 - (ii) if the sponsor and the employer are not the same person—the relationship between the sponsor and the employer;
 - (b) information that identifies the location or locations where the nominated program will be carried out;
 - (c) information that identifies each member of the family unit of the nominee who holds, or proposes to apply for, the same visa as the nominee on the basis of satisfying the secondary criteria.
- (9) For the purposes of paragraph (8)(a), if undertaking the nominated program is a volunteer role (within the meaning given by subregulation 2.57(5)), **employer** includes the person or organisation responsible for the tasks to be carried out as part of the nominated program.
- (10) The Minister is satisfied that the sponsor has certified, in writing and as part of the nomination, whether or not the sponsor has engaged in conduct in relation to the nomination that constitutes a contravention of subsection 245AR(1) of the Act.
- (11) The Minister is satisfied that:
 - (a) there is no adverse information known to Immigration about the sponsor or a person associated with the sponsor; or
 - (b) if any adverse information is known to Immigration about the sponsor or a person associated with the sponsor—it is reasonable to disregard the information.
- (12) The Minister is satisfied that:
 - (a) the occupational training will be provided directly by the sponsor; or
 - (b) the sponsor is supported by a Commonwealth agency, and the Commonwealth agency has provided a letter endorsing the arrangement for the provision of the occupational training; or
 - (c) the sponsor is specified in a legislative instrument made by the Minister for the purposes of this paragraph; or
 - (d) the occupational training will be provided in circumstances specified in a legislative instrument made by the Minister for the purposes of this paragraph.
- (13) The Minister is satisfied that the sponsor does not engage in, or intend to engage in, activities that will have adverse consequences for employment or training

opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

- (14) The Minister is satisfied that the nominee has functional English.

Note: For *functional English*, see subsection 5(2) of the Act.

- (15) Regulation 2.72B applies to the nomination.

- (16) The Minister is satisfied that the nominated program is offered as a genuine training opportunity for a purpose referred to in the subregulation of regulation 2.72B that applies.

2.72B Criteria for approval of nomination—alternative criteria for Subclass 407 (Training) visa

- (1) For the purposes of subregulation 2.72A(15), this regulation applies to a nomination by an approved sponsor (the *sponsor*) of a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa (the *nominee*) if any subregulation of this regulation applies.

Occupational training required for registration etc.

- (2) This subregulation applies if the Minister is satisfied that:
- (a) the occupational training is necessary for the nominee to obtain registration, membership or licensing in Australia, or in the home country of the nominee, in relation to the occupation of the nominee; and
 - (b) the registration, membership or licensing is required in order for the nominee to be employed in the occupation of the nominee in Australia or in the home country of the nominee; and
 - (c) the duration of the occupational training is necessary for the nominee to obtain registration, membership or licensing in Australia, or in the home country of the nominee, in relation to the occupation of the nominee, taking into account the prior experience of the nominee; and
 - (d) the occupational training is workplace based; and
 - (e) the nominee has appropriate qualifications and experience to undertake the occupational training.

Occupational training to enhance skills

- (3) This subregulation applies if the Minister is satisfied that:
- (a) the occupational training is:
 - (i) a structured workplace training program; and
 - (ii) specifically tailored to the training needs of the nominee; and
 - (iii) of a duration that meets the specific training needs of the nominee; and
 - (b) the occupational training is in relation to an occupation specified, with its corresponding 6-digit code, by the Minister in a legislative instrument made for the purposes of this paragraph; and

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- (c) the nominee has the equivalent of at least 12 months of full-time experience in the occupation to which the occupational training relates in the 24 months immediately preceding the time of nomination.

Occupational training for capacity building overseas—overseas qualification

- (4) This subregulation applies if the Minister is satisfied that:
 - (a) the nominee is required to complete a period of no more than 6 months of practical experience, research or observation to obtain a qualification from a foreign educational institution; and
 - (b) the occupational training is a structured workplace-based training program specifically tailored to the training needs of the nominee.

Occupational training for capacity building overseas—government support

- (5) This subregulation applies if the Minister is satisfied that:
 - (a) the occupational training is supported by a government agency, or by the government of a foreign country that is the home country of the nominee; and
 - (b) the occupational training is a structured workplace-based training program that is:
 - (i) specifically tailored to the training needs of the nominee; and
 - (ii) of a duration that meets the specific training needs of the nominee.

Occupational training for capacity building overseas—professional development

- (6) This subregulation applies if the Minister is satisfied that:
 - (a) the nominee:
 - (i) has an overseas employer; and
 - (ii) is in a managerial or professional position in relation to the overseas employer; and
 - (b) the occupational training is relevant to, and consistent with, the development of the managerial or professional skills of the nominee; and
 - (c) the occupational training will provide skills and expertise relevant to, and consistent with, the business of the overseas employer of the nominee; and
 - (d) the primary form of the occupational training is the provision of face-to-face teaching in a classroom or similar environment.

2.73 Process for nomination—Subclass 457 (Temporary Work (Skilled)) visa

- (1A) Subregulations (1) to (6) and (9) apply to a person:
 - (a) who is nominating an occupation under paragraph 140GB(1)(b) of the Act; and
 - (b) who identifies in the nomination a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Temporary Work (Skilled)) visa as the person who will work in the occupation.

- (1) For subsection 140GB(3) of the Act, the person may nominate a proposed occupation in accordance with the process set out in this regulation.
- (2) The nomination must be made using the internet.
- (3) The approved form for the nomination is the form specified by the Minister in an instrument in writing for this subregulation.
- (4) If the nomination was made before 1 July 2010—the person must provide, as part of the nomination:
 - (a) the information mentioned in subregulations 2.72(5) and (8); and
 - (b) if the person is a standard business sponsor—the certification mentioned in paragraph 2.72(10)(d); and
 - (c) if the person is a party to a work agreement (other than a Minister)—the certification mentioned in paragraph 2.72(11)(b).
- (4A) If the nomination is made on or after 1 July 2010—the person must provide, as part of the nomination:
 - (a) the information mentioned in subregulations 2.72(5) and (8A); and
 - (b) if the person is a standard business sponsor—the certification mentioned in paragraph 2.72(10)(e); and
 - (c) if the person is a party to a work agreement (other than a Minister)—the certification mentioned in paragraph 2.72(11)(c).
- (4B) The person must provide, as part of the nomination, the certification mentioned in subregulation 2.72(8B).
- (5) The nomination must be accompanied by the fee specified by the Minister in an instrument in writing for this subregulation.
- (6) The Minister may refund the fee if:
 - (a) both of the following apply:
 - (i) the tasks of the nominated occupation no longer correspond to the tasks of:
 - (A) if the nomination was made before 1 July 2010—an occupation specified in the instrument in writing made for paragraph 2.72(10)(a); or
 - (B) if the nomination is made on or after 1 July 2010—an occupation specified in the instrument in writing made for paragraph 2.72(10)(aa);
 - (ii) the person withdraws the nomination for that reason before a decision is made under section 140GB of the Act; or
 - (b) both of the following apply:
 - (i) the nomination is approved under section 140GB of the Act;
 - (ii) after the Minister has approved the nomination, but before a visa is granted in relation to the approval, the tasks of the nominated occupation no longer correspond to the tasks of:

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- (A) if the nomination was made before 1 July 2010—an occupation specified in the instrument in writing made for paragraph 2.72(10)(a); or
- (B) if the nomination is made on or after 1 July 2010—an occupation specified in the instrument in writing made for paragraph 2.72(10)(aa); or
- (c) if the person is a party to a work agreement—both of the following apply:
 - (i) the person withdraws the nomination before a decision is made under section 140GB of the Act;
 - (ii) the reason for withdrawing the nomination is because:
 - (A) the person has listed an occupation in the nomination that is not specified in the work agreement as an occupation that the person may nominate; or
 - (B) the number of nominations made by the person and approved by the Minister under section 140GB is equal to or more than the number of approved nominations permitted under the work agreement for the year; or
- (d) both of the following apply:
 - (i) on or after 1 July 2010, the person nominates an occupation using an ASCO code;
 - (ii) the person withdraws the nomination for that reason before a decision is made under section 140GB of the Act.
- (9) For subregulations (2) to (5):
 - (a) if the Minister specifies, in an instrument in writing for this subregulation, a different way of making a nomination of an occupation, in circumstances specified in the instrument, the application may be made in that way; and
 - (b) if the Minister specifies in the instrument a form for the different way of making the nomination, the nomination must be made using that form; and
 - (c) if the Minister specifies in the instrument a different fee for making the nomination, the nomination must be accompanied by that fee; and
 - (d) an instrument made for this subregulation does not apply to a nomination made before 1 July 2010.

Note: Subregulation (2) relates to making nominations on the internet. It may be necessary for the Minister to specify arrangements other than those in subregulations (2) to (5) if special circumstances exist.

2.73A Process for nomination—Subclass 407 (Training) visa

- (1) This regulation applies to a person who is nominating, under paragraph 140GB(1)(b) of the Act, a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa.
- (2) For the purposes of subsection 140GB(3) of the Act, the person may nominate the program in accordance with a process specified in a legislative instrument made by the Minister for the purposes of this subregulation.

- (3) A legislative instrument made for the purposes of subregulation (2) may specify any of the following:
- (a) a form for the nomination;
 - (b) a fee which must accompany the nomination;
 - (c) any other requirements in relation to the nomination.

2.74 Notice of decision

- (1) The Minister must notify an applicant for approval of a nomination, in writing, of a decision under subsection 140GB(2) of the Act:
- (a) within a reasonable period after making the decision; and
 - (b) by attaching a written copy of the approval or refusal; and
 - (c) if the decision is a refusal—by attaching a statement of reasons for the refusal.
- (2) If the application was made using approved form 1196 (Internet) or 1479N (Internet), the Minister may provide the notification to the applicant in an electronic form.

2.75 Period of approval of nomination—Subclass 457 (Temporary Work (Skilled)) visa

- (1) This regulation applies to a nomination of an occupation in which a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Temporary Work (Skilled)) visa is identified as the person who will work in the occupation.
- (2) An approval of a nomination ceases on the earliest of:
- (a) the day on which Immigration receives notification, in writing, of the withdrawal of the nomination by the approved sponsor; and
 - (b) 12 months after the day on which the nomination is approved; and
 - (c) the day on which the applicant, or the proposed applicant, for the nominated occupation, is granted a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (d) if the approval of the nomination is given to a standard business sponsor—3 months after the day on which the person's approval as a standard business sponsor ceases; and
 - (e) if the approval of the nomination is given to a standard business sponsor, and the person's approval as a standard business sponsor is cancelled under subsection 140M(1) of the Act—the day on which the person's approval as a standard business sponsor is cancelled; and
 - (f) if the approval of the nomination is given to a party to a work agreement (other than a Minister)—the day on which the work agreement ceases.

2.75A Period of approval of nomination—Subclass 407 (Training) visa

- (1) This regulation applies to a nomination, under paragraph 140GB(1)(b) of the Act, of a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa.
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- (2) An approval of a nomination ceases on the earliest of:
- (a) the day on which Immigration receives notification, in writing, of the withdrawal of the nomination by the approved sponsor; and
 - (b) 12 months after the day on which the nomination is approved; and
 - (c) 3 months after the day on which the person's approval as the kind of sponsor that could make the nomination ceases; and
 - (d) if the person's approval as the kind of sponsor that could make the nomination is cancelled under subsection 140M(1) of the Act—the day on which the person's approval is cancelled; and
 - (f) the day on which the applicant, or the proposed applicant, who is identified in relation to the nominated program, is granted a visa on the basis of that nomination.

Division 2.18—Work agreements

2.76 Requirements

- (1) For section 140GC of the Act, and for the definition of *work agreement* in subsection 5(1) of the Act, a work agreement must meet the requirements prescribed in this regulation.
- (2) A work agreement:
 - (a) must be between:
 - (i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and
 - (ii) a person, an unincorporated association or a partnership in Australia; and
 - (b) must be a labour agreement that authorises the recruitment, employment, or engagement of services of a person who is intended to be employed or engaged as a holder of a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (c) must be in effect.

2.76A Labour market testing and other work agreement requirements

- (1) The Commonwealth must not enter into a work agreement in relation to the recruitment, employment or engagement of persons in occupations and locations required by the other party to the agreement unless the Minister is satisfied that the other party has made recent and genuine efforts to recruit, employ or engage Australian citizens or Australian permanent residents to meet those requirements.
- (2) Subregulation (1) does not apply in relation to the recruitment, employment or engagement of a person in the following occupations:
 - (a) Minister of Religion;
 - (b) Religious Assistant.
- (3) The Minister must publish, on the Department's website, policy guidelines to be considered by the Commonwealth in relation to the Commonwealth's negotiation of the following agreements:
 - (a) work agreements;
 - (b) agreements, known as Project Agreements, that relate to work agreements.
- (4) Without limiting subregulation (3), the policy guidelines must include guidelines relating to the following:
 - (a) objectives and principles relating to the negotiation of the agreements mentioned in that subregulation;
 - (b) eligibility requirements to be considered for such agreements;
 - (c) obligations to be required of parties entering into such agreements.

Division 2.19—Sponsorship obligations

2.77 Preliminary

For subsection 140H(1) of the Act, each of the obligations mentioned in this Division is a sponsorship obligation that a person to whom the obligation applies must satisfy.

2.78 Obligation to cooperate with inspectors

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must cooperate with an inspector if:
 - (a) the inspector is appointed under section 140V of the Act; and
 - (b) the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act.
- (3) Without limiting subregulation (2), the person is taken not to have cooperated with an inspector if:
 - (a) the person hinders or obstructs an inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
 - (b) the person conceals, or attempts to conceal, from an inspector the location of a person, document or thing while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
 - (c) the person prevents, or attempts to prevent, another person from assisting an inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
 - (d) the person assaults an inspector or a person assisting the inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
 - (e) the person intimidates or threatens, or attempts to intimidate or threaten, an inspector or a person assisting the inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act.
- (4) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E(1) of the Act, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which the person is approved as a sponsor in a class under subsection 140E(1) of the Act; and
 - (b) ends 5 years after the day on which the person ceases or ceased to be a sponsor.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which the work agreement commences; and
 - (b) ends 5 years after the day on which the work agreement ceases or ceased.

2.79 Obligation to ensure equivalent terms and conditions of employment

- (1) Subject to subregulation (1A):
- (a) this regulation applies to a person who is or was a standard business sponsor of a primary sponsored person if:
 - (i) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (b) this regulation applies to a person who is or was a party to a work agreement (other than a Minister), and who is or was an approved sponsor of a primary sponsored person, if:
 - (i) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa.

- (1A) This regulation does not apply to a standard business sponsor of a primary sponsored person if:
- (a) either:
 - (i) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (b) the annual earnings of the primary sponsored person are equal to or greater than the amount specified by the Minister in an instrument in writing for this paragraph.
- (2) The person must ensure that the terms and conditions of employment provided to the primary sponsored person are no less favourable than the terms and conditions of employment that the person provides, or would provide, to an Australian citizen or an Australian permanent resident to perform equivalent work in the person's workplace at the same location.
- (3) The person must ensure that:
- (a) if:
 - (i) the person is mentioned in paragraph (1)(a); and
 - (ii) the nomination by the person of an occupation in which the primary sponsored person is identified was approved under section 140GB of the Act on or after 14 September 2009;the terms and conditions of employment provided to the primary sponsored person are no less favourable than the terms and conditions of employment that the Minister was satisfied, under paragraph 2.72 (10)(c), were no less favourable than the terms and conditions of employment that are provided, or would be provided, to an Australian citizen or an Australian permanent resident; or
 - (b) if:

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- (i) the person is mentioned in paragraph (1)(a); and
 - (ii) the nomination by the person of an activity under regulation 1.20GA (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
 - (iii) the activity mentioned in subparagraph (ii) is an activity other than an information and communication technology activity; and
 - (iv) paragraph (d) does not apply.
- the primary sponsored person's base rate of pay is not less than \$40 705; or
- (ba) if:
- (i) the person is mentioned in paragraph (1)(a); and
 - (ii) the nomination by the person of an activity under regulation 1.20GA (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
 - (iii) the activity mentioned in subparagraph (ii) is an information and communication technology activity; and
 - (iv) paragraph (d) does not apply;
- the primary sponsored person's base rate of pay is not less than \$55 725.
- (c) if:
- (i) the person is mentioned in paragraph (1)(a); and
 - (ii) the nomination by the person of an activity under regulation 1.20G (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
 - (iii) the activity mentioned in subparagraph (ii) is an activity other than an information and communication technology activity; and
 - (iv) paragraph (d) does not apply.
- the primary sponsored person's base rate of pay is not less than \$45 220; or
- (ca) if:
- (i) the person is mentioned in paragraph (1)(a); and
 - (ii) the nomination by the person of an activity under regulation 1.20G (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
 - (iii) the activity mentioned in subparagraph (ii) is an information and communication technology activity; and
 - (iv) paragraph (d) does not apply;
- the primary sponsored person's base rate of pay is not less than \$61 920.
- (d) if:
- (i) the person is mentioned in paragraph (1)(a); and

- (ii) the nomination by the person of an activity, in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
 - (iii) the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa on the basis that subclause 457.223 (6) of Schedule 2 applied to the primary sponsored person;
the primary sponsored person's base rate of pay is not less than \$81 040; or
 - (e) if the person is mentioned in paragraph (1)(b), the terms and conditions of employment provided to the primary sponsored person are no less favourable than the terms and conditions of employment set out in the work agreement.
- (3A) For the purposes of the terms and conditions set out in a work agreement, the Minister may specify that a minimum salary level is to be worked out in the way specified in an instrument in writing for this subregulation.

Note: The terms and conditions of a work agreement may refer to a minimum salary level specified in an instrument in writing.

- (4) The obligations mentioned in subregulations (2) and (3):
- (a) start to apply on:
 - (i) the day on which the Minister approves a nomination by the person in which the primary sponsored person is identified; or
 - (ii) if the primary sponsored person was not identified in an approved nomination—the day on which the primary sponsored person is granted a Subclass 457 (Temporary Work (Skilled)) visa on the basis of the person agreeing in writing to being the approved sponsor of the primary sponsored person; or
 - (iii) if the primary sponsored person does not hold a Subclass 457 (Temporary Work (Skilled)) visa on the day the Minister approves the nomination—the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and
 - (b) end on the earlier of:
 - (i) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is not a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (B) is in effect; and
 - (ii) the day on which the primary sponsored person ceases employment with the person.

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2.80 Obligation to pay travel costs to enable sponsored persons to leave Australia

- (1) This regulation applies to a person who is or was:
- (a) a temporary activities sponsor or a long stay activity sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
 - (i) the primary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) of Schedule 2; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) of Schedule 2; or
 - (aa) a long stay activity sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
 - (i) the primary sponsored person holds a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Religious Worker stream; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Religious Worker stream; or
 - (b) a professional development sponsor of a primary sponsored person (the *sponsored person*), if:
 - (i) the primary sponsored person holds a Subclass 402 (Training and Research) visa in the Professional Development stream; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 402 (Training and Research) visa in the Professional Development stream; or
 - (c) a special program sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
 - (i) the primary sponsored person holds a Subclass 416 (Special Program) visa granted on the basis that the person satisfied the criterion in paragraph 416.222(a) of Schedule 2; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 416 (Special Program) visa granted on that basis; or
 - (ca) a temporary activities sponsor or a special program sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
 - (i) the primary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.228 (special program) of Schedule 2; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.228 (special program) of Schedule 2; or

- (d) a party to a work agreement (other than a Minister), and who is or was an approved sponsor of a primary sponsored person or secondary sponsored person (the *sponsored person*), if
 - (i) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (e) a standard business sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
 - (i) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa.
- (2) The person must pay the travel costs of the primary sponsored person or the secondary sponsored person:
- (a) if the costs have been requested in writing by:
 - (i) the Minister on behalf of the primary sponsored person or the secondary sponsored person; or
 - (ii) the primary sponsored person; or
 - (iii) the primary sponsored person on behalf of the secondary sponsored person; or
 - (iv) the secondary sponsored person; or
 - (v) the secondary sponsored person on behalf of the primary sponsored person; and
 - (b) that have not already been paid in accordance with this regulation; and
 - (c) that are reasonable and necessary.
- (3) The request to pay travel costs must:
- (a) specify the person or persons whose travel will be funded by the costs; and
 - (b) specify the country that the person, whose travel will be funded, holds a passport for and will travel to; and
 - (c) if the person is a multiple passport holder—specify the country that the person holds a passport for and wants to travel to; and
 - (d) be made while the person whose travel will be funded is the holder of the Subclass 401 (Temporary Work (Long Stay Activity)) visa, the Subclass 402 (Training and Research) visa, the Subclass 408 (Temporary Activity) visa, the Subclass 416 (Special Program) visa or the Subclass 457 (Temporary Work (Skilled)) visa.
- (4) Without limiting paragraph (2)(c), a person is taken to have paid reasonable and necessary costs if:
- (a) the costs include the cost of travel from the primary sponsored person's usual place of residence in Australia to the place of departure from Australia; and
 - (b) the costs include the cost of travel from Australia to the country the person specifies in accordance with subregulation (3); and
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- (c) the costs are paid within 30 days of receiving the request for costs; and
- (d) the costs are for economy class air travel or the equivalent of economy class air travel.

(5) The obligation mentioned in subregulation (2):

- (a) starts to apply:
 - (i) if the primary sponsored person holds a Subclass 402 (Training and Research) visa—on the day the primary sponsored person is granted the visa; or
 - (ia) if the primary sponsored person or secondary sponsored person holds a Subclass 408 (Temporary Activity) visa or a Subclass 416 (Special Program) visa—on the day the primary sponsored person or secondary sponsored person is granted the visa; or
 - (ii) if the primary sponsored person or secondary sponsored person holds a Subclass 401 (Temporary Work (Long Stay Activity)) visa or a Subclass 457 (Temporary Work (Skilled)) visa:
 - (A) on the day on which the Minister approves a nomination by the person that identifies the primary sponsored person; or
 - (B) if the primary sponsored person does not hold the visa on the day the Minister approves the nomination—on the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and
- (b) for a primary sponsored person—ends on the earliest of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
 - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following has occurred:
 - (A) the primary sponsored person has left Australia;
 - (B) the Subclass 401 (Temporary Work (Long Stay Activity)) visa, the Subclass 402 (Training and Research) visa, the Subclass 408 (Temporary Activity) visa, the Subclass 416 (Special Program) visa or the Subclass 457 (Temporary Work (Skilled)) visa has ceased to be in effect;
 - (C) if:
 - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and
 - (II) the last substantive visa held by the primary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa, a Subclass 402

- (Training and Research) visa, a Subclass 408 (Temporary Activity) visa, a Subclass 416 (Special Program) visa or a Subclass 457 (Temporary Work (Skilled)) visa;
- the bridging visa has ceased to be in effect; and
- (c) for a secondary sponsored person—ends on the earliest of:
- (i) the day on which the Minister approves a nomination by another approved sponsor in which the primary sponsored person is identified; and
 - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
 - (A) is a visa of a different subclass to the last substantive visa held by the secondary sponsored person; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following has occurred:
 - (A) the secondary sponsored person has left Australia;
 - (B) the Subclass 401 (Temporary Work (Long Stay Activity)) visa, the Subclass 408 (Temporary Activity) visa, the Subclass 416 (Special Program) visa or the Subclass 457 (Temporary Work (Skilled)) visa has ceased to be in effect;
 - (C) if:
 - (I) the secondary sponsored person held a Subclass 020 (Bridging B) visa when the secondary sponsored person left Australia; and
 - (II) the last substantive visa held by the secondary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa, a Subclass 408 (Temporary Activity) visa, a Subclass 416 (Special Program) visa or a Subclass 457 (Temporary Work (Skilled)) visa;
- the bridging visa has ceased to be in effect.

2.80A Obligation to pay travel costs—domestic worker (executive)

- (1) This regulation applies to a person who is or was a temporary activities sponsor, or a long stay activity sponsor, of a primary sponsored person or a secondary sponsored person, if:
- (a) the sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.224 (domestic worker) of Schedule 2; or
 - (b) the last substantive visa held by the sponsored person was a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.224 (domestic worker) of Schedule 2.
- (1A) This regulation also applies to a person who is or was a long stay activity sponsor of a primary sponsored person or a secondary sponsored person if:
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- (a) the primary sponsored person holds a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Domestic Worker (Executive) stream; or
 - (b) the last substantive visa held by the primary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Domestic Worker (Executive) stream.
- (2) The person must pay the travel costs of the sponsored person:
- (a) that will enable the sponsored person to travel to Australia, and leave Australia; and
 - (b) that have not already been paid in accordance with this regulation; and
 - (c) that are reasonable and necessary.
- (3) Without limiting paragraph (2)(c), a person is taken to have paid reasonable and necessary costs if:
- (a) the costs include the cost of travel:
 - (i) to Australia; and
 - (ii) from the place of arrival in Australia to the sponsored person's usual place of residence in Australia; and
 - (b) the costs include the cost of travel from the sponsored person's usual place of residence in Australia to the place of departure from Australia; and
 - (c) the costs include the cost of travel from Australia to the country from which the sponsored person came to Australia; and
 - (d) the costs are for economy class air travel or the equivalent of economy class air travel.
- (4) The obligation mentioned in subregulation (2):
- (aa) if subregulation (1) applies—starts to apply on the day on which the primary sponsored person is granted the visa referred to in that subregulation; or
 - (a) if subregulation (1A) applies—starts to apply on:
 - (i) the day on which the Minister approves a nomination by the person in which the primary sponsored person is identified; or
 - (ii) if the primary sponsored person does not hold a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Domestic Worker (Executive) Stream on the day the Minister approves the nomination—the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and
 - (b) for a primary sponsored person—ends on the earliest of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
 - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
 - (B) is in effect; and

- (iii) the first day on which each of the following has occurred:
 - (A) the primary sponsored person has left Australia;
 - (B) the Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Domestic Worker (Executive) Stream or the Subclass 408 (Temporary Activity) visa has ceased to be in effect;
 - (C) if:
 - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and
 - (II) the last substantive visa held by the primary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Domestic Worker (Executive) Stream or a Subclass 408 (Temporary Activity) visa;the bridging visa has ceased to be in effect; and
- (c) for a secondary sponsored person—ends on the earliest of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
 - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
 - (A) is a visa of a different subclass to the last substantive visa held by the secondary sponsored person; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following has occurred:
 - (A) the secondary sponsored person has left Australia;
 - (B) the Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Domestic Worker (Executive) Stream or the Subclass 408 (Temporary Activity) visa has ceased to be in effect;
 - (C) if:
 - (I) the secondary sponsored person held a Subclass 020 (Bridging B) visa when the secondary sponsored person left Australia; and
 - (II) the last substantive visa held by the secondary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Domestic Worker (Executive) Stream or a Subclass 408 (Temporary Activity) visa;the bridging visa has ceased to be in effect.

2.81 Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen

- (1) This regulation applies to a person who is or was an approved sponsor.
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- (2) The person must pay costs incurred by the Commonwealth:
 - (a) if the costs were incurred by the Commonwealth in taking either or both of the following actions in relation to the primary sponsored person or secondary sponsored person:
 - (i) locating, as an unlawful non-citizen, the primary sponsored person or the secondary sponsored person;
 - (ii) removing, as an unlawful non-citizen, the primary sponsored person or the secondary sponsored person from Australia; and
 - (b) if the Minister has requested the payment of the costs by written notice in the manner specified in subregulation (5); and
 - (c) if the costs were incurred by the Commonwealth within the period mentioned in subregulation (6).
- (3) However, if the person has already paid the costs of return travel in accordance with the sponsorship obligation mentioned in regulation 2.80 (the *return costs*), the person is liable to pay to the Commonwealth only the difference between:
 - (a) the lesser of:
 - (i) the actual costs incurred by the Commonwealth in taking 1 or more of the actions mentioned in paragraph (2)(a); or
 - (ii) the costs up to the limit prescribed under paragraph 140J(1)(a) of the Act, as prescribed in subregulation (4); and
 - (b) the return costs that have already been paid by the person.
- (4) For paragraph 140J(1)(a) of the Act, the limit in relation to the obligation at subregulation (2) is \$10 000.
- (5) For paragraph (2)(b), the notice from the Minister requesting the payment of costs must:
 - (a) be given using a method mentioned in section 494B of the Act; and
 - (b) specify a date for compliance not earlier than 7 days after the date a person will be taken, by section 494C of the Act, to have received the notice.
- (6) For paragraph 2 (c):
 - (a) in relation to a primary sponsored person—the period within which the Commonwealth must incur the costs:
 - (i) starts on the day on which the primary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends at the moment when the primary sponsored person leaves Australia; and
 - (b) in relation to a secondary sponsored person—the period within which the Commonwealth must incur the costs:
 - (i) starts on the day on which the secondary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends at the moment when the secondary sponsored person leaves Australia.
- (7) The obligation mentioned in subregulation (2):

- (a) in relation to a primary sponsored person:
 - (i) starts to apply on the day on which the primary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends 5 years after the time at which the primary sponsored person leaves Australia; and
- (b) in relation to a secondary sponsored person:
 - (i) starts to apply on the day on which the secondary sponsored person becomes an unlawful non-citizen; and
 - (ii) ends 5 years after the time at which the secondary sponsored person leaves Australia.

(8) In this regulation:

costs, in relation to the removal of a former primary sponsored person or a former secondary sponsored person from Australia, has the same meaning as in paragraph (b) of the definition of costs in section 207 of the Act.

2.82 Obligation to keep records

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must keep records:
 - (a) of a kind:
 - (i) if the person is a standard business sponsor—specified in subregulation (3); or
 - (ii) if the person is a party to a work agreement—specified in subregulations (3) and (3A); or
 - (iii) if the person is a temporary activities sponsor, a temporary work sponsor or a professional development sponsor—specified in paragraphs (3)(a) and (b); and
 - (aa) of a kind specified by the Minister in an instrument in writing (if any) made for this subparagraph; and
 - (b) in a reproducible format; and
 - (c) either:
 - (i) in the manner specified by the Minister in an instrument in writing (if any) made for this subparagraph; or
 - (ii) if the record is a record mentioned in subparagraph (3)(a)(iii), (3)(e)(i), (3)(e)(ii) or paragraph (3)(g)—in a manner that is capable of being verified by an independent person; and
 - (d) for the period specified in subregulation (4), (5) or (6).
- (3) For paragraph (2)(a), the records are:
 - (a) if the obligation mentioned in regulation 2.80 applies to the person:
 - (i) a record of the written request by the primary sponsored person or secondary sponsored person for the payment of return travel costs; and

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- (ii) a record of when the written request for the payment of return travel costs was received by the person; and
 - (iii) a record of how the person complied with the request to pay return travel costs, including:
 - (A) the costs paid; and
 - (B) who the costs were paid for; and
 - (C) the date of the payment of the costs; and
- (b) if the obligation mentioned in regulation 2.84 applies to the person:
 - (i) a record of a notification to Immigration of an event specified in regulation 2.84 for the person; and
 - (ii) a record of the particulars of the notification of the event, including:
 - (A) the date on which the person notified Immigration of the event; and
 - (B) the method by which the notification was provided; and
 - (C) where the notification was provided; and
- (c) if:
 - (i) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa;a record of the tasks performed by the primary sponsored person in relation to work undertaken in relation to the nominated occupation or activity; and
- (d) a record of the location or locations at which the tasks mentioned in paragraph (c) were performed; and
- (e) if the obligation mentioned in regulation 2.79 applies to the person:
 - (i) a record of the money paid to the primary sponsored person; and
 - (ii) a record of the money applied or dealt with in any way on the primary sponsored person's behalf or as the primary sponsored person directed; and
 - (iii) a record of the non-monetary benefits provided to the primary sponsored person, including the agreed value and the time at which, or the period over which, those benefits were provided; and
 - (iv) if there is an equivalent worker or workers in the person's workplace—a record of the terms and conditions that apply, or did apply, to an equivalent worker or workers, including the period over which the terms and conditions applied; and
- (f) a copy of the written contract of employment under which the primary sponsored person is employed; and
- (g) if the person was lawfully operating a business in Australia at the time of:
 - (i) the person's approval as a standard business sponsor; or
 - (ii) the approval of a variation to the person's approval as a standard business sponsor;all records showing that the person has complied with requirements relating to training specified by the Minister in an instrument in writing for subregulation 2.87B(2).

- (3A) For subparagraph (2)(a)(ii), the records are the records specified in the work agreement as records that must be kept.
- (4) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E(1) of the Act, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the person is approved as a sponsor in a class of sponsor under subsection 140E(1) of the Act; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be an approved sponsor;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the work agreement commences; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a party to a work agreement;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (6) However, the obligation mentioned in subregulation (2) does not require a person to keep a record for a period of more than 5 years.

2.83 Obligation to provide records and information to the Minister

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must provide records or information to the Minister:
- (a) if the Minister has requested the provision of the records or information by written notice in the manner specified in subregulation (3); and
 - (b) if the records requested by the Minister:
 - (i) are records the person is required to keep under a law of the Commonwealth or a State or Territory that applies to the person; or
 - (ii) are records the person is required to keep under regulation 2.82; and
 - (c) if the records or information relates to:
 - (i) the administration of Division 3A of Part 2 of the Act and the Regulations made under that Division; or
 - (ii) if the person is a party to a work agreement—the administration of the work agreement; and
 - (d) in the manner, and within the timeframe, requested by the Minister in the notice mentioned in subregulation (3).
- (3) A notice from the Minister requesting the provision of records or information must:
- (a) be given using a method mentioned in section 494B of the Act; and

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- (b) specify a date for compliance not earlier than 7 days after the date on which a person will be taken, by section 494C of the Act, to have received the document.
- (4) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E(1) of the Act, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which the person is approved as a sponsor under section 140E of the Act; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be an approved sponsor; and
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
 - (a) starts to apply on the day on which the work agreement commences; and
 - (b) ends 2 years after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a party to a work agreement;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

2.84 Obligation to provide information to Immigration when certain events occur

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must:
 - (a) provide details of an event to Immigration when an event mentioned in this regulation, and specified for the person, occurs; and
 - (b) provide the details of the event by registered post or electronic mail:
 - (i) to an address specified by the Minister in an instrument in writing made for the purpose of this subparagraph; and
 - (ii) within the period specified in subregulation (6).
- (3) If the person is or was a standard business sponsor or a party to a work agreement, the person must notify Immigration about each of the following events:
 - (a) the cessation, or expected cessation, of a primary sponsored person's employment with the person;
 - (aa) a change to the work duties carried out by a primary sponsored person;
 - (b) a change to the information provided to Immigration in the person's application for approval as a sponsor in relation to:
 - (i) the training requirement mentioned in paragraphs 2.59(d) and (e); and
 - (ii) the person's address and contact details;
 - (ba) if the person is or was a party to a work agreement—a change to:

- (i) the training information provided in the work agreement; or
- (ii) the person's address and contact details provided in the work agreement;
- (c) a change to the information provided to Immigration in the person's application for a variation of a term of approval in relation to the training requirement mentioned in paragraphs 2.68(e) and (f);
- (d) the legal entity of the person ceases to exist;
- (e) if the legal entity of the person is a company—a new director is appointed;
- (f) if the legal entity of the person is a partnership—a new partner joins the partnership;
- (g) if the legal entity of the person is an unincorporated association—a new member is appointed to the managing committee of the association;
- (h) the person has paid the return travel costs of a primary sponsored person or secondary sponsored person in accordance with the obligation mentioned in regulation 2.80;
- (i) the person has become insolvent within the meaning of subsections 5(2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*;
- (j) if the person is a natural person—any of the following:
 - (i) the person enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
 - (ii) the person enters into a debt agreement under Part IX of the *Bankruptcy Act 1966*;
 - (iii) a sequestration order is made against the estate of the person under Part IV of the *Bankruptcy Act 1966*;
 - (iv) the person becomes a bankrupt by virtue of the presentation of a debtor's petition under Part IV of the *Bankruptcy Act 1966*;
 - (v) the person presents a declaration of intention to present a debtor's petition under Part IV of the *Bankruptcy Act 1966*;
 - (vi) a composition or scheme of arrangement is presented in relation to the person in accordance with Division 6 of Part IV of the *Bankruptcy Act 1966*;
- (k) if the person is a company—any of the following:
 - (i) an administrator is appointed for the company under Part 5.3A of the *Corporations Act 2001*;
 - (ii) the company resolves by special resolution to be wound up voluntarily under subsection 491(1) of the *Corporations Act 2001*;
 - (iii) a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the *Corporations Act 2001*;
 - (iv) a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the *Corporations Act 2001*;
 - (v) a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the *Corporations Act 2001*;

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- (vi) the property of the company becomes subject to a receiver or other controller under Part 5.2 of the *Corporations Act 2001*;
 - (vii) procedures are initiated for the deregistration of the company under Part 5A.1 of the *Corporations Act 2001*;
 - (l) if the person is a partner of a partnership, or a member of a managing committee for an unincorporated association—any of the events of the kind mentioned in paragraphs (j) and (k).
- (4) If the person is or was a professional development sponsor of a primary sponsored person (other than a holder of a Subclass 407 (Training) visa), the person must inform Immigration about each of the following events:
- (a) a change to the information provided to Immigration in the person's application for approval as a sponsor in relation to:
 - (i) the person's address and contact details; and
 - (ii) the person's capacity to deliver the approved professional development program; and
 - (iii) the capacity of a sub-contractor involved in the delivery of the approved professional development program to deliver the program or any part of the program;
 - (b) the legal entity of the person ceases to exist;
 - (c) if the legal entity of the person is a company—a new director is appointed;
 - (d) if the legal entity of the person is a partnership—a new partner joins the partnership;
 - (e) if the legal entity of the person is an unincorporated association—a new member is appointed to the managing committee of the association;
 - (f) the person has become insolvent within the meaning of subsections 5(2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*;
 - (h) if the person is a company—any of the following:
 - (i) an administrator is appointed for the company under Part 5.3A of the *Corporations Act 2001*;
 - (ii) the company resolves by special resolution to be wound up voluntarily under subsection 491(1) of the *Corporations Act 2001*;
 - (iii) a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the *Corporations Act 2001*;
 - (iv) a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the *Corporations Act 2001*;
 - (v) a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the *Corporations Act 2001*;
 - (vi) the property of the company becomes subject to a receiver or other controller under Part 5.2 of the *Corporations Act 2001*;
 - (vii) procedures are initiated for the deregistration of the company under Part 5A.1 of the *Corporations Act 2001*;

- (i) if the person is a partner of a partnership, or a member of a managing committee for an unincorporated association—any of the events of the kind mentioned in paragraph (h);
 - (j) the primary sponsored person is unable to participate in the professional development program;
 - (k) the primary sponsored person has ceased participation in the professional development program prior to the ending of the professional development program;
 - (l) the primary sponsored person has failed to attend the professional development program, and this absence was not authorised by the professional development sponsor.
- (4A) If the person is or was a temporary activities sponsor, the person must inform Immigration about a change to the information, in relation to the sponsor's address and contact details, provided to Immigration in the person's application for approval as a temporary activities sponsor.
- (4B) If the person is or was:
- (a) a temporary activities sponsor in relation to a primary sponsored person; or
 - (b) a professional development sponsor in relation to a primary sponsored person who holds a Subclass 407 (Training) visa; or
 - (c) any of the following kinds of sponsor in relation to a primary sponsored person who holds a Subclass 408 (Temporary Activity) visa:
 - (i) a special program sponsor;
 - (ii) an entertainment sponsor;
 - (iii) a superyacht crew sponsor;
 - (iv) a long stay activity sponsor;
 - (v) a training and research sponsor;
- the person must inform Immigration about each of the following events:
- (d) the primary sponsored person failing to participate in the activity in relation to which the visa was granted;
 - (e) the primary sponsored person ceasing participation in the activity in relation to which the visa was granted;
 - (f) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that subclause 408.222(3) (elite player, coach, instructor or adjudicator) of Schedule 2 applied to the primary sponsored person—a change to the formal arrangement referred to in paragraph 408.222(3)(c) of Schedule 2;
 - (g) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied the criteria in clause 408.225 (superyacht crew) of Schedule 2—the cessation, or expected cessation, of a primary sponsored person's employment with the sponsor;
 - (h) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied the criteria in clause 408.227 (staff exchange) of Schedule 2—a change to the agreement referred to in paragraph 408.227(b) of Schedule 2;
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- (i) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied any of the criteria in clause 408.229A (entertainment) of Schedule 2 and the sponsor is an Australian organisation—the organisation ceasing to exist;
 - (j) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied the criteria in subclause 408.229A(2), (3), (4), (5) or (6) (entertainment) of Schedule 2—the sponsor ceasing to hold a licence referred to in paragraph 408.229A(2)(d), (3)(d), (4)(d), (5)(d) or (6)(d) of Schedule 2, as the case may be;
 - (k) the person paying the return travel costs of the primary sponsored person, or a secondary sponsored person in relation to the primary sponsored person, in accordance with the obligation referred to in regulation 2.80.
- (4C) If the person is or was a special program sponsor, the person must inform Immigration about each of the following events:
- (a) a non-Subclass 408 primary sponsored person is unable to meet the requirements of the special program;
 - (b) a non-Subclass 408 primary sponsored person is unable to participate in a special program;
 - (c) a non-Subclass 408 primary sponsored person ceases participation in a special program prior to the ending of the special program;
 - (d) a non-Subclass 408 primary sponsored person fails to attend a special program.
- (4E) If the person is or was an entertainment sponsor, the person must inform Immigration about each of the following events:
- (a) a non-Subclass 408 primary sponsored person fails to participate in the nominated activity for which the non-Subclass 408 primary sponsored person was identified;
 - (b) if a non-Subclass 408 primary sponsored person was identified in a nomination to perform in a film or television production—the cessation of the non-Subclass 408 primary sponsored person's participation in the nominated activity for which the non-Subclass 408 primary sponsored person was identified;
 - (c) a non-Subclass 408 primary sponsored person (other than a person mentioned in paragraph (b)) ceases participation, in the nominated activity for which the non-Subclass 408 primary sponsored person was identified, prior to the cessation date specified in the itinerary provided to the Minister in accordance with the nomination criteria;
 - (d) the entertainment sponsor ceases to hold a licence that the entertainment sponsor was required to hold for the nomination to be approved;
 - (e) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as an entertainment sponsor;
 - (f) if the entertainment sponsor is an Australian organisation—the legal entity of the sponsor ceases to exist.

- (4J) If the person is or was a superyacht crew sponsor, the person must inform Immigration about each of the following events:
- (a) the cessation, or expected cessation, of a non-Subclass 408 primary sponsored person's employment with the person;
 - (b) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a superyacht crew sponsor.
- (4K) If the person is or was a long stay activity sponsor, the person must inform Immigration about each of the following events:
- (a) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a long stay activity sponsor;
 - (b) a non-Subclass 408 primary sponsored person fails to participate in the nominated occupation or activity for which the non-Subclass 408 primary sponsored person was identified;
 - (c) a non-Subclass 408 primary sponsored person ceases participation in the nominated occupation or activity for which the non-Subclass 408 primary sponsored person was identified;
 - (d) a change to the formal arrangement between the non-Subclass 408 primary sponsored person and the person;
 - (e) a change to the exchange agreement;
 - (f) the person has paid the return travel costs of a non-Subclass 408 primary sponsored person or secondary sponsored person in accordance with the obligation mentioned in regulation 2.80.
- (4L) If the person is or was a training and research sponsor, the person must inform Immigration about each of the following events:
- (a) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a training and research sponsor;
 - (b) a non-Subclass 408 primary sponsored person fails to participate in the nominated occupation, program or activity for which the non-Subclass 408 primary sponsored person was identified;
 - (c) a non-Subclass 408 primary sponsored person ceases participation in the nominated occupation, program or activity for which the non-Subclass 408 primary sponsored person was identified;
 - (d) a non-Subclass 408 primary sponsored person fails to participate in the research project in relation to which the non-Subclass 408 primary sponsored person was granted the visa.
- (5) For paragraphs (3)(a), (4B)(g) and (4J)(a):
- (a) the person may notify Immigration of the final date of employment of the primary sponsored person before that date; and
 - (b) if the primary sponsored person does not cease employment with the person, or ceases employment on a different date—the person must notify Immigration of the continued employment or the new date of cessation.
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Part 2A Sponsorship applicable to Division 3A of Part 2 of the Act

Division 2.19 Sponsorship obligations

Regulation 2.85

- (6) The notification of an event mentioned in an item of the table must be made within the timeframe mentioned in the item.

Item	For an event mentioned in ...	the notification must be made ...
1	paragraph (3)(a), (4B)(g) or (4J)(a)	within 28 days of the primary sponsored person ceasing employment
2	paragraphs (3)(aa) to (l)	within 28 days of the change or event occurring
3	subregulation (4)	within 28 days of the change or event occurring
3A	subregulations (4A) to (4L), other than the paragraphs mentioned in item 1	within 28 days of the change or event occurring
4	paragraph (5)(b)	the earlier of: (a) within 28 days of the cessation date notified under paragraph (3)(a), (4B)(g) or (4J)(a); and (b) within 28 days of the actual cessation date

- (7) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E(1) of the Act, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the person is approved as a sponsor under section 140E of the Act; and
 - (b) ends after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be an approved sponsor; and
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (8) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the work agreement commences; and
 - (b) ends after the first day on which each of the following occurs concurrently:
 - (i) the person ceases to be a party to a work agreement; and
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

- (9) In this regulation:

non-Subclass 408 primary sponsored person means a primary sponsored person who does not hold a Subclass 408 (Temporary Activity) visa.

2.85 Obligation to secure an offer of a reasonable standard of accommodation

- (1) This regulation applies to a person who is or was:
- (a) an approved sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
 - (iii) the primary sponsored person holds a Subclass 402 (Training and Research) visa in the Professional Development stream; or

- (iv) the last substantive visa held by the primary sponsored person was a Subclass 402 (Training and Research) visa in the Professional Development stream; or
- (b) a special program sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
 - (i) either:
 - (A) the primary sponsored person or secondary sponsored person holds a Subclass 416 (Special Program) visa; or
 - (B) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 416 (Special Program) visa; and
 - (ii) the position in the activity in relation to which the primary sponsored person or secondary sponsored person was granted the Subclass 416 (Special Program) visa is a volunteer role; or
- (ba) a temporary activities sponsor or a special program sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
 - (i) the primary sponsored person or secondary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.228 (special program) of Schedule 2, or the last substantive visa held by the primary sponsored person or secondary sponsored person was such a visa; and
 - (ii) the position in the activity in relation to which the primary sponsored person or secondary sponsored person was granted the visa is a volunteer role; or
- (c) an entertainment sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
 - (i) either:
 - (A) the primary sponsored person or secondary sponsored person holds a Subclass 420 (Entertainment) visa; or
 - (B) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 420 (Entertainment) visa; and
 - (ii) the primary sponsored person or secondary sponsored person was identified in a nomination of an occupation, a program or an activity that is a volunteer role; or
- (d) an approved sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
 - (i) the primary sponsored person holds a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Sport stream, or the Religious Worker stream, in relation to a volunteer role; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Sport stream, or the Religious Worker stream, in relation to a volunteer role; or

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- (iii) the primary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.222 (sport), 408.223 (religious worker) or 408.229A (entertainment) of Schedule 2 in relation to a volunteer role; or
 - (iv) the last substantive visa held by the primary sponsored person was a visa referred to in subparagraph (iii); or
 - (e) an approved sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
 - (i) the primary sponsored person holds a Subclass 402 (Training and Research) visa in the Occupational Trainee stream in relation to a volunteer role; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 402 (Training and Research) visa in the Occupational Trainee stream in relation to a volunteer role; or
 - (iii) the primary sponsored person holds a Subclass 407 (Training) visa in relation to a volunteer role; or
 - (iv) the last substantive visa held by the primary sponsored person was a Subclass 407 (Training) visa in relation to a volunteer role.
 - (2) The person must secure 1 or more offers of accommodation for the primary sponsored person or secondary sponsored person that:
 - (a) will provide for a reasonable standard of accommodation; and
 - (b) will ensure that the primary sponsored person or secondary sponsored person has accommodation while the primary sponsored person or secondary sponsored person is in Australia.
- Example: If accommodation that has been secured becomes unavailable, the approved sponsor must secure another offer of accommodation for the primary sponsored person or secondary sponsored person.
- (3) For subregulation (2)(a), accommodation is of a reasonable standard if the accommodation:
 - (a) meets all relevant State or Territory and local government regulations regarding fire, health and safety; and
 - (b) offers 24-hour access; and
 - (c) provides meals or a self-catering kitchen; and
 - (d) is clean and well-maintained; and
 - (e) has a lounge area; and
 - (f) has adequate laundry facilities or a laundry service; and
 - (g) provides power for lighting, cooking and refrigeration; and
 - (h) has an adequate ratio of guests to bathroom facilities; and
 - (i) has uncrowded sleeping areas; and
 - (j) provides appropriate gender segregated areas and bathroom facilities; and
 - (k) allows adequate privacy and secure storage for personal items.
 - (4) The obligation mentioned in subregulation (2):
 - (a) starts to apply:

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- (i) if the primary sponsored person or secondary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.222 (sport), 408.223 (religious worker), 408.228 (special program) or 408.229A (entertainment) of Schedule 2, or a Subclass 416 (Special Program) visa—on the day on which the primary sponsored person or secondary sponsored person is granted the visa; or
 - (ii) if the primary sponsored person or secondary sponsored person holds a Subclass 401 (Temporary Work (Long Stay Activity)) visa, a Subclass 407 (Training) visa or a Subclass 420 (Entertainment) visa:
 - (A) on the day on which the Minister approves a nomination by the person that identifies the primary sponsored person; or
 - (B) if the primary sponsored person does not hold the visa on the day the Minister approves the nomination—on the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; or
 - (iii) if the primary sponsored person holds a Subclass 402 (Training and Research) visa in the Professional Development stream—on the day the visa is granted; or
 - (iv) if the primary sponsored person holds a Subclass 402 (Training and Research) visa in the Occupational Trainee stream:
 - (A) on the day the Minister approves a nomination by the person that identifies the primary sponsored person; or
 - (B) if the primary sponsored person does not hold the visa on the day the Minister approves the nomination—on the day the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and
- (b) for a primary sponsored person—ends on the earliest of:
- (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
 - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following has occurred:
 - (A) the primary sponsored person has left Australia;
 - (B) the visa mentioned in subregulation (1) has ceased to be in effect;
 - (C) if:
 - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and
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- (II) the last substantive visa held by the primary sponsored person was a visa mentioned in subregulation (1);
- the bridging visa has ceased to be in effect; and
- (c) for a secondary sponsored person—ends on the earliest of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
 - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
 - (A) is a visa of a different subclass to the last substantive visa held by the secondary sponsored person; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following has occurred:
 - (A) the secondary sponsored person has left Australia;
 - (B) the visa mentioned in subregulation (1) has ceased to be in effect;
 - (C) if:
 - (I) the secondary sponsored person held a Subclass 020 (Bridging B) visa when the secondary sponsored person left Australia; and
 - (II) the last substantive visa held by the secondary sponsored person was a visa mentioned in subregulation (1);
- the bridging visa has ceased to be in effect.

2.86 Obligation to ensure primary sponsored person works or participates in nominated occupation, program or activity

- (1) This regulation applies to:
 - (a) a person who is or was an approved sponsor in relation to a primary sponsored person if:
 - (i) the primary sponsored person holds a visa in relation to which the primary sponsored person was required to be nominated by an approved sponsor; or
 - (ii) an occupation, a program or an activity was required to be nominated in relation to the primary sponsored person by an approved sponsor; and
 - (b) a person who is or was an approved sponsor in relation to a person who was a primary sponsored person if:
 - (i) the last substantive visa held by the primary sponsored person was a visa in relation to which the primary sponsored person was required to be nominated by an approved sponsor; or
 - (ii) an occupation, a program or an activity was required to be nominated in relation to the primary sponsored person by an approved sponsor.

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- (2) If the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa, or the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa, the person must ensure that the primary sponsored person:
- (a) does not work in an occupation unless both of the following apply:
 - (i) the occupation was nominated by the person for the primary sponsored person under subsection 140GB(1) of the Act;
 - (ii) the nomination was approved by the Minister under subsection 140GB(2) of the Act; or
 - (b) is not employed in an activity unless both of the following apply:
 - (i) the activity was nominated by the person for the primary sponsored person under regulation 1.20G or 1.20GA (as in force immediately before 14 September 2009);
 - (ii) the nomination was approved by the Minister under regulation 1.20H (as in force immediately before 14 September 2009); or
 - (c) is not employed in an activity unless both of the following apply:
 - (i) the activity was nominated by the person for the primary sponsored person under regulation 1.20G or 1.20GA as in force immediately before 14 September 2009;
 - (ii) the nomination was approved by the Minister under subsection 140GB(2) of the Act.
- (2A) Subject to subregulation (2B), if:
- (a) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (b) the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa;
- the person must ensure that:
- (c) if the person is, or was, a standard business sponsor who was lawfully operating a business in Australia at the time of the person's approval as a standard business sponsor, or at the time of the last approval of a variation to the person's term of approval as a standard business sponsor—the primary sponsored person is engaged only as:
 - (i) an employee of the person; or
 - (ii) an employee of an associated entity of the person; or
 - (d) if the person is or was a standard business sponsor who was not lawfully operating a business in Australia, and was lawfully operating a business outside Australia, at the time of the person's approval as a standard business sponsor, or at the time of the last approval of a variation to the person's term of approval as a standard business sponsor—the primary sponsored person is engaged only as an employee of the person; or
 - (e) if the person is or was a party to a work agreement—the primary sponsored person is engaged only as an employee of the person.
- (2AA) In addition to subregulation (2A), if the person is, or was, a standard business sponsor, the person must ensure that, if the nominated occupation is not an
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occupation specified by the Minister in an instrument in writing for sub-subparagraph 2.72(10)(e)(iii)(B):

- (a) the primary sponsored person is employed under a written contract of employment; and
- (b) if the person is, or was, a standard business sponsor who was lawfully operating a business in Australia at the time of the person's approval as a standard business sponsor, or at the time of the last approval of a variation to the person's term of approval as a standard business sponsor:
 - (i) the person does not engage in activities that relate to the recruitment of a visa holder, an applicant for a visa or a proposed applicant for a visa for the purpose of supplying the holder, applicant or proposed applicant to a business that is not associated with the person; and
 - (ii) the person does not engage in activities that relate to the hire of a visa holder to a business that is not associated with the person; and
- (c) if the person is or was a standard business sponsor who was not lawfully operating a business in Australia, and was lawfully operating a business outside Australia, at the time of the person's approval as a standard business sponsor, or at the time of the last approval of a variation to the person's term of approval as a standard business sponsor:
 - (i) the person does not engage in activities that relate to the recruitment of a visa holder, an applicant for a visa or a proposed applicant for a visa for the purpose of supplying the holder, applicant or proposed applicant to any other business; and
 - (ii) the person does not engage in activities that relate to the hire of a visa holder to any other business.

(2AB) The person's obligation in subregulation (2AA) applies only in relation to:

- (a) a primary sponsored person:
 - (i) who holds a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) whose last substantive visa held was a Subclass 457 (Temporary Work (Skilled)) visa; and
- (b) a primary sponsored person:
 - (i) who holds a Subclass 457 (Temporary Work (Skilled)) visa on the basis of satisfying the criteria in subclause 457.223(4) of Schedule 2; or
 - (ii) whose last substantive visa was a Subclass 457 (Temporary Work (Skilled)) visa held on the basis of satisfying the criteria in subclause 457.223(4) of Schedule 2.

(2B) For subregulation (2A), if the Minister specifies an occupation in an instrument in writing for this subregulation, a primary sponsored person may be engaged in that occupation as an independent contractor by:

- (a) the person; or
- (b) an associated entity of the person.

(2C) If the primary sponsored person holds a visa other than a Subclass 457 (Temporary Work (Skilled)) visa, the person must ensure that the primary

sponsored person works or participates in the nominated occupation, program or activity in relation to which the primary sponsored person was identified.

- (3) The obligations mentioned in subregulations (2), (2A) and (2C):
- (a) start to apply:
 - (i) on the day on which the Minister approves a nomination by the person that identifies the primary sponsored person; or
 - (ii) if the primary sponsored person does not hold a visa mentioned in subregulation (1) on the day the Minister approves the nomination—on the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; or
 - (iii) if the primary sponsored person was not identified in an approved nomination—the day on which the primary sponsored person is granted a Subclass 457 (Temporary Work (Skilled)) visa on the basis of the person agreeing in writing to being the approved sponsor in relation to the primary sponsored person; and
 - (b) end on the earliest of:
 - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
 - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
 - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
 - (B) is in effect; and
 - (iii) the first day on which each of the following has occurred:
 - (A) the primary sponsored person has left Australia;
 - (B) the visa granted to the primary sponsored person on the basis of being identified in an approved nomination by the person has ceased to be in effect;
 - (C) if:
 - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and
 - (II) the last substantive visa held by the primary sponsored person was the visa granted to the primary sponsored person on the basis of being identified in an approved nomination by the person;
- the bridging visa has ceased to be in effect.

2.86A Obligation to ensure primary sponsored person works or participates in activity in relation to which the visa was granted

- (1) This regulation applies to a person (the *sponsor*) who is or was an approved sponsor of:

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- (a) a primary sponsored person (the *sponsored person*) who holds a Subclass 408 (Temporary Activity) visa; or
 - (b) a person (the *sponsored person*) who was a primary sponsored person if the last substantive visa held by the sponsored person was a Subclass 408 (Temporary Activity) visa.
- (2) The sponsor must ensure that the sponsored person undertakes the activity in relation to which the visa was granted.
- (3) The obligation mentioned in subregulation (2) starts to apply on the day the visa is granted.
- (4) The obligation mentioned in subregulation (2) ceases to apply on the earliest of the following days:
- (a) the day on which the sponsored person is granted a further substantive visa that:
 - (i) is a visa of a different subclass to the last substantive visa held by the sponsored person; and
 - (ii) is in effect;
 - (b) the day on which the primary sponsored person is granted a further Subclass 408 (Temporary Activity) visa, if the sponsor is not a sponsor in relation to that further visa;
 - (c) the first day on which each of the following has occurred:
 - (i) the primary sponsored person has left Australia;
 - (ii) the visa referred to in subregulation (1) has ceased to be in effect;
 - (iii) if the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia, and the last substantive visa held by the primary sponsored person was the visa referred to in subregulation (1)—the bridging visa has ceased to be in effect.

2.87 Obligation not to recover, transfer or take actions that would result in another person paying for certain costs

- (1) This regulation applies to a person who is or was an approved sponsor.
- (1A) The person:
- (a) must not take any action, or seek to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs:
 - (i) associated with the person becoming an approved sponsor; or
 - (ii) associated with the person being an approved sponsor; or
 - (iii) associated with the person being a former approved sponsor; or
 - (iv) that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (b) must not take any action, or seek to take any action, that would result in another person paying to the person some or all of the costs, including migration agent costs:

- (i) associated with the person becoming an approved sponsor; or
 - (ii) associated with the person being an approved sponsor; or
 - (iii) associated with the person being a former approved sponsor; or
 - (iv) that relate specifically to the recruitment of a non-citizen for the purposes of a nomination under subsection 140GB(1) of the Act; and
- (c) if the person has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
- (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 407 (Training) visa; or
 - (ic) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;
- must not take any action, or seek to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder; and
- (d) if the person has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
- (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 407 (Training) visa; or
 - (ic) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;
- must not take any action, or seek to take any that would result in another person paying to the person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder.

(1B) The person:

- (a) must not recover from another person some or all of the costs, including migration agent costs:
- (i) associated with the person becoming an approved sponsor; or
 - (ii) associated with the person being an approved sponsor; or
 - (iii) associated with the person being a former approved sponsor; or
 - (iv) that relate specifically to the recruitment of the primary sponsored person, or a non-citizen, for the purposes of a nomination under subsection 140GB(1) of the Act; and
- (b) must not seek to recover from another person some or all of the costs, including migration agent costs:
- (i) associated with the person becoming an approved sponsor; or
 - (ii) associated with the person being an approved sponsor; or
 - (iii) associated with the person being a former approved sponsor; or

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- (iv) that relate specifically to the recruitment of the primary sponsored person, or a non-citizen, for the purposes of a nomination under subsection 140GB(1) of the Act; and
 - (c) if the person has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 407 (Training) visa; or
 - (ic) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;must not recover from another person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder; and
 - (d) if the person has agreed to be the sponsor of an applicant for, proposed applicant for, or holder of:
 - (i) a Subclass 402 (Training and Research) visa; or
 - (ia) a Subclass 403 (Temporary Work (International Relations)) visa; or
 - (ib) a Subclass 407 (Training) visa; or
 - (ic) a Subclass 408 (Temporary Activity) visa; or
 - (ii) a Subclass 416 (Special Program) visa; or
 - (iii) a Subclass 488 (Superyacht Crew) visa;must not seek to recover from another person some or all of the costs, including migration agent costs, that relate specifically to the recruitment of that applicant, proposed applicant or holder.
- (2A) In addition to subregulations (1A) and (1B), if:
- (a) the person is or was:
 - (i) a temporary activities sponsor in relation to a primary sponsored person or a secondary sponsored person (the *sponsored person*); or
 - (ii) a long stay activity sponsor in relation to a primary sponsored person or a secondary sponsored person (the *sponsored person*); and
 - (b) either:
 - (i) the primary sponsored person holds a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Religious Worker stream or the Domestic Worker stream; or
 - (ii) the last substantive visa held by the primary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Religious Worker stream or the Domestic Worker stream; or
 - (iii) the sponsored person holds a Subclass 408 (Temporary Activity) visa granted to the sponsored person on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) or 408.224 (domestic worker) of Schedule 2; or
 - (iv) the last substantive visa held by the sponsored person was a Subclass 408 (Temporary Activity) visa granted to the sponsored person on the

basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) or 408.224 (domestic worker) of Schedule 2;

the person must not recover or seek to recover from the sponsored person any expenditure by the person in relation to financial support of the sponsored person in Australia.

- (3) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E(1) of the Act, the obligations mentioned in subregulations (1A), (1B) and (2A):
 - (a) start to apply on the day on which the person is approved as a sponsor; and
 - (b) end on the day on which each of the following has occurred:
 - (i) the person ceases to be an approved sponsor;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (4) If the person is or was a party to a work agreement, the obligations mentioned in subregulations (1A), (1B) and (2A):
 - (a) start to apply on the day on which the work agreement commences; and
 - (b) end on the day on which each of the following has occurred:
 - (i) the person ceases to be a party to a work agreement;
 - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

2.87B Obligation to provide training

- (1) This regulation applies to a person who was lawfully operating a business in Australia at the time of:
 - (a) the person's approval as a standard business sponsor; or
 - (b) the approval of a variation to the person's approval as a standard business sponsor.
- (2) If, during all or part of:
 - (a) the period of 12 months commencing on the day the person is approved as a standard business sponsor; or
 - (b) a period of 12 months commencing on an anniversary of that day;the person is a standard business sponsor of at least one primary sponsored person, the standard business sponsor must comply with requirements relating to training, specified by the Minister in an instrument in writing for this subregulation, for that 12 month period.
- (3) If, during all or part of:
 - (a) the period of 12 months commencing on the day the terms of the person's approval as a standard business sponsor are varied; or
 - (b) a period of 12 months commencing on an anniversary of that day;the person is a standard business sponsor of at least one primary sponsored person, the standard business sponsor must comply with requirements relating to

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training, specified by the Minister in an instrument in writing for this subregulation, for that 12 month period.

- (4) The obligations referred to in subregulations (2) and (3) start to apply on the day the person is approved as a standard business sponsor.
- (5) If the period of the person's approval as a standard business sponsor is less than 6 years, the obligation referred to in subregulation (2) or (3) ends 3 years after the person is approved as a standard business sponsor.
- (6) If the period of the person's approval as a standard business sponsor is at least 6 years, the obligation referred to in subregulation (2) or (3) ends 6 years after the person is approved as a standard business sponsor.

2.87C Obligation not to engage in discriminatory recruitment practices

- (1) This regulation applies to a person who:
 - (a) is or was a standard business sponsor; and
 - (b) is lawfully operating a business in Australia.
- (2) The person must not engage in, or have engaged in, discriminatory recruitment practices during the period of the person's approval as a sponsor.
- (3) The obligation referred to in subregulation (2):
 - (a) starts to apply on the day the person is, or was, approved as a standard business sponsor; and
 - (b) ends when the person ceases, or ceased, to be a standard business sponsor.

Division 2.20—Circumstances in which sponsor may be barred or sponsor's approval may be cancelled

2.88 Preliminary

For subparagraphs 140L(1)(a)(i) and (ii) of the Act, each of the circumstances mentioned in this Division is a circumstance in which the Minister may take one or more of the actions mentioned in section 140M of the Act.

Note: The Minister cannot take action against a party to a work agreement under section 140M of the Act. The terms of the work agreement will provide for whether the agreement can be cancelled or whether the person can be barred from doing certain things under the agreement.

2.89 Failure to satisfy sponsorship obligation

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor in relation to a primary sponsored person or a secondary sponsored person; or
 - (b) a professional development sponsor in relation to a primary sponsored person; or
 - (c) a temporary work sponsor in relation to a primary sponsored person or a secondary sponsored person; or
 - (d) a temporary activities sponsor in relation to a primary sponsored person or a secondary sponsored person.
- (2) For subparagraph 140L(1)(a)(i) of the Act, the circumstance is that the Minister is satisfied that the person has failed to satisfy a sponsorship obligation mentioned in Division 2.19.
- (3) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the past and present conduct of the person in relation to Immigration; and
 - (b) the number of occasions on which the person has failed to satisfy the sponsorship obligation; and
 - (c) the nature and severity of the circumstances relating to the failure to satisfy the sponsorship obligation, including the period of time over which the failure has occurred; and
 - (d) the period of time over which the person has been an approved sponsor; and
 - (e) whether, and the extent to which, the failure to satisfy the sponsorship obligation has had a direct or indirect impact on another person; and
 - (f) whether, and the extent to which, the failure to satisfy the sponsorship obligation was intentional, reckless or inadvertent; and
 - (g) whether, and the extent to which, the person has cooperated with Immigration, including whether the person informed Immigration of the failure; and

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- (h) the steps (if any) the person has taken to rectify the failure to satisfy the sponsorship obligation, including whether the steps were taken at the request of Immigration or otherwise; and
- (i) the processes (if any) the person has implemented to ensure future compliance with the sponsorship obligation; and
- (j) the number of other sponsorship obligations that the person has failed to satisfy, and the number of occasions on which the person has failed to satisfy other sponsorship obligations; and
- (k) any other relevant factors.

2.90 Provision of false or misleading information

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or
 - (b) a professional development sponsor; or
 - (c) a temporary work sponsor; or
 - (d) a temporary activities sponsor.
- (2) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has provided false or misleading information to Immigration or the Tribunal.
- (3) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the purpose for which the information was provided; and
 - (b) the past and present conduct of the person in relation to Immigration; and
 - (c) the nature of the information; and
 - (d) whether, and the extent to which, the provision of false or misleading information has had a direct or indirect impact on another person; and
 - (e) whether the information was provided in good faith; and
 - (f) whether the person notified Immigration immediately upon discovering that the information was false or misleading; and
 - (g) any other relevant factors.

2.91 Application or variation criteria no longer met

- (1) This regulation applies to a person who is or was:
 - (a) a standard business sponsor; or
 - (b) a professional development sponsor; or
 - (c) a temporary work sponsor; or
 - (d) a temporary activities sponsor.
- (2) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance is that the Minister is satisfied that:
 - (a) the person no longer satisfies the criteria prescribed under section 140E of the Act at the time the person was approved as a sponsor; or

- (b) if the terms of the approval of the person as a standard business sponsor, temporary work sponsor or temporary activities sponsor have been varied—the person no longer satisfies the criteria prescribed under section 140GA of the Act at the time of the approval of the variation.
- (3) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
- (a) the nature of the applicable sponsorship criteria that the person no longer meets; and
 - (b) whether, and the extent to which, the failure to continue to satisfy the criteria for approval as a sponsor, or to continue to satisfy the criteria for approval of a variation, has had a direct or indirect impact on another person; and
 - (c) the reason why the person no longer satisfies the applicable sponsorship criteria, including whether the failure to satisfy the criteria is within the person's control; and
 - (d) the steps (if any) the person has taken to ensure that the person will satisfy the applicable criteria in the future; and
 - (e) any other relevant factors.

2.92 Contravention of law

- (1) This regulation applies to a person who is or was:
- (a) a standard business sponsor; or
 - (b) a professional development sponsor; or
 - (c) a temporary work sponsor; or
 - (d) a temporary activities sponsor.

Standard business sponsors, temporary activities sponsors, professional development sponsors and temporary work sponsors

- (2) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance for a person who is or was a standard business sponsor, a temporary activities sponsor, a professional development sponsor or a temporary work sponsor is that the Minister is satisfied that the person has been found by a court or a competent authority to have contravened a Commonwealth, State or Territory law.
- (3) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstances mentioned in subregulation (2) are:
- (a) the past and present conduct of the person; and
 - (b) the nature of the law that the person has contravened; and
 - (c) the gravity of the unlawful activity; and
 - (d) any other relevant factors.

Regulation 2.93

Standard business sponsors, temporary activities sponsors and temporary work sponsors

- (4) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance for a standard business sponsor, a temporary activities sponsor or a temporary work sponsor, in relation to a primary sponsored person, is that the Minister is satisfied that each of the following applies:
- (a) the primary sponsored person has been found by a court or a competent authority to have contravened a Commonwealth, State or Territory law;
 - (b) the law was a law relating to the licensing, registration or membership of the primary sponsored person in relation to the primary sponsored person's approved occupation;
 - (c) the primary sponsored person was required to comply with the law in order to work in the occupation nominated by the standard business sponsor, temporary activities sponsor or temporary work sponsor and approved by the Minister.
- (5) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstances mentioned in subregulation (4) are:
- (a) whether the person took reasonable steps to prevent the primary sponsored person from contravening a law relating to a licensing, registration or membership requirement of the primary sponsored person's approved occupation; and
 - (b) whether any other primary sponsored person, while in the employ of the person, has been found by a court or a competent authority to have contravened a law relating to a licensing, registration or membership requirement; and
 - (c) the processes (if any) the person has implemented to ensure future compliance with the licensing, registration or membership requirements of a primary sponsored person's approved occupation; and
 - (d) any other relevant factors.

2.93 Unapproved change to professional development program or special program

- (1) This regulation applies to a person who is or was:
- (a) a professional development sponsor; or
 - (b) a special program sponsor; or
 - (c) a temporary activities sponsor who is conducting, or has conducted, a program referred to in subclause 408.228(2) (youth exchange program) or (5) (other program) of Schedule 2.
- (2) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance is that the Minister is satisfied that the person made a change to:
- (a) if the person is or was a professional development sponsor—the professional development program; or
 - (b) if the person is or was a special program sponsor—the special program; or

- (c) if the person is or was a temporary activities sponsor referred to in paragraph (1)(c)—the program referred to in that paragraph; without the approval in writing of the Secretary.
- (3) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the severity of the conduct; and
 - (b) the past conduct of the person in relation to Immigration; and
 - (c) the impact, if any, that the taking of the action may have on the Australian community; and
 - (d) the extent to which the barring of the person as a sponsor will be an adequate means of dealing with the matter, having regard to:
 - (i) the seriousness of the inability, or of the failure, to comply; and
 - (ii) the past conduct of the person; and
 - (e) any other relevant factors.

2.94 Failure to pay additional security

- (1) This regulation applies to a person who is or was a professional development sponsor.
- (2) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has failed to pay an additional security requested by an authorised officer under section 269 of the Act.
- (3) For subregulation (2), a person has failed to pay an additional security if the person has failed to pay the security:
 - (a) within 28 days of the day on which the person was requested to pay the security; or
 - (b) within a longer period as allowed by an authorised officer in the request.
- (4) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the severity of the conduct; and
 - (b) the past conduct of the person in relation to Immigration; and
 - (c) the impact, if any, that the taking of the action may have on the Australian community; and
 - (d) the extent to which the barring of the person as a sponsor will be an adequate means of dealing with the matter, having regard to:
 - (i) the seriousness of the inability, or of the failure, to comply; and
 - (ii) the past conduct of the person; and
 - (e) any other relevant factors.

Regulation 2.94A

2.94A Failure to comply with certain terms of special program agreement or professional development agreement

- (1) This regulation applies to a person who is or was:
 - (a) a special program sponsor; or
 - (b) a professional development sponsor; or
 - (c) a temporary activities sponsor who is conducting, or has conducted, a program referred to in subclause 408.228(2) (youth exchange program) or (5) (other program) of Schedule 2.
- (2) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance is that the Minister is satisfied that:
 - (a) if the person is or was a special program sponsor—the person has not complied with a term or condition of the special program agreement in relation to which the special program sponsor was approved; or
 - (b) if the person is or was a professional development sponsor—the person has not complied with a term or condition of the professional development agreement in relation to which the professional development sponsor was approved; or
 - (c) if the person is or was a temporary activities sponsor—the person has not complied with a term or condition of the special program agreement referred to in paragraph 408.228(2)(c) or (5)(c) (as the case requires) of Schedule 2.
- (3) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
 - (a) the past and current conduct of the person in relation to Immigration; and
 - (b) the extent to which the person has not complied with the special program agreement or professional development agreement; and
 - (c) the number of occasions on which the person has failed to comply with the special program agreement or professional development agreement; and
 - (d) any other relevant factors.

2.94B Failure to pay medical and hospital expenses

- (1) This regulation applies to a person who is or was a standard business sponsor in relation to a primary sponsored person or a secondary sponsored person (the **sponsored person**) whose Subclass 457 (Business (Long Stay)) visa was granted before 14 September 2009.
- (2) For subparagraph 140L(1)(a)(ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has not paid a medical or hospital expense incurred by the sponsored person arising from treatment in a public hospital.
- (3) The medical or hospital expense:
 - (a) must be incurred by the sponsored person on or after 14 September 2009; and

- (b) must be incurred while the sponsored person is a primary sponsored person or secondary sponsored person in relation to the person; and
 - (c) must not have been paid under an insurance policy or a reciprocal health agreement between Australia and another country.
- (4) For paragraph 140L(1)(b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
- (a) the past and present conduct of the person in relation to Immigration; and
 - (b) the number of occasions on which the person has not paid medical or hospital expenses incurred by a sponsored person arising from treatment in a public hospital; and
 - (c) the amount of the medical or hospital expenses that the person has not paid; and
 - (d) the circumstances in which the medical or hospital expenses were incurred; and
 - (e) any other matter the Minister considers relevant.

Division 2.21—Process to bar sponsor or cancel sponsor's approval

2.95 Preliminary

- (1) This Division applies to a person who is or was an approved sponsor (other than a party to a work agreement).

Note: The Minister cannot take action against a party to a work agreement under section 140M of the Act. The terms of the work agreement will provide for whether the agreement can be cancelled or whether the person can be barred from doing certain things under the agreement.

- (2) If the Minister is taking action against a person under section 140M of the Act, the Minister must do so in accordance with the process set out in this Division.

2.96 Notice of intention to take action

- (1) If the Minister is considering taking action under section 140M of the Act in relation to the person, the Minister must give a written notice to the person.
- (2) The notice must:
 - (a) specify details of the circumstances prescribed under section 140L of the Act in relation to which action is being considered; and
 - (b) specify details of the actions that the Minister may take; and
 - (c) specify the address for providing a response to the Minister; and
 - (d) be given using a method mentioned in section 494B of the Act; and
 - (e) specify a date for a response not earlier than 7 days after the date a person is taken to have received the notice by section 494C of the Act.

2.97 Decision

The Minister must consider a response before making a decision if the person:

- (a) provides a response to the Minister before the date mentioned in paragraph 2.96(2)(e); or
- (b) provides a response:
 - (i) after the date mentioned in paragraph 2.96(2)(e); and
 - (ii) before the Minister has made the decision.

2.98 Notice of decision

- (1) If the Minister decides to take action under section 140M of the Act, the Minister must notify the person, in writing, of the following matters:
 - (a) the decision taken by the Minister, including the effect of the decision;
 - (b) the grounds for making the decision;
 - (c) if the person has a right to have the decision reviewed under Part 5 of the Act—state:
 - (i) that the decision can be reviewed; and
 - (ii) the time in which the application for review may be made; and

- (iii) who can apply for the review; and
 - (iv) where the application for review may be made;
 - (d) if an action is to bar the person:
 - (i) details of how the person can apply for a waiver of the bar; and
 - (ii) the address to which a request for a waiver, if made, must be sent.
- (2) If a notice is issued under regulation 2.96, and the Minister decides to take no action under section 140M of the Act, the Minister must notify the person, in writing, of the decision to take no action.

Division 2.22—Waiving a bar on sponsor's approval

2.99 Application

This Division applies to a person who is or was an approved sponsor other than a party to a work agreement.

2.100 Circumstances in which a bar may be waived

For subsection 140O(2) of the Act, a circumstance in which the Minister may waive a bar is that the Minister has received a request from the person to waive the bar.

2.101 Criteria for waiving a bar

For subsection 140O(3) of the Act, the criteria to be taken into account by the Minister in determining whether to waive a bar are:

- (a) whether the person has made the request to waive the bar in accordance with the process set out in regulation 2.102; and
- (b) if the Minister has not previously refused to waive the bar:
 - (i) whether the interests of Australia would be significantly affected if the bar were not waived; and
 - (ii) whether a substantial trade opportunity would be lost if the bar were not waived; and
 - (iii) whether there would be a significant detriment to the Australian community if the bar were not waived; and
 - (iv) whether the person's inability to sponsor a proposed primary sponsored person would significantly damage Australia's relations with the government of another country; and
 - (v) whether significant new evidence or information has come to light which was not available at the time the decision to place the bar was made; and
- (c) if the Minister has previously refused to waive the bar, whether the circumstances relevant to the making of the earlier decision have changed substantially.

2.102 Process to waive a bar

- (1) For section 140P of the Act, the Minister may waive a bar placed on the person under section 140M of the Act in accordance with the process set out in this regulation.
- (2) A request from the person to the Minister to waive the bar must:
 - (a) be in writing; and
 - (b) be sent to the address specified in the notice from the Minister mentioned in regulation 2.98.

Division 2.22A—Inspectors

2.102A Period of appointment

For subsection 140V(2) of the Act, the period specified in an instrument of appointment issued under subsection 140V(1) of the Act must not exceed 4 years.

2.102B Identity cards

- (1) For paragraph 140W(2)(a) of the Act, an identity card:
 - (a) must be:
 - (i) in accordance with prescribed Form 4; or
 - (ii) the form approved by the Fair Work Ombudsman under subsection 702(3) of the *Fair Work Act 2009*; and
 - (b) may include additional information that is not set out in the form mentioned in paragraph (a).

2.102C Purposes for which powers of inspectors may be exercised

For paragraph 140X(b) of the Act, the purposes for which an inspector may exercise his or her powers are:

- (a) determining whether a term or a condition of a work agreement is being, or has been, complied with; and
- (b) determining whether a circumstance prescribed under section 140L of the Act exists or has existed; and
- (c) investigating a circumstance, if a circumstance exists or has existed, in order to assist the Minister in determining what (if any) action to take under section 140M of the Act.

Note 1: These purposes are additional to the purpose of determining whether a sponsorship obligation is being, or has been, complied with—see paragraph 140X(a) of the Act.

Note 2: Section 140L of the Act allows the regulations to prescribe circumstances in which a sponsor may be barred or a sponsor's approval may be cancelled. These circumstances are prescribed in Division 2.20.

Note 3: Section 140M of the Act enables the Minister to cancel the approval of a sponsor or to bar a sponsor if regulations are prescribed under section 140L of the Act.

Division 2.23—Disclosure of personal information

2.103 Disclosure of personal information by Minister

- (1) For subsection 140ZH(1) of the Act, the kinds of information about a visa holder or a former visa holder that may be disclosed by the Minister to a person mentioned in column 3 of items 1 and 2 of the table in subsection 140ZH(1), and to an agency mentioned in subregulation (3), are:
 - (a) information relating to a failure to comply with a visa condition; and
 - (b) information about the immigration status of the visa holder or former visa holder; and
 - (c) information about the terms and conditions of employment of the visa holder or former visa holder; and
 - (d) information about costs incurred by the Commonwealth in relation to the visa holder or former visa holder; and
 - (e) information about an allegation made by the visa holder or former visa holder (or presumed to be made by the visa holder or former visa holder) that:
 - (i) an approved sponsor or a former approved sponsor has failed to satisfy a sponsorship obligation; or
 - (ii) a circumstance prescribed under section 140L of the Act may exist; and
 - (f) information about a debt, relating to the visa holder or former visa holder, owed by an approved sponsor or former approved sponsor.
- (2) For subsection 140ZH(1) of the Act, the kinds of information about an approved sponsor, or former approved sponsor, of a visa holder or a former visa holder that may be disclosed by the Minister to a person mentioned in column 3 for items 3 and 4 of the table in subsection 140ZH(1), and to an agency mentioned in subregulation (3), are:
 - (a) information relating to a failure, or a possible failure, to satisfy a sponsorship obligation prescribed under subsection 140H(1) of the Act; and
 - (b) information that a circumstance prescribed under section 140L of the Act may exist; and
 - (c) information about a warning given in relation to the possible existence of a circumstance prescribed under section 140L of the Act; and
 - (d) information about an action taken under section 140M of the Act; and
 - (e) information about a pecuniary penalty imposed for a contravention of section 140Q of the Act; and
 - (f) information about a warning given in relation to a possible contravention of section 140Q of the Act; and
 - (g) information about an infringement notice issued under section 506A of the Act; and
 - (h) information about the outcome of monitoring by an inspector exercising powers under Subdivision F of Division 3A of Part 2 of the Act; and

- (i) information provided to the Minister in accordance with regulation 2.83;
and
- (j) information provided to Immigration in accordance with regulation 2.84;
and
- (k) information relevant to the performance of a function by a Commonwealth, State or Territory agency relating to the regulation of 1 or more of the matters mentioned in subregulation (3).

Note: Regulation 2.83 prescribes a sponsorship obligation to provide records and information to the Minister. Regulation 2.84 prescribes a sponsorship obligation to provide information to Immigration when certain events occur.

- (3) For subsection 140ZH(1) of the Act, an agency that the Minister may disclose information to is a Commonwealth, State or Territory agency responsible for the regulation of 1 or more of the following matters:
 - (a) education;
 - (b) fair trading;
 - (c) health;
 - (d) industrial relations;
 - (e) law enforcement;
 - (f) public safety;
 - (g) registration and licensing in relation to an occupation;
 - (h) taxation;
 - (i) trade practices;
 - (j) workplace safety;
 - (k) workplace training.

2.104 Circumstances in which the Minister may disclose personal information

- (1) For subsection 140ZH(2) of the Act, this regulation sets out the circumstances in which the Minister may disclose personal information to which subsection 140ZH(1) of the Act applies.
- (2) Each of the following are circumstances in which the Minister may disclose personal information to a visa holder or a former visa holder:
 - (a) the disclosure of the information may assist Immigration in determining:
 - (i) whether an approved sponsor or a former approved sponsor has failed to satisfy a sponsorship obligation; or
 - (ii) whether a circumstance prescribed under section 140L of the Act exists in relation to an approved sponsor or a former approved sponsor of the visa holder or the former visa holder;
 - (b) the disclosure of the information may assist the visa holder or former visa holder to recover a debt under section 140S of the Act;
 - (c) the disclosure of the information will notify the visa holder or the former visa holder that their approved sponsor or former approved sponsor has been sanctioned:
 - (i) for a failure to satisfy a sponsorship obligation prescribed under section 140H of the Act; or

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- (ii) due to the existence of a circumstance prescribed under section 140L of the Act;
 - (d) the disclosure of the information will notify the visa holder or the former visa holder of the outcome of an allegation made by the visa holder or the former visa holder in relation to an approved sponsor or a former approved sponsor.
- (3) Each of the following are circumstances in which the Minister may disclose personal information to an approved sponsor or a former approved sponsor:
 - (a) the disclosure of the information may assist the approved sponsor or former approved sponsor:
 - (i) to respond to a claim that a sponsorship obligation has not been satisfied; or
 - (ii) to respond to a claim that a circumstance prescribed under section 140L of the Act exists; or
 - (iii) to satisfy a sponsorship obligation; or
 - (iv) to meet a liability to a visa holder or a former visa holder;
 - (b) the disclosure of the information will notify the approved sponsor or former approved sponsor that he or she is no longer the approved sponsor of a visa holder or a former visa holder;
 - (c) the disclosure of the information will notify the approved sponsor or former approved sponsor of the cancellation of a visa held by a person who is or was a primary sponsored person or a secondary sponsored person.
- (4) Each of the following are circumstances in which the Minister may disclose personal information to an agency of the Commonwealth or a State or Territory:
 - (a) the disclosure of the information may assist the agency to perform a regulatory function in relation to the matters mentioned at subregulation 2.103(3);
 - (b) the disclosure of the information may assist Immigration in determining:
 - (i) whether an approved sponsor or a former approved sponsor has satisfied a sponsorship obligation; or
 - (ii) whether a circumstance prescribed under section 140L of the Act exists.

2.105 Circumstances in which a recipient may use or disclose personal information

For subsection 140ZH(3) of the Act, the circumstance in which a recipient of personal information may use or disclose information to which subsection 140ZH(1) of the Act applies is that the information is to be used or disclosed by the recipient in the same circumstances in which it was disclosed to the recipient.

2.106 Disclosure of personal information to Minister

For subsection 140ZI(1) of the Act, the kind of personal information that the Minister may request an approved sponsor or a former approved sponsor of a

visa holder or a former visa holder to disclose to the Minister is the contact details of the visa holder or the former visa holder.

Examples

- 1 a postal address
- 2 a residential address
- 3 a telephone number
- 4 a personal website
- 5 an email address.

Part 3—Immigration clearance and collection of information

Division 3.1—Information to be given

3.01 Provision of information (general requirement)

(1) In this regulation:

officer includes a clearance officer.

(2) This regulation applies to:

(a) a person who is an overseas passenger:

- (i) arriving on board a vessel at a port in Australia in the course of, or at the conclusion of, an overseas flight or an overseas voyage; or
- (ii) leaving Australia on board a vessel bound for or calling at a place outside Australia; and

(b) a person on board an aircraft arriving at, or departing from, an airport in Australia, being an aircraft operated by an international air carrier;

other than:

- (c) a person included in a class of persons set out in an item in Part 1 of Schedule 9, being an item in which the word “no” appears in column 4; and
- (d) a person who, under regulation 3.06, is not required to complete a passenger card; and
- (e) a person who enters Australia:
 - (i) on a non-military ship; and
 - (ii) as a member of the crew of that non-military ship, or as a member of the family unit of a member of the crew of that non-military ship.

(3) A person to whom this regulation applies must:

(a) complete a passenger card:

- (i) in relation to the person and to any other person that person is in charge of on the relevant flight or voyage; and
- (ii) in accordance with directions set out on the passenger card; and

(b) if the person is arriving in Australia—provide the completed passenger card to an officer; and

(c) if the person is departing Australia—either:

- (i) provide the completed passenger card to an officer or an authorised system; or
- (ii) deposit the completed passenger card at a place of a kind specified in a legislative instrument made by the Minister for this subparagraph.

(4) An officer may require a person to whom this regulation applies to provide to the officer information about that person in respect of any of the following matters:

(a) name;

- (b) date of birth and country of birth;
- (c) citizenship;
- (d) sex, and marital or relationship status;
- (e) usual occupation;
- (f) passport number;
- (g) if the person is not:
 - (i) an Australian citizen; or
 - (ii) a person who is eligible for the grant of a Special Category visa; or
 - (iii) a person who will on entry be taken to hold a special purpose visa; the number of the Australian visa held by the person;
- (h) flight number of aircraft or name of ship in relation to the relevant flight or voyage;
- (i) country in which the person boarded, or intends to disembark from, the aircraft or ship;
- (j) if the person is entering Australia—the intended address of the person in Australia.

3.02 Passenger cards for persons entering Australia

- (1) A passenger card for a person entering Australia must include the following questions, or substantially similar questions:
 - (a) “Do you currently suffer from tuberculosis?”;
 - (b) “Do you have any criminal conviction/s?”.
- (2) The questions set out in subregulation (1):
 - (a) may be printed on the passenger card in any order; and
 - (b) may be numbered in any way.
- (3) The passenger card may include instructions for completing it, including instructions that questions are to be answered by ticks or other symbols.

3.03 Evidence of identity and visa for persons entering Australia (Act s 166)

- (1) For paragraph 166(1)(b) of the Act, the information required to be provided to a clearance authority is that set out in regulation 3.02.

Note: Under section 166, a person who enters Australia (other than a person referred to in sections 168 and 169—broadly, persons who have left Australia only for short periods without going to a foreign country, persons in prescribed classes (see below) and allowed inhabitants of the Protected Zone) must present evidence of their identity and provide certain information, and must do so in a prescribed way.

- (2) For subsection 166(3) of the Act, an Australian citizen who is required to comply with section 166 of the Act must provide a completed passenger card to a clearance officer.
- (3) For subsection 166(3) of the Act, a non-citizen who is required to comply with section 166 of the Act must:
 - (a) if the non-citizen is taken to hold a special purpose visa:

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- (i) provide a completed passenger card to a clearance officer where required by Part 1 of Schedule 9; and
- (ii) present to a clearance authority:
 - (A) if the non-citizen is a person who is registered for an automated identification processing system—evidence of his or her identity using the system; or
 - (B) evidence of the person’s identity, as specified in Part 1 of Schedule 9; and
- (b) if the non-citizen is eligible to hold a special category visa:
 - (i) present a New Zealand passport that is in force to a clearance authority; and
 - (ii) provide a completed passenger card to a clearance officer; and
- (d) if the non-citizen holds an Electronic Travel Authority (Class UD) visa:
 - (i) present evidence of the person’s identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
 - (ii) provide a completed passenger card to a clearance officer; and
- (e) if the non-citizen is a person mentioned in paragraph 1223A(1)(c) of Schedule 1, as in force before 23 March 2013, who holds a Temporary Business Entry (Class UC) visa:
 - (i) present evidence of the person’s identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
 - (ii) provide a completed passenger card to a clearance officer; and
- (ea) if the non-citizen holds a Subclass 600 (Visitor) visa granted on the basis of an application which was taken to have been validly made under regulation 2.07AA:
 - (i) present evidence of the person’s identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
 - (ii) provide a completed passenger card to a clearance officer; and
- (f) if the non-citizen holds a Subclass 417 (Working Holiday) or Subclass 676 (Tourist) visa granted on the basis of an Internet application:
 - (i) present evidence of the person’s identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
 - (ii) provide a completed passenger card to a clearance officer; and
- (fa) if the non-citizen holds a Subclass 600 (Visitor) visa granted on the basis of an Internet application:
 - (i) present evidence of the person’s identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
 - (ii) provide a completed passenger card to a clearance officer; and
- (g) if the non-citizen holds a Visitor (Class TV) visa:
 - (i) present evidence of the person’s identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
 - (ii) provide a completed passenger card to a clearance officer.

Note: **Internet application** is defined in regulation 1.03.

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- (4) For subsection 166(3) of the Act, a non-citizen who is required to comply with section 166 of the Act, other than a non-citizen mentioned in subregulation (3), must:
- (a) present his or her passport to a clearance authority; and
 - (b) if his or her visa is evidenced by a label and a clearance officer asks for the label to be shown—present the label to a clearance officer; and
 - (c) provide a completed passenger card to a clearance officer.

**3.03AA Evidence of identity and providing information—non-military ships
(Act s 166)**

- (1) This regulation applies to a person who is the holder of a Maritime Crew (Temporary) (Class ZM) visa.
- (2) For paragraph 166(1)(b) of the Act, the information is as much of the information in the table as is required by a clearance officer:

Item	Information
<i>If the person arrives in Australia on a non-military ship</i>	
101	a document that identifies the person as being a member of the crew of the non-military ship on which the person arrived (for example, a contract of employment, a crew list, a supernumerary crew list or a seafarer identity card)
102	a document that indicates that the person is a member of the family unit of a member of the crew of a non-military ship (for example, a marriage certificate, a birth certificate or an adoption certificate)
104	a statement from the master, owner, agent, charterer or operator of a non-military ship that the person is: <ul style="list-style-type: none">(a) a member of the crew of the non-military ship; or(b) a member of the family unit of a member of the crew of the non-military ship; or(c) a member of the family unit of a person who is under an offer to become a member of the crew of the non-military ship
105	any information mentioned in subregulation 3.01(4)
<i>If the person arrives in Australia by air</i>	
201	a document that indicates the person is under an offer to become a member of the crew of a non-military ship (a prospective member of the crew)
202	a document that indicates that the person is a member of the family unit of: <ul style="list-style-type: none">(a) a member of the crew of a non-military ship; or(b) a prospective member of the crew; (for example, a marriage certificate, a birth certificate or an adoption certificate)
204	a statement from the master, owner, agent, charterer or operator of a non-military ship that the person is: <ul style="list-style-type: none">(a) a prospective member of the crew; or(b) a member of the family unit of a member of the crew of the non-military ship; or(c) a member of the family unit of a person who is a prospective member of the crew
205	any information mentioned in subregulation 3.01(4)

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- (3) For subsection 166(3) of the Act, if the person enters Australia as:
- (a) a member of the crew on a non-military ship; or
 - (b) a member of the family unit of a member of the crew of a non-military ship;
- the requirements relating to passenger cards in subregulations 3.03(3) and (4) do not apply in relation to the person.

3.04 Place and time for giving evidence (Act, s 167)

For the purposes of subsection 167(2) of the Act (which deals with the time and place at which a person who enters Australia must comply with section 166):

- (a) the place at which a person who is required to comply with section 166 must do so is:
 - (i) a regional or area office of Immigration; or
 - (ii) at any place where there is a clearance officer, including a port; and
- (b) the period within which the person must do so is 2 working days after he or she enters Australia.

3.05 Allowed inhabitants of the Protected Zone (Act, s 168(2))

For the purposes of subsection 168(2) of the Act (which deals with compliance with section 166 by allowed inhabitants of the Protected Zone):

- (a) the place at which an allowed inhabitant of the Protected Zone who is required to comply with section 166 must do so is:
 - (i) a regional or area office of Immigration; or
 - (ii) at any place where there is a clearance officer, including a port; and
- (b) the period within which the inhabitant must do so is 5 working days after he or she goes to a part of the migration zone outside the protected area.

3.06 Persons not required to comply with s 166 of the Act (Act, s 168(3))

For the purposes of subsection 168(3) of the Act (which deals with the classes of person not required to give information under section 166), each class of person set out in Part 2 of Schedule 9 is prescribed.

3.06A Designated foreign dignitaries

- (1) For item 10 of Part 2 of Schedule 9 (which deals with persons not required to comply with section 166 of the Act), a person is a *designated foreign dignitary* if:
 - (a) the Minister specifies the person in an instrument in writing for this paragraph; or
 - (b) the person is included in a class of persons specified by the Minister in an instrument in writing for this paragraph.
- (2) The Minister must specify a person or a class in accordance with arrangements approved in writing by the Minister.

- (3) If the person is specified in an instrument for paragraph (1)(a), the period in which the person is a designated foreign dignitary:
 - (a) starts when the Minister specifies the person; and
 - (b) ends at the time, or in the way, mentioned in the instrument.
- (4) If the person is included in a class of persons specified in an instrument for paragraph (1)(b), the period in which the person is a designated foreign dignitary:
 - (a) starts when the person becomes a member of the class; and
 - (b) ends at the time, or in the way, mentioned in the instrument.
- (5) For item 10 of Part 2 of Schedule 9, a person is a **designated foreign dignitary** if the person is an accompanying member of the immediate family of a person who is a designated foreign dignitary in accordance with subregulation (1).

Note: Regulation 1.12AA explains when a person is a member of the immediate family of another person.
- (6) An instrument made under paragraph (1)(a) or (b) is not a legislative instrument.

Note: The effect of section 168 of the Act, regulation 3.06 and Part 2 of Schedule 9 to these Regulations is that a designated foreign dignitary is not required to comply with the requirements of section 166 of the Act relating to the giving of information.

3.07 Persons taken not to leave Australia (Act, s 80(c))

For the purposes of paragraph 80(c) of the Act, the prescribed period is 30 days.

3.08 Offence—failure to complete a passenger card

- (1) A person who is required by these Regulations to complete a passenger card must not fail to do so.

Penalty: 10 penalty units.
- (2) Strict liability applies to subregulation (1).

3.09 Evidence of identity—domestic travel on overseas vessels

- (1) In this regulation:

boarding pass means a document that permits a person to board an aircraft, given to the person by the operator of the aircraft.

officer includes a clearance officer.

overseas vessel has the meaning given by section 165 of the Act.

Note: **Vessel** includes an aircraft: see s 5(1) of the Act.
- (2) Subregulation (2A) applies in relation to a person who travels, or appears to intend to travel, on an overseas vessel from a port in Australia to another port in Australia without calling at a port outside Australia.

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Division 3.1 Information to be given

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- (2A) The person may be required by an officer at either port or both ports in Australia to provide evidence of his or her identity to the officer by producing a document of a kind mentioned in subregulation (3) that:
- (a) bears a photograph and the full name of the person; and
 - (b) is in force.
- (3) For subregulation (2A), the kinds of document are the following:
- (a) a passport issued to the person that is in the form in which it was issued;
 - (b) a licence to drive a motor vehicle issued under a law of the Commonwealth, or a State or Territory;
 - (c) a document issued by the Commonwealth, or a State or Territory, or by a Commonwealth, State or Territory authority, that identifies the person;
 - (d) if the vessel is an aircraft—an aviation security identity card issued by:
 - (i) the operator of the aircraft; or
 - (ii) the operator of an airport in Australia.
- (4) If a person to whom this regulation applies is boarding or disembarking from an overseas vessel that is an aircraft, an officer may require the person to show the officer the person's boarding pass.
- (5) An officer may require a person who is travelling with a person:
- (a) who is under 18; and
 - (b) in respect of whom a document cannot be produced to the officer as required;
- to write on the boarding pass issued to the first-mentioned person the full name of the second-mentioned person.

3.10 Use of information

- (1) With the written consent of the Minister, use may be made of information collected under this Part in respect of persons, being information that:
- (a) is collected from passenger cards or passports, or contained in notified data bases (or both), by an officer of any Department or authority of the Commonwealth, or of a State or Territory; and
 - (b) is concerned with any of the following matters, namely law enforcement, national security, national intelligence, education, health, community services, social welfare, employment, labour, taxation, statistics, quarantine, customs, excise.
- (2) The consent of the Minister for the use of information concerned with a matter specified in subregulation (1) may be given in respect of a particular occasion or any number of occasions.
- (3) If:
- (a) the Commonwealth has entered into an agreement with another country in relation to the provision of information concerning international movements of air traffic and persons on international flights; and

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- (b) the Minister is satisfied that the provision to that country of the information specified in subregulation (4) would facilitate the handling of aircraft or of persons travelling to destinations outside Australia;

the Minister may cause that information to be provided to the immigration authorities of that country.

(3A) If:

- (a) the Commonwealth has entered into an agreement with an international air carrier in relation to the provision of information concerning persons on international flights; and
- (b) the Minister is satisfied that the provision to that international air carrier of the information specified in subregulation (4) would facilitate the handling of persons travelling to destinations outside Australia;

the Minister may cause that information to be provided to that international air carrier.

- (4) For paragraph (3)(b), in relation to a person travelling to (or to and beyond) the country mentioned in that paragraph, and for paragraph (3A)(b), in relation to a person travelling with the international air carrier mentioned in that paragraph, the following information is specified:

- (a) name;
- (b) date of birth;
- (c) citizenship;
- (ca) sex;
- (cb) class and subclass of visa;
- (cc) when the visa ceases to be in effect;
- (d) passport number;
- (e) date of departure from Australia;
- (f) flight number;
- (g) place of intended disembarkation;
- (h) ultimate destination.

Note: Under the Act, a *visa* is an Australian visa issued in accordance with the Act.

- (5) If the Commonwealth enters into an agreement of a kind referred to in paragraph (3)(a) or (3A)(a):
- (a) the Minister must, as soon as is practicable, cause notice of the fact to be published in the *Gazette*; and
- (b) information must not be made available under the agreement earlier than the day after the day on which the notice is published.

3.10A Access to movement records

- (1) For subparagraph 488(2)(a)(vii) of the Act, Commonwealth, State or Territory legislation specified by the Minister in an instrument in writing for this subregulation is prescribed.

Note: Under subsection 488(1) of the Act, a person must not read, examine, reproduce, use or disclose any part of the movement records. However, subparagraph 488(2)(a)(vii) of

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the Act permits the Minister to authorise an officer to perform 1 or more of those actions for the purposes of prescribed Commonwealth, State or Territory legislation.

- (2) For paragraph 488(2)(g) of the Act:
- (a) an agency of the Commonwealth, a State or a Territory specified by the Minister in an instrument in writing for this paragraph is prescribed; and
 - (b) an employee of a prescribed agency who is specified by the Minister in an instrument in writing for this paragraph is prescribed; and
 - (c) a purpose specified by the Minister in an instrument in writing for this paragraph is prescribed.

Note: Under subsection 488(1) of the Act, a person must not read, examine, reproduce, use or disclose any part of the movement records. However, paragraph 488(2)(g) of the Act permits the Minister to authorise a prescribed employee of a prescribed agency of the Commonwealth, or of a State or Territory, to perform 1 or more of those actions for a prescribed purpose.

3.11 Production of deportee or removee

- (1) If a person has been placed on board a vessel for the purpose of:
- (a) deportation from Australia under an order made by the Minister under the Act; or
 - (b) removal from Australia;

an officer may require the master to produce the deportee or removee to the officer at any time before the vessel's departure from its last port of call in Australia.

- (2) The master must not fail to comply with a requirement under subregulation (1).

Penalty: 10 penalty units.

- (3) Subregulation (2) does not apply if the master has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subregulation (3) (see subsection 13.3(3) of the *Criminal Code*).

3.12 Offences by master of vessel

The master of a vessel must not:

- (a) refuse or neglect to afford all reasonable facilities to an officer for the performance of the officer's duties; or
- (b) deliver to an officer, under these Regulations, a list or statement that is incorrect in a material particular.

Penalty: 10 penalty units.

Division 3.2—Information about passengers and crew on overseas vessels

3.13 Interpretation

In this Division:

civilian vessel means a vessel other than a vessel of the regular armed forces of a Government recognised by Australia.

international cargo ship:

- (a) means a civilian vessel that:
 - (i) has a gross tonnage of at least 500 tons; and
 - (ii) either:
 - (A) is used wholly or principally to provide sea transportation of cargo; or
 - (B) is used to provide services to ships or shipping; and
- (b) does not include any of the following:
 - (i) an international passenger cruise ship;
 - (ii) a fishing vessel;
 - (iii) a fishing support vessel;
 - (iv) a pleasure craft.

international passenger aircraft means an aircraft that is being used to provide a regular international passenger air service or an international passenger charter air service.

international passenger charter air service means a service of providing air transportation of persons:

- (a) from:
 - (i) a place outside Australia to a place in Australia; or
 - (ii) a place in Australia to a place outside Australia; and
- (b) that is provided:
 - (i) by an airline operator that provides a regular international passenger air service; and
 - (ii) in return for a fee payable by persons using the service; and
- (c) that is not conducted in accordance with an international airline licence granted under Division 1 of Part 6 of the *Air Navigation Regulations 1947*.

international passenger cruise ship means a ship that:

- (a) has sleeping facilities for at least 100 persons (other than crew members); and
- (b) is being used to provide an international passenger sea transportation service.

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international passenger sea transportation service means a service of providing sea transportation of persons:

- (a) from:
 - (i) a place outside Australia to a place in Australia; or
 - (ii) a place in Australia to a place outside Australia; and
- (b) that is provided in return for a fee payable by persons using the service; and
- (c) that is available to the general public.

master includes owner, charterer, and agent in Australia.

regular international passenger air service means a service of providing air transportation of persons:

- (a) from:
 - (i) a place outside Australia to a place in Australia; or
 - (ii) a place in Australia to a place outside Australia; and
- (b) that is provided in return for a fee payable by persons using the service; and
- (c) that is conducted in accordance with:
 - (i) an international airline licence granted under Division 1 of Part 6 of the *Air Navigation Regulations 1947*; and
 - (ii) fixed schedules from fixed airports outside Australia over specific routes to fixed airports in Australia; and
- (d) that is available to the general public on a regular basis.

Note: *Vessel* includes an aircraft: see the Act, s 5(1).

3.13A Information about passengers and crew to be given before arrival and departure of certain aircraft and ships

For the definition of ***kind of aircraft or ship to which this Division applies*** in subsection 245I(1) of the Act, the following kinds of aircraft or ship are a kind of aircraft or ship to which Division 12B of the Act applies:

- (a) an international passenger aircraft;
- (b) an international passenger cruise ship;
- (c) an international cargo ship.

Note: Division 12B of the Act deals with the reporting of persons due to arrive at, or depart from, a place in Australia.

3.13B Obligation to report on persons arriving on ships—reporting periods for journey from last port outside Australia

- (1) For paragraph 245L(5)(a) of the Act, the prescribed period is 96 hours.
- (2) For paragraph 245L(5)(b) of the Act, the period mentioned in an item in the following table is specified for a journey of the kind mentioned in the item.

Reporting periods for certain journeys		
Item	Likely duration of ship's journey	Specified period
1	72 hours or more but less than 96 hours	72 hours
2	48 hours or more but less than 72 hours	48 hours
3	24 hours or more but less than 48 hours	24 hours
4	Less than 24 hours	12 hours

3.13C Report on departing person to relate to flight or voyage from the last place in Australia to a place outside Australia

For paragraph 245LA(3)(b) of the Act, a report under subsection 245LA(2) of the Act must only relate to the part of a flight or voyage that is from the last place in Australia to a place outside Australia.

3.13D Obligation to report on persons departing from Australia—deadline for providing report

Deadline for reporting on persons departing on an international passenger aircraft

- (1) For subsection 245LA(5) of the Act, a report under subsection 245LA(2) of the Act on a passenger or crew member who is on, or is expected to be on, a flight to be undertaken by an international passenger aircraft must be provided:
 - (a) before the passenger or crew member is required to present evidence of his or her identity to a clearance authority in relation to his or her departure; or
 - (b) if a report on the passenger or crew member has been made under subsection 245LA(2) of the Act and after the report was made the passenger or crew member changes his or her departing flight—before the passenger or crew member boards the departing flight; or
 - (c) for a passenger or crew member transiting through Australia without being immigration cleared and for whom a report under subsection 245LA(2) of the Act has not been made in relation to the person's departure from Australia—before the passenger or crew member boards the departing flight.

Deadline for reporting on persons departing on an international passenger cruise ship

- (2) For subsection 245LA(5) of the Act, a report under subsection 245LA(2) of the Act on a passenger or crew member who is on, or is expected to be on, a voyage to be undertaken by an international passenger cruise ship must be provided before the ship departs a place in Australia for a place outside Australia.

Deadline for reporting on persons departing on an international cargo ship

- (3) For subsection 245LA(5) of the Act, a report under subsection 245LA(2) of the Act on a passenger or crew member who is on, or is expected to be on, a voyage

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to be undertaken by an international cargo ship must be provided before the ship departs a place in Australia for a place outside Australia.

3.14 Information about overseas passengers to be given on arrival of inbound civilian vessel

- (1) If:
- (a) a civilian vessel arrives at a port in Australia (in this regulation called *the relevant port*); and
 - (b) the vessel carries overseas passengers;
- the master must, on the request of an officer, give the officer, to the best of the master's knowledge and belief, the particulars set out in subregulation (2), (3) or (4), as the case requires.

Penalty: 10 penalty units.

- (2) If the last port entered by the vessel before its arrival at the relevant port was outside Australia, the particulars are:
- (a) each passenger's full name; and
 - (b) each passenger's date of birth; and
 - (c) the country of issue and number of each passenger's passport; and
 - (d) the citizenship of each passenger; and
 - (e) the intended address in Australia (if any) of each passenger; and
 - (f) the place in Australia (if any) at which each passenger's journey in the vessel ends.
- (3) If there are overseas passengers on the vessel whose journey is to end at the relevant port, the particulars in respect of each of those passengers are:
- (a) his or her full name; and
 - (b) his or her date of birth; and
 - (c) the country of issue and number of his or her passport; and
 - (d) his or her citizenship; and
 - (e) his or her intended address in Australia.
- (4) If:
- (a) there are passengers on the vessel who:
 - (i) were on board the vessel when it left a place outside Australia; and
 - (ii) intend to travel in the vessel beyond Australia; and
 - (b) the master has not previously been asked by an officer to give particulars of those passengers;
- the particulars of each of those passengers are:
- (c) his or her full name; and
 - (d) his or her date of birth; and
 - (e) the country of issue and number of his or her passport; and
 - (f) his or her citizenship.

- (5) The master must, if asked to do so by an officer, give the officer a specified number (not exceeding 6) of copies of a document containing particulars given under this regulation.

Penalty: 10 penalty units.

3.15 Medical certificate

- (1) If a list is given to an officer under subregulation 3.14(2), the medical officer of the vessel must also give the officer a certificate signed by him or her that certifies that, in his or her opinion:
- (a) no passenger on the vessel; or
 - (b) no passenger on the vessel other than a passenger named in the certificate; is suffering from:
 - (c) tuberculosis; or
 - (d) a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; or
 - (e) a disease or condition that, during the person's proposed period of stay in Australia, would be likely to:
 - (i) result in a significant cost to the Australian community in the areas of health care or community services; or
 - (ii) prejudice the access of an Australian citizen or permanent resident to health care or community services.
- (2) If a passenger is named in the certificate as suffering from a disease or condition referred to in paragraph (1)(c), (d) or (e), the certificate must also set out the disease or condition from which the passenger is suffering.
- (3) If a vessel has no medical officer, the certificate must be signed and given by the master to the best of his or her knowledge and belief.
- (4) If an officer has required the master of a vessel to provide copies of a document under subregulation 3.14(5), the medical officer or master must provide the same number of copies of the certificate.

Penalty: 10 penalty units.

3.16 Information about overseas passengers—outbound civilian vessel

- (1) If:
- (a) a civilian vessel leaves a port in Australia on an overseas voyage or an overseas flight; and
 - (b) the vessel carries overseas passengers:
 - (i) who were on board the vessel when it left a place outside Australia, and who intend to travel in the vessel beyond Australia; or
 - (ii) who joined the vessel at that port;

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the master of the vessel must give an officer a list setting out, to the best of the master's knowledge and belief, the following particulars of each of those passengers:

- (c) his or her full name;
- (d) his or her date of birth;
- (e) the country of issue and number of his or her passport;
- (f) his or her citizenship;
- (g) the place where his or her journey in the vessel ends.

- (2) The master must, if asked to do so by an officer, give the officer a specified number (not exceeding 6) of copies of a document containing particulars given under this regulation.

Penalty: 10 penalty units.

3.17 Information about crew

- (1) The master of a civilian vessel that enters Australia must, at any port of call in Australia, if so requested by an officer:

- (a) give the officer a list showing the number of members of the crew and showing, in respect of each member of the crew:
 - (i) his or her full name; and
 - (ii) his or her date of birth; and
 - (iii) his or her citizenship; and
 - (iv) the country of issue and number of his or her passport; and
- (b) if the vessel is a ship, produce to the officer the ship's articles.

- (2) The master of a civilian vessel that is a ship must, at the first port of call in Australia of the ship, give an officer a list signed by the master showing the name and citizenship of every person on board other than:

- (a) a passenger; or
- (b) a member of the crew whose name appears on the ship's articles as a member of the crew for discharge at a port outside Australia.

Penalty: 10 penalty units.

Division 3.3—Examination, search and detention

3.19 Periods within which evidence to be shown to officer

For subsections 188(2) and (3) of the Act, the periods are:

- (a) if the requirement is oral—5 minutes; or
- (b) if the requirement is in writing—48 hours.

3.20 Information to be provided—authorised officers carrying out identification tests

- (1) For subsection 258B(1) of the Act, the matters are:
 - (a) the reason why a personal identifier is required to be provided; and
 - (b) how a personal identifier may be collected; and
 - (c) how any personal identifier that is collected may be used; and
 - (d) the circumstances in which a personal identifier may be disclosed to a third party; and
 - (e) notification that a personal identifier may be produced in evidence in a court or tribunal in relation to the person who provided the personal identifier; and
 - (f) notification that the *Privacy Act 1988* applies to a personal identifier, and that the person has a right to make a complaint to the Australian Information Commissioner about the handling of personal information; and
 - (g) notification that the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and of its agencies, and that the person has a right under that Act to seek access to that information or those documents under that Act, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading; and
 - (h) if the person is a minor or incapable person—information concerning how a personal identifier is to be obtained from a minor or incapable person.
- (2) For subsection 258B(3) of the Act, if a form is to be given to a person, it must be given to the person at a time that gives the person enough time to read and understand the form before the identification test is conducted.

3.21 Procedure and requirements—identification test not carried out

- (1) For subsection 258D(2) of the Act, subregulation (2) prescribes the procedures and requirements that apply if:
 - (a) a person has applied for a visa; and
 - (b) at the time of making the application the person is outside Australia; and
 - (c) the person is required to provide a personal identifier under section 257A of the Act otherwise than by way of an identification test, in relation to the application.

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- (2) For subregulation (1), the person must be informed of the following matters:
 - (a) the reason why a personal identifier is required to be provided;
 - (b) how a personal identifier may be collected;
 - (c) how any personal identifier that is collected may be used;
 - (d) the circumstances in which a personal identifier may be disclosed to a third party;
 - (e) that a personal identifier may be produced in evidence in a court or tribunal in relation to the person;
 - (f) that the *Privacy Act 1988* applies to a personal identifier, and that the person has a right to make a complaint to the Australian Information Commissioner about the handling of personal information;
 - (g) that the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and its agencies, and that the person has a right under that Act to seek access to that information or those documents under that Act, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading.
- (3) The person may be informed of the matters in writing or orally.
- (4) The manner in which the person is informed of the matters need not involve an officer or authorised officer informing the person of the matters.

Division 3.4—Identification of immigration detainees

3.30 Immigration detainees must provide personal identifiers

- (1) For subsection 261AA(1) of the Act, a circumstance is that the non-citizen is in the company of, and restrained by:
 - (a) an officer; or
 - (b) in the case of a particular non-citizen—another person directed by the Secretary to accompany and restrain the non-citizen.
- (2) For subsection 261AA(1) of the Act, a circumstance is that each of the following applies:
 - (a) immediately before being detained in immigration detention, the non-citizen was detained under:
 - (i) the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (ii) the *Fisheries Management Act 1991*;
 - (iii) the *Torres Strait Fisheries Act 1984*;
 - (b) the non-citizen has provided a personal identifier or personal identifiers in accordance with the relevant Act in subparagraph (a)(i), (ii) or (iii).
- (3) Subregulation (2) applies to the provision of a personal identifier only if:
 - (a) an authorised officer is satisfied that the personal identifier that has been provided is usable for a particular purpose set out in subsection 5A(3) of the Act; and
 - (b) the authorised officer is satisfied about the integrity of the personal identifier; and
 - (c) the authorised officer is satisfied that no further personal identifiers need to be collected from the non-citizen to satisfy the purpose.
- (4) For paragraph 261AA(1A)(e) of the Act, an iris scan is prescribed.

Note: Under subsection 261AA(1) of the Act, a non-citizen who is in immigration detention must (other than in the prescribed circumstances) provide to an authorised officer one or more personal identifiers. Personal identifiers are mentioned in subsection 261AA(1A) of the Act, and include any prescribed personal identifiers.

3.31 Authorised officers must require and carry out identification tests

For paragraph 261AB(1)(a) of the Act, the types of personal identifiers are as follows:

- (a) fingerprints or handprints of the non-citizen (including those taken using paper and ink or digital liveness scanning technologies);
- (b) a measurement of the non-citizen's height and weight;
- (c) a photograph or other image of the non-citizen's face and shoulders;
- (d) the non-citizen's signature.

Part 4—Review of decisions

Division 4.1—Review of decisions other than decisions relating to protection visas

Note: This Division deals with the review of visa decisions other than protection visa decisions. The review of decisions relating to protection visas is dealt with in Divisions 4.2 and 4.4.

4.01 Interpretation

Expressions used in this Part, other than *nominated* and *sponsored*, have the same respective meanings as in Part 5 of the Act.

4.02 Part 5-reviewable decisions and who may apply for review

- (1AA) For section 337 of the Act, *sponsored* includes being identified in a nomination under section 140GB of the Act.
- (1A) For paragraph 338(2)(d) of the Act, the following visas are prescribed:
- (a) a Subclass 401 (Temporary Work (Long Stay Activity)) visa;
 - (aa) a Subclass 402 (Training and Research) visa;
 - (b) a Subclass 407 (Training) visa;
 - (c) a Subclass 416 (Special Program) visa;
 - (e) a Subclass 420 (Entertainment) visa;
 - (k) a Subclass 457 (Temporary Work (Skilled)) visa;
 - (l) a Subclass 488 (Superyacht Crew) visa.
- (4) For subsection 338(9) of the Act, each of the following decisions is a Part 5-reviewable decision:
- (a) a decision under subsection 140E(1) of the Act to refuse a person's application for approval as a sponsor in relation to one or more classes of sponsor;
 - (d) a decision under subsection 140GB(2) of the Act to refuse to approve a nomination;
 - (e) a decision under regulation 5.19 to refuse an application for approval of the nomination of a position;
 - (f) a decision that:
 - (i) relates to requiring a security; and
 - (ii) relates to the refusal to grant a visa, being a visa for which the Minister is to have regard to a criterion to the effect that 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;
 - (h) a decision under section 140M of the Act to take 1 or more actions to cancel a sponsor's approval or to bar a sponsor;

- (j) a decision to refuse to grant a Subclass 173 (Contributory Parent (Temporary)) visa to a contributory parent newborn child;
- (k) a decision to refuse to grant a Subclass 884 (Contributory Aged Parent (Temporary)) visa to a contributory parent newborn child;
- (l) a decision to refuse to grant a Subclass 457 (Temporary Work (Skilled)) visa to a non-citizen if:
 - (i) the non-citizen is outside Australia at the time of application; and
 - (ii) the non-citizen was sponsored or nominated, as required by a criterion for the grant of the visa, by:
 - (A) an Australian citizen; or
 - (B) a company that operates in the migration zone; or
 - (C) a partnership that operates in the migration zone; or
 - (D) the holder of a permanent visa; or
 - (E) a New Zealand citizen who holds a special category visa;
- (la) a decision to refuse to grant a Subclass 489 (Skilled—Regional (Provisional)) visa to a non-citizen if:
 - (i) the non-citizen is outside Australia at the time of application; and
 - (ii) the non-citizen was sponsored or nominated, as required by a criterion for the grant of the visa, by:
 - (A) an Australian citizen; or
 - (B) a company that operates in the migration zone; or
 - (C) a partnership that operates in the migration zone; or
 - (D) the holder of a permanent visa; or
 - (E) a New Zealand citizen who holds a special category visa;
- (m) a decision under subregulation 1.20AA(2) to refuse to approve a person or an organisation as a sponsor of a temporary visa applicant;
- (n) a decision under subsection 140GA(2) of the Act not to vary a term specified in an approval;
- (o) a decision to refuse to grant a Subclass 407 (Training) visa to a non-citizen, if:
 - (i) the non-citizen was outside Australia at the time of application; and
 - (ii) the non-citizen was sponsored or nominated, as required by a criterion for the grant of the visa, by:
 - (A) an Australian citizen; or
 - (B) a company that operates in the migration zone; or
 - (C) a partnership that operates in the migration zone; or
 - (D) the holder of a permanent visa; or
 - (E) a New Zealand citizen who holds a special category visa;
- (p) a decision to refuse to grant a Subclass 408 (Temporary Activity) visa to a non-citizen, if:
 - (i) the non-citizen was outside Australia at the time of application; and
 - (ii) the non-citizen was sponsored, as referred to in paragraph (a) of the definition of *passes the sponsorship test* in clause 408.111 of Schedule 2, by:

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- (A) an Australian citizen; or
- (B) a company that operates in the migration zone; or
- (C) a partnership that operates in the migration zone; or
- (D) the holder of a permanent visa; or
- (E) a New Zealand citizen who holds a special category visa.

- (4A) For paragraph (4)(a), the decision is not a Part 5-reviewable decision if the decision relates to a person:
- (a) whose application for approval as an approved sponsor in relation to the standard business sponsor class has been refused; and
 - (b) in making the decision, the Minister did not consider the criteria at paragraphs 2.59(d) and (e).

Note: The Minister is required to consider the criteria at paragraphs 2.59(d) and (e) only if the applicant is lawfully operating a business in Australia.

- (4B) For paragraphs (4)(d) and (h), the decision is not a Part 5-reviewable decision:
- (a) if the decision relates to a person who is:
 - (i) a standard business sponsor; or
 - (ii) a former standard business sponsor; and
 - (b) either:
 - (i) in making the decision under subsection 140E(1) of the Act (whether to approve the person as a standard business sponsor), the Minister did not consider the criteria at paragraphs 2.59(d) and (e); or
 - (ii) in making the decision under subsection 140GA(2) of the Act (whether to vary the terms of approval), the Minister did not consider the criteria at paragraphs 2.68(e) and (f).

Note: The Minister is required to consider the criteria at paragraphs 2.59(d) and (e) or paragraphs 2.68(e) and (f) only if the applicant is lawfully operating a business in Australia.

- (4C) For paragraph (4)(n), the decision is not a Part 5-reviewable decision if:
- (a) the decision relates to a person who is:
 - (i) a standard business sponsor; or
 - (ii) a former standard business sponsor; and
 - (b) in making the decision under subsection 140GA(2) of the Act (whether to vary the terms of approval), the Minister did not consider the criteria at paragraphs 2.68(e) and (f).

Note: The Minister is required to consider the criteria at paragraphs 2.68(e) and (f) only if the applicant is lawfully operating a business in Australia.

- (5) For paragraph 347(2)(d) of the Act, an application for review of a decision mentioned in subregulation (4) may only be made by:
- (a) in the case of a decision mentioned in paragraph (4)(a)—a person to whose application the decision relates;
 - (c) in the case of a decision mentioned in paragraph (4)(d)—the approved sponsor who made the nomination;

- (d) in the case of a decision mentioned in paragraph (4)(e)—the employer to whose nomination of a position the decision relates;
- (e) in the case of a decision to which paragraph (4)(f) applies—the non-citizen in relation to whom the decision is made;
- (g) in the case of a decision mentioned in paragraph (4)(h)—the person whose approval is cancelled or who has been barred;
- (h) in the case of a decision to which paragraph (4)(j) applies—the sponsor of the contributory parent newborn child;
- (i) in the case of a decision to which paragraph (4)(k) applies—the applicant;
- (k) in the case of a decision to which paragraph (4)(l) relates—the sponsor or nominator;
- (ka) in the case of a decision to which paragraph (4)(la) relates—the sponsor or nominator;
 - (l) in the case of a decision to which paragraph (4)(m) applies—the person or organisation to whose approval the decision relates;
- (m) in the case of a decision to which paragraph (4)(n) applies—the approved sponsor who applied for a variation of the term;
- (n) in the case of a decision to which paragraph (4)(o) applies—the sponsor or nominator;
- (o) in the case of a decision to which paragraph (4)(p) applies—the sponsor.

4.10 Time for lodgment of applications with Tribunal (Act, s 347)

- (1) For paragraph 347(1)(b) of the Act, the period in which an application for review of a Part 5-reviewable decision must be given to the Tribunal:
 - (a) if the Part 5-reviewable decision is mentioned in subsection 338(2) or (7A) of the Act—starts when the applicant receives notice of the decision and ends at the end of 21 days after the day on which the notice is received; or
 - (b) if the Part 5-reviewable decision is mentioned in subsection 338(3) or (3A) of the Act—starts when the applicant receives notice of the decision and ends at the end of 7 working days after the day on which the notice is received; or
 - (c) if the Part 5-reviewable decision is mentioned in subsection 338(5), (6), (7) or (8) of the Act—starts when the applicant receives notice of the decision and ends at the end of 70 days after the day on which the notice is received; or
 - (d) if the Part 5-reviewable decision is prescribed under subsection 338(9) of the Act—starts when the applicant receives notice of the decision and ends at the end of 21 days after the day on which the notice is received.
- (2) However, the period in which an application by a detainee for review of a Part 5-reviewable decision must be given to the Tribunal:
 - (a) in the case of an application for review of a decision of a kind mentioned in subsection 338(4) of the Act—starts when the detainee receives notice of the decision and ends at the end of 2 working days after the day on which the notice is received; or

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- (aa) in the case of an application for review of a decision to which paragraph 4.02(4)(f) applies—starts when the detainee receives notice of the decision to refuse to grant the visa mentioned in subparagraph 4.02(4)(f)(ii) and ends at the end of 2 working days after the day on which the notice is received; or
 - (b) in any other case—starts when the detainee receives notice of the decision and ends at the end of 7 working days after the day on which the notice is received.
- (2A) For subparagraph 347(1)(b)(iii) of the Act, the prescribed number of days in respect of a Part 5-reviewable decision prescribed under subsection 338(9) of the Act is 28 days.

Note: For subparagraph 347(1)(b)(iii) of the Act, there must be a prescribed number of days in respect of kinds of decisions covered by subsection 338(9) of the Act. The prescribed period for applications for review must end not later than the prescribed number of days after notification of the decision.

4.11 Giving the application to the Tribunal

- (1) An application for review by the Tribunal must be given to the Tribunal by:
 - (a) leaving it with an officer of the Tribunal at a registry of the Tribunal, or with a person specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*; or
 - (b) sending the application by pre-paid post to a registry of the Tribunal; or
 - (c) having the application delivered by post, or by hand, to an address specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*; or
 - (d) faxing the application to a fax number specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*; or
 - (e) transmitting it to a registry of the Tribunal by other electronic means specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*.
- (2) An application made to the Tribunal in accordance with paragraph (1)(a) or (b) is taken to have been received by the Tribunal at the time the Tribunal receives it.
- (3) An application made to the Tribunal in accordance with paragraph (1)(c) is taken to have been received by the Tribunal at the time it is received at the relevant address.
- (4) An application made to the Tribunal in accordance with paragraph (1)(d) is taken to have been received by the Tribunal at the time it is received at the relevant fax number.
- (5) An application made to the Tribunal in accordance with paragraph (1)(e) is taken to have been received by the Tribunal at the time the Tribunal receives it.

4.12 Combined applications for Tribunal review

- (2) If:
- (a) 2 or more applicants have combined their primary applications in Australia in a way permitted by Schedule 1 or regulation 2.08, 2.08A or 2.08B; and
 - (b) the Minister's decisions in respect of 2 or more of those applicants are that a visa not be granted; and
 - (c) the Minister's decisions are Part 5-reviewable decisions;
- the applicants referred to in paragraph (b) may combine their applications for review by the Tribunal of the Minister's decisions.
- (4) If:
- (a) a person has nominated or sponsored 2 or more members of a family unit in respect of their primary applications for visas of a kind referred to in subsection 338(5) of the Act; and
 - (b) the Minister's decisions in respect of 2 or more of the members of that family unit are that a visa not be granted; and
 - (c) the Minister's decisions are Part 5-reviewable decisions;
- the nominator or sponsor may combine his or her applications for review by the Tribunal of the Minister's decisions in respect of each of the members of the family unit to whom the Minister refused to grant a visa.
- (5) If a person applies for review by the Tribunal of:
- (a) a decision to which paragraph 4.02(4)(f) applies; and
 - (b) a decision to refuse to grant the visa mentioned in subparagraph 4.02 (4) (f) (ii) that is a Part 5-reviewable decision;
- the applications for review by the Tribunal of the decisions are taken to be combined.
- (6) If:
- (a) 2 or more visa applicants have combined their primary applications, in a way permitted by Schedule 1 or regulation 2.08, 2.08A or 2.08B, for visas of a kind referred to in subsection 338(6) or (7) of the Act; and
 - (b) the Minister's decisions in respect of 2 or more of those visa applicants are that visas not be granted; and
 - (c) the Minister's decisions are Part 5-reviewable decisions;
- the Australian citizen or Australian permanent resident who is a parent, spouse, de facto partner, child, brother or sister of the visa applicants may combine his or her applications for review by the Tribunal of the Minister's decisions in respect of each of those visa applicants to whom the Minister refused to grant a visa.

4.13 Tribunal review—fees and waiver

- (1) Subject to this regulation, the fee for an application for review of a decision by the Tribunal is \$1,540.

Note: The fee in subregulation (1) is subject to increase under regulation 4.13A.

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- (2) No fee is payable on the following:
 - (a) an application for review by the Tribunal of a primary decision of a kind referred to in subsection 338(4) of the Act;
 - (b) an application, made by a non-citizen who is in immigration detention, for review by the Tribunal of a decision to which paragraph 4.02(4)(f) applies.
- (3) If a person combines 2 or more applications for review by the Tribunal in accordance with regulation 4.12, an application fee is payable in respect of only 1 of those applications.
- (4) If the Registrar of the Tribunal is satisfied that the payment of the fee mentioned in subregulation (1) has caused, or is likely to cause, severe financial hardship to the review applicant, the Registrar may determine that the fee payable is 50% of the amount mentioned in subregulation (1).

4.13A Biennial increases in fees

Despite any other provision of these Regulations, the fee prescribed by subregulation 4.13(1) is increased, in accordance with regulation 4.13B, on each biennial anniversary of 1 July 2011.

4.13B Calculation of increase

- (1) If, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is taken to increase, on 1 July immediately following the end of the period, in accordance with the formula:

$$\frac{\text{Fee} \times \text{Latest CPI number}}{\text{Earlier CPI number}}$$

where:

earlier CPI number is the CPI number for the last March quarter before the beginning of the relevant period.

latest CPI number is the CPI number for the last March quarter before the end of the relevant period.

- (2) If, apart from this subregulation, the amount of a fee increased under subregulation (1) would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.
 - (3) Subject to subregulation (4), if at any time, whether before or after the commencement of this regulation, the Australian Statistician publishes for a particular March quarter a CPI number in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this regulation.
 - (4) If, at any time, whether before or after the commencement of this regulation, the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this regulation after the change is
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made, regard must be had only to numbers published in terms of the new reference base.

(5) In this regulation:

CPI number means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

fee means:

- (a) a fee prescribed by subregulation 4.13(1); or
- (b) the fee in force at the end of the relevant period if regulation 4.13A applies.

relevant period means any of the following periods:

- (a) the 2 year period commencing on 1 July 2011;
- (b) after that period—each 2 year period commencing on a biennial anniversary of 1 July 2011.

4.14 Refund of fees by Tribunal

(1) The table sets out:

- (a) circumstances in which all or part of the amount of the fee for an application for review of a decision is to be refunded; and
- (b) the amount that is to be refunded.

Item	If ...	the amount to be refunded is ...
<i>Refunds for severe financial hardship</i>		
1	the applicant has paid the amount mentioned in subregulation 4.13(1) and the Registrar of the Tribunal has made a determination mentioned in subregulation 4.13(4)	50% of the amount mentioned in subregulation 4.13(1)
<i>General refunds</i>		
2	the applicant is not entitled to apply for review by the Tribunal	the amount that the applicant was required to pay by regulation 4.13
3	the decision to which the application relates is not subject to review by the Tribunal	the amount that the applicant was required to pay by regulation 4.13
4	the Minister has given a conclusive certificate as mentioned in section 339 of the Act (which deals with conclusive certificates) in relation to the decision	the amount that the applicant was required to pay by regulation 4.13
	Note: The conclusive certificate certifies that review would be contrary to the public interest.	
<i>Refunds after Tribunal decision</i>		
5	the decision to which the review relates is set aside or varied	50% of the amount mentioned in subregulation 4.13(1)
6	the application is remitted to the primary decision-maker for reconsideration	50% of the amount mentioned in subregulation 4.13(1)

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- (2) If an application for review by the Tribunal is withdrawn, the fee paid on the application is to be refunded if the application is withdrawn because:
- (a) the death has occurred, since the visa application was made, of:
 - (i) the applicant for the visa that was the subject of the application; or
 - (ii) a member of that applicant's family unit; or
 - (iii) a review applicant; or
 - (b) the applicant for the visa that was the subject of the application has been granted a visa of the class applied for otherwise than because the Minister has reconsidered the primary application and the applicant's score on the reconsideration is more than or equal to the applicable pass mark; or
 - (c) in relation to an application for a parent visa—the applicant:
 - (i) applied for another parent visa after lodging the application for review; and
 - (ii) wants to have a decision made on the application for the other parent visa.

4.15 Tribunal's power to give directions

- (1) For paragraph 349(2)(c) of the Act (which deals with the Tribunal's power to remit):
- (a) an application for a visa or entry permit made on or after 19 December 1989 is a prescribed matter; and
 - (b) subject to subregulation (4), a permissible direction is that the applicant must be taken to have satisfied a specified criterion for the visa or entry permit.
- (2) For paragraph 349(2)(c) of the Act, the requiring of a security that is mentioned in paragraph 4.02(4)(f) is a prescribed matter.
- (3) If the Tribunal remits a prescribed matter that is mentioned in subregulation (2) to the primary decision-maker, the Tribunal may direct the primary decision-maker:
- (a) to indicate to the applicant that a condition specified by the Tribunal will be imposed on the visa if it is granted; and
 - (b) to require a security for compliance with the condition (whether or not a security has already been required).
- Note 1: **Prescribed matter:** in this case, a matter that the Tribunal may remit for reconsideration.
- (4) If, under subregulation 2.08E(2B), the Tribunal remits a prescribed matter mentioned in paragraph (1)(a) to the Minister for reconsideration, the Tribunal must not make a direction in relation to that matter other than the direction mentioned in subregulation 2.08E(2B).

4.16 Statement about decision under review

The number of copies that the Secretary must give to the Registrar under subsection 352(2) of the Act (which deals with the statement that the Secretary must give to the Tribunal) is 1.

4.17 Prescribed periods—invitation to comment or give additional information (Act, s 359B(2))

- (1) This regulation applies, for subsection 359B(2) of the Act, if a person is invited to give additional information, or to comment on information, other than at an interview.
- (2) If the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the prescribed period for giving the information or comments:
 - (a) commences when the detainee receives the invitation; and
 - (b) ends at the end of:
 - (i) 2 working days after the day the detainee receives the invitation; or
 - (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (3) If the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the prescribed period for giving the information or comments:
 - (a) commences when the detainee receives the invitation; and
 - (b) ends at the end of:
 - (i) 7 days after the day the detainee receives the invitation; or
 - (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (4) If the invitation relates to any other application for review of a decision, the prescribed period for giving the information or comments:
 - (a) commences when the person receives the invitation; and
 - (b) ends at the end of:
 - (i) 14 days after the day the person receives the invitation; or
 - (ii) if the person agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (6) A response to the invitation is taken to be given to the Tribunal when a registry of the Tribunal receives the response.

Note 1: If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

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**4.18 Prescribed periods—invitation to comment or give additional information
(Act, s 359B(3))**

- (1) This regulation applies, for paragraph 359B(3)(b) of the Act, if a person is invited to give additional information, or to comment on information, at an interview.
- (2) If the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the prescribed period for giving the information or comments:
 - (a) commences when the detainee receives the invitation; and
 - (b) ends at the end of 2 working days after the day the detainee receives the invitation.
- (3) If the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the prescribed period for giving the information or comments:
 - (a) commences when the detainee receives the invitation; and
 - (b) ends at the end of 14 days after the day the detainee receives the invitation.
- (4) If the invitation relates to any other application for review of a decision, the prescribed period for giving the information or comments:
 - (a) commences when the person receives the invitation; and
 - (b) ends at the end of 28 days after the day the person receives the invitation.

Note 1: If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**4.18A Prescribed periods—invitation to comment or give additional information
(Act, s 359B(4))**

- (1) This regulation applies, for subregulation 359B(4) of the Act, if:
 - (a) a person is invited to give additional information, or to comment on information, within a period prescribed in regulation 4.17; and
 - (b) the invitation is to give the information or comments other than at an interview; and
 - (c) the prescribed period is to be extended by the Tribunal.
- (2) If the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the period by which the Tribunal may extend the prescribed period:
 - (a) commences when the detainee receives notice of the extended period; and
 - (b) ends at the end of:
 - (i) 2 working days after the day the detainee receives notice of the extended period; or

- (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (3) If the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the period by which the Tribunal may extend the prescribed period:
 - (a) commences when the detainee receives notice of the extended period; and
 - (b) ends at the end of:
 - (i) 14 days after the day the detainee receives notice of the extended period; or
 - (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (4) If the invitation relates to any other application for review of a decision, the period by which the Tribunal may extend the prescribed period:
 - (a) commences when the person receives notice of the extended period; and
 - (b) ends at the end of:
 - (i) 14 days after the day the person receives notice of the extended period; or
 - (ii) if the person agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (6) A response to the invitation is taken to be given to the Tribunal when a registry of the Tribunal receives the response.

Note 1: If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

4.18B Prescribed periods—invitation to comment or give additional information (Act, s 359B(5))

- (1) This regulation applies, for paragraph 359B(5)(b) of the Act, if:
 - (a) a person is invited to give additional information, or to comment on information, within a period prescribed in regulation 4.18; and
 - (b) the invitation is to give the information or comments at an interview; and
 - (c) the prescribed period is to be extended by the Tribunal.
- (2) If the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the period by which the Tribunal may extend the prescribed period:
 - (a) commences when the detainee receives notice of the extended period; and
 - (b) ends at the end of 2 working days after the day the detainee receives notice of the extended period.

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- (3) If the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the period by which the Tribunal may extend the prescribed period:
- (a) commences when the detainee receives notice of the extended period; and
 - (b) ends at the end of 14 days after the day the detainee receives notice of the extended period.
- (4) If the invitation relates to any other application for review of a decision, the period by which the Tribunal may extend the prescribed period:
- (a) commences when the person receives notice of the extended period; and
 - (b) ends at the end of 14 days after the day the person receives notice of the extended period.

Note 1: If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

4.19 Summons to attend before Tribunal

- (1) For paragraph 363(3)(a) of the Act, this regulation sets out the manner of serving on a person a summons to appear before the Tribunal to give evidence.
- (2) For paragraph 363(3)(b) of the Act, this regulation sets out the manner of serving on a person a summons to produce to the Tribunal such documents as are referred to in the summons.
- (3) If the person has notified the Tribunal of an address for service under regulation 4.39, the summons must be served by one of the methods specified in section 379A of the Act.

Note 1: If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

- (4) If the person has not notified the Tribunal of an address for service under regulation 4.39, the summons must be served in one of the following ways:
- (a) by handing it to the person personally;
 - (b) by handing it to another person who:
 - (i) is at the person's last residential or business address known to the Tribunal; and
 - (ii) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
 - (iii) appears to be at least 16 years of age;
 - (c) by dating it, and then dispatching it:
 - (i) within 3 working days (in the place of dispatch) of the date of the document; and

- (ii) by prepaid post or by other prepaid means;
to the person's last residential or business address known to the Tribunal.

4.21 Prescribed periods—notice to appear before Tribunal

- (1) For subsection 360A(4) of the Act, this regulation sets out the prescribed period of notice of the day on which, and the time and place at which, an applicant is scheduled to appear before the Tribunal in response to an invitation.
- (2) If the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the period of notice:
 - (a) commences when the detainee receives notice of the invitation to appear before the Tribunal; and
 - (b) ends at the end of:
 - (i) 2 working days after the day the detainee receives notice of the invitation to appear before the Tribunal; or
 - (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (3) If the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the period of notice:
 - (a) commences when the detainee receives notice of the invitation to appear before the Tribunal; and
 - (b) ends at the end of:
 - (i) 7 days after the day the detainee receives notice of the invitation to appear before the Tribunal; or
 - (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (4) If the invitation relates to any other application for review of a decision, the period of notice:
 - (a) commences when the person receives notice of the invitation to appear before the Tribunal; and
 - (b) ends at the end of:
 - (i) 14 days after the day the person receives notice of the invitation to appear before the Tribunal; or
 - (ii) if the person agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.

Note 1: If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

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4.23 Expedited review (close family visit visas)

- (1) This regulation applies to review of a decision to refuse to grant a Sponsored (Visitor) (Class UL) visa, a Tourist (Class TR) visa or a Subclass 600 (Visitor) visa if and only if:
 - (a) the applicant stated in his or her application that he or she intended to visit Australia, or remain in Australia as a visitor, for the purposes of visiting an Australian citizen or an Australian permanent resident who is a parent, spouse, de facto partner, child, brother or sister of the applicant; and
 - (b) that application was made to allow the applicant to participate in an event of special family significance in which he or she is directly concerned; and
 - (c) the applicant identified the event and the applicant's concern in that application; and
 - (d) that application was refused because either:
 - (i) the Minister was not satisfied that the expressed intention of the applicant only to visit Australia was genuine; or
 - (ii) the applicant did not satisfy public interest criterion 4011; and
 - (e) the application was made long enough before the event to allow for review by the Tribunal if the application were refused.
- (3) The decision must be reviewed immediately by the Tribunal on receipt of an application for review of the decision.
- (4) The Tribunal must give notice to the applicant of its decision in respect of an application for review as soon as practicable.

4.24 Expedited review (decisions to cancel visas)

- (1) A decision to cancel a visa (other than a decision of a kind referred to in subsection 338(4) of the Act) must be reviewed immediately by the Tribunal on receipt by it of an application for review of the decision.
- (2) The Tribunal must give notice of its decision in respect of an application for review to the applicant as soon as practicable.

4.25 Expedited review (certain applicants in immigration detention)

- (1) If:
 - (a) a decision is made to refuse a substantive visa; and
 - (b) the person who applied for the visa is in immigration detention when the review application is made;the Tribunal must review the decision immediately on receipt of the application.
- (2) The Tribunal must give notice of its decision in respect of an application for review to the applicant as soon as practicable.

4.27 Prescribed period for making certain decisions (Act, s 367)

For subsection 367(1) of the Act, the prescribed period starts when the application for review is received by the Tribunal and ends at the end of 7 working days after the day on which the application is received.

Note: Subsection 367(1) of the Act provides for the regulations to limit the time in which the Tribunal must review certain decisions on bridging visas.

4.27B Prescribed period for requesting written statement

For subsection 368D(4) of the Act, the prescribed period for requesting a written statement in relation to an oral statement made by the Tribunal under paragraph 368D(2)(a) of the Act starts when the Tribunal makes the oral statement and ends at the end of 14 days after the day on which the Tribunal makes the oral statement.

Division 4.2—Review of Part 7-reviewable decisions

Subdivision 4.2.1—Introductory

4.28 Interpretation

Expressions used in this Division and in Part 7 of the Act have the same respective meanings in this Division as in that Part.

Subdivision 4.2.3—General

4.31 Time for lodgement of application with Tribunal

- (1) For paragraph 412(1)(b) of the Act, if an applicant is in immigration detention on the day the applicant is notified of a Part 7-reviewable decision, the period in which an application for review of the decision must be given to the Tribunal by or for the applicant is 7 working days, commencing on:
 - (a) the day the applicant is notified of the decision; or
 - (b) if that day is not a working day—the first working day after that day.
- (2) For paragraph 412(1)(b) of the Act, if an applicant is not in immigration detention on the day the applicant is notified of a Part 7-reviewable decision, the period in which an application for review of the decision must be given to the Tribunal by or for the applicant is 28 days, commencing on the day the applicant is notified of the decision.

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

4.31AA Giving application to the Tribunal

- (1) An application for review by the Tribunal of a Part 7-reviewable decision must be given to the Tribunal by:
 - (a) leaving it with an officer of the Tribunal at a registry of the Tribunal, or with a person specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*; or
 - (b) sending it by pre-paid post to a registry of the Tribunal; or
 - (c) having it delivered by post, or by hand, to an address specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*; or
 - (d) faxing it to a fax number specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*; or
 - (e) transmitting it to a registry of the Tribunal by other electronic means specified in a direction given by the President of the Tribunal under section 18B of the *Administrative Appeals Tribunal Act 1975*.

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- (2) An application made to the Tribunal in accordance with paragraph (1)(a) or (b) is taken to have been received by the Tribunal at the time the Tribunal receives it.
- (3) An application made to the Tribunal in accordance with paragraph (1)(c) is taken to have been received by the Tribunal at the time it is received at the relevant address.
- (4) An application made to the Tribunal in accordance with paragraph (1)(d) is taken to have been received by the Tribunal at the time it is received at the relevant fax number.
- (5) An application made to the Tribunal in accordance with paragraph (1)(e) is taken to have been received by the Tribunal at the time the Tribunal receives it.

4.31A Combined applications for review by the Tribunal

If:

- (a) 2 or more applicants have combined their primary applications for a protection visa in a way permitted by Schedule 1 or regulation 2.08, 2.08A or 2.08B; and
 - (b) the Minister's decisions in respect of 2 or more of those applicants are that protection visas not be granted; and
 - (c) the Minister's decisions are Part 7-reviewable decisions;
- the applicants referred to in paragraph (b) may combine their applications for review by the Tribunal of the Minister's decisions.

4.31B Review by the Tribunal—fee and waiver

- (1) The fee for review by the Tribunal of a Part 7-reviewable decision is:
 - (b) if the application for review was made on or after 1 July 2003 and before 1 July 2011—\$1,400; or
 - (c) if the application for review was made on or after 1 July 2011—\$1,540.

Note: The fee in paragraph (1)(c) is subject to increase under regulation 4.31BA.

- (2) The fee is payable within 7 days of the time when notice of the decision of the Tribunal is taken to be received by the applicant in accordance with section 441C of the Act.

Note: Under regulation 4.40, notice of a decision of the Tribunal is given by one of the methods specified in section 441A of the Act.

- (3) No fee is payable if the Tribunal remits a matter to which the decision relates with a permissible direction under regulation 4.33.
- (3A) No further fee is payable under this regulation if:
- (a) a fee has been paid under this regulation; and
 - (b) following the Tribunal's determination, the matter in relation to which the fee was paid is remitted by a court for reconsideration by the Tribunal.

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- (4) If 2 or more applications for review are combined in accordance with regulation 4.31A, only 1 fee is payable for reviews that result from those applications.

4.31BA Biennial increases in fees

Despite any other provision of these Regulations, the fee prescribed by paragraph 4.31B(1)(c) is increased in accordance with regulation 4.31BB, on each biennial anniversary of 1 July 2011.

4.31BB Calculation of increase

- (1) If, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is taken to increase, on 1 July immediately following the end of the period, in accordance with the formula:

$$\frac{\text{Fee} \times \text{Latest CPI number}}{\text{Earlier CPI number}}$$

where:

earlier CPI number is the CPI number for the last March quarter before the beginning of the relevant period; and

latest CPI number is the CPI number for the last March quarter before the end of the relevant period.

- (2) If, apart from this subregulation, the amount of a fee increased under subregulation (1) would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.
- (3) Subject to subregulation (4), if at any time, whether before or after the commencement of this regulation, the Australian Statistician publishes for a particular March quarter a CPI number in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this regulation.
- (4) If, at any time, whether before or after the commencement of this regulation, the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this regulation after the change is made, regard must be had only to numbers published in terms of the new reference base.

- (5) In this regulation:

CPI number means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

fee means:

- (a) a fee prescribed by paragraph 4.31B(1)(c); or

- (b) the fee in force at the end of the relevant period if regulation 4.31BA applies.

relevant period means any of the following periods:

- (a) the 2 year period commencing on 1 July 2011;
- (b) after that period—each 2 year period commencing on a biennial anniversary of 1 July 2011.

4.31C Refund (or waiver) of fee for review by the Tribunal

- (1) This regulation applies to a review of a decision if:
 - (a) both:
 - (i) on review by a court, the decision is remitted for reconsideration by the Tribunal; and
 - (ii) the Tribunal remits a matter to which the decision relates with a permissible direction under regulation 4.33; or
 - (b) the Minister, under section 417 of the Act, has substituted for the decision of the Tribunal a decision that is favourable to the applicant.
- (2) A fee paid under regulation 4.31B, or liable to be paid under regulation 4.31B, in relation to a decision to which this regulation applies is to be refunded, or waived, as the case requires.

4.33 Powers of Tribunal

- (1) For the purposes of paragraph 415(2)(c) of the Act, an application for a protection visa is prescribed.
- (2) For the purposes of paragraph 415(2)(c) of the Act, it is a permissible direction that the applicant must be taken to have satisfied the criteria for the visa that are specified in the direction.
- (3) For paragraph 415(2)(c) of the Act:
 - (a) it is a permissible direction that the applicant is a refugee within the meaning of subsection 5H(1) of the Act; and
 - (aa) it is a permissible direction that subsection 36(3) of the Act does not apply to the applicant; and
 - (b) it is not a permissible direction that:
 - (i) subsection 5H(1) of the Act applies to the applicant; or
 - (ii) subsection 5H(1) does not apply to the applicant because of subsection 5H(2); or
 - (iii) the applicant satisfies, or does not satisfy, the criterion in subsection 36(1C) of the Act.
- (4) For paragraph 415(2)(c) of the Act:
 - (a) it is a permissible direction that the applicant satisfies each matter, specified in the direction, that relates to establishing whether the applicant is a person to whom Australia has protection obligations because there are

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substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm; and

- (b) it is not a permissible direction that the applicant satisfies a matter that relates to establishing whether there are serious reasons for considering that:
 - (i) the applicant has committed a crime against peace, a war crime or a crime against humanity, as defined by an international instrument mentioned in regulation 2.03B; or
 - (ii) the applicant committed a serious non-political crime before entering Australia; or
 - (iii) the applicant has been guilty of acts contrary to the purposes and principles of the United Nations; and
 - (c) it is not a permissible direction that the applicant satisfies a matter that relates to establishing whether there are reasonable grounds that:
 - (i) the applicant is a danger to Australia's security; or
 - (ii) the applicant, having been convicted by a final judgment of a particularly serious crime, including a crime that consists of the commission of a serious Australian offence or serious foreign offence, is a danger to the Australian community.
- (5) For paragraph 415(2)(c) of the Act, it is a permissible direction that the grant of the visa is not prevented by section 91W, 91WA or 91WB of the Act.

4.34 Statement about decision under review—number of copies

For the purposes of subsection 418(2) of the Act, the prescribed number of copies of a statement of the kind mentioned in that subsection is 1.

4.35 Prescribed periods—invitation to comment or give additional information

- (1) This regulation applies, for subsection 424B(2) of the Act, if a person is invited to give additional information, or to comment on information, other than at an interview.
- (2) If the invitation relates to an application for review of a decision that applies to a detainee, the prescribed period for giving the information or comments:
 - (a) commences when the detainee receives the invitation; and
 - (b) ends at the end of:
 - (i) 7 days after the day the detainee receives the invitation; or
 - (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (3) If the invitation relates to any other application for review of a decision, the prescribed period for giving the information, comments or response:
 - (a) commences when the person receives the invitation; and
 - (b) ends at the end of:

- (i) 14 days after the day the person receives the invitation; or
 - (ii) if the person agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.
- (4) A response to the invitation is taken to be given to the Tribunal when a registry of the Tribunal receives the response.

Note 1: If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

4.35A Prescribed periods—invitation to comment or give additional information (Act, s 424B(3))

- (1) This regulation applies, for paragraph 424B(3)(b) of the Act, if a person is invited to give additional information, or to comment on information, at an interview.
- (2) If the invitation relates to an application for review of a decision that applies to a detainee, the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 14 days after the day on which the invitation is received.
- (3) If the invitation relates to an application for review of a decision that does not apply to a detainee, the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 28 days after the day on which the invitation is received.

Note 1: If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

4.35B Prescribed periods—invitation to comment or give additional information (Act, s 424B(4))

- (1) This regulation applies, for subsection 424B(4) of the Act, if:
 - (a) a person is invited to give additional information, or to comment on information, within a period prescribed in regulation 4.35; and
 - (b) the invitation is to give the information or comments other than at an interview; and
 - (c) the prescribed period is to be extended by the Tribunal.
- (2) The period by which the Tribunal may extend the prescribed period:
 - (a) commences when the person receives notice of the extended period; and
 - (b) ends at the end of:
 - (i) 14 days after the day the person receives notice of the extended period; or

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(ii) if the person agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.

(4) A response to the invitation is taken to be given to the Tribunal when a registry of the Tribunal receives the response.

Note 1: If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

4.35C Prescribed periods—invitation to comment or give additional information (Act, s 424B(5))

(1) This regulation applies, for paragraph 424B(5)(b) of the Act, if:

- (a) a person is invited to give additional information, or to comment on information, within a period prescribed in regulation 4.35A; and
- (b) the invitation is to give the information or comments at an interview; and
- (c) the prescribed period is to be extended by the Tribunal.

(2) The period by which the Tribunal may extend the prescribed period:

- (a) commences when the person receives notice of the extended period; and
- (b) ends at the end of 14 days after the day the person receives notice of the extended period.

Note 1: If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

4.35D Prescribed periods—notice to appear before Tribunal

(1) For subsection 425A(3) of the Act, this regulation sets out the prescribed period of notice of the day on which, and the time and place at which, an applicant is scheduled to appear before the Tribunal in response to an invitation.

(2) If the invitation relates to an application for review of a decision that applies to a detainee, the period of notice:

- (a) commences when the detainee receives notice of the invitation to appear before the Tribunal; and
- (b) ends at the end of:
 - (i) 7 days after the day the detainee receives notice of the invitation to appear before the Tribunal; or
 - (ii) if the detainee agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.

(3) If the invitation relates to any other application for review of a decision, the period of notice:

- (a) commences when the person receives notice of the invitation to appear before the Tribunal; and
- (b) ends at the end of:
 - (i) 14 days after the day the person receives notice of the invitation to appear before the Tribunal; or
 - (ii) if the person agrees, in writing, to a shorter period of not less than 1 working day—the shorter period.

Note 1: If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

Note 2: A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

4.35F Prescribed period for requesting written statement

For subsection 430D(4) of the Act, the prescribed period for requesting a written statement in relation to an oral statement made by the Tribunal under paragraph 430D(2)(a) of the Act starts when the Tribunal makes the oral statement and ends at the end of 14 days after the day on which the Tribunal makes the oral statement.

4.36 Duties, powers and functions of officers of Tribunal

Each officer of the Tribunal has the following duties, powers and functions:

- (a) the issuing of a summons by the Tribunal under paragraph 427(3)(a) or (b) of the Act;
- (b) the obtaining of documents in connection with the review of a Part 7-reviewable decision;
- (c) the directing of attendance at a registry of the Tribunal in connection with the review of a Part 7-reviewable decision.

Division 4.3—Service of documents

4.39 Address for service

- (1) In this regulation:

lodge an address for service, in relation to an applicant for review, means give the Tribunal notice in writing of an address at which documents relating to a review may be sent to the applicant.

- (2) An applicant for review of a Part 5-reviewable decision or a Part 7-reviewable decision may:
- (a) lodge an address for service in a review; and
 - (b) at any time after lodging an address for service, lodge a new address for service in that review.
- (3) If an applicant for review lodges with the Tribunal a new address for service under paragraph (2)(b):
- (a) that new address becomes the applicant for review's address for service in the review; and
 - (b) he or she must, immediately after doing so, serve on the Minister a notice of that new address for service.
- (4) An address for service may be, but need not be, the applicant's residential address.

Division 4.4—Review of protection visa decisions by the Immigration Assessment Authority

4.41 New information not required to be given to referred applicant

For paragraph 473DE(3)(c) of the Act, new information given to the Immigration Assessment Authority by a referred applicant for the purposes of the Authority's review of a fast track reviewable decision in relation to the referred applicant is prescribed.

4.42 Periods for giving information or comments

For subsection 473DF(2) of the Act, the period for giving information or comments in response to an invitation given by the Immigration Assessment Authority to a referred applicant is as follows:

- (a) for a referred applicant in immigration detention—3 working days after the referred applicant is notified of the invitation; and
- (b) in any other case:
 - (i) for an oral invitation to give information or comments in writing—7 days after the invitation is given; and
 - (ii) for an oral invitation to give information or comments at an interview—14 days after invitation is given; and
 - (iii) for a written invitation to give information or comments in writing or at an interview—14 days after the referred applicant is notified of the invitation.

4.43 Permissible directions on remittal

- (1) For paragraph 473CC(2)(b) of the Act, this regulation prescribes directions that the Immigration Assessment Authority is permitted to make in relation to the review of a fast track reviewable decision in respect of a protection visa application by a referred applicant.
- (2) It is a permissible direction that:
 - (a) the referred applicant must be taken to have satisfied the criteria for the visa that are specified in the direction; or
 - (b) the referred applicant is a refugee within the meaning of subsection 5H(1) of the Act; or
 - (c) subsection 36(3) of the Act does not apply to the referred applicant; or
 - (d) the referred applicant satisfies each matter, specified in the direction, that relates to establishing whether the referred applicant is a person to whom Australia has protection obligations because the criterion mentioned in paragraph 36(2)(aa) of the Act is satisfied in relation to the applicant.
- (3) However, it is not a permissible direction that:
 - (a) subsection 5H(1) of the Act applies to the referred applicant; or

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- (b) subsection 5H(1) does not apply to the referred applicant because of subsection 5H(2); or
 - (c) the referred applicant satisfies, or does not satisfy, the criterion in subsection 36(1C) of the Act; or
 - (d) the referred applicant satisfies a matter that relates to establishing whether there are serious reasons for considering that:
 - (i) the referred applicant has committed a crime against peace, a war crime or a crime against humanity, as defined by an international instrument mentioned in regulation 2.03B; or
 - (ii) the referred applicant committed a serious non-political crime before entering Australia; or
 - (iii) the referred applicant has been guilty of acts contrary to the purposes and principles of the United Nations; or
 - (e) the referred applicant satisfies a matter that relates to establishing whether there are reasonable grounds that:
 - (i) the referred applicant is a danger to Australia's security; or
 - (ii) the referred applicant, having been convicted by a final judgment of a particularly serious crime, including a crime that consists of the commission of a serious Australian offence or serious foreign offence, is a danger to the Australian community.
- (4) It is a permissible direction that the grant of the visa is not prevented by section 91W, 91WA or 91WB of the Act.

Part 5—Miscellaneous

Division 5.1—Service of documents

5.01 Definition for Division 5.1

In this Division:

document includes:

- (a) a letter; and
- (b) an invitation, notice, notification, statement or summons, if it is in writing.

5.02 Service of document on person in immigration detention

For the purposes of the Act and these Regulations, a document to be served on a person in immigration detention may be served by giving it to the person himself or herself, or to another person authorised by him or her to receive documents on his or her behalf.

Division 5.2—Procedure of commissioners and prescribed authorities

Note: If a person is proposed to be deported because he or she was convicted of certain serious offences (set out in section 203 of the Act), he or she may ask the Minister to appoint a Commissioner to inquire into whether the grounds for the deportation have been made out.

Section 253 of the Act provides that if a person arrested as a deportee asserts that he or she is not the person named in the deportation order, and makes a statutory declaration saying so, the person must be taken before a prescribed authority, who must inquire into whether there are reasonable grounds for supposing the person to be a deportee. The persons who may be prescribed authorities are set out in section 255 and include a judge or former judge, a legal practitioner of at least 5 years' standing, and a magistrate.

5.04 Power of Commissioner to send for witnesses and documents

A Commissioner appointed under subsection 203(4) of the Act (which deals with the appointment of commissioners) may, by writing signed by the Commissioner, summon any person:

- (a) to attend before the Commissioner at a time and place specified in the summons; and
- (b) to give evidence; and
- (c) to produce any books or documents in the person's custody or control which the person is required by the summons to produce.

5.05 Duty of witness to continue in attendance

- (1) A person who has been summoned to attend before a Commissioner as a witness must appear and report from day to day, unless excused by the Commissioner.

Penalty: 10 penalty units.

- (2) Strict liability applies to subregulation (1).

5.06 Arrest of witness failing to appear

- (1) If a person who has been summoned to attend before a Commissioner fails:
 - (a) to attend before the Commissioner as required by the summons; or
 - (b) to appear and report in accordance with regulation 5.05;the Commissioner may, on being satisfied that the summons has been duly served and that reasonable expenses have been paid or tendered to the person, issue a warrant for the person's arrest.
- (2) A warrant authorises:
 - (a) the arrest and bringing before the Commissioner of the person; and
 - (b) the detention of the person in custody for the purposes specified in the warrant until the person is released by order of the Commissioner.
- (3) A warrant may be executed by a member of the police force of the Commonwealth or of a State or Territory or by any person to whom it is

addressed, and the person executing it has power to break and enter any place, building or vessel, using any force that is necessary and reasonable, for the purpose of executing the warrant.

- (4) The arrest of a person under this regulation does not relieve that person from any liability incurred by the person because of the failure of that person to attend before the Commissioner.

5.07 Witnesses' fees

- (1) A person who attends to give evidence before a Commissioner is, in respect of that attendance, to be paid such fees and travelling expenses as the Commissioner allows in accordance with the scale in Schedule 2 to the Public Works Committee Regulations as in force from time to time.
- (2) The fees and travelling expenses are payable:
 - (a) in the case of a witness summoned at the request of the person to whom the investigation relates—by that person; and
 - (b) in any other case—by the Commonwealth.

5.08 Power to examine on oath or affirmation

- (1) A Commissioner may administer an oath to a person appearing as a witness before the Commissioner, whether the witness has been summoned or appears without being summoned, and may examine the witness on oath.
- (2) If a witness conscientiously objects to swear an oath, the witness may make an affirmation that the witness conscientiously objects to swear an oath and that the witness will state the truth, the whole truth, and nothing but the truth to all questions the witness is asked.
- (3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

5.09 Offences by witnesses

- (1) A person summoned to attend before a Commissioner as a witness must not:
 - (a) fail to attend, after payment or tender to the person of a reasonable sum for expenses of attendance; or
 - (b) refuse to be sworn or to make an affirmation as a witness; or
 - (c) refuse to answer any question when required to do so by the Commissioner; or
 - (d) refuse or fail to produce a book or document which the person was required by the summons to produce.

Penalty: 10 penalty units.

- (2) Paragraphs (1)(a) and (d) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3(3) of the *Criminal Code*).

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- (3) Strict liability applies to paragraph (1)(a).

5.10 Statements of person not admissible in evidence against the person

A statement or disclosure made by a person in answer to a question put to the person during an investigation by a Commissioner is not admissible in evidence against the person in any civil or criminal proceedings other than:

- (a) proceedings in respect of a false answer; or
- (b) proceedings relating to the deportation of the person.

5.11 Representation by counsel etc

- (1) In an investigation before a Commissioner, the person summoned to appear and the Minister are each entitled to be represented by a barrister or solicitor or by an agent approved by the Commissioner.
- (2) A barrister, solicitor or agent appearing before a Commissioner may examine or cross-examine witnesses and address the Commissioner.

5.12 Offences in relation to Commissioners

A person must not:

- (a) intentionally insult or disturb a Commissioner when exercising powers and functions under the Act; or
- (b) interrupt the proceedings of a Commissioner; or
- (c) use insulting language towards a Commissioner; or
- (d) by writing or speech use words calculated to influence dishonestly a Commissioner or a witness before a Commissioner.

Penalty: 10 penalty units.

5.13 Protection of Commissioners, barristers and witnesses

- (1) A Commissioner has, in the performance of the duties of a Commissioner, the same protection and immunity as a Justice of the High Court.
- (2) A barrister, solicitor or approved agent appearing before a Commissioner has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) A witness summoned to attend, or appearing, before a Commissioner has the same protection as a witness in proceedings in the High Court.

5.14 Procedure of prescribed authorities

This Part applies to:

- (a) prescribed authorities referred to in section 255 of the Act; and
- (b) proceedings before those prescribed authorities under section 253 of the Act;

in the same manner as it applies to Commissioners and proceedings before Commissioners and as if references in those provisions to a Commissioner were references to a prescribed authority.

Division 5.3—General

5.15 Behaviour concern non-citizen

For the purposes of paragraph (e) of the definition of *behaviour concern non-citizen* in subsection 5(1) of the Act, each of the following circumstances is prescribed in relation to the exclusion of a person from a country other than Australia:

- (a) that the person refused or failed to present a passport on request by the competent authorities in that country in circumstances in which it would be unreasonable to refuse or fail to do so;
- (b) that the person presented to those authorities a passport that was a bogus document;
- (c) that the person was reasonably refused entry to that country on the ground that the person was not a genuine visitor;
- (d) that the authorities of that country considered the person to be a threat to the national security of the country.

5.15A Special category visas—declared classes of New Zealand citizens

- (1) For paragraph 32(2)(c) of the Act, a person is in a class of persons for whom a visa of a class other than a special category visa would be inappropriate if the person:
 - (a) is a New Zealand citizen who holds, and has presented to an officer, a New Zealand passport that is in force; and
 - (b) is not a health concern non-citizen; and
 - (c) is covered by subregulation (2) or (3).
 - (2) A person is covered by this subregulation if the person is a behaviour concern non-citizen only because of having been excluded from a country other than Australia in circumstances that, in the opinion of the Minister, do not warrant the exclusion of the person from Australia.
 - (3) A person is covered by this subregulation if:
 - (a) the Minister has, under subsection 501(3A) of the Act (person serving sentence of imprisonment), cancelled a visa held by the person; and
 - (b) the person has made representations to the Minister in accordance with the invitation given by the Minister under subsection 501CA(3) of the Act; and
 - (c) the decision to cancel the visa is revoked under subsection 501CA(4) of the Act; and
 - (d) the Minister has not, under subsection 501BA(2) of the Act, set aside the decision to revoke the cancellation of the visa; and
 - (e) since the person made the representations to the Minister mentioned in paragraph (b), no new grounds have arisen for the person to fall within the definition of *behaviour concern non-citizen* in subsection 5(1) of the Act, unless the only new ground that has arisen is the person's removal or deportation from Australia because of the decision to cancel the visa.
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5.15C Excised offshore places

- (1) For paragraph (d) of the definition of *excised offshore place* in subsection 5(1) of the Act, the Coral Sea Islands Territory is prescribed.
- (2) For paragraph (e) of the definition of *excised offshore place* in subsection 5(1) of the Act, the following islands are prescribed:
 - (a) all islands that:
 - (i) form part of Queensland; and
 - (ii) are north of latitude 21° south;
 - (b) all islands that:
 - (i) form part of Western Australia; and
 - (ii) are north of latitude 23° south;
 - (c) all islands that:
 - (i) form part of the Northern Territory; and
 - (ii) are north of latitude 16° south.

5.16 Prescribed diseases—health concern non-citizen (Act, s 5(1))

For the purposes of the definition of *health concern non-citizen* in subsection 5(1) of the Act, tuberculosis (being tuberculosis that is not being controlled with medication, and in respect of which the person suffering from it refuses to sign an undertaking to visit a Commonwealth Medical Officer within 7 days of entering Australia) is a prescribed disease.

5.17 Prescribed evidence of English language proficiency (Act, s 5(2)(b))

For the purposes of paragraph 5(2)(b) of the Act (dealing with whether a person has functional English), the evidence referred to in each of the following paragraphs is prescribed evidence of the English language proficiency of a person:

- (a) evidence specified by the Minister in an instrument in writing for this paragraph;
- (c) evidence that:
 - (i) the person holds an award (being a degree, a higher degree, a diploma or a trade certificate) that required at least 2 years of full-time study or training; and
 - (ii) all instruction (including instruction received in other courses for which the person was allowed credit) for that award was conducted in English;
- (e) evidence that the person has attained the functional level of the ACCESS test, being evidence in the form of a copy of results of a test:
 - (i) completed not more than 12 months before the person applies for the grant of a visa in relation to which those results are relevant; or
 - (ii) completed after the application is made;and certified by the body that conducted the test as the results of the test of the person;

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- (f) evidence that the person has been assessed as having functional English by the provider of a course that is an approved English course for the purposes of section 4 of the *Immigration (Education) Act 1971*;
- (h) in the case of a person who is an applicant for a Business Skills—Established Business (Residence) (Class BH) visa—evidence that the person has a score of at least 20 points under Part 3 of Schedule 7, being a score awarded on the basis of an interview of the person for the purpose of ascertaining that score;
- (j) if:
 - (i) the person is an applicant for a visa of a class that is not mentioned in paragraph (h); and
 - (ii) evidence referred to in paragraph (a) cannot be provided by the person; and
 - (iii) it is not reasonably practicable for the person to attend at a place where, or time when, he or she could be subjected to a test mentioned in paragraph (e) or (f);evidence that the person has been determined by the Minister, on the basis of an interview with the person, to have functional English.

5.18 Prescribed laws relating to control of fishing

For the purposes of paragraph 262(1)(b) of the Act (specifying laws that, if broken by a non-citizen in certain circumstances, will render the non-citizen liable to repay costs to the Commonwealth), the following laws are prescribed:

- (a) the following laws of the Commonwealth:
 - (i) the *Continental Shelf (Living Natural Resources) Act 1968*;
 - (ii) the *Fisheries Act 1952*;
 - (iii) the *Fisheries Management Act 1991*;
 - (iv) the *Torres Strait Fisheries Act 1984*;
- (b) the following laws of Queensland:
 - (i) the *Fisheries Act 1976*;
 - (ii) the *Fishing Industry Organisation and Marketing Act 1982*;
- (c) the *Fisheries Act 1905* of Western Australia.

5.19 Approval of nominated positions (employer nomination)

- (1) A person (a ***nominator***) (including a partnership or unincorporated association) may apply to the Minister for approval of the nomination of a position in Australia.
- (2) The application must:
 - (a) be made in accordance with approved form 1395 (Internet); and
 - (aa) include a written certification by the nominator stating whether or not the nominator has engaged in conduct, in relation to the nomination, that constitutes a contravention of subsection 245AR(1) of the Act; and
 - (b) be accompanied by the fee mentioned in regulation 5.37.

Temporary Residence Transition nomination

- (3) The Minister must, in writing, approve a nomination if:
- (a) the application for approval:
 - (i) is made in accordance with subregulation (2); and
 - (ii) identifies a person who holds a Subclass 457 (Temporary Work (Skilled)) visa granted on the basis that the person satisfied the criterion in subclause 457.223(4) of Schedule 2; and
 - (iii) identifies an occupation, in relation to the position, that:
 - (A) is listed in ANZSCO; and
 - (B) has the same 4-digit occupation unit group code as the occupation carried out by the holder of the Subclass 457 (Temporary Work (Skilled)) visa; and
 - (b) the nominator:
 - (i) is, or was, the standard business sponsor who last identified the holder of the Subclass 457 (Temporary Work (Skilled)) visa in a nomination made under section 140GB of the Act or under regulation 1.20G or 1.20GA as in force immediately before 14 September 2009; and
 - (ii) is actively and lawfully operating a business in Australia; and
 - (iii) did not, as that standard business sponsor, meet regulation 1.20DA, or paragraph 2.59(h) or 2.68(i), in the most recent approval as a standard business sponsor; and
 - (c) either:
 - (i) both of the following apply:
 - (A) in the period of 3 years immediately before the nominator made the application, the holder of the Subclass 457 (Temporary Work (Skilled)) visa identified in subparagraph (a)(ii) has:
 - (I) held one or more Subclass 457 visas for a total period of at least 2 years; and
 - (II) been employed in the position in respect of which the person holds the Subclass 457 (Temporary Work (Skilled)) visa for a total period of at least 2 years (not including any period of unpaid leave);
 - (B) the employment in the position has been full-time, and undertaken in Australia; or
 - (ii) all of the following apply:
 - (A) the person holds the Subclass 457 (Temporary Work (Skilled)) visa on the basis that the person was identified in a nomination of an occupation mentioned in sub-subparagraph 2.72(10)(d)(iii)(B) or sub-subparagraph 2.72(10)(e)(iii)(B);
 - (B) the nominator nominated the occupation;
 - (C) the person has been employed, in the occupation in respect of which the person holds the Subclass 457 (Temporary Work (Skilled)) visa, for a total period of at least 2 years in the

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period of 3 years immediately before the nominator made the application; and

- (d) for a person to whom subparagraph (c)(i) applies:
 - (i) the person will be employed on a full-time basis in the position for at least 2 years; and
 - (ii) the terms and conditions of the person's employment will not include an express exclusion of the possibility of extending the period of employment; and
- (e) the terms and conditions of employment applicable to the position will be no less favourable than the terms and conditions that:
 - (i) are provided; or
 - (ii) would be provided;to an Australian citizen or an Australian permanent resident for performing equivalent work in the same workplace at the same location; and
- (f) either:
 - (i) the nominator:
 - (A) fulfilled any commitments the nominator made relating to meeting the nominator's training requirements during the period of the nominator's most recent approval as a standard business sponsor; and
 - (B) complied with the applicable obligations under Division 2.19 relating to the nominator's training requirements during the period of the nominator's most recent approval as a standard business sponsor; or
 - (ii) it is reasonable to disregard subparagraph (i); and

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

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

Direct Entry nomination

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

- (b) the nominator:
 - (i) is actively and lawfully operating a business in Australia; and
 - (ii) directly operates the business; and
- (c) for a nominator whose business activities include activities relating to the hiring of labour to other unrelated businesses—the position is within the business activities of the nominator and not for hire to other unrelated businesses; and
- (d) both of the following apply:
 - (i) the employee will be employed on a full-time basis in the position for at least 2 years;
 - (ii) the terms and conditions of the employee’s employment will not include an express exclusion of the possibility of extending the period of employment; and
- (e) the terms and conditions of employment applicable to the position will be no less favourable than the terms and conditions that:
 - (i) are provided; or
 - (ii) would be provided;to an Australian citizen or an Australian permanent resident for performing equivalent work in the same workplace at the same location; and
- (f) either:
 - (i) there is no adverse information known to Immigration about the nominator or a person associated with the nominator; or
 - (ii) it is reasonable to disregard any adverse information known to Immigration about the nominator or a person associated with the nominator; and
- (g) the nominator has a satisfactory record of compliance with the laws of the Commonwealth, and of each State or Territory in which the applicant operates a business and employs employees in the business, relating to workplace relations; and
- (h) either:
 - (i) both of the following apply:
 - (A) the tasks to be performed in the position will be performed in Australia and correspond to the tasks of an occupation specified by the Minister in an instrument in writing for this sub-subparagraph;
 - (B) either:
 - (I) the nominator’s business has operated for at least 12 months, and the nominator meets the requirements for the training of Australian citizens and Australian permanent residents that are specified by the Minister in an instrument in writing for this sub-sub-subparagraph; or
 - (II) the nominator’s business has operated for less than 12 months, and the nominator has an auditable plan for meeting the requirements specified in the instrument mentioned in sub-sub-subparagraph (I); or

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- (ii) all of the following apply:
 - (A) the position is located in regional Australia;
 - (B) there is a genuine need for the nominator to employ a paid employee to work in the position under the nominator's direct control;
 - (C) the position cannot be filled by an Australian citizen or an Australian permanent resident who is living in the same local area as that place;
 - (D) the tasks to be performed in the position correspond to the tasks of an occupation specified by the Minister in an instrument in writing for this sub-subparagraph;
 - (E) the business operated by the nominator is located at that place;
 - (F) a body that is:
 - (I) specified by the Minister in an instrument in writing for this sub-subparagraph; and
 - (II) located in the same State or Territory as the location of the position;has advised the Minister about the matters mentioned in paragraph (e) and sub-subparagraphs (B) and (C).

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

Note: Division 4.1 deals with review of decisions. Paragraph 4.02(4)(e) provides that a decision under regulation 5.19 to refuse an application is a Part 5-reviewable decision.

- (7) In this regulation:

regional Australia means a part of Australia specified by the Minister in an instrument in writing for this definition.

5.19A Designated investment

- (1) Subject to subregulation (2), the Minister may, by legislative instrument, specify a security issued by an Australian State or Territory government authority as a security in which an investment is a designated investment for the purposes of a Part of Schedule 2.
- (2) The Minister may so specify a security if and only if:

- (a) an investment in the security matures in not less than 4 years from its date of issue; and
- (b) repayment of principal is guaranteed by the issuing authority; and
- (c) an investment in the security cannot be transferred or redeemed before maturity except by operation of law or under other conditions acceptable to the Minister; and
- (d) investment in the security is open to the general public at commercially competitive rates of return; and
- (e) the Minister is satisfied that the Commonwealth will not be exposed to any liability as a result of an investment in the security by a person.

5.19B Complying investment

- (1) An investment by a person (the *investor*) is a *complying investment* if all of the requirements in this regulation are met.

Description

- (2) The investment must consist of one or more of the following:
- (a) an investment in a government bond (however described) of the Commonwealth, a State or Territory; or
 - (b) a direct investment in an Australian proprietary company that meets the following requirements:
 - (i) the company is not listed on an Australian stock exchange;
 - (ii) the company has not been established wholly or substantially for the purpose of creating compliance with this paragraph;
 - (iii) the investment is an ownership interest in the company;
 - (c) an investment in a managed fund (directly or through an investor directed portfolio service) for a purpose specified by the Minister in an instrument, in writing, for this paragraph.
- (3) The funds used to make the investment are:
- (a) unencumbered; and
 - (b) lawfully acquired.

Investor

- (4) The investor must be an individual.
- (5) The investor must make the investment:
- (a) personally; or
 - (b) with the investor's spouse or de facto partner; or
 - (c) by means of a company that has issued shares and in which:
 - (i) the investor holds all of the issued shares; or
 - (ii) the investor and the investor's spouse or de facto partner hold all of the issued shares; or
 - (d) by means of a trust:

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- (i) that is lawfully established; and
 - (ii) of which:
 - (A) the investor is the sole trustee; or
 - (B) the investor and the investor's spouse or de facto partner are the sole trustees; and
 - (iii) of which:
 - (A) the investor is the sole beneficiary; or
 - (B) the investor and the investor's spouse or de facto partner are the sole beneficiaries.
- (6) If:
- (a) an investor withdraws money from a complying investment, or cancels the investment; and
 - (b) the investor makes an investment of at least the value of the withdrawn money or cancelled investment in one or more other investments mentioned in subregulation (2); and
 - (c) no more than 30 days passes between the events mentioned in paragraphs (a) and (b);
- the investment is taken not to have ceased to be a complying investment during the period between the events mentioned in paragraphs (a) and (b).

5.19C Complying significant investment

Definition

- (1) An investment by a person (the *investor*) is a **complying significant investment** if all of the requirements of this regulation are met.
- (2) If an investment (the *overall investment*) is based on one or more other investments, this regulation (and any instrument under subregulation (6)) applies equally to the overall investment and each investment on which the overall investment is based.

Investment requirements

- (3) All funds used to make the investment must be unencumbered and lawfully acquired.
- (4) The investment:
 - (a) must be lawful; and
 - (b) must not form the basis for security or collateral for a loan.
- (5) The investment, and the means by which the investment is made:
 - (a) must be of a kind permitted by the requirements specified in an instrument under subregulation (6); and
 - (b) must comply with any requirements specified in an instrument under subregulation (6).

- (6) The Minister may, by legislative instrument, specify requirements for the purposes of subregulation (5).

Investment switching periods

- (7) Subregulation (8) applies in relation to a period (the **switching period**):
- (a) beginning when the investor withdraws funds from the investment, or cancels the investment; and
 - (b) ending when the investor reinvests the withdrawn funds, or the funds used to make the cancelled investment.
- (8) If the switching period is of no more than 30 days duration, the investment is taken not to have ceased to be a complying significant investment during the switching period only because of the event mentioned in paragraph (7)(a).

Investor requirements

- (9) The investor must be an individual.
- (10) The investor must make the investment:
- (a) personally; or
 - (b) with the investor's spouse or de facto partner; or
 - (c) by means of a company that has issued shares and in which:
 - (i) the investor holds all of the issued shares; or
 - (ii) the investor and the investor's spouse or de facto partner hold all of the issued shares; or
 - (d) by means of a trust to which the following applies:
 - (i) the trust is lawfully established;
 - (ii) the investor is the sole trustee or the investor and the investor's spouse or de facto partner are the sole trustees;
 - (iii) the investor is the sole beneficiary or the investor and the investor's spouse or de facto partner are the sole beneficiaries.

5.19D Complying premium investment

Definition

- (1) An investment or a philanthropic contribution, or a combined investment and philanthropic contribution, by a person (the **investor**) is a **complying premium investment** if all of the requirements of this regulation are met.
- (2) If an investment (the **overall investment**) is based on one or more other investments, this regulation (and any instrument under subregulation (8)) applies equally to the overall investment and each investment on which the overall investment is based.
- (3) If a philanthropic contribution (the **overall contribution**) is based on one or more other philanthropic contributions, this regulation applies equally to the overall

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contribution and each philanthropic contribution on which the overall contribution is based.

Investment and philanthropic contribution requirements

- (4) All funds used to make an investment or philanthropic contribution (or both) must be unencumbered and lawfully acquired.
- (5) An investment or philanthropic contribution (or both):
 - (a) must be lawful; and
 - (b) must not form the basis for security or collateral for a loan.

Philanthropic contribution requirement

- (6) A philanthropic contribution must be approved for this regulation, in writing, by a State or Territory government agency.

Investment requirements

- (7) An investment, and the means by which an investment is made:
 - (a) must be of a kind permitted by the requirements specified in an instrument under subregulation (8); and
 - (b) must comply with any requirements specified in an instrument under subregulation (8).
- (8) The Minister may, by legislative instrument, specify requirements for the purposes of subregulation (7).

Investment switching periods

- (9) Subregulation (10) applies in relation to a period (the *switching period*):
 - (a) beginning when the investor withdraws funds from an investment, or cancels an investment; and
 - (b) ending when the investor reinvests the withdrawn funds, or the funds used to make the cancelled investment.
- (10) If the switching period is of no more than 30 days duration, the investment (whether or not combined with a philanthropic contribution) is taken not to have ceased to be a complying premium investment during the switching period only because of the event mentioned in paragraph (9)(a).

Investor requirements

- (11) The investor must be an individual.
- (12) The investor must make an investment or philanthropic contribution (or both):
 - (a) personally; or
 - (b) with the investor's spouse or de facto partner; or
 - (c) by means of a company that has issued shares and in which:
 - (i) the investor holds all of the issued shares; or

- (ii) the investor and the investor's spouse or de facto partner hold all of the issued shares; or
- (d) by means of a trust to which the following applies:
 - (i) the trust is lawfully established;
 - (ii) the investor is the sole trustee or the investor and the investor's spouse or de facto partner are the sole trustees;
 - (iii) the investor is the sole beneficiary or the investor and the investor's spouse or de facto partner are the sole beneficiaries.

5.19E Complying entrepreneur activity

- (1) An activity that an applicant for a visa is undertaking, or proposing to undertake, is a **complying entrepreneur activity** if all the requirements set out in this regulation are met.

Note: For the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream, the applicant must be undertaking, or proposing to undertake, a complying entrepreneurial activity (see Subdivision 188.28 of Schedule 2).

- (2) The activity:
- (a) relates to an innovative idea that is proposed to lead to:
 - (i) the commercialisation of a product or service in Australia; or
 - (ii) the development of an enterprise or business in Australia; and
 - (b) does not relate to an activity specified, whether individually or by class, in an instrument under subregulation (6).
- (3) All of the following apply:
- (a) funding in relation to the activity is to be provided to any of the following (the **entrepreneurial entity**):
 - (i) the applicant;
 - (ii) a body corporate;
 - (iii) a partnership;
 - (b) the funding is to be provided under one or more legally enforceable agreements in effect between the entrepreneurial entity and one or more entities covered by subregulation (5);
 - (c) if the applicant is not the entrepreneurial entity—the applicant personally held, at the time the agreement or each agreement was entered into, at least a 30% share in the ownership of the entrepreneurial entity;
 - (d) the total amount of the funding provided or to be provided under the agreement or agreements is at least \$200,000;
 - (e) under the agreement or each agreement, at least 10% of the funding is to be paid to the entrepreneurial entity within 12 months of the day the activity starts to be undertaken in Australia;
 - (f) there is in place a business plan for the entrepreneurial entity that the Minister considers to be appropriately formulated to lead to a result mentioned in subparagraph (2)(a)(i) or (ii).

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- (4) All of the funding provided or to be provided to the entrepreneurial entity under the agreement or agreements is unencumbered and lawfully acquired.
- (5) An entity is covered by this subregulation if the entity is both:
 - (a) any of the following:
 - (i) an agency of the Commonwealth, a State or a Territory, or a body established under a law of the Commonwealth, a State or a Territory;
 - (ii) a body corporate;
 - (iii) a partnership;
 - (iv) an unincorporated body;
 - (v) an individual;
 - (vi) the trustee of a trust that has only 1 trustee;
 - (vii) the trustees together of a trust that has more than 1 trustee; and
 - (b) specified, whether by name or by class, in an instrument made under subregulation (6).
- (6) The Minister may, by legislative instrument, specify:
 - (a) activities for the purposes of paragraph (2)(b); and
 - (b) entities for the purposes of paragraph (5)(b).

Division 5.3A—Offences and civil penalties in relation to work by non-citizens

5.19G Allowing an unlawful non-citizen to work

- (1) For paragraph 245AB(2)(a) of the Act, the computer system operated by the Department, and known as “Visa Entitlement Verification Online”, or “VEVO”, is prescribed.
- (2) For paragraph 245AB(2)(b) of the Act, each of the following is a prescribed thing:
 - (a) the entry into a contract under which a party to the contract performs either or both of the following functions:
 - (i) verifying that a person has the required permission to work in Australia (however that is described in the contract);
 - (ii) supplying persons who have the required permission to work in Australia (however that is described in the contract);
 - (b) the inspection of:
 - (i) a document that appears to be the worker’s Australian passport; or
 - (ii) a document that appears to be the worker’s New Zealand passport; or
 - (iii) a document that appears to be the worker’s Australian certificate of citizenship, accompanied by a form of identification featuring a photograph of the worker; or
 - (iv) a document that appears to be a certificate of evidence of the worker’s Australian citizenship, accompanied by a form of identification featuring a photograph of the worker; or
 - (v) a document that appears to be the worker’s Australian birth certificate, accompanied by a form of identification featuring a photograph of the worker; or
 - (vi) a document that appears to be a Certificate of Evidence of Resident Status for the worker, accompanied by a form of identification featuring a photograph of the worker; or
 - (vii) a document that appears to be a Certificate of Status for New Zealand Citizens in Australia for the worker, accompanied by a form of identification featuring a photograph of the worker.

Example: An example of a form of identification is a driver’s licence.

Note: Subsection 245AB(1) of the Act does not apply if reasonable steps are taken at reasonable times to verify that a worker is not an unlawful non-citizen, including (but not limited to) either of the following steps:

- (a) using a computer system prescribed by the regulations to verify that matter;
- (b) doing any one or more things prescribed by the regulations.

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5.19H Allowing a lawful non-citizen to work in breach of a work-related condition

- (1) For paragraph 245AC(2)(a) of the Act, the computer system operated by the Department, and known as “Visa Entitlement Verification Online”, or “VEVO”, is prescribed.
- (2) For paragraph 245AC(2)(b) of the Act, each of the following is a prescribed thing:
 - (a) the entry into a contract under which a party to the contract performs either or both of the following functions:
 - (i) verifying that a person has the required permission to work in Australia (however that is described in the contract);
 - (ii) supplying persons who have the required permission to work in Australia (however that is described in the contract);
 - (b) the inspection of:
 - (i) a document that appears to be the worker’s Australian passport; or
 - (ii) a document that appears to be the worker’s New Zealand passport; or
 - (iii) a document that appears to be the worker’s Australian certificate of citizenship, accompanied by a form of identification featuring a photograph of the worker; or
 - (iv) a document that appears to be a certificate of evidence of the worker’s Australian citizenship, accompanied by a form of identification featuring a photograph of the worker; or
 - (v) a document that appears to be the worker’s Australian birth certificate, accompanied by a form of identification featuring a photograph of the worker; or
 - (vi) a document that appears to be a Certificate of Evidence of Resident Status for the worker, accompanied by a form of identification featuring a photograph of the worker; or
 - (vii) a document that appears to be a Certificate of Status for New Zealand Citizens in Australia for the worker, accompanied by a form of identification featuring a photograph of the worker.

Example: An example of a form of identification is a driver’s licence.

Note: Subsection 245AC(1) of the Act does not apply if reasonable steps are taken at reasonable times to verify that a worker is not in breach of a work-related condition solely because of doing the work referred to in that subsection, including (but not limited to) either of the following steps:

- (a) using a computer system prescribed by the regulations to verify that matter;
- (b) doing any one or more things prescribed by the regulations.

5.19J Referring an unlawful non-citizen for work

- (1) For paragraph 245AE(2)(a) of the Act, the computer system operated by the Department, and known as “Visa Entitlement Verification Online”, or “VEVO”, is prescribed.

- (2) For paragraph 245AE(2)(b) of the Act, each of the following is a prescribed thing:
- (a) the entry into a contract under which a party to the contract performs the function of verifying that a person has, or will have, the required permission to work in Australia (however that is described in the contract);
 - (b) the inspection of:
 - (i) a document that appears to be the prospective worker's Australian passport; or
 - (ii) a document that appears to be the prospective worker's New Zealand passport; or
 - (iii) a document that appears to be the prospective worker's Australian certificate of citizenship, accompanied by a form of identification featuring a photograph of the prospective worker; or
 - (iv) a document that appears to be a certificate of evidence of the prospective worker's Australian citizenship, accompanied by a form of identification featuring a photograph of the prospective worker; or
 - (v) a document that appears to be the prospective worker's Australian birth certificate, accompanied by a form of identification featuring a photograph of the prospective worker; or
 - (vi) a document that appears to be a Certificate of Evidence of Resident Status for the prospective worker, accompanied by a form of identification featuring a photograph of the prospective worker; or
 - (vii) a document that appears to be a Certificate of Status for New Zealand Citizens in Australia for the prospective worker, accompanied by a form of identification featuring a photograph of the prospective worker.

Example: An example of a form of identification is a driver's licence.

Note: Subsection 245AE(1) of the Act does not apply if reasonable steps are taken at reasonable times before the referral to verify that a prospective worker is not an unlawful non-citizen, including (but not limited to) either of the following steps:

- (a) using a computer system prescribed by the regulations to verify that matter;
- (b) doing any one or more things prescribed by the regulations.

5.19K Referring a lawful non-citizen for work in breach of a work-related condition

- (1) For paragraph 245AEA(2)(a) of the Act, the computer system operated by the Department, and known as "Visa Entitlement Verification Online", or "VEVO", is prescribed.
- (2) For paragraph 245AEA(2)(b) of the Act, each of the following is a prescribed thing:
- (a) the entry into a contract under which a party to the contract performs the function of verifying that a person has, or will have, the required permission to work in Australia (however that is described in the contract);
 - (b) the inspection of:

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- (i) a document that appears to be the prospective worker's Australian passport; or
- (ii) a document that appears to be the prospective worker's New Zealand passport; or
- (iii) a document that appears to be the prospective worker's Australian certificate of citizenship, accompanied by a form of identification featuring a photograph of the prospective worker; or
- (iv) a document that appears to be a certificate of evidence of the prospective worker's Australian citizenship, accompanied by a form of identification featuring a photograph of the prospective worker; or
- (v) a document that appears to be the prospective worker's Australian birth certificate, accompanied by a form of identification featuring a photograph of the prospective worker; or
- (vi) a document that appears to be a Certificate of Evidence of Resident Status for the prospective worker, accompanied by a form of identification featuring a photograph of the prospective worker; or
- (vii) a document that appears to be a Certificate of Status for New Zealand Citizens in Australia for the prospective worker, accompanied by a form of identification featuring a photograph of the prospective worker.

Example: An example of a form of identification is a driver's licence.

Note: Subsection 245AEA(1) of the Act does not apply if reasonable steps are taken at reasonable times before the referral to verify that a prospective worker will not be in breach of a work-related condition solely because of doing the work in relation to which he or she is referred, including (but not limited to) either of the following steps:

- (a) using a computer system prescribed by the regulations to verify that matter;
- (b) doing any one or more things prescribed by the regulations.

Division 5.3B—Offences and civil penalties in relation to sponsored visas

5.19L Classes of sponsor

For the definition of *sponsor class* in section 245AQ of the Act, the following classes of sponsor are prescribed:

- (a) a standard business sponsor;
- (b) an entertainment sponsor;
- (c) a superyacht crew sponsor;
- (d) a long stay activity sponsor;
- (e) a training and research sponsor;
- (f) a temporary activities sponsor.

5.19M Kinds of sponsored visa

For the definition of *sponsored visa* in section 245AQ of the Act, the following kinds of visa are prescribed:

- (a) a Subclass 186 (Employer Nomination Scheme) visa;
- (b) a Subclass 187 (Regional Sponsored Migration Scheme) visa;
- (c) a Subclass 401 (Temporary Work (Long Stay Activity)) visa;
- (d) a Subclass 402 (Training and Research) visa in the Research stream;
- (da) a Subclass 407 (Training) visa;
- (db) a Subclass 408 (Temporary Activity) visa;
- (e) a Subclass 420 (Temporary Work (Entertainment)) visa;
- (f) a Subclass 457 (Temporary Work (Skilled)) visa;
- (g) a Subclass 488 (Superyacht Crew) visa.

5.19N Sponsorship-related events

For paragraph (l) of the definition of *sponsorship-related event* in section 245AQ of the Act, each of the following is a prescribed event:

- (a) a person becoming, or not ceasing to be, a party to a labour agreement that is not a work agreement;
- (b) a person nominating a position in accordance with such a labour agreement in relation to a holder of, or an applicant or proposed applicant for, a sponsored visa, or including another person in such a nomination;
- (c) a person not withdrawing a nomination of a position made in accordance with such a labour agreement in relation to a holder of, or an applicant or proposed applicant for, a sponsored visa.

Division 5.4—Infringement notice penalties

5.20 Offences

- (1) For paragraph 504(1)(i) of the Act (which authorises the Regulations to set penalties as an alternative to prosecution), the prescribed penalty for an offence against section 137 of the Act is:
 - (a) in the case of a failure by a person to supply the person's address—\$250; or
 - (b) in any other case—\$1 000.
- (2) For paragraph 504(1)(j) of the Act, the prescribed penalty to be paid as an alternative to prosecution for a contravention of section 229 or 230 of the Act is:
 - (a) in the case of a natural person—\$3 000; or
 - (b) in the case of a body corporate—\$5 000.
- (3) For paragraph 504(1)(jaa) of the Act, the prescribed penalty to be paid as an alternative to prosecution for a contravention of subsection 245N(2) of the Act is 10 penalty units.

5.20A Civil penalty provisions

Sponsorship-related civil penalty provisions

- (1) For subsection 506A(1) of the Act, a person who is alleged to have contravened subsection 140Q(1), 140Q(2), 140XE(3) or 140XF(3) of the Act may pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.
- (2) If the person has previously been issued an infringement notice for an alleged contravention of any of those subsections, or has been ordered by a Court to pay a pecuniary penalty for a contravention of any of those subsections, the penalty is:
 - (a) in the case of a natural person—12 penalty units; or
 - (b) in the case of a body corporate—60 penalty units.
- (3) If subregulation (2) does not apply, the penalty is:
 - (a) in the case of a natural person—6 penalty units; or
 - (b) in the case of a body corporate—30 penalty units.
- (3A) For subsection 506A(1) of the Act, a person who is alleged to have contravened subsection 245AR(1) or 245AS(1) of the Act may pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.
- (3B) If the person has previously been issued an infringement notice for an alleged contravention of subsection 245AR(1) or 245AS(1) of the Act, or has been

ordered by a Court to pay a pecuniary penalty for a contravention of either of those subsections, the penalty is:

- (a) in the case of a natural person—48 penalty units; or
- (b) in the case of a body corporate—240 penalty units.

(3C) If subregulation (3B) does not apply, the penalty is:

- (a) in the case of a natural person—24 penalty units; or
- (b) in the case of a body corporate—120 penalty units.

Work-related civil penalty provisions

- (4) For subsection 506A(1) of the Act, a person who is alleged to have contravened subsection 245AB(5), 245AC(5), 245AE(5) or 245AEA(5) of the Act may pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.
- (5) If the person has previously been issued an infringement notice for an alleged contravention of any of those subsections, or has been ordered by a Court to pay a pecuniary penalty for a contravention of any of those subsections, the penalty is:
 - (a) in the case of a natural person—18 penalty units; or
 - (b) in the case of a body corporate—90 penalty units.
- (6) If subregulation (5) does not apply, the penalty is:
 - (a) in the case of a natural person—9 penalty units; or
 - (b) in the case of a body corporate—45 penalty units.

Division 5.5—Infringement notices

5.21 Interpretation

In this Division:

authorised officer includes the Secretary.

business visa has the same meaning as in section 137 of the Act.

civil penalty provision means any of the following provisions of the Act:

- (a) subsection 140Q(1);
- (b) subsection 140Q(2);
- (c) subsection 140XE(3);
- (d) subsection 140XF(3);
- (e) subsection 245AB(5);
- (f) subsection 245AC(5);
- (g) subsection 245AE(5);
- (h) subsection 245AEA(5);
- (i) subsection 245AR(1);
- (j) subsection 245AS(1).

infringement notice means a notice under regulation 5.22.

infringement notice penalty:

- (a) for an offence—means the penalty prescribed by regulation 5.20 for the offence; and
- (b) for a civil penalty provision—means the penalty prescribed by regulation 5.20A for the civil penalty provision.

offence means a contravention of:

- (a) section 137, 229 or 230 of the Act; or
- (b) subsection 245N(2) of the Act.

sponsorship-related civil penalty provision means any of the following provisions of the Act:

- (a) subsection 140Q(1);
- (b) subsection 140Q(2);
- (c) subsection 140XE(3);
- (d) subsection 140XF(3).

work-related civil penalty provision means any of the following provisions of the Act:

- (a) subsection 245AB(5);
- (b) subsection 245AC(5);
- (c) subsection 245AE(5);
- (d) subsection 245AEA(5).

5.22 When can an infringement notice be served?

- (1) If an authorised officer has reason to believe that a person has committed an offence or has contravened a civil penalty provision, the officer may cause an infringement notice to be served on the person in accordance with this Division.
- (2) An infringement notice must be served within 12 months of the date on which, or the last day of the period over which, an offence is alleged to have been committed or a civil penalty provision is alleged to have been contravened.
- (3) An infringement notice must not be served on a person in relation to:
 - (a) a failure to satisfy a sponsorship obligation prescribed in regulation 2.78;
or
 - (b) a failure to satisfy a sponsorship obligation prescribed in regulation 2.85.

Note: Regulation 2.78 prescribes an obligation to cooperate with inspectors. Regulation 2.85 prescribes an obligation to secure an offer of a reasonable standard of accommodation for a primary sponsored person or secondary sponsored person.

5.23 What must an infringement notice contain?

- (1) An infringement notice must:
 - (a) state the name of the authorised officer who caused the notice to be served;
and
 - (b) if the notice is for the alleged commission of an offence—set out:
 - (i) the day on which the offence is alleged to have been committed; and
 - (ii) if the offence is against section 229 or 230 of the Act, the place at which the offence is alleged to have been committed; or
 - (ba) if the notice is for an alleged contravention of a civil penalty provision—set out the day on which, or the period over which, the civil penalty provision is alleged to have been contravened; and
 - (c) give brief particulars of the alleged offence or the alleged contravention of a civil penalty provision; and
 - (d) set out the infringement notice penalty; and
 - (e) state that, if the person on whom it is served does not wish the matter to be dealt with by a court, he or she may pay that penalty within 28 days after the date of service of the notice unless the notice is withdrawn before the end of that period; and
 - (f) specify where and how that penalty may be paid; and
 - (g) set out the procedures relating to the withdrawal of notices and the consequences of the withdrawal of a notice.
- (2) An infringement notice for a contravention of a sponsorship-related civil penalty provision must also state that if the provision is contravened after the day on which, or the period over which, the contravention specified in the notice occurred:
 - (a) the person will have contravened the provision again; and
 - (b) further action may be taken as mentioned in section 140K of the Act.

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- (3) An infringement notice for a contravention of a work-related civil penalty provision, or subsection 245AR(1) or 245AS(1) of the Act, must also state the grounds on which the infringement notice may be withdrawn.
- (4) An infringement notice for a contravention of a work-related civil penalty provision, or subsection 245AR(1) or 245AS(1) of the Act, must also state that the grounds on which the infringement notice may be withdrawn are not exhaustive.
- (5) An infringement notice may contain any other particulars that the authorised officer considers necessary.

5.24 Can the time for payment be extended?

If an infringement notice has been served on a person, an authorised officer may, if he or she is satisfied that in all the circumstances it is proper to do so, allow a further period for payment of the infringement notice penalty, whether or not the period of 28 days after the date of service of the notice has expired.

5.25 What happens if the infringement notice penalty is paid?

If the person on whom an infringement notice is served pays the infringement notice penalty in relation to the alleged offence or the alleged contravention of a civil penalty provision before:

- (a) the end of:
 - (i) the period of 28 days after the date of service of the notice; or
 - (ii) if a further period has been allowed under regulation 5.24—that further period; or
 - (b) the notice is withdrawn;
- whichever happens first, then:
- (c) any liability of the person in respect of the alleged offence or the alleged contravention of the civil penalty provision is discharged; and
 - (d) no further proceedings may be taken in respect of the alleged offence or the alleged contravention of the civil penalty provision; and
 - (e) the person is not to be taken to have been convicted of the alleged offence.

5.26 Can an infringement notice be withdrawn?

- (1) If an infringement notice has been served on a person, an authorised officer may withdraw it by notice in writing served on the person in accordance with these Regulations, at any time before:
 - (a) the end of 28 days after the date of service of the notice; or
 - (b) if a further period has been allowed under regulation 5.24—the end of that further period.
- (2) An infringement notice for:
 - (a) an alleged offence against section 229 or 230 of the Act; or
 - (b) an alleged contravention of a civil penalty provision;

must not be withdrawn under subregulation (1) after the expiry of 3 months commencing on the day on which the notice was served.

5.27 Refund of infringement notice penalty if notice withdrawn

If:

- (a) an infringement notice has been served on a person; and
- (b) the person has paid the infringement notice penalty in accordance with the notice; and
- (c) the notice is subsequently withdrawn;

an authorised officer must arrange for the refund to the person of an amount equal to the amount so paid.

5.28 Evidence

- (1) In the hearing of proceedings for:
 - (a) a prosecution for an offence specified in an infringement notice; or
 - (b) an application for a pecuniary penalty order in relation to a contravention of a civil penalty provision specified in an infringement notice;a certificate signed by an authorised officer and stating a matter mentioned in subregulation (2) is evidence of the matter.
- (2) The matter is that:
 - (a) the authorised officer did not allow further time for payment of the infringement notice penalty and the penalty was not paid within 28 days after the date of service of the infringement notice; or
 - (b) the authorised officer allowed a further period (as specified in the certificate) for payment of the infringement notice penalty and the penalty was not paid within the further period; or
 - (c) the authorised officer withdrew the infringement notice on a day specified in the certificate.
- (3) A certificate that purports to have been signed by an authorised officer is taken to have been signed by that person unless the contrary is proved.

5.29 Can there be more than one infringement notice for the same offence or contravention of a civil penalty provision?

This Division does not prevent more than one infringement notice being served on a person for the same offence or the same contravention of a civil penalty provision, but regulation 5.25 applies to the person if the person pays the infringement notice penalty in accordance with one of the infringement notices.

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5.30 What if payment is made by cheque?

If a cheque is offered to Immigration as payment of all or part of the amount of a penalty specified in an infringement notice, payment is taken not to have been made unless the cheque is honoured upon presentation.

5.31 Infringement notice not compulsory

Nothing in this Division:

- (a) requires an infringement notice to be served on a person in relation to an offence or a contravention of a civil penalty provision; or
- (b) affects the liability of a person to be prosecuted for an offence or to be subject to proceedings in relation to a contravention of a civil penalty provision if the person does not comply with an infringement notice; or
- (c) affects the liability of a person to be prosecuted for an offence or to be subject to proceedings in relation to a contravention of a civil penalty provision if an infringement notice is not served on the person in relation to the offence or in relation to a contravention of a civil penalty provision; or
- (d) affects the liability of a person to be prosecuted for an offence or to be subject to proceedings in relation to a contravention of a civil penalty provision if an infringement notice is served and withdrawn; or
- (e) limits the amount of:
 - (i) the fine that may be imposed by a court on a person convicted of an offence; or
 - (ii) the pecuniary penalty that may be imposed by a court on a person for a contravention of a civil penalty provision.

Division 5.6—Miscellaneous

5.32 Search warrants (Act, ss 223(14) and 251(4))

- (1) A search warrant for the purposes of subsection 223(14) of the Act (dealing with directions about, and seizure of, the valuables of non-citizens in detention) is to be in accordance with prescribed form 1.
- (2) A search warrant for the purposes of subsection 251(4) of the Act (dealing with entry and search for unlawful non-citizens) is to be in accordance with prescribed form 2.

5.32A Work performed by unlawful non-citizen in detention centre

For subsection 235(6) of the Act, the circumstance is that the work:

- (a) is performed by an unlawful non-citizen who is detained in a detention centre established under the Act; and
- (b) is allocated to the unlawful non-citizen, at the non-citizen's request, by an officer at the detention centre.

5.33 Document for purposes of s 274(3)(a) of Act

A document for the purposes of paragraph 274(3)(a) of the Act (dealing with documents relating to persons to be removed or deported from Australia) is to be in accordance with prescribed form 3.

5.34 Application of Chapter 2 of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies, on and after 1 November 2001, to offences against these Regulations.

5.34D Disclosure of information to prescribed bodies

For paragraph 336F(1)(d) of the Act (which deals with the authorised disclosure of identifying information to various bodies), a body of:

- (a) a foreign country; or
- (b) the Commonwealth; or
- (c) a State; or
- (d) a Territory;

that is specified in a legislative instrument made by the Minister for this regulation is a prescribed body.

5.34E Disclosure of information to prescribed international organisations

For paragraph 336F(1)(e) of the Act (which deals with the authorised disclosure of identifying information to international organisations), an organisation that is

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specified in a legislative instrument made by the Minister for this regulation is a prescribed international organisation.

5.34F Disclosure of information to police and Australian Crime Commission

- (1) This regulation applies in relation to the following:
 - (a) a person who holds:
 - (i) a Subclass 050 (Bridging (General)) visa; or
 - (ii) a Subclass 051 (Bridging (Protection Visa Applicant)) visa;
 - (b) a person covered by a residence determination.
- (2) The Minister may authorise the disclosure of any information mentioned in subregulation (4) about the person, or a class of such persons, to the following:
 - (a) the Australian Federal Police;
 - (b) the police force or police service of a State or Territory;
 - (c) the Australian Crime Commission.
- (3) The Minister may authorise the disclosure only if the Minister reasonably believes the disclosure is necessary or appropriate for the performance of functions or the exercise of powers under the Act.
- (4) For subregulation (2), the information is the following:
 - (a) the name of the person or the names of persons in the class;
 - (b) the residential address of the person or the residential addresses of persons in the class;
 - (c) the sex of the person or of persons in the class;
 - (d) the date of birth of the person or the dates of birth of persons in the class;
 - (e) the immigration status of the person or of persons in the class;
 - (f) the CNI number of the person or persons;
 - (g) the client number of the person or persons.

5.35 Medical treatment of persons in detention under the Act

- (1) In this regulation:

detainee means a person held at a detention centre in detention under the Act.

medical treatment includes:

- (a) the administration of nourishment and fluids; and
 - (b) treatment in a hospital.
- (2) The Secretary may authorise medical treatment to be given to a detainee if:
 - (a) the Secretary, acting in person and on the written advice of:
 - (i) a Commonwealth Medical Officer; or
 - (ii) another registered medical practitioner;forms the opinion that:
 - (iii) that detainee needs medical treatment; and

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- (iv) if medical treatment is not given to that detainee, there will be a serious risk to his or her life or health; and
- (b) that detainee fails to give, refuses to give, or is not reasonably capable of giving, consent to the medical treatment.
- (3) An authorisation by the Secretary under subregulation (2) is authority for the use of reasonable force (including the reasonable use of restraint and sedatives) for the purpose of giving medical treatment to a detainee.
- (4) A detainee to whom medical treatment is given under an authorisation under subregulation (2) is taken for all purposes to have consented to the treatment.
- (5) Medical treatment that is given under an authorisation under subregulation (2) must be given by, or in the presence of, a registered medical practitioner.
- (6) Nothing in this regulation authorises the Secretary to require a registered medical practitioner to act in a way contrary to the ethical, moral or religious convictions of that medical practitioner.

5.35AA Decisions that are not privative clause decisions

For subsection 474(5) of the Act, a decision, or a decision included in a class of decisions, made under a provision of the Act set out in the following table is not a privative clause decision.

Item	Provision	Subject matter of provision
1	section 252AA	Power to conduct a screening procedure
2	section 252A	Power to conduct a strip search
3	section 252B	Rules for conducting a strip search
4	section 252C	Possession and retention of certain things obtained during a screening procedure or strip search
5	section 252D	Authorised officer may apply for a thing to be retained for a further period
6	section 252E	Magistrate may order that thing be retained
7	section 252G	Powers concerning entry to a detention centre
8	Division 13A of Part 2	Automatic forfeiture of things used in certain offences

Division 5.6A—Powers under an agreement or arrangement with a foreign country

5.35A Definitions

In this Division:

place means any place in or outside Australia.

weapon includes any thing capable of being used to inflict bodily injury or to help an individual escape from restraint.

5.35B Exercise of power to restrain an individual

- (1) In the exercise of a power under this Division to restrain an individual, the officer:
 - (a) must not use more force, or subject the individual to greater indignity, than is reasonably necessary to exercise the power; and
 - (b) must not do anything likely to cause the individual grievous bodily harm unless the officer believes on reasonable grounds that doing the thing is necessary to protect life or prevent serious injury to the individual or another individual (including the officer).

- (2) In this regulation:

officer includes an individual assisting the officer.

5.35C Exercise of power to search an individual

- (1) This regulation applies to a search under this Division of an individual, clothing of an individual or property under the immediate control of an individual.
- (2) The purpose for which an individual, clothing of the individual or any property under the immediate control of the individual may be searched is to find out whether the individual is carrying a weapon, or a weapon is hidden on the individual, in the clothing or in the property.
- (3) This regulation does not authorise an officer, or another individual conducting a search under subregulation (4), to remove any of the individual's clothing, or to require an individual to remove any of his or her clothing, except the individual's outer garments (including but not limited to the individual's overcoat, coat, jacket, gloves, shoes and head covering).
- (4) A search of an individual, and the individual's clothing, must be conducted by:
 - (a) an officer of the same sex as the individual; or
 - (b) if an officer of the same sex as the individual is not available to conduct the search—any other individual who is of the same sex and:
 - (i) is requested by an officer; and
 - (ii) agrees;

to conduct the search.

- (5) An officer or other individual who conducts a search to which this regulation applies must not use more force, or subject the individual to greater indignity, than is reasonably necessary to conduct the search.

5.35D Protection of persons when acts done in good faith

- (1) An action or proceeding, whether civil or criminal, does not lie, in respect of anything done in the exercise of a power under this Division to restrain an individual, against the Commonwealth, an officer or an individual assisting an officer if the officer or individual who does the thing acts in good faith and does not contravene regulation 5.35B.
- (2) An action or proceeding, whether civil or criminal, does not lie against an individual who, at the request of an officer under subregulation 5.35C(4), conducts a search under that subregulation if the individual acts in good faith and does not contravene subregulation 5.35C(5).

5.35E Powers when boarding certain foreign ships (Act s 245F(14))

For subsection 245F(14) of the Act, the powers that the officer may exercise, consistently with the agreement or arrangement, are the powers to do the following:

- (a) search, without warrant:
- (i) an individual on the ship; or
 - (ii) the clothing of the individual; or
 - (iii) any property under the immediate control of the individual;
- (b) take possession of any weapon for as long as the officer thinks necessary for the purposes of this regulation;
- (c) restrain any individual on board the ship for as long as the officer thinks necessary for the purposes of this regulation;
- (d) detain the ship for as long as the officer thinks necessary for the purposes of this regulation;
- (e) bring the ship, or cause it to be brought, to a place that the officer considers appropriate.

5.35F Powers when boarding certain foreign ships on the high seas (Act s 245G(4))

- (1) For subsection 245G(4) of the Act, the powers that the officer may exercise, consistently with the agreement or arrangement, are the powers to do the following:
- (a) search the ship;
- (b) search, without warrant:
- (i) an individual on the ship; or
 - (ii) the clothing or the individual; or
 - (iii) any property under the immediate control of the individual;

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- (c) take possession of any weapon for as long as the officer thinks necessary for the purposes of this regulation;
 - (d) restrain any individual on board the ship for as long as the officer thinks necessary for the purposes of this regulation;
 - (e) detain the ship for as long as the officer thinks necessary for the purposes of this regulation;
 - (f) bring the ship, or cause it to be brought, to a port or other place that the officer considers appropriate;
 - (g) return to the ship any individual who:
 - (i) was on the ship when it was initially detained under paragraph (e);
and
 - (ii) later leaves the ship.
- (2) Subject to this Division, an officer may use such force as is necessary and reasonable in the exercise of a power under this regulation.
- (3) In searching the ship, an officer must not damage the ship or any goods on the ship by forcing open a part of the ship or the goods unless:
- (a) the individual (if any) apparently in charge of the ship has been given a reasonable opportunity to open that part or the goods; or
 - (b) it is not reasonably practical to give that individual such an opportunity.
- (4) An individual may be returned to a ship under paragraph (1)(g) only if the officer or individual assisting the officer is satisfied that it is safe to do so.

Division 5.7—Charges and fees

5.36 Payment of visa application charges, and fees, in foreign currencies

- (1) Payment of a fee, other than a visa application charge mentioned in subregulation (3A), must be made:
 - (a) in a place, being Australia or a foreign country, that is specified in a legislative instrument made by the Minister for the purposes of this paragraph; and
 - (b) in a currency that is specified for the purposes of this paragraph in a legislative instrument made by the Minister as a currency in which a fee may be paid in that place.

Note: For *foreign country*, see section 2B of the *Acts Interpretation Act 1901*.

- (1A) The amount of the payment is to be worked out as follows:
 - (a) if the currency in which the amount is to be paid is specified by the Minister in an instrument in writing for this paragraph, use the exchange rate for the currency specified in the notice;
 - (b) if the currency in which the amount is to be paid is not specified in an instrument for paragraph (a), use the formula in subregulation (2).

- (2) The formula is:

$$\text{AUD} \times \text{CER} \times 1.05$$

where:

AUD means the amount of the fee in Australian dollars.

CER means the highest exchange rate that is lawfully obtainable on a commercial basis for the purchase in the foreign country of Australian currency with the currency of the foreign country in a period that:

- (a) begins:
 - (i) on the day when this regulation commences; or
 - (ii) on any subsequent day when that rate increases or decreases by at least 5%; and
 - (b) ends at the end of each day before another period begins.
- (3) If the amount worked out by that formula cannot be paid wholly in banknotes of that country, the corresponding amount is that amount rounded up to the nearest larger amount that is payable wholly in banknotes of that country.
 - (3A) A visa application charge payment made in accordance with regulation 2.12JA must be made in Australian dollars.

- (4) In this regulation:

fee means:

- (a) an instalment of visa application charge; or

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- (b) an amount of visa evidence charge; or
- (c) a fee payable under these Regulations except regulation 5.41C.

5.37 Employer nomination fee

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

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

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

5.38 Sponsorship fee

- (1) This regulation applies to sponsorship of an applicant if the applicant is applying for a temporary visa for which sponsorship is a requirement (other than a Subclass 600 (Visitor) visa).
- (2) Subject to subregulation (3), a fee is payable for seeking to be approved as a sponsor in respect of a sponsorship of an applicant to which this regulation applies, as follows:
 - (a) if the person or organisation is seeking to sponsor more than 10 applicants together—\$3 350;
 - (b) in any other case—\$335 for each applicant the person or organisation is seeking to sponsor.
- (3) If an application for a visa is not subject to a visa application charge, or a fee under these Regulations, no fee is payable for seeking to be approved as a sponsor in respect of that application.

5.40 Fees for assessment of a person's work qualifications and experience etc

- (1) The fee payable to a non-corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* for:
 - (a) an application for assessment, for the purposes of the Act, of a person's occupational qualifications or experience (or both); and
 - (b) an application for assessment, for the purposes of the Act, of a person's educational qualifications; and
 - (c) an application for internal review of an assessment;is the fee specified by the Minister in an instrument in writing for this regulation.

- (2) Subject to subregulation (3), if, on an internal review of an assessment, a review authority decides in favour of the applicant, the fee paid for the internal review is to be refunded.
- (3) A fee paid for an internal review is not to be refunded if the applicant provided evidence for the purposes of the review that was not provided for the purposes of the application for assessment.

5.41 Fee for further opinion of Medical Officer of the Commonwealth in merits review

- (1) This regulation applies to a review by the Tribunal of a refusal to grant a visa to a person, if:
 - (a) under regulation 2.25A, in determining whether the criteria for grant of the visa were satisfied, the Minister was required, to seek the opinion of a Medical Officer of the Commonwealth; and
 - (b) the refusal occurred wholly, or in part, because in the opinion of the Medical Officer of the Commonwealth, the person did not satisfy a requirement mentioned in subregulation 2.25A(1) or (2), as the case requires; and
 - (c) for the review—a further opinion of a Medical Officer of the Commonwealth is required.
- (2) There is payable, for the further opinion mentioned in paragraph (1)(c), a fee of \$520.

5.41A Credit card surcharge

- (1) A person is liable to pay a fee (a *credit card surcharge*) if:
 - (a) the person pays a fee or charge, or part of a fee or charge; and
 - (b) the fee or charge is of a kind specified by the Minister by a legislative instrument made for this paragraph; and
 - (c) the payment is made by credit card.
- (2) The amount of the credit card surcharge payable in respect of the payment is as follows:
 - (a) for a payment made by Visa or MasterCard credit card—0.98% of the amount of the payment;
 - (b) for a payment made by American Express or Japan Credit Bureau (JCB) credit card—1.4% of the amount of the payment;
 - (c) for a payment made by Diners Club International credit card—1.99% of the amount of the payment.
- (3) The credit card surcharge is payable when the payment is made.
- (4) The Minister may specify, in a legislative instrument, circumstances in which the credit card surcharge:
 - (a) must be waived; or
 - (b) may be waived; or

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- (c) must be refunded; or
- (d) may be refunded.

(5) The Minister:

- (a) must waive payment of the credit card surcharge in circumstances specified under paragraph (4)(a); and
- (b) may waive payment of the credit card surcharge in circumstances specified under paragraph (4)(b); and
- (c) must refund payment of the credit card surcharge in circumstances specified under paragraph (4)(c); and
- (d) may refund payment of the credit card surcharge in circumstances specified under paragraph (4)(d).

5.41B PayPal surcharge

- (1) A person is liable to pay a fee (a *PayPal surcharge*) if:
 - (a) the person pays a fee or charge, or part of a fee or charge; and
 - (b) the fee or charge is of a kind specified by the Minister by a legislative instrument made for this paragraph; and
 - (c) the payment is made by the PayPal system.
- (2) The amount of the PayPal surcharge payable in respect of the payment is 1% of the amount of the payment.
- (3) The PayPal surcharge is payable when the payment is made.
- (4) The Minister may specify, in a legislative instrument, circumstances in which the PayPal surcharge:
 - (a) must be waived; or
 - (b) may be waived; or
 - (c) must be refunded; or
 - (d) may be refunded.
- (5) The Minister:
 - (a) must waive payment of the PayPal surcharge in circumstances specified under paragraph (4)(a); and
 - (b) may waive payment of the PayPal surcharge in circumstances specified under paragraph (4)(b); and
 - (c) must refund payment of the PayPal surcharge in circumstances specified under paragraph (4)(c); and
 - (d) may refund payment of the PayPal surcharge in circumstances specified under paragraph (4)(d).

5.41C Fees for performing functions relating to certain international travellers using gateway airports

- (1) If, at the request of a person, the Secretary arranges for a statutory function to be performed:
-

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- (a) in a special processing area for the performance of the function at a gateway airport; and
- (b) in relation to one or more international travellers using the gateway airport; the person must pay the Commonwealth an agreed fee in respect of the performance of the statutory function and any other statutory functions in relation to those international travellers.

Note: An agreed fee in respect of the performance of the statutory function and other statutory functions may be payable in anticipation of the performance of the function.

- (2) On behalf of the Commonwealth, the Secretary may make, with a person making a request described in subregulation (1), an agreement relating to the amount and payment of a fee that is or will be payable under that subregulation.
- (3) In these Regulations:

gateway airport means an aerodrome (whether a proclaimed airport or not) used by aircraft on overseas flights.

international traveller using a gateway airport means a person who:

- (a) arrives at the gateway airport aboard an aircraft on an overseas flight; or
- (b) is due to depart from the gateway airport aboard an aircraft on an overseas flight.

overseas flight means:

- (a) a flight from a place outside Australia to a place in Australia; or
- (b) a flight from a place in Australia to a place outside Australia (whether or not after calling at other places in Australia).

special processing area of a gateway airport for the performance of a particular statutory function means:

- (a) if the gateway airport is commonly used for overseas flights—an area of the gateway airport other than an area in which that function is performed in relation to:
 - (i) a majority of international travellers arriving at the gateway airport aboard aircraft on overseas flights; or
 - (ii) a majority of international travellers due to depart from the gateway airport aboard aircraft on overseas flights; or
- (b) if the gateway airport is not commonly used for overseas flights—an area of the gateway airport in which that function is, or is to be, performed in relation to international travellers using the gateway airport.

statutory function means a function under:

- (a) the Act; or
- (b) regulations made under the Act.

Division 5.8—Multiple parties in migration litigation

5.43 Meaning of *family* (Act s 486B)

For paragraph 486B(7)(a) of the Act, *family*, of an applicant in a migration proceeding, means:

- (a) the spouse or de facto partner of the applicant; and
- (b) the dependent children of the applicant.

5.44 Prescription of other persons (Act s 486B)

For paragraph 486B(7)(d) of the Act, the legal personal representative of a person who has a serious physical or mental incapacity and who is an applicant in a migration proceeding, or a member of the family of the applicant, is prescribed.

Division 5.8A—Review of these Regulations

5.44A Review of these Regulations

Requirement for review

- (1) The Secretary must ensure that there is a review of the operation of these Regulations.

Initial review in the 2017/18 financial year

- (2) The first review must:
 - (a) start during the period:
 - (i) beginning on 1 July 2017; and
 - (ii) ending on 30 June 2018; and
 - (b) be completed within 2 years after the day that the review begins.

Subsequent 10 yearly reviews

- (3) Subsequent reviews must:
 - (a) start as soon as possible after the end of every 10 year period, with the first period beginning on 1 October 2017; and
 - (b) be completed within 2 years after the day that the review begins.

Division 5.9—Transitional arrangements

5.45 Operation of Schedule 13

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

Schedule 1—Classes of visa

(regulations 2.01 and 2.07)

Note: This Schedule sets out the specific ways in which a non-citizen applies for a visa of a particular class. An application that is not made as set out in this Schedule is not valid and will not be considered: see the Act, ss 45, 46 and 47.

Part 1—Permanent visas

1104AA Business Skills—Business Talent (Permanent) (Class EA)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$6 990
2	Additional applicant charge for an applicant who is at least 18	\$3 495
3	Additional applicant charge for an applicant who is less than 18	\$1 745

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the primary criteria for the grant of a Subclass 132 (Business Talent) visa	\$9 795
2	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the secondary criteria for the grant of a Subclass 132 (Business Talent) visa	\$4 890
3	Any other applicant	Nil

- (3) Other:

Schedule 1 Classes of visa
Part 1 Permanent visas

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) An applicant may be in or outside Australia, but not in immigration clearance.
 - (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 Bridging A visa; or
 - (iii) a Subclass 020 Bridging B visa; or
 - (iv) a Subclass 030 Bridging C visa.
 - (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills—Business Talent (Permanent) (Class EA) visa may be made at the same time as, and combined with, the application by that person.
- (4) An applicant seeking to satisfy the primary criteria for a Subclass 132 (Business Talent) visa in the Significant Business History stream must meet the requirements in the table.

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

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

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

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

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

- (6) Subclasses:
Subclass 132 (Business Talent)

1104BA Business Skills (Permanent) (Class EC)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
-

(2) Visa application charge:

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

First instalment		
Item	Component	Amount
1	Base application charge	\$2,305
2	Additional applicant charge for an applicant who is at least 18	\$1,155
3	Additional applicant charge for an applicant who is less than 18	\$575

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the secondary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa; and (d) has not paid a second instalment of the visa application charge in relation to an application for a Subclass 188 (Business Innovation and Investment (Provisional)) visa	\$4 890
2	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) An applicant may be in or outside Australia, but not in immigration clearance.
- (c) An applicant seeking to satisfy the primary criteria must be nominated by:
 - (i) if the applicant is seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream, the Investor stream or the Entrepreneur stream—a State or Territory government agency; or
 - (ii) if the applicant is seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Significant Investor stream—a State or Territory government agency or the CEO of Austrade; or
 - (iii) if the applicant is seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Premium Investor stream—the CEO of Austrade.

Schedule 1 Classes of visa

Part 1 Permanent visas

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

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

Item	Requirements
1	The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream or the Business Innovation Extension stream
2	The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa granted on the basis that the applicant was the spouse or de facto partner of a person who held a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream or the Business Innovation Extension stream
3	The applicant holds a Subclass 444 (Special Category) visa
4	The applicant holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that: (a) the applicant; or (b) the applicant's spouse or de facto partner (if any); or (c) the applicant's former spouse or de facto partner; satisfied the criteria in subclause 457.223(7) or (7A) of Schedule 2 for the grant of the visa

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

Item	Requirements
1	The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream
2	The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa granted on the basis that the applicant was the spouse or de facto partner of a person who held a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream

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

Item	Requirements
1	The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream or the Significant Investor Extension stream
2	Both of the following apply: (a) the applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa granted on the basis that the applicant was the spouse or de facto partner of a person who held a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream or the Significant Investor Extension stream;

Item	Requirements
	(b) either: (i) the applicant has ceased to be the spouse or de facto partner of that person; or (ii) that person has since died
	(5B) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Premium Investor stream must meet the requirements in at least one item in the table.

Item	Requirements
1	The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Premium Investor stream
2	Both of the following apply: (a) the applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa granted on the basis that the applicant was the spouse or de facto partner of a person (the primary visa holder) who held a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Premium Investor stream; (b) either: (i) the applicant has ceased to be the spouse or de facto partner of the primary visa holder; or (ii) that primary visa holder has since died
	(5C) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Entrepreneur stream must hold a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream.
	(6) Subclasses: Subclass 888 (Business Innovation and Investment (Permanent))

1104B Business Skills (Residence) (Class DF)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):
 - (i) for an applicant:
 - (A) who is the holder of a Skilled—Independent Regional (Provisional) (Class UX) visa; or
 - (B) whose application is combined, or sought to be combined, with an application made by that holder:

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165

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First instalment		
Item	Component	Amount
3	Additional applicant charge for an applicant who is less than 18	\$80

(ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$2 180
2	Additional applicant charge for an applicant who is at least 18	\$1 090
3	Additional applicant charge for an applicant who is less than 18	\$545

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the secondary criteria for the grant of a visa of a subclass included in Business Skills (Residence) (Class DF); and (d) is not the holder of a visa of a subclass included in Business Skills (Provisional) (Class UR); and (e) is not the holder of a Skilled—Independent Regional (Provisional) (Class UX) visa	\$4 890
2	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant seeking to satisfy the primary criteria must be in Australia, but not in immigration clearance.
- (c) Applicant seeking to satisfy the secondary criteria may be in or outside Australia, but not in immigration clearance.
- (d) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 890 (Business Owner) visa must hold a visa of a subclass included in Business Skills (Provisional) (Class UR), granted on the basis that the applicant, or the spouse or de facto partner of the applicant (if any), or the

former spouse or former de facto partner of the applicant, satisfied the primary criteria for the grant of the visa.

- (e) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 891 (Investor) visa must hold a Subclass 162 (Investor (Provisional)) visa granted on the basis that the applicant satisfied the primary criteria for the grant of the visa.
- (f) For an applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa, applicant must hold a visa of a subclass included in Business Skills (Provisional) (Class UR), granted on the basis that the applicant, or the spouse or de facto partner of the applicant (if any), or the former spouse or former de facto partner of the applicant, satisfied the primary criteria for the grant of the visa.
- (g) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 893 (State/Territory Sponsored Investor) visa must hold a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa granted on the basis that the applicant satisfied the primary criteria for the grant of the visa.
- (h) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Residence) (Class DF) visa may be made at the same time and place as, and combined with, the application by that person.
- (i) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) or 893 (State/Territory Sponsored Investor) visa:
 - (i) applicant must be sponsored by an appropriate regional authority; and
 - (ii) form 949 must be signed by an officer of the authority who is authorised to sign a sponsorship of that kind.

(4) Subclasses:

- 890 (Business Owner)
- 891 (Investor)
- 892 (State/Territory Sponsored Business Owner)
- 893 (State/Territory Sponsored Investor)

1108 Child (Migrant) (Class AH)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):
 - (i) for an applicant:
 - (A) who appears to the Minister, on the basis of information contained in the application, to be an orphan relative; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

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First instalment		
Item	Component	Amount
1	Base application charge	\$1 450
2	Additional applicant charge for an applicant who is at least 18	\$725
3	Additional applicant charge for an applicant who is less than 18	\$365

(ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$2 370
2	Additional applicant charge for an applicant who is at least 18	\$1 185
3	Additional applicant charge for an applicant who is less than 18	\$595

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (aa) Applicant must be outside Australia.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Child (Migrant) (Class AH) visa may be made at the same time and place as, and combined with, the application by that person.
- (c) An application is not a valid application if:
 - (i) the applicant seeks to meet the requirements in subclause 102.211(2) of Schedule 2 by claiming to have been adopted in an overseas country at a particular time; and
 - (ii) the country is specified by the Minister in a legislative instrument made for the purposes of this paragraph; and
 - (iii) if a period is specified in the instrument in relation to the country—the time referred to in subparagraph (i) is within that period.

(4) Subclasses:

- 101 (Child)
- 102 (Adoption)
- 117 (Orphan Relative)

1108A Child (Residence) (Class BT)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
- (i) for an applicant:
- (A) who appears to the Minister, on the basis of information contained in the application, to be an orphan relative; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1 450
2	Additional applicant charge for an applicant who is at least 18	\$725
3	Additional applicant charge for an applicant who is less than 18	\$365

- (iii) for an applicant whose application is:
- (A) supported by a letter of support from a State or Territory government welfare authority; or
- (B) combined, or sought to be combined, with an application made by that person;
- the amount is nil; and
- (iv) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$2 370
2	Additional applicant charge for an applicant who is at least 18	\$1 185
3	Additional applicant charge for an applicant who is less than 18	\$595

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia but not in immigration clearance.

- (c) Application by a person claiming to be a member of the family unit of a person (the **first applicant**) who is an applicant for a Child (Residence) (Class BT) visa:
 - (i) if subparagraph (ii) does not apply—may be made at the same time and place as, and combined with, the application made by the first applicant; and
 - (ii) if the first applicant’s application for a Child (Residence) (Class BT) visa is supported by a letter of support from a State or Territory government welfare authority—may not be made at the same time and place as, and combined with, the application made by the first applicant.
- (d) Application by a person whose application is supported by a letter of support from a State or Territory government welfare authority may be made if the person has not turned 18 at the time the application is made.
- (e) For an application made by a person to whom section 48 of the Act applies:
 - (i) the applicant:
 - (A) has not turned 25; or
 - (B) claims to be incapacitated for work due to total or partial loss of bodily or mental functions; and
 - (ii) if the applicant is not claiming to be an orphan relative of an Australian citizen, Australian permanent resident or eligible New Zealand citizen, the applicant must provide, at the same time and place as making the application, an approved form 40CH that has been completed and signed by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who claims to be the parent of the applicant; and
 - (iii) if the applicant claims to be incapacitated for work due to total or partial loss of bodily or mental functions, the applicant must provide, at the same time and place as making the application, evidence from a medical practitioner that supports the applicant’s claim.
- (f) An application is not a valid application if:
 - (i) the applicant seeks to meet the requirements in subclause 802.213(5) of Schedule 2 by claiming to have been adopted in an overseas country at a particular time; and
 - (ii) the country is specified by the Minister in a legislative instrument made for the purposes of this paragraph; and
 - (iii) if a period is specified in the instrument in relation to the country—the time referred to in subparagraph (i) is within that period.

- (4) Subclasses:
 - 802 (Child)
 - 837 (Orphan Relative)

- (5) In this item:

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

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

medical practitioner means a person registered as a medical practitioner under a law of a State or Territory providing for the registration of medical practitioners.

1111 Confirmatory (Residence) (Class AK)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):
 - (i) for an applicant covered by subitem (2A):

First instalment

Item	Component	Amount
1	Base application charge	\$275
2	Additional applicant charge for an applicant who is at least 18	\$140
3	Additional applicant charge for an applicant who is less than 18	\$70

- (ii) for any other applicant, the amount is nil.

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

Second instalment

Item	Applicant	Amount
1	Applicant who is the holder of a Subclass 302 (Emergency (Permanent Visa Applicant)) visa	The second instalment of the visa application charge that applied to that visa, less any payment already made towards that instalment

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Second instalment

Item	Applicant	Amount
2	Any other applicant	Nil

(2A) This subitem covers the following applicants:

- (a) an applicant:
 - (i) who was granted a Subclass 773 (Border) visa on last arriving in Australia; or
 - (ii) whose application is combined, or sought to be combined, with an application made by that person;
- (b) an applicant whose application is made on the basis that, on 30 June 2016, he or she held any of the following permits granted under the *Immigration Act 1980* (Norfolk Island):
 - (i) a temporary entry permit;
 - (ii) a general entry permit;
 - (iii) an unrestricted entry permit (a **UEP**);
- (c) an applicant whose application is made on the basis that:
 - (i) on 30 June 2016, the applicant did not hold any of the permits mentioned in paragraph (b); and
 - (ii) at any time before 30 June 2016, the applicant held a UEP; and
 - (iii) at that time, the applicant was ordinarily resident in Norfolk Island;
- (d) an applicant whose application is made on the basis that:
 - (i) on or before 30 June 2016, the applicant was born outside Norfolk Island (whether in or outside Australia); and
 - (ii) on 30 June 2016, the applicant did not hold any of the permits mentioned in paragraph (b); and
 - (iii) on 30 June 2016, a parent of the applicant, other than an adoptive parent of the applicant, was covered by paragraph (b) or (c); and
 - (iv) on 30 June 2016, the applicant was a dependent child of the parent;
- (e) an applicant whose application is made on the basis that clause 808.311 of Schedule 2 is satisfied in relation to an applicant covered by paragraph (b), (c) or (d) of this subitem.

Note: Paragraph (e) applies to a dependent child of the other applicant born in Australia on or after 1 July 2016. The child's application must be combined with that of the parent.

- (3) Other, unless paragraph (2A)(b), (c), (d) or (e) covers the applicant:
 - (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Confirmatory (Residence) (Class AK) visa may be made at the same time and place as, and combined with, the application by that person.

- (3A) Other, if paragraph (2A)(b), (c), (d) or (e) covers the applicant:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant may be in or outside Australia, but must not be in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Confirmatory (Residence) (Class AK) visa may be made at the same time and place as, and combined with, the application by that person.
 - (d) Application by a person is not a valid application if:
 - (i) the visa held by the person that was most recently in effect is, or was, the subject of a notice under the Act proposing cancellation; and
 - (ii) the person has not been notified of a decision not to proceed with the cancellation; and
 - (iii) the visa was not the subject of a decision to cancel the visa under the Act.
 - (e) Application by a person is not a valid application if:
 - (i) the visa held by the person that was most recently in effect was the subject of a decision to cancel the visa under the Act (whether or not the decision has come into effect); and
 - (ii) the decision to cancel the visa has not been set aside by the Tribunal.
- (4) Subclasses:
808 (Confirmatory)

1112 Distinguished Talent (Migrant) (Class AL)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$3 655
2	Additional applicant charge for an applicant who is at least 18	\$1 830
3	Additional applicant charge for an applicant who is less than 18	\$915

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

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Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English	\$4 890
2	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (aa) Applicant may be in or outside Australia, but not in immigration clearance.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Distinguished Talent (Migrant) (Class AL) visa may be made at the same time and place as, and combined with, the application by that person.
- (c) If the applicant seeks to meet the requirements of subclause 124.211(2), application must be accompanied by a completed approved form 1000.
- (d) If the applicant seeks to meet the requirements of subclause 124.211(4), the Minister must have received advice from:
 - (i) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
 - (ii) the Director-General of Security;
that the applicant has provided specialised assistance to the Australian Government in matters of security.

(4) Subclasses:

124 (Distinguished Talent)

1113 Distinguished Talent (Residence) (Class BX)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$3 655
2	Additional applicant charge for an applicant who is at least 18	\$1 830
3	Additional applicant charge for an applicant who is less than 18	\$915

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English	\$4 890
2	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Distinguished Talent (Residence) (Class BX) visa may be made at the same time and place as, and combined with, the application by that person.
- (d) If the applicant seeks to meet the requirements of subclause 858.212(2), application must be accompanied by a completed approved form 1000.
- (e) If the applicant seeks to meet the requirements of subclause 858.212(4), the Minister must have received advice from:
 - (i) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
 - (ii) the Director-General of Security;
that the applicant has provided specialised assistance to the Australian Government in matters of security.

(4) Subclasses:

858 (Distinguished Talent)

1114B Employer Nomination (Permanent) (Class EN)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

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First instalment		
Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant: (a) who was at least 18 at the time of application; and (b) who is assessed as not having functional English; and (c) who satisfies the primary criteria for the grant of a Subclass 186 (Employer Nomination Scheme) visa; and (d) to whom item 3 does not apply	\$9 800
2	Applicant: (a) who was at least 18 at the time of application; and (b) who is assessed as not having functional English; and (c) who satisfies the secondary criteria for the grant of a Subclass 186 (Employer Nomination Scheme) visa; and (d) to whom item 3 does not apply	\$4 890
3	Applicant who is: (a) nominated as a Minister of Religion by a religious institution; or (b) a member of the family unit of an applicant referred to in paragraph (a)	Nil
4	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) An applicant may be in or outside Australia, but not in immigration clearance.
- (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 (Bridging A) visa; or
 - (iii) a Subclass 020 (Bridging B) visa; or
 - (iv) a Subclass 030 (Bridging C) visa.

- (d) An applicant seeking to satisfy the primary criteria must declare in the application that the position to which the application relates is a position nominated:
- (i) under regulation 5.19; or
 - (ii) in accordance with a labour agreement that is in effect, by an employer that is a party to the labour agreement.
- (da) An applicant seeking to satisfy the primary criteria must declare in the application (the *primary application*) whether or not either:
- (i) the applicant; or
 - (ii) any person who has made a combined application with the applicant; has engaged in conduct, in relation to the primary application or the combined application, that constitutes a contravention of subsection 245AS(1) of the Act.
- (e) An application by a person claiming to be a member of the family unit of a person who is an applicant for an Employer Nomination (Permanent) (Class EN) visa may be made at the same time as, and combined with, the application by that person.

(4) Subclasses:

Subclass 186 (Employer Nomination Scheme)

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

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

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Second instalment		
Item	Applicant	Amount
1	Applicant: (a) who was at least 18 at the time of application; and (b) who is assessed as not having functional English; and (c) who satisfies the primary criteria for the grant of a Subclass 187 (Regional Sponsored Migration Scheme) visa; and (d) to whom item 3 does not apply	\$9 800
2	Applicant: (a) who was at least 18 at the time of application; and (b) who is assessed as not having functional English; and (c) who satisfies the secondary criteria for the grant of a Subclass 187 (Regional Sponsored Migration Scheme) visa; and (d) to whom item 3 does not apply	\$4 890
3	Applicant who is: (a) nominated as a Minister of Religion by a religious institution; or (b) a member of the family unit of an applicant referred to in paragraph (a)	Nil
4	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) An applicant may be in or outside Australia, but not in immigration clearance.
- (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 (Bridging A) visa; or
 - (iii) a Subclass 020 (Bridging B) visa; or
 - (iv) a Subclass 030 (Bridging C) visa.
- (d) An applicant seeking to satisfy the primary criteria must declare in the application that the position to which the application relates is a position nominated:
 - (i) under regulation 5.19; or
 - (ii) in accordance with a labour agreement that is in effect, by an employer that is a party to the labour agreement.
- (da) An applicant seeking to satisfy the primary criteria must declare in the application (the **primary application**) whether or not either:
 - (i) the applicant; or
 - (ii) any person who has made a combined application with the applicant; has engaged in conduct, in relation to the primary application or the combined application, that constitutes a contravention of subsection 245AS(1) of the Act.

- (e) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Regional Employer Nomination (Permanent) (Class RN) visa may be made at the same time as, and combined with, the application by that person.

(4) Subclasses:

Subclass 187 (Regional Sponsored Migration Scheme)

1118A Special Eligibility (Class CB)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
- (i) for an applicant:
- (A) who is in Australia at the time of application; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 520
2	Additional applicant charge for an applicant who is at least 18	\$1 760
3	Additional applicant charge for an applicant who is less than 18	\$880

(ii) for an applicant:

- (A) who is outside Australia at the time of application; and
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 520
2	Additional applicant charge for an applicant who is at least 18	\$1 760
3	Additional applicant charge for an applicant who is less than 18	\$880

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

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Second instalment		
Item	Applicant	Amount
1	Applicant: (a) who was at least 18 at the time of application; and (b) who is assessed as not having functional English	\$4 890
2	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (aa) Applicant may be in or outside Australia, but not in immigration clearance.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Special Eligibility (Class CB) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

151 (Former Resident)

1123A Other Family (Migrant) (Class BO)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant:
 - (A) who appears to the Minister, on the basis of information contained in the application, to be a carer; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1 595
2	Additional applicant charge for an applicant who is at least 18	\$800
3	Additional applicant charge for an applicant who is less than 18	\$400

(ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 870

First instalment		
Item	Component	Amount
2	Additional applicant charge for an applicant who is at least 18	\$1 935
3	Additional applicant charge for an applicant who is less than 18	\$970

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant: (a) who is a carer; and (b) 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	Nil
2	Any other applicant	\$2 065

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (aa) Applicant must be outside Australia.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Other Family (Migrant) (Class BO) visa may be made at the same time and place as, and combined with, the application by that person.
- (c) Application by a person claiming to be a carer must be accompanied by satisfactory evidence that the relevant medical assessment has been sought.

(4) Subclasses:

- 114 (Aged Dependent Relative)
- 115 (Remaining Relative)
- 116 (Carer)

1123B Other Family (Residence) (Class BU)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

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- (i) for an applicant:
- (A) who appears to the Minister, on the basis of information contained in the application, to be a carer; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1 595
2	Additional applicant charge for an applicant who is at least 18	\$800
3	Additional applicant charge for an applicant who is less than 18	\$400

- (ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 870
2	Additional applicant charge for an applicant who is at least 18	\$1 935
3	Additional applicant charge for an applicant who is less than 18	\$970

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

Second instalment		
Item	Applicant	Amount
1	Applicant: (a) who is a carer; and (b) 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	Nil
2	Any other applicant	\$2 065

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Other Family (Residence) (Class BU)

visa may be made at the same time and place as, and combined with, the application by that person.

- (d) Application by a person claiming to be a carer must be accompanied by satisfactory evidence that the relevant medical assessment has been sought.

(4) Subclasses:

- 835 (Remaining Relative)
- 836 (Carer)
- 838 (Aged Dependent Relative)

1124 Parent (Migrant) (Class AX)

- (1) Form: 47PA.

(2) Visa application charge:

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

First instalment		
Item	Component	Amount
1	Base application charge	\$3 870
2	Additional applicant charge for an applicant who is at least 18	\$1 935
3	Additional applicant charge for an applicant who is less than 18	\$970

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is \$2 065.

(3) Other:

- (a) Application must be made in Australia but not in immigration clearance.

(aa) Application must be made by:

- (i) posting the application (with the correct pre-paid postage) to the post office box address specified in a legislative instrument made by the Minister for this subparagraph; or
- (ii) having the application delivered by a courier service to the address specified in a legislative instrument made by the Minister for this subparagraph.

- (ab) If the applicant has previously made a valid application for another parent visa:

- (i) a decision to grant or to refuse to grant that visa has been made; or
- (ii) the application for that visa has been withdrawn.

- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Parent (Migrant) (Class AX) visa may be made at the same time and place as, and combined with, the application by that person.

- (4) Subclasses:
103 (Parent)

1124A Aged Parent (Residence) (Class BP)

- (1) Form: 47PA.
(2) Visa application charge:
(a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$3 870
2	Additional applicant charge for an applicant who is at least 18	\$1 935
3	Additional applicant charge for an applicant who is less than 18	\$970

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is \$2 065.

- (3) Other:
- (a) Application must be made in Australia, but not in immigration clearance.
 - (b) The applicant must be in Australia, but not in immigration clearance.
 - (ba) If the applicant has previously made a valid application for another parent visa:
 - (i) a decision to grant or to refuse to grant that visa has been made; or
 - (ii) the application for that visa has been withdrawn.
 - (bb) An application must be made:
 - (i) by posting the application (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 subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) if no address has been specified for subparagraphs (i) and (ii)—by lodging the application at an office of Immigration.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Aged Parent (Residence) (Class BP) visa may be made at the same time and place as, and combined with, the application by that person.

- (4) Subclasses:
804 (Aged Parent)
-

1124B Partner (Residence) (Class BS)

- (1) Form:
- (a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa:
1002
 - (b) In any other case: 47SP or 47SP (Internet).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant:
 - (A) who is the holder of a Subclass 445 (Dependent Child) visa;
or
 - (B) whose application is combined, or sought to be combined,
with an application made by that person:
the amount is nil; and
 - (ii) for an applicant:
 - (A) who is the holder of a transitional (temporary) visa, granted
on the basis that the holder satisfied the criteria for grant of an
extended eligibility entry permit under the Migration (1989)
Regulations; or
 - (B) whose application is combined, or sought to be combined,
with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$410
2	Additional applicant charge for an applicant who is at least 18	\$205
3	Additional applicant charge for an applicant who is less than 18	\$105

- (iii) for an applicant who:
 - (A) is not the holder of a substantive visa; and
 - (B) entered Australia before 19 December 1989; and
 - (C) at the time of entry, was engaged to be married to a person
who was an Australian citizen or Australian permanent
resident; and
 - (D) has subsequently married that person;
 or whose application is combined, or sought to be combined, with an
application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1 450
2	Additional applicant charge for an applicant who is at least 18	\$725
3	Additional applicant charge for an applicant who is less than 18	\$365

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- (iv) for an applicant who:
- (A) is not the holder of a substantive visa; and
 - (B) entered Australia on or after 19 December 1989 as the holder of a prospective marriage (code number 300) entry permit granted under the Migration (1989) Regulations, or a Class 300 (prospective marriage) entry permit granted under the Migration (1993) Regulations; and
 - (C) ceased to hold a substantive visa after marrying the Australian citizen or Australian permanent resident whom the applicant entered Australia to marry;
- or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1 450
2	Additional applicant charge for an applicant who is at least 18	\$725
3	Additional applicant charge for an applicant who is less than 18	\$365

- (v) for an applicant who:
- (A) is the holder of a Prospective Marriage (Temporary) (Class TO) visa; and
 - (B) is married to the person who was specified as the applicant's intended spouse in the application for that visa; and
 - (C) seeks to remain in Australia permanently on the basis of that marriage;
- or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1 145
2	Additional applicant charge for an applicant who is at least 18	\$575
3	Additional applicant charge for an applicant who is less than 18	\$285

- (vi) In the case of an applicant who:
- (A) is not the holder of a substantive visa; and
 - (B) entered Australia as the holder of a Prospective Marriage (Temporary) (Class TO) visa; and
 - (C) ceased to hold that visa after marrying the Australian citizen, Australian permanent resident or eligible New Zealand citizen whom the applicant entered Australia to marry; and

(D) seeks to remain in Australia permanently on the basis of that marriage;
or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1 450
2	Additional applicant charge for an applicant who is at least 18	\$725
3	Additional applicant charge for an applicant who is less than 18	\$365

(vii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$6 865
2	Additional applicant charge for an applicant who is at least 18	\$3 435
3	Additional applicant charge for an applicant who is less than 18	\$1 720

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) Application must be made in Australia, but not in immigration clearance.
- (b) The applicant must be in Australia, but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Partner (Residence) (Class BS) visa may be made at the same time and place as, and combined with, the application by that person.
- (ca) An application (not being an Internet application) must be made:
 - (i) by posting the application (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 subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) if no address has been specified for subparagraphs (i) and (ii)—by lodging the application at an office of Immigration.
- (d) If the applicant holds a Subclass 820 (Partner) visa or a Subclass 309 (Partner (Provisional)) visa at the time of making the application for the Partner (Residence) (Class BS) visa, the applicant must not have had any of

the following visas refused in the 21 days immediately before making the application for the Partner (Residence) (Class BS) visa:

- (i) a Subclass 100 (Spouse) visa;
 - (ii) a Subclass 100 (Partner) visa;
 - (iii) a Subclass 110 (Interdependency) visa;
 - (iv) a Subclass 309 (Spouse (Provisional)) visa;
 - (v) a Subclass 309 (Partner (Provisional)) visa;
 - (vi) a Subclass 310 (Interdependency (Provisional)) visa;
 - (vii) a Subclass 801 (Spouse) visa;
 - (viii) a Subclass 801 (Partner) visa;
 - (ix) a Subclass 814 (Interdependency) visa;
 - (x) a Subclass 820 (Spouse) visa;
 - (xi) a Subclass 820 (Partner) visa;
 - (xii) a Subclass 826 (Interdependency) visa.
- (e) Subject to subitem (3A), if the applicant is a person to whom section 48 of the Act applies, the applicant:
- (i) must not have been refused any of the following visas since last entering Australia:
 - (A) a Subclass 100 (Spouse) visa;
 - (B) a Subclass 100 (Partner) visa;
 - (C) a Subclass 110 (Interdependency) visa;
 - (D) a Subclass 309 (Spouse (Provisional)) visa;
 - (E) a Subclass 309 (Partner (Provisional)) visa;
 - (F) a Subclass 310 (Interdependency (Provisional)) visa;
 - (G) a Subclass 801 (Spouse) visa;
 - (H) a Subclass 801 (Partner) visa;
 - (I) a Subclass 814 (Interdependency) visa;
 - (J) a Subclass 820 (Spouse) visa;
 - (K) a Subclass 820 (Partner) visa;
 - (L) a Subclass 826 (Interdependency) visa; and
 - (ii) must provide, at the same time and place as making the application, an approved form 40SP or 40SP (Internet) that has been completed and signed by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who claims to be the spouse or de facto partner of the applicant (the *partner*); and
 - (iii) must provide, at the same time and place as making the application, 2 statutory declarations each of which:
 - (A) is made by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who is not the partner; and
 - (B) declares that the applicant and the partner are in a married relationship or de facto relationship; and

(C) was declared no more than 6 weeks before the day on which the application for the Partner (Residence) (Class BS) visa was made.

(3A) For paragraph (3)(e):

- (a) the applicant is taken to have met the requirements of the paragraph if the applicant:
 - (i) is a person to whom section 48 of the Act applies; and
 - (ii) claims to be a dependent child of a person who has met the requirements of paragraph (3)(e); and
- (b) if the applicant leaves and re-enters the migration zone while holding a bridging visa, the applicant is taken to have been continuously in the migration zone despite the travel.

(4) Subclasses:

801 (Partner)

1127AA Resolution of Status (Class CD)

Note: Subregulation 2.07AQ(3) sets out other circumstances in which a person is taken to have made a valid application for a Resolution of Status (Class CD) visa.

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) The criteria in at least 1 of the items in the table are satisfied.

Item	Criterion 1	Criterion 2	Criterion 3
1	Applicant holds: (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or (c) a Subclass 695 (Return Pending) visa	Nil	Nil
2	Applicant held, but no longer holds, a visa of a kind mentioned in criterion 1 of item 1, or a Subclass 785 (Temporary Protection) visa granted before 9 August 2008, and the visa was not cancelled	Applicant: (a) has not left Australia; or (b) while holding a visa that permits re-entry to Australia, has left and re-entered Australia	Applicant does not hold a permanent visa

Item	Criterion 1	Criterion 2	Criterion 3
3	Applicant is a member of the same family unit as a person who: (a) has made a valid application for a Resolution of Status (Class CD) visa as a result of satisfying the criteria in item 1 or 2; or (b) is taken to have made a valid application for a Resolution of Status (Class CD) visa as a result of satisfying the criteria in item 1 or 2 of the table in subregulation 2.07AQ (3).	Applicant: (a) was in Australia on 9 August 2008 and was a member of the same family unit on that date; or (b) was born on or after 9 August 2008	Nil

Note: For *member of the same family unit*, see subsection 5(1) of the Act.

- (4) Subclasses:
851 (Resolution of Status)

1128 Return (Residence) (Class BB)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) the base application charge (payable at the time the application is made) is \$360; and
 - (b) the second instalment (payable before grant of visa) is nil.

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (aa) Applicant must be in Australia to make an application in Australia.
 - (b) For an Internet application the applicant may be in or outside Australia, but not in immigration clearance.
 - (c) Applicant must not hold a Transitional (Permanent) visa that is taken to have been granted under regulation 9 of the Migration Reform (Transitional Provisions) Regulations.
 - (d) Application by a person is not a valid application if:
 - (i) the most recent permanent visa held by the person is, or was, the subject of a notice, under subsection 135(1) of the Act, proposing cancellation; and

- (ii) the person has not been notified of a decision not to proceed with the cancellation; and
 - (iii) the visa was not the subject of a decision to cancel the visa under section 134 of the Act.
- (e) Application by a person is not a valid application if:
- (i) the most recent permanent visa held by the person was the subject of a decision to cancel the visa under section 134 of the Act (whether or not the decision has come into effect); and
 - (ii) the decision to cancel the visa has not been set aside by the Tribunal.
- (4) Subclasses:
- 155 (Five Year Resident Return)
 - 157 (Three Month Resident Return)

1129 Partner (Migrant) (Class BC)

- (1) Form:
- (a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: 1002.
 - (b) In any other case: 47SP or 47SP (Internet).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant:
 - (A) who is the holder of a Subclass 445 (Dependent Child) visa; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person;
 the amount is nil; and
 - (ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$6 865
2	Additional applicant charge for an applicant who is at least 18	\$3 435
3	Additional applicant charge for an applicant who is less than 18	\$1 720

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
- (a) Application (not being an Internet application) otherwise than by the holder of:

- (i) a Subclass 445 (Dependent Child) visa; or
 - (ii) a Subclass 309 (Spouse (Provisional)) visa, a Subclass 309 (Partner (Provisional)) visa or a Subclass 310 (Interdependency (Provisional)) visa, which the Minister has decided, under section 345, 351, 417 or 501J of the Act, to grant;must be made outside Australia.
 - (b) Application by the holder of:
 - (i) a Subclass 445 (Dependent Child) visa; or
 - (ii) a Subclass 309 (Spouse (Provisional)) visa, a Subclass 309 (Partner (Provisional)) visa or a Subclass 310 (Interdependency (Provisional)) visa, which the Minister has decided, under section 345, 351, 417 or 501J of the Act, to grant;may be made in or outside Australia, but not in immigration clearance.
 - (c) Applicant other than an applicant who is the holder of:
 - (i) a Subclass 445 (Dependent Child) visa; or
 - (ii) a Subclass 309 (Spouse (Provisional)) visa, a Subclass 309 (Partner (Provisional)) visa or a Subclass 310 (Interdependency (Provisional)) visa, which the Minister has decided, under section 345, 351, 417 or 501J of the Act, to grant;must be outside Australia.
 - (d) Applicant who is the holder of:
 - (i) a Subclass 445 (Dependent Child) visa; or
 - (ii) a Subclass 309 (Spouse (Provisional)) visa, a Subclass 309 (Partner (Provisional)) visa or a Subclass 310 (Interdependency (Provisional)) visa, which the Minister has decided, under section 345, 351, 417 or 501J of the Act, to grant;may be in or outside Australia, but not in immigration clearance.
 - (e) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Partner (Migrant) (Class BC) visa may be made at the same time and place as, and combined with, the application by that person.
 - (f) An application (not being an Internet application) that is made in Australia must be made:
 - (i) by posting the application (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 subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) if no address has been specified for subparagraphs (i) and (ii)—by lodging the application at an office of Immigration.
- (4) Subclasses:
100 (Partner)

1130 Contributory Parent (Migrant) (Class CA)

(1) Form:

- (a) If the applicant is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa: 47PT
- (b) In any other case: 47PA.

(2) Visa application charge:

- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant:
 - (A) who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

(ii) for an applicant who:

- (A) has been the holder of a Subclass 173 (Contributory Parent (Temporary)) visa; and
 - (B) is the holder of a substituted Subclass 600 visa at the time of application;
- or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

(iii) for an applicant:

- (A) who has held a Subclass 173 (Contributory Parent (Temporary)) visa at any time in the 28 days immediately before making the application; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

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First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

- (iv) for an applicant who:
- (A) has been the holder of a Subclass 173 (Contributory Parent (Temporary)) visa; and
 - (B) provides the Minister with evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a Subclass 173 (Contributory Parent (Temporary)) visa for the purpose of the application;
- or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$2 370
2	Additional applicant charge for an applicant who is at least 18	\$1 185
3	Additional applicant charge for an applicant who is less than 18	\$595

- (v) for an applicant who:
- (A) made a valid application for a Parent (Migrant) (Class AX) visa before 27 June 2003; and
 - (B) withdrew that application at the same time as making the application for the Contributory Parent (Migrant) (Class CA) visa;
- or whose application is combined, or sought to be combined, with an application made by that person, the amount is nil; and
- (vi) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 695
2	Additional applicant charge for an applicant who is at least 18	\$1 245
3	Additional applicant charge for an applicant who is less than 18	\$625

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

Second instalment		
Item	Applicant	Amount
1	Applicant who was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application	\$19 420
2	Applicant who: (a) held a Subclass 173 (Contributory Parent (Temporary)) visa; and (b) was the holder of a substituted Subclass 600 visa at the time of application; and (c) is not described in item 3	\$19 420
3	Applicant who: (a) held a Subclass 173 (Contributory Parent (Temporary)) visa; and (b) was, at the time of application, the holder of a substituted Subclass 600 visa or the child or step-child of an applicant mentioned in item 2; and (c) is the child or step-child of an applicant for a Contributory Parent (Migrant) (Class CA) visa, and was less than 18 at the time of application for a Contributory Parent (Temporary) (Class UT) visa	Nil
4	Applicant who: (a) was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application; and (b) is the child or step-child of an applicant for a Contributory Parent (Migrant) (Class CA) visa; and (c) was less than 18 at the time of application for a Contributory Parent (Temporary) (Class UT) visa	Nil
5	Applicant who has held a Subclass 173 (Contributory Parent (Temporary)) visa at any time in the 28 days immediately before making the application	\$19 420
6	Applicant: (a) who has held a Subclass 173 (Contributory Parent (Temporary)) visa; and (b) in relation to whom the Minister is satisfied that compassionate and compelling circumstances exist for the person to be considered to be the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application	\$17 575
7	An applicant who: (a) is a dependent child of an applicant for a Contributory Parent (Migrant) (Class CA) visa; and (b) was less than 18 at the time of application	\$2 095
8	Any other applicant	\$43 600

(3) Other:

(a) If the applicant is in Australia, and is:

(i) the holder of a Subclass 173 (Contributory Parent (Temporary)) visa;
or

(ii) the holder of a substituted Subclass 600 visa;

the application must be made in Australia but not in immigration clearance.

- (b) For an applicant other than an applicant mentioned in paragraph (a), the application must be made by:
 - (i) posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister in an instrument for this subparagraph; or
 - (ii) having the application delivered by a courier to the address specified by the Minister in an instrument for this subparagraph.
- (c) If the applicant (the **relevant applicant**) makes his or her application on the basis of claiming to be a member of the family unit of a person who is an applicant for a Contributory Parent (Migrant) (Class CA) visa (the **other applicant**), the relevant applicant's application:
 - (i) must be made in the same way as the application made by the other applicant; and
 - (ii) may be made at the same time and place as, and combined with, the application made by the other applicant.
- (d) If the applicant has previously made a valid application for another parent visa:
 - (i) a decision to grant or refuse to grant that visa has been made; or
 - (ii) the application for that visa has been withdrawn.

(4) Subclasses:

143 (Contributory Parent)

- (5) In this item, a reference to an applicant who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa, means a person who, as the case may be:
- (a) currently holds a Subclass 173 (Contributory Parent (Temporary)) visa; or
 - (b) has held a Subclass 173 (Contributory Parent (Temporary)) visa at any time in the 28 days immediately before making the application; or
 - (c) has held a Subclass 173 (Contributory Parent (Temporary)) visa, and who provides the Minister with evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a Subclass 173 (Contributory Parent (Temporary)) visa for the purpose of the application.

1130A Contributory Aged Parent (Residence) (Class DG)

(1) Form:

- (a) If the applicant is the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa: 47PT
- (b) In any other case: 47PA.

(2) Visa application charge:

- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who:
 - (A) made a valid application for an Aged Parent (Residence) (Class BP) visa before 1 July 2003; and

- (B) withdrew that application at the same time as making the application for the Contributory Aged Parent (Residence) (Class DG) visa;
- or whose application is combined, or sought to be combined, with an application made by that person, the amount is nil; and
- (ii) for an applicant:
- (A) who is the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

- (iii) for an applicant who:
- (A) held a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and
- (B) is the holder of a substituted Subclass 600 visa at the time of application;
- or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

- (iv) for an applicant:
- (A) who has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa at any time in the 28 days immediately before making the application; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

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- (v) for an applicant who:
- (A) held a Subclass 884 (Contributory Aged Parent (Temporary)) visa, and
 - (B) provides the Minister with evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa for the purpose of the application;
- or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 695
2	Additional applicant charge for an applicant who is at least 18	\$1 845
3	Additional applicant charge for an applicant who is less than 18	\$925

- (vi) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 695
2	Additional applicant charge for an applicant who is at least 18	\$1 845
3	Additional applicant charge for an applicant who is less than 18	\$925

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

Second instalment		
Item	Applicant	Amount
1	Applicant who was the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application	\$19 420
2	Applicant who: (a) held a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and (b) was the holder of a substituted Subclass 600 visa at the time of application; and (c) is not described in item 3	\$19 420

Second instalment		
Item	Applicant	Amount
3	Applicant who: (a) held a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and (b) was, at the time of application, the holder of a substituted Subclass 600 visa or the child or step-child of an applicant mentioned in item 2; and (c) is the child or step-child of an applicant for a Contributory Parent (Migrant) (Class CA) visa, and was less than 18 at the time of application for a Contributory Aged Parent (Temporary) (Class UU) visa	Nil
4	Applicant who: (a) was the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application; and (b) is the child or step-child of an applicant for a Contributory Aged Parent (Residence) (Class DG) visa; and (c) was less than 18 at the time of application for a Contributory Aged Parent (Temporary) (Class UU) visa	Nil
5	Applicant who has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa at any time in the 28 days immediately before making the application	\$19 420
6	Applicant: (a) who has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and (b) in relation to whom the Minister is satisfied that compassionate and compelling circumstances exist for the person to be considered to be the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application	\$16 545
7	An applicant who: (a) is a dependent child of an applicant for a Contributory Aged Parent (Residence) (Class DG) visa; and (b) was less than 18 at the time of application	\$2 095
8	Any other applicant	\$43 600

(3) Other:

- (a) Application must be made in Australia but not in immigration clearance.
- (b) Applicant must be in Australia but not in immigration clearance.
- (ba) An application must be made:
 - (i) by posting the application (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 subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) if no address has been specified for subparagraphs (i) and (ii)—by lodging the application at an office of Immigration.
- (c) If the applicant has previously made a valid application for another parent visa:

- (i) a decision to grant or to refuse to grant that visa has been made; or
 - (ii) the application for that visa has been withdrawn.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Contributory Aged Parent (Residence) (Class DG) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 864 (Contributory Aged Parent)
- (5) In this item, a reference to an applicant who is the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa, means a person who, as the case may be:
 - (a) currently holds a Subclass 884 (Contributory Aged Parent (Temporary)) visa; or
 - (b) has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa at any time in the 28 days immediately before making the application; or
 - (c) has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa, and who provides the Minister with evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa for the purpose of the application.

1131 Territorial Asylum (Residence) (Class BE)

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application must be made by or on behalf of the applicant in a manner approved by a Minister.
 - (aa) At the time when the application is made, there is lodged at the office of Immigration at which, or with the officer of Immigration to whom, the application is made, documentation that:
 - (i) evidences the grant by a Minister to the applicant of territorial asylum in Australia; and
 - (ii) was issued by or on behalf of the Commonwealth.
 - (b) Application must be made in Australia.
 - (c) Applicant must be in Australia but not in immigration clearance.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Territorial Asylum (Residence) (Class BE) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 800 (Territorial Asylum)

1133 Referred Stay (Permanent) (Class DH)

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Subclasses:

852 (Referred Stay (Permanent))

Note: See regulation 2.07AK for how an application for a Referred Stay (Permanent) (Class DH) visa is taken to have been validly made.

1136 Skilled (Residence) (Class VB)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who is the holder of:
 - (A) a Skilled—Independent Regional (Provisional) (Class UX) visa; or
 - (B) a Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa; or
 - (C) a Subclass 475 (Skilled—Regional Sponsored) visa; or
 - (D) a Subclass 487 (Skilled—Regional Sponsored) visa; or
 - (E) a Skilled—Regional Sponsored (Provisional) (Class SP) visa; or
 - (F) a Bridging A (Class WA) or Bridging B (Class WB) visa granted on the basis of a valid application for a Skilled—Independent Regional (Class UX) visa; or
 - (G) a Bridging A (Class WA) or Bridging B (Class WB) visa granted on the basis of a valid application for a Skilled (Provisional) (Class VC) visa (other than a Subclass 485 (Temporary Graduate) visa); or
 - (H) a Bridging A (Class WA) or Bridging B (Class WB) visa granted on the basis of a valid application for a Skilled—Regional Sponsored (Provisional) (Class SP) visa;
- or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$370
2	Additional applicant charge for an applicant who is at least 18	\$185
3	Additional applicant charge for an applicant who is less than 18	\$95

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(ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 520
2	Additional applicant charge for an applicant who is at least 18	\$1 760
3	Additional applicant charge for an applicant who is less than 18	\$880

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) has not paid a second instalment of visa application charge in relation to the application for the visa, mentioned in paragraph (2)(a), that the applicant holds	\$4 890
2	Any other applicant	Nil

(3) Other:

- (aa) An application by a person seeking to satisfy the primary criteria for the grant of a Subclass 885 (Skilled—Independent) visa or a Subclass 886 (Skilled—Sponsored) visa must be made before 1 January 2013.
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of a person who seeks to satisfy the primary criteria may be made at the same time and place as, and combined with, an application by that person.

(7) The following requirements must be met:

- (a) the applicant must be the holder of:
 - (i) a Skilled—Independent Regional (Provisional) (Class UX) visa; or
 - (ii) a Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa; or
 - or
 - (iii) a Subclass 475 (Skilled—Regional Sponsored) visa; or
 - (iv) a Subclass 487 (Skilled—Regional Sponsored) visa; or
 - (v) a Skilled—Regional Sponsored (Provisional) (Class SP) visa; or

- (vi) a Bridging A (Class WA) or Bridging B (Class WB) visa granted on the basis of a valid application for:
- (A) a Skilled—Independent Regional (Provisional) (Class UX) visa; or
 - (B) a Skilled (Provisional) (Class VC) visa (other than a Subclass 485 (Temporary Graduate) visa); or
 - (C) a Skilled—Regional Sponsored (Provisional) (Class SP) visa;
- (b) the applicant seeking to satisfy the primary criteria for the grant of the visa must have been, for a total of at least 2 years before the day on which the application was made, the holder of 1 of the following visas:
- (i) a Skilled—Independent Regional (Provisional) (Class UX) visa;
 - (ii) a Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa;
 - (iii) a Subclass 475 (Skilled—Regional Sponsored) visa;
 - (iv) a Subclass 487 (Skilled—Regional Sponsored) visa;
 - (v) a Skilled—Regional Sponsored (Provisional) (Class SP) visa;
- that was granted on the basis of satisfying the primary criteria for the grant of that visa, or of being the spouse or de facto partner of the applicant who satisfied the primary criteria for the grant of the visa.

- (8) Subclass:
Subclass 887 (Skilled—Regional)

1137 Skilled—Independent (Permanent) (Class SI)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

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Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English	\$4 885
2	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) An applicant may be in or outside Australia, but not in immigration clearance.
- (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 Bridging A visa; or
 - (iii) a Subclass 020 Bridging B visa; or
 - (iv) a Subclass 030 Bridging C visa.
- (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled—Independent (Permanent) (Class SI) visa may be made at the same time as, and combined with, the application by that person.

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

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 189 (Skilled—Independent) visa
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must not have turned 50 at the time of invitation to apply for the visa
4	The applicant must nominate a skilled occupation: <ul style="list-style-type: none"> (a) that is specified by the Minister in an instrument in writing for this item as a skilled occupation at the time of invitation to apply for the visa; and (b) that is specified in the invitation as the skilled occupation which the applicant may nominate; and (c) for which the applicant declares in the application that the applicant's skills have been assessed as suitable by the relevant assessing authority and that the assessment is not for a Subclass 485 (Temporary Graduate) visa

(5) Subclasses:

Subclass 189 (Skilled—Independent)

1138 Skilled—Nominated (Permanent) (Class SN)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English	\$4 885
2	Any other applicant	Nil

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) An applicant may be in or outside Australia, but not in immigration clearance.
- (c) An applicant in Australia must hold:
- (i) a substantive visa; or
- (ii) a Subclass 010 Bridging A visa; or
- (iii) a Subclass 020 Bridging B visa; or
- (iv) a Subclass 030 Bridging C visa.
- (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled—Nominated (Permanent) (Class SN) visa may be made at the same time as, and combined with, the application by that person.
- (4) An applicant seeking to satisfy the primary criteria must meet the requirements in the table.

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Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 190 (Skilled—Nominated) visa
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must not have turned 50 at the time of invitation to apply for the visa
4	The applicant must nominate a skilled occupation: (a) that is specified by the Minister in an instrument in writing for this item as a skilled occupation at the time of invitation to apply for the visa; and (b) that is specified in the invitation as the skilled occupation which the applicant may nominate; and (c) for which the applicant declares in the application that the applicant's skills have been assessed as suitable by the relevant assessing authority and that the assessment is not for a Subclass 485 (Temporary Graduate) visa
5	The applicant must be nominated by a State or Territory government agency

(5) Subclasses:

Subclass 190 (Skilled—Nominated)

Part 2—Temporary visas (other than bridging visas)

1201 Border (Temporary) (Class TA)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) The applicant must be in Australia, but not in immigration clearance, if the applicant is:
 - (i) a dependent child of a non-citizen; and
 - (ii) the holder of a Subclass 773 visa.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Border (Temporary) (Class TA) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
773 (Border)

1202A Business Skills (Provisional) (Class UR)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$4 675
2	Additional applicant charge for an applicant who is at least 18	\$2 340
3	Additional applicant charge for an applicant who is less than 18	\$1 170

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

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Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the primary criteria for the grant of a visa of a subclass included in Business Skills (Provisional) (Class UR)	\$9 795
2	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the secondary criteria for the grant of a visa of a subclass included in Business Skills (Provisional) (Class UR)	\$4 890
3	Any other applicant	Nil

(3) Other:

- (aa) Application by a person seeking to satisfy the primary criteria must be made before 1 July 2012.
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant may be in or outside Australia, but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Provisional) (Class UR) visa may be made at the same time and place as, and combined with, the application by that person.
- (d) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)), 164 (State/Territory Sponsored Senior Executive (Provisional)) or 165 (State/ Territory Sponsored Investor (Provisional)) visa:
 - (i) applicant must be sponsored by an appropriate regional authority; and
 - (ii) form 949 must be signed by an officer of the authority who is authorised to sign a sponsorship of that kind.

(4) Subclasses:

- 160 (Business Owner (Provisional))
- 161 (Senior Executive (Provisional))
- 162 (Investor (Provisional))
- 163 (State/Territory Sponsored Business Owner (Provisional))
- 164 (State/Territory Sponsored Senior Executive (Provisional))
- 165 (State/Territory Sponsored Investor (Provisional))

1202B Business Skills (Provisional) (Class EB)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
- (i) for an applicant:
- (A) seeking to satisfy the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation Extension stream or the Significant Investor Extension stream; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$575
2	Additional applicant charge for an applicant who is at least 18	\$290
3	Additional applicant charge for an applicant who is less than 18	\$145

- (ia) for an applicant:
- (A) seeking to satisfy the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$7 010
2	Additional applicant charge for an applicant who is at least 18	\$3 505
3	Additional applicant charge for an applicant who is less than 18	\$1 755

- (ib) for an applicant:
- (A) seeking to satisfy the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Premium Investor stream; or
- (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$8 410
2	Additional applicant charge for an applicant who is at least 18	\$4 205
3	Additional applicant charge for an applicant who is less than 18	\$2 105

- (ic) for an applicant:

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Part 2 Temporary visas (other than bridging visas)

-
- (A) seeking to satisfy the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment

Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

(ii) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	\$4 780
2	Additional applicant charge for an applicant who is at least 18	\$2 390
3	Additional applicant charge for an applicant who is less than 18	\$1 195

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment

Item	Applicant	Amount
1	Applicant who: <ul style="list-style-type: none">(a) was at least 18 at the time of application; and(b) is assessed as not having functional English; and(c) satisfies the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa; and(d) has not paid a second instalment of the visa application charge in relation to an application for a Subclass 188 (Business Innovation and Investment (Provisional)) visa	\$9 795

Second instalment

Item	Applicant	Amount
2	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the secondary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa; and (d) has not paid a second instalment of the visa application charge in relation to an application for a Subclass 188 (Business Innovation and Investment (Provisional)) visa	\$4 890
3	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) An applicant may be in or outside Australia, but not in immigration clearance.
 - (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 Bridging A visa; or
 - (iii) a Subclass 020 Bridging B visa; or
 - (iv) a Subclass 030 Bridging C visa.
 - (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Provisional) (Class EB) visa may be made at the same time as, and combined with, the application by that person.
- (4) An applicant seeking to satisfy the primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream must meet the requirements in the table.

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

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

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

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Part 2 Temporary visas (other than bridging visas)

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

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

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

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

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

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

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

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

Item	Requirements
1	The applicant must be nominated by a State or Territory government agency or the CEO of Austrade
2	Either: (a) the applicant: (i) holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream; and (ii) has held that visa for at least 3 years; or (b) at the time of application, the applicant: (i) holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor Extension stream; and

Item	Requirements
	(ii) has not held more than one Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor Extension stream

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

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Premium Investor stream
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must be nominated by the CEO of Austrade

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

(6D) An applicant seeking to satisfy the primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream must meet the requirements in the table.

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

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

(7) Subclasses:
Subclass 188 (Business Innovation and Investment (Provisional))

1206 Diplomatic (Temporary) (Class TF)

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application must be made by or on behalf of the applicant in a manner approved by the Minister.
 - (b) Application may be made in or outside Australia, but not in immigration clearance.
 - (c) Applicant must be in Australia to make an application in Australia.
- (4) Subclasses:
 - 995 (Diplomatic (Temporary))

1208A Electronic Travel Authority (Class UD)

(1) Form: nil.

Note: An application for this visa must be made in a way set out in regulation 2.07AB.

(2) Visa application charge:

- (a) the base application charge (payable at the time the application is made) is nil; and
- (b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application may be made in or outside Australia.
- (b) If an application is made in immigration clearance, the applicant must be in immigration clearance.
- (c) If an application is made in Australia (except in immigration clearance), or outside Australia, the applicant must be outside Australia.
- (d) An application made outside Australia must be made at:
 - (i) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
 - (ii) an office of an agent who is approved in writing by the Minister as an agent with whom an application for an Electronic Travel Authority (Class UD) visa may be made.
- (e) An application made in Australia must be made:
 - (i) in immigration clearance; or
 - (ii) at an office of an agent who is approved in writing by the Minister as an agent with whom an application for an Electronic Travel Authority (Class UD) visa may be made.
- (f) An applicant must hold an ETA-eligible passport.

(4) Subclasses:

Subclass 601 (Electronic Travel Authority)

1211 Extended Eligibility (Temporary) (Class TK)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

First instalment		
Item	Component	Amount
1	Base application charge	\$2 370
2	Additional applicant charge for an applicant who is at least 18	\$1 185
3	Additional applicant charge for an applicant who is less than 18	\$595

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(aa) Applicant may be in or outside Australia, but not in immigration clearance.

(ab) Applicant must be in Australia to make an application in Australia.

(b) Application by a person claiming to be a dependent child of a person who is an applicant for an Extended Eligibility (Temporary) (Class TK) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

445 (Dependent Child)

1212B Investor Retirement (Class UY)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is \$12 990.

(3) Other:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(b) Applicant may be in or outside Australia, but not in immigration clearance.

(c) Application by a person claiming to be the spouse or de facto partner of a person who is an applicant for an Investor Retirement (Class UY) visa may

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be made at the same time and place as, and combined with, the application by that person.

- (d) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 405 visa must:
- (i) be sponsored by an appropriate regional authority; and
 - (ii) provide, with the application, form 1249 signed by an officer of the authority who is authorised to sign a sponsorship of that kind; and
 - (iii) be at least 55 years old, unless:
 - (A) the applicant is the holder of an Investor Retirement (Class UY) visa; or
 - (B) the last substantive visa held by the applicant since last entering Australia was an Investor Retirement (Class UY) visa.

Note: For *appropriate regional authority*, see regulation 1.03.

- (4) Subclasses:
405 (Investor Retirement)

1214A Medical Treatment (Visitor) (Class UB)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who:
 - (A) is in Australia at the time of application; and
 - (B) does not apply in the course of acting as a representative for a foreign government;
 - or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$280
2	Additional applicant charge for an applicant who is at least 18	\$140
3	Additional applicant charge for an applicant who is less than 18	\$70

- (ii) for any other applicant, the amount is nil.

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.
-

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (c) An applicant may be in or outside Australia, but not in immigration clearance.
 - (d) An application by a person included in the passport of another person may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
Subclass 602 (Medical Treatment)

1214BA New Zealand Citizen Family Relationship (Temporary) (Class UP)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$325
2	Additional applicant charge for an applicant who is at least 18	\$165
3	Additional applicant charge for an applicant who is less than 18	\$80

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.
- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (aa) Applicant may be in or outside Australia, but not in immigration clearance.
 - (ab) Applicant must be outside Australia to make an application outside Australia.
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a New Zealand Citizen Family Relationship (Temporary) (Class UP) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:

461 New Zealand Citizen Family Relationship (Temporary))

1214C Partner (Temporary) (Class UK)

- (1) Form: 47SP or 47SP (Internet).
 - (2) Visa application charge: Nil.
 - (3) Other:
 - (a) Application must be made at the same time and place as an application for a Partner (Residence) (Class BS) visa.
 - (b) Application must be made in Australia, but not in immigration clearance.
 - (c) Applicant must be in Australia, but not in immigration clearance.
 - (e) Application by a person claiming to be a member of the family unit of the holder or former holder of a prospective marriage (temporary) visa (as defined in clause 820.111 of Schedule 2) who is an applicant for a Partner (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.
 - (f) Application by a person claiming to be a dependent child of a person who is an applicant for a Partner (Temporary) (Class UK) visa may be made at the same time and place as, and combined with, the application by that person.
 - (fa) An application (not being an Internet application) must be made:
 - (i) by posting the application (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 subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) if no address has been specified for subparagraphs (i) and (ii)—by lodging the application at an office of Immigration.
 - (g) If:
 - (i) the applicant is the holder of:
 - (A) a Skilled—Independent Regional (Provisional) (Class UX) visa; or
 - (B) a Subclass 475 (Skilled—Regional Sponsored) visa; or
 - (C) a Subclass 487 (Skilled—Regional Sponsored) visa; or
 - (D) a Skilled—Regional Sponsored (Provisional) (Class SP) visa; or
 - (ii) the last substantive visa held by the applicant was:
 - (A) a Skilled—Independent Regional (Provisional) (Class UX) visa; or
 - (B) a Subclass 475 (Skilled—Regional Sponsored) visa; or
 - (C) a Subclass 487 (Skilled—Regional Sponsored) visa; or
 - (D) a Skilled—Regional Sponsored (Provisional) (Class SP) visa;
- the applicant must have held that visa for at least 2 years.

- (4) Subclasses:
820 (Partner)

1215 Prospective Marriage (Temporary) (Class TO)

- (1) Form: 47SP or 47SP (Internet).
(2) Visa application charge:
(a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$6 865
2	Additional applicant charge for an applicant who is at least 18	\$3 435
3	Additional applicant charge for an applicant who is less than 18	\$1 720

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
(a) Application (not being an Internet application) must be made outside Australia.
(b) Applicant must be outside Australia.
(c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Prospective Marriage (Temporary) (Class TO) visa must be made at the same time and place as, and combined with, the application by that person.

- (4) Subclasses:
300 (Prospective Marriage)

1216 Resident Return (Temporary) (Class TP)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
(2) Visa application charge:
(a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$185
2	Additional applicant charge for an applicant who is at least 18	\$95

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First instalment		
Item	Component	Amount
3	Additional applicant charge for an applicant who is less than 18	\$45

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other, unless the application is covered by subitem (3A):

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(aa) Applicant must be outside Australia.

(b) Application by a person who is included in the passport of another applicant for a Resident Return (Temporary) (Class TP) visa may be made at the same time and place as, and combined with, the application by that other applicant.

(c) Application by a person is not a valid application if:

(i) the most recent permanent visa held by the person is, or was, the subject of a notice, under subsection 135(1) of the Act, proposing cancellation; and

(ii) the person has not been notified of a decision not to proceed with the cancellation; and

(iii) the visa was not the subject of a decision to cancel the visa under section 134 of the Act.

(d) Application by a person is not a valid application if:

(i) the most recent permanent visa held by the person was the subject of a decision to cancel the visa under section 134 of the Act (whether or not the decision has come into effect); and

(ii) the decision to cancel the visa has not been set aside by the Tribunal.

(3A) This subitem covers applications made on one of the following bases:

(a) that, on 30 June 2016, the applicant held either of the following permits granted under the *Immigration Act 1980* (Norfolk Island):

(i) a temporary entry permit;

(ii) a general entry permit;

(b) that:

(i) on or before 30 June 2016, the applicant was born outside Norfolk Island (whether in or outside Australia); and

(ii) on 30 June 2016, the applicant did not hold either of the permits mentioned in paragraph (a); and

(iii) on 30 June 2016, a parent of the applicant (other than an adoptive parent) was covered by paragraph (a); and

(iv) on 30 June 2016, the applicant was a dependent child of the parent;

- (c) that clause 159.311 of Schedule 2 is satisfied in relation to another applicant whose application is covered by paragraph (a) or (b) of this subitem.

Note: Paragraph (c) applies to a dependent child of the other applicant born in Australia on or after 1 July 2016. The child's application must be combined with that of the parent.

(3B) Other, if the application is covered by subitem (3A):

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant may be in or outside Australia, but must not be in immigration clearance.
- (c) Application by a person who is included in the passport of another applicant for a Resident Return (Temporary) (Class TP) visa may be made at the same time and place as, and combined with, the application by that other applicant.
- (d) Application by a person is not a valid application if:
- (i) the visa held by the person that was most recently in effect is, or was, the subject of a notice under the Act proposing cancellation; and
 - (ii) the person has not been notified of a decision not to proceed with the cancellation; and
 - (iii) the visa was not the subject of a decision to cancel the visa under the Act.
- (e) Application by a person is not a valid application if:
- (i) the visa held by the person that was most recently in effect was the subject of a decision to cancel the visa under the Act (whether or not the decision has come into effect); and
 - (ii) the decision to cancel the visa has not been set aside by the Tribunal.

(4) Subclasses:

159 (Provisional Resident Return)

1217 Retirement (Temporary) (Class TQ)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$365
2	Additional applicant charge for an applicant who is at least 18	\$185
3	Additional applicant charge for an applicant who is less than 18	\$90

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Part 2 Temporary visas (other than bridging visas)

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant may be in or outside Australia, but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.
- (d) Application may be made on or after 1 July 2005 by a person only if:
 - (i) the person is the holder of a Subclass 410 visa; or
 - (ii) the last substantive visa held by the person since last entering Australia was a Subclass 410 visa; or
 - (iii) the person claims to be the spouse or de facto partner of a person mentioned in subparagraph (i) or (ii).

(4) Subclasses:

410 (Retirement)

1218 Tourist (Class TR)

(1) Form:

- (a) If the applicant is:
 - (i) in Australia; and
 - (ii) in a class of persons specified by the Minister in an instrument in writing for this subparagraph: 601E.
- (b) If the applicant is:
 - (i) outside Australia; and
 - (ii) in a class of persons specified by the Minister in an instrument in writing for this subparagraph: 48 (Internet).

(2) Visa application charge:

- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who:
 - (A) applies in the course of acting as a representative of a foreign government; or
 - (B) is in a class of persons specified in an instrument in writing for this sub-subparagraph;or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

- (ii) for any other applicant:
- (A) who is in Australia at the time of application; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$290
2	Additional applicant charge for an applicant who is at least 18	\$290
3	Additional applicant charge for an applicant who is less than 18	\$75

- (iii) for any other applicant:
- (A) who is outside Australia at the time of application; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$115
2	Additional applicant charge for an applicant who is at least 18	\$115
3	Additional applicant charge for an applicant who is less than 18	\$30

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) Oral application may be made if, and only if, the applicant:
 - (i) is in Australia (but not in immigration clearance); and
 - (ii) is the holder of:
 - (A) a Long Stay (Visitor) (Class TN) visa; or
 - (B) a Short Stay (Visitor) (Class TR) visa; or
 - (C) a Tourist (Class TR) visa.

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(b) Application (not being an oral application) by a person included in the passport of another person may be made at the same time and place as, and combined with, the application by that person.

- (4) Subclasses:
676 (Tourist)

1218AA Visitor (Class TV)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
(a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
(aa) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
(a) Applicant must be outside Australia.
(b) Applicant must hold an eVisitor eligible passport.

- (4) Subclasses:
651 (eVisitor)

1219 Special Category (Temporary) (Class TY)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge: Nil.
- (3) Other:
(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
-

- (aa) An applicant who holds a special purpose visa, or who does not hold a visa, must be:
 - (i) in immigration clearance outside Australia travelling to Australia on a pre-cleared flight; or
 - (ii) in immigration clearance in Australia; or
 - (iii) in Australia after having been immigration cleared.
- (ab) An applicant who holds a temporary visa (other than a special purpose visa) must be:
 - (i) in immigration clearance outside Australia travelling to Australia on a pre-cleared flight; or
 - (ii) in Australia, but not in immigration clearance.
- (b) The applicant must present a New Zealand passport that is in force to an officer or a clearance authority.
- (c) Applicant is not the holder of a permanent visa.
- (d) If the application is made using an authorised system, the applicant must answer the health and character questions asked by the authorised system.

- (4) Subclasses:
 - 444 (Special Category)

1220A Partner (Provisional) (Class UF)

- (1) Form: 47SP or 47SP (Internet).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application (not being an Internet application) must be made outside Australia.
 - (b) Applicant must be outside Australia.
 - (c) Application must be made at the same time and place as an application for a Partner (Migrant) (Class BC) visa.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Partner (Provisional) (Class UF) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 309 (Partner (Provisional))

1221 Contributory Parent (Temporary) (Class UT)

- (1) Form:
 - (a) If the applicant is a contributory parent newborn child: Nil
 - (b) In any other case: 47PA.
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

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- (i) for an applicant who:
- (A) made a valid application for a Parent (Migrant) (Class AX) visa before 27 June 2003; and
 - (B) withdrew that application at the same time as making the application for the Contributory Parent (Temporary) (Class UT) visa;
- or whose application is combined, or sought to be combined, with an application made by that person, the amount is nil; and
- (ii) for an applicant:
- (A) who is a contributory parent newborn child; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person;
- the amount is nil; and
- (iii) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	\$2 490
2	Additional applicant charge for an applicant who is at least 18	\$1 245
3	Additional applicant charge for an applicant who is less than 18	\$625

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) second instalment (payable before grant of visa):

Second instalment

Item	Applicant	Amount
1	Applicant who: <ul style="list-style-type: none"> (a) was less than 18 at the time of application; and (b) is a dependent child of an applicant for a Contributory Parent (Temporary) (Class UT) visa; and (c) applied during the period that began on 1 July 2013 and ended on 31 August 2013 	\$1 825
1A	Applicant who: <ul style="list-style-type: none"> (a) was less than 18 at the time of application; and (b) is a dependent child of an applicant for a Contributory Parent (Temporary) (Class UT) visa; and (c) applied on or after 1 September 2013 	\$2 095
2	Applicant who is a contributory parent newborn child	Nil
3	Any other applicant	\$29 130

- (3) Other:

- (a) Application must be made by:
 - (i) posting the application (with the correct pre-paid postage) to the post office box address specified in a legislative instrument made by the Minister for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in a legislative instrument made by the Minister for this subparagraph.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Contributory Parent (Temporary) (Class UT) visa may be made at the same time and place as, and combined with, the application by that person.
- (c) If the applicant has previously made a valid application for another parent visa:
 - (i) a decision to grant or to refuse to grant that visa must have been made; or
 - (ii) the application for that visa must have been withdrawn.
- (d) Application by a contributory parent newborn child must be made by notifying Immigration, in writing, of the birth of the applicant.

- (4) Subclasses:
 - 173 (Contributory Parent (Temporary))

1221A Contributory Aged Parent (Temporary) (Class UU)

- (1) Form:
 - (a) If the applicant is a contributory parent newborn child: Nil
 - (b) In any other case: 47PA.
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who:
 - (A) made a valid application for an Aged Parent (Residence) (Class BP) visa before 1 July 2003; and
 - (B) withdrew that application at the same time as making the application for the Contributory Aged Parent (Temporary) (Class UU) visa;or whose application is combined, or sought to be combined, with an application made by that person, the amount is nil; and
 - (ii) for an applicant:
 - (A) who is a contributory parent newborn child; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:
the amount is nil; and
 - (iii) for any other applicant:

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First instalment		
Item	Component	Amount
1	Base application charge	\$3 695
2	Additional applicant charge for an applicant who is at least 18	\$1 845
3	Additional applicant charge for an applicant who is less than 18	\$925

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant who: (a) was less than 18 at the time of application; and (b) is a dependent child of an applicant for a Contributory Aged Parent (Temporary) (Class UU) visa	\$2 095
2	Applicant who is a contributory parent newborn child	Nil
3	Any other applicant	\$29 130

(3) Other:

- (a) Application must be made in Australia but not in immigration clearance.
- (b) Applicant, other than a contributory parent newborn child, must be in Australia but not in immigration clearance.
- (c) If the applicant has previously made a valid application for another parent visa:
 - (i) a decision to grant or to refuse to grant that visa must have been made; or
 - (ii) the application for that visa must have been withdrawn.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Contributory Aged Parent (Temporary) (Class UU) visa may be made at the same time and place as, and combined with, the application by that person.
- (da) An application must be made:
 - (i) by posting the application (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 subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) if no address has been specified for subparagraphs (i) and (ii)—by lodging the application at an office of Immigration.

(e) Application by a contributory parent newborn child must be made by notifying Immigration, in writing, of the birth of the applicant.

(4) Subclasses:

884 (Contributory Aged Parent (Temporary))

1222 Student (Temporary) (Class TU)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

- (i) for an applicant who is included in a class of persons specified in an instrument under paragraph (5)(a), the amount is nil; and
- (ii) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	\$550
2	Additional applicant charge for any other applicant who is at least 18	\$410
3	Additional applicant charge for any other applicant who is less than 18	\$135

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) An applicant may be in or outside Australia, but not in immigration clearance.
- (c) If the applicant seeks to satisfy the primary criteria for the grant of a Subclass 500 (Student) visa, the application must be accompanied by evidence of the applicant's intended course of study in Australia, or activities related to study in Australia, being evidence that satisfies the requirements specified in an instrument under paragraph (5)(b).
- (d) If the applicant seeks to satisfy the primary criteria for the grant of a Subclass 500 (Student) visa and will be under 18 years of age at any time while in Australia, the application must be accompanied by evidence of intended arrangements for the applicant's accommodation, support and general welfare.
- (e) An application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a

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Subclass 500 (Student) visa may be made at the same time and place as, and combined with, the application by that person.

(f) An application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 590 (Student Guardian) visa must be made at the same time as, and combined with, the application by that person.

- (4) If the applicant is in Australia, the applicant must hold a substantive temporary visa (other than a substantive temporary visa specified in an instrument under paragraph (5)(c)), or must satisfy the following paragraphs:
- (a) the applicant is not the holder of a substantive visa;
 - (b) the last substantive visa held by the applicant was:
 - (i) a student visa; or
 - (ii) a special purpose visa; or
 - (iii) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse or de facto partner, or a dependent relative, of a diplomatic or consular representative of a foreign country;
 - (c) the application is made within 28 days after:
 - (i) the day when that last substantive visa ceased to be in effect; or
 - (ii) if that last substantive visa was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—the later of:
 - (A) the day when that last substantive visa ceased to be in effect; and
 - (B) the day when the applicant is taken, under sections 368D and 379C of the Act, to have been notified of the Tribunal's decision;
 - (d) the applicant has not previously been granted a visa based on an application made when the applicant did not hold a substantive visa.
- (5) The Minister may, by legislative instrument, specify all or any of the following:
- (a) classes of persons to whom subparagraph (2)(a)(i) applies;
 - (b) the requirements that evidence required by paragraph (3)(c) must satisfy;
 - (c) substantive temporary visas for the purposes of subitem (4).
- (6) Subclasses:
- 500 (Student)
 - 590 (Student Guardian)
- (7) In this item:

course of study has the same meaning as in clause 500.111.

1223A Temporary Business Entry (Class UC)

- (1) Form:
(b) If:
-

- (i) the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (ii) paragraph (bb) does not apply;
- the application must be made as an internet application using the form specified by the Minister in an instrument in writing for this paragraph.
- (ba) If:
- (i) the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (ii) paragraph (bb) does not apply; and
 - (iii) the applicant has been unable to lodge an application in accordance with paragraph (b) in a circumstance specified by the Minister in an instrument in writing for this paragraph;
- the application may be made in a way, and using a form, specified by the Minister in that instrument.
- (bb) If the applicant:
- (i) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (ii) is not making a combined application with the applicant seeking to satisfy the primary criteria for the grant of that visa;
- the application must be made as an internet application using the form specified by the Minister in an instrument in writing for this paragraph.
- (bc) If:
- (i) the applicant seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (ii) the applicant has been unable to lodge an application in accordance with paragraph (bb) in a circumstance specified by the Minister in an instrument in writing for this paragraph;
- the application may be made in a way, and using a form, specified by the Minister in that instrument.
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$1 060
2	Additional applicant charge for an applicant who is at least 18	\$1 060
3	Additional applicant charge for an applicant who is less than 18	\$265

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
- (aa) An applicant for a Subclass 457 (Temporary Work (Skilled)) visa may be in or outside Australia, but not in immigration clearance.
 - (c) An application by an applicant who:
 - (i) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
 - (ii) claims to be a member of the family unit of a person who seeks to satisfy the primary criteria (the **primary applicant**);may be made at the same time and place as, and combined with, an application by the primary applicant or any other applicant who claims to be a member of the family unit of the primary applicant.
 - (d) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa on the basis that the applicant meets the requirements of subclause 457.223(2) of Schedule 2:
 - (i) a person must have nominated an occupation in relation to the applicant; and
 - (ii) either of the following applies:
 - (A) the nomination has been approved under section 140GB of the Act and the approval of the nomination has not ceased under regulation 2.75;
 - (B) a decision in respect of the nomination has not been made under section 140GB of the Act.
 - (da) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa on the basis that the applicant meets the requirements of subclause 457.223(4) of Schedule 2:
 - (i) a person must have nominated an occupation in relation to the applicant; and
 - (ii) either of the following applies:
 - (A) the nomination has been approved under section 140GB of the Act and the approval of the nomination has not ceased under regulation 2.75;
 - (B) a decision in respect of the nomination has not been made under section 140GB of the Act; and
 - (iii) the person who nominated the occupation is not the subject of a bar under section 140M of the Act.
 - (e) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa must declare in the application (the **primary application**) whether or not either:
 - (i) the applicant; or
 - (ii) any person who has made a combined application with the applicant; has engaged in conduct, in relation to the primary application or the combined application, that constitutes a contravention of subsection 245AS(1) of the Act.
-

- (4) Subclasses:
Subclass 457 (Temporary Work (Skilled))

1223B Temporary Safe Haven (Class UJ)

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Subclasses:
449 (Humanitarian Stay (Temporary))
- Note: See regulation 2.07AC for how an application for a Temporary Safe Haven (Class UJ) visa is taken to have been validly made.

1223C Temporary (Humanitarian Concern) (Class UO)

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Subclasses:
786 (Temporary (Humanitarian Concern))
- Note: See regulation 2.07AC for how an application for a Temporary (Humanitarian Concern) (Class UO) visa is taken to have been validly made.

1224 Transit (Temporary) (Class TX)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge: Nil.
- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant must be outside Australia.
- (4) Subclasses:
771 (Transit)

1224A Work and Holiday (Temporary) (Class US)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) the base application charge (payable at the time the application is made) is \$440; and
 - (b) the second instalment (payable before grant of visa) is nil.

Schedule 1 Classes of visa

Part 2 Temporary visas (other than bridging visas)

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(3) Other:

- (a) Applicant must hold a valid passport issued by a foreign country specified in an instrument in writing for this paragraph.

Note: For *foreign country*, see section 2B of the *Acts Interpretation Act 1901*.

- (aa) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) If the applicant is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa, the applicant must:
- (i) be outside Australia; and
 - (ii) not have previously been in Australia as the holder of a Subclass 417 (Working Holiday) visa; and
 - (iii) unless the applicant is a member of a class of persons specified by the Minister, by an instrument in writing, for this subparagraph—provide evidence that the applicant has the support for the grant of the visa from the government of the foreign country mentioned in paragraph (a).
- (c) If the applicant is, or has previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa:
- (i) the applicant may be in or outside Australia, but not in immigration clearance; and
 - (ii) the application must be accompanied by a declaration by the applicant that he or she has carried out specified Subclass 462 work for a total period of at least 3 months as the holder of that visa; and
 - (iii) the applicant must not have held more than one Subclass 462 (Work and Holiday) visa in Australia before making the application; and
 - (iv) if the applicant is in Australia, the applicant must hold a substantive visa or have held a substantive visa at any time in the period of 28 days immediately before making the application.

(4) Subclasses:

462 (Work and Holiday)

1225 Working Holiday (Temporary) (Class TZ)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

- (2) Visa application charge:

- (a) the base application charge (payable at the time the application is made) is \$440; and
- (b) the second instalment (payable before grant of visa) is nil.

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (3) An application must be made at the place, and in the manner, (if any) specified in relation to a class of persons that includes the applicant by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (3A) If the applicant is not, and has not previously been, in Australia as the holder of a Subclass 417 (Working Holiday) visa, the applicant:
 - (a) is outside Australia; and
 - (b) holds a working holiday eligible passport.
- (3B) If the applicant is, or has previously been, in Australia as the holder of a Subclass 417 (Working Holiday) visa:
 - (a) the applicant may be in or outside Australia, but not in immigration clearance; and
 - (c) the application must be accompanied by a declaration by the applicant that he or she has carried out specified work in regional Australia for a total period of at least 3 months as the holder of that visa; and
 - (d) the applicant has not previously held more than 1 Subclass 417 (Working Holiday) visa in Australia; and
 - (e) the applicant holds a working holiday eligible passport; and
 - (f) if the applicant is in Australia, the applicant must:
 - (i) hold a substantive visa; or
 - (ii) have held a substantive visa at any time in the period of 28 days immediately before making the application.
- (3C) The applicant must not have previously been in Australia as the holder of a Subclass 462 (Work and Holiday) visa.

- (4) Subclasses:
 - 417 (Working Holiday)

- (5) In this item:

regional Australia means a place specified by the Minister in an instrument in writing for this definition.

specified work means work of a kind specified by the Minister in an instrument in writing for this definition.

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working holiday eligible passport means a valid passport held by a person who is a member of a class of persons specified in an instrument mentioned in subitem (3).

Note: ***Internet application*** is defined in regulation 1.03.

1227 Maritime Crew (Temporary) (Class ZM)

Note: This class of visa relates to a member of the crew of a non-military ship. Those expressions are defined in regulation 1.03.

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant must be outside Australia.
 - (c) Applicant is not the holder of a permanent visa.
 - (e) An applicant who seeks to satisfy the secondary criteria for the grant of the visa must claim to be a member of the family unit of:
 - (i) the holder of a Maritime Crew (Temporary) (Class ZM) visa who has satisfied the primary criteria for the grant of the visa; or
 - (ii) an applicant who seeks to satisfy, or has satisfied, the primary criteria for the grant of the visa.
- (4) Subclasses:
988 (Maritime Crew)

1228 Skilled (Provisional) (Class VF)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	\$360
2	Additional applicant charge for an applicant who is at least 18	\$180
3	Additional applicant charge for an applicant who is less than 18	\$90

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(c) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 476 (Skilled—Recognised Graduate) visa must be less than 31.

(d) Application by a person claiming to be a member of the family unit of a person who seeks to satisfy the primary criteria may be made at the same time and place as, and combined with, an application by that person.

(4) Subclasses:

Subclass 476 (Skilled—Recognised Graduate)

1229 Skilled (Provisional) (Class VC)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

First instalment		
Item	Component	Amount
1	Base application charge	\$1 470
2	Additional applicant charge for an applicant who is at least 18	\$735
3	Additional applicant charge for an applicant who is less than 18	\$370

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

(c) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(f) An applicant claiming to be a member of the family unit of a person who, having satisfied the primary criteria, holds a Skilled (Provisional) (Class VC) visa may be in or outside Australia when making his or her application, but not in immigration clearance.

(g) An applicant to whom paragraph (f) does not apply must be in Australia, but not in immigration clearance, when making his or her application.

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Part 2 Temporary visas (other than bridging visas)

- (h) An application by a person claiming to be a member of the family unit of a person who seeks to satisfy the primary criteria may be made at the same time and place as, and combined with, an application by that person.
 - (j) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa must nominate only one stream to which the application relates.
 - (k) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Graduate Work stream must nominate a skilled occupation for the applicant that is specified by the Minister in an instrument in writing for this paragraph.
 - (l) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream:
 - (i) must hold a Student Temporary (Class TU) visa that:
 - (A) was granted on the basis of an application made on or after 5 November 2011; and
 - (B) is the first Student Temporary (Class TU) visa that the applicant has held; or
 - (ii) must have held a Student Temporary (Class TU) visa that:
 - (A) was granted on the basis of an application made on or after 5 November 2011; and
 - (B) was the first Student Temporary (Class TU) visa that the applicant had held.
 - (m) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa must meet the requirements of subitem (4).
- (4) The following requirements must be met:
- (a) one of the following subparagraphs must be satisfied by the applicant:
 - (i) the applicant holds an eligible student visa;
 - (ii) the applicant must:
 - (A) hold a Bridging A (Class WA) visa or Bridging B (Class WB) visa that was granted on the basis of a valid application for a visa; and
 - (B) have held an eligible student visa at any time during the period of 6 months ending immediately before the day on which the application for the Skilled (Provisional) (Class VC) visa is made;
 - (iii) the applicant must:
 - (A) hold a substantive visa; and
 - (B) have held an eligible student visa at any time during the period of 6 months ending immediately before the day on which the application for the Skilled (Provisional) (Class VC) visa is made;
 - (iv) the applicant must have been taken, under sections 368C, 368D and 379C of the Act, to have been notified that the Tribunal has set aside and substituted the Minister's decision not to revoke the cancellation

- of the applicant's eligible student visa not more than 28 days before the day on which the application is made;
- (b) the applicant seeking to satisfy the primary criteria for the grant of the visa must be less than 50.

(10) Subclasses:

Subclass 485 (Temporary Graduate)

(11) In this item:

eligible student visa means a student visa, other than:

- (a) a visa granted to a Foreign Affairs student or Defence student; or
(b) a visa granted on the basis of the applicant being a member of the family unit of the holder of a student visa.

1230 Skilled—Regional Sponsored (Provisional) (Class SP)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

(i) for an applicant who holds:

- (A) a Skilled—Independent Regional (Provisional) (Class UX) visa; or
(B) a Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa; or
(C) a Subclass 475 (Skilled—Regional Sponsored) visa; or
(D) a Subclass 487 (Skilled—Regional Sponsored) visa;

or whose application is combined, or sought to be combined, with an application made by that person:

First instalment

Item	Component	Amount
1	Base application charge	\$320
2	Additional applicant charge for an applicant who is at least 18	\$160
3	Additional applicant charge for an applicant who is less than 18	\$80

(ii) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

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Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment

Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English; and (c) has not paid a second instalment of visa application charge in relation to the application for the visa, mentioned in subparagraph (2)(a)(i), that the applicant holds	\$4 890
2	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) An applicant may be in or outside Australia, but not in immigration clearance.
- (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 (Bridging A) visa; or
 - (iii) a Subclass 020 (Bridging B) visa; or
 - (iv) a Subclass 030 (Bridging C) visa.
- (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled—Regional Sponsored (Provisional) (Class SP) visa may be made at the same time as, and combined with, an application by that person.

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

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 489 (Skilled-Regional (Provisional)) visa in the First Provisional Visa stream
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must not have turned 50 at the time of invitation to apply for the visa

Item	Requirements
4	<p>The applicant must nominate a skilled occupation:</p> <ul style="list-style-type: none"> (a) that is specified by the Minister in an instrument in writing for this item as a skilled occupation at the time of invitation to apply for the visa; and (b) that is specified in the invitation as the skilled occupation which the applicant may nominate; and (c) for which the applicant declares in the application that the applicant's skills have been assessed as suitable by the relevant assessing authority and that the assessment is not for a Subclass 485 (Temporary Graduate) visa
5	<p>The applicant must:</p> <ul style="list-style-type: none"> (a) be nominated by a State or Territory government agency; or (b) declare in the application that the applicant is sponsored by a person who: <ul style="list-style-type: none"> (i) has turned 18; and (ii) is an Australian citizen, Australian permanent resident or eligible New Zealand citizen
6	<p>If the applicant declares in the application that the applicant is sponsored by a person mentioned in paragraph 5(b), the applicant also declares in the application that:</p> <ul style="list-style-type: none"> (a) the sponsor is usually resident in a designated area of Australia; and (b) the sponsor is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is an applicant for the grant of a Skilled—Regional Sponsored (Provisional) (Class SP) visa), as: <ul style="list-style-type: none"> (i) a parent; or (ii) a child or step-child; or (iii) a brother, sister, adoptive brother, adoptive sister, step-brother or step-sister; or (iv) an aunt, uncle, adoptive aunt, adoptive uncle, step-aunt or step-uncle; or (v) a nephew, niece, adoptive nephew, adoptive niece, step-nephew or step-niece; or (vi) a grandparent; or (vii) a first cousin; and (c) each person who is an applicant, and claims to be a member of the family unit of the applicant, is sponsored by that person

Note: *designated area* is defined in regulation 1.03

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

Item	Requirements
1	<p>The applicant holds one of the following visas:</p> <ul style="list-style-type: none"> (a) a Skilled—Independent (Provisional) (Class UX) visa; (b) a Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa; (c) a Subclass 475 (Skilled—Regional Sponsored) visa; (d) a Subclass 487 (Skilled—Regional Sponsored) visa.

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Part 2 Temporary visas (other than bridging visas)

Item	Requirements
2	For at least 2 years immediately before the application is made, the applicant must have held one of those visas, granted on the basis of: (a) satisfying the primary criteria for the grant of that visa; or (b) being the spouse or de facto partner of the person who satisfied the primary criteria for the grant of that visa

3 The applicant must not have held more than one of a particular kind of those visas

(6) Subclasses:

Subclass 489 (Skilled—Regional (Provisional))

1231 Temporary Work (Short Stay Specialist) (Class GA)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

(iii) for an applicant:

(A) who applies in the course of acting as a representative for a foreign government; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(iv) for an applicant:

(A) who is in a class of persons specified by the Minister in an instrument in writing for this subparagraph; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(v) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	\$275
2	Additional applicant charge for an applicant who is at least 18	\$275
3	Additional applicant charge for an applicant who is less than 18	\$70

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) An applicant must be outside Australia.
 - (c) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Temporary Work (Short Stay Specialist) (Class GA) visa may be made at the same time as, and combined with, the application by that person.
- (4) Subclasses:
Subclass 400 (Temporary Work (Short Stay Specialist))

1234 Temporary Work (International Relations) (Class GD)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who is in a class of persons specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5), the amount is nil; and
 - (ii) for an applicant whose application is combined with an application made by a person referred to in subparagraph (i), the amount is nil; and
 - (iii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$275
2	Additional applicant charge for an applicant who is at least 18	\$275
3	Additional applicant charge for an applicant who is less than 18	\$70

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

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Part 2 Temporary visas (other than bridging visas)

- (b) Subject to paragraph (c), an applicant may be in or outside Australia, but not in immigration clearance.
- (c) An applicant seeking to satisfy the criteria for a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream must be outside Australia.
- (ca) If an applicant is seeking to satisfy the primary criteria for a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream, the application must meet the requirement in subitem (3A) or (3B).
- (cb) An applicant must not hold a permanent visa.
- (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for an Temporary Work (International Relations) (Class GD) visa may be made at the same time and place as, and combined with, an application by that person or any other member of the family unit who claims to be a member of the family unit of the primary applicant.

Note: An applicant for a Temporary Work (International Relations) (Class GD) visa cannot meet the secondary criteria for the grant of the visa if the primary applicant holds a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream or the Domestic Worker (Diplomatic or Consular) stream (see clause 403.311 of Schedule 2).

- (3A) For the purposes of paragraph (3)(ca), an application meets the requirement in this subitem if the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:
 - (a) a temporary activities sponsor; or
 - (b) a person who has applied for approval as a temporary activities sponsor, but whose application has not yet been decided.
- (3B) For the purposes of paragraph (3)(ca), an application meets the requirement in this subitem if:
 - (a) the application is lodged on or before 18 May 2017; and
 - (b) the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:
 - (i) a special program sponsor; or
 - (ii) a person who has applied for approval as a special program sponsor, but whose application has not yet been decided.
- (4) Subclasses:
 - Subclass 403 (Temporary Work (International Relations))

1236 Visitor (Class FA)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:

- (a) in relation to an application for a Subclass 600 (Visitor) visa that is not in the Frequent Traveller stream—first instalment (payable at the time the application is made):
 - (i) for an applicant who is in Australia at the time of application, the base application charge is \$340; and
 - (ii) for an applicant who is outside Australia at the time of application, the base application charge is \$135; and
 - (iii) for an applicant who applies in the course of acting as a representative of a foreign government, the amount is nil; and
 - (iv) for an applicant in a class of persons specified by the Minister in an instrument in writing for this subparagraph, the amount is nil; and
- (aa) in relation to an application for a Subclass 600 (Visitor) visa in the Frequent Traveller stream—first instalment (payable at the time the application is made): the base application charge is \$1,000; and
- (b) the second instalment (payable before grant of visa) is nil.

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

Tourist stream—additional requirements

- (3) For an applicant seeking to satisfy the primary criteria for a Subclass 600 (Visitor) visa in the Tourist stream, the requirements in the table must be met.

Requirements

Item	Requirements
1	An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
2	The applicant may be in or outside Australia.
3	The applicant may make an oral application for the visa only if the applicant: <ul style="list-style-type: none"> (a) is in Australia (but not in immigration clearance); and (b) holds: <ul style="list-style-type: none"> (i) a Subclass 600 (Visitor) visa; or (ii) a Subclass 676 (Tourist) visa

Note: Regulation 2.09 deals with oral applications.

Sponsored Family stream—additional requirements

- (4) For an applicant seeking to satisfy the primary criteria for a Subclass 600 (Visitor) visa in the Sponsored Family stream, the requirements in the table must be met.

Schedule 1 Classes of visa

Part 2 Temporary visas (other than bridging visas)

Requirements

Item Requirements

-
- | | |
|---|---|
| 1 | An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5). |
| 2 | The applicant must be outside Australia |
-

Business Visitor stream—additional requirements

- (5) For an applicant seeking to satisfy the primary criteria for a Subclass 600 (Visitor) visa in the Business Visitor stream, the requirements in the table must be met.

Requirements

Item Requirements

-
- | | |
|---|---|
| 1 | An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5). |
| 2 | The applicant must be outside Australia |
-

Approved Destination Status stream—additional requirements

- (6) For an applicant seeking to satisfy the primary criteria for a Subclass 600 (Visitor) visa in the Approved Destination Status stream, the requirements in the table must be met.

Requirements

Item Requirements

-
- | | |
|---|--|
| 1 | The applicant must be a citizen of PRC |
| 2 | The applicant must be in PRC at the time of application |
| 3 | The applicant must be intending to travel to Australia as a member of a tour organised by a travel agent specified by the Minister in an instrument in writing for this item |
| 4 | An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5). |
-

Frequent Traveller stream—additional requirements

- (6A) For an applicant seeking to satisfy the primary criteria for a Subclass 600 (Visitor) visa in the Frequent Traveller stream, the requirements in the table must be met.

Requirements

Item Requirements

-
- | | |
|---|--|
| 1 | An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5) |
|---|--|
-

Requirements	
Item	Requirements
2	The applicant must be: (a) outside Australia; and (b) if a place is specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5)—in the specified place
3	The applicant must hold a valid passport of a kind specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).

Subclasses

- (7) Subclasses:
Subclass 600 (Visitor)

1237 Temporary Activity (Class GG)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
- (i) for an applicant in a class of persons specified by the Minister in a legislative instrument made for the purposes of this subparagraph under subregulation 2.07(5), the amount is nil; and
- (ii) for an applicant whose application is combined with an application made by a person referred to in subparagraph (i), the amount is nil; and
- (iii) for an applicant in a class of persons specified by the Minister in a legislative instrument made for the purposes of this subparagraph under subregulation 2.07(5):

First instalment		
Item	Component	Amount
1	Base application charge	\$70
2	Additional applicant charge for an applicant who is at least 18	\$70
3	Additional applicant charge for an applicant who is less than 18	\$20

- (iv) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$275

Schedule 1 Classes of visa

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First instalment		
Item	Component	Amount
2	Additional applicant charge for an applicant who is at least 18	\$275
3	Additional applicant charge for an applicant who is less than 18	\$70

(b) the second instalment (payable before grant of visa) is nil.

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and who has combined the application with that applicant's application.

Additional requirements

(3) The requirements in the table must be met.

Requirements	
Item	Requirements
1	An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5)
2	An applicant may be in or outside Australia, but not in immigration clearance
3	If an applicant: (a) is seeking to satisfy the criterion in clause 408.219A of Schedule 2 on the basis of a clause in Subdivision 408.22 of Schedule 2 other than clause 408.229 (Australian Government endorsed events); and (b) either: (i) is in Australia; or (ii) is outside Australia, and states on the application form that the proposed length of stay in Australia exceeds 3 months; the application must meet the requirement in subitem (4) or (5) of this item
4	If an applicant holds a substantive visa, the visa must not be: (a) a permanent visa; or (b) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or (c) a Subclass 771 (Transit) visa; or (d) a special purpose visa; or (e) a temporary visa specified by the Minister in a legislative instrument made for the purposes of this paragraph under subregulation 2.07(5)

Requirements

Item Requirements

- 5 If an applicant is in Australia and does not hold a substantive visa:
- (a) the applicant must have held a substantive visa; and
 - (b) the last substantive visa held by the applicant must not have been:
 - (i) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or
 - (ii) a Subclass 771 (Transit) visa; or
 - (iii) a special purpose visa; and
 - (c) the application must be made:
 - (i) within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or
 - (ii) if that last substantive visa was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—within 28 days after the day when the applicant is taken, under section 368D or 379C of the Act, to have been notified of the Tribunal's decision
-
- 6 An applicant seeking to satisfy the primary criteria must declare in the application (the **primary application**) whether or not each of the following:
- (a) the applicant;
 - (b) any person who has made a combined application with the applicant; has engaged in conduct, in relation to the primary application or the combined application, that constitutes a contravention of subsection 245AS(1) of the Act
-
- (4) For the purposes of item 3 of the table in subitem (3), an application meets the requirement in this subitem if the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:
- (a) a temporary activities sponsor; or
 - (b) a person who has applied for approval as a temporary activities sponsor, but whose application has not yet been decided.
- (5) For the purposes of item 3 of the table in subitem (3), an application lodged on or before 18 May 2017 meets the requirement in this subitem if the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:
- (a) a long stay activity sponsor; or
 - (b) a training and research sponsor; or
 - (c) a special program sponsor; or
 - (d) an entertainment sponsor; or
 - (e) a superyacht crew sponsor; or
 - (f) a person who has applied for approval as a sponsor mentioned in any of paragraphs (a) to (e), but whose application has not yet been decided.
- (6) An application by a person claiming to be a member of the family unit of a person (the **primary applicant**) who is an applicant for a Temporary Activity (Class GG) visa may be made at the same time and place as, and combined with,

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Part 2 Temporary visas (other than bridging visas)

an application by the primary applicant or any other member of the family unit who claims to be a member of the family unit of the primary applicant.

(7) Subclasses:

Subclass 408 (Temporary Activity)

1238 Training (Class GF)

(1) Form: The approved form specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).

(2) Visa application charge:

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

First instalment		
Item	Component	Amount
1	Base application charge	\$275
2	Additional applicant charge for an applicant who is at least 18	\$275
3	Additional applicant charge for an applicant who is less than 18	\$70

(b) the second instalment (payable before grant of visa) is nil.

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

Additional requirements

(3) The requirements in the table must be met.

Requirements	
Item	Requirements
1	An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5)
2	An applicant may be in or outside Australia, but not in immigration clearance
3	An application must specify the person who has agreed to be the applicant's approved sponsor
4	The person specified in an application for the purposes of item 3 must be: (a) a temporary activities sponsor, or a person who has applied for approval as a temporary activities sponsor but whose application has not yet been decided; or

Requirements	
Item	Requirements
	(b) for an application lodged on or before 18 May 2017—a professional development sponsor or a training and research sponsor, or a person who has applied for approval as a professional development sponsor or a training and research sponsor but whose application has not yet been decided
5	<p>If the person specified in an application for the purposes of item 3 is not a Commonwealth agency:</p> <p>(a) in a case where the person is an approved sponsor of a kind referred to in item 4:</p> <ul style="list-style-type: none">(i) the person must have nominated a program of occupational training in relation to the applicant under paragraph 140GB(1)(b) of the Act; and(ii) if a decision in respect of the nomination has been made under subsection 140GB(2) of the Act, the nomination must have been approved under that subsection and the approval must not have ceased under regulation 2.75A; and(iii) the application must identify the nomination; or <p>(b) in a case where the person has applied for approval as a sponsor of a kind referred to in item 4, but the application has not yet been decided:</p> <ul style="list-style-type: none">(i) the person must have made a nomination of a program of occupational training in relation to the applicant that would be a nomination under paragraph 140GB(1)(b) of the Act if the person were an approved sponsor of a kind referred to in item 4; and(ii) the application must identify the nomination
6	<p>If an applicant holds a substantive visa, the visa must not be:</p> <ul style="list-style-type: none">(a) a permanent visa; or(b) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or(c) a Subclass 771 (Transit) visa; or(d) a special purpose visa; or(e) a temporary visa specified by the Minister in a legislative instrument made for the purposes of this paragraph under subregulation 2.07(5)
7	<p>If an applicant is in Australia and does not hold a substantive visa:</p> <p>(a) the applicant must have held a substantive visa; and</p> <p>(b) the last substantive visa held by the applicant must not have been:</p> <ul style="list-style-type: none">(i) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or(ii) a Subclass 771 (Transit) visa; or(iii) a special purpose visa; and <p>(c) the application must be made:</p> <ul style="list-style-type: none">(i) within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or(ii) if that last substantive visa was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—within 28 days after the day when the applicant is taken, under section 368D or 379C of the Act, to have been notified of the Tribunal's decision

Schedule 1 Classes of visa

Part 2 Temporary visas (other than bridging visas)

Requirements

Item Requirements

8 An applicant seeking to satisfy the primary criteria must declare in the application (the *primary application*) whether or not each of the following:

- (a) the applicant;
- (b) any person who has made a combined application with the applicant;

has engaged in conduct, in relation to the primary application or the combined application, that constitutes a contravention of subsection 245AS(1) of the Act

(4) An application by a person claiming to be a member of the family unit of a person (the *primary applicant*) who is an applicant for a Training (Class GF) visa may be made at the same time and place as, and combined with, an application by that person or any other member of the family unit who claims to be a member of the family unit of the primary applicant.

(5) Subclasses:
 Subclass 407 (Training)

Part 3—Bridging visas

1301 Bridging A (Class WA)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia but not in immigration clearance.
- (c) Either:
 - (i) the applicant has made a valid application for a substantive visa that has not been finally determined; or
 - (ii) application has been made, 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.
- (d) Applicant must:
 - (i) hold a substantive visa; or
 - (ii) hold a Bridging A (Class WA) or Bridging B (Class WB) visa and have held a substantive visa when he or she made the substantive visa application; or
 - (iii) have held a substantive visa when he or she made the substantive visa application referred to in paragraph (c); or
 - (iv) have previously held a Bridging A (Class WA) visa granted under regulation 2.21A in respect of the substantive visa referred to in paragraph (c).

- (e) If the last substantive visa held by the applicant was cancelled:
 - (i) the decision to cancel that visa has been set aside by the Tribunal; or
 - (ii) if that visa was cancelled under section 137J of the Act:
 - (A) the cancellation has been revoked; or
 - (B) a decision not to revoke the cancellation has been set aside by the Tribunal.
- (f) Applicant is not in immigration detention or criminal detention.
- (g) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging A (Class WA) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

010 (Bridging A)

Note 1: The Minister must grant a Bridging A (Class WA) visa in the circumstances set out in regulation 2.21A.

Note 2: Regulation 2.07A sets out the circumstances in which an application for a substantive visa on a form mentioned in this item is not a valid application for a Bridging A (Class WA), Bridging C (Class WC) or Bridging E (Class WE) visa.

1302 Bridging B (Class WB)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$140
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia but not in immigration clearance.
- (ba) Applicant must be a person who is immigration cleared.

- (bb) Applicant must not be:
- (i) the holder of a Subclass 785 (Temporary Protection) visa, including a Subclass 785 (Temporary Protection) visa granted before 2 December 2013; or
 - (ii) a person whose last substantive visa was a Subclass 785 (Temporary Protection) visa, including a Subclass 785 (Temporary Protection) visa granted before 2 December 2013; or
 - (iii) the holder of a Subclass 790 (Safe Haven Enterprise) visa; or
 - (iv) a person whose last substantive visa was a Subclass 790 (Safe Haven Enterprise) visa.
- (c) Applicant is not in immigration detention or criminal detention.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging B (Class WB) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
020 (Bridging B)

1303 Bridging C (Class WC)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
(a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Either:

- (i) the applicant has made a valid application for a substantive visa that has not been finally determined; or
- (ii) both of the following apply:
 - (A) application has been made, within statutory time limits, for judicial review of a decision in relation to the applicant's substantive visa application, and the judicial proceedings (including proceedings on appeal, if any) have not been completed;
 - (B) the applicant held a Bridging C (Class WC) visa granted on the basis of the applicant's substantive visa application.
- (ca) Applicant must be:
 - (i) a person who is immigration cleared; or
 - (ii) an eligible non-citizen referred to in subregulation 2.20(6).
- (d) Applicant:
 - (i) was not the holder of a substantive visa when he or she made the substantive visa application referred to in paragraph (c); and
 - (ii) does not hold a Bridging E (Class WE) visa; and
 - (iii) has not held a Bridging E (Class WE) visa since he or she last held a substantive visa.
- (e) Applicant is not in immigration detention or in criminal detention and has not escaped from either immigration detention or criminal detention.
- (f) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging C (Class WC) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

030 (Bridging C)

Note: Regulation 2.07A sets out the circumstances in which an application for a substantive visa made on a form mentioned in this item is not a valid application for a Bridging A (Class WA), Bridging C (Class WC) or Bridging E (Class WE) visa.

1304 Bridging D (Class WD)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(b) Applicant must be in Australia but not in immigration clearance.

(ba) Applicant must be:

(i) a person who is immigration cleared; or

(ii) an eligible non-citizen referred to in subregulation 2.20(6).

(c) Applicant is not in immigration detention or criminal detention.

(d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging D (Class WD) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

040 (Bridging (Prospective Applicant))

041 (Bridging (Non-applicant))

1305 Bridging E (Class WE)

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia but not in immigration clearance.
- (ba) Applicant must be an eligible non-citizen within the meaning of section 72 of the Act.
- (c) If applicant is in immigration detention, an officer appointed under subregulation 2.10A(2) as a detention review officer for the State or Territory in which the applicant is detained has been informed of the application.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging E (Class WE) visa may be made at the same time and place as, and combined with, the application by that person.
- (e) If the applicant has applied at the same time and on the same form for a substantive visa, the application for the substantive visa is valid.
- (f) The applicant has not previously held a Bridging E (Class WE) visa that has been cancelled by reason of a failure to comply with condition 8564 or 8566.
- (g) The applicant has not previously held a visa that has been cancelled on a ground specified in paragraph 2.43(1)(p) or (q).

(4) Subclasses:

050 (Bridging (General))

051 (Bridging (Protection Visa Applicant))

Note: Regulation 2.07A sets out the circumstances in which an application for a substantive visa made on a form mentioned in this item is not a valid application for a Bridging A (Class WA), Bridging C (Class WC) or Bridging E (Class WE) visa.

1306 Bridging F (Class WF)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia but not in immigration clearance.
- (c) One of the following subparagraphs applies in relation to the applicant:
 - (ia) an assistance notice has been given to the Minister in relation to the applicant, and the notice has not been revoked;
 - (i) the applicant does not hold a visa and has not held a Bridging F (Class WF) visa since he or she last entered Australia;
 - (ii) the applicant:
 - (A) does not hold a visa; and
 - (B) has held one Bridging F (Class WF) visa since last entering Australia; and
 - (C) has not held another visa since holding that visa;
 - (iii) the applicant holds a Bridging F (Class WF) visa, which is the first Bridging F (Class WF) visa held since he or she last entered Australia.
- (d) Either:
 - (i) an officer of the Australian Federal Police, or of a police force of a State or Territory, has told Immigration, in writing, that the applicant has been identified as a suspected victim of human trafficking, slavery or slavery-like practices; or
 - (ii) the applicant is a member of the immediate family of a person who an officer of the Australian Federal Police, or of a police force of a State or Territory, has told Immigration, in writing, has been identified as a suspected victim of human trafficking, slavery or slavery-like practices.

Note: *Member of the immediate family* is defined in regulation 1.12AA.

- (e) An officer of the Australian Federal Police, or of a police force of a State or Territory, has told Immigration, in writing, that suitable arrangements have been made for the care, safety and welfare of the applicant for the proposed period of the visa.
- (f) If the applicant is in immigration detention, the authorised officer to whom notice was given under subregulation 2.10B(2) has been informed of the lodgement of the application.
- (g) Application by a person claiming to be a member of the immediate family of a person who is an applicant for a Bridging F (Class WF) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

060 (Bridging F)

Note: As an alternative to item 1306, an application for a Bridging F (Class WF) visa will be taken to have been validly made by a non-citizen if the application is made in accordance with subregulation 2.20B(2).

1307 Bridging R (Class WR)

- (1) Application must be taken to have been made in accordance with subregulation 2.20A(2).
- (2) Visa application charge:
 - (a) the first instalment (payable at the time the application is made) is nil; and
 - (b) the second instalment (payable before grant of visa) is nil.
- (3) Subclasses:
 - 070 (Bridging (Removal Pending))

Part 4—Protection, Refugee and Humanitarian visas

1401 Protection (Class XA)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	\$35
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Protection (Class XA) visa may be made at the same time and place as, and combined with, the application by that person.
- (d) An application by a person for a Protection (Class XA) visa is valid only if the person:
 - (i) does not hold, and has not ever held, a Subclass 785 (Temporary Protection) visa, including such a visa granted before 2 December 2013; and
 - (ia) does not hold, and has not ever held, a Safe Haven Enterprise (Class XE) visa; and
 - (ii) does not hold, and has not ever held, a Temporary Safe Haven (Class UJ) visa; and
 - (iii) does not hold, and has not ever held, a Temporary (Humanitarian Concern) (Class UO) visa; and
 - (iv) held a visa that was in effect on the person's last entry into Australia; and
 - (v) is not an unauthorised maritime arrival; and

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(vi) was immigration cleared on the person's last entry into Australia.

(4) Subclasses:

866 (Protection)

1402 Refugee and Humanitarian (Class XB)

Note: Subregulation 2.07AM(3) sets out requirements for the making of applications by persons who are mentioned in subregulation 2.07AM(5).

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(2) Visa application charge:

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

(i) for an applicant whose application includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2:

First instalment		
Item	Component	Amount
1	Base application charge	\$3 080
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

(ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

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

Second instalment		
Item	Applicant	Amount
1	Applicant: (a) whose application includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2; and (b) who satisfies the primary criteria for the grant of the visa	\$18 910

Second instalment		
Item	Applicant	Amount
2	Applicant: (a) whose application includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2; and (b) who satisfies the secondary criteria for the grant of the visa	\$3 080
3	Any other applicant	Nil

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be outside Australia.
- (ba) Applicant must not be a person mentioned in subregulation 2.07AM(5).
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Refugee and Humanitarian (Class XB) visa may be made at the same time and place as, and combined with, the application by that person.

(3A) In addition to subitem (3), for an application that includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2:

- (a) the applicant may be a person who made a valid application for a visa, in accordance with form 842, before 1 June 2013 (whether or not the application was accompanied by form 681); and
- (b) the application must include form 1417, completed by the approved proposing organisation; and
- (c) an application that includes a proposal by an approved proposing organisation must not include form 681.

Note 1: This subitem commenced on 1 June 2013 as part of the Department's Community Proposal Pilot program. Applicants who made a valid application for a Refugee and Humanitarian (Class XB) visa, using form 842, before 1 June 2013 may make a new application for a Refugee and Humanitarian (Class XB) visa as part of that program, but are not required to do so.

Note 2: Applicants wishing to make a new application for a Refugee and Humanitarian (Class XB) visa as part of the Community Proposal Pilot program must not include form 681 as part of that application.

(4) Subclasses:

- 200 (Refugee)
- 201 (In-country Special Humanitarian)
- 202 (Global Special Humanitarian)
- 203 (Emergency Rescue)
- 204 (Woman at Risk)

1403 Temporary Protection (Class XD)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who is in immigration detention and has not been immigration cleared:

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

- (ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$35
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (b) the second instalment (payable before grant of visa) is nil.

- (3) Other:
 - (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
 - (b) Applicant must be in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Temporary Protection (Class XD) visa may be made at the same time and place as, and combined with, the application by that person.
 - (d) An application by a person for a Temporary Protection (Class XD) visa is valid only if the person:
 - (i) holds, or has ever held, a Temporary Protection (Class XD) visa or a Subclass 785 (Temporary Protection) visa, including such a visa granted before 2 December 2013; or
 - (ia) holds, or has ever held, a Safe Haven Enterprise (Class XE) visa; or

- (ii) holds, or has ever held, a Temporary Safe Haven (Class UJ) visa; or
 - (iii) holds, or has ever held, a Temporary (Humanitarian Concern) (Class UO) visa; or
 - (iv) did not hold a visa that was in effect on the person's last entry into Australia; or
 - (v) is an unauthorised maritime arrival; or
 - (vi) was not immigration cleared on the person's last entry into Australia.
- (e) Either:
- (i) the applicant has not made a valid application for a Safe Haven Enterprise (Class XE) visa (a *SHEV*); or
 - (ii) the applicant has made a valid application for a SHEV and the SHEV application has been refused (whether or not it has been finally determined) or withdrawn; or
 - (iii) a SHEV has been granted to the applicant.
- Note: A person to whom subparagraph (ii) applies, whose SHEV application has been refused, is prevented by section 48A of the Act from making the Temporary Protection visa application unless the Minister has made a determination in relation to the person under section 48B of the Act.
- (f) The application for the visa was not made at the same time as an application for a SHEV.

- (4) Subclasses:
785 (Temporary Protection)

1404 Safe Haven Enterprise (Class XE)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who is in immigration detention and has not been immigration cleared:

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

- (ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$35

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First instalment		
Item	Component	Amount
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant must be in Australia.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Safe Haven Enterprise (Class XE) visa may be made at the same time and place as, and combined with, the application by that person.
- (d) An application by a person for a Safe Haven Enterprise (Class XE) visa is valid only if the person:
 - (i) holds, or has ever held, a Temporary Protection (Class XD) visa or a Subclass 785 (Temporary Protection) visa, including such a visa granted before 2 December 2013; or
 - (ii) holds, or has ever held, a Safe Haven Enterprise (Class XE) visa; or
 - (iii) holds, or has ever held, a Temporary Safe Haven (Class UJ) visa; or
 - (iv) holds, or has ever held, a Temporary (Humanitarian Concern) (Class UO) visa; or
 - (v) did not hold a visa that was in effect on the person's last entry into Australia; or
 - (vi) is an unauthorised maritime arrival; or
 - (vii) was not immigration cleared on the person's last entry into Australia.
- (e) The application includes an indication, in writing, that the applicant, or a member of the same family unit as the applicant who is also an applicant for a Safe Haven Enterprise (Class XE) visa, intends to work or study while accessing minimum social security benefits in a regional area specified under subclause (4).
- (f) Either:
 - (i) the applicant has not made a valid application for a Temporary Protection (Class XD) visa (a *TPV*); or
 - (ii) the applicant has made a valid application for a TPV, and the TPV application has been refused (whether or not it has been finally determined) or withdrawn; or
 - (iii) a TPV has been granted to the applicant; or

(iv) the application for the Safe Haven Enterprise (Class XE) visa is made at the same time as an application for a TPV.

Note 1: A person to whom subparagraph (ii) applies, whose TPV application has been refused, is prevented by section 48A of the Act from making the Safe Haven Enterprise visa application unless the Minister has made a determination in relation to the person under section 48B of the Act.

Note 2: If subparagraph (iv) applies, the TPV application will be invalid: see paragraph 1403(3)(f).

(4) The Minister may, by legislative instrument, specify a regional area for the purposes of these regulations.

Note: See also regulation 2.06AAB (visa applications by holders and certain former holders of safe haven enterprise visas).

(5) Subclasses:

790 (Safe Haven Enterprise)