



Migration Regulations 1994

Statutory Rules 1994 No. 268 as amended

made under the

Migration Act 1958

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

This document has been split into seven volumes
Volume 1 contains Parts 1–3 (Rr. 1.01–3.31),
Volume 2 contains Parts 4 and 5 (Rr. 4.01–5.44) and Schedule 1,
Volume 3 contains Schedule 2 (Subclasses 010–415),
Volume 4 contains Schedule 2 (Subclasses 416–801),
Volume 5 contains Schedule 2 (Subclasses 802–995),
Volume 6 contains Schedules 3–12, and
Volume 7 contains Notes and Tables A and B
Each volume has its own Table of Contents

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Contents

Part 4 Review of decisions

Division 4.1	Review of decisions other than decisions relating to refugee status	
4.01	Interpretation	9
4.02	Prescribed MRT-reviewable decisions and who may apply for review (Act, ss 338 and 347)	9
4.10	Time for lodgment of applications with Tribunal (Act, s 347)	13
4.11	Giving the application to the Tribunal	15
4.12	Combined applications for Tribunal review	15
4.13	Tribunal review — fees and waiver	17
4.14	Refund of fees by Tribunal	17
4.15	Tribunal's power to give directions	18
4.16	Statement about decision under review	19
4.17	Prescribed periods — invitation to comment or give additional information (Act, s 359B (2))	19
4.18	Prescribed periods — invitation to comment or give additional information (Act, s 359B (3))	20
4.18A	Prescribed periods — invitation to comment or give additional information (Act, s 359B (4))	21
4.18B	Prescribed periods — invitation to comment or give additional information (Act, s 359B (5))	23
4.19	Summons to attend before Tribunal	24
4.20	Fees for persons giving evidence	25
4.21	Prescribed periods — notice to appear before Tribunal (Act, s 360A)	25
4.22	Numbers of Senior Members and members of Tribunal (Act, s 395)	26
4.23	Expedited review (close family visit visas)	26
4.24	Expedited review (decisions to cancel visas)	27
4.25	Expedited review (certain applicants in immigration detention)	27
4.26	Prescribed periods — reconstitution of Tribunal (Act, s 355A)	27
4.27	Prescribed period for making certain decisions (Act, s 367)	28

	Page
4.27A Prescribed period — notice of handing down of decisions (Act, s 368A)	28
Division 4.2 Refugee Review Tribunal and decisions relating to protection visas	
Subdivision 4.2.1 Introductory	
4.28 Interpretation	28
Subdivision 4.2.2 Tribunal members	
4.29 Membership	29
4.30 Prescribed periods — reconstitution of Tribunal (Act, s 422A)	29
Subdivision 4.2.3 General	
4.31 Applications	29
4.31A Combined applications for review by the Tribunal	30
4.31B Review by the Tribunal — fee and waiver	31
4.31C Refund (or waiver) of fee for review by the Tribunal	31
4.32 Notice of lodgment of application — person in immigration detention	32
4.33 Powers of Tribunal	33
4.34 Statement about decision under review — number of copies	33
4.35 Prescribed periods — invitation to comment or give additional information (Act, s 424B (2))	34
4.35A Prescribed periods — invitation to comment or give additional information (Act, s 424B (3))	35
4.35B Prescribed periods — invitation to comment or give additional information (Act, s 424B (4))	35
4.35C Prescribed periods — invitation to comment or give additional information (Act, s 424B (5))	36
4.35D Prescribed periods — notice to appear before Tribunal (Act, s 425A)	37
4.35E Prescribed period — notice of handing down of Tribunal decisions (Act, s 430A)	37
4.36 Duties, powers and functions of officers of Tribunal	38
4.37 Fees and allowances for persons giving evidence	38
Division 4.3 Service of documents	
4.38 Definition for Division 4.3	38
4.39 Address for service	38
4.40 Notice of decision of Tribunal	39

		Page
Part 5	Miscellaneous	
Division 5.1	Service of documents	
5.01	Definition for Division 5.1	40
5.02	Service of document on person in immigration detention	40
Division 5.2	Procedure of commissioners and prescribed authorities	
5.04	Power of Commissioner to send for witnesses and documents	41
5.05	Duty of witness to continue in attendance	41
5.06	Arrest of witness failing to appear	41
5.07	Witnesses' fees	42
5.08	Power to examine on oath or affirmation	42
5.09	Offences by witnesses	43
5.10	Statements of person not admissible in evidence against the person	43
5.11	Representation by counsel etc	43
5.12	Offences in relation to Commissioners	44
5.13	Protection of Commissioners, barristers and witnesses	44
5.14	Procedure of prescribed authorities	44
Division 5.3	General	
5.15	Behaviour concern non-citizen	45
5.15A	Certain New Zealand citizens	45
5.15C	Excised offshore places	45
5.16	Prescribed diseases — health concern non-citizen (Act, s 5 (1))	46
5.17	Prescribed evidence of English language proficiency (Act, s 5 (2) (b))	46
5.18	Prescribed laws relating to control of fishing (Act, s 262 (b))	48
5.19	Approval of nominated positions (employer nomination)	48
5.19A	Designated investment	52
Division 5.4	Prescribed penalties	
5.20	Prescribed penalties — offences (Act, ss 137, 229, 230 and 245N)	53

	Page
5.20A Prescribed penalties — civil penalties (Act, ss 140Q, 140XE, 140XF)	54
Division 5.5 Infringement notices	
5.21 Interpretation	54
5.22 When can an infringement notice be served?	56
5.23 What must an infringement notice contain?	56
5.24 Can the time for payment be extended?	57
5.25 What happens if the prescribed penalty is paid?	57
5.26 Can an infringement notice be withdrawn?	58
5.27 Refund of prescribed penalty if notice withdrawn	58
5.28 Evidence	59
5.29 Can there be more than one infringement notice for the same offence or contravention of a civil penalty provision?	59
5.30 What if payment is made by cheque?	60
5.31 Infringement notice not compulsory	60
Division 5.6 Miscellaneous	
5.32 Search warrants (Act, ss 223 (14) and 251 (4))	61
5.32A Work performed by unlawful non-citizen in detention centre	61
5.33 Document for purposes of s 274 (3) (a) of Act	61
5.34 Application of Chapter 2 of the <i>Criminal Code</i>	61
5.34D Disclosure of information to prescribed bodies	61
5.34E Disclosure of information to prescribed international organisations	62
5.35 Medical treatment of persons in detention under the Act	62
5.35AA Decisions that are not privative clause decisions	63
Division 5.6A Powers under an agreement or arrangement with a foreign country	
5.35A Definitions	64
5.35B Exercise of power to restrain an individual	64
5.35C Exercise of power to search an individual	65
5.35D Protection of persons when acts done in good faith	65
5.35E Powers when boarding certain foreign ships (Act s 245F (14))	66
5.35F Powers when boarding certain foreign ships on the high seas (Act s 245G (4))	66

	Page
Division 5.7	Charges and fees
5.36	Payment of visa application charges, and fees, in foreign currencies 68
5.37	Employer nomination fee 69
5.38	Sponsorship fee 69
5.40	Fees for assessment of a person's work qualifications and experience etc 70
5.41	Fee for further opinion of Medical Officer of the Commonwealth in merits review 70
Division 5.8	Multiple parties in migration litigation
5.43	Meaning of <i>family</i> (Act s 486B) 71
5.44	Prescription of other persons (Act s 486B) 71
Schedule 1	Classes of visa 72
Part 1	Permanent visas 72
1104AA.	Business Skills — Business Talent (Migrant) (Class EA) 72
1104A.	Business Skills — Established Business (Residence) (Class BH) 73
1104B.	Business Skills (Residence) (Class DF) 75
1108.	Child (Migrant) (Class AH) 78
1108A.	Child (Residence) (Class BT) 79
1111.	Confirmatory (Residence) (Class AK) 82
1111A.	Designated Parent (Migrant) (Class BY) 83
1111B.	Designated Parent (Residence) (Class BZ) 84
1112.	Distinguished Talent (Migrant) (Class AL) 84
1113.	Distinguished Talent (Residence) (Class BX) 85
1114.	Employer Nomination (Migrant) (Class AN) 87
1114A.	Employer Nomination (Residence) (Class BW) 88
1118A.	Special Eligibility (Class CB) 92
1120.	Independent (Migrant) (Class AT) 92
1121.	Labour Agreement (Migrant) (Class AU) 93
1121A.	Labour Agreement (Residence) (Class BV) 95
1123.	Norfolk Island Permanent Resident (Residence) (Class AW) 97
1123A.	Other Family (Migrant) (Class BO) 97
1123B.	Other Family (Residence) (Class BU) 98
1124.	Parent (Migrant) (Class AX) 100
1124A.	Aged Parent (Residence) (Class BP) 100
1124B.	Partner (Residence) (Class BS) 101

	Page
1127AA. Resolution of Status (Class CD)	103
1128. Return (Residence) (Class BB)	105
1128AA. Skill Matching (Migrant) (Class BR)	106
1128A. Skilled — Australian Linked (Migrant) (Class AJ)	108
1128B. Skilled — Australian-sponsored (Migrant) (Class BQ)	108
1128BA. Skilled — Australian-sponsored Overseas Student (Residence) (Class DE)	110
1128C. Skilled — Independent (Migrant) (Class BN)	118
1128CA. Skilled — Independent Overseas Student (Residence) (Class DD)	121
1128D. Skilled — New Zealand Citizen (Residence) (Class DB)	128
1129. Partner (Migrant) (Class BC)	130
1130. Contributory Parent (Migrant) (Class CA)	131
1130A. Contributory Aged Parent (Residence) (Class DG)	135
1131. Territorial Asylum (Residence) (Class BE)	138
1133. Witness Protection (Trafficking) (Permanent) (Class DH)	139
1134. Skilled — Designated Area-sponsored (Residence) (Class CC)	139
1135. Skilled (Migrant) (Class VE)	141
1136. Skilled (Residence) (Class VB)	143
Part 2 Temporary visas (other than bridging visas)	150
1201. Border (Temporary) (Class TA)	150
1202A. Business Skills (Provisional) (Class UR)	151
1205. Cultural/Social (Temporary) (Class TE)	153
1206. Diplomatic (Temporary) (Class TF)	158
1207. Domestic Worker (Temporary) (Class TG)	158
1208. Educational (Temporary) (Class TH)	159
1208A. Electronic Travel Authority (Class UD)	162
1209. Emergency (Temporary) (Class TI)	163
1211. Extended Eligibility (Temporary) (Class TK)	163
1212A. Graduate — Skilled (Temporary) (Class UQ)	165
1212B. Investor Retirement (Class UY)	171
1214AA. Medical Practitioner (Temporary) (Class UE)	173
1214A. Medical Treatment (Visitor) (Class UB)	173
1214BA. New Zealand Citizen Family Relationship (Temporary) (Class UP)	175
1214C. Partner (Temporary) (Class UK)	175
1215. Prospective Marriage (Temporary) (Class TO)	177

	Page
1216. Resident Return (Temporary) (Class TP)	178
1216A. Resolution of Status (Temporary) (Class UH)	179
1217. Retirement (Temporary) (Class TQ)	183
1217A. Sponsored (Visitor) (Class UL)	184
1218. Tourist (Class TR)	186
1218AA. Visitor (Class TV)	188
1218A. Skilled — Independent Regional (Provisional) (Class UX)	188
1219. Special Category (Temporary) (Class TY)	200
1220A. Partner (Provisional) (Class UF)	200
1220B. Sponsored Training (Temporary) (Class UV)	201
1221. Contributory Parent (Temporary) (Class UT)	202
1221A. Contributory Aged Parent (Temporary) (Class UU)	204
1222. Student (Temporary) (Class TU)	205
1223A. Temporary Business Entry (Class UC)	212
1223B. Temporary Safe Haven (Class UJ)	220
1223C. Temporary (Humanitarian Concern) (Class UO)	221
1224. Transit (Temporary) (Class TX)	221
1224A. Work and Holiday (Temporary) (Class US)	221
1225. Working Holiday (Temporary) (Class TZ)	223
1226. Skilled — Designated Area-sponsored (Provisional) (Class UZ)	225
1227. Maritime Crew (Temporary) (Class ZM)	227
1227A. Superyacht Crew (Temporary) (Class UW)	228
1228. Skilled (Provisional) (Class VF)	229
1229. Skilled (Provisional) (Class VC)	231
Part 3 Bridging visas	239
1301. Bridging A (Class WA)	239
1302. Bridging B (Class WB)	241
1303. Bridging C (Class WC) [see Note 4]	241
1304. Bridging D (Class WD)	243
1305. Bridging E (Class WE) [see Note 4]	243
1306. Bridging F (Class WF)	244
1307. Bridging R (Class WR)	246
Part 4 Protection, Refugee and Humanitarian visas	246
1401. Protection (Class XA)	246
1402. Refugee and Humanitarian (Class XB)	247

Part 4 Review of decisions

Division 4.1 Review of decisions other than decisions relating to refugee status

Note This Division of Part 4 deals with review of visa decisions. It refers to the definition of ***MRT-reviewable decision*** in Division 2 of Part 5 of the Act.

Review of decisions relating to protection visas is dealt with in Division 4.2.

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 Prescribed MRT-reviewable decisions and who may apply for review (Act, ss 338 and 347)

- (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 411 (Exchange) visa;
 - (b) a Subclass 415 (Foreign Government Agency) visa;
 - (c) a Subclass 416 (Special Program) visa;
 - (d) a Subclass 419 (Visiting Academic) visa;
 - (e) a Subclass 420 (Entertainment) visa;
 - (f) a Subclass 421 (Sport) visa;
 - (g) a Subclass 423 (Media and Film Staff) visa;
 - (h) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa;
 - (i) a Subclass 428 (Religious Worker) visa;
 - (j) a Subclass 442 (Occupational Trainee) visa;
 - (k) a Subclass 457 (Business (Long Stay)) visa;

Regulation 4.02

- (l) a Subclass 488 (Superyacht Crew) visa.
- (4) For subsection 338 (9) of the Act, each of the following decisions is an MRT-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 subregulation 5.19 (1B) to reject an application for approval of a nominated 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 (Business (Long Stay)) 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

Regulation 4.02

- (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.
- (4A) For paragraph (4) (a), the decision is not an MRT-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 an MRT-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.

Regulation 4.02

(4C) For paragraph (4) (n), the decision is not an MRT-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;
- (l) in the case of a decision to which paragraph (4) (m) applies — the person or organisation to whose approval the decision relates;

Regulation 4.10

- (m) in the case of a decision to which paragraph (4) (n) applies — the approved sponsor who applied for a variation of the term.

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 an MRT-reviewable decision must be given to the Tribunal:
 - (a) if the MRT-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 MRT-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 MRT-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 MRT-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 an MRT-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

Regulation 4.10

- (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 an MRT-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) An application for review of an MRT-reviewable decision must set out:
- (a) the name and address of the applicant for review; and
 - (b) a brief statement of the capacity in which the applicant applies for review; and
 - (c) details of the decision to which the application relates; and
 - (d) if:
 - (i) the application is made in relation to a decision refusing to grant a visa, or a decision relating to a points test assessed score; and
 - (ii) the applicant for the review was not also the applicant for the visa;the name and address of the applicant for the visa.
- (5) An application that is sent to the Tribunal by post is taken to be given to the Tribunal at the time it is received at a registry of the Tribunal.
- (6) An application that is sent to the Tribunal by fax or other electronic means is taken to be given to the Tribunal at the time the fax or transmission is received at a registry of the Tribunal.

Regulation 4.12

4.11 Giving the application to the Tribunal

An application for review by the Tribunal must be given to the Tribunal:

- (a) in the case of a primary decision relating to an applicant who is in immigration detention:
 - (i) at a registry of the Tribunal:
 - (A) by posting it to that registry; or
 - (B) by leaving it at that registry in a box designated for receiving applications; or
 - (C) by leaving it with an officer of the Tribunal at that registry; or
 - (D) by sending it to that registry by fax; or
 - (E) by transmitting it to that registry by other electronic means specified in a direction given by the Principal Member under section 353A of the Act; or
 - (ii) by giving it to an officer of Immigration at a detention centre, or at an office occupied by an officer of Immigration at an airport, at least 1 working day before the expiry of the period in which the application for review must be given to the Tribunal under regulation 4.10; or
- (b) in any other case — at a registry of the Tribunal by any method set out in sub-subparagraph (a) (i) (A), (B), (C), (D) or (E).

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 MRT-reviewable decisions;the applicants referred to in paragraph (b) may combine their applications for review by the Tribunal of the Minister's decisions.

Regulation 4.12

- (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 MRT-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 an MRT-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 MRT-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 \$1,400.
- (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) The Registrar, or a Deputy Registrar, of the Tribunal, or another officer of the Tribunal authorised in writing by the Registrar, may determine that the fee on an application for review by the Tribunal of a decision should not be paid if he or she is satisfied that payment of the fee has caused, or is likely to cause, severe financial hardship to the review applicant.

4.14 Refund of fees by Tribunal

- (1) The amount of a fee paid on an application for review by the Tribunal is to be refunded if:
 - (a) the decision to which the review relates is set aside or varied; or
 - (b) the application is remitted to the primary decision-maker for reconsideration; or
 - (c) the Registrar, a Deputy Registrar or another officer of the Tribunal authorised by the Registrar determines under subregulation 4.13 (4) that the fee should not be paid; or
 - (d) the applicant is not entitled to apply for review by the Tribunal; or
 - (e) the decision to which the application relates is not subject to review by the Tribunal; or

Regulation 4.15

- (f) the Minister has given a conclusive certificate as referred to in section 339 of the Act (which deals with conclusive certificates) in relation to the decision to which the application relates.

Note The conclusive certificate certifies that review would be contrary to the public interest.

- (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.

Regulation 4.17

- (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 MRT remits a prescribed matter that is mentioned in subregulation (2) to the primary decision-maker, the MRT may direct the primary decision-maker:
 - (a) to indicate to the applicant that a condition specified by the MRT 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.

Note 2 See s 390 of the Act, which modifies the Administrative Appeals Tribunal Act 1975 for the purposes of review by the Administrative Appeals Tribunal of migration decisions. Under s 43 (1A) (c), taken to be inserted in the Administrative Appeals Tribunal Act for those purposes, the matters set out in regulation 4.15 apply also to review by the Administrative Appeals Tribunal.

- (4) If, under subregulation 2.08E (2B), the MRT remits a prescribed matter mentioned in paragraph (1) (a) to the Minister for reconsideration, the MRT 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.

Regulation 4.18

- (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 2 working days after the day on which the invitation is received.
- (3) If the invitation relates to an application for review of a decision to cancel, or a decision not to revoke the cancellation of, a visa that applies to a person who is not a detainee, the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 5 working days after the day on which the invitation is received.
- (4) If the invitation relates to any other application for review, 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.
- (5) However, if the prescribed period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367 (2) of the Act, the prescribed period:
 - (a) starts when the invitation is received; and
 - (b) ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367 (2).
- (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.

4.18 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.

Regulation 4.18A

- (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:
 - (a) at the end of 2 working days after the day on which the invitation is received; or
 - (b) if the person agrees in writing — at the end of 1 working day after the day on which the invitation is received.
- (3) If the invitation relates to an application for review of a decision that applies to a person who is not a detainee, the prescribed period for giving the information or comments starts when the person receives the invitation and ends:
 - (a) at the end of 5 working days after the day on which the invitation is received; or
 - (b) if the person agrees in writing — at the end of a shorter period that is not less than 1 working day.
- (5) However, if the prescribed period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367 (2) of the Act, the prescribed period:
 - (a) starts when the invitation is received; and
 - (b) ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367 (2).

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

Regulation 4.18A

- (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, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 2 working days after the day on which the notice is received.
- (3) If the invitation relates to an application for review of a decision to cancel, or a decision not to revoke the cancellation of, a visa that applies to a person who is not a detainee, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 5 working days after the day on which the notice is received.
- (4) If the invitation relates to any other application for review, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 28 days after the day on which the notice is received.
- (5) However, if the prescribed further period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367 (2) of the Act, the prescribed further period:
 - (a) starts when notice of the extended period is received; and
 - (b) ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367 (2).
- (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, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 2 working days after the day on which the notice is received.
- (3) If the invitation relates to an application for review of a decision to cancel, or a decision not to revoke the cancellation of, a visa that applies to a person who is not a detainee, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 5 working days after the day on which the notice is received.
- (4) If the invitation relates to any other application for review, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 14 days after the day on which the notice is received.
- (5) However, if the prescribed period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367 (2) of the Act, the prescribed period:
 - (a) starts when notice of the extended period is received; and

Regulation 4.19

- (b) ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367 (2).

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

Regulation 4.21

- (ii) by prepaid post or by other prepaid means;
to the person's last residential or business address known
to the Tribunal.

4.20 Fees for persons giving evidence

- (1) For the purposes of subsection 374 (1) of the Act (which deals with the fees and allowances to be paid to a person summoned to give evidence), the fees and allowances for expenses to be paid to a person summoned to appear before the Tribunal in relation to a review by the Tribunal are the fees and allowances in accordance with the scale in Schedule 2 to the Administrative Appeals Tribunal Regulations as in force from time to time.
- (2) The presiding member of the Tribunal is to determine the fees and allowances (if any) payable to a person under subregulation (1).

4.21 Prescribed periods — notice to appear before Tribunal (Act, s 360A)

For subsection 360A (4) of the Act, the prescribed period:

- (a) if the decision under review applies to an applicant who is a detainee — starts when the applicant receives notice of the invitation to appear before the Tribunal 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 applicant receives notice of the invitation to appear before the Tribunal and ends:
 - (i) at the end of 7 working days after the day on which the notice is received; or
 - (ii) if the applicant agrees in writing — at the end of a shorter period that is not less than 1 working day.

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.

Regulation 4.22

4.22 Numbers of Senior Members and members of Tribunal (Act, s 395)

- (1) For paragraph 395 (b) of the Act (which deals with the number of Senior Members of the Tribunal), 9 is prescribed.
- (2) For paragraph 395 (c) of the Act (which deals with the number of members of the Tribunal), 110 is prescribed.

4.23 Expedited review (close family visit visas)

- (1) This regulation applies to review of a decision to refuse to grant a Short Stay Sponsored (Visitor) (Class UL) visa (also known as a Sponsored (Visitor) (Class UL) visa), a Long Stay (Visitor) (Class TN) visa, a Short Stay (Visitor) (Class TR) visa or a Tourist (Class TR) 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.

Regulation 4.26

- (4) A review authority 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.

4.26 Prescribed periods — reconstitution of Tribunal (Act, s 355A)

For subparagraph 355A (2) (c) (ii) of the Act, the prescribed period:

- (a) if the applicant for review of a decision, except a decision to which regulation 4.27 applies, is a detainee when the Tribunal is constituted for the review — starts when the Tribunal is constituted and ends at the end of 2 months after the day on which the Tribunal is constituted; or
- (b) if the applicant for review is not a detainee when the Tribunal is constituted for the review — starts when the Tribunal is constituted and ends at the end of 3 months after the day on which the Tribunal is constituted.

Regulation 4.27

**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.

**4.27A Prescribed period — notice of handing down of
decisions (Act, s 368A)**

For subsection 368A (3) of the Act, the prescribed period:

- (a) starts when the Tribunal gives the applicant notice of the day on which, and the time and place at which, the decision is to be handed down; and
- (b) ends:
 - (i) at the end of 5 working days after the day on which the notice is received; or
 - (ii) if the applicant agrees in writing — at the end of a shorter period that is not less than 1 working day.

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.

**Division 4.2 Refugee Review Tribunal and
decisions relating to protection
visas**

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 4.2.2 Tribunal members

4.29 Membership

For the purposes of subsection 458 (2) of the Act, the prescribed number of members (other than the Principal Member) of the Tribunal is 120.

4.30 Prescribed periods — reconstitution of Tribunal (Act, s 422A)

For subparagraph 422A (2) (c) (ii) of the Act, the prescribed period:

- (a) if the applicant for review of a decision is a detainee when the Tribunal is constituted for the review — starts when the Tribunal is constituted and ends at the end of 2 months after the day on which the Tribunal is constituted; or
- (b) if the applicant for review is not a detainee when the Tribunal is constituted for the review — starts when the Tribunal is constituted and ends at the end of 3 months after the day on which the Tribunal is constituted.

Subdivision 4.2.3 General

4.31 Applications

- (1) For the purposes of paragraph 412 (1) (b) of the Act, each period stated in subregulation (2) is prescribed as the period within which an application for review of an RRT-reviewable decision to which the period applies must be given to the Tribunal.
- (2) A period mentioned in subregulation (1) commences on the day on which the applicant is notified of the decision to which the application relates, and ends at the end of:
 - (a) in the case of an application given to the Tribunal by or for an applicant in immigration detention on that day — 7 working days (beginning with the first working day that occurs on or after that day); or

Regulation 4.31A

- (b) in any other case — 28 days.

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

- (3) Subject to this regulation, an application must be lodged at a registry of the Tribunal:
- (a) by posting the application to that registry; or
 - (b) by leaving it at that registry in a box designated for the lodgment of such applications; or
 - (c) by leaving it with a person employed at that registry and authorised to receive such documents; or
 - (d) by means of electronic facsimile transmission to that registry.
- (4) An application posted in accordance with paragraph (3) (a) or transmitted in accordance with paragraph (3) (d) is not to be taken to have been lodged until it is received at a registry of the Tribunal.

4.31A Combined applications for review by the Tribunal

- (1) If:
- (a) 2 or more applicants have combined their primary applications for a Protection (Class XA) 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 (Class XA) visas not be granted; and
 - (c) the Minister's decisions are RRT-reviewable decisions; the applicants referred to in paragraph (b) may combine their applications for review by the Tribunal of the Minister's decisions.
- (2) Subregulation (1) applies to an application for review made on or after 1 August 1996.

4.31B Review by the Tribunal — fee and waiver

- (1) The fee for review by the Tribunal of an RRT-reviewable decision is:
 - (a) if the application for review was made before 1 July 2003 — \$1 000; or
 - (b) if the application for review was made on or after 1 July 2003 — \$1 400.
- (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) However, if:
 - (a) the Tribunal determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol — the fee is not payable; and
 - (b) a fee has been paid under this regulation and, 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 — no further fee is payable under this regulation.
- (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.
- (5) This regulation applies in relation to a review of a decision only if the application for review was made on or after 1 July 1997.

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

Regulation 4.32

- (ii) the Tribunal determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; 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.

4.32 Notice of lodgment of application — person in immigration detention

- (1) This regulation applies in the case of an application for review of an RRT-reviewable decision that is lodged by or for a person who is in immigration detention.
- (2) The person lodging it must give notice in writing, in accordance with subregulation (3), to an officer of Immigration appointed by the Secretary to be a detention review officer in the relevant State or Territory.
- (3) The notice must:
 - (a) be given to the officer on the day on which the application is lodged; and
 - (b) state:
 - (i) the nature of the application and the name of the person in respect of whom it was lodged; and
 - (ii) the registry at which it was lodged; and
 - (iii) if the applicant is assisted by an agent (whether or not a registered agent within the meaning of Part 3 of the Act), the agent's name and address; and
 - (iv) the manner in which the application has been lodged (being a manner specified in subregulation 4.31 (3)).

Regulation 4.34

- (4) Failure to comply with this regulation does not affect the validity of an application.

4.33 Powers of Tribunal

- (1) For the purposes of paragraph 415 (2) (c) of the Act, an application for a Protection (Class XA) visa is prescribed.
- (2) For the purposes of paragraphs 415 (2) (c) of the Act and 43 (1A) (c) of the *Administrative Appeals Tribunal Act 1975* (as substituted in relation to an RRT-reviewable decision by section 452 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 and paragraph 43 (1A) (c) of the *Administrative Appeals Tribunal Act 1975* (as substituted in relation to an RRT-reviewable decision by section 452 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 under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees; but
- (b) it is not a permissible direction that the applicant satisfies a matter specified in Article 1F, 32 or 33 (2) of the Convention.

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.

Regulation 4.35

4.35 Prescribed periods — invitation to comment or give additional information (Act, s 424B (2))

- (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:
 - (a) the invitation relates to an application for review of a decision that applies to a detainee; and
 - (b) the information or comment to which the invitation relates is to be provided from a place in Australia;the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 7 days after the day on which the invitation is received.
- (3) If:
 - (a) the invitation relates to an application for review of a decision that does not apply to a detainee; and
 - (b) the information or comment to which the invitation relates is to be provided from a place in Australia;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.
- (4) If:
 - (a) the invitation relates to an application for review of a decision that applies to a detainee; and
 - (b) the information or comment to which the invitation relates is to be provided from a place that is not in Australia;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.
- (5) If:
 - (a) the invitation relates to an application for review of a decision that applies to a person who is not a detainee; and

Regulation 4.35B

(b) the information or comment to which the invitation relates is to be provided from a place that is not in Australia;
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.

- (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 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:

Regulation 4.35C

- (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) If the information or comment to which the invitation relates is to be provided from a place in Australia, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 28 days after the day on which the notice is received.
- (3) If the information or comment to which the invitation relates is to be provided from a place that is not in Australia, the period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 70 days after the day on which the notice is received.
- (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.

Regulation 4.35E

- (2) The period by which the Tribunal may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 28 days after the day on which the notice 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.

4.35D Prescribed periods — notice to appear before Tribunal (Act, s 425A)

For subsection 425A (3) of the Act, the prescribed period:

- (a) if the applicant is a detainee — starts when the applicant receives notice of the invitation to appear before the Tribunal and ends at the end of 7 days after the day on which the notice is received; or
- (b) in any other case — starts when the applicant receives notice of the invitation to appear before the Tribunal and ends at the end of 14 days after the day on which the notice 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.

4.35E Prescribed period — notice of handing down of Tribunal decisions (Act, s 430A)

For subsection 430A (3) of the Act, the prescribed period:

- (a) starts when the Tribunal gives the applicant notice of the day on which, and the time and place at which, the decision is to be handed down; and
- (b) ends at the end of 7 days after the day on which notice is received.

Note 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.

Regulation 4.36

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 an RRT-reviewable decision;
- (c) the directing of attendance at a registry of the Tribunal in connection with the review of an RRT-reviewable decision.

4.37 Fees and allowances for persons giving evidence

- (1) For the purposes of subsection 436 (1) of the Act, the fees and allowances for expenses to be paid to a person summoned to appear before the Tribunal in relation to a review by the Tribunal are the fees and allowances in accordance with the scale in Schedule 2 to the Administrative Appeals Tribunal Regulations as in force from time to time.
- (2) The principal member of the Tribunal is to determine the fees and allowances (if any) payable to a person under subregulation (1).

Division 4.3 Service of documents

4.38 Definition for Division 4.3

In this Division:

Tribunal means the Migration Review Tribunal or the Refugee Review Tribunal.

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.

Regulation 4.40

- (2) An applicant for review 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.

4.40 Notice of decision of Tribunal

- (1) A notice or statement to be given to an applicant in relation to a decision of the Migration Review Tribunal must be given by one of the methods specified in section 379A of the Act.

Note 1 If the Migration Review 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 served on a person in immigration detention is served in the manner specified in regulation 5.02.

- (2) A notice or statement to be given to an applicant in relation to a decision of the Refugee Review Tribunal must be given by one of the methods specified in section 441A of the Act.

Note 1 If the Refugee Review 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.

Regulation 5.01

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.

Regulation 5.07

- (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*).

- (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.

Regulation 5.12

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 Certain New Zealand citizens

For the purposes of paragraph 32 (2) (c) of the Act, it is declared that the class of persons each of whom:

- (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 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;

is a class of persons for whom a visa of a class other than Special Category (Temporary) (Class TY) would be inappropriate.

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.

Regulation 5.16

- (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 that the person has a qualification or experience, or has attained test results, set out in column 2 of an item in Part 3 of Schedule 6, being a qualification, experience or test results in relation to which 10 points or more is specified in column 3 of that item;
- (b) evidence that the person has been awarded 10 or more points under Part 3 of Schedule 6 (including points awarded because of a determination by the Minister under subregulation 2.26 (4));

Regulation 5.17

- (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;
- (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.

Regulation 5.18

**5.18 Prescribed laws relating to control of fishing
(Act, s 262 (b))**

For the purposes of paragraph 262 (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) An employer may apply to the Minister for approval of a nominated position as an ***approved appointment***.
- (1A) Application must be:
 - (a) made in accordance with approved form 785 or 1054; and
 - (b) accompanied by the fee prescribed in regulation 5.37.
- (1B) The Minister may, in writing, approve or reject an application.
- (1C) However:
 - (a) the Minister must approve an application if:
 - (i) the application is made in accordance with subregulation (1A); and
 - (ii) the nominated position is the subject of an employer nomination that:
 - (A) if the application was made using form 785 — meets the requirements of subregulation (2); or

Regulation 5.19

- (B) if the application was made using form 1054 — meets the requirements of subregulation (4); and
 - (iii) the employer is not the subject of an action that is described in section 140L of the Act (as in force immediately before 14 September 2009) or section 140M of the Act; and
 - (b) the Minister must reject an application if any of the requirements in paragraph (a) is not met.
- (1D) As soon as practicable after deciding an application, the Minister must give the employer:
- (a) a copy of the written approval or rejection of the application; and
 - (b) if the application is rejected:
 - (i) a written statement of the reasons why the application was rejected; and
 - (ii) a written statement that the decision is an MRT-reviewable decision.

Note Division 4.1 deals with review of decisions. Paragraph 4.02 (4) (e) provides that a decision under subregulation 5.19 (1B) to reject an application is an **MRT-reviewable decision**. **MRT-reviewable decision** is defined in Division 2 of Part 5 of the Act.

- (2) An employer nomination meets the requirements of this subregulation if:
- (a) the employer nomination is made by an employer in respect of a need for a paid employee (the **employee**) in a business:
 - (i) actively and lawfully operating in Australia; and
 - (ii) operated by that employer; and
 - (b) the Minister is satisfied that nothing adverse is known to Immigration about the business background of:
 - (i) the employer; or
 - (ii) any officer of any of the entities that constitute the employer; or
 - (iii) any individual who is a member of a partnership that is 1 of the entities that constitute the employer; and

Regulation 5.19

- (c) the Minister is satisfied that the employer has a satisfactory record of compliance with the immigration laws of Australia; and
- (d) the Minister is satisfied that the employer has a satisfactory record of compliance with workplace relations laws of:
 - (i) the Commonwealth; and
 - (ii) each State or Territory in which the employer operates the business and has employees of that business; and
- (e) the Minister is satisfied:
 - (i) that the employer has made, and continues to make, adequate provision for training existing employees in work relevant to the business; or
 - (ii) if the business is newly established, that the employer is making adequate provision for future training of employees in work relevant to the business; and
- (f) the appointment will:
 - (i) provide the employee with full-time employment; and
 - (ii) be for at least 3 years, and not subject to any express exclusion of the possibility of renewal; and
- (g) the employee's working conditions will be no less favourable than working conditions provided for under relevant Australian legislation and awards; and
- (h) the tasks to be performed in the nominated position:
 - (i) correspond to the tasks of an occupation specified in a Gazette Notice in force for this subparagraph at the time at which the application for approval of the nominated position is made; and
 - (ii) will be carried out in a location specified, for the relevant occupation, in a Gazette Notice in force for this subparagraph at the time at which the application for approval of the nominated position is made; and
- (i) the employee will be paid a salary in the nominated position that is at least the salary specified, for the relevant

Regulation 5.19

occupation and location, in a Gazette Notice in force for this paragraph at the time at which the application for approval of the nominated position is made.

- (4) An employer nomination meets the requirements of this subregulation if:
- (a) the employer nomination is made by an employer in respect of a need for a paid employee in a business that is:
 - (i) actively and lawfully operating in regional Australia; and
 - (ii) operated by that employer; and
 - (b) either:
 - (i) the appointment:
 - (A) will provide the employee with full-time employment; and
 - (B) will be for at least 2 years; and
 - (C) will be located in regional Australia; or
 - (ii) if the employer nomination relates to a person designated under regulation 2.07AO — the appointment:
 - (A) will provide the employee with either continuing full-time employment or seasonal employment that will continue; and
 - (B) is in accordance with the employment the employee has undertaken in regional Australia over the previous 12 months; and
 - (C) will be located in regional Australia; and
 - (c) unless the appointment is exceptional, the work to be performed requires the appointment of a person who has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification; and
 - (d) the employee is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards; and
 - (e) a body specified by Gazette Notice for this paragraph certifies that the employer nomination meets the requirements of paragraphs (a), (b) and (c); and

Regulation 5.19A

- (f) the Minister is satisfied that nothing adverse is known to Immigration about the business background of:
 - (i) the employer; or
 - (ii) any officer of any of the entities that constitute the employer; or
 - (iii) any individual who is a member of a partnership that is 1 of the entities that constitute the employer; and
 - (g) the Minister is satisfied that the employer has a satisfactory record of compliance with the immigration laws of Australia; and
 - (h) the Minister is satisfied that the employer has a satisfactory record of compliance with workplace relations laws of:
 - (i) the Commonwealth; and
 - (ii) each State or Territory in which the employer operates the business and has employees of that business.
- (5) In this regulation:
regional Australia means a part of Australia specified by Gazette Notice for this definition.

5.19A Designated investment

- (1) Subject to subregulation (2), the Minister may specify by Gazette Notice 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.

Division 5.4 Prescribed penalties

5.20 Prescribed penalties — offences (Act, ss 137, 229, 230 and 245N)

- (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.

Note Section 137 permits the Secretary to require information from the holder of a business visa.

Section 229 prohibits the carrying of persons to Australia without visas.

Section 230 makes it an offence to have an unlawful non-citizen concealed on a vessel entering Australia.

Subsection 245L (2) establishes an obligation on an operator of an aircraft or ship to report to the Department about passengers and crew prior to their arrival in Australia.

Subsection 245N (2) makes it an offence for an operator of an aircraft or ship to contravene subsection 245L (2).

Regulation 5.20A

5.20A Prescribed penalties — civil penalties (Act, ss 140Q, 140XE, 140XF)

For subsection 140R (1) of the Act, the penalty to be paid as an alternative to the Minister applying to a Court for an order that a pecuniary penalty be paid for a contravention of subsection 140Q (1), 140Q (2), 140XE (3) or 140XF (3) of the Act is:

- (a) if the person has previously been issued an infringement notice for an alleged contravention of a civil penalty provision, or has been ordered by a Court to pay a pecuniary penalty for contravention of a civil penalty provision:
 - (i) in the case of a natural person — 12 penalty units; or
 - (ii) in the case of a body corporate — 60 penalty units; or
- (b) if paragraph (a) does not apply to the person:
 - (i) in the case of a natural person — 6 penalty units; or
 - (ii) in the case of a body corporate — 30 penalty units.

Note 1 Subsections 140Q (1) and (2) of the Act are civil penalty provisions that are contravened if an approved sponsor or a former approved sponsor fails to satisfy a sponsorship obligation.

Note 2 Subsection 140XE (3) of the Act is a civil penalty provision that is contravened if a person does not comply with a requirement to:

- (a) tell an inspector the person's name and address if the inspector reasonably believes that the person has contravened a civil penalty provision; or
- (b) give evidence of the correctness of the person's name and address if the inspector reasonably believes that the name or address provided by the person is false.

Note 3 Subsection 140XF (3) of the Act is a civil penalty provision that is contravened if a person does not comply with a notice to produce a record or document to an inspector.

Division 5.5 Infringement notices

5.21 Interpretation

- (1) In this Division:
authorised officer includes the Secretary.

Regulation 5.21

business visa has the same meaning as in section 137 of the Act.

infringement notice means a notice under regulation 5.22.

offence means a contravention of:

- (a) section 137, 229 or 230 of the Act; or
- (b) subsection 245N (2) of the Act.

prescribed penalty means:

- (a) in relation to an offence — the penalty prescribed by regulation 5.20 for the offence; or
- (b) in relation to a civil penalty provision — the penalty prescribed by regulation 5.20A for a contravention of the civil penalty provision.

Note 1 Section 137 of the Act permits the Secretary to require information from the holder of a business visa.

Subsections 140Q (1) and (2) of the Act are civil penalty provisions that are contravened if an approved sponsor or a former approved sponsor fails to satisfy a sponsorship obligation.

Subsection 140XE (3) of the Act is a civil penalty provision that is contravened if a person does not comply with a requirement to:

- (a) tell an inspector the person's name and address if the inspector reasonably believes that the person has contravened a civil penalty provision; or
- (b) give evidence of the correctness of the person's name and address if the inspector reasonably believes that the name or address provided by the person is false.

Subsection 140XF (3) of the Act is a civil penalty provision that is contravened if a person does not comply with a notice to produce a record or document to an inspector.

Section 229 of the Act prohibits the carrying of persons to Australia without visas.

Section 230 of the Act makes it an offence to have an unlawful non-citizen concealed on a vessel entering Australia.

Subsection 245L (2) of the Act establishes an obligation on an operator of an aircraft or ship to report to the Department about passengers and crew prior to their arrival in Australia.

Subsection 245N (2) of the Act makes it an offence for an operator of an aircraft or ship to contravene subsection 245L (2).

Note 2 ***civil penalty provision*** is defined in subsection 5 (1) of the Act.

Regulation 5.22

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 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 a 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

Regulation 5.25

- (d) set out the prescribed 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; and
 - (h) if the notice is for a contravention of a civil penalty provision — state that if the provision is contravened after the day on which, or the period over which, the contravention specified in the notice occurred, the person will have contravened the provision again and further action may be taken to sanction the person as mentioned in section 140K of the Act.
- (2) 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 prescribed 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 prescribed penalty is paid?

If the person on whom an infringement notice is served pays the prescribed 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

Regulation 5.26

- (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 prescribed penalty if notice withdrawn

If:

- (a) an infringement notice has been served on a person; and
 - (b) the person has paid the prescribed 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.

Regulation 5.29

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 the authorised officer:
 - (a) did not allow further time for payment of the penalty specified in the infringement notice under regulation 5.24 and the penalty was not paid within the time allowed for payment of the notice; or
 - (b) allowed a further period (as specified in the certificate) for payment of the penalty specified in the infringement notice and the penalty was not paid within that further period; or
 - (c) 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 prescribed penalty in accordance with one of the infringement notices.

Regulation 5.30

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

Regulation 5.34E

- (b) the Commonwealth; or
- (c) a State; or
- (d) a Territory;

that is specified by the Minister by Gazette Notice 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 specified by the Minister by Gazette Notice for this regulation is a prescribed international organisation.

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
 - (iv) if medical treatment is not given to that detainee, there will be a serious risk to his or her life or health; and

Regulation 5.35AA

- (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

Regulation 5.35A

Item	Provision	Subject matter of provision
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

Regulation 5.35E

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

Regulation 5.35F

- (iii) any property under the immediate control of the individual;
- (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.

Regulation 5.36

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 for the purposes of this paragraph by Gazette Notice; and
 - (b) in a currency that is specified for the purposes of this paragraph by Gazette Notice as a currency in which a fee may be paid in that place.

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

- (1A) The amount of the payment is to be ascertained as follows:
- (a) if the currency in which the amount is to be paid is a currency for which an amount corresponding to the amount of the fee in Australian dollars is specified for the purposes of this paragraph by Gazette Notice — in accordance with the amount specified in the Gazette Notice that corresponds to the amount of the fee in Australian dollars;
 - (b) if the currency in which the amount is to be paid is any other currency — in accordance with the formula in subregulation (2).
- (2) The formula is:

$$AUD \times CER \times 1.05$$

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

Regulation 5.38

- (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 the visa application charge; or
 - (b) a fee payable under these Regulations.

5.37 Employer nomination fee

- (1) The fee payable in respect of an employer nomination to which subregulation 5.19 (2) applies is \$455 and must be paid at the time the nomination is lodged.
- (2) No fee is payable in respect of an employer nomination to which subregulation 5.19 (4) applies.

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 426 (Domestic Worker (Diplomatic or Consular)) visa or a Sponsored (Visitor) (Class UL) 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.

Regulation 5.40

- (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 an Agency within the meaning of the *Financial Management and Accountability Act 1997* 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 Migration Review 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

Regulation 5.44

- (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.

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.

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

Note Arrangements that affect certain visas mentioned in this Part can be found in regulation 2.12BC.

1104AA. Business Skills — Business Talent (Migrant) (Class EA)

- (1) Forms: 47BU, 1213 and 1224.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$4 995
 - (b) Second instalment (payable before grant of visa):
 - (i) For each applicant who:
 - (A) was at least 18 years old at 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: \$7 165
 - (ii) For each applicant who:
 - (A) was at least 18 years old at 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: \$3 575
 - (iii) In any other case: Nil.

(3) Other:

(a) Application must be made:

- (i) if the applicant's residential address, given using form 47BU, is in PRC, including Hong Kong or Macau — at the address in Hong Kong specified in a Gazette Notice for this subparagraph; or
 - (ii) if the applicant's residential address, given using form 47BU, is in Taiwan — at the address in Taipei specified in a Gazette Notice for this subparagraph; or
 - (iii) if subparagraphs (i) and (ii) do not apply — at the address in Perth specified in a Gazette Notice for this subparagraph.
- (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 — Business Talent (Migrant) (Class EA) 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 132 (Business Talent) visa:
- (i) applicant must be sponsored by a State or Territory; and
 - (ii) form 1224 must be signed by the Premier or Chief Minister, or by a person authorised by the Premier or Chief Minister, of that State or Territory.

(4) Subclasses:

132 (Business Talent)

1104A. Business Skills — Established Business (Residence) (Class BH)

- (1) Forms: 47BU and 1138.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$4 995

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

(i) In the case of each applicant who:

- (A) was 18 years or more at 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 — Established Business (Residence) (Class BH): \$7 165

(ii) In the case of each applicant who:

- (A) was 18 years or more at 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 — Established Business (Residence) (Class BH): \$3 575

(iii) In any other case: 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 Business Skills — Established Business (Residence) (Class BH) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

845 (Established Business in Australia)

846 (State/Territory Sponsored Regional Established Business in Australia)

1104B. Business Skills (Residence) (Class DF)

- (1) Forms:
 - (a) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 890 (Business Owner) visa: 47BU and 1217
 - (b) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 891 (Investor) visa: 47BU
 - (c) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa: 47BU, 1217 and 949
 - (d) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 893 (State/Territory Sponsored Investor) visa: 47BU and 949.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa: \$235.
 - (ii) In any other case: \$1 435.
 - (b) Second instalment (payable before grant of visa):
 - (i) For each applicant who:
 - (A) was at least 18 years old at 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: \$3 575
 - (ii) In any other case: Nil.

(3) Other:

- (a) Application must be made in Australia, but not in immigration clearance.
- (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:
 - (i) if the applicant is not a person designated under regulation 2.07AO — 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, or the former spouse or former de facto partner of the applicant, satisfied the primary criteria for the grant of the visa; or
 - (ii) if the applicant is a person designated under regulation 2.07AO:
 - (A) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
 - (B) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
 - (C) a Subclass 785 (Temporary Protection) visa; or
 - (D) a Subclass 695 (Return Pending) 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:
 - (i) if the applicant is not a person designated under regulation 2.07AO:
 - (A) 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, or the former spouse or former de facto partner of the applicant, satisfied the primary criteria for the grant of the visa; or
- (B) applicant must hold a Subclass 457 (Business (Long Stay)) visa, granted on the basis that the applicant, or the spouse or de facto partner of the applicant, or the former spouse or former de facto partner of the applicant, satisfied the criteria in subclause 457.223 (7) or (7A) for the grant of the visa; or
- (C) applicant:
- (I) must hold a Skilled — Independent Regional (Provisional) (Class UX) visa; or
 - (II) must have held a Skilled — Independent Regional (Provisional) (Class UX) visa at any time in the 28 days immediately before making the application; and
- (ii) if the applicant is a person designated under regulation 2.07AO, applicant must hold:
- (A) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
 - (B) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
 - (C) a Subclass 785 (Temporary Protection) visa; or
 - (D) a Subclass 695 (Return Pending) 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.
 - (j) If the applicant:
 - (i) is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; and
 - (ii) seeks to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa;the applicant has held 1 or more Skilled — Independent Regional (Provisional) (Class UX) visas for a total of at least 2 years.
- (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: 47CH.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant whose brother or sister:

-
- (A) applies for a Child (Migrant) (Class AH) visa at the same time and place as the applicant; and
 - (B) has paid the amount of charge specified in subparagraph (ii) or (iii) on his or her application: Nil
 - (ii) In the case of an applicant who appears to the Minister, on the basis of information contained in the application, to be an orphan relative: \$1 060
 - (iii) In any other case: \$1 735
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
- (a) Application must be made 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.
- (4) Subclasses:
- 101 (Child)
 - 102 (Adoption)
 - 117 (Orphan Relative)

1108A. Child (Residence) (Class BT)

- (1) Form: 47CH.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant whose brother or sister:
 - (A) applies for a Child (Residence) (Class BT) visa at the same time and place as the applicant; and
 - (B) has paid the amount of charge specified in subparagraph (ii) or (v) on his or her application: Nil

- (ii) In the case of an applicant who appears to the Minister, on the basis of information contained in the application, to be an orphan relative: \$1 060
- (iii) In the case of an applicant:
 - (A) whose parent has been granted a permanent visa; and
 - (B) who was included in the parent's application for:
 - (I) a Group 1.1 (migrant) visa under the Migration (1993) Regulations; or
 - (II) a business (joint venture) visa (code number 122) or a business (general) visa (code number 123) under the Migration (1989) Regulations: Nil
- (iv) In the case of an applicant whose application is supported by a letter of support from a State or Territory government welfare authority: Nil
- (v) In any other case: \$2 575
- (b) Second instalment (payable before grant of visa): Nil.
- (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.
 - (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.

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- (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.
- (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: 852.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of each applicant who, on last arriving in Australia, was granted a Subclass 773 (Border) visa: \$200
 - (ii) In any other case: Nil
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of a holder of a Subclass 302 (Emergency (Permanent Visa Applicant)) visa: the second instalment of the visa application charge that applied to the principal visa, less any payment already made towards that instalment.
 - (ii) In any other case: Nil.

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- (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.
 - (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.
- (4) Subclasses:
- 808 (Confirmatory)

1111A. Designated Parent (Migrant) (Class BY)

- (1) Form: Nil.
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made): Nil.
 - (b) Second instalment (payable before grant of visa):
 - (i) if the applicant has turned 18 at the time of application: \$5,000
 - (ii) if the applicant has not turned 18 at the time of application: \$960.
- (3) Other:
- (a) Application must be made outside Australia in the period from 1 November 1999 to the end of 28 April 2000.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Designated Parent (Migrant) (Class BY) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
- 118 (Designated Parent)

Note See regulation 2.07AE for how an application for a Designated Parent (Migrant) (Class BY) visa must be made.

1111B. Designated Parent (Residence) (Class BZ)

- (1) Form: Nil.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): Nil.
 - (b) Second instalment (payable before grant of visa):
 - (i) if the applicant has turned 18 at the time of application: \$5,000
 - (ii) if the applicant has not turned 18 at the time of application: \$960.
- (3) Other:
 - (a) Application must be made in Australia, but not in immigration clearance, in the period from 1 November 1999 to the end of 28 April 2000.
 - (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 Designated Parent (Residence) (Class BZ) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 859 (Designated Parent)

Note See regulation 2.07AE for how an application for a Designated Parent (Residence) (Class BZ) visa must be made.

1112. Distinguished Talent (Migrant) (Class AL)

- (1) Form: 47SV.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$1 735
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant who was 18 years or more at time of application and is assessed as not having functional English: \$3 575

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- (ii) In any other case: Nil.
- (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 Gazette Notice for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in a Gazette Notice 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 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: 47SV.
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made): \$2 575.

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

- (i) In the case of each applicant who was 18 years or more at time of application and is assessed as not having functional English: \$3 575
- (ii) In any other case: Nil.

(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 Gazette Notice for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in a Gazette Notice for this subparagraph.

Note Regulation 2.12BC sets out special arrangements for the making of applications by persons designated under regulation 2.07AO. The arrangements in paragraph 1113 (3) (aa) do not apply to those persons.

- (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)

1114. Employer Nomination (Migrant) (Class AN)

- (1) Form: 47ES (unless the applicant is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa, in which case no form is required).
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made):
- (i) In the case of an applicant who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa: Nil
- (ii) In the case of an applicant:
- (A) who has made a valid application for a Skilled (Migrant) (Class VE) visa; and
- (B) in relation to whom a decision to grant or refuse to grant a Subclass 175 (Skilled — Independent) or a Subclass 176 (Skilled — Sponsored) visa has not been made: Nil
- (iii) In any other case: \$1 735.
- (b) Second instalment (payable before grant of visa):
- (i) Subject to subparagraph (iii), in the case of each applicant who:
- (A) was 18 years or more at 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 Employer Nomination (Migrant) (Class AN): \$7 165
- (ii) Subject to subparagraph (iii), in the case of each applicant (including a person taken by paragraph 2.08C (5) (b) to be included in an application) who:
- (A) was 18 years or more at 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 Employer Nomination (Migrant) (Class AN): \$3 575
 - (iii) In the case of:
 - (A) an applicant who is a religious worker within the meaning of paragraph 5 (4) (a) of the *Immigration (Education) Charge Regulations 1993*; or
 - (B) a member of the family unit of an applicant referred to in sub-subparagraph (A): Nil
 - (iv) In the case of a Skill Matching (Migrant) (Class BR) visa applicant who is taken, under subregulation 2.08C (4), to have applied for an Employer Nomination (Migrant) (Class AN) visa: \$1 690.
 - (v) In any other case: Nil.
- (3) Other:
- (a) Application must be made in 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 an Employer Nomination (Migrant) (Class AN) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
- 119 (Regional Sponsored Migration Scheme)
 - 121 (Employer Nomination Scheme)

1114A. Employer Nomination (Residence) (Class BW)

- (1) Form: 47ES.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken, under regulation 2.08CA or 2.08CB, to have applied for an Employer Nomination (Residence) (Class BW) visa: Nil

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- (ii) In the case of an applicant who 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: \$235
 - (iii) In the case of an applicant:
 - (A) who has made a valid application for a Skilled (Residence) (Class VB) visa; and
 - (B) in relation to whom a decision to grant or refuse to grant a Subclass 885 (Skilled — Independent) visa or a Subclass 886 (Skilled — Sponsored) visa has not been made: Nil
 - (iv) In the case of an applicant:
 - (A) who has made a valid application for a Skilled (Migrant) (Class VE) visa while being the holder of a Subclass 444 (Special Category) visa; and
 - (B) in relation to whom a decision to grant or refuse to grant a Subclass 175 (Skilled — Independent) visa or a Subclass 176 (Skilled — Sponsored) visa has not been made: Nil
 - (v) In any other case: \$2 575.
 - (b) Second instalment (payable before grant of visa):
 - (i) Subject to subparagraphs (iii) and (iv), in the case of each applicant who:
 - (A) was 18 years or more at time of application; and
 - (AA) is not the holder of:
 - (I) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
 - (II) a Subclass 475 (Skilled — Regional Sponsored) visa; or

- (III) a Subclass 487 (Skilled — Regional Sponsored) visa; 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 Employer Nomination (Residence) (Class BW): \$7 165
- (ii) Subject to subparagraph (iii), in the case of each applicant (including a person taken by paragraph 2.08C (2) (b) to be included in an application) who:
 - (A) was 18 years or more at time of application; and
 - (AA) is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; 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 Employer Nomination (Residence) (Class BW): \$3 575
- (iii) In the case of:
 - (A) an applicant who is a religious worker within the meaning of paragraph 5 (4) (a) of the *Immigration (Education) Charge Regulations 1993*; or
 - (B) a member of the family unit of an applicant mentioned in sub-subparagraph (A): Nil
- (iv) In the case of an applicant:
 - (A) to whom subparagraphs (i), (ii) and (iii) do not apply; and
 - (B) who had turned 18 at the time of application; and
 - (C) who is assessed as not having functional English; and
 - (D) who has not previously paid a second instalment for an application for any of the following visas:
 - (I) Skilled — Independent Regional (Provisional) (Class UX) visa;

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- (II) Subclass 475 (Skilled — Regional Sponsored) visa;
- (III) Subclass 487 (Skilled — Regional Sponsored) visa: \$3 575
- (v) In any other case: Nil.
- (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) In the case of an applicant who:
- (i) is the holder of 1 of the following visas:
- (A) Skilled — Independent Regional (Provisional) (Class UX) visa;
- (B) Subclass 475 (Skilled — Regional Sponsored) visa;
- (C) Subclass 487 (Skilled — Regional Sponsored) visa; and
- (ii) seeks to satisfy the primary criteria for the grant of a Subclass 856 (Employer Nomination Scheme) visa;
- the applicant has held 1 or more of the following visas for a total of at least 2 years:
- (iii) Skilled — Independent Regional (Provisional) (Class UX) visa;
- (iv) Subclass 475 (Skilled — Regional Sponsored) visa;
- (v) Subclass 487 (Skilled — Regional Sponsored) visa.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Employer Nomination (Residence) (Class BW) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
- 856 (Employer Nomination Scheme)
- 857 (Regional Sponsored Migration Scheme)

1118A. Special Eligibility (Class CB)

- (1) Form: 47SV.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is in Australia: \$2 575
 - (ii) In the case of an applicant who is outside Australia: \$1 735
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant who was 18 years or more at time of application and is assessed as not having functional English: \$3 575
 - (ii) In any other case: Nil.
- (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 by the Minister in an instrument in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing 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 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)

1120. Independent (Migrant) (Class AT)

- (1) Form: 47.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$1 080

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- (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant who was 18 years or more at time of application and is assessed as not having functional English: \$2 315
 - (ii) In any other case: Nil.
 - (3) Other:
 - (a) Application must be made 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 Independent (Migrant) (Class AT) visa may be made at the same time and place as, and combined with, the application by that person.
 - (c) Application must be made before 1 July 1999.
 - (4) Subclasses:
 - 126 (Independent)
 - 135 (State/Territory-Nominated Independent)

1121. Labour Agreement (Migrant) (Class AU)

- (1) Form: 47ES (unless the applicant is taken, under regulation 2.08C, to have applied for a Labour Agreement (Migrant) (Class AU) visa, in which case no form is required).
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken, under regulation 2.08C, to have applied for a Labour Agreement (Migrant) (Class AU) visa: Nil
 - (ii) In the case of an applicant:
 - (A) who has made a valid application for a Skilled (Migrant) (Class VE) visa; and
 - (B) in relation to whom a decision to grant or refuse to grant a Subclass 175 (Skilled — Independent) visa or a Subclass 176 (Skilled — Sponsored) visa has not been made: Nil
 - (iii) In any other case: \$1 735.

- (b) Second instalment (payable before grant of visa):
 - (i) Subject to subparagraph (iii), in the case of each applicant who:
 - (A) was 18 years or more at 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 Labour Agreement (Migrant) (Class AU): \$7 165
 - (ii) Subject to subparagraph (iv), in the case of each applicant (including a person taken by paragraph 2.08C (8) (b) to be included in an application) who:
 - (A) was 18 years or more at 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 Labour Agreement (Migrant) (Class AU): \$3 575
 - (iii) In the case of an applicant who is a person (a *religious worker*):
 - (A) who seeks to enter Australia to work in accordance with a labour agreement entered into by a religious institution; and
 - (B) who satisfies the primary criteria for the grant of a visa of a subclass included in Labour Agreement (Migrant) (Class AU): Nil
 - (iv) In the case of an applicant who:
 - (A) is a member of the family unit of a religious worker; and
 - (B) satisfies the secondary criteria for the grant of a visa of a subclass included in Labour Agreement (Migrant) (Class AU): Nil

- (v) In the case of a Skill Matching (Migrant) (Class BR) visa applicant who is taken, under subregulation 2.08C (7), to have applied for a Labour Agreement (Migrant) (Class AU) visa: \$1 690
 - (vi) In any other case: Nil.
- (3) Other:
- (a) Application must be made in 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 Labour Agreement (Migrant) (Class AU) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
- 120 (Labour Agreement)

1121A. Labour Agreement (Residence) (Class BV)

- (1) Form: 47ES.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken, under regulation 2.08CC, to have applied for a Labour Agreement (Residence) (Class BV) visa: Nil
 - (ii) In the case of an applicant:
 - (A) who has made a valid application for a Skilled (Residence) (Class VB) visa; and
 - (B) in relation to whom a decision to grant or refuse to grant a Subclass 885 (Skilled — Independent) visa or a Subclass 886 (Skilled — Sponsored) visa has not been made: Nil
 - (iii) In the case of an applicant:
 - (A) who has made a valid application for a Skilled (Migrant) (Class VE) visa while being the holder of a Subclass 444 (Special Category) visa; and

- (B) in relation to whom a decision to grant or refuse to grant a Subclass 175 (Skilled — Independent) visa or a Subclass 176 (Skilled — Sponsored) visa has not been made: Nil
- (iv) In any other case: \$2 575.
- (b) Second instalment (payable before grant of visa):
 - (i) Subject to subparagraphs (iii) and (iv), in the case of each applicant who:
 - (A) was 18 years or more at 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 Labour Agreement (Residence) (Class BV): \$7 165
 - (ii) Subject to subparagraphs (iii) and (iv), in the case of each applicant who:
 - (A) was 18 years or more at 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 Labour Agreement (Residence) (Class BV): \$3 575
 - (iii) In the case of an applicant who is a person (a *religious worker*):
 - (A) who seeks to work, or is working, in accordance with a labour agreement entered into by a religious institution; and
 - (B) who satisfies the primary criteria for the grant of a visa of a subclass included in Labour Agreement (Residence) (Class BV): Nil
 - (iv) In the case of an applicant who:
 - (A) is a member of the family unit of a religious worker; and

(B) satisfies the secondary criteria for the grant of a visa of a subclass included in Labour Agreement (Residence) (Class BV): Nil

(v) In any other case: Nil.

(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.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Labour Agreement (Residence) (Class BV) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

855 (Labour Agreement)

1123. Norfolk Island Permanent Resident (Residence) (Class AW)

(1) Form: 15.

(2) Visa application charge: Nil.

(3) Other:

- (a) Application must be made in immigration clearance.
- (b) Applicant must be in immigration clearance.
- (c) The applicant must show a clearance officer a passport that is in force and that is endorsed with an authority to reside indefinitely on Norfolk Island.

(4) Subclasses:

834 (Permanent Resident of Norfolk Island)

1123A. Other Family (Migrant) (Class BO)

(1) Form: 47OF.

(2) Visa application charge:

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

- (i) In the case of an applicant who appears to the Minister, on the basis of information contained in the application, to be a carer: \$1 060
 - (ii) In any other case: \$1 735
- (b) Second instalment (payable before grant of visa):
 - (i) In the case of an 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
 - (ii) In any other case: \$1 510.
- (3) Other:
 - (a) Application must be made 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: 47OF.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):

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- (i) In the case of an applicant who appears to the Minister, on the basis of information contained in the application, to be a carer: \$1 060
 - (ii) In any other case: \$2 575.
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of an 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
 - (ii) In any other case: \$1 510.
 - (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.
 - (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 application is made): \$1 735
 - (b) Second instalment (payable before grant of visa): \$1 510
- (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 Gazette Notice for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in a Gazette Notice 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 application is made): \$2 575
 - (b) Second instalment (payable before grant of visa): \$1 510.

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- (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.
 - (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 application is made):
 - (i) In the case of an applicant who is the holder of a Subclass 445 (Dependent Child) visa: Nil
 - (ii) In the case of an applicant 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: \$300
 - (iii) In the case of 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: \$1 060
- (iv) In the case of 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: \$1 060
- (v) In the case of 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: \$840
- (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: \$1 060

- (vii) In any other case: \$2 575
- (b) Second instalment (payable before grant of visa): 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.
- (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: 1364.
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application must be made in Australia.
 - (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: <ul style="list-style-type: none"> (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or 	Nil	Nil

Item	Criterion 1	Criterion 2	Criterion 3
	(c) a Subclass 695 (Return Pending) visa; or (d) a Subclass 785 (Temporary Protection) visa		
2	Applicant held, but no longer holds, a visa of a kind mentioned in criterion 1 of item 1, 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
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

(4) Subclasses:

851 (Resolution of Status)

(5) For this item, a person (**person A**) is a member of the same family unit as another person (**person B**) if:

- (a) person A is a member of person B's family unit; or
- (b) person B is a member of person A's family unit; or
- (c) person A and person B are members of the family unit of a third person.

1128. Return (Residence) (Class BB)

- (1) Form:
 - (a) If the application is an Internet application: 1085E
 - (b) In any other case: 1085 (unless the application is in accordance with subparagraph (3) (a) (iii), in which case no form is required).
 - (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) Application made in Australia: \$260
 - (ii) Application made outside Australia: \$260
 - (b) Second instalment (payable before grant of visa): Nil.
 - (3) Other:
 - (a) For an application (not being an Internet application):
 - (i) the application may be made in or outside Australia, but not in immigration clearance; and
 - (ii) the applicant must be in Australia to make an application in Australia; and
 - (iii) an application made in Australia may be:
 - (A) an oral application; or
 - (B) an application in writing, otherwise than in accordance with form 1085;if accompanied by presentation of a valid passport.
 - (b) For an Internet application the applicant must be in Australia, but not in immigration clearance.
- Note* An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.
- (c) Application by a person who is included in the passport of another applicant for a Return (Residence) (Class BB) 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 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 AAT.

(4) Subclasses:

- 155 (Five Year Resident Return)
- 157 (Three Month Resident Return)

1128AA.Skill Matching (Migrant) (Class BR)

- (1) Form: 47SK.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): Nil.
 - (b) Second instalment (payable before grant of visa):
 - (i) \$2 505; and
 - (ii) For each applicant whose age was 18 years or more at the time of application and is assessed as not having functional English: \$3 575.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.

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- (aa) 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 in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.
- (ab) Applicant seeking to satisfy the primary criteria must be less than 45.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skill Matching (Migrant) (Class BR) visa may be made at the same time and place as, and combined with, the application by that person.
- (c) Application by a person who is seeking to satisfy the primary criteria must be accompanied by evidence that a relevant assessing authority has assessed the skills of the applicant as suitable for his or her nominated skilled occupation.
- (d) Application must be accompanied by satisfactory evidence that the applicant has provided the personal and occupational information required for inclusion in Immigration's skill matching database.
- (e) If the applicant:
- (i) is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; and
 - (ii) seeks to satisfy the primary criteria for the grant of a Subclass 134 (Skill Matching) visa;
- the applicant has held 1 or more Skilled — Independent Regional (Provisional) (Class UX) visas for a total of at least 2 years.
- (f) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.
- (4) Subclasses:
- 134 (Skill Matching)

1128A. Skilled — Australian Linked (Migrant) (Class AJ)

- (1) Form: 47.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$1 110
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant whose age was 18 years or more at the time of application and who is assessed as not having functional English: \$2 380
 - (ii) In any other case: Nil
- (3) Other:
 - (a) Application must be made 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 Skilled – Australian Linked (Migrant) (Class AJ) visa may be made at the same time and place as, and combined with, the application by that person.
 - (c) Application must be made before 1 July 1999.
- (4) Subclasses:
 - 105 (Skilled – Australian Linked)
 - 106 (Regional Linked)

1128B. Skilled — Australian-sponsored (Migrant) (Class BQ)

- (1) Form: 47SK.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken under regulation 2.08D to have applied for a Skilled – Australian-sponsored (Migrant) (Class BQ) visa: Nil.
 - (ii) In any other case: \$2 575.
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant whose age was 18 years or more at the time of application and who is assessed as not having functional English: \$3 575.

- (ii) In any other case: Nil.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

(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 by the Minister in an instrument in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.
- (ab) Applicant seeking to satisfy the primary criteria must be less than 45.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled – Australian-sponsored (Migrant) (Class BQ) visa may be made at the same time and place as, and combined with, the application by that person.
- (c) Application by a person who is seeking to satisfy the primary criteria must be accompanied by evidence that a relevant assessing authority has assessed the skills of the applicant as suitable for his or her nominated skilled occupation.
- (d) Application must be accompanied by a sponsorship form completed by a person who is the sponsor of the applicant.
- (da) Application by a person seeking to satisfy the primary criteria for the grant of a Subclass 138 (Skilled – Australian-sponsored) visa must be made before 1 September 2007.
- (e) Application by a person seeking to satisfy the criteria for a Subclass 139 (Skilled — Designated Area-sponsored) visa must be made before 1 July 2006.

(4) Subclasses:

- 138 (Skilled – Australian-sponsored)
- 139 (Skilled – Designated Area-sponsored)

1128BA. Skilled — Australian-sponsored Overseas Student (Residence) (Class DE)

(1) Forms: 47SK and 47SK (Internet).

(2) Visa application charge:

- (a) First instalment (payable at the time application is made): \$2 575
- (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant who was 18 years or more at time of application and is assessed as not having functional English: \$3 575
 - (ii) In any other case: Nil.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

(3) Other:

- (b) Applicant must be in Australia but not in immigration clearance.
- (c) Application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:
 - (i) all persons included in the application have undergone a medical examination for the purpose of the application carried out by any of the following:
 - (A) a Medical Officer of the Commonwealth;
 - (B) a medical practitioner approved by the Minister for this sub-subparagraph;
 - (C) a medical practitioner employed by an organisation approved by the Minister for this sub-subparagraph; and
 - (ii) each applicant who is at least 16 years old has applied for an Australian Federal Police check in relation to the applicant during the 12 months

immediately before the day when the application is made.

- (d) Applicant must be:
 - (i) the holder of a Bridging A (Class WA) visa granted because the applicant met the requirements of subclause 010.211 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (e); or
 - (ii) the holder of a Bridging B (Class WB) visa granted because the applicant met the requirements of subclause 020.212 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (e); or
 - (iii) a person to whom paragraph (e) applies.
- (da) Applicant is taken to have complied with paragraph (d) if:
 - (i) the applicant is not the holder of a substantive visa; and
 - (ii) the last substantive visa held by the applicant was cancelled, and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation; and
 - (iii) that last substantive visa was a visa other than a visa of a kind mentioned in paragraph (e); and
 - (iv) the applicant has lodged the application within 28 days after the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.
- (db) If the last substantive visa, held by an applicant who is taken, under paragraph (da), to have complied with paragraph (d), was not a Subclass 560, 562, 563, 572, 573 or 574 visa, the applicant must have been, at some time in the 6 months immediately before that visa was cancelled, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that was not of a kind mentioned in paragraph (e).
- (e) This paragraph applies to an applicant who is the holder of a substantive visa other than:
 - (i) a Subclass 560 (Student) visa granted to:

- (A) the applicant as a person who satisfied the primary criteria for that visa (the ***primary person***) in relation to undertaking:
 - (I) a registered English language course or an ELICOS; or
 - (II) a course of study paid for wholly or in part by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency; or
 - (III) a full-time course of study or training under a scholarship scheme or training program approved by the AusAID Minister or the Defence Minister; or
 - (IV) a non-award course; or
- (B) the applicant as a member of the family unit of the primary person; or
- (ii) a Subclass 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependant), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Postgraduate Research Sector) visa granted to:
 - (A) the applicant as a person who satisfied the primary criteria for the visa (the ***primary person***) in relation to undertaking a course mentioned in sub-sub-subparagraph (i) (A) (II) or (III); or
 - (B) the applicant as a member of the family unit of the primary person; or
- (iii) a Subclass 570 (Independent ELICOS Sector) visa; or
- (iv) a Subclass 571 (Schools Sector) visa; or
- (v) a Subclass 575 (Non-Award Sector) visa; or
- (vi) a Subclass 576 (AusAID or Defence Sector) visa.
- (f) If the applicant is the holder of:
 - (i) a Bridging A (Class WA) visa or Bridging B (Class WB) visa; or

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- (ii) a substantive visa that is not a Subclass 560, 562, 563, 572, 573 or 574 visa of the kind required in paragraph (e) —
the applicant must have been, at some time in the 6 months immediately before making the application, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa of the kind required in paragraph (e).
- (g) Applicant must not have been an unlawful non-citizen at any time in the 6 months immediately before making the application.
- (h) Application must be made:
- (i) by posting the application (with the correct pre-paid postage) to the post office box address specified in an instrument in writing for this subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified in an instrument in writing for this subparagraph; or
 - (iii) as an Internet application.
- Note* An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.
- (ha) Applicant seeking to satisfy the primary criteria must be less than 45.
- (i) Applicant seeking to satisfy the primary criteria must make a declaration that the applicant is a person to whom paragraphs (j) and (ja) apply.
- (j) This paragraph applies to a person who:
- (ii) if he or she is seeking to satisfy the criteria for the grant of a Subclass 881 (Skilled — Australian-sponsored Overseas Student) visa — nominates in his or her application a skilled occupation for which at least 50 points are specified by an instrument in writing for this subparagraph as available; and

- (iii) if he or she is seeking to satisfy the criteria for the grant of a Subclass 882 (Skilled — Designated Area-sponsored Overseas Student) visa — nominates a skilled occupation in his or her application; and
 - (iv) has applied for an assessment of his or her skills for the nominated skilled occupation by a relevant assessing authority.
- (ja) This paragraph applies to an applicant to whom paragraph (j) applies if:
 - (i) each of the following sub-subparagraphs applies in relation to the applicant:
 - (A) the applicant has, in the 6 months immediately before the day when the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
 - (B) all instruction for that degree, diploma or trade qualification was conducted in English; or
 - (ii) each of the following sub-subparagraphs applies in relation to the applicant:
 - (A) the applicant has, in the 6 months immediately before the day when the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;

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- (B) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
 - (C) the 2 or more degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
 - (D) each of the degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) was completed at the institution at which it was commenced;
 - (E) all instruction for each of the degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) was conducted in English.
- (k) Application:
- (i) made using form 47SK must be accompanied by a sponsorship form 40 completed by a person who is the sponsor of the applicant; or
 - (ii) made using form 47SK (Internet) must be accompanied by a sponsorship form 40 (Internet) completed by a person who is the sponsor of the applicant.
- (l) Application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that the applicant's sponsor:
- (i) has turned 18; and
 - (ii) is an Australian citizen, Australian permanent resident or eligible New Zealand citizen; and

- (iii) is a person in respect of whom the applicant seeking to satisfy the primary criteria, or the spouse or de facto partner of the applicant seeking to satisfy the primary criteria, if the applicant's spouse or de facto partner is an applicant for a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa, has one of the following relationships:
 - (A) a parent;
 - (B) a child or step-child who is not a dependent child of the sponsor;
 - (C) a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
 - (CA) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle;
 - (D) a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece;
 - (E) if the applicant is seeking to satisfy the primary criteria for the grant of a Subclass 882 (Skilled — Designated Area-sponsored Overseas Student) visa — a grandchild or first cousin.
- (m) Application made by an applicant seeking to satisfy the criteria for the grant of a Subclass 882 (Skilled — Designated Area-sponsored Overseas Student) visa must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria, that the applicant's sponsor:
 - (i) is resident in an area specified in a an instrument in writing for this subparagraph as a designated area for item 6701 of Schedule 6; and
 - (ii) was resident in at least 1 designated area throughout the period of 12 months immediately before the day when the application is made (except for short absences for the purposes of recreation or business).
- (p) If the applicant is, or was at any time, the holder of an AusAID student visa within the meaning of regulation 1.04A or of a Subclass 560, 562, 563, 570, 571, 572, 573, 574, 575 or 576 visa granted to the applicant for a course of study or training for which the applicant is or was

provided financial support by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency, application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:

- (i) the course of study or training (whether or not the applicant has ceased the course) is one designed to be undertaken over a period of less than 12 months; or
 - (ii) the applicant:
 - (A) has ceased, completed, withdrawn from, or been excluded from:
 - (I) the course of study or training to which the visa relates or related; or
 - (II) another course approved by the AusAID Minister, or the government or multilateral agency that provided financial support to the applicant, as the case requires, in substitution for that course; and
 - (B) has spent at least 2 years outside Australia since ceasing or completing, or withdrawing or being excluded from, the course.
- (pa) Application by an applicant who is, or was at any time, a member of the family unit of a person:
- (i) who was the holder of a visa of a kind mentioned in paragraph (p); and
 - (ii) to whom subparagraph (p) (ii) applies;
- must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that the applicant has spent at least 2 years outside Australia since that person ceased, completed, withdrew from or was excluded from the course of study or training to which the visa related.
- (q) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa may be made at the same time and place as, and combined with, the application by that person.

- (r) Applicant must:
 - (i) satisfy paragraphs (a) to (pa); or
 - (ii) in the case of an applicant who:
 - (A) is a member of the family unit of an applicant who satisfies paragraphs (a) to (pa); and
 - (B) makes a combined application with that applicant;satisfy paragraphs (a) to (h) and (k) to (pa).
- (s) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.

(4) Subclasses:

881 (Skilled — Australian-sponsored Overseas Student)

882 (Skilled — Designated Area-sponsored Overseas Student)

(5) In this item:

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

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

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

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

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

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

1128C. Skilled — Independent (Migrant) (Class BN)

- (1) Form: 47SK.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):

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- (i) In the case of an applicant who is taken under regulation 2.08D to have applied for a Skilled – Independent (Migrant) (Class BN) visa: Nil.
 - (ii) In the case of an applicant who is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa: \$235.
 - (iii) In any other case: \$2 575.
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant whose age was 18 years or more at the time of application, who is not the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa and who is assessed as not having functional English: \$3 575.
 - (ii) In any other case: Nil.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

- (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 by the Minister in an instrument in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.
 - (ab) Except in the case of an applicant who:
 - (i) is the holder of a Subclass 495 (Skilled — Independent Regional (Provisional)) visa; and
 - (ii) is seeking to satisfy the primary criteria for a Subclass 137 (Skilled — State/Territory-nominated Independent) visa;applicant seeking to satisfy the primary criteria must be less than 45.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled – Independent (Migrant) (Class BN) visa may be made at the same time and place as, and combined with, the application by that person.

(c) Unless the applicant:

(i) is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa granted on the basis of satisfying the primary criteria; or

(ii) is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa granted on the basis that he or she was the spouse or de facto partner of the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa granted on the basis of satisfying the primary criteria;

application must be accompanied by evidence that a relevant assessing authority has assessed the skills of the applicant seeking to satisfy the primary criteria for the grant of a Subclass 136 (Skilled — Independent) or Subclass 137 (Skilled — State/Territory-nominated Independent) visa as suitable for his or her nominated skilled occupation.

(d) If the applicant:

(i) is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; and

(ii) seeks to satisfy the primary criteria for the grant of a Subclass 136 (Skilled — Independent) or a Subclass 137 (Skilled — State/Territory-nominated Independent) visa;

the applicant has held 1 or more Skilled — Independent Regional (Provisional) (Class UX) visas for a total of at least 2 years.

(e) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.

(4) Subclasses:

136 (Skilled – Independent)

137 (Skilled – State/Territory-nominated Independent)

**1128CA.Skilled — Independent Overseas Student (Residence)
(Class DD)**

- (1) Forms: 47SK and 47SK (Internet).
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$2 575
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of each applicant who was 18 years or more at time of application and is assessed as not having functional English: \$3 575
 - (ii) In any other case: Nil.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

- (3) Other:
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application must be made:
 - (i) by posting the application (with the correct pre-paid postage) to the post office box address specified in an instrument in writing for this subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified in an instrument in writing for this subparagraph; or
 - (iii) as an Internet application.

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

- (d) Application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:
 - (i) all persons included in the application have undergone a medical examination for the purpose of the application, carried out by any of the following:
 - (A) a Medical Officer of the Commonwealth;

- (B) a medical practitioner approved by the Minister for this sub-subparagraph;
 - (C) a medical practitioner employed by an organisation approved by the Minister for this sub-subparagraph; and
- (ii) each applicant who is at least 16 years old has applied for an Australian Federal Police check in relation to the applicant during the 12 months immediately before the day when the application is made.
- (e) Applicant must be:
 - (i) the holder of a Bridging A (Class WA) visa granted because the applicant met the requirements of subclause 010.211 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (f); or
 - (ii) the holder of a Bridging B (Class WB) visa granted because the applicant met the requirements of subclause 020.212 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (f); or
 - (iii) a person to whom paragraph (f) applies.
- (ea) Applicant is taken to have complied with paragraph (e) if:
 - (i) the applicant is not the holder of a substantive visa; and
 - (ii) the last substantive visa held by the applicant was cancelled, and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation; and
 - (iii) that last substantive visa was a visa other than a visa of a kind mentioned in paragraph (f); and
 - (iv) the applicant has lodged the application within 28 days after the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.
- (eb) If the last substantive visa, held by an applicant who is taken, under paragraph (ea), to have complied with paragraph (e), was not a Subclass 560, 562, 563, 572, 573

or 574 visa, the applicant must have been, at some time in the 6 months immediately before that visa was cancelled, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that was not of a kind mentioned in paragraph (f).

- (f) This paragraph applies to an applicant who is the holder of a substantive visa other than:
- (i) a Subclass 560 (Student) visa granted to:
 - (A) the applicant as a person who satisfied the primary criteria for that visa (the ***primary person***) in relation to undertaking:
 - (I) a registered English language course or an ELICOS; or
 - (II) a course of study paid for wholly or in part by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency; or
 - (III) a full-time course of study or training under a scholarship scheme or training program approved by the AusAID Minister or the Defence Minister; or
 - (IV) a non-award course; or
 - (B) the applicant as a member of the family unit of the primary person; or
 - (ii) a Subclass 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependant), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Postgraduate Research Sector) visa granted to:
 - (A) the applicant as a person who satisfied the primary criteria for the visa (the ***primary person***) in relation to undertaking a course mentioned in sub-sub-subparagraph (i) (A) (II) or (III); or
 - (B) the applicant as a member of the family unit of the primary person; or

- (iii) a Subclass 570 (Independent ELICOS Sector) visa;
or
- (iv) a Subclass 571 (Schools Sector) visa; or
- (v) a Subclass 575 (Non-Award Sector) visa; or
- (vi) a Subclass 576 (AusAID or Defence Sector) visa.
- (g) If the applicant is the holder of:
 - (i) a Bridging A (Class WA) visa or Bridging B (Class WB) visa; or
 - (ii) a substantive visa that is not a Subclass 560, 562, 563, 572, 573 or 574 visa of the kind required in paragraph (f) —
the applicant must have been, at some time in the 6 months immediately before making the application, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa of the kind required in paragraph (f).
- (h) Applicant must not have been an unlawful non-citizen at any time in the 6 months immediately before making the application.
- (i) Applicant seeking to satisfy the primary criteria must be less than 45 years of age.
- (j) Applicant seeking to satisfy the primary criteria must, in his or her application:
 - (i) if the applicant has, in the 6 months immediately before the day on which the application is made, completed a doctoral degree, in which all instruction was conducted in English, for award by an Australian educational institution as the result of at least 2 years of full-time study in Australia at that institution — nominate a skilled occupation for which at least 50 points are specified by an instrument in writing for this subparagraph as available; or
 - (ii) in any other case — nominate a skilled occupation for which 60 points are specified by an instrument in writing for this subparagraph as available.

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- (k) Application by an applicant seeking to satisfy the primary criteria must be accompanied by a declaration by the applicant that the applicant has applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority.
- (l) Application by an applicant seeking to satisfy the primary criteria must be accompanied by a declaration by the applicant that:
- (i) each of the following sub-subparagraphs applies in relation to the applicant:
 - (A) the applicant has, in the 6 months immediately before the day when the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
 - (C) all instruction for that degree, diploma or trade qualification was conducted in English; or
 - (ii) each of the following sub-subparagraphs applies in relation to the applicant:
 - (A) the applicant has, in the 6 months immediately before the day when the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;

- (B) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
 - (C) the 2 or more degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
 - (D) each of the degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) was completed at the institution at which it was commenced;
 - (E) all instruction for each of the degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) was conducted in English.
- (m) If the applicant is, or was at any time, the holder of an AusAID student visa within the meaning of regulation 1.04A or of a Subclass 560, 562, 563, 570, 571, 572, 573, 574, 575 or 576 visa granted to the applicant for a course of study or training for which the applicant is or was provided financial support by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency, application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:
- (i) the course of study or training (whether or not the applicant has ceased the course) is one designed to be undertaken over a period of less than 12 months; or
 - (ii) the applicant:
 - (A) has ceased, completed, withdrawn from, or been excluded from:

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- (I) the course of study or training to which the visa relates or related; or
 - (II) another course approved by the AusAID Minister, or the government or multilateral agency that provided financial support to the applicant, as the case requires, in substitution for that course; and
 - (B) has spent at least 2 years outside Australia since ceasing or completing, or withdrawing or being excluded from, the course.
- (ma) Application by an applicant who is, or was at any time, a member of the family unit of a person:
- (i) who was the holder of a visa of a kind mentioned in paragraph (m); and
 - (ii) to whom subparagraph (m) (ii) applies;
- must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that the applicant has spent at least 2 years outside Australia since that person ceased, completed, withdrew from or was excluded from the course of study or training to which the visa related.
- (n) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — Independent Overseas Student (Residence) (Class DD) visa may be made at the same time and place as, and combined with, the application by that person.
- (o) Applicant must:
- (i) satisfy paragraphs (a) to (ma); or
 - (ii) in the case of an applicant who:
 - (A) is a member of the family unit of an applicant who satisfies paragraphs (a) to (ma); and
 - (B) makes a combined application with that applicant;satisfy paragraphs (a) to (h), (m) and (ma).
- (p) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.

(4) Subclasses:

880 (Skilled — Independent Overseas Student)

(5) In this item:

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

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

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

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

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

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

**1128D. Skilled — New Zealand Citizen (Residence)
(Class DB)**

(1) Form: 47SK.

(2) Visa application charge:

(a) First instalment (payable at the time application is made): \$2 575

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

(i) In the case of each applicant who was 18 years or more at time of application and is assessed as not having functional English: \$3 575

(ii) In any other case: Nil.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

(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 by the Minister in an instrument in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.
- (b) Applicant must be in Australia, but not in immigration clearance.
- (c) Applicant seeking to satisfy the primary criteria must be the holder of a Subclass 444 (Special Category) visa.
- (ca) Applicant seeking to satisfy the primary criteria must be less than 45.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — New Zealand Citizen (Residence) (Class DB) visa may be made at the same time and place as, and combined with, the application by that person.
- (e) Application by a person seeking to satisfy the primary criteria must be accompanied by evidence that a relevant assessing authority has assessed the skills of the applicant as suitable for his or her nominated skilled occupation.
- (f) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.

(4) Subclasses:

- 861 (Skilled — Onshore Independent New Zealand Citizen)
- 862 (Skilled — Onshore Australian-sponsored New Zealand Citizen)
- 863 (Skilled — Onshore Designated Area-sponsored New Zealand Citizen)

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 application is made):
 - (i) In the case of each applicant who is the holder of a Subclass 445 (Dependent Child) visa: Nil
 - (ii) In any other case: \$1 735
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) 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, 391, 417, 454 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, 391, 417, 454 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, 391, 417, 454 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, 391, 417, 454 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.
- (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 application is made):
 - (i) For an applicant who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application: \$235
 - (ia) For an applicant who:
 - (A) held a Subclass 173 (Contributory Parent (Temporary)) visa; and
 - (B) is the holder of a substituted Subclass 676 visa at the time of application: \$235

- (ib) For an applicant who has held a Subclass 173 (Contributory Parent (Temporary)) visa at any time in the 28 days immediately before making the application: \$235
- (ic) For an applicant who 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: \$1 735
- (ii) For an applicant who:
 - (A) made a valid application for a Parent (Migrant) (Class AX) visa before the day on which this item commences; and
 - (B) withdrew that application at the same time as making the application for the Contributory Parent (Migrant) (Class CA) visa: Nil
- (iii) In any other case: \$1 735
- (b) Second instalment (payable before grant of visa):
 - (i) For an applicant who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application: \$15 185
 - (ia) For an applicant
 - (A) who:
 - (I) held a Subclass 173 (Contributory Parent (Temporary)) visa; and
 - (II) is the holder of a substituted Subclass 676 visa at the time of application; and
 - (III) is not described in sub-subparagraph (B): \$15 185; or
 - (B) who:
 - (I) held a Subclass 173 (Contributory Parent (Temporary)) visa; and
 - (II) is, at the time of application, the holder of a substituted Subclass 676 visa or the child or

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- step-child of an applicant mentioned in sub-subparagraph (A); and
- (III) is a person who is the child or step-child of an applicant for a Contributory Parent (Migrant) (Class CA) visa and has not turned 18 at the time of application for a Contributory Parent (Temporary) (Class UT) visa: Nil.
- (ii) For an applicant who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, and:
- (A) is the child or step-child of an applicant for a Contributory Parent (Migrant) (Class CA) visa; and
- (B) had not turned 18 at the time of application for a Contributory Parent (Temporary) (Class UT) visa: Nil
- (iia) For an applicant who has held a Subclass 173 (Contributory Parent (Temporary)) visa at any time in the 28 days immediately before making the application: \$15 185
- (iib) For an applicant who has held a Subclass 173 (Contributory Parent (Temporary)) visa, and 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: \$13 745
- (iii) For an applicant who:
- (A) is a dependent child of an applicant for a Contributory Parent (Migrant) (Class CA) visa; and
- (B) has not turned 18 at the time of application: \$1 640
- (iv) In any other case: \$37 965.

(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 676 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 application is made):
 - (i) For an applicant who:
 - (A) made a valid application for an Aged Parent (Residence) (Class BP) visa before the day on which this item commences; and
 - (B) withdrew that application at the same time as making the application for the Contributory Aged Parent (Residence) (Class DG) visa: Nil
 - (ii) For an applicant who is the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application: \$235
 - (ia) For an applicant who:
 - (A) held a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and
 - (B) is the holder of a substituted Subclass 676 visa at the time of application: \$235

- (iib) For an applicant who has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa at any time in the 28 days immediately before making the application: \$235
- (iic) For an applicant who 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: \$2 575
- (iii) In any other case: \$2 575
- (b) Second instalment (payable before grant of visa):
 - (i) For an applicant who is the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application: \$15 185
 - (ia) For an applicant:
 - (A) who:
 - (I) held a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and
 - (II) is the holder of a substituted Subclass 676 visa at the time of application; and
 - (III) is not described in sub-subparagraph (B): \$15 185; or
 - (B) who:
 - (I) held a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and
 - (II) is, at the time of application, the holder of a substituted Subclass 676 visa or the child or step-child of an applicant mentioned in sub-subparagraph (A); and
 - (III) is a person who is the child or step-child of an applicant for a Contributory Parent (Migrant) (Class CA) visa and has not turned 18 at the

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- time of application for a Contributory Aged Parent (Temporary) (Class UU) visa: Nil
- (ii) For an applicant who is the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application, and:
 - (A) is the child or step-child of an applicant for a Contributory Aged Parent (Residence) (Class DG) visa; and
 - (B) had not turned 18 at the time of application for a Contributory Aged Parent (Temporary) (Class UU) visa: Nil
 - (ia) For an applicant who has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa at any time in the 28 days immediately before making the application: \$15 185
 - (ib) For an applicant who has held a Subclass 884 (Contributory Aged Parent (Temporary)) visa, and 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: \$12 940
 - (iii) For an applicant who:
 - (A) is a dependent child of an applicant for a Contributory Aged Parent (Residence) (Class DG) visa; and
 - (B) has not turned 18 at the time of application: \$1 640
 - (iv) In any other case: \$37 965.
- (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.

- (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.

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- (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. Witness Protection (Trafficking) (Permanent)
(Class DH)**

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Subclasses:
852 (Witness Protection (Trafficking) (Permanent))

Note See regulation 2.07AK for how an application for a Witness Protection (Trafficking) (Permanent) (Class DH) visa is taken to have been validly made.

**1134. Skilled — Designated Area-sponsored (Residence)
(Class CC)**

- (1) Form: 47ST.
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made): \$235.

- (b) Second instalment (payable before grant of visa):
 - (i) In the case of an applicant who:
 - (A) was 18 or more at the time of application; and
 - (B) is assessed as not having functional English; and
 - (C) has held a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; and
 - (D) has not paid a second instalment for the application for that visa: \$3 575.
 - (ii) In the case of an applicant who:
 - (A) was 18 or more at the time of application; and
 - (B) is assessed as not having functional English; and
 - (C) has not previously held a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa: \$3 575.
 - (iii) In any other case: Nil.
- (3) Other:
 - (a) Applicant may be in or outside Australia, but not in immigration clearance.
 - (b) 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 in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.
 - (c) Applicant seeking to satisfy the primary criteria must be the holder of a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa and must have held a visa of that class for at least 2 years.

- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — Designated Area-sponsored (Residence) (Class CC) visa may be made at the same time and place as, and combined with, the application by that person.
- (e) Application must be accompanied by evidence that each applicant who is at least 16 has applied for an Australian Federal Police check in relation to the applicant during the 12 months immediately before the day when the application is made.
- (f) Application must be accompanied by a sponsorship form 40 completed by the person who is the sponsor of the applicant.
- (g) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.

(4) Subclasses:

883 (Skilled — Designated Area-sponsored (Residence))

1135. Skilled (Migrant) (Class VE)

- (1) Forms: 1276 and 1276 (Internet).
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$2 575
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of an applicant:
 - (A) who had turned 18 at the time of application; and
 - (B) who is assessed as not having functional English: \$3 575
 - (ii) In any other case: Nil.
- (3) Other:
 - (a) Application must be made:
 - (i) as an Internet application; or

- (ii) 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
- (iii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.

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

- (b) Applicant seeking to satisfy the primary criteria must be less than 45.
 - (c) Applicant seeking to satisfy the primary criteria must nominate a skilled occupation for the applicant in the application.
 - (ca) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 176 (Skilled — Sponsored) visa must meet the requirements in subitem (3A) or (3B).
 - (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.
- (3A) The applicant is nominated by a State or Territory government agency.
- (3B) All of the following requirements are met:
- (a) the applicant is sponsored by a person who:
 - (i) has turned 18; and
 - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
 - (b) the applicant has declared on the application that the sponsor:
 - (i) is usually resident in Australia; and

- (ii) is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is also seeking to satisfy the criteria for a Subclass 176 (Skilled — Sponsored) visa), as:
 - (A) a parent; or
 - (B) a child or step-child; or
 - (C) a brother or sister, an adoptive brother or sister, or a step-brother or step-sister; or
 - (D) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle; or
 - (E) a nephew or niece, an adoptive nephew or niece, or a step-nephew or step-niece;
 - (c) each person who:
 - (i) is an applicant; and
 - (ii) claims to be a member of the family unit of the applicant;is sponsored by the same person;
 - (d) the sponsorship was entered into on Form 1277 (Internet) or 1277.
- (4) Subclasses:
- 175 (Skilled — Independent)
 - 176 (Skilled — Sponsored)

1136. Skilled (Residence) (Class VB)

- (1) Forms: 1276 and 1276 (Internet).
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of 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 Bridging A (Class WA) 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 (other than a Subclass 485 visa): \$235
- (ii) In any other case: \$2 575.
- (b) Second instalment (payable before grant of visa):
 - (i) In the case of an applicant who:
 - (A) had turned 18 at the time of application; and
 - (B) is assessed as not having functional English; and
 - (C) has not paid a second instalment of visa application charge in relation to the application for the visa, mentioned in paragraph (a), that the applicant holds: \$3 575
 - (ii) In any other case: Nil.
- (3) Other:
 - (a) Application must be made:
 - (i) as an Internet application; or
 - (ii) 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
 - (iii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.

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

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- (b) Applicant must be in Australia but not in immigration clearance.
- (ba) If the applicant:
- (i) is not seeking to satisfy the criteria for the grant of a Subclass 887 (Skilled — Regional) visa; and
 - (ii) has not nominated a skilled occupation specified by the Minister in an instrument in writing for paragraph (bb);
- the applicant's skills must have been assessed by the relevant assessing authority as suitable for the applicant's nominated skilled occupation.
- (bb) If the applicant:
- (i) is not seeking to satisfy the criteria for the grant of a Subclass 887 (Skilled — Regional) visa; and
 - (ii) has nominated a skilled occupation specified by the Minister in an instrument in writing for this paragraph;
- the applicant's skills must have been assessed by the relevant assessing authority, on or after 1 January 2010, as suitable for the applicant's nominated skilled occupation.
- (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.
- (ca) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 886 (Skilled — Sponsored) visa must meet the requirements in subitem (3A) or (3B).
- (d) The requirements of subitem (4), (5), (6) or (7) must be satisfied.
- (3A) The applicant is nominated by a State or Territory government agency.
- (3B) All of the following requirements are met:
- (a) the applicant is sponsored by a person who:
 - (i) has turned 18; and
 - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

- (b) the applicant has declared on the application that the sponsor:
 - (i) is usually resident in Australia; and
 - (ii) is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is also seeking to satisfy the criteria for a Subclass 886 (Skilled — Sponsored) visa), as:
 - (A) a parent; or
 - (B) a child or step-child; or
 - (C) a brother or sister, an adoptive brother or sister, or a step-brother or step-sister; or
 - (D) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle; or
 - (E) a nephew or niece, an adoptive nephew or niece, or a step-nephew or step-niece;
 - (c) each person who:
 - (i) is an applicant; and
 - (ii) claims to be a member of the family unit of the applicant;is sponsored by the same person;
 - (d) the sponsorship was entered into on Form 1277 (Internet) or 1277.
- (4) The following requirements must be met:
- (a) one of the following subparagraphs must be satisfied by the applicant:
 - (i) the applicant must be the holder of an eligible student visa;
 - (ii) the applicant must be the holder of 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 other than 1 of the following visas:
 - (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, a Subclass 573 (Higher Education Sector) visa, or a Subclass 574

(Postgraduate Research Sector) visa, that was applied for on the basis that the applicant seeking to satisfy the primary criteria for the grant of that visa intends to undertake a course of study paid for, wholly or in part, by:

- (I) the Commonwealth or the government of a State or Territory; or
- (II) the government of a foreign country; or
- (III) a multilateral agency;

and for which a condition of payment by that body for the course is that the student will leave Australia on the completion of the course;

- (D) a Subclass 572 (Vocational Education and Training Sector) visa, a Subclass 573 (Higher Education Sector) visa, or a Subclass 574 (Postgraduate Research Sector) visa that was applied for on the basis that the applicant seeking to satisfy the primary criteria for the grant of that visa intends to undertake a course of study or training under a scholarship scheme or training program approved by:

- (I) the AusAID Minister; or
- (II) the Defence Minister;

and for which a condition of that scheme or program is that the student will leave Australia on completion of the course;

- (E) a Subclass 575 (Non-Award Sector) visa;
- (F) a Subclass 576 (AusAID or Defence Sector) visa;

and must also have held an eligible student visa at any time during the period of 6 months ending immediately before the day on which the application is made;

- (iii) the applicant must:
 - (A) be the holder of a substantive visa other than a visa mentioned in sub-subparagraphs (ii) (A) to (F); 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 (Residence) (Class VB) 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 Migration Review 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:
 - (i) must be less than 45; and
 - (ii) must nominate a skilled occupation for the applicant in the application for which at least 50 points are available as specified by the Minister in an instrument in writing for this subparagraph.
- (5) The following requirements must be met:
- (a) the applicant must be:
 - (i) the holder of a Subclass 476 (Skilled — Recognised Graduate) visa; or
 - (ii) the holder of a Subclass 485 (Skilled — Graduate) visa;
 - (b) the applicant seeking to satisfy the primary criteria for the grant of the visa must:
 - (i) have been granted the visa mentioned in paragraph (a) on the basis of satisfying the primary criteria for the grant of that visa; and
 - (ii) nominate a skilled occupation for the applicant in the application for which at least 50 points are available as specified by the Minister in an instrument in writing for this subparagraph.

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- (6) The following requirements must be met:
- (a) each applicant must be the holder of a Subclass 471 (Trade Skills Training) visa;
 - (b) the applicant seeking to satisfy the primary criteria for the grant of the visa:
 - (i) must have been the holder, for a total of at least 2 years before the day on which the application was made, of the Subclass 471 (Trade Skills Training) visa mentioned in paragraph (a) that was granted on the basis of satisfying the primary criteria for the grant of that visa; and
 - (ii) must be less than 45; and
 - (iii) must nominate a skilled occupation for the applicant in the application for which at least 50 points are available as specified by the Minister in an instrument in writing for this subparagraph.
- (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
 - (iii) a Subclass 475 (Skilled — Regional Sponsored) visa; or
 - (iv) a Subclass 487 (Skilled — Regional Sponsored) visa; or
 - (v) a Bridging A (Class WA) visa or Bridging B (Class WB) visa that was 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;
 - (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;

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) Subclasses:

- 885 (Skilled — Independent)
- 886 (Skilled — Sponsored)
- 887 (Skilled — Regional)

Part 2 Temporary visas (other than bridging visas)

Note Arrangements that affect certain visas mentioned in this Part can be found in regulation 2.12BC.

1201. Border (Temporary) (Class TA)

- (1) Form: 871.
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) In the case of an application by a non-citizen who:
 - (i) is a dependent child of a non-citizen; and
 - (ii) is the holder of a Subclass 773 visa:
 - (A) application may be made in Australia; and
 - (B) applicant must be in Australia.
 - (b) In any other case:
 - (i) Application must be made in immigration clearance.
 - (ii) Applicant must 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 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) Forms:
 - (a) 47BT and:
 - (i) 1136; or
 - (ii) 1137; or
 - (iii) 1139; and
 - (b) For applicant seeking to satisfy the primary criteria for the grant of:
 - (i) a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) visa; or
 - (ii) a Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) visa; or
 - (iii) a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa:
949.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$3 420
 - (b) Second instalment (payable before grant of visa):
 - (i) For each applicant who:
 - (A) was at least 18 years old at 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): \$7 165

- (ii) For each applicant who:
 - (A) was at least 18 years old at 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): \$3 575
 - (iii) In any other case: Nil.
- (3) Other:
 - (a) Application must be made:
 - (i) if the applicant's residential address, given using form 47BT, is in PRC, including Hong Kong or Macau — at the address in Hong Kong specified in a Gazette Notice for this subparagraph; or
 - (ii) if the applicant's residential address, given using form 47BT, is in Taiwan — at the address in Taipei specified in a Gazette Notice for this subparagraph; or
 - (iii) if subparagraphs (i) and (ii) do not apply — at the address in Perth specified in a Gazette Notice for this subparagraph.
 - (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))

1205. Cultural/Social (Temporary) (Class TE)

- (1) Form: 147.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is outside Australia at the time of application, and who appears to the Minister on the basis of the information contained in the application to meet the requirements of subparagraph (iii): Nil
 - (ia) In the case of an applicant who is outside Australia at the time of application, and who appears to the Minister on the basis of information contained in the application to meet the requirements of subparagraph (ii): Nil
 - (ii) An applicant meets the requirements of this subparagraph if:
 - (A) the applicant has been identified in a nomination under section 140GB of the Act to perform as an entertainer in 1 or more specific engagements that are for non-profit purposes; or

- (B) the applicant has been identified in a nomination under section 140GB of the Act by a person mentioned in sub-sub-subparagraph 1205 (3) (cb) (ii) (B) (I) or (II), and that person is an organisation that is:
 - (I) funded wholly or in part by the Commonwealth; and
 - (II) is approved by the Secretary for this sub-sub-subparagraph.
 - (iii) An applicant satisfies the requirements of this subparagraph if the application is made on the basis that the applicant is:
 - (A) entered, as an amateur participant, in a sporting event; or
 - (B) appointed or employed to assist:
 - (I) an amateur participant in a sporting event; or
 - (II) an amateur team that is participating in a sporting event.
 - (iv) In the case of an applicant who:
 - (A) applies outside Australia; and
 - (B) is a member of a sporting body that comprises at least 10 other applicants:

A charge that is equal to \$2 650 divided by the number of applicants included in that body.
 - (iva) In the case of an applicant who:
 - (A) is outside Australia at the time of application; and
 - (B) is a member of an entertainment body that comprises at least 10 other applicants:

A charge that is equal to \$2 650 divided by the number of applicants included in that body.
 - (v) In any other case: \$265
- (b) Second instalment (payable before grant of visa): Nil.

(3) Other:

- (a) Application (other than an application by a person seeking to satisfy the criteria for the grant of a Subclass 416 (Special Program) visa or a Subclass 420 (Entertainment) visa) may be made in or outside Australia, but not in immigration clearance.
- (aa) Applicant seeking to satisfy a criterion for the grant of a Subclass 416 (Special Program) visa specified in paragraph 416.222 (d) of Schedule 2 must be outside Australia when the application is made.
- (b) Applicant (other than an applicant seeking to satisfy the criteria for the grant of a Subclass 416 (Special Program) visa or a Subclass 420 (Entertainment) visa) must be in Australia to make an application in Australia.
- (ba) Application by a person seeking to satisfy the criteria for the grant of a Subclass 416 (Special Program) visa must be made by:
 - (i) posting the application (with the correct pre-paid postage) to the post office box address specified in an instrument in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in an instrument in writing for this subparagraph; or
 - (iii) having the application sent by facsimile to the address specified in an instrument in writing for this subparagraph.
- (c) Application by a person seeking to satisfy the primary criteria for the grant of a Subclass 420 (Entertainment) visa must be accompanied by a completed form 1379.
- (ca) Application by a person seeking to satisfy the criteria for the grant of a Subclass 420 (Entertainment) visa must be made by:
 - (i) posting the application (with the correct pre-paid postage) to the post office box address specified in an instrument in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service, or otherwise by hand, to the address specified in an instrument in writing for this subparagraph; or

- (iii) having the application sent by fax to the fax number specified in an instrument in writing for this subparagraph.

Note Regulation 2.12BC sets out special arrangements for the making of applications by persons designated under regulation 2.07AO. The arrangements in paragraph 1205 (3) (ca) do not apply to those persons.

- (cb) Applicant (other than an applicant seeking to satisfy the criteria for the grant of a Subclass 416 (Special Program) visa) must:
 - (i) specify, in the application, the person by whom the applicant has been identified, or proposes to be identified, in a nomination for the purposes of section 140GB of the Act; and
 - (ii) provide evidence that the person is:
 - (A) if the applicant seeks to satisfy the primary criteria for the grant of a Subclass 411 (Exchange) visa:
 - (I) an exchange sponsor; or
 - (II) a person who has applied for approval as an exchange sponsor but whose application has not yet been decided; or
 - (B) if the applicant seeks to satisfy the primary criteria for the grant of a Subclass 420 (Entertainment) visa or Subclass 423 (Media and Film Staff) visa:
 - (I) an entertainment sponsor; or
 - (II) a person who has applied for approval as an entertainment sponsor but whose application has not yet been decided; or
 - (C) if the applicant seeks to satisfy the primary criteria for the grant of a Subclass 421 (Sport) visa:
 - (I) a sport sponsor or a party to a work agreement (other than a Minister) of a kind mentioned in subregulation 2.76 (3); or

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- (II) a person who has applied for approval as a sport sponsor but whose application has not yet been decided; or
 - (D) if the applicant seeks to satisfy the primary criteria for the grant of a Subclass 428 (Religious Worker) visa:
 - (I) a religious worker sponsor or a party to a work agreement (other than a Minister) of a kind mentioned in subregulation 2.76 (4); or
 - (II) a person who has applied for approval as a religious worker sponsor but whose application has not yet been decided.
 - (cc) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 416 (Special Program) visa (other than the criterion specified in paragraph 416.222 (d) of Schedule 2) must:
 - (i) specify, in the application, the person who proposes to be the special program sponsor in relation to the applicant; and
 - (ii) provide evidence that the person is a special program sponsor, or is a person who has applied for approval as a special program sponsor but whose application has not yet been decided.
 - (d) 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.
- (4) Subclasses:
- 411 (Exchange)
 - 416 (Special Program)
 - 420 (Entertainment)
 - 421 (Sport)
 - 423 (Media and Film Staff)
 - 428 (Religious Worker)

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))

1207. Domestic Worker (Temporary) (Class TG)

- (1) Form: 147.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$265
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application may be made in or outside Australia, but not in immigration clearance.
 - (b) Applicant must be in Australia to make an application in Australia.
 - (ba) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 427 (Domestic Worker (Temporary) — Executive) visa must:
 - (i) specify, in the application, the person by whom the applicant has been identified, or proposes to be identified, in a nomination for the purposes of section 140GB of the Act; and
 - (ii) provide evidence that the person is a domestic worker sponsor, or a person who has applied for approval as a domestic worker sponsor but whose application has not yet been decided.

- (c) Application by a person claiming to be a member of the family unit of a person seeking to satisfy the criteria for a Subclass 427 (Domestic Worker (Temporary) — Executive) visa may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria for a Subclass 427 (Domestic Worker (Temporary) — Executive) visa.
- (4) Subclasses:
 - 426 (Domestic Worker (Temporary) — Diplomatic or Consular)
 - 427 (Domestic Worker (Temporary) — Executive)

1208. Educational (Temporary) (Class TH)

- (1) Form: 147.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who:
 - (A) holds a valid diplomatic, official or service passport; and
 - (B) holds a third person note of support for the application from the government or a government agency of the applicant's home country; and
 - (C) appears to the Minister, on the basis of the information contained in the application, to meet the requirements for the grant of a Subclass 415 visa: Nil
 - (ia) In the case of an applicant who:
 - (A) is seeking to satisfy the criteria for the grant of a Subclass 406 (Government Agreement) visa; and
 - (B) is an applicant of a kind specified by the Minister in an instrument in writing for this sub-subparagraph: Nil
 - (ii) In any other case: \$265
 - (b) Second instalment (payable before grant of visa): Nil.

(3) Other:

- (a) Application (other than an application by a person seeking to satisfy the criteria for the grant of a Subclass 442 (Occupational Trainee) visa) may be made in or outside Australia, but not in immigration clearance.
- (b) Applicant (other than an applicant seeking to satisfy the criteria for the grant of a Subclass 442 (Occupational Trainee) visa) must be in Australia to make an application in Australia.
- (ba) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 415 (Foreign Government Agency) visa must:
 - (i) specify, in the application, the person who proposes to be the foreign government agency sponsor in relation to the applicant; and
 - (ii) provide evidence that the person is a foreign government agency sponsor, or is a person who has applied for approval as a foreign government agency sponsor but whose application has not yet been decided.
- (bb) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 419 (Visiting Academic) visa must:
 - (i) specify, in the application, the person by whom the applicant has been identified, or proposes to be identified, in a nomination for the purposes of section 140GB of the Act; and
 - (ii) provide evidence that the person is a visiting academic sponsor, or is a person who has applied for approval as a visiting academic sponsor but whose application has not yet been decided.
- (bc) Unless subitem (3A) applies, an applicant seeking to satisfy the primary criteria for the grant of a Subclass 442 (Occupational Trainee) visa must:
 - (i) specify, in the application, the person by whom the applicant has been identified, or proposes to be identified, in a nomination for the purposes of section 140GB of the Act; and

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- (ii) provide evidence that the person is an occupational trainee sponsor, or a person who has applied for approval as an occupational trainee sponsor but whose application has not yet been decided.
 - (bd) Application by a person seeking to satisfy the criteria for the grant of a Subclass 442 (Occupational Trainee) visa must be made:
 - (i) by posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister in an instrument in writing for this subparagraph; or
 - (ii) by delivering the application by courier service to the address specified by the Minister in an instrument in writing for this subparagraph.
 - (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.
- (3A) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 442 (Occupational Trainee) visa in order to undertake a program of occupational training that will be provided by the Commonwealth must:
- (i) specify, in the application, the person who proposes to be the occupational trainee sponsor in relation to the applicant; and
 - (ii) provide evidence that the person is an occupational trainee sponsor, or is a person who has applied for approval as an occupational trainee sponsor but whose application has not yet been decided.
- (4) Subclasses:
- 406 (Government Agreement)
 - 415 (Foreign Government Agency)
 - 419 (Visiting Academic)
 - 442 (Occupational Trainee)

1208A. Electronic Travel Authority (Class UD)

- (1) Form: Nil.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who appears to the Minister, on the basis of information contained in the application, to meet the requirements for the grant of a Subclass 956 (Electronic Travel Authority (Business Entrant — Long Validity)) visa: \$90
 - (ii) In any other case: Nil
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application may be made in or outside Australia.
 - (b) If the application is made in immigration clearance, applicant must be in immigration clearance.
 - (ba) If the application is made in Australia (except in immigration clearance), or outside Australia, applicant must be outside Australia.
 - (bb) If the application is made outside Australia, application 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.
 - (bc) If the application is made in Australia, application 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.
 - (c) Applicant must hold an ETA-eligible passport.

- (e) 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:

- 956 (Electronic Travel Authority (Business Entrant — Long Validity))
- 976 (Electronic Travel Authority (Visitor))
- 977 (Electronic Travel Authority (Business Entrant — Short Validity))

1209. Emergency (Temporary) (Class TI)

- (1) Form: 1003.
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application may be made inside or outside Australia, but not in immigration clearance.
 - (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 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.
- (4) Subclasses:
 - 302 (Emergency (Permanent Visa Applicant))
 - 303 (Emergency (Temporary Visa Applicant))

1211. Extended Eligibility (Temporary) (Class TK)

- (1) Form: 918.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who:
 - (A) applies as the dependent child of a holder of a Subclass 309, 310, 445, 820 or 826 visa; and

(B) whose brother or sister:

(I) applies, as a dependent child of a holder of a Subclass 309, 310, 445, 820 or 826 visa, for an Extended Eligibility (Temporary) (Class TK) visa at the same time and place as the applicant; and

(II) has paid the fee specified in subparagraph (ii) on his or her application: Nil

(ii) In any other case: \$185

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

(3) Other:

(a) Application by the dependent child of a holder of a visa of Subclass 309, 310, 445, 820 or 826 may be made in or outside Australia, but not in immigration clearance.

(aa) Applicant must be in Australia to make an application in Australia.

(ab) Application by an applicant in Australia must be made by:

(i) posting the application (with the correct pre-paid postage) to the post office box address specified in a Gazette Notice for this subparagraph; or

(ii) having the application delivered by a courier service to the address specified in a Gazette Notice for this subparagraph.

Note Regulation 2.12BC sets out special arrangements for the making of applications by persons designated under regulation 2.07AO. The arrangements in paragraph 1211 (3) (ab) do not apply to those persons.

(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)

1212A. Graduate — Skilled (Temporary) (Class UQ)

- (1) Form: 1182.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$235
 - (b) Second instalment (payable before grant of visa): Nil.
- (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.
 - (c) Applicant must state in the application an intention to make a valid application for a Skilled — Independent Overseas Student (Class DD), Skilled — Australian-sponsored Overseas Student (Class DE) or Skilled — Independent Regional (Provisional) (Class UX) visa.
 - (ca) Applicant must be:
 - (i) the holder of a Bridging A (Class WA) visa granted on the basis that the applicant met the requirements of subclause 010.211 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (d); or
 - (ii) the holder of a Bridging B (Class WB) visa granted on the basis that the applicant met the requirements of subclause 020.212 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (d); or
 - (iii) a person to whom paragraph (d) applies.
 - (d) This paragraph applies to an applicant who is the holder of a substantive visa other than:
 - (i) a Subclass 497 (Graduate — Skilled) visa; or
 - (ii) a Subclass 560 (Student) visa granted to:
 - (A) the applicant as a person who satisfied the primary criteria for that visa (the **primary person**) in relation to undertaking:

- (I) a registered English language course or an ELICOS; or
- (II) a course of study paid for wholly or in part by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency; or
- (III) a full-time course of study or training under a scholarship scheme or training program approved by the AusAID Minister or the Defence Minister; or
- (IV) a non-award course; or
- (B) the applicant as a member of the family unit of the primary person; or
- (iii) a Subclass 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependant), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Postgraduate Research Sector) visa granted to:
 - (A) the applicant as a person who satisfied the primary criteria for the visa (the **primary person**) in relation to undertaking a course mentioned in sub-sub-subparagraph (ii) (A) (II) or (III); or
 - (B) the applicant as a member of the family unit of the primary person; or
- (iv) a Subclass 570 (Independent ELICOS Sector) visa; or
- (v) a Subclass 571 (Schools Sector) visa; or
- (vi) a Subclass 575 (Non-Award Sector) visa; or
- (vii) a Subclass 576 (AusAID or Defence Sector) visa.
- (da) Applicant is taken to have complied with paragraph (d) if:
 - (i) the applicant is not the holder of a substantive visa; and

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- (ii) the last substantive visa held by the applicant was cancelled, and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation; and
 - (iii) that last substantive visa was a visa other than a visa of a kind mentioned in paragraph (d); and
 - (iv) the applicant has lodged the application within 28 days after the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.
- (e) If the substantive visa, held by an applicant who complies with paragraph (d) (other than an applicant to whom paragraph (ea) applies), is not a Subclass 560, 562, 563, 572, 573 or 574 visa, the applicant must have been, at some time in the 6 months immediately before making the application, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that is not of a kind mentioned in paragraph (d).
- (ea) If the last substantive visa, held by an applicant who is taken, under paragraph (da), to have complied with paragraph (d), was not a Subclass 560, 562, 563, 572, 573 or 574 visa, the applicant must have been, at some time in the 6 months immediately before that visa was cancelled, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that was not of a kind mentioned, at the time of cancellation, in paragraph (d).
- (f) Applicant must not have been an unlawful non-citizen at any time in the 6 months immediately before making the application.
- (g) Applicant seeking to satisfy the primary criteria must nominate a skilled occupation in his or her application.
- (h) Application by an applicant seeking to satisfy the primary criteria must be accompanied by satisfactory evidence that:
- (i) the applicant has applied to the relevant assessing authority for an assessment of the suitability of his or her skills for the skilled occupation nominated by the applicant in his or her application; and

- (ii) either:
 - (A) each of the following sub-sub-subparagraphs applies in relation to the applicant:
 - (I) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
 - (II) the degree, diploma or trade qualification is relevant to the skilled occupation nominated by the applicant in his or her application;
 - (III) all instruction for that degree, diploma or trade qualification was conducted in English; or
 - (B) each of the following sub-sub-subparagraphs applies in relation to the applicant:
 - (I) the applicant has, in the 6 months immediately before the day on which the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years at that institution while the applicant was present in Australia;
 - (II) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language

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- proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
- (III) the 2 or more degrees, diplomas or trade qualifications mentioned in sub-sub-subparagraphs (I) and (II) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
 - (IV) each of the degrees, diplomas or trade qualifications mentioned in sub-sub-subparagraphs (I) and (II) was completed at the institution at which it was commenced;
 - (V) each of the degrees, diplomas or trade qualifications mentioned in sub-sub-subparagraphs (I) and (II) is relevant to the skilled occupation nominated by the applicant in his or her application;
 - (VI) all instruction for each of the degrees, diplomas or trade qualifications mentioned in sub-sub-subparagraphs (I) and (II) was conducted in English.
- (i) Applicant seeking to satisfy the primary criteria must be less than 45 years of age.
 - (j) 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 in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.

- (k) If the applicant is, or was at any time, the holder of an AusAID student visa within the meaning of regulation 1.04A or of a Subclass 560, 562, 563, 570, 571, 572, 573, 574, 575 or 576 visa granted to the applicant for a course of study or training for which the applicant is or was provided financial support by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency:
 - (i) the course of study or training (whether or not the applicant has ceased the course) is one designed to be undertaken over a period of less than 12 months; or
 - (ii) the applicant:
 - (A) has ceased, completed, withdrawn from, or been excluded from:
 - (I) the course of study or training to which the visa relates or related; or
 - (II) another course approved by the AusAID Minister, or the government or multilateral agency that provided financial support to the applicant, as the case requires, in substitution for that course; and
 - (B) has spent at least 2 years outside Australia since ceasing or completing, or withdrawing or being excluded from, the course.
- (ka) Applicant who is, or was at any time, a member of the family unit of a person:
 - (i) who was the holder of a visa of a kind mentioned in paragraph (k); and
 - (ii) to whom subparagraph (k) (ii) applies;must have spent at least 2 years outside Australia since that person ceased, completed, withdrew from or was excluded from the course of study or training to which the visa related.
- (l) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Graduate — Skilled (Temporary) (Class UQ) visa may be

made at the same time and place as, and combined with, the application by that person.

(m) Applicant must:

- (i) satisfy paragraphs (a) to (ka); or
- (ii) in the case of an applicant who:
 - (A) is a member of the family unit of an applicant who satisfies paragraphs (a) to (ka); and
 - (B) makes a combined application with that applicant;

satisfy paragraphs (a) to (f) and (j) to (ka).

- (n) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.

(4) Subclasses:

497 Graduate — Skilled

(5) In this item:

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

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

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

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

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

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

1212B. Investor Retirement (Class UY)

- (1) Form: 147.

(2) Visa application charge:

- (a) First instalment (payable at the time application is made): \$235.
- (b) Second instalment (payable before grant of visa): \$10 625.

(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 an instrument in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service, or otherwise hand-delivered, to the address specified in an instrument in writing for this subparagraph.
- (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 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)

1214AA. Medical Practitioner (Temporary) (Class UE)

- (1) Form: 147
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$265
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application must be made in 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 by a person seeking to satisfy the primary criteria for the grant of the visa must be made before 1 July 2010.
- (4) Subclasses:
 - 422 (Medical Practitioner)

1214A. Medical Treatment (Visitor) (Class UB)

- (1) Form:
 - (a) If the applicant is outside Australia (whether or not the application is made outside Australia): 48ME.
 - (b) If the applicant is in Australia: 601.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) Subject to subparagraph (iii), in the case of an applicant who is outside Australia when he or she applies (whether or not the application is made outside Australia):
 - (A) If the applicant seeks a visa that will permit him or her to remain in Australia for more than 3 months: \$55

- (B) If the applicant seeks a visa that will permit him or her to travel to, and enter, Australia for:
 - (I) 4 years; or
 - (II) the remaining period of validity of the applicant's passport (if that period exceeds 12 months): \$55
 - (C) In any other case: Nil
 - (ii) Subject to subparagraph (iii), in the case of an applicant who is in Australia: \$230
 - (iii) In the case of an applicant who applies in the course of acting as a representative for a foreign government: Nil
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
- (a) Application may be made in or outside Australia, but not in immigration clearance.
 - (b) If the applicant is outside Australia, the application may be made in the migration zone if and only if no fee is payable on the application.
 - (ba) If the application is made outside Australia, application 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 a visa application agency that is approved in writing by the Minister for the purpose of receiving applications for Medical Treatment (Visitor) (Class UB) visas.
 - (c) 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:
- 675 (Medical Treatment (Short Stay))
 - 685 (Medical Treatment (Long Stay))

**1214BA. New Zealand Citizen Family Relationship (Temporary)
(Class UP)**

- (1) Form: 147.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$235
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application may be made in or outside Australia (but not in immigration clearance).
 - (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.
- (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
 - (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;the applicant must have held that visa for at least 2 years.
- (h) Subject to paragraph (i), if the applicant is a person to whom section 48 of the Act applies, the applicant:
 - (i) must not have been refused a visa, or had a visa cancelled, under section 501 of the Act; and
 - (ii) 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
- (iii) must provide, at the same time and place as making the application, an approved form 40SP 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
- (iv) 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, as the case may be.
- (i) 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 satisfied paragraph (h);the applicant is taken to have satisfied subparagraphs (h) (iii) and (iv).
- (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 application is made): \$1 735
 - (b) Second instalment (payable before grant of visa): Nil.

(3) Other:

- (a) 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: 1085.

(2) Visa application charge:

- (a) First instalment (payable at the time application is made): \$120
- (b) Second instalment (payable before grant of visa): Nil.

(3) Other:

- (a) Application must be made 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 AAT.

(4) Subclasses:

159 (Provisional Resident Return)

1216A. Resolution of Status (Temporary) (Class UH)

(1) Form: 1096.

(2) Visa application charge:

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

- (i) In the case of an application made outside Australia:
Nil

- (ii) In the case of an application made in Australia:
\$2 955

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

(i) In the case of each applicant who:

- (A) is in Australia; and
(B) was 18 years or more at time of application;
and
(C) is assessed as not having functional English;
and
(D) satisfies the primary criteria for the grant of a visa of a subclass included in Resolution of Status (Temporary) (Class UH): \$6 530

(ii) In the case of each applicant who:

- (A) is outside Australia; and
(B) was 18 years or more at time of application;
and
(C) is assessed as not having functional English;
and
(D) satisfies the primary criteria for the grant of a visa of a subclass included in Resolution of Status (Temporary) (Class UH): \$3 275

- (iii) In the case of each applicant who:
 - (A) was 18 years or more at 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 Resolution of Status (Temporary) (Class UH): \$3 275
 - (iv) In any other case: Nil
- (3) Other:
- (a) Application may be made in Australia, but not in immigration clearance, if:
 - (i) it is made during the period from 1 October 1997 to 31 March 1998 (inclusive); and
 - (ii) at the time when it is made, the applicant is in Australia.
 - (b) Application may be made outside Australia if:
 - (i) subject to paragraph (i), it is made during the period from 1 October 1997 to 30 June 1998 (inclusive); and
 - (ii) at the time when it is made, the applicant is outside Australia.
 - (c) In the case of an application mentioned in paragraph (a), the application must be accompanied by satisfactory evidence that:
 - (i) the applicant, or at least 1 person who makes a combined application with the applicant, entered Australia, as the holder of:
 - (A) a valid passport of a country specified in paragraph (d); and
 - (B) an entry permit or an entry visa that had effect as an entry permit; and
 - (ii) the applicant or the person, as the case requires, so entered Australia on or before the date specified in paragraph (d) in relation to that country.

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- (d) The countries and dates mentioned in paragraph (c) are as follows:
- (i) Iraq — 31 October 1991;
 - (ii) Kuwait — 31 October 1991;
 - (iii) Lebanon — 30 November 1991;
 - (iv) PRC — 1 November 1993;
 - (v) Sri Lanka — 1 November 1993;
 - (vi) Socialist Federal Republic of Yugoslavia — 1 November 1993;
 - (vii) Federal Republic of Yugoslavia — 1 November 1993;
 - (viii) Former Yugoslav Republic of Macedonia — 1 November 1993;
 - (ix) Republic of Bosnia and Herzegovina — 1 November 1993;
 - (x) Republic of Croatia — 1 November 1993;
 - (xi) Republic of Slovenia — 1 November 1993.
- (e) In the case of an application mentioned in paragraph (a), the application must be made at the same time and place as an application, by the applicant, for a Resolution of Status (Residence) (Class BL) visa.
- (f) In the case of an application mentioned in paragraph (a) by an applicant who claims to be:
- (i) a member of the immediate family of a person (*the principal person*) who is also making an application mentioned in that paragraph; or
 - (ii) a dependent child of the spouse of the principal person, being a spouse who is an applicant for a Resolution of Status (Temporary) (Class UH) or Resolution of Status (Residence) (Class BL) visa;
- the application may be made at the same time and place as, and combined with, the application by the principal person.
- (g) In the case of an application mentioned in paragraph (b), subject to paragraph (i), the application specifies a valid application mentioned in paragraph (a), by another person (*the sponsor*), that identifies the applicant as:

- (i) either:
 - (A) a member of the immediate family of the sponsor; or
 - (B) a dependent child of the spouse of the sponsor, being a spouse who is an applicant for a Resolution of Status (Temporary) (Class UH) visa; and
 - (ii) a person who is sponsored by the sponsor.
- (h) An application mentioned in paragraph (b) may be made at the same time and place as, and combined with, another such application if each applicant claims to be:
 - (i) identified, in the application of a person (*the sponsor*) who has made a valid application mentioned in paragraph (a), as:
 - (A) a member of the immediate family of the sponsor; or
 - (B) a dependent child of the spouse of the sponsor, being a spouse who is an applicant for a Resolution of Status (Temporary) (Class UH) visa; and
 - (ii) sponsored by the sponsor.
- (i) If:
 - (i) the applicant is a dependent child of a person (*the sponsor*) who has made a valid application mentioned in paragraph (a); and
 - (ii) the applicant is sponsored by the sponsor; and
 - (iii) the Minister is satisfied that compelling and compassionate circumstances exist for the applicant to make the application;the application:
 - (iv) may be made outside Australia at any time before the grant to the sponsor of a Resolution of Status (Residence) (Class BL) visa; and
 - (v) need not specify the valid application made by the sponsor.

(4) Subclasses:

450 (Resolution of Status — Family Member
(Temporary))

850 (Resolution of Status (Temporary))

1217. Retirement (Temporary) (Class TQ)

(1) Form: 147.

(2) Visa application charge:

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

(i) In the case of an applicant who:

(A) is the holder of a Subclass 410 visa granted
before 1 July 2009 (the *earlier visa*); and

(B) applies for a new Subclass 410 visa that
would expire not later than the day on which
the earlier visa would have expired: Nil

(ii) In any other case: \$265.

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

(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
an instrument in writing for this subparagraph; or

(ii) having the application delivered by a courier service,
or otherwise hand-delivered, to the address specified
in an instrument in writing for this subparagraph.

(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)

1217A. Sponsored (Visitor) (Class UL)

(1) Form:

- (a) If the applicant is seeking to satisfy the criteria for the grant of a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa: 1235 and 1238.
- (b) If the applicant is seeking to satisfy the criteria for the grant of a Subclass 679 (Sponsored Family Visitor) visa: 48S and 1149.

(2) Visa application charge:

- (a) First instalment (payable at the time the application is made):
 - (i) Subject to subparagraphs (ii), (iii) and (iv): \$105
 - (ii) An applicant who makes an application of the kind mentioned in paragraph (1) (a) and who:
 - (A) appears to the Minister, on the basis of the application, to be a person to whom privileges and immunities are, or are expected to be, accorded under:
 - (I) the *International Organisations (Privileges and Immunities) Act 1963*; or
 - (II) the *Overseas Missions (Privileges and Immunities) Act 1995*; and
 - (B) is expected to be recommended by the Foreign Minister for the grant of the visa: Nil
 - (iii) An applicant who makes an application of the kind mentioned in paragraph (1) (a) in the course of

acting as a representative for a foreign government:
Nil

- (iv) An applicant who is the spouse, de facto partner or dependent child of an applicant mentioned in subparagraph (ii) or (iii): Nil.

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

(3) Other:

- (a) Application by a person seeking to satisfy the criteria for the grant of a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa:
- (i) must be made in Australia, but not in immigration clearance; and
 - (ii) must be lodged by the person, agency, instrumentality or organisation mentioned in clause 459.214.
- (aa) Application by a person seeking to satisfy the criteria for the grant of a Subclass 679 (Sponsored Family Visitor) visa:
- (i) must be made in Australia, but not in immigration clearance; and
 - (ii) must be lodged by the sponsor of the applicant.
- (b) Applicant must be outside Australia.
- (c) Application by the spouse, de facto partner or a dependent child of an applicant (the **primary applicant**) who appears to the Minister, on the basis of information contained in the primary applicant's application, to meet the requirements for the grant of a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa may be made at the same time and place as, and combined with, the application by the primary applicant.
- (d) Application by a person included in the passport of another applicant who appears to the Minister, on the basis of information contained in the other applicant's application, to meet the requirements for the grant of a Subclass 679 (Sponsored Family Visitor) visa may be made at the same time and place as, and combined with, the application by that other applicant.

(4) Subclasses:

- 459 (Sponsored Business Visitor (Short Stay))
- 679 (Sponsored Family Visitor)

1218. Tourist (Class TR)

(1) Form:

- (a) If the applicant is in Australia: 601 or 601E.
- (b) If the applicant:
 - (i) is a citizen of PRC; and
 - (ii) is in PRC; and
 - (iii) is intending to travel to Australia as a member of a tour organised by a travel agent specified in an instrument in writing for this subparagraph; and
 - (iv) makes the application at a diplomatic or consular office maintained by, or on behalf of, the Commonwealth in PRC: 48G or 48G (electronic).
- (c) If the applicant is outside Australia, and paragraph (b) does not apply: 48, 48 (Internet), 48N or 48R.

(2) Visa application charge:

- (a) First instalment (payable at the time application is made):
 - (i) In the case of 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: Nil
 - (ii) In any other case:
 - (A) if the applicant is outside Australia at the time of application: \$105
 - (B) if the applicant is in Australia at the time of application: \$255.
- (b) Second instalment (payable before grant of visa): Nil.

(3) Other:

- (a) If the applicant is in Australia, application must be made in Australia.

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- (b) If the applicant is outside Australia, the application must be made outside Australia.
 - (c) If the application is made outside Australia (not being an application on form 48 (Internet)), application 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 a visa application agency that is approved in writing by the Minister for the purpose of receiving applications for Tourist (Class TR) visas.
 - (d) Application may be made on form 48 (Internet) if, and only if the applicant is in a class of persons specified in an instrument in writing for this paragraph.
 - (e) Application may be made on form 601E if, and only if, the applicant is the holder of:
 - (i) a Subclass 651 (eVisitor) visa; or
 - (ii) a Subclass 676 (Tourist) visa; or
 - (iii) a Subclass 976 (Electronic Travel Authority (Visitor)) visa.
 - (f) 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.
 - (g) 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: 1362 (Internet).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Applicant must be outside Australia.
 - (b) Applicant must hold an eVisitor eligible passport.
- (4) Subclasses:
 - 651 (eVisitor)

1218A. Skilled — Independent Regional (Provisional) (Class UX)

- (1) Forms: 47SK and 47SK (Internet).
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) in the case of an applicant for a Skilled — Independent (Migrant) (Class BN) visa who has a written invitation from the Minister under regulation 2.08DA to apply for a Skilled — Independent Regional (Provisional) (Class UX) visa, and has applied for the visa in accordance with that regulation: \$235
 - (ii) in the case of an applicant who is the holder of a Subclass 495 (Skilled — Independent Regional (Provisional)) visa: \$235
 - (iii) in any other case: \$2 575.
 - (b) Second instalment (payable before grant of visa):
 - (i) if the applicant:
 - (A) has turned 18; and
 - (B) is assessed as not having functional English; and
 - (C) has held a Skilled — Independent Regional (Provisional) (Class UX) visa; and

- (D) has not paid a second instalment for the application for the visa mentioned in sub-subparagraph (C): \$3 575
- (ii) if the applicant:
 - (A) has turned 18; and
 - (B) is assessed as not having functional English; and
 - (C) has not previously held a Skilled — Independent Regional (Provisional) (Class UX) visa: \$3 575
- (iii) in any other case: Nil.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

(3) Other:

- (b) Application must be made:
 - (i) by posting the application (with the correct pre-paid postage) to the post office box address specified in an instrument in writing for this subparagraph; or
 - (ii) by having the application delivered by a courier service to the address specified in an instrument in writing for this subparagraph; or
 - (iii) as an Internet application.

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

- (c) subitem (4), (5), (5A), (5B) or (6) must be satisfied.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — Independent Regional (Provisional) (Class UX) visa may be made at the same time and place as, and combined with, the application by that person.
- (e) Applicant who is a member of the family unit of an applicant who meets the requirements of subitem (5), and makes a combined application with that applicant must satisfy paragraphs (5) (a), (b), (c), (d), (e), (k) and (l).

- (f) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.
- (4) If the applicant is the holder of, or is a member of the family unit of the holder of, a Skilled — Independent Regional (Provisional) (Class UX) visa:
 - (a) if the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa granted on the basis of satisfying the primary criteria, the applicant has never held another Skilled — Independent Regional (Provisional) (Class UX) visa; and
 - (b) application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that each applicant who is at least 16 years old has applied for an Australian Federal Police check in relation to the applicant during the 12 months immediately before the day when the application is made.
- (5) If the applicant does not meet the requirements of subitem 1218A (4), and is in Australia, and seeks to be eligible for the grant of a Subclass 495 (Skilled — Independent Regional (Provisional)) visa while in Australia:
 - (a) The applicant must be:
 - (i) the holder of a Bridging A (Class WA) visa granted on the basis that the applicant met the requirements of subclause 010.211 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (b); or
 - (ii) the holder of a Bridging B (Class WB) visa granted on the basis that the applicant met the requirements of subclause 020.212 (2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in paragraph (b); or
 - (iii) a person to whom paragraph (b) applies.
 - (ab) Applicant is taken to have complied with paragraph (a) if:
 - (i) the applicant is not the holder of a substantive visa; and
 - (ii) the last substantive visa held by the applicant was cancelled, and the Migration Review Tribunal has made a decision to set aside and substitute the

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- cancellation decision or the Minister's decision not to revoke the cancellation; and
- (iii) that last substantive visa was a visa other than a visa of a kind mentioned in paragraph (b); and
 - (iv) the applicant has lodged the application within 28 days after the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.
- (ac) If the last substantive visa, held by an applicant who is taken, under paragraph (ab), to have complied with paragraph (a), was not a Subclass 560, 562, 563, 572, 573 or 574 visa, the applicant must have been, at some time in the 6 months immediately before that visa was cancelled, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that was not of a kind mentioned in paragraph (b).
- (b) This paragraph applies to an applicant who is the holder of a substantive visa other than:
- (i) a Subclass 560 (Student) visa granted to:
 - (A) the applicant as a person who satisfied the primary criteria for that visa (the ***primary person***) in relation to undertaking:
 - (I) a registered English language course or an ELICOS; or
 - (II) a course of study paid for wholly or in part by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency; or
 - (III) a full-time course of study or training under a scholarship scheme or training program approved by the AusAID Minister or the Defence Minister; or
 - (IV) a non-award course; or
 - (B) the applicant as a member of the family unit of the primary person; or

- (ii) a Subclass 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependant), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Postgraduate Research Sector) visa granted to:
 - (A) the applicant as a person who satisfied the primary criteria for the visa (the ***primary person***) in relation to undertaking a course mentioned in sub-sub-subparagraph (i) (A) (II) or (III); or
 - (B) the applicant as a member of the family unit of the primary person; or
- (iii) a Subclass 570 (Independent ELICOS Sector) visa; or
- (iv) a Subclass 571 (Schools Sector) visa; or
- (v) a Subclass 575 (Non-Award Sector) visa; or
- (vi) a Subclass 576 (AusAID or Defence Sector) visa.
- (c) If the applicant is the holder of:
 - (i) a Bridging A (Class WA) visa or Bridging B (Class WB) visa; or
 - (ii) a substantive visa that is not a Subclass 560, 562, 563, 572, 573 or 574 visa of the kind required in paragraph (b);the applicant:
 - (iii) must be the holder of a Subclass 497 (Graduate — Skilled) visa; or
 - (iv) must have been, at some time in the 6 months immediately before making the application, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa of the kind required in paragraph (b).
- (d) Applicant must not have been an unlawful non-citizen at any time in the 6 months immediately before making the application.
- (e) Application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:
 - (i) all persons included in the application have undergone a medical examination for the purpose of the application, carried out by any of the following:

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- (A) a Medical Officer of the Commonwealth;
 - (B) a medical practitioner approved by the Minister for this sub-subparagraph;
 - (C) a medical practitioner employed by an organisation approved by the Minister for this sub-subparagraph; and
 - (ii) each applicant who is at least 16 years old has applied for an Australian Federal Police check in relation to the applicant during the 12 months immediately before the day when the application is made.
- (f) Applicant seeking to satisfy the primary criteria:
- (i) must:
 - (A) be less than 45 years old; or
 - (B) if the applicant:
 - (I) has a written invitation from the Minister under regulation 2.08DA; and
 - (II) was less than 45 years old when the application for a Skilled — Independent (Migrant) (Class BN) visa was made; and
 - (III) has applied for the visa in accordance with regulation 2.08DA;
 - (ii) must nominate in his or her application a skilled occupation.
- (g) Applicant seeking to satisfy the primary criteria must, in his or her application:
- (i) if the applicant has, in the 6 months immediately before the day when the application is made, completed a doctoral degree, in which all instruction was conducted in English, for award by an Australian educational institution as the result of at least 2 years of full-time study in Australia at that institution — nominate a skilled occupation for

- which at least 50 points are specified by an instrument in writing for this subparagraph as available; or
- (ii) if the applicant meets the requirements of Part 10 of Schedule 6A to these Regulations — nominate a skilled occupation for which at least 50 points are specified by an instrument in writing for this subparagraph as available; or
 - (iii) in any other case — nominate a skilled occupation for which 60 points are specified by an instrument in writing for this subparagraph as available.
- (h) Application by the applicant seeking to satisfy the primary criteria must be accompanied by a declaration by that applicant that:
- (i) each of the following sub-subparagraphs applies in relation to the applicant:
 - (A) the applicant has, in the 6 months immediately before the day when the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of at least 2 years at that institution while the applicant was present in Australia;
 - (B) all instruction for that degree, diploma or trade qualification was conducted in English; or
 - (ii) each of the following sub-subparagraphs applies in relation to the applicant:
 - (A) the applicant has, in the 6 months immediately before the day when the application is made, completed a degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by an Australian educational institution as a result of a course of study of less than 2 years

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- at that institution while the applicant was present in Australia;
- (B) before completing that degree, diploma or trade qualification, the applicant completed at least 1 other degree, diploma or trade qualification (other than a degree, diploma or trade qualification in English language proficiency) for award by that institution, or another Australian educational institution, as a result of a course of study, while the applicant was present in Australia;
 - (C) the 2 or more degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) were completed as a result of 1 or more courses of study undertaken over a total of at least 2 years while the applicant was present in Australia;
 - (D) if 1 of the 2 or more degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) is a doctoral degree — the doctoral degree was completed as a result of a total of at least 2 years of full-time study while the applicant was present in Australia;
 - (E) each of the degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) was completed at the institution at which it was commenced;
 - (F) all instruction for each of the degrees, diplomas or trade qualifications mentioned in sub-subparagraphs (A) and (B) was conducted in English.
- (i) Application by an applicant seeking to satisfy the primary criteria must be accompanied by a declaration by the applicant that the applicant has applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority.

- (j) Application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that the applicant is sponsored by a State or Territory government agency.
- (k) If the applicant is, or was at any time, the holder of an AusAID student visa within the meaning of regulation 1.04A or of a Subclass 560, 562, 563, 570, 571, 572, 573, 574, 575 or 576 visa granted to the applicant for a course of study or training for which the applicant is or was provided financial support by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency, application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:
 - (i) the course of study or training (whether or not the applicant has ceased the course) is one designed to be undertaken over a period of less than 12 months; or
 - (ii) the applicant:
 - (A) has ceased, completed, withdrawn from, or been excluded from:
 - (I) the course of study or training to which the visa relates or related; or
 - (II) another course approved by the AusAID Minister, or the government or multilateral agency that provided financial support to the applicant, as the case requires, in substitution for that course; and
 - (B) has spent at least 2 years outside Australia since ceasing or completing, or withdrawing or being excluded from, the course.
- (l) Application by an applicant who is, or was at any time, a member of the family unit of a person:
 - (i) who was the holder of a visa of a kind mentioned in paragraph (k); and
 - (ii) to whom subparagraph (k) (ii) applies;must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that the applicant

has spent at least 2 years outside Australia since that person ceased, completed, withdrew from or was excluded from the course of study or training to which the visa related.

- (5A) If the applicant is the holder of a Subclass 417 (Working Holiday) visa:
- (a) the applicant seeking to satisfy the primary criteria must be at least 18 years old and less than 45 years old; and
 - (b) the applicant seeking to satisfy the primary criteria has nominated a skilled occupation in his or her application; and
 - (c) the application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:
 - (i) all persons included in the application have undergone a medical examination for the purpose of the application, carried out by any of the following:
 - (A) a Medical Officer of the Commonwealth;
 - (B) a medical practitioner approved by the Minister for this sub-subparagraph;
 - (C) a medical practitioner employed by an organisation approved by the Minister for this sub-subparagraph; and
 - (ii) each applicant who is at least 16 years old has applied for an Australian Federal Police check in relation to the applicant during the 12 months immediately before the day when the application is made; and
 - (iii) the applicant seeking to satisfy the primary criteria has applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority; and
 - (iv) the applicant seeking to satisfy the primary criteria is sponsored by a State or Territory government agency; and
 - (v) the applicant has been in Australia as the holder of a Working Holiday (Temporary) (Class TZ) visa for a period of at least 6 months immediately before the day when the application is made.

- (5B) If the applicant is the holder of a Subclass 442 (Occupational Trainee) visa:
- (a) the applicant seeking to satisfy the primary criteria must be at least 18 years old and less than 45 years old; and
 - (b) the applicant seeking to satisfy the primary criteria has nominated a skilled occupation in his or her application; and
 - (c) the application must be accompanied by a declaration by the applicant seeking to satisfy the primary criteria that:
 - (i) all persons included in the application have undergone a medical examination for the purpose of the application, carried out by any of the following:
 - (A) a Medical Officer of the Commonwealth;
 - (B) a medical practitioner approved by the Minister for this sub-subparagraph;
 - (C) a medical practitioner employed by an organisation approved by the Minister for this sub-subparagraph; and
 - (ii) each applicant who is at least 16 years old has applied for an Australian Federal Police check in relation to the applicant during the 12 months immediately before the day when the application is made; and
 - (iii) the applicant seeking to satisfy the primary criteria has applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority; and
 - (iv) the applicant seeking to satisfy the primary criteria is sponsored by a State or Territory government agency; and
 - (v) if the applicant is the holder of a Subclass 442 (Occupational Trainee) visa on the basis of satisfying the primary criteria — the applicant has completed the course, training or work experience for which the applicant was granted the Subclass 442 (Occupational Trainee) visa.
- (6) If the applicant does not meet the requirements of subitem (4), (5), (5A) or (5B):

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- (a) Applicant seeking to satisfy the primary criteria:
- (i) must accompany his or her application with a declaration by the applicant that:
 - (A) he or she is less than 45; or
 - (B) if the applicant:
 - (I) has a written invitation from the Minister under regulation 2.08DA; and
 - (II) was less than 45 years old when the application for a Skilled — Independent (Migrant) (Class BN) visa was made; and
 - (III) has applied for the visa in accordance with regulation 2.08DA;he or she has received such an invitation; and
 - (ii) must nominate in his or her application a skilled occupation.
- (b) Application by an applicant seeking to satisfy the primary criteria must be accompanied by a declaration by the applicant that a relevant assessing authority has assessed the skills of the applicant as suitable for his or her nominated skilled occupation.
- (c) Application by an applicant seeking to satisfy the primary criteria must be accompanied by a declaration by the applicant that the applicant is sponsored by a State or Territory government agency.
- (7) Subclasses:
- 495 (Skilled — Independent Regional (Provisional))
- (8) In this item:
- completed***, in relation to a degree, diploma or trade qualification, means having met the academic requirements for its award.

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

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

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

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

1219. Special Category (Temporary) (Class TY)

- (1) Form: 15 (unless the application is made using an authorised system, in which case no form is required).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application must be made:
 - (i) if the applicant does not hold a visa:
 - (A) in Australia, either in immigration clearance or after immigration clearance; or
 - (B) if the applicant is to travel to Australia on a pre-cleared flight — outside Australia in immigration clearance; or
 - (ii) if the applicant is the holder of a temporary visa — 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 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))

1220B. Sponsored Training (Temporary) (Class UV)

(1) Form: 1227.

(2) Visa application charge:

- (a) First instalment (payable at the time application is made): \$265
- (b) Second instalment (payable before grant of visa): Nil.

(3) Other:

- (a) Application by a person seeking to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa:
 - (i) must include evidence that:
 - (A) a professional development sponsor has agreed, in writing, to be the professional development sponsor in relation to the person; and
 - (B) the professional development sponsor is not barred from sponsoring the person under paragraph 140M (1) (c) of the Act; and
 - (ii) must be lodged by the professional development sponsor.

Note Under paragraph 140M (1) (c) of the Act, a professional development sponsor may be barred for a specified period from sponsoring more people under the terms of 1 or more specified, or all, existing approvals for visas.

- (b) Application by a person seeking to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa must be made by:
 - (i) posting the application (with the correct pre-paid postage) to the post office box address specified in a Gazette Notice for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in a Gazette Notice for this subparagraph; or
 - (iii) having the application sent by facsimile to the address specified in a Gazette Notice for this subparagraph.
 - (c) Applicant seeking to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa must be outside Australia.
- (4) Subclass:
470 (Professional Development)

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 application is made):
 - (i) For an applicant who:
 - (A) made a valid application for a Parent (Migrant) (Class AX) visa before the day on which this item commences; and
 - (B) withdrew that application at the same time as making the application for the Contributory Parent (Temporary) (Class UT) visa: Nil
 - (ii) For an applicant who is a contributory parent newborn child: Nil
 - (iii) In any other case: \$1 735.

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- (b) Second instalment (payable before grant of visa):
- (i) For an applicant who:
 - (A) is a dependent child of an applicant for a Contributory Parent (Temporary) (Class UT) visa; and
 - (B) has not turned 18 at the time of application: \$1 640
 - (ii) For an applicant who is a contributory parent newborn child: Nil
 - (iii) In any other case: \$22 780.
- (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 Gazette Notice for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified in a Gazette Notice 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 application is made):
 - (i) For an applicant who:
 - (A) made a valid application for an Aged Parent (Residence) (Class BP) visa before the day on which this item commences; and
 - (B) withdrew that application at the same time as making the application for the Contributory Aged Parent (Temporary) (Class UU) visa: Nil
 - (ii) For an applicant who is a contributory parent newborn child: Nil
 - (iii) In any other case: \$2 575.
 - (b) Second instalment (payable before grant of visa):
 - (i) For an applicant who:
 - (A) is a dependent child of an applicant for a Contributory Aged Parent (Temporary) (Class UU) visa; and
 - (B) has not turned 18 at the time of application: \$1 640
 - (ii) For an applicant who is a contributory parent newborn child: Nil
 - (iii) In any other case: \$22 780.
- (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.
 - (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:
- (a) In the case of an application by an applicant who:
 - (i) is outside Australia; and
 - (ii) is included in a class of persons specified by Gazette Notice for the purposes of this subparagraph: 157A or 157E.
 - (aa) In the case of an application by an applicant who is in Australia and:
 - (i) is included in a class of persons specified by an instrument in writing for the purposes of this subparagraph: 157A or 157A (Internet); or
 - (ii) is included in a class of persons specified by an instrument in writing for the purposes of this subparagraph: 157P or 157P (Internet).
 - (ca) In the case of an application by a person who seeks a Subclass 580 visa: 157G.
 - (d) In any other case: 157A.
 - (i) if the application is made outside Australia: 157A; or
 - (ii) if the application is made in Australia: 157A or 157A (Internet).

(2) Visa application charge:

- (a) First instalment (payable at the time application is made):
 - (i) In the case of each applicant (or a member of the family unit of each applicant) who:
 - (A) has been granted approval, under a students' training scheme approved by the Commonwealth, to study in Australia; or
 - (C) is a secondary exchange student; or
 - (D) is an AusAID student to whom subparagraph 1.04A (3) (b) (ii) applies; or
 - (E) is a member of the family unit of an AusAID student who has not, since becoming an AusAID student, applied for a visa other than an AusAID student visa within the meaning of regulation 1.04A; or
 - (F) is a Defence student to whom subparagraph 1.04B (b) (ii) applies; or
 - (G) is a member of the family unit of a Defence student who has not, since becoming a Defence student, applied for a visa other than a student visa; or
 - (H) is a student to whom paragraph (aa) applies; or
 - (I) is an applicant for a Subclass 580 visa to whom paragraph (ab) applies: Nil.
 - (ii) In the case of an applicant who makes an application on form 157P or 157P (Internet) (other than an applicant mentioned in subparagraph (2) (a) (i)): \$75
 - (iv) In any other case: \$550
- (aa) This paragraph applies to a student if:
 - (i) the student was not able to complete a registered course due to provider default; and
 - (ii) there is satisfactory evidence that the student was enrolled in that course on the provider default day; and

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- (iii) either:
 - (A) the student holds a student visa; or
 - (B) the student's last substantive visa was a student visa; and
 - (iv) the student requires a student visa to allow him or her to complete:
 - (A) an alternative registered course; or
 - (B) 1 or more registered courses after an alternative registered course; and
 - (v) the student's visa application is made no later than 12 months after the provider default day; and
 - (vi) the student has not made a previous application to which this paragraph applied because of the same provider default.
- (ab) This paragraph applies to a person if:
- (i) the nominating student was not able to complete a registered course due to provider default; and
 - (ii) there is satisfactory evidence that the nominating student was enrolled in that course on the provider default day; and
 - (iii) either:
 - (A) the nominating student holds a student visa; or
 - (B) the nominating student's last substantive visa was a student visa; and
 - (iv) the nominating student requires a student visa to allow him or her to complete:
 - (A) an alternative registered course; or
 - (B) 1 or more registered courses after an alternative registered course; and
 - (v) the person's visa application is made no later than 12 months after the provider default day; and
 - (vi) the person has not made a previous application to which this paragraph applied because of the same provider default.
- (b) Second instalment (payable before grant of visa): Nil.

(3) Other:

- (a) Subject to paragraph (aa), application may be made in or outside Australia, but not in immigration clearance.
- (aa) An application made on form 157A or 157G by an applicant who is included in a class of persons specified in a Gazette Notice for this paragraph must be made by:
 - (i) posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister.

Note An application made under paragraph (aa) is taken to have been made outside Australia — see subregulation 2.07AF (6).

- (b) Applicant must be in Australia to make an application in Australia.
- (c) If the application is made on form 157A or 157E and the applicant seeks to satisfy the primary criteria, the application is accompanied by satisfactory evidence that:
 - (i) the applicant is enrolled in a registered full-time course of study:
 - (A) of a type that has been gazetted under regulation 1.40A; and
 - (B) the provider of which is not a suspended education provider; or
 - (ii) the applicant has been offered a place in a registered full-time course of study:
 - (A) of a type that has been gazetted under regulation 1.40A; and
 - (B) the provider of which is not a suspended education provider; or
 - (iii) if the applicant is an AusAID student who meets the requirement in subparagraph 1.04A (3) (b) (ii), a Defence student who meets the requirement in subparagraph 1.04B (b) (ii) or a secondary exchange student — the applicant is enrolled, or intends to enrol, in a full-time course of study the provider of which is not a suspended education provider; or

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- (iv) if:
- (A) the application was made in Australia; and
 - (B) at the time of application, the applicant was the holder of a Subclass 560, 562 or 574 visa; and
 - (C) the applicant is seeking to remain in Australia during the marking of his or her postgraduate thesis —
in connection with a full-time course of study or with a matter arising from the course, the relevant educational institution requires the applicant to remain in Australia during the marking of a postgraduate thesis.
- (ce) If the application (not being an Internet application) is made outside Australia, application 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 a visa application agency that is approved in writing by the Minister for the purpose of receiving applications for Student (Temporary) (Class TU) visas.
- (cf) If the application is made in Australia, using form 157P, application must be made at:
- (i) an office of Immigration in Australia; or
 - (ii) if the educational institution at which the applicant is enrolled is approved in writing by the Minister for the purpose of receiving applications for Student (Temporary) (Class TU) visas — that educational institution; or
 - (iii) if:
 - (A) the applicant holds a Subclass 560, 563, 570, 571, 572, 573, 574, 575 or 576 visa as a member of the family unit of a person who, having satisfied the primary criteria, holds a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa; and

- (B) the educational institution at which that person is enrolled is approved in writing by the Minister for the purpose of receiving applications for Student (Temporary) (Class TU) visas;
that educational institution.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Student (Temporary) (Class TU) visa may be made at the same time and place as, and combined with, the application by that person.
- (e) A person claiming to be a member of the family unit of the primary applicant must be included by the primary applicant in the application or the information under subregulation 2.07AF (3) or (4), except if the applicant became such a member of the family unit after the decision to grant the Student (Temporary) (Class TU) visa to the primary applicant was made.
- (f) If the application is made on form 157G, the application must be accompanied by a form 157N.
- (g) In the case of an application to which paragraph (h) applies, the application must be accompanied by:
 - (i) evidence of an intention to reside in Australia with a person who:
 - (A) is a parent of the applicant or a person who has custody of the applicant; or
 - (B) is:
 - (I) a relative of the applicant; and
 - (II) nominated by a parent of the applicant or a person who has custody of the applicant; and
 - (III) aged at least 21; or
 - (ii) evidence that the education provider for the course in which the applicant is enrolled has made appropriate arrangements for the applicant's accommodation, support and general welfare for at least the minimum period of enrolment stated on the applicant's:

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- (A) certificate of enrolment; or
 - (B) electronic confirmation of enrolment; or
 - (C) Acceptance Advice of Secondary Exchange Student (AASES);
- plus 7 days after the end of that period.
- (h) This paragraph applies to an application if:
 - (i) the application is made in Australia; and
 - (ii) the application is made on form 157A or 157A (Internet); and
 - (iii) the applicant is under 18 years of age; and
 - (iv) the applicant is not:
 - (A) an AusAID student; or
 - (B) a Defence student.
- (4) Subclasses:
- 570 Independent ELICOS Sector
 - 571 Schools Sector
 - 572 Vocational Education and Training Sector
 - 573 Higher Education Sector
 - 574 Postgraduate Research Sector
 - 575 Non-Award Sector
 - 576 AusAID or Defence Sector
 - 580 Student Guardian
- (5) In this item:
- nominating student***, for an applicant, means a person who nominates the applicant on form 157N.
- relevant visa*** means a visa of one of the following classes or subclasses:
- (a) Border (Temporary) (Class TA);
 - (b) Business (Temporary) (Class TB);
 - (c) Cultural/Social (Temporary) (Class TE);
 - (d) Educational (Temporary) (Class TH);
 - (e) Electronic Travel Authority (Class UD);

- (f) Expatriate (Temporary) (Class TJ);
- (g) Family Relationship (Temporary) (Class TL);
- (h) Long Stay (Visitor) (Class TN);
- (i) Medical Practitioner (Temporary) (Class UE);
- (j) Retirement (Temporary) (Class TQ);
- (k) Short Stay (Visitor) (Class TR);
- (l) Supported Dependant (Temporary) (Class TW);
- (m) Temporary Business Entry (Class UC);
- (ma) Tourist (Class TR) visa;
- (n) Working Holiday (Temporary) (Class TZ);
- (o) Subclass 303 (Emergency (Temporary Visa Applicant));
- (p) Subclass 427 (Domestic Worker (Temporary) — Executive);
- (q) Subclass 497 (Graduate — Skilled).

1223A. Temporary Business Entry (Class UC)

- (1) Form:
 - (a) Subject to paragraph (c), if the applicant seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa: 456.
 - (b) If the applicant:
 - (i) seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) is outside Australia at the time of application; and
 - (iii) is making the application for the visa:
 - (A) in connection with a standard business sponsor who is operating a business in Australia; or
 - (B) as part of a labour agreement; or
 - (C) in circumstances in which the person who proposes to nominate an occupation in relation to the applicant has made an application for approval as a standard business sponsor on Form 1196 (Internet); or

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- (D) in circumstances in which:
- (I) an approved nomination of an occupation in relation to the applicant has been made by a person who was a standard business sponsor who is operating a business in Australia; and
 - (II) that nomination has not ceased to have effect under regulation 2.75: 1066 or 1066 (Internet).
- (ba) If the applicant:
- (i) seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) is in Australia at the time of application; and
 - (iii) is making the application for the visa:
 - (A) in connection with a standard business sponsor who is operating a business in Australia; or
 - (B) as part of a labour agreement; or
 - (C) in circumstances in which the person who proposes to nominate an occupation in relation to the applicant has made an application for approval as a standard business sponsor on Form 1196 (Internet); or
 - (D) in circumstances in which:
 - (I) an approved nomination of an occupation in relation to the applicant has been made by a person who was a standard business sponsor who is operating a business in Australia; and
 - (II) that nomination has not ceased to have effect under regulation 2.75; and
 - (iv) holds a substantive visa at the time of application for the Temporary Business Entry (Class UC) visa: 1066 or 1066 (Internet).
- (bb) If the applicant:
- (i) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and

- (ii) is not making a combined application with the applicant seeking to satisfy the primary criteria for the grant of that visa; and
 - (iii) either:
 - (A) the applicant is outside Australia at the time of the application; or
 - (B) at the time of the application, the applicant is in Australia and holds a substantive visa: 1066 or 1066S (Internet).
 - (bc) If:
 - (i) the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (ii) paragraphs (b), (ba) and (bb) do not apply: 1066.
 - (c) If:
 - (i) a person has made an application to a Government in accordance with subparagraph 2.07AA (2) (b) (i) or (ii); and
 - (ii) that application, a copy of that application, or the information contained in that application, has been sent by the Government in accordance with paragraph 2.07AA (2) (c) to an office of Immigration that is approved in writing by the Minister for the purpose of receiving applications of that kind: Nil.
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made):
 - (i) Subject to subparagraphs (v), (vi), (vii), (viii) and (ix), in the case of an applicant who seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa: \$105
 - (iii) Subject to subparagraphs (v) and (vi), in the case of each applicant who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa: \$265
 - (v) In the case of an applicant who:
 - (B) appears to the Minister, on the basis of the application, to be a person to whom privileges and immunities are, or are

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- expected to be, accorded under the *International Organisations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities) Act 1995*; and
- (C) is expected to be recommended by the Foreign Minister for the grant of a visa: Nil
- (vi) In the case of an applicant who:
- (A) seeks to satisfy the secondary criteria for the grant of a Subclass 456 (Business (Short Stay)) visa, and is a spouse, de facto partner or dependent child of an applicant mentioned in subparagraph (v); or
- (B) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa, and is a member of the family unit of a person mentioned in subparagraph (v): Nil
- (vii) In the case of an applicant who applies in the course of acting as a representative for a foreign government: Nil
- (viii) In the case of an applicant who is an applicant referred to in paragraph (1) (c): Nil
- (ix) In the case of an applicant who is in a class of persons specified by the Minister in an instrument in writing for this subparagraph: Nil
- (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
- (a) In the case of an applicant who seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa:
- (i) the applicant must be outside Australia; and
- (ii) the application must be made outside Australia.
- (aa) Subject to paragraphs (ad), (ae), (af) and (ag), an application by an applicant who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa may be made in or outside Australia, but not in immigration clearance.

- (ad) An application by an applicant who:
- (ia) seeks to satisfy the criteria for grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (i) holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that the applicant met the requirements of subclause 457.223 (7) of Schedule 2 as in force immediately prior to 14 September 2009; and
 - (ii) on the day on which the application is made:
 - (A) had been conducting the business in Australia as a principal for at least 15 months; or
 - (B) if the applicant had been conducting the business in Australia as a principal for less than 15 months — had received an endorsement of the business as beneficial to a State or Territory from the government of the State or Territory;
- must be made in Australia, but not in immigration clearance.
- (ae) An application by an applicant who:
- (ia) seeks to satisfy the criteria for grant of a Subclass 457 (Business (Long Stay)) visa; and
 - (i) holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that the applicant met the requirements of Subdivision 457.32 of Schedule 2; and
 - (ii) is the spouse or de facto partner of a person who holds a visa of the kind mentioned in subparagraph (ad) (i); and
 - (iii) on the day on which the application is made:
 - (A) had been conducting the business in Australia as a principal for at least 15 months; or
 - (B) if the applicant had been conducting the business in Australia as a principal for less than 15 months — had received an endorsement of the business as beneficial to a

State or Territory from the government of the
State or Territory;

must be made in Australia, but not in immigration
clearance.

(af) Subject to paragraph (ag), an application by an applicant
who:

- (i) seeks to satisfy the criteria for the grant of a
Subclass 457 (Business (Long Stay)) visa; and
- (ii) seeks to meet the requirements of subclause
457.223 (2), (4) or (10) of Schedule 2;

must be made:

- (iii) in Australia, but not in immigration clearance; or
- (iv) as an Internet application.

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

(ag) In the case of an applicant:

- (i) who seeks to satisfy the criteria for the grant of a
Subclass 457 (Business (Long Stay)) visa; and
- (ii) in relation to whom the nomination of an occupation
has been made, or is proposed to be made, by a
person who does not operate a business in Australia;

the applicant must be outside Australia and the application
must be made outside Australia.

(b) An application by an applicant who:

- (i) seeks to satisfy the criteria for the grant of a
Subclass 456 (Business (Short Stay)) visa; and
- (ii) claims to be a spouse, de facto partner or dependent
child of another such applicant;

may be made at the same time and place as, and combined
with, the application of that other applicant.

(c) An application by an applicant who:

- (i) seeks to satisfy the secondary criteria for the grant of
a Subclass 457 (Business (Long Stay)) 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.

- (ca) An application by an applicant who:

- (i) seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
- (ii) claims to be a member of the family unit of an applicant who seeks to satisfy, or has satisfied, the primary criteria on the basis of meeting the requirements of subclause 457.223 (2), (4) or (10) of Schedule 2;

(other than an applicant in relation to whom the nomination of an occupation in relation to the primary applicant has been made or is proposed to be made by a person who does not operate a business in Australia) must be made:

- (iii) in Australia, but not in immigration clearance; or
- (iv) as an Internet application.

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

- (d) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa on the basis that the applicant meets the requirements of subclause 457.223 (4) of Schedule 2:
 - (i) the application must specify the person who has nominated, or who proposes to nominate, an occupation in relation to the applicant; and
 - (ii) the application must be accompanied by evidence that the person who has nominated, or proposes to nominate, the occupation is:
 - (B) a standard business sponsor; or

- (C) a person who has applied for approval under regulation 2.61 as a standard business sponsor but whose application has not yet been decided; or

Note Item 49 of Schedule 1 of the *Migration Legislation Amendment (Worker Protection) Act 2008* provides that if:

- (a) a person applied for approval as a sponsor under section 140E of the Act as in force immediately prior to 14 September 2009; and
- (b) the person's application is not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*) before 14 September 2009;

the application is treated as if it had been made on 14 September 2009.

- (D) a person whose approval as a standard business sponsor has ceased to have effect, but whose nomination of an occupation in relation to the applicant:

- (I) has been approved under section 140GB of the Act; and
- (II) has not ceased to have effect under regulation 2.75; and

- (iii) the person who has nominated, or proposes to nominate, the occupation is not the subject of a bar under:

- (A) section 140L of the Act as in force immediately prior to 14 September 2009; or
- (B) section 140M of the Act.

- (da) In the case of an applicant who seeks to satisfy the primary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa on the basis that the applicant meets the requirements of subclause 457.223 (2) of Schedule 2:

- (i) the application must specify the person who has nominated, or proposes to nominate, an occupation in relation to the applicant; and
- (ii) either:
 - (A) if the applicant is outside Australia at the time of making the application — the labour agreement has been approved; or

- (B) if the applicant is in Australia at the time of making the application:
 - (I) the labour agreement has been approved; or
 - (II) the person who proposes to nominate an occupation in relation to the applicant has made a submission to the Minister to enter into a labour agreement.
 - (e) If:
 - (i) the application is made outside Australia; and
 - (ii) the applicant seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa;
application must be made at:
 - (iii) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
 - (iv) an office of a visa application agency that is approved in writing by the Minister with whom an application for a Temporary Business Entry (Class UC) visa may be made.
 - (f) If the application is made in Australia, in accordance with subregulation 2.07AA (2), application must be made at 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.
- (4) Subclasses:
- 456 (Business (Short Stay))
 - 457 (Business (Long Stay)).

1223B. Temporary Safe Haven (Class UJ)

- (1) Form: Nil.
- (2) Visa application charge: Nil.

(3) Subclasses:

448 (Kosovar Safe Haven (Temporary))

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: 876.

(2) Visa application charge: Nil.

(3) Other:

(a) Application must be made outside Australia.

(b) Applicant must be outside Australia.

(4) Subclasses:

771 (Transit)

1224A. Work and Holiday (Temporary) (Class US)

(1) Forms:

(a) For an applicant in a class of persons specified in an instrument in writing for this paragraph: 1208 or 1208E (Internet).

(b) For any other applicant: 1208.

(2) Visa application charge:

(a) First instalment (payable at the time application is made): \$235

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

(3) Other:

(a) Applicant must hold a valid passport issued by a foreign country specified in an instrument in writing for this paragraph.

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

(aa) Subject to paragraph (ab), application using form 1208 by a person who holds a valid passport mentioned in paragraph (a) must be made at an address specified for the country of issue in an instrument in writing for this paragraph.

(ab) Application using form 1208 by a person in a class of persons specified in an instrument in writing for this paragraph may be made in any foreign country.

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

(b) If the applicant does not hold a Subclass 462 (Work and Holiday) visa at the time of application, 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 or a Subclass 462 (Work and 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 holds a Subclass 462 (Work and Holiday) visa at the time of application, the applicant must:

- (i) be in Australia, but not in immigration clearance; and

- (ii) have previously held, in Australia, not more than 2 Subclass 462 (Work and Holiday) visas; and
 - (iii) be a member of a class of persons specified by the Minister, by an instrument in writing, for this subparagraph.
- (4) Subclasses:
- 462 (Work and Holiday)

1225. Working Holiday (Temporary) (Class TZ)

- (1) Form: 1150 or 1150E.
- (2) Visa application charge (payable at the time application is made): \$235.
- (3) Application by a person made using form 1150 must be made:
 - (a) if the applicant is, or has previously been, in Australia as the holder of a working holiday visa:
 - (i) by posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister in an instrument in writing for this paragraph; or
 - (ii) by having the application sent by fax to the number specified by the Minister in an instrument in writing for this paragraph; or
 - (b) if the applicant is not, and has not previously been, in Australia as the holder of a working holiday visa the application is made:
 - (i) if the applicant is a member of a class of persons specified by the Minister in an instrument in writing for this paragraph — in any foreign country; or
 - (ii) if the applicant is a member of a class of persons specified by the Minister in an instrument in writing for this paragraph — in the foreign country specified in the instrument in writing for that class of persons.

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

- (3A) If the applicant is not, and has not previously been, in Australia as the holder of a 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 working holiday visa:
- (a) the applicant must not be in immigration clearance; and
 - (b) the application must not be made 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 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.
- 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 in writing under subparagraph (3) (b) (i) or (ii).

working holiday visa means a visa or entry permit of any of the following classes or kinds:

- (a) a visa that:
 - (i) was issued under the Migration (1989) Regulations; and
 - (ii) contained an endorsement describing the visa as a working holiday visa (code T18) or a working holiday visa (code number 417);
- (b) a class 417 (working holiday) visa and entry permit within the meaning of the Migration (1993) Regulations;
- (c) a Working Holiday (Temporary) (Class TZ) visa;
- (d) a visa that was granted:
 - (i) before 19 December 1989; and
 - (ii) in accordance with the law in force at the time; and
 - (iii) for the same purpose as a visa or permit mentioned in paragraph (a), (b) or (c).

Note **Internet application** is defined in regulation 1.03.

1226. Skilled — Designated Area-sponsored (Provisional) (Class UZ)

- (1) Form: 47ST.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken under regulation 2.08D to have applied for a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa: Nil.
 - (ii) In the case of an applicant who is the holder of a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa: \$235.
 - (iii) In any other case: \$2 575.
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of an applicant who:
 - (A) was 18 or more at the time of application; and

- (B) is assessed as not having functional English; and
 - (C) has held a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; and
 - (D) has not paid a second instalment for the application for that visa: \$3 575.
- (ii) In the case of an applicant who:
- (A) was 18 or more at the time of application; and
 - (B) is assessed as not having functional English; and
 - (C) has not previously held a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa: \$3 575.
- (iii) In any other case: Nil.

Note Regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

(3) Other:

- (a) Applicant may be in or outside Australia, but not in immigration clearance.
- (b) 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 in writing for this subparagraph; or
 - (ii) having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.
- (c) Applicant must not have previously held more than 1 Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa.
- (d) Applicant seeking to satisfy the primary criteria who is not the holder of a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa must be under 45.
- (e) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled —

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

- (f) Application by a person who is not the holder of a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa must be accompanied by evidence that a relevant assessing authority has assessed the skills of the applicant as suitable for his or her nominated skilled occupation.
- (g) Application must be accompanied by a sponsorship form 40 completed by the person who is the sponsor of the applicant.
- (h) Application by a person seeking to satisfy the primary criteria must be made before 1 September 2007.

(4) Subclasses:

496 (Skilled — Designated Area-sponsored (Provisional))

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: 1273 or 1273 (Internet).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Application may be made in or outside Australia.
 - (b) Applicant must be outside Australia.
 - (c) Applicant is not the holder of a permanent visa.
 - (d) Application must be made:
 - (i) by posting the application (with the correct pre-paid postage) to the post office box 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) by having the application sent by facsimile to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iv) as an Internet application.
 - (e) An applicant who seeks to satisfy the secondary criteria for the grant of the visa must claim to be the spouse, de facto partner or a dependent child 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)

1227A. Superyacht Crew (Temporary) (Class UW)

Note This class of visa relates to a member of the crew of a superyacht. Those expressions are defined in regulation 1.03. Regulation 1.15G is also relevant for the purposes of the definition of *superyacht*.

- (1) Form: 1365 or 1365 (Internet).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Applicant may be in or outside Australia.
 - (b) Applicant is not the holder of a permanent visa.
 - (c) If the applicant is in Australia at the time of application, the applicant is the holder of a substantive visa other than a permanent visa.
- (ca) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 488 (Superyacht Crew) visa must:
 - (i) specify, in the application, the person who proposes to be the superyacht crew sponsor in relation to the applicant; and
 - (ii) provide evidence that the person is a superyacht crew sponsor, or is a person who has applied for approval as a superyacht crew sponsor but whose application has not yet been decided.

- (d) Application must be made:
 - (i) as an Internet application; or
 - (ii) by posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) 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
 - (iv) by having the application sent by fax to the number specified by the Minister in an instrument in writing for this subparagraph.

- (4) Subclasses:
 - 488 (Superyacht Crew)

1228. Skilled (Provisional) (Class VF)

- (1) Forms: 1276 and 1276 (Internet).
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant seeking to satisfy the criteria for the grant of a Subclass 475 (Skilled — Regional Sponsored) visa: \$2 575
 - (ii) In the case of an applicant seeking to satisfy the criteria for the grant of a Subclass 476 (Skilled — Recognised Graduate) visa: \$235.
 - (b) Second instalment (payable before grant of visa):
 - (i) In the case of an applicant who:
 - (A) seeks to satisfy the criteria for the grant of a Subclass 475 (Skilled — Regional Sponsored) visa; and
 - (B) had turned 18 at the time of application; and
 - (C) is assessed as not having functional English: \$3 575
 - (ii) In any other case: Nil.

(3) Other:

(a) Application must be made:

- (i) as an Internet application; or
- (ii) 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
- (iii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.

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

(b) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 475 (Skilled — Regional Sponsored) visa:

- (i) must be less than 45; and
- (ii) must nominate a skilled occupation for the applicant in the application; and
- (iii) must meet the requirements of subitem (3A) or (3B).

(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.

(3A) The applicant is nominated by a State or Territory government agency.

(3B) All of the following requirements are met:

(a) the applicant is sponsored by a person who:

- (i) has turned 18; and
- (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

- (b) the applicant has declared on the application that the sponsor:
 - (i) is usually resident in a designated area of Australia; and
 - (ii) is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is also seeking to satisfy the criteria for a Subclass 475 (Skilled — Regional Sponsored) visa), as:
 - (A) a parent; or
 - (B) a child or step-child; or
 - (C) a brother or sister, an adoptive brother or sister, or a step-brother or step-sister; or
 - (D) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle; or
 - (E) a nephew or niece, an adoptive nephew or niece, or a step-nephew or step-niece; or
 - (F) a grandparent or first cousin;
- (c) each person who:
 - (i) is an applicant; and
 - (ii) claims to be a member of the family unit of the applicant;is sponsored by the same person;
- (d) the sponsorship was entered into on Form 1277 (Internet) or 1277.

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

- (4) Subclasses:
 - 475 (Skilled — Regional Sponsored)
 - 476 (Skilled — Recognised Graduate)

1229. Skilled (Provisional) (Class VC)

- (1) Forms: 1276 and 1276 (Internet).
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):

- (i) In the case of an applicant seeking to satisfy the criteria for the grant of a Subclass 485 (Skilled — Graduate) visa: \$235
 - (ii) In the case of an applicant seeking to satisfy the criteria for the grant of a Subclass 487 (Skilled — Regional Sponsored) visa, and 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: \$235
 - (iii) In any other case: \$2 575.
- (b) Second instalment (payable before grant of visa):
 - (i) In the case of an applicant who:
 - (A) seeks to satisfy the criteria for the grant of a Subclass 487 (Skilled — Regional Sponsored) visa; and
 - (B) had turned 18 at the time of application; and
 - (C) is assessed as not having functional English; and
 - (D) has not paid a second instalment of visa application charge in relation to the application for the visa, mentioned in paragraph (a), that the applicant holds: \$3 575
 - (ii) In any other case: Nil.
- (3) Other:
 - (a) Application must be made:
 - (i) as an Internet application; or
 - (ii) 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

- (iii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph.

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

- (aa) If the applicant:

- (i) is not seeking to satisfy the criteria for the grant of a Subclass 485 (Skilled — Graduate) visa; and
- (ii) has not nominated a skilled occupation specified by the Minister in an instrument in writing for paragraph (ab);

the applicant's skills must have been assessed by the relevant assessing authority as suitable for the applicant's nominated skilled occupation.

- (ab) If the applicant:

- (i) is not seeking to satisfy the criteria for the grant of a Subclass 485 (Skilled — Graduate) visa; and
- (ii) has nominated a skilled occupation specified by the Minister in an instrument in writing for this paragraph;

the applicant's skills must have been assessed by the relevant assessing authority, on or after 1 January 2010, as suitable for the applicant's nominated skilled occupation.

- (b) 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.
- (c) Applicant to whom paragraph (b) does not apply must be in Australia, but not in immigration clearance, when making his or her application.
- (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.

- (da) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 487 (Skilled — Regional Sponsored) visa must meet the requirements of subitem (3A) or (3B).
 - (e) The requirements of subitem (4), (5), (6), (7), (8) or (9) must be satisfied.
- (3A) The applicant is nominated by a State or Territory government agency.
- (3B) All of the following requirements are met:
- (a) the applicant is sponsored by a person who:
 - (i) has turned 18; and
 - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
 - (b) the applicant has declared on the application that the sponsor:
 - (i) is usually resident in a designated area of Australia; and
 - (ii) is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is also seeking to satisfy the criteria for a Subclass 487 (Skilled — Regional Sponsored) visa), as:
 - (A) a parent; or
 - (B) a child or step-child; or
 - (C) a brother or sister, an adoptive brother or sister, or a step-brother or step-sister; or
 - (D) an aunt or uncle, an adoptive aunt or uncle, or a step-aunt or step-uncle; or
 - (E) a nephew or niece, an adoptive nephew or niece, or a step-nephew or step-niece; or
 - (F) a grandparent or first cousin;
 - (c) each person who:
 - (i) is an applicant; and
 - (ii) claims to be a member of the family unit of the applicant;is sponsored by the same person;

- (d) the sponsorship was entered into on Form 1277 (Internet) or 1277.

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

- (4) The following requirements must be met:
- (a) one of the following subparagraphs must be satisfied by the applicant:
- (i) the applicant must be the holder of an eligible student visa;
 - (ii) the applicant must be the holder of 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 other than 1 of the following visas:
 - (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, a Subclass 573 (Higher Education Sector) visa, or a Subclass 574 (Postgraduate Research Sector) visa, that was applied for on the basis that the applicant seeking to satisfy the primary criteria for the grant of that visa intends to undertake a course of study paid for, wholly or in part, by:
 - (I) the Commonwealth or the government of a State or Territory; or
 - (II) the government of a foreign country; or
 - (III) a multilateral agency;and for which a condition of payment by that body for the course is that the student will leave Australia on the completion of the course;
 - (D) a Subclass 572 (Vocational Education and Training Sector) visa, a Subclass 573 (Higher Education Sector) visa, or a Subclass 574 (Postgraduate Research Sector) visa that was applied for on the basis that the applicant

seeking to satisfy the primary criteria for the grant of that visa intends to undertake a course of study or training under a scholarship scheme or training program approved by:

- (I) the AusAID Minister; or
- (II) the Defence Minister;

and for which a condition of that scheme or program is that the student will leave Australia on completion of the course;

- (E) a Subclass 575 (Non-Award Sector) visa;
- (F) a Subclass 576 (AusAID or Defence Sector) visa;

and must also have held an eligible student visa at any time during the period of 6 months ending immediately before the day on which the application is made;

(iii) the applicant must:

- (A) be the holder of a substantive visa other than a visa mentioned in sub-subparagraphs (ii) (A) to (F); 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 Migration Review 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:

- (i) must be less than 45; and

-
- (ii) must nominate a skilled occupation for the applicant in the application for which at least 50 points are available as specified by the Minister in an instrument in writing for this subparagraph.
 - (5) The following requirements must be met:
 - (a) the applicant must be:
 - (i) the holder of a Subclass 476 (Skilled — Recognised Graduate) visa; or
 - (ii) the holder of a Subclass 485 (Skilled — Graduate) visa;
 - (b) the applicant seeking to satisfy the primary criteria for the grant of the visa must:
 - (i) have been granted the visa mentioned in paragraph (a) on the basis of satisfying the primary criteria for the grant of that visa; and
 - (ii) nominate a skilled occupation for the applicant in the application for which at least 50 points are available as specified by the Minister in an instrument in writing for this subparagraph.
 - (6) The following requirements must be met:
 - (a) each applicant must be the holder of a Subclass 471 (Trade Skills Training) visa;
 - (b) the applicant seeking to satisfy the primary criteria for the grant of the visa:
 - (i) must have been the holder, for a total of at least 2 years before the day on which the application was made, of the Subclass 471 (Trade Skills Training) visa mentioned in paragraph (a) that was granted on the basis of satisfying the primary criteria for the grant of that visa; and
 - (ii) must be less than 45; and
 - (iii) must nominate a skilled occupation for the applicant in the application for which at least 50 points are available as specified by the Minister in an instrument in writing for this subparagraph.

- (7) The following requirements must be met:
- (a) the applicant must be:
 - (i) the holder of a Subclass 417 (Working Holiday) visa; or
 - (ii) the holder of a Subclass 442 (Occupational Trainee) visa that was granted on the basis of satisfying the primary criteria for that visa;
 - (b) the applicant seeking to satisfy the primary criteria for the grant of the visa:
 - (i) must be less than 45; and
 - (ii) must nominate a skilled occupation for the applicant in the application for which at least 50 points are available as specified by the Minister in an instrument in writing for this subparagraph.
- (8) 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
 - (iii) a Subclass 475 (Skilled — Regional Sponsored) visa; or
 - (iv) a Subclass 487 (Skilled — Regional Sponsored) visa;and must not have previously held more than 1 of any of those visas;
 - (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;

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.

- (9) The applicant must claim to be a member of the family unit of an applicant who holds a Skilled (Provisional) (Class VC) visa granted on the basis of satisfying the primary criteria for the grant of the visa.
- (10) Subclasses:
- 485 (Skilled — Graduate)
 - 487 (Skilled — Regional Sponsored)

Part 3 Bridging visas

1301. Bridging A (Class WA)

- (1) Form: 47SP, 47SP (Internet), 47CH, 47PA, 47PT, 47OF, 47SK, 47SK (Internet), 47ES, 47BT, 47BU, 47SV, 147, 157A, 157A (Internet), 852, 866, 918, 1001, 1002, 1003, 1005, 1066, 1066 (Internet), 1066S (Internet), 1096, 1182, 1150, 1150E (Internet), 1208, 1276, 1276 (Internet), 1365 or 1365 (Internet).
- (2) Visa application charge: Nil.
- (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.
 - (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 a review authority; 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 a review authority.
- (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: 1005 or 1006.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$95
 - (b) Second instalment (payable before grant of visa): Nil.
- (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) Applicant must be a person who is immigration cleared.
 - (bb) Applicant must not be:
 - (i) the holder of a Subclass 785 (Temporary Protection) visa; or
 - (ii) a person whose last substantive visa was a Subclass 785 (Temporary Protection) 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) [see Note 4]

- (1) Form: 47PT, 47SP, 47SP (Internet), 47CH, 47PA, 47OF, 47SK, 47ES, 47BU, 47SV, 147, 157A, 852, 866, 918, 1002, 1003, 1005, 1066, 1096, 1150, 1150E (Internet), 1276 or 1276 (Internet).
- (2) Visa application charge: Nil.

(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.
- (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: 1007.

(2) Visa application charge: Nil.

(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) 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) [see Note 4]

(1) Form: 47PT, 47SP, 47SP (Internet), 47CH, 47PA, 47OF, 47SK, 47ES, 47BU, 47SV, 147, 157A, 852, 866, 918, 1002, 1003, 1005, 1008, 1066, 1096, 1150, 1150E (Internet), 1276 or 1276 (Internet).

(2) Visa application charge: Nil.

(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) 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.

(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: 1239.

(2) Visa application charge: Nil.

(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.

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- (c) One of the following subparagraphs applies in relation to the applicant:
- (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; 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.

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: Nil.
- (3) Subclasses:

070 (Bridging (Removal Pending))

Part 4 Protection, Refugee and Humanitarian visas

1401. Protection (Class XA)

- (1) Form: 866.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made):
 - (i) In the case of each applicant who is in immigration detention and has not been immigration cleared: Nil
 - (ii) In any other case: \$30
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application must be made in Australia.
 - (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.

- (4) Subclasses:
866 (Protection)

1402. Refugee and Humanitarian (Class XB)

- (1) Form: 842.
- (2) Visa application charge: Nil.
- (3) Other:
- (a) Application by a person included in a class of persons specified in a Gazette Notice for this paragraph must be made by:
- (i) posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister; or
- (ii) having the application delivered by a courier service to the address specified by the Minister.

Note An application made under paragraph (a) is taken to have been made outside Australia — see regulation 2.07AM.

- (aa) Application by a person not included in a class of persons specified for paragraph (a) 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 Refugee and Humanitarian (Class XB) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
- 200 (Refugee)
- 201 (In-country Special Humanitarian)
- 202 (Global Special Humanitarian)
- 203 (Emergency Rescue)
- 204 (Woman at Risk)