



# Migration Regulations 1994

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

made under the

*Migration Act 1958*

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This compilation was prepared on 20 December 2005 taking into account amendments up to SLI 2005 No. 339

The text of any of those amendments not in force on that date is appended in the Notes section

This document has been split into 9 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 3–5B,  
Volume 7 contains Schedules 6–9,  
Volume 8 contains Schedules 10–12, Note 1, and the Table of Instruments, and  
Volume 9 contains the Table of Amendments, Notes 2 and 3, and Tables A and B  
Each volume has its own Table of Contents

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

### **Subclass 416 Special Program**

#### **416.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

#### **416.2 Primary criteria**

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

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

*Note* If the applicant is outside Australia at time of application, there are no criteria to be satisfied at time of application.

416.211 If the applicant is in the migration zone at time of application, the applicant is:

- (a) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:

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- (A) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
  - (C) Subclass 457 (Business (Long Stay)); or
- (b) the holder of:
- (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);
    - (D) Short Stay (Visitor) (Class TR);
    - (E) Tourist (Class TR); or
  - (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the holder of a Confirmatory (Temporary) (Class TD) visa that was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
- (d) not the holder of a substantive visa and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005; or
- (e) not the holder of a substantive visa and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

416.221 If:

- (a) the applicant was outside Australia at time of application; or
- (b) the applicant was in the migration zone at time of application and the applicant does not hold a Subclass 416 visa;

- the applicant satisfies the criteria in clauses 416.222 to 416.226.
- 416.222 The applicant produces evidence that the applicant:
- (a) is the holder of a Churchill Fellowship; or
  - (b) is applying for the visa for the purpose of taking part in a youth exchange program approved in writing by the Secretary; or
  - (c) has been nominated by a community-based non-commercial organisation in Australia to take part in a program of activity that has the object of cultural enrichment or community benefits and both that organisation and that program have been approved by the Secretary for the purposes of this paragraph.
- 416.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4012, 4013 and 4014.
- 416.224 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 416.225 If the applicant was outside Australia at time of application and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 416.226 If the applicant was in the migration zone at time of application, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 416.227 If, at time of application, the applicant was in the migration zone and was also the holder of a Subclass 416 visa, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 416 visa.
- 416.228 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

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- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 416.229 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **416.3 Secondary criteria**

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

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

- 416.311 The applicant is a member of the family unit of a person who has applied for a Subclass 416 visa.
- 416.312 If the applicant is outside Australia at time of application and the application is made separately from that of the person who seeks to satisfy or has satisfied the primary criteria, that person is, or is expected soon to be, in Australia.

#### **416.32 Criteria to be met at time of decision**

- 416.321 The applicant continues to be a member of the family unit of a person who having satisfied the primary criteria is the holder of a Subclass 416 visa.
- 416.322 The member of the family unit who satisfies the primary criteria produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 416.323 The applicant:

- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4012, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 416.324 If the applicant was outside Australia at time of application and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 416.324A If the applicant was in the migration zone at time of application, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 416.325 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 416.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 416.327 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.



#### **416.4 Circumstances applicable to grant**

- 416.411 If the applicant was in the migration zone at time of application, the applicant must be in the migration zone, but not in immigration clearance, at the time of grant.
- 416.412 If the applicant was outside Australia at time of application, the applicant must be outside Australia at time of grant.

#### **416.5 When visa is in effect**

- 416.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **416.6 Conditions**

- 416.611 If the applicant satisfies the primary criteria, condition 8107.
- 416.611A If the applicant satisfies the primary criteria or the secondary criteria, condition 8403 may be imposed.
- 416.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **416.7 Way of giving evidence**

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

### **Subclass 417 Working Holiday**

#### **417.1 Interpretation**

- 417.111 In this Part:
- regional Australia* means a place specified by the Minister in a Gazette Notice for the definition of *regional Australia* in subitem 1225 (5) of Schedule 1.
- seasonal work* means work of a kind specified by the Minister in a Gazette Notice for the definition of *seasonal work* in subitem 1225 (5) of Schedule 1.

***working holiday eligible passport*** means a valid passport held by a person who is a member of a class of persons specified in a Gazette Notice under subparagraph 1225 (3) (b) (i) or (ii) of Schedule 1.

***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.

## **417.2 Primary criteria**

*Note* all applicants must be satisfy the primary criteria.

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

- 417.211 (1) The applicant satisfies the criteria in subclauses (2), (4) and (5).
- (2) The applicant:
    - (a) has no dependent children; and
    - (b) has turned 18 but has not turned 31; and
    - (c) holds a working holiday eligible passport.

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- (4) The Minister is satisfied that the applicant:
    - (a) seeks to enter or remain in Australia as a genuine visitor whose principal purpose is to spend a holiday in Australia; and
    - (b) has sufficient money for:
      - (i) the fare to the applicant's intended overseas destination on leaving Australia; and
      - (ii) personal support for the purposes of a working holiday; and
    - (c) has a reasonable prospect of obtaining employment in Australia.
  - (5) If the applicant has previously entered Australia as the holder of a working holiday visa, the Minister is satisfied that the applicant has carried out seasonal work in regional Australia for a total period of at least 3 months as the holder of that visa.

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

- 417.221
- (1) The applicant satisfies the criteria in subclauses (2) to (7).
  - (2) The applicant:
    - (a) continues to satisfy the criteria in paragraphs 417.211 (2) (a) and (c) and subclauses 417.211 (4) and (5); and
    - (b) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
  - (3) If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
  - (4) The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
  - (5) Approval of the application would not result in either:
    - (a) the number of Subclass 417 visas granted in a financial year exceeding the maximum number of Subclass 417

visas, as determined by Gazette Notice, that may be granted in that financial year; or

- (b) the number of visas of particular classes, including Subclass 417, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

(6) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(7) The Minister may waive the requirements of subclause (6) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or  
(b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

417.222 If the applicant has previously entered Australia as the holder of a working holiday visa:

- (a) the applicant has complied substantially with the conditions that applied to any visa held by the applicant; and  
(b) the applicant has not previously entered Australia as the holder of more than 1 working holiday visa.

### **417.3 Secondary criteria**

*Note* All applicants must meet the primary criteria.

### **417.4 Circumstances applicable to grant**

417.411 If the applicant has not previously entered Australia as the holder of a working holiday visa granted at any time, the applicant must be outside Australia at the time of grant.

417.412 If the applicant has previously entered Australia as the holder of a working holiday visa:

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- (a) if the applicant is in Australia at the time of application, the applicant must be in Australia at the time of grant; or
  - (b) if the applicant is outside Australia at the time of application, the applicant must be outside Australia at the time of grant.

## **417.5 When visa is in effect**

417.511 (1) If the applicant is outside Australia at the time of application — temporary visa permitting the holder:

- (a) to travel to and enter Australia within 12 months after the date of grant of the visa; and
- (b) to travel to, enter and remain in Australia until 12 months after the date of first entry to Australia.

(2) If:

- (a) the applicant is in Australia at the time of application; and
- (b) the applicant holds a working holiday visa at the time of application;

temporary visa permitting the holder to travel to, enter and remain in Australia until 24 months after the date of first entry to Australia as the holder of the visa mentioned in paragraph (b).

(3) If:

- (a) the applicant is in Australia at the time of application; and
- (b) the applicant has previously entered Australia as the holder of a working holiday visa; and
- (c) the applicant does not hold a working holiday visa at the time of application;

temporary visa permitting the holder to travel to, enter and remain in Australia until 12 months after the date of grant of the visa.

## **417.6 Conditions**

417.611 Conditions 8108 and 8201.

417.612 Any 1 or more of conditions 8106, 8107, 8301, 8303, 8403, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

## **417.7 Way of giving evidence**

417.711 No evidence need be given.

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

## **Subclass 418 Educational**

### **418.1 Interpretation**

*Note* No interpretation provisions specific to this subclass.

### **418.2 Primary criteria**

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

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

*Note* No criteria to be satisfied at time of application outside Australia.

418.211 If the application is made in the migration zone, the applicant is:

- (a) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);

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- (G) Medical Practitioner (Temporary) (Class UE);
  - (H) Retirement (Temporary) (Class TQ);
  - (I) Supported Dependant (Temporary) (Class TW);
  - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 457 (Business (Long Stay)); or
  - (b) the holder of:
    - (i) a visa of one of the following classes:
      - (A) Border (Temporary) (Class TA);
      - (B) Electronic Travel Authority (Class UD);
      - (C) Long Stay (Visitor) (Class TN);
      - (D) Short Stay (Visitor) (Class TR);
      - (E) Student (Temporary) (Class TU);
      - (F) Tourist (Class TR); or
    - (ii) a Subclass 456 (Business (Short Stay)) visa; or
  - (c) the holder of a Confirmatory (Temporary) (Class TD) visa that was granted on the grounds that the applicant satisfied the criteria for a visa specified in paragraph (a) or (b); or
  - (ca) the holder of a Subclass 497 (Graduate — Skilled) visa; or
  - (d) not the holder of a substantive visa and:
    - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a), (c) or (ca); and
    - (ii) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005; or
  - (e) not the holder of a substantive visa and:
    - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
    - (ii) the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

418.221 The applicant:

- (a) has been appointed:
  - (i) to a full-time position at an Australian tertiary education institution or research institution, being an academic position or the position of a librarian, technician or laboratory demonstrator; or
  - (ii) to a full-time position at an Australian tertiary education institution or research institution to undertake graduate or post-doctoral research; or
  - (iii) to a full-time position as a teacher at an Australian school or technical college, not being a tertiary education institution; and
- (b) has provided with the application a letter of appointment from the relevant institution, school or college; and
- (c) satisfies the Minister that the applicant intends to comply with any conditions subject to which the visa is granted.

418.222 If the application is in respect of a proposed stay in Australia of more than 3 months, the applicant is sponsored by the relevant institution, school or college.

418.223 If sponsorship of the applicant is required under clause 418.222, at the time when the sponsorship is approved:

- (a) the relevant institution, school or college satisfies the Minister that it has not been possible to find a suitable person in Australia for appointment to the position; or
- (b) the Minister is satisfied that there is no need to seek a suitable person in Australia for appointment to the position.

418.224 If sponsorship is required under clause 418.222:

- (a) a sponsorship of the applicant has been approved by the Minister; and
- (b) the sponsorship fee prescribed by regulation 5.38 has been paid.

418.225 If the applicant seeks to enter Australia in accordance with a labour agreement, the applicant establishes that:



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- (a) the requirements of the labour agreement have been met; and
  - (b) the applicant's skills and experience are suitable for the position to which the application relates.
- 418.226 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4006A, 4010, 4013 and 4014.
- 418.227 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 418.228 If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 418.229 If the application is made in the migration zone and the applicant was the holder of a Student (Temporary) (Class TU) visa at the time of application:
- (a) the applicant has successfully completed a course of study in Australia leading to a diploma (within the meaning of subregulation 2.26A (6)) or above; and
  - (b) the applicant is sponsored by an educational or research institution that is able to establish that a person with those skills is not reasonably available in Australia; and
  - (c) if the applicant is a private subsidised student:
    - (i) the sponsor establishes a strong case on economic grounds for the grant of the visa; and
    - (ii) the Minister is satisfied that it would not be detrimental to Australia's policies in respect of overseas students to grant the visa.
- 418.229A (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or

- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

418.230 If the application is made in the migration zone:

- (a) the applicant was, at the time of application:
  - (i) the holder of a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Business (Temporary) (Class TB);
    - (C) Cultural/Social (Temporary) (Class TE);
    - (D) Educational (Temporary) (Class TH);
    - (E) Expatriate (Temporary) (Class TJ);
    - (F) Family Relationship (Temporary) (Class TL);
    - (G) Interdependency (Temporary) (Class TM);
    - (H) Medical Practitioner (Temporary) (Class UE);
    - (I) Retirement (Temporary) (Class TQ);
    - (J) Supported Dependant (Temporary) (Class TW); or
  - (ii) the holder of a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 457 (Business (Long Stay)); or
  - (iii) the holder of a Confirmatory (Temporary) (Class TD) visa granted on the grounds that the applicant satisfied the criteria for a visa specified in subparagraph (i) or (ii); or
  - (iv) the holder of a Subclass 497 (Graduate — Skilled) visa; or
  - (v) a person designated under regulation 2.07AO, and the holder of:
    - (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

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- (D) a Subclass 695 (Return Pending) visa; and
- (b) the grant of the visa would allow the applicant a total period of stay in Australia of more than 3 months as a temporary resident;
- the applicant is sponsored by an institution, college or school.
- 418.231 If the application is made in the migration zone and, at the time of application, the applicant was the holder of an Electronic Travel Authority (Class UD), Long Stay (Visitor) (Class TN), Short Stay (Visitor) (Class TR), Tourist (Class TR), Working Holiday (Temporary) (Class TZ) or Subclass 456 (Business (Short Stay)) visa:
- (a) the applicant is sponsored by an educational or research institution; and
- (b) the Minister is satisfied that:
- (i) it has not been possible to find a person in Australia who is suitable for the position; or
- (ii) in the circumstances, the institution should not be required to seek a suitable person in Australia.
- 418.232 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **418.3 Secondary criteria**

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

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

- 418.311 The applicant is a member of the family unit of a person who has applied for a Subclass 418 visa.
- 418.312 If the application is made outside Australia and the application is made separately from that of the family unit member satisfying the primary criteria:

- (a) that family unit member is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of that family unit.

**418.32 Criteria to be met at time of decision**

- 418.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 418 visa.
- 418.322 The applicant is included in any sponsorship required in respect of the member of the family unit who, having satisfied the primary criteria, is the holder of a Subclass 418 visa.
- 418.323 If sponsorship is not required for the member of the family unit who having satisfied the primary criteria holds a Subclass 418 visa, that family unit member produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 418.324 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4006A, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 418.325 If the application is made outside Australia and if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 418.325A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 418.326 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

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

418.328 The Minister is satisfied that:

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

#### **418.4 Circumstances applicable to grant**

418.411 If the application is made in the migration zone, the applicant must be in the migration zone at time of grant.

418.412 If the application is made outside Australia, the applicant must be outside Australia at time of grant.

#### **418.5 When visa is in effect**

418.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **418.6 Conditions**

418.611 If the applicant satisfies the primary criteria, condition 8107.

418.612 Any one or more of conditions 8106, 8203, 8301, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

## **418.7 Way of giving evidence**

418.711 No evidence need be given.

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

## **Subclass 419 Visiting Academic**

### **419.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

### **419.2 Primary criteria**

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

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

*Note* No criteria to be satisfied at time of application outside Australia.

419.211 If the application is made in the migration zone, the applicant is:

- (a) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:

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- (A) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
  - (C) Subclass 457 (Business (Long Stay)); or
- (b) the holder of:
- (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);
    - (D) Short Stay (Visitor) (Class TR);
    - (E) Tourist (Class TR); or
  - (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the holder of a Confirmatory (Temporary) (Class TD) visa which was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
- (d) not the holder of a substantive visa and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) satisfies Schedule 3 criteria 3003, 3004, and 3005; or
- (e) not the holder of a substantive visa and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

419.221 If:

- (a) the application is made outside Australia; or
- (b) the application is made in the migration zone and the applicant does not hold a Subclass 419 visa;

the applicant satisfies the criteria in clauses 419.222 to 419.228.

- 419.222 (1) The applicant is an academic who is invited to visit an Australian tertiary institution or research institution for the purpose of observing, or participating in, research at the institution.
- (2) The applicant or the institution that invited the applicant provides a copy of the invitation.
- 419.223 If the applicant seeks to enter Australia under an agreement between Australia and another country:
- (a) the Minister is satisfied that the application meets the requirements of the agreement; and
- (b) the applicant has produced evidence that the stay of the applicant in Australia under the agreement has been agreed to by the competent authorities in Australia and the other country.
- 419.224 The applicant will not be receiving a salary, scholarship or allowance (other than an allowance towards living expenses in Australia and travel costs) from the institution.
- 419.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 419.226 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 419.227 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 419.228 If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 419.229 If the application is made in the migration zone and the applicant was at the time of application, the holder of a Subclass 419 visa, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 419 visa.
- 419.230 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.



(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

419.231 The Minister is satisfied that:

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

### **419.3 Secondary criteria**

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

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

419.311 The applicant is a member of the family unit of a person who has applied for a Subclass 419 visa.

419.312 If the application is made outside Australia and the application is made separately from that of the person satisfying the primary criteria:

- (a) that person is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of the family unit of that person.

#### **419.32 Criteria to be met at time of decision**

419.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 419 visa.

- 419.322 The member of the family unit who meets the primary criteria produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 419.323 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 419.324 If the application is made outside Australia and the applicant has previously been in Australia, he or she satisfies special return criteria 5001 and 5002.
- 419.324A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 419.325 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 419.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 419.327 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or

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

#### **419.4 Circumstances applicable to grant**

- 419.411 If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.
- 419.412 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

#### **419.5 When visa is in effect**

- 419.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **419.6 Conditions**

- 419.611 If the applicant meets the primary criteria, conditions 8103 and 8107.
- 419.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **419.7 Way of giving evidence**

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

### **Subclass 420 Entertainment**

#### **420.1 Interpretation**

- 420.111 In this Part:  
*Arts Minister* means the Minister for the Arts and Sport.

## **420.2 Primary criteria**

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

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

*Note* No criteria to be satisfied at time of application outside Australia.

420.211 If, at the time of application, the applicant is in the migration zone, the applicant is:

- (a) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 457 (Business (Long Stay)); or
- (b) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);
    - (D) Short Stay (Visitor) (Class TR);
    - (E) Tourist (Class TR); or

- (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the holder of a Confirmatory (Temporary) (Class TD) visa which was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
- (d) not the holder of a substantive visa and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) satisfies Schedule 3 criteria 3003, 3004 and 3005; or
- (e) not the holder of a substantive visa and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

420.221 If:

- (a) the applicant is outside Australia at the time of application; or
- (b) the applicant is in the migration zone at the time of application and the applicant does not hold a Subclass 420 (Entertainment) visa;

the applicant satisfies the criteria in clauses 420.222 to 420.229.

420.222

- (1) The applicant meets the requirements of subclause (2), (3), (4), (5) or (6).
- (2) An applicant meets the requirements of this subclause if:
  - (a) the applicant seeks to enter Australia as an entertainer under a performing contract for one or more specific engagements (other than non-commercial engagements of a cultural or educational nature) in Australia to take part in a film or television production that is subsidised in whole or in part by a government in Australia; and
  - (b) entry is sought to perform:
    - (i) in a leading, major supporting or cameo role; or

- (ii) to satisfy ethnic or other special requirements; and
  - (c) the application is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that relevant Australian content criteria have been met.
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant seeks to enter Australia as an entertainer under a performing contract for one or more specific engagements (other than non-commercial engagements of a cultural or educational nature) in Australia to take part in a film or television production that is not subsidised in whole or in part by a government in Australia; and
  - (b) entry is sought:
    - (i) to perform in a leading, major supporting or cameo role; or
    - (ii) to satisfy ethnic or other special requirements; and
  - (c) the application is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:
    - (i) citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of production; and
    - (ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production, is greater than the amount to be expended on entertainers sponsored for entry.
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant seeks to enter Australia:
    - (i) as an entertainer under a performing contract that is not related to film or television production for one or more specific engagements in Australia (other than non-commercial engagements of a cultural or educational nature); or
    - (ii) to support an entertainer or group of entertainers (whether by assisting performance or by personal

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- services) in relation to a performing contract for one or more specific engagements in Australia; or
- (iii) to direct, produce or take some other part (otherwise than as a performer) in a theatre, film, television or radio production, or a concert or recording to be performed or shown in Australia, being a production, concert or recording that involves the employment of at least one resident of Australia; and
- (b) the applicant satisfies the Minister that the activity in Australia in relation to which the application is made will bring a net employment benefit to the Australian entertainment industry.
- (5) An applicant meets the requirements of this subclause if the applicant seeks to enter Australia to perform in one or more specific engagements of a cultural nature for non-commercial purposes.
- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant seeks to enter Australia under an agreement between Australia and another country; and
- (b) the Minister is satisfied that the application meets the requirements of the agreement; and
- (c) the applicant has produced evidence that the applicant's stay in Australia under the agreement has been agreed to by the competent authorities in Australia and in that other country.
- 420.223 (1) Subject to subclauses (2) and (3), the applicant is sponsored by a person or body in Australia, being a person who, or body which:
- (a) satisfies the Minister that the person or body has good professional and financial standing; and
- (b) has not defaulted on any previous sponsorship into which the person or body has entered; and
- (c) holds any necessary licences in respect of the work to which the application relates; and

- (d) has consulted with relevant Australian unions in relation to the employment or engagement of the applicant in Australia.
- (2) Subclause (1) does not apply to an applicant who seeks to enter Australia under an agreement mentioned in subclause 420.222 (6).
- (3) Paragraphs (1) (a) and (d) do not apply in relation to the sponsorship of an applicant who seeks to enter Australia to perform in one or more specific engagements of a cultural nature for non-commercial purposes.
- 420.224 If sponsorship is required, sponsorship of the applicant has been approved by the Minister and the sponsorship fee prescribed in regulation 5.38 has been paid.
- 420.225 Unless the applicant seeks to enter Australia to perform purely for non-commercial purposes, the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards.
- 420.226 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 420.227 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 420.228 If the applicant was outside Australia at the time of application and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 420.229 If the applicant is in the migration zone at time of application, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 420.230 If the applicant was in the migration zone at the time of application and the applicant was at the time of application the holder of a Subclass 420 visa, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 420 visa.



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- 420.231 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 420.232 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **420.3 Secondary criteria**

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

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

- 420.311 The applicant is a member of the family unit of a person who has applied for a Subclass 420 visa.
- 420.312 If the applicant was outside Australia at the time of application and the application was made separately from that of the person satisfying the primary criteria:
- (a) that person is, or is expected soon to be, in Australia; and
  - (b) the applicant intends to stay temporarily in Australia as a member of the family unit of that person.

**420.32 Criteria to be met at time of decision**

- 420.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 420 visa.
- 420.322 The applicant is included in any sponsorship required in respect of the member of the family unit who satisfies the primary criteria.
- 420.323 If sponsorship is not required for the member of the family unit who satisfies the primary criteria, that person produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 420.324 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 420.325 If the applicant was outside Australia at the time of application and the applicant has previously been in Australia, he or she satisfies special return criteria 5001 and 5002.
- 420.325A If the applicant is in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 420.326 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or

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- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 420.327 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 420.328 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **420.4 Circumstances applicable to grant**

- 420.411 If the applicant was in the migration zone at the time of application, the applicant must be in the migration zone at the time of grant.
- 420.412 If the applicant was outside Australia at the time of application, the applicant must be outside Australia at the time of grant.

#### **420.5 When visa is in effect**

- 420.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **420.6 Conditions**

- 420.611 If the applicant meets the primary criteria, conditions 8107 and 8109.
- 420.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **420.7 Way of giving evidence**

- 420.711 No evidence need be given.

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

## **Subclass 421 Sport**

### **421.1 Interpretation**

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

### **421.2 Primary criteria**

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

*Note* If the application is made outside Australia, there are no criteria to be satisfied at time of application.

421.211 If the application is made in the migration zone, the applicant is:

- (a) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 457 (Business (Long Stay)); or

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- (b) the holder of:
    - (i) a visa of one of the following classes:
      - (A) Border (Temporary) (Class TA);
      - (B) Electronic Travel Authority (Class UD);
      - (C) Long Stay (Visitor) (Class TN);
      - (D) Short Stay (Visitor) (Class TR);
      - (E) Tourist (Class TR); or
    - (ii) a Subclass 456 (Business (Short Stay)) visa; or
  - (c) the holder of a Confirmatory (Temporary) (Class TD) visa which was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
  - (d) not the holder of a substantive visa and:
    - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
    - (ii) satisfies Schedule 3 criteria 3003, 3004, and 3005; or
  - (e) not the holder of a substantive visa and:
    - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
    - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

421.221 If:

- (a) the application is made outside Australia; or
- (b) the application is made in the migration zone and the applicant does not hold a Subclass 421 visa;

the applicant satisfies the criteria in clauses 421.222 to 421.229.

- 421.222 (1) The applicant meets the requirements of subclause (2), (3), (4), (5), (6) or (7).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant is entered individually or as a member of a team to compete in a sporting event, or sporting events,

in Australia, and is not so entered as a Taiwanese national claiming to represent Taiwan, China or the Republic of China; and

- (b) the applicant satisfies the Minister:
  - (i) that the applicant has sufficient money for the support of the applicant and of any accompanying member of the applicant's family, and of any assistant for whom the applicant is responsible, in Australia; and
  - (ii) that, on arrival in Australia, the applicant and any accompanying family member or assistant of that kind will possess travel tickets to a destination in a foreign country.
- (3) An applicant meets the requirements of this subclause if the applicant:
  - (a) has been, or is to be, appointed or employed to assist a participant or team referred to in paragraph (2) (a); and
  - (b) satisfies the Minister:
    - (i) that the individual participant or team with whom the applicant is associated will provide complete financial support for the applicant and any accompanying member of the applicant's family in Australia; and
    - (ii) that, on arrival in Australia, the applicant and any accompanying family member will possess travel tickets to a destination in a foreign country.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant seeks to enter Australia under an arrangement with an organisation in Australia to:
    - (i) be a player, coach or instructor in relation to an Australian team or organisation; or
    - (ii) participate in a training program; and
  - (b) the applicant is sponsored by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen or an organisation in Australia; and

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- (c) the applicant establishes:
    - (i) if there is a relevant labour agreement between the Minister and an Australian sporting organisation — that the sponsorship is in accordance with the agreement; and
    - (ii) that the sponsor has good financial and professional status in Australia; and
    - (iii) that the applicant has an established reputation in the field of sport; and
    - (iv) that the applicant and the sponsor have entered into a formal arrangement relating to the applicant's prospective activities in Australia; and
  - (d) approval of the application would not result in the number of Subclass 421 visas granted in a financial year on the basis of the satisfaction of the requirements of this subclause exceeding the maximum number of such visas specified, by Gazette Notice, for the purposes of this paragraph in respect of that financial year.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant seeks to enter Australia under a business arrangement with an organisation in Australia to be a sports instructor, and that arrangement is approved in writing by the Minister; and
  - (b) the applicant is sponsored by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen or an organisation in Australia; and
  - (c) the applicant establishes that:
    - (i) labour market requirements have been met; and
    - (ii) the applicant's qualifications and experience are suitable for the position to which the application relates; and
    - (iii) the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards; and
    - (iv) the employer has a satisfactory training record; and
  - (d) the applicant satisfies the Minister that undertaking the arrangement will benefit Australia.

- (6) An applicant meets the requirements of this subclause if:
  - (a) the applicant seeks to enter Australia to act as a judge or adjudicator at shows or competitions in Australia; and
  - (b) the applicant:
    - (i) produces a written invitation or request to act as a judge or adjudicator as stated in the application; and
    - (ii) provides an itinerary listing the engagements as a judge or adjudicator to be undertaken by the applicant; and
    - (iii) if intending to stay in Australia for more than 3 months — is sponsored by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen or an organisation operating in Australia.
- (7) An applicant meets the requirements of this subclause if the applicant:
  - (a) seeks to enter Australia temporarily under an agreement between Australia and another country, and the Minister is satisfied that the application meets the requirements of the agreement; and
  - (b) has produced evidence that the applicant's stay in Australia under the agreement has been agreed to by the competent authorities in Australia and in that other country.

421.223

- If:
- (a) the applicant is a person to whom subclause 421.222 (2) or (3) applies; and
  - (b) the intended period of the applicant's stay in Australia does not exceed 3 months;
- the applicant:
- (c) provides a letter of invitation from an organisation in Australia in relation to the participation in an event or events in Australia of the applicant or a person or team with whom the applicant is associated, or satisfactory evidence that an entry for an event in Australia has been accepted; or



- 
- (d) is an individual competitor, or is assisting an individual competitor or a team, known internationally and having a record of participation in international events.
- 421.224 If:
- (a) the applicant is a person to whom subclause 421.222 (2) or (3) applies; and
- (b) the intended period of the applicant's stay exceeds 3 months;
- the applicant:
- (c) is sponsored by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen or an organisation in Australia; or
- (d) is an individual competitor, or is associated with an individual competitor or a team, known internationally and having a record of participation in international events.
- 421.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 421.226 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 421.227 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 421.228 If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 421.229 If the application is made in the migration zone and the application is in respect of a proposed stay in Australia of more than 3 months, the applicant:
- (a) is sponsored by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen or an organisation operating in Australia; or
- (b) is an individual competitor, or is associated with an individual competitor or a team, known internationally and having a record of participation in international events.

- 421.230 If the application is made in the migration zone and the applicant was at the time of application the holder of a Subclass 421 visa, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 421 visa.
- 421.231 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 421.232 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **421.3 Secondary criteria**

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

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

- 421.311 The applicant is a member of the family unit of a person who has applied for a Subclass 421 visa.
- 421.312 If the application is made outside Australia and the application is made separately from that of the person satisfying the primary criteria:

- (a) that person is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of the family unit of that person.

**421.32 Criteria to be met at time of decision**

- 421.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 421 visa.
- 421.322 The applicant is included in any sponsorship required in respect of the member of the family unit who satisfies the primary criteria.
- 421.323 If sponsorship is not required for the person who satisfies the primary criteria, that person produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that person and the applicant.
- 421.324 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 421.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 421.325A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 421.326 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

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

421.328 The Minister is satisfied that:

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

#### **421.4 Circumstances applicable to grant**

421.411 If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.

421.412 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

#### **421.5 When visa is in effect**

421.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **421.6 Conditions**

421.611 If the applicant satisfies the primary criteria, condition 8107.

421.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

## **421.7 Way of giving evidence**

421.712 No evidence need be given.

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

## **Subclass 422 Medical Practitioner**

### **422.1 Interpretation**

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

### **422.2 Primary criteria**

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

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

*Note* If the applicant is outside Australia at time of application, there are no criteria to be satisfied at time of application.

422.211 If the applicant is in the migration zone at time of application, the applicant is:

- (a) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Prospective Marriage (Temporary) (Class TO);
    - (I) Retirement (Temporary) (Class TQ);

- (J) Supported Dependant (Temporary) (Class TW);
- (K) Working Holiday (Temporary) (Class TZ); or
- (ii) a visa of one of the following subclasses:
  - (A) Subclass 427 (Domestic Worker (Temporary) — Executive);
  - (B) Subclass 457 (Business (Long Stay)); or
- (b) the holder of:
  - (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);
    - (D) Short Stay (Visitor) (Class TR);
    - (E) Student (Temporary) (Class TU);
    - (F) Tourist (Class TR); or
  - (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the holder of a Confirmatory (Temporary) (Class TD) visa that was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
- (d) not the holder of a substantive visa and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) satisfies Schedule 3 criteria 3003, 3004 and 3005; or
- (e) not the holder of a substantive visa and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

422.221 If:

- (a) the applicant was outside Australia at time of application; or

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- (b) the applicant was in the migration zone at time of application and the applicant does not hold a Subclass 422 visa;

the applicant satisfies the criteria in clauses 422.222 to 422.227B.

422.222 An applicant satisfies the requirements of this clause if:

- (a) the applicant's qualifications are recognised by the Medical Board of a State or Territory as entitling the applicant to practise as a medical practitioner in that State or Territory for the purposes of the position to which the application relates; and
- (b) the Minister is satisfied that:
- (i) labour market requirements have been met; and
  - (ii) the position to which the application relates is a full-time position; and
  - (iii) the applicant is to be adequately remunerated in the position, having regard to Australian conditions and levels of remuneration; and
  - (iv) the employment of the applicant in the position would benefit Australia; and
- (c) the applicant is sponsored by:
- (i) a person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or
  - (ii) a body operating in Australia;  
being the prospective employer of the applicant; and
- (d) the sponsorship of the applicant under paragraph 422.222 (2) (c) has been approved by the Minister and the sponsorship fee specified in regulation 5.38 has been paid.

422.223 If the applicant seeks to enter Australia in accordance with a labour agreement, the applicant establishes that:

- (a) the requirements of the labour agreement have been met; and
- (b) the applicant's skills and experience are suitable for the position to which the application relates.

- 422.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 422.225 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 422.226 If the applicant was outside Australia at time of application and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 422.227 If, at time of application, the applicant was in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 422.227A If, at time of application, the applicant was in the migration zone and was also the holder of a student visa:
- (a) the applicant has successfully completed a course in Australia at diploma level (within the meaning of subregulation 2.26A (6)) or above; and
  - (b) the Minister is satisfied that:
    - (i) it has not been possible to find a person who is suitable for the position in which the applicant's intended employer proposes to employ the applicant; or
    - (ii) in the circumstances, the intended employer should not be required to seek a suitable employee in Australia; and
  - (c) the applicant is sponsored by an intended employer that is able to establish that a person with those skills is not reasonably available in Australia; and
  - (d) if the applicant is a private subsidised student:
    - (i) the sponsor establishes a strong case on economic grounds for the grant of the visa; and
    - (ii) the Minister is satisfied that it would not be detrimental to Australia's policies in respect of overseas students to grant the visa.
- 422.227B If, at time of application, the applicant was in the migration zone and was also the holder of an Electronic Travel Authority (Class UD), Long Stay (Visitor) (Class TN), Short



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Stay (Visitor) (Class TR), Tourist (Class TR), Working Holiday (Temporary) (Class TZ) or Subclass 456 (Business (Short Stay)) visa:

- (a) the applicant is sponsored by the applicant's intended employer; and
- (b) the Minister is satisfied that:
  - (i) it has not been possible to find a person who is suitable for the position in which the applicant's intended employer proposes to employ the applicant; or
  - (ii) in the circumstances, the intended employer should not be required to seek a suitable employee in Australia.

422.228 If, at time of application, the applicant was in the migration zone and was also the holder of a Subclass 422 visa, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the criteria for the grant of a Subclass 422 visa.

422.229 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

422.230 The Minister is satisfied that:

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

### **422.3 Secondary criteria**

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

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

422.311 The applicant is a member of the family unit of a person who has applied for a Subclass 422 visa.

422.312 If the applicant is outside Australia at time of application and the application is made separately from that of the member of the family unit who seeks to satisfy or has satisfied the primary criteria, that member of the family unit is, or is expected soon to be, in Australia.

#### **422.32 Criteria to be met at time of decision**

422.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 422 visa.

422.322 The applicant is included in the sponsorship required in respect of the person who satisfies the primary criteria.

422.323 The applicant:

- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
- (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.

422.326 If the applicant was outside Australia at time of application and if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

422.326A If the applicant was in the migration zone at time of application, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

422.327 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

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(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

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

422.329 The Minister is satisfied that:

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

#### **422.4 Circumstances applicable to grant**

422.411 If the applicant was in the migration zone at time of application, the applicant must be in the migration zone at the time of grant.

422.412 If the applicant was outside Australia at time of application, the applicant must be outside Australia at the time of grant.

#### **422.5 When visa is in effect**

422.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **422.6 Conditions**

422.611 If the applicant meets the primary criteria, condition 8107.

422.612 Any 1 or more of conditions 8106, 8301, 8303, 8403, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

## **422.7 Way of giving evidence**

422.711 No evidence need be given.

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

## **Subclass 423 Media and Film Staff**

### **423.1 Interpretation**

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

### **423.2 Primary criteria**

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

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

*Note* If the application is made outside Australia, there are no criteria to be satisfied at time of application.

423.211 If the application is made in the migration zone:

- (a) the applicant is the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:

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- (A) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
  - (C) Subclass 457 (Business (Long Stay)); or
- (b) the applicant is the holder of:
- (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);
    - (D) Short Stay (Visitor) (Class TR);
    - (E) Tourist (Class TR); or
  - (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the applicant is the holder of a Confirmatory (Temporary) (Class TD) visa which was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
- (d) the applicant is not the holder of a substantive visa, and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) satisfies Schedule 3 criteria 3003, 3004, and 3005; or
- (e) the applicant is not the holder of a substantive visa, and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

423.221 If:

- (a) the application is made outside Australia; or
- (b) the application is made in the migration zone and the applicant does not hold a Subclass 423 visa;

the applicant satisfies the criteria in clauses 423.222 to 423.229.

- 423.222 (1) If the applicant seeks to enter Australia temporarily, the applicant meets the requirements of subclause (2), (3) or (4).
- (2) An applicant meets the requirements of this subclause if the applicant seeks to represent an overseas news organisation as a journalist, correspondent or reporter and:
- (a) either:
- (i) if the organisation is not represented in Australia, the applicant provides a statement from the organisation detailing the intended activities of the organisation in Australia and the Minister is satisfied that:
- (A) representation of the organisation in Australia would not be contrary to the interests of Australia; and
- (B) the organisation would support the applicant financially in Australia and arrange for the applicant's departure from Australia on or before the day of expiry of the visa; or
- (ii) if the organisation is represented in Australia, the Minister is satisfied that:
- (A) there is no suitable person in Australia who is capable of doing, and available to do, the work envisaged for the applicant; and
- (B) that the work would not be contrary to the interests of Australia; and
- (b) if the intended period of stay in Australia is more than 3 months, the applicant is sponsored by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an organisation operating in Australia.
- (3) An applicant meets the requirements of this subclause if the applicant seeks to make a documentary program or a commercial that is exclusively for overseas use, and the Minister is satisfied that:
- (a) there is no suitable person in Australia who is capable of doing, and available to do, the work envisaged for the applicant; and

- 
- (b) that work would not be contrary to the interests of Australia; and
  - (c) if the intended period of stay in Australia is more than 3 months, the applicant is sponsored by an Australian citizen, an Australian permanent resident or an organisation operating in Australia.
- (4) An applicant meets the requirements of this subclause if the applicant:
- (a) seeks to enter Australia temporarily under an agreement between Australia and another country; and
  - (b) has produced evidence that the applicant's stay in Australia under the agreement has been agreed to by the competent authorities in Australia and in that other country; and
  - (c) the Minister is satisfied that the application meets the requirements of the agreement.
- 423.223 If sponsorship is required under paragraph 423.222 (2) (b) or (3) (c):
- (a) a sponsorship of the applicant has been approved by the Minister; and
  - (b) the sponsorship fee prescribed in regulation 5.38 has been paid.
- 423.224 The applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards.
- 423.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 423.226 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 423.227 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 423.228 If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

- 423.229 If the application is made in the migration zone and:
- (a) the applicant was, at the time of application, the holder of:
    - (i) a visa of one of the following classes:
      - (A) Border (Temporary) (Class TA);
      - (B) Business (Temporary) (Class TB);
      - (C) Cultural/Social (Temporary) (Class TE);
      - (D) Educational (Temporary) (Class TH);
      - (E) Expatriate (Temporary) (Class TJ);
      - (F) Family Relationship (Temporary) (Class TL);
      - (G) Interdependency (Temporary) (Class TM);
      - (H) Medical Practitioner (Temporary) (Class UE);
      - (I) Retirement (Temporary) (Class TQ);
      - (J) Supported Dependant (Temporary) (Class TW); or
    - (ii) a visa of one of the following subclasses:
      - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
      - (B) Subclass 457 (Business (Long Stay)); or
    - (iii) a Confirmatory (Temporary) (Class TD) visa granted on the grounds that the applicant satisfied the criteria for a visa specified in subparagraph (i) or (ii); and
  - (b) the grant of the visa would allow the applicant a total period of stay in Australia of more than 3 months as a temporary resident;
- the applicant is sponsored by an intended employer.
- 423.230 If the application is made in the migration zone and the applicant was the holder of a Subclass 423 visa at the time of application, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 423 visa.
- 423.231 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.



(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

423.232 The Minister is satisfied that:

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

### **423.3 Secondary criteria**

*Note* The secondary criteria must be met by applicants who are members of the family unit of a person who satisfies the primary criteria.

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

423.311 The applicant is a member of the family unit of a person who has applied for a Subclass 423 visa.

423.312 If the application is made outside Australia and the application is made separately from that of the person satisfying the primary criteria:

- (a) that person is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of the family unit of that person.

#### **423.32 Criteria to be met at time of decision**

423.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 423 visa.

- 423.322 The applicant is included in any sponsorship required in respect of the person who satisfies the primary criteria.
- 423.323 If sponsorship is not required for the member of the family unit who satisfies the primary criteria, that person produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 423.324 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 423.325 If the application is made outside Australia and if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.
- 423.325A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 423.326 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 423.327 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 423.328 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:

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

#### **423.4 Circumstances applicable to grant**

423.411 If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.

423.412 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

#### **423.5 When visa is in effect**

423.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **423.6 Conditions**

423.611 If the applicant meets the primary criteria, condition 8107.

423.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **423.7 Way of giving evidence**

423.711 No evidence need be given.

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

**Subclass 426 Domestic Worker  
(Temporary) — Diplomatic or  
Consular**

**426.1 Interpretation**

426.111 In this Part:

*current employer*, in relation to the applicant, means the person whose household is the household in relation to employment in which the Subclass 426 visa was granted to the applicant.

**426.2 Primary criteria**

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

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

*Note* If the application is made outside Australia, there are no criteria to be satisfied at time of application.

426.211 If the application is made in the migration zone:

- (a) the applicant is the holder, having satisfied the primary criteria, of a Subclass 426 visa; or
- (b) the applicant is not the holder of a substantive visa; and
  - (i) the last substantive visa held by the applicant was a Subclass 426 visa; and
  - (ii) the applicant satisfies Schedule 3 criteria 3003 and 3004.

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

426.221 If:

- (a) the application is made outside Australia; or

- 
- (b) the application is made in the migration zone and the applicant does not hold a Subclass 426 visa;
- the applicant satisfies the criteria in clauses 426.222 to 426.228.
- 426.222 If the application is made outside Australia, the applicant:
- (a) has turned 18; and
  - (b) seeks to enter Australia to undertake full-time domestic duties in the household of a person who:
    - (i) is a diplomatic or consular representative in Australia of another country; and
    - (ii) is not a permanent resident of Australia; and
    - (iii) has entered into an employment agreement with the applicant in relation to those duties; and
  - (c) 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.
- 426.223 The application has the support in writing of the Foreign Minister.
- 426.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 426.225 The applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 426.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 426.227 If the application is made in the migration zone, the Minister is satisfied that:
- (a) the applicant is undertaking, and while remaining in Australia will continue to undertake, full-time domestic duties in the household of the applicant's current employer; or
  - (b) the applicant seeks to remain in Australia to undertake full-time domestic duties in the household of a person (other than the applicant's current employer) who:

- (i) is a diplomatic or consular representative in Australia of the same or another country; and
  - (ii) has entered into an employment agreement with the applicant in relation to those duties.
- 426.228 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 426.229 If the application is made in the migration zone and the applicant was the holder of a Subclass 426 visa at the time of application, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 426 visa.
- 426.230 The Minister is satisfied that:
  - (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **426.3 Secondary criteria**

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

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

- 426.311 The applicant is a member of the family unit of a person who has applied for a Subclass 426 visa.
- 426.312 If the application is made outside Australia and the application is made separately from that of the family unit member satisfying the primary criteria:
  - (a) that family unit member is, or is expected soon to be, in Australia; and
  - (b) the applicant intends to stay temporarily in Australia as a member of that family unit.

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

- 426.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 426 visa.
- 426.323 The member of the family unit who satisfies the primary criteria produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 426.324 The application has the support in writing of the Foreign Minister.
- 426.325 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 426.326 If the application is made outside Australia and the applicant had previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 426.326A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 426.327 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 426.328 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **426.4 Circumstances applicable to grant**

- 426.411 If the application is made in the migration zone, the applicant must be in the migration zone at time of grant.
- 426.412 If the application is made outside Australia, the applicant must be outside Australia at time of grant.

#### **426.5 When visa is in effect**

- 426.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **426.6 Conditions**

- 426.611 Condition 8110 and, if the applicant satisfies the primary criteria, condition 8107.
- 426.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **426.7 Way of giving evidence**

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

### **Subclass 427 Domestic Worker (Temporary) — Executive**

#### **427.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

#### **427.2 Primary criteria**

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



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## 427.21 Criteria to be satisfied at time of application

*Note* If the application is made outside Australia, there are no criteria to be satisfied at time of application.

### 427.211 If the application is made in the migration zone:

- (a) the applicant is the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 457 (Business (Long Stay)); or
- (b) the applicant is the holder of:
  - (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);
    - (D) Short Stay (Visitor) (Class TR);
    - (E) Tourist (Class TR); or
  - (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the applicant is the holder of a Confirmatory (Temporary) (Class TD) visa which was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or

- (d) the applicant is not the holder of a substantive visa, and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) satisfies Schedule 3 criteria 3003, 3004 and 3005; or
- (e) the applicant is not the holder of a substantive visa, and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

427.221 If:

- (a) the application is made outside Australia; or
- (b) the application is made in the migration zone and the applicant does not hold a Subclass 427 visa;

the applicant satisfies the criteria in clauses 427.222 to 427.232.

427.222 The applicant seeks to enter Australia to undertake full-time domestic duties in the household of an executive who:

- (a) is in charge of an Australian office of an overseas organisation; and
- (b) is the holder of:
  - (i) a Subclass 412 (Independent Executive) visa; or
  - (ii) a Subclass 413 (Executive) visa; or
  - (iii) a Subclass 457 (Business (Long Stay)) visa granted on the basis of the holder meeting the requirements of subclause 457.223 (2), (3), (4), (5), (7), (9) or (10).

427.223 If the executive is sponsored by an organisation in Australia, the applicant gives satisfactory evidence to the Minister that the applicant is sponsored by that organisation.

427.224 If the executive is not sponsored by an organisation in Australia, the applicant lodges with the application:

- (a) an employment agreement, acceptable to the Minister, between the applicant and the executive for the

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performance of full-time domestic duties in the household of the executive; and

- (b) an undertaking by the executive to be responsible for:
  - (i) all financial liabilities of the applicant arising out of the applicant's stay in Australia; and
  - (ii) compliance by the applicant with:
    - (A) all legislation and awards (including State or Territory legislation and awards) relating to the applicant's proposed employment; and
    - (B) the departure of the applicant from Australia not later than the departure of the executive from Australia.

427.225 The executive:

- (a) establishes:
  - (i) that the executive has been unable to find a suitable person in Australia for the relevant position; or
  - (ii) that there are compelling reasons for employing the applicant; and
- (b) produces a written undertaking:
  - (i) to meet all the applicant's travel expenses to Australia to take up the position and to a destination outside Australia on the expiry of the contract of employment and not later than the time of expiry of the visa; and
  - (ii) not to seek to recover any expenditure by the executive in relation to the applicant's travel to or from Australia or financial support of the applicant in Australia.

427.226 The applicant has turned 18 and has experience as a domestic worker.

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

427.228 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.

- 427.229 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 427.230 If the application is made outside Australia, and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 427.231 Either:
- (a) the sponsorship of the applicant under clause 427.223 has been approved by the Minister; or
  - (b) the documents mentioned in clause 427.224 have been lodged with the Minister;
- as the case requires, and the sponsorship fee specified in regulation 5.38 has been paid.
- 427.232 If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 427.233 If the application is made in the migration zone, and the applicant was at the time of application the holder of a Subclass 427 visa, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 427 visa.
- 427.234 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **427.3 Secondary criteria**

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

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

- 427.311 The applicant is a member of the family unit of a person who has applied for a Subclass 427 visa.
- 427.312 If the application is made outside Australia and the application is made separately from that of the family unit member satisfying the primary criteria:
- (a) that family unit member is, or is expected soon to be, in Australia; and
  - (b) the applicant intends to stay temporarily in Australia as a member of that family unit.

**427.32 Criteria to be met at time of decision**

- 427.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 427 visa.
- 427.322 The applicant is included in any sponsorship required in respect of the person who satisfies the primary criteria.
- 427.323 If sponsorship is not required for the member of the family unit who satisfies the primary criteria, that family unit member produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 427.324 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 427.325 If the application is made outside Australia and if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 427.325A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

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

427.327 The Minister is satisfied that:

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

#### **427.4 Circumstances applicable to grant**

427.411 If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.

427.412 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

#### **427.5 When visa is in effect**

427.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **427.6 Conditions**

427.611 If the applicant meets the primary criteria, conditions 8107 and 8111.

427.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **427.7 Way of giving evidence**

427.711 No evidence need be given.

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

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## **Subclass 428                      Religious Worker**

### **428.1      Interpretation**

*Note* No interpretation provisions specific to this Part.

### **428.2      Primary criteria**

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

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

*Note* If the application is made outside Australia, there are no criteria to be satisfied at time of application.

##### **428.211      If the application is lodged in the migration zone:**

- (a) the applicant is the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 457 (Business (Long Stay)); or
- (b) the applicant is the holder of:

- (i) a visa of one of the following classes:
  - (A) Border (Temporary) (Class TA);
  - (B) Electronic Travel Authority (Class UD);
  - (C) Long Stay (Visitor) (Class TN);
  - (D) Short Stay (Visitor) (Class TR);
  - (E) Tourist (Class TR); or
- (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the applicant is the holder of a Confirmatory (Temporary) (Class TD) visa that was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
- (d) the applicant is not the holder of a substantive visa, and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) satisfies Schedule 3 criteria 3003, 3004 and 3005; or
- (e) the applicant is not the holder of a substantive visa, and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

428.221 If:

- (a) the application is made outside Australia; or
- (b) the application is made in the migration zone and the applicant does not hold a Subclass 428 visa;

the applicant satisfies the criteria in clauses 428.222 to 428.228.

428.222 The applicant is sponsored by a religious organisation in Australia to undertake work in Australia that directly serves the religious objectives of the organisation, and the sponsorship has been approved by the Minister and the sponsorship fee prescribed in regulation 5.38 has been paid.



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- 428.222A If the religious organisation mentioned in clause 428.222 has entered into a written agreement with the Secretary relating to the sponsorship of applicants:
- (a) the agreement specifies the position which the applicant will occupy while in Australia; and
  - (b) the Minister is satisfied that the applicant will occupy that position while in Australia.
- 428.223 The applicant provides a written undertaking by the religious organisation:
- (a) to meet all the applicant's travel expenses to a place in a foreign country on:
    - (i) the expiry of the sponsorship; or
    - (ii) the expiry of the visa;whichever is the earlier; and
  - (b) not to seek to recover from the applicant any expenditure by the religious organisation in relation to the applicant's travel to or from Australia, or in relation to financial support of the applicant in Australia.
- 428.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 428.226 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 428.227 If the application is lodged outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 428.228 The applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 428.229 If the application is made in the migration zone and the applicant was the holder of a Subclass 428 visa at the time of application, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 428 visa.
- 428.230 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

428.231 The Minister is satisfied that:

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

### **428.3 Secondary criteria**

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

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

428.311 The applicant is a member of the family unit of a person who has applied for a Subclass 428 visa.

428.312 If the application is lodged outside Australia and the application is made separately from that of the person satisfying the primary criteria:

- (a) that person is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of the family unit of that person.

#### **428.32 Criteria to be met at time of decision**

428.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 428 visa.

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- 428.322 The applicant is included in the sponsorship required in respect of the person who meets the primary criteria.
- 428.323 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.
- 428.324 If the application is lodged outside Australia and if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.
- 428.324A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 428.325 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 428.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 428.327 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **428.4 Circumstances applicable to grant**

- 428.411 If the application is made in the migration zone, the applicant is in the migration zone at the time of grant.
- 428.412 If the application is made outside Australia, the applicant is outside Australia at the time of grant.

#### **428.5 When visa is in effect**

- 428.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **428.6 Conditions**

- 428.611 If the applicant satisfies the primary criteria, conditions 8107 and 8303.
- 428.612 Any 1 or more of conditions 8106, 8107, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **428.7 Way of giving evidence**

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

### **Subclass 442 Occupational Trainee**

#### **442.1 Interpretation**

- 442.111 In this Part:  
*completed*, in relation to the principal course, for an award course means having met the academic requirements for its award, and for a non-award course means having met the course requirements.

*Note* The academic requirements for the award of an academic qualification do not include the formal conferral of the award. Therefore, a person can *complete* a principal course, for this Part, before the award is formally conferred.

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*principal course* has the meaning given in regulation 1.40.

## 442.2 Primary criteria

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

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

*Note* If the application is made outside Australia, there are no criteria to be satisfied at time of application.

442.211 If the application is made in the migration zone:

- (a) the applicant is the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Family Relationship (Temporary) (Class TL);
    - (E) Interdependency (Temporary) (Class TM);
    - (F) Medical Practitioner (Temporary) (Class UE);
    - (G) Retirement (Temporary) (Class TQ);
    - (H) Supported Dependant (Temporary) (Class TW);
    - (I) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 442 (Occupational Trainee);
    - (D) Subclass 457 (Business (Long Stay)); or
- (b) the applicant is the holder of:
  - (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);

- (D) Short Stay (Visitor) (Class TR);
- (F) Tourist (Class TR); or
- (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (iii) a visa of one of the following subclasses:
  - (A) Subclass 570 (Independent ELICOS Sector);
  - (B) Subclass 572 (Vocational Education and Training Sector);
  - (C) Subclass 573 (Higher Education Sector);
  - (D) Subclass 574 (Postgraduate Research Sector);
  - (E) Subclass 575 (Non-Award Sector); or
- (c) the applicant is the holder of a Confirmatory (Temporary) (Class TD) visa which was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in paragraph (a) or (b); or
- (d) the applicant is not the holder of a substantive visa, and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a) or (c); and
  - (ii) satisfies Schedule 3 criteria 3003, 3004 and 3005; or
- (e) the applicant is not the holder of a substantive visa, and:
  - (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

442.221 If:

- (a) the application is made outside Australia; or
- (b) the application is made in the migration zone and the applicant does not hold a Subclass 442 visa;

the applicant satisfies the criteria in clauses 442.222 to 442.229.

442.222 (1) Except in the case of an application made in relation to occupational training to be provided by the Commonwealth, a nomination in respect of the occupational training has been lodged and has been approved by the Minister.

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- (2) The reference in subclause (1) to occupational training to be provided by the Commonwealth includes occupational training to be provided by:
- (a) a body corporate incorporated for a public purpose by an Act or regulations made under an Act; or
  - (b) an authority or body, not being a body corporate, established for a public purpose by, or under, an Act or regulations made under an Act.
- (3) The nomination mentioned in subclause (1) in respect of an applicant must include a declaration that the applicant will be engaged or employed under Australian Industrial Relations law and relevant Commonwealth, State or Territory awards and conditions for the industry in which the applicant will undertake occupational training.
- 442.223 The Minister is satisfied:
- (a) that the occupational training that is proposed:
    - (i) is workplace-based; and
    - (ii) will give the applicant additional or enhanced skills that the applicant will be able to utilise in the applicant's employment ; and
  - (b) that occupational opportunities available to Australian citizens or permanent residents of Australia will not be adversely affected if the visa is granted.
- 442.224 The Minister is satisfied that the applicant is a genuine applicant for entry to Australia as an occupational trainee.
- 442.225 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
  - (b) gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 442.226 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 442.227 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

- 442.228 If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 442.229 If the application is made in the migration zone, and the applicant was, at the time of making the application, the holder of a visa mentioned in subparagraph 442.211 (b) (iii), or an applicant mentioned in paragraph 442.211 (e) whose last substantive visa was of a kind specified in subparagraph 442.211 (b) (iii), the applicant satisfies the Minister that:
- (a) the applicant:
    - (i) has completed the principal course, at the diploma level or higher, in Australia in relation to which that visa was granted; and
    - (ii) seeks to undertake occupational training closely related to the principal course; and
    - (iii) would complete the occupational training within 12 months; or
  - (b) the applicant:
    - (i) has completed the principal course in Australia in relation to which that visa was granted; and
    - (ii) must complete a period of practical employment experience for the applicant to obtain registration in a profession in which registration is a prerequisite for the practice of the profession in:
      - (A) the applicant's usual country of residence; or
      - (B) Australia.
- 442.230 If the application is made in the migration zone and the applicant was at the time of application, the holder of a Subclass 442 visa, the applicant satisfies the Minister that there is no reason to believe that the applicant does not continue to satisfy the primary criteria for the grant of a Subclass 442 visa.
- 442.231 (1) For all applications, if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.



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(2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

442.232 The Minister is satisfied that:

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

442.233 (1) Either:

- (a) the applicant has turned 18; or
- (b) the applicant has not turned 18, and the Minister is satisfied that exceptional circumstances exist for the grant of the visa.

(2) If the applicant has not turned 18, public interest criteria 4012, 4017 and 4018 are satisfied in relation to the applicant.

### **442.3 Secondary criteria**

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

442.31 Criteria to be satisfied at time of application

442.311 The applicant is a member of the family unit of a person who has applied for a Subclass 442 visa.

442.312 If the application is made outside Australia and the application is made separately from that of the family unit member satisfying the primary criteria:

- (a) that family unit member is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of that family unit.

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

- 442.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 442 visa.
- 442.322 The member of the family unit who satisfies the primary criteria produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that family unit member and the applicant.
- 442.323 The applicant:
- (a) in all cases, satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 442.324 If the application is made outside Australia and if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 442.324A If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 442.325 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

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

442.327 The Minister is satisfied that:

(a) the applicant is the holder of a valid passport that:

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

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

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

#### **442.4 Circumstances applicable to grant**

442.411 If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.

442.412 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

#### **442.5 When visa is in effect**

442.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

#### **442.6 Conditions**

442.611 If the applicant meets the primary criteria, conditions 8102 and 8501.

442.612 If the applicant meets the secondary criteria, conditions 8104 and 8501.

442.613 Any 1 or more of conditions 8106, 8107, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

#### **442.7 Way of giving evidence**

442.711 No evidence need be given.

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

## Subclass 444 Special Category

### 444.1 Interpretation

*Note* No interpretation provisions specific to this Part.

### 444.2 Primary Criteria

*Note* The only criteria are those set out in paragraph 32 (2) (a) of the Act and in regulation 5.15A. Under paragraph 32 (2) (a) of the Act, the requirements are: that the applicant is a New Zealand citizen; that the applicant holds, and has shown an officer, a New Zealand passport that is in force; and that the applicant is neither a behaviour concern non-citizen nor a health concern non-citizen.

The terms *behaviour concern non-citizen* and *health concern non-citizen* are defined in subsection 5 (1) of the Act. Prescribed diseases in respect of a health concern non-citizen are set out in regulation 5.16. The definition of *behaviour concern non-citizen* includes a person who has been excluded from another country in certain circumstances. Those circumstances are set out in regulation 5.15.

Paragraph 32 (2) (c) of the Act allows other classes of persons to be declared by the regulations as classes of persons for whom a visa of another class would be inappropriate, and the declaration of a class of persons is to be found in regulation 5.15A.

Under regulation 5.15A, the requirements are that the applicant is a New Zealand citizen who holds, and has shown an officer, a New Zealand passport that is in force; that the applicant is not a health concern non-citizen; and that the applicant is a behaviour concern non-citizen only because he or she has been excluded from another country in circumstances that, in the Minister's opinion, do not warrant the exclusion of the applicant from Australia.

### 444.3 Secondary criteria: Nil.

*Note* All applicants must satisfy the primary criteria.

### 444.4 Circumstances applicable to grant

444.411 At the time of grant, the applicant must:

- (a) be in Australia; or
- (b) intend to travel to Australia on a pre-cleared flight and be in immigration clearance at a port outside Australia at which pre-clearance procedures are carried out.

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*Note* For *pre-cleared flight* see the Act, s 17.

#### **444.5 When visa is in effect**

444.511 Temporary visa permitting the holder to remain in Australia while the holder is a New Zealand citizen.

#### **444.6 Conditions: Nil.**

#### **444.7 Way of giving evidence**

444.711 If the grant is made:

- (a) in immigration clearance — a port and date stamp placed in the passport of the holder; or
- (b) in Australia after immigration clearance — a *special category visa holder* stamp placed in the passport of the holder; or
- (c) at an airport outside Australia at which pre-clearance procedures are carried out — a *pre-cleared* stamp placed in the passport of the holder.

### **Subclass 445 Dependent Child**

#### **445.1 Interpretation**

445.111 For this Part, the parent of an applicant is a *visa-holding parent* if he or she holds any of the following visas:

- (a) Subclass 309 (Spouse (Provisional));
- (b) Subclass 310 (Interdependency (Provisional));
- (c) Subclass 445 (Dependent Child);
- (d) Subclass 820 (Spouse);
- (e) Subclass 826 (Interdependency).

*Note* For *dependent child*, see regulation 1.03.

#### **445.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

445.211 The applicant:

- (a) is a dependent child of a visa-holding parent; and
- (b) is sponsored by the nominator or sponsor of the visa-holding parent.

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

445.221 The parent of the applicant continues to be a visa-holding parent.

445.222 The applicant continues to be a dependent child of the visa-holding parent.

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

(2) The applicant meets the requirements of this subclause if he or she continues to be sponsored by the nominator or sponsor of the visa-holding parent.

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

(a) either:

(i) the nominator or sponsor of the visa-holding parent has died; or

(ii) the relationship between the visa-holding parent and his or her nominator or sponsor has ceased, and either:

(A) the visa-holding parent has requested consideration under provisions relating to domestic violence in Subclass 100, 110, 801 or 814; or

(B) the visa-holding parent has requested consideration under provisions relating to parental arrangements for a child in Subclass 100 or 801; and

(b) the applicant is sponsored by the visa-holding parent.

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- (4) The applicant meets the requirements of this subclause if:
- (a) the applicant is a dependent child of a parent holding a Subclass 445 visa; and
  - (b) the circumstances mentioned in subparagraph (3) (a) (i), or sub-subparagraph (3) (a) (ii) (A) or (B) apply; and
  - (c) the applicant is sponsored by the person who is required to satisfy the primary criteria in Subclass 100, 110, 801 or 814.

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

- 445.224 The sponsorship mentioned in clause 445.223 has been approved by the Minister and is still in force.
- 445.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- 445.226 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 445.227 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 445 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 445 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criteria 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 445.228 If a person (the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant — public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

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

### **445.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are dependent children of, and who have made a combined application with, the person who satisfies the primary criteria.

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

- 445.311 The applicant is a dependent child of, and made a combined application with, the person who satisfies the primary criteria for a Subclass 445 visa.
- 445.312 The sponsorship mentioned in paragraph 445.211 (c) for the person who satisfies the primary criteria also includes sponsorship of the applicant.

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

- 445.321 The applicant continues to be a dependent child of the person who, having satisfied the primary criteria, is the holder of a Subclass 445 visa.
- 445.322 The sponsorship mentioned in clause 445.223 for the person who satisfies the primary criteria also includes sponsorship of the applicant.
- 445.323 The sponsorship mentioned in clause 445.322 has been approved by the Minister and is still in force.
- 445.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- 445.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied, in relation to the applicant.
- 445.326 The Minister is satisfied that:



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

#### **445.4 Circumstances applicable to grant**

- 445.411 If the application is made outside Australia, the applicant must be outside Australia when the visa is granted.
- 445.412 If the application is made in Australia, the applicant must be in Australia when the visa is granted.

#### **445.5 When a visa is in effect**

- 445.511 Temporary visa permitting the holder to travel to, enter and remain in Australia within the visa period of the Extended Eligibility (Temporary) (Class TK) visa, Interdependency (Provisional) (Class UG) visa, Spouse (Provisional) (Class UF) visa, Partner (Provisional) (Class UF) visa or Partner (Temporary) (Class UK) visa held by the person on whom the applicant is dependent.

#### **445.6 Conditions: Nil.**

#### **445.7 Way of giving evidence**

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

## **Subclass 447 Secondary Movement Offshore Entry (Temporary)**

### **447.1 Interpretation**

*Note* *member of the family unit* is defined in regulation 1.03.

No interpretation provisions specific to this Part.

### **447.2 Primary criteria**

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

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

447.211 The applicant:

- (a) is either:
  - (i) subject to persecution in the applicant's home country; or
  - (ii) subject to substantial discrimination, amounting to gross violation of human rights, in the applicant's home country; or
  - (iii) a female person who is subject to persecution or is registered as being of concern to the United Nations High Commissioner for Refugees; and
- (b) is an offshore entry person.

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

447.221 The applicant continues to satisfy the criterion in clause 447.211.

447.222 The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a temporary visa, having regard to:

- (a) the extent of the applicant's connection with Australia; and

- 
- (b) if the applicant continues to meet the requirement in subparagraph 447.211 (a) (i) — the degree of persecution to which the applicant is subject in the applicant's home country; and
  - (c) if the applicant continues to meet the requirement in subparagraph 447.211 (a) (ii) — the degree of discrimination to which the applicant is subject in the applicant's home country; and
  - (d) if the applicant continues to meet the requirement in subparagraph 447.211 (a) (iii) — whether the applicant has the protection of a male relative and is in danger of victimisation, harassment or serious abuse because of her sex; and
  - (e) whether there is any suitable country available, other than Australia, that can provide for the applicant's stay and protection from persecution, discrimination, victimisation, harassment or serious abuse; and
  - (f) the capacity of the Australian community to provide for the temporary stay of persons such as the applicant in Australia.
- 447.223 The Minister is satisfied that temporary stay in Australia would not be contrary to the interests of Australia.
- 447.224 Grant of the visa would not result in either:
- (a) the number of Subclass 447 visas granted in a financial year exceeding the maximum number of Subclass 447 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Refugee and Humanitarian (Class XB) visa) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.
- 447.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007.
- 447.226 If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.

- 447.227 (1) In relation to the family unit of the applicant, each member of the family unit who is an applicant for a Subclass 447 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007; and
  - (b) if he or she has previously been in Australia — satisfies special return criterion 5001.
- (2) In relation to the family unit of the applicant, each member of the family unit who is not an applicant for a Subclass 447 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

### **447.3 Secondary criteria**

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

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

447.311 The applicant:

- (a) is a member of the family unit of a person who satisfies, or has satisfied, the criterion in clause 447.211; and
- (b) is in the same country as that person.

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

447.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 447 visa.

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

447.323 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007; and

- (b) if he or she has previously been in Australia, satisfies special return criterion 5001.

#### **447.4 Circumstances applicable to grant**

447.411 The applicant must be outside Australia at the time of grant.

#### **447.5 When visa is in effect**

447.511 Temporary visa permitting the holder:

- (a) to travel to and enter Australia on 1 occasion, as specified by the Minister; and
- (b) to remain in Australia until:
  - (i) if the holder applies for a visa after the temporary visa is granted and before the end of 36 months from the grant — the day on which the application is finally determined; and
  - (ii) in any other case — the end of the 36 months.

#### **447.6 Conditions**

447.611 The holder cannot be granted a substantive visa other than a protection visa.

447.612 Entry must be made before the date specified by the Minister for the purpose.

447.613 Condition 8502 may be imposed.

#### **447.7 Way of giving evidence**

447.711 No evidence need be given.

447.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

## **Subclass 448 Kosovar Safe Haven (Temporary)**

### **448.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

### **448.2 Primary criteria**

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

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

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

448.221 (1) The applicant meets the requirements of subclause (2) or (3).

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

- (a) was resident in Kosovo in the Federal Republic of Yugoslavia on 25 March 1999; and
- (b) has been displaced from Kosovo since 25 March 1999.

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

- (a) is a member of the immediate family of a holder of a Subclass 448 visa (the visa holder); and
- (b) was a member of the visa holder's immediate family when the visa holder was first granted a Subclass 448 visa.

448.223 Grant of the visa would not result in either:

- (a) the number of Subclass 448 visas granted in a financial year exceeding the maximum number of Subclass 448 visas, as determined by Gazette Notice, that may be granted in that financial year; or

- (b) the number of visas of particular classes, including Subclass 448, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

- 448.224 The applicant satisfies public interest criteria 4002 and 4003.
- 448.225 If the applicant is outside Australia, the applicant has undergone a medical examination carried out by a medical practitioner approved by the Minister.
- 448.226 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

### **448.3 Secondary criteria**

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

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

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

- 448.321 The applicant:
- (a) is a member of the family unit of a person who, having met the requirements of subclause 448.221 (2), is the holder of a Subclass 448 visa; or
  - (b) is a member of the immediate family of a person who, having met the requirements of subclause 448.221 (3), is the holder of a Subclass 448 visa.
- 448.322 The applicant satisfies public interest criteria 4002 and 4003.
- 448.323 If the applicant is outside Australia, the applicant has undergone a medical examination carried out by a medical practitioner approved by the Minister.
- 448.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **448.4 Circumstances applicable to grant**

448.411 The applicant may be in, or outside, Australia at time of grant.

#### **448.5 When visa is in effect**

448.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **448.6 Conditions**

448.611 If the applicant is outside Australia at time of grant, conditions 8104, 8506 and 8529.

448.612 If the applicant is in Australia at time of grant, conditions 8104 and 8506.

448.613 Condition 8303 may be imposed.

#### **448.7 Way of giving evidence**

448.711 No evidence need be given.

448.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

### **Subclass 449 Humanitarian Stay (Temporary)**

#### **449.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

#### **449.2 Primary criteria**

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

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



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

- 449.221 (1) The applicant meets the requirements of subclause (2) or (3).
- (2) The applicant meets the requirements of this subclause if:
- (a) the applicant has been displaced from his or her place of residence, and:
- (i) cannot reasonably return to that place of residence; and
  - (ii) is in grave fear of his or her personal safety because of the circumstances in which, or reasons why, he or she was displaced from that place of residence; or
- (b) the applicant has not been displaced from his or her place of residence, but:
- (i) there is a strong likelihood that the applicant will be displaced from that place of residence; and
  - (ii) the applicant is in grave fear of his or her personal safety because of the circumstances in which, or reasons why, the applicant may be displaced from that place of residence.
- (3) The applicant meets the requirements of this subclause if the applicant:
- (a) is a member of the immediate family of a holder of a Subclass 449 visa (*the visa holder*); and
  - (b) was a member of the visa holder's immediate family when the visa holder was first granted a Subclass 449 visa.
- 449.223 Grant of the visa would not result in either:
- (a) the number of Subclass 449 visas granted in a financial year exceeding the maximum number of Subclass 449 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes, including Subclass 449, granted in a financial year exceeding the maximum number of visas of those classes, as

determined by Gazette Notice, that may be granted in that financial year.

- 449.224 (1) The applicant satisfies public interest criteria 4002 and 4003.
- (2) The applicant satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

### **449.3 Secondary criteria**

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

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

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

- 449.321 The applicant:
- (a) is a member of the family unit of a person who, having met the requirements of subclause 449.221 (2), is the holder of a Subclass 449 visa; or
  - (b) is a member of the immediate family of a person who, having met the requirements of subclause 449.221 (3), is the holder of a Subclass 449 visa.
- 449.322 (1) The applicant satisfies public interest criteria 4002 and 4003.
- (2) The applicant satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 449.323 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

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#### **449.4 Circumstances applicable to grant**

- 449.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.
- 449.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **449.5 When visa is in effect**

- 449.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **449.6 Conditions**

- 449.611 Condition 8506.
- 449.612 Condition 8101 or 8104 may be imposed.
- 449.612A Condition 8303 may be imposed.
- 449.613 If the Minister is satisfied that it would be unreasonable to require an applicant to undergo assessment in relation to criterion 4007, condition 8529.

*Note* See subclauses 449.224 (2) and 449.322 (2).

#### **449.7 Way of giving evidence**

- 449.711 No evidence need be given.
- 449.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

### **Subclass 450 Resolution of Status — Family Member (Temporary)**

#### **450.1 Interpretation**

*Note* *dependent child* is defined in regulation 1.03, *member of the family unit* in regulation 1.12, and *member of the immediate family* in regulation 1.12AA. There are no interpretation provisions specific to this Part.

## 450.2 Primary criteria

*Note* All applicants must satisfy the primary criteria.

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

450.211 The applicant:

- (a) is either:
  - (i) a member of the immediate family of a person (*the sponsor*) who:
    - (A) has made an application for a Resolution of Status (Temporary) (Class UH) visa mentioned in paragraph 1216A (3) (a) of Schedule 1; and
    - (B) on the basis of the information provided in that application, appears to satisfy the criteria in Subdivision 850.21; or
  - (ii) 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
- (b) is sponsored by the sponsor.

450.212 The applicant:

- (a) was, on 13 June 1997, a member of the immediate family of the sponsor; or
- (b) became a dependent child of the sponsor after that date; or
- (c) was, on 13 June 1997, a dependent child of the spouse of the sponsor.

450.213 In the application, by the sponsor, that is mentioned in sub-paragraph 450.211 (a) (i) (A), the applicant is:

- (a) identified as:
  - (i) a member of the immediate family of the sponsor, except if the applicant became a dependent child of the sponsor after that date; or
  - (ii) a dependent child of the spouse of the sponsor; and
- (b) sponsored by the sponsor.

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

- 450.221 The applicant continues to satisfy clause 450.211 and the sponsor is a person who, having satisfied the primary criteria, is the holder of a Subclass 850 (Resolution of Status (Temporary)) or Subclass 851 (Resolution of Status) visa.
- 450.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- 450.223 Each member of the family unit of the applicant who is not an applicant for a Subclass 450 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 450.224 If the applicant is, or has been, a student under a scholarship scheme or training program approved by AusAID:
- (a) the applicant made the application more than 2 years after the applicant's departure from Australia on ceasing the course of studies under the scheme or program; or
  - (b) the applicant has the support in writing of AusAID for the grant of the visa.
- 450.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 450.226 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **450.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

#### **450.4 Circumstances applicable to grant**

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

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

## **450.5 When visa is in effect**

- 450.511 Temporary visa permitting the holder:
- (a) to travel to and enter Australia until a date specified by the Minister; and
  - (b) to remain in Australia until the end of the day on which:
    - (i) the holder is notified that the holder's application for a Resolution of Status (Residence) (Class BL) visa has been decided; or
    - (ii) that application is withdrawn.

## **450.6 Conditions**

- 450.611 First entry must be made before a date specified by the Minister for the purpose.
- 450.612 Condition 8515 may be imposed.

## **450.7 Way of giving evidence**

- 450.711 Visa label affixed to a valid passport.

# **Subclass 451 Secondary Movement Relocation (Temporary)**

## **451.1 Interpretation**

*Note* *member of the family unit* is defined in regulation 1.03.  
No interpretation provisions specific to this Part.

## **451.2 Primary criteria**

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

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

- 451.211 The applicant:
- (a) is either:

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- (i) subject to persecution in the applicant's home country; or
  - (ii) subject to substantial discrimination, amounting to gross violation of human rights, in the applicant's home country; or
  - (iii) a female person who is subject to persecution or is registered as being of concern to the United Nations High Commissioner for Refugees; and
- (b) is outside his or her home country and is not an offshore entry person.

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

451.221 The applicant continues to satisfy the criterion in clause 451.211.

451.222 The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a temporary visa, having regard to:

- (a) the extent of the applicant's connection with Australia; and
- (b) if the applicant continues to meet the requirement in subparagraph 451.211 (a) (i) — the degree of persecution to which the applicant is subject in the applicant's home country; and
- (c) if the applicant continues to meet the requirement in subparagraph 451.211 (a) (ii) — the degree of discrimination to which the applicant is subject in the applicant's home country; and
- (d) if the applicant continues to meet the requirement in subparagraph 451.211 (a) (iii) — whether the applicant has the protection of a male relative and is in danger of victimisation, harassment or serious abuse because of her sex; and
- (e) whether there is any suitable country available, other than Australia, that can provide for the applicant's stay and protection from persecution, discrimination, victimisation, harassment or serious abuse; and

- (f) the capacity of the Australian community to provide for the temporary stay of persons such as the applicant in Australia.
- 451.223 The Minister is satisfied that temporary stay in Australia would not be contrary to the interests of Australia.
- 451.224 Grant of the visa would not result in either:
- (a) the number of Subclass 451 visas granted in a financial year exceeding the maximum number of Subclass 451 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Refugee and Humanitarian (Class XB) visa) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.
- 451.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007.
- 451.226 If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.
- 451.227 (1) In relation to the family unit of the applicant, each member of the family unit who is an applicant for a Subclass 451 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007; and
  - (b) if he or she has previously been in Australia — satisfies special return criterion 5001.
- (2) In relation to the family unit of the applicant, each member of the family unit who is not an applicant for a Subclass 451 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.



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### **451.3 Secondary criteria**

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

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

451.311 The applicant:

- (a) is a member of the family unit of a person who satisfies, or has satisfied, the criterion in clause 451.211; and
- (b) is in the same country as that person.

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

451.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 451 visa.

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

451.323 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004 and 4007; and
- (b) if he or she has previously been in Australia, satisfies special return criterion 5001.

### **451.4 Circumstances applicable to grant**

451.411 The applicant must be outside Australia at the time of grant.

### **451.5 When visa is in effect**

451.511 Temporary visa permitting the holder:

- (a) to travel to and enter Australia on 1 occasion, as specified by the Minister; and
- (b) to remain in Australia until:
  - (i) if the holder applies for a visa after the temporary visa is granted and before the end of 60 months from the grant — the day on which the application is finally determined; and

(ii) in any other case — the end of the 60 months.

### **451.6 Conditions**

- 451.611 The holder cannot be granted a substantive visa other than a protection visa.
- 451.612 Entry must be made before the date specified by the Minister for the purpose.
- 451.613 Condition 8502 may be imposed.

### **451.7 Way of giving evidence**

- 451.711 No evidence need be given.
- 451.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

## **Subclass 456 Business (Short Stay)**

### **456.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

### **456.2 Primary criteria**

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

- 456.211 The applicant:
- (a) seeks to enter Australia temporarily for business purposes; and
  - (aa) has personal attributes and business background that are relevant to, and consistent with, the nature of the applicant's proposed business in Australia; and
  - (ab) demonstrates that there is need for the applicant to be in Australia for business purposes; and
  - (b) proposes in the application to remain in Australia for not more than 3 months on any single occasion; and

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- (c) has adequate funds for personal support during the period of his or her stay in Australia on each such occasion.
- 456.212 The applicant does not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.
- 456.213 The applicant does not intend to engage in:
- (a) any course:
    - (i) leading to the completion of a primary or secondary education program; or
    - (ii) leading to a degree, diploma, trade certificate or other formal award; or
  - (b) any other course (other than a language training program) completion of which may be unconditionally credited towards, or accepted as a prerequisite for, a course of studies at a higher educational institution within or outside Australia.

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

- 456.221 (1) The applicant meets the requirements of subclause (2) or (4).
- (2) The applicant meets the requirements of this subclause if:
- (a) the applicant continues to satisfy the criteria in clauses 456.211 and 456.212; and
  - (b) the applicant satisfies the Minister that the expressed intention of the applicant only to stay in Australia temporarily for business purposes is genuine; and
  - (c) satisfies:
    - (i) public interest criteria 4001, 4002, 4003, 4004, 4011, 4013 and 4014; and
    - (ii) except where the applicant is a person to whom subclause (4) applies, public interest criterion 4005; and

- (d) if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002; and
- (4) The applicant is a person to whom this subclause applies if:
  - (a) privileges and immunities are, or are expected to be, accorded to the applicant under the *International Organisations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities) Act 1995*; and
  - (b) the Foreign Minister has recommended in writing to the Minister that the applicant should be granted the visa.
- 456.222 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
  - (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
    - (a) compelling circumstances that affect the interests of Australia; or
    - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 456.223 The Minister is satisfied that:
  - (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **456.3 Secondary criteria**

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

- 456.311 The applicant is the spouse, or a dependent child, of a person who is an applicant for a Temporary Business Entry

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(Class UC) visa who seeks a visa to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less.

- 456.313 The applicant does not intend to engage in:
- (a) any course:
    - (i) leading to the completion of a primary or secondary education program; or
    - (ii) leading to a degree, diploma, trade certificate or other formal award; or
  - (b) any other course (other than a language training program) completion of which may be unconditionally credited towards, or accepted as a prerequisite for, a course of studies at a higher educational institution within or outside Australia.
- 456.32 Criteria to be satisfied at time of decision**
- 456.321 The applicant is a spouse or dependent child of a person who, having satisfied the primary criteria, is the holder of a Subclass 456 visa.
- 456.322 The applicant, or the person who satisfies the primary criteria, produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant.
- 456.323 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4011, 4013 and 4014; and
  - (b) except where the applicant is the spouse, or a dependent child, of a person to whom subclause 456.221 (4) applies — satisfies public interest criterion 4005.
- 456.325 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 456.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 456.327 The applicant satisfies the Minister that the expressed intention of the applicant only to visit Australia is genuine.

- 456.328 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 456.329 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **456.4 Circumstances applicable to grant**

- 456.411 The applicant must be outside Australia at the time of grant.

#### **456.5 When visa is in effect**

- 456.511 Subject to clause 456.514, a temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions, as specified by the Minister, until a date, not later than 10 years after the date of grant of the visa, specified by the Minister; and
  - (b) to remain in Australia after each entry for a period, not longer than 3 months, specified by the Minister.
- 456.514 If the visa is granted to the spouse or a dependent child of another person who is the holder of a Subclass 456 visa — a temporary visa having the same effect as the visa granted to that other person.

## **456.6 Conditions**

456.611 Condition 8112 must be imposed.

456.612 Condition 8503 may be imposed.

## **456.7 Way of giving evidence**

456.711 No evidence need be given.

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

## **Subclass 457 Business (Long Stay)**

### **457.1 Interpretation**

457.111 (1) In this Part:

*approved business nomination* means a nomination approved under regulation 1.20H.

*person* includes an unincorporated body of persons.

*pre-qualified business sponsor* has the same meaning as in Division 1.4A.

*standard business sponsor* has the same meaning as in Division 1.4A.

(2) For the purposes of this Part, a business activity is of benefit to Australia if:

- (a) the conduct of the activity contributes to:
- (i) the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
  - (ii) expansion of Australian trade in goods or services; or
  - (iii) the improvement of Australian business links with international markets; or
  - (iv) competitiveness within sectors of the Australian economy; and

- (b) the operator of the business:
  - (i) introduces to, or utilises or creates in, Australia new or improved technology or business skills; or
  - (ii) has a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents in the business in Australia.

*Note* *AUD, Internet application, ownership interest, RHQ agreement* and *IASS agreement* are defined in regulation 1.03.

## 457.2 Primary criteria

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

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

457.211 If the applicant is in Australia:

- (a) the applicant is the holder of:
  - (i) a visa of one of the following classes:
    - (A) Business (Temporary) (Class TB);
    - (B) Cultural/Social (Temporary) (Class TE);
    - (C) Educational (Temporary) (Class TH);
    - (D) Expatriate (Temporary) (Class TJ);
    - (E) Family Relationship (Temporary) (Class TL);
    - (F) Interdependency (Temporary) (Class TM);
    - (G) Medical Practitioner (Temporary) (Class UE);
    - (H) Retirement (Temporary) (Class TQ);
    - (I) Supported Dependant (Temporary) (Class TW);
    - (J) Working Holiday (Temporary) (Class TZ); or
  - (ii) a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 457;



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- (D) Subclass 471 (Trade Skills Training) visa; or
- (b) the applicant is the holder of:
- (i) a visa of one of the following classes:
    - (A) Border (Temporary) (Class TA);
    - (B) Electronic Travel Authority (Class UD);
    - (C) Long Stay (Visitor) (Class TN);
    - (D) Short Stay (Visitor) (Class TR);
    - (E) Student (Temporary) (Class TU);
    - (F) Tourist (Class TR); or
  - (ii) a Subclass 456 (Business (Short Stay)) visa; or
- (c) the applicant is the holder of a Confirmatory (Temporary) (Class TD) visa granted on the grounds that the applicant satisfied the criteria for a visa specified in paragraph (a) or (b); or
- (ca) the applicant is the holder of a Subclass 497 (Graduate — Skilled) visa; or
- (d) the applicant is not the holder of a substantive visa and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (a), (c) or (ca); and
  - (ii) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005; or
- (e) the applicant is not the holder of a substantive visa and:
- (i) the last substantive visa held by the applicant was of a kind specified in paragraph (b); and
  - (ii) the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.
- 457.212 (1) If the applicant is the holder of a Student (Temporary) (Class TU) visa and is a fully funded student within the meaning given by clause 5A103, the Minister is satisfied that it would not be detrimental to Australia's policies in relation to overseas students to grant the visa.
- (2) Subclause (1) does not apply to an applicant who meets the requirements of subclause 457.223 (3) or (10).

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

457.221 If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

457.221A If:

- (a) the applicant is in Australia; and
- (b) the applicant was outside Australia at the time of application;

the applicant is the holder of a visa mentioned in paragraph 457.211 (a), (b), (c) or (ca).

457.223 (1) The applicant meets the requirements of subclause (2), (3), (4), (5), (7A), (8), (9) or (10).

*Labour agreements*

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

- (a) the activity specified in the application is the subject of a labour agreement; and
- (b) that activity is the subject of an approved business nomination by a party to the labour agreement; and
- (c) the applicant is nominated by a party to the labour agreement; and
- (d) the Minister is satisfied that:
  - (i) the skills and experience of the applicant are suitable for the performance of the activity; and
  - (ii) the requirements of the labour agreement have been met in relation to the application.

*RHQ agreements*

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

- (a) the activity specified in the application is the subject of an RHQ agreement; and
- (b) the applicant has lodged with the application a statement that:

- (i) identifies the applicant as a person who is to be employed in the regional headquarters of a business in Australia; and
- (ii) identifies the RHQ agreement by the number given to the agreement.

*Sponsorship — Australian business*

- (4) The applicant meets the requirements of this subclause if:
  - (a) the activity in which the applicant proposes to be employed in Australia by a person (the *employer*) is the subject of an approved business nomination by the employer; and
  - (b) the employer is:
    - (i) either:
      - (A) a pre-qualified business sponsor; or
      - (B) a standard business sponsor approved under regulation 1.20D as in force before, on or after 1 July 2003; and
    - (ii) the employer mentioned in subparagraph 1223A (3) (d) (i); and
  - (c) the applicant is nominated, in accordance with approved form 1068, 1196 or 1196 (Internet), in relation to the activity by the employer; and
  - (d) the applicant has personal attributes and an employment background that are relevant to, and consistent with, the nature of the activity to be performed; and
  - (e) the applicant demonstrates, if so required by the Minister, that he or she has the skills necessary to perform the activity; and
  - (f) for an applicant in respect of whom there is a nomination of an activity under regulation 1.20G — the Minister is satisfied that:
    - (i) the applicant will be paid at the level specified in the nomination; and
    - (ii) that level will be at least the minimum salary level that applied at the time the nomination was made; and

- (g) for an applicant in respect of whom there is a nomination of an activity under regulation 1.20GA — the Minister is satisfied that:
  - (i) the applicant will be paid at the level specified in the nomination; and
  - (ii) that level will be not less than the level of remuneration provided for under relevant Australian legislation and awards; and
  - (iii) the applicant's working conditions will be no less favourable than working conditions provided for under relevant Australian legislation and awards; and
- (h) for a standard business sponsor — the Minister is satisfied that the position to be filled by the applicant has not been created only for the purposes of securing the entry of the applicant to Australia; and
  - (i) the applicant is sponsored by an approved sponsor within the meaning of section 140D of the Act.

*Sponsorship — overseas business*

- (5) The applicant meets the requirements of this subclause if:
  - (a) the applicant proposes to be employed in Australia by a person (the **employer**) who does not operate a business activity in Australia; and
  - (b) that activity is the subject of an approved business nomination by the employer made under regulation 1.20G; and
  - (c) either:
    - (i) the employer is a standard business sponsor approved under regulation 1.20DA; or
    - (ii) before 1 July 2003, the employer:
      - (A) did not operate a business in Australia; and
      - (B) gave the Minister undertakings in accordance with approved form 1067; and
      - (C) was a person whom the Minister was satisfied (apart from not operating a business in Australia) would, on application, have been

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likely to have been approved as a standard business sponsor; and

- (d) the applicant is nominated, in accordance with approved form 1068 or 1196, in relation to the activity by the employer; and
- (e) the applicant demonstrates, if so required by the Minister, that he or she has the skills necessary to perform the activity; and
- (f) the applicant has personal attributes and an employment background that are relevant to, and consistent with, the nature of the activity to be performed; and
- (g) the Minister is satisfied that the position to be filled by the applicant has not been created only for the purposes of securing the entry of the applicant to Australia; and
- (h) the Minister is satisfied that:
  - (i) the applicant will be paid at the level specified in the nomination; and
  - (ii) that level will be at least the minimum salary level that applied at the time the nomination was made; and
- (i) the Minister is satisfied that the applicant has a genuine and realistic commitment to:
  - (i) establish, or assist in establishing, on behalf of the employer, a business activity in Australia with overseas connections; or
  - (ii) fulfil, or assist in fulfilling, contractual obligations of the employer;that will be of benefit to Australia; and
- (j) the applicant is sponsored by an approved sponsor within the meaning of section 140D of the Act.

*Independent executives*

- (7) The applicant meets the requirements of this subclause if the Minister is satisfied that:
- (a) the applicant proposes to develop in Australia a business activity that will be:
    - (i) conducted by the applicant as a principal; and
    - (ii) of benefit to Australia; and

- (b) the applicant has a genuine and realistic commitment:
    - (i) to maintain or obtain an ownership interest in a business in Australia; and
    - (ii) to maintain a direct and continuous involvement in the management of the business; and
    - (iii) to make decisions that affect the overall direction and performance of the business from day to day; and
  - (c) nothing adverse is known to Immigration about the applicant's business background; and
  - (d) the applicant has net assets of:
    - (i) not less than AUD250,000; or
    - (ii) a lesser amount that the Minister considers to be adequate;to conduct or establish the business; and
  - (e) the applicant has personal attributes and background that are relevant to, and consistent with, the nature of the proposed business; and
  - (f) the applicant has demonstrated that there is need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business.
- (7A) The applicant meets the requirements of this subclause if:
- (a) either:
    - (i) the applicant holds a Subclass 457 visa granted on the basis that:
      - (A) the applicant met the requirements of subclause (7); or
      - (B) the applicant met the requirements of Subdivision 457.32 as the spouse of a person who held a Subclass 457 visa granted on the basis that he or she met the requirements of subclause (7); or
    - (ii) the applicant does not hold a substantive visa, and the last substantive visa held by the applicant was of a kind mentioned in subparagraph (i); and

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- (b) on the day on which the application is made:
- (i) the applicant had been conducting the business in Australia as a principal for at least 15 months; or
  - (ii) if the applicant had been conducting the business in Australia as a principal for less than 15 months — a government of a State or Territory had endorsed the business as beneficial to the State or Territory; and
- (c) the Minister is satisfied that:
- (i) the business is of benefit to Australia; and
  - (ii) the applicant has a genuine and realistic commitment:
    - (A) to maintain an ownership interest in the business; and
    - (B) to maintain a direct and continuous involvement in the management of the business; and
    - (C) to make decisions that affect the overall direction and performance of the business from day to day; and
  - (iii) nothing adverse is known to Immigration about the applicant's business background; and
  - (iv) the applicant has net assets of:
    - (A) not less than AUD250,000; or
    - (B) a lesser amount that is adequate; to conduct the business; and
  - (v) the applicant has demonstrated that there is need for the applicant to be temporarily resident in Australia to conduct the business.

*Service sellers*

- (8) The applicant meets the requirements of this subclause if:
- (a) the applicant:
    - (i) is a representative of a supplier of services who is located outside Australia; and
    - (ii) proposes to represent the supplier in Australia; and

- (b) the representation involves negotiating, or entering into agreements, for the sale of services but does not involve the actual supply, or direct sale, of the services; and
- (c) the Minister is satisfied that the proposal has not been made only for the purposes of securing the entry of the applicant to Australia.

*Persons accorded certain privileges and immunities*

- (9) The applicant meets the requirements of this subclause if:
  - (a) the applicant is a person to whom privileges and immunities will be accorded under the *International Organisations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities) Act 1995*; and
  - (b) the Foreign Minister has recommended in writing to the Minister that the applicant should be granted the visa.

*IASS agreements*

- (10) The applicant meets the requirements of this subclause if:
  - (a) the activity specified in the application is the subject of an IASS agreement; and
  - (b) the activity is the subject of an approved business nomination by a business that is a party to the IASS agreement; and
  - (c) the applicant is nominated by the business mentioned in paragraph (b); and
  - (d) the requirements of the IASS agreement have been met in relation to the application.

457.224 The applicant satisfies:

- (a) public interest criteria 4001, 4002, 4003, 4004, 4010, 4013 and 4014; and
- (b) if:
  - (i) the applicant is the holder of a visa granted on the basis that the applicant met the requirements of subclause 457.223 (7); and



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- (ii) the applicant seeks a visa on the basis that the applicant meets the requirements of subclause 457.223 (7A);  
public interest criterion 4005; and
- (c) except where the applicant meets the requirements of subclause 457.223 (9) — public interest criterion 4006A.
- 457.225 If:
- (a) the applicant is outside Australia; and
- (b) the applicant has previously been in Australia;
- the applicant satisfies special return criteria 5001 and 5002.
- 457.226 (1) If the applicant:
- (a) is an AusAID student or an AusAID recipient; and
- (b) does not meet the requirements of subclause 457.223 (3) or (10);
- the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 457.227 (1) In relation to the family unit of an applicant who seeks to meet the requirements of subclause 457.223 (7A), each member of the family unit who is an applicant for a Subclass 457 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) In relation to the family unit of an applicant who seeks to meet the requirements of subclause 457.223 (7A), each

member of the family unit who is not an applicant for a Subclass 457 visa is a person who:

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

457.228 The Minister is satisfied that:

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

### **457.3 Secondary criteria**

**457.31 [No criteria to be satisfied at time of application.]**

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

457.321 The applicant is a member of the family unit of a person (in this Subdivision called *the primary applicant*) who, having satisfied the primary criteria, is the holder of a Subclass 457 visa.

457.322 If:

- (a) the applicant is outside Australia; and
- (b) the application is made separately from that of the primary applicant;

the primary applicant is, or is expected soon to be, in Australia.

457.323 If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

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- 457.324 The applicant is included in any nomination that is required in respect of the primary applicant in accordance with approved form 1068, 1196 or 1196 (Internet).
- 457.324A The applicant is:
- (a) a member of the family unit of the applicant who satisfied the criterion in clause 457.223 of being sponsored by an approved sponsor within the meaning of section 140D of the Act; and
  - (b) included in that sponsorship.
- 457.325 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4010, 4013 and 4014; and
  - (aa) if the applicant is a member of the family unit of an applicant who seeks to meet the requirements of subclause 457.223 (7A) — satisfies public interest criterion 4005; and
  - (b) except where the applicant is a member of the family unit of a primary applicant who meets the requirements of subclause 457.223 (9) — satisfies public interest criterion 4006A.
- 457.326 If:
- (a) the applicant is outside Australia; and
  - (b) the applicant has previously been in Australia;
- the applicant satisfies special return criteria 5001 and 5002.
- 457.327 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

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

457.329 The Minister is satisfied that:

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

#### **457.4 Circumstances applicable to grant**

457.411 The applicant may be in or outside Australia at the time of grant, but not in immigration clearance.

#### **457.5 When visa is in effect**

457.511 A temporary visa permitting the holder:

- (a) in the case of a holder who is in Australia at the time of grant — to remain in Australia for a period of more than 3 months, but not more than 4 years, from the date of grant; and
- (b) in the case of a holder who is outside Australia at the time of grant — to remain in Australia for a period of more than 3 months, but not more than 4 years from the date of entry that is specified by the Minister; and
- (c) in the case of a holder of a visa granted on the basis that the holder met the requirements of subclause 457.223 (7A) — to remain in Australia for a period of 2 years from the date of the grant; and
- (d) in any case — to travel to, and enter, Australia on multiple occasions before the end of the relevant period.

#### **457.6 Conditions**

457.611 (1) If the applicant satisfies the primary criteria, condition 8107 applies unless the applicant meets the requirements of subclause 457.223 (7A).

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(2) Any one or more of conditions 8106, 8301, 8303, 8403, 8502, 8516, 8522, 8525 and 8526 may be imposed.

### **457.7 Way of giving evidence**

457.711 No evidence need be given.

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

## **Subclass 459 Sponsored Business Visitor (Short Stay)**

### **459.1 Interpretation**

*Note* *AusAID Minister, AusAID recipient, AusAID student, Australian permanent resident, dependent child* and *settled* are defined in regulation 1.03, *sponsor* is defined in regulation 1.20, and *spouse* is defined in regulation 1.15A. There are no interpretation provisions specific to this Part.

### **459.2 Primary criteria**

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

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

459.211 The applicant:

- (a) seeks to enter Australia temporarily for business purposes; and
- (b) has personal attributes and business background that are relevant to, and consistent with, the nature of the applicant's proposed business in Australia; and
- (c) demonstrates that there is need for the applicant to be in Australia for business purposes; and
- (d) proposes in the application to remain in Australia for not more than 3 months; and
- (e) has adequate funds for personal support during the period of the proposed visit to Australia.

459.212 The applicant does not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

459.213 The applicant does not intend to engage in:

- (a) any course:
  - (i) leading to the completion of a primary or secondary education program; or
  - (ii) leading to a degree, diploma, trade certificate or other formal award; or
- (b) any other course (other than a language training program) completion of which may be unconditionally credited towards, or accepted as a prerequisite for, a course of studies at a higher educational institution within or outside Australia.

459.214 The applicant is sponsored by:

- (a) a settled Australian citizen, or a settled Australian permanent resident, who:
  - (i) is a member of the Commonwealth Parliament or a State Parliament; or
  - (ii) is a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory; or
  - (iii) holds the office of mayor; or
- (b) a Commonwealth government agency or instrumentality or a State or Territory government agency or instrumentality; or
- (c) an organisation specified in a Gazette Notice for this paragraph.

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

459.221 The applicant continues to satisfy the criteria in clauses 459.211 to 459.214.

459.222 The sponsorship referred to in subclause 459.214 has been approved by the Minister and is still in force.

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- 459.223 The applicant satisfies the Minister that the expressed intention of the applicant only to visit Australia temporarily for business purposes is genuine.
- 459.224 A security has been lodged, if asked for by an officer authorised under section 269 of the Act (which deals with security for compliance with the Act).
- 459.225 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 459.226 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4013 and 4014.
- 459.227 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 459.228 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 459.229 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **459.3 Secondary criteria**

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

- 459.311 The applicant is the spouse, or a dependent child, of a person who is an applicant for a Subclass 459 visa who seeks a visa to remain in Australia temporarily for a period of 3 months or less.
- 459.312 The sponsorship referred to in clause 459.214 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.
- 459.313 The applicant does not intend to engage in:
- (a) any course:
    - (i) leading to the completion of a primary or secondary education program; or
    - (ii) leading to a degree, diploma, trade certificate or other formal award; or
  - (b) any other course (other than a language training program) completion of which may be unconditionally credited towards, or accepted as a prerequisite for, a course of studies at a higher educational institution within or outside Australia.

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

- 459.321 The applicant is the spouse, or a dependent child, of a person who, having satisfied the primary criteria, is the holder of a Subclass 459 visa.
- 459.322 The sponsorship referred to in clause 459.214 in respect of the person who satisfies the primary criteria:
- (a) includes sponsorship of the applicant; and
  - (b) has been approved by the Minister; and
  - (c) is still in force.
- 459.323 A security has been lodged, if asked for by an officer authorised under section 269 of the Act (which deals with security for compliance with the Act).



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- 459.324 The applicant, or the person who satisfies the primary criteria, produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant.
- 459.325 The applicant satisfies the Minister that the expressed intention of the applicant only to visit Australia is genuine.
- 459.326 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 459.327 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4013 and 4014.
- 459.328 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 459.329 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 459.330 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **459.4 Circumstances applicable to grant**

- 459.411 The applicant must be outside Australia at the time of grant.

### **459.5 When visa is in effect**

- 459.511 Temporary visa permitting the holder:
- (a) to travel to and enter Australia on 1 occasion until a date specified by the Minister for the purpose; and
  - (b) to remain in Australia for a period (not longer than 3 months after the date of entry) specified by the Minister for the purpose.

### **459.6 Conditions**

- 459.611 If the applicant satisfies the primary criteria, conditions 8112, 8205, 8503 and 8531.
- 459.612 If the applicant satisfies the primary criteria, condition 8106 may be imposed.
- 459.613 If the applicant is the spouse of the person who satisfies the primary criteria for a Subclass 459 visa and the applicant satisfies the secondary criteria, conditions 8101, 8205, 8503 and 8531.
- 459.614 If the applicant is a dependent child of the person who satisfies the primary criteria for a Subclass 459 visa and the applicant satisfies the secondary criteria, conditions 8205, 8503 and 8531.
- 459.615 If the applicant is a dependent child of the person who satisfies the primary criteria for a Subclass 459 visa and the applicant satisfies the secondary criteria, condition 8101 may be imposed.

### **459.7 Way of giving evidence**

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

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## **Subclass 461                      New Zealand Citizen Family Relationship (Temporary)**

### **461.1      Interpretation**

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

### **461.2      Primary criteria**

*Note* All applicants must meet the primary criteria.

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

461.211 The applicant is not a New Zealand citizen.

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

(2) An applicant meets the requirements of this subclause if the applicant is a member of the family unit of:

(a) a person who is in Australia as the holder of a Subclass 444 (Special Category) visa; or

(b) a person who:

(i) is outside Australia; and

(ii) will be accompanying the applicant to Australia; and

(iii) will, on entry, be the holder of a special category visa.

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

(a) either:

(i) is in Australia as the holder of a Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) visa; or

(ii) is not the holder of a substantive visa and the last substantive visa held by the applicant was a Subclass 461 visa; and

- (b) is no longer a member of the family unit of the person in relation to whom the applicant was granted a Subclass 461 visa; and
- (c) has not become a member of the family unit of another person (whether or not the applicant is still a member of the family unit of that other person).

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

- (a) is outside Australia; and
- (b) either:
  - (i) the applicant was lawfully present in Australia as the holder of a Subclass 461 visa for a period of, or periods that total, not less than 2 years in the period of 5 years immediately before the application for the visa; or
  - (ii) the Minister is satisfied that the applicant:
    - (A) has substantial business, cultural, employment or personal ties with Australia which are of benefit to Australia; and
    - (B) has not been absent from Australia for a continuous period of 5 years or more immediately before the application for the visa, unless there are compelling reasons for the absence; and
- (c) on last departure from Australia was a holder of a Subclass 461 visa; and
- (d) is no longer a member of the family unit of the person in relation to whom the applicant was granted a Subclass 461 visa; and
- (e) has not become a member of the family unit of another person (whether or not the applicant is still a member of the family unit of that other person).

461.213 If the application is made in Australia, the applicant:

- (a) is the holder of a substantive temporary visa other than a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa; or

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- (b) does not hold a substantive visa and:
- (i) immediately before ceasing to hold such a visa was the holder of a substantive temporary visa other than a Subclass 426 visa; and
  - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

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

- 461.221 The applicant continues to satisfy the criterion in subclause 461.212 (1).
- 461.222 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 461.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009, 4010, 4013 and 4014.
- 461.224 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 461.225 If the application is made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 461.226 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 461.227 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **461.3 Secondary criteria**

*Note* All applicants must satisfy the primary criteria.

#### **461.4 Circumstances applicable to grant**

- 461.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.
- 461.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **461.5 When visa is in effect**

- 461.511 Temporary visa permitting the holder to travel to, and enter and remain in, Australia for a period of 5 years from the date of grant.

#### **461.6 Conditions**

- 461.611 Either or both of conditions 8303 and 8501 may be imposed.

#### **461.7 Way of giving evidence**

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

### **Subclass 462 Work and Holiday**

#### **462.1 Interpretation**

- 462.111 In this Part:

*degree* means:

- (a) a degree within the meaning of subregulation 2.26A (6);  
or
- (b) a formal educational qualification that is of an equivalent standard to a degree within the meaning of subregulation 2.26A (6), awarded by an educational institution outside Australia.

*diploma* means:

- (a) a diploma within the meaning of subregulation 2.26A (6); or

- (b) a formal educational qualification that is of an equivalent standard to a diploma within the meaning of subregulation 2.26A (6), awarded by an educational institution outside Australia.

*Note* *AusAID recipient* and *AusAID student* are defined in regulation 1.03.

## **462.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

462.211 The applicant is at least 18 but has not turned 31.

- 462.213 (1) The applicant has provided with the application a letter:
- (a) from the government of a foreign country with which the Australian Government has an arrangement mentioned in clause 462.216; and
  - (b) that includes a statement to the effect that the government of the foreign country has agreed to the applicant's stay in Australia under the arrangement.

(2) The applicant holds a valid passport issued by the foreign country mentioned in subclause (1).

462.215 The Minister is satisfied that the applicant has at least functional English.

*Note* *functional English* is defined in subsection 5 (2) of the Act.

462.216 The Minister is satisfied that the application meets the requirements of an arrangement between the Australian Government and the government of a foreign country specified in a Gazette Notice made under paragraph 1224A (3) (a) of Schedule 1.

462.217 The Minister is satisfied that the applicant:

- (a) seeks to enter or remain in Australia as a genuine visitor whose principal purpose is to spend a holiday in Australia; and
- (b) has sufficient money for:
  - (i) the fare to the applicant's intended overseas destination on leaving Australia; and

- (ii) personal support for the purposes of a working holiday; and
- (c) has a reasonable prospect of obtaining employment in Australia.

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

462.221 The applicant:

- (a) continues to satisfy the criteria in clauses 462.215, 462.216 and 462.217; and
- (aa) continues to hold the passport mentioned in paragraph 1224A (3) (a) of Schedule 1, or a valid replacement passport issued by the country concerned; and
- (b) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4013 and 4014; and
- (c) is the holder of a diploma or a degree; and
- (e) is not an AusAID student or an AusAID recipient.

462.222 If the applicant:

- (a) was outside Australia at the time of application; and
- (b) has previously been in Australia;

the applicant satisfies special return criteria 5001 and 5002.

462.223 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.

#### **462.3 Secondary criteria**

*Note* All applicants must meet the primary criteria.

#### **462.4 Circumstances applicable to grant**

462.411 If the applicant is outside Australia at the time of application, the applicant must be outside Australia at the time of grant.

462.412 If the applicant is in Australia at the time of application, the applicant must be in Australia, but not in immigration clearance, at the time of grant.



### **462.5 When visa is in effect**

- 462.511 If the applicant is outside Australia at the time of application — temporary visa permitting the holder:
- (a) to travel to and enter Australia within 3 months after the date of the grant of the visa; and
  - (b) to travel to, enter and remain in Australia until 12 months after the date of first entry to Australia.
- 462.512 If the applicant is in Australia at the time of application — temporary visa permitting the holder to travel to, enter and remain in Australia until 12 months after the date of grant.

### **462.6 Conditions**

- 462.611 Conditions 8108 and 8201.
- 462.612 Any 1 or more of conditions 8303, 8501 and 8516 may be imposed.
- 462.613 If, at the time of grant, the holder has previously held not more than 1 Subclass 462 (Work and Holiday) visa, condition 8540.
- 462.614 If, at the time of grant, the holder has previously held 2 Subclass 462 (Work and Holiday) visas, condition 8503.

### **462.7 Way of giving evidence**

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

## **Subclass 470 Professional Development**

### **470.1 Interpretation**

470.111 In this Part:

*employed, professional development agreement* and *overseas employer* have the same meaning as in regulation 1.20M.

*Note Approved professional development sponsor* is defined in regulation 1.03.

470.112 In this Part:

*applicable agreement*, in relation to an applicant, means the professional development agreement that the applicant's approved professional development sponsor has with the applicant's overseas employer.

### **470.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

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

470.221 Either:

- (a) the applicant has turned 18; or
- (b) the applicant has not turned 18, and the Minister is satisfied that exceptional circumstances exist for the grant of the visa.

470.222 The applicant:

- (a) nominated an approved professional development sponsor as the applicant's sponsor in the application for the visa; and
- (b) is sponsored by that approved professional development sponsor.

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- 470.223 The sponsor is satisfied that the applicant:
- (a) will undertake the professional development program mentioned in the visa application; and
  - (b) has managerial or other professional skills and work experience that are relevant to that program.
- 470.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 470.225 The applicant continues to be sponsored by an approved professional development sponsor who is not the subject of a bar mentioned in paragraph 140L (c) or (d) of the Act in relation to the professional development sponsorship approval to which the application relates.
- 470.226 The applicant is employed, within the meaning given by regulation 1.20M:
- (a) by an overseas employer; and
  - (b) in a managerial or other professional position.
- 470.227 The Minister is satisfied that there is no information indicating that any of the parties to the applicable agreement are unable to meet their financial commitments under the agreement.
- 470.228 The applicant's approved professional development sponsor has made the undertakings mentioned in regulation 1.20P in relation to the applicant.
- 470.229 The Minister is satisfied that the applicant is a genuine applicant for entry to Australia to undertake the professional development program conducted by or for the approved professional development sponsor, having regard to:
- (a) the applicant's previous compliance with the immigration laws of Australia; and
  - (b) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
  - (c) any other relevant matter.
- 470.230 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

- 470.231 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 470.232 The applicant gives to the Minister evidence that the approved professional development sponsor is satisfied in relation to the applicant's English language proficiency for the purposes of undertaking the professional development program mentioned in the visa application.
- 470.233 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.
- 470.234 The Minister is satisfied that there is no evidence to suggest that the applicant is unable to meet the costs (if any) specified in the applicable agreement as costs that the applicant will meet.

### **470.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

### **470.4 Circumstances applicable to grant**

- 470.411 The applicant must be outside Australia at the time of grant.

### **470.5 When visa is in effect**

- 470.511 Temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
  - (b) to remain in Australia until a date specified by the Minister for the purpose.

## **470.6 Conditions**

470.611 Conditions 8102, 8205, 8501, 8503, 8514, 8516, 8531 and 8536.

## **470.7 Way of giving evidence**

470.711 No evidence need be given.

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

## **Subclass 471 Trade Skills Training**

### **471.1 Interpretation**

471.111 In this Part:

*apprentice*, *apprenticeship* and *organisation* have the same meanings as in regulation 1.20UJ.

*Note approved trade skills training sponsor* is defined in regulation 1.03.

### **471.2 Primary criteria**

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

471.211 If the applicant is in Australia:

- (a) the applicant holds a substantive visa, other than a Subclass 679 (Sponsored Family Visitor) visa or a Special Purpose Visa; or
- (b) if the applicant does not hold a substantive visa at the time of the application:
  - (i) the last substantive visa held by the applicant was not a Subclass 679 visa or a Special Purpose visa; and
  - (ii) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005.

471.212 The applicant is aged between 18 and 35 years.

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

- 471.221 If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 471.222 The applicant has made satisfactory arrangements to undertake an apprenticeship.
- 471.223 The Minister is satisfied that the applicant is a genuine applicant for a Subclass 471 (Trade Skills Training) visa to undertake an apprenticeship, having regard to:
- (a) the applicant's previous compliance with the immigration laws of Australia; and
  - (b) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
  - (c) any other relevant matter.
- 471.224 The applicant has an appropriate level of education, qualifications and skills to undertake an apprenticeship in Australia.
- 471.225 The applicant has health insurance cover in Australia that the Minister considers adequate.
- 471.226 The applicant has the financial capacity to meet:
- (a) the costs of, and associated with, the apprenticeship, including all tuition costs; and
  - (b) the costs of living, travel and school for the applicant and any spouse or dependent child accompanying the applicant.
- 471.227 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 471.228 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 471.229 The applicant has vocational English.
- 471.229A The applicant is sponsored by an approved trade skills training sponsor who is not the subject of a bar mentioned in paragraph 140L (c), (d) (e) or (f) of the Act.

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- 471.229B The applicant's sponsor has made the undertakings mentioned in regulation 1.20UO in relation to the applicant.
- 471.229C Approval of the application would not result in the number of persons sponsored by the sponsor exceeding the number of persons specified in the sponsor's approval as an approved trade skills training sponsor as the number that may be sponsored by the sponsor as apprentices.
- 471.229D The applicant's proposed employment will comply with all relevant Commonwealth, State and Territory legislation dealing with the employment and working conditions of the apprentice.
- 471.229E Nothing adverse is known to Immigration about the applicant's proposed employer.
- 471.229F The applicant's proposed apprenticeship will be:
- (a) in a trade that the Minister considers to be an acceptable trade; and
  - (b) in a trade in which the Minister considers there is a shortage of skilled workers; and
  - (c) in a location that the Minister considers to be a regional area.
- 471.229G The applicant's sponsor has provided evidence to Immigration that the proposed apprenticeship position has been certified, by a body approved by the Minister, as being a position that was unable to be filled by local recruitment.
- 471.229H The Minister is satisfied, having considered the certification mentioned in clause 471.229G in respect of the applicant's proposed apprenticeship position, that the position is a position that has been unable to be filled by local recruitment.
- 471.229I The Minister is satisfied that the applicant's proposed apprenticeship has not been created only for the purposes of securing the applicant's entry to, or a continuing stay in, Australia.
- 471.229J The Minister is satisfied that the individual or organisation operating the workplace in which the applicant's proposed apprenticeship will be undertaken:
- (a) has a satisfactory record of compliance with the immigration laws of Australia; and

- (b) is lawfully and actively operating in Australia; and
- (c) has a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents; and
- (d) has the capacity to provide the apprenticeship.

471.229K (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

(2) The Minister may waive the requirement of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

471.229L The Minister is satisfied that:

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

### **471.3 Secondary criteria**

*Note* These criteria must be satisfied by an applicant who is the spouse or dependent child of a person who satisfies the primary criteria.

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

471.311 The applicant is the spouse or dependent child of a person who seeks to satisfy or who satisfies the primary criteria for a Subclass 471 (Trade Skills Training) visa.

471.312 If the applicant is in Australia:



- 
- (a) the applicant holds a substantive visa other than a Subclass 679 (Sponsored Family Visitor) visa or a Special Purpose visa; or
  - (b) if the applicant does not hold a substantive visa at the time of the application:
    - (i) the last substantive visa held by the applicant was not a Subclass 679 visa or a Special Purpose visa; and
    - (ii) the applicant satisfies Schedule 3 criteria 3003, 3004 and 3005.

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

- 471.321 The applicant continues to be the spouse or dependent child of a person who, having satisfied the primary criteria, is the holder of a Subclass 471 (Trade Skills Training) visa.
- 471.322 The applicant is sponsored by the same approved trade skills training sponsor who is sponsoring the person and the sponsor is not the subject of a bar mentioned in paragraph 140L (c), (d), (e) or (f) of the Act and the sponsor has made the undertakings mentioned in regulation 1.20UO in relation to the applicant.
- 471.323 If:
- (a) the applicant is outside Australia, and
  - (b) the application is made separately from that of the person referred to in clause 471.321;
- that person is, or is expected soon to be, in Australia.
- 471.324 If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 471.325 The applicant has health insurance cover in Australia that the Minister considers adequate.
- 471.326 If the applicant was not included in the application of the person referred to in clause 471.321, that person has the financial capacity to support himself or herself as well as the applicant during the applicant's intended stay in Australia.

- 471.327 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- 471.328 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 471.329 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 471.329A (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirement of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 471.329B The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **471.4 Circumstances applicable to grant**

- 471.411 The applicant may be in Australia (but not in immigration clearance) or outside Australia when the visa is granted.

#### **471.5 When visa is in effect**

- 471.511 Temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and

- (b) to remain in Australia until a date specified by the Minister for the purpose.

## 471.6 Conditions

- 471.611 If the applicant satisfies the primary criteria, conditions 8303, 8501, 8514, 8516, 8544, 8545 and 8546 must be imposed.
- 471.612 If the applicant satisfies the secondary criteria:
- (a) conditions 8303, 8501, 8514 and 8516 must be imposed; and
  - (b) conditions 8502, 8515 and 8518 may be imposed.

## 471.7 Way of giving evidence

- 471.711 No evidence need be given.
- 471.712 If evidence is given, to be given by way of visa label affixed to a valid passport.

# Subclass 495 Skilled — Independent Regional (Provisional)

## 495.1 Interpretation

- 495.111 In this Part:

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

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

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

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

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

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

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

*Note* For *skilled occupation*, see regulation 1.03.

## **495.2 Primary criteria**

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

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

495.210 For an applicant:

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

clauses 495.213 and 495.214, paragraph 495.215 (c) and clause 495.219A only must be satisfied.

495.211 (1) Subject to subclause (2), the Minister is satisfied that the applicant has been employed in a skilled occupation:

- (a) if 60 points are specified in a Gazette Notice as available for the skilled occupation — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day when the application was made; or
- (b) if 40 or 50 points are specified in a Gazette Notice as available for the skilled occupation — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day when the application was made.

(2) Subclause (1) does not apply to an applicant if:

- (a) each of the following subparagraphs applies in relation to the applicant:

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

- (ii) was completed at the institution at which it was commenced;
    - (v) each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) is relevant to the skilled occupation nominated by the applicant in his or her application;
    - (vi) all instruction for each of the degrees, diplomas or trade qualifications mentioned in subparagraphs (i) and (ii) was conducted in English; or
  - (c) the applicant is the holder of:
    - (i) a Working Holiday (Temporary) (Class TZ) visa; or
    - (ii) a Subclass 442 (Occupational Trainee) visa.
- 495.212 In determining whether the applicant satisfies a criterion that he or she has been employed in a skilled occupation for a certain period, a period of employment in Australia must not be counted unless the applicant:
- (a) held a substantive visa authorising him or her to work during that period and complied with the conditions to which that visa is or was subject; or
  - (b) held a Subclass 010 (Bridging A) or Subclass 020 (Bridging B) visa permitting him or her to work during that period and complied with the conditions to which that visa is or was subject.
- 495.213 If:
- (a) the applicant is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
  - (b) the last substantive visa held by the applicant since last entering Australia was a Skilled — Independent Regional (Provisional) (Class UX) visa;
- the Minister is satisfied that the applicant has complied with the conditions of that visa.
- 495.214 If the applicant met the requirements of subitem 1218A (4) of Schedule 1 — the Minister is satisfied that the applicant 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.

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- 495.215 For an applicant who met the requirements of subitem 1218A (5) of Schedule 1:
- (a) if a declaration was required to be made for paragraph 1218A (5) (i) of Schedule 1 — the Minister is satisfied that the applicant has applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority; and
  - (b) if a declaration was required to be made for subparagraph 1218A (5) (e) (i) of Schedule 1 — the Minister is satisfied that the applicant has undergone a medical examination, for the purpose of the application, carried out by any of the following:
    - (i) a Medical Officer of the Commonwealth;
    - (ii) a medical practitioner approved by the Minister for sub-subparagraph 1218A (5) (e) (i) (B) of Schedule 1;
    - (iii) a medical practitioner employed by an organisation approved by the Minister for sub-subparagraph 1218A (5) (e) (i) (C) of Schedule 1; and
  - (c) if a declaration was required to be made for subparagraph 1218A (5) (e) (ii) of Schedule 1 — the Minister is satisfied that the applicant 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
  - (d) if a declaration was required to be made for sub-subparagraph 1218A (5) (f) (i) (B) of Schedule 1 — the Minister is satisfied that the applicant meets the requirements for which the declaration was made; and
  - (e) if a declaration was required to be made for paragraph 1218A (5) (h), (k) or (l) of Schedule 1 — the Minister is satisfied that the applicant meets the requirements of the paragraph for which the declaration was made.
- 495.216 For an applicant who met the requirements of subitem 1218A (5A) of Schedule 1 — the Minister is satisfied that:

- (a) the applicant has undergone a medical examination for the purpose of the application, carried out by any of the following:
  - (i) a Medical Officer of the Commonwealth;
  - (ii) a medical practitioner approved by the Minister for sub-subparagraph 1218A (5A) (c) (i) (B) of Schedule 1;
  - (iii) a medical practitioner employed by an organisation approved by the Minister for sub-subparagraph 1218A (5A) (c) (i) (C) of Schedule 1; and
- (b) the applicant 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
- (c) the applicant has applied for a skills assessment for his or her nominated skilled occupation; and
- (d) 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.

495.217 For an applicant who met the requirements of subitem 1218A (5B) of Schedule 1 — the Minister is satisfied that:

- (a) the applicant has undergone a medical examination for the purpose of the application, carried out by any of the following:
  - (i) a Medical Officer of the Commonwealth;
  - (ii) a medical practitioner approved by the Minister for sub-subparagraph 1218A (5B) (c) (i) (B) of Schedule 1;
  - (iii) a medical practitioner employed by an organisation approved by the Minister for sub-subparagraph 1218A (5B) (c) (i) (C) of Schedule 1; and
- (b) the applicant 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
- (c) the applicant has applied for a skills assessment for his or her nominated skilled occupation; and



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- (d) the applicant has completed the course, training or work experience for which the applicant was granted the Subclass 442 (Occupational Trainee) visa.
- 495.218 For an applicant who met the requirements of paragraph 1218A (6) (b) of Schedule 1 — the Minister is satisfied that a relevant assessing authority has assessed the skills of the applicant for his or her nominated skilled occupation.
- 495.219 If a declaration was required to be made for subparagraph 1218A (6) (a) (i) of Schedule 1 in relation to the applicant — the Minister is satisfied that the applicant meets the requirements of the paragraph for which the declaration was made.
- 495.219A The Minister is satisfied that the applicant is sponsored by a State or Territory government agency.

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

- 495.220 For an applicant:
- (a) who is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
  - (b) in relation to whom the last substantive visa held by the applicant since last entering Australia was a visa of that kind;
- clauses 495.224, 495.225, 495.226, 495.227, 495.229, 495.230, 495.233 and 495.234 only must be satisfied.
- 495.221 If regulation 2.27B applies:
- (a) the applicant provides, for the application, the assessment of his or her skills mentioned in subregulation 2.27B (4); and
  - (b) the skills of the applicant for the skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.
- 495.222 (1) If the applicant:
- (a) was an applicant for a Skilled — Independent (Migrant) (Class BN) visa; and

- (b) was invited by the Minister, under regulation 2.08DA, to apply for a Skilled — Independent Regional (Provisional) (Class UX) visa; and
- (c) made the application for the Skilled — Independent Regional (Provisional) (Class UX) visa not later than 6 months after the day when the applicant received the invitation;

the applicant's assessed score for the Skilled — Independent (Migrant) (Class BN) visa is equal to or greater than the applicable pass mark for the Skilled — Independent Regional (Provisional) (Class UX) visa.

(2) If subclause (1) does not apply, the applicant has the qualifying score when assessed for the visa under Subdivision B of Division 3 of Part 2 of the Act.

*Note* Subdivision B of Division 3 of Part 2 of the Act provides in sections 92 to 96 for the application of a *points system*, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.6 of Part 2 (see regulation 2.26A), and Schedule 6A, of these Regulations. Pool marks and pass marks are set from time to time by the Minister (Act, section 96).

- 495.223 The applicant has vocational English.
- 495.224 No evidence has become available since the time of application that the information given to satisfy Subdivision 495.21, or to meet the requirements of item 1218A of Schedule 1, was false or misleading in a material particular.
- 495.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 495.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 495.227 The applicant is sponsored by a State or Territory government agency, the sponsorship has been accepted by the Minister, and the sponsorship is still in force.

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- 495.229 Each member of the family unit of the applicant who is an applicant for a Subclass 495 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 495.230 If a person (the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied for the additional applicant.
- 495.231 Grant of the visa would not result in either:
- (a) the number of Subclass 495 visas granted in a financial year exceeding the maximum number of Subclass 495 visas, as determined by Gazette Notice, that may be granted in that financial year; or
  - (b) the number of visas of particular classes (including Subclass 495) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.
- 495.232 A relevant assessing authority has assessed the skills of the applicant as suitable for his or her nominated skilled occupation.
- 495.233 If an Australian Federal Police check is required in relation to the applicant, an Australian Federal Police check undertaken in the past 12 months in relation to the applicant has been provided to the Minister.
- 495.234 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

495.235 If the applicant's qualifying score when assessed for the visa under Subdivision B of Division 3 of Part 2 of the Act included (or, under subregulation 2.26A (5A), was taken to have included) the bonus points relating to a designated security mentioned in paragraph (a) of item 6A82 of Part 8 of Schedule 6A, the applicant has deposited at least AUD100 000 in a designated security for a term of not less than 12 months.

### **495.3 Secondary criteria**

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

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

495.311 The applicant:

- (a) is a member of the family unit of a person who satisfies the primary criteria in Subdivision 495.21, and has made a combined application with that person; or
- (b) is a member of the family unit of a holder of a Skilled — Independent Regional (Provisional) (Class UX) visa.

495.312 If:

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

the applicant has complied with the conditions of that visa.

495.313 If a declaration was required to be made for paragraph 1218A (4) (b) of Schedule 1 in relation to the applicant — the Minister is satisfied that the applicant 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.

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- 495.314 If a declaration was required to be made for subitem 1218A (5) of Schedule 1 in relation to the applicant:
- (a) if a declaration was required to be made for subparagraph 1218A (5) (e) (i) of Schedule 1 in relation to the applicant — the Minister is satisfied that the applicant has undergone a medical examination, for the purpose of the application, carried out by any of the following:
    - (i) a Medical Officer of the Commonwealth;
    - (ii) a medical practitioner approved by the Minister for sub-subparagraph 1218A (5) (e) (i) (B) of Schedule 1;
    - (iii) a medical practitioner employed by an organisation approved by the Minister for sub-subparagraph 1218A (5) (e) (i) (C) of Schedule 1; and
  - (b) if a declaration was required to be made for subparagraph 1218A (5) (e) (ii) of Schedule 1 in relation to the applicant — the Minister is satisfied that the applicant 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
  - (c) if a declaration was required to be made for paragraph 1218A (5) (k) or (l) of Schedule 1 in relation to the applicant — the Minister is satisfied that the applicant meets the requirements of the paragraph for which the declaration was made.
- 495.315 If a declaration was required to be made for paragraph 1218A (5A) (c) of Schedule 1 in relation to the applicant — the Minister is satisfied that:
- (a) the applicant has undergone a medical examination for the purpose of the application, carried out by any of the following:
    - (i) a Medical Officer of the Commonwealth;
    - (ii) a medical practitioner approved by the Minister for sub-subparagraph 1218A (5A) (c) (i) (B) of Schedule 1;

- (iii) a medical practitioner employed by an organisation approved by the Minister for sub-subparagraph 1218A (5A) (c) (i) (C) of Schedule 1; and
  - (b) the applicant 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.
- 495.316 If a declaration was required to be made for paragraph 1218A (5B) (c) of Schedule 1 in relation to the applicant — the Minister is satisfied that:
- (a) the applicant undergone a medical examination for the purpose of the application, carried out by any of the following:
    - (i) a Medical Officer of the Commonwealth;
    - (ii) a medical practitioner approved by the Minister for sub-subparagraph 1218A (5B) (c) (i) (B) of Schedule 1;
    - (iii) a medical practitioner employed by an organisation approved by the Minister for sub-subparagraph 1218A (5B) (c) (i) (C) of Schedule 1; and
  - (b) the applicant 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.

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

- 495.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 495 visa.
- 495.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 495.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 495.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied for the applicant.

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495.326 If an Australian Federal Police check is required in relation to the applicant, an Australian Federal Police check undertaken in the past 12 months in relation to the applicant has been provided to the Minister.

495.327 The Minister is satisfied that:

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

#### **495.4 Circumstances applicable to grant**

495.411 If the applicant:

- (a) meets the requirements of subitem (4), (5), (5A) or (5B) of item 1218A of Schedule 1; or
- (b) is a member of the family unit of a person who meets the requirements of subitem (4), (5), (5A) or (5B) of item 1218A of Schedule 1, and made a combined application with that person;

the applicant may be in Australia (but not in immigration clearance) or outside Australia when the visa is granted.

495.412 In any other case, the applicant must be outside Australia when the visa is granted.

#### **495.5 When visa is in effect**

495.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **495.6 Conditions**

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

495.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

495.613 Condition 8515 may be imposed.

495.614 Condition 8539 must be imposed.

### **495.7 Way of giving evidence**

495.711 No evidence need be given.

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

## **Subclass 497 Graduate — Skilled**

### **497.1 Interpretation**

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

### **497.2 Primary criteria**

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

497.211 The applicant has complied substantially with the conditions to which the visa held by the applicant is subject.

*Note* The requirements for making a valid application for a Graduate — Skilled (Temporary) (Class UQ) visa are set out in item 1212A of Schedule 1.

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

497.221 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.

497.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004 and 4005.

497.223 The Minister is satisfied that the expressed intention of the applicant 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 is genuine.

497.224 There is no evidence that the applicant will not be able to make a valid application for a Skilled — Independent



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Overseas Student (Class DD), Skilled — Australian-sponsored Overseas Student (Class DE) or Skilled — Independent Regional (Provisional) (Class UX) visa.

497.225 The Minister is satisfied that:

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

### **497.3 Secondary criteria**

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

497.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 497.21 (the *primary applicant*) and:

- (a) the applicant has made a combined application with the primary applicant; and
- (b) the Minister has not decided to grant or refuse to grant a Graduate — Skilled (Temporary) (Class UQ) visa to the primary applicant.

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

497.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 497 visa.

497.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004 and 4005.

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

497.324 The Minister is satisfied that:

- (a) the applicant is the holder of a valid passport that:
  - (i) was issued to the applicant by an official source; and

- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **497.4 Circumstances applicable to grant**

497.411 The applicant must be in Australia at the time of grant.

#### **497.5 When visa is in effect**

497.511 Temporary visa permitting the holder to travel to, enter and remain in Australia for a period (not longer than 6 months after the date of grant of the visa) specified by the Minister for the purpose.

#### **497.6 Conditions**

497.611 If the applicant satisfies the primary criteria, condition 8501.

497.612 If the applicant satisfies the secondary criteria, conditions 8501 and 8522.

#### **497.7 Way of giving evidence**

497.711 No evidence need be given.

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

### **Subclass 570 Independent ELICOS Sector**

#### **570.1 Interpretation**

570.111 In this Part:

*course fees* has the same meaning as in Schedule 5A.

*course of study* means a full-time registered course of study.

*Note* To work out whether a course of study is a principal course, see subregulation 1.40 (2).

*full period* has the same meaning as in Schedule 5A.

*fully funded* has the same meaning as in Schedule 5A.

*living costs* has the same meaning as in Schedule 5A.

*travel costs* has the same meaning as in Schedule 5A.

*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.

## **570.2 Primary criteria**

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

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

570.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4), (5) or (6).

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

- (a) the holder of a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or

- (b) the holder, as the spouse or a dependent relative of a diplomatic or consular representative of a foreign country, of a Diplomatic (Temporary) (Class TF) visa; or
  - (c) the holder of a special purpose visa; or
  - (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is not the holder of a substantive visa; and
  - (b) the last substantive visa held by the applicant was:
    - (i) a student visa; or
    - (ii) a special purpose visa; or
    - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
    - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; and
  - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
    - (i) the day when that last substantive visa ceased to be in effect; or
    - (ii) if that last substantive visa was cancelled, and the 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 — the later of:
      - (A) the day when that last substantive visa ceased to be in effect; and
      - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
  - (d) the applicant satisfies Schedule 3 criterion 3005.

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- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant:
    - (i) is the holder of a Subclass 560, 562 or 570 visa that is subject to condition 8101; or
    - (ii) is the holder of a Subclass 572 visa:
      - (A) granted on the basis that the applicant proposed to commence, or had commenced, an ELICOS as a principal course; and
      - (B) that is subject to condition 8101; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant gives to the Minister evidence that the applicant has commenced an ELICOS.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant:
    - (i) is the holder of a Subclass 560, 562 or 570 visa that is subject to condition 8206; or
    - (ii) is the holder of a Subclass 572 visa:
      - (A) granted on the basis that the applicant proposed to commence, or had commenced, an ELICOS as a principal course; and
      - (B) that is subject to condition 8206; and
  - (b) the application was made on form 157C; and
  - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of an ELICOS other than the education provider of the ELICOS for which the visa held was granted; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.
- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 571, 572, 573, 574, 575 or 576 visa that is subject to condition 8206; and
  - (b) the application was made on form 157A or 157A (Internet); and

- (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of an ELICOS other than the education provider of the course, or courses, of study for which the visa held was granted; and
- (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

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

570.221 (1) Unless, at the time of application, the applicant met the requirements of subclause 570.211 (4) or (5), the applicant satisfies the criteria in clauses 570.222 to 570.234.

(2) If, at the time of application, the applicant met the requirements of subclause 570.211 (4):

- (a) the applicant continues to meet the requirements of paragraph 570.211 (4) (a); and
- (b) either:
  - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
  - (ii) the applicant satisfies the criteria in clauses 570.223 to 570.234.

(3) If, at the time of application, the applicant met the requirements of subclause 570.211 (5):

- (a) the applicant continues to meet the requirements of paragraphs 570.211 (5) (a) and (d); and
- (b) either:
  - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
  - (ii) the applicant satisfies the criteria in clauses 570.222 to 570.234.

570.222 (1) Except if subclause (2) applies or if the application was made on form 157E, the applicant gives to the Minister a certificate of enrolment relating to the applicant undertaking a full-time ELICOS (*an acceptable ELICOS*):

- (a) that has been gazetted under regulation 1.40A; and

- 
- (b) the provider of which is not a suspended education provider.
- (2) If a failure of electronic transmission has prevented an education provider from sending a certificate of enrolment and the Minister is satisfied that the applicant needs to travel urgently, the applicant gives to the Minister satisfactory evidence that the applicant is enrolled in an acceptable ELICOS.
- (3) If the application was made on form 157E, the applicant is enrolled in an acceptable ELICOS.
- 570.223 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause (2).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 570 and the assessment level to which the applicant is subject, in relation to:
- (i) the applicant's English language proficiency for the purposes of each ELICOS that the applicant proposes to undertake; and
- (ii) the financial capacity of the applicant to undertake each of those ELICOS without contravening any condition of the visa relating to work; and
- (iii) other requirements under Schedule 5A; and
- (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
- (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
- (ii) any other relevant matter.
- 570.224 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4012A, 4013 and 4014; and

- (b) if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) if the applicant is applying outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 570.225 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 570.227 If:
- (a) the application was made in Australia; and
  - (b) the applicant is subject to assessment level 2, 3, 4 or 5; and
  - (c) at the time of application, the applicant met the requirements of clause 570.211:
    - (i) as the holder of a visa of one of the following classes:
      - (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) Interdependency (Temporary) (Class TM);
      - (I) Long Stay (Visitor) (Class TN);
      - (J) Medical Practitioner (Temporary) (Class UE);
      - (K) Retirement (Temporary) (Class TQ);
      - (L) Short Stay (Visitor) (Class TR);
      - (M) Supported Dependant (Temporary) (Class TW);
      - (N) Temporary Business Entry (Class UC);
      - (NA) Tourist (Class TR);
      - (O) Working Holiday (Temporary) (Class TZ); or
    - (ii) as the holder of a special purpose visa; or



- (iii) as the holder of a visa of one of the following subclasses:
  - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (B) Subclass 427 (Domestic Worker (Temporary) — Executive); or
- (iv) as a person:
  - (A) who was not the holder of a substantive visa; and
  - (B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

the applicant establishes exceptional reasons for the grant of a Subclass 570 visa.

570.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:

- (a) that representative has completed, or is about to complete, an official posting in Australia; and
- (b) the Foreign Minister recommends the grant of the visa.

570.229 If the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
- (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.

570.230 If:

- (a) the application was made in Australia; and
- (b) either:
  - (i) the applicant is the holder of a student visa that is subject to condition 8535; or

- (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and
  - (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;
- the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant undertaking an ELICOS.
- 570.230A If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- 570.231 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40.
- 570.232 The applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is:
  - (a) a principal course; and
  - (b) of a type that was specified for Subclass 570 visas by the Minister in a Gazette Notice:
    - (i) made under regulation 1.40A; and
    - (ii) in force at the time the application was made.
- 570.233 If the applicant is subject to assessment level 2, the Minister is satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- 570.234 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 570.235 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

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### **570.3 Secondary criteria**

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

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

570.311 If the application is made outside Australia, the applicant is a member of the family unit of:

- (a) a person who is the holder of a Subclass 560 or 562 visa; or
- (b) a person who satisfies, or has satisfied, the primary criteria in Subdivision 570.21.

570.312 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).

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

- (a) a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or

- (b) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
- (c) a special purpose visa; or
- (d) a visa of one of the following subclasses:
  - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).
- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 570.211 (3); and
  - (c) the applicant was a member of the family unit of the person at the time that person's visa ceased to be in effect.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 560, 563, 570 or 572 visa that is subject to condition 8101; and
  - (b) for an applicant who is the holder of a Subclass 560, 563 or 570 visa, the applicant:
    - (i) is a member of the family unit of a person (the *primary person*) who holds a Subclass 560, 562 or 570 visa; and
    - (ii) gives to the Minister evidence that the primary person has commenced an ELICOS; and
  - (c) for an applicant who is the holder of a Subclass 572 visa:
    - (i) the visa was granted on the basis that the applicant was a member of the family unit of a person (the *primary person*) who was the holder of a student visa granted on the basis that the primary person proposed to commence, or had commenced, an ELICOS as a principal course; and

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- (ii) the applicant gives to the Minister evidence that the primary person has commenced an ELICOS; and
  - (d) the application was made on form 157P or 157P (Internet).
  - (5) An applicant meets the requirements of this subclause if:
    - (a) the applicant does not hold a substantive visa; and
    - (b) the applicant is a member of the family unit of a person:
      - (i) who is the holder of a Subclass 560, 562 or 570 visa, having satisfied the primary criteria for that visa; or
      - (ii) who is the holder of a Subclass 572 visa granted on the basis that the person proposed to commence, or had commenced, an ELICOS as a principal course.
- 570.314 If the applicant is not included in the application under subregulation 2.07AF (3), or the information under subregulation 2.07AF (4), as a member of the family unit of the primary applicant mentioned in those subregulations, the applicant gives to the Minister evidence that the applicant became such a member of the family unit after the decision to grant the Subclass 570 or 572 visa to the primary applicant was made.
- 570.315 The applicant is not a secondary exchange student.

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

- 570.321 (1) Unless, at the time of application, the applicant met the requirements of subclause 570.312 (4), the applicant satisfies the criteria in clauses 570.322 to 570.332.
- (2) If, at the time of application, the applicant met the requirements of subclause 570.312 (4):
- (a) the applicant continues to meet the requirements of paragraphs 570.312 (4) (a) and (c); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine applicant for entry and

stay as a member of the family unit of the primary person mentioned in clause 570.322; or

- (ii) the applicant satisfies the criteria in clauses 570.322 to 570.332.

570.322 The applicant is a member of the family unit of a person (the **primary person**):

- (a) who is the holder of a Subclass 560 or 562 visa and who meets one of the following:

- (i) the primary person is a citizen of a gazetted country within the meaning of Part 560 as it read immediately before 1 July 2001;

*Note* Under former clause 560.111, **gazetted country** meant a country specified by Gazette Notice for the purpose of Part 560.

- (ii) the primary person is undertaking a course of study paid for, wholly or in part, by:

- (A) the Commonwealth or the government of a State or Territory; or  
(B) the government of a foreign country; or  
(C) a multilateral agency;

- (iii) the primary person:

- (A) will be, or has been, granted a visa in relation to an ELICOS that is, or to ELICOS that are together, of a duration of 12 months or more; or  
(B) has been lawfully in Australia for 12 months or more; or

- (b) who satisfies, or has satisfied, the primary criteria in Subdivisions 570.21 and 570.22 and who meets one of the following:

- (i) the primary person is subject to assessment level 1 or 2;  
(ii) the primary person is undertaking a course of study paid for, wholly or in part, by:  
(A) the Commonwealth or the government of a State or Territory; or  
(B) the government of a foreign country; or  
(C) a multilateral agency;

- 
- (iii) the primary person:
- (A) will be, or has been, granted a visa in relation to an ELICOS that is, or to ELICOS that are together, of a duration of 12 months or more; or
  - (B) has been lawfully in Australia for 12 months or more.
- 570.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 570.324 If the applicant seeks to stay in Australia for 12 months or more, the applicant satisfies public interest criterion 4010.
- 570.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 570.326 The Minister is satisfied that:
- (a) the applicant is a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 570.322; and
  - (b) that primary person has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
  - (c) on the basis of the applicant's stated intention, the applicant intends to comply with any conditions subject to which the visa is granted.
- 570.327 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 570.328 If:
- (a) the applicant is a school-age dependant of the primary person mentioned in clause 570.322; and
  - (b) the period of stay proposed in the application is more than 3 months;
- the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.

- 570.329 If the application was made outside Australia and made separately from that of the primary person mentioned in clause 570.322:
- (a) the primary person is, or is expected soon to be, in Australia; and
  - (b) a nomination of the applicant by the primary person, on approved form 919, has been lodged and has been approved by the Minister.
- 570.330 The applicant gives evidence that there are sufficient funds to meet the travel costs for the applicant:
- (a) if the applicant is not in Australia — to Australia, and from Australia; or
  - (b) if the applicant is in Australia — from Australia.
- 570.331 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 570.332 (1) If the applicant:
- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (2) applies; and
  - (b) was not included in the application for a student visa made by the primary person;
- the applicant must give evidence, in accordance with Schedule 5B, for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person.
- (2) This subclause applies to a primary person who:
- (a) is the holder of a Subclass 570 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 570.2; and
  - (b) was subject to assessment level 2, 3 or 4 at the time of the decision to grant the visa; and
  - (c) was, at the time of the decision to grant the visa:
    - (i) fully funded; or
    - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:



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- (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
  - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

(3) If the applicant:

- (a) is a member of the family unit of a person (the **primary person**) to whom subclause (4) applies; and
- (b) was not included in the application for a student visa made by the primary person;

the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

(4) This subclause applies to a primary person who:

- (a) is the holder of a Subclass 570 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 570.2; and
- (b) was subject to assessment level 2 at the time of the decision to grant the visa; and
- (c) was, at the time of the decision to grant the visa:
  - (i) fully funded; or
  - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
    - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
    - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

570.333 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

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

#### **570.4 Circumstances applicable to grant**

- 570.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.
- 570.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **570.5 When visa is in effect**

- 570.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:
- (a) if the application is made on form 157P or 157P (Internet) — until the date on which the visa held by the applicant at the time of application would have ceased to be in effect; and
  - (b) otherwise — until a date specified by the Minister.

#### **570.6 Conditions**

- 570.611 (1) If the applicant satisfies the primary criteria:
- (a) in all cases, conditions 8202, 8501, 8516, 8517, 8532 and 8533; and
  - (b) subject to subclause (2), condition 8101; and
  - (c) subject to subclause (3), condition 8206; and
  - (d) if the applicant is a citizen of Iran, condition 8204; and
  - (e) subject to clause 570.612, any 1 or more of conditions 8303, 8523 and 8535 may be imposed.
- (2) If the application was made in Australia and, at the time of application, the applicant:

- 
- (a) met the requirements of subclause 570.211 (4); or
- (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8105;
- condition 8105.
- (3) Condition 8206 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 570.211 (5) or (6); or
- (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was not subject to condition 8206.
- 570.612 If, at the time of application, the applicant was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8523 and the applicant satisfies the primary criteria, condition 8523.
- 570.613 (1) If the applicant:
- (a) satisfies the primary criteria; and
- (b) is subject to assessment level 3, 4 or 5; and
- (c) is seeking to undertake an ELICOS that is, or ELICOS that are together, of 10 months duration or less; and
- (d) is not an applicant to whom subclause (2) applies;
- condition 8534.
- (2) If the applicant:
- (a) satisfies the primary criteria; and
- (b) is subject to assessment level 3; and
- (c) gives to the Minister the evidence mentioned in subclause (3);
- condition 8534 may be imposed.
- (3) For subclause (2), the evidence is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
- (i) living costs, within the meaning of subclause 5A104 (1);

- (ii) school costs, within the meaning of subclause 5A104 (2); and
  - (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and
  - (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- (4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A208 (1).
- (5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 570 visa that is subject to condition 8534, condition 8534.
- (6) In this clause:  
*funds from an acceptable source* has the meaning given by subclause 5A208 (2).
- 570.614 (1) If the applicant (the *primary applicant*) is subject to assessment level 1 or 2 and is seeking to undertake an ELICOS that is, or ELICOS that are together, of 10 months duration or less, condition 8534 may be imposed.
- (2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.
- 570.615 (1) If the applicant (the *primary applicant*) is seeking to undertake an ELICOS that is, or ELICOS that are together, of more than 10 months duration, condition 8534 may be imposed.
- (2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.
- 570.616 (1) If the applicant satisfies the secondary criteria:
- (a) in all cases:
    - (i) conditions 8501 and 8516; and

- 
- (ii) condition 8518 (except if the visa is granted to an applicant who has turned 18); and
  - (b) if the applicant is a citizen of Iran, condition 8204; and
  - (c) subject to subclause (2), condition 8201 must be imposed if the applicant has turned 18; and
  - (d) any 1 or more of conditions 8303, 8522 and 8535 may be imposed.
- (2) Condition 8201 is not imposed on a student visa granted to an applicant who has turned 18 if, at the time of the application:
- (a) the applicant was the holder of a Subclass 560 visa as a person who satisfied the secondary criteria in Subdivision 560.31 and 560.32; or
  - (b) the applicant was the holder of a Subclass 563 visa; or
  - (c) the applicant was:
    - (i) the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa as a person who satisfied the secondary criteria for the subclass; and
    - (ii) immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a Subclass 560 or 563 visa that was subject to condition 8101.
- 570.617 (1) Condition 8104, if:
- (a) the application was made in Australia; and
  - (b) the applicant satisfies the secondary criteria; and
  - (c) at the time of application:
    - (i) the applicant was the holder of a student visa that was subject to condition 8104; or
    - (ii) the applicant was a member of the family unit of a person who was the holder of a Subclass 560, 562, 570 or 572 visa and met the requirements of subclause 570.312 (4).
- (2) Condition 8101, if the applicant satisfies the secondary criteria and subclause (1) does not apply.

## **570.7 Way of giving evidence**

570.711 No evidence need be given.

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

## **Subclass 571 Schools Sector**

### **571.1 Interpretation**

571.111 In this Part:

*course fees* has the same meaning as in Schedule 5A.

*course of study* means:

- (a) in relation to a secondary exchange student — a full-time course of study under a secondary school student exchange program approved by the State or Territory education authority that administers the program; or
- (b) in any other case — a full-time registered course of study.

*Note 1* *secondary exchange student* is defined in regulation 1.03.

*Note 2* To work out whether a course of study is a principal course, see subregulation 1.40 (2).

*full period* has the same meaning as in Schedule 5A.

*fully funded* has the same meaning as in Schedule 5A.

*living costs* has the same meaning as in Schedule 5A.

*travel costs* has the same meaning as in Schedule 5A.

*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.

### **571.2 Primary criteria**

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

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

- 571.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4), (5) or (6).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
    - (i) Border (Temporary) (Class TA);
    - (ii) Business (Temporary) (Class TB);
    - (iii) Cultural/Social (Temporary) (Class TE);
    - (iv) Educational (Temporary) (Class TH);
    - (v) Electronic Travel Authority (Class UD);
    - (vi) Expatriate (Temporary) (Class TJ);
    - (vii) Family Relationship (Temporary) (Class TL);
    - (viii) Interdependency (Temporary) (Class TM);
    - (ix) Long Stay (Visitor) (Class TN);
    - (x) Medical Practitioner (Temporary) (Class UE);
    - (xi) Retirement (Temporary) (Class TQ);
    - (xii) Short Stay (Visitor) (Class TR);
    - (xiii) Student (Temporary) (Class TU);
    - (xiv) Supported Dependant (Temporary) (Class TW);
    - (xv) Temporary Business Entry (Class UC);
    - (xva) Tourist (Class TR);
    - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) the holder, as the spouse or a dependent relative of a diplomatic or consular representative of a foreign country, of a Diplomatic (Temporary) (Class TF) visa; or
  - (c) the holder of a special purpose visa; or
  - (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).

- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant is not the holder of a substantive visa; and
  - (b) the last substantive visa held by the applicant was:
    - (i) a student visa; or
    - (ii) a special purpose visa; or
    - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
    - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; and
  - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
    - (i) the day when that last substantive visa ceased to be in effect; or
    - (ii) if that last substantive visa was cancelled, and the 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 — the later of:
      - (A) the day when that last substantive visa ceased to be in effect; and
      - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
  - (d) the applicant satisfies Schedule 3 criterion 3005.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 560, 562 or 571 visa that is subject to condition 8101; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant gives to the Minister evidence that the applicant has commenced a course of study for which the visa held was granted.



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- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 560, 562 or 571 visa that is subject to condition 8206; and
  - (b) the application was made on form 157C; and
  - (c) except if the applicant is a secondary exchange student, the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.
- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 570, 572, 573, 575 or 576 visa that is subject to condition 8206; and
  - (b) the application was made on form 157A or 157A (Internet); and
  - (c) except if the applicant is a secondary exchange student, the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

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

- 571.221 (1) Unless, at the time of application, the applicant met the requirements of subclause 571.211 (4) or (5), the applicant satisfies the criteria in clauses 571.222 to 571.236.
- (2) If, at the time of application, the applicant met the requirements of subclause 571.211 (4):
- (a) the applicant continues to meet the requirements of paragraph 571.211 (4) (a); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or

- (ii) the applicant satisfies the criteria in clauses 571.223 to 571.236.
- (3) If, at the time of application, the applicant met the requirements of subclause 571.211 (5):
  - (a) the applicant continues to meet the requirements of paragraphs 571.211 (5) (a) and (d); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
    - (ii) the applicant satisfies the criteria in clauses 571.222 to 571.236.
- 571.222 (1) Except if:
  - (a) subclause (2) applies; or
  - (b) the application was made on form 157E; or
  - (c) the applicant is a secondary exchange student;

the applicant gives to the Minister a certificate of enrolment relating to the applicant undertaking a course of study the provider of which is not a suspended education provider (***an acceptable course***).

  - (2) If a failure of electronic transmission has prevented an education provider from sending a certificate of enrolment and the Minister is satisfied that the applicant needs to travel urgently, the applicant gives to the Minister satisfactory evidence that the applicant is enrolled in an acceptable course.
  - (3) If the application was made on form 157E, the applicant is enrolled in an acceptable course.
  - (4) If the applicant is a secondary exchange student, the applicant is enrolled in an acceptable course.
- 571.223 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause (2).
- (2) An applicant meets the requirements of this subclause if:
  - (a) for an applicant who is not a person designated under regulation 2.07AO:

- (i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 571 and the assessment level to which the applicant is subject, in relation to:
  - (A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and
  - (B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
  - (C) other requirements under Schedule 5A; and
- (ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
  - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
  - (B) any other relevant matter; or
- (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
  - (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
    - (A) has access to sufficient funds of the person's own or provided by a relative; or
    - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and
  - (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
  - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:

- (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
- (B) any other relevant matter.

571.224 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4012A, 4013 and 4014; and
- (b) if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
- (c) if the applicant is applying outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

571.225 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

571.227 If:

- (a) the application was made in Australia; and
- (b) the applicant is subject to assessment level 2, 3, 4 or 5; and
- (c) at the time of application, the applicant met the requirements of clause 571.211:
  - (i) as the holder of a visa of one of the following classes:
    - (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) Interdependency (Temporary) (Class TM);
    - (I) Long Stay (Visitor) (Class TN);
    - (J) Medical Practitioner (Temporary) (Class UE);
    - (K) Retirement (Temporary) (Class TQ);
    - (L) Short Stay (Visitor) (Class TR);

- (M) Supported Dependant (Temporary) (Class TW);
- (N) Temporary Business Entry (Class UC);
- (NA) Tourist (Class TR);
- (O) Working Holiday (Temporary) (Class TZ); or
- (ii) as the holder of a special purpose visa; or
- (iii) as the holder of a visa of one of the following subclasses:
  - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (B) Subclass 427 (Domestic Worker (Temporary) — Executive); or
- (iv) as a person:
  - (A) who was not the holder of a substantive visa; and
  - (B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

the applicant establishes exceptional reasons for the grant of a Subclass 571 visa.

571.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:

- (a) that representative has completed, or is about to complete, an official posting in Australia; and
- (b) the Foreign Minister recommends the grant of the visa.

571.229 If:

- (a) the application was made in Australia; and
- (b) either:
  - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
  - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and

- (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;
- the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant undertaking a course of study.
- 571.229A If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- 571.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.
- 571.231 If the applicant is subject to assessment level 3, the Minister is satisfied that the applicant is of an age that is appropriate to the entry level for the applicant's principal course.
- 571.232 The applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is:
- (a) a principal course; and
  - (b) of a type that was specified for Subclass 571 visas by the Minister in a Gazette Notice:
    - (i) made under regulation 1.40A; and
    - (ii) in force at the time the application was made.
- 571.233 If the applicant is subject to assessment level 2, the Minister is satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- 571.234 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 571.235 If the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

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- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
  - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- 571.236 If the applicant is not a secondary exchange student, the year or level of school study that the applicant intends to undertake must not be a year or level that is more than 18 months below a year or level that the applicant has previously undertaken in Australia or another country.
- 571.237 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

### **571.3 Secondary criteria**

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

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

- 571.311 If the application is made outside Australia, the applicant is a member of the family unit of:
- (a) a person who is the holder of a Subclass 560 or 562 visa; or
  - (b) a person who satisfies, or has satisfied, the primary criteria in Subdivision 571.21.
- 571.312 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
    - (i) Border (Temporary) (Class TA);
    - (ii) Business (Temporary) (Class TB);
    - (iii) Cultural/Social (Temporary) (Class TE);
    - (iv) Educational (Temporary) (Class TH);
    - (v) Electronic Travel Authority (Class UD);

- (vi) Expatriate (Temporary) (Class TJ);
- (vii) Family Relationship (Temporary) (Class TL);
- (viii) Interdependency (Temporary) (Class TM);
- (ix) Long Stay (Visitor) (Class TN);
- (x) Medical Practitioner (Temporary) (Class UE);
- (xi) Retirement (Temporary) (Class TQ);
- (xii) Short Stay (Visitor) (Class TR);
- (xiii) Student (Temporary) (Class TU);
- (xiv) Supported Dependant (Temporary) (Class TW);
- (xv) Temporary Business Entry (Class UC);
- (xva) Tourist (Class TR);
- (xvi) Working Holiday (Temporary) (Class TZ); or
- (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
- (c) the holder of a special purpose visa; or
- (d) the holder of a visa of one of the following subclasses:
  - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
- (e) a person designated under regulation 2.07AO.
- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 571.211 (3); and
  - (c) the applicant was a member of the family unit of the person at the time that person's visa ceased to be in effect.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 560, 563 or 571 visa that is subject to condition 8101; and



- (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant is a member of the family unit of a person who is the holder of a Subclass 560, 562 or 571 visa; and
  - (d) the applicant gives to the Minister evidence that the holder of the Subclass 560, 562 or 571 visa mentioned in paragraph (c) has commenced a course of study.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 571 student visa, having satisfied the primary criteria for that visa.

571.314 If the applicant is not included in the application under subregulation 2.07AF (3), or the information under subregulation 2.07AF (4), as a member of the family unit of the primary applicant mentioned in those subregulations, the applicant gives to the Minister evidence that the applicant became such a member of the family unit after the decision to grant the Subclass 571 visa to the primary applicant was made.

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

- 571.321 (1) Unless, at the time of application, the applicant met the requirements of subclause 571.312 (4), the applicant satisfies the criteria in clauses 571.322 to 571.332.
- (2) If, at the time of application, the applicant met the requirements of subclause 571.312 (4):
- (a) the applicant continues to meet the requirements of paragraphs 571.312 (4) (a) and (c); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 571.322; or
    - (ii) the applicant satisfies the criteria in clauses 571.322 to 571.332.

571.322 The applicant is a member of the family unit of a person (the *primary person*):

(a) who is the holder of a Subclass 560 or 562 visa and who meets one of the following:

(i) the primary person is a citizen of a gazetted country within the meaning of Part 560 as it read immediately before 1 July 2001;

*Note* Under former clause 560.111, *gazetted country* meant a country specified by Gazette Notice for the purpose of Part 560.

(ii) the primary person is undertaking a course of study paid for, wholly or in part, by:

(A) the Commonwealth or the government of a State or Territory; or

(B) the government of a foreign country; or

(C) a multilateral agency;

(iii) the primary person:

(A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or

(B) has been lawfully in Australia for 12 months or more; or

(b) who satisfies, or has satisfied, the primary criteria in Subdivisions 571.21 and 571.22 and who meets one of the following:

(i) the primary person is subject to assessment level 1 or 2;

(ii) the primary person is undertaking a course of study paid for, wholly or in part, by:

(A) the Commonwealth or the government of a State or Territory; or

(B) the government of a foreign country; or

(C) a multilateral agency;

(iii) the primary person:

(A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of

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- study that are together, of a duration of 12 months or more; or
- (B) has been lawfully in Australia for 12 months or more.
- 571.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 571.324 If the applicant seeks to stay in Australia for 12 months or more, the applicant satisfies public interest criterion 4010.
- 571.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 571.326 The Minister is satisfied that:
- (a) the applicant is a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 571.322; and
  - (b) that primary person has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
  - (c) on the basis of the applicant's stated intention, the applicant intends to comply with any conditions subject to which the visa is granted.
- 571.327 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 571.328 If:
- (a) the applicant is a school-age dependant of the primary person mentioned in clause 571.322; and
  - (b) the period of stay proposed in the application is more than 3 months;
- the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.
- 571.329 If the application was made outside Australia and made separately from that of the primary person mentioned in clause 571.322:

- (a) the primary person is, or is expected soon to be, in Australia; and
  - (b) a nomination of the applicant by the primary person, on approved form 919, has been lodged and has been approved by the Minister.
- 571.330 The applicant gives evidence that there are sufficient funds to meet the travel costs for the applicant:
- (a) if the applicant is not in Australia — to Australia, and from Australia; or
  - (b) if the applicant is in Australia — from Australia.
- 571.331 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 571.332 (1) If the applicant:
- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (2) applies; and
  - (b) was not included in the application for a student visa made by the primary person;
- the applicant must give evidence, in accordance with Schedule 5B, for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person.
- (2) This subclause applies to a primary person who:
- (a) is the holder of a Subclass 571 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 571.2; and
  - (b) was subject to assessment level 2, 3 or 4 at the time of the decision to grant the visa; and
  - (c) was, at the time of the decision to grant the visa:
    - (i) fully funded; or
    - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
      - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or

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(B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

(3) If the applicant:

- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (4) applies; and
- (b) was not included in the application for a student visa made by the primary person;

the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

(4) This subclause applies to a primary person who:

- (a) is the holder of a Subclass 571 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 571.2; and
- (b) was subject to assessment level 2 at the time of the decision to grant the visa; and
- (c) was, at the time of the decision to grant the visa:
  - (i) fully funded; or
  - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
    - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
    - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

571.333 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

571.334 The Minister is satisfied that:

- (a) the applicant is the holder of a valid passport that:
  - (i) was issued to the applicant by an official source; and

- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **571.4 Circumstances applicable to grant**

- 571.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.
- 571.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **571.5 When visa is in effect**

- 571.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:
- (a) if the application is made on form 157P or 157P (Internet) — until the date on which the visa held by the applicant at the time of application would have ceased to be in effect; and
  - (b) otherwise — until a date specified by the Minister.

#### **571.6 Conditions**

- 571.611 (1) If the applicant satisfies the primary criteria:
- (a) in all cases, conditions 8202, 8501, 8516, 8517, 8532 and 8533; and
  - (b) subject to subclause (2), condition 8101; and
  - (c) subject to subclause (3), condition 8206; and
  - (d) if the applicant is a citizen of Iran, condition 8204; and
  - (e) subject to clause 571.612, any 1 or more of conditions 8303, 8523, 8534 and 8535 may be imposed.
- (2) If the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 571.211 (4); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8105;

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condition 8105.

(3) Condition 8206 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:

- (a) met the requirements of subclause 571.211 (5) or (6); or
- (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was not subject to condition 8206.

571.612 If, at the time of application, the applicant was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8523 and the applicant satisfies the primary criteria, condition 8523.

571.613 (1) If the applicant satisfies the secondary criteria:

- (a) in all cases:
  - (i) conditions 8501 and 8516; and
  - (ii) condition 8518 (except if the visa is granted to an applicant who has turned 18); and
- (b) if the applicant is a citizen of Iran, condition 8204; and
- (c) subject to subclause (2), condition 8201 must be imposed if the applicant has turned 18; and
- (d) any 1 or more of conditions 8303, 8522, 8534 and 8535 may be imposed.

(2) Condition 8201 is not imposed on a student visa granted to an applicant who has turned 18 if, at the time of the application:

- (a) the applicant was the holder of a Subclass 560 visa as a person who satisfied the secondary criteria in Subdivisions 560.31 and 560.32; or
- (b) the applicant was the holder of a Subclass 563 visa; or
- (c) the applicant was:
  - (i) the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa as a person who satisfied the secondary criteria for the subclass; and
  - (ii) immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a

Subclass 560 or 563 visa that was subject to condition 8101.

- 571.614 (1) If the applicant satisfies the secondary criteria and any of the following paragraphs apply, condition 8104:
- (a) the application was made in Australia and, at the time of application, the applicant was the holder of a student visa that was subject to condition 8104;
  - (b) the application was made in Australia and:
    - (i) the applicant was, at the time of application, a member of the family unit of a person who was the holder of a Subclass 560, 562 or 571 visa; and
    - (ii) the applicant met the requirement of paragraph 571.312 (4) (d).
- (2) If the applicant satisfies the secondary criteria and none of paragraphs (1) (a) and (b) applies, condition 8101.

## **571.7 Way of giving evidence**

571.711 No evidence need be given.

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

## **Subclass 572 Vocational Education and Training Sector**

### **572.1 Interpretation**

572.111 In this Part:

*course fees* has the same meaning as in Schedule 5A.

*course of study* means a full-time registered course of study.

*Note* To work out whether a course of study is a principal course, see subregulation 1.40 (2).

*full period* has the same meaning as in Schedule 5A.

*fully funded* has the same meaning as in Schedule 5A.

*living costs* has the same meaning as in Schedule 5A.

*travel costs* has the same meaning as in Schedule 5A.



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*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.

## **572.2 Primary criteria**

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

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

572.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4), (5) or (6).

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

- (a) the holder of a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or
- (b) the holder, as the spouse or a dependent relative of a diplomatic or consular representative of a foreign

- country, of a Diplomatic (Temporary) (Class TF) visa;  
or
- (c) the holder of a special purpose visa; or
  - (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (iii) Subclass 497 (Graduate — Skilled).
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is not the holder of a substantive visa; and
  - (b) the last substantive visa held by the applicant was:
    - (i) a student visa; or
    - (ii) a special purpose visa; or
    - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
    - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
    - (v) a Subclass 497 (Graduate — Skilled) visa; and
  - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
    - (i) the day when that last substantive visa ceased to be in effect; or
    - (ii) if that last substantive visa was cancelled, and the 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 — the later of:
      - (A) the day when that last substantive visa ceased to be in effect; and
      - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
  - (d) the applicant satisfies Schedule 3 criterion 3005.

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- (4) An applicant meets the requirements of this subclause if:
    - (a) the applicant is the holder of a Subclass 560, 562 or 572 visa that is subject to condition 8101; and
    - (b) the application was made on form 157P or 157P (Internet); and
    - (c) the applicant gives to the Minister evidence that the applicant has commenced a course of study for which the visa held was granted.
  
  - (5) An applicant meets the requirements of this subclause if:
    - (a) the applicant is the holder of a Subclass 560, 562 or 572 visa that is subject to condition 8206; and
    - (b) the application was made on form 157C; and
    - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and
    - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.
  
  - (6) An applicant meets the requirements of this subclause if:
    - (a) the applicant is the holder of a Subclass 570, 571, 573, 574, 575 or 576 visa that is subject to condition 8206; and
    - (b) the application was made on form 157A or 157A (Internet); and
    - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and
    - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

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

- 572.221 (1) Unless, at the time of application, the applicant met the requirements of subclause 572.211 (4) or (5), the applicant satisfies the criteria in clauses 572.222 to 572.234.

- (2) If, at the time of application, the applicant met the requirements of subclause 572.211 (4):
- (a) the applicant continues to meet the requirements of paragraph 572.211 (4) (a); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
    - (ii) the applicant satisfies the criteria in clauses 572.223 to 572.234.
- (3) If, at the time of application, the applicant met the requirements of subclause 572.211 (5):
- (a) the applicant continues to meet the requirements of paragraphs 572.211 (5) (a) and (d); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
    - (ii) the applicant satisfies the criteria in clauses 572.222 to 572.234.
- 572.222 (1) Except if subclause (2) applies or if the application was made on form 157E, the applicant gives to the Minister a certificate of enrolment relating to the applicant undertaking a course of study the provider of which is not a suspended education provider (*an acceptable course*).
- (2) If a failure of electronic transmission has prevented an education provider from sending a certificate of enrolment and the Minister is satisfied that the applicant needs to travel urgently, the applicant gives to the Minister satisfactory evidence that the applicant is enrolled in an acceptable course.
- (3) If the application was made on form 157E, the applicant is enrolled in an acceptable course.
- 572.223 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause (2).
- (2) An applicant meets the requirements of this subclause if:

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- (a) for an applicant who is not a person designated under regulation 2.07AO:
- (i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 572 and the assessment level to which the applicant is subject, in relation to:
    - (A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and
    - (B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
    - (C) other requirements under Schedule 5A; and
  - (ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - (B) any other relevant matter; or
- (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
- (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
    - (A) has access to sufficient funds of the person's own or provided by a relative; or
    - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and
  - (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
  - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:

- (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
- (B) any other relevant matter.

572.224 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4012A, 4013 and 4014; and
- (b) if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
- (c) if the applicant is applying outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

572.225 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

572.227 If:

- (a) the application was made in Australia; and
- (b) the applicant is subject to assessment level 2, 3, 4 or 5; and
- (c) at the time of application, the applicant met the requirements of clause 572.211:
  - (i) as the holder of a visa of one of the following classes:
    - (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) Interdependency (Temporary) (Class TM);
    - (I) Long Stay (Visitor) (Class TN);
    - (J) Medical Practitioner (Temporary) (Class UE);
    - (K) Retirement (Temporary) (Class TQ);
    - (L) Short Stay (Visitor) (Class TR);

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- (M) Supported Dependant (Temporary) (Class TW);
  - (N) Temporary Business Entry (Class UC);
  - (NA) Tourist (Class TR);
  - (O) Working Holiday (Temporary) (Class TZ); or
  - (ii) as the holder of a special purpose visa; or
  - (iii) as the holder of a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 497 (Graduate — Skilled); or
  - (iv) as a person:
    - (A) who was not the holder of a substantive visa; and
    - (B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

the applicant establishes exceptional reasons for the grant of a Subclass 572 visa.

572.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:

- (a) that representative has completed, or is about to complete, an official posting in Australia; and
- (b) the Foreign Minister recommends the grant of the visa.

572.229 If:

- (a) the application was made in Australia; and
- (b) either:
  - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
  - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and

- (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;

the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant undertaking a course of study.

572.229A If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

572.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

572.231 The applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is:

- (a) a principal course; and
- (b) of a type that was specified for Subclass 572 visas by the Minister in a Gazette Notice:
  - (i) made under regulation 1.40A; and
  - (ii) in force at the time the application was made.

572.232 If the applicant is subject to assessment level 2, the Minister is satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

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

572.234 If the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
- (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.



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572.235 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

### **572.3 Secondary criteria**

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

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

572.311 If the application is made outside Australia, the applicant is a member of the family unit of:

- (a) a person who is the holder of a Subclass 560 or 562 visa; or
- (b) a person who satisfies, or has satisfied, the primary criteria in Subdivision 572.21.

572.312 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).

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

- (a) the holder of a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);

- (xv) Temporary Business Entry (Class UC);
- (xva) Tourist (Class TR);
- (xvi) Working Holiday (Temporary) (Class TZ); or
- (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
- (c) the holder of a special purpose visa; or
- (d) the holder of a visa of one of the following subclasses:
  - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
  - (iii) Subclass 497 (Graduate Skilled); or
- (e) a person designated under regulation 2.07AO.
- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 572.211 (3); and
  - (c) the applicant was a member of the family unit of the person at the time that person's visa ceased to be in effect.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 560, 563 or 572 visa that is subject to condition 8101; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant is a member of the family unit of a person who is the holder of a Subclass 560, 562 or 572 visa; and
  - (d) the applicant gives to the Minister evidence that the holder of the Subclass 560, 562 or 572 visa mentioned in paragraph (c) has commenced a course of study.

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- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 572 student visa, having satisfied the primary criteria for that visa.
- 572.314 If the applicant is not included in the application under subregulation 2.07AF (3), or the information under subregulation 2.07AF (4), as a member of the family unit of the primary applicant mentioned in those subregulations, the applicant gives to the Minister evidence that the applicant became such a member of the family unit after the decision to grant the Subclass 572 visa to the primary applicant was made.
- 572.315 The applicant is not a secondary exchange student.

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

- 572.321 (1) Unless, at the time of application, the applicant met the requirements of subclause 572.312 (4), the applicant satisfies the criteria in clauses 572.322 to 572.332.
- (2) If, at the time of application, the applicant met the requirements of subclause 572.312 (4):
- (a) the applicant continues to meet the requirements of paragraphs 572.312 (4) (a) and (c); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 572.322; or
    - (ii) the applicant satisfies the criteria in clauses 572.322 to 572.332.
- 572.322 The applicant is a member of the family unit of a person (the **primary person**):
- (a) who is the holder of a Subclass 560 or 562 visa and who meets one of the following:
    - (i) the primary person is a citizen of a gazetted country within the meaning of Part 560 as it read immediately before 1 July 2001;

*Note* Under former clause 560.111, **gazetted country** meant a country specified by Gazette Notice for the purpose of Part 560.

- (ii) the primary person is undertaking a course of study paid for, wholly or in part, by:
    - (A) the Commonwealth or the government of a State or Territory; or
    - (B) the government of a foreign country; or
    - (C) a multilateral agency;
  - (iii) the primary person:
    - (A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or
    - (B) has been lawfully in Australia for 12 months or more; or
- (b) who satisfies, or has satisfied, the primary criteria in Subdivisions 572.21 and 572.22 and who meets one of the following:
- (i) the primary person is subject to assessment level 1 or 2;
  - (ii) the primary person is undertaking a course of study paid for, wholly or in part, by:
    - (A) the Commonwealth or the government of a State or Territory; or
    - (B) the government of a foreign country; or
    - (C) a multilateral agency;
  - (iii) the primary person:
    - (A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or
    - (B) has been lawfully in Australia for 12 months or more.
- 572.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 572.324 If the applicant seeks to stay in Australia for 12 months or more, the applicant satisfies public interest criterion 4010.

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- 572.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 572.326 The Minister is satisfied that:
- (a) the applicant is a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 572.322; and
  - (b) that primary person has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
  - (c) on the basis of the applicant's stated intention, the applicant intends to comply with any conditions subject to which the visa is granted.
- 572.327 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 572.328 If:
- (a) the applicant is a school-age dependant of the primary person mentioned in clause 572.322; and
  - (b) the period of stay proposed in the application is more than 3 months;
- the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.
- 572.329 If the application was made outside Australia and made separately from that of the primary person mentioned in clause 572.322:
- (a) the primary person is, or is expected soon to be, in Australia; and
  - (b) a nomination of the applicant by the primary person, on approved form 919, has been lodged and has been approved by the Minister.
- 572.330 The applicant gives evidence that there are sufficient funds to meet the travel costs for the applicant:
- (a) if the applicant is not in Australia — to Australia, and from Australia; or

(b) if the applicant is in Australia — from Australia.

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

572.332 (1) If the applicant:

- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (2) applies; and
- (b) was not included in the application for a student visa made by the primary person;

the applicant must give evidence, in accordance with Schedule 5B, for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person.

(2) This subclause applies to a primary person who:

- (a) is the holder of a Subclass 572 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 572.2; and
- (b) was subject to assessment level 2, 3 or 4 at the time of the decision to grant the visa; and
- (c) was, at the time of the decision to grant the visa:
  - (i) fully funded; or
  - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
    - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
    - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

(3) If the applicant:

- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (4) applies; and
- (b) was not included in the application for a student visa made by the primary person;

the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the

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applicant was sufficient to accumulate the level of funding being provided by that individual.

- (4) This subclause applies to a primary person who:
- (a) is the holder of a Subclass 572 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 572.2; and
  - (b) was subject to assessment level 2 at the time of the decision to grant the visa; and
  - (c) was, at the time of the decision to grant the visa:
    - (i) fully funded; or
    - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
      - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
      - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

572.333 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

572.334 The Minister is satisfied that:

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

## **572.4 Circumstances applicable to grant**

572.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

572.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

## **572.5 When visa is in effect**

- 572.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:
- (a) if the application is made on form 157P or 157P (Internet) — until the date on which the visa held by the applicant at the time of application would have ceased to be in effect; and
  - (b) otherwise — until a date specified by the Minister.

## **572.6 Conditions**

- 572.611 (1) If the applicant satisfies the primary criteria:
- (a) in all cases, conditions 8202, 8501, 8516, 8517, 8532 and 8533; and
  - (b) subject to subclause (2), condition 8101; and
  - (c) subject to subclause (3), condition 8206; and
  - (d) if the applicant is a citizen of Iran, condition 8204; and
  - (e) subject to clause 572.612, any 1 or more of conditions 8303, 8523 and 8535 may be imposed.
- (2) If the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 572.211 (4); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8105;
- condition 8105.
- (3) Condition 8206 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 572.211 (5) or (6); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was not subject to condition 8206.
- 572.612 If, at the time of application, the applicant was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa



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that was subject to condition 8523 and the applicant satisfies the primary criteria, condition 8523.

- 572.613 (1) If the applicant:
- (a) satisfies the primary criteria; and
  - (b) is subject to assessment level 3, 4 or 5; and
  - (c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and
  - (d) is not an applicant to whom subclause (2) applies; condition 8534.
- (2) If the applicant:
- (a) satisfies the primary criteria; and
  - (b) is subject to assessment level 3; and
  - (c) gives to the Minister the evidence mentioned in subclause (3); condition 8534 may be imposed.
- (3) For subclause (2), the evidence is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
    - (i) living costs, within the meaning of subclause 5A104 (1);
    - (ii) school costs, within the meaning of subclause 5A104 (2); and
  - (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and
  - (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- (4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A408 (1).
- (5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied

the primary criteria, is the holder of a Subclass 572 visa that is subject to condition 8534, condition 8534.

(6) In this clause:

*funds from an acceptable source* has the meaning given by subclause 5A408 (2).

572.614 (1) If the applicant (the *primary applicant*) is subject to assessment level 1 or 2 and is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less, condition 8534 may be imposed.

(2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.

572.615 (1) If the applicant (the *primary applicant*) is seeking to undertake a course of study that is, or courses of study that are together, of more than 10 months duration, condition 8534 may be imposed.

(2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.

572.616 (1) If the applicant satisfies the secondary criteria:

(a) in all cases:

(i) conditions 8501 and 8516; and

(ii) condition 8518 (except if the visa is granted to an applicant who has turned 18); and

(b) if the applicant is a citizen of Iran, condition 8204; and

(c) subject to subclause (2), condition 8201 must be imposed if the applicant has turned 18; and

(d) any 1 or more of conditions 8303, 8522 and 8535 may be imposed.

(2) Condition 8201 is not imposed on a student visa granted to an applicant who has turned 18 if, at the time of the application:

(a) the applicant was the holder of a Subclass 560 visa as a person who satisfied the secondary criteria in Subdivisions 560.31 and 560.32; or

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- (b) the applicant was the holder of a Subclass 563 visa; or
- (c) the applicant was:
- (i) the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa as a person who satisfied the secondary criteria for the subclass; and
  - (ii) immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a Subclass 560 or 563 visa that was subject to condition 8101.
- 572.617 (1) If the applicant satisfies the secondary criteria and any of the following paragraphs apply, condition 8104:
- (a) the application was made in Australia and, at the time of application, the applicant was the holder of a student visa that was subject to condition 8104;
  - (b) the application was made in Australia and:
    - (i) the applicant was, at the time of application, a member of the family unit of a person who was the holder of a Subclass 560, 562 or 572 visa; and
    - (ii) the applicant met the requirement of paragraph 572.312 (4) (d).
- (2) If the applicant satisfies the secondary criteria and none of paragraphs (1) (a) and (b) applies, condition 8101.

## **572.7 Way of giving evidence**

572.711 No evidence need be given.

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

## **Subclass 573 Higher Education Sector**

### **573.1 Interpretation**

573.111 In this Part:

*course fees* has the same meaning as in Schedule 5A.

*course of study* means a full-time registered course of study.

*Note* To work out whether a course of study is a principal course, see subregulation 1.40 (2).

***full period*** has the same meaning as in Schedule 5A.

***fully funded*** has the same meaning as in Schedule 5A.

***living costs*** has the same meaning as in Schedule 5A.

***travel costs*** has the same meaning as in Schedule 5A.

*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.

## **573.2 Primary criteria**

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

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

573.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4), (5) or (6).

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

- (a) the holder of a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);

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- (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) the holder, as the spouse or a dependent relative of a diplomatic or consular representative of a foreign country, of a Diplomatic (Temporary) (Class TF) visa; or
  - (c) the holder of a special purpose visa; or
  - (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (iii) Subclass 497 (Graduate — Skilled).
  - (3) An applicant meets the requirements of this subclause if:
    - (a) the applicant is not the holder of a substantive visa; and
    - (b) the last substantive visa held by the applicant was:
      - (i) a student visa; or
      - (ii) a special purpose visa; or
      - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
      - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
      - (v) a Subclass 497 (Graduate — Skilled) visa; and
    - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
      - (i) the day when that last substantive visa ceased to be in effect; or
      - (ii) if that last substantive visa was cancelled, and the 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 — the later of:

- (A) the day when that last substantive visa ceased to be in effect; and
  - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
- (d) the applicant satisfies Schedule 3 criterion 3005.
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of:
    - (i) a Subclass 560, 562 or 573 visa that is subject to condition 8101; or
    - (ii) a Subclass 574 visa that is subject to condition 8101 and was granted on the basis that the applicant proposed to commence, or had commenced, as a principal course, a course of study for the award of a masters degree by coursework; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant gives to the Minister evidence that the applicant has commenced a course of study for which the visa held was granted.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of:
    - (i) a Subclass 560, 562 or 573 visa that is subject to condition 8206; or
    - (ii) a Subclass 574 visa that is subject to condition 8206 and was granted on the basis that the applicant proposed to commence, or had commenced, as a principal course, a course of study for the award of a masters degree by coursework; and
  - (b) the application was made on form 157C; and
  - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and

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- (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.
  - (6) An applicant meets the requirements of this subclause if:
    - (a) the applicant is the holder of a Subclass 570, 571, 572, 574, 575 or 576 visa that is subject to condition 8206; and
    - (b) the application was made on form 157A or 157A (Internet); and
    - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and
    - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

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

- 573.221
- (1) Unless, at the time of application, the applicant met the requirements of subclause 573.211 (4) or (5), the applicant satisfies the criteria in clauses 573.222 to 573.234.
  - (2) If, at the time of application, the applicant met the requirements of subclause 573.211 (4):
    - (a) the applicant continues to meet the requirements of paragraph 573.211 (4) (a); and
    - (b) either:
      - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
      - (ii) the applicant satisfies the criteria in clauses 573.223 to 573.234.
  - (3) If, at the time of application, the applicant met the requirements of subclause 573.211 (5):
    - (a) the applicant continues to meet the requirements of paragraphs 573.211 (5) (a) and (d); and
    - (b) either:
      - (i) the Minister has no reason to believe that the applicant is not a genuine student; or

(ii) the applicant satisfies the criteria in clauses 573.222 to 573.234.

573.222 (1) Except if subclause (2) applies or if the application was made on form 157E, the applicant gives to the Minister a certificate of enrolment relating to the applicant undertaking a course of study the provider of which is not a suspended education provider (*an acceptable course*).

(2) If a failure of electronic transmission has prevented an education provider from sending a certificate of enrolment and the Minister is satisfied that the applicant needs to travel urgently, the applicant gives to the Minister satisfactory evidence that the applicant is enrolled in an acceptable course.

(3) If the application was made on form 157E, the applicant is enrolled in an acceptable course.

573.223 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause (2).

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

(a) for an applicant who is not a person designated under regulation 2.07AO:

(i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 573 and the assessment level to which the applicant is subject, in relation to:

(A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and

(B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and

(C) other requirements under Schedule 5A; and

(ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:



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- (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
  - (B) any other relevant matter; or
- (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
- (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
    - (A) has access to sufficient funds of the person's own or provided by a relative; or
    - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and
  - (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
  - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - (B) any other relevant matter.
- 573.224 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4012A, 4013 and 4014; and
  - (b) if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) if the applicant is applying outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 573.225 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 573.227 If:
- (a) the application was made in Australia; and

- (b) the applicant is subject to assessment level 2, 3, 4 or 5; and
- (c) at the time of application, the applicant met the requirements of clause 573.211:
  - (i) as the holder of a visa of one of the following classes:
    - (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) Interdependency (Temporary) (Class TM);
    - (I) Long Stay (Visitor) (Class TN);
    - (J) Medical Practitioner (Temporary) (Class UE);
    - (K) Retirement (Temporary) (Class TQ);
    - (L) Short Stay (Visitor) (Class TR);
    - (M) Supported Dependant (Temporary) (Class TW);
    - (N) Temporary Business Entry (Class UC);
    - (NA) Tourist (Class TR);
    - (O) Working Holiday (Temporary) (Class TZ); or
  - (ii) as the holder of a special purpose visa; or
  - (iii) as the holder of a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 497 (Graduate — Skilled); or
  - (iv) as a person:
    - (A) who was not the holder of a substantive visa; and

(B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

the applicant establishes exceptional reasons for the grant of a Subclass 573 visa.

573.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:

- (a) that representative has completed, or is about to complete, an official posting in Australia; and
- (b) the Foreign Minister recommends the grant of the visa.

573.229 If:

- (a) the application was made in Australia; and
- (b) either:
  - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
  - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and
- (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;

the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant undertaking a course of study.

573.229A If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

573.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

573.231 The applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is:

- (a) a principal course; and

- (b) of a type that was specified for Subclass 573 visas by the Minister in a Gazette Notice:
    - (i) made under regulation 1.40A; and
    - (ii) in force at the time the application was made.
- 573.232 If the applicant is subject to assessment level 2, the Minister is satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- 573.233 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 573.234 If the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:
  - (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
  - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- 573.235 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

### **573.3 Secondary criteria**

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

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

- 573.311 If the application is made outside Australia, the applicant is a member of the family unit of:
  - (a) a person who is the holder of a Subclass 560 or 562 visa; or

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- (b) a person who satisfies, or has satisfied, the primary criteria in Subdivision 573.21.
- 573.312 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
- (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or
- (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
- (c) the holder of a special purpose visa; or
- (d) the holder of a visa of one of the following subclasses:
- (i) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
  - (iii) Subclass 497 (Graduate Skilled); or

- (e) a person designated under regulation 2.07AO.
- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 573.211 (3); and
  - (c) the applicant was a member of the family unit of the person at the time that person's visa ceased to be in effect.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 560, 563, 573 or 574 visa that:
    - (i) for a holder of a Subclass 574 visa — was granted on the basis that:
      - (A) the applicant was a member of the family unit of a person (the *primary person*) who satisfied the primary criteria in Division 574.2; and
      - (B) the primary person proposed to commence, or had commenced, as a principal course, a course of study for the award of a masters degree by coursework; and
    - (ii) for all holders — is subject to condition 8101 or 8104; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant is a member of the family unit of a person who is the holder of a Subclass 560, 562, 573 or 574 visa; and
  - (d) the applicant gives to the Minister evidence that the holder of the Subclass 560, 562, 573 or 574 visa mentioned in paragraph (c) has commenced a course of study.
- (5) An applicant meets the requirements of this subclause if:
  - (a) the applicant does not hold a substantive visa; and

- (b) the applicant is a member of the family unit of a person (the *primary person*) who:
  - (i) holds a Subclass 560, 562 or 573 visa, having satisfied the primary criteria for that visa; or
  - (ii) holds a Subclass 574 visa that was granted on the basis that the primary person proposed to commence, or had commenced, as a principal course, a course of study for the award of a masters degree by coursework.

573.314 If the applicant is not included in the application under subregulation 2.07AF (3), or the information under subregulation 2.07AF (4), as a member of the family unit of the primary applicant mentioned in those subregulations, the applicant gives to the Minister evidence that the applicant became such a member of the family unit after the decision to grant the Subclass 573 or 574 visa to the primary applicant was made.

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

573.321 (1) Unless, at the time of application, the applicant met the requirements of subclause 573.312 (4), the applicant satisfies the criteria in clauses 573.322 to 573.332.

(2) If, at the time of application, the applicant met the requirements of subclause 573.312 (4):

- (a) the applicant continues to meet the requirements of paragraphs 573.312 (4) (a) and (c); and
- (b) either:
  - (i) the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 573.322; or
  - (ii) the applicant satisfies the criteria in clauses 573.322 to 573.332.

573.322 The applicant is a member of the family unit of a person (the *primary person*):

- (a) who is the holder of a Subclass 560 or 562 visa and who meets one of the following:

- (i) the primary person is a citizen of a gazetted country within the meaning of Part 560 as it read immediately before 1 July 2001;

*Note* Under former clause 560.111, **gazetted country** meant a country specified by Gazette Notice for the purpose of Part 560.

- (ii) the primary person is undertaking a course of study paid for, wholly or in part, by:
    - (A) the Commonwealth or the government of a State or Territory; or
    - (B) the government of a foreign country; or
    - (C) a multilateral agency;
  - (iii) the primary person:
    - (A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or
    - (B) has been lawfully in Australia for 12 months or more; or
- (b) who satisfies, or has satisfied, the primary criteria in Subdivisions 573.21 and 573.22 and who meets one of the following:
- (i) the primary person is subject to assessment level 1 or 2;
  - (ii) the primary person is undertaking a course of study paid for, wholly or in part, by:
    - (A) the Commonwealth or the government of a State or Territory; or
    - (B) the government of a foreign country; or
    - (C) a multilateral agency;
  - (iii) the primary person:
    - (A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or
    - (B) has been lawfully in Australia for 12 months or more.



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- 573.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 573.324 If the applicant seeks to stay in Australia for 12 months or more, the applicant satisfies public interest criterion 4010.
- 573.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 573.326 The Minister is satisfied that:
- (a) the applicant is a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 573.322; and
  - (b) that primary person has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
  - (c) on the basis of the applicant's stated intention, the applicant intends to comply with any conditions subject to which the visa is granted.
- 573.327 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 573.328 If:
- (a) the applicant is a school-age dependant of the primary person mentioned in clause 573.322; and
  - (b) the period of stay proposed in the application is more than 3 months;
- the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.
- 573.329 If the application was made outside Australia and made separately from that of the primary person mentioned in clause 573.322:
- (a) the primary person is, or is expected soon to be, in Australia; and
  - (b) a nomination of the applicant by the primary person, on approved form 919, has been lodged and has been approved by the Minister.

573.330 The applicant gives evidence that there are sufficient funds to meet the travel costs for the applicant:

- (a) if the applicant is not in Australia — to Australia, and from Australia; or
- (b) if the applicant is in Australia — from Australia.

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

573.332 (1) If the applicant:

- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (2) applies; and
- (b) was not included in the application for a student visa made by the primary person;

the applicant must give evidence, in accordance with Schedule 5B, for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person.

(2) This subclause applies to a primary person who:

- (a) is:
  - (i) the holder of a Subclass 573 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 573.2; or
  - (ii) the holder of a Subclass 574 visa, granted:
    - (A) on or after 1 December 2003; and
    - (B) on the basis of satisfying the primary criteria in Division 574.2; and
    - (C) on the basis that the primary person proposed to commence, or had commenced, as a principal course, a course of study for the award of a masters degree by coursework; and
- (b) was subject to assessment level 2, 3 or 4 at the time of the decision to grant the visa; and
- (c) was, at the time of the decision to grant the visa:
  - (i) fully funded; or
  - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary

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person's full period, assessed for the primary person alone, were to be met by:

- (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
- (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

(3) If the applicant:

- (a) is a member of the family unit of a person (the **primary person**) to whom subclause (4) applies; and
- (b) was not included in the application for a student visa made by the primary person;

the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

(4) This subclause applies to a primary person who:

- (a) is:
  - (i) the holder of a Subclass 573 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 573.2; or
  - (ii) the holder of a Subclass 574 visa, granted:
    - (A) on or after 1 December 2003; and
    - (B) on the basis of satisfying the primary criteria in Division 574.2; and
    - (C) on the basis that the primary person proposed to commence, or had commenced, as a principal course, a course of study for the award of a masters degree by coursework; and
- (b) was subject to assessment level 2 at the time of the decision to grant the visa; and
- (c) was, at the time of the decision to grant the visa:
  - (i) fully funded; or
  - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary

person's full period, assessed for the primary person alone, were to be met by:

- (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
- (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

573.333 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

573.334 The Minister is satisfied that:

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

#### **573.4 Circumstances applicable to grant**

573.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

573.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **573.5 When visa is in effect**

573.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:

- (a) if the application is made on form 157P or 157P (Internet) — until the date on which the visa held by the applicant at the time of application would have ceased to be in effect; and
- (b) otherwise — until a date specified by the Minister.

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## **573.6 Conditions**

- 573.611 (1) If the applicant satisfies the primary criteria:
- (a) in all cases, conditions 8202, 8501, 8516, 8517, 8532 and 8533; and
  - (b) subject to subclause (2), condition 8101; and
  - (c) subject to subclause (3), condition 8206; and
  - (d) if the applicant is a citizen of Iran, condition 8203; and
  - (e) subject to clause 573.612, any 1 or more of conditions 8303, 8523 and 8535 may be imposed.
- (2) If the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 573.211 (4); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8105;
- condition 8105.
- (3) Condition 8206 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 573.211 (5) or (6); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was not subject to condition 8206.
- 573.612 If, at the time of application, the applicant was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8523 and the applicant satisfies the primary criteria, condition 8523.
- 573.613 (1) If the applicant:
- (a) satisfies the primary criteria; and
  - (b) is subject to assessment level 3, 4 or 5; and
  - (c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and
  - (d) is not an applicant to whom subclause (2) applies;
- condition 8534.

- (2) If the applicant:
- (a) satisfies the primary criteria; and
  - (b) is subject to assessment level 3; and
  - (c) gives to the Minister the evidence mentioned in subclause (3);
- condition 8534 may be imposed.

- (3) For subclause (2), the evidence is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
    - (i) living costs, within the meaning of subclause 5A104 (1);
    - (ii) school costs, within the meaning of subclause 5A104 (2); and
  - (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and
  - (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

(4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A508 (1).

(5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 573 visa that is subject to condition 8534, condition 8534.

(6) In this clause:  
*funds from an acceptable source* has the meaning given by subclause 5A508 (2).

- 573.614 (1) If the applicant (the *primary applicant*) is subject to assessment level 1 or 2 and is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less, condition 8534 may be imposed.

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- (2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.
- 573.615 (1) If the applicant (the *primary applicant*) is seeking to undertake a course of study that is, or courses of study that are together, of more than 10 months duration, condition 8534 may be imposed.
- (2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.
- 573.616 (1) If the applicant satisfies the secondary criteria:
- (a) in all cases:
    - (i) conditions 8501 and 8516; and
    - (ii) condition 8518 (except if the visa is granted to an applicant who has turned 18); and
  - (b) if the applicant is a citizen of Iran, condition 8204; and
  - (c) subject to subclause (2), condition 8201 must be imposed if the applicant has turned 18; and
  - (d) any 1 or more of conditions 8303, 8522 and 8535 may be imposed.
- (2) Condition 8201 is not imposed on a student visa granted to an applicant who has turned 18 if, at the time of the application:
- (a) the applicant was the holder of a Subclass 560 visa as a person who satisfied the secondary criteria in Subdivisions 560.31 and 560.32; or
  - (b) the applicant was the holder of a Subclass 563 visa; or
  - (c) the applicant was:
    - (i) the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa as a person who satisfied the secondary criteria for the subclass; and
    - (ii) immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a Subclass 560 or 563 visa that was subject to condition 8101.

- 573.617 (1) Subject to subclause (3), if the applicant satisfies the secondary criteria and any of the following paragraphs apply, condition 8104:
- (a) the application was made in Australia and, at the time of application, the applicant was the holder of a student visa that was subject to condition 8104;
  - (b) the application was made in Australia and:
    - (i) the applicant was, at the time of application, a member of the family unit of a person who was the holder of a Subclass 560, 562, 573 or 574 visa; and
    - (ii) the applicant met the requirement of paragraph 573.312 (4) (d).
- (2) Subject to subclause (3), if the applicant satisfies the secondary criteria and none of paragraphs (1) (a) and (b) applies, condition 8101.
- (3) Conditions 8101 and 8104 are not imposed on a visa granted to an applicant who satisfies the secondary criteria as a member of the family unit of a person (the *primary person*) who satisfies the primary criteria for a Subclass 560, 562, 573 or 574 visa:
- (a) if:
    - (i) the application was made in Australia; and
    - (ii) at the time of application, the applicant was the holder of a Subclass 560, 563, 573 or 574 visa that was not subject to condition 8101, 8104 or 8105; and
    - (iii) the primary person has commenced a course of study for the award of a masters degree by coursework; and
    - (iv) the primary person is continuing that course of study; or
  - (b) if:
    - (i) the application was made in Australia; and
    - (ii) the applicant meets the requirements of subclause 573.312 (4); and



- (iii) the primary person has commenced a course of study for the award of a masters degree by coursework; and
- (iv) the primary person is continuing that course of study.

### **573.7 Way of giving evidence**

573.711 No evidence need be given.

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

## **Subclass 574 Postgraduate Research Sector**

### **574.1 Interpretation**

574.111 In this Part:

*course fees* has the same meaning as in Schedule 5A.

*course of study* means a full-time registered course of study.

*Note* To work out whether a course of study is a principal course, see subregulation 1.40 (2).

*full period* has the same meaning as in Schedule 5A.

*fully funded* has the same meaning as in Schedule 5A.

*living costs* has the same meaning as in Schedule 5A.

*travel costs* has the same meaning as in Schedule 5A.

*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.

### **574.2 Primary criteria**

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

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

- 574.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4), (5) or (6).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
    - (i) Border (Temporary) (Class TA);
    - (ii) Business (Temporary) (Class TB);
    - (iii) Cultural/Social (Temporary) (Class TE);
    - (iv) Educational (Temporary) (Class TH);
    - (v) Electronic Travel Authority (Class UD);
    - (vi) Expatriate (Temporary) (Class TJ);
    - (vii) Family Relationship (Temporary) (Class TL);
    - (viii) Interdependency (Temporary) (Class TM);
    - (ix) Long Stay (Visitor) (Class TN);
    - (x) Medical Practitioner (Temporary) (Class UE);
    - (xi) Retirement (Temporary) (Class TQ);
    - (xii) Short Stay (Visitor) (Class TR);
    - (xiii) Student (Temporary) (Class TU);
    - (xiv) Supported Dependant (Temporary) (Class TW);
    - (xv) Temporary Business Entry (Class UC);
    - (xva) Tourist (Class TR);
    - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) the holder, as the spouse or a dependent relative of a diplomatic or consular representative of a foreign country, of a Diplomatic (Temporary) (Class TF) visa; or
  - (c) the holder of a special purpose visa; or
  - (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (iii) Subclass 497 (Graduate — Skilled).

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- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is not the holder of a substantive visa; and
  - (b) the last substantive visa held by the applicant was:
    - (i) a student visa; or
    - (ii) a special purpose visa; or
    - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
    - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
    - (v) a Subclass 497 (Graduate — Skilled) visa; and
  - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
    - (i) the day when that last substantive visa ceased to be in effect; or
    - (ii) if that last substantive visa was cancelled, and the 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 — the later of:
      - (A) the day when that last substantive visa ceased to be in effect; and
      - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
  - (d) the applicant satisfies Schedule 3 criterion 3005.
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 560, 562 or 574 visa that is subject to condition 8101; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant gives to the Minister evidence that the applicant has commenced a course of study for which the visa held was granted.

- (5) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 560, 562 or 574 visa that is subject to condition 8206; and
  - (b) the application was made on form 157C; and
  - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a full-time course of study other than the education provider of a course of study for which the visa held was granted; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.
  
- (6) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 570, 571, 572, 573, 575 or 576 visa that is subject to condition 8206; and
  - (b) the application was made on form 157A or 157A (Internet); and
  - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

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

- 574.221 (1) Unless, at the time of application, the applicant met the requirements of subclause 574.211 (4) or (5), the applicant satisfies the criteria in clauses 574.222 to 574.234.
- (2) If, at the time of application, the applicant met the requirements of subclause 574.211 (4):
- (a) the applicant continues to meet the requirements of paragraph 574.211 (4) (a); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
    - (ii) the applicant satisfies the criteria in clauses 574.223 to 574.234.

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- (3) If, at the time of application, the applicant met the requirements of subclause 574.211 (5):
- (a) the applicant continues to meet the requirements of paragraphs 574.211 (5) (a) and (d); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
    - (ii) the applicant satisfies the criteria in clauses 574.222 to 574.234.
- 574.222 (1) Except if subclause (2), (3) or (3A) applies or if the application was made on form 157E, the applicant gives to the Minister a certificate of enrolment relating to the applicant undertaking a course of study the provider of which is not a suspended education provider (*an acceptable course*).
- (2) If a failure of electronic transmission has prevented an education provider from sending a certificate of enrolment and the Minister is satisfied that the applicant needs to travel urgently, the applicant gives to the Minister satisfactory evidence that the applicant is enrolled in an acceptable course.
- (3) If the application was made in Australia and, at the time of application, the applicant was the holder of a Subclass 560 or 562 visa, the applicant satisfies the Minister that, in connection with a 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.
- (3A) If the application was made in Australia and, at the time of application, the applicant was the holder of a Subclass 574 visa (the *current visa*):
- (a) the applicant satisfies the Minister that, in connection with a 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; and

- (b) either:
  - (i) the applicant has held the current visa, or a combination of the current visa and 1 or more other Subclass 560 or 574 visas, on that basis for a continuous period of 6 months or less; or
  - (ii) the applicant has held the current visa, or a combination of the current visa and 1 or more other Subclass 560 or 574 visas, on that basis for more than 6 months and there are exceptional circumstances justifying the grant of the visa.
- (4) If the application was made on form 157E, the applicant is enrolled in an acceptable course.

574.223 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause (2).

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

(a) for an applicant who is not a person designated under regulation 2.07AO:

(i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 574 and the assessment level to which the applicant is subject, in relation to:

(A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and

(B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and

(C) other requirements under Schedule 5A; and

(ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:

(A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and

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- (B) any other relevant matter; or
- (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
- (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
    - (A) has access to sufficient funds of the person's own or provided by a relative; or
    - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and
  - (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
  - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - (B) any other relevant matter.
- 574.224 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4012A, 4013 and 4014; and
  - (b) if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) if the applicant is applying outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 574.225 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 574.227 If:
- (a) the application was made in Australia; and

- (b) the applicant is subject to assessment level 2, 3, 4 or 5; and
- (c) at the time of application, the applicant met the requirements of clause 574.211:
  - (i) as the holder of a visa of one of the following classes:
    - (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) Interdependency (Temporary) (Class TM);
    - (I) Long Stay (Visitor) (Class TN);
    - (J) Medical Practitioner (Temporary) (Class UE);
    - (K) Retirement (Temporary) (Class TQ);
    - (L) Short Stay (Visitor) (Class TR);
    - (M) Supported Dependant (Temporary) (Class TW);
    - (N) Temporary Business Entry (Class UC);
    - (NA) Tourist (Class TR);
    - (O) Working Holiday (Temporary) (Class TZ); or
  - (ii) as the holder of a special purpose visa; or
  - (iii) as the holder of a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 497 (Graduate — Skilled); or
  - (iv) as a person:
    - (A) who was not the holder of a substantive visa; and



(B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

the applicant establishes exceptional reasons for the grant of a Subclass 574 visa.

574.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:

- (a) that representative has completed, or is about to complete, an official posting in Australia; and
- (b) the Foreign Minister recommends the grant of the visa.

574.229 If:

- (a) the application was made in Australia; and
- (b) either:
  - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
  - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and
- (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;

the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant undertaking a course of study.

574.229A If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.

574.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

574.231 The applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is:

- (a) a principal course; and

- (b) of a type that was specified for Subclass 574 visas by the Minister in a Gazette Notice:
    - (i) made under regulation 1.40A; and
    - (ii) in force at the time the application was made.
- 574.232 If the applicant is subject to assessment level 2, the Minister is satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- 574.233 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 574.234 If the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:
  - (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
  - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- 574.235 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

### **574.3 Secondary criteria**

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

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

- 574.311 If the application is made outside Australia, the applicant is a member of the family unit of:
  - (a) a person who is the holder of a Subclass 560 or 562 visa; or

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- (b) a person who satisfies, or has satisfied, the primary criteria in Subdivision 574.21.
- 574.312 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
- (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or
- (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
- (c) the holder of a special purpose visa; or
- (d) the holder of a visa of one of the following subclasses:
- (i) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or

- (iii) Subclass 497 (Graduate Skilled); or
  - (e) a person designated under regulation 2.07AO.
  - (3) An applicant meets the requirements of this subclause if:
    - (a) the applicant does not hold a substantive visa; and
    - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 574.211 (3); and
    - (c) the applicant was a member of the family unit of the person at the time that person's visa ceased to be in effect.
  - (4) An applicant meets the requirements of this subclause if:
    - (a) the applicant is the holder of a Subclass 560, 563 or 574 visa that is subject to condition 8101 or 8104; and
    - (b) the application was made on form 157P or 157P (Internet); and
    - (c) the applicant is a member of the family unit of a person who is the holder of a Subclass 560, 562 or 574 visa; and
    - (d) the applicant gives to the Minister evidence that the holder of the Subclass 560, 562 or 574 visa mentioned in paragraph (c) has commenced a course of study.
  - (5) An applicant meets the requirements of this subclause if:
    - (a) the applicant does not hold a substantive visa; and
    - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 574 student visa, having satisfied the primary criteria for that visa.
- 574.314 If the applicant is not included in the application under subregulation 2.07AF (3), or the information under subregulation 2.07AF (4), as a member of the family unit of the primary applicant mentioned in those subregulations, the applicant gives to the Minister evidence that the applicant became such a member of the family unit after the decision to grant the Subclass 574 visa to the primary applicant was made.

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

- 574.321 (1) Unless, at the time of application, the applicant met the requirements of subclause 574.312 (4), the applicant satisfies the criteria in clauses 574.322 to 574.332.
- (2) If, at the time of application, the applicant met the requirements of subclause 574.312 (4):
- (a) the applicant continues to meet the requirements of paragraphs 574.312 (4) (a) and (c); and
- (b) either:
- (i) the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 574.322; or
- (ii) the applicant satisfies the criteria in clauses 574.322 to 574.332.
- 574.322 The applicant is a member of the family unit of a person (the **primary person**):
- (a) who is the holder of a Subclass 560 or 562 visa and who meets one of the following:
- (i) the primary person is a citizen of a gazetted country within the meaning of Part 560 as it read immediately before 1 July 2001;
- Note* Under former clause 560.111, **gazetted country** meant a country specified by Gazette Notice for the purpose of Part 560.
- (ii) the primary person is undertaking a course of study paid for, wholly or in part, by:
- (A) the Commonwealth or the government of a State or Territory; or
- (B) the government of a foreign country; or
- (C) a multilateral agency;
- (iii) the primary person:
- (A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or
- (B) has been lawfully in Australia for 12 months or more; or

- (b) who satisfies, or has satisfied, the primary criteria in Subdivisions 574.21 and 574.22 and who meets one of the following:
    - (i) the primary person is subject to assessment level 1 or 2;
    - (ii) the primary person is undertaking a course of study paid for, wholly or in part, by:
      - (A) the Commonwealth or the government of a State or Territory; or
      - (B) the government of a foreign country; or
      - (C) a multilateral agency;
    - (iii) the primary person:
      - (A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or
      - (B) has been lawfully in Australia for 12 months or more.
- 574.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 574.324 If the applicant seeks to stay in Australia for 12 months or more, the applicant satisfies public interest criterion 4010.
- 574.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 574.326 The Minister is satisfied that:
- (a) the applicant is a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 574.322; and
  - (b) that primary person has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
  - (c) on the basis of the applicant's stated intention, the applicant intends to comply with any conditions subject to which the visa is granted.

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- 574.327 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 574.328 If:
- (a) the applicant is a school-age dependant of the primary person mentioned in clause 574.322; and
  - (b) the period of stay proposed in the application is more than 3 months;
- the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.
- 574.329 If the application was made outside Australia and made separately from that of the primary person mentioned in clause 574.322:
- (a) the primary person is, or is expected soon to be, in Australia; and
  - (b) a nomination of the applicant by the primary person, on approved form 919, has been lodged and has been approved by the Minister.
- 574.330 The applicant gives evidence that there are sufficient funds to meet the travel costs for the applicant:
- (a) if the applicant is not in Australia — to Australia, and from Australia; or
  - (b) if the applicant is in Australia — from Australia.
- 574.331 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 574.332 (1) If the applicant:
- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (2) applies; and
  - (b) was not included in the application for a student visa made by the primary person;
- the applicant must give evidence, in accordance with Schedule 5B, for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person.

- (2) This subclause applies to a primary person who:
- (a) is the holder of a Subclass 574 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 574.2; and
  - (b) was subject to assessment level 2, 3 or 4 at the time of the decision to grant the visa; and
  - (c) was, at the time of the decision to grant the visa:
    - (i) fully funded; or
    - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
      - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
      - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph; or
    - (iii) the holder of an International Postgraduate Research Scholarship funded by the Commonwealth Government.
- (3) If the applicant:
- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (4) applies; and
  - (b) was not included in the application for a student visa made by the primary person;

the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

- (4) This subclause applies to a primary person who:
- (a) is the holder of a Subclass 574 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 574.2; and
  - (b) was subject to assessment level 2 at the time of the decision to grant the visa; and



- (c) was, at the time of the decision to grant the visa:
  - (i) fully funded; or
  - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
    - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
    - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph; or
  - (iii) the holder of an International Postgraduate Research Scholarship funded by the Commonwealth Government.

574.333 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

574.334 The Minister is satisfied that:

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

#### **574.4 Circumstances applicable to grant**

574.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

574.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **574.5 When visa is in effect**

574.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:

- (a) if the application is made on form 157P or 157P (Internet) — until the date on which the visa held by the applicant at the time of application would have ceased to be in effect; and
- (b) otherwise — until a date specified by the Minister.

## **574.6 Conditions**

- 574.611 (1) If the applicant satisfies the primary criteria:
- (a) in all cases, conditions 8202, 8501, 8516, 8517, 8532 and 8533; and
  - (b) subject to subclause (2), condition 8101; and
  - (c) subject to subclause (3), condition 8206; and
  - (d) if the applicant is a citizen of Iran, condition 8203; and
  - (e) subject to clause 574.612, any 1 or more of conditions 8303, 8523 and 8535 may be imposed.
- (2) If the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 574.211 (4); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8105;
- condition 8105.
- (3) Condition 8206 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 574.211 (5) or (6); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was not subject to condition 8206.
- 574.612 If, at the time of application, the applicant was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8523 and the applicant satisfies the primary criteria, condition 8523.
- 574.613 (1) If the applicant:
- (a) satisfies the primary criteria; and

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- (b) is subject to assessment level 3, 4 or 5; and
  - (c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and
  - (d) is not an applicant to whom subclause (2) applies; condition 8534.
- (2) If the applicant:
- (a) satisfies the primary criteria; and
  - (b) is subject to assessment level 3; and
  - (c) gives to the Minister the evidence mentioned in subclause (3);
- condition 8534 may be imposed.
- (3) For subclause (2), the evidence is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
    - (i) living costs, within the meaning of subclause 5A104 (1);
    - (ii) school costs, within the meaning of subclause 5A104 (2); and
  - (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and
  - (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- (4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A608 (1).
- (5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 574 visa that is subject to condition 8534, condition 8534.

(6) In this clause:

*funds from an acceptable source* has the meaning given by subclause 5A608 (2).

574.613A (1) If the applicant (the *primary applicant*) is seeking to undertake a course of study that has been gazetted for subregulation 1.44 (2) and the applicant did not provide evidence of English language proficiency otherwise required under clause 5A604 or 5A607 of Schedule 5A, condition 8534.

(2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534.

574.614 (1) If the applicant (the *primary applicant*) is subject to assessment level 1 or 2 and is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less, condition 8534 may be imposed.

(2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.

574.615 (1) If the applicant (the *primary applicant*) is seeking to undertake a course of study that is, or courses of study that are together, of more than 10 months duration, condition 8534 may be imposed.

(2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.

574.616 (1) If the applicant satisfies the secondary criteria:

(a) in all cases:

(i) conditions 8501 and 8516; and

(ii) condition 8518 (except if the visa is granted to an applicant who has turned 18); and

(b) if the applicant is a citizen of Iran, condition 8204; and

(c) subject to subclause (2), condition 8201 must be imposed if the applicant has turned 18; and

(d) subject to clauses 574.617 and 574.618, condition 8101; and

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- (e) any 1 or more of conditions 8303, 8522 and 8535 may be imposed.
- (2) Condition 8201 is not imposed on a student visa granted to an applicant who has turned 18 if, at the time of the application:
- (a) the applicant was the holder of a Subclass 560 visa as a person who satisfied the secondary criteria in Subdivisions 560.31 and 560.32; or
  - (b) the applicant was the holder of a Subclass 563 visa; or
  - (c) the applicant was:
    - (i) the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa as a person who satisfied the secondary criteria for the subclass; and
    - (ii) immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a Subclass 560 or 563 visa that was subject to condition 8101.
- 574.617 Conditions 8101 and 8104 are not imposed on a student visa granted to a person (the *secondary applicant*) who satisfies the secondary criteria as a member of the family unit of a person (the *primary person*) who satisfies the primary criteria for a Subclass 574 visa:
- (a) if the application was made in Australia, and the secondary applicant is the holder of a Subclass 560, 563 or 574 visa that is not subject to condition 8101, 8104 or 8105; or
  - (b) if:
    - (i) the application was made in Australia, and the secondary applicant meets the requirements of subclause 574.312 (4); and
    - (ii) the primary person has commenced a course of study for the award of a masters or a doctorate degree.
- 574.618 Subject to clause 574.617, condition 8104 is imposed on a student visa granted to an applicant (the *secondary applicant*) who satisfies the secondary criteria as a member of the family unit of another person (the *primary person*) if:

- (a) the application was made in Australia and, at the time of application, the secondary applicant was the holder of a student visa that was subject to condition 8104; or
- (b) the application was made in Australia and:
  - (i) at the time of application, the secondary applicant was the holder of a Subclass 560, 563 or 574 visa; and
  - (ii) the secondary applicant meets the requirements of subclause 574.312 (4).

## **574.7 Way of giving evidence**

574.711 No evidence need be given.

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

## **Subclass 575 Non-Award Sector**

### **575.1 Interpretation**

575.111 In this Part:

*course fees* has the same meaning as in Schedule 5A.

*course of study* means a full-time registered course of study.

*Note 1 non-award course* is defined in regulation 1.03.

*Note 2* To work out whether a course of study is a principal course, see subregulation 1.40 (2).

*full period* has the same meaning as in Schedule 5A.

*fully funded* has the same meaning as in Schedule 5A.

*living costs* has the same meaning as in Schedule 5A.

*travel costs* has the same meaning as in Schedule 5A.

*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.

## 575.2 Primary criteria

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

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

- 575.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4), (5) or (6).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
    - (i) Border (Temporary) (Class TA);
    - (ii) Business (Temporary) (Class TB);
    - (iii) Cultural/Social (Temporary) (Class TE);
    - (iv) Educational (Temporary) (Class TH);
    - (v) Electronic Travel Authority (Class UD);
    - (vi) Expatriate (Temporary) (Class TJ);
    - (vii) Family Relationship (Temporary) (Class TL);
    - (viii) Interdependency (Temporary) (Class TM);
    - (ix) Long Stay (Visitor) (Class TN);
    - (x) Medical Practitioner (Temporary) (Class UE);
    - (xi) Retirement (Temporary) (Class TQ);
    - (xii) Short Stay (Visitor) (Class TR);
    - (xiii) Student (Temporary) (Class TU);
    - (xiv) Supported Dependant (Temporary) (Class TW);
    - (xv) Temporary Business Entry (Class UC);
    - (xva) Tourist (Class TR);
    - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) the holder, as the spouse or a dependent relative of a diplomatic or consular representative of a foreign country, of a Diplomatic (Temporary) (Class TF) visa; or
  - (c) the holder of a special purpose visa; or

- (d) the holder of a visa of one of the following subclasses:
  - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).
- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant is not the holder of a substantive visa; and
  - (b) the last substantive visa held by the applicant was:
    - (i) a student visa; or
    - (ii) a special purpose visa; or
    - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
    - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; and
  - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
    - (i) the day when that last substantive visa ceased to be in effect; or
    - (ii) if that last substantive visa was cancelled, and the 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 — the later of:
      - (A) the day when that last substantive visa ceased to be in effect; and
      - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
  - (d) the applicant satisfies Schedule 3 criterion 3005.
- (4) An applicant meets the requirements of this subclause if:
  - (a) the applicant is the holder of a Subclass 560, 562 or 575 visa that is subject to condition 8101; and



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- (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant gives to the Minister evidence that the applicant has commenced a course of study.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 560, 562 or 575 visa that is subject to condition 8206; and
  - (b) the application was made on form 157C; and
  - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course for which the visa held was granted; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.
- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 570, 571, 572, 573, 574 or 576 visa that is subject to condition 8206; and
  - (b) the application was made on form 157A or 157A (Internet); and
  - (c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course for which the visa held was granted; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

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

- 575.221 (1) Unless, at the time of application, the applicant met the requirements of subclause 575.211 (4) or (5), the applicant satisfies the criteria in clauses 575.222 to 575.234.
- (2) If, at the time of application, the applicant met the requirements of subclause 575.211 (4):
- (a) the applicant continues to meet the requirements of paragraph 575.211 (4) (a); and

- (b) either:
  - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
  - (ii) the applicant satisfies the criteria in clauses 575.223 to 575.234.
- (3) If, at the time of application, the applicant met the requirements of subclause 575.211 (5):
  - (a) the applicant continues to meet the requirements of paragraphs 575.211 (5) (a) and (d); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
    - (ii) the applicant satisfies the criteria in clauses 575.222 to 575.234.

575.222 (1) Except if subclause (2) applies or if the application was made on form 157E, the applicant gives to the Minister a certificate of enrolment relating to the applicant undertaking a course of study the provider of which is not a suspended education provider (*an acceptable course*).

(2) If a failure of electronic transmission has prevented an education provider from sending a certificate of enrolment and the Minister is satisfied that the applicant needs to travel urgently, the applicant gives to the Minister satisfactory evidence that the applicant is enrolled in an acceptable course.

(3) If the application was made on form 157E, the applicant is enrolled in an acceptable course.

575.223 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause (2).

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

- (a) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 575 and the assessment level to which the applicant is subject, in relation to:

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- (i) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and
  - (ii) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
  - (iii) other requirements under Schedule 5A; and
- (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
- (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
  - (ii) any other relevant matter.
- 575.224 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4012A, 4013 and 4014; and
  - (b) if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) if the applicant is applying outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 575.225 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 575.227 If:
- (a) the application was made in Australia; and
  - (b) the applicant is subject to assessment level 2, 3, 4 or 5; and
  - (c) at the time of application, the applicant met the requirements of clause 575.211:
    - (i) as the holder of a visa of one of the following classes:
      - (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) Interdependency (Temporary) (Class TM);
- (I) Long Stay (Visitor) (Class TN);
- (J) Medical Practitioner (Temporary) (Class UE);
- (K) Retirement (Temporary) (Class TQ);
- (L) Short Stay (Visitor) (Class TR);
- (M) Supported Dependant (Temporary) (Class TW);
- (N) Temporary Business Entry (Class UC);
- (NA) Tourist (Class TR);
- (O) Working Holiday (Temporary) (Class TZ); or
- (ii) as the holder of a special purpose visa; or
- (iii) as the holder of a visa of one of the following subclasses:
  - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (B) Subclass 427 (Domestic Worker (Temporary) — Executive); or
- (iv) as a person:
  - (A) who was not the holder of a substantive visa; and
  - (B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

the applicant establishes exceptional reasons for the grant of a Subclass 575 visa.

- 575.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:
- (a) that representative has completed, or is about to complete, an official posting in Australia; and
  - (b) the Foreign Minister recommends the grant of the visa.

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- 575.229 If:
- (a) the application was made in Australia; and
  - (b) either:
    - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
    - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and
  - (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;
- the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant undertaking a full-time non-award course.
- 575.229A If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- 575.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40.
- 575.231 The applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is:
- (a) a principal course; and
  - (b) of a type that was specified for Subclass 575 visas by the Minister in a Gazette Notice:
    - (i) made under regulation 1.40A; and
    - (ii) in force at the time the application was made.
- 575.232 If the applicant is subject to assessment level 2, the Minister is satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- 575.233 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 575.234 If the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the

applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
- (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.

575.235 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

### **575.3 Secondary criteria**

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

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

575.311 If the application is made outside Australia, the applicant is a member of the family unit of:

- (a) a person who is the holder of a Subclass 560 or 562 visa; or
- (b) a person who satisfies, or has satisfied, the primary criteria in Subdivision 575.21.

575.312 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).

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

- (a) a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);

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- (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
  - (c) a special purpose visa; or
  - (d) a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).
  - (3) An applicant meets the requirements of this subclause if:
    - (a) the applicant does not hold a substantive visa; and
    - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 575.211 (3); and
    - (c) the applicant was a member of the family unit of the person at the time that person's visa ceased to be in effect.
  - (4) An applicant meets the requirements of this subclause if:
    - (a) the applicant is the holder of a Subclass 560, 563 or 575 visa that is subject to condition 8101; and
    - (b) the application was made on form 157P or 157P (Internet); and

- (c) the applicant is a member of the family unit of a person who is the holder of a Subclass 560, 562 or 575 visa; and
  - (d) the applicant gives to the Minister evidence that the holder of the Subclass 560, 562 or 575 visa mentioned in paragraph (c) has commenced a course of study.
  - (5) An applicant meets the requirements of this subclause if:
    - (a) the applicant does not hold a substantive visa; and
    - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 575 student visa, having satisfied the primary criteria for that visa.
- 575.314 If the applicant is not included in the application under subregulation 2.07AF (3), or the information under subregulation 2.07AF (4), as a member of the family unit of the primary applicant mentioned in those subregulations, the applicant gives to the Minister evidence that the applicant became such a member of the family unit after the decision to grant the Subclass 575 visa to the primary applicant was made.
- 575.315 The applicant is not a secondary exchange student.

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

- 575.321 (1) Unless, at the time of application, the applicant met the requirements of subclause 575.312 (4), the applicant satisfies the criteria in clauses 575.322 to 575.332.
- (2) If, at the time of application, the applicant met the requirements of subclause 575.312 (4):
- (a) the applicant continues to meet the requirements of paragraphs 575.312 (4) (a) and (c); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 575.322; or
    - (ii) the applicant satisfies the criteria in clauses 575.322 to 575.332.



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575.322 The applicant is a member of the family unit of a person (the *primary person*):

(a) who is the holder of a Subclass 560 or 562 visa and who meets one of the following:

(i) the primary person is a citizen of a gazetted country within the meaning of Part 560 as it read immediately before 1 July 2001;

*Note* Under former clause 560.111, *gazetted country* meant a country specified by Gazette Notice for the purpose of Part 560.

(ii) the primary person is undertaking a course of study paid for, wholly or in part, by:

(A) the Commonwealth or the government of a State or Territory; or

(B) the government of a foreign country; or

(C) a multilateral agency;

(iii) the primary person:

(A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of study that are together, of a duration of 12 months or more; or

(B) has been lawfully in Australia for 12 months or more; or

(b) who satisfies, or has satisfied, the primary criteria in Subdivisions 575.21 and 575.22 and who meets one of the following:

(i) the primary person is subject to assessment level 1 or 2;

(ii) the primary person is undertaking a course of study paid for, wholly or in part, by:

(A) the Commonwealth or the government of a State or Territory; or

(B) the government of a foreign country; or

(C) a multilateral agency;

(iii) the primary person:

(A) will be, or has been, granted a visa in relation to a course of study that is, or to courses of

study that are together, of a duration of 12 months or more; or

(B) has been lawfully in Australia for 12 months or more.

- 575.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 575.324 If the applicant seeks to stay in Australia for 12 months or more, the applicant satisfies public interest criterion 4010.
- 575.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 575.326 The Minister is satisfied that:
- (a) the applicant is a genuine applicant for entry and stay as a member of the family unit of the primary person mentioned in clause 575.322; and
  - (b) that primary person has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
  - (c) on the basis of the applicant's stated intention, the applicant intends to comply with any conditions subject to which the visa is granted.
- 575.327 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 575.328 If:
- (a) the applicant is a school-age dependant of the primary person mentioned in clause 575.322; and
  - (b) the period of stay proposed in the application is more than 3 months;
- the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.
- 575.329 If the application was made outside Australia and made separately from that of the primary person mentioned in clause 575.322:

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- (a) the primary person is, or is expected soon to be, in Australia; and
- (b) a nomination of the applicant by the primary person, on approved form 919, has been lodged and has been approved by the Minister.
- 575.330 The applicant gives evidence that there are sufficient funds to meet the travel costs for the applicant:
- (a) if the applicant is not in Australia — to Australia, and from Australia; or
- (b) if the applicant is in Australia — from Australia.
- 575.331 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 575.332 (1) If the applicant:
- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (2) applies; and
- (b) was not included in the application for a student visa made by the primary person;
- the applicant must give evidence, in accordance with Schedule 5B, for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person.
- (2) This subclause applies to a primary person who:
- (a) is the holder of a Subclass 575 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 575.2; and
- (b) was subject to assessment level 2, 3 or 4 at the time of the decision to grant the visa; and
- (c) was, at the time of the decision to grant the visa:
- (i) fully funded; or
- (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
- (A) a provincial or state government in a foreign country, with the written support of the government of that country; or

(B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

- (3) If the applicant:
- (a) is a member of the family unit of a person (the *primary person*) to whom subclause (4) applies; and
  - (b) was not included in the application for a student visa made by the primary person;

the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

- (4) This subclause applies to a primary person who:
- (a) is the holder of a Subclass 575 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Division 575.2; and
  - (b) was subject to assessment level 2 at the time of the decision to grant the visa; and
  - (c) was, at the time of the decision to grant the visa:
    - (i) fully funded; or
    - (ii) the subject of an arrangement by which the course fees, living costs and travel costs for the primary person's full period, assessed for the primary person alone, were to be met by:
      - (A) a provincial or state government in a foreign country, with the written support of the government of that country; or
      - (B) an organisation specified by the Minister in a Gazette Notice for this paragraph.

575.333 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

575.334 The Minister is satisfied that:

- (a) the applicant is the holder of a valid passport that:
  - (i) was issued to the applicant by an official source; and

- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **575.4 Circumstances applicable to grant**

- 575.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.
- 575.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **575.5 When visa is in effect**

- 575.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:
- (a) if the application is made on form 157P or 157P (Internet) — until the date on which the visa held by the applicant at the time of application would have ceased to be in effect; and
  - (b) otherwise — until a date specified by the Minister.

#### **575.6 Conditions**

- 575.611 (1) If the applicant satisfies the primary criteria:
- (a) in all cases, conditions 8202, 8501, 8516, 8517, 8532 and 8533; and
  - (b) subject to subclause (2), condition 8101; and
  - (c) subject to subclause (3), condition 8206; and
  - (d) if the applicant is a citizen of Iran, condition 8204; and
  - (e) subject to clause 575.612, any 1 or more of conditions 8303, 8523 and 8535 may be imposed.
- (2) If the application was made in Australia and, at the time of application, the applicant:
- (a) met the requirements of subclause 575.211 (4); or

- (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8105;

condition 8105.

(3) Condition 8206 does not apply to a visa granted to an applicant if the application was made in Australia and, at the time of application, the applicant:

- (a) met the requirements of subclause 575.211 (5) or (6); or
- (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was not subject to condition 8206.

575.612 If, at the time of application, the applicant was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8523 and the applicant satisfies the primary criteria, condition 8523.

575.613 (1) If the applicant:

- (a) satisfies the primary criteria; and
  - (b) is subject to assessment level 3, 4 or 5; and
  - (c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and
  - (d) is not an applicant to whom subclause (2) applies;
- condition 8534.

(2) If the applicant:

- (a) satisfies the primary criteria; and
- (b) is subject to assessment level 3; and
- (c) gives to the Minister the evidence mentioned in subclause (3);

condition 8534 may be imposed.

(3) For subclause (2), the evidence is:

- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
  - (i) living costs, within the meaning of subclause 5A104 (1);

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- (ii) school costs, within the meaning of subclause 5A104 (2); and
- (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and
- (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- (4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A708 (1).
- (5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 575 visa that is subject to condition 8534, condition 8534.
- (6) In this clause:  
*funds from an acceptable source* has the meaning given by subclause 5A708 (2).
- 575.614 (1) If the applicant (the *primary applicant*) is subject to assessment level 1 or 2 and is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less, condition 8534 may be imposed.
- (2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.
- 575.615 (1) If the applicant (the *primary applicant*) is seeking to undertake a course of study that is, or courses of study that are together, of more than 10 months duration, condition 8534 may be imposed.
- (2) If the applicant satisfies the secondary criteria as a member of the family unit of the primary applicant, condition 8534 may be imposed.
- 575.616 (1) If the applicant satisfies the secondary criteria:
- (a) in all cases:
- (i) conditions 8501 and 8516; and

- (ii) condition 8518 (except if the visa is granted to an applicant who has turned 18); and
  - (b) if the applicant is a citizen of Iran, condition 8204; and
  - (c) subject to subclause (2), condition 8201 must be imposed if the applicant has turned 18; and
  - (d) any 1 or more of conditions 8303, 8522 and 8535 may be imposed.
- (2) Condition 8201 is not imposed on a student visa granted to an applicant who has turned 18 if, at the time of the application:
- (a) the applicant was the holder of a Subclass 560 visa as a person who satisfied the secondary criteria in Subdivisions 560.31 and 560.32; or
  - (b) the applicant was the holder of a Subclass 563 visa; or
  - (c) the applicant was:
    - (i) the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa as a person who satisfied the secondary criteria for the subclass; and
    - (ii) immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a Subclass 560 or 563 visa that was subject to condition 8101.

- 575.617 (1) If the applicant satisfies the secondary criteria and any of the following paragraphs apply, condition 8104:
- (a) the application was made in Australia and, at the time of application, the applicant was the holder of a student visa that was subject to condition 8104;
  - (b) the application was made in Australia and:
    - (i) the applicant was, at the time of application, a member of the family unit of a person who:
      - (A) was the holder of a Subclass 560 visa and was a citizen of a gazetted country within the meaning of Part 560 as it read immediately before 1 July 2001; or

*Note* Under former clause 560.111, *gazetted country* meant a country specified by Gazette Notice for the purpose of Part 560.



- (B) was the holder of a Subclass 575 visa and was subject to assessment level 1 or 2; and
  - (ii) the applicant met the requirement of paragraph 575.312 (4) (d);
  - (c) the application was made in Australia and:
    - (i) the applicant was, at the time of application, a member of the family unit of a person who:
      - (A) was the holder of a Subclass 560 visa and was not included in the class of persons specified by Gazette Notice for the purposes of sub-subparagraph (b) (i) (A); or
      - (B) was the holder of a Subclass 562 visa; or
      - (C) was the holder of a Subclass 575 visa and was subject to assessment level 3, 4 or 5; and
    - (ii) the applicant met the requirement of paragraph 575.312 (4) (d) in relation to a full-time non-award course that is paid for, wholly or in part, by:
      - (A) the Commonwealth; or
      - (B) the government of a State or Territory; or
      - (C) the government of a foreign country; or
      - (D) a multilateral agency.
- (2) If the applicant satisfies the secondary criteria and none of paragraphs (1) (a), (b) and (c) applies, condition 8101.

## **575.7 Way of giving evidence**

575.711 No evidence need be given.

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

## Subclass 576 AusAID or Defence Sector

### 576.1 Interpretation

576.111 In this Part:

*course of study* means a full-time course of study or training under a scholarship scheme or training program approved by the AusAID Minister or the Defence Minister.

*travel costs* has the same meaning as in Schedule 5A.

*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.

### 576.2 Primary criteria

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

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

576.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).

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

- (a) the holder of a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);
  - (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);

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- (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) the holder, as the spouse or a dependent relative of a diplomatic or consular representative of a foreign country, of a Diplomatic (Temporary) (Class TF) visa; or
  - (c) the holder of a special purpose visa; or
  - (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).
  - (3) An applicant meets the requirements of this subclause if:
    - (a) the applicant is not the holder of a substantive visa; and
    - (b) the last substantive visa held by the applicant was:
      - (i) a student visa; or
      - (ii) a special purpose visa; or
      - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
      - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; and
    - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
      - (i) the day when that last substantive visa ceased to be in effect; or
      - (ii) if that last substantive visa was cancelled, and the 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 — the later of:

- (A) the day when that last substantive visa ceased to be in effect; and
  - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
- (d) the applicant satisfies Schedule 3 criterion 3005.
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 560, 562 or 576 visa that is subject to condition 8101; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant gives to the Minister evidence that the applicant has commenced a course of study or training for which the visa held was granted; and
  - (d) the applicant has the support of the AusAID Minister or the Defence Minister for the grant of the visa.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 560 or 562 visa that is subject to condition 8206; and
  - (b) the application was made on form 157C; and
  - (c) the applicant has the support of the AusAID Minister or the Defence Minister for the change in enrolment; and
  - (d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

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

- 576.221 (1) Unless, at the time of application, the applicant met the requirements of subclause 576.211 (4) or (5), the applicant satisfies the criteria in clauses 576.222 to 576.232.
- (2) If, at the time of application, the applicant met the requirements of subclause 576.211 (4):
- (a) the applicant continues to meet the requirements of paragraph 576.211 (4) (a); and

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- (b) either:
- (i) the Minister has no reason to believe that the applicant is not a genuine student; or
  - (ii) the applicant satisfies the criteria in clauses 576.222 to 576.232.
- (3) If, at the time of application, the applicant met the requirements of subclause 576.211 (5):
- (a) the applicant continues to meet the requirements of paragraphs 576.211 (5) (a) and (c); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine student; or
    - (ii) the applicant satisfies the criteria in clauses 576.222 to 576.232.
- 576.222 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause (2).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 576 and the assessment level to which the applicant is subject, in relation to:
    - (i) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and
    - (ii) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
    - (iii) other requirements under Schedule 5A; and
  - (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - (ii) any other relevant matter.

- 576.223 The applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
  - (b) if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010; and
  - (c) if the applicant is applying outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 576.224 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 576.226 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:
- (a) that representative has completed, or is about to complete, an official posting in Australia; and
  - (b) the Foreign Minister recommends the grant of the visa.
- 576.227 If:
- (a) the application was made in Australia; and
  - (b) either:
    - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
    - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and
  - (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;
- the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant undertaking a course of study.
- 576.228 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40.

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- 576.229 The applicant has the support of the AusAID Minister or the Defence Minister for the grant of the visa.
- 576.230 If the applicant is subject to assessment level 2, the Minister is satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- 576.231 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 576.232 If the applicant is subject to assessment level 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed 40 weeks.
- 576.233 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

### **576.3 Secondary criteria**

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

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

- 576.311 If the application is made outside Australia, the applicant is a member of the family unit of:
- (a) a person who is the holder of a Subclass 560 or 562 visa; or
  - (b) a person who satisfies, or has satisfied, the primary criteria in Subdivision 576.21.
- 576.312 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (5).
- (2) An applicant meets the requirements of this subclause if the applicant is the holder of:
- (a) a visa of one of the following classes:

- (i) Border (Temporary) (Class TA);
- (ii) Business (Temporary) (Class TB);
- (iii) Cultural/Social (Temporary) (Class TE);
- (iv) Educational (Temporary) (Class TH);
- (v) Electronic Travel Authority (Class UD);
- (vi) Expatriate (Temporary) (Class TJ);
- (vii) Family Relationship (Temporary) (Class TL);
- (viii) Interdependency (Temporary) (Class TM);
- (ix) Long Stay (Visitor) (Class TN);
- (x) Medical Practitioner (Temporary) (Class UE);
- (xi) Retirement (Temporary) (Class TQ);
- (xii) Short Stay (Visitor) (Class TR);
- (xiii) Student (Temporary) (Class TU);
- (xiv) Supported Dependant (Temporary) (Class TW);
- (xv) Temporary Business Entry (Class UC);
- (xva) Tourist (Class TR);
- (xvi) Working Holiday (Temporary) (Class TZ); or
- (b) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
- (c) a special purpose visa; or
- (d) a visa of one of the following subclasses:
  - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).
- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 576.211 (3); and
  - (c) the applicant was a member of the family unit of the person at the time that person's visa ceased to be in effect.



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- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 560, 563 or 576 visa that is subject to condition 8101 or 8104; and
  - (b) the application was made on form 157P or 157P (Internet); and
  - (c) the applicant is a member of the family unit of a person who is the holder of a Subclass 560, 562 or 576 visa; and
  - (d) the applicant gives to the Minister evidence that the holder of the Subclass 560, 562 or 576 visa mentioned in paragraph (c) has commenced a course of study.
- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 576 student visa, having satisfied the primary criteria for that visa.

576.314 If the applicant is not included in the application under subregulation 2.07AF (3), or the information under subregulation 2.07AF (4), as a member of the family unit of the primary applicant mentioned in those subregulations, the applicant gives to the Minister evidence that the applicant became such a member of the family unit after the decision to grant the Subclass 576 visa to the primary applicant was made.

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

- 576.321 (1) Unless, at the time of application, the applicant met the requirements of subclause 576.312 (4), the applicant satisfies the criteria in clauses 576.322 to 576.333.
- (2) If, at the time of application, the applicant met the requirements of subclause 576.312 (4):
- (a) the applicant continues to meet the requirements of paragraphs 576.312 (4) (a) and (c); and
  - (b) either:
    - (i) the Minister has no reason to believe that the applicant is not a genuine applicant for entry and

stay as a member of the family unit of the primary person mentioned in clause 576.322; or

(ii) the applicant satisfies the criteria in clauses 576.322 to 576.333.

576.322 The applicant is a member of the family unit of a person (the **primary person**) who:

- (a) is the holder of a Subclass 560, 562 or 576 visa; and
- (b) had the support of the AusAID Minister or the Defence Minister for the grant of that visa.

576.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.

576.324 If the applicant seeks to stay in Australia for 12 months or more, the applicant satisfies public interest criterion 4010.

576.325 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

576.327 The applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

576.328 If:

- (a) the applicant is a school-age dependant of the primary person mentioned in clause 576.322; and
- (b) the period of stay proposed in the application is more than 3 months;

the applicant gives to the Minister evidence that adequate arrangements have been made for the education of the applicant in Australia.

576.329 If the application was made outside Australia and made separately from that of the primary person mentioned in clause 576.322, the primary person is, or is expected soon to be, in Australia.

576.330 The Minister is satisfied that there are sufficient funds to meet the travel costs for the applicant:

- (a) if the applicant is not in Australia — to Australia, and from Australia; or
- (b) if the applicant is in Australia — from Australia.

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- 576.331 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 576.332 The applicant has the support of the AusAID Minister or the Defence Minister for the grant of the visa.
- 576.333 (1) If:44
- (a) the applicant is a member of the family unit of a person (the *primary person*) who is the holder of a Subclass 576 visa, granted on or after 1 December 2003 on the basis of satisfying the primary criteria in Subdivision 576.21; and
  - (b) the primary person was subject to assessment level 2 at the time of the decision to grant the visa; and
  - (c) the applicant was not included in the application for a student visa made by the primary person;
- the applicant must give evidence in accordance with Schedule 5B for assessment level 2.
- (2) If the applicant meets subclause (1), the Minister must also be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- 576.334 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 576.335 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **576.4 Circumstances applicable to grant**

- 576.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

576.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

### **576.5 When visa is in effect**

576.511 Temporary visa permitting the holder to travel to, enter and remain in Australia:

- (a) if the application is made on form 157P or 157P (Internet) — until the date on which the visa held by the applicant at the time of application would have ceased to be in effect; and
- (b) otherwise — until a date specified by the Minister.

### **576.6 Conditions**

576.611 (1) If the applicant satisfies the primary criteria:

- (a) in all cases, conditions 8202, 8501, 8516, 8517, 8533 and 8535; and
- (b) subject to subclause (2), condition 8101; and
- (c) if the applicant is a citizen of Iran, condition 8203; and
- (d) subject to clause 576.612, one or both of conditions 8303 and 8523 may be imposed.

(2) If the application was made in Australia and, at the time of application, the applicant:

- (a) met the requirements of subclause 576.211 (4); or
  - (b) was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8105;
- condition 8105.

576.612 If, at the time of application, the applicant was the holder of a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that was subject to condition 8523 and the applicant satisfies the primary criteria, condition 8523.

576.613 (1) If the applicant satisfies the secondary criteria:

- (a) in all cases:
  - (i) conditions 8501 and 8516; and

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- (ii) condition 8518 (except if the visa is granted to an applicant who has turned 18); and
    - (b) if the applicant is a citizen of Iran, condition 8204; and
    - (c) subject to subclause (2), condition 8201 must be imposed if the applicant has turned 18; and
    - (d) any 1 or more of conditions 8303, 8522, 8534 and 8535 may be imposed.
  - (2) Condition 8201 is not imposed on a student visa granted to an applicant who has turned 18 if, at the time of the application:
    - (a) the applicant was the holder of a Subclass 560 visa as a person who satisfied the secondary criteria in Subdivisions 560.31 and 560.32; or
    - (b) the applicant was the holder of a Subclass 563 visa; or
    - (c) the applicant was:
      - (i) the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa as a person who satisfied the secondary criteria for the subclass; and
      - (ii) immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a Subclass 560 (as a person who satisfied the secondary criteria for the subclass) or 563 visa that was subject to condition 8101.
- 576.614 (1) Subject to subclause (3), if the applicant satisfies the secondary criteria and any of the following paragraphs apply, condition 8104:
- (a) the application was made in Australia and, at the time of application, the applicant was the holder of a student visa that was subject to condition 8104;
  - (b) the application was made in Australia and:
    - (i) the applicant was, at the time of application, a member of the family unit of a person who was the holder of a Subclass 560, 562 or 576 visa; and
    - (ii) the applicant met the requirement of paragraph 576.312 (4) (d).

(2) Subject to subclause (3), if the applicant satisfies the secondary criteria and none of paragraphs (1) (a) and (b) applies, condition 8101.

(3) Conditions 8101 and 8104 are not imposed on a visa granted to an applicant (the *secondary applicant*) who satisfies the secondary criteria as a member of the family unit of another person (the *primary person*) who satisfies the primary criteria for a Subclass 576 visa:

- (a) if:
  - (i) the application is made in Australia; and
  - (ii) at the time of application, the secondary applicant was the holder of a Subclass 560, 563 or 576 visa that was not subject to condition 8101, 8104 or 8105; and
  - (iii) the primary person has commenced a course of study for the award of a masters or doctorate degree; and
  - (iv) the primary person is continuing that course of study; or
- (b) if:
  - (i) the application is made in Australia; and
  - (ii) the secondary applicant meets the requirements of subclause 576.312 (4); and
  - (iii) the primary person has commenced a course of study for the award of a masters or doctorate degree; and
  - (iv) the primary person is continuing that course of study.

## **576.7 Way of giving evidence**

576.711 No evidence need be given.

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

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## Subclass 580                      Student Guardian

### 580.1      Interpretation

580.111      In this Part:

*acceptable individual* means one or more of the following:

- (a) the applicant;
- (b) the applicant's spouse;
- (c) the nominating student;
- (d) the nominating student's spouse;
- (e) a parent of the nominating student;
- (f) a grandparent of the nominating student;
- (g) a brother or sister of the nominating student;
- (h) an aunt or uncle of the nominating student, if the aunt or uncle is usually resident in Australia and is:
  - (i) an Australian citizen; or
  - (ii) an Australian permanent resident; or
  - (iii) an eligible New Zealand citizen.

*acceptable non-profit organisation* means an organisation that:

- (a) operates on a non-profit basis; and
- (b) is actively and lawfully operating in Australia or overseas; and
- (c) has funds that are, or an income that is, sufficient to provide the financial support that it proposes to provide.

*family applicant*, for an applicant, means a member of the applicant's family unit who is a visa applicant seeking to satisfy secondary criteria in relation to the applicant.

*financial institution* means a body corporate that, as part of its normal activities:

- (a) takes money on deposit and makes advances of money; and
- (b) does so under a regulatory regime, governed by the central bank (or its equivalent) of the country in which it operates, that the Minister is satisfied provides effective prudential assurance.

***first 12 months***, for an applicant, means the period that:

- (a) begins:
  - (i) if the application is made outside Australia — on the day of the applicant's expected arrival in Australia; or
  - (ii) if the application is made in Australia — on the day that the visa is expected to be granted to the applicant; and
- (b) ends on the earlier of the following:
  - (i) the day 12 months after the beginning of the period;
  - (ii) the last day of the applicant's proposed stay in Australia.

***first 24 months***, for an applicant, means the period that:

- (a) begins:
  - (i) if the application is made outside Australia — on the day of the applicant's expected arrival in Australia; or
  - (ii) if the application is made in Australia — on the day that the visa is expected to be granted to the applicant; and
- (b) ends on the earlier of the following:
  - (i) the day 24 months after the beginning of the period;
  - (ii) the last day of the applicant's proposed stay in Australia.

***first 36 months***, for an applicant, means the period that:

- (a) begins:
  - (i) if the application is made outside Australia — on the day of the applicant's expected arrival in Australia; or
  - (ii) if the application is made in Australia — on the day that the visa is expected to be granted to the applicant; and
- (b) ends on the earlier of the following:
  - (i) the day 36 months after the beginning of the period;



- (ii) the last day of the applicant's proposed stay in Australia.

**full period**, for an applicant, means the period that:

- (a) begins:
- (i) if the application is made outside Australia — on the day of the applicant's expected arrival in Australia; or
  - (ii) if the application is made in Australia — on the day that the visa is expected to be granted to the applicant; and
- (b) ends on the last day of the applicant's proposed stay in Australia.

**living costs**, for an applicant for a visa, means an amount worked out as follows:

- (a) for the applicant — \$12 000 per year (the **basic rate**); and
- (b) if the applicant has a dependent child who is a family applicant — 20% of the basic rate; and
- (c) if the applicant has any further dependent children who are family applicants — 15% of the basic rate for each such child.

**money deposit** means a money deposit with a financial institution.

**nominating student**, for an applicant, means a person who:

- (a) nominates the applicant on form 157N; and
- (b) at the time of decision for the applicant, holds a student visa that was granted on the basis that the person met the primary criteria for the grant of the student visa; and
- (c) if, at the time of decision for an applicant, there is more than 1 person who meets the requirements of paragraphs (a) and (b) — is the person mentioned in a written communication given to the Minister by the applicant in accordance with Division 2.3.

**scholarship** means a scholarship that:

- (a) is awarded to a student by his or her education provider or proposed education provider; and

- (b) is awarded on the basis of merit and an open selection process; and
- (c) is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification; and
- (d) is awarded to the greater of:
  - (i) not more than 10% of overseas students in a course intake; and
  - (ii) not more than 3 overseas students in a course intake.

**travel costs**, for an applicant, means the sum of costs for each of the applicant and any family applicant:

- (a) if the applicant or family applicant is not in Australia when the application is made — of travelling to Australia; and
- (b) of returning to the applicant's home country at the end of his or her stay.

580.112 In subclause 580.226 (3):

**funds from an acceptable source** means one or more of the following:

- (a) a money deposit that an acceptable individual has held for at least the 6 months immediately before the date of the application;
- (b) a loan from a financial institution made to, and held in the name of, an acceptable individual;
- (c) a loan from the government of the home country of the applicant or of the nominating student;
- (d) a scholarship awarded to the nominating student by his or her education provider or proposed education provider;
- (e) financial support from:
  - (i) the Commonwealth Government, or the government of a State or Territory; or
  - (ii) the government of a foreign country; or

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- (iii) unless the nominating student holds a Subclass 570 (Independent ELICOS Sector) visa — a corporation that:
    - (A) conducts commercial activities outside the country in which it is based; and
    - (B) employs the nominating student in a role in relation to which the nominating student's principal course is directly relevant; or
  - (iv) a multilateral agency; or
  - (v) a provincial or state government in a foreign country, provided with the written support of the government of that country; or
  - (vi) an organisation specified by the Minister in a Gazette Notice for this subparagraph; or
  - (vii) an acceptable non-profit organisation.

580.113 In subclause 580.226 (4):

***funds from an acceptable source*** means one or more of the following:

- (a) a money deposit that the applicant or an individual who is providing support to the applicant has held for at least the 3 months immediately before the date of the application;
- (b) a loan from a financial institution made to, and held in the name of, the applicant or of an individual who is providing support to the applicant;
- (c) a loan from the government of the home country of the applicant or of the nominating student;
- (d) a scholarship awarded to the nominating student by his or her education provider or proposed education provider;
- (e) financial support from:
  - (i) the Commonwealth Government, or the government of a State or Territory; or
  - (ii) the government of a foreign country; or
  - (iii) a corporation that:
    - (A) conducts commercial activities outside the country in which it is based; and

(B) employs the nominating student in a role in relation to which the nominating student's principal course is directly relevant; or

- (iv) a multilateral agency; or
- (v) a provincial or state government in a foreign country, provided with the written support of the government of that country; or
- (vi) an organisation specified by the Minister in a Gazette Notice for this subparagraph; or
- (vii) an acceptable non-profit organisation.

580.114 In subclause 580.226 (5):

*funds from an acceptable source* does not include the value of an item of property.

*Note* *Assessment level, AusAID Minister, AusAID recipient, AusAID student, Australian permanent resident, custody, Defence Minister, education provider, eligible New Zealand citizen, home country and relative* are defined in regulation 1.03. *Member of the family unit* is defined in regulation 1.12.

## 580.2 Primary criteria

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

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

580.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2) or (3).

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

- (a) the holder of a visa of one of the following classes:
  - (i) Border (Temporary) (Class TA);
  - (ii) Business (Temporary) (Class TB);
  - (iii) Cultural/Social (Temporary) (Class TE);
  - (iv) Educational (Temporary) (Class TH);
  - (v) Electronic Travel Authority (Class UD);
  - (vi) Expatriate (Temporary) (Class TJ);

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- (vii) Family Relationship (Temporary) (Class TL);
  - (viii) Interdependency (Temporary) (Class TM);
  - (ix) Long Stay (Visitor) (Class TN);
  - (x) Medical Practitioner (Temporary) (Class UE);
  - (xi) Retirement (Temporary) (Class TQ);
  - (xii) Short Stay (Visitor) (Class TR);
  - (xiii) Student (Temporary) (Class TU);
  - (xiv) Supported Dependant (Temporary) (Class TW);
  - (xv) Temporary Business Entry (Class UC);
  - (xva) Tourist (Class TR);
  - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
  - (c) the holder of a special purpose visa; or
  - (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (iii) Subclass 497 (Graduate Skilled); or
  - (e) a person designated under regulation 2.07AO.
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is not the holder of a substantive visa; and
  - (b) the last substantive visa held by the applicant was:
    - (i) a Subclass 580 (Student Guardian) visa; or
    - (ii) a special purpose visa; or
    - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
    - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; and

- (c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
  - (i) the day when that last substantive visa ceased to be in effect; or
  - (ii) if that last substantive visa was cancelled, and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision — the later of:
    - (A) the day when that last substantive visa ceased to be in effect; and
    - (B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
- (d) the applicant satisfies Schedule 3 criterion 3005.

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

- 580.222
- (1) The applicant meets the requirements of subclause (2), (3) or (4).
  - (2) The applicant meets the requirements of this subclause if:
    - (a) the nominating student has not turned 18; and
    - (b) the applicant is able to:
      - (i) provide appropriate accommodation and support for the nominating student; and
      - (ii) provide for the general welfare of the nominating student; and
  - (c) the applicant is either:
    - (i) a parent of the nominating student or a person who has custody of the nominating student; or
    - (ii) a person who:
      - (A) is a relative of the nominating student; and
      - (B) has turned 21; and
  - (d) if subparagraph (c) (ii) applies — the nomination of the applicant is supported in writing by:
    - (i) a parent of the nominating student; or

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- (ii) a person who has custody of the nominating student.
- (3) The applicant meets the requirements of this subclause if:
- (a) the nominating student has turned 18; and
  - (b) the Minister is satisfied that there are exceptional reasons why the nominating student needs the applicant to reside with the nominating student in Australia; and
  - (c) the applicant is able to:
    - (i) provide appropriate accommodation and support for the nominating student; and
    - (ii) provide for the general welfare of the nominating student; and
  - (d) the applicant is a person who:
    - (i) is a relative of the nominating student; and
    - (ii) has turned 21.
- (4) An applicant meets the requirements of this subclause if:
- (a) the Minister is satisfied that the grant of the visa to the applicant will significantly benefit the relationship between the government of Australia and the government of a foreign country; and
  - (b) the applicant has turned 21; and
  - (c) if the nominating student has not turned 18 — the nomination of the applicant is supported in writing by:
    - (i) a parent of the nominating student; or
    - (ii) a person who has custody of the nominating student.
- 580.223 (1) The applicant meets the requirements of subclauses (2), (3) and (4).
- (2) The applicant meets the requirements of this subclause if:
- (a) the Minister is satisfied that the applicant has a genuine intention to reside in Australia with the nominating student; and

- (b) the Minister is satisfied that the nominating student has a genuine intention to reside in Australia with the applicant; and
- (c) the Minister is satisfied that, unless the applicant meets the requirements of subclause 580.222 (4), the nominating student does not intend to reside in Australia with:
  - (i) a holder of a Subclass 580 visa other than the applicant; or
  - (ii) a parent of the nominating student, or a person who has custody of the nominating student, other than the applicant; and

*Note* If the applicant meets the requirements of subclause 580.222 (4), the nominating student may intend to reside with 1 or more holders of a Subclass 580 visa in addition to the applicant.

- (d) unless:
  - (i) the applicant satisfies subclause 580.222 (4); or
  - (ii) the Minister has, under subclause (2A), waived the requirement in this paragraph;each member of the family unit of the applicant has turned 6; and
- (e) the Minister is satisfied that the applicant has made appropriate arrangements, for the period of the applicant's proposed stay in Australia, for the accommodation, support and general welfare of each member of the applicant's family unit:
  - (i) who has not turned 18; and
  - (ii) who does not hold a student visa.

(2A) The Minister may waive the requirement under paragraph (2) (d) if:

- (a) either:
  - (i) the applicant is a person designated under regulation 2.07AO; or
  - (ii) each child under 6 would be subject to assessment level 1 or 2 if the child were an applicant for a Subclass 571 (Schools Sector) visa; and



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- (b) the Minister is satisfied that there are compelling and compassionate reasons to do so.
- (3) The applicant meets the requirements of this subclause if the applicant:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014; and
- (b) if the applicant seeks to reside in Australia for 12 months or more, satisfies public interest criterion 4010; and
- (c) if the application was made outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (4) The applicant meets the requirements of this subclause if the applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 580.224 If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- 580.225 If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister or the Defence Minister for the grant of the visa.
- 580.226 (1) The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student guardian:
- (a) because:
- (i) for an applicant who is not a person designated under regulation 2.07AO — the applicant gives to the Minister evidence relating to the applicant's financial capacity in accordance with subclause (2), (3), (4) or (5); or
- (ii) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that the applicant has access to sufficient funds to meet:
- (A) the costs and expenses required to support the applicant during the proposed stay in Australia; and

- (B) the costs and expenses required to support each family applicant; and
- (b) having regard to:
- (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
  - (ii) any other relevant matter.
- (2) If the nominating student was, at the time his or her visa was granted, subject to assessment level 5, the evidence for paragraph (1) (a) is evidence that:
- (a) the applicant has funds that are sufficient to meet living costs for the full period; and
  - (b) the applicant has funds that are sufficient to meet travel costs; and
  - (c) the funds have been held by the applicant in money deposits for at least the 5 years immediately before the date of the application; and
  - (d) the applicant's regular income before the date of the application was sufficient to accumulate the funds.
- (3) If the nominating student was, at the time his or her visa was granted, subject to assessment level 4, the evidence for paragraph (1) (a) is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs for the first 36 months; and
  - (b) evidence that the applicant has funds from an acceptable source that are sufficient to meet travel costs; and
  - (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual; and
  - (d) a declaration by the applicant stating that he or she has access to funds from an acceptable source that are sufficient to meet living costs for the remainder of the full period.

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(4) If the nominating student was, at the time his or her visa was granted, subject to assessment level 3, the evidence for paragraph (1) (a) is:

- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs for the first 24 months; and
- (b) evidence that the applicant has funds from an acceptable source that are sufficient to meet travel costs; and
- (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual; and
- (d) a declaration by the applicant stating that he or she has access to funds from an acceptable source that are sufficient to meet living costs for the remainder of the full period.

(5) If the nominating student was, at the time his or her visa was granted, subject to assessment level 1 or 2:

- (a) the evidence for paragraph (1) (a) is:
  - (i) evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs for the first 12 months; and
  - (ii) evidence that the applicant has funds from an acceptable source that are sufficient to meet travel costs; and
  - (iii) a declaration by the applicant stating that he or she has access to funds from an acceptable source that are sufficient to meet living costs for the remainder of the full period; and
- (b) the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

580.227 If:

- (a) the application was made in Australia; and
- (b) the student who nominated the applicant is subject to assessment level 2, 3, 4 or 5 in respect of the student visa held by that student; and

- (c) at the time of application, the applicant met the requirements of clause 580.211:
- (i) as the holder of a visa of one of the following classes:
    - (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) Interdependency (Temporary) (Class TM);
    - (I) Long Stay (Visitor) (Class TN);
    - (J) Medical Practitioner (Temporary) (Class UE);
    - (K) Retirement (Temporary) (Class TQ);
    - (L) Short Stay (Visitor) (Class TR);
    - (M) Supported Dependant (Temporary) (Class TW);
    - (N) Temporary Business Entry (Class UC);
    - (NA) Tourist (Class TR);
    - (O) Working Holiday (Temporary) (Class TZ); or
  - (ii) as the holder of a special purpose visa; or
  - (iii) as the holder of a visa of one of the following subclasses:
    - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (B) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (C) Subclass 497 (Graduate Skilled); or
  - (iv) as a person:
    - (A) who was not the holder of a substantive visa; and
    - (B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

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the applicant establishes exceptional reasons for the grant of a Subclass 580 visa.

580.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:

- (a) that representative has completed, or is about to complete, an official posting in Australia; and
- (b) the Foreign Minister recommends the grant of the visa.

580.229 If:

- (a) the application was made in Australia; and
- (b) either:
  - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
  - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and
- (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;

the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant remaining in Australia as a student guardian.

580.230 The Minister is satisfied that:

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

### **580.3 Secondary criteria**

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

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

- 580.310 If the application is made outside Australia, the applicant is a member of the family unit of:
- (a) a person who is the holder of a Subclass 580 visa; or
  - (b) a person who satisfies the primary criteria in Subdivision 580.21.
- 580.311 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3) or (4).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
    - (i) Border (Temporary) (Class TA);
    - (ii) Business (Temporary) (Class TB);
    - (iii) Cultural/Social (Temporary) (Class TE);
    - (iv) Educational (Temporary) (Class TH);
    - (v) Electronic Travel Authority (Class UD);
    - (vi) Expatriate (Temporary) (Class TJ);
    - (vii) Family Relationship (Temporary) (Class TL);
    - (viii) Interdependency (Temporary) (Class TM);
    - (ix) Long Stay (Visitor) (Class TN);
    - (x) Medical Practitioner (Temporary) (Class UE);
    - (xi) Retirement (Temporary) (Class TQ);
    - (xii) Short Stay (Visitor) (Class TR);
    - (xiii) Student (Temporary) (Class TU);
    - (xiv) Supported Dependant (Temporary) (Class TW);
    - (xv) Temporary Business Entry (Class UC);
    - (xva) Tourist (Class TR);
    - (xvi) Working Holiday (Temporary) (Class TZ); or
  - (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
  - (c) the holder of a special purpose visa; or

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- (d) the holder of a visa of one of the following subclasses:
    - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
    - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive);
    - (iii) Subclass 497 (Graduate Skilled); or
  - (e) a person designated under regulation 2.07AO.
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is not the holder of a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 580.211 (2).
- (4) An applicant meets the requirements of this subclause if:
- (a) the applicant is not the holder of a substantive visa; and
  - (b) the applicant is a member of the family unit of a person who meets the requirements of subclause 580.211 (3); and
  - (c) the applicant was a member of the family unit of the person at the time that person's last substantive visa ceased to be in effect.

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

- 580.321 The applicant meets the requirements of clauses 580.322, 580.323, 580.324, 580.325, 580.326 and 580.327.
- 580.322 The applicant has not turned 6.
- 580.323 The applicant is a member of the family unit of a person:
- (a) in relation to whom the Minister has, under subclause 580.223 (2A), waived the requirement in paragraph 580.223 (2) (d); and
  - (b) who has otherwise satisfied the primary criteria in Subdivision 580.22.
- 580.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013, 4014, 4017 and 4018.
- 580.325 If the application is in respect of a proposed stay in Australia of more than 12 months, the applicant also satisfies public interest criterion 4010.

- 580.326 If:
- (a) the application is made outside Australia; and
  - (b) the applicant has previously been in Australia;
- the applicant satisfies special return criteria 5001 and 5002.
- 580.327 The applicant produces to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.
- 580.328 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

#### **580.4 Circumstances applicable to grant**

- 580.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.
- 580.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

#### **580.5 When visa is in effect**

- 580.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **580.6 Conditions**

- 580.611 (1) In the case of a visa granted to an applicant who meets the requirements of subclause 580.222 (2) or (3) — conditions 8101, 8201, 8501, 8516, 8534, 8537 and 8538.
- (2) In the case of a visa granted to an applicant who meets the requirements of subclause 580.222 (4) — conditions 8106, 8201, 8501, 8516, 8534, 8537 and 8538.



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580.612 In the case of a visa granted to an applicant who meets the requirements of clause 580.321 — conditions 8101, 8501, 8502 and 8516.

### **580.7 Way of giving evidence**

580.711 No evidence need be given.

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

## **Subclass 675 Medical Treatment (Short Stay)**

### **675.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

### **675.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

675.211 The applicant seeks to visit Australia, or remain in Australia as a visitor, for the purposes of medical treatment or for related purposes.

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

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

- (a) seeks to obtain medical treatment (including consultation), other than treatment for the purposes of surrogate motherhood, in Australia; and
- (b) satisfies the Minister that arrangements have been concluded to carry out the treatment; and
- (e) satisfies the Minister that, if the treatment is an organ transplant, the donor of the relevant organ is accompanying the applicant to Australia or that all requisite arrangements to effect the donation of the organ have been concluded in Australia.

- (3) An applicant meets the requirements of this subclause if the applicant:
  - (a) seeks to donate an organ for transplant in Australia; and
  - (b) satisfies the Minister that, if the donee is an applicant referred to in subclause (2), the donee meets the requirements of that subclause.
- (4) The applicant meets the requirements of this subclause if the applicant:
  - (a) seeks to give emotional and other support to an applicant described in subclause (2) or (3); and
  - (b) satisfies the Minister that the person to whom the applicant is to provide support meets the requirements of subclause (2) or (3), as the case requires.
- (5) The applicant meets the requirements of this subclause if the applicant is a citizen of Papua New Guinea who:
  - (a) resides in the Western Province of Papua New Guinea; and
  - (b) is approved by the Queensland Department of Health for medical evacuation to a hospital in Queensland.
- 675.213 The Minister is satisfied that no Australian citizen or Australian permanent resident would be disadvantaged in obtaining medical treatment or consultation if the visa was granted.
- 675.214 The applicant has adequate funds for personal support during the period of the visit.
- 675.215 If the application is made outside Australia, the period of stay in Australia proposed in the application does not exceed 3 months.
- 675.216 If the application is made in Australia:
  - (a) the applicant:
    - (i) is the holder of a substantive temporary visa other than a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa; or
    - (ii) does not hold a substantive visa and:
      - (A) immediately before ceasing to hold a substantive visa, was the holder of a

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substantive temporary visa other than a Subclass 426 visa; and

- (B) satisfies Schedule 3 criteria 3001, 3003, 3004 and 3005; and
- (c) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa; and
- (d) the grant of the visa would not result in the applicant being authorised to remain in Australia for more than 3 consecutive months as the holder of 1 or more visitor visas.

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

- 675.221 (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant continues to satisfy the criteria in clauses 675.211 to 675.214; and
  - (b) if the application is made outside Australia, the applicant continues to satisfy the criterion in clause 675.215; and
  - (c) the applicant satisfies the Minister that the expressed intention of the applicant only to visit Australia is genuine; and
  - (d) the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4012, 4013 and 4014; and
  - (e) if the applicant is applying outside Australia and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002; and
  - (f) if the applicant is a person described in subclause 675.212 (2):
    - (i) the applicant satisfies the Minister that the applicant is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community;

- (ii) the applicant satisfies the Minister that arrangements have been concluded for the payment of all costs related to the treatment referred to in paragraph 675.212 (2) (a) and all other expenses of the applicant's stay in Australia, including the expenses of any person accompanying the applicant; and
  - (iii) the applicant satisfies the Minister that, except where evidence is produced that the relevant government authority has otherwise approved, the payment of those costs will not be a charge on the Commonwealth, a State, a Territory or any public authority in Australia; and
- (g) if the applicant is a person described in subclause 675.212 (3), the applicant satisfies the Minister that:
  - (i) the applicant is free from tuberculosis; and
  - (ii) the applicant is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; and
  - (iii) the applicant is not a person who has a disease or condition (other than a disease or condition normally related to the organ transplant for which the applicant proposes coming to Australia) that, during the applicant's proposed period of stay in Australia, would be likely to:
    - (A) result in a significant cost to the Australian community in the areas of health care or community services; or
    - (B) prejudice the access of an Australian citizen or permanent resident to health care or community services; and
  - (iv) arrangements have been concluded for the payment of all costs related to the organ transplant referred to in paragraph 675.212 (3) (a) and all other expenses of the applicant's stay in Australia, including the expenses of any person accompanying the applicant; and

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- (v) except where evidence is produced that the relevant government authority has otherwise approved, the payment of those costs will not be a charge on the Commonwealth, a State, a Territory or any public authority in Australia; and
  - (h) if the applicant is a person described in subclause 675.212 (4), the applicant:
    - (i) satisfies public interest criterion 4005; and
    - (ii) satisfies the Minister that arrangements have been concluded for the payment of all costs related to procedures to be undergone by the person to whom the applicant seeks to provide support, including the expenses of the applicant's stay in Australia; and
    - (iii) satisfies the Minister that, except where evidence is produced that the relevant government authority has otherwise approved, the payment of those costs will not be a charge on the Commonwealth, a State, a Territory or any public authority in Australia; and
  - (j) if the application is made in Australia:
    - (i) the Minister is satisfied that the further period of stay in Australia is not sought for the purpose of commencing, continuing or completing any studies or training; and
    - (ii) the Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- (3) An applicant meets the requirements of this subclause if the applicant is in Australia and:
- (a) satisfies the criteria in paragraph (2) (c) and subparagraph (2) (j) (ii); and
  - (b) has compelling personal reasons for the grant of the visa; and
  - (c) satisfies public interest criteria 4005 (except paragraph (c) of that criterion) and 4012.
- (4) An applicant meets the requirements of this subclause if:

- (a) he or she is in Australia; and
  - (b) he or she is suffering financial hardship as a result of changes in his or her circumstances after entering Australia; and
  - (c) he or she, or a member of his or her immediate family, is likely to become a charge on public funds in Australia; and
  - (d) for reasons beyond his or her control, he or she, or a member of his or her immediate family, cannot leave Australia; and
  - (e) the Minister is satisfied that the applicant has compelling personal reasons to work in Australia; and
  - (f) he or she satisfies public interest criteria 4005 and 4012; and
  - (g) the applicant satisfies the Minister that the applicant's expressed intention only to visit Australia is genuine; and
  - (h) the Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 675.222 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 675.223 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 675.224 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and

- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **675.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

### **675.4 Circumstances applicable to grant**

- 675.411 If the applicant is outside Australia at the time of application, the applicant must be outside Australia at the time of grant.
- 675.412 If the applicant is in Australia at the time of application, the applicant must be in Australia at the time of grant.

### **675.5 When visa is in effect**

- 675.511 If the visa is granted outside Australia — temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
  - (b) to remain in Australia:
    - (i) for a period (not longer than 3 months after the date of each entry) specified by the Minister for the purpose; or
    - (ii) until a date (not later than 3 months after the date of each entry) specified by the Minister for the purpose.
- 675.512 (1) In this clause:  
*date of latest entry*, in relation to the holder of a visa, is the date on which he or she last entered Australia before the grant of the visa.
- (2) If the visa is granted in Australia — temporary visa permitting the holder:

- (a) to remain in Australia:
  - (i) for a period (not longer than 3 months after the date of latest entry) specified by the Minister for the purpose; or
  - (ii) until a date (not longer than 3 months after the date of latest entry) specified by the Minister for the purpose; and
- (b) if the holder leaves Australia:
  - (i) to travel to and enter Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
  - (ii) to remain in Australia:
    - (A) for a period (not longer than 3 months after the date of each entry) specified by the Minister for the purpose; or
    - (B) until a date (not later than 3 months after the date of each entry) specified by the Minister for the purpose.

## **675.6 Conditions**

- 675.611 In the case of a visa granted to an applicant who meets the requirements of subclause 675.221 (4), conditions 8201 and 8205.
- 675.611A In any other case, conditions 8101, 8201 and 8205.
- 675.612 Condition 8503 may be imposed.

## **675.7 Way of giving evidence**

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



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## Subclass 676                      Tourist

### 676.1      Interpretation

*Note* **oral application** is defined in regulation 1.03. There are no interpretation provisions specific to this Part.

### 676.2      Primary criteria

*Note* All applicants must satisfy the primary criteria.

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

676.211      The applicant satisfies the Minister that the applicant's expressed intention to only visit Australia is genuine.

676.212      The applicant seeks to visit Australia, or remain in Australia as a visitor:

- (a) for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, child, brother or sister of the applicant; or
- (b) for a purpose other than a purpose related to business or medical treatment.

676.213      The applicant:

- (a) has adequate funds, or access to adequate funds, for personal support during the period of the visit; or
- (b) meets the requirements of paragraph 676.221 (3) (f).

676.214      If the applicant is a citizen of PRC mentioned in paragraph 1218 (1) (b) of Schedule 1:

- (a) the applicant is a resident of an area in PRC specified in a Gazette Notice for this paragraph; and
- (b) the travel agent organising the applicant's tour to Australia is specified in a Gazette Notice for subparagraph 1218 (1) (b) (iii); and
- (c) the applicant provides a written statement of the details of the tour arrangements with his or her application.

676.215      If the applicant is in Australia:

- (a) the applicant:

- (i) is the holder of a substantive temporary visa other than a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa; or
- (ii) does not hold a substantive visa, and:
  - (A) immediately before ceasing to hold a substantive visa, was the holder of a substantive temporary visa other than a Subclass 426 visa; and
  - (B) satisfies Schedule 3 criteria 3001, 3003, 3004 and 3005; and
- (b) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

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

- 676.221
- (1) The applicant meets the requirements of subclause (2) or (3).
  - (2) An applicant meets the requirements of this subclause if:
    - (a) the applicant satisfies the Minister that the applicant's expressed intention to only visit Australia is genuine; and
    - (b) the applicant continues to satisfy the criteria in clauses 676.212 and 676.213; and
    - (c) either:
      - (i) if the applicant has not turned 18, public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4012, 4013, 4014, 4017 and 4018 are satisfied in relation to the applicant; or
      - (ii) if the applicant has turned 18, public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4012, 4013 and 4014 are satisfied in relation to the applicant; and
    - (d) if the applicant is a citizen of PRC mentioned in paragraph 1218 (1) (b) of Schedule 1:
      - (i) the criteria in clause 676.214 continue to be satisfied; and

- (ii) the Minister has approved the details of the tour arrangements that were provided with the application; and
- (e) if the applicant is in Australia:
  - (i) the applicant continues to satisfy the criteria in paragraph 676.215 (b); and
  - (ii) the Minister is satisfied that the further period of stay in Australia is not sought for the purpose of commencing, continuing or completing any studies or training; and
  - (iii) the Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- (3) An applicant meets the requirements of this subclause if:
  - (a) the applicant is in Australia; and
  - (b) the application was not an oral application; and
  - (c) the application was not made on form 601E; and
  - (d) the applicant satisfies the Minister that the applicant's expressed intention to only visit Australia is genuine; and
  - (e) the applicant continues to satisfy the criteria in clause 676.212; and
  - (f) either:
    - (i) the applicant has compelling personal reasons for the grant of the visa; or
    - (ii) each of the following applies:
      - (A) the applicant is suffering financial hardship as a result of changes in the applicant's circumstances after entering Australia;
      - (B) the applicant, or a member of the applicant's immediate family, is likely to become a charge on public funds in Australia;
      - (C) for reasons beyond the applicant's control, the applicant, or a member of the applicant's immediate family, cannot leave Australia;

- (D) the Minister is satisfied that the applicant has compelling personal reasons to work in Australia; and
- (g) the applicant satisfies public interest criterion 4005; and
- (h) the Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 676.222 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 676.223 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 676.224 If the grant of the visa would result in the applicant being authorised to stay in Australia for more than 12 consecutive months as the holder of 1 or more visitor visas or a Subclass 417 (Working Holiday) visa, the Minister is satisfied that exceptional circumstances exist for the grant of the visa.
- 676.225 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **676.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

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#### **676.4 Circumstances applicable to grant**

- 676.411 If the applicant is outside Australia at the time of application, the applicant must be outside Australia at the time of grant.
- 676.412 If the applicant is a citizen of PRC mentioned in paragraph 1218 (1) (b) of Schedule 1, the applicant must be in PRC at the time of grant.
- 676.413 If the applicant is in Australia at the time of application, the applicant must be in Australia at the time of grant.

#### **676.5 When visa is in effect**

- 676.511 If the visa was granted to an applicant outside Australia — temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
  - (b) to remain in Australia for a period, or until a date, specified by the Minister for the purpose.
- 676.512 If the visa was granted to an applicant in Australia (not being on the basis of an oral application) — temporary visa permitting the holder:
- (a) to remain in Australia for a period, or until a date, specified by the Minister for the purpose; and
  - (b) if the holder leaves Australia during the visa period:
    - (i) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
    - (ii) to remain in Australia, after each entry, for a period, or until a date, specified by the Minister for the purpose.
- 676.513 If the visa was granted to an applicant in Australia on the basis of an oral application — temporary visa permitting the holder:
- (a) to remain in Australia until the date (the *last stay date*) that is the earlier of:
    - (i) the date 6 months after the latest date on which the substantive visa held by the applicant at the time of

- making the oral application would have permitted the holder to remain in Australia; and
- (ii) the date 12 months from the date on which the holder last entered Australia; and
- (b) if the holder leaves Australia during the visa period:
- (i) to travel to, and enter, Australia on 1 or more occasions until the later of:
    - (A) the last stay date; and
    - (B) the latest date on which the substantive visa held by the applicant at the time of making the oral application would have permitted the holder to enter Australia; and
  - (ii) to remain in Australia, after each entry, for a period, or until a date, specified by the Minister for the purpose.

## **676.6 Conditions**

- 676.611 In the case of a visa granted to an applicant who meets the requirements of sub-subparagraph 676.221 (3) (f) (ii) (D), that the applicant has compelling personal reasons to work in Australia:
- (a) conditions 8201 and 8205 must be imposed; and
  - (b) condition 8503 may be imposed.
- 676.212 In the case of a visa granted to an applicant who is a citizen of PRC mentioned in paragraph 1218 (1) (b) of Schedule 1, conditions 8101, 8207, 8503 and 8530 must be imposed.
- 676.613 In any other case:
- (a) conditions 8101, 8201 and 8205 must be imposed; and
  - (b) condition 8503 may be imposed.

## **676.7 Way of giving evidence**

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

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## Subclass 679                      Sponsored Family Visitor

### 679.1      Interpretation

*Note* *AusAID Minister, AusAID recipient, AusAID student, Australian permanent resident, relative* and *settled* are defined in regulation 1.03, *member of the family unit* is defined in regulation 1.12, and *sponsor* is defined in regulation 1.20. There are no interpretation provisions specific to this Part.

### 679.2      Primary criteria

*Note* All applicants must satisfy the primary criteria.

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

679.211      The applicant seeks to visit Australia:

- (a) for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, child, brother or sister of the applicant; or
- (b) for a purpose other than a purpose related to business or medical treatment.

679.212      The applicant has adequate funds, or access to adequate funds, for personal support during the period of the proposed visit to Australia.

679.213      The period of stay in Australia proposed in the application does not exceed 12 months.

679.214      The applicant is sponsored by:

- (a) a settled Australian citizen, or a settled Australian permanent resident, who:
  - (i) is:
    - (A) a relative of the applicant; or
    - (B) a relative of a person who:
      - (I) is a member of the family unit of the applicant; and
      - (II) is also an applicant for a Subclass 679 visa; and
  - (ii) has turned 18; or

- (b) a settled Australian citizen, or a settled Australian permanent resident, who:
  - (i) is a member of the Commonwealth Parliament or a State Parliament; or
  - (ii) is a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory; or
  - (iii) holds the office of mayor; or
- (c) a Commonwealth government agency or instrumentality or a State or Territory government agency or instrumentality.

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

- 679.221 The applicant continues to satisfy the criteria in clauses 679.211 to 679.214.
- 679.222 The sponsorship referred to in clause 679.214 has been approved by the Minister and is still in force.
- 679.223 If:
- (a) the applicant's sponsor is a settled Australian citizen or a settled Australian permanent resident; and
  - (b) the applicant is not a relative of the sponsor, but is included in the sponsorship on the basis that the applicant is a member of the family unit of a person who:
    - (i) is an applicant for a Subclass 679 visa; and
    - (ii) is sponsored by the sponsor; and
    - (iii) is a relative of the sponsor —
- the person has been granted a Subclass 679 visa.
- 679.224 The applicant satisfies the Minister that the expressed intention of the applicant only to visit Australia is genuine.
- 679.225 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 679.226 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.



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- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 679.227 A security has been lodged, if asked for by an officer authorised under section 269 of the Act (which deals with security for compliance with the Act).
- 679.228 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4012, 4013 and 4014.
- 679.229 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 679.230 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 679.231 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **679.3 Secondary criteria: Nil**

*Note* All applicants must satisfy the primary criteria.

### **679.4 Circumstances applicable to grant**

- 679.411 The applicant must be outside Australia at the time of grant.

### **679.5 When visa is in effect**

- 679.511 Temporary visa permitting the holder:

- (a) to travel to and enter Australia on 1 occasion until a date specified by the Minister for the purpose; and
- (b) to remain in Australia for a period (not longer than 12 months after the date of entry) specified by the Minister for the purpose.

## **679.6 Conditions**

679.611 Conditions 8101, 8201, 8205, 8503 and 8531.

## **679.7 Way of giving evidence**

679.711 No evidence need be given.

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

## **Subclass 685 Medical Treatment (Long Stay)**

### **685.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

### **685.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

685.211 The applicant seeks to visit Australia, or remain in Australia as a visitor, for the purposes of medical treatment or for related purposes.

685.212 (1) The applicant meets the requirements of subclause (2), (3), (4), (5), (6) or (7).

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

- (a) seeks to obtain medical treatment (including consultation), other than treatment for the purposes of surrogate motherhood, in Australia; and

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- (b) satisfies the Minister that arrangements have been concluded to carry out the treatment; and
  - (e) satisfies the Minister that, if the treatment is an organ transplant, the donor of the relevant organ is accompanying the applicant to Australia or that all requisite arrangements to effect the donation of the organ have been concluded in Australia.
- (3) An applicant meets the requirements of this subclause if the applicant:
- (a) seeks to donate an organ for transplant in Australia; and
  - (b) satisfies the Minister that, if the donee is an applicant referred to in subclause (2), the donee meets the requirements of that subclause.
- (4) An applicant meets the requirements of this subclause if the applicant:
- (a) seeks to give emotional and other support to an applicant described in subclause (2) or (3); and
  - (b) satisfies the Minister that the person to whom the applicant is to provide support meets the requirements of subclause (2) or (3), as the case requires.
- (5) An applicant meets the requirements of this subclause if the applicant is a citizen of Papua New Guinea who:
- (a) resides in the Western Province of Papua New Guinea; and
  - (b) is approved by the Queensland Department of Health for medical evacuation to a hospital in Queensland.
- (6) An applicant meets the requirements of this subclause if he or she:
- (a) is in Australia; and
  - (b) has turned 50; and
  - (c) while in Australia, applied:
    - (i) for a permanent entry permit before 1 September 1994; or
    - (ia) for a section 47 temporary entry permit (within the meaning of the Migration (1993) Regulations); or

- (ib) for an extended eligibility entry permit (within the meaning of the Migration (1989) Regulations); or
    - (ii) for a permanent visa on or after 1 September 1994; and
  - (d) has met all the criteria for the grant of that visa or entry permit other than public interest criteria related to health; and
  - (e) has been refused the visa or entry permit.
- (7) An applicant meets the requirements of this subclause if he or she is a member of the family unit of a person who meets the requirements of subclause (6).
- 685.213 Except in the case of an applicant referred to in subclause 685.212 (6) or (7), the Minister is satisfied that no Australian citizen or Australian permanent resident would be disadvantaged in obtaining medical treatment or consultation if the visa was granted.
- 685.214 Except in the case of an applicant referred to in subclause 685.212 (6) or (7), the applicant has adequate funds for personal support during the period of the visit.
- 685.215 If the application is made outside Australia, the period of stay in Australia proposed in the application exceeds 3 months.
- 685.216 (1) Subject to subclause (2), if the application is made in Australia:
- (a) the applicant is the holder of a substantive temporary visa other than a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa; or
  - (b) the applicant does not hold a substantive visa and:
    - (i) immediately before ceasing to hold a substantive visa was the holder of a temporary visa other than a visa of Subclass 426; and
    - (ii) satisfies Schedule 3 criteria 3001, 3003, 3004 and 3005; and
  - (c) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

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(2) Subclause (1) does not apply to an applicant referred to in subclause 685.212 (6) or (7).

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

- 685.221 (1) The applicant meets the requirements of subclause (2), (3), (4), (5) or (6).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant continues to satisfy the criteria in clauses 685.211 to 685.214; and
  - (b) if the application is made outside Australia, the applicant continues to satisfy the criterion in clause 685.215; and
  - (c) the applicant satisfies the Minister that the expressed intention of the applicant only to visit Australia is genuine; and
  - (d) the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4012, 4013 and 4014; and
  - (e) if the applicant is applying outside Australia and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002; and
  - (f) if the applicant is a person described in subclause 685.212 (2):
    - (i) the applicant satisfies the Minister that the applicant is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community;
    - (ii) the applicant satisfies the Minister that arrangements have been concluded for the payment of all costs related to the treatment referred to in paragraph 685.212 (2) (a) and all other expenses of the applicant's stay in Australia, including the expenses of any person accompanying the applicant; and
    - (iii) the applicant satisfies the Minister that, except where evidence is produced that the relevant government authority has otherwise approved, the payment of those costs will not be a charge on the

- Commonwealth, a State, a Territory or any public authority in Australia; and
- (g) if the applicant is a person described in subclause 685.212 (3) the applicant satisfies the Minister that:
    - (i) the applicant is free from tuberculosis; and
    - (ii) the applicant is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; and
    - (iii) the applicant is not a person who has a disease or condition (other than a disease or condition normally related to the organ transplant for which the applicant proposes coming to Australia) that, during the applicant's proposed period of stay in Australia, would be likely to:
      - (A) result in a significant cost to the Australian community in the areas of health care or community services; or
      - (B) prejudice the access of an Australian citizen or permanent resident to health care or community services; and
    - (iv) arrangements have been concluded for the payment of all costs related to the organ transplant referred to in paragraph 685.212 (3) (a) and all other expenses of the applicant's stay in Australia, including the expenses of any person accompanying the applicant; and
    - (v) except where evidence is produced that the relevant government authority has otherwise approved, the payment of those costs will not be a charge on the Commonwealth, a State, a Territory or any public authority in Australia; and
  - (h) if the applicant is a person described in subclause 685.212 (4), the applicant:
    - (i) satisfies public interest criterion 4005; and
    - (ii) satisfies the Minister that arrangements have been concluded for the payment of all costs related to procedures to be undergone by the person to whom the applicant seeks to provide support, including

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- the expenses of the applicant's stay in Australia;  
and
- (iii) satisfies the Minister that, except where evidence is produced that the relevant government authority has otherwise approved, the payment of those costs will not be a charge on the Commonwealth, a State, a Territory or any public authority in Australia; and
- (j) if the application is made in Australia:
- (i) the Minister is satisfied that the further period of stay in Australia is not sought for the purpose of commencing, continuing or completing any studies or training; and
  - (ii) the Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted; and
  - (iii) if the grant of the visa would result in the applicant being authorised to stay in Australia for more than 12 consecutive months as the holder of 1 or more visitor visas, the applicant must satisfy the Minister that compelling personal reasons or exceptional circumstances exist for the grant of the visa.
- (3) An applicant meets the requirements of this subclause if the applicant:
- (a) is in Australia and:
  - (b) satisfies the criteria in paragraph (2) (c) and subparagraph (2) (j) (ii); and
  - (c) has compelling personal reasons for the grant of the visa; and
  - (d) satisfies public interest criteria 4005 (except paragraph (c) of that criterion) and 4012.
- (4) An applicant meets the requirements of this subclause if he or she:
- (a) satisfies the criterion in subclause 685.212 (6); and

- (b) is medically unfit to depart Australia, as evidenced by a written statement to that effect from the Commonwealth Medical Officer.
- (5) An applicant meets the requirements of this subclause if he or she:
  - (a) is a member of the family unit of a person who satisfies the criterion in subclause 685.212 (6); and
  - (b) that person is unfit to depart Australia, as evidenced by a statement from the Commonwealth Medical Officer.
- (6) An applicant meets the requirements of this subclause if:
  - (a) he or she is in Australia; and
  - (b) he or she is suffering financial hardship as a result of changes in his or her circumstances after entering Australia; and
  - (c) he or she, or a member of his or her immediate family, is likely to become a charge on public funds in Australia; and
  - (d) for reasons beyond his or her control, he or she, or a member of his or her immediate family, cannot leave Australia; and
  - (e) the Minister is satisfied that the applicant has compelling personal reasons to work in Australia; and
  - (f) he or she satisfies public interest criteria 4005 and 4012; and
  - (g) the applicant satisfies the Minister that the applicant's expressed intention only to visit Australia is genuine; and
  - (h) the Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 685.222 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:



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- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 685.223 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 685.224 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
    - (i) was issued to the applicant by an official source; and
    - (ii) is in the form issued by the official source; or
  - (b) it would be unreasonable to require the applicant to be the holder of a passport.

### **685.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

### **685.4 Circumstances applicable to grant**

- 685.411 If the applicant is outside Australia at the time of application, the applicant must be outside Australia at the time of grant.
- 685.412 If the applicant is in Australia at the time of application, the applicant must be in Australia at the time of grant.

### **685.5 When visa is in effect**

- 685.511 (1) If the visa is granted outside Australia — temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
  - (b) to remain in Australia:
    - (i) for a period specified by the Minister for the purpose; or
    - (ii) until a date specified by the Minister for the purpose.

- (2) If the visa is granted in Australia — temporary visa permitting the holder:
- (a) to remain in Australia:
    - (i) for a period specified by the Minister for the purpose; or
    - (ii) until a date specified by the Minister for the purpose; and
  - (b) if the holder leaves Australia during the visa period:
    - (i) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
    - (ii) to remain in Australia:
      - (A) for a period specified by the Minister for the purpose; or
      - (B) until a date specified by the Minister for the purpose.

## **685.6 Conditions**

- 685.611 In the case of a visa granted to an applicant who meets the requirements of subclause 685.221 (6), conditions 8201 and 8205.
- 685.611A In any other case, conditions 8101, 8201 and 8205.
- 685.612 Condition 8503 may be imposed.

## **685.7 Way of giving evidence**

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

## **Subclass 695 Return Pending**

### **695.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

## **695.2 Primary Criteria**

*Note* All applicants must satisfy the primary criteria.

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

695.211 [No criteria to be satisfied at time of application]

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

695.221 The applicant does not hold a substantive visa other than:

- (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.

695.222 The applicant satisfies public interest criteria 4001, 4002 and 4003.

695.223 If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.

695.224 The Minister is satisfied that the applicant has not, at any time, obtained

- (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 Return Pending (Temporary) (Class VA) visa;

through the concealment or misrepresentation of facts material to the decision to grant the visa.

## **695.3 Secondary Criteria: Nil**

*Note* All applicants must satisfy the primary criteria.

### **695.4 Circumstances applicable to grant**

695.411 The applicant must be in Australia when the visa is granted.

## **695.5 When visa is in effect**

695.511 Temporary visa permitting the holder to remain in, but not re-enter, Australia for 18 months from:

- (a) if:
- (i) the holder's application for a Protection (Class XA) visa has been finally determined within the meaning of subsection 5 (9) of the Act) before the commencement of this paragraph; and
  - (ii) the Minister has refused to grant the Protection (Class XA) visa;

the date of grant of the Return Pending (Class VA) visa; and

- (b) if:
- (i) the holder's application for a Protection (Class XA) visa has been finally determined within the meaning of subsection 5 (9) of the Act) on or after the commencement of this paragraph; and
  - (ii) the Minister has refused to grant the Protection (Class XA) visa;

the later of the date on which the holder's application for a Protection (Class XA) visa is finally determined and the date of grant of the Return Pending (Class VA) visa.

*Note* If the Minister refuses to grant a Protection (Class XA) visa to an applicant who holds, or held, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa or a Subclass 785 (Temporary Protection) visa after the commencement of Part 695, the applicant for that visa will be taken to have applied for a Return Pending (Class VA) visa: see regulation 2.07AN.

## **695.6 Conditions**

695.611 The holder cannot be granted a substantive visa other than a protection visa.

695.612 The holder must notify Immigration of any change in the holder's residential address within 14 days after the change.

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## **695.7 Way of giving evidence**

695.711 No evidence need be given.

695.712 If evidence is given, to be given by a label affixed to a valid passport, valid Convention travel document or an approved form.

## **Subclass 771 Transit**

### **771.1 Interpretation**

*Note non-military ship and member of the crew* are defined in regulation 1.03. No interpretation provisions specific to this Part.

### **771.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

771.211 The applicant intends to remain in Australia no longer than 72 hours.

771.212 The applicant establishes that the applicant's principal purpose in entering Australia is:

- (a) to pass through Australia in transit to another country;  
or
- (b) to pass through Australia for the purpose of signing on to a non-military ship (other than a ship that is being imported into Australia) as a member of the crew.

771.213 The applicant produces tickets or documentation, or both, establishing that the applicant has concluded arrangements for travel to a destination outside Australia.

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

771.221 The applicant continues to satisfy the criteria in clauses 771.211 to 771.213.

771.222 The applicant satisfies public interest criteria 4001, 4002, 4004, 4005, 4013 and 4014.

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

771.224 The Minister is satisfied that:

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

### **771.3 Secondary criteria: Nil.**

*Note* All applicants must meet the primary criteria.

### **771.4 Circumstances applicable to grant**

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

### **771.5 When visa is in effect**

771.511 Temporary visa permitting the holder to travel to and enter Australia on 1 or more occasions and to remain in Australia no longer than 72 hours on each occasion.

### **771.6 Conditions**

771.611 The holder must enter on or before the date specified by the Minister for the purpose.

771.612 Conditions 8101 and 8201.

771.613 Any 1 or more of conditions 8501, 8514 and 8516 may be imposed.

### **771.7 Way of giving evidence**

771.711 No evidence need be given.

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

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## Subclass 773                      Border

### 773.1      Interpretation

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

### 773.2      Primary criteria

*Note* All applicants must meet the primary criteria.

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

773.211      If the applicant has entered Australia and seeks immigration clearance, the applicant satisfies the criteria in clauses 773.212 to 773.216.

773.212      The applicant does not seek to remain in Australia as a refugee or on humanitarian grounds.

- 773.213      (1) The applicant is:
- (a) the spouse of an Australian citizen, Australian permanent resident or an eligible New Zealand citizen; or
  - (b) a person who is apparently eligible for a Return (Residence) visa or Resident Return (Temporary) visa; or
  - (c) a person who has entered Australia with a visa that has been cancelled on presentation in immigration clearance because the person has breached a condition that the person is not to arrive in Australia before the arrival of another person specified in the visa; or
  - (d) a person who:
    - (i) is a dependent child of:
      - (A) an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or
      - (B) the holder of a visa of a class set out in subclause (2); or
      - (C) the holder of a visa of a class specified in subclause (3); or

- (D) the holder of a visa of a subclass specified in subclause (4); and
- (ii) arrives in Australia in the care of a person who is an Australian citizen or the holder of a visa; or
- (e) a person who:
  - (i) immediately before last departing Australia, held a visa of:
    - (A) a class specified in subclause (3); or
    - (B) a subclass specified in subclause (4); and
  - (ii) departed in circumstances in which it was not reasonably practicable to obtain a visa before departing; and
  - (iii) would, if refused immigration clearance, be prevented from reunion with a close relative of the person in Australia; or
- (f) a person who:
  - (i) immediately before last departing Australia, held a Student (Temporary) visa; and
  - (ii) departed in circumstances in which it was not reasonably practicable for the person to obtain a visa before departing; or
- (g) a person who:
  - (i) has entered Australia without a visa that is in effect; and
  - (ii) seeks to remain in Australia on a temporary basis; and
  - (iii) appears to the Minister, from information in the application, to be a person:
    - (A) who is eligible for the grant of a Tourist (Class TR) visa; or
    - (C) who is, apart from the requirements of paragraph 1223A (3) (a) of Schedule 1 and clause 456.411 of this Schedule, eligible for the grant of a Subclass 456 (Business (Short Stay)) visa; or
    - (D) who is, apart from the requirements of subitem 1224 (3) of Schedule 1 and



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clause 771.411 of this Schedule, eligible for the grant of a Transit (Temporary) (Class TX) visa.

- (2) The classes of visa referred to in sub-subparagraph (1) (d) (i) (B) are the following:
- (a) Spouse (Migrant) (Class BC);
  - (ab) Partner (Migrant) (Class BC);
  - (b) Child (Migrant) (Class AH);
  - (c) Adoption (Migrant) (Class AA);
  - (d) Parent (Migrant) (Class AX);
  - (e) Preferential Relative (Migrant) (Class AY);
  - (f) Skilled — Australian Linked (Migrant) (Class AJ);
  - (g) Labour Agreement (Migrant) (Class AU);
  - (h) Employer Nomination (Migrant) (Class AN);
  - (j) Distinguished Talent (Migrant) (Class AL);
  - (k) Independent (Migrant) (Class AT);
  - (l) Business Skills (Migrant) (Class AD);
  - (la) Business Skills — Business Talent (Migrant) (Class EA);
  - (lb) Business Skills — Established Business (Residence) (Class BH);
  - (lc) Business Skills (Residence) (Class DF);
  - (n) Special Eligibility (Migrant) (Class AR);
  - (q) General (Residence) (Class AS);
  - (s) Confirmatory (Residence) (Class AK);
  - (t) Special Eligibility (Residence) (Class AO);
  - (u) Refugee and Humanitarian (Migrant) (Class BA);
  - (v) Camp Clearance (Migrant) (Class AF);
  - (w) East Timorese in Portugal (Special Assistance) (Class AM);
  - (x) Citizens of the Former Yugoslavia (Special Assistance) (Class AI);
  - (y) Minorities of Former USSR (Special Assistance) (Class AV);
  - (z) Burmese in Burma (Special Assistance) (Class AB);

- (za) Sudanese (Special Assistance) (Class BD);
  - (zb) Burmese in Thailand (Special Assistance) (Class AC);
  - (zc) Cambodian (Special Assistance) (Class AE);
  - (zd) Return (Residence) (Class BB);
  - (ze) Norfolk Island Permanent Resident (Residence) (Class AW);
  - (zf) Protection (Class AZ);
  - (zfa) Protection (Class XA);
  - (zg) Territorial Asylum (Residence) (Class BE);
  - (zga) Designated Parent (Migrant) (Class BY);
  - (zgb) Designated Parent (Residence) (Class BZ);
  - (zh) Skilled – Independent (Migrant) (Class BN);
  - (zi) Skilled – Australian-sponsored (Migrant) (Class BQ);
  - (zj) Other Family (Migrant) (Class BO);
  - (zk) Aged Parent (Residence) (Class BP);
  - (zl) Partner (Residence) (Class BS);
  - (zm) Child (Residence) (Class BT);
  - (zn) Other Family (Residence) (Class BU);
  - (zo) Skilled — New Zealand Citizen (Residence) (Class DB);
  - (zp) Skilled — Independent Overseas Student (Residence) (Class DD);
  - (zq) Skilled — Australian-sponsored Overseas Student (Residence) (Class DE);
  - (zr) Contributory Parent (Migrant) (Class CA);
  - (zs) Contributory Aged Parent (Residence) (Class DG).
- (3) The classes of visa referred to in sub-subparagraphs (1) (d) (i) (C) and (1) (e) (i) (A) are the following:
- (a) Business (Temporary) (Class TB);
  - (aa) Business Skills (Provisional) (Class UR);
  - (b) Cultural/Social (Temporary) (Class TE);
  - (c) Diplomatic (Temporary) (Class TF);
  - (d) Domestic Worker (Temporary) (Class TG);
  - (e) Educational (Temporary) (Class TH);

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- (f) Expatriate (Temporary) (Class TJ);
  - (g) Family Relationship (Temporary) (Class TL);
  - (ga) Graduate — Skilled (Temporary) (Class UQ);
  - (gb) Interdependency (Provisional) (Class UG);
  - (h) Interdependency (Temporary) (Class TM);
  - (i) Medical Practitioner (Temporary) (Class UE);
  - (ia) New Zealand Citizen Family Relationship (Temporary) (Class UP);
  - (j) Retirement (Temporary) (Class TQ);
  - (ja) Spouse (Provisional) (Class UF);
  - (jb) Partner (Provisional) (Class UF);
  - (k) Supported Dependant (Temporary) (Class TW);
  - (l) Working Holiday (Temporary) (Class TZ);
  - (m) Contributory Parent (Temporary) (Class UT);
  - (n) Contributory Aged Parent (Temporary) (Class UU).
- (4) The subclasses of visa referred to in sub-subparagraphs (1) (d) (i) (D) and (1) (e) (i) (B) are the following:
- (a) Subclass 303 (Emergency (Temporary Visa Applicant));
  - (b) Subclass 457 (Business (Long Stay)).

773.214 In the case of an application by an applicant other than a person referred to in paragraph 773.213 (1) (c), the Minister is satisfied that:

- (a) there are compelling reasons for granting a Subclass 773 visa to the applicant; and
- (b) the presence of the applicant in Australia would not be contrary to Australia's interests; and
- (c) the applicant has a good reason for not being the holder of a visa.

773.215 In the case of an application by an applicant referred to in paragraph 773.213 (1) (c), the Minister is satisfied, on the basis of a written statement by the applicant, that:

- (a) the applicant has reasonable grounds for having failed to comply with the condition; and

- (b) there are compelling reasons for allowing the applicant to leave the place of immigration clearance with the permission of the clearance officer; and
  - (c) the specified person referred to in that paragraph will arrive in Australia within 30 days of the applicant being allowed to leave the place of immigration clearance with the permission of the clearance officer.
- 773.216 (1) Subject to subclause (2), if the applicant is an applicant referred to in paragraph 773.213 (1) (e), (f) or (g), the application is not made within 5 years of the grant of a previous Subclass 773 visa that was granted to the applicant on the basis of the applicant being a person of that kind.
- (2) Subclause (1) does not apply to an applicant:
  - (a) if the applicant is a passenger on a vessel that has entered Australia because of matters beyond the control of the person in charge of the vessel; or
  - (b) if:
    - (i) there are compelling reasons for the grant of the visa to the applicant; and
    - (ii) the presence of the applicant in Australia would not be contrary to the interests of Australia; and
    - (iii) the applicant has a good reason for not being the holder of a visa.
- 773.217 If the application is made in Australia after immigration clearance, the applicant is the holder of a Subclass 773 visa that was granted to the holder as a person referred to in paragraph 773.213 (1) (d).
- 773.22 Criteria to be satisfied at time of decision**
- 773.221 If the application is made in Australia and the applicant seeks immigration clearance, the applicant continues to satisfy the criteria in clauses 773.212 to 773.216.
- 773.222 The applicant satisfies:
  - (a) public interest criteria 4001, 4002, 4003, 4004, 4005 and 4012; and

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- (b) if the applicant is not a person described in subparagraph 773.213 (1) (d) (i) (A) or (B) — public interest criteria 4013 and 4014.
- 773.223 If the application is made in Australia and the applicant seeks immigration clearance, and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 773.224 If the application is made in Australia after immigration clearance:
- (a) the Subclass 773 visa held by the applicant was granted subject to the satisfaction of a requirement or condition before the expiry of a period specified in the visa and that requirement has not been satisfied; and
  - (b) the applicant establishes that it was not possible to satisfy the requirement or condition before expiry of the period; and
  - (c) the Minister is satisfied that it would be unreasonable to require the person to leave Australia.
- 773.225 (1) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (2) The Minister may waive the requirements of subclause (1) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- 773.226 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

### **773.3 Secondary criteria: Nil.**

*Note* All applicants must satisfy the primary criteria.

### **773.4 Circumstances applicable to grant**

- 773.411 When visa is granted, the applicant must be:

- (a) in Australia and in immigration clearance; or
- (b) in Australia after immigration clearance.

## **773.5 When visa is in effect**

773.511 Temporary visa:

- (a) either:
  - (i) coming into effect on grant; or
  - (ii) providing that if:
    - (A) the applicant holds another substantive visa (other than a Special Purpose visa) that is in effect at the date of grant; and
    - (B) the other substantive visa ceases during the period beginning at the grant of this visa and ending at the end of the period specified in this visa;  
this visa comes into effect when the other substantive visa ceases; and
- (b) permitting the holder to remain in Australia for a period specified by the Minister, not exceeding 30 days from the date of grant.

*Note* If, when the other substantive visa ceases, the period from the grant of this visa to the time the other substantive visa ceases exceeds the period specified in this visa, this visa will not come into effect.

773.512 If the visa holder holds another substantive visa at the date of grant and that substantive visa is cancelled, this visa is in effect for a period that ends when the other substantive visa is cancelled.

## **773.6 Conditions**

773.611 Conditions applicable to the visa for which the applicant is apparently eligible.

## **773.7 Way of giving evidence**

773.711 No evidence need be given.

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

## **Subclass 785 Temporary Protection**

### **785.1 Interpretation**

785.111 In this Part:

*Refugees Convention* means the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees.

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

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

### **785.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

785.211 The applicant claims to be a person to whom Australia has protection obligations under the Refugees Convention and:

- (a) makes specific claims under the Refugees Convention; or
- (b) claims to be a member of the same family unit as a person who:
  - (i) has made specific claims under the Refugees Convention; and
  - (ii) is an applicant for a Protection (Class XA) visa.

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

- 785.221 The Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.
- 785.222 In the case of an applicant referred to in paragraph 785.211 (b):
- (a) the Minister is satisfied that the applicant is a member of the same family unit as a person who has made specific claims under the Refugees Convention (a *claimant*); and
  - (b) the claimant has been granted a Protection (Class XA) visa.
- 785.223 The applicant, or a member of the family unit of the applicant, has not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.
- 785.224 The applicant has undergone a medical examination carried out by any of the following (a *relevant medical practitioner*):
- (a) a Medical Officer of the Commonwealth;
  - (b) a medical practitioner approved by the Minister for the purposes of this paragraph;
  - (c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.
- 785.225 The applicant:
- (a) has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or
  - (b) is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested such an examination; or
  - (c) is a person:
    - (i) who is confirmed by a relevant medical practitioner to be pregnant; and
    - (ii) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and



- (iii) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and
- (iv) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

785.225A A relevant medical practitioner:

- (a) has considered:
  - (i) the results of any tests carried out for the purposes of the medical examination required under clause 785.224; and
  - (ii) the radiological report (if any) required under clause 785.225 in respect of the applicant; and
- (b) if he or she is not a Medical Officer of the Commonwealth and considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, has referred any relevant results and reports to a Medical Officer of the Commonwealth.

785.225B If a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

785.226 The applicant satisfies public interest criteria 4001, 4002 and 4003.

785.227 The Minister is satisfied that the grant of the visa is in the national interest.

### **785.3 Secondary criteria**

*Note* All applicants must satisfy the primary criteria.

*Note* If the Minister refuses to grant a Protection (Class XA) visa to an applicant who holds, or held, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa or a Subclass 785 (Temporary Protection) visa after the commencement of Part 695, the applicant for that visa will be taken to have applied for a Return Pending (Class VA) visa: see regulation 2.07AN.

## **785.4 Circumstances applicable to grant**

785.411 The applicant must be in Australia.

## **785.5 When visa is in effect**

785.511 Temporary visa permitting the holder to remain in, but not re-enter, Australia until:

- (a) for the holder of a Subclass 785 (Temporary Protection) (Class XA) visa:
  - (i) if the holder applies for a Protection (Class XA) visa after the temporary visa is granted and within 36 months after the grant — the day when the application is finally determined or withdrawn; and
  - (ii) in any other case — the end of the 36 months; or
- (b) for the holder of a Subclass 785 (Temporary Protection) (Class XC) visa — the day when the application mentioned in paragraph 2.08F (1) (d) is finally determined or withdrawn.

## **785.6 Conditions**

785.611 The holder cannot be granted a substantive visa other than a protection visa.

785.612 The holder must notify Immigration of any change in the holder's residential address within 14 days after the change.

## **785.7 Way of giving evidence**

785.711 No evidence need be given.

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785.712 If evidence is given, to be given by a label affixed to a valid passport, valid Convention travel document or an approved form.

## **Subclass 786 Temporary (Humanitarian Concern)**

### **786.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

### **786.2 Primary criteria**

*Note* All applicants must satisfy the primary criteria.

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

786.211 The applicant is the holder of a Temporary Safe Haven (Class UJ) visa.

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

786.221 The Minister is satisfied that, for reasons of humanitarian concern, the applicant should be permitted to remain in Australia for a further period.

786.222 The applicant has undergone a medical examination carried out by any of the following (a *relevant medical practitioner*):

- (a) a Medical Officer of the Commonwealth;
- (b) a medical practitioner approved by the Minister for the purposes of this paragraph;
- (c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

786.223 (1) Subject to subclause (2), the applicant has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia.

(2) Subclause (1) does not apply to an applicant if the applicant:

- (a) is under 11 years of age and is not a person in respect of whom a Commonwealth Medical Officer has requested such an examination; or
- (b) is a person:
  - (i) who is confirmed by a Commonwealth Medical Officer to be pregnant; and
  - (ii) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
  - (iii) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and
  - (iv) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

786.224 The applicant satisfies public interest criterion 4001 or, if the applicant is unable to satisfy that criterion because the appropriate inquiries have not been completed, the applicant declares in writing, to the satisfaction of the Minister, that the applicant:

- (a) does not have a criminal record; and
- (b) is not a terrorist; and
- (c) has not engaged in crimes against humanity or war crimes; and
- (d) will assist Immigration by attempting to obtain any relevant records relating to the applicant.

786.225 The applicant satisfies public interest criteria 4002 and 4003.

### **786.3 Secondary criteria**

*Note* All applicants must satisfy the primary criteria.

### **786.4 Circumstances applicable to grant**

786.411 The applicant must be in Australia.

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## **786.5 When visa is in effect**

- 786.511 Temporary visa permitting the holder to remain in, but not re-enter, Australia until the earlier of:
- (a) the end of 36 months from the date of grant of the visa; and
  - (b) the end of any shorter period determined in writing by the Minister from the date of grant of the visa.

## **786.6 Conditions**

- 786.611 The holder must notify Immigration of any change in the holder's address at least 2 working days before the change.
- 786.612 The holder must not become involved in any disruptive activity, or violence, that may be a threat to the welfare of the Australian community or a group in the Australian community.

## **786.7 Way of giving evidence**

- 786.711 No evidence need be given.
- 786.712 If evidence is given, to be given by a label affixed to a valid passport or valid Convention travel document.

## **Subclass 787                      Witness Protection (Trafficking) (Temporary)**

### **787.1 Interpretation**

*Note 1* Regulation 1.03 provides that *member of the immediate family* has the meaning set out in regulation 1.12AA.

*Note 2* There are no interpretation provisions specific to this Part.

### **787.2 Primary criteria**

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

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

787.211 The applicant is taken to have made a valid application for a Witness Protection (Trafficking) (Temporary) (Class UM) visa under subregulation 2.07AJ (2) in accordance with subregulation 2.07AJ (3).

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

787.221 The applicant satisfies public interest criteria 4001, 4002, 4003 and 4007.

787.222 The requirements of paragraphs 2.07AJ (3) (d), (e) and (f) continue to be met in relation to the applicant.

787.223 Each member of the immediate family of the applicant who is an applicant for a Subclass 787 (Witness Protection (Trafficking) (Temporary)) visa is a person who satisfies public interest criteria 4001, 4002, 4003 and 4007.

**787.3 Secondary criteria**

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

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

787.311 The applicant is a member of the immediate family of a person who is taken, under subregulation 2.07AJ (2), to have made a valid application for a Witness Protection (Trafficking) (Temporary) (Class UM) visa in accordance with subregulation 2.07AJ (3).

*Note* See regulation 2.07AJ for how an application for a Witness Protection (Trafficking) (Temporary) (Class UM) visa is taken to have been validly made.

787.312 The Minister has not decided to grant or refuse to grant a Subclass 787 (Witness Protection (Trafficking) (Temporary)) visa to the person mentioned in clause 787.311.

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

787.321 The applicant satisfies public interest criteria 4001, 4002, 4003 and 4007.

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- 787.322 The applicant continues to be a member of the immediate family of the person mentioned in clause 787.311.
- 787.323 The person mentioned in clause 787.311 has been granted a Subclass 787 (Witness Protection (Trafficking) (Temporary)) visa.
- 787.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **787.4 Circumstances applicable to grant**

- 787.411 The applicant must be in Australia when the visa is granted.

#### **787.5 When visa is in effect**

- 787.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **787.6 Conditions**

- 787.611 Conditions 8401 and 8506.

#### **787.7 Way of giving evidence**

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

### **Subclass 800 Territorial Asylum**

#### **800.1 Interpretation**

*Note* No interpretation provisions specific to this Part.

#### **800.2 Primary criteria**

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

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

800.211 The applicant has been granted territorial asylum in Australia by instrument of a Minister.

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

800.221 The applicant continues to satisfy the criterion in clause 800.211.

800.221A The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4009.

800.222 (1) Each person who is a member of the family unit of the applicant and is also an applicant for a Subclass 800 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4009.

(2) Each person who is a member of the family unit of the applicant and is not an applicant for a Subclass 800 visa satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

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

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —

public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

**800.3 Secondary criteria**

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

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

800.311 The applicant is a member of the family unit of a person who satisfies or has satisfied the primary criteria in Subdivision 800.21.



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

- 800.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 800 visa.
- 800.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4009.
- 800.323 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

**800.4 Circumstances applicable to grant**

- 800.411 The applicant must be in the migration zone when the visa is granted.

**800.5 When visa is in effect**

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

**800.6 Conditions: Nil.**

**800.7 Way of giving evidence**

- 800.711 No evidence need be given.
- 800.712 If evidence is given, to be given by a label affixed to a valid passport, valid Convention travel document or an approved form.

**Subclass 801 Spouse**

**801.1 Interpretation**

- 801.111 In this Part:  
*prospective marriage (temporary) visa* means:  
(a) a Prospective Marriage (Temporary) (Class TO) visa; or

- (b) a Class 300 (prospective marriage) visa or entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a prospective marriage visa (code number 300), or equivalent entry permit, within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (temporary) visa, within the meaning of the Migration Reform (Transitional Provisions) Regulations, being:
  - (i) such a visa granted on the basis of an application for a visa or entry permit of a kind specified in paragraph (b) or (c); or
  - (ii) a visa or entry permit of such a kind having effect under those Regulations as a transitional (temporary) visa.

*sponsoring spouse* means:

- (a) the Australian citizen, Australian permanent resident or eligible New Zealand citizen who was specified in the application for the Subclass 820 (Spouse) visa as the spouse of the applicant; or
- (b) for a person to whom the Minister has decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant a Subclass 820 (Spouse) visa — the Australian citizen, Australian permanent resident or eligible New Zealand citizen who was the spouse of that person at the time the visa was granted.

*Note* *Australian permanent resident, eligible New Zealand citizen* and *long-term spouse relationship* are defined in regulation 1.03. For *spouse* see regulation 1.15A.

## 801.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 member of a family unit. The dependent child of an applicant who satisfies the primary criteria is also eligible for the grant of the visa if the child satisfies the secondary criteria.

**801.21 [No criteria to be satisfied at time of application.]**

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

- 801.221 (1) The applicant meets the requirements of subclause (2), (2A), (3), (4), (5), (6) or (8).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 820 visa; and
  - (b) the applicant continues to be sponsored for the grant of the Subclass 820 (Spouse) visa by:
    - (i) the sponsoring spouse; or
    - (ii) the Australian citizen, Australian permanent resident or eligible New Zealand citizen who sponsored the applicant for that visa; and
  - (c) the applicant is the spouse of the sponsoring spouse; and
  - (d) subject to subclauses (6A) and (7), at least 2 years have passed since the application was made.
- (2A) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 820 (Spouse) visa which the Minister has decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant to the applicant; and
  - (b) the applicant is the spouse of the sponsoring spouse; and
  - (c) subject to subclauses (6A) and (7), at least 2 years have passed since the Minister made the decision mentioned in paragraph (a).
- (3) An applicant meets the requirements of this subclause if the applicant is the holder of a Subclass 820 visa granted on the basis that the applicant met the requirements of subclause 820.221 (2).
- (4) An applicant meets the requirements of this subclause if the applicant is the holder of a Subclass 820 visa granted on the basis that the applicant met the requirements of subclause 820.221 (3).

- (5) An applicant meets the requirements of this subclause if the applicant:
- (a) is the holder of a Subclass 820 visa; and
  - (b) would meet the requirements of subclause (2) or (2A) except that the sponsoring spouse has died; and
  - (c) satisfies the Minister that the applicant would have continued to be the spouse of the sponsoring spouse if the sponsoring spouse had not died; and
  - (d) has developed close business, cultural or personal ties in Australia.
- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 820 visa; and
  - (b) the applicant would meet the requirements of subclause (2) or (2A) except that the relationship between the applicant and the sponsoring spouse has ceased; and
  - (c) either or both of the following circumstances applies:
    - (i) either or both of the following:
      - (A) the applicant;
      - (B) a dependent child of the sponsoring spouse or of the applicant or of both of them;  
has suffered domestic violence committed by the sponsoring spouse;
    - (ii) the applicant:
      - (A) has custody or joint custody of, or access to; or
      - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the sponsoring spouse:
      - (C) has been granted joint custody or access by a court; or
      - (D) has a residence order or contact order made under the *Family Law Act 1975*; or
      - (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

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

(6A) Paragraphs (2) (d) and (2A) (c) do not apply to an applicant who at the time of making the application was in a long-term spouse relationship with the sponsoring spouse.

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

- (a) refusing to grant a Subclass 801 visa; or
  - (b) in the case of an application made before 1 November 1996, granting a Subclass 801 visa to an applicant who was granted a Subclass 820 visa on the basis that he or she satisfied the requirements of subclause 820.211 (3) or (5); or
  - (c) granting a Subclass 801 visa to an applicant who was granted:
    - (i) an extended eligibility (spouse) (code number 820) entry permit under the Migration (1989) Regulations; or
    - (ii) a Class 820 (extended eligibility (spouse)) entry permit under the Migration (1993) Regulations; other than an applicant whose application was in accordance with approved form 47SP or 887; or
  - (d) approving the grant of a Subclass 801 visa to an applicant who meets the requirements of subclause (5) or (6).
- (8) The applicant meets the requirements of this subclause:
- (a) if the applicant held a Subclass 820 (Spouse) visa that ceased on notification of a decision of the Minister to refuse a Subclass 801 visa; and
  - (b) if the Tribunal:
    - (i) has remitted that decision for reconsideration and, as a result, the Minister decides that the applicant satisfies the criteria for the grant of a Subclass 801 visa apart from the criterion that the applicant hold a Subclass 820 visa; or
    - (ii) has determined that the applicant satisfies the criteria for the grant of a Subclass 801 visa apart

from the criterion that the applicant hold a Subclass 820 visa.

- 801.222 If the Minister has requested an assurance of support in relation to the applicant, the Minister is satisfied that the assurance has been accepted by the Secretary of the Department of Family and Community Services.
- 801.223 (1) Subject to subclause (2), the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- (2) Subclause (1) does not apply to an applicant who holds a Subclass 820 visa granted on the basis that the applicant satisfied the requirements of subclause 820.211 (3), (4) or (5).
- 801.224 (1) Subject to subclause (3), each member of the family unit of the applicant who is an applicant for a Subclass 801 visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 801 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- (3) Subclause (1) does not apply to an applicant who meets the requirements of clause 801.321 as the holder of a Subclass 820 visa granted on the basis that the applicant:
- (a) was the dependent child of a person who met the requirements of subclause 820.211 (3), (4) or (5); and
- (b) entered Australia as the holder, as a dependent child, of a visa of the same class as the visa held by that person.
- 801.225 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —

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public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

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

### **801.3 Secondary criteria**

*Note* A dependent child, or member of the family unit, of an applicant who satisfies the primary criteria is also eligible for the grant of the visa if the child or member of the family unit satisfies the secondary criteria and his or her application is made before the Minister has decided to grant or refuse to grant the visa to the applicant meeting the primary criteria.

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

- 801.311 (1) The applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) a dependent child of a person who has applied for a Partner (Residence) (Class BS) visa; or
  - (b) a member of the family unit of a person who:
    - (i) is the holder of, or has been the holder of, a prospective marriage (temporary) visa; and
    - (ii) has applied for a Partner (Residence) (Class BS) visa;

and the Minister has not decided to grant or refuse to grant a visa to the person.

- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 820 (Spouse) visa which the Minister has decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant to the applicant; and

- (b) the applicant is a member of the family unit of a person who:
  - (i) is the holder of a Subclass 820 (Spouse) visa; and
  - (ii) has applied for a Partner (Residence) (Class BS) visa; and
- (c) the Minister has not decided to grant or refuse to grant a visa to the person.

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

801.321 An applicant meets the requirements of this clause if:

- (a) any of the following applies:
  - (i) the applicant is the holder of:
    - (A) a Subclass 445 (Dependent Child) visa; or
    - (B) a Subclass 820 (Spouse) visa;  
granted on the basis that the applicant was the dependent child, or a member of the family unit, as the case requires, of another person who was the holder of a Subclass 445 or 820 visa;
  - (ii) the applicant was the holder of:
    - (A) a Subclass 445 visa; or
    - (B) a Subclass 820 visa;  
which ceased on notification of a decision to refuse a Subclass 801 visa to the person of whom the applicant is a dependent child or of whose family unit the applicant is a member;
  - (iii) the applicant is a person:
    - (A) who holds:
      - (I) a Subclass 445 (Dependent Child) visa; or
      - (II) a Subclass 820 (Spouse) visa;  
which the Minister has decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant to the applicant; and
    - (B) who, at the time the visa mentioned in sub-subparagraph (A) was granted, was the dependent child, or a member of the family unit, as the case requires, of another person



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who was the holder of a Subclass 445 (Dependent Child) or Subclass 820 (Spouse) visa; and

(b) that other person has been granted a Subclass 801 visa.

801.322 If the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the Minister is satisfied that:

(a) the applicant is included in the assurance of support given in relation to that person, and that assurance has been accepted by the Secretary of the Department of Family and Community Services; or

(b) an assurance of support in relation to the applicant has been accepted by the Secretary of the Department of Family and Community Services.

801.323 (1) Subject to subclause (2), the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

(2) Subclause (1) does not apply to an applicant who holds a Subclass 820 visa granted on the basis that the applicant met the requirements of clause 820.311 as the dependent child of a person:

(a) who satisfied the requirements of subclause 820.211 (3), (4) or (5); and

(b) who entered Australia as the holder, as a dependent child, of a visa of the same class as the visa held by that person.

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

801.325 The Minister is satisfied that:

(a) the applicant is the holder of a valid passport that:

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

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

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

**801.4 Circumstances applicable to grant**

801.411 The applicant must be in Australia, but not in immigration clearance when the visa is granted.

**801.5 When visa is in effect**

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

**801.6 Conditions: Nil.**

**801.7 Way of giving evidence**

801.711 No evidence need be given.

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