

## Partner Visa (Subclass 820) Final Check Summary

### VISA APPLICATION

Relevant sections in the Acts/Regulations	Description	Do you currently meet the requirement?	Comment
<b>Schedule 1 requirement</b>			
1. Item 1214C	Valid Application for Partner (Temporary) Subclass 820	√	No Comment
2. Item 1124B	Valid Application for Partner (Residence) Subclass 801	√	No Comment
3. IMMI 18/103	Valid Application Form	√	No Comment
<b>Schedule 2 requirement</b>			
<b>Partner (Temporary) Subclass 820</b>			
4. Reg 820.21	<p>Criteria to be satisfied at time of application:</p> <p><u>820.211</u></p> <ul style="list-style-type: none"> <li>• 820.211 (1)</li> <li>• 820.211 (2)</li> <li>• 820.211 (2A)</li> <li>• 820.211 (2B)</li> <li>• 820.211 (5)</li> <li>• 820.211 (6)</li> <li>• 820.211 (7)</li> </ul>	<p style="text-align: center;">√</p> <p style="text-align: center;">×</p> <p>Not Applicable</p> <p>Not Applicable</p> <p>Not Applicable</p> <p>Not Applicable</p> <p>Not Applicable</p>	<p>In order to meet r 820.211(2), the Minister may consider the following matters (per r 1.09A):</p> <ul style="list-style-type: none"> <li>• The Financial aspect of relationship</li> <li>• The nature of household</li> <li>• The Social aspect of relationship</li> <li>• The nature of person's commitment to each other</li> </ul>

	<ul style="list-style-type: none"> <li>• 820.211 (8)</li> <li>• 820.211 (9)</li> </ul> <p><u>820.212</u></p>	<p>Not Applicable</p> <p>Not Applicable</p> <p>Not Applicable</p>	<p>Based on the information you have provided to us, you may wish to provide the following additional documents (but not limited to the following) to show a stronger de facto relationship:</p> <ul style="list-style-type: none"> <li>• Couple photos, photos with friends and families to show that you indeed know each other's families or friends as suggested in the relationship statements, along with any call logs, email and message correspondences between you two; or,</li> <li>• Any other documents you consider relevant</li> </ul>
5. Reg 820.22	Criteria to be satisfied at time of decision	×	Cannot assess at this stage
<b>Partner (Residence) Subclass 801</b>			
6. Reg 801.21	Criteria to be satisfied at time of application	Not Applicable	There are no criteria to be satisfied at the time of application
7. Reg 801.22	Criteria to be satisfied at time of decision	×	Cannot assess at this stage
<b>Relevant sections in Migration Act and Migration Regulations</b>			
8. s 5F	Spouse	Not applicable	-
9. Policy on s 5F	Policy on Spouse	Not applicable	-
10. s 5B	De Facto partner	×	Please refer to comment next to r 820.211(2) for more information
11. Policy on s 5CB	Policy on De Facto partner	×	Please refer to comment next to r 820.211(2) for more information
12. Reg 1.09A	De Facto partner and de facto relationship	×	Please refer to comment next to r 820.211(2) for more information
13. Policy on Reg 1.09A	Policy on De Facto partner and de facto relationship	×	Please refer to comment next to r 820.211(2) for more information
14. Reg 2.03A	Criteria Applicable to de facto partners	×	Please refer to comment next to r 820.211(2) for more information

15. Policy on Reg 2.03A	Policy on Criteria Applicable to de facto partners	×	Please refer to comment next to r 820.211(2) for more information
<b>Schedule 3 requirement - Not Applicable for the current Visa Applicant</b>			
<b>Schedule 4 requirement</b>			
<b>Partner (Temporary) Subclass 820</b>			
16. 4001	Character test	×	Pending Police Check
17. 4002	Pass the assessment by ASIO	√	No information to the contrary
18. 4004	No outstanding debts to the Commonwealth	√	No information to the contrary
19. 4007	Health requirement	√	No information to the contrary
20. 4009	Intention to permanent lively in Australia	√	No information to the contrary
21. 4019	Value statement signed	√	-
22. 4020	Identification declaration	√	No information to the contrary
23. 4021	Valid Passport	√	-
<b>Partner (Residence) Subclass 801</b>			
24. 4001	Character test	×	<ul style="list-style-type: none"> <li>• Pending Police Check from UK</li> <li>• Should the current situation not change</li> </ul>
25. 4002	Pass the assessment by ASIO	√	Should the current situation not change
26. 4004	No outstanding debts to the Commonwealth	√	Should the current situation not change
27. 4007	Health requirement	√	Should the current situation not change
28. 4009	- Intention to permanent lively in Australia	√	Should the current situation not change
29. 4019	- Value statement signed	√	Should the current situation not change
30. 4020	Identification declaration	√	Should the current situation not change
31. 4021	Valid Passport	√	Should the current situation not change

## SPONSORSHIP APPLICATION

Section	Description/ Comment	Do you currently meet the requirement?	Comment
1. s 5F	Spouse	Not applicable	-
2. Policy on s 5F	Policy on Spouse	Not applicable	-
3. s 5B	De Facto partner	×	<p>In order to assess whether the Sponsor and the Visa Applicant are indeed in a de facto relationship, the Minister may consider the following matters (per r 1.09A):</p> <ul style="list-style-type: none"> <li>• The Financial aspect of relationship</li> <li>• The nature of household</li> <li>• The Social aspect of relationship</li> <li>• The nature of person's commitment to each other</li> </ul> <p>Based on the information you have provided to us, you may wish to provide the following additional documents (but not limited to the following) to show a stronger de facto relationship:</p> <ul style="list-style-type: none"> <li>• Couple photos, photos with friends and families to show that you indeed know each other's families or friends as suggested in the relationship statements, along with any call logs, email and message correspondences between you two; or,</li> </ul> <p>Any other documents you consider relevant</p>
4. Policy on s 5CB	Policy on De Facto partner	×	Please see above
5. Reg 1.09A	De Facto partner and de facto relationship	×	Please see above

6. Policy on Reg 1.09	Policy on De Facto partner and de facto relationship	×	Please see above
7. Reg 2.03A	Criteria Applicable to de facto partners	×	Please see above
8. Policy on Reg 2.03A	Policy on Criteria Applicable to de facto partners	×	Please see above
9. Reg 1.20	Sponsorship Undertakings	√	No Comment
10. Reg 1.20J	Limitation on approval of sponsorships – Spouse, partner, prospective marriage and interdependency visas	√	Based on the information you have provided to us, we have assessed this regulation to be inapplicable to you.
11. Reg 1.20KA	Limitation on approval of sponsorship—partner (provisional or temporary) or prospective marriage (temporary) visas	√	Based on the information you have provided to us, we have assessed this regulation to be inapplicable to you.
12. Reg 1.20KB	Limitation on approval of sponsorship — child, partner and prospective marriage visas	√	Based on the information you have provided to us, we have assessed this regulation to be inapplicable to you.
13. Reg 1.20KC	Limitation on approval of sponsorship – prospective marriage and partner visas	√	Based on the information you have provided to us, we have assessed this regulation to be inapplicable to you.
14. Reg 1.20KD	Prospective marriage and partner visas – definition of significant criminal record	√	Based on the information you have provided to us, we have assessed this regulation to be inapplicable to you.



## **Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Instrument 2018**

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I, RENELLE FORSTER, Delegate of the Minister for Home Affairs and Minister for Immigration and Border Protection, make the following instrument:

Dated 14/06/18

Renelle Forster

RENELLE FORSTER

Assistant Secretary, Senior Executive Service Band One

Visa Delivery Transformation Division and

Delegate of the Minister for Home Affairs and Minister for Immigration and Border Protection

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## Part 1 – Preliminary

### 1 Name

- (1) This instrument is the *Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Instrument 2018*.
- (2) This instrument may be cited as IMMI 18/103.

### 2 Commencement

This instrument commences on 1 July 2018.

### 3 Authority

This instrument is made under subregulation 2.07(5) of the *Migration Regulations 1994*.

### 4 Definitions

In this instrument:

*Act* means the *Migration Act 1958*.

*approved form* has the meaning given by subsection 5(1) of the Act.

*Internet application* has the meaning given by regulation 1.03 of the Regulations.

*Regulations* means the *Migration Regulations 1994*.

*visa* has the meaning given by subsection 5(1) of the Act.

### 5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Part 2 – Arrangements for Partner Visa Applications

### 6 Partner (Residence)(Class BS) visa

- (1) For subitem 1124B(1) and paragraph 1124B(3)(a) of Schedule 1 to the Regulations, for each kind of applicant described in Column B of item 1 in the table in Schedule 1 to this instrument:
- (a) the approved form is specified in the corresponding row in Column C;
  - (b) the place and manner for making an application is specified in the corresponding row in Column D.

### 7 Partner (Migrant)(Class BC) visa

- (1) For subitem 1129(1) and paragraph 1129(3)(a) of Schedule 1 to the Regulations, for each kind of applicant described in Column B of item 2 in the table in Schedule 1 to this instrument:
- (a) the approved form is specified in the corresponding row in Column C;
  - (b) the place and manner for making an application is specified in the corresponding row in Column D.

### 8 Partner (Temporary)(Class UK) visa

- (1) For subitem 1214C(1) and paragraph 1214C(3)(b) of Schedule 1 to the Regulations, for each kind of applicant described in Column B of item 3 in the table in Schedule 1 to this instrument:
- (a) the approved form is specified in the corresponding row in Column C;
  - (b) the place and manner for making an application is specified in the corresponding row in Column D.

### 9 Prospective Marriage (Temporary)(Class TO) visa

- (1) For subitem 1215(1) and paragraph 1215(3)(a) of Schedule 1 to the Regulations, for each kind of applicant described in Column B of item 4 in the table in Schedule 1 to this instrument:
- (a) the approved form is specified in the corresponding row in Column C;
  - (b) the place and manner for making an application is specified in the corresponding row in Column D.

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## 10 Partner (Provisional)(Class UF) visa

WA (1) For subitem 1220A(1) and paragraph 1220A(3)(a) of Schedule 1 to the Regulations, for each kind of applicant described in Column B of item 5 in the table in Schedule 1 to this instrument:

- (a) the approved form is specified in the corresponding row in Column C;
- (b) the place and manner for making an application is specified in the corresponding row in Column D.

## Schedule 1 – Place, manner and form for making Partner visa

Row No.	Column A: Item and visa	Column B: Kind of applicant	Column C: Approved form	Column D: Place and manner
1.	<b>Item 1124B</b> Partner (Residence) (Class BS): Subclass 801 (Partner)	If the applicant is the holder of a Subclass 445 (Dependent Child) visa	1002	Application must be made: (a) in Australia <del>but not</del> in immigration clearance; and (b) by posting the application to the office that is processing the parent's permanent Partner visa application.
		In any other case	47SP (Internet) or If authorised by the Department: 47SP	Application must be made: (a) as an internet application; or (b) if authorised in writing to use Form 47SP, in accordance with directions from the Department, by the date specified.
2.	<b>Item 1129</b> Partner (Migrant) (Class BC): Subclass 100 (Partner)	If the applicant is the holder of a Subclass 445 (Dependent Child) visa	1002	Application must be made: (a) in or outside Australia but not in immigration clearance; and (b) by posting the application to the office that is processing the parent's permanent Partner visa application.
		In any other case	47SP (Internet); or If authorised by the Department: 47SP	Application must be made: (a) as an internet application; or (b) if authorised in writing to use form 47SP, in accordance with directions from the Department, by a date specified.

3.	<b>Item 1214C</b>  Partner (Temporary) (Class UK): Subclass 820 Partner	All applicants	47SP (Internet) or If authorised by the Department: 47SP	Application must be made: (a) as an internet application; or (b) if authorised in writing to use form 47SP, in accordance with directions from the Department, by a date specified.
4.	<b>Item 1215</b>  Prospective Marriage (Temporary) Class TO: Subclass 300 (Prospective Marriage)	All applicants	47SP (Internet) or If authorised by the Department: 47SP	Application must be made: (a) as an internet application; or (b) if authorised in writing to use form 47SP, in accordance with directions from the Department, by a date specified.
5.	<b>Item 1220A</b>  Partner (Provisional) (Class UF): Subclass 309 Partner (Provisional)	All applicants	47SP (Internet) or If authorised by the Department: 47SP	Application must be made: (a) as an internet application; or (b) if authorised in writing to use form 47SP, in accordance with directions from the Department, by a date specified.

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## **Schedule 2—Repeals**

### ***Migration (IMMI 17/101: Arrangements for Partner and Prospective Marriage Visa Applications) Instrument 2017 (F2017L01496)***

#### **1 The whole of the instrument**

Repeal the instrument.



stack  
missing  
refs  
for  
De facto  
relationship

**Australian seabed** means so much of the seabed adjacent to Australia (other than the seabed within the **Joint Petroleum Development Area**) as is:

(a) within the area comprising:

(i) the areas described in Schedule 1 to the **Offshore Petroleum and Greenhouse Gas Storage Act 2006**; and

(ii) the **Coral Sea area**; and

(b) part of:

(i) the **continental shelf** of Australia;

(ii) the seabed beneath the territorial sea of Australia (including the territorial sea adjacent to any island forming part of Australia); or

(iii) the seabed beneath waters of the sea that are on the landward side of the territorial sea of Australia and are not within the limits of a State or **Territory**.



W/A

**Australian permanent resident** means:

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

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

## Section 5CB **De facto partner**

### *De facto partners*

(1) For the purposes of this Act, a person is the **de facto partner** of another person (whether of the same sex or a different sex) if, under subsection (2), the person is in a de facto relationship with the other person.

### *De facto relationship*

(2) For the purposes of subsection (1), a person is in a **de facto relationship** with another person if they are not in a married relationship (for the purposes of section 5F) with each other but:

(a) they have a mutual commitment to a shared life to the exclusion of all others;  
and

(b) the relationship between them is genuine and continuing; and

(c) they:

(i) live together; or

(ii) do not live separately and apart on a permanent basis; and

(d) they are not related by family (see subsection (4)).

(3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

### *Definition*

(4) For the purposes of paragraph (2)(d), 2 persons are **related by family** if:

(a) one is the **child** (including an adopted child) of the other; or

(b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or

(c) they have a **parent** in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have effect.

## Reg 2.03A Criteria applicable to de facto partners

(1) In addition to the criteria prescribed by regulations 2.03 and 2.03AA, if a person claims to be in a **de facto relationship** for the purposes of a visa application, the criteria in subregulations (2) and (3) are prescribed.

(2) If a person mentioned in subregulation (1) applies for a visa:

(a) the applicant is at least 18; and

(b) the person with whom the applicant claims to be in a **de facto relationship** is at least 18.

(3) Subject to subregulations (4) and (5), if:

(a) a person mentioned in subregulation (1) applies for:

(i) a **permanent visa**; or

(ii) a **Business Skills (Provisional) (Class UR) visa**; or

(iiia) a **Business Skills (Provisional) (Class EB) visa**; or

(iii) a **Student (Temporary) (Class TU) visa**; or

(iv) a **Partner (Provisional) (Class UF) visa**; or

(v) a **Partner (Temporary) (Class UK) visa**; or

(vi) a **General Skilled Migration visa**; and

(b) the applicant cannot establish compelling and compassionate circumstances for the grant of the visa;

the Minister must be satisfied that the applicant has been in the **de facto relationship** for at least the period of 12 months ending immediately before the date of the application.

*since 02/09/2018 - MET.*

(4) Subregulation (3) does not apply if the applicant applies on the basis of being:


(a) in a **de facto relationship** with a person who:

(i) is, or was, the holder of a **permanent humanitarian visa**; and

(ii) before the **permanent humanitarian visa** was granted, was in a de facto relationship with the applicant and informed **Immigration** of the existence of the

relationship; or

(b) in a *de facto relationship* with a person who is an applicant for a *permanent humanitarian visa*.

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

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

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

**eligible New Zealand citizen** means a New Zealand citizen who is a protected SCV holder within the meaning of Section 7 of the *Social Security Act 1991*.

N/A


**enter Australia**, in relation to a person, means enter the migration zone.

W/A

Note: See also section 9A, which concerns offshore resources activities.



*in Australia* means in the migration zone.



## Reg 1.12 Member of the family unit

N/A Scope

none

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

### General rule

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

This subregulation has effect subject to the later subregulations of this regulation.

### Protection, refugee and humanitarian visas

- (3) Subregulation (4) has effect for the purposes of the main definition so far as it is relevant to a provision of the Act or these Regulations applying in relation to any of the following visas:
- (a) a **Protection (Class XA) visa**;
  - (b) a **Refugee and Humanitarian (Class XB) visa**;
  - (c) a **Temporary Protection (Class XD) visa**;
  - (d) a **Safe Haven Enterprise (Class XE) visa**;
  - (e) a **Resolution of Status (Class CD) visa**;

- (f) a **Temporary Safe Haven (Class UJ) visa**;
- (g) a **Temporary (Humanitarian Concern) (Class UO) visa**;
- (h) a **Territorial Asylum (Residence) (Class BE) visa**.

**(4)** A person is a member of the family unit of another person (the **family head**) if the person is:

- (a) a **spouse** or **de facto partner** of the family head; or
- (b) a **dependent child** of:
  - (i) the family head; or
  - (ii) a **spouse** or **de facto partner** of the family head; or
- (c) a **dependent child** of a dependent **child** of:
  - (i) the family head; or
  - (ii) a **spouse** or **de facto partner** of the family head; **de facto partner** of the family head, who:
    - (i) does not have a **spouse** or **de facto partner**; and
    - (ii) is usually resident in the family head's household; and
    - (iii) is dependent on the family head.
- (d) a relative, of the family head or of a **spouse** or **de facto partner** of the family head, who:
  - (i) does not have a **spouse** or **de facto partner**; and
  - (ii) is usually resident in the family head's household;
  - (iii) is dependent on the family head.

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

**(5)** In addition to subregulation (2), a person is a member of the family unit, of an applicant for a visa (the **new visa**) described in column 1 of an item of the following table who seeks to satisfy the primary criteria for the new visa, if, at the time of the application for the new visa, the person:

- (a) is included in the application for the new visa; and

(b) holds a visa (the **old visa**) described in column 2 of the item granted on the basis that the person was a member of the family unit of a person who held a visa of the same kind as the old visa.

### Members of the family units of applicants for new visas

	<b>Column 1 New visa applied for</b>	<b>Column 2 Old visa person holds at time of application for new visa</b>
1	Contributory Parent (Migrant) (Class CA) visa	Contributory Parent (Temporary) (Class UT) visa
2	Contributory Aged Parent (Residence) (Class DG) visa	Contributory Aged Parent (Temporary) (Class UU) visa
3	Business Skills (Residence) (Class DF) visa	Business Skills (Provisional) (Class UR) visa
4	Business Skills (Permanent) (Class EC) visa	Business Skills (Provisional) (Class EB) visa
5	Employer Nomination (Permanent) (Class EN) visa	Any of the following visas: (a) Subclass 457 (Temporary Work (Skilled)) visa; (b) Subclass 482 (Temporary Skill Shortage) visa
6	Regional Employer Nomination (Permanent) (Class RN) visa	Any of the following visas: (a) Subclass 457 (Temporary Work (Skilled)) visa; (b) Subclass 482 (Temporary Skill Shortage) visa

## Members of the family units of applicants for new visas

	Column 1 New visa applied for	Column 2 Old visa person holds at time of application for new visa
7	Skilled (Residence) (Class VB) visa	<p>Any of the following visas:</p> <p>(a) Skilled—Independent Regional (Provisional) (Class UX) visa;</p> <p>(b) Bridging A (Class WA) visa or Bridging B (Class WB) visa granted on the basis of a valid application for:</p> <p>(i) a Skilled—Independent Regional (Provisional) (Class UX) visa; or (i) a Skilled—Independent Regional (Provisional) (Class UX) visa; or</p> <p>(ii) a Skilled (Provisional) (Class VC) visa; or</p> <p>(iii) a Skilled—Regional Sponsored (Provisional) (Class SP) visa;</p> <p>(c) Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa;</p> <p>(d) Subclass 475 (Skilled—Regional Sponsored) visa;</p> <p>(e) Subclass 487 (Skilled—Regional Sponsored) visa;</p> <p>(f) Skilled—Regional Sponsored (Provisional) (Class SP) visa</p>
8	Subclass 482 (Temporary Skill Shortage) visa	<p>Any of the following visas:</p> <p>(a) Subclass 457 (Temporary Work (Skilled)) visa;</p> <p>(b) Subclass 482 (Temporary Skill Shortage) visa</p>

### Student (Temporary) (Class TU) visas

**(6)** A person is a member of the family unit of an applicant for, or of a holder of, a **Student (Temporary) (Class TU) visa** if the person is:

(a) a **spouse** or **de facto partner** of the applicant or holder; or

(b) a **dependent child** of the applicant or holder, or of that **spouse** or **de facto partner** of the applicant or holder, who is unmarried and has not turned 18.

*Distinguished talent visas*

**(7)** A person is a member of the family unit of an applicant for a **Distinguished Talent (Migrant) (Class AL) visa** or a **Distinguished Talent (Residence) (Class BX) visa** who has not turned 18 at the time of application if:

(a) the person is:

(i) a **parent** of the applicant who has made a combined application with the applicant for the visa; or

(ii) under subregulation (2), a member of the family unit of a **parent** of the applicant who has made a combined application with the applicant for the visa; and

(b) no person is being treated under subregulation (2) as a member of the family unit of the applicant, in relation to the applicant's application for the visa; and

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

**migration zone** means the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes:

- (a) land that is part of a State or Territory at mean low water; and
- (b) sea within the limits of both a State or a Territory and a port; and
- (c) piers, or similar structures, any part of which is connected to such land or to ground under such sea;

but does not include sea within the limits of a State or a Territory but not in a port.

Note: See also section 9A, which concerns offshore resources activities.

**port** means:

- (a) a proclaimed port; or
- (b) a proclaimed airport;



***proclaimed airport*** means:

- (a) an airport appointed under section 15 of the *Customs Act 1901*; or
- (b) an airport appointed by the Minister under subsection (5);

***proclaimed port*** means:

- (a) a port appointed under section 15 of the *Customs Act 1901*; or
- (b) a port appointed by the Minister under subsection (5);

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

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

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

## Section 5F

## Spouse

*not met*

*WA* (1) For the purposes of this Act, a person is the **spouse** of another person (whether of the same sex or a different sex) if, under subsection (2), the 2 persons are in a married relationship.

~~(2) For the purposes of subsection (1), persons are in a married relationship if:~~

~~(a) they are married to each other under a marriage that is valid for the purposes of this Act; and~~

~~(b) they have a mutual commitment to a shared life as a married couple to the exclusion of all others; and~~

~~(c) the relationship between them is genuine and continuing; and~~

~~(d) they:~~

~~(i) live together; or~~

~~(ii) do not live separately and apart on a permanent basis.~~

(3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

Note: Section 12 also affects the determination of whether the condition in paragraph (2)(a) of this section exists.

**Reg 1.15A Spouse**

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

(2) If the Minister is considering an application for:

- (a) a Partner (Migrant) (Class BC) visa; or
- (b) a Partner (Provisional) (Class UF) visa; or
- (c) a Partner (Residence) (Class BS) visa; or
- (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

(3) The matters for subregulation (2) are:

- (a) the financial aspects of the relationship, including:
  - (i) any joint ownership of real estate or other major assets; and
  - (ii) any joint liabilities; and
  - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
  - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
  - (v) the basis of any sharing of day-to-day household expenses; and
- (b) the nature of the household, including:
  - (i) any joint responsibility for the care and support of children; and
  - (ii) the living arrangements of the persons; and
  - (iii) any sharing of the responsibility for housework; and
- (c) the social aspects of the relationship, including:

- (i) whether the persons represent themselves to other people as being married to each other; and
  - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
  - (iii) any basis on which the persons plan and undertake joint social activities; and
- (d) the nature of the persons' commitment to each other, including:
- (i) the duration of the relationship; and
  - (ii) the length of time during which the persons have lived together; and
  - (iii) the degree of companionship and emotional support that the persons draw from each other; and
  - (iv) whether the persons see the relationship as a long-term one.

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

**substantive visa** means a visa other than:

(a) a bridging visa; or

(b) a criminal justice visa; or

(c) an enforcement visa.

**Territory** means:

- (a) an internal Territory; or
- (b) an external Territory to which this Act extends;

## Section 48 Non-citizen refused a visa or whose visa cancelled may only apply for particular visas

(1) A non-citizen in the migration zone who:

(a) does not hold a substantive visa; and

(b) after last entering Australia:

(i) was refused a visa, other than a refusal of a bridging visa or a refusal under section 501, 501A or 501B, for which the non-citizen had applied (whether or not the application has been finally determined); or

(ii) held a visa that was cancelled under section 109 (incorrect information), 116 (general power to cancel), 133A (Minister's personal powers to cancel visas on section 109 grounds), 133C (Minister's personal powers to cancel visas on section 116 grounds), 134 (business visas), 137J (student visas) or 137Q (regional sponsored employment visas);

may, subject to the regulations, apply for a visa of a class prescribed for the purposes of this section or have an application for such a visa made on his or her behalf, but not for a visa of any other class.

(1A) A non-citizen in the migration zone who:

(a) does not hold a substantive visa; and

(b) after last entering Australia, was refused a visa (other than a refusal of a bridging visa or a refusal under section 501, 501A or 501B) for which an application had been made on the non-citizen's behalf, whether or not:

(i) the application has been finally determined; or

(ii) the non-citizen knew about, or understood the nature of, the application due to any mental impairment; or

(iii) the non-citizen knew about, or understood the nature of, the application due to the fact that the non-citizen was, at the time the application was made, a minor;

may, subject to the regulations, apply for a visa of a class prescribed for the purposes of this section or have an application for such a visa made on his or her behalf, but not for a visa of any other class.



**(2)** For the purposes of this section (which applies only in respect of applications made while a non-citizen is in the migration zone), a non-citizen who:

(a) has been removed from the migration zone under section 198; and

(b) is again in the migration zone as a result of travel to Australia that is covered by paragraph 42(2A)(d) or (e);

is taken to have been continuously in the migration zone despite the removal referred to in paragraph (a).

Note: Paragraphs 42(2A)(d) and (e) cover limited situations where people are returned to Australia despite their removal under section 198.

**(3)** For the purposes of this section (which applies only in respect of applications made while a non-citizen is in the migration zone), a non-citizen who, while holding a bridging visa, leaves and re-enters the migration zone is taken to have been continuously in the migration zone despite that travel.

**(4)** In paragraphs (1)(b) and (1A)(b):

(a) a reference to an application for a visa made by or on behalf of a non-citizen includes a reference to an application for a visa that is taken to have been made by the non-citizen by the operation of this Act or a regulation; and

(b) a reference to the cancellation of a visa includes a reference to the cancellation of a visa for which an application is taken to have been made by the operation of this Act or a regulation.

## Item 1214C Partner (Temporary) (Class UK)

(1) Form: The approved form specified by the Minister in a **legislative instrument** made for this item under subregulation 2.07(5).

(2) **Visa application charge**: Nil.

(3) Other:

(a) Application must be made at the same time and place as an application for a **Partner (Residence) (Class BS) visa**.

(b) An application must be made at the place, and in the manner, (if any) specified by the Minister in a **legislative instrument** made for this item under subregulation 2.07(5).

(c) Applicant must be **in Australia**, but not **in immigration clearance**.

N/A (e) Application by a person claiming to be a **member of the family unit** of the holder or former holder of a **prospective marriage (temporary) visa** (as defined in clause 820.111 of Schedule 2) who is an applicant for a Partner (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.

N/A (f) Application by a person claiming to be a **dependent child** of a person who is an applicant for a Partner (Temporary) (Class UK) visa may be made at the same time and place as, and combined with, the application by that person.

N/A (g) If:

(i) the applicant is the holder of:

N/A (A) a Skilled — Independent Regional (Provisional) (Class UX) visa; or

N/A (B) a Subclass 475 (Skilled — Regional Sponsored) visa ; or

N/A (C) a Subclass 487 (Skilled — Regional Sponsored) visa ; or

N/A (D) a **Skilled — Regional Sponsored (Provisional) (Class SP) visa**; or

N/A (ii) the last **substantive visa** held by the applicant was:

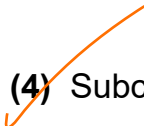
(A) a Skilled — Independent Regional (Provisional) (Class UX) visa; or

(B) a Subclass 475 (Skilled — Regional Sponsored) visa; or

(C) a Subclass 487 (Skilled — Regional Sponsored) visa ; or

(D) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

the applicant must have held that visa for at least 2 years.

 (4) Subclasses:

820 Partner

## Item 1124B Partner (Residence) (Class BS)

(1) Form: The approved form specified by the Minister in a **legislative instrument** made for this item under subregulation 2.07(5).

(2) **Visa application charge:**

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

(i) for an applicant:

(A) who is the holder of a **Subclass 445 (Dependent Child) visa**; or

(B) whose application is combined, or sought to be combined, with an application made by that person:

the amount is nil; and

(ii) for an applicant:

(A) who is the holder of a transitional (temporary) visa, granted on the basis that the holder satisfied the criteria for grant of an extended eligibility entry permit under the **Migration (1989) Regulations**; or

(B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$430
2	Additional applicant charge for an applicant who is at least 18	\$215
3	Additional applicant charge for an applicant who is less than 18	\$110

(iii) for an applicant who:

(A) is not the holder of a **substantive visa**; and

(B) **entered Australia** before 19 December 1989; and

(C) at the time of entry, was engaged to be married to a person who was an Australian citizen or **Australian permanent resident**; and

(D) has subsequently married that person;

or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1510
2	Additional applicant charge for an applicant who is at least 18	\$755
3	Additional applicant charge for an applicant who is less than 18	\$380

*MP* (iv) for an applicant who:

(A) is not the holder of a **substantive visa**; and

(B) **entered Australia** on or after 19 December 1989 as the holder of a prospective marriage (code number 300) **entry permit** granted under the **Migration (1989) Regulations**, or a Class 300 (prospective marriage) **entry permit** granted under the **Migration (1993) Regulations**; and

(C) ceased to hold a **substantive visa** after marrying the Australian citizen or **Australian permanent resident** whom the applicant **entered Australia** to marry;

or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	Base application charge	\$1510
2	Additional applicant charge for an applicant who is at least 18	\$755
3	Additional applicant charge for an applicant who is less than 18	\$380

*N/A* (v) for an applicant who:

(A) is the holder of a **Prospective Marriage (Temporary) (Class TO) visa**; and

(B) is married to the person who was specified as the applicant's intended **spouse** in the application for that visa; and

(C) seeks to remain **in Australia** permanently on the basis of that marriage;

or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount
1	<b>Base application charge</b>	\$1195
2	<b>Additional applicant charge</b> for an applicant who is at least 18	\$600
3	<b>Additional applicant charge</b> for an applicant who is less than 18	\$295

*N/A* (vi) in the case of an applicant who:

(A) is not the holder of a **substantive visa**; and

(B) **entered Australia** as the holder of a **Prospective Marriage (Temporary) (Class TO) visa**; and

(C) ceased to hold that visa after marrying the Australian citizen, **Australian permanent resident** or **eligible New Zealand citizen** whom the applicant **entered Australia** to marry; and

(D) seeks to remain **in Australia** permanently on the basis of that marriage;

or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	Component	Amount

Item	Component	Amount
1	Base application charge	\$1510
2	Additional applicant charge for an applicant who is at least 18	\$755
3	Additional applicant charge for an applicant who is less than 18	\$380

(vii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$7160
2	Additional applicant charge for an applicant who is at least 18	\$3585
3	Additional applicant charge for an applicant who is less than 18	\$1795

Note: Regulation 2.12C explains the components of the first instalment of the visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(b) The applicant must be in Australia, but not in immigration clearance.

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

N/A (d) If the applicant holds a **Subclass 820 (Partner) visa** or a **Subclass 309 (Partner (Provisional)) visa** at the time of making the application for the Partner (Residence) (Class BS) visa, the applicant must not have had any of the following visas refused in the 21 days immediately before making the application for the Partner (Residence) (Class BS) visa:

- (i) a Subclass 100 (Spouse) visa;
- (ii) a **Subclass 100 (Partner) visa**;
- (iii) a Subclass 110 (Interdependency) visa;
- (iv) a Subclass 309 (Spouse (Provisional)) visa;
- (v) a **Subclass 309 (Partner (Provisional)) visa**;
- (vi) a Subclass 310 (Interdependency (Provisional)) visa;
- (vii) a Subclass 801 (Spouse) visa;
- (viii) a **Subclass 801 (Partner) visa**;
- (ix) a Subclass 814 (Interdependency) visa;
- (x) a Subclass 820 (Spouse) visa;
- (xi) a **Subclass 820 (Partner) visa**;
- (xii) a Subclass 826 (Interdependency) visa.

W/A (e) Subject to subitem (3A), if the applicant is a person to whom section 48 of the Act applies, the applicant:

- (i) must not have been refused any of the following visas since last **entering Australia**:
  - (A) a Subclass 100 (Spouse) visa;
  - (B) a **Subclass 100 (Partner) visa**;
  - (C) a Subclass 110 (Interdependency) visa;
  - (D) a Subclass 309 (Spouse (Provisional)) visa;
  - (E) a **Subclass 309 (Partner (Provisional)) visa**;
  - (F) a Subclass 310 (Interdependency (Provisional)) visa;
  - (G) a Subclass 801 (Spouse) visa;
  - (H) a **Subclass 801 (Partner) visa**;



(I) a Subclass 814 (Interdependency) visa;

(J) a Subclass 820 (Spouse) visa;

(K) a Subclass 820 (Partner) visa;

(L) a Subclass 826 (Interdependency) visa; and

(ii) must provide, at the same time and place as making the application, the approved form specified by the Minister in a legislative instrument made for this subparagraph under subregulation 2.07(5) that has been completed and signed by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who claims to be the spouse or de facto partner of the applicant (the *partner*); and

(iii) must provide, at the same time and place as making the application, 2 statutory declarations each of which:

(A) is made by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who is not the partner; and

(B) declares that the applicant and the partner are in a married relationship or de facto relationship; and

(C) was declared no more than 6 weeks before the day on which the application for the Partner (Residence) (Class BS) visa was made.

 (3A) For paragraph (3)(e):

(a) the applicant is taken to have met the requirements of the paragraph if the applicant:

(i) is a person to whom section 48 of the Act applies; and

(ii) claims to be a dependent child of a person who has met the requirements of paragraph (3)(e); and

(b) if the applicant leaves and re-enters the migration zone while holding a bridging visa, the applicant is taken to have been continuously in the migration zone despite the travel.

 (4) Subclasses:

801 (Partner)

## Reg 1.09A De facto partner and de facto relationship

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

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

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

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

(2) If the Minister is considering an application for:

- (a) a Partner (Migrant) (Class BC) visa; or
- (b) a Partner (Provisional) (Class UF) visa; or
- (c) a Partner (Residence) (Class BS) visa; or
- (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

(3) The matters for subregulation (2) are:

- (a) the financial aspects of the relationship, including:
  - (i) any joint ownership of real estate or other major assets; and
  - (ii) any joint liabilities; and
  - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
  - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
  - (v) the basis of any sharing of day-to-day household expenses; and

(b) the nature of the household, including:

- (i) any joint responsibility for the care and support of children; and
- (ii) the living arrangements of the persons; and
- (iii) any sharing of the responsibility for housework; and

(c) the social aspects of the relationship, including:

- (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and *statement*
- (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
- (iii) any basis on which the persons plan and undertake joint social activities; and

(d) the nature of the persons' commitment to each other, including:

- (i) the duration of the relationship; and *more evidence to support on the*
- (ii) the length of time during which the persons have lived together; and *2018*
- (iii) the degree of companionship and emotional support that the persons draw from each other; and
- (iv) whether the persons see the relationship as a long-term one.

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

## Section 5CB De facto partner

### *De facto partners*

For the purposes of this Act, a person is the **de facto partner** of another person (whether of the same sex or a different sex) if under subsection (2), the person is in a de facto relationship with the other person.

### *De facto relationship*

(2) For the purposes of subsection (1), a person is in a **de facto relationship** with another person if they are not in a married relationship (for the purposes of section 5F) with each other but:

(a) they have a mutual commitment to a shared life to the exclusion of all others; and

(b) the relationship between them is genuine and continuing; and

(c) they:

(i) live together; or

(ii) do not live separately and apart on a permanent basis; and

(d) they are not related by family (see subsection (4)).

(3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

### *Definition*

(4) For the purposes of paragraph (2)(d), 2 persons are **related by family** if:

(a) one is the **child** (including an adopted child) of the other; or

(b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or

(c) they have a **parent** in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have effect.

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

**(1AA)** This regulation applies in relation to an application for:

- (b) a **Partner (Provisional) (Class UF) visa**; or
- (c) a **Prospective Marriage (Temporary) (Class TO) visa**; or
- (e) an **Extended Eligibility (Temporary) (Class TK) visa**; or
- (f) a **Partner (Temporary) (Class UK) visa**.

**(1)** Subject to subregulations (2) and (3), if a person applies for a visa mentioned in subregulation (1AA) as the **spouse, de facto partner** or prospective **spouse** of the sponsor, the Minister must not approve the **sponsorship** of the applicant unless the Minister is satisfied that:

(a) not more than 1 other person has been granted a **relevant permission** as:

- (i) the **spouse, de facto partner** or prospective **spouse** of the sponsor on the basis of a **sponsorship** or nomination; or
- (ii) a person who ceased a relationship of a kind mentioned in subparagraph (i) with the **sponsor** after the person, or another person mentioned in the prescribed criteria for the visa, had suffered family violence committed by the **sponsor**; and

(b) if another person has been granted a **relevant permission** in the circumstances referred to in paragraph (a) — not less than 5 years has passed since the date of making the application for that relevant permission; and

(c) if the sponsor was granted a **relevant permission** as the **spouse, de facto partner** or prospective **spouse** of another person on the basis of a **sponsorship** or nomination — not less than 5 years has passed since the date of making the application for that relevant permission.

**(1A)** In subregulation (1):

**relevant permission** means:

- (a) in relation to an application for a visa referred to in subregulation (1AA) made during the period from 1 November 1996 to 30 June 1997 (inclusive) — a visa; and

(b) in relation to an application for a visa referred to in subregulation (1AA) made on or after 1 July 1997 — permission (other than a visa or **entry permit**) granted under the Act to **remain indefinitely in Australia**, a visa or an entry permit.

(2) Despite subregulation (1), the Minister may approve the **sponsorship** of an applicant for a visa if the Minister is satisfied that there are compelling circumstances affecting the sponsor.

### **Reg 1.20K Limitation on sponsorships - remaining relative visas**

(1) The Minister must not grant a **Subclass 115 (Remaining Relative) visa** or a **Subclass 835 (Remaining Relative) visa** to an applicant if the applicant is **sponsored** for the visa by a person:

- (a) who is an **Australian relative** for the applicant; and
- (b) to whom the Minister has granted any of the following:
  - (i) a Subclass 104 visa;
  - (ii) a **Subclass 115 (Remaining Relative) visa**;
  - (iii) a Subclass 806 visa;
  - (iv) a **Subclass 835 (Remaining Relative) visa**.

(2) The Minister must not grant a **Subclass 115 (Remaining Relative) visa** or a **Subclass 835 (Remaining Relative) visa** to an applicant if the applicant is **sponsored** for the visa by a person:

- (a) who is an **Australian relative** for the applicant; and
- (b) who has sponsored another applicant for any of the following:
  - (i) a Subclass 104 visa;
  - (ii) a **Subclass 115 (Remaining Relative) visa**;
  - (iii) a Subclass 806 visa;
  - (iv) a **Subclass 835 (Remaining Relative) visa**; and
- (c) the Minister granted the visa to the other applicant.

(3) The Minister must not grant a **Subclass 115 (Remaining Relative) visa** or a **Subclass 835 (Remaining Relative) visa** to an applicant if:

(a) the applicant is sponsored for the visa by a person who is the **spouse or de facto partner** of an **Australian relative** for the applicant; and

(b) the **Australian relative** for the applicant is a person to whom the Minister has granted any of the following:

- (i) a Subclass 104 visa;
- (ii) a **Subclass 115 (Remaining Relative) visa**;
- (iii) a Subclass 806 visa;
- (iv) a **Subclass 835 (Remaining Relative) visa**.

**(4)** The Minister must not grant a **Subclass 115 (Remaining Relative) visa** or a **Subclass 835 (Remaining Relative) visa** to an applicant if:

(a) the applicant is sponsored for the visa by a person who is the **spouse or de facto partner** of an **Australian relative** for the applicant; and

(b) the **Australian relative** for the applicant has sponsored another applicant for any of the following:

- (i) a Subclass 104 visa;
- (ii) a **Subclass 115 (Remaining Relative) visa**;
- (iii) a Subclass 806 visa;
- (iv) a **Subclass 835 (Remaining Relative) visa**; and

(c) the Minister granted the visa to the other applicant.

**(5)** The Minister must not grant a **Subclass 115 (Remaining Relative) visa** or a **Subclass 835 (Remaining Relative) visa** to an applicant if:

(a) the applicant is sponsored for the visa by the **spouse or de facto partner** of an **Australian relative** for the applicant; and

(b) the **spouse or de facto partner** has sponsored another applicant who is a relative of the **Australian relative** for the applicant for any of the following:

- (i) a **Subclass 104 visa**;
- (ii) a **Subclass 115 (Remaining Relative) visa**;
- (iii) a **Subclass 806 visa**;



(iv) a **Subclass 835 (Remaining Relative) visa**; and

(c) the Minister granted the visa to the other applicant.

**(6)** In this regulation:

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

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

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

**(1)** This regulation applies if:

(a) a person is granted a specified visa on or after 1 July 2009; and

(b) the person seeks approval to **sponsor** the relevant applicant on or after 1 July 2009; and

(c) the person was the **spouse** or **de facto partner** of the relevant applicant on or before the day the specified visa was granted to the person.

**(2)** The Minister must not approve **sponsorship** by the person of the relevant applicant within 5 years after the day when the person was granted the specified visa.

**(3)** Despite subregulation (2), the Minister may approve **sponsorship** by the person of the relevant applicant:

(a) if the relevant applicant had compelling reasons, other than reasons related to his or her financial circumstances, for not applying for a specified visa at the same time as the person applied for his or her specified visa; or

(b) if:

(i) the relevant applicant applied for a specified visa at the same time as the sponsor; and

(ii) the relevant applicant withdrew the application for the specified visa before it was granted; and

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

(4) In this regulation:

**relevant applicant** means the applicant for:

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

**specified visa** means:

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

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

(1) This regulation applies in relation to:

- (a) an application for any of the following visas:
  - (i) a **Child (Migrant) (Class AH) visa**;
  - (ii) a **Child (Residence) (Class BT) visa**;
  - (iii) an **Extended Eligibility (Temporary) (Class TK) visa**;
  - (iv) a **Partner (Temporary) (Class UK) visa**;
  - (v) a **Prospective Marriage (Temporary) (Class TO) visa**;
  - (vi) a **Partner (Provisional) (Class UF) visa**;

W | if the **primary applicant** or **secondary applicant** is under 18 at the time of the application; and

(b) an application for the approval of a **sponsorship** in relation to that application for a visa.

*Sponsor charged with registrable offence*

*none apparently*

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

(a) none of the applicants is under 18 at the time of the decision on the application for approval of the **sponsorship**; or

(b) the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction.

*Sponsor convicted of registrable offence*

*none to our knowledge*

**(3)** Subject to subregulations (4) and (5), if the sponsor has been convicted of a **registrable offence**, the Minister must refuse to approve the **sponsorship** of all of the applicants for the visa unless:

(a) none of the applicants is under 18 at the time of the decision on the application for approval of the **sponsorship**; or

(b) the conviction has been quashed or otherwise set aside.

**(4)** Despite subregulation (3), the Minister may decide to approve the **sponsorship** if:

(a) the sponsor completed the **sentence** imposed for the **registrable offence** (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the **sponsorship**; and

(b) the sponsor has not been charged with a **registrable offence** since the sponsor completed that **sentence**; and

(c) there are compelling circumstances affecting the sponsor or the applicant.

**(5)** Despite subregulation (3), the Minister may decide to approve the **sponsorship** if:

(a) the sponsor completed the **sentence** imposed for the **registrable offence** (including any period of release under recognisance, parole, or licence)

more than 5 years before the date of the application for approval of the **sponsorship**;  
and

(b) if the sponsor has been charged with a **registrable offence** since the **sponsor** completed that **sentence** — the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction; and

(c) there are compelling circumstances affecting the sponsor or the applicant.

**(6)** Subregulations (7) to (10) do not apply in relation to an application for any of the following visas:

(a) a **Partner (Temporary) (Class UK) visa**;

(b) a **Prospective Marriage (Temporary) (Class TO) visa**;

(c) a **Partner (Provisional) (Class UF) visa**.

#### *Spouse or de facto partner charged with registrable offence*

**(7)** If the **spouse** or **de facto partner** of the sponsor has been charged with a **registrable offence**, the Minister must refuse to approve the **sponsorship** of all of the applicants for the visa unless:

(a) none of the applicants is under 18 at the time of the decision on the application for approval of the **sponsorship**; or

(b) the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction.

#### *Spouse or de facto partner convicted of registrable offence*

**(8)** Subject to subregulations (9) and (10), if the **spouse** or **de facto partner** of the sponsor has been convicted of a **registrable offence**, the Minister must refuse to approve the **sponsorship** of all of the applicants for the visa unless:

(a) none of the applicants is under 18 at the time of the decision on the application for approval of the **sponsorship**; or

(b) the conviction has been quashed or otherwise set aside.

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

#### *Evidence of charge or conviction*

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

- (a) the Minister has requested a police check for the sponsor or the sponsor's **spouse** or **de facto partner**; and
- (b) the sponsor or the sponsor's **spouse** or **de facto partner** does not provide the police check within a reasonable time.

**(13)** In this regulation:

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

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

(a) an offence that is a registrable offence within the meaning of any of the following Acts:

- (i) the *Child Protection (Offenders Registration) Act 2000 (NSW)*;
- (ii) the *Sex Offenders Registration Act 2004 (Vic)*;
- (iii) the *Child Sex Offenders Registration Act 2006 (SA)*;
- (iv) the *Crimes (Child Sex Offenders) Act 2005 (ACT)*;

(b) an offence that would be a registrable offence under paragraph (a) if it were committed in a jurisdiction mentioned in that paragraph;

(c) an offence that is a reportable offence within the meaning of any of the following Acts:

- (i) the *Child Protection (Offender Reporting) Act 2004 (Qld)*;
- (ii) the *Community Protection (Offender Reporting) Act 2004 (WA)*;
- (iii) the *Community Protection (Offender Reporting) Act 2005 (Tas)*;
- (iv) the *Child Protection (Offender Reporting and Registration) Act (NT)*;

(d) an offence that would be a reportable offence under paragraph (c) if it were committed in a jurisdiction mentioned in that paragraph.

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

## **Reg 1.20KC Limitation on approval of sponsorship - prospective marriage and partner visas**

### *Application for which visas?*

(1) This regulation applies in relation to the approval of a **sponsorship** for one or more applications for any of the following visas:

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

### *Relevant offences*

(2) This regulation applies in relation to an offence (a **relevant offence**) against a law of the Commonwealth, a State, a Territory or a foreign country, involving any of the following matters:

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

*Sponsor has significant criminal record in relation to relevant offence*

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

*Police check*

- (5)** To determine whether a sponsor has been convicted of a relevant offence, and whether the sponsor has a significant criminal record in relation to a relevant offence, the Minister may, on one or more occasions, request the sponsor to provide a police check relating to the sponsor from any, or all, of the following:
- (a) a jurisdiction **in Australia** specified in the request;
  - (b) a foreign country, specified in the request, in which the sponsor has lived for a period, or a total period, of at least 12 months since the latest of the following dates:
    - (i) 10 years before the date of the request;
    - (ii) the date the sponsor turned 16.



(6) In addition to subregulation (3), the Minister may refuse to approve the **sponsorship** of each applicant for the visa if:

- (a) the Minister has requested a police check from the sponsor under subregulation (5); and
- (b) the sponsor does not provide the police check within a reasonable time.

### **Reg 1.20KD Prospective marriage and partner visas - definition of *significant criminal record***

(1) For the purposes of regulation 1.20KC, a sponsor has a **significant criminal record** in relation to a relevant offence or relevant offences if, for that offence or those offences:

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

#### *Concurrent sentences*

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

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

#### *Periodic detention*

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

*Residential schemes or programs*

**(4)** For the purposes of subregulation (1), if a sponsor has been convicted of a relevant offence, and the **court** orders the sponsor to participate in:

- (a) a residential drug rehabilitation scheme; or
- (b) a residential program for the mentally ill;

the sponsor is taken to have been **sentenced** to a term of **imprisonment** equal to the number of days the sponsor is required to participate in the scheme or program.

*Pardons etc.*

**(5)** For the purposes of subregulation (1), a **sentence** imposed on a sponsor for a relevant offence, or the conviction of a sponsor for a relevant offence, is to be disregarded if:

- (a) the conviction concerned has been quashed or otherwise nullified; or
- (b) both:
  - (i) the sponsor has been pardoned in relation to the conviction concerned; and
  - (ii) the effect of that pardon is that the sponsor is taken never to have been convicted of that offence.



## Subclass 820 - Partner

### Subclass 820 - Partner

#### 820.1 Interpretation

##### 820.111

In this Part:

**court** means a Court of Australia or an external Territory;

**original sponsor** means the Australian citizen, [Australian permanent resident](#) or [eligible New Zealand citizen](#) who was specified in the application for a [Subclass 300 \(Prospective Marriage\) visa](#) as the person whom the applicant intended to marry after [entry](#) into Australia.

**sponsoring partner** means:

(a) in subclauses 820.211(2) and (2B) and clause 820.221:

(i) for an applicant who is, or was, the holder of a [Subclass 300 \(Prospective Marriage\) visa](#):

(A) the [original sponsor](#) for the applicant; or

(B) the [subsequent sponsor](#) for the applicant; or

(ii) for any other applicant — the Australian citizen, [Australian permanent resident](#) or [eligible New Zealand citizen](#) who was specified in the application as the [spouse](#) or [de facto partner](#) of the applicant; and

(b) in any other provision of this Part:

(i) for an applicant who is, or was, the holder of a [Subclass 300 \(Prospective Marriage\) visa](#)— the [original sponsor](#) for the applicant; or

(ii) for any other applicant — the Australian citizen, [Australian permanent resident](#) or [eligible New Zealand citizen](#) who was specified in the application as the [spouse](#) or [de facto partner](#) of the applicant.

**subsequent sponsor** means a person who:

(a) is an Australian citizen, [Australian permanent resident](#) or [eligible New Zealand citizen](#); and

(b) is not the [original sponsor](#) for the applicant; and

(c) is the [spouse](#) or [de facto partner](#) of the applicant.

Note: [eligible New Zealand citizen](#), [SOFA forces member](#) and [SOFA forces civilian component member](#) are defined in regulation 1.03. For [de facto partner](#), see section 5CB of the Act (also see regulation 1.09A). For [spouse](#), see section 5F of the Act (also see regulation 1.15A).

## 820.2 Primary criteria

Note: The primary criteria must be satisfied by at least 1 **member of the 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.

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

#### 820.211

(1) The applicant:

- (a) is not the holder of a **Subclass 771 (Transit) visa**; and
- (b) meets the requirements of subclause (2), (5), (6), (7), (8) or (9).

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

- (a) the applicant is the **spouse** or **de facto partner** of a person who:
  - (i) is an Australian citizen, an **Australian permanent resident** or **eligible New Zealand citizen**; and
  - (ii) is not prohibited by subclause (2B) from being a **sponsoring partner**; and

(c) the applicant is sponsored:

- (i) if the applicant's **spouse** or **de facto partner** has turned 18 — by the spouse or de facto partner; or
- (ii) if the applicant's **spouse** has not turned 18 — by a **parent** or **guardian** of the spouse who:

(A) has turned 18; and

(B) is an Australian citizen, an **Australian permanent resident** or an **eligible New Zealand citizen**; and

(d) in the case of an applicant who is not the holder of a **substantive visa** — either:

(i) the applicant:

(A) entered Australia as the holder of a **Subclass 995 (Diplomatic) visa** or as a **special purpose visa** holder who at the time of **entry** met the requirements of subclause (2A); and

(B) satisfies **Schedule 3** criterion **3002**; or

(ii) the applicant satisfies **Schedule 3** criteria **3001**, **3003** and **3004**, unless the Minister is satisfied that there are compelling reasons for not applying those criteria.

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

(a) the applicant is:

- (i) a **SOFA member**; or
- (ii) a **SOFA forces civilian component member**; or

(b) the applicant:

- (i) is a **dependent child** of a person referred to in paragraph (a); and
- (ii) holds a valid national passport and certificate that he or she is a dependant of a **SOFA forces member** or a **SOFA forces civilian component member**, as the case requires.

(2B) The **spouse** or **de facto partner** of the applicant is prohibited from being a **sponsoring partner** if:

(a) the spouse or de facto partner is a woman who was granted a Subclass 204 (Woman at Risk) visa within the 5 years immediately preceding the application; and

(b) on the date of grant of that visa:

- (i) the applicant was a former spouse or former de facto partner of that woman, having been divorced or permanently separated from that woman; or
- (ii) the applicant was the spouse or de facto partner of that woman and that relationship had not been declared to **Immigration**.

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

- (a) the applicant is not the holder of a **substantive visa**; and
- (b) the applicant last entered Australia as the holder of a **Subclass 300 (Prospective Marriage) visa**; and
- (c) the applicant has married the Australian citizen, **Australian permanent resident** or **eligible New Zealand citizen** whom the applicant entered Australia to marry; and
- (d) the applicant ceased to hold a **substantive visa** after marrying that Australian citizen, **Australian permanent resident** or **eligible New Zealand citizen**; and
- (e) the applicant is the **spouse** of the **sponsoring partner**; and
- (f) the applicant is **sponsored**:
  - (i) if the applicant's **spouse** has turned 18 — by the **spouse**; or
  - (ii) if the applicant's **spouse** has not turned 18 — by a **parent** or **guardian** of the **spouse** who:
    - (A) has turned 18; and
    - (B) is an Australian citizen, an **Australian permanent resident** or an **eligible New Zealand citizen**.

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

- (a) is the holder of a **Subclass 300 (Prospective Marriage) visa**; and
- (b) has married the **sponsoring partner** under a marriage that is recognised as valid for the purposes of the Act; and
- (c) the applicant is **sponsored**:
  - (i) if the applicant's **spouse** has turned 18 — by the **spouse**; or
  - (ii) if the applicant's **spouse** has not turned 18 — by a **parent** or **guardian** of the **spouse** who:
    - (A) has turned 18; and
    - (B) is an Australian citizen, an **Australian permanent resident** or an **eligible New Zealand citizen**; and
- (d) continues to be the **spouse** of the **sponsoring partner**.

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

- (a) the applicant is the holder of a **Subclass 300 (Prospective Marriage) visa**; and
- (b) the applicant has married the **sponsoring partner** under a marriage that is recognised as valid for the purposes of the Act; and
- (c) the **sponsoring partner** has died; and
- (d) the applicant satisfies the Minister that the applicant would have continued to be the **spouse** of the **sponsoring partner** if the sponsoring partner had not died; and
- (e) the applicant has developed close business, cultural or personal ties **in Australia**.

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

- (a) the applicant is the holder of a **Subclass 300 (Prospective Marriage) visa**; and
- (b) the applicant has married the **sponsoring partner** under a marriage that is recognised as valid for the purposes of the Act; and
- (c) the relationship between the applicant and the **sponsoring partner** has ceased; and
- (d) any 1 or more of the following:
  - (i) the applicant;
  - (ii) a **member of the family unit** of the applicant who has made a combined application with the applicant;
  - (iii) a **dependent child** of the **sponsoring partner** or of the applicant or of both of them; has suffered **family violence** committed by the **sponsoring partner**.

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

- (a) the applicant is not the holder of a **substantive visa**; and
- (b) the applicant has been the holder of a **Subclass 300 (Prospective Marriage) visa**; and
- (c) while that visa was valid, the applicant married the **sponsoring partner** under a marriage that is recognised as valid for the purposes of the Act; and
- (d) the relationship between the applicant and the **sponsoring partner** has ceased; and
- (e) any 1 or more of the following:
  - (i) the applicant;
  - (ii) a **member of the family unit** of the applicant who has made a combined application with the applicant;
  - (iii) a **dependent child** of the **sponsoring partner** or of the applicant or of both of them;
    - has suffered family violence committed by the **sponsoring partner**.

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

## 820.212

If:

- (a) the applicant is the holder of:
  - (ii) a Subclass 475 (Skilled - Regional Sponsored) visa; or
  - (iii) a Subclass 487 (Skilled - Regional Sponsored) visa; or
  - (iv) a **Skilled — Regional Sponsored (Provisional) (Class SP) visa**; or
- (b) the last **substantive visa** held by the applicant since **entering Australia** was:
  - (i) a **Skilled — Independent Regional (Provisional) (Class UX) visa**; or
  - (ii) a Subclass 475 (Skilled - Regional Sponsored) visa; or
  - (iii) a Subclass 487 (Skilled - Regional Sponsored) visa; or
  - (iv) a **Skilled — Regional Sponsored (Provisional) (Class SP) visa**;

the applicant has substantially complied with the conditions to which that visa was subject.

## 820.22 Criteria to be satisfied at time of decision

### 820.221

**(1)** In the case of an applicant referred to in subclause 820.211(2), (5), (6), (7), (8) or (9), the applicant either:

- (a) continues to meet the requirements of the applicable subclause; or
- (b) **meets the requirements** of subclause (2) or (3).

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

- (a) would continue to meet the requirements of subclause 820.211(2), (5) or (6) except that the **sponsoring partner** has died; and
- (b) satisfies the Minister that the applicant would have continued to be the **spouse or de facto partner** of the **sponsoring partner** if the sponsoring partner had not died; and
- (c) has developed close business, cultural or personal ties **in Australia**.

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

- (a) the applicant would continue to meet the requirements of subclause 820.211(2), (5) or (6) except that the relationship between the applicant and the **sponsoring partner** has ceased; and
- (b) 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 partner** or of the applicant or of both of them;  
has suffered **family violence** committed by the **sponsoring partner**;

(ii) the applicant:

(A) has **custody** or joint custody of, or access to; or

(B) has a residence order or contact order made under the *Family Law Act 1975* relating to;  
at least 1 **child** in respect of whom the **sponsoring partner**:

(C) has been granted joint **custody** or access by a court; or

(D) has a residence order or contact order made under the *Family Law Act 1975*; or

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

Note: For special provisions relating to family violence, see [Division 1.5](#).

**(4)** if paragraph 820.211(2)(c), (5)(f) or (6)(c) requires the applicant to be sponsored:

(a) the sponsorship has been approved by the Minister and is still in force; and

(b) the sponsor has consented to the disclosure by the Department, to each applicant included in the sponsorship, of any conviction of the sponsor for a relevant offence (within the meaning of subregulation 1.20KC(2)).

Note 1: Regulations [1.20J](#), [1.20KA](#), [1.20KB](#) and [1.20KC](#) limit the Minister's discretion to approve sponsorships.

Note 2: The sponsor may be asked to consent to the disclosure mentioned in paragraph (b) on the approved form required to be completed by the sponsor in relation to the visa application.

**(5)** For the purposes of subclause (4), the conviction of the sponsor for a relevant offence is to be disregarded if:

(a) the conviction has been quashed or otherwise nullified; or

(b) both:

(i) the sponsor has been pardoned in relation to the conviction; and

(ii) the effect of that pardon is that the sponsor is taken never to have been convicted of the offence.

## 820.221A

Unless the applicant:

(a) is, or has been, the holder of a **Subclass 300 (Prospective Marriage) visa**; and

(b) is seeking to **remain** permanently in **Australia** on the basis of the applicant's marriage to the person who was specified as the intended spouse in the application that resulted in the grant of that **Subclass 300 (Prospective Marriage) visa**;

the sponsorship of the applicant under clause 820.211 has been approved by the Minister.

Note: Regulations [1.20J](#), [1.20KA](#) and [1.20KB](#) and [1.20KC](#) limits the Minister's discretion to approve sponsorships.

## 820.223

**(1)** The applicant:

(a) subject to subclause (2) — satisfies public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4007](#) and [4009](#); and

(b) if the applicant had turned 18 at the time of application — satisfies public interest criterion [4019](#).

**(2)** Paragraph (1)(a) does not apply to an applicant referred to in subclause 820.211(5).

## 820.224

**(1)** Each **member of the family unit** of the applicant who is an applicant for a Subclass 820 visa is a person who:

- (a) subject to subclause (2) — satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
- (b) if the person had turned 18 at the time of application — satisfies public interest criterion 4019; and
- (c) satisfies public interest criterion 4020.

(1A) Each member of the family unit of the applicant who is not an applicant for a Subclass 820 visa is a person who:

- (a) subject to subclause (2) — 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.

(2) Paragraphs (1)(a) and (1A)(a) do not apply to an applicant who:

- (a) is a dependent child of an applicant referred to in subclause 820.211(5); and
- (b) entered Australia as the holder of a visa of the same class as the visa held by that other applicant.

### 820.225

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

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

### 820.226

The applicant satisfies public interest criteria 4020 and 4021.

## 820.3 Secondary criteria

Note: A dependent child, or a 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.

## 820.31 Criteria to be satisfied at time of application

### 820.311

The applicant is:

- (a) either:
  - (i) a dependent child of a person who has applied for a Partner (Residence) (Class BS) visa; or
  - (ii) a member of the family unit of a person who:
    - (A) is the holder of, or has been the holder of, a Subclass 300 (Prospective Marriage) visa; and
    - (B) has applied for a Partner (Residence) (Class BS) visa; and
- (b) the sponsorship (if any) in respect of that person includes the applicant; and
- (c) the Minister has not decided to grant or refuse to grant a visa to the person.

### 820.312

In the case of an applicant who is not the holder of a substantive visa — either:

- (a) the applicant:



- (i) entered Australia as the holder of a [Subclass 995 \(Diplomatic\) visa](#) or as a [special purpose visa](#) holder who at the time of [entry](#) met the requirements of subclause 820.211(2A); and
  - (ii) satisfies [Schedule 3](#) criterion [3002](#); or
- (b) the applicant satisfies [Schedule 3](#) criteria [3001](#), [3003](#) and [3004](#), unless the Minister is satisfied that there are compelling reasons for not applying those criteria.

## 820.313

If:

- (a) the applicant is the holder of:
  - (ii) a Subclass 475 (Skilled - Regional Sponsored) visa; or
  - (iii) a Subclass 487 (Skilled - Regional Sponsored) visa; or
  - (iv) a [Skilled — Regional Sponsored \(Provisional\) \(Class SP\) visa](#);
- (b) the last [substantive visa](#) held by the applicant since [entering Australia](#) was:
  - (i) a [Skilled — Independent Regional \(Provisional\) \(Class UX\) visa](#); or
  - (ii) a Subclass 475 (Skilled - Regional Sponsored) visa; or
  - (iii) a Subclass 487 (Skilled - Regional Sponsored) visa; or
  - (iv) a [Skilled — Regional Sponsored \(Provisional\) \(Class SP\) visa](#);

the applicant has substantially complied with the conditions to which that visa was subject.

## 820.32 Criteria to be satisfied at time of decision

### 820.321

In the case of an applicant referred to in clause 820.311, the applicant:

- (a) is a person who is dependent on, or a [member of the family unit](#) of, another person who having satisfied the primary criteria, is the holder of a Subclass 820 (Partner) visa (the person who satisfies the primary criteria); or
- (b) is a person to whom each of the following applies:
  - (i) the person made a combined application with the person who satisfies the primary criteria;
  - (ii) subsequent to the combined application being made, the person was found by the Minister not to be dependent on, or a [member of the family unit](#) of, the person who satisfies the primary criteria;
  - (iii) subsequent to the person who satisfies the primary criteria being granted a Subclass 820 (Partner) visa and a [Subclass 801 \(Partner\) visa](#) — the Tribunal found the person to be dependent on, or a [member of the family unit](#) of, the person who satisfies the primary criteria.

### 820.323

(1) The applicant:

- (a) subject to subclause (2) — satisfies public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4007](#) and [4009](#); and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion [4019](#).

(2) Paragraph (1)(a) does not apply to an applicant referred to in subclause 820.311 who:

- (a) is a [dependent child](#) of another applicant referred to in subclause 820.211(5); and
- (b) entered Australia as the holder of a visa of the same class as the visa held by that other applicant.

### 820.324

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

## 820.325

The sponsorship mentioned in paragraph 820.311(b) has been approved by the Minister and is still in force.

## 820.326

The applicant satisfies public interest criteria [4020](#) and [4021](#).

## 820.4 Circumstances applicable to grant

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### 820.411

The applicant must be [in Australia](#), but not [in immigration clearance](#), when the visa is granted.

## 820.5 When visa is in effect

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### 820.511

[Temporary visa](#) permitting the holder to travel to and [enter Australia](#) until:

- (a) the holder is notified that his or her application for a [Subclass 801 \(Partner\) visa](#) has been decided; or
- (b) that application is [withdrawn](#).

## 820.6 Conditions:

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**Nil**

[LEGEND Comment - For amendment history, please see [Table of Amendments](#)]

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

(1AA) This regulation applies in relation to an application for:

- (b) a Partner (Provisional) (Class UF) visa; or
- (c) a Prospective Marriage (Temporary) (Class TO) visa; or
- (e) an Extended Eligibility (Temporary) (Class TK) visa; or
- (f) a Partner (Temporary) (Class UK) visa.

(1) Subject to subregulations (2) and (3), if a person applies for a visa mentioned in subregulation (1AA) as the spouse, de facto partner or prospective spouse of the sponsor, the Minister must not approve the sponsorship of the applicant unless the Minister is satisfied that:

- (a) not more than 1 other person has been granted a relevant permission as:
  - (i) the spouse, de facto partner or prospective spouse of the sponsor on the basis of a sponsorship or nomination; or
  - (ii) a person who ceased a relationship of a kind mentioned in subparagraph (i) with the sponsor after the person, or another person mentioned in the prescribed criteria for the visa, had suffered family violence committed by the sponsor; and
- (b) if another person has been granted a relevant permission in the circumstances referred to in paragraph (a) — not less than 5 years has passed since the date of making the application for that relevant permission; and
- (c) if the sponsor was granted a relevant permission as the spouse, de facto partner or prospective spouse of another person on the basis of a sponsorship or nomination — not less than 5 years has passed since the date of making the application for that relevant permission.

(1A) In subregulation (1):

**relevant permission** means:

- (a) in relation to an application for a visa referred to in subregulation (1AA) made during the period from 1 November 1996 to 30 June 1997 (inclusive) — a visa; and

(b) in relation to an application for a visa referred to in subregulation (1AA) made on or after 1 July 1997 — permission (other than a visa or **entry permit**) granted under the Act to **remain indefinitely in Australia**, a visa or an entry permit.

**(2)** Despite subregulation (1), the Minister may approve the **sponsorship** of an applicant for a visa if the Minister is satisfied that there are compelling circumstances affecting the sponsor.

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

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

**specified visa** means:

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

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

**(1)** This regulation applies in relation to:

(a) an application for any of the following visas:

- (i) a **Child (Migrant) (Class AH) visa**;
- (ii) a **Child (Residence) (Class BT) visa**;
- (iii) an **Extended Eligibility (Temporary) (Class TK) visa**;
- (iv) a **Partner (Temporary) (Class UK) visa**;
- (v) a **Prospective Marriage (Temporary) (Class TO) visa**;
- (vi) a **Partner (Provisional) (Class UF) visa**;

if the **primary applicant** or **secondary applicant** is under 18 at the time of the application; and

(b) an application for the approval of a **sponsorship** in relation to that application for a visa.

### *Sponsor charged with registrable offence*

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

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

### *Sponsor convicted of registrable offence*

- (3) Subject to subregulations (4) and (5), if the sponsor has been convicted of a **registrable offence**, the Minister must refuse to approve the **sponsorship** of all of the applicants for the visa unless:
- (a) none of the applicants is under 18 at the time of the decision on the application for approval of the **sponsorship**; or
  - (b) the conviction has been quashed or otherwise set aside.
- (4) Despite subregulation (3), the Minister may decide to approve the **sponsorship** if:
- (a) the sponsor completed the **sentence** imposed for the **registrable offence** (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the **sponsorship**; and
  - (b) the sponsor has not been charged with a **registrable offence** since the sponsor completed that **sentence**; and
  - (c) there are compelling circumstances affecting the sponsor or the applicant.
- (5) Despite subregulation (3), the Minister may decide to approve the **sponsorship** if:
- (a) the sponsor completed the **sentence** imposed for the **registrable offence** (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the **sponsorship**; and
  - (b) if the sponsor has been charged with a **registrable offence** since the **sponsor** completed that **sentence** — the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction; and
  - (c) there are compelling circumstances affecting the sponsor or the applicant.
- (6) Subregulations (7) to (10) do not apply in relation to an application for any of the following visas:
- (a) a **Partner (Temporary) (Class UK) visa**;
  - (b) a **Prospective Marriage (Temporary) (Class TO) visa**;
  - (c) a **Partner (Provisional) (Class UF) visa**.

*Spouse or de facto partner charged with registrable offence*

(7) If the spouse or de facto partner of the sponsor has been charged with a registrable offence, the Minister must refuse to approve the sponsorship of all of the applicants for the visa unless:

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

*Spouse or de facto partner convicted of registrable offence*

(8) Subject to subregulations (9) and (10), if the spouse or de facto partner of the sponsor has been convicted of a registrable offence, the Minister must refuse to approve the sponsorship of all of the applicants for the visa unless:

- (a) none of the applicants is under 18 at the time of the decision on the application for approval of the sponsorship; or
- (b) the conviction has been quashed or otherwise set aside.

(9) Despite subregulation (8), the Minister may decide to approve the sponsorship if:

- (a) the spouse or de facto partner completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the sponsorship; and
- (b) the spouse or de facto partner has not been charged with a registrable offence since the sponsor completed that sentence; and
- (c) there are compelling circumstances affecting the sponsor or the applicant.

(10) Despite subregulation (8), the Minister may decide to approve the sponsorship if:

- (a) the spouse or de facto partner completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the sponsorship; and



- (b) if the spouse or de facto partner has been charged with a registrable offence since the spouse or de facto partner completed that sentence — the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction; and
- (c) there are compelling circumstances affecting the sponsor or the applicant.

*Evidence of charge or conviction*

(11) To determine whether a sponsor, or the spouse or de facto partner of a sponsor, has been charged with, or convicted of, a registrable offence, the Minister may request the sponsor, or the spouse or de facto partner of the sponsor, to provide a police check from:

- (a) a jurisdiction in Australia specified in the request; or
- (b) a country, specified in the request, in which the sponsor or the spouse or de facto partner has lived for a period, or a total period, of at least 12 months.

(12) In addition to other reasons set out in this regulation for refusing to approve a sponsorship, the Minister may refuse to approve the sponsorship of all applicants for a visa if:

- (a) the Minister has requested a police check for the sponsor or the sponsor's spouse or de facto partner; and
- (b) the sponsor or the sponsor's spouse or de facto partner does not provide the police check within a reasonable time.

(13) In this regulation:

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

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

- (a) an offence that is a registrable offence within the meaning of any of the following Acts:
- (i) the *Child Protection (Offenders Registration) Act 2000 (NSW)*;

- (ii) the *Sex Offenders Registration Act 2004 (Vic)*;
- (iii) the *Child Sex Offenders Registration Act 2006 (SA)*;
- (iv) the *Crimes (Child Sex Offenders) Act 2005 (ACT)*;

(b) an offence that would be a registrable offence under paragraph (a) if it were committed in a jurisdiction mentioned in that paragraph;

(c) an offence that is a reportable offence within the meaning of any of the following Acts:

- (i) the *Child Protection (Offender Reporting) Act 2004 (Qld)*;
- (ii) the *Community Protection (Offender Reporting) Act 2004 (WA)*;
- (iii) the *Community Protection (Offender Reporting) Act 2005 (Tas)*;
- (iv) the *Child Protection (Offender Reporting and Registration) Act (NT)*;

(d) an offence that would be a reportable offence under paragraph (c) if it were committed in a jurisdiction mentioned in that paragraph.

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

## Reg 1.20KC Limitation on approval of sponsorship - prospective marriage and partner visas

### *Application for which visas?*

(1) This regulation applies in relation to the approval of a **sponsorship** for one or more applications for any of the following visas:

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

### *Relevant offences*

**(2)** This regulation applies in relation to an offence (a **relevant offence**) against a law of the Commonwealth, a State, a Territory or a foreign country, involving any of the following matters:

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

*Sponsor has significant criminal record in relation to relevant offence*

**(3)** The Minister must refuse to approve the **sponsorship** of each applicant for the visa if:

- (a) the sponsor has been convicted of a relevant offence or relevant offences; and
- (b) the sponsor has a significant criminal record in relation to the relevant offence or relevant offences (see regulation 1.20KD).

**(4)** Despite subregulation (3), the Minister may decide to approve the **sponsorship** if the Minister considers it reasonable to do so, having regard to matters including the following (without limitation):

- (a) the length of time since the sponsor completed the **sentence** (or **sentences**) for the relevant offence or relevant offences;
- (b) the best interest of the following:
  - (i) any **children** of the sponsor;

(ii) any **children** of the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned;

(c) the length of the relationship between the sponsor and the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned.

#### *Police check*

**(5)** To determine whether a sponsor has been convicted of a relevant offence, and whether the sponsor has a significant criminal record in relation to a relevant offence, the Minister may, on one or more occasions, request the sponsor to provide a police check relating to the sponsor from any, or all, of the following:

(a) a jurisdiction **in Australia** specified in the request;

(b) a foreign country, specified in the request, in which the sponsor has lived for a period, or a total period, of at least 12 months since the latest of the following dates:

(i) 10 years before the date of the request;

(ii) the date the sponsor turned 16.

**(6)** In addition to subregulation (3), the Minister may refuse to approve the **sponsorship** of each applicant for the visa if:

(a) the Minister has requested a police check from the sponsor under subregulation (5); and

(b) the sponsor does not provide the police check within a reasonable time.

#### **Reg 1.20KD Prospective marriage and partner visas - definition of *significant criminal record***

**(1)** For the purposes of regulation **1.20KC**, a sponsor has a ***significant criminal record*** in relation to a relevant offence or relevant offences if, for that offence or those offences:

(a) the sponsor has been **sentenced** to death; or

(b) the sponsor has been **sentenced** to **imprisonment** for life; or

(c) the sponsor has been **sentenced** to a term of imprisonment of 12 months or more; or

(d) the sponsor has been **sentenced** to 2 or more terms of **imprisonment**, where the total of those terms is 12 months or more.

#### *Concurrent sentences*

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

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

#### *Periodic detention*

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

#### *Residential schemes or programs*

**(4)** For the purposes of subregulation (1), if a sponsor has been convicted of a relevant offence, and the **court** orders the sponsor to participate in:

(a) a residential drug rehabilitation scheme; or

(b) a residential program for the mentally ill;

the sponsor is taken to have been **sentenced** to a term of **imprisonment** equal to the number of days the sponsor is required to participate in the scheme or program.

#### *Pardons etc.*

**(5)** For the purposes of subregulation (1), a sentence imposed on a sponsor for a relevant offence, or the conviction of a sponsor for a relevant offence, is to be disregarded if:

- (a) the conviction concerned has been quashed or otherwise nullified; or
- (b) both:
  - (i) the sponsor has been pardoned in relation to the conviction concerned; and
  - (ii) the effect of that pardon is that the sponsor is taken never to have been convicted of that offence.



## Subclass 801 - Partner

### Subclass 801 - Partner

#### 801.1 Interpretation

##### 801.111

In this Part:

**sponsoring partner** means:

- (a) an Australian citizen, **Australian permanent resident** or **eligible New Zealand citizen** who was specified in the application for the Subclass 820 (Spouse) visa or **Subclass 820 (Partner) visa** as the **spouse** or **de facto partner** of the applicant; or
- (b) for a person to whom the Minister has decided, under section 345, **351**, **417** or **501J** of the Act, to grant a Subclass 820 (Spouse) visa or a **Subclass 820 (Partner) visa** — an Australian citizen, **Australian permanent resident** or **eligible New Zealand citizen** who was the **spouse** or **de facto partner** of that person at the time the visa was granted.

Note: **Australian permanent resident**, **eligible New Zealand citizen** and **long-term partner relationship** are defined in regulation 1.03, **de facto partner** is defined in section 5CB of the Act (also see regulation 1.09A) and **spouse** is defined in section 5F of the Act (also see regulation 1.15A).

#### 801.2 Primary criteria

Note: The primary criteria must be satisfied by at least one **member of the 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 (Partner) visa** by:
    - (i) the **sponsoring partner**; 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** or **de facto partner** of the **sponsoring partner**; 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 (Partner) visa** which the Minister has decided, under section 345, **351, 417** or **501J** of the Act, to grant to the applicant; and
- (b) the applicant is the **spouse** or **de facto partner** of the **sponsoring partner**; and
- (c) subject to subclauses (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 partner** has died; and
- (c) satisfies the Minister that the applicant would have continued to be the **spouse** or **de facto partner** of the **sponsoring partner** if the sponsoring partner had not died; 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 partner** 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 partner** or of the applicant or of both of them; has suffered **family violence** committed by the **sponsoring partner**;
  - (ii) the applicant:
    - (A) has **custody** or joint custody of, or access to; or
    - (B) has a residence order or contact order made under the **Family Law Act 1975** relating to; at least 1 **child** in respect of whom the **sponsoring partner**;
    - (C) has been granted joint **custody** or access by a court; or
    - (D) has a residence order or contact order made under the **Family Law Act 1975**; or
    - (E) has an obligation under a child maintenance order made under the **Family Law Act 1975**, or any other formal maintenance obligation.

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

**(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 partner relationship** with the **sponsoring partner**.

**(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
- (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 (Partner) visa** that ceased on notification of a decision of the Minister to refuse a Subclass 801 visa; and
- (b) if the **Tribunal**:

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(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.

## 801.223

(1) The applicant:

(a) subject to subclause (2) — satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and

(b) if the applicant had turned 18 at the time of application — public interest criterion 4019.

(2) Paragraph (1)(a) 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) Each member of the family unit of the applicant who is an applicant for a Subclass 801 visa is a person who:

(a) subject to subclause (3) — satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and

(b) if the person had turned 18 at the time of application — satisfies public interest criterion 4019; and

(c) satisfies public interest criterion 4020.

(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) Paragraph (1)(a) 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 —

public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

## 801.226

The applicant satisfies public interest criteria 4020 and 4021.

## 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 Subclass 300 (Prospective Marriage) 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 (Partner) visa** which the Minister has decided, under section 345, **351**, **417** 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 (Partner) 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
    - (C) a **Subclass 820 (Partner) 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**; or
      - (III) a **Subclass 820 (Partner) visa**;
 which the Minister has decided, under section 345, **351**, **417** 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 who was the holder of a **Subclass 445 (Dependent Child) visa**, **Subclass 820 (Spouse) visa** or **Subclass 820 (Partner) visa**; and
- (b) that other person has been granted a Subclass 801 visa.

## 801.323

(1) The applicant:

- (a) subject to subclause (2) — satisfies public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4007](#) and [4009](#); and
- (b) if the applicant had turned 18 at the time of application — satisfies public interest criterion [4019](#).

(2) Paragraph (1)(a) does not apply to an applicant who holds [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 applicant satisfies public interest criteria [4020](#) and [4021](#).

## 801.4 Circumstances applicable to grant

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### 801.411

The applicant must be:

- (a) [in Australia](#), but not [in immigration clearance](#); or
- (b) [outside Australia](#);

when the visa is granted.

### 801.5 When visa is in effect

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### 801.511

[Permanent visa](#) permitting the holder to travel to and [enter Australia](#) for 5 years from date of grant.

### 801.6 Conditions:

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Nil

[LEGEND Comment - For amendment history, please see [Table of Amendments](#)]



## SCHEDULE 3 — ADDITIONAL CRITERIA APPLICABLE TO UNLAWFUL NON-CITIZENS AND CERTAIN BRIDGING VISA HOLDERS [clause 3001 - clause 3005]

### Schedule 3 - ADDITIONAL CRITERIA APPLICABLE TO UNLAWFUL NON-CITIZENS AND CERTAIN BRIDGING VISA HOLDERS

Regulation 1.03

#### 3001

- (1) The application is validly made within 28 days after the relevant day (within the meaning of subclause (2)).
- (2) For the purposes of subclause (1) and of clause 3002, the relevant day, in relation to an applicant, is:
- (a) if the applicant held an **entry permit** that was valid up to and including 31 August 1994 but has not subsequently been the holder of a **substantive visa** — 1 September 1994; or
  - (b) if the applicant became an illegal entrant before 1 September 1994 (whether or not clause 6002 in Schedule 6 of the *Migration (1993) Regulations* applied or section 195 of the Act applies) and has not, at any time on or after 1 September 1994, been the holder of a **substantive visa** — the day when the applicant last became an illegal entrant; or
  - (c) if the applicant:
    - (i) ceased to hold a substantive or **criminal justice visa** on or after 1 September 1994; or
    - (ii) entered Australia **unlawfully** on or after 1 September 1994;
 whichever is the later of:
    - (iii) the last day when the applicant held a **substantive** or **criminal justice visa**; or
    - (iv) the day when the applicant last **entered Australia unlawfully**; or
  - (d) if the last **substantive visa** held by the applicant was cancelled, and the **Tribunal** has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation — the later of:
    - (i) the day when that last **substantive visa** ceased to be in effect; and
    - (ii) 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.

#### 3002

The application is validly made within 12 months after the relevant day (within the meaning of subclause 3001(2)).

#### 3003



If:

- (a) the applicant has not, on or after 1 September 1994, been the holder of a **substantive visa**; and
- (b) on 31 August 1994, the applicant was either:
  - (i) an illegal entrant; or
  - (ii) the holder of an **entry permit** that was not valid beyond 31 August 1994;
 the Minister is satisfied that:
- (c) the applicant last became an illegal entrant, or, in the case of a person referred to in subparagraph (b)(ii), last became a person **in Australia** without a **substantive visa**, because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with the conditions that apply or applied to:
  - (i) the last of any **entry permits** held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
  - (ii) any subsequent **bridging visa**; and
- (f) the applicant would have been entitled to be granted an **entry permit** equivalent to a visa of the class applied for if the applicant had applied for the entry permit immediately before last becoming an illegal entrant or, in the case of a person referred to in subparagraph (b)(i), if the applicant had applied for the entry permit on 31 August 1994; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) the last **entry permit** (if any) held by the applicant was not granted subject to a condition that the holder would not, after **entering Australia**, be entitled to be granted an entry permit, or a further entry permit, while the holder remained **in Australia**.

### 3004

If the applicant:

- (a) ceased to hold a **substantive** or **criminal justice visa** on or after 1 September 1994; or
  - (b) **entered Australia** unlawfully on or after 1 September 1994 and has not subsequently been granted a **substantive visa**;
- the Minister is satisfied that:
- (c) the applicant is not the holder of a **substantive visa** because of factors beyond the applicant's control; and
  - (d) there are compelling reasons for granting the visa; and
  - (e) the applicant has complied substantially with:
    - (i) the conditions that apply or applied to:
      - (A) the last of any **entry permits** held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
      - (B) any subsequent **bridging visa**; or
    - (ii) the conditions that apply or applied to:
      - (A) the last of any **substantive visas** held by the applicant (other than a condition of which the applicant was in breach solely because the visa ceased to be in effect); and
      - (B) any subsequent **bridging visa**; and
  - (f) either:
    - (i) in the case of an applicant referred to in paragraph (a) — the applicant would have been entitled to be granted a visa of the class applied for if the applicant had applied for the visa on the day when the applicant last held a **substantive** or **criminal justice visa**; or
    - (ii) in the case of an applicant referred to in paragraph (b) — the applicant would have satisfied the criteria (other than any Schedule 3 criteria) for the grant of a visa of the class applied for on



the day when the applicant last **entered Australia** unlawfully; and

- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) if the last visa (if any) held by the applicant was a transitional (temporary) visa, that visa was not subject to a condition that the holder would not, after entering Australia, be entitled to be granted an **entry permit**, or a further entry permit, while the holder remained **in Australia**.

### 3005

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A **visa** or **entry permit** has not previously been granted to the applicant on the basis of the satisfaction of any of the criteria set out in:

- (a) this Schedule; or
- (b) Schedule 6 of the *Migration (1993) Regulations*; or
- (c) regulation 35AA or subregulation 42(1A) or (1C) of the *Migration (1989) Regulations*.

Note: Section 10 of the Act provides that a **child** who was born in the **migration zone** and was a non-citizen when he or she was born shall be taken to have **entered Australia** when he or she was born.

[LEGEND Comment - For amendment history, please see [Table of Amendments](#)]





**Australian Government**  
**Department of Immigration  
 and Border Protection**

LEGENDcom

**PART 1 - Public interest criteria [clause 4001 to clause 4022]**

**PART 1—Public Interest Criteria [PIC]**

**4001**

Either:

- (a) the person satisfies the Minister that the person passes the character test; or
- (b) the Minister is satisfied, after appropriate inquiries, that there is nothing to indicate that the person would fail to satisfy the Minister that the person passes the character test; or
- (c) the Minister has decided not to refuse to grant a visa to the person despite reasonably suspecting that the person does not pass the character test; or
- (d) the Minister has decided not to refuse to grant a visa to the person despite not being satisfied that the person passes the character test.

**4002**

The applicant is not assessed by the [Australian Security Intelligence Organisation](#) to be directly or indirectly a risk to security, within the meaning of section 4 of the [Australian Security Intelligence Organisation Act 1979](#).

**4003**

The applicant:

- (a) is not determined by the [Foreign Minister](#), or a person authorised by the Foreign Minister, to be a person whose presence in [Australia](#) is, or would be, contrary to Australia's foreign policy interests; and
- (b) is not determined by the [Foreign Minister](#), or a person authorised by the Foreign Minister, to be a person whose presence in [Australia](#) may be directly or indirectly associated with the [proliferation of weapons of mass destruction](#); and
- (c) either:
  - (i) is not declared under paragraph 6(1)(b) or (2)(b) of the [Autonomous Sanctions Regulations 2011](#) for the purpose of preventing the person from travelling to, [entering](#) or [remaining in Australia](#); or
  - (ii) if the applicant is declared — is a person for whom the [Foreign Minister](#) has waived the operation of the declaration in accordance with regulation 19 of the [Autonomous Sanctions Regulations 2011](#).

**4003A**

The applicant is not determined by the [Foreign Minister](#), or a person authorised by the Foreign Minister, to be a person whose presence [in Australia](#) may be directly or indirectly associated with the [proliferation of weapons of mass destruction](#).

#### 4004

The applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment.

#### 4005

##### (1) The applicant:

(aa) if the applicant is in a class of persons specified by the Minister in an [instrument in writing](#) for this paragraph:

- (i) must undertake any medical assessment specified in the instrument; and
- (ii) must be assessed by the person specified in the instrument;

unless a [Medical Officer of the Commonwealth](#) decides otherwise; and

(ab) must comply with any request by a [Medical Officer of the Commonwealth](#) to undertake a medical assessment; and

(a) is free from tuberculosis; and

(b) 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

(c) is free from a disease or condition in relation to which:

(i) a person who has it would be likely to:

- (A) require health care or [community services](#); or
- (B) meet the medical criteria for the provision of a [community service](#);

during the period described in subclause (2); and

(ii) the provision of the health care or [community services](#) would be likely to:

- (A) result in a significant cost to the Australian community in the areas of health care and community services; or
- (B) prejudice the access of an Australian citizen or [permanent resident](#) to health care or community services;

regardless of whether the health care or community services will actually be used in connection with the applicant; and

(d) if the applicant is a person from whom a [Medical Officer of the Commonwealth](#) has requested a signed undertaking to present himself or herself to a health authority in the State or Territory of intended residence [in Australia](#) for a follow-up medical assessment — has provided the undertaking.

##### (2) For subparagraph (1)(c)(i), the period is:

(a) for an application for a [permanent visa](#) — the period commencing when the application is made; or

(b) for an application for a [temporary visa](#):

- (i) the period for which the Minister intends to grant the visa; or
- (ii) if the visa is of a subclass specified by the Minister in an [instrument in writing](#) for this subparagraph — the period commencing when the application is made.

##### (3) If:

(a) the applicant applies for a [temporary visa](#); and

(b) the subclass being applied for is not specified by the Minister in an instrument in writing made for subparagraph (2)(b)(ii);





the reference in sub-subparagraph (1)(c)(ii)(A) to health care and community services does not include the health care and community services specified by the Minister in an [instrument in writing](#) made for this subclause.

 4007

*no info to the contrary*

**(1)** The applicant:

(aa) if the applicant is in a class of persons specified by the Minister in an [instrument in writing](#) for this paragraph:

- (i) must undertake any medical assessment specified in the instrument; and
  - (ii) must be assessed by the person specified in the instrument;
- unless a [Medical Officer of the Commonwealth](#) decides otherwise; and

(ab) must comply with any request by a [Medical Officer of the Commonwealth](#) to undertake a medical assessment; and

(a) is free from tuberculosis; and

(b) 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

(c) subject to subclause (2) — is free from a disease or condition in relation to which:

- (i) a person who has it would be likely to:
  - (A) require health care or [community services](#); or
  - (B) meet the medical criteria for the provision of a [community service](#);
 during the period described in subclause (1A); and
- (ii) the provision of the health care or [community services](#) would be likely to:
  - (A) result in a significant cost to the Australian community in the areas of health care and community services; or
  - (B) prejudice the access of an Australian citizen or [permanent resident](#) to health care or community services;
 regardless of whether the health care or community services will actually be used in connection with the applicant; and

(d) if the applicant is a person from whom a [Medical Officer of the Commonwealth](#) has requested a signed undertaking to present himself or herself to a health authority in the State or Territory of intended residence [in Australia](#) for a follow-up medical assessment — has provided the undertaking.

**(1A)** For subparagraph (1)(c)(i), the period is:

- (a) for an application for a [permanent visa](#) — the period commencing when the application is made; or
- (b) for an application for a [temporary visa](#):
  - (i) the period for which the Minister intends to grant the visa; or
  - (ii) if the visa is of a subclass specified by the Minister in an [instrument in writing](#) for this subparagraph — the period commencing when the application is made.

**(1B)** If:

- (a) the applicant applies for a [temporary visa](#); and
- (b) the subclass being applied for is not specified by the Minister in an instrument in writing made for subparagraph (1A)(b)(ii);

the reference in sub-subparagraph (1)(c)(ii)(A) to health care and community services does not include the health care and community services specified by the Minister in an [instrument in writing](#) made for this subclause.

**(2)** The Minister may waive the requirements of paragraph (1)(c) if:

- (a) the applicant satisfies all other criteria for the grant of the visa applied for; and



(b) the Minister is satisfied that the granting of the visa would be unlikely to result in:

- (i) undue cost to the Australian community; or
- (ii) undue prejudice to the access to health care or **community services** of an Australian citizen or **permanent resident**.

#### 4009

The applicant:

- (a) intends to live permanently **in Australia**; and
- (b) if the applicant seeks **entry** to **in Australia** as a **member of the family unit**, also satisfies the Minister that the applicant could obtain support **in Australia** from other **members of the family unit**.

#### 4010

If the applicant seeks to **remain in Australia** permanently, or temporarily for longer than 12 months, the applicant is likely to become established **in Australia** without undue personal difficulty and without imposing undue difficulties or costs on the Australian community.

#### 4011

**(1)** If the applicant is affected by the risk factor specified in subclause (2), the applicant satisfies the Minister that, having regard to the applicant's circumstances in the applicant's country of usual residence, there is very little likelihood that the applicant will remain after the expiry of any period during which the applicant might be authorised to remain after **entry**.

**(2)** An applicant is affected by the risk factor referred to in subclause (1) if:

- (a) during the period of 5 years immediately preceding the application, the applicant has applied for a visa for the purpose of permanent residence **in Australia**; or
- (b) the applicant has all the **characteristics** of a class of persons specified in a legislative instrument made by the Minister for the purposes of this paragraph.

**(2A)** In specifying a class of persons for the purposes of paragraph (2)(b), the Minister must have regard to statistics prepared by the Secretary:

- (a) from movement records kept by **Immigration** about persons who have **remained in Australia** after expiry of the period during which each person was authorised to **remain in Australia** under the visa with which he or she last **entered Australia**; and
- (b) having regard to one or more of the characteristics mentioned in subclause (3).

**(3)** For the purposes of paragraph (2)(b), a characteristic is any of the following:

- (a) nationality;
- (b) marital or relationship status;
- (c) age;
- (d) sex;
- (e) occupation;
- (f) the class of visa currently applied for;
- (g) the place of lodgement or posting of the application for that visa.

#### 4012

In the case of an applicant:



- (a) who has not turned 18; and
  - (b) whose intended stay **in Australia** will not be in the company of either or both of his or her **parents** or **guardians**; and
  - (c) whose application expresses an intention to visit, or stay with, a person **in Australia** who is not a relative of the applicant; and
  - (d) who is not a member of an organised tour and for whom no adequate maintenance and support arrangements have been made for the total period of stay **in Australia**;
- an undertaking to provide accommodation for, and to be responsible for the support and general welfare of, the applicant during the applicant's stay **in Australia** is given to the Minister by a person who, in the reasonable belief of the Minister, is of good character.

#### 4012A

In the case of an applicant who has not turned 18:

- (a) the application expresses a genuine intention to reside **in Australia** with a person who:
  - (i) is a **parent** of the applicant or a person who has **custody** of the applicant; or
  - (ii) is:
    - (A) a **relative** of the applicant; and
    - (B) nominated by a **parent** of the applicant or a person who has **custody** of the applicant; and
    - (C) aged at least 21; and
    - (D) of good character; or
- (b) a signed statement is given to the Minister by the **education provider** for the course in which the applicant is enrolled confirming that appropriate arrangements have been made for the applicant's accommodation, support and general welfare for at least the minimum period of enrolment stated on the applicant's:
  - (i) confirmation of enrolment; or
  - (ii) AASES form;
 plus 7 days after the end of that period; or
- (c) if the applicant is a **Foreign Affairs student** or a **Defence student**, appropriate arrangements for the applicant's accommodation, support and general welfare have been approved by:
  - (i) in the case of a **Foreign Affairs student** the Foreign Minister; and
  - (ii) in the case of a **Defence student** —the Defence Minister.

#### 4013

- (1)** If the applicant is affected by a risk factor mentioned in subclause (1A), (2), (2A) or (3):
- (a) the application is made more than 3 years after the cancellation of the visa or the determination of the Minister, as the case may be, referred to in the subclause that relates to the applicant; or
  - (b) the Minister is satisfied that, in the particular case:
    - (i) compelling circumstances that affect the interests of Australia; or
    - (ii) compassionate or compelling circumstances that affect the interests of an Australian citizen, an **Australian permanent resident** or an **eligible New Zealand citizen**;
 justify the granting of the visa within 3 years after the cancellation or determination.
- (1A)** A person is affected by a risk factor if a visa previously held by the person was cancelled:



- (a) under section 109, paragraph 116(1)(d), subsection 116(1AA) or (1AB) or section 133A of the Act; or
- (b) under section 128 of the Act because the Minister was satisfied that the ground mentioned in paragraph 116(1)(d) of the Act applied to the person; or
- (c) under section 133C of the Act because the Minister was satisfied that the ground mentioned in paragraph 116(1)(d) or subsection 116(1AA) or (1AB) of the Act applied to the person.
- (2)** A person is affected by a risk factor if a visa previously held by the person was cancelled under section 116, 128 or 133C of the Act:
- (a) because the person was found by Immigration to have worked without authority; or
- (b) if the visa was of a subclass specified in Part 2 of this Schedule — because the person did not comply with a condition specified in that Part in relation to that subclass; or
- (c) if the visa was a Subclass 773 (Border) visa and, at the time of grant of the visa, the person was apparently eligible for a substantive visa of a subclass specified in Part 2 of this Schedule — because the person did not comply with a condition specified in that Part in relation to that subclass of substantive visa; or
- (ca) because the person held a student visa and the Minister was satisfied that a ground mentioned in paragraph 116(1)(fa) of the Act applied to the person; or
- (d) because the Minister was satisfied that a ground prescribed by paragraph 2.43(1)(ea), (i), (ia), (j), (k), (ka), (kb), (kc), (m), (o), (oa) or (ob) applied to the person.
- (2A)** A person is affected by a risk factor if a visa previously held by the person was cancelled under section 137J of the Act.
- (3)** A person is affected by a risk factor if a visa previously held by the person was cancelled because the Minister was satisfied that a ground mentioned in paragraph 116(1)(e) of the Act applied to the person.

#### 4014

- (1)** If the applicant is affected by the risk factor specified in subclause (4):
- (a) the application is made more than 3 years after the departure of the person from Australia referred to in that subclause; or
- (b) the Minister is satisfied that, in the particular case:
- (i) compelling circumstances that affect the interests of Australia; or
- (ii) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa within 3 years after the departure.
- (4)** Subject to subclause (5), a person is affected by a risk factor if the person left Australia as:
- (a) an unlawful non-citizen; or
- (b) the holder of a Bridging C (Class WC), Bridging D (Class WD) or Bridging E (Class WE) visa.
- (5)** Subclause (4) does not to apply to a person if:
- (a) the person left Australia within 28 days after a substantive visa held by the person ceased to be in effect; or
- (b) a bridging visa held by the person at the time of departure was granted:
- (i) within 28 days after a substantive visa held by the person ceased to be in effect; or
- (ii) while the person held another bridging visa granted:
- (A) while the person held a substantive visa; or
- (B) within 28 days after a substantive visa held by the person ceased to be in effect.

#### 4015



The Minister is satisfied of 1 of the following:

- (a) the law of the additional applicant's [home country](#) permits the removal of the additional applicant;
- (b) each person who can lawfully determine where the additional applicant is to live consents to the grant of the visa;
- (c) the grant of the visa would be consistent with any [Australian child order](#) in force in relation to the additional applicant.

#### 4016

The Minister is satisfied that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the additional applicant.

#### 4017

The Minister is satisfied of 1 of the following:

- (a) the law of the applicant's [home country](#) permits the removal of the applicant;
- (b) each person who can lawfully determine where the applicant is to live consents to the grant of the visa;
- (c) the grant of the visa would be consistent with any [Australian child order](#) in force in relation to the applicant.

#### 4018

The Minister is satisfied that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the applicant.

#### 4019

- (1) The applicant has signed a statement (a [values statement](#)) in accordance with [Part 3](#).

Note: [Part 3](#) sets out further provisions relating to values statements and the requirements for this criterion.

- (2) However, if compelling circumstances exist, the Minister may decide that the applicant is not required to satisfy subclause (1).

#### 4020

- (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an [officer](#), the Tribunal during the review of a Part 5-reviewable decision, a [relevant assessing authority](#) or a [Medical Officer of the Commonwealth](#), a [bogus document](#) or [information that is false or misleading in a material particular](#) in relation to:

- (a) the application for the visa; or
- (b) a visa that the applicant held in the period of 12 months before the application was made.

- (2) The Minister is satisfied that during the period:

- (a) starting 3 years before the application was made; and
- (b) ending when the Minister makes a decision to grant or refuse to grant the visa;

the applicant and each [member of the family unit](#) of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).



**(2AA)** However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

**(2A)** The applicant satisfies the Minister as to the applicant's identity.

**(2B)** The Minister is satisfied that during the period:

(a) starting 10 years before the application was made; and

(b) ending when the Minister makes a decision to grant or refuse to grant the visa;

neither the applicant, nor any **member of the family unit** of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).

**(2BA)** However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

**(3)** To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the **bogus document** or **information that is false or misleading in a material particular** because of information given by the applicant.

**(4)** The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:

(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**;

justify the granting of the visa.

**(5)** In this clause:

***information that is false or misleading in a material particular*** means information that is:

(a) false or misleading at the time it is given; and

(b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

Note: For definition of **bogus document**, see subsection 5(1) of the Act.

## 4021

Either:

(a) the applicant holds 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; and

(iii) is not in a class of passports specified by the Minister in an **instrument in writing** for this clause; or

(b) it would be unreasonable to require the applicant to hold a **passport**.

## 4022

Either:

(a) the applicant has signed a code of behaviour that:

(i) has been approved by the Minister in accordance with **Part 4**; and

(ii) is in effect for the subclass of visa; or

(b) the Minister does not require the applicant to sign a code of behaviour that is in effect for the subclass of visa.



