

LegendStack 21/1/1999 - 20/2/1999

PROCEDURES ADVICE MANUAL 3

SCHEDULE 2 - AGED PARENT - VISA 819

1 ABOUT VISA 819

1.1 Overview

1.1.1 This visa is for persons in Australia seeking a permanent visa on the basis of being the [aged parent](#) of an "Australian resident" i.e. an Australian citizen, [Australian permanent resident](#) or [eligible New Zealand citizen](#).

1.1.2 In very broad terms, the applicant must be an aged parent who

- has held a Retirement visa ([subclass 410](#) or former equivalent) for at least ten years; or
- was an applicant for the (former) [Aged parent visa 804](#) and satisfies the '[balance of family](#)' test.

1.1.3 Visa 819 in effect replaced visa subclass 804 on 1 November 1998. Under transitional provisions [see Schedule 1 item [1124A\(2\)\(a\)\(i\)](#)], there is no first instalment visa 819 application charge for aged parents who have an undecided application for a General or Family visa. See [Further Guidelines section 3](#) for further details.

1.2 Prioritising

1.2.1 Visa 819 applications are to be given higher priority than undecided visa 804 applications. See [General Direction no. 7](#) (PAM3: Generic Guidelines B/Offshore visas/Attachment 4).

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MIGRATION REGULATIONS

PART 1 - PRELIMINARY

Division 1.2 - Interpretation

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- **Regulation 1.05.** [Balance of family test](#)

1.05. (1) For the purposes of this regulation:

(a) a person is a child of another person ("**the parent**") if the person is a child, [adopted child](#) or step-child of:

- (i) the parent; or
- (ii) a [spouse](#) of the parent; or
- (iii) a former spouse of the parent, if the child was born or adopted:
 - (A) before the parent became the spouse of the former spouse; or
 - (B) while the parent was the spouse of the former spouse; and

(b) if the whereabouts of a child of the parent are unknown, the child is taken to be resident in the usual country of residence of the parent.

(2) A parent satisfies the balance of family test if:

(a) each of the children of the parent is either:

(i) lawfully and permanently resident in Australia; or

(ii) a person who is:

(A) the holder of a [special category visa](#); and

(B) usually resident in Australia; or

(b) the number of children of the parent who are lawfully and permanently resident in Australia or are holders of special category visas usually resident in Australia is:

(i) greater than, or equal to, the total number of children of the parent who are resident overseas; or

(ii) greater than the greatest number of children of the parent who are resident in any single overseas country.

(3) In applying the balance of family test, no account is to be taken of a child of the parent:

(a) if the child has been removed by court order, by [adoption](#) or by operation of law (other than in consequence of marriage) from the exclusive custody of the parent; or

(b) if the child is resident in a country where the child suffers persecution or abuse of human rights and it is not possible to reunite the child and the parent in another country; or

(c) if the child is resident in a refugee camp operated by:

(i) the United Nations High Commissioner for Refugees; or

(ii) the government of [Hong Kong](#);

and is registered by the Commissioner as a refugee; or

(d) if:

(i) the child is a step-child of the [parent](#); and

(ii) the child had turned 18 at the time at which the parent became the [spouse](#) of the child's other parent;

and one or more of the following subparagraphs applies:

(iii) the other parent is deceased; or

(iv) the parent is permanently separated from the other parent; or

(v) the parent is divorced from the other parent.

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MIGRATION REGULATIONS

SCHEDULE 1 - CLASSES OF VISAS

PART 1 - PERMANENT VISAS

- Item 1124A. [Parent \(Residence\) \(Class BP\)](#)

[Note about disallowance](#)

(1) [Form:](#) [1083](#).

(2) [Visa application charge:](#)

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

(i) In the case of each applicant who:

(A) is an [aged parent](#); and

(B) has made a valid application for a [Family \(Residence\) \(Class AO\)](#) or [General \(Residence\) \(Class AS\)](#) visa before 1 November 1998 in relation to which no primary decision to grant, or to refuse to grant, has been made: Nil

(ii) In any other case: \$1,570

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

(i) In the case of each applicant who held a [Subclass 410 \(Retirement\)](#) visa at time of application: Nil

(ii) In any other case:

(A) if the applicant was 18 years or more at time of application: \$5,000

(B) if the applicant was under 18 years at time of application: \$945

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

(b) Applicant must be in Australia but not in immigration clearance.

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

(d) Application must be accompanied by [satisfactory evidence](#) that:

(i) the applicant is the [aged parent](#) of an Australian citizen, an [Australian permanent resident](#) or an [eligible New Zealand citizen](#); and

(ii) either:

(A) the applicant is the holder of a [Subclass 410 \(Retirement\)](#) visa; or

(B) the applicant has made a [valid application](#) for a [Family \(Residence\) \(Class AO\)](#) or [General \(Residence\) \(Class AS\)](#) visa before 1 November 1998 in relation to which no primary decision to grant, or to refuse to grant, has been made.

(4) Subclasses: [819 \(Aged Parent\)](#).

- Item 1125. Preferential Relative (Migrant) (Class AY)

(1) Form: [47](#).

Popup-SCHEDULE 2 - PROVISIONS WITH RESPECT TO THE GRANT OF SUBCLASSES OF VISAS\SUBCLASS 819 - AGED PARENT

Visa 819 is the only subclass in the [Parent \(Residence\) \(Class BP\)](#) class of visa. See [Schedule 1](#) for form, visa application charge (first and second instalments) and other requirements for making a valid application. Only aged parents who hold a Subclass 410 (Retirement) visa or who applied for Family (Residence) (Class AO) or General (Residence) (Class AS) visa prior to 1 November 1998 for which no primary decision has been made are eligible to apply for an 819 visa (see Schedule 1, [item 1124A\(3\)\(d\)\(ii\)](#)).

MIGRATION REGULATIONS

SCHEDULE 2 - PROVISIONS WITH RESPECT TO THE GRANT OF SUBCLASSES OF VISAS

SUBCLASS 819 - AGED PARENT

- **819.1 INTERPRETATION**

[NOTE: *aged parent*, *dependent child* and *eligible New Zealand citizen* are defined in regulation 1.03, and *balance of family test* is defined in regulation 1.05. There are no interpretation provisions specific to this Part.]

- **819.2 [PRIMARY CRITERIA](#)**

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

- **819.21 Criteria to be satisfied at time of application**

[819.211](#) The applicant is [nominated](#) for the grant of the visa by a child of the applicant who:

- (a) has turned 18; and
- (b) is a [settled](#) Australian citizen, a settled [Australian permanent resident](#) or a settled [eligible New Zealand citizen](#).

819.212 If the applicant is the holder of a [Subclass 410 \(Retirement\)](#) visa, the applicant has been, for a period of 10 years, or for periods that total 10 years, the holder of a visa, or visas, of the following kinds:

- (a) a Subclass 410 visa;
- (b) a [Transitional \(Temporary\) \(Class UA\)](#) visa that:

- (i) was granted on the basis of an application for a Class 410 (retirement) visa or entry permit under the [Migration \(1993\) Regulations](#) or a retirement (code number 410) visa or entry permit under the [Migration \(1989\) Regulations](#); or
- (ii) was taken to be held by a person on the basis of having held a visa or entry permit of a kind mentioned in subparagraph (i);
- (c) a Class 410 (retirement) visa under the Migration (1993) Regulations;
- (d) a retirement (code number 410) visa under the Migration (1989) Regulations.

- **819.22 Criteria to be satisfied at time of decision**

[819.221](#) The applicant is an [aged parent](#) of the Australian citizen, [Australian permanent resident](#) or [eligible New Zealand citizen](#) referred to in clause [819.211](#).

[819.222](#) The applicant continues to satisfy the criterion in clause [819.211](#).

[819.223](#) If the applicant has made a valid application for a [Family \(Residence\) \(Class AO\)](#) or [General \(Residence\) \(Class AS\)](#) visa before 1 November 1998 in relation to which no primary decision to grant, or to refuse to grant, has been made:

- (a) the applicant satisfies the [balance of family test](#); and
- (b) an [assurance of support](#) in relation to the applicant has been given, and has been accepted by the Minister.

[819.224](#) The applicant satisfies public interest criteria [4001, 4002, 4003, 4004, 4005, 4009 and 4010](#).

[819.225](#) (1) Each [member of the family unit](#) of the applicant who is an applicant for a Subclass 819 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 819 visa:

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

[819.226](#) The Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has [custody](#) or [guardianship](#) of, or access to, a [dependent child](#) of the applicant.

- **819.3 [SECONDARY CRITERIA](#)**

[NOTE: If a person satisfies the primary criteria, members of the family unit of that person are eligible for the grant of the visa if they satisfy the secondary criteria and their applications are made before the Minister has decided to grant or refuse to grant the visa to the first person.]

- **819.31 Criteria to be satisfied at time of application**

[819.311](#) The applicant is:

- (a) the [spouse](#) of an applicant for a Subclass 819 visa who satisfies the criterion in subclause [819.212](#); or

(b) a [member of the family unit](#) of an applicant for a Subclass 819 visa mentioned in clause [819.223](#);

and the Minister has not decided to grant or refuse to grant the visa to that other applicant.

○ **819.32 Criteria to be satisfied at time of decision**

[819.321](#) The person referred to in clause [819.311](#) of whom the applicant is the spouse, or of whose family unit the applicant is a member, is the holder of a Subclass 819 visa, having satisfied the primary criteria.

[819.322](#) The applicant satisfies public interest criteria [4001, 4002, 4003, 4004, 4005, 4009 and 4010](#).

[819.323](#) If an [assurance of support](#) is required, either:

(a) an assurance of support in relation to the relevant person who satisfies the primary criteria, that includes the applicant, has been given, and has been accepted by the Minister; or

(b) an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

[819.324](#) If the applicant is a [dependent child](#), the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has [custody](#) or [guardianship](#) of, or access to, the applicant.

• **819.4 [CIRCUMSTANCES APPLICABLE TO GRANT](#)**

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

[**NOTE:** The [second instalment of the visa application charge](#) (if any) must be paid before the visa can be granted.]

• **819.5 [WHEN VISA IS IN EFFECT](#)**

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

• **819.6 CONDITIONS: Nil**

• **819.7 [WAY OF GIVING EVIDENCE](#)**

[819.711](#) Visa label affixed to a passport.

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MIGRATION REGULATIONS

SCHEDULE 1 - CLASSES OF VISAS

PART 2 - TEMPORARY VISAS (OTHER THAN BRIDGING VISAS)

- **Item 1217.** [Retirement \(Temporary\) \(Class TQ\)](#)
 - (1) [Form:](#) [147](#).
 - (2) [Visa application charge:](#)
 - (a) First instalment (payable at the time application is made): \$145
 - (b) Second instalment (payable before grant of visa): Nil.
 - (3) Other:
 - (a) Application may be made in or outside Australia, but not [in immigration clearance](#).
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a [member of the family unit](#) of a person may be made at the same time and place as, and [combined with](#), an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.
 - (4) [Subclasses:](#) [410 \(Retirement\)](#)

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MIGRATION REGULATIONS

SCHEDULE 2 - PROVISIONS WITH RESPECT TO THE GRANT OF SUBCLASSES OF VISAS

SUBCLASS 410 – RETIREMENT

- **410.1 INTERPRETATION**

[410.111](#) (1) In this Part:

equivalent visa means:

- (a) a Class 410 (retirement) visa or entry permit under the [Migration \(1993\) Regulations](#); or
- (b) a retirement (code number 410) visa or entry permit under the [Migration \(1989\) Regulations](#); or
- (c) a [Transitional \(Temporary\) \(Class UA\) visa](#) that:
 - (i) was granted on the basis of an application for a visa or entry permit of a kind mentioned in paragraph (a) or (b); or
 - (ii) is, or was, taken to be held by a person on the basis of having held a visa or entry permit of a kind mentioned in paragraph (a) or (b).

established applicant means an applicant who:

- (a) either:
 - (i) holds a Subclass 410 visa or an [equivalent visa](#); or
 - (ii) meets the requirements of [subclause \(2\)](#); and
 - (b) either:
 - (i) held a Subclass 410 visa, or an equivalent visa, on 30 November 1998; or
 - (ii) was granted a Subclass 410 visa on or after 1 December 1998 on the basis of an application made before 1 December 1998; and
 - (c) has not held another [substantive visa](#) (other than a Subclass 410 visa) since becoming the holder of the visa mentioned in paragraph (b).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant:
 - (i) is in Australia; and
 - (ii) is not the holder of a substantive visa; and
 - (b) the last [substantive visa](#) held by the applicant was a Subclass 410 visa or an [equivalent visa](#).

- **410.2 PRIMARY CRITERIA**

[NOTE: The primary criteria must be satisfied by at least one member of a family

unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.]

○ **410.21 Criteria to be satisfied at time of application**

[NOTE: No criteria to be satisfied at time of application outside Australia.]

410.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3) or (4).

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

(a) the holder of:

(i) a visa of one of the following classes:

(A) [Business \(Temporary\) \(Class TB\)](#);

(B) [Cultural/Social \(Temporary\) \(Class TE\)](#);

(C) [Educational \(Temporary\) \(Class TH\)](#);

(D) [Expatriate \(Temporary\) \(Class TJ\)](#);

(E) [Family Relationship \(Temporary\) \(Class TL\)](#);

(F) [Interdependency \(Temporary\) \(Class TM\)](#);

(G) [Medical Practitioner \(Temporary\) \(Class UE\)](#);

(H) [Retirement \(Temporary\) \(Class TQ\)](#);

(I) [Supported Dependant \(Temporary\) \(Class TW\)](#);

(J) [Working Holiday \(Temporary\) \(Class TZ\)](#); or

(ii) a visa of one of the following subclasses:

(A) [Subclass 303 \(Emergency \(Temporary Visa Applicant\)\)](#);

(B) [Subclass 427 \(Domestic Worker \(Temporary\) - Executive\)](#);

(C) [Subclass 457 \(Business \(Long Stay\)\)](#); or

(iii) a [Transitional \(Temporary\) \(Class UA\) visa](#) that:

(A) was granted on the basis of an application for a Class 410 (retirement) visa or entry permit under the [Migration \(1993\) Regulations](#) or a retirement (code number 410) visa or entry permit under the [Migration \(1989\) Regulations](#); or

(B) is, or was, taken to be held by a person on the basis of having held a visa or entry permit mentioned in sub-subparagraph (A); or

(b) the holder of:

(i) a visa of one of the following classes:

(A) [Border \(Temporary\) \(Class TA\)](#);

(B) [Electronic Travel Authority \(Class UD\)](#);

- (C) [Long Stay \(Visitor\) \(Class TN\)](#);
- (D) [Short Stay \(Visitor\) \(Class TR\)](#); or
- (E) [Student \(Temporary\) \(Class TU\)](#); or
- (ii) a [Subclass 456 \(Business \(Short Stay\)\) visa](#); or
- (c) the holder of a [Confirmatory \(Temporary\) \(Class TD\)](#) visa that was granted on the grounds that the applicant satisfied the criteria for a visa specified in paragraph (a) or (b).
- (3) An applicant meets the requirements of this subclause if.
 - (a) the applicant is not the holder of a substantive visa; and
 - (b) the last substantive visa held by the applicant was of a kind specified in paragraph (2) (a) or (c); and
 - (c) the applicant satisfies Schedule 3 criteria [3003](#), [3004](#) and [3005](#).
- (4) An applicant meets the requirements of this subclause if.
 - (a) the applicant is not the holder of a [substantive visa](#); and
 - (b) the last substantive visa held by the applicant was of a kind specified in paragraph (2) (b); and
 - (c) the applicant satisfies Schedule 3 criteria [3002](#), [3003](#), [3004](#), and [3005](#).

- **410.22 Criteria to be satisfied at the time of decision**

[410.221](#) The applicant has turned 55.

[410.222](#) (1) If the applicant intends to settle in Australia with his or her [spouse](#):

- (a) the [family unit](#) of the applicant does not include any other person [dependent](#) on the applicant or the applicant's spouse; and
- (b) the Minister is satisfied that neither the applicant nor the applicant's spouse intends to take employment in Australia.

(2) If the applicant intends to settle in Australia without a spouse:

- (a) the family unit of the applicant does not include a person dependent on the applicant; and
- (b) the Minister is satisfied that the applicant does not intend to take employment in Australia.

[410.223](#) If the application was made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria [5001 and 5002](#).

[410.224](#) If the application is made in Australia, the applicant has complied substantially with the conditions to which the visa (if any) held, or last held, by the applicant is, or was, subject.

[410.225](#) The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.

[410.226](#) If the applicant is an [established applicant](#), both the applicant and the applicant's [spouse](#) (if any) satisfy public interest criteria [4001, 4002, 4003, 4004, 4013 and 4014](#).

[410.227](#) If the applicant is not an [established applicant](#):

[\(a\)](#) either:

(i) the resources of the applicant, or (if the applicant has a [spouse](#)) the combined resources of the applicant and the applicant's spouse (if any), available for transfer to Australia, are not less than:

(A) \$650,000; or

(B) if the applicant is the [parent](#) of an Australian citizen who is usually resident in Australia, an [Australian permanent resident](#) or an [eligible New Zealand citizen](#) - \$600,000; or

(ii) the resources of the applicant, or (if the applicant has a [spouse](#)) the combined resources of the applicant and the applicant's spouse, available for transfer to Australia, are not less than \$200,000, and the applicant and the applicant's spouse (if any) have:

(A) pension rights; or

(B) capital for investment; or

(C) both pension rights and capital for investment;

being in total money and entitlements sufficient to provide an annual income of not less than \$45,000; or

(iii) the applicant is the [parent](#) of an Australian citizen who is usually resident in Australia, an [Australian permanent resident](#) or an [eligible New Zealand citizen](#) and the resources of the applicant, or (if the applicant has a [spouse](#)) the combined resources of the applicant and the applicant's spouse, available for transfer to Australia are not less than \$180,000, and the applicant and the applicant's spouse (if any) have:

(A) pension rights; or

(B) capital for investment; or

(C) both pension rights and capital for investment;

being in total money and entitlements sufficient to provide an annual income of not less than \$42,000; and

[\(b\)](#) both the applicant and the applicant's spouse (if any) satisfy public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4005](#), [4010](#), [4013](#) and [4014](#); and

[\(c\)](#) if the application was made in Australia, and at the time of application the applicant had satisfied the primary criteria for a [Student \(Temporary\) \(Class TU\)](#) visa and was the holder of a visa of that class:

(i) in the case of an applicant who is a private [subsidised student](#), the Minister is satisfied that it would not be detrimental to Australia's policies in respect of overseas students to grant the visa; and

(ii) in the case of an applicant who is a student under a scholarship scheme or training program approved by [AusAID](#), the applicant has the support of AusAID for the grant of the visa; and

(d) the applicant produces to the Minister evidence of [adequate arrangements in Australia for health insurance](#) during the period of the applicant's intended stay in Australia.

- **410.3** [SECONDARY CRITERIA](#)

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

○ **410.31 Criteria to be satisfied at time of application**

[410.311](#) The applicant is the [spouse](#) of a person who has applied for a [Retirement \(Temporary\) \(Class TQ\)](#) visa.

[410.312](#) If the application is made outside Australia and the application is made separately from that of the applicant's spouse:

- (a) the spouse is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia with the spouse.

○ **410.32 Criteria to be satisfied at time of decision**

[410.321](#) The applicant continues to be the [spouse](#) of a person who, having satisfied the primary criteria, is the holder of a Subclass 410 visa.

[410.322](#) If the applicant is the spouse of an [established applicant](#), the applicant satisfies public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4013](#) and [4014](#).

[410.323](#) If the applicant is not the spouse of an [established applicant](#), the applicant:

- (a) gives to the Minister evidence of:
 - (i) adequate means to support the applicant; and
 - (ii) [adequate arrangements in Australia for health insurance](#);

during the period of the applicant's intended stay in Australia; and

- (b) satisfies public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4005](#), [4010](#), [4013](#) and [4014](#).

[410.324](#) If the application is made in Australia, the applicant has complied substantially with the conditions that:

- (a) apply to any visa of which the applicant is the holder; or
- (b) applied to any visa held by the applicant immediately before becoming an [unlawful non-citizen](#).

[410.325](#) If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria [5001](#) and [5002](#).

• **410.4 [CIRCUMSTANCES APPLICABLE TO GRANT](#)**

[410.411](#) If the application is made in the [migration zone](#), the applicant must be in the migration zone at time of grant.

[410.412](#) If the application is made outside Australia, the applicant must be outside Australia at time of grant.

• **410.5 [WHEN VISA IS IN EFFECT](#)**

[410.511](#) [Temporary visa](#) permitting the holder to travel to, enter and [remain in Australia](#):

(a) in the case of a visa granted to an applicant who holds, or whose last [substantive visa](#) was, a Subclass 410 visa or an [equivalent visa](#) - for 2 years from the date of grant; or

(b) in any other case - until a date specified by the Minister.

- [410.6](#) [CONDITIONS](#)

410.611 Condition [8101](#).

410.612 Any 1 or more of conditions [8301](#), [8303](#), [8501](#), [8502](#), [8503](#), [8516](#), [8522](#), [8525](#) and [8526](#) may be imposed.

- [410.7](#) [WAY OF GIVING EVIDENCE](#)

410.711 Visa label affixed to valid passport.

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PROCEDURES ADVICE MANUAL 3

SCHEDULE 2 - RETIREMENT - VISA 410

3 FURTHER GUIDELINES

3 FURTHER GUIDELINES

- **3.1 Interview requirements**

- **ALL APPLICANTS**

3.1.1 Officers are expected to interview all applicants for a visa 410 regardless of whether the application is made

- in or outside Australia; or
- by an established applicant or other applicant.

3.1.2 To avoid any future misunderstandings, officer should record on file full details of the interview, especially any counselling given at interview (or subsequent to interview).

3.1.3 Officers should ensure that the visa notification letter to successful applicants gives clear advice on the visa conditions and residential restrictions and that any subsequent application for another visa 410 will be assessed against migration law and visa requirements in force at that time.

- **OFFSHORE APPLICANTS**

3.1.4 This section applies to "first-time" visa 410 applicants outside Australia. (It is expected that most existing visa 410 holders will apply for further visas 410 in Australia, rather than overseas.) At interview officers should

- verify the family composition - see [410.222\(1\)\(b\) guidelines](#) above;
- verify the intention of the applicant (and spouse, if applicable) not to work in Australia - see [410.222\(1\)\(b\) guidelines](#) above;
- counsel the applicant that a decision to grant a visa cannot be made until and unless the applicant, when asked to do so, provides evidence that
- their capital has been made available for transfer to Australia (see [410.227\(a\) guidelines](#) above); and
- they have health insurance from an Australian health insurance company (see also [section 3.2](#) below);
- counsel the applicant regards the timing of transferring their resources to Australia (i.e. not until advised that all other legislative requirements for visa grant appear to have been satisfied);
- if the spouse is under 55, warn them that they are ineligible for a visa 410 in their own right until they turn 55 and, it follows, may be ineligible to stay on in Australia should, for whatever reason, the spouse relationship end;
- advise applicants that changes in their family circumstances (for example, birth or adoption of a child) will rule them ineligible for any further visa 410.

3.1.5 Officers should, before initiating any further processing that may be required, counsel applicant(s) that

- visas 410 are granted subject to a condition barring work in Australia and that failure to abide by this condition may result in visa cancellation;
- they should contact the Foreign Investment Review Board (FIRB) for information on the law regarding the purchase of residential real estate by temporary visa holders;
- because the visa 410 is a temporary visa only, holders cannot sponsor relatives for entry to Australia; and
- the success of any subsequent visa 410 application in Australia will depend on migration law and visa requirements at that time. Under no circumstances should officers give applicants any expectation that further stay in Australia will necessarily be available (this is particularly critical if the spouse is under 55).

3.1.6 Applicants intending to invest capital in Australia should also be advised to first seek details of legal requirements from FIRB:

Executive Member

Foreign Investment Review Board

C/- The Treasury

Canberra Act 2600

Tel: 61 2 6263 2111

Fax: 61 2 6263 2940

○ **APPLICANTS IN AUSTRALIA**

Applicants "changing status" to visa 410

3.1.7 Applicants applying in Australia to "change status" to visa 410 should be interviewed along the same lines as offshore applicants - see the section above beginning [paragraph 3.1.4](#).

Established applicants

3.1.8 Officers are reminded that persons who apply for their first visa 410 on or after 1 December 1998 *never* become established applicants, even when they apply later for a further visa 410. In other words, whenever they apply for a further visa 410, they are subject to having their financial resources and health assessed afresh and are required to produce evidence of having maintained health insurance. See [section 3.2](#) below.

3.1.9 In interviewing established applicants, officers should first

- verify the family composition - see [410.222\(1\)\(b\) guidelines](#) above (and remind them that changes in their family circumstances (for example, birth or adoption of a child) will rule them ineligible for any further 410; and
- verify that the applicant (and spouse, if applicable) are not working (and have no intention to do so) - see [410.222\(1\)\(b\) guidelines](#) above - and remind them that visas 410 are granted subject to a

condition barring work in Australia (and that failure to abide by this condition may result in visa cancellation).

3.1.10 *Established* applicants are not required by law to take out or maintain health insurance as a requirement to be granted a further visa 410. However, such applicants should, at interview, be counselled to do so and reminded that they are not covered by standard Medicare arrangements.

3.1.11 If the spouse is under 55, the couple should be reminded that the spouse is ineligible for a visa 410 in their own right until they turn 55 and, it follows, may be ineligible to stay on in Australia should, for whatever reason, the spouse relationship end.

3.1.12 All applicants should be reminded that the success of any subsequent visa 410 application in Australia will depend on migration law and visa requirements operating at that time. Under no circumstances should officers give applicants any expectation that further stay in Australia will necessarily be available (this is particularly critical if the spouse is under 55).

"Non-established" visa 410 holders seeking further visa 410

3.1.13 In interviewing "non-established applicants", officers should first

- verify the family composition - see [410.222\(1\)\(b\) guidelines](#) above (and remind them that changes in their family circumstances (for example, birth or adoption of a child) will rule them ineligible for any further visa 410; and
- verify that the applicant (and spouse, if applicable) are not working (and have no intention to do so) - see 410.222(1)(b) guidelines above - and remind them that visas 410 are granted subject to a condition barring work in Australia (and that failure to abide by this condition may result in visa cancellation).

3.1.14 Applicants other than established applicants are required by law to take out and maintain health insurance as a requirement to be granted a further visa 410. Officers should therefore

- request evidence that the applicant has maintained health insurance while in Australia; and
- remind the applicant that, provided they satisfy health and character requirements to be granted a visa 410, they will be asked to submit evidence on having (on-going) health insurance.

3.1.15 If the spouse is under 55, the couple should be reminded that the spouse is ineligible for a visa 410 in their own right until they turn 55 and, it follows, may be ineligible to stay on in Australia should, for whatever reason, the spouse relationship end.

3.1.16 All applicants should be reminded that the success of any subsequent visa 410 application in Australia will depend on migration law operating at that time. Under no circumstances should officers give applicants any expectation that further stay in Australia will necessarily be available (this is particularly critical if the spouse is under 55).

Visa 410 holders nearing 10 years residence in Australia

3.1.17 Officers may use their judgment in bringing to the attention of visa 410 holders in Australia who

- are nearing Australian age pension age;
- have held a visa 410 for nearly ten years; and

- have an adult child permanently resident in Australia;

of the provision to be granted a permanent visa under the Aged [Parent \(Residence\)](#) visa class ([visa 819](#)). (Note that the Balance of family test does not apply to these applicants.)

- **3.2 Health insurance**

- **FOR ESTABLISHED APPLICANTS**

3.2.1 *Established* applicants are not required by law to take out or maintain health insurance as a requirement to be granted a further visa 410. However, such applicants should, at interview, be counselled to do so and reminded that they are not covered by standard Medicare arrangements. Although Australia has signed reciprocal health care agreements with several countries, applicants from these countries should be counselled to seek advice from the Australian Department of Health and Aged Care as to their eligibility, as visa 410 holders, for health services in Australia.

- **FOR OTHER THAN ESTABLISHED APPLICANTS**

3.2.2 For other than established applicants, [410.227\(d\)](#) and [410.323\(a\)\(ii\)](#) provisions require applicants to provide evidence of adequate arrangements for health insurance in Australia. For "first-time" visa 410 applicants, officers should request this evidence only after most other visa criteria have been satisfied i.e. generally when requesting evidence that the applicant has their resources available for transfer to Australia.

3.2.3 'Adequate arrangements' for health insurance is not defined, however, it is policy that this criterion generally cannot be satisfied unless the applicant produces evidence of comprehensive health insurance (covering hospital and medical costs) with an Australian insurer. The insurance policy

- need not necessarily be with a specialist health insurance company;
- can include an excess, if the applicant so wishes; and
- may include standard "pre-existing condition" clauses;

but otherwise must be fully comprehensive.

3.2.4 Note that, although a visa 410 can be granted to have effect for two or four years (see [410.5 guidelines](#) above), applicants will probably be able to obtain health insurance cover for at most 12 months (at a time):

- Under policy, 12 month cover is sufficient for "first time" applicants to satisfy [410.227\(d\)](#) and [410.323\(a\)\(ii\)](#) criteria; however,
- visa 410 holders (other than established applicants) seeking a further visa 410 are still required to show evidence of having maintained health insurance for the entire period they have held a visa 410 - see paragraph 3.2.6 below and [410.224 guidelines](#) above.

3.2.5 Should an applicant claim to be unable to obtain from an Australian insurer insurance as described in paragraph 3.2.3, details of any proposal by the applicant to obtain insurance from an overseas company (or to "self-insure" i.e. cover all risks from their own capital) should be referred to Temporary Entry Section, Migration and Temporary Entry Division, DIMA CO for further consultation with HFS.

3.2.6 Visa 410 holders applying for a further visa 410 are, unless established applicants, required to demonstrate that they have maintained health insurance since they were last granted a visa 410. As the health insurance criterion is a *core component* of visa 410 policy, if an applicant fails to maintain their health insurance while holding a visa 410, under policy it is sufficient grounds to refuse to grant a further visa 410, on the basis that the applicant

- has failed either to comply substantially with visa conditions;
- is unable to satisfy DIMA of their intention to comply with visa conditions.

Legend Stack 21/1/1999 - 20/2/1999

MIGRATION REGULATIONS

SCHEDULE 2 - PROVISIONS WITH RESPECT TO THE GRANT OF SUBCLASSES OF VISAS

SUBCLASS 819 - AGED PARENT

POP UP NOTE – SCHEDULE 2 - PROVISIONS WITH RESPECT TO THE GRANT OF SUBCLASSES OF VISAS\SUBCLASS 819 - AGED PARENT

Statutory Rules 1998 No. 285 [SR 285] inserted this subclass (Subclass 819 - Aged Parent) into the Migration Regulations, with effect from 1 November 1998.

SR 285 was subsequently **disallowed** by the Senate on 31 March 1999. By operation of subsection 48(6) of the *Acts Interpretation Act 1901*, Subclass 819 was effectively repealed on and from 31 March 1999.

IMPORTANT:

For advice on dealing with applications affected by the disallowance, see:

- MSI 216, "Disallowance of Statutory Rule 285 of 1998 - Parents, Aged Dependent Relatives and Assurances of Support", which can be found in the **I. 31/03/99** infobase.

Legend Stack 21/12/2000 - 26/2/2001

MIGRATION SERIES INSTRUCTIONS

MSI-216: DISALLOWANCE OF STATUTORY RULE 285 OF 1998 - PARENTS, AGED DEPENDENT RELATIVES AND ASSURANCES OF SUPPORT

[WARNING ABOUT SUBSEQUENT LEGISLATIVE CHANGE](#)

MIGRATION SERIES INSTRUCTION

Instructions in this **Migration Series (MSIs)** relate to: the **Migration Act 1958**; the **Migration Regulations** and other related legislation [as amended from time to time].

MSIs are a temporary instruction format only; they are intended for ultimate incorporation into PAM. It is the responsibility of the program area to ensure that the information in this MSI is up-to-date. It will be reviewed 12 months from date of issue but will remain current until formally replaced, re-issued or deleted. For information on the status of this MSI see the latest **Instructions and Legislation Update** or contact Instructions and Forms Coordination (IFCO) Section.

MSI no.: **216** File no.: **99/10966** No. of Pages: **18**

Author Section: **Family**

Date of issue: **8/4/99** [Refers to date of registration of the signed original instruction by Instructions Forms Coordination (IFCO) Section.]

TITLE: DISALLOWANCE OF STATUTORY RULE 285 OF 1998 - PARENTS, AGED DEPENDENT RELATIVES AND ASSURANCES OF SUPPORT

THIS INSTRUCTION IS INDEXED UNDER THE FOLLOWING LEGISLATIVE REFERENCES

Migration Act 1958: | **Migration Regulations:** | **Other Legislation:**

Sections | Regulations 2.12, 2.43 |

General Direction under s 499 | Visa subclasses 103, 113, 114, |

(GD No 7 of 1998). | 410, 804, 819. |

Effect on other MSIs:

Distribution: Release on LEGEND and paper distribution to overseas posts and limited outlets within Australia is managed by Instructions and Forms Distribution and Delivery Strategies (INFDIS) Section and necessarily occurs after date of issue. MSIs are available for inspection and purchase at DIMA Freedom of Information Units.

On 31 March 1999 the Senate voted to disallow regulations introduced on 1 November 1998 by Statutory Rule No 285 of 1998, relating to parents, aged dependent relatives and mandatory assurances of support.

2 It is now as if these changes had never been made and the regulations relating to parents, aged dependent relatives and mandatory assurances of support in existence before 1 November 1998 have been revived.

3 This MSI explains how the disallowance affects the following groups of applicants:

- parent applicants under visa subclasses 819 (onshore) and 113 (offshore);

- aged dependent relative applicants under visa [subclass 114](#) (offshore); and
- applicants who applied on or after 1 November 1998 where a mandatory assurance of support is required before a visa can be granted (subclasses [104](#) (offshore) and [806](#)(onshore)).

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- [7 IMPACT ON THOSE SERVED WITH S 64 NOTICE OF LIABILITY \(2nd INSTALMENT OF THE VAC\)](#)
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- [9 PRIORITY PROCESSING](#)
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- [11 ONSHORE PARENT SUBCLASS 819 APPLICANTS - BRIDGING VISAS](#)
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ATTACHMENTS

[Attachment A](#) Summary of effect of Statutory Rule 285 of 1998

[Attachment B](#) Table summarising the impacts of disallowance on visa subclasses

[Attachment C](#) Questions and answers on the disallowance of Statutory Rule 285 - affecting mandatory assurances of support and [visa subclasses](#).

- **1 INTRODUCTION**

1.1 On 31 March 1999 the Senate disallowed Statutory Rule 285 of 1998 which came into effect on 1 November 1998.

- **2 DETAILS OF REGULATIONS DISALLOWED**

2.1 Statutory Rule 285 included changes to the entry arrangements for parents and aged dependent relatives, and introduced changes to mandatory assurances of support.

2.2 Refer to [Attachment A](#) for more details of the disallowed regulations contained in SR 285. In summary these were:

- . Assurance of support bond for all mandatory assurances of support was increased and 2nd instalment of the Visa Application Charge (VAC) was increased for parents and aged dependent relatives only.
- . Assurers for mandatory assurances of support were income tested to demonstrate that they have the financial capacity to meet their obligations.
- . Only aged parents could apply to migrate to Australia, with one exception, detailed at [Attachment A](#).
- . All applications from aged parents and aged dependent relatives had to be made outside of Australia.
- . Certain subclass 410 retirement visa holders also had access to permanent residence.

- **3 TIME OF EFFECT OF DISALLOWANCE MOTION**

3.1 The Attorney-General's Department has advised that when regulations are disallowed by Parliament, the regulations disallowed cease to have effect at the beginning of the day on which a resolution of disallowance is passed.

3.2 In this case, as the motion of disallowance was agreed to by the Senate on 31 March 1999, the regulations are taken to have been disallowed with effect from 12.01 am on 31 March 1999 local time (for example the regulations are taken as being disallowed from 12.01 am Moscow time, or 12.01 am Australian Eastern Standard Time).

3.3 The effect of the disallowance is that the regulations revert to what they were immediately before 1 November 1998 (ie when these disallowed regulations commenced).

- **4 DECISIONS MADE BEFORE THE DATE OF DISALLOWANCE**

4.1 A reference table on how to process applications is at [Attachment B](#).

4.2 Decisions to grant or refuse a visa made before the date of disallowance are not affected as they were made under the regulations in force at that time. This is the case even if the applicants have not been notified of the decision before disallowance.

4.3 If the decision is to grant the visa, the visa to be granted is the one that was applied for even if it is not evidenced until after the disallowance is passed.

4.4 The applicable law for merits review of refused applications is set out in [paragraph 8](#) below.

- **5 EFFECT OF DISALLOWANCE ON PROCESSING VISA APPLICATIONS THAT WERE UNDECIDED AT THE TIME OF DISALLOWANCE**

5.1 Due to the nature of the changes, different procedures apply to the various visa classes as outlined below.

- **Offshore Parents (Class AX - subclass 113)**

5.2 Visa Class AX remains the same, with subclass 103 being revived. Those people who have applied for the new [subclass 113](#) visa, will continue to be processed, but against the revived subclass 103 criteria.

5.3 If the person has met the subclass 113 'time of application' criterion, generally it should only be necessary to apply the revived subclass 103 'time of decision' criterion to the application.

5.4 Where the particular applicant would not meet the subclass 113 'time of application' criterion but could meet the subclass 103 'time of application' criterion, this criterion should be applied to them.

- **Onshore Parents ([Class BP](#) - subclass 819)**

5.5 A new visa [Class \(BP\)](#) was created for [subclass 819](#) in SR 285. As a result of the disallowance of the regulations, the visa class applied for no longer exists, so there are no requirements against which to assess the application. Undecided applications for subclass 819 can no longer be processed. Applicants should be contacted and advised of this - see [paragraph 12](#) below.

5.6 Refunds of the visa application charge will be arranged once requested by the applicant (on the basis that the application has become 'unnecessary' – [reg 2.12F](#) refers). (See [paragraph 7](#) below.)

- **Aged Dependent Relatives ([Class BO](#) - subclass 114)**

5.7 A new visa [Class \(BO\)](#) was created for [subclass 114](#) in SR 285. As a result of the disallowance of the regulations, the visa class applied for no longer exists, so there are no requirements against which to assess the application. Undecided applications for [subclass 114](#) can no longer be processed. Applicants should be contacted and advised of this - see [paragraph 12](#) below.

5.8 Refunds of the visa application charge should be arranged once requested by the applicant (on the basis that the application has become 'unnecessary' – [regulation 2.12F](#) refers).

5.9 Former applicants for [subclass 114](#) should be invited to apply for [subclass 104](#). If they choose to take up this option they should be sent a fresh copy of Form 47 *Application for migration to Australia*. Any information they have previously provided can be attached to the new application.

5.10 The fee paid for the [subclass 114](#) application can be used for the [subclass 104](#) application. The fee should be transferred from the SAP code relevant to [subclass 114](#) to the SAP code relevant to [subclass 104](#) to ensure accurate financial reporting. Any queries should be directed to Budget Strategy Section.

- **[6](#) [IMPACT ON PROCESSING OF ASSURANCES OF SUPPORT](#)**

[6.1](#) Where visas have been granted prior to disallowance for applications lodged between 1 November 1998 and 30 March 1999 the responsibilities of the assurer are unchanged. That is, the undertaking is to provide financial support and repay any debt generated by a social security benefit paid to the migrant/s during their first two years in Australia. For mandatory assurances the bond amounts of \$4000 for the principal applicant and \$2000 for other adult applicants on the same application remain and no refund is due.

[6.2](#) For undecided applications for which an Assurance of Support (AOS) has been given, and for assurances given on or after 31 March 1999, the undertaking reverts to an undertaking solely to repay any debt created by payment of social security benefits to the applicant during the two year period for which the assurance is in place. The strengthened undertaking to provide 'direct and indirect' financial support to the assured migrant/s is no longer part of the undertaking. This change has no direct processing implications.

[6.3](#) The income testing arrangements for mandatory Assurances of Support introduced on 1 November 1998 into regulations have been removed as a result of disallowance. Testing arrangements for the acceptability of assurers will revert back to those in policy prior to 1 November

1998. Income Tax Assessment Notices continue to be the most reliable documents for evidencing the income level of potential assurers. [Guidelines for assessing assurers are in PAM3.](#)

6.4 The assessment of assurers where the AOS is discretionary will remain unchanged.

6.5 For mandatory assurances the bond amounts will revert to \$3500 for the principal applicant and \$1500 for other adults on the same application.

6.6 Bond payments made for applications undecided at date of disallowance will be released. Bond establishment fees charged by the Commonwealth Bank cannot be refunded.

6.7 If applicants had been assessed as meeting the requirements under the post - 1 November 1998 AOS testing arrangements in disallowed [reg 2.36A](#), they should be considered as meeting the pre – 1 November 1998 testing arrangements. Conversely, if an AOS has been refused because of [reg 2.36A](#) but no decision on the application has been made at the time of disallowance, the AOS should be re-assessed, disregarding [reg 2.36A](#).

- **7 IMPACT ON THOSE SERVED WITH S64 NOTICE OF LIABILITY (2nd INSTALMENT OF THE [VAC](#))**

7.1 The second instalment of the VAC for parents and aged dependent relatives will revert from \$5000 to the rate in place prior to 1 November 1998 (\$945, depending on date of application as this amount is subject to indexation).

7.2 For offshore parent applicants under Class AX (subclass 113) who have not had a visa granted but have been served with a [s64](#) liability notice in relation to the 2nd instalment of the VAC, the liability of the applicant is to pay the revived rate – that is \$945 per applicant (subject to indexation).

7.3 If payment has been made and no decision made at date of disallowance, a reimbursement will have to be arranged. The reimbursement will have to be taken from the new parents SAP account code. A fresh payment of the 2nd instalment can be requested in relation to the grant of a subclass 103 visa at the appropriate time.

7.4 Applicants under classes [BP](#) (onshore parents - [subclass 819](#)) and [BO](#) (offshore aged dependent relatives - [subclass 114](#)) will have to have the money paid for the VAC refunded if no decision had been made by the date of disallowance. The application can no longer be processed and we do not have the authority to retain the second instalment.

- **8 [LAW APPLICABLE AT MERITS REVIEW STAGE](#)**

8.1 The law applicable at merits review will depend upon the visa class applied for and the time that the review application is lodged.

- **Parent applicants under Class AX (offshore parents - subclass 113)**

8.2 For applications for [subclass 113](#) lodged between 1 November 1998 and 30 March 1999, which were refused, applications for review received before 31 March 1999 should be assessed at all stages of review under the disallowed regulations (subclass 113) and if successful granted a subclass 113 visa. This will be catered for in IRIS.

8.3 Applications for review received on or after 31 March 1999 will be assessed at all stages of review under the revived regulations (subclass 103) and if successful granted a subclass 103 visa.

- **Parent applicants under [Class BP](#) (onshore parents - subclass 819)**

8.4 For applications for [subclass 819](#) lodged between 1 November 1998 and 30 March 1999, which were refused, applications for review received before 31 March 1999 will be assessed at all stages of review against the disallowed regulations (subclass 819) and if successful be granted a subclass 819 visa.

8.5 Applications for review received on or after 31 March 1999 will not be accepted as the applicants have no accrued right to review. No further processing or action can be taken under the disallowed law.

- **Aged Dependent Relatives under [Class BO \(subclass 114\)](#)**

8.6 For applications for [subclass 114](#) lodged between 1 November 1998 and 30 March 1999 applications for review which were received before 31 March 1999 will have their case assessed at all stages of review under the disallowed regulations and if successful be granted a [subclass 114](#) visa.

8.7 Applications for review which are received on or after 31 March 1999 will not be accepted as the applicants have no accrued right of review. No further processing or action can be taken under the disallowed law.

- **9 PRIORITY PROCESSING**

9.1 [Paragraph 6](#) of General Direction No.7 of 1998 (GD 7/98) states:

‘In respect of parent and aged dependent relative applications, it is the Government’s view that, generally, applications lodged after 1 November 1998 in the new ‘Aged Parent’ subclasses, including existing applications that transfer to the new sub-classes, should be given a higher processing priority than existing applications in the Parent category.’

9.2 As of 31 March 1999 this paragraph of GD 7/98 ceased to have effect as the new sub-classes referred to no longer exist. Parent applications which continue to be processed under subclass 103 criteria will be subject to the standard priority processing arrangements for parents under this subclass.

- **10 QUEUING OF VISA CLASS AX (OFFSHORE) PARENT APPLICATIONS**

10.1 Subclass 113 applicants who also had a subclass 103 application (with a queue date) will maintain that subclass 103 queue date.

10.2 Subclass 113 applicants who also had a subclass 103 application (without a queue date) but who have received a subclass 113 queue date, will maintain that queue date in relation to their 103 application.

10.3 Subclass 113 applicants who only had a subclass 113 application (with a queue date) will maintain that queue date in relation to the subclass 103 queue. As advised on 29 October 1998 by the Acting Assistant Secretary of Migration Branch, the subclass 113 queue date should have also been assigned to the subclass 103 application.

10.4 All applications for both subclass 103 and subclass 113 without a queue date on 31 March 1999 will receive a queue date on the date that all criteria for the grant of a visa are met, with the exception of payment of the 2nd instalment of the VAC and lodgement of the bond.

- **11 ONSHORE PARENT SUBCLASS 819 APPLICANTS – BRIDGING VISAS**

11.1 An application made under visa [class BP](#) (onshore parent [subclass 819](#)) was also an application for a bridging visa.

11.2 The bridging visa in relation to the [class BP](#) must be cancelled. On disallowance, the application should be treated as invalid because no further processing action can be taken on it and the bridging visa comes within the prescribed grounds for cancellation and for which cancellation is mandatory ([regulation 2.43\(1\)\(c\)](#) and [\(2\)\(a\)](#)). If the bridging visa is not cancelled it will remain in effect indefinitely, in the absence of any decision to refuse or grant the visa. Codified procedures for visa cancellation are to be found in [MSI 203 - Visa Cancellation under Subdivision D, E and F](#).

11.3 It may be that no decision has been made in relation to the bridging visa application connected to the application under visa [class BP](#). In this case, as the application under [class BP](#) is an invalid application, the bridging visa must be for refusal.

11.4 Holders of substantive visas will not be affected by the cancellation of the bridging visa attached to the [Class BP](#) application. This should include certain subclass 410 retirement visa holders.

11.5 If the applicant does not have a valid application under visa Classes AO or AS, or another substantive or bridging visa, they will become unlawful once you cancel their bridging visa. They should be advised that they can apply for a bridging visa E and generally will be given 28 days to depart Australia.

- **12 STANDARD LETTERS**

12.1 All undecided applicants for subclasses 113, 114 and 819 will have to be notified of the disallowance and the impact upon them. Standard letters have been prepared for use by posts and State offices.

- **13 CLIENT INFORMATION**

13.1 A client question and answer sheet is at [Attachment C](#).

- **14 FORMS**

14.1 The following forms are affected by the disallowance:

- **Onshore forms**

887 - Application to Remain Permanently in Australia

887N - Explanatory Notes to Form 887

970i - Applying to remain permanently in Australia – Information form

1083 - Application to Remain Permanently in Australia on Parent Grounds*

1109i - Addendum for carer changes.

- **Offshore forms**

47 - Application for migration to Australia

47N - Explanatory Notes to Form 47

[957i](#) - [Who can migrate? – Information form](#)

[961i](#) - [Sponsorship – Information form](#)

[1106i](#) - [Parents – Information form*](#)

- **Forms for use both onshore and offshore**

28 - Required Assurance of Support

960i - Assurance of Support – Information form

990i - Charges

* These forms will be deleted.

14.2 The electronic copies of these forms have been amended. An addendum to be used with paper copies of forms 47 and 887 was distributed on 1 April 1999.

Abul Rizvi

Acting First Assistant Secretary

Migration and Temporary Entry Division

- **ATTACHMENT A -
STATUTORY RULE 285 (SR 285)
DETAILS OF DISALLOWED REGULATIONS**

[SR 285 which came into effect on 1 November 1998 provided for the following matters:](#)

- **Assurance of support and related bond**

Item 4 Introduction of an undertaking by the assurer to provide sufficient direct or indirect financial assistance to ensure that the applicant will not rely on any form of support – reg 2.36(1)(c).

Item 5 Introduction of new arrangements for an assurer (where the assurance of support is a mandatory requirement for the visa subclass#) to meet minimum income requirements – reg 2.36A.

Item 6 Introduction of a higher level of bond (where the assurance of support is a mandatory requirement for the visa subclass#) from \$3500 to \$4000 for the main applicant and \$1500 to \$2000 for each adult dependent – reg 2.39.

[# parents, remaining relatives, aged dependent relatives, carers]

- **Aged Dependent Relatives**

Item 7 - Introduction of a new offshore visa class – [Class BO](#) - Other Family (Migrant)

- Introduction of a higher level of the second instalment of the Visa Application Charge (the health charge) from \$945 to \$5000 for the main applicant in [Class BO](#).

Item 10 Introduction of visa [subclass 114](#) (Aged Dependent Relative).

Item 12 Removal of the provisions whereby an aged dependent relative could apply for permanent residence within Australia.

- **Parents - Offshore**

Item 7 - Introduction of a new offshore visa subclass within Class AX – Parent (Migrant)– subclass 113 (Aged Parent)

- Introduction of a higher level of the second instalment of the Visa Application Charge (the health charge) from \$945 to \$5000 for the main applicant in subclass 113.

Item 8 Removal of provisions for parents to continue to apply under the former subclass 103 (parents of any age who meet the balance of family test).

Item 10 Introduction of new eligibility requirements for the grant of a subclass 113 visa, ie:

- applicant is either:
 - an aged parent; or
 - a working aged parent who has a dependent child in Australia under 18 years of age who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen; or
 - a person who has previously applied for a Class AX – Parent (Migrant) visa where that application has not been decided.
- applicant must be outside Australia at the time the application is made.

- **Parents - Onshore**

Item 7 - Introduction of a new onshore visa class – [Class BP](#) – Aged Parent (Residence)

- Introduction of a higher level of the second instalment of the Visa Application Charge (the health charge) from \$945 to \$5000 for the main applicant in subclass 819 (except where the application was made by a person who is the holder of a Retirement (Temporary) visa.

Item 11 Removal of provisions for parents to continue to apply under the former subclass 804 (aged parent who meets the balance of family test).

Item 13 - Introduction of subclass 819.

- Introduction of eligibility requirements for the grant of a subclass 819 visa; ie applicant is either:

- a person who has previously applied for a Class AO or AS visa on aged parent grounds (subclass 804) where that application has not been decided; or
- a person who is the holder of a Retirement (Temporary) visa and has held the visa or equivalent for a period of at least ten years.

Consequential amendments to relevant subclasses and classes in Schedule 1 and 2.

- **ATTACHMENT B -**

- Table summarising the impacts of disallowance on visa subclasses**

VISA SUBCLASS	STATUS AT TIME OF DISALLOWANCE (31 MARCH 1999)	APPLICABLE REGULATIONS	IMPACT OF THE MIGRATION DISALLOWANCE
---------------	--	------------------------	--------------------------------------

All subclasses	Decision made by 30 March 1999		The decision stands.
	See under separate		
	subclasses for review		
	rights		

114 (Aged dependent | Undecided | Schedule 2 | Can no longer be relative) | | | processed.

114 | S64 notice sent but no | Schedule 2 | Can no longer be decision made | | processed. If 2nd | | instalment of the | | VAC has been paid a | | refund will have to be | | arranged.

114 | Application made for review | Schedule 2 | Can continue to be before 31 March 1999 | | reviewed. Will be | | assessed against | | disallowed | | regulations.

114 | Application for review | Schedule 2 | No right to review. received on or after 31 March | | 1999. | |

819 (Aged Parent) | Undecided | Schedule 2 | Can no longer be | | processed.

819 | S64 notice sent but no | Schedule 2 | If the 2nd instalment decision made | | has been paid, a | | refund will have to be | | arranged.

819 | Application for review made | Schedule 2 | Review application before 31 March 1999 | | will be assessed | | against disallowed | | 819 regulations.

819 | Application for review | Schedule 2 | No right to review. received on or after 31 March | | 1999. | |

113 (Parent) | Undecided | Schedule 2 | Will continue to be | | processed but will be | | assessed under the | | revived subclass 103 | | criteria.

113 | S64 notice sent but no | Schedule 2 | Can continue to be decision made | | processed but if the | | 2nd instalment has | | been paid, the | | difference will have | | to be refunded.

113 | Application for review before | Schedule 2 | Applicants will have | 31 March 1999 | | the review

| | application assessed
| | against the
| | disallowed 113
| | criteria.

113 | Application for review | Schedule 2 | Applicants will have
| received on or after | | the review
| 31 March 1999 | | application assessed
| | against 103 criteria.

- **ATTACHMENT C -
QUESTIONS AND ANSWERS**

DISALLOWANCE OF STATUTORY RULE 285 – AFFECTING MANDATORY ASSURANCES OF SUPPORT AND VISA SUBCLASSES:

103 (OFFSHORE PARENT VISA BEFORE 1 NOVEMBER 1998)

113 (OFFSHORE AGED PARENT VISA AFTER 1 NOVEMBER 1998)

114 (OFFSHORE AGED DEPENDENT RELATIVE VISA AFTER 1 NOVEMBER 1998)

804 (ONSHORE AGED PARENT VISA BEFORE 1 NOVEMBER 1998); AND

819 (ONSHORE AGED PARENT VISA AFTER 1 NOVEMBER 1998).

Q: *What is the disallowance?*

A: Under Australian government legislation the Senate has the right to disallow regulations made by the Government. After regulations are introduced, the Senate has 15 days in which to move a motion of disallowance and a further 15 days to vote on that motion.

On 31 March 1999 non-Government senators in the Senate voted to reject regulations introduced on 1 November 1998 relating to parents, aged dependent relatives and mandatory assurances of support. It is now as if these changes had never been made and the regulations relating to parents, aged dependent relatives and mandatory assurances of support in existence before 1 November 1998 have been revived.

Q: *Why did the disallowance go ahead?*

A: The disallowance was moved by Senator Andrew Bartlett (Democrat QLD). The Government briefed both Senator and the Opposition on the rationale behind the changes. However, non-Government senators still decided to disallow the regulations.

Q: *Who does the disallowance affect?*

A: The disallowance affects the following applicants:

- Parent applicants under visa subclasses 819 (onshore) and 113 (offshore);
- aged dependent relative applicants under visa [subclass 114](#) (offshore); and
- applicants who applied after 1 November 1998 where a mandatory assurance of support is required before a visa can be granted (subclasses [104](#) (offshore) and [806](#)(onshore)).

Q: I have been granted a subclass 113/114/819 visa. How does disallowance affect me?

A: The disallowance does not affect you if the decision to grant your visa was made before the date of disallowance. Your visa is still valid.

○ **PARENTS**

Q: I have an undecided subclass 113 visa application but do not have an ongoing subclass 103 visa application. How does disallowance affect me?

A: Your application will continue to be processed, but under the subclass 103 regulations. You will be placed in the pipeline of 103 visa applications. You do not have to pay another application fee. If you meet all the other visa requirements, you will only have a liability to pay \$945 per person for the second instalment of the Visa Application Charge. Your assurer will have to lodge a bond of \$3 500 for the main applicant and \$1 500 for each additional adult when requested by the visa processing office.

What should I do now?

The Department will be writing to you to officially inform you of the impact of these changes on your application.

Q: I have an undecided subclass 113 and an undecided subclass 103 application. How does the disallowance affect me?

A: Your application reverts to being processed under the subclass 103 provisions. You will lose priority in processing, but if you meet all the other visa requirements you will only have a liability to pay \$945 per person for the second instalment of the Visa Application Charge. Your assurer will have to lodge a bond of \$3 500 for the main applicant and \$1 500 for each additional adult, when requested by the visa processing office.

What should I do now?

The Department will be writing to you to officially inform you of the impact of these changes on your application.

What about my place in the queue?

If you already have a 103 queue date, your 103 queue date will remain the same.

If you do *not* have a 103 queue date, you will receive a queue date once you meet all criteria for the grant of a subclass 103 visa. If you have a 113 queue date, this is also your 103 queue date.

Q: I have an undecided application for subclass 819, how does the disallowance affect me?

A: Your application under subclass 819 can no longer be processed as the visa subclass no longer exists. If you paid the visa application charge, you may request a refund of that money.

What should I do now?

If you have an application under the Family (Residence) or [General \(Residence\)](#) visa classes which is undecided that application will continue to be processed.

Q: I am a working-age parent offshore and was told I could not apply to join my children permanently in Australia. Is this still the case?

- A:** No. You can now apply to migrate to Australia under subclass 103 offshore only. You must:
- . be sponsored by your settled Australian citizen, settled permanent resident or eligible New Zealand citizen child;
 - . meet the balance of family test and relevant public interest criteria; and
 - . have an acceptable assurance of support.

Applications for this visa must be lodged outside of Australia, but you do not have to be physically outside of Australia at the time of lodgement.

Q: *I am a parent and currently in Australia. I had been told that I could not apply for a visa while I remained in Australia. Is this still the case?*

A: If you are an aged parent (that is 65 years of age for men, and currently 61 years of age for women) and depending on your current status in Australia you may be able to apply for permanent residence in Australia under subclass 804.

If you are *not* an aged parent, then you are able to apply for subclass 103. You must :

- . be sponsored by your settled Australian citizen, settled permanent resident or eligible New Zealand citizen child;
- . meet the balance of family test and relevant public interest criteria; and
- . have an acceptable assurance of support.

Applications for this visa must be lodged outside of Australia, but you do not have to be physically outside of Australia at the time of lodgement.

Q: *My application for subclass 113 visa has been refused. What can I do now?*

A: If you lodged an application for review which was received by MIRO before 31 March 1999 your review application will continue to be processed. It will be assessed against subclass 113 visa requirements.

[If you did *not* lodge an application for review with MIRO which was received before 31 March 1999 you are *not* able to have this decision reviewed.](#) If you think you can meet the subclass 103 visa requirements, you may be able to lodge a fresh application. You will have to pay the relevant application fee.

Q: *My application for subclass 819 has been refused. What can I do now?*

A: If you lodged an application for review which was received by MIRO before 31 March 1999 your review application will continue to be processed. It will be assessed against subclass 819 visa requirements.

If you did *not* lodge an application for review with MIRO which was received before 31 March 1999 you are not able to have this decision reviewed. If you think you can meet the subclass 804 criteria, you may be able to lodge a fresh application, depending upon your current status in Australia. You will have to pay the relevant application fee.

Q: *I hold a retirement visa (410) and, having my children in Australia, had intended to lodge an application under subclass 819. What can I apply for now?*

A: If you are an aged parent (that is 65 years of age for men, and currently 61 years of age for women) you may be able to apply for a subclass 804 Aged Parent visa. You must meet the balance of family test and you will have to pay the second instalment of the Visa Application Charge and have an acceptable assurance of support.

Q: *When will I get a parent visa?*

A: No final decision has been made by the Australian Government on the number of visas available in the 1999-2000 Migration Program. There are already over 2000 people in the queue for parent visas and over 17000 people still being processed. Given these circumstances and depending on the allocation of parent visas in future program years, some applicants may not be granted a visa for a number of years.

○ **AGED DEPENDENT RELATIVES**

Q: *I have an undecided subclass 114 aged dependent relative visa application. How does disallowance affect me?*

A: Your application can no longer be processed as the visa class no longer exists.

What should I do now?

If you wish you can apply for a subclass [104](#) visa. You will have to lodge a new application Form 47 and a new sponsorship Form 40. The fee you have already paid will cover the new application.

If you do not wish to apply for this visa class you may request a refund of your application fee.

Q: *When will I get an aged dependent relative visa?*

A: This year there were 1200 places allocated to subclasses [104](#) and [806](#) which contain the aged dependent relative category. This allocation is expected to be filled shortly. The numbers for next program year have not yet been decided so it is difficult to project when you may be granted a visa.

○ **ASSURANCE OF SUPPORT AND SECOND INSTALMENT OF THE VISA APPLICATION CHARGE**

Q: *My assurer has paid the bond to the Commonwealth Bank, but I did not get a subclass 113/114/819 visa. Can my assurer get their money back?*

A: Yes. The bond paid to the Commonwealth Bank can be released to your assurer. However, the fee charged by the bank will not be refunded. If you are assessed as meeting the criteria for another visa at a later date your assurer will be asked to pay another bond of a lesser amount. Negotiations are in progress with the bank to waive the second establishment fee.

Q: *I have paid the \$5000 second instalment of the VAC for a 113/114/819 visa but was not granted a visa before disallowance. Can I have my money refunded?*

A: Yes. As your 113/114/819 visa application is not progressing a refund can be made. If you are assessed as meeting the criteria for another visa at a later date you will be asked to pay a new second instalment of the VAC which will be a lesser amount.

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MIGRATION REGULATIONS

SCHEDULE 1 - CLASSES OF VISAS

PART 2 - TEMPORARY VISAS (OTHER THAN BRIDGING VISAS)

- **Item 1217. [Retirement \(Temporary\) \(Class TQ\)](#)**
 - (1) [Form:](#) [147](#).
 - (2) [Visa application charge:](#)
 - (a) First instalment (payable at the time application is made): \$150
 - (b) Second instalment (payable before grant of visa): Nil.
 - (3) Other:
 - (a) Application may be made in or outside Australia, but not [in immigration clearance](#).
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a [member of the family unit](#) of a person may be made at the same time and place as, and [combined with](#), an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.
 - (4) [Subclasses:](#) [410 \(Retirement\)](#)

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MIGRATION REGULATIONS

SCHEDULE 2 - PROVISIONS WITH RESPECT TO THE GRANT OF SUBCLASSES OF VISAS

SUBCLASS 410 - RETIREMENT

410.1 INTERPRETATION

[410.111](#) (1) In this Part:

"equivalent visa" means:

- (a) a Class 410 (retirement) visa or entry permit under the [Migration \(1993\) Regulations](#); or
- (b) a retirement (code number 410) visa or entry permit under the [Migration \(1989\) Regulations](#); or
- (c) a [Transitional \(Temporary\) \(Class UA\) visa](#) that:
 - (i) was granted on the basis of an application for a visa or entry permit of a kind mentioned in paragraph (a) or (b); or
 - (ii) is, or was, taken to be held by a person on the basis of having held a visa or entry permit of a kind mentioned in paragraph (a) or (b).

"established applicant" means an applicant who:

- (a) either:
 - (i) holds a Subclass 410 visa or an [equivalent visa](#); or
 - (ii) meets the requirements of [subclause \(2\)](#); and
 - (b) either:
 - (i) held a Subclass 410 visa, or an equivalent visa, on 30 November 1998; or
 - (ii) was granted a Subclass 410 visa on or after 1 December 1998 on the basis of an application made before 1 December 1998; and
 - (c) has not held another [substantive visa](#) (other than a Subclass 410 visa) since becoming the holder of the visa mentioned in paragraph (b).
- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant:
 - (i) is in Australia; and
 - (ii) is not the holder of a substantive visa; and
 - (b) the last [substantive visa](#) held by the applicant was a Subclass 410 visa or an [equivalent visa](#).

410.2 [PRIMARY CRITERIA](#)

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

410.21 Criteria to be satisfied at time of application

[NOTE: No criteria to be satisfied at time of application outside Australia.]

410.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3) or (4).

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

(a) the holder of:

(i) a visa of one of the following classes:

(A) [Business \(Temporary\) \(Class TB\)](#);

(B) [Cultural/Social \(Temporary\) \(Class TE\)](#);

(C) [Educational \(Temporary\) \(Class TH\)](#);

(D) [Expatriate \(Temporary\) \(Class TJ\)](#);

(E) [Family Relationship \(Temporary\) \(Class TL\)](#);

(F) [Interdependency \(Temporary\) \(Class TM\)](#);

(G) [Medical Practitioner \(Temporary\) \(Class UE\)](#);

(H) [Retirement \(Temporary\) \(Class TQ\)](#);

(I) [Supported Dependant \(Temporary\) \(Class TW\)](#);

(J) [Working Holiday \(Temporary\) \(Class TZ\)](#); or

(ii) a visa of one of the following subclasses:

(A) [Subclass 303 \(Emergency \(Temporary Visa Applicant\)\)](#);

(B) [Subclass 427 \(Domestic Worker \(Temporary\) - Executive\)](#);

(C) [Subclass 457 \(Business \(Long Stay\)\)](#); or

(iii) a [Transitional \(Temporary\) \(Class UA\) visa](#) that:

(A) was granted on the basis of an application for a Class 410 (retirement) visa or entry permit under the [Migration \(1993\) Regulations](#) or a retirement (code number 410) visa or entry permit under the [Migration \(1989\) Regulations](#); or

(B) is, or was, taken to be held by a person on the basis of having held a visa or entry permit mentioned in sub-subparagraph (A); or

(b) the holder of:

(i) a visa of one of the following classes:

(A) [Border \(Temporary\) \(Class TA\)](#);

- (B) [Electronic Travel Authority \(Class UD\)](#);
- (C) [Long Stay \(Visitor\) \(Class TN\)](#);
- (D) [Short Stay \(Visitor\) \(Class TR\)](#); or
- (E) [Student \(Temporary\) \(Class TU\)](#); or
- (ii) a [Subclass 456 \(Business \(Short Stay\)\) visa](#); or
- (c) the holder of a [Confirmatory \(Temporary\) \(Class TD\)](#) visa that was granted on the grounds that the applicant satisfied the criteria for a visa specified in paragraph (a) or (b).
- (3) An applicant meets the requirements of this subclause if.
 - (a) the applicant is not the holder of a substantive visa; and
 - (b) the last substantive visa held by the applicant was of a kind specified in paragraph (2) (a) or (c); and
 - (c) the applicant satisfies Schedule 3 criteria [3003](#), [3004](#) and [3005](#).
- (4) An applicant meets the requirements of this subclause if.
 - (a) the applicant is not the holder of a [substantive visa](#); and
 - (b) the last substantive visa held by the applicant was of a kind specified in paragraph (2) (b); and
 - (c) the applicant satisfies Schedule 3 criteria [3002](#), [3003](#), [3004](#), and [3005](#).

410.22 Criteria to be satisfied at the time of decision

[410.221](#) The applicant has turned 55.

[410.222](#) (1) If the applicant intends to settle in Australia with his or her [spouse](#):

- (a) the [family unit](#) of the applicant does not include any other person [dependent](#) on the applicant or the applicant's spouse; and
- (b) the Minister is satisfied that neither the applicant nor the applicant's spouse intends to take employment in Australia.

[\(2\)](#) If the applicant intends to settle in Australia without a spouse:

- (a) the family unit of the applicant does not include a person dependent on the applicant; and
- (b) the Minister is satisfied that the applicant does not intend to take employment in Australia.

[410.223](#) If the application was made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria [5001 and 5002](#).

[410.224](#) If the application is made in Australia, the applicant has complied substantially with the conditions to which the visa (if any) held, or last held, by the applicant is, or was, subject.

[410.225](#) The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.

[410.226](#) If the applicant is an [established applicant](#), both the applicant and the applicant's [spouse](#) (if any) satisfy public interest criteria [4001, 4002, 4003, 4004, 4013 and 4014](#).

[410.227](#) (1) If the applicant is not an [established applicant](#):

(a) either:

(i) the resources of the applicant, or (if the applicant has a [spouse](#)) the combined resources of the applicant and the applicant's spouse (if any), available for transfer to Australia, are not less than:

(A) \$650,000; or

(B) if the applicant is the [parent](#) of an Australian citizen who is usually resident in Australia, an [Australian permanent resident](#) or an [eligible New Zealand citizen](#) - \$600,000; or

(ii) the resources of the applicant, or (if the applicant has a [spouse](#)) the combined resources of the applicant and the applicant's spouse, available for transfer to Australia, are not less than \$200,000, and the applicant and the applicant's spouse (if any) have:

(A) pension rights; or

(B) capital for investment; or

(C) both pension rights and capital for investment;

being in total money and entitlements sufficient to provide an annual income of not less than \$45,000; or

(iii) the applicant is the [parent](#) of an Australian citizen who is usually resident in Australia, an [Australian permanent resident](#) or an [eligible New Zealand citizen](#) and the resources of the applicant, or (if the applicant has a [spouse](#)) the combined resources of the applicant and the applicant's spouse, available for transfer to Australia are not less than \$180,000, and the applicant and the applicant's spouse (if any) have:

(A) pension rights; or

(B) capital for investment; or

(C) both pension rights and capital for investment;

being in total money and entitlements sufficient to provide an annual income of not less than \$42,000; and

[\(b\)](#) both the applicant and the applicant's spouse (if any) satisfy public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4005](#), [4010](#), [4013](#) and [4014](#); and

[\(c\)](#) If the applicant is an [AusAID student](#) or an [AusAID recipient](#), the applicant has the support of the [AusAID Minister](#) for the grant of the visa.

[\(d\)](#) the applicant produces to the Minister evidence of [adequate arrangements in Australia for health insurance](#) during the period of the applicant's intended stay in Australia.

[\(2\)](#) The Minister may waive the requirements of paragraph (1) (c) if the Minister is satisfied that, in the particular case, waiver is justified by:

(a) compelling circumstances that affect the interests of Australia; or

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

410.3 [SECONDARY CRITERIA](#)

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

410.31 Criteria to be satisfied at time of application

[410.311](#) The applicant is the [spouse](#) of a person who has applied for a [Retirement \(Temporary\) \(Class TQ\)](#) visa.

[410.312](#) If the application is made outside Australia and the application is made separately from that of the applicant's spouse:

- (a) the spouse is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia with the spouse.

410.32 Criteria to be satisfied at time of decision

[410.321](#) The applicant continues to be the [spouse](#) of a person who, having satisfied the primary criteria, is the holder of a Subclass 410 visa.

[410.322](#) If the applicant is the spouse of an [established applicant](#), the applicant satisfies public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4013](#) and [4014](#).

[410.323](#) If the applicant is not the spouse of an [established applicant](#), the applicant:

- (a) gives to the Minister evidence of:
 - (i) adequate means to support the applicant; and
 - (ii) [adequate arrangements in Australia for health insurance](#);

during the period of the applicant's intended stay in Australia; and

- (b) satisfies public interest criteria [4001](#), [4002](#), [4003](#), [4004](#), [4005](#), [4010](#), [4013](#) and [4014](#).

[410.324](#) If the application is made in Australia, the applicant has complied substantially with the conditions that:

- (a) apply to any visa of which the applicant is the holder; or
- (b) applied to any visa held by the applicant immediately before becoming an [unlawful non-citizen](#).

[410.325](#) If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria [5001](#) and [5002](#).

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

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

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

410.4 [CIRCUMSTANCES APPLICABLE TO GRANT](#)

[410.411](#) If the application is made in the [migration zone](#), the applicant must be in the migration zone at time of grant.

[410.412](#) If the application is made outside Australia, the applicant must be outside Australia at time of grant.

410.5 [WHEN VISA IS IN EFFECT](#)

[410.511](#) [Temporary visa](#) permitting the holder to travel to, enter and [remain in Australia](#):

(a) in the case of a visa granted to an applicant who holds, or whose last [substantive visa](#) was, a Subclass 410 visa or an [equivalent visa](#) - for 2 years from the date of grant; or

(b) in any other case - until a date specified by the Minister.

[410.6](#) [CONDITIONS](#)

410.611 Condition [8101](#).

410.612 Any 1 or more of conditions [8301](#), [8303](#), [8501](#), [8502](#), [8503](#), [8516](#), [8522](#), [8525](#) and [8526](#) may be imposed.

[410.7](#) [WAY OF GIVING EVIDENCE](#)

410.711 Visa label affixed to a valid passport.

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PROCEDURES ADVICE MANUAL 3

SCHEDULE 2 - RETIREMENT - VISA 410

3 FURTHER GUIDELINES

3 FURTHER GUIDELINES

- **3.1 Interview requirements**

- **All applicants**

3.1.1 Officers are expected to interview all applicants for a visa 410 regardless of whether the application is made

- in or outside Australia; or
- by an established applicant or other applicant.

3.1.2 To avoid any future misunderstandings, officer should record on file full details of the interview, especially any counselling given at interview (or subsequent to interview).

3.1.3 Officers should ensure that the visa notification letter to successful applicants gives clear advice on the visa conditions and residential restrictions and that any subsequent application for another visa 410 will be assessed against migration law and visa requirements in force at that time.

- **Offshore applicants**

3.1.4 This section applies to "first-time" visa 410 applicants outside Australia. (It is expected that most existing visa 410 holders will apply for further visas 410 in Australia, rather than overseas.) At interview officers should

- verify the family composition - see [410.222\(1\)\(b\) guidelines](#) above;
- verify the intention of the applicant (and spouse, if applicable) not to work in Australia - see [410.222\(1\)\(b\) guidelines](#) above;
- counsel the applicant that a decision to grant a visa cannot be made until and unless the applicant, when asked to do so, provides evidence that
- their capital has been made available for transfer to Australia (see [410.227\(1\)\(a\) guidelines](#) above); and
- they have health insurance from an Australian health insurance company (see also [section 3.2](#) below);
- counsel the applicant regards the timing of transferring their resources to Australia (i.e. not until advised that all other legislative requirements for visa grant appear to have been satisfied);
- if the spouse is under 55, warn them that they are ineligible for a visa 410 in their own right until they turn 55 and, it follows, may be ineligible to stay on in Australia should, for whatever reason, the spouse relationship end;
- advise applicants that changes in their family circumstances (for example, birth or adoption of a child) will rule them ineligible for any further visa 410.

3.1.5 Officers should, before initiating any further processing that may be required, counsel applicant(s) that

- visas 410 are granted subject to a condition barring work in Australia and that failure to abide by this condition may result in visa cancellation;
- they should contact the Foreign Investment Review Board (FIRB) for information on the law regarding the purchase of residential real estate by temporary visa holders;
- because the visa 410 is a temporary visa only, holders cannot sponsor relatives for entry to Australia; and
- the success of any subsequent visa 410 application in Australia will depend on migration law and visa requirements at that time. Under no circumstances should officers give applicants any expectation that further stay in Australia will necessarily be available (this is particularly critical if the spouse is under 55).

3.1.6 Applicants intending to invest capital in Australia should also be advised to first seek details of legal requirements from FIRB:

Executive Member

Foreign Investment Review Board

C/- The Treasury

Canberra ACT 2600

Tel: 61 2 6263 2111

Fax: 61 2 6263 2940

- **Applicants in Australia**

Applicants "changing status" to visa 410

3.1.7 Applicants applying in Australia to "change status" to visa 410 should be interviewed along the same lines as offshore applicants - see the section above beginning [paragraph 3.1.4](#).

Established applicants

3.1.8 Officers are reminded that persons who apply for their first visa 410 on or after 1 December 1998 *never* become established applicants, even when they apply later for a further visa 410. In other words, whenever they apply for a further visa 410, they are subject to having their financial resources and health assessed afresh and are required to produce evidence of having maintained health insurance. See [section 3.2](#) below.

3.1.9 In interviewing established applicants, officers should first

- verify the family composition - see [410.222\(1\)\(b\) guidelines](#) above (and remind them that changes in their family circumstances (for example, birth or adoption of a child) will rule them ineligible for any further visa 410; and
- verify that the applicant (and spouse, if applicable) are not working (and have no intention to do so) - see [410.222\(1\)\(b\) guidelines](#) above - and remind them that visas 410 are granted subject to a

condition barring work in Australia (and that failure to abide by this condition may result in visa cancellation).

3.1.10 *Established* applicants are not required by law to take out or maintain health insurance as a requirement to be granted a further visa 410. However, such applicants should, at interview, be counselled to do so and reminded that they are not covered by standard Medicare arrangements.

3.1.11 If the spouse is under 55, the couple should be reminded that the spouse is ineligible for a visa 410 in their own right until they turn 55 and, it follows, may be ineligible to stay on in Australia should, for whatever reason, the spouse relationship end.

3.1.12 All applicants should be reminded that the success of any subsequent visa 410 application in Australia will depend on migration law and visa requirements operating at that time. Under no circumstances should officers give applicants any expectation that further stay in Australia will necessarily be available (this is particularly critical if the spouse is under 55).

"Non-established" visa 410 holders seeking further visa 410

3.1.13 In interviewing "non-established applicants", officers should first

- verify the family composition - see [410.222\(1\)\(b\) guidelines](#) above (and remind them that changes in their family circumstances (for example, birth or adoption of a child) will rule them ineligible for any further visa 410; and
- verify that the applicant (and spouse, if applicable) are not working (and have no intention to do so) - see 410.222(1)(b) guidelines above - and remind them that visas 410 are granted subject to a condition barring work in Australia (and that failure to abide by this condition may result in visa cancellation).

3.1.14 Applicants other than established applicants are required by law to take out and maintain health insurance as a requirement to be granted a further visa 410. Officers should therefore

- request evidence that the applicant has maintained health insurance while in Australia; and
- remind the applicant that, provided they satisfy health and character requirements to be granted a visa 410, they will be asked to submit evidence on having (on-going) health insurance.

3.1.15 If the spouse is under 55, the couple should be reminded that the spouse is ineligible for a visa 410 in their own right until they turn 55 and, it follows, may be ineligible to stay on in Australia should, for whatever reason, the spouse relationship end.

3.1.16 All applicants should be reminded that the success of any subsequent visa 410 application in Australia will depend on migration law operating at that time. Under no circumstances should officers give applicants any expectation that further stay in Australia will necessarily be available (this is particularly critical if the spouse is under 55).

- **3.2 Health insurance**

- **For established applicants**

3.2.1 *Established* applicants are not required by law to take out or maintain health insurance as a requirement to be granted a further visa 410. However, such applicants should, at interview, be counselled to do so and reminded that they are not covered by standard Medicare arrangements. Although Australia has signed reciprocal health care agreements with several countries, applicants

from these countries should be counselled to seek advice from the Australian Department of Health and Aged Care as to their eligibility, as visa 410 holders, for health services in Australia.

- **For other than established applicants**

3.2.2 For other than established applicants, [410.227\(1\)\(d\)](#) and [410.323\(a\)\(ii\)](#) provisions require applicants to provide evidence of adequate arrangements for health insurance in Australia. For "first-time" visa 410 applicants, officers should request this evidence only after most other visa criteria have been satisfied i.e. generally when requesting evidence that the applicant has their resources available for transfer to Australia.

3.2.3 'Adequate arrangements' for health insurance is not defined, however, it is policy that this criterion generally cannot be satisfied unless the applicant produces evidence of comprehensive health insurance (covering hospital and medical costs) with an Australian insurer. The insurance policy

- need not necessarily be with a specialist health insurance company;
- can include an excess, if the applicant so wishes; and
- may include standard "pre-existing condition" clauses;

but otherwise must be fully comprehensive.

3.2.4 Note that, although a visa 410 can be granted to have effect for two or four years (see [410.5 guidelines](#) above), applicants will probably be able to obtain health insurance cover for at most 12 months (at a time):

- Under policy, 12 month cover is sufficient for "first time" applicants to satisfy 410.227(1)(d) and 410.323(a)(ii) criteria; however,
- visa 410 holders (other than established applicants) seeking a further visa 410 are still required to show evidence of having maintained health insurance for the entire period they have held a visa 410 - see paragraph 3.2.6 below and [410.224 guidelines](#) above.

3.2.5 Should an applicant claim to be unable to obtain from an Australian insurer insurance as described in paragraph 3.2.3, details of any proposal by the applicant to obtain insurance from an overseas company (or to "self-insure" i.e. cover all risks from their own capital) should be referred to Health Policy Section, Migration and Temporary Entry Division, DIMA CO for further consultation with DHAC.

3.2.6 Visa 410 holders applying for a further visa 410 are, unless established applicants, required to demonstrate that they have maintained health insurance since they were last granted a visa 410. As the health insurance criterion is a *core component* of visa 410 policy, if an applicant fails to maintain their health insurance while holding a visa 410, under policy it is sufficient grounds to refuse to grant a further visa 410, on the basis that the applicant

- has failed either to comply substantially with visa conditions;
- is unable to satisfy DIMA of their intention to comply with visa conditions.

Legend Stack 21/12/2000 - 26/2/2001

PROCEDURES ADVICE MANUAL 3

SCHEDULE 4 - PUBLIC INTEREST CRITERIA - CRITERIA 4005-4007

VISITORS, STUDENTS AND OTHER TEMPORARY ENTRANTS - HEALTH CHECKS REQUIRED

○ **8.3 Retirement visa ([subclass 410](#)) applicants**

8.3.1 Retirement visa applicants are required to undertake a medical examination and x-ray unless they are **established applicants** (see the Schedule 2 [410.111](#) definition), in which case they are not required to undertake health checks when they seek to extend their stay in Australia under this visa class (because Schedule 4 health criteria do not apply in this instance).

8.3.2 Non-established applicants (i.e. applicants *other than established applicants* as defined) are required to undertake health checks in relation to their initial visa 410 and any subsequent visa 410 application. Officers should also note that Schedule 2 criterion [410.227\(1\)\(d\)](#) requires non-established applicants to provide

- evidence of health insurance in Australia prior to grant of their initial visa; and
- for any subsequent visa 410, evidence that they still hold health insurance and have held insurance throughout their stay in Australia (see [PAM3: Sch2Visa410](#)).