



SCHEDULE 5 — SPECIAL RETURN CRITERIA [clause 5001 to clause 5010]

SCHEDULE 5 - SPECIAL RETURN CRITERIA

5001

The applicant is not:

- (a) a person who [left Australia](#) while the subject of a [deportation order](#) under:
 - (i) section [200](#) of the Act; or
 - (ii) section 55, 56 or 57 of the Act as in force on and after 19 December 1989 but before 1 September 1994; or
 - (iii) section 12, 13 or 14 of the Act as in force before 19 December 1989; or
- (b) a person whose visa has been cancelled under section 501 of the Act, as in force before 1 June 1999, wholly or partly because the Minister, having regard to the person's past criminal conduct, was satisfied that the person is not of good character; or
- (c) a person whose visa has been cancelled under section [501](#), [501A](#) or [501B](#) of the Act, if:
 - (i) the cancellation has not been revoked under subsection [501C\(4\)](#) or [501CA\(4\)](#) of the Act; or
 - (ii) after cancelling the visa, the Minister has not, acting personally, granted a permanent visa to the person; or
- (d) a person whose visa has been cancelled under section [501BA](#) of the Act if the Minister has not, acting personally, granted a permanent visa to the person after that cancellation.

5002

If the applicant is a person who has been [removed](#) from Australia under section [198](#), [199](#) or [205](#) of the Act:

- (a) the application is made more than 12 months after the removal; or
- (b) the Minister is satisfied that, in the particular case:
 - (i) compelling circumstances that affect the interests of Australia; or
 - (ii) compassionate or compelling circumstances that affect the interests of an Australian citizen, an [Australian permanent resident](#) or an [eligible New Zealand citizen](#);justify the granting of the visa within 12 months after the removal.

5010

(1) If:

- (a) the applicant is the holder of a [Foreign Affairs student visa](#); or
 - (b) the applicant is the holder of a student visa granted to the applicant who is provided financial support by the government of a foreign country;
- the applicant meets the requirements of subclause (3), (4) or (5).

(2) If:

- (a) the applicant is not the holder of a [Foreign Affairs student visa](#) and has in the past held a [Foreign Affairs student visa](#); or
 - (b) both:
 - (i) paragraph (a) does not apply to the applicant, and the applicant is not the holder of a [substantive visa](#); and
 - (ii) the last [substantive visa](#) held by the applicant was a student visa granted to the applicant who was provided financial support by the government of a foreign country;
- the applicant meets the requirements of subclause (3), (4) or (5).

(3) The applicant meets the requirements of this subclause if the course of study or training to which:

- (a) the visa mentioned in paragraph (1)(a) or (b) relates; or
 - (b) if paragraph (2)(a) applies — the [Foreign Affairs student visa](#) most recently held by the applicant related; or
 - (c) if paragraph (2)(b) applies — the last [substantive visa](#) held by the applicant related;
- (whether or not the applicant has [ceased](#) the course) is one designed to be undertaken over a period of less than 12 months.

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

- (a) has ceased:
 - (i) the course of study or training to which:
 - (A) the visa mentioned in paragraph (1)(a) or (b) relates; or
 - (B) if paragraph (2)(a) applies — the [Foreign Affairs student visa](#) most recently held by the applicant related; or
 - (C) if paragraph (2)(b) applies — the last [substantive visa](#) held by the applicant related; or
 - (ii) another course approved by the [AusAID Minister](#), the Foreign Minister or the government of the foreign country that provided financial support to the applicant, as the case requires, in substitution for that course; and

(b) has spent at least 2 years [outside Australia](#) since ceasing the course.

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

(a) the applicant has the support of the Foreign Minister or the government of the foreign country that provided financial support to the applicant, as the case requires, for the grant of the visa; or

(b) the Minister is satisfied that, in the particular case, waiving the requirement of paragraph (a) is justified by:

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

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

(6) In this clause:

cease has the same meaning as in regulation 1.04A.

Foreign Affairs student visa has the same meaning as in regulation 1.04A.

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

