

EXPLANATORY STATEMENT

Subject: Migration Act 1958

Migration Regulations (Amendment)

1990 No. 34

Section 181 of the Migration Act 1958 (the Act) provides the power in so far as is relevant to prescribe matters which are required by the Act and which are necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

In addition, regulations are prescribed pursuant to the following powers:

- section 23 of the Act provides that without limiting the generality of section 181, the regulations may provide inter alia for different classes of visa and for the cancellation of visas;
- section 33 of the Act provides that without limiting the generality of section 181, the regulations may provide for inter alia different classes of entry permits;
- section 37 of the Act provides inter alia the power to prescribe the change in circumstances to make further applications, where the person is an illegal entrant and for which review has not been applied;
- section 60 of the Act provides inter alia for matters to be prescribed before the Minister may order the deportation of a person;
- section 68 of the Act provides inter alia for the form of search warrant issued pursuant to that section by the Secretary to be prescribed;
- section 82 of the Act provides inter alia for matters to be prescribed before an illegal entrant may be required to leave Australia;
- section 90 of the Act provides inter alia for the form of search warrant issued pursuant to that section by the Secretary to be prescribed;



- paragraph 181(1)(b) of the Act provides that regulations may be made to provide for the remission, refund or waiver of fees which may be provided for in the Migration Regulations or for the exempting of persons from the payment of such fees.

The regulations amend the Migration Regulations to:

- create new classes of entry permits and to extend the eligibility for certain classes of existing entry permits to provide for protection to be given to nationals of the Peoples' Republic of China (PRC), Sri Lanka and the Lebanon who could be subject to personal danger if they had to return to their home country;
- facilitate the processing of the backlog of applications for permanent entry which arose as a result of an increase in the number of such applications made before 19 December 1989;
- make transitional arrangements for certain applicants refused the grant of a visa or entry permit before 19 December 1989;
- clarify the matters upon which the Minister is to be satisfied before exercising his or her powers under subsections 60(1) and 82(1) of the Act and to ensure natural justice;
- provide an exemption from the payment of application fees in respect of a visa or entry permit application made by persons who had the right to make such an application before 19 December 1989 and whose right was affected by the commencement of the amendments to the Act and Migration Regulations on 19 December 1989;
- make technical and consequential amendments to the Migration Regulations.



Details of the regulations are set out in the Attachment.

The regulations commenced on gazettal, except regulations 7 and 18 which had a retrospective commencement date of 19 February 1990.

Authority: Sections
23, 33, 37,
68, 90 and 181
of the
Migration Act
1958

By authority of the Minister of State
for Immigration, Local Government
and Ethnic Affairs



ATTACHMENT

Regulation 1 - Commencement

This regulation provides that regulations 7 and 18 commence on 19 February 1990. This allows applications to have been validly made on that date.

Regulation 2 - Interpretation

This regulation amends regulation 2 of the Migration Regulations to insert a definition of "health criteria" and also to amend the definition of "public interest criteria" to exclude dependent children of Australian citizens from meeting the requirements in paragraph (e) of that definition.

Regulation 3 - Application for entry permit

This regulation amends regulation 22 of the Migration Regulations to provide that a person presents the visa to the Minister for examination. In effect this means that where a person arrives at an airport the person is required to present the visa in order that the Minister may consider whether it should be cancelled. Only after examination may the person apply for an entry permit; in the case of a person holding an entry visa, entry into Australia may take place only after the examination.

Regulation 4 - Certain applications made before 1 June 1990 to be taken to be applications for processing entry permits

This regulation inserts a new regulation 22A into the Migration Regulations to deem applications made after entry into Australia for permanent entry before 19 December 1989 and applications for permanent entry after entry made on or after 19 December and before 31 May 1990 to be applications for processing entry permits. This will facilitate the grant of an entry permit to persons as an aid to dealing with a vast number of cases.

Regulation 5 - Repeal

This regulation repeals regulation 25. The matters contained in regulation 25 are included in the new subregulation 42(1A).

Regulation 6 - Grant of entry permit - illegal entrants

This regulation amends regulation 35AA of the Migration Regulations -

(a) to permit the Minister to facilitate the grant of a temporary entry permit to an illegal entrant who satisfies the prescribed criteria for the grant of the relevant class of entry permit other than the criterion that the applicant not be an illegal entrant;

(b) by deleting the sunset clause in subregulation 35AA(3);

(c) to enable the Minister to grant a temporary entry permit to an illegal entrant who was notified of an entitlement to lodge an application under the Regulation Second Application Scheme prior to 19 December 1989, but whose entitlement lapsed with the commencement of the amendments to the Act and the Migration Regulations. However, the application must be made before 30 September 1990;

(d) to prescribe certain technical amendments.

Regulation 7 - Grant of entry permit - illegal entrants

This regulation amends regulation 35AA of the Migration Regulations to extend the period in which an illegal entrant who entered Australia prior to 19 December 1989 may apply for an entry permit, to not later than 31 May 1990. This amendment is retrospective to 19 February 1990 to enable persons to lodge applications on that day.

Regulation 8 - Restrictions on re-entry

This regulation amends regulation 36 of the Migration Regulations so that an illegal entrant who, on or before 31 May 1990, leaves Australia voluntarily after the expiry of the period of grace is not subject to a restriction on readmission into Australia.

Regulation 9 - Prescribed change in circumstances - paragraphs 36(1)(a) and 37(2)(a) of the Act

This regulation amends subregulation 40(2) of the Migration Regulations to include as a prescribed change in circumstances for the purposes of section 37 of the Act the circumstance that the person was notified of an entitlement to lodge an application under the Regulation Second Application Scheme before 19 December 1989 but that entitlement lapsed with the commencement of the amendments to the Act and the Migration Regulations, providing any application is made before 30 September 1990.

Regulation 10 - Prescribed criteria upon application for entry permits by illegal entrants

This regulation amends regulation 42 of the Migration Regulations -

(a) by inserting a new subregulation 42(1A) which establishes substantially the same matters contained in regulation 25 of the Migration Regulations, as prerequisites to the grant of an entry permit to certain illegal entrants. Regulation 25 determined which illegal entrants could be granted an entry permit. These matters are now included as prescribed criteria for the grant of all entry permits other than where subregulations 42(2) and (6) apply;

(b) by limiting subregulation 42(2) to when the application is made. This allows the Minister to examine the visa pursuant to the amended regulation 22;

(c) by making a technical amendment to subregulation 42(6) to ensure that this subregulation also applies to holders of valid visas granted on or after 19 December 1989 but in respect of an application lodged before that date.

Regulation 11 - Division to cease to have effect

This regulation amends regulation 99 of the Migration Regulations by changing the date on which Division 3 of Part 3 of the Migration Regulations ceases to have effect from 30 June 1990 to 30 September 1990. (Division 3 of Part 3 of the Migration Regulations provides for the additional criteria relating to visas which are subject to special provisions - refugee visa, in-country special humanitarian program visa, emergency rescue visa, woman at risk visa, camp clearance visa and Lebanese concession visa)

Regulation 12 - Border visa

This regulation amends regulation 111 of the Migration Regulations by providing for additional discretion and greater precision in the criteria to determine the grant of a border visa.

Regulation 13 - Border entry permits

This regulation amends regulation 112 of the Migration Regulations consequential to the amendments made in respect of regulation 111, to provide that border entry permits only have effect for 30 days.

Regulation 14 - Extended eligibility (PRC) entry permit

This regulation amends Regulation 119D of the Migration Regulations to extend the circumstances in which an extended eligibility (PRC) entry permit may be granted. The requirement that the applicant had to have been present in Australia on 20 June 1989 and had to hold a valid temporary entry permit on that date has been relaxed.

Regulation 15 - Lebanese (temporary) entry permit and Sri Lankan (temporary) entry permit

This regulation inserts new regulations 119F and 119G which establish the circumstances under which an extension of temporary stay up to 31 July 1990 may be granted to citizens of the Lebanon and Sri Lankan citizens present in Australia on 19 February 1990. These entry permits are not valid for the purposes of the grant of a permanent entry permit after entry.

Regulation 16 - Grant of visitor or student entry permits to holders of certain student visas or entry permits

This regulation amends regulation 123 to exclude its application to holders of trainee (non-formal course) or trainee (English language) entry permits. These are covered in new regulation 123A.

Regulation 17 - Holders of trainee (non-formal course) or trainee (English language) entry permit - temporary provisions

This regulation inserts regulation 123A into the Migration Regulations to provide for a person who holds a trainee (non-formal course) or trainee (English language) entry permit to have an extension of stay in Australia as a visitor or to undertake further studies.

Regulation 18 - Extended eligibility (spouse) entry permit

This regulation repeals regulation 126 of the Migration Regulations and inserts a new regulation 126. The new regulation permits persons who arrive in Australia between 19 December 1989 and 30 May 1990 on visitor visas (including those visas granted before 19 December 1989), and who, after arrival in Australia, marry Australian citizens or permanent residents, and who apply prior to 31 May 1990, to be granted an extended eligibility (spouse) entry permit (although they may have held only a visitor visa or entry permit at the time of application). This amendment commences on 19 February 1990 to enable applications to be made on that date.

Regulation 19 - Extended eligibility (family) entry permit

This regulation contains a technical amendment to regulation 127 of the Migration Regulations as a result of the amendments to regulation 42 of the Migration Regulations.

Regulation 20 - Processing entry permit

This regulation amends regulation 131 of the Migration Regulations -

(a) to allow the grant of a processing entry permit to persons who, before 19 December 1989, made application for a permanent entry permit, where that application is not yet determined and the person appears to be eligible for the entry permit;

(b) to allow the grant of the processing entry permit where the existing entry permit held by an applicant may expire pending determination of the application. This will then prevent a person becoming an illegal entrant;

(c) to allow the Minister to grant a processing entry permit to any holder of a processing entry visa where not inconsistent with the interests of Australia. This facilitates the grant of a processing entry permit at the airport where the person holds the relevant visa.

Regulation 21 - Compassionate grounds entry permit

This regulation contains a technical amendment to regulation 140 of the Migration Regulations as a result of the amendments to regulation 42 of the Migration Regulations.

Regulation 22 - PRC citizen (permanent) entry permit

This regulation inserts a new regulation 142A which provides for the grant of a permanent entry permit after entry to a citizen of the People's Republic of China who holds an extended eligibility (PRC) entry permit or a temporary entry permit valid for the purpose of the grant of a permanent entry permit after entry.

Regulation 23 - Waiver of health criteria

This regulation amends subregulation 144(1) of the Migration Regulations to include the classes of extended eligibility (PRC) entry permit, PRC citizen entry permit, Sri Lankan citizen entry permit, PRC citizen (permanent) entry permit and Lebanese (temporary) entry permit among the classes of visa or entry permit in respect of which the power to waive may be exercised. This regulation also reformats subregulation 144(1).

Regulation 24 - Prescribed matters - subsections 60 and 82(1) of the Act

This regulation amends regulation 179 of the Migration Regulations in relation to the power to order deportation and the power to order a person to leave Australia. It clarifies the requirements to give notice to a person prior to the exercise of a power and ensures natural justice is given to the person being deported or who is asked to leave Australia.

Regulation 25 - Delegation

This regulation inserts a new regulation 182B to provide a power of delegation in relation to the exercise of the Minister's powers under the Migration Regulations. This ensures that the Minister has the power to delegate his or her powers under the Migration Regulations quite apart from the power contained in subsection 176(1) of the Act which permits the Minister to delegate his or her powers under the Act.

Regulation 26 - Fees - transitional

This regulation amends regulation 195 of the Migration Regulations to provide that an application fee is not payable in respect of the first application for a visa or entry permit lodged after 19 December 1989 by a person who was notified of an entitlement to lodge an application under the Regulation Second Application Scheme prior to that date and where that entitlement lapsed with the commencement of the amendments to the Act and Migration Regulations on 19 December 1989.

Regulation 27 - Schedule 3

This regulation adds three new entry permit classes to schedule 3 and makes technical amendments. The three new classes of entry permits are PRC citizen (permanent) entry permit, the Lebanese (temporary) entry permit and the Sri Lankan (temporary) entry permit.

Regulation 28 - Schedule 5

This regulation amends Schedule 5 to the Migration Regulations to insert a reference to a particular group of people who are granted a border visa in relation to item 2 contained in column 1 of that Schedule.

Regulation 29 - Schedule 6

This regulation amends Forms 2 and 3 in Schedule 6 to the Migration Regulations by amending the period of force of search warrants from a maximum of three months to a maximum of seven days. It also omits the reference to 'the execution of the warrant' as this is inappropriate for warrants which are not directed to a specific place or to specific places.

Regulation 30 - Schedule 8

This regulation prescribes the fees payable by an applicant for a PRC citizen (permanent) entry permit, the Lebanese (temporary) entry permit and the Sri Lankan (temporary) entry permit.