



Statutory Rules 1990 No. 34¹

Migration Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Migration Act 1958*.

Dated 19 February 1990.

BILL HAYDEN
Governor-General

By His Excellency's Command,

ROBERT RAY
Minister of State for Immigration,
Local Government and Ethnic Affairs

Commencement

1. Regulations 7 and 18 are to be taken to have commenced on 19 February 1990.

Interpretation

2. Regulation 2 of the Migration Regulations is amended:

(a) by inserting in subregulation (1) the following definition:

“**health criteria**’, in relation to an applicant for a visa or an entry permit, means the criteria specified in items 9 and 10 in Schedule 1, whichever item applies;”;

(b) by inserting “or as the dependent child of an Australian citizen” after “visa” in paragraph (e) of the definition of “**public interest criteria**”.

Application for entry permit

3. Regulation 22 of the Migration Regulations is amended by omitting from paragraph (b) “a valid” and substituting “for examination a”.

4. After regulation 22 of the Migration Regulations the following regulation is inserted:

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

“22A. An application:

- (a) for an entry permit, other than a temporary entry permit, that is made before 19 December 1989; or
- (b) for a permanent entry permit that is made on or after 19 December 1989 and before 1 June 1990 and after entry;

is to be taken to be an application for a processing entry permit that is in accordance with these Regulations.”.

Repeal

5. Regulation 25 of the Migration Regulations is repealed.

Grant of entry permits—illegal entrants

6. Regulation 35AA of the Migration Regulations is amended:

- (a) by omitting from subregulation (1) “subject to subregulation (2) and regulation 25, but in spite of any other provision of these Regulations” and substituting “in spite of any provision of these Regulations except subregulation (2) and subregulations 42 (1A), (1B) and (1C)”;
- (b) by omitting from paragraph (1) (a) “who entered Australia before 1 January 1975, or before 2 April 1984 as a person engaged to be married:” and substituting “to whom paragraph 42 (1C) (a), (b) or (c) applies:”;
- (c) by omitting from subparagraph (1) (a) (i) “criterion that the person is the holder of the valid temporary entry permit” and substituting “criteria that the person is the holder of a valid temporary entry permit and that the person is not an illegal entrant”;
- (d) by omitting from subparagraph (1) (b) (ii) “criterion that the person is the holder of a valid temporary entry permit” and substituting “criteria that the person is the holder of a valid temporary entry permit and that the person is not an illegal entrant”;
- (e) by omitting from subparagraph (1) (c) (iii) “criterion that the person is the holder of a valid temporary entry permit” and substituting “criteria that the person is the holder of a valid temporary entry permit and that the person is not an illegal entrant”;
- (f) by adding at the end the following paragraph:
 - “(d) the person:
 - (i) was notified on or after 21 November 1989 that he or she was entitled, under the provisions of the Migration Regulations relating to second applications as in force before 19 December 1989, to make an application for an entry permit; and
 - (ii) had not lodged the application before 19 December 1989; and

(iii) applies for an entry permit not later than 30 September 1990;

(g) by omitting subregulation (3).

Grant of entry permits—illegal entrants

7. Regulation 35AA of the Migration Regulations is amended by omitting from subparagraph (1) (b) (i) “16 February” and substituting “31 May”.

Restriction on re-entry

8. Regulation 36 of the Migration Regulations is amended by omitting from subparagraph (1) (e) (ii) “after being known to be an illegal entrant” and substituting “other than a person who departed from Australia before 1 June 1990”.

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

9. Regulation 40 of the Migration Regulations is amended:

(a) by inserting “and” at the end of subparagraph (f) (i);

(b) by adding at the end of subregulation (2) the following paragraph:

“(d) the person:

(i) was notified on or after 21 September 1989 that he or she was entitled, under the provisions of the Migration Regulations relating to second applications as in force before 19 December 1989, to make an application for an entry permit; and

(ii) had not lodged the application before 19 December 1989; and

(iii) applies for an entry permit not later than 30 September 1990.”.

Prescribed criteria—classes of entry permits

10. Regulation 42 of the Migration Regulations is amended:

(a) by inserting after subregulation (1) the following subregulations:

“(1A) The following criteria are prescribed in relation to entry permits other than entry permits in relation to which the criteria in subregulation (2) or the criterion in subregulation (6) applies:

(a) where the applicant for the entry permit:

(i) has been an illegal entrant for less than 12 months; and

(ii) has been arrested under section 92 or 93 of the Act; that the applicant lodges the application for the entry permit not more than 2 working days after being first so arrested;

(b) where the applicant for the entry permit is an illegal entrant who has not been arrested under section 92 or 93 of the Act:

(i) that the applicant is a prescribed applicant; or

- (ii) that the applicant has lodged the application for the entry permit not more than 12 months after becoming an illegal entrant.

“(1B) For the purposes of subregulation (1A), an application for an entry permit does not include an application in relation to which paragraph 22 (b) applies.

“(1C) For the purposes of subregulation (1A), an applicant is a prescribed applicant:

- (a) if the applicant entered Australia before 1 January 1975; or
- (b) if the applicant entered Australia before 19 December 1989 when he or she was engaged to be married to an Australian citizen or an Australian permanent resident and subsequently married that citizen or resident; or
- (c) if the applicant:
 - (i) entered Australia when he or she was:
 - (A) the holder of a conditional resident return visa granted before 19 December 1989; or
 - (B) the holder of a return visa granted in accordance with regulation 19; and
 - (ii) was an Australian permanent resident at any time within 5 years before being granted that visa; and
 - (iii) has not departed from Australia since that entry; and
 - (iv) has developed close personal ties with Australia; or
- (d) if the applicant:
 - (i) entered Australia before 19 December 1989; and
 - (ii) would have been entitled to be the holder of a trainee (English language) entry permit or trainee (non-formal course) entry permit if the applicant had applied for, and had been granted, that entry permit after 19 December 1989 and had entered Australia after 19 December 1989; and
 - (iii) was before 30 April 1990 an applicant for a trainee (English language) entry permit or a trainee (non-formal course) entry permit.”;
- (b) by omitting subregulation (2) and substituting the following subregulation:

“(2) The following criteria are prescribed on application before entry for an entry permit of a class specified in Part 1 in Schedule 3 by the holder of a visa, namely, that at the time when the application is decided:

- (a) the visa is a valid visa, other than an entry visa; and
- (b) the entry permit applied for is of a class equivalent to that of the visa held by the applicant; and

- (c) the Minister is satisfied that it would be consistent with the interests of Australia to grant the entry permit.”.
- (c) by omitting from subregulation (6) “visa granted before the commencement of section 4 of the *Migration Legislation Amendment Act 1989*, namely, the” and substituting:
- “visa:
- (a) granted before 19 December 1989; or
 - (b) applied for before 19 December 1989 and granted under the provisions of the *Migration Act 1958* continued in force by subsection 6 (4) of the *Migration Legislation Amendment Act 1989*;
- namely, that the”.

Division to cease to have effect

11. Regulation 99 of the Migration Regulations is amended by omitting “June” and substituting “September”.

12. Regulation 111 of the Migration Regulations is repealed and the following regulation substituted:

Border visas

- “111. (1) The following persons are eligible to apply for a border visa:
- (a) a person who is the spouse of an Australian citizen or an Australian permanent resident and who seeks to enter Australia on or before 31 May 1990;
 - (b) a person who is apparently eligible for a visa referred to in item 51, 52, 53, 54 or 55 in Part 1 of Schedule 2;
 - (c) a person who has arrived in Australia with a valid visa if, after the person’s arrival, the visa is cancelled because the person has breached a terminating condition that the holder is not to arrive in Australia before the arrival or entry of a specified person;
 - (d) a person who has been evacuated to Australia under an arrangement approved by the Minister as the result of an emergency situation;
 - (e) a dependent child, being a child of an Australian citizen or of an Australian permanent resident, who arrives in Australia in the care of another person who holds a valid visa or is an Australian citizen;
 - (f) a person:
 - (i) who is not a person referred to in a previous paragraph; and
 - (ii) who has arrived in Australia without a valid visa; and
 - (iii) who seeks temporary entry to Australia; and
 - (iv) who is apparently eligible for a visa referred to in item 45, 46, 47, 48, 49 or 50 in Part 1 of Schedule 2.

- “(2) The following criteria are prescribed in relation to a border visa:
- (a) in the case of an application by a person referred to in paragraph 1 (a), (b), (d), (e) or (f) for a border visa—that the Minister is satisfied:
 - (i) that there are compelling reasons for granting the visa to the person; and
 - (ii) that the person’s entry to Australia would not be contrary to Australia’s interests; and
 - (iii) that the person has a good reason for not holding a visa;
 - (b) in the case of an application by a person referred to in paragraph (1) (c)—that the Minister is satisfied, on the basis of a written statement by the person:
 - (i) that the person has reasonable grounds for having failed to comply with the terminating condition; and
 - (ii) that there are compelling reasons for allowing the applicant to enter Australia; and
 - (iii) that the specified person referred to in that paragraph will arrive in Australia within 30 days of the applicant being allowed to enter Australia.

“(3) A border visa must not be granted to a person referred to in paragraph (1) (f) within 5 years of the grant of a previous border visa that was granted to the person under that paragraph.

- “(4) A border visa must not be granted to a person:
- (a) before the person has arrived in Australia; or
 - (b) who seeks entry to Australia as a refugee or on humanitarian grounds.”.

Border entry permit

13. Regulation 112 of the Migration Regulations is amended by adding at the end the following subregulation:

“(2) A border entry permit must not remain in effect for more than 30 days.”.

Extended eligibility (PRC) entry permit

14. Regulation 119D of the Migration Regulations is amended by omitting paragraph (1) (b) and substituting the following paragraph:

- “(b) either:
- (i) the applicant was present in Australia and the holder of a valid temporary entry permit at any time during the period commencing on 4 June 1989 and ending at the end of 20 June 1989; or
 - (ii) the applicant:
 - (A) was the holder of a valid temporary entry permit; and

- (B) had made before 21 June 1989 an application for a temporary entry permit that was subsequently granted;”.

15. After regulation 119E of the Migration Regulations the following regulations are inserted in Division 4 of Part 3:

Lebanese (temporary) entry permit

“119F. (1) The following criteria are prescribed in relation to a Lebanese (temporary) entry permit:

- (a) the applicant is a citizen, and normally a resident, of Lebanon;
- (b) the applicant was present in Australia on 19 February 1990;
- (c) the applicant is not subject to a current deportation order;
- (d) the applicant has not had an entry permit cancelled under section 35 of the Act.

“(2) A Lebanese (temporary) entry permit is not to be granted:

- (a) except as a temporary entry permit;
- (b) except in respect of a period ending not later than 31 July 1990;
- (c) unless granted subject to the condition specified in paragraph 33 (4) (a) of the Act.

Sri Lankan (temporary) entry permit

“119G. (1) The following criteria are prescribed in relation to a Sri Lankan (temporary) entry permit:

- (a) the applicant is a citizen, and normally a resident, of Sri Lanka;
- (b) the applicant was present in Australia on 19 February 1990;
- (c) the applicant is not subject to a current deportation order;
- (d) the applicant has not had an entry permit cancelled under section 35 of the Act.

“(2) A Sri Lankan (temporary) entry permit is not to be granted:

- (a) except as a temporary entry permit;
- (b) except in respect of a period ending not later than 31 July 1990;
- (c) unless granted subject to the condition specified in paragraph 33 (4) (a) of the Act.”.

Grant of visitor or student entry permits to holders of certain student visas or entry permits

16. Regulation 123 of the Migration Regulations is amended:

- (a) by omitting “, trainee (non-formal course) and trainee (English language)”;
- (b) by omitting subparagraph (d) (iii).

17. After regulation 123 of the Migration Regulations, the following regulation is inserted:

Holders of trainee (non-formal course), or trainee (English language), entry permits—temporary provisions

“123A. (1) This regulation applies to the holder of:

- (a) a trainee (English language); or
- (b) a trainee (non-formal course);

entry permit (in this regulation called the ‘**current entry permit**’) who applies for an entry permit referred to in subregulation (4), (5) or (6) (in this regulation called the ‘**new entry permit**’).

“(2) The following criteria are specified in relation to all applications for a new entry permit where the applicant is the holder of a current entry permit:

- (a) that the applicant has substantially complied with the conditions subject to which the applicant’s current entry permit was granted; and
- (b) that the Minister is satisfied that the applicant intends to comply with the conditions subject to which the new entry permit may be granted.

“(3) In relation to a visitor entry permit, the following criteria are specified, namely:

- (a) that the applicant:
 - (i) satisfies the prescribed criteria in relation to a visa of a class to which the class of entry permits is equivalent; and
 - (ii) has been in Australia for less than 12 months under the applicant’s current entry permit.

“(4) In relation to:

- (a) a student (AIDAB) entry permit; or
- (b) a student (Equity and Merit Scholarship Scheme) entry permit; or
- (c) a student (formal course) entry permit;

the following criterion is specified, namely, that the applicant satisfies the prescribed criteria in relation to a visa of a class to which the class of entry permits is equivalent.

“(5) Where the application is for a trainee (English language), or a trainee (non-formal course), entry permit, the following criteria are specified:

- (a) that the applicant has:
 - (i) completed in Australia a course of less than 12 months’ duration; and
 - (ii) applied for a course in Australia of less than 12 months’ duration; and
- (b) that:
 - (i) the applicant:
 - (A) is a trainee; or

- (B) has enrolled in a course of study which has been registered by the Minister for Employment, Education and Training as being of equivalent standard to courses recognised by the Australian Council on Tertiary Awards; or
- (C) was enrolled and studying in an English language or non-formal course in Australia on 1 November 1989, satisfies the prescribed criteria in relation to the relevant class of entry permit and seeks to undertake one further non-formal course or English language course after that course; or
- (ii) the applicant has completed within Australia;
 - (A) a non-formal course; or
 - (B) an English language course;of at least 12 months' duration; or
- (iii) the applicant has enrolled within Australia in:
 - (A) a non-formal course; or
 - (B) an English language course;of at least 12 months' duration.

“(6) Where the applicant has satisfied the criterion specified in sub-paragraph (5) (b) (i) (c), an entry permit granted to the applicant must not be granted in respect of a period ending after 31 July 1990.

“(7) This regulation ceases to have effect at the end of 30 June 1990.”.

18. Regulation 126 of the Migration Regulations is repealed and the following regulation substituted:

Extended eligibility (spouse) entry permit

“126. (1) The prescribed criteria in relation to an extended eligibility (spouse) entry permit are that, at the time when the application is decided:

- (a) the applicant is the spouse of an Australian citizen or Australian permanent resident and was the spouse of that citizen or resident at the time when the application was lodged; and
- (b) the applicant's relationship with that spouse is a genuine and continuing one; and
- (c) the applicant meets the prescribed health criteria specified in item 9 in Schedule 1 and the public interest criteria; and
- (d) the applicant is not an illegal entrant within the meaning of this regulation.

“(2) Subregulation (1) does not apply to an applicant:

- (a) who is the holder of a transit entry permit; or
- (b) who is the holder of a visitor entry permit granted on or after 1 June 1990; or
- (c) who is an illegal entrant to whom paragraph 42 (1C) (a), (b) or (c) applies.”.

Extended eligibility (family) entry permit

19. Regulation 127 of the Migration Regulations is amended by omitting subparagraph (a) (iv) and substituting the following subparagraph:

“(iv) being an illegal entrant to whom paragraph 42 (1C) (a), (b) or (c) applies; and”.

Processing entry permit

20. Regulation 131 of the Migration Regulations is amended:

(a) by omitting subparagraph (a) (ii) and substituting the following subparagraph:

“(ii) the entry visa or temporary entry permit has expired, or may expire, after that day and before the application has been determined;”;

(b) by omitting from subparagraph (a) (iii) “or”;

(c) by omitting from subparagraph (b) (i) “a temporary entry visa” and substituting “an entry visa”;

(d) by omitting subparagraph (b) (ii) and substituting the following subparagraph:

“(ii) the entry visa or temporary entry permit has expired, or may expire, after that day and before the application has been determined;”;

(e) by omitting from subparagraph (b) (iii) “has satisfied” and substituting “apparently meets”;

(f) by inserting after paragraph (b) the following paragraphs:

“(c) in the case of an applicant for an entry permit other than a temporary entry permit who made his or her application for the permit before 19 December 1989—that the applicant apparently meets the requirements (except those relating to health and character) for the grant of the permit (being the requirements continued in force by subsection 6 (4) of the *Migration Legislation Amendment Act 1989*);

(d) in the case of an applicant who is the holder of a processing entry visa—that the Minister is satisfied that it would be consistent with the interests of Australia to grant the entry permit.”.

Compassionate grounds entry permit

21. Regulation 140 of the Migration Regulations is amended by omitting subparagraph (2) (c) (i) and substituting the following subparagraph:

“(i) is an illegal entrant to whom paragraph 42 (1C) (a), (b) or (c) applies; and”.

22. After regulation 142 of the Migration Regulations the following regulation is inserted in Division 6 of Part 3:

- (o) PRC citizen entry permit; and
- (p) PRC citizen (permanent); and
- (q) refugee; and
- (r) spouse; and
- (s) spouse (after entry); and
- (t) Sri Lankan (temporary); and
- (u) woman at risk.

Prescribed matters—subsections 60 (1) and 82 (1) of the Act

24. Regulation 179 of the Migration Regulations is amended by omitting paragraph (b) and substituting the following paragraph:

“(b) whether the person has been given in accordance with these Regulations a notice of the intention to refer to the Minister the question of the exercise of the power:

- (i) to order the deportation of the person; or
- (ii) to require the person to leave Australia; as the case requires;”

25. After regulation 182A of the Migration Regulations the following regulation is inserted in Division 2 of Part 8:

Delegation

“182B. The Minister may, by writing signed by him or her, delegate to a person any of the Minister’s powers under these Regulations.”

Fees—transitional

26. Regulation 195 of the Migration Regulations is amended by inserting after subregulation (1) the following subregulation:

“(1A) Where:

- (a) a person was notified on or after 21 September 1989 that he or she was entitled, under the provisions of the Migration Regulations relating to second applications as in force before 19 December 1989, to make an application for an entry permit or a visa; and
- (b) the person had not lodged the application referred to in paragraph (a) before 19 December 1989; and
- (c) the person first makes the application before 1 October 1990; no fee is payable on the application.”

Schedule 3

27. Schedule 3 to the Migration Regulations is amended:

(a) by adding at the end of Part 2 the following item:

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|-----------------------------|--|-------|
| “10 PRC citizen (permanent) | (a) the criteria specified in paragraph 142A | 809”; |
| | (b) D, E, H ¹ | |

(b) by adding at the end of Part 3 the following items:

PRC citizen (permanent) entry permit

“142A. The additional criteria in relation to a PRC citizen (permanent) entry permit are as follows:

- (a) the applicant meets the requirements of at least one of the paragraphs of subsection 47 (1) of the Act; and
- (b) the applicant:
 - (i) holds a valid extended eligibility (PRC) entry permit; or
 - (ii) holds a temporary entry permit that is not subject to the condition referred to in paragraph 33 (4) (a) of the Act; and
- (c) the Minister is satisfied that, at the time when the application is decided:
 - (i) resettlement in Australia is the most appropriate course for the applicant; and
 - (ii) resettlement would not be contrary to the interests of Australia; and
 - (iii) there is no country (other than the country in which the applicant is normally resident) in which the applicant is entitled to reside; and
 - (iv) if the applicant is not resettled in Australia, there is a substantial probability that, because of circumstances involving individual danger to the applicant, the applicant will personally suffer serious and lasting consequences.”.

Waiver of health criteria

23. Regulation 144 of the Migration Regulations is amended by omitting subregulation (1) and substituting the following subregulation:

“(1) This regulation applies only in relation to a visa or an entry permit of one of the following classes:

- (a) adoption; and
- (b) asylum (after entry); and
- (c) camp clearance; and
- (d) child; and
- (e) compassionate (only if applied for on the basis that the applicant is a de facto spouse); and
- (f) extended eligibility (PRC) entry permit; and
- (g) emergency rescue; and
- (h) former citizen; and
- (i) global (special humanitarian program); and
- (j) humanitarian (only if granted after entry); and
- (k) in-country special humanitarian program; and
- (l) Lebanese concession; and
- (m) Lebanese (temporary); and
- (n) prospective marriage; and

“30	Sri Lankan (temporary)	435
31	Lebanese (temporary)	436”.

Schedule 5

28. Schedule 5 to the Migration Regulations is amended by omitting “49” in Column 2 in item 2 and substituting “49, border entry permit granted to a person described in paragraph 111 (1) (f)”.

Schedule 6

29. Schedule 6 to the Migration Regulations is amended by omitting from Forms 2 and 3 “on the execution of the warrant or on the expiry of 19 , whichever first occurs, being in either case a period not exceeding 3 months.” and substituting “on 19 , being a period not exceeding 7 days.”.

Schedule 8

30. Schedule 8 to the Migration Regulations is amended by adding at the end of Part 2 the following items:

“18	PRC citizen (permanent)	340
19	Sri Lankan (temporary)	30
20	Lebanese (temporary)	30”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 20 February 1990.
2. Statutory Rules 1989 No. 365 as amended to date. For previous amendments *see* Note 2 to Statutory Rules 1990 No. 1 and *see also* Statutory Rules 1990 No. 1.