



Statutory Rules 1994 No. 240<sup>1</sup>

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## **Migration (1993) Regulations<sup>2</sup> (Amendment)**

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

Dated 30 June 1994.

BILL HAYDEN  
Governor-General

By His Excellency's Command,

NICK BOLKUS  
Minister for Immigration and Ethnic Affairs

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### **1. Commencement**

1.1 Regulation 8 is taken to have commenced on 1 March 1994.

1.2 Regulations 3, 4, 5, 6, 7, 10, 11, 12 and 13 commence on 1 July 1994.

[NOTE: The remainder of these Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

## **2. Amendment**

2.1 The Migration (1993) Regulations are amended as set out in these Regulations.

## **3. Regulation 1.3 (Interpretation)**

3.1 Definition of “designated industry sector”:

Omit the definition.

3.2 Insert the following definitions in alphabetical order on a letter by letter basis:

“ ‘**appropriate regional authority**’, in relation to a State or Territory and applications for visas or entry permits of a particular class, means a Department or authority of that State or Territory that is specified by Gazette Notice, for the purposes of these Regulations, in relation to the grant of visas and entry permits of that class;

‘**AUD**’, in relation to an amount of money, means Australian dollars;

‘**eligible business**’ has the meaning given to it in subsection 50A (10) of the Act;

‘**fiscal year**’, in relation to a business, means:

- (a) if there is applicable to the business by law an accounting period of 12 months—that period; or
- (b) in any other case—a period of 12 months approved by the Minister in writing for that business;

‘**main business**’ has the meaning set out in subregulation 1.7A (2);

‘**ownership interest**’ has the meaning given to it in subsection 50A (10) of the Act;”.

**4. New regulation 1.7A**

4.1 After regulation 1.7, insert:

**Business interests**

“**1.7A** (1) For the purposes of these Regulations and subject to subregulation (2), a business is a main business in relation to an applicant for a visa or entry permit if:

- (a) the applicant has, or has had, an ownership interest in the business; and
- (b) the applicant maintains, or has maintained, direct and continuous involvement in management of the business from day to day and in making decisions affecting the overall direction and performance of the business; and
- (c) the value of the applicant’s ownership interest, or the total value of the ownership interests of the applicant and the applicant’s spouse, in the business is or was at least 10% of the total value of the business.

“(2) If an applicant has, or has had, an ownership interest in more than 1 business that would, except for this subregulation, be a main business in relation to the applicant, the applicant must not nominate more than 2 of those businesses as main businesses.”.

**5. Regulation 7.16 (Prescribed penalties—sections 50D and 76 of the Act)**

5.1 Subregulation 7.16 (2):

Omit “\$1,000”, substitute “\$2,000”.

**6. Regulation 7.25 (Payment of fees in foreign currency)**

6.1 Paragraphs 7.25 (b) and (c):

Omit the paragraphs, substitute:

- “(b) by payment of the corresponding amount in a currency that is specified for the purposes of this paragraph by

Gazette Notice, ascertained in accordance with that Gazette Notice; or

- (c) by payment of the corresponding amount, ascertained in accordance with subregulation (2), in the currency of the country in which the payment is made, not being a currency specified for the purposes of paragraph (b).”.

**7. Schedule 2 , Chapter 1.1 (Provisions with respect to the grant of individual classes of visas and entry permits to primary persons)**

7.1 Subdivision 127.13:

Omit the subdivision.

7.2 Clause 127.321:

Omit the clause, substitute:

“127.321 The applicant has, or has had, in any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application, an ownership interest in one or more businesses.”.

7.3 Clause 127.323:

Omit “any 3”, substitute “any 2”.

7.4 Clause 127.325:

Omit “3 or more”, substitute “2 or more”.

7.5 Clause 127.326:

After “authority”, insert “of a State or Territory”.

7.6 Paragraph 127.326 (b):

Omit “the State”, insert “that State”.

7.7 Paragraphs 127.327 (a) and (b):

Omit the paragraphs, substitute:

“(a) to either:

- (i) establish an eligible business in Australia; or
- (ii) participate in an existing eligible business in Australia; and

- (b) to maintain a substantial ownership interest in that business; and
- (c) to maintain direct and continuous involvement in the management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.”.

7.8 Subparagraph 127.332 (2) (a) (i):

Omit “Division 1 of Part 1”, substitute “Subdivisions 1.1.1, 1.1.2 and 1.1.3”.

7.9 Paragraph 127.332 (2) (b):

Omit “Division” (wherever occurring), substitute “Subdivision”.

7.10 Clause 128.131:

Omit the definitions of “appropriate regional authority”, “AUD” and “fiscal year”.

7.11 Clause 128.131 (definition of “major business”):

Omit “any 3”, substitute “any 2”.

7.12 Clause 128.322:

Omit “any 3 of”, substitute “any 2 of”.

7.13 Clause 128.323:

After “authority”, insert “of a State or Territory”.

7.14 Paragraph 128.323 (b):

Omit “the State”, substitute “that State”.

7.15 Paragraphs 128.324 (a) and (b):

Omit the paragraphs, substitute:

“(a) to either:

- (i) establish an eligible business in Australia; or
- (ii) participate in an existing eligible business in Australia; and

- (b) to maintain a substantial ownership interest in that business; and
- (c) to maintain direct and continuous involvement in the management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.”.

7.16 Subparagraph 128.332 (2) (a) (i):

Omit “Division 2 of Part 1”, substitute “Division 1.2”.

7.17 Paragraph 128.332 (2) (b):

Omit “Division” (wherever occurring), substitute “Subdivision”.

7.18 Subdivision 129.13:

Omit the subdivision.

7.19 Clause 129.321:

Omit the clause, substitute:

“129.321 The applicant has, or has had, in any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application, an ownership interest in one or more businesses.”.

7.20 Clause 129.323:

Omit “any 3 fiscal years”, substitute “any 2 fiscal years”.

7.21 Clause 129.325:

Omit “for 3 or more”, substitute “for 2 or more”.

7.22 Subclause 129.326 (1):

After “authority”, insert “of a State or Territory”.

7.23 Paragraph 129.326 (1) (b):

Omit “the State”, substitute “that State”.

7.24 Subclause 129.326 (2):

Omit “an appropriate”, substitute “that appropriate”.

7.25 Paragraphs 129.327 (a) and (b):

Omit the paragraphs, substitute:

“(a) to either:

(i) establish an eligible business in Australia; or

(ii) participate in an existing eligible business in Australia; and

(b) to maintain a substantial ownership interest in that business; and

(c) to maintain direct and continuous involvement in the management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.”.

7.26 Subparagraph 129.332 (2) (a) (i):

Omit “Division 1 of Part 1”, substitute “Subdivisions 1.1.1, 1.1.2 and 1.1.3”.

7.27 Paragraph 129.332 (2) (b):

Omit “Division” (wherever occurring), substitute “Subdivision”.

## 7.28 Clause 130.131:

Omit the definitions of ‘appropriate regional authority’, ‘AUD’ and ‘fiscal year’.

## 7.29 Clause 130.131 (definition of “major business”):

Omit “any 3”, substitute “any 2”.

## 7.30 Clause 130.322:

Omit “any 3 of”, substitute “any 2 of”.

## 7.31 Subclause 130.323 (1):

After “authority”, insert “of a State or Territory”.

## 7.32 Paragraph 130.323 (1) (b):

Omit “the State”, substitute “that State”.

## 7.33 Subclause 130.323 (2):

Omit “the appropriate”, substitute “that appropriate”.

## 7.34 Paragraph 130.324 (a) and (b):

Omit the paragraphs, substitute:

“(a) to either:

(i) establish an eligible business in Australia; or

(ii) participate in an existing eligible business in Australia; and

(b) to maintain a substantial ownership interest in that business; and

(c) to maintain direct and continuous involvement in the management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.”.

## 7.35 Subparagraph 130.332 (2) (a) (i):

Omit “Division 2 of Part 1”, substitute “Division 1.2”.

## 7.36 Paragraph 130.332 (2) (b):

Omit “Division” (wherever occurring), substitute “Subdivision”.



**8. Schedule 2, Chapter 1.2 (Permanent resident (after entry) entry permits)**

8.1 Clause 818.722:

Omit the clause, substitute:

“818.722 (1) If the applicant is a principal person, the applicant was not financially assisted either:

- (a) by the Commonwealth (except as mentioned in subclause (2)); or
- (b) by the government of another country;

to undertake in Australia the study leading to the qualification referred to in subclause 818.721 (2), paragraph 818.721 (3) (b), subclause 818.721 (4) or paragraph 818.721 (5) (b).

“(2) Subclause (1) does not apply to an applicant who was financially assisted under:

- (a) the overseas postgraduate research scholarship program administered by Education; or
- (b) the special overseas postgraduate fund administered by Education; or
- (c) the Australian development co-operation scholarship scheme administered by AIDAB.”.

**9. Schedule 2, Part 2.6 (Refugee and humanitarian (temporary entry) visas and entry permits)**

9.1 Clause 435.521:

Omit “30 June”, substitute “30 November”.

9.2 Clause 435.723:

Omit “30 June”, substitute “30 November”.

9.3 Clause 443.521:

Omit “30 June”, substitute “30 November”.

9.4 Clause 443.723:

Omit “30 June”, substitute “30 November”.

**10. Schedule 8 (Business skills points test—attributes and points)**

10.1 Omit the Schedule, substitute the Schedule set out in the Schedule to these Regulations.

**11. Schedule 10 (Amounts of fees in certain currencies)**

11.1 Omit the Schedule.

**12. Further amendments—fees****12.1 Part 7:**

Provision amended	Omit	Substitute
Regulation 7.26	\$250	\$260
Paragraph 7.27 (2) (a)	\$190	\$195
Paragraph 7.27 (2) (b)	\$1900	\$1,950

**12.2 Schedule 2, Chapter 1.1:**

Clauses 100.811, 101.811, 102.811, 103.811, 104.811, 105.811, 120.811, 121.811, 124.811, 125.811, 126.811, 150.811, 151.811 and 152.811:

Omit “\$390”, substitute “\$400”.

**12.3 Schedule 2, Chapter 1.1:**

Clauses 127.811, 128.811, 129.811 and 130.811:

Omit “\$1,600”, substitute “\$1,715”.

12.4 Schedule 2, Chapter 1.2:

Paragraphs 801.821 (a), 802.821 (a), 804.821 (a), 805.821 (a), 806.821 (a) and 814.821 (a):

Omit "\$155", substitute "\$165".

12.5 Schedule 2, Chapter 1.2:

Paragraphs 801.821 (b), 802.821 (c), 804.821 (b), 806.821 (b) and 812.821 (c):

Omit "\$370", substitute "\$395".

12.6 Schedule 2, Chapter 1.2:

Paragraph 805.821 (d):

Omit "\$780", substitute "\$835".

12.7 Schedule 2, Chapter 1.2:

Paragraph 808.821 (a):

Omit "\$105", substitute "\$115".

12.8 Schedule 2, Chapter 1.4:

Paragraphs 154.811 (a), 155.811 (a), 156.811 (a) and 157.811 (a):

Omit "\$60", substitute "\$75".

12.9 Schedule 2, Chapter 1.4:

Paragraphs 154.812 (a), 155.812 (a), 156.812 (a) and 157.812 (a):

Omit "\$50", substitute "\$60".

12.10 Schedule 2, Chapter 1.5:

Paragraph 810.821 (b):

Omit "\$50", substitute "\$60".

12.11 Schedule 2, Chapter 2.1:

Subdivision 304.81:

Omit "\$50", substitute "\$55".

12.12 Schedule 2, Chapter 2.1:

Paragraph 305.811 (a), clauses 410.811, 412.811, 413.811, 414.811, 415.811, 416.811, 417.811, 418.811 and 419.811, paragraphs

420.811 (1) (b) and 421.811 (1) (b), clauses 422.811, 423.811, 424.811, 426.811, 427.811, 428.811, 430.811, 432.811, and 442.811:  
Omit "\$130", substitute "\$140".

12.13 Schedule 2, Chapter 2.1:

Paragraph 421.811 (a):

Omit "\$1,300", substitute "\$1,400".

12.14 Schedule 2, Chapter 2.1:

Clauses 410.822, 411.822 and 412.822, paragraphs 413.822 (b), 414.822 (b) and 415.822 (b), clauses 416.822 and 417.822, paragraph 418.822 (b), clause 419.822, paragraphs 421.822 (1) (b) and 422.822 (b), clauses 423.822, 424.822, 425.822 and 426.822, paragraph 427.822 (b), clauses 428.822, 430.822, 432.822 and 442.822:

Omit "\$100", substitute "\$105".

12.15 Schedule 2, Chapter 2.1:

Omit subdivision 420.82, substitute:

**“420.82 Entry permit applications**

420.821 Before entry: Nil.

420.822 After entry:

(a) if a sponsorship fee is payable: Nil;

(b) in any other case: \$105.”.

12.16 Schedule 2, Chapter 2.2:

Paragraphs 560.811 (1) (b), 561.811 (b) and 562.811 (1) (b), subparagraph 563.811 (a) (ii) and paragraph 563.812 (b):

Omit "\$130", substitute "\$135".

12.17 Schedule 2, Chapter 2.2:

Paragraphs 560.822 (1) (c) and 561.822 (c):

Omit "\$100", substitute "\$105".

12.18 Schedule 2, Chapter 2.3:

Paragraphs 680.822 (a), 680.822 (aa), 682.822 (a), 682.822 (aa), 683.822 (a), 683.822 (aa), 684.822 (a), 684.822 (aa), 685.822 (a) and 685.822 (aa):

Omit "\$200", substitute "\$215".

12.19 Schedule 2, Chapter 2.3:

Paragraphs 680.822 (c), 682.822 (c), 683.822 (c), 684.822 (c) and 685.822 (c):

Omit "\$100", substitute "\$105".

12.20 Schedule 2, Chapter 2.4:

Paragraphs 670.822 (a), 672.822 (a), 673.822 (a), 674.822 (a) and 675.822 (a):

Omit "\$100", substitute "\$105".

12.21 Schedule 2, Chapter 2.5:

Paragraphs 820.811 (a) and 826.811 (a):

Omit "\$100", substitute "\$105".

12.22 Schedule 2, Chapter 2.5:  
Paragraphs 820.812 (a) and 826.812 (a):  
Omit “\$50”, substitute “\$55”.

12.23 Schedule 2, Chapter 2.5:  
Paragraphs 820.822 (a) and 826.822 (a):  
Omit “\$780”, substitute “\$835”.

12.24 Schedule 2, Chapter 2.5:  
Paragraph 820.822 (b):  
Omit “\$370”, substitute “\$395”.

12.25 Schedule 2, Chapter 2.7  
Paragraph 159.811 (a):  
Omit “\$60”, substitute “\$75”.

12.26 Schedule 2, Chapter 2.7:  
Clause 300.811:  
Omit “\$390”, substitute “\$395”.

12.27 Schedule 2, Chapter 2.7:  
Clauses 300.822, 301.822 and 302.822:  
Omit “\$100”, substitute “\$105”.

12.28 Schedule 2, Chapter 2.8  
Subdivision 828.81 and paragraph 829.811 (a):  
Omit “\$50”, substitute “\$60”.

### **13. Transitional**

13.1 A Gazette Notice specifying an appropriate regional authority for the purposes of Part 127, 128, 129 or 130 of Chapter 1.1 of Schedule 2 of the Migration (1993) Regulations that was in force immediately before the date of commencement of regulation 3 of these Regulations continues to have effect on and after that date as if it were a Gazette Notice made, for the purposes of the Migration (1993) Regulations as amended by regulation 3 of these Regulations,

in relation to the grant of visas and entry permits of the class to which that Part relates.

**SCHEDULE**

Regulation 10

## SUBSTITUTED SCHEDULE 8

**SCHEDULE 8**

Regulation 1.3

**BUSINESS SKILLS POINTS TEST—ATTRIBUTES  
AND POINTS**

Column 1 Item	Column 2 Attributes	Column 3 Number of points
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**PART 1—BUSINESS ATTRIBUTES**

*Division 1.1—Applicant’s main business or main businesses  
(Class 127 and 129 visas)*

*Subdivision 1.1.1—Annual turnover and employee levels*

8101	<p>In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant’s main business, or the applicant’s main businesses together:</p> <ul style="list-style-type: none"> <li>(a) had an annual turnover equivalent to not less than AUD 5,000,000; and</li> <li>(b) employed not fewer than:</li> </ul>	60
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- (i) in the case of an applicant for a Class 127 visa or entry permit—5 full-time employees; and
- (ii) in the case of an applicant for a Class 129 visa or entry permit—3 full-time employees

**SCHEDULE—continued**

Column 1 Item	Column 2 Attributes	Column 3 Number of points
8102	<p>In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together:</p> <ul style="list-style-type: none"> <li>(a) had an annual turnover equivalent to not less than AUD 3,000,000; and</li> <li>(b) employed not fewer than: <ul style="list-style-type: none"> <li>(i) in the case of an applicant for a Class 127 visa or entry permit—5 full-time employees; and</li> <li>(ii) in the case of an applicant for a Class 129 visa or entry permit—3 full-time employees</li> </ul> </li> </ul>	55
8103	<p>In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together:</p> <ul style="list-style-type: none"> <li>(a) had an annual turnover equivalent to not less than AUD 1,500,000; and</li> </ul>	50

- (b) employed not fewer than:
  - (i) in the case of an applicant for a Class 127 visa or entry permit—5 full-time employees; and

**SCHEDULE—continued**

Column 1 Item	Column 2 Attributes	Column 3 Number of points
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- (ii) in the case of an applicant for a Class 129 visa or entry permit—3 full-time employees

8104	<p>In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together:</p> <ul style="list-style-type: none"> <li>(a) had an annual turnover equivalent to not less than AUD 750,000; and</li> <li>(b) employed not fewer than:</li> </ul>	40
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- (i) in the case of an applicant for a Class 127 visa or entry permit—5 full-time employees; and
- (ii) in the case of an applicant for a Class 129 visa or entry permit—3 full-time employees

8105

In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together:

35

- (a) had an annual turnover equivalent to not less than AUD 500,000; and

**SCHEDULE**—continued

Column 1 Item	Column 2 Attributes	Column 3 Number of points
	(b)employed not fewer than: <ul style="list-style-type: none"> <li>(i) in the case of an applicant for a Class 127 visa or entry permit—5 full-time employees; and</li> <li>(ii) in the case of an applicant for a Class 129 visa or entry permit—3 full-time employees</li> </ul>	
<b><i>Subdivision 1.1.2—Labour costs</i></b>		
8121	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had labour costs equivalent to not less than AUD 250,000 but less than AUD 500,000	5
8122	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had labour costs equivalent to not less than AUD 500,000	10

**SCHEDULE—continued**

Column 1 Item	Column 2 Attributes	Column 3 Number of points
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***Subdivision 1.1.3—Total assets***

8131	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had total assets of a value equivalent to not less than AUD 750,000 but less than AUD 1,500,000	5
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8132	In each of any 2 of the 4 fiscal years immediately preceding the making of the application, the applicant's main business, or the applicant's main businesses together, had total assets of a value equivalent to not less than AUD 1,500,000	10
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***Division 1.2—Business employing the applicant (Class 128 and 130 visas)***

8151	The applicant was employed in a major business (within the meaning of clause 128.131 or 130.131, as the case requires, of Chapter 1.1 of Schedule 2) in each of any 2 of the 4 fiscal years immediately preceding the making of the application	65
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**SCHEDULE—continued**

Column 1 Item	Column 2 Attributes	Column 3 Number of points
<b>PART 2—AGE OF APPLICANT AT TIME OF APPLICATION</b>		
8201	Not less than 30 years but less than 45 years	30
8202	Not less than 45 years but less than 50 years	25
8203	Not less than 25 years but less than 30 years	20
8204	Not less than 50 years but less than 55 years	10
8205	Less than 25 years or 55 years or more	0
<b>PART 3 — LANGUAGE ABILITY OF APPLICANT</b>		
8301	Better than functional ability in English	30
8302	Functional ability in English	20
8303	Bilingual in languages other than English	10
8304	Limited ability in English	10

24

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8305

No ability in English

0



**SCHEDULE—continued**

Column 1 Item	Column 2 Attributes	Column 3 Number of points
<b>PART 4—NET ASSETS OF THE APPLICANT OR OF THE APPLICANT AND THE APPLICANT'S SPOUSE TOGETHER</b>		
8401	Not less than the equivalent of AUD 2,500,000	15
8402	Not less than the equivalent of AUD 1,500,000 but less than the equivalent of AUD 2,500,000	10
8403	Not less than the equivalent of AUD 500,000 but less than the equivalent of AUD 1,500,000	5
8404	Less than the equivalent of AUD 500,000	0
<b>PART 5—SPONSORSHIP</b>		
8501	Sponsorship by the appropriate regional authority	15

**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 1 July 1994.
2. Statutory Rules 1992 No. 367 as amended by 1993 Nos. 19, 29, 88, 169, 175, 218, 235, 253, 267, 283, 309, 310, 329, 363 and 371; 1994 Nos. 11, 38, 39 87 and 141.