

Migration Amendment Regulations 1999 (No. 15) 1999 No. 321

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 321

Issued by the Authority of the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment Regulations 1999 (No. 15)

Section 504 of the Migration Act 1958 ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, to prescribe all matters which are required or permitted to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. In addition, regulations may be made pursuant to the following powers:

- paragraph 504(1)(g) of the Act provides that the regulations may require an assurance of support to be given in respect of an applicant for a visa to enter and remain in Australia, and may provide for the enforcement of assurances of support for the liabilities of an assurer;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class;
- section 41 of the Act provides that, without limiting the generality of the section, the regulations may provide that visas or visas of a specified class are subject to specified conditions, including but not limited to a condition that a further visa cannot be granted and a condition restricting work rights;
- section 48 of the Act provides for prescribing classes of visas which are the only classes of visas for which a person whose visa has been cancelled, or whose application for a visa has been refused, may apply;
- section 72 of the Act provides that a class of persons may be prescribed who are "eligible non-citizens" for the purposes of the grant of bridging visas; and
- paragraph 415(2)(c) of the Act provides that decisions relating to a prescribed matter

may be remitted by the Refugee Review Tribunal for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted.

The purpose of the Regulations is to amend the Migration Regulations 1994 ("the Migration Regulations") to:

- * make minor consequential amendments resulting from the introduction of the Protection (Class XA) visa on 20 October 1999 (items 101 to 109, item 401 and items 505 to 515);
- * correct a minor technical error in the Migration Amendment Regulations 1999 (No. 11) (item 201);
- * correct minor technical errors in the Migration Amendment Regulations 1999 (No. 14) (items 301 and 302); and

* add the new "crisis payment" as a recoverable debt to the Commonwealth for the purposes of assurances of support (items 501 to 504).

Details of the Regulations are set out in the Attachment.

Schedule 1 of the Regulations is taken to have commenced retrospectively on 20 October 1999. Schedule 1 makes amendments that are consequential to the introduction of a new class of visa (Protection (Class XA)) by Migration Amendment Regulations 1999 (No. 12). These amendments have no adverse operation.

Schedules 2 and 3 of the Regulations are taken to have commenced retrospectively on 31 October 1999. These amendments correct minor technical errors in Migration Amendment Regulations 1999 (No. 11) and Migration Amendment Regulations 1999 (No. 14) and have no adverse operation.

Schedule 4 of the Regulations will be taken to have commenced on 1 November 1999, the date that regulation 1.05A commenced. This amendment, which inserts a reference to a Protection (Class XA) visa in the definition of "dependent", is beneficial in operation.

Schedule 5 of the Regulations commences on 16 December 1999. Schedule 5 inserts amendments relating to the "crisis payment" and also makes amendments that are consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

ATTACHMENT

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the Migration Amendment Regulations 1999 (No. 15).

Regulation 2 - Commencement

Paragraph 2(a) provides that subregulation 3(1), regulation 6 and Schedule 1 are taken to have commenced on 20 October 1999.

Paragraph 2(b) provides that regulations 4 and 5 and Schedules 2 and 3 are taken to have commenced on 31 October 1999.

Paragraph 2(c) provides that subregulation 3(2) and Schedule 4 are taken to have commenced on 1 November 1999.

Paragraph 2(d) provides that subregulation 3(3) and Schedule 5 commence on 16 December 1999.

Paragraph 2(e) provides that the remainder of these Regulations commence on gazettal.

Regulation 3 - Amendment of Migration Regulations 1994

Subregulations 3(1), (2) and (3) provide that Schedules 1, 4 and 5 amend the Migration Regulations 1994.

Regulation 4 - Amendment of Migration Amendment Regulations 1999 (No. 11)

This regulation provides that Schedule 2 amends the Migration Amendment Regulations 1999 (No. 11).

Regulation 5 - Amendment of Migration Amendment Regulations 1999 (No. 14)

This regulation provides that Schedule 3 amends the Migration Amendment Regulations 1999 (No. 14).

Regulation 6 - Transitional

Subregulation 6(1) provides that the amendments of the Migration Regulations 1994 made by items [101], [107] and [108] of Schedule 1 do not apply in relation to a person who applied for a Protection (Class AZ) visa before 20 October 1999 and whose application was not finally determined before that date.

Subregulation 6(2) provides that if a person is taken to have applied for a Protection (Class AZ) visa as an additional applicant under paragraph 2.08A(1)(e) and the original applicant applied for a visa before 20 October 1999, the Migration Regulations, as in force immediately before 20 October 1999, apply in relation to the application taken to have been made by the additional applicant.

Schedule 1 - Amendment of Migration Regulations 1994 taken to have commenced on 20 October 1999. Item 101 - Regulation 1.03, definition of relative, paragraph (a)

This item replaces a reference to a (Class AZ) visa with a reference to a (Class XA) visa in the definition of "relative". The amendment is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 102 - Paragraph 2.12(1)(c)

Subregulation 2.12 prescribes the classes of visa for which a person may apply, pursuant to section 48 of the Act, if that person's visa has been cancelled or visa application refused. This item amends paragraph 2.12(1)(c) to replace the reference to a Protection (Class AZ) visa with a reference to a Protection (Class XA) visa. This amendment is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Items 103 to 106 - Paragraphs 2.20(7)(b), 8(b), 9(b) and 10(b)

Regulation 2.20 prescribes who is an "eligible non-citizen" for the purposes of the definition of that term in section 72 of the Act. A person who is an "eligible non-citizen" may be granted a bridging visa under section 73 of the Act.

These items amend paragraphs 2.20(7)(b), 8(b), 9(b) and 10(b) to prescribe an applicant for a Protection (Class XA) visa as an "eligible non-citizen", provided other elements within regulation 2.20 are satisfied. Specifically, the paragraphs are amended so that a person will be an "eligible non-citizen" if, among other things, he or she has:

- * on or after 1 September 1994 made a Protection (Class AZ) visa application that is not finally determined or applied for judicial review of a decision to refuse a Protection (Class AZ) visa; or

- * on or after 20 October 1999 made a Protection (Class XA) visa application that is not finally determined or applied for judicial review of a decision to refuse a Protection (Class XA) visa.

This amendment is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 107 - Paragraphs 4.31A(1)(a) and (b)

Regulation 4.31A enables persons who have been refused a visa to make a combined application for merits review to the Refugee Review Tribunal ("RRT"), if their visa applications were combined at the primary phase. This item amends paragraphs 4.31A(1)(a) and (b) by omitting a reference to a (Class AZ) visa and inserting a reference to a (Class XA) visa in these paragraphs. This amendment is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 108 - Subregulation 4.33(1)

Subregulation 4.33(1) currently prescribes a Protection (Class AZ) visa for the purposes of paragraph 415(2)(c) of the Act. This paragraph of the Act enables the RRT to remit a decision relating to a prescribed matter to a delegate of the Minister for reconsideration. This item amends subregulation 4.33(1) to omit a reference to a (Class AZ) visa and insert a reference to a (Class XA) visa. This amendment is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 109 - Schedule 2, after paragraph 773.213(2)(zf)

This item adds a reference to a Protection (Class XA) visa to subclause 773.213(2) as a consequential amendment to the new Protection (Class XA) introduced by Migration Amendment Regulations 1999 (No. 12).

The amendment made by this item provides that a dependent child of a holder of a Protection (Class XA) visa may be eligible for the grant of a Subclass 773 (Border) visa.

Schedule 2 - Amendment of Migration Amendment Regulations 1999 (No. 11) taken to have commenced on 31 October 1999 Item 201 - Schedule 1, Part 3, item 1301

Item 1301 of the Migration Amendment Regulations 1999 (No. 11) inserted new Part 119 (Regional Sponsored Migration Scheme). This item makes a minor technical amendment to item 1301 to ensure that Part 119 is inserted consecutively in Schedule 2 of the Migration Regulations.

Schedule 3 - Amendments of Migration Amendment Regulations 1999 (No. 14) taken to have commenced on 31 October 1999 Item 301 - Schedule 1, item [3]

Item 3 of the Migration Amendment Regulations 1999 (No. 14) inserted new Part 118 (Designated Parent). This item makes a minor technical amendment to item 3 to ensure that Part 118 is inserted consecutively in Schedule 2 of the Migration Regulations.

Item 302 - Schedule 1, item [5]

Item 5 of Migration Amendment Regulations 1999 (No. 14) inserted new Part 859 (Designated Parent). This item makes a minor technical amendment to item 5 to ensure that Part 859 is inserted consecutively of a new class of visa (Protection (Class XA)) in Schedule 2 of the Migration Regulations.

Schedule 4 - Amendment of Migration Regulations 1994 taken to have commenced on 1 November 1999 Item 401 - Paragraph 1.05A(2)(d)

Subregulation 1.05A(2) prescribes the definition of "dependent" in respect of an application for a visa of a class specified in that paragraph. This item amends paragraph 1.05A(2)(d) to replace a reference to a Protection (Class AZ) visa with a reference to a Protection (Class XA) visa. This amendment is consequential to the introduction of Protection (Class X-A) by Migration Amendment Regulations 1999 (No. 12).

Schedule 5 - Amendments of Migration Amendment Regulations 1994 to commence on 16 December 1999

Item 501 - Paragraph 2.33(k)

This item makes a consequential amendment to paragraph 2.33(k) as a result of amendments made by item 502 of these Regulations.

Item 502 - After paragraph 2.33(k)

Regulation 2.33 currently provides that if, while an assurance of support in respect of a person has effect after 19 December 1991, a person has received certain specified payments, an amount equal to that payment (less any amounts already repaid to the Commonwealth), is a recoverable debt to the Commonwealth.

A new support payment, known as the "crisis payment", was introduced by the Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999. This item adds a reference

to this new payment to regulation 2.33. The effect of this amendment is that the amount of the crisis payment is a recoverable debt to the Commonwealth if it is received by a person while an assurance of support is in effect in respect of that person.

Item 503 - Paragraph 2.38(1)(k)

This item makes a consequential amendment to paragraph 2.38(1)(k) as a result of the amendments made by item 504 of these Regulations.

Item 504 - After paragraph 2.38(1)(k)

Subregulation 2.38(1) provides that if a person receives a specified payment while an assurance of support is in effect in respect of that person, the person who gave the assurance ("the assurer"), is liable to pay to the Commonwealth the amount of the support (subject to other provisions within regulation 2.38).

A new support payment, known as the "crisis payment", was introduced by the Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999. This item adds a reference to this new payment to subregulation 2.38(1). The effect of this amendment is that if a person receives the crisis payment while an assurance of support is in effect in respect of that person, the assurer is liable to pay the Commonwealth the amount of the crisis payment (subject to other provisions in regulation 2.38).

Item 505 - Schedule 2, paragraph 010.211(4)(b)

Subclause 010.211(4) prescribes criteria to be satisfied at the time of application for a Bridging A (Class WA) visa. This item inserts a reference to a Protection (Class XA) visa to paragraph 010.211(4)(b). This amendment is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 506 - Schedule 2, subparagraph 010.611(1)(b)(i)

Subclause 010.611(1) prescribes conditions attached to the grant of a Bridging A (Class WA) visa and sets out the circumstances when there are no conditions. This item adds a reference to a Protection (Class XA) visa to subparagraph 010.611(1)(b)(i) and is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 507 - Schedule 2, paragraph 010.611(2)(a)

Subclause 010.611(2) provides for the circumstances when condition 8 101 (the "no work" condition) applies to a Bridging A (Class WA) visa. This item replaces existing paragraph 010.611(2)(a) and is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12). Broadly, the effect of this amendment is that condition 8101 will apply where, among other things, a person has been in Australia for a period or periods totalling at least 45 days in the 12 months immediately before the date of making an application for a:

- * Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999);
- or
- * Protection (Class XA) visa on or after 20 October 1999.

Item 508 - Schedule 2, sub-subparagraph 010.611(2)(c)(ii)(A)

This item adds a reference to a Protection (Class XA) visa to sub-subparagraph 010.611(2)(c)(ii)(A) and is consequential to amendments made by item 507 of these Regulations.

Item 509 - Schedule 2, paragraph 020.611(1)(a)

Subclause 010.611(1) prescribes conditions attached to the grant of a Bridging B (Class WB) visa and sets out the circumstances when there are no conditions. This item adds a reference to a Protection (Class XA) visa to subparagraph 020.611(1)(a) and is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 510 - Schedule 2, paragraph 020.611(2)(a)

Subclause 020.611(2) provides for the circumstances when condition 8101 (the "no work" condition) applies to a Bridging B (Class WB) visa. This item replaces existing paragraph 020.611(2)(a) and is consequential to the insertion of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12). Broadly, the effect of this amendment is that condition 8101 will apply where, among other things, a person has been in Australia for a period or periods totalling at least 45 days in the 12 months immediately before the date of making an application for a:

- * Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999); or
- * Protection (Class XA) visa on or after 20 October 1999.

Item 511 - Schedule 2, sub-subparagraph 020.611(2)(c)(ii)(A)

This item adds a reference to a Protection (Class XA) visa to sub-subparagraph 020.611(2)(c)(ii)(A) and is consequential to amendments made by item 510 of these Regulations.

Item 512 - Schedule 2, paragraph 030.212(3)(b)

Subclause 030.212(3) prescribes criteria to be satisfied at the time of application for a Bridging C (Class WC) visa. This item replaces the opening words in existing paragraph 030.212(3)(b) by providing that, in the case of an applicant for a Bridging C (Class WC) visa who has applied for a Protection visa, the relevant date for making the application is:

- * the period from 1 July 1997 to the end of 19 October 1999 for a Protection (Class AZ) visa; or
- * on or after 20 October 1999 for a Protection (Class XA) visa.

This item is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 513 - Schedule 2, paragraph 050.212(8)(b)

Subclause 050.212(8) prescribes criteria to be satisfied at the time of application for a Subclass 050 (Bridging (General)) visa. This item replaces the opening words in existing paragraph 050.212(8)(b) by providing that, in the case of an applicant for a Subclass 050 visa who has applied for a Protection visa, the relevant date for making the application is:

* the period from 1 July 1997 to the end of 19 October 1999 for a Protection (Class AZ) visa; or

* on or after 20 October 1999 for a Protection (Class XA) visa.

This item is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12).

Item 514 - Schedule 2, paragraph 050.613A(1)(a)

Subclause 050.613A(1) provides for the circumstances when condition 8101 (the "no work" condition) applies to a Subclass 050 (Bridging (General)) visa. This item replaces existing paragraph 050.613A(1)(a) and is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12). Broadly, the effect of this amendment is that condition 8101 will apply where, among other things, a person has been in Australia for a period or periods totalling at least 45 days in the 12 months immediately before the date of making an application for a:

* Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999);
or

* Protection (Class XA) visa on or after 20 October 1999.

Item 515 - Schedule 2, paragraph 051.611A(1)(a)

Subclause 051.611A(1) provides for the circumstances when condition 8 101 (the "no work" condition) applies to a Subclass 051 (Bridging (Protection Visa Applicant)) visa. This item replaces existing paragraph 051.611A(1)(a) and is consequential to the introduction of Protection (Class XA) by Migration Amendment Regulations 1999 (No. 12). Broadly, the effect of this amendment is that condition 8101 will apply where, among other things, a person has been in Australia for a period or periods totalling at least 45 days in the 12 months immediately before the date of making an application for a:

* Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999);
or

* Protection (Class XA) visa on or after 20 October 1999.