

# Migration Amendment Regulations 2000 (No. 6) 2000 No. 284

## EXPLANATORY STATEMENT

### STATUTORY RULES 2000 No. 284

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

*Migration Act 1958*

*Migration Amendment Regulations 2000 (No. 6)*

Subsection 504(1) of the *Migration Act 1958* ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed 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 under the Act:

- paragraph 116(1)(g) provides that the Minister may cancel a visa where prescribed grounds apply to a visa holder; and
- paragraph 505(a) provides that the regulations may provide that the Minister is to get a specified person or organisation, or a person or organisation in a specified class, to give an opinion on a specified matter, make an assessment of a specified matter, make a finding about a specified matter, or make a decision about a specified matter.

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

- provide a mechanism for refusing to grant or cancelling a visa where the Foreign Minister determines, pursuant to paragraph 505(a) of the Act, that the applicant's presence in Australia may be directly or indirectly associated with a risk of proliferation of weapons of mass destruction; and
- make technical amendments to ensure that the amendments made by the *Migration Amendment Regulations 2000 (No. 5)* which relate to student visas apply to both applications made on or after 1 November 2000 and applications made, but not finally determined, before 1 November 2000. Details of the Regulations are set out in the Attachment.

Regulations 1, 2 and 3 and Schedule 1 to the Regulations commence on 31 October 2000.

Regulations 4 and 5 and Schedule 2 to the Regulations commence on 1 November 2000.

## Attachment

### Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2000 (No. 6)*.

### Regulation 2 - Commencement

Paragraph 2(a) provides that regulations 1, 2 and 3 and Schedule 1 to these Regulations commence on 31 October 2000. This is to ensure that the *Migration Amendment Regulations 2000 (No. 5)* will be amended before they commence on 1 November 2000.

Paragraph 2(b) provides that regulations 4 and 5 and Schedule 2 to these Regulations commence on 1 November 2000.

### Regulation 3 - Amendment of *Migration Amendment Regulations 2000 (No. 5)*

This regulation provides that Schedule 1 to these Regulations amends the *Migration Amendment Regulations 2000 (No. 5)*.

### Regulation 4 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 2 to these Regulations amends *the Migration Regulations 1994*.

### Regulation 5 - Application of amendments in Schedule 2

This regulation provides that:

- \* the amendment made by item [1] in Schedule 2 applies in relation to visas already in effect on 1 November 2000, visas that come into effect on or after 1 November 2000 and an application for a visa made on or after 1 November 2000. This is because item [1] contains a definition of "proliferation of weapons of mass destruction", which is relevant to the amendments contained in both items [2] and [3], below;
- \* the amendment made by item [2] in Schedule 2 applies in relation to a visa that is in effect on or after 1 November 2000. This is because item [2] relates to the cancellation of a visa. It is therefore important that visas already in effect are able to be cancelled in accordance with this provision;
- \* the amendment made by item [3] in Schedule 2 will only apply in relation to an application for a visa made on or after 1 November 2000.

### Schedule 1 - Amendment of *Migration Amendment Regulations 2000 (No. 5)*

#### Item [1] - Before subregulation 6 (1)

This item inserts new subregulation 6(1A) into the *Migration Amendment Regulations 2000 (No. 5)*. The amendment makes it clear that the amendments made by the items referred to in subregulation 6(1A), which relate to student visas, apply to both applications made on or after 1 November 2000 and applications made, but not finally determined, before 1 November 2000.

### Schedule 2 - Amendments of *Migration Regulations 1994*

Item [1] - Regulation 1.03, after definition of *prohibited non-citizen*

This item inserts a definition of "proliferation of weapons of mass destruction" for the purposes of the *Migration Regulations 1994* and is consequential to the amendments made below.

Item [2] - Paragraph 2.43 (1)(a)

This item inserts a new discretionary ground for the cancellation of a person's visa under section 116 of the *Migration Act 1958*. New subparagraph 2.43 (1) (a) (ii) enables the Minister to cancel a person's visa where the Foreign Minister has personally determined that his or her presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction. This amendment is consequential to the amendment made by item [3] below.

Item [3] - Schedule 4, item 4003

Public interest criterion 4003 is considered to be an imperfect mechanism for refusing a visa where there is a risk that an applicant's visit may assist in the proliferation of weapons of mass destruction. This is because it does not specifically target the proliferation risk posed by overseas visitors as a criterion in the granting of a visa.

This item substitutes new item 4003. New paragraph 4003(b) ensures that the risk that an applicant is directly or indirectly associated with the proliferation of weapons of mass destruction can be assessed. The effect of this amendment is that under new item 4003 the Foreign Minister, or a person authorised by the Foreign Minister, will be able to decide whether an applicant's presence in Australia:

- \* would be prejudicial to relations between Australia and a foreign country; or
- \* may be directly or indirectly linked to the proliferation of weapons of mass destruction.

If an applicant is determined by the Foreign Minister, or a person authorised by the Foreign Minister, to be a person whose presence in Australia falls foul of either paragraph 4003(a) or 4003(b), the person will not satisfy public interest criterion 4003.