



# Migration Amendment Regulations 2006 (No. 2)<sup>1</sup>

**Select Legislative Instrument 2006 No. 123**

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I, PHILIP MICHAEL JEFFERY, 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 1 June 2006

P. M. JEFFERY  
Governor-General

By His Excellency's Command

AMANDA VANSTONE  
Minister for Immigration and Multicultural Affairs

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### 1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2006 (No. 2)*.

### 2 Commencement

These Regulations commence on 1 July 2006.

### 3 Amendment of *Migration Regulations 1994*

Schedules 1 to 7 amend the *Migration Regulations 1994*.

**4 Transitional**

- (1) The amendments made by items [6] to [15] of Schedule 1 apply in relation to an application for a visa made on or after 1 July 2006.

*Note* There are no transitional arrangements for items [1] to [5] of Schedule 1.

- (2) The amendments made by Schedule 2 apply in relation to an application for a visa made on or after 1 July 2006.
- (3) The amendment made by item [1] of Schedule 3 applies in relation to a visa application made on or after 1 July 2006.
- (4) The amendments made by items [2] and [3] of Schedule 3 apply in relation to a visa application:
- (a) made on or after 1 July 2006; or
  - (b) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 1 July 2006.

- (5) The amendments made by Schedule 4 apply in relation to an application for a visa made on or after 1 July 2006.

- (6) The amendments made by Schedule 6 apply in relation to an application for a visa made on or after 1 July 2006.

*Note* There are no transitional arrangements for Schedules 5 and 7.

## Schedule 1      Amendments relating to interdependent partners

(regulation 3)

**[1]      Regulation 1.03, after definition of *Industry Minister***

*insert*

*interdependent partner* means a non-citizen who is in an interdependent relationship.

**[2]      Regulation 1.20B, definition of *sponsored person*, subparagraph (a) (ii)**

*substitute*

(ii) a person who is:

(A) a member of the family unit; or

(B) the interdependent partner; or

(C) a dependent child of the interdependent partner;

of a person who is described in subparagraph (i);  
and

**[3]      Regulation 1.20B, definition of *sponsored person*, subparagraph (b) (ii)**

*substitute*

(ii) a person who is:

(A) a member of the family unit; or

(B) the interdependent partner; or

(C) a dependent child of the interdependent partner;

of a person who is described in subparagraph (i).

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**[4] Paragraph 1.20BA (c)***substitute*

- (c) a Subclass 457 (Business (Long Stay)) visa granted to a person who is:
- (i) a member of the family unit; or
  - (ii) the interdependent partner; or
  - (iii) a dependent child of the interdependent partner; of a person who has been granted a Subclass 457 (Business (Long Stay)) visa on the basis that the requirements of subclause 457.223 (4) or (5) of Schedule 2 were met.

**[5] Paragraph 1.20HC (1) (c)***substitute*

- (c) a Subclass 457 (Business (Long Stay)) visa granted to a person who is:
- (i) a member of the family unit; or
  - (ii) the interdependent partner; or
  - (iii) a dependent child of the interdependent partner; of a person who has been granted a Subclass 457 (Business (Long Stay)) visa on the basis that the requirements of subclause 457.223 (4) or (5) of Schedule 2 were met.

**[6] Schedule 1, sub-subparagraph 1223A (2) (a) (vi) (B)***substitute*

- (B) applying for a visa that will permit the applicant to remain in Australia for more than 3 months, and who is:
- (I) a member of the family unit; or
  - (II) the interdependent partner; or
  - (III) a dependent child of the interdependent partner; of an applicant mentioned in subparagraph (v): Nil

**[7] Schedule 1, subparagraph 1223A (3) (ae) (ii)**

*omit*

spouse

*insert*

spouse or interdependent partner

**[8] Schedule 1, paragraph 1223A (3) (c)**

*substitute*

(c) If the applicant:

(i) seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months; and

(ii) claims to be:

(A) a member of the family unit; or

(B) the interdependent partner; or

(C) a dependent child of the interdependent partner;

of a person who seeks to satisfy the primary criteria (in this paragraph referred to as the *primary applicant*), the application may be made at the same time and place as, and combined with, an application by the primary applicant or any other applicant who claims to be a member of the family unit, interdependent partner or dependent child of the interdependent partner of the primary applicant.

**[9] Schedule 1, subparagraph 1223A (3) (ca) (ii)**

*substitute*

(ii) claims to be:

(A) a member of the family unit; or

(B) the interdependent partner; or

(C) a dependent child of the interdependent partner;

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of an applicant who seeks to satisfy, or has satisfied, the primary criteria on the basis of meeting the requirements of subclause 457.223 (2), (3), (4) or (10) of Schedule 2;

**[10] Schedule 2, Division 457.2, Note**

*substitute*

*Note* The primary criteria must be satisfied by at least one applicant. Other applicants who are members of the family unit, or the interdependent partner or dependent child of the interdependent partner, of the applicant who satisfies the primary criteria need satisfy only the secondary criteria.

**[11] Schedule 2, after clause 457.227**

*insert*

457.227A In relation to:

- (a) the interdependent partner; or
- (b) a dependent child of the interdependent partner;

of an applicant who seeks to meet the requirements of subclause 457.223 (7A), the partner or child who is an applicant for a Subclass 457 visa is a person who:

- (c) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
- (d) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

**[12] Schedule 2, clause 457.321**

*substitute*

457.321 The applicant is:

- (a) a member of the family unit; or
- (b) the interdependent partner; or
- (c) a dependent child of the interdependent partner;

of a person (in this Subdivision called *the primary applicant*) who, having satisfied the primary criteria, is the holder of a Subclass 457 visa.

**[13] Schedule 2, clause 457.324A***substitute*

457.324A The applicant is:

- (a) a member of the family unit; or
- (b) the interdependent partner; or
- (c) a dependent child of the interdependent partner;

of the applicant who satisfied the criterion in clause 457.223 of being sponsored by an approved sponsor within the meaning of section 140D of the Act, and is included in that sponsorship.

**[14] Schedule 2, paragraph 457.325 (aa)***substitute*

(aa) if the applicant is:

- (i) a member of the family unit; or
- (ii) the interdependent partner; or
- (iii) a dependent child of the interdependent partner;

of an applicant who seeks to meet the requirements of subclause 457.223 (7A) — satisfies public interest criterion 4005; and

**[15] Schedule 2, paragraph 457.325 (b)***substitute*

(b) except where the applicant is:

- (i) a member of the family unit; or
- (ii) the interdependent partner; or
- (iii) a dependent child of the interdependent partner;

of a primary applicant who meets the requirements of subclause 457.223 (9) — satisfies public interest criterion 4006A.



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## Schedule 2      Amendments relating to Distinguished Talent visas

(regulation 3)

### [1]      Schedule 1, after paragraph 1112 (3) (b)

*insert*

- (c) If the applicant seeks to meet the requirements of subclause 124.211 (2), application must be accompanied by a completed approved form 1000.
- (d) If the applicant seeks to meet the requirements of subclause 124.211 (4), the Minister must have received advice from:
  - (i) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
  - (ii) the Director-General of Security;that the applicant has provided specialised assistance to the Australian Government in matters of security.

### [2]      Schedule 1, after paragraph 1113 (3) (c)

*insert*

- (d) If the applicant seeks to meet the requirements of subclause 858.212 (2), application must be accompanied by a completed approved form 1000.
- (e) If the applicant seeks to meet the requirements of subclause 858.212 (4), the Minister must have received advice from:
  - (i) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
  - (ii) the Director-General of Security;that the applicant has provided specialised assistance to the Australian Government in matters of security.

**[3] Schedule 2, paragraph 124.211 (2) (e)***substitute*

(e) produces a completed approved form 1000; and

*Note* An approved form 1000 requires the applicant's record of achievement in an area (as mentioned in paragraph (a)) to be attested to by:

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen; or
- (d) an Australian organisation;

who has a national reputation in relation to the area.

**[4] Schedule 2, paragraph 858.212 (2) (e)***substitute*

(e) produces a completed approved form 1000; and

*Note* An approved form 1000 requires the applicant's record of achievement in an area (as mentioned in paragraph (a)) to be attested to by:

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen; or
- (d) an Australian organisation;

who has a national reputation in relation to the area.

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**Schedule 3**      **Amendments relating to  
Sponsored Business Visitor  
(Short Stay) (Subclass 459)  
visas**  
(regulation 3)

**[1]      Schedule 1, subitem 1217A (2)**

*substitute*

- (2) Visa application charge:
- (a) First instalment (payable at the time the application is made):
- (i) Subject to subparagraphs (ii), (iii) and (iv): \$70
  - (ii) An applicant who makes an application of the kind mentioned in paragraph (1) (a) and who:
    - (A) appears to the Minister, on the basis of the application, to be a person to whom privileges and immunities are, or are expected to be, accorded under:
      - (I) the *International Organisations (Privileges and Immunities) Act 1963*;  
or
      - (II) the *Overseas Missions (Privileges and Immunities) Act 1995*; and
    - (B) is expected to be recommended by the Foreign Minister for the grant of the visa: Nil
  - (iii) An applicant who makes an application of the kind mentioned in paragraph (1) (a) in the course of acting as a representative for a foreign government: Nil
  - (iv) An applicant who is the spouse or dependent child of an applicant mentioned in subparagraph (ii) or (iii): Nil.

- (b) Second instalment (payable before the grant of visa): Nil.

**[2] Schedule 2, Division 459.5**

*substitute*

**459.5 When visa is in effect**

459.511 Temporary visa permitting the holder:

- (a) to travel to and enter Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
- (b) to remain in Australia for a period, not longer than 3 months after the date of each entry, specified by the Minister for the purpose.

**[3] Schedule 2, Division 459.6**

*substitute*

**459.6 Conditions**

459.611 If the applicant satisfies the primary criteria, conditions 8112 and 8205.

459.612 If the applicant satisfies the primary criteria, conditions 8106, 8503 and 8531 may be imposed.

459.613 If the applicant is the spouse of the person who satisfies the primary criteria for a Subclass 459 visa and the applicant satisfies the secondary criteria, conditions 8101 and 8205.

459.613A If the applicant is the spouse of the person who satisfies the primary criteria for a Subclass 459 visa and the applicant satisfies the secondary criteria, conditions 8503 and 8531 may be imposed.

459.614 If the applicant is a dependent child of the person who satisfies the primary criteria for a Subclass 459 visa and the applicant satisfies the secondary criteria, condition 8205.

459.615 If the applicant is a dependent child of the person who satisfies the primary criteria for a Subclass 459 visa and the

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applicant satisfies the secondary criteria, conditions 8101,  
8503 and 8531 may be imposed.

## Schedule 4      Amendments relating to sponsored business owners

(regulation 3)

### [1]      Schedule 2, Division 163.1, including the notes

*substitute*

#### 163.1      Interpretation

163.111      In this Part:

*senior manager* means a person who:

- (a) has:
  - (i) either:
    - (A) appropriate formal qualifications, obtained as a result of at least 3 years full time study (or part time equivalent); or
    - (B) at least 5 years appropriate experience; and
  - (ii) been employed for at least 3 years (not counting experience mentioned in sub-subparagraph (i) (B)) in the kind of employment to which the qualifications or experience mentioned in subparagraph (i) relates; and
- (b) has a sound and continuous employment record, for at least 3 of the 5 years immediately before the application is made, in a position or positions in a qualifying business or businesses requiring the occupant to:
  - (i) make decisions about how the whole or a substantial part of the activities of the business is to be managed; and
  - (ii) take responsibility for the day to day running of the business or part of the business; and
  - (iii) if appropriate to the structure of the business, have management responsibilities over other functional managers; and

- 
- (c) if required under Australian law to be registered or licensed — is so registered or licensed.

*Note 1* *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

**[2] Schedule 2, paragraph 163.212 (b)**

*substitute*

- (b) is a senior manager.

**[3] Schedule 2, clause 892.213**

*substitute*

- 892.213 (1) The applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if, in the 12 months immediately before the application is made, the applicant's main business in Australia, or main businesses in Australia together, had an annual turnover of at least AUD200 000.
- (3) An applicant meets the requirements of this subclause if:
- (a) the applicant meets at least 2 of the requirements set out in paragraphs 892.212 (a), (b) and (c); and
- (b) the applicant resides in, and operates the applicant's main business or businesses in Australia in, an area specified in an instrument in writing made by the Minister for this paragraph; and
- (c) the appropriate regional authority has determined that there are exceptional circumstances for this subclause.

## Schedule 5      Amendments relating to safe third countries

(regulation 3)

### [1]      Regulation 2.12A, including the notes

*substitute*

#### 2.12A    Safe third country and prescribed connection (Act s 91D)

- (1) For paragraph 91D (1) (a) of the Act, PRC is a safe third country in relation to a person who:
  - (a) either:
    - (i) is, or has been, a Vietnamese refugee settled in PRC;  
or
    - (ii) is a close relative of, or is dependent on, a person who is, or has been, a Vietnamese refugee settled in PRC;  
as covered by the agreement between Australia and PRC;  
and
  - (b) entered Australia without lawful authority on or after 1 January 1996.
- (2) For paragraph 91D (1) (b) of the Act, a person mentioned in subregulation (1) has a prescribed connection with PRC if the person, or a parent of the person, resided in PRC at any time before the person entered Australia.
- (3) In this regulation:
  - (a) ***agreement between Australia and PRC*** means the agreement constituted by the Memorandum of Understanding the English text of which is set out in Schedule 11, together with the exchange of letters between representatives of Australia and PRC dated 17 March 2006 and 20 March 2006 the text of which is set out in Schedule 12; and



- (b) the use of the word *Vietnamese* is a reference to nationality or country of origin, and is not an ethnic description.

*Note 1* *PRC* is defined in regulation 1.03.

*Note 2* This regulation ceases to be in force at the end of 30 June 2008 — see subsection 91D (4) of the Act.

## [2] **Schedule 12**

*substitute*

## **Schedule 12 Exchange of letters**

(subregulation 2.12A (3))

### **Part 1**

Mr Kang Peng  
Deputy Director-General  
Department of Foreign Affairs  
Ministry of Civil Affairs  
Beijing  
People's Republic of China

17 March 2006

Dear Mr Kang

I am writing about the Memorandum of Understanding of 25 January 1995 between the Department of Immigration and Ethnic Affairs (now the Department of Immigration and Multicultural Affairs) and the Ministry of Civil Affairs relating to unauthorised arrivals in Australia of Vietnamese refugees settled in the People's Republic of China.

I note that the Memorandum of Understanding, established with regard to Vietnamese refugees settled in China who have arrived in Australia as unauthorised arrivals after 25 January 1995, continues to operate in the future.

Upon your confirmation of this, this exchange of letters replaces the previous exchange of letters of 15 and 16 April 2004, and together with the Memorandum of Understanding constitutes the agreement between our two countries on this subject.

Yours sincerely

Dr Alan Thomas  
Ambassador

## **Part 2**

H.E. Dr Alan Thomas  
Ambassador to China  
Australian Embassy  
Beijing

20 March 2006

Dear Ambassador Thomas,

I refer to your letter of 17 March, 2006, and confirm that the Memorandum of Understanding of 25 January 1995, established with regard to Vietnamese refugees settled in China who have arrived in Australia as unauthorised arrivals after 25 January 1995, continues to operate for current arrivals and will continue to operate for future arrivals.

Yours sincerely

Kang Peng  
Deputy Director-General  
Department of Foreign Affairs  
Ministry of Civil Affairs  
People's Republic of China

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**Schedule 6**      **Amendments relating to  
Working Holiday (Subclass  
417) and Work and Holiday  
(Subclass 462) visas**  
(regulation 3)

**[1]      Schedule 1, subitem 1305 (1)**

*omit*

1066 or 1096.

*insert*

1066, 1096, 1150 or 1150E (Internet).

**[2]      Schedule 2, sub-subparagraph 010.211 (4) (a) (i) (B)**

*omit*

or 8112; and

*insert*

, 8112 or 8547; and

**[3]      Schedule 2, subclause 010.611 (4)**

*omit*

and 8112

*insert*

, 8112 and 8547

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**[4] Schedule 2, subclause 020.611 (3)**

*omit*

and 8112

*insert*

, 8112 and 8547

**[5] Schedule 2, clause 050.611**

*omit*

or 8506 that apply

*insert*

, 8506 and 8548 apply

**[6] Schedule 2, clause 050.611A**

*omit*

or 8506

*insert*

, 8506 and 8548

**[7] Schedule 2, paragraph 050.611B (b)**

*omit*

and 8506

*insert*

, 8506 and 8548

**[8] Schedule 2, clause 050.612**

*omit*

and 8509.

*insert*

, 8509 and 8548.

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**[9] Schedule 2, subclause 050.612A (3)**

*omit*

and 8512

*insert*

, 8512 and 8548

**[10] Schedule 2, clause 050.613**

*omit*

and 8512

*insert*

, 8512 and 8548

**[11] Schedule 2, subclause 050.613A (2)**

*omit*

and 8512

*insert*

, 8512 and 8548

**[12] Schedule 2, clause 050.614**

*omit*

and 8512

*insert*

, 8512 and 8548

**[13] Schedule 2, clause 417.611**

*omit*

8108 and 8201.

*insert*

8547 and 8548.

**[14] Schedule 2, clause 462.611**

*omit*

8108 and 8201.

*insert*

8547 and 8548.

**[15] Schedule 8, after clause 8546**

*insert*

8547 The holder must not be employed by any 1 employer for more than 6 months, without the prior permission in writing of the Secretary.

8548 The holder must not engage in any studies or training in Australia for more than 4 months.

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## **Schedule 7      Amendments relating to the prescribed numbers of MRT and RRT members**

(regulation 3)

**[1]      Subregulation 4.22 (2)**

*omit*

90

*insert*

110

**[2]      Regulation 4.29**

*omit*

100.

*insert*

120.

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### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).