



Migration Amendment Regulations 2007 (No. 6)¹

Select Legislative Instrument 2007 No. 191

I, PROFESSOR MARIE BASHIR, AC, CVO, Deputy for 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 28 June 2007

MARIE BASHIR
Deputy for the Governor-General
By Her Excellency's Command

KEVIN ANDREWS
Minister for Immigration and Citizenship

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2007 (No. 6)*.

2 Commencement

These Regulations commence as follows:

- (a) on 1 July 2007 — regulations 1, 2 and 3 and Schedule 1;
- (b) on 1 January 2008 — regulation 4 and Schedule 2.

3 Amendment of *Migration Regulations 1994*

- (1) Schedule 1 amends the *Migration Regulations 1994*.

- (2) The amendments made by Schedule 1 apply in relation to a person who proposes to enter Australia on or after 1 July 2007.

4 Amendment of *Migration Regulations 1994*

- (1) Schedule 2 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 2 apply in relation to a person who proposes to enter Australia on or after 1 January 2008.

Schedule 1 Amendments relating to maritime crew visas — commencing on 1 July 2007

(regulation 3)

Part 1 General amendments of the *Migration Regulations 1994*

[1] Regulation 1.03, definition of *member of the crew*

substitute

member of the crew, in relation to a non-military ship:

- (a) means any of the following persons:
- (i) a person who is involved in the usual day to day routine maintenance or business of the ship while it is at sea, including a supernumerary member of the crew;
 - (ii) for a ship described in paragraph (b) of the definition of ***non-military ship*** — a person who is engaged in scientific research conducted on or from the ship;
- whether the person works as an employee, a contractor or in another capacity; but

- (b) does not include a person who only works on a ship while it is in port or dry dock unless that person:
 - (i) travelled with the ship to reach the port or dry dock; or
 - (ii) travels with the ship after completing the work in port or dry dock.

[2] Regulation 1.03, definition of *non-military ship*

substitute

non-military ship

- (a) means a ship that:
 - (i) is engaged in:
 - (A) commercial trade; or
 - (B) the carriage of passengers for reward; or
 - (ii) is owned and operated by a foreign government for the purposes of scientific research; or
 - (iii) has been accorded public vessel status by Foreign Affairs; but
- (b) does not include a ship that has been:
 - (i) imported in accordance with section 49A of the *Customs Act 1901*; or
 - (ii) entered for home consumption in accordance with section 71A of that Act.

[3] After regulation 2.06

insert

2.06AAA Entry to Australia — Maritime Crew (Temporary) (Class ZM) visas

- (1) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia on a non-military ship at a proclaimed port, other than at an excised offshore place.

-
- (2) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia if:
- (a) the holder is on a non-military ship; and
 - (b) the ship enters Australia at an excised offshore place that is:
 - (i) a proclaimed port; or
 - (ii) a place for which permission has been given, in advance under section 58 of the *Customs Act 1901*, for the ship to be brought to that place; and
 - (c) before the holder enters Australia, the operator of the ship has complied with the reporting requirements in sections 64, 64ACA and 64ACB of the *Customs Act 1901* in accordance with those sections and the *Customs Regulations 1926*.

Note The reporting requirements in sections 64, 64ACA and 64ACB of the *Customs Act 1901* provide, in general, that an operator of a ship that is due to arrive at a port must:

- (a) report the impending arrival of the ship; and
- (b) report to Customs on the passengers who will be on board the ship at the time of its arrival in port; and
- (c) report to Customs on the crew who will be on board the ship at the time of its arrival in port.

The Customs Act and the *Customs Regulations 1926* specify time limits within which the reporting is to be done.

- (3) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia in a way other than those described in subregulations (1) and (2) if:
- (a) health or safety reasons require entry in that way; and
 - (b) the holder of the visa does not enter Australia at an excised offshore place.
- (4) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia in a way other than those described in subregulations (1), (2) and (3) if an authorised officer authorises the holder to enter Australia in that way.

[4] After regulation 2.07AO

insert

2.07AP Applications for Maritime Crew (Temporary) (Class ZM) visas

Despite anything in regulation 2.07, an application for a Maritime Crew (Temporary) (Class ZM) visa may be made on behalf of an applicant.

Example

For convenience, an application for a Maritime Crew (Temporary) (Class ZM) visa could be completed and lodged by a third party such as a shipping agent or a manning agent, on behalf of a member of crew of a non-military ship or the spouse or dependent child of a member of the crew.

[5] Paragraph 2.40 (6) (b)

substitute

- (b) the person has been issued with a passport that is in force; and
- (ba) there is a document in existence that identifies the person as a seafarer employed on that ship; and

[6] Subparagraph 2.40 (6) (c) (ii)

substitute

- (ii) at the time the person is signed on to the ship in Australia, in accordance with subregulation (6A):
 - (A) the person is a lawful non-citizen in the migration zone; and
 - (B) the person has been issued with a passport that is in force; and
 - (C) there is a document in existence that identifies the person as a seafarer employed on that ship.

[7] After paragraph 2.40 (6) (c)

insert

(d) the person:

- (i) has not held a Maritime Crew (Temporary) (Class ZM) visa at any time after 1 July 2007; and
- (ii) has not been refused a Maritime Crew (Temporary) (Class ZM) visa at any time after 1 July 2007.

[8] Paragraph 2.40 (6A) (b)

substitute

- (b) the person has been issued with a passport that is in force; and
- (c) there is a document in existence that identifies the person as a seafarer employed on that ship.

[9] Subparagraph 2.40 (8) (a) (ii)

substitute

- (ii) the person has been issued with a passport that is in force; and
- (ia) there is a document in existence that identifies the person as a seafarer employed on that ship; and

[10] After subparagraph 2.40 (8) (a) (iii)

insert

(iv) the person:

- (A) has not held a Maritime Crew (Temporary) (Class ZM) visa at any time after 1 July 2007; and
- (B) has not been refused a Maritime Crew (Temporary) (Class ZM) visa at any time after 1 July 2007; and

[11] After subparagraph 2.40 (8A) (a) (iii)

insert

(iv) the person:

- (A) has not held a Maritime Crew (Temporary) (Class ZM) visa at any time after 1 July 2007; and
- (B) has not been refused a Maritime Crew (Temporary) (Class ZM) visa at any time after 1 July 2007; and

[12] After regulation 2.40

insert in Division 2.8

2.40A Arrangements for certain special purpose visas before 1 January 2008

Between 1 July 2007 and the end of 31 December 2007, regulation 2.40 is taken to apply in relation to a person as if the expressions *member of the crew* and *non-military ship* had the meanings given by the *Migration Regulations 1994* as in force immediately before 1 July 2007.

[13] Paragraph 3.01 (2) (d)

omit

card.

insert

card; and

[14] After paragraph 3.01 (2) (d)

insert

- (e) a person who enters Australia as the holder of a Maritime Crew (Temporary) (Class ZM) visa, or as an applicant for the grant of that visa:
 - (i) on a non-military ship; and

-
- (ii) as a member of the crew of that non-military ship, or as the spouse or dependent child of a member of the crew of that non-military ship.

[15] After regulation 3.03

insert

3.03AA Evidence of identity and providing information — non-military ships (Act s 166)

- (1) This regulation applies to the following persons:
- (a) a person who is the holder of a Maritime Crew (Temporary) (Class ZM) visa;
 - (b) a person who is the holder of a special purpose visa on the basis of being a person to whom paragraph 2.40 (1) (k), (kaa) or (ka) applies.
- (2) For paragraph 166 (1) (b) of the Act, the information is as much of the information in the table as is required by a clearance officer:

Item	Information
-------------	--------------------

If the person arrives in Australia on a non-military ship

- | | |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 101 | a document that identifies the person as being a member of the crew of the non-military ship on which the person arrived (for example, a contract of employment, a crew list, a supernumerary crew list or a seafarer identity card) |
| 102 | a document which indicates that the person is a spouse of a member of the crew of a non-military ship (for example, a marriage certificate) |
| 103 | a document which indicates that the person is a dependent child of a member of the crew (for example a birth certificate or adoption certificate) |

Item	Information
104	a statement from the master, owner, agent, charterer or operator of a non-military ship that the person is: <ul style="list-style-type: none">(a) a member of the crew of the non-military ship; or(b) the spouse of a member of the crew of the non-military ship; or(c) the spouse of a person who is under an offer to become a member of the crew of the non-military ship; or(d) a dependent child of a member of the crew of the non-military ship; or(e) a dependent child of a person who is under an offer to become a member of the crew of the non-military ship
105	any information mentioned in subregulation 3.01 (4)
	<i>If the person arrives in Australia by air</i>
201	a document which indicates the person is under an offer to become a member of the crew of a non-military ship (a <i>prospective member of the crew</i>)
202	a document which indicates that the person is the spouse of: <ul style="list-style-type: none">(a) a member of the crew of a non-military ship; or(b) a prospective member of the crew (for example, a marriage certificate)
203	a document which indicates that the person is a dependent child of: <ul style="list-style-type: none">(a) a member of the crew of a non-military ship; or(b) a prospective member of the crew (for example, a birth certificate or adoption certificate)

-
- [18] After sub-subparagraph 457.211 (a) (ii) (D)**
insert
(E) Subclass 988 (Maritime Crew) visa; or
- [19] After subparagraph 570.211 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);
- [20] After sub-subparagraph 570.227 (c) (i) (I)**
insert
(IA) Maritime Crew (Temporary) (Class ZM);
- [21] After subparagraph 570.312 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);
- [22] After subparagraph 571.211 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);
- [23] After sub-subparagraph 571.227 (c) (i) (I)**
insert
(IA) Maritime Crew (Temporary) (Class ZM);
- [24] After subparagraph 571.312 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);

[25] After subparagraph 572.211 (2) (a) (ix)*insert*

(ixa) Maritime Crew (Temporary) (Class ZM);

[26] After sub-subparagraph 572.227 (c) (i) (I)*insert*

(IA) Maritime Crew (Temporary) (Class ZM);

[27] After subparagraph 572.312 (2) (a) (ix)*insert*

(ixa) Maritime Crew (Temporary) (Class ZM);

[28] After subparagraph 573.211 (2) (a) (ix)*insert*

(ixa) Maritime Crew (Temporary) (Class ZM);

[29] After sub-subparagraph 573.227 (c) (i) (I)*insert*

(IA) Maritime Crew (Temporary) (Class ZM);

[30] After subparagraph 573.312 (2) (a) (ix)*insert*

(ixa) Maritime Crew (Temporary) (Class ZM);

[31] After subparagraph 574.211 (2) (a) (ix)*insert*

(ixa) Maritime Crew (Temporary) (Class ZM);

-
- [32] After sub-subparagraph 574.227 (c) (i) (I)**
insert
(IA) Maritime Crew (Temporary) (Class ZM);
- [33] After subparagraph 574.312 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);
- [34] After subparagraph 575.211 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);
- [35] After sub-subparagraph 575.227 (c) (i) (I)**
insert
(IA) Maritime Crew (Temporary) (Class ZM);
- [36] After subparagraph 575.312 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);
- [37] After subparagraph 576.211 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);
- [38] After subparagraph 576.312 (2) (a) (ix)**
insert
(ixa) Maritime Crew (Temporary) (Class ZM);

[39] After subparagraph 580.211 (2) (a) (ix)

insert

(ixa) Maritime Crew (Temporary) (Class ZM);

[40] After sub-subparagraph 580.227 (c) (i) (I)

insert

(IA) Maritime Crew (Temporary) (Class ZM);

[41] After subparagraph 580.311 (2) (a) (ix)

insert

(ixa) Maritime Crew (Temporary) (Class ZM);

[42] Sub-subparagraph 773.511 (a) (ii) (A)

substitute

(A) the applicant holds another substantive visa, other than:

(I) a Special Purpose visa; or

(II) a Subclass 988 (Maritime Crew) visa;

that is in effect at the date of grant; and

[43] After paragraph 845.211 (e)

insert

(ea) a Maritime Crew (Temporary) (Class ZM) visa;

[44] After subparagraph 855.211 (1) (a) (ii)

insert

(ia) Maritime Crew (Temporary) (Class ZM);

[45] After sub-subparagraph 855.211 (2) (b) (i) (B)

insert

(BA) Maritime Crew (Temporary) (Class ZM);

[46] After subparagraph 856.211 (1) (a) (ii)

insert

(ia) Maritime Crew (Temporary) (Class ZM);

[47] After sub-subparagraph 856.211 (2) (b) (i) (B)

insert

(BA) Maritime Crew (Temporary) (Class ZM);

[48] After subparagraph 857.211 (1) (a) (ii)

insert

(ia) Maritime Crew (Temporary) (Class ZM);

[49] After sub-subparagraph 857.211 (2) (b) (i) (B)

insert

(BA) Maritime Crew (Temporary) (Class ZM);

[50] After subparagraph 858.211 (1) (a) (ii)

insert

(ia) Maritime Crew (Temporary) (Class ZM);

[51] After sub-subparagraph 858.211 (2) (b) (i) (B)

insert

(BA) Maritime Crew (Temporary) (Class ZM);

[52] Sub-subparagraph 956.511 (a) (ii) (A)

substitute

(A) the applicant holds another substantive visa,
other than:

(I) a Special Purpose visa; or

(II) a Subclass 676 Tourist (Short Stay) visa;
or

-
- (III) a Subclass 676 (Tourist) visa; or
 - (IV) a Subclass 686 Tourist (Long Stay) visa;
or
 - (V) a Subclass 976 Electronic Travel Authority (Visitor) visa; or
 - (VI) a Subclass 977 Electronic Travel Authority (Business Entrant — Short Validity) visa; or
 - (VII) a Subclass 988 (Maritime Crew) visa;
that is in effect at the date of grant; and

[53] Sub-subparagraph 976.511 (a) (ii) (A)

substitute

- (A) the applicant holds another substantive visa, other than:
 - (I) a Special Purpose visa; or
 - (II) a Subclass 988 (Maritime Crew) visa;
that is in effect at the date of grant; and

[54] Sub-subparagraph 977.511 (a) (ii) (A)

substitute

- (A) the applicant holds another substantive visa, other than:
 - (I) a Special Purpose visa; or
 - (II) a Subclass 676 Tourist (Short Stay) visa;
or
 - (III) a Subclass 676 (Tourist) visa; or
 - (IV) a Subclass 686 Tourist (Long Stay) visa;
or
 - (V) a Subclass 976 Electronic Travel Authority (Visitor) visa; or
 - (VI) a Subclass 988 (Maritime Crew) visa;
that is in effect at the date of grant; and

[55] After Part 977

insert

Subclass 988 Maritime Crew

Note This Subclass is created in accordance with section 38B of the Act.

988.1 Interpretation

Note *member of the crew* and *non-military ship* are defined in regulation 1.03.

988.111 In this Part, a person is taken to have signed on to a non-military ship in Australia on the day notified to the Department by the Australian Customs Service.

Note For this Part, a person will sign on to a ship in Australia after:

- (a) travelling to Australia on another visa in order to join a ship as a member of the crew; or
- (b) joining the ship in Australia after signing off another ship in Australia; or
- (c) joining another ship after the ship on which the person travelled to Australia is imported under section 49A or 71A of the *Customs Act 1901*.

988.112 In this Part, a person is taken to have signed off a non-military ship on the day notified to the Department by the Australian Customs Service.

988.113 In this Part, a non-military ship is imported under section 49A of the *Customs Act 1901* or entered for home consumption under 71A of that Act on the day notified to the Department by the Australian Customs Service.

988.2 Primary criteria

Note The spouse or dependent child of a member of the crew of a non-military ship, or of a prospective member of the crew of a non-military ship, need satisfy only the secondary criteria.

988.21 Criteria to be satisfied at time of application

988.211 The applicant is:

- (a) a member of the crew of a non-military ship; or

-
- (b) a person:
- (i) who has received an offer from the master, owner, agent, charterer or operator of a non-military ship to become a member of the crew of the ship; and
 - (ii) in relation to whom the offer is current; and
 - (iii) who would be a member of the crew of the non-military ship if the person signs on to the ship.

988.22 Criteria to be satisfied at time of decision

988.221 The applicant is:

- (a) a member of the crew of a non-military ship; or
- (b) a person:
 - (i) who has received an offer from the master, owner, agent, charterer or operator of a non-military ship to become a member of the crew of the ship; and
 - (ii) in relation to whom the offer is current; and
 - (iii) who would be a member of the crew of the non-military ship if the person signs on to the ship.

988.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4013 and 4014.

988.223 The applicant satisfies special return criteria 5001 and 5002.

988.3 Secondary criteria

Note These criteria must be satisfied by the spouse or dependent child of a member of the crew of a non-military ship, or of a prospective member of the crew of a non-military ship.

988.31 [No criteria to be satisfied at time of application]

988.32 Criteria to be satisfied at time of decision

988.321 The applicant is:

- (a) the spouse of a person who is the holder of a Subclass 988 visa on the basis of having satisfied the primary criteria for the grant of the visa; or

- (b) a dependent child of a person who is the holder of a Subclass 988 visa on the basis of having satisfied the primary criteria for the grant of the visa.

988.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4013 and 4014.

988.323 The applicant satisfies special return criteria 5001 and 5002.

988.4 Circumstances applicable to grant

988.411 The applicant may be in or outside Australia when the visa is granted.

988.5 When visa is in effect

988.511 Temporary visa coming into effect on grant.

988.512 The visa ceases to be in effect:

- (a) on the occurrence of the earliest of the circumstances mentioned in an item in the following table; and
(b) at the time mentioned in the item:

Item	Circumstances	Time at which the visa ceases to have effect
1	Both of the following apply: (a) the holder has entered Australia otherwise than as: (i) a member of the crew serving on a non-military ship; or (ii) the spouse or a dependent child of a member of the crew serving on a non-military ship;	The end of the day or period worked out under paragraph (b) in column 2

Item	Circumstances	Time at which the visa ceases to have effect
	(b) the holder has not signed on to a non-military ship as a member of the crew, or as a spouse or dependent child of a member of the crew, before the latest of: <ul style="list-style-type: none">(i) 5 days after the day on which the holder last entered Australia; and(ii) if the holder last entered Australia for health or safety reasons that required the holder to enter Australia — 30 days after the day on which the holder last entered Australia; and(iii) if the holder holds another visa that is in effect — the day on which that other visa ceases	

Item	Circumstances	Time at which the visa ceases to have effect
2	<p>Each of the following applies:</p> <ul style="list-style-type: none"> (a) the holder has entered Australia; (b) the non-military ship in relation to which the holder is: <ul style="list-style-type: none"> (i) a member of the crew; or (ii) the spouse or a dependent child of a member of the crew; <p>has been imported under section 49A of the <i>Customs Act 1901</i> or entered for home consumption under 71A of that Act;</p> <ul style="list-style-type: none"> (c) the holder has not signed on to another non-military ship as a member of the crew, or as the spouse or a dependent child of a member of the crew before the end of the longer of the following periods that applies to the person: <ul style="list-style-type: none"> (i) 5 days after the day on which the non-military ship was imported or entered for home consumption; 	<p>The end of the day or the longest period worked out under paragraph (c) or (d) in column 2</p>

Item	Circumstances	Time at which the visa ceases to have effect
	(ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the non-military ship was imported or entered for home consumption — that longer period	
	(d) the person has not departed Australia before the end of the longest of the following periods that applies to the person:	
	(i) 5 days after the day on which the non-military ship was imported or entered for home consumption;	
	(ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the non-military ship was imported or entered for home consumption — that longer period;	
	(iii) if the holder holds another visa that is in effect — the day on which that other visa ceases	

Item	Circumstances	Time at which the visa ceases to have effect
3	<p>Each of the following applies:</p> <ul style="list-style-type: none"> (a) the holder has entered Australia; (b) the holder has signed off a non-military ship as: <ul style="list-style-type: none"> (i) a member of the crew of the non-military ship; or (ii) the spouse or a dependent child of the spouse of a member of the crew of a non-military ship; (c) the holder has not signed on to another non-military ship as a member of the crew or the spouse or a dependent child of a member of the crew before the end of the longer of the following periods that applies to the person: <ul style="list-style-type: none"> (i) 5 days after the day on which the holder signed off the last ship; (ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the holder last entered Australia — that longer period; 	<p>The end of the day or the longest period worked out under paragraph (c) or (d) in column 2</p>

Item	Circumstances	Time at which the visa ceases to have effect
(d)	<p>the holder has not departed Australia before the end of the longest of the following periods that applies to the person:</p> <p>(i) 5 days after the day on which the holder signed off the last ship;</p> <p>(ii) if an authorised officer decides, within those 5 days, to allow the person a longer period of up to 30 days after the day on which the holder last entered Australia — that longer period;</p> <p>(iii) if the holder holds another visa that is in effect — the day on which that other visa ceases</p>	
4	The end of a continuous period of 3 years starting when the visa is granted	At the end of the period of 3 years
5	<p>Both of the following apply:</p> <p>(a) the holder is a person who satisfied the secondary criteria for the grant of the visa;</p> <p>(b) the maritime crew visa granted to the person who satisfied the primary criteria for the grant of the visa ceases to be in effect</p>	The end of the day on which the maritime crew visa granted to the holder who satisfied the primary criteria ceases to be in effect

Item	Circumstances	Time at which the visa ceases to have effect
6	Both of the following apply: (a) the holder also holds another visa; (b) the other visa is cancelled otherwise than under section 501, 501A or 501B of the Act	At the end of the day on which the other visa is cancelled

988.6 Conditions

988.611 For an applicant who satisfies the primary criteria, condition 8113.

988.612 For an applicant who satisfies the secondary criteria, condition 8101.

988.7 Way of giving evidence

988.711 No evidence need be given.

Part 4 Amendment of Schedule 8 to the *Migration Regulations 1994*

[56] After item 8112

insert

8113 The holder of Subclass 988 (Maritime Crew) visa must not work in Australia otherwise than as a member of the crew of a non-military ship.

Schedule 2 Amendments relating to maritime crew visas — commencing on 1 January 2008

(regulation 3)

[1] Paragraphs 2.40 (1) (k), (kaa) and (ka)

omit

[2] Subregulation 2.40 (4)

omit

(k), (kaa), (ka),

**[3] Subregulations 2.40 (6) to (8B), including the
subheadings and the note**

omit

[4] Regulation 2.40A

omit

[5] Subregulation 3.03AA (1)

substitute

- (1) This regulation applies to a person who is the holder of a Maritime Crew (Temporary) (Class ZM) visa.

[6] Schedule 9, items 16 and 16A

omit

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.