



Migration Amendment Regulations 2008 (No. 6)¹

Select Legislative Instrument 2008 No. 189

I, QUENTIN BRYCE, 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 18 September 2008

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS EVANS
Minister for Immigration and Citizenship

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2008 (No. 6)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 9 August 2008 — regulations 1, 2 and 3 and Schedule 1;
- (b) on 19 September 2008 — regulation 4 and Schedule 2;
- (c) on 27 October 2008 — regulation 5 and Schedule 3.

**3 Amendment of *Migration Regulations 1994* —
Schedule 1**

- (1) Schedule 1 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 1 apply in relation to a decision, relating to sponsorship, made on or after 9 August 2008.

**4 Amendment of *Migration Regulations 1994* —
Schedule 2**

- (1) Schedule 2 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 2 apply in relation to an application for a visa made on or after 19 September 2008.

**5 Amendment of *Migration Regulations 1994* —
Schedule 3**

- (1) Schedule 3 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 3 apply in relation to an application for a visa made on or after 27 October 2008.

Schedule 1 Amendments relating to sponsorship

(subregulation 3 (1))

[1] Paragraph 4.02 (5) (k)

omit

nominator.

insert

nominator;

[2] After paragraph 4.02 (5) (k)

insert

- (l) in the case of a decision to which paragraph (4) (m) applies — the person or organisation to whose approval the decision relates.

Schedule 2 Amendments relating to seasonal workers

(subregulation 4 (1))

[1] Schedule 1, paragraph 1205 (3) (b)

substitute

- (aa) Applicant seeking to satisfy a criterion for the grant of a Subclass 416 (Special Program) visa specified in paragraph 416.222 (d) of Schedule 2 must be outside Australia when the application is made.
- (b) Applicant other than:
- (i) an applicant mentioned in paragraph (a); or
 - (ii) an applicant seeking to satisfy criteria for the grant of a Subclass 416 (Special Program) visa other than the criterion specified in paragraph 416.222 (d) of Schedule 2; or
 - (iii) an applicant seeking to satisfy the criteria for the grant of a Subclass 420 (Entertainment) visa; must be in Australia when the application is made.

[2] Schedule 2, paragraph 416.222 (c)

omit

paragraph.

insert

paragraph; or

[3] Schedule 2, after paragraph 416.222 (c)

insert

- (d) has been invited to undertake seasonal work in Australia:
- (i) by an organisation approved by the Secretary for this subparagraph; and

- (ii) in accordance with a program for undertaking seasonal work approved by the Secretary for this subparagraph.

[4] Schedule 2, clause 416.311

substitute

- 416.311 Both of the following:
- (a) the applicant is a member of the family unit of a person who has applied for a Subclass 416 visa (the *primary applicant*);
 - (b) the primary applicant is not seeking to satisfy the criterion in paragraph 416.222 (d).

[5] Schedule 2, clause 416.321

substitute

- 416.321 The applicant continues to be a member of the family unit of a person who:
- (a) having satisfied the primary criteria, is the holder of a Subclass 416 visa; but
 - (b) was not granted the visa on the basis of satisfying the criterion in paragraph 416.222 (d).

[6] Schedule 2, Division 416.4

substitute

416.4 Circumstances applicable to grant

- 416.411 If the applicant satisfies the criterion in paragraph 416.222 (d), the applicant must be outside Australia at the time of grant.
- 416.412 In any other case:
- (a) if the applicant was in the migration zone at time of application, the applicant must be in the migration zone, but not in immigration clearance, at the time of grant; and

- (b) if the applicant was outside Australia at time of application, the applicant must be outside Australia at time of grant.

[7] Schedule 2, clause 416.611

substitute

- 416.611 (1) If the applicant satisfies the primary criteria, condition 8107 must be imposed.
- (2) If the applicant satisfies the criterion in paragraph 416.222 (d), conditions 8501 and 8503 must also be imposed.

Schedule 3 Amendments relating to Superyacht Crew (Class UW) and Subclass 488 (Superyacht Crew) visas

(subregulation 5 (1))

Part 1 General amendments

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

substitute

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

- (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 or superyacht 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 or superyacht while it is in port or dry dock unless that person:
- (i) travelled with the ship or superyacht to reach the port or dry dock; or
 - (ii) travels with the ship or superyacht after completing the work in port or dry dock.

[2] Regulation 1.03, after definition of *substituted Subclass 676 visa*

insert

superyacht means a sailing ship or motor vessel of a kind that is specified by the Minister under regulation 1.15G to be a superyacht.

[3] After regulation 1.15F

insert in Division 1.2

1.15G Superyachts

The Minister may, by instrument in writing, specify that:

- (a) a sailing ship of a particular kind is a superyacht for the purposes of these Regulations; or
- (b) a motor vessel of a particular kind is a superyacht for the purposes of these Regulations.

[4] Paragraph 1.20 (2) (b)

omit

Extended Eligibility (Temporary) (Class TK) visa) or
Sponsored Training (Temporary) (Class UV) visa

insert

Extended Eligibility (Temporary) (Class TK), Sponsored
Training (Temporary) (Class UV) or Superyacht Crew
(Temporary) (Class UW) visa

[5] Subparagraph 1.20 (2) (e) (ii)

omit

is granted.

insert

is granted;

[6] After paragraph 1.20 (2) (e)

insert

- (f) if the application is for a Superyacht Crew (Temporary) (Class UW) visa, the sponsor undertakes to accept responsibility for:
- (i) all financial obligations to the Commonwealth incurred by the applicant arising out of the applicant's stay in Australia; and
 - (ii) compliance with the standards for wages and working conditions under all relevant legislation and awards in relation to employment entered into by the applicant in Australia; and
 - (iii) unless the Minister otherwise decides, compliance by the applicant with the conditions under which the applicant was allowed to enter Australia.

[7] After regulation 2.07AQ

insert

2.07AR Applications for Superyacht Crew (Temporary) (Class UW) visas

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

[8] After paragraph 2.43 (1) (la)

insert

- (lb) in the case of the holder of a Superyacht Crew (Temporary) (Class UW) visa — that the visa holder's sponsor has not complied, or is not complying, with the undertakings given by the sponsor in accordance with approved form 1366;

Part 2 Amendments of Schedule 1

[9] After item 1227

insert

1227A. Superyacht Crew (Temporary) (Class UW)

Note This class of visa relates to a member of the crew of a superyacht. Those expressions are defined in regulation 1.03. Regulation 1.15G is also relevant for the purposes of the definition of *superyacht*.

- (1) Form: 1365 or 1365 (Internet).
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Applicant may be in or outside Australia.
 - (b) Applicant is not the holder of a permanent visa.
 - (c) If the applicant is in Australia at the time of application, the applicant is the holder of a substantive visa other than a permanent visa.
 - (d) Application must be made:
 - (i) as an Internet application; or
 - (ii) by posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or
 - (iv) by having the application sent by fax to the number specified by the Minister in an instrument in writing for this subparagraph.
- (4) Subclasses:
 - 488 (Superyacht Crew)

[10] Subitem 1301 (1)

omit

1276 or 1276 (Internet)

insert

1276, 1276 (Internet), 1365 or 1365 (Internet)

Part 3 Amendments of Schedule 2

[11] Subclause 010.611 (4)

after

8112,

insert

8114,

[12] Subclause 020.611 (5)

after

8112,

insert

8114,

[13] Sub-subparagraph 457.211 (a) (i) (I)

substitute

- (I) Superyacht Crew (Temporary) (Class UW);
- (J) Supported Dependant (Temporary)
(Class TW);
- (K) Working Holiday (Temporary) (Class TZ); or

[14] After Part 487

insert

Subclass 488 Superyacht Crew

488.1 Interpretation

Note **Member of the crew** and **superyacht** are defined in regulation 1.03. Regulation 1.15G is also relevant for the purposes of the definition of **superyacht**. There are no interpretation provisions specific to this Part.

488.2 Primary criteria

Note All applicants must satisfy the primary criteria.

488.21 Criteria to be satisfied at time of application

488.211 The applicant has turned 18.

488.212 The applicant is a member of the crew of a superyacht.

488.213 The applicant does not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

488.22 Criteria to be satisfied at time of decision

488.221 The applicant continues to satisfy the criteria in clauses 488.212 and 488.213.

488.222 The applicant is sponsored by the captain or owner of the superyacht and each of the following criteria is satisfied:

- (a) the captain or owner sponsoring the applicant has not defaulted on any previous sponsorship entered into under these Regulations;
- (b) the captain or owner sponsoring the applicant has given written undertakings in accordance with approved form 1366;
- (c) the Minister has approved the captain or owner as a sponsor for the applicant.

- 488.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014.
- 488.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- 488.225 The Minister is satisfied that:
- (a) the applicant is the holder of a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
 - (b) it would be unreasonable to require the applicant to be the holder of a passport.

488.3 Secondary criteria: Nil

Note All applicants must satisfy the primary criteria.

488.4 Circumstances applicable to grant

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

488.5 When visa is in effect

- 488.511 If the visa was granted to an applicant outside Australia — 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, or until a date, specified by the Minister for the purpose.
- 488.512 If the visa was granted to an applicant in Australia — temporary visa permitting the holder:
- (a) to remain in Australia for a period, or until a date, specified by the Minister for the purpose; and
 - (b) if the holder leaves Australia during the visa period:
 - (i) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and

- (ii) to remain in Australia, after each entry, for a period, or until a date, specified by the Minister for the purpose.

488.6 Conditions

488.611 Conditions 8107 and 8114.

488.7 Way of giving evidence

488.711 No evidence need be given.

[15] After subparagraph 570.211 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[16] After sub-subparagraph 570.227 (c) (i) (L)

insert

(LA) Superyacht Crew (Temporary) (Class UW);

[17] After subparagraph 570.312 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[18] After subparagraph 571.211 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[19] After sub-subparagraph 571.227 (c) (i) (L)

insert

(LA) Superyacht Crew (Temporary) (Class UW);

[20] After subparagraph 571.312 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[21] After subparagraph 572.211 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[22] After sub-subparagraph 572.227 (c) (i) (L)

insert

(LA) Superyacht Crew (Temporary) (Class UW);

[23] After subparagraph 572.312 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[24] After subparagraph 573.211 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[25] After sub-subparagraph 573.227 (c) (i) (L)

insert

(LA) Superyacht Crew (Temporary) (Class UW);

[26] After subparagraph 573.312 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

-
- [27] After subparagraph 574.211 (2) (a) (xiii)**
insert
(xiiia) Superyacht Crew (Temporary) (Class UW);
- [28] After sub-subparagraph 574.227 (c) (i) (L)**
insert
(LA) Superyacht Crew (Temporary) (Class UW);
- [29] After subparagraph 574.312 (2) (a) (xiii)**
insert
(xiiia) Superyacht Crew (Temporary) (Class UW);
- [30] After subparagraph 575.211 (2) (a) (xiii)**
insert
(xiiia) Superyacht Crew (Temporary) (Class UW);
- [31] After sub-subparagraph 575.227 (c) (i) (L)**
insert
(LA) Superyacht Crew (Temporary) (Class UW);
- [32] After subparagraph 575.312 (2) (a) (xiii)**
insert
(xiiia) Superyacht Crew (Temporary) (Class UW);
- [33] After subparagraph 576.211 (2) (a) (xiii)**
insert
(xiiia) Superyacht Crew (Temporary) (Class UW);

[34] After subparagraph 576.312 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[35] After subparagraph 580.211 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[36] After sub-subparagraph 580.227 (c) (i) (L)

insert

(LA) Superyacht Crew (Temporary) (Class UW);

[37] After subparagraph 580.311 (2) (a) (xiii)

insert

(xiiia) Superyacht Crew (Temporary) (Class UW);

[38] After paragraph 845.211 (ea)

insert

(eb) Superyacht Crew (Temporary) (Class UW) visa;

[39] After subparagraph 855.211 (1) (a) (iv)

insert

(iva) Superyacht Crew (Temporary) (Class UW);

[40] After sub-subparagraph 855.211 (2) (b) (i) (D)

insert

(DA) Superyacht Crew (Temporary) (Class UW);

[41] After subparagraph 856.211 (1) (a) (iv)

insert

(iva) Superyacht Crew (Temporary) (Class UW);

[42] After sub-subparagraph 856.211 (2) (b) (i) (D)

insert

(DA) Superyacht Crew (Temporary) (Class UW);

[43] After subparagraph 857.211 (1) (a) (iv)

insert

(iva) Superyacht Crew (Temporary) (Class UW);

[44] After sub-subparagraph 857.211 (2) (b) (i) (D)

insert

(DA) Superyacht Crew (Temporary) (Class UW);

[45] After subparagraph 858.211 (1) (a) (iv)

insert

(iva) Superyacht Crew (Temporary) (Class UW);

[46] After sub-subparagraph 858.211 (2) (b) (i) (D)

insert

(DA) Superyacht Crew (Temporary) (Class UW);

Part 4 Amendment of Schedule 4

[47] Part 2, after item 4055AA

insert

4055AB

488 (Superyacht Crew)

8107 or 8114

Part 5 **Amendment of Schedule 8**

[48] After condition 8113

insert

8114 The holder must not work in Australia otherwise than as a member of the crew of a superyacht.

Note

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