



# Migration Amendment (Temporary Protection Visas) Regulation 2013

## Select Legislative Instrument No. 234, 2013

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I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Migration Act 1958*.

Dated 17 October 2013

Marie Bashir  
Administrator

By Her Excellency's Command

Scott Morrison  
Minister for Immigration and Border Protection

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## **1 Name of regulation**

This regulation is the *Migration Amendment (Temporary Protection Visas) Regulation 2013*.

## **2 Commencement**

This regulation commences on 18 October 2013.

## **3 Authority**

This regulation is made under the *Migration Act 1958*.

## **4 Schedule(s)**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Migration Regulations 1994*

**1 Subregulation 2.07AQ(3) (table item 1, column headed “Criterion 2”, at the end of paragraph (d))**

Add “granted before 18 October 2013”.

**2 After regulation 2.08G**

Insert:

**2.08H Certain persons taken to have applied for Subclass 785 (Temporary Protection) visas**

- (1) For subsection 46(2) of the Act, a Protection (Class XA) visa is a prescribed class of visa.
- (2) A valid application for a Protection (Class XA) visa made, but not finally determined, before 18 October 2013 is taken to also be a valid application for a Subclass 785 (Temporary Protection) visa if the applicant:
  - (a) holds a Subclass 785 (Temporary Protection) visa; or
  - (b) has held a Subclass 785 (Temporary Protection) visa since last entering Australia; or
  - (c) did not hold a visa that was in effect on the applicant’s last entry into Australia; or
  - (d) is an unauthorised maritime arrival; or
  - (e) was not immigration cleared on the applicant’s last entry into Australia.

**3 Subitem 1127AA(3) of Schedule 1 (table item 1, column headed “Criterion 1”, at the end of paragraph (d))**

Add “granted before 18 October 2013”.

**4 At the end of subitem 1401(3) of Schedule 1**

Add:

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- (d) An application by a person for a Protection (Class XA) visa is a valid application for a Subclass 785 (Temporary Protection) visa only if the person:
- (i) holds a Subclass 785 (Temporary Protection) visa; or
  - (ii) has held a Subclass 785 (Temporary Protection) visa since last entering Australia; or
  - (iii) did not hold a visa that was in effect on the person's last entry into Australia; or
  - (iv) is an unauthorised maritime arrival; or
  - (v) was not immigration cleared on the person's last entry into Australia.
- (e) An application by a person for a Protection (Class XA) visa is a valid application for a Subclass 866 (Protection) visa only if the person:
- (i) does not hold a Subclass 785 (Temporary Protection) visa; and
  - (ii) has not held a Subclass 785 (Temporary Protection) visa since last entering Australia; and
  - (iii) held a visa that was in effect on the person's last entry into Australia; and
  - (iv) is not an unauthorised maritime arrival; and
  - (v) was immigration cleared on the person's last entry into Australia.

#### **5 Subitem 1401(4) of Schedule 1**

Repeal the subitem, substitute:

- (4) Subclasses:
- (a) Subclass 785 (Temporary Protection)
  - (b) Subclass 866 (Protection).

#### **6 After Subclass 773 of Schedule 2**

Insert:

## Subclass 785—Temporary Protection

### 785.1—Interpretation

#### 785.111

In this Part:

*Refugees Convention* means the Refugees Convention as amended by the Refugees Protocol.

Note: *Refugees Convention*, *Refugees Protocol* and *member of the same family unit* are defined in section 5 of the Act.

### 785.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

### 785.21—Criteria to be satisfied at time of application

#### 785.211

- (1) One of subclauses (2) to (5) is satisfied.
- (2) The applicant:
  - (a) claims to be a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - (b) makes specific claims under the Refugees Convention.
- (3) The applicant claims to be a member of the same family unit as a person who is:
  - (a) mentioned in subclause (2); and
  - (b) an applicant who has made a valid application for a Subclass 785 (Temporary Protection) visa.
- (4) The applicant claims to be a person in respect of whom Australia has protection obligations because the applicant claims that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.
- (5) The applicant claims to be a member of the same family unit as a person who is:



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- (a) mentioned in subclause (4); and
  - (b) an applicant who has made a valid application for a Subclass 785 (Temporary Protection) visa.

**785.22—Criteria to be satisfied at time of decision****785.221**

- (1) One of subclauses (2) to (5) is satisfied.
- (2) The Minister is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

Note: See paragraph 36(2)(a) of the Act.

- (3) The Minister is satisfied that:
  - (a) the applicant is a person who is a member of the same family unit as an applicant who is mentioned in subclause (2); and
  - (b) the applicant mentioned in subclause (2) has been granted a Subclass 785 (Temporary Protection) visa.

Note: See paragraph 36(2)(b) of the Act.

- (4) The Minister is satisfied that the applicant:
  - (a) is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - (b) is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Note: See paragraph 36(2)(aa) of the Act.

- (5) The Minister is satisfied that:
  - (a) the applicant is a person who is a member of the same family unit as an applicant mentioned in subclause (4); and
  - (b) the applicant mentioned in subclause (4) has been granted a Subclass 785 (Temporary Protection) visa.

Note: See paragraph 36(2)(c) of the Act.

**785.222**

- (1) Subclause (2) or (3) is satisfied.
- (2) The applicant, or a member of the family unit of the applicant, has not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.
- (3) Section 91K of the Act does not apply to the applicant's application because of a determination made by the Minister under subsection 91L(1) of the Act.

**785.223**

The applicant has undergone a medical examination carried out by any of the following (a *relevant medical practitioner*):

- (a) a Medical Officer of the Commonwealth;
- (b) a medical practitioner approved by the Minister for the purposes of this paragraph;
- (c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

**785.224**

- (1) One of subclauses (2) to (4) is satisfied.
- (2) The applicant has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia.
- (3) The applicant is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested the examination mentioned in subclause (2).
- (4) The applicant is a person:
  - (a) who is confirmed by a relevant medical practitioner to be pregnant; and
  - (b) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
  - (c) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and

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- (d) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

**785.225**

- (1) A relevant medical practitioner has considered:
- (a) the results of any tests carried out for the purposes of the medical examination required under clause 785.223; and
  - (b) the radiological report (if any) required under clause 785.224 in respect of the applicant.
- (2) If the relevant medical practitioner:
- (a) is not a Medical Officer of the Commonwealth; and
  - (b) considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community;
- he or she has referred any relevant results and reports to a Medical Officer of the Commonwealth.

**785.226**

If a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

**785.227**

The applicant:

- (a) satisfies public interest criteria 4001 and 4003A; and
- (b) if the applicant had turned 18 at the time of application—satisfies public interest criterion 4019.

**785.228**

- (1) If the applicant is a child mentioned in paragraph 2.08(1)(b), subclause (2) or (3) is satisfied.
  - (2) Both of the following apply:
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- (a) the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(2);
  - (b) the applicant mentioned in subclause 785.211(2) has been granted a Subclass 785 (Temporary Protection) visa.
- (3) Both of the following apply:
- (a) the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(4);
  - (b) the applicant mentioned in subclause 785.211(4) has been granted a Subclass 785 (Temporary Protection) visa.

#### **785.229**

The Minister is satisfied that the grant of the visa is in the national interest.

#### **785.3—Secondary criteria**

Note: All applicants must satisfy the primary criteria.

#### **785.4—Circumstances applicable to grant**

##### **785.411**

The applicant must be in Australia when the visa is granted.

#### **785.5—When visa is in effect**

##### **785.511**

Temporary visa permitting the holder to remain in Australia until the earlier of:

- (a) the end of 36 months from the date of grant of the visa; and
- (b) the end of any shorter period, specified by the Minister, from the date of grant of the visa.

#### **785.6—Conditions**

##### **785.611**

Conditions 8503, 8564 and 8565.

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**7 Subclauses 866.211(2) and (4) of Schedule 2**

Omit “to whom”, substitute “in respect of whom”.

**8 Subclauses 866.221(2) to (5) of Schedule 2**

Repeal the subclauses, substitute:

- (2) The Minister is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

Note: See paragraph 36(2)(a) of the Act.

- (3) The Minister is satisfied that:
- (a) the applicant is a person who is a member of the same family unit as an applicant who is mentioned in subclause (2); and
  - (b) the applicant mentioned in subclause (2) has been granted a Subclass 866 (Protection) visa.

Note: See paragraph 36(2)(b) of the Act.

- (4) The Minister is satisfied that:
- (a) the applicant is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - (b) the applicant is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Note: For paragraph (b), see paragraph 36(2)(aa) of the Act.

- (5) The Minister is satisfied that:
- (a) the applicant is a person who is a member of the same family unit as an applicant mentioned in subclause (4); and
  - (b) the applicant mentioned in subclause (4) has been granted a Subclass 866 (Protection) visa.

Note: See paragraph 36(2)(c) of the Act.

**9 After clause 866.221**

Insert:

**866.222**

The applicant:

- (a) does not hold a Subclass 785 (Temporary Protection) visa; and
- (b) has not held a Subclass 785 (Temporary Protection) visa since last entering Australia; and
- (c) held a visa that was in effect on the applicant's last entry into Australia; and
- (d) is not an unauthorised maritime arrival; and
- (e) was immigration cleared on the applicant's last entry into Australia.

**10 Subclause 866.223**

Omit "relevant medical practitioner", substitute "*relevant medical practitioner*".

**11 At the end of Schedule 8**

Add:

- 8565 The holder must notify Immigration of any change in the holder's residential address within 14 days after the change occurs.

**12 At the end of Schedule 13**

Add:

**Part 21—Amendments made by the Migration  
Amendment (Temporary Protection Visas)  
Regulation 2013**

**2101 Operation of Schedule 1**

- (1) The amendments of these Regulations made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas) Regulation 2013* apply in relation to an application for a visa made on or after 18 October 2013.
- (2) The amendment of these Regulations made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas)*

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*Regulation 2013*, other than the amendments made by items 1, 3 and 4 of that Schedule, apply in relation to an application for a visa made, but not finally determined, before 18 October 2013.

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