



Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015

Select Legislative Instrument No. 243, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 10 December 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

OPC61441 - A

Contents

1	Name	1
2	Commencement	1
3	Authority	2
4	Schedules.....	2
Schedule 1—Amendments commencing 14 December 2015		3
Part 1—Child and adoption visa requirements		3
<i>Migration Regulations 1994</i>		3
Part 2—Immigration Assessment Authority remittal to the Minister		4
<i>Migration Regulations 1994</i>		4
Part 3—Technical amendments		5
<i>Migration Regulations 1994</i>		5
Schedule 2—Amendments commencing 16 February 2016		6
<i>Migration Regulations 1994</i>		6
Schedule 3—Application and transitional provisions		8
<i>Migration Regulations 1994</i>		8

1 Name

This is the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	12 December 2015
2. Schedule 1	14 December 2015.	14 December 2015
3. Schedule 2	16 February 2016.	16 February 2016
4. Schedule 3, item 1	14 December 2015.	14 December 2015
5. Schedule 3, item 2	16 February 2016.	16 February 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Schedule 1—Amendments commencing 14 December 2015

Part 1—Child and adoption visa requirements

Migration Regulations 1994

1 At the end of subitem 1108(3) of Schedule 1

Add:

- (c) An application is not a valid application if:
 - (i) the applicant seeks to meet the requirements in subclause 102.211(2) of Schedule 2 by claiming to have been adopted in an overseas country at a particular time; and
 - (ii) the country is specified by the Minister in a legislative instrument made for the purposes of this paragraph; and
 - (iii) if a period is specified in the instrument in relation to the country—the time referred to in subparagraph (i) is within that period.

2 At the end of subitem 1108A(3) of Schedule 1

Add:

- (f) An application is not a valid application if:
 - (i) the applicant seeks to meet the requirements in subclause 802.213(5) of Schedule 2 by claiming to have been adopted in an overseas country at a particular time; and
 - (ii) the country is specified by the Minister in a legislative instrument made for the purposes of this paragraph; and
 - (iii) if a period is specified in the instrument in relation to the country—the time referred to in subparagraph (i) is within that period.

Part 3—Technical amendments

Migration Regulations 1994

1 Subitem 1225(3) of Schedule 1

After “specified”, insert “in relation to a class of persons that includes the applicant”.

2 Subitem 1225(5) of Schedule 1 (definition of *working holiday eligible passport*)

Omit “in writing under subparagraph (3)(b)(i) or (ii)”, substitute “mentioned in subitem (3)”.

3 Clause 417.111 of Schedule 2 (definition of *working holiday eligible passport*)

Omit “in writing under subparagraph 1225(3)(b)(i) or (ii)”, substitute “mentioned in subitem 1225(3)”.

Schedule 2—Amendments commencing 16 February 2016

Migration Regulations 1994

1 Regulation 2.04

Repeal the regulation, substitute:

2.04 Circumstances in which a visa may be granted

For subsection 40(1) of the Act, a visa may be granted to a person who has satisfied the criteria in the relevant Part of Schedule 2 only if:

- (a) the circumstances set out in that Part exist; and
- (b) if the person has been required under section 257A of the Act to provide one or more personal identifiers—the person has complied with the requirement, or the requirement has been withdrawn.

2 Regulations 2.08AB and 2.08AC

Repeal the regulations.

3 Subregulations 3.03(1A) and (1B)

Repeal the subregulations.

4 Regulations 3.03A and 3.19A

Repeal the regulations.

5 Subregulation 3.20(1)

Omit “paragraph 258B(1)(b)”, substitute “subsection 258B(1)”.

6 Subregulation 3.20(1) (note)

Repeal the note.

7 Regulation 3.21

Repeal the regulation, substitute:

3.21 Procedure and requirements—identification test not carried out

- (1) For subsection 258D(2) of the Act, subregulation (2) prescribes the procedures and requirements that apply if:
 - (a) a person has applied for a visa; and
 - (b) at the time of making the application the person is outside Australia; and
 - (c) the person is required to provide a personal identifier under section 257A of the Act otherwise than by way of an identification test, in relation to the application.
- (2) For subregulation (1), the person must be informed of the following matters:
 - (a) the reason why a personal identifier is required to be provided;
 - (b) how a personal identifier may be collected;
 - (c) how any personal identifier that is collected may be used;
 - (d) the circumstances in which a personal identifier may be disclosed to a third party;
 - (e) that a personal identifier may be produced in evidence in a court or tribunal in relation to the person;
 - (f) that the *Privacy Act 1988* applies to a personal identifier, and that the person has a right to make a complaint to the Australian Information Commissioner about the handling of personal information;
 - (g) that the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and its agencies, and that the person has a right under that Act to seek access to that information or those documents under that Act, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading.
- (3) The person may be informed of the matters in writing or orally.
- (4) The manner in which the person is informed of the matters need not involve an officer or authorised officer informing the person of the matters.

Schedule 3—Application and transitional provisions

Migration Regulations 1994

1 Schedule 13

Insert in its appropriate numerical position:

Part 52—Amendments made by the Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015

5201 Operation of Schedule 1

- (1) The amendments of these Regulations made by Part 1 of Schedule 1 to the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015* apply in relation to an application for a visa made on or after 14 December 2015.
- (2) The amendment of these Regulations made by Part 2 of Schedule 1 to the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015* applies in relation to:
 - (a) a decision (a **remittal decision**) by the Immigration Assessment Authority to remit a fast track reviewable decision for reconsideration, if the remittal decision is made on or after 14 December 2015; and
 - (b) a fast track reviewable decision that is the subject of a remittal decision, whether the fast track reviewable decision is made before, on or after 14 December 2015.
- (3) The amendments of these Regulations made by Part 3 of Schedule 1 to the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015* apply in relation to an application for a visa made on or after 14 December 2015.

Note: Schedule 1 to the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015* commences on 14 December 2015.

2 At the end of Part 52 of Schedule 13

Insert:

5202 Operation of Schedule 2

Personal identifier required before 16 February 2016

- (1) Subitem (2) applies if:
 - (a) before 16 February 2016, a person was required to provide a personal identifier under:
 - (i) section 46, 166, 170, 175 or 188 of the Act; or
 - (ii) regulation 2.04; and
 - (b) immediately before 16 February 2016, both of the following apply:
 - (i) the person had not complied with the requirement;
 - (ii) the period for complying with the requirement had not ended.
- (2) Despite the amendments of these Regulations made by Schedule 2 to the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015*, these Regulations continue to apply in relation to the requirement as if those amendments had not been made.

Visa application made (but not finally determined) before 16 February 2016, but personal identifier not required

- (3) The amendment of these Regulations made by item 1 of Schedule 2 to the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015* applies, subject to subitem (2), to the following applications for visas:
 - (a) an application made, but not finally determined, before 16 February 2016;
 - (b) an application made on or after 16 February 2016.

Note: Schedule 2 to the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015* commences on 16 February 2016.