



## **Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016**

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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 05 May 2016

Peter Cosgrove  
Governor-General

By His Excellency's Command

Peter Dutton  
Minister for Immigration and Border Protection

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## 1 Name

This is the *Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016*.

## 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. The whole of this instrument	1 July 2016.	1 July 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Note: This table relates only to the provisions of this instrument as originally made.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.

## 3 Authority

This instrument is made under the following:

- (a) the *Migration Act 1958*;
- (b) the *Australian Citizenship Act 2007*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

### ***Migration Regulations 1994***

#### **1 Regulation 2.06**

Repeal the regulation, substitute:

#### **2.06 Non-citizens who do not require visas to travel to Australia**

For subsection 42(3) of the Act (which deals with the classes of person who may travel to Australia without a visa that is in effect), the class of New Zealand citizens who hold and produce New Zealand passports that are in force is prescribed.

#### **2 At the end of paragraph 2.07AB(2)(a)**

Add “and”.

#### **3 Paragraph 2.07AB(2)(b)**

Repeal the paragraph.

#### **4 Subregulation 2.16(2C)**

Repeal the subregulation.

#### **5 Subparagraph 3.01(4)(g)(ii)**

Omit “or a Permanent Resident of Norfolk Island visa”.

#### **6 Paragraph 3.03(3)(c)**

Repeal the paragraph.

#### **7 Subparagraph 1111(2)(a)(i) of Schedule 1**

Omit “for an applicant:”, substitute “for an applicant covered by subitem (2A):”

#### **8 Sub-subparagraphs 1111(2)(a)(i)(A) and (B) of Schedule 1**

Repeal the sub-subparagraphs.

#### **9 After subitem 1111(2) of Schedule 1**

Insert:

(2A) This subitem covers the following applicants:

- (a) an applicant:
  - (i) who was granted a Subclass 773 (Border) visa on last arriving in Australia; or
  - (ii) whose application is combined, or sought to be combined, with an application made by that person;
- (b) an applicant whose application is made on the basis that, on 30 June 2016, he or she held any of the following permits granted under the *Immigration Act 1980* (Norfolk Island):
  - (i) a temporary entry permit;

- (ii) a general entry permit;
- (iii) an unrestricted entry permit (a *UEP*);
- (c) an applicant whose application is made on the basis that:
  - (i) on 30 June 2016, the applicant did not hold any of the permits mentioned in paragraph (b); and
  - (ii) at any time before 30 June 2016, the applicant held a UEP; and
  - (iii) at that time, the applicant was ordinarily resident in Norfolk Island;
- (d) an applicant whose application is made on the basis that:
  - (i) on or before 30 June 2016, the applicant was born outside Norfolk Island (whether in or outside Australia); and
  - (ii) on 30 June 2016, the applicant did not hold any of the permits mentioned in paragraph (b); and
  - (iii) on 30 June 2016, a parent of the applicant, other than an adoptive parent of the applicant, was covered by paragraph (b) or (c); and
  - (iv) on 30 June 2016, the applicant was a dependent child of the parent;
- (e) an applicant whose application is made on the basis that clause 808.311 of Schedule 2 is satisfied in relation to an applicant covered by paragraph (b), (c) or (d) of this subitem.

Note: Paragraph (e) applies to a dependent child of the other applicant born in Australia on or after 1 July 2016. The child's application must be combined with that of the parent.

## **10 Subitem 1111(3) of Schedule 1**

After "Other", insert " , unless paragraph (2A)(b), (c), (d) or (e) covers the applicant".

## **11 After subitem 1111(3) of Schedule 1**

Insert:

- (3A) Other, if paragraph (2A)(b), (c), (d) or (e) covers the applicant:
  - (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
  - (b) Applicant may be in or outside Australia, but must not be in immigration clearance.
  - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Confirmatory (Residence) (Class AK) visa may be made at the same time and place as, and combined with, the application by that person.
  - (d) Application by a person is not a valid application if:
    - (i) the visa held by the person that was most recently in effect is, or was, the subject of a notice under the Act proposing cancellation; and
    - (ii) the person has not been notified of a decision not to proceed with the cancellation; and
    - (iii) the visa was not the subject of a decision to cancel the visa under the Act.
  - (e) Application by a person is not a valid application if:
    - (i) the visa held by the person that was most recently in effect was the subject of a decision to cancel the visa under the Act (whether or not the decision has come into effect); and
    - (ii) the decision to cancel the visa has not been set aside by the Tribunal.

## 12 Item 1123 of Schedule 1

Repeal the item.

## 13 Subitem 1216(3) of Schedule 1

After “Other”, insert “, unless the application is covered by subitem (3A)”.

## 14 After subitem 1216(3) of Schedule 1

Insert:

(3A) This subitem covers applications made on one of the following bases:

- (a) that, on 30 June 2016, the applicant held either of the following permits granted under the *Immigration Act 1980* (Norfolk Island):
  - (i) a temporary entry permit;
  - (ii) a general entry permit;
- (b) that:
  - (i) on or before 30 June 2016, the applicant was born outside Norfolk Island (whether in or outside Australia); and
  - (ii) on 30 June 2016, the applicant did not hold either of the permits mentioned in paragraph (a); and
  - (iii) on 30 June 2016, a parent of the applicant (other than an adoptive parent) was covered by paragraph (a); and
  - (iv) on 30 June 2016, the applicant was a dependent child of the parent;
- (c) that clause 159.311 of Schedule 2 is satisfied in relation to another applicant whose application is covered by paragraph (a) or (b) of this subitem.

Note: Paragraph (c) applies to a dependent child of the other applicant born in Australia on or after 1 July 2016. The child’s application must be combined with that of the parent.

(3B) Other, if the application is covered by subitem (3A):

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).
- (b) Applicant may be in or outside Australia, but must not be in immigration clearance.
- (c) Application by a person who is included in the passport of another applicant for a Resident Return (Temporary) (Class TP) visa may be made at the same time and place as, and combined with, the application by that other applicant.
- (d) Application by a person is not a valid application if:
  - (i) the visa held by the person that was most recently in effect is, or was, the subject of a notice under the Act proposing cancellation; and
  - (ii) the person has not been notified of a decision not to proceed with the cancellation; and
  - (iii) the visa was not the subject of a decision to cancel the visa under the Act.
- (e) Application by a person is not a valid application if:
  - (i) the visa held by the person that was most recently in effect was the subject of a decision to cancel the visa under the Act (whether or not the decision has come into effect); and



- (ii) the decision to cancel the visa has not been set aside by the Tribunal.

**15 Division 159.2 of Schedule 2 (note to Division heading)**

Repeal the note.

**16 Before clause 159.211 of Schedule 2**

Insert:

**159.211A**

The applicant satisfies:

- (a) clauses 159.211, 159.212, 159.212A and 159.213; or
- (b) clause 159.214 (which applies in relation to some former holders of Norfolk Island immigration permits).

**17 At the end of Subdivision 159.21 of Schedule 2**

Add:

**159.214**

- (1) This clause applies if paragraph 1216(3A)(a) or (b) of Schedule 1 covers the application.

Note: Paragraphs 1216(3A)(a) and (b) of Schedule 1 cover applications made on the basis of the former migration status under the *Immigration Act 1980* (Norfolk Island) of the applicant or a parent of the applicant.

- (2) The application must be made before 1 July 2017, unless the Minister is satisfied that there are compelling reasons for granting the visa.

**18 Before clause 159.221 of Schedule 2**

Insert:

**159.221A**

The applicant satisfies:

- (a) clauses 159.221 and 159.222; or
- (b) clause 159.223 (which applies in relation to some former holders of Norfolk Island immigration permits).

**19 At the end of Subdivision 159.22 of Schedule 2**

Add:

**159.223**

- (1) This clause applies if paragraph 1216(3A)(a) or (b) of Schedule 1 covers the application.

- (2) The applicant satisfies special return criteria 5001, 5002 and 5010.

- (3) The applicant satisfies:

- (a) public interest criteria 4001, 4002, 4003, 4004, 4007, 4010, 4014, 4020 and 4021; and

- (b) if the applicant has not turned 18 at the time of the application—public interest criteria 4012, 4017 and 4018; and
- (b) if the applicant has turned 18 at the time of the application—public interest criterion 4019.

- (4) If a person (the *additional applicant*):
  - (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

## **20 Division 159.3 of Schedule 2**

Repeal the Division, substitute:

### **159.3—Secondary criteria**

#### **159.31—Criteria to be satisfied at time of application**

##### **159.311**

The following requirements are met:

- (a) the applicant was born in Australia on or after 1 July 2016;
- (b) the applicant is a dependent child of another applicant (the *parent applicant*);
- (c) paragraph 1216(3A)(a) or (b) of Schedule 1 covers the parent applicant's application;
- (d) the applicant made a combined application with the parent applicant.

#### **159.32—Criteria to be satisfied at time of decision**

##### **159.321**

- (1) The parent applicant mentioned in paragraph 159.311(b) is granted a Subclass 159 visa on the basis of satisfying clause 159.214.
- (2) The applicant satisfies public interest criteria 4007, 4010, 4012, 4014, 4017, 4018, 4020 and 4021.

## **21 Before clause 159.411 of Schedule 2**

Insert:

### **159.411A**

The applicant satisfies clause 159.411 or 159.412 (which applies in relation to some former holders of Norfolk Island immigration permits).

## **22 At the end of Division 159.4 of Schedule 2**

Add:

**159.412**

- (1) This clause applies if the applicant satisfies clause 159.214 or 159.311.
- (2) The applicant may be in or outside Australia when the visa is granted, but must not be in immigration clearance.

**23 Clause 159.511 of Schedule 2**

Omit “Temporary”, substitute: “Visa granted on the basis of satisfaction of clauses 159.211 to 159.213: temporary”.

**24 At the end of Division 159.5 of Schedule 2**

Add:

**159.512**

- (1) Visa granted on the basis of satisfaction of clause 159.214: temporary visa permitting the holder to travel to, enter and remain in Australia for the shorter of the following periods:
  - (a) 6 years and 6 months after the date of the grant of the visa;
  - (b) the period, after the date of the grant of the visa, ending on 31 December 2023.
- (2) Visa granted on the basis of satisfaction of clause 159.311 in relation to a parent applicant mentioned in paragraph 159.311(b): temporary visa permitting the holder to travel to, enter and remain in Australia for the period permitted in relation to the parent applicant under subclause (1) of this clause.

**25 Clause 159.611 of Schedule 2**

Omit “The”, substitute “Visa granted on the basis of satisfaction of clauses 159.211, 159.212, 159.212A and 159.213:”.

**26 At the end of Division 159.6 of Schedule 2**

Add:

**159.612**

Visa granted on the basis of satisfaction of clause 159.214 or 159.311: condition 8549 must be imposed.

**27 Paragraph 773.213(2)(ze) of Schedule 2**

Repeal the paragraph.

**28 Division 808.2 of Schedule 2 (note to Division heading)**

Repeal the note.

**29 Before clause 808.211 of Schedule 2**

Insert:

**808.211A**

The applicant satisfies:

- (a) clauses 808.211 and 808.212; or
- (b) clause 808.213 (which applies in relation to some former holders of Norfolk Island immigration permits).

### **30 At the end of Subdivision 808.21 of Schedule 2**

Add:

#### **808.213**

- (1) This clause applies if paragraph 1111(2A)(b), (c) or (d) of Schedule 1 covers the application.

Note: Paragraphs 1111(2A)(b), (c) and (d) of Schedule 1 cover applications made on the basis of the former migration status under the *Immigration Act 1980* (Norfolk Island) of the applicant or a parent of the applicant.

- (2) The application must be made before 1 January 2024, unless the Minister is satisfied that there are compelling reasons for granting the visa.
- (3) During a period of, or periods that total, not less than 5 years in the period of 7 years immediately before the application is made (including any period, or part of a period, before 30 June 2016), the applicant meets the requirements of subclause (4).
- (4) The applicant meets the requirements of this subclause during any period or periods while:
- (a) the applicant is (or has been) lawfully present in Norfolk Island; or
  - (b) the applicant is (or has been) lawfully present in a place elsewhere in Australia, and:
    - (i) has not turned 25; and
    - (ii) is a dependent child of a person who is ordinarily resident in Norfolk Island; and
    - (iii) lives (or has lived) in that place for the purpose of study; and
    - (iv) while living there, meets (or met) the requirements mentioned in condition 8105 (which relates to students engaging in work).

Note 1: An applicant can meet the requirements of subclause (4) by a combination of periods to which either paragraph (4)(a) or (4)(b) applies, if the total duration of that combination of periods amounts to not less than 5 years.

Note 2: Condition 8105 is not imposed on the visa.

### **31 Before clause 808.221 of Schedule 2**

Insert:

#### **808.221A**

The applicant satisfies:

- (a) clauses 808.221 and 808.222; or
- (b) clause 808.223 (which applies to some former holders of Norfolk Island immigration permits).

### **32 At the end of Subdivision 808.22 of Schedule 2**

Add:

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**808.223**

- (1) This clause applies if paragraph 1111(2A)(b), (c) or (d) of Schedule 1 covers the application.
- (2) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (3) The applicant:
  - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009, 4010, 4014, 4020 and 4021; and
  - (b) if the applicant has turned 18 at the time of the application—public interest criterion 4019.
- (4) If a person (the *additional applicant*):
  - (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18 at the time of the application; and
  - (c) made a combined application with the applicant;public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

**33 Division 808.3 of Schedule 2**

Repeal the Division, substitute:

**808.3—Secondary criteria****808.31—Criteria to be satisfied at time of application****808.311**

The following requirements are met:

- (a) the applicant was born in Australia on or after 1 July 2016;
- (b) the applicant is a dependent child of another applicant (the *parent applicant*);
- (c) paragraph 1111(2A)(b), (c) or (d) of Schedule 1 covers the parent's application;
- (d) the applicant made a combined application with the parent applicant.

**808.32—Criteria to be satisfied at time of decision****808.321**

- (1) The parent applicant mentioned in paragraph 808.311(b) is granted a Subclass 808 visa on the basis of satisfying clause 808.213.
- (2) The applicant satisfies public interest criteria 4007, 4010, 4012, 4014, 4017, 4018, 4020 and 4021.

**34 Before clause 808.411 of Schedule 2**

Insert:

**808.411A**

The applicant satisfies clause 808.411 or 808.412 (which applies to some former holders of Norfolk Island immigration permits).

**35 At the end of Division 808.4 of Schedule 2**

Add:

**808.412**

- (1) This clause applies if the applicant satisfies clause 808.213 or 808.311.
- (2) The applicant may be in or outside Australia when the visa is granted, but must not be in immigration clearance.

**36 At the end of Division 808.5 of Schedule 2**

Add:

**808.513**

- (1) Visa granted on the basis of satisfaction of clause 808.213: permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.
- (2) Visa granted on the basis of satisfaction of clause 808.311 in relation to a parent applicant mentioned in paragraph 808.311(b): permanent visa permitting the holder to travel to and enter Australia for the period permitted in relation to the parent applicant under subclause (1) of this clause.

**37 Part 834 of Schedule 2**

Repeal the Part.

**38 Clause 8549 of Schedule 8**

Omit “While”, substitute “(1) Unless subclause (2) applies, while”.

**39 At the end of clause 8549 of Schedule 8**

Add:

- (2) For a visa granted on the basis of satisfaction of clause 159.214 or 159.311 of Schedule 2, while the holder is in Australia, the holder must live, study and work only in Norfolk Island, apart from any period during the whole of which the visa holder:
  - (a) has not turned 25; and
  - (b) is a dependent child of a person who is ordinarily resident in Norfolk Island; and
  - (c) lives elsewhere in Australia for the purpose of study; and
  - (d) meets the requirements mentioned in condition 8105 (which relates to students engaging in work).

Note: Condition 8105 is not imposed on the visa.

## **Schedule 2—Australian citizenship amendments**

### *Australian Citizenship Regulations 2007*

#### **1 Subregulation 12A(7)**

Repeal the subregulation, substitute:

(7) In this regulation:

*conversion instrument* means the instrument titled *Payment of Visa Application Charges and Fees in Foreign Currencies* (IMMI 16/035) that commenced on 1 July 2016.

*places and currencies instrument* means the instrument titled *Places and Currencies for Paying of Fees* (IMMI 16/036) that commenced on 1 July 2016.

#### **2 Subregulations 13(5) and (5A)**

Omit “\$130” (wherever occurring), substitute “\$105”.

## **Schedule 3—Australian citizenship: transitional arrangements**

### *Australian Citizenship Regulations 2007*

#### **1 In the appropriate position in Part 4**

Insert:

#### **30 Amendments made by the *Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016***

The amendments of these Regulations made by Schedule 2 to the *Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016* apply in relation to an application made under the *Australian Citizenship Act 2007* on or after 1 July 2016.

Note: Schedule 2 to the *Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016* commences on 1 July 2016.