



## **Migration Legislation Amendment (2016 Measures No. 3) 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 01 September 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. 3) 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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	7 September 2016
2. Schedules 1 to 5	10 September 2016.	10 September 2016
3. Schedule 6	18 November 2016.	18 November 2016
4. Schedule 7	10 September 2016.	10 September 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Note: This table relates only to the provisions of this instrument as originally made.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 *Australian Citizenship Act 2007*;
- (b) the *Migration Act 1958*.

## 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Applications for Return (Residence) (Class BB) visas**

### *Migration Regulations 1994*

#### **1 Subregulation 2.09(1)**

Omit “Subject to subregulation (2), if”, substitute “If”.

#### **2 Subregulations 2.09(2) and (3)**

Repeal the subregulations.

#### **3 Paragraph 1128(3)(ba) of Schedule 1**

Repeal the paragraph.

## **Schedule 2—Method of payment of citizenship and migration fees and charges**

### *Australian Citizenship Regulations 2007*

#### **1 Regulation 4**

Insert:

*PayPal surcharge*: see subregulation 12A(1).

#### **2 Subparagraphs 12A(1)(b)(i), (ii) and (iii)**

Omit “the Schedule 3 amount”, substitute “so much of the Schedule 3 amount as is”.

#### **3 At the end of subregulation 12A(1)**

Add:

; and (c) if the Schedule 3 amount, or part of the Schedule 3 amount, is paid by the PayPal system (other than a payment made in New Zealand currency or Singaporean currency)—the amount (the *PayPal surcharge*) of 1% of so much of the Schedule 3 amount as is paid by the PayPal system.

#### **4 Paragraph 13(4)(c)**

Omit “or 15A”.

#### **5 Subregulation 13(4A)**

After “credit card surcharge” (first occurring), insert “or PayPal surcharge”.

#### **6 Subregulation 13(4A)**

Omit “credit card” (second occurring).

#### **7 Paragraph 13(5)(c)**

Omit “or 15B”.

#### **8 Subregulation 13(5A)**

After “credit card surcharge” (first occurring), insert “or PayPal surcharge”.

#### **9 Subregulation 13(5A)**

Omit “credit card” (second occurring).

### *Migration Regulations 1994*

#### **10 At the end of subregulation 2.12JA(1)**

Add:

; or (c) the PayPal system, in accordance with the instructions given to the applicant as part of making the Internet application.

Note 1: A credit card surcharge is payable if an instalment, or part of an instalment, of visa application charge is paid by credit card: see regulation 5.41A.

Note 2: A PayPal surcharge is payable if an instalment, or part of an instalment, of visa application charge is paid by the PayPal system: see regulation 5.41B.

**11 Subregulation 2.12JA(2) (note)**

Repeal the note.

**12 At the end of regulation 2.12JA**

Add:

- (4) If the visa application charge is paid in accordance with paragraph (1)(c), the charge is taken not to have been received until the payment has been confirmed by the operator of the PayPal system.

**13 At the end of paragraph 2.12K(b)**

Add:

; and (v) if the payment is made by the PayPal system—the person whose PayPal account was used for the payment.

**14 At the end of subregulation 2.12N(3)**

Add:

; or (c) the Paypal system, in accordance with the instructions given to the applicant as part of making the request.

**15 Subregulation 2.12N(3) (note)**

Repeal the note, substitute:

Note 1: A credit card surcharge is payable if a fee, or part of a fee, is paid by credit card: see regulation 5.41A.

Note 2: A PayPal surcharge is payable if a fee, or part of a fee, is paid by the PayPal system: see regulation 5.41B.

**16 At the end of Division 5.7 of Part 5**

Add:

**5.41B PayPal surcharge**

- (1) A person is liable to pay a fee (a *PayPal surcharge*) if:
- (a) the person pays a fee or charge, or part of a fee or charge; and
  - (b) the fee or charge is of a kind specified by the Minister by a legislative instrument made for this paragraph; and
  - (c) the payment is made by the PayPal system.
- (2) The amount of the PayPal surcharge payable in respect of the payment is 1% of the amount of the payment.
- (3) The PayPal surcharge is payable when the payment is made.
- (4) The Minister may specify, in a legislative instrument, circumstances in which the PayPal surcharge:
- (a) must be waived; or
  - (b) may be waived; or
  - (c) must be refunded; or
  - (d) may be refunded.
- (5) The Minister:



- (a) must waive payment of the PayPal surcharge in circumstances specified under paragraph (4)(a); and
- (b) may waive payment of the PayPal surcharge in circumstances specified under paragraph (4)(b); and
- (c) must refund payment of the PayPal surcharge in circumstances specified under paragraph (4)(c); and
- (d) may refund payment of the PayPal surcharge in circumstances specified under paragraph (4)(d).

## **Schedule 3—Credit card surcharge**

### *Australian Citizenship Regulations 2007*

**1 Subparagraph 12A(1)(b)(i)**

Omit “1.08%”, substitute “0.98%”.

**2 Subparagraph 12A(1)(b)(ii)**

Omit “1.99%”, substitute “1.4%”.

**3 Subparagraph 12A(1)(b)(iii)**

Omit “2.91%”, substitute “1.99%”.

### *Migration Regulations 1994*

**4 Paragraph 5.41A(2)(a)**

Omit “1.08%”, substitute “0.98%”.

**5 Paragraph 5.41A(2)(b)**

Omit “1.99%”, substitute “1.4%”.

**6 Paragraph 5.41A(2)(c)**

Omit “2.91%”, substitute “1.99%”.

## **Schedule 4—Bridging visas for children born in migration zone to unauthorised maritime arrivals**

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

#### **1 After subregulation 2.20(11)**

Insert:

(11A) This subregulation applies to a non-citizen if:

- (a) the non-citizen is an unauthorised maritime arrival because of subsection 5AA(1A) of the Act (which is about a non-citizen born in the migration zone with a parent who is at the time of the birth an unauthorised maritime arrival because of subsection 5AA(1) of the Act); and
- (b) a parent of the non-citizen is or was an eligible non-citizen.

Note 1: A non-citizen born on or after the day this subregulation commences becomes an eligible non-citizen because of this subregulation:

- (a) at birth, if at least one of his or her parents is an eligible non-citizen then or had been an eligible non-citizen before then; or
- (b) at the time after birth when at least one of the non-citizen's parents first becomes an eligible non-citizen, if none of the non-citizen's parents was an eligible non-citizen before that time.

Note 2: A non-citizen who was born before the day this subregulation commences becomes an eligible non-citizen because of this subregulation:

- (a) on that day, if at least one of his or her parents is an eligible non-citizen then or had been an eligible non-citizen before then; or
- (b) at the time after that day when at least one of the non-citizen's parents first becomes an eligible non-citizen, if none of the non-citizen's parents was an eligible non-citizen before that time.

## Schedule 5—Technical amendments

### *Migration Regulations 1994*

**1 Regulation 1.03 (definition of *approved appointment*)**

Repeal the definition.

**2 Regulation 1.03 (definition of *CNI number*)**

Omit “CrimTrac”, substitute “the Australian Crime Commission”.

**3 Regulation 1.03 (definition of *CrimTrac*)**

Repeal the definition.

**4 Regulation 1.03 (definition of *working age parent*)**

Repeal the definition (including the notes).

**5 Subparagraph 1.04A(2)(a)(ii)**

Omit “an Foreign”, substitute “a Foreign”.

**6 Paragraphs 1.08(b) and (c)**

Repeal the paragraphs.

**7 Subparagraph 1.15AA(1)(b)(iii)**

Repeal the subparagraph, substitute:

- (iii) the impairment has, under the Impairment Tables (within the meaning of subsection 23(1) of the *Social Security Act 1991*), the rating that is specified in the certificate; and

**8 Subregulation 1.15AA(4)**

Repeal the subregulation.

**9 Subparagraphs 2.06AAB(2)(a)(i) and (ii)**

Omit “subclause”, substitute “subitem”.

**10 Regulation 2.12A**

Repeal the regulation.

**11 Subregulation 2.16(2D)**

Omit “subregulations (2) to (2C)”, substitute “subregulations (2) to (2B)”.

**12 Subparagraph 2.55(1)(b)(i)**

Omit “501BA, or”, substitute “501BA or”.

**13 Paragraphs 2.55(3)(d), (3A)(d) and (3A)(f)**

Omit “e-mail” (wherever occurring), substitute “email”.

**14 Subregulation 2.55(8)**

Omit “e-mail”, substitute “email”.

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**15 Subregulation 2.85(3)**

Omit “accomodation”, substitute “accommodation”.

**16 Subdivision 4.2.2 (heading)**

Repeal the heading.

**17 Regulation 5.34F (heading)**

Repeal the heading, substitute:

**5.34F Disclosure of information to police and Australian Crime Commission**

**18 Paragraph 5.34F(2)(c)**

Repeal the paragraph, substitute:

(c) the Australian Crime Commission.

**19 Subitem 1404(3) of Schedule 1 (note 2)**

Omit “paragraph 1403(3)(f)”, substitute “paragraph 1403(3)(f)”.

**20 Before Subdivision 040.51 of Schedule 2**

Insert:

**040.5—When visa is in effect**

**21 Subdivision 040.51 of Schedule 2 (heading)**

Repeal the heading.

**22 Before Subdivision 041.51 of Schedule 2**

Insert:

**041.5—When visa is in effect**

**23 Subdivision 041.51 of Schedule 2 (heading)**

Repeal the heading.

**24 Paragraph 050.212(4A)(b) of Schedule 2**

Omit “Order 16 Rule 12 of the *High Court Rules*”, substitute “rule 21.09.1 of the *High Court Rules 2004*”.

**25 Subparagraph 050.511(b)(vii) of Schedule 2**

Omit “or” (first occurring).

**26 Division 151.1 of Schedule 2 (heading)**

Repeal the heading, substitute:

## **151.1—Interpretation**

### **151.111**

#### **27 Clause 602.313 of Schedule 2**

Omit “*Financial hardship*”.

#### **28 Division 802.1 of Schedule 2 (heading)**

Repeal the heading, substitute:

## **802.1—Interpretation**

### **802.111**

#### **29 Part 6D.7 of Schedule 6D (table item 6D72, column headed “At the time of invitation to apply for the visa, the applicant had ...”, paragraph (b))**

Omit “qualification”, substitute “qualification”.

#### **30 Schedules 11 and 12**

Repeal the Schedules.

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## Schedule 6—Family violence

### *Migration Regulations 1994*

#### **1 After regulation 1.20KB**

Insert:

#### **1.20KC Limitation on approval of sponsorship—prospective marriage and partner visas**

*Applications for which visas?*

- (1) This regulation applies in relation to the approval of a sponsorship for one or more applications for any of the following visas:
  - (a) a Prospective Marriage (Temporary) (Class TO) visa;
  - (b) a Partner (Provisional) (Class UF) visa;
  - (c) a Partner (Temporary) (Class UK) visa.

*Relevant offences*

- (2) This regulation applies in relation to an offence (a **relevant offence**) against a law of the Commonwealth, a State, a Territory or a foreign country, involving any of the following matters:
  - (a) violence against a person, including (without limitation) murder, assault, sexual assault and the threat of violence;
  - (b) the harassment, molestation, intimidation or stalking of a person;
  - (c) the breach of an apprehended violence order, or a similar order, issued under a law of a State, a Territory or a foreign country;
  - (d) firearms or other dangerous weapons;
  - (e) people smuggling;
  - (f) human trafficking, slavery or slavery-like practices (including forced marriage), kidnapping or unlawful confinement;
  - (g) attempting to commit an offence involving any of the matters mentioned in paragraphs (a) to (f), or paragraph (h);
  - (h) aiding, abetting, counselling or procuring the commission of an offence involving any of the matters mentioned in paragraphs (a) to (g).

*Sponsor has significant criminal record in relation to relevant offence*

- (3) The Minister must refuse to approve the sponsorship of each applicant for the visa if:
  - (a) the sponsor has been convicted of a relevant offence or relevant offences; and
  - (b) the sponsor has a significant criminal record in relation to the relevant offence or relevant offences (see regulation 1.20KD).
- (4) Despite subregulation (3), the Minister may decide to approve the sponsorship if the Minister considers it reasonable to do so, having regard to matters including the following (without limitation):
  - (a) the length of time since the sponsor completed the sentence (or sentences) for the relevant offence or relevant offences;

- (b) the best interests of the following:
  - (i) any children of the sponsor;
  - (ii) any children of the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned;
- (c) the length of the relationship between the sponsor and the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned.

*Police check*

- (5) To determine whether a sponsor has been convicted of a relevant offence, and whether the sponsor has a significant criminal record in relation to a relevant offence, the Minister may, on one or more occasions, request the sponsor to provide a police check relating to the sponsor from any, or all, of the following:
  - (a) a jurisdiction in Australia specified in the request;
  - (b) a foreign country, specified in the request, in which the sponsor has lived for a period, or a total period, of at least 12 months since the latest of the following dates:
    - (i) 10 years before the date of the request;
    - (ii) the date the sponsor turned 16.
- (6) In addition to subregulation (3), the Minister may refuse to approve the sponsorship of each applicant for the visa if:
  - (a) the Minister has requested a police check from the sponsor under subregulation (5); and
  - (b) the sponsor does not provide the police check within a reasonable time.

**1.20KD Prospective marriage and partner visas—definition of *significant criminal record***

- (1) For the purposes of regulation 1.20KC, a sponsor has a ***significant criminal record*** in relation to a relevant offence or relevant offences if, for that offence or those offences:
  - (a) the sponsor has been sentenced to death; or
  - (b) the sponsor has been sentenced to imprisonment for life; or
  - (c) the sponsor has been sentenced to a term of imprisonment of 12 months or more; or
  - (d) the sponsor has been sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more.

*Concurrent sentences*

- (2) For the purposes of subregulation (1), if a sponsor has been sentenced to 2 or more terms of imprisonment to be served concurrently (whether in whole or in part), the whole of each term is to be counted in working out the total of the terms.

Example: A sponsor is sentenced to 2 terms of 3 months imprisonment for 2 offences, to be served concurrently. For the purposes of subregulation (1), the total of those terms is 6 months.



*Periodic detention*

- (3) For the purposes of subregulation (1), if a sponsor has been sentenced to periodic detention, the sponsor's term of imprisonment is taken to be equal to the number of days the sponsor is required under that sentence to spend in detention.

*Residential schemes or programs*

- (4) For the purposes of subregulation (1), if a sponsor has been convicted of a relevant offence, and the court orders the sponsor to participate in:
- (a) a residential drug rehabilitation scheme; or
  - (b) a residential program for the mentally ill;
- the sponsor is taken to have been sentenced to a term of imprisonment equal to the number of days the sponsor is required to participate in the scheme or program.

*Pardons etc.*

- (5) For the purposes of subregulation (1), a sentence imposed on a sponsor for a relevant offence, or the conviction of a sponsor for a relevant offence, is to be disregarded if:
- (a) the conviction concerned has been quashed or otherwise nullified; or
  - (b) both:
    - (i) the sponsor has been pardoned in relation to the conviction concerned; and
    - (ii) the effect of that pardon is that the sponsor is taken never to have been convicted of the offence.

**2 Clause 300.222 of Schedule 2**

Before "The sponsorship", insert "(1)".

**3 Clause 300.222 of Schedule 2 (note)**

Omit "and 1.20KB", substitute ", 1.20KB and 1.20KC".

**4 At the end of clause 300.222 of Schedule 2**

Add:

- (2) The prospective spouse has consented to the disclosure by the Department, to each applicant sponsored by the prospective spouse, of any conviction of the prospective spouse for a relevant offence (within the meaning of subregulation 1.20KC(2)).

Note: The prospective spouse may be asked to consent to such disclosure on the approved form required to be completed by the prospective spouse in relation to the visa application.

- (3) For the purposes of subclause (2), the conviction of the prospective spouse for a relevant offence is to be disregarded if:
- (a) the conviction has been quashed or otherwise nullified; or
  - (b) both:
    - (i) the prospective spouse has been pardoned in relation to the conviction; and

- (ii) the effect of that pardon is that the prospective spouse is taken never to have been convicted of the offence.

#### **5 Clause 309.222 of Schedule 2**

Before “The sponsorship”, insert “(1)”.

#### **6 Clause 309.222 of Schedule 2 (note)**

Omit “and 1.20KB”, substitute “, 1.20KB and 1.20KC”.

#### **7 At the end of clause 309.222 of Schedule 2**

Add:

- (2) The sponsor has consented to the disclosure by the Department, to each applicant included in the sponsorship, of any conviction of the sponsor for a relevant offence (within the meaning of subregulation 1.20KC(2)).

Note: The sponsor may be asked to consent to such disclosure on the approved form required to be completed by the sponsor in relation to the visa application.

- (3) For the purposes of subclause (2), the conviction of the sponsor for a relevant offence is to be disregarded if:
  - (a) the conviction has been quashed or otherwise nullified; or
  - (b) both:
    - (i) the sponsor has been pardoned in relation to the conviction; and
    - (ii) the effect of that pardon is that the sponsor is taken never to have been convicted of the offence.

#### **8 Subclause 820.221(4) of Schedule 2**

Repeal the subclause, substitute:

- (4) If paragraph 820.211(2)(c), (5)(f) or (6)(c) requires the applicant to be sponsored:
  - (a) the sponsorship has been approved by the Minister and is still in force; and
  - (b) the sponsor has consented to the disclosure by the Department, to each applicant included in the sponsorship, of any conviction of the sponsor for a relevant offence (within the meaning of subregulation 1.20KC(2)).

Note 1: Regulations 1.20J, 1.20KA, 1.20KB and 1.20KC limit the Minister’s discretion to approve sponsorships.

Note 2: The sponsor may be asked to consent to the disclosure mentioned in paragraph (b) on the approved form required to be completed by the sponsor in relation to the visa application.

- (5) For the purposes of subclause (4), the conviction of the sponsor for a relevant offence is to be disregarded if:
  - (a) the conviction has been quashed or otherwise nullified; or
  - (b) both:
    - (i) the sponsor has been pardoned in relation to the conviction; and
    - (ii) the effect of that pardon is that the sponsor is taken never to have been convicted of the offence.

#### **9 Clause 820.221A of Schedule 2 (note)**

Omit “and 1.20KB”, substitute “, 1.20KB and 1.20KC”.

## **Schedule 7—Application and transitional provisions**

### *Australian Citizenship Regulations 2007*

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

Insert:

#### **31 Amendments made by the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016***

- (1) The amendments of these Regulations made by Schedule 2 to the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* apply in relation to applications made under a provision of the Act on or after 10 September 2016.
- (2) The amendments of these Regulations made by Schedule 3 to the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* apply in relation to applications made under a provision of the Act on or after 10 September 2016.

### *Migration Regulations 1994*

#### **2 In the appropriate position in Schedule 13**

Insert:

## **Part 55—Amendments made by the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016***

#### **5501 Operation of Schedule 1**

The amendments of these Regulations made by Schedule 1 to the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* apply to the making of applications for Return (Residence) (Class BB) visas on or after 10 September 2016.

#### **5502 Operation of Schedules 2 and 3**

The amendments of these Regulations made by Schedules 2 and 3 to the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* apply in relation to payment of fees and charges on or after 10 September 2016.

#### **5503 Operation of Schedule 4**

The amendment of these Regulations made by Schedule 4 to the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* applies to non-citizens born before, on or after 10 September 2016.

### 5504 Operation of Schedule 6

The amendments of these Regulations made by Schedule 6 to the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* apply in relation to an application for any of the following visas made on or after 18 November 2016:

- (a) a Prospective Marriage (Temporary) (Class TO) visa;
- (b) a Partner (Provisional) (Class UF) visa;
- (c) a Partner (Temporary) (Class UK) visa.

Note: Schedule 6 to the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* commences on 18 November 2016.