Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018

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 regulations.

Dated 25 October 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

David Coleman
Minister for Immigration, Citizenship and Multicultural Affairs

Contents

1 Name

This instrument is the *Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018*.

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	17 November 2018.	17 November 2018

> Note: This table relates only to the provisions of this instrument as originally made.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 *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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Amendments

Migration Regulations 1994

1 Subregulation 2.12(1)

Omit "(1)".

2 After paragraph 2.12(1)(p)

Insert:

; (q) Retirement (Temporary) (Class TQ);

(r) Investor Retirement (Class UY).

3 After paragraph 1124(3)(a) of Schedule 1

Insert:

(aaa) An applicant who is seeking to satisfy the primary criteria set out in clause 103.214 of Schedule 2 for a Subclass 103 (Parent) visa must:

(i) be in Australia, but not in immigration clearance; and

(ii) meet the requirements of subitem (3A).

(aa) An applicant who is seeking to satisfy the secondary criteria set out in clause 103.313 for a Subclass 103 (Parent) visa on the basis that the applicant is the spouse or de facto partner of an applicant mentioned in paragraph (aaa) must:

(i) be in Australia, but not in immigration clearance; and

(ii) meet the requirements of subitem (3A).

4 After subitem 1124(3) of Schedule 1

Insert:

(3A) An applicant meets the requirements of this subitem if:

(a) on 8 May 2018:

(i) the applicant held a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; or

(ii) the last substantive visa held by the applicant was such a visa; and

(b) during the period commencing on 8 May 2018 and ending on the day the application for the parent visa is made, the applicant has not held any substantive visa other than a visa mentioned in subparagraph (a)(i).

5 After paragraph 1130(3)(a) of Schedule 1

Insert:

(b) An applicant who is seeking to satisfy the primary criteria set out in clause 143.214 of Schedule 2 for a Subclass 143 (Contributory Parent) visa must:

(i) be in Australia, but not in immigration clearance; and

(ii) meet the requirements of subitem (3A).

(ba) An applicant who is seeking to satisfy the secondary criteria set out in clause 143.313 for a Subclass 143 (Contributory Parent) visa on the basis that the applicant is the spouse or de facto partner of an applicant mentioned in paragraph (b) must:

(i) be in Australia, but not in immigration clearance; and

(ii) meet the requirements of subitem (3A).

6 After subitem 1130(3) of Schedule 1

Insert:

(3A) An applicant meets the requirements of this subitem if:

(a) on 8 May 2018:

(i) the applicant held a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; or

(ii) the last substantive visa held by the applicant was such a visa; and

(b) during the period commencing on 8 May 2018 and ending on the day the application for the parent visa is made, the applicant has not held any substantive visa other than a visa mentioned in subparagraph (a)(i).

7 Paragraph 1217(3)(d) of Schedule 1

Omit "1 July 2005", substitute "17 November 2018".

8 Subparagraph 1217(3)(d)(ii) of Schedule 1

Omit "410 visa; or", substitute "410 visa.".

9 Subparagraph 1217(3)(d)(iii) of Schedule 1

Repeal the subparagraph.

10 After subclause 010.611(3D) of Schedule 2

Insert:

(3E) In the case of a visa granted to a person:

(a) who meets the requirements of subclause 010.211(2) or (3) on the basis of making a valid application for a Subclass 103 (Parent) visa or a Subclass 143 (Contributory Parent) visa; and

(b) who is seeking to meet the requirements of subclause 103.214(2), 103.313(2), 143.214(2) or 143.313(2);

the following conditions:

(c) condition 8104—but only if the condition applied to the most recent substantive visa held by the person;

(d) condition 8303—but only if the condition applied to the most recent substantive visa held by the person;

(e) condition 8501.

11 After subclause 020.611(4B) of Schedule 2

Insert:

(4C) In the case of a visa granted to a person:

(a) who meets the requirements of subclause 020.212(2) or (3) on the basis of making a valid application for a Subclass 103 (Parent) visa or a Subclass 143 (Contributory Parent) visa; and

(b) who is seeking to meet the requirements of subclause 103.214(2), 103.313(2), 143.214(2) or 143.313(2);

the following conditions:

(c) condition 8104—but only if the condition applied to the most recent substantive visa held by the person;

(d) condition 8303—but only if the condition applied to the most recent substantive visa held by the person;

(e) condition 8501.

12 Clause 030.611 of Schedule 2

Repeal the clause, substitute:

030.611

In the case of a visa granted to an applicant who meets the requirements of subclause 030.212(3):

(a) if condition 8303 applies to the Bridging C (Class WC) visa held by the applicant—condition 8303; or

(b) if condition 8501 applies to the Bridging C (Class WC) visa held by the applicant—condition 8501; or

(c) in any other case—nil.

13 Clause 030.613 of Schedule 2

Before "In", insert "(1)".

14 At the end of clause 030.613 of Schedule 2

Add:

(2) In the case of a visa granted to a person:

(a) on the basis of making a valid application for a Subclass 103 (Parent) visa or a Subclass 143 (Contributory Parent) visa; and

(b) who is seeking to meet the requirements of subclause 103.214(2), 103.313(2), 143.214(2) or 143.313(2);

the following conditions:

(c) conditions 8101 and 8501;

(d) condition 8303—but only if the condition applied to the most recent substantive visa held by the person.

15 At the end of Subdivision 050.6 of Schedule 2

Add:

050.620

In addition to any other condition imposed by another provision of this Division, if:

(a) the person to whom the visa would be granted is an applicant for a Subclass 103 (Parent) visa or a Subclass 143 (Contributory Parent) visa; and

(b) the person is seeking to meet the requirements of subclause 103.214(2), 103.313(2), 143.214(2) or 143.313(2);

the following apply:

(c) condition 8303 must be imposed if that condition applied to the last substantive visa held by the applicant;

(d) condition 8501 may be imposed.

16 Clause 103.211 of Schedule 2

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

17 At the end of clause 103.211 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.214(2).

18 At the end of clause 103.212 of Schedule 2

Add:

(5) This clause does not apply if the applicant meets the requirements of subclause 103.214(2).

19 Clause 103.213 of Schedule 2

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

20 At the end of clause 103.213 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.214(2).

21 At the end of Subdivision 103.21 of Schedule 2

Add:

103.214

(1) The applicant meets the requirements of subclause (2).

(2) An applicant meets the requirements of this subclause if:
    (a) on 8 May 2018:
        (i) the applicant held a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; or
        (ii) the last substantive visa held by the applicant was a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; and
    (b) during the period commencing on 8 May 2018 and ending on the day the application for the Subclass 103 (Parent) visa is made, the applicant has not held any substantive visa other than a visa mentioned in subparagraph (a)(i); and
    (c) the applicant was in Australia, but not in immigration clearance, when the application for the Subclass 103 (Parent) visa was made.

(3) This clause does not apply if the applicant satisfies the criteria in clauses 103.211, 103.212 and 103.213.

22 Clause 103.221 of Schedule 2

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

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23 At the end of clause 103.221 of Schedule 2

Add:

 (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.214(2).

24 Clause 103.222 of Schedule 2

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

25 At the end of clause 103.222 of Schedule 2 (after the note)

Add:

 (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.214(2).

26 Clause 103.226 of Schedule 2

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

27 At the end of clause 103.226 of Schedule 2

Add:

 (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.214(2).

28 Clause 103.311 of Schedule 2

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

29 At the end of clause 103.311 of Schedule 2

Add:

 (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.313(2).

30 Clause 103.312 of Schedule 2

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

31 At the end of clause 103.312 of Schedule 2

Add:

 (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.313(2).

32 At the end of Subdivision 103.31 of Schedule 2

Add:

103.313

 (1) The applicant meets the requirements of subclause (2).

 (2) An applicant meets the requirements of this subclause if:

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> (a) the applicant is a member of the family unit of, and makes a combined application with, a person who has met the requirements of subclause 103.214(2); and
>
> (b) on 8 May 2018:
>> (i) the applicant held a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; or
>> (ii) the last substantive visa held by the applicant was a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; and
>
> (c) during the period commencing on 8 May 2018 and ending on the day the application for the Subclass 103 (Parent) visa is made, the applicant has not held any substantive visa other than a visa mentioned in subparagraph (b)(i); and
>
> (d) the applicant was in Australia, but not in immigration clearance, when the application for the Subclass 103 (Parent) visa was made.

> (3) This clause does not apply if the applicant satisfies the criteria in clauses 103.311 and 103.312.

33 Clause 103.322 of Schedule 2

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

34 At the end of clause 103.322 of Schedule 2

Add:

> (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.313(2).

35 Clause 103.325 of Schedule 2

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

36 At the end of clause 103.325 of Schedule 2

Add:

> (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 103.313(2).

37 Clause 103.411 of Schedule 2

Omit "The applicant", substitute "(1) Unless subclause (2) applies, the applicant".

38 At the end of clause 103.411 of Schedule 2 (before the note)

Add:

> (2) If the applicant:
>> (a) meets the requirements of subclause 103.214(2); or
>> (b) meets the requirements of subclause 103.313(2) on the basis that the applicant is a family member of the applicant mentioned in paragraph (a);
>
> the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

39 Clause 103.611 of Schedule 2

Omit "First", substitute "If the applicant is outside Australia when the visa is granted, first".

40 At the end of clause 143.211 of Schedule 2

Add:

(3) Subclauses (1) and (2) do not apply if the applicant meets the requirements of subclause 143.214(2).

41 At the end of clause 143.212 of Schedule 2

Add:

(5) This clause does not apply if the applicant meets the requirements of subclause 143.214(2).

42 Clause 143.213 of Schedule 2

Before "For", insert "(1)".

43 At the end of clause 143.213 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

44 At the end of Subdivision 143.21 of Schedule 2

Add:

143.214

(1) The applicant meets the requirements of subclause (2).

(2) An applicant meets the requirements of this subclause if:
  (a) on 8 May 2018:
    (i) the applicant held a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; or
    (ii) the last substantive visa held by the applicant since last entering Australia was a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; and
  (b) during the period commencing on 8 May 2018 and ending on the day the application for the Subclass 143 (Contributory Parent) visa is made, the applicant has not held any substantive visa other than a visa mentioned in subparagraph (a)(i); and
  (c) the applicant was in Australia, but not in immigration clearance, when the application for the Subclass 143 (Contributory Parent) visa was made.

(3) Subclause (1) does not apply if the applicant satisfies the criteria in clauses 143.211, 143.212 and 143.213.

45 Clause 143.221 of Schedule 2

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

46 At the end of clause 143.221 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

47 Clause 143.222A of Schedule 2

Before "If", insert "(1)".

48 At the end of clause 143.222A of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

49 Clause 143.224 of Schedule 2

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

50 At the end of clause 143.224 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

51 Clause 143.225 of Schedule 2

Before "If", insert "(1)".

52 At the end of clause 143.225 of Schedule 2 (after the table)

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

53 After clause 143.225 of Schedule 2

Insert:

143.225AA

If the applicant meets the requirements of subclause 143.214(2), the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010, 4019, 4020 and 4021.

54 Clause 143.225A of Schedule 2

Before "Each", insert "(1)".

55 At the end of clause 143.225A of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

56 After clause 143.225A of Schedule 2

Insert:

143.225B

If the applicant meets the requirements of subclause 143.214(2), each member of the family unit of the applicant who is an applicant for a Subclass 143 (Contributory Parent) visa is a person who satisfies:

   (a) public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010, 4019 and 4020; and

   (b) special return criteria 5001, 5002 and 5010.

57 Clause 143.228 of Schedule 2

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

58 At the end of clause 143.228 of Schedule 2

Add:

  (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

59 Clause 143.229 of Schedule 2

Before "If", insert "(1)".

60 At the end of clause 143.229 of Schedule 2 (after the table)

Add:

  (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.214(2).

61 Clause 143.311 of Schedule 2

Before "Either", insert "(1)".

62 At the end of clause 143.311 of Schedule 2

Add:

  (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.313(2).

63 Clause 143.312 of Schedule 2

Before "One", insert "(1)".

64 At the end of clause 143.312 of Schedule 2

Add:

  (2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.313(2).

65 At the end of Subdivision 143.3 of Schedule 2

Add:

143.313

(1) The applicant meets the requirements of subclause (2).

(2) An applicant meets the requirements of this subclause if:

   (a) the applicant is a member of the family unit of, and makes a combined application with, a person who has met the requirements of subclause 143.214(2); and

   (b) on 8 May 2018:

     (i) the applicant held a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; or

     (ii) the last substantive visa held by the applicant was a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa; and

   (c) during the period commencing on 8 May 2018 and ending on the day the application for the Subclass 143 (Contributory Parent) visa is made, the applicant has not held any substantive visa other than a visa mentioned in subparagraph (b)(i); and

   (d) the applicant was in Australia, but not in immigration clearance, when the application for the Subclass 143 (Contributory Parent) visa was made.

(3) Subclause (1) does not apply if the applicant satisfies the criteria in clauses 143.311 and 143.312.

66 Clause 143.322 of Schedule 2

Before "One", insert "(1)".

67 At the end of clause 143.322 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.313(2).

68 Clause 143.323 of Schedule 2

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

69 At the end of clause 143.323 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.313(2).

70 Clause 143.324 of Schedule 2

Before "If", insert "(1)".

71 At the end of clause 143.324 of Schedule 2 (after the table)

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.313(2).

72 After clause 143.324 of Schedule 2

Insert:

143.324A

If the applicant meets the requirements of subclause 143.313(2), the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010, 4019, 4020 and 4021.

73 Clause 143.327 of Schedule 2

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

74 At the end of clause 143.327 of Schedule 2

Add:

(2) Subclause (1) does not apply if the applicant meets the requirements of subclause 143.313(2).

75 Clause 143.411 of Schedule 2

Before "If", insert "(1)".

76 At the end of clause 143.411 of Schedule 2

Add:

(2) If the applicant:
    (a) meets the requirements of subclause 143.214(2); or
    (b) meets the requirements of subclause 143.313(2) on the basis that the applicant is a family member of the applicant mentioned in paragraph (a);
the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

77 In the appropriate position in Schedule 13

Insert:

Part 78—Amendments made by the Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018

7801 Operation of Schedule 1

The amendments of these Regulations made by items 1 to 76 of Schedule 1 to the *Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018* apply in relation to visa applications made on or after 17 November 2018.