



## **Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 31 March 2022

David Hurley  
Governor-General

By His Excellency's Command

Karen Andrews  
Minister for Home Affairs

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## 1 Name

This instrument is the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022*.

## 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.	6 April 2022
2. Schedule 1, Part 1	1 July 2022.	1 July 2022
3. Schedule 1, Part 2	A single time to be fixed by the Minister by notifiable instrument.  A notifiable instrument must not specify a time that occurs before the commencement of the provisions covered by table item 2.  However, if the provisions do not commence within the period of 6 months beginning on the day after this instrument is registered, they commence on the day after the end of that period.	6 October 2022

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

### Part 1—Subclass 500 (Student) visas

#### Division 1—Public interest criterion and visa conditions

#### *Migration Regulations 1994*

##### 1 Regulation 1.03

Insert:

***critical technology*** means:

- (a) technology of a kind specified for the purposes of this definition by the Minister under subregulation 1.15Q(2); or
- (b) property of every description (whether tangible or intangible) that is:
  - (i) part of; or
  - (ii) a result of; or
  - (iii) used for the purposes of researching, testing, developing or manufacturing;

any technology of a kind specified for the purposes of this definition by the Minister under subregulation 1.15Q(2).

***unwanted transfer of critical technology*** has the meaning given by subregulation 1.15Q(1).

##### 2 At the end of Division 1.2 of Part 1

Add:

##### 1.15Q Unwanted transfer of critical technology

- (1) An ***unwanted transfer of critical technology*** by a person is any direct or indirect:
  - (a) transfer of critical technology; or
  - (b) communication of information about critical technology;by the person that would:
  - (c) harm or prejudice the security or defence of Australia, including the operations, capabilities or technologies of, or methods or sources used by, domestic intelligence agencies (within the meaning of Part 5.6 of the *Criminal Code*) or foreign intelligence agencies (within the meaning of the *Criminal Code*); or
  - (d) harm or prejudice the health and safety of the Australian public or a section of the Australian public; or
  - (e) interfere with or prejudice the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth; or
  - (f) harm or prejudice Australia's international relations:
    - (i) in relation to information that was communicated in confidence by, or on behalf of, the government of a foreign country, an authority of the government of a foreign country or an international organisation; or

- (ii) by enabling critical technology to be used in a way that is contrary to Australia's international obligations or commitments; or
- (iii) by leading to a reaction by a foreign country that damages Australia's interests or relations with the foreign country or with a particular region.

(2) The Minister may, by legislative instrument, specify kinds of technology for the purposes of the definition of *critical technology* in regulation 1.03.

### **3 At the end of clause 500.217 of Schedule 2**

Add:

(6) If the applicant's course of study or intended course of study is a postgraduate research course, the applicant satisfies public interest criterion 4003B.

### **4 At the end of clause 500.317 of Schedule 2**

Add:

- (6) If:
- (a) the applicant is a member of the family unit of a person who holds a Subclass 500 (Student) visa, having satisfied the primary criteria for that visa; and
  - (b) the person's course of study or intended course of study is a postgraduate research course;
- the applicant satisfies public interest criterion 4003B.

### **5 After paragraph 500.611(1)(a) of Schedule 2**

Insert:

- (aa) if the applicant intends to undertake a higher education course or a postgraduate research course, condition 8204A;
- (ab) if the applicant intends to undertake a course of study other than a higher education course or a postgraduate research course, condition 8204B;

### **6 Paragraph 500.612(1)(a) of Schedule 2**

After "8104,", insert "8204B,".

### **7 After clause 4003A of Schedule 4**

Insert:

4003B The Minister has not determined that there is an unreasonable risk of an unwanted transfer of critical technology by the applicant.

### **8 After clause 8204 of Schedule 8**

Insert:

8204A The holder must not change the holder's course of study, or thesis or research topic, unless:

- (a) the Minister is satisfied that there is not an unreasonable risk of an unwanted transfer of critical technology by the holder; and
- (b) the Minister has approved the change in writing.

**Schedule 1** Amendments

**Part 1** Subclass 500 (Student) visas

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- 8204B The holder must not undertake or change a course of study or research, or thesis or research topic, for:
- (a) a graduate certificate, a graduate diploma, a master's degree or a doctorate; or
  - (b) any bridging course required as a prerequisite to a course of study or research for a master's degree or a doctorate;
- unless:
- (c) the Minister is satisfied that there is not an unreasonable risk of an unwanted transfer of critical technology by the holder; and
  - (d) the Minister has approved in writing the holder undertaking or changing the course of study or research, or thesis or research topic.

**Division 2—Other amendments**

***Migration Regulations 1994***

**9 At the end of subregulation 4.02(4)**

Add:

- ; (u) a decision not to approve a change of a visa holder's course of study, or thesis or research topic, for the purposes of condition 8204A;
- (v) a decision not to approve a visa holder undertaking or changing a course of study or research, or thesis or research topic, for the purposes of condition 8204B.

**10 At the end of subregulation 4.02(5)**

Add:

- ; (t) in the case of a decision to which paragraph (4)(u) or (v) applies—the visa holder.

**11 In the appropriate position in Schedule 13**

Insert:

**Part 108—Amendments made by the Migration Amendment  
(Protecting Australia's Critical Technology)  
Regulations 2022**

**10801 Operation of Part 1 of Schedule 1 (Public interest criterion and visa conditions for Subclass 500 (Student) visas)**

The amendments made by Division 1 of Part 1 of Schedule 1 to the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022* apply in relation to any application for a visa made after the commencement of that Part.



## **Part 2—Public interest criterion and visa cancellation**

### **Division 1—Public interest criterion**

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

**12 Subparagraphs 2.73AA(3D)(b)(ii) and 2.73C(7)(b)(ii)**

After “4003”, insert “, 4003B”.

**13 Subparagraphs 5.37A(8)(b)(ii) and (iii)**

After “4003”, insert “, 4003B”.

**14 Subclauses 186.213(1), (3) and (6) of Schedule 2**

After “4003”, insert “, 4003B”.

**15 Subclause 186.313(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**16 Subclauses 187.213(1), (3) and (6) of Schedule 2**

After “4003”, insert “, 4003B”.

**17 Subclause 187.313(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**18 Subclauses 189.211(1), (3) and (6) of Schedule 2**

After “4003”, insert “, 4003B”.

**19 Subclause 189.312(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**20 Subclauses 191.211(1) and (3) of Schedule 2**

After “4003”, insert “, 4003B”.

**21 Paragraph 191.211(6)(a) of Schedule 2**

After “4003”, insert “, 4003B”.

**22 Subclause 191.312(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**23 Subclause 400.215(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**24 Subclause 400.315(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**25 Subclause 407.219A(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**26 Subclause 407.317(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**27 Subclause 408.216(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**28 Subclause 408.317(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**29 Paragraphs 476.222(a) and 476.224(d) of Schedule 2**

After “4003”, insert “, 4003B”.

**30 Paragraph 476.322(a) of Schedule 2**

After “4003”, insert “, 4003B”.

**31 Subclause 482.217(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**32 Subclause 482.317(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**33 Subclauses 485.216(1) and (3) of Schedule 2**

After “4003”, insert “, 4003B”.

**34 Subclause 485.313(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**35 Subclauses 494.211(1), (3) and (6) of Schedule 2**

After “4003”, insert “, 4003B”.

**36 Subclause 494.312(1) of Schedule 2**

After “4003”, insert “, 4003B”.

**37 Paragraphs 858.221(a) and 858.223(1)(a) and (2)(a) of Schedule 2**

After “4003”, insert “, 4003B”.

**38 Paragraph 858.322(a) of Schedule 2**

After “4003”, insert “, 4003B”.

**Division 2—Visa cancellation**

***Migration Regulations 1994***

**39 After paragraph 2.43(1)(b)**

Insert:

- (c) that there is an unreasonable risk of an unwanted transfer of critical technology by the holder of the visa;

**40 At the end of paragraph 2.43(2)(a)**

Add:

- (iv) paragraph (1)(c); and

**Division 3—Application and transitional provisions**

***Migration Regulations 1994***

**41 At the end of Part 108 of Schedule 13**

Add:

**10802 Operation of Part 2 of Schedule 1 (public interest criterion and visa cancellation)**

- (1) The amendments made by Division 1 of Part 2 of Schedule 1 to the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022* apply in relation to any application for a visa made after the commencement of that Part.
- (2) The amendments made by Division 2 of Part 2 of Schedule 1 to the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022* apply in relation to any visa granted before, at or after the commencement of that Part.