



Migration Amendment (Resolution of Status Visa Additional Cohort) Regulations 2023

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 13 December 2023

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

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1 Name

This instrument is the *Migration Amendment (Resolution of Status Visa Additional Cohort) Regulations 2023*.

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	The day after this instrument is registered.	20 December 2023

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 2.07AQ(3) (at the end of the table)

Add:

5	The circumstance specified in subregulation (3A) exists for the person	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer
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2 After subregulation 2.07AQ(3)

Insert:

- (3A) The circumstance specified in this subregulation exists for a person if the Minister has issued a certificate stating that, by reason of the High Court's decision in *Love v Commonwealth; Thoms v Commonwealth* (2020) 270 CLR 152:
- (a) if the person is in the migration zone:
 - (i) the person has been released from immigration detention; or
 - (ii) the person has not been taken into immigration detention; or
 - (iii) the person, based on the information known to the Minister at the date of the certificate, will not be taken into immigration detention; or
 - (b) otherwise—the Minister is satisfied, based on the information known to the Minister at the date of the certificate, that the person could not be detained under section 189 of the Act if the person were in the migration zone.

3 Subregulation 2.07AQ(6)

Omit “or 4”, substitute “, 4 or 5”.

4 Before clause 851.221 of Schedule 2

Insert:

851.221A

- (1) For an applicant who was taken to have made an application because the criteria in item 5 of the table in subregulation 2.07AQ(3) were satisfied, the criteria set out in clauses 851.221B and 851.221C are satisfied.
- (2) For any other applicant, the criteria set out in clauses 851.221 to 851.229 are satisfied.

851.221B

The offer of a permanent stay made by the Australian Government to the applicant has not been withdrawn by the Australian Government.

851.221C

The applicant satisfies public interest criterion 4002.