



Migration Amendment Regulations 2009 (No. 15)¹

Select Legislative Instrument 2009 No. 375

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated 14 December 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS EVANS
Minister for Immigration and Citizenship

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2009 (No. 15)*.

2 Commencement

These Regulations commence as follows:

- (a) on 21 December 2009 — regulations 1 to 3 and Schedule 1;
- (b) on 1 January 2010 — regulation 4 and Schedule 2.

3 Amendment of *Migration Regulations 1994*

- (1) Schedule 1 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 1 apply in relation to:
 - (a) a request:
 - (i) made before 21 December 2009; and
 - (ii) on which a decision had not been made before 21 December 2009; and
 - (b) a request made on or after 21 December 2009.

4 Amendment of *Migration Regulations 1994*

- (1) Schedule 2 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 2 apply in relation to an application for a visa made on or after 1 January 2010.

Schedule 1 Amendments relating to refund of second instalment of visa application charge

(regulation 3)

[1] Paragraphs 2.12H (2) (f) to (i)

substitute

- (f) the amount was paid under a provision of Schedule 1 specified in an instrument in writing made by the Minister for this paragraph and:
- (i) the applicant died before commencing a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*; or
 - (ii) the visa was granted, and later cancelled, before the applicant commenced a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*; or
 - (iii) the visa was granted, and ceased to have effect, before the applicant commenced a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*; or
 - (iv) the obligation of the Commonwealth to the applicant under section 4C of the *Immigration (Education) Act 1971* has ceased, by operation of paragraph 4D (1) (a) of that Act, without the applicant receiving any English language tuition in an approved English course provided under that Act.

[2] Subregulation 2.12H (2A)

omit

Paragraph (2) (h)

insert

Subparagraph (2) (f) (iii)

Schedule 2 Amendments relating to skills

(regulation 4)

[1] Schedule 1, after paragraph 1136 (3) (b)

insert

(ba) If the applicant:

- (i) is not seeking to satisfy the criteria for the grant of a Subclass 887 (Skilled — Regional) visa; and
- (ii) has not nominated a skilled occupation specified by the Minister in an instrument in writing for paragraph (bb);

the applicant's skills must have been assessed by the relevant assessing authority as suitable for the applicant's nominated skilled occupation.

(bb) If the applicant:

- (i) is not seeking to satisfy the criteria for the grant of a Subclass 887 (Skilled — Regional) visa; and
- (ii) has nominated a skilled occupation specified by the Minister in an instrument in writing for this paragraph;

the applicant's skills must have been assessed by the relevant assessing authority, on or after 1 January 2010, as suitable for the applicant's nominated skilled occupation.

[2] Schedule 1, after paragraph 1229 (3) (a), including the note

insert

(aa) If the applicant:

- (i) is not seeking to satisfy the criteria for the grant of a Subclass 485 (Skilled — Graduate) visa; and
- (ii) has not nominated a skilled occupation specified by the Minister in an instrument in writing for paragraph (ab);

the applicant's skills must have been assessed by the relevant assessing authority as suitable for the applicant's nominated skilled occupation.

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- (ab) If the applicant:
- (i) is not seeking to satisfy the criteria for the grant of a Subclass 485 (Skilled — Graduate) visa; and
 - (ii) has nominated a skilled occupation specified by the Minister in an instrument in writing for this paragraph;
- the applicant's skills must have been assessed by the relevant assessing authority, on or after 1 January 2010, as suitable for the applicant's nominated skilled occupation.

[3] Schedule 2, clause 175.211

substitute

- 175.211 (1) If the applicant has nominated a skilled occupation which is specified by the Minister in an instrument in writing for this subclause, the applicant has been employed in the skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made.
- (2) If the applicant has not nominated a skilled occupation as described in subclause (1):
- (a) the applicant has been employed in a skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made; or
 - (b) the following requirements are met:
 - (i) the applicant satisfied the Australian study requirement in the period of 6 months ending immediately before the day on which the application was made;
 - (ii) each degree, diploma or trade qualification used to satisfy the Australian study requirement is closely related to the applicant's nominated skilled occupation.

[4] Schedule 2, clause 176.211*substitute*

- 176.211 (1) If the applicant has nominated a skilled occupation which is specified by the Minister in an instrument in writing for this subclause, the applicant has been employed in the skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made.
- (2) If the applicant has not nominated a skilled occupation as described in subclause (1):
- (a) the applicant has been employed in a skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made; or
- (b) the following requirements are met:
- (i) the applicant satisfied the Australian study requirement in the period of 6 months ending immediately before the day on which the application was made;
 - (ii) each degree, diploma or trade qualification used to satisfy the Australian study requirement is closely related to the applicant's nominated skilled occupation.

[5] Schedule 2, clause 475.211*substitute*

- 475.211 (1) If the applicant has nominated a skilled occupation which is specified by the Minister in an instrument in writing for this subclause, the applicant has been employed in the skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made.

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- (2) If the applicant has not nominated a skilled occupation as described in subclause (1):
- (a) the applicant has been employed in a skilled occupation for at least 12 months in the period of 24 months ending immediately before the day on which the application was made; or
 - (b) the following requirements are met:
 - (i) the applicant satisfied the Australian study requirement in the period of 6 months ending immediately before the day on which the application was made;
 - (ii) each degree, diploma or trade qualification used to satisfy the Australian study requirement is closely related to the applicant's nominated skilled occupation.

[6] Schedule 2, clause 885.212

omit

[7] Schedule 2, clause 886.212

omit

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.