

# Migration Amendment Regulations 2002 (No. 4) 2002 No. 129

## EXPLANATORY STATEMENT

### STATUTORY RULES 2002 No. 129

Issued by the Authority of the Minister for Immigration and Multicultural and Indigenous Affairs

*Migration Act 1958*

Migration Amendment Regulations 2002 (No. 4)

Subsection 504(1) of the *Migration Act 1958* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, paragraphs (d) and (e) of the definition of "excised offshore place" in subsection 5(1) of the Act provide that the regulations may prescribe an external Territory and any island that forms part of a State or Territory as an "excised offshore place" (other than the external Territories of Christmas Island, Ashmore and Cartier Islands, and Cocos (Keeling) Islands, which are already defined as excised offshore places).

The purpose of the Regulations is to amend the *Migration Regulations 1994* to prescribe:

- certain islands that form part of Western Australia, Queensland and the Northern Territory; and
- the Coral Sea Islands Territory

as excised offshore places, pursuant to paragraphs (d) and (e) of the definition of "excised offshore place" in subsection 5(1) of the Act. The effect of being an offshore excised place is that persons who are not citizens of Australia who arrive in such places without authority - usually in the form of a visa - cannot make a valid application for a visa.

The Regulations address indications that people smugglers are likely to change the focus of their operations to target landing on islands closer to the Australian mainland. In combating these new threats it is necessary to extend the bar on visa applications by persons who arrive without lawful authority at these offshore places.

Australian citizens and other persons with lawful authority under the Act to be in Australia continue to be able to move about freely in these areas and make any applications permitted by the Act.

In particular, in respect of the Torres Strait Islands, the Act allows inhabitants of the Protected Zone (as established by the Torres Strait Treaty) to move about freely in connection with the performance of their traditional activities. These provisions continue to apply and traditional inhabitants of the Torres Strait are not affected by the inclusion of the Torres Strait Islands in the definition of "excised offshore place".

The Commonwealth will continue to ensure that, while unauthorised arrivals at excised offshore places cannot apply for visas, appropriate arrangements will ensure that Australia continues to fulfil its obligations under the United Nations Convention relating to the Status of Refugees and under other relevant international instruments.

Details of the Regulations are set out in the Attachment.

The Regulations commence on gazettal.

## **ATTACHMENT**

### Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2002 (No. 4)*.

### Regulation 2 - Commencement

This regulation provides that these Regulations commence on gazettal.

### Regulation 3 - Amendment of *Migration Regulations 1994*

Regulation 3 provides that Schedule 1 to these Regulations amends the *Migration Regulations 1994* (the Regulations).

### Schedule 1 - Amendment

#### Item [1] - After regulation 5.15A

This item inserts new regulation 5.15B into Part 5 of the Regulations.

New subregulation 5.15B(1) provides that the Coral Sea Islands Territory is prescribed as an "excised offshore place" for the purposes of paragraph (d) of the definition of "excised offshore place" in subsection 5(1) of the Act.

New subregulation 5.15B(2) provides that the following islands are prescribed as "excised offshore places" for the purposes of paragraph (e) of the definition of "excised offshore place" in subsection 5(1) of the Act:

- all islands that form part of Queensland and are north of latitude 12 degrees south; and
- all islands that form part of Western Australia and north of latitude 23 degrees south; and
- all islands that form part of the Northern Territory and are north of latitude 16 degrees south.

The effect of the above places being prescribed as "excised offshore places" is that persons who are not citizens of Australia who arrive there without authority - usually in the form of a visa - cannot make a valid application for a visa.

The amendments address indications that people smugglers are likely to change the focus of their operations to target landing on islands closer to the Australian mainland. In combating these new threats it is necessary to extend the bar on visa applications by persons who arrive without lawful authority at these offshore places.

Australian citizens and other persons with lawful authority under the Act to be in Australia will continue to be able to move about freely in these areas and make any applications permitted by the Act.

In particular, in respect of the Torres Strait Islands, the Act allows inhabitants of the Protected Zone (as established by the Torres Strait Treaty) to move about freely in connection with the performance of their traditional activities. These provisions will continue to apply and traditional inhabitants of the Torres Strait will not be affected by the inclusion of the Torres Strait Islands in the definition of "excised offshore place".

The Commonwealth will continue to ensure that, while unauthorised arrivals at excised offshore places cannot apply for visas, appropriate arrangements will ensure that Australia continues to fulfil its obligations under the United Nations Convention relating to the Status of Refugees and under other relevant international instruments.

The definition of "excised offshore place" was inserted into the Act, and other amendments were made to the Act, by the *Migration Legislation (Excision from Migration Zone) Act 2001* (Act No. 127 of 2001), which received the Royal Assent and also commenced on 27 September 2001. The amendments had the effect of preventing a non-citizen who enters Australia at a place or entity described in the definition of "excised offshore place" after the relevant "excision time" without a visa from making a valid visa application unless the Minister determines that it is in the public interest that such a person should be able to make a valid visa application.

The Act was part of a package of Acts including the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* and the *Border Protection (Validation and Enforcement Powers) Act 2001*.

The *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* contained, amongst other things, amendments to the Regulations. In particular, new Part 4 of Schedule 1 to the Regulations, containing the Refugee and Humanitarian (Class XB) visa class, was inserted into Schedule 1 to the Regulations, the subclasses within that Class were amended, and new Subclasses 447 (Secondary Movement Offshore Entry (Temporary) and 451 (Secondary Movement Relocation (Temporary) were inserted into Schedule 2 to the Regulations.

The purpose behind the above package of changes was to remove the ability for unauthorised arrivals who land on Australian offshore places from being able to access Australia's comprehensive visa application and review processes.

New regulation 5.15B is therefore related to the above package of amendments.