



Migration Amendment (Entrepreneur Visas and Other Measures) Regulation 2016

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 regulation.

Dated 01 September 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

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1 Name

This is the *Migration Amendment (Entrepreneur Visas and Other Measures) Regulation 2016*.

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	10 September 2016.	10 September 2016

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Migration Regulations 1994

1 Regulation 1.03

Insert:

complying entrepreneur activity: see regulation 5.19E.

2 Regulation 5.19D (note)

Repeal the note.

3 At the end of Division 5.3 of Part 5

Add:

5.19E Complying entrepreneur activity

- (1) An activity that an applicant for a visa is undertaking, or proposing to undertake, is a *complying entrepreneur activity* if all the requirements set out in this regulation are met.

Note: For the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream, the applicant must be undertaking, or proposing to undertake, a complying entrepreneurial activity (see Subdivision 188.28 of Schedule 2).

- (2) The activity:
- (a) relates to an innovative idea that is proposed to lead to:
 - (i) the commercialisation of a product or service in Australia; or
 - (ii) the development of an enterprise or business in Australia; and
 - (b) does not relate to an activity specified, whether individually or by class, in an instrument under subregulation (6).
- (3) All of the following apply:
- (a) funding in relation to the activity is to be provided to any of the following (the *entrepreneurial entity*):
 - (i) the applicant;
 - (ii) a body corporate;
 - (iii) a partnership;
 - (b) the funding is to be provided under one or more legally enforceable agreements in effect between the entrepreneurial entity and one or more entities covered by subregulation (5);
 - (c) if the applicant is not the entrepreneurial entity—the applicant personally held, at the time the agreement or each agreement was entered into, at least a 30% share in the ownership of the entrepreneurial entity;
 - (d) the total amount of the funding provided or to be provided under the agreement or agreements is at least \$200,000;
 - (e) under the agreement or each agreement, at least 10% of the funding is to be paid to the entrepreneurial entity within 12 months of the day the activity starts to be undertaken in Australia;

- (f) there is in place a business plan for the entrepreneurial entity that the Minister considers to be appropriately formulated to lead to a result mentioned in subparagraph (2)(a)(i) or (ii).
- (4) All of the funding provided or to be provided to the entrepreneurial entity under the agreement or agreements is unencumbered and lawfully acquired.
- (5) An entity is covered by this subregulation if the entity is both:
- (a) any of the following:
 - (i) an agency of the Commonwealth, a State or a Territory, or a body established under a law of the Commonwealth, a State or a Territory;
 - (ii) a body corporate;
 - (iii) a partnership;
 - (iv) an unincorporated body;
 - (v) an individual;
 - (vi) the trustee of a trust that has only 1 trustee;
 - (vii) the trustees together of a trust that has more than 1 trustee; and
 - (b) specified, whether by name or by class, in an instrument made under subregulation (6).
- (6) The Minister may, by legislative instrument, specify:
- (a) activities for the purposes of paragraph (2)(b); and
 - (b) entities for the purposes of paragraph (5)(b).

4 Paragraph 1104BA(2)(a) of Schedule 1

Repeal the paragraph, substitute:

- (a) first instalment (payable at the time the application is made):
 - (i) for an applicant seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Entrepreneur stream:

First instalment

Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

- (ii) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	\$2 305
2	Additional applicant charge for an applicant who is at least 18	\$1 155
3	Additional applicant charge for an applicant who is less than 18	\$575

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

5 Subparagraph 1104BA(3)(c)(i) of Schedule 1

Omit "or the Investor stream", substitute " , the Investor stream or the Entrepreneur stream".

6 After subitem 1104BA(5B) of Schedule 1

Insert:

- (5C) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Entrepreneur stream must hold a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream.

7 After subparagraph 1202B(2)(a)(ib) of Schedule 1

Insert:

- (ic) for an applicant:
- (A) seeking to satisfy the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream; or
 - (B) whose application is combined, or sought to be combined, with an application made by that person:

First instalment

Item	Component	Amount
1	Base application charge	\$3 600
2	Additional applicant charge for an applicant who is at least 18	\$1 800
3	Additional applicant charge for an applicant who is less than 18	\$900

8 After subitem 1202B(6C) of Schedule 1

Insert:

- (6D) An applicant seeking to satisfy the primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream must meet the requirements in the table.

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must be nominated by a State or Territory government agency

Note: The invitation to apply for the visa will identify the stream to which the invitation relates.

9 Clause 188.113 of Schedule 2 (notes 2 to 7)

Repeal the notes, substitute:

Note 2: Regulation 1.03 also provides as follows:

- (a) *competent English* has the meaning given by regulation 1.15C;
- (b) *complying entrepreneur activity* is defined in regulation 5.19E;
- (c) *complying investment* is defined in regulation 5.19B;
- (d) *complying significant investment* is defined in regulation 5.19C;
- (e) *complying premium investment* is defined in regulation 5.19D;
- (f) *main business* has the meaning set out in regulation 1.11;
- (g) *member of the family unit* has the meaning set out in regulation 1.12.

Note 3: For the beneficial ownership of an asset, eligible investment or ownership interest, see regulation 1.11A.

10 Division 188.2 of Schedule 2 (note)

After:

If an applicant applies for a Subclass 188 visa in the Premium Investor stream, the criteria in Subdivisions 188.21 and 188.27 are the primary criteria.

insert:

If an applicant applies for a Subclass 188 visa in the Entrepreneur stream, the criteria in Subdivisions 188.21 and 188.28 are the primary criteria.

11 At the end of Division 188.2 of Schedule 2

Add:

188.28—Criteria for Entrepreneur stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 188 visa in the Entrepreneur stream.

188.281

- (1) The applicant was invited, in writing, by the Minister to apply for the visa.
- (2) Either:
 - (a) the applicant had not turned 55 at the time of the invitation to apply for the visa; or
 - (b) the nominating State or Territory government agency has determined that the complying entrepreneur activity the applicant is undertaking or proposing to undertake is, or will be, of exceptional economic benefit to the State or Territory in which the agency is located.
- (3) At the time of invitation to apply for the visa, the applicant had competent English.

188.282

The applicant:

- (a) is undertaking, or proposing to undertake, a complying entrepreneur activity; and
- (b) has a genuine intention to undertake, and continue to undertake, the complying entrepreneur activity in Australia in accordance with the agreement or agreements mentioned in paragraph 5.19E(3)(b) in relation to the activity.

188.283

The nominating State or Territory government agency is satisfied that the net value of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, is sufficient to allow them to settle in Australia.

188.284

- (1) The applicant satisfies public interest criterion 4005.
- (2) Each member of the applicant's family unit who is an applicant for a Subclass 188 visa satisfies public interest criterion 4005.
- (3) Each member of the applicant's family unit who is not an applicant for a Subclass 188 visa satisfies public interest criterion 4005, unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

12 Subclause 188.312(4) of Schedule 2

Omit "or the Premium Investor stream," substitute "the Premium Investor stream or the Entrepreneur stream,".

13 Clause 188.511 of Schedule 2

Omit "or the Premium Investor stream," substitute "the Premium Investor stream or the Entrepreneur stream,".

14 At the end of Division 188.6 of Schedule 2

Add:

188.613

If the applicant is granted a Subclass 188 visa in the Entrepreneur stream, condition 8571 must be imposed.

15 Division 888.2 of Schedule 2 (note)

After:

If an applicant applies for a Subclass 888 visa in the Premium Investor stream, the criteria in Subdivisions 888.21 and 888.25 are the primary criteria for the grant of the visa.

insert:

If an applicant applies for a Subclass 888 visa in the Entrepreneur stream, the criteria in Subdivisions 888.21 and 888.26 are the primary criteria for the grant of the visa.

16 At the end of Division 888.2 of Schedule 2

Add:

888.26—Criteria for Entrepreneur stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 888 visa in the Entrepreneur stream.

888.261

- (1) At the time of application the applicant:
 - (a) holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream and has done so for a continuous period of at least 4 years; and
 - (b) has resided in Australia for at least 2 years of the 4 years.
- (2) The applicant has demonstrated overall a successful record of undertaking, whether alone or by participating in a business, activities of an entrepreneurial nature (disregarding activities specified in an instrument made under subregulation 5.19E(6) for the purposes of paragraph 5.19E(2)(b)):
 - (a) in Australia; and
 - (b) while holding a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream.
- (3) In determining the success of the applicant's record for the purposes of subclause (2), the Minister must have regard to the following (without limitation):
 - (a) the number of Australian citizens and Australian permanent residents that are employed in Australia in relation to the activities;
 - (b) the level and nature of ongoing funding of, or investment in, the activities;
 - (c) the annual turnover of businesses related to the activities.

17 At the end of Schedule 8

Add:

- 8571 The holder must maintain an ongoing relationship with the nominating State or Territory government agency or the government of the State or Territory in which the agency is (or was) located.

Schedule 2—Specialist educational qualifications

Migration Regulations 1994

1 After subregulation 2.26AC(5)

Insert:

(5A) For Schedule 6D, a person meets the requirements for the award of a *specialist educational qualification* if the person satisfies the Minister that:

- (a) the person has met the requirements for the award, by an Australian educational institution, of:
 - (i) a masters degree by research; or
 - (ii) a doctoral degree; and
- (b) the degree included study for at least 2 academic years at the institution in a field of education specified in an instrument under subregulation (5B).

Note: *Academic year* is defined in regulation 1.03.

(5B) The Minister may, by legislative instrument, specify a field or fields of education for the purposes of paragraph (5A)(b).

2 Subregulation 2.26AC(6)

After “In Schedule 6D”, insert “and this regulation”.

3 After Part 6D.7 of Schedule 6D

Insert:

Part 6D.7A—Specialist educational qualifications

Item	At the time of invitation to apply for the visa ...	Number of points
6D7A1	the applicant met the requirements for the award of a specialist educational qualification	5

Schedule 3—Application and transitional provisions

Migration Regulations 1994

1 In the appropriate position in Schedule 13

Insert:

Part 56—Amendments made by the Migration Amendment (Entrepreneur Visas and Other Measures) Regulation 2016

5601 Operation of Schedule 1

The amendments of these Regulations made by Schedule 1 to the *Migration Amendment (Entrepreneur Visas and Other Measures) Regulation 2016* apply in relation to an application for a visa made on or after 10 September 2016.

Note: Schedule 1 to the *Migration Amendment (Entrepreneur Visas and Other Measures) Regulation 2016* commences on 10 September 2016.