

Migration Reform (Transitional Provisions) Regulations (Amendment) 1994 No. 377

EXPLANATORY STATEMENT

STATUTORY RULES 1994 No. 377

Issued by the Authority of the Minister for Immigration and Ethnic Affairs

Migration Reform Act 1992

Migration Reform (Transitional Provisions) Regulations (Amendment)

Section 42 of the Migration Reform Act 1992 ("the Reform Act") provides that the Governor-General may make regulations prescribing matters required or permitted by the Reform Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Reform Act.

In addition, regulations may be made pursuant to the following powers:

- subsection 40(5) of the Reform Act provides that regulations may provide that, from 1 September 1994, visas or entry permits in a specified class of visas or entry permits provided for by, or by regulations under, the Migration Act 1958 as in force immediately before 1 September 1994 ("the old Act") and held by specified persons immediately before that date are to continue in effect as visas in a specified class of visas or entry permits provided for by, or by regulations under, the Migration Act 1958 as in force on and after 1 September 1994 ("the amended Act");
- subsection 40(6) of the Reform Act provides that the regulations may provide that, from 1 September 1994, specified persons are to be taken to have been granted visas in a specified amended Act class; and
- subsection 40(7) of the Reform Act provides that the regulations may provide that, from 1 September 1994, applications made after a specified date, or other specified applications, for visas or entry permits in a specified old Act class are to be taken to be applications for visas in a specified amended Act class.

The purpose of the Regulations is to amend the Migration Reform (Transitional Provisions) Regulations to:

- correct an unintended omission by inserting new regulation 5A to provide that certain persons who, before 1 September 1994, were outside Australia as the holders of permanent visas but had not applied for a resident return visa, are deemed to be holders of transitional (permanent) visas with an additional multiple travel facility;
- correct the unintended omission from regulation 6 of a reference to regulation 5 and to insert a reference to new regulation 5A in regulation 6;
- correct an unintended omission by extending regulation 12 to cover people who hold travelonly visas rather than only holders of entry visas; and
- provide that transitional (permanent) visas taken to be granted under regulations 21 and 22 will have the same travel and entry conditions as other permanent visas granted offshore from 1 September 1994. That is, a condition of the visa is to be that initial entry must be made

by a specified date, and the visa is then to permit the holder to make multiple re-entries for a period of four years from grant.

The Regulations are retrospective to 1 September 1994. The effect of the regulations is entirely beneficial to the applicants concerned as they ensure continuity of visas held and provide for multiple re-entry facilities not previously held. Retrospective commencement of these regulations is not prejudicial to any person and does not, therefore, contravene subsection 48(2) of the Acts Interpretation Act 1901.

Details of the Regulations are set out in the Attachment.

ATTACHMENT

Regulation 1 - Commencement

This regulation provides that these Regulations are taken to have commenced on 1 September 1994. Retrospective commencement of these regulations is not prejudicial to any person and does not, therefore, contravene subsection 48(2) of the Acts Interpretation Act 1901.

Regulation 2 - Amendment

This regulation provides for the Migration Reform (Transitional Provisions) Regulations to be amended as set out in these Regulations.

Regulation 3 - New regulation 5A

Regulation 3 inserts new regulation 5A (Certain visas held by persons outside Australia to continue in effect) to provide that a non-citizen who immediately before 1 September 1994:

- was outside Australia; and
- held a permanent entry visa or permanent travel-only visa (other than a permanent return visa); and
- had not applied for a return visa Class A (code number 154) under the Migration (1989) Regulations or a Class 154 (resident return (Class A)) visa under the Migration (1993) Regulations;

is taken, from 1 September 1994, to be the holder of a transitional (permanent) visa.

The visa will permit the holder to travel to and enter Australia until the date specified for this purpose by the Minister in the holder's original permanent visa. Further, if the holder's first entry on the visa is made on or before this date, the visa will permit the holder to travel to, and enter, Australia for a period of four years from the date of the grant of the original permanent visa. After each entry the person is permitted to remain in Australia indefinitely.

The amendment provides that the transitional (permanent) visas these non-citizens hold will have identical return facilities to permanent visas granted overseas on or after 1 September 1994, following amendments to the Migration Act 1958 and the commencement of the Migration Regulations.

Regulation 4 - Regulation 6 (Visas granted before 1 September 1994 to continue in effect)

This regulation corrects the unintended omission from regulation 6 of a reference to regulation 5 and inserts a reference to new regulation 5A.

Regulation 5 - Regulation 12 (Non-citizens outside Australia with applications not finally determined on 1 September 1994)

This regulation corrects an unintended omission by extending the operation of regulation 12 of the Migration Reform (Transitional Provisions) Regulations to cover people who hold travel-only visas rather than covering only holders of **entry** visas.

Regulation - Regulation 21 (Visa and entry permit applications made before 19 December 1989)

Prior to 1 September 1994, permanent visas granted offshore generally allowed their holders to travel to Australia by a date specified, and thereafter to travel to and enter Australia within three years of first entry. If the holder did not arrive within the initial travel period, the visa ceased to be in effect and could no longer be used to travel to, or enter, Australia.

Subregulation 6.1 amends paragraph 21(3)(a) to insert the words "on 1 or more occasions". The purpose of this amendment is to make it clear that a visa taken to be granted under this regulation is to Provide for multiple travel and entry to Australia for the period of the visa.

Subregulation 6.2 omits subparagraph 21(3)(a)(i) and substitutes a new subparagraph. The new subparagraph omits the provision that the holder of a visa taken to be granted under this regulation must use the visa to enter Australia by a date specified in the visa. The effect of this provision was that the visa would cease to have effect if not used for travel and entry to Australia by that date. The new subparagraph also provides that a visa granted under this regulation is a visa to travel to and enter Australia for a period of 4 years from the date of grant, rather than for 3 years from the date of first entry as under the omitted subparagraph.

Subregulation 6.3 omits paragraph 21(3)(c) and substitutes a new paragraph. The new paragraph continues the provision of the omitted paragraph for the visa to be subject to the conditions (if any) imposed by the Minister. The new paragraph also has an additional provision that the visa is subject to the condition that the holder must first enter Australia by a date specified by the Minister for the purpose. This provision should be read in conjunction with the amendment made to subparagraph 21(3)(a)(i) by subregulation 6.2 of these Regulations. The combined effect of these amendments is that the requirement that initial entry to Australia be made by a date specified is now imposed by way of a condition. If initial entry is not made by this date the visa does not automatically cease to have effect but may be cancelled in the Minister's discretion before the holder enters Australia (see sections 116(1)(b) and 117 of the amended Act).

This amendment is retrospective to 1 September 1994. Retrospectivity will extend the validity period of any relevant visas which may have been granted on or after 1 September with a validity period of three years. Further, the provisions regarding possible cancellation for not first entering Australia by a certain date does not mean the visas cease to be in effect, rather it is a matter only for which cancellation may occur. This is entirely beneficial to the visa holders and is not detrimental to any person and does not, therefore, contravene subsection 48(2) of the Acts Interpretation Act 1901.

Regulation 7 - Regulation 22 (Visa applications made on or after 19 December 1989 and before 1 September 1995)

This regulation omits subregulation 22(3) and substitutes a new subregulation (3). The effect of this regulation is to make a similar amendment to regulation 22 as that made by regulation 6 of these Regulations to regulation 21. For further details, please see the notes on regulation 6, above.