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# Migration Amendment Regulations 2001 (No. 6)<sup>1</sup>

Statutory Rules 2001 No. <sup>2</sup>

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I, PETER JOHN HOLLINGWORTH, 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 26 JUL 2001 2001

PETER HOLLINGWORTH  
Governor-General

By His Excellency's Command

PHILIP RUDDOCK  
Minister for Immigration and Multicultural Affairs

**1 Name of Regulations**

These Regulations are the *Migration Amendment Regulations 2001* (No.   ).

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**2 Commencement**

These Regulations commence on the commencement of Schedule 2 to the *Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Act 2001*.

**3 Amendment of *Migration Regulations 1994***

Schedule 1 amends the *Migration Regulations 1994*.

**4 Transitional**

- (1) The amendments made by items [1] to [4] and [13] to [28] of Schedule 1 apply in relation to an application for a visa:
  - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 10 August 2001; or
  - (b) made on or after 10 August 2001.
- (2) The amendments made by items [5] and [8] to [12] of Schedule 1 apply in relation to any visa (including a visa that has been cancelled).
- (3) The amendments made by items [6] and [7] of Schedule 1 apply in relation to an application for a visa made on or after 10 August 2001.
- (4) Despite item [29] of Schedule 1, regulations 5.02A and 5.03 of the *Migration Regulations 1994* (as they read immediately before these Regulations commence) continue to apply in relation to a notice given under either of those regulations before these Regulations commence.

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## Schedule 1      Amendments

(regulation 3)

### [1]      Subregulation 2.08D (2), note

*substitute*

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

### [2]      Regulation 2.12D, note

*substitute*

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

### [3]      Subregulation 2.15 (4), note

*substitute*

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

### [4]      Regulations 2.16 and 2.16A

*substitute*

#### 2.16      Notification of decision on visa application

- (1) For subsections 66 (1) and 501G (3) of the Act (which deal with giving notice of decisions), this regulation sets out the way of notifying a person of a decision to grant or refuse to grant a visa.

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2001, *L*

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*Grant of visa*

- (2) The Minister must notify the applicant of the grant of the visa in one of the following ways:
- (a) if the visa is a bridging visa granted at the same time as a substantive visa — by:
    - (i) notifying the applicant of the grant of the substantive visa; or
    - (ii) giving the applicant evidence of the substantive visa;
  - (b) in any other case:
    - (i) by telling the applicant orally that the visa has been granted; or
    - (ii) by notifying the applicant by one of the methods specified in section 494B of the Act; or
    - (iii) if, under these Regulations, evidence of the visa must be given to the applicant in a particular way — by giving the applicant evidence of the visa in that way.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

*Refusal to grant visa*

- (3) The Minister must notify an applicant of a decision to refuse to grant a visa by one of the methods specified in section 494B of the Act.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

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**[5] Subregulation 2.42 (2), note**

*substitute*

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[6] Paragraph 2.43 (1) (m)**

*omit*

of the Act.

*insert*

of the Act;

**[7] After paragraph 2.43 (1) (m)**

*insert*

(n) that:

- (i) a certificate is in force under paragraph 271 (1) (l) of the Act, stating that a computer program was not functioning correctly; and
- (ii) both of the following apply:
  - (A) the visa was granted at the time, or during the period, that is specified in the certificate;
  - (B) the grant of the visa is an outcome from the operation of that program, under an arrangement made under subsection 495A (1) of the Act, that is specified in the certificate.

**[8] Subregulation 2.44 (3), note***substitute*

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[9] Regulation 2.45, note***substitute*

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[10] Regulation 2.47, note***substitute*

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[11] Regulation 2.49, note***substitute*

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or

- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

[12] **Regulation 2.54**

*substitute*

**Division 2.10 Documents relating to  
cancellation of visas**

**2.54 Definition for Division 2.10**

In this Division:

***document*** includes:

- (a) a letter; and
- (b) an invitation, notice, notification, statement or summons, if it is in writing.

**2.55 Giving of documents relating to proposed  
cancellation, cancellation or revocation of  
cancellation**

- (1) This regulation applies to:
  - (a) the giving of a document to a holder or former holder of a visa relating to the proposed cancellation or the cancellation of a visa under the Act; and
  - (b) the giving of a document under subsection 501G (3) of the Act relating to a decision to cancel a visa under subsection 501 (1) or (2) or 501A (2) or section 501B or 501F of the Act; and
  - (c) the giving of a document to a holder or former holder of a visa relating to the revocation of the cancellation of a visa under the Act.

- (2) However, this regulation does not apply in relation to:
- (a) a notice to which section 137J of the Act relates;  
or
  - (b) a person who is in immigration detention.

*Note* See regulation 5.02.

- (3) For a document mentioned in paragraph (1) (a) or (c), the Minister must give the document in one of the following ways:
- (a) by handing it to the person personally;
  - (b) by handing it to another person who:
    - (i) is at the person's last residential or business address known to the Minister; and
    - (ii) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
    - (iii) appears to be at least 16 years of age;
  - (c) by dating it, and then dispatching it:
    - (i) within 3 working days (in the place of dispatch) of the date of the document; and
    - (ii) by prepaid post or by other prepaid means; to the person's last residential address, business address or post box address known to the Minister;
  - (d) by transmitting the document by:
    - (i) fax; or
    - (ii) e-mail; or
    - (iii) other electronic means; to the last fax number, e-mail address or other electronic address known to the Minister.
- (4) For a document mentioned in paragraph (1) (b):
- (a) if the person has held the visa for less than 1 year when the document is to be given, the Minister must give the document in one of the ways mentioned in subregulation (3); and



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- (b) if the person has held the visa for at least 1 year when the document is to be given:
    - (i) Immigration must try to find the person; and
    - (ii) the Minister must give the document in one of the ways mentioned in subregulation (3).
  - (5) If the Minister gives a document to a person by handing it to the person, the person is taken to have received the document when it is handed to the person.
  - (6) If the Minister gives a document to a person by handing it to another person at a residential or business address, the person is taken to have received the document when it is handed to the other person.
  - (7) If the Minister gives a document to a person by dispatching it by prepaid post or by other prepaid means, the person is taken to have received the document:
    - (a) if the document was dispatched from a place in Australia to an address in Australia — 7 working days (in the place of that address) after the date of the document; or
    - (b) in any other case — 21 days after the date of the document.
  - (8) If the Minister gives a document to a person by transmitting it by fax, e-mail or other electronic means, the person is taken to have received the document at the end of the day on which the document is transmitted.

**[13] Subregulation 4.17 (6), notes**

*substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[14] Subregulation 4.18 (5), notes***substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[15] Subregulation 4.18A (6), notes***substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[16] Subregulation 4.18B (5), notes***substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[17] Regulation 4.19***substitute***4.19 Summons to attend before Tribunal**

- (1) For paragraph 363 (3) (a) of the Act, this regulation sets out the manner of serving on a person a summons to appear before the Tribunal to give evidence.

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- (2) For paragraph 363 (3) (b) of the Act, this regulation sets out the manner of serving on a person a summons to produce to the Tribunal such documents as are referred to in the summons.
- (3) If the person has notified the Tribunal of an address for service under regulation 4.39, the summons must be served by one of the methods specified in section 379A of the Act.

*Note 1* If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

- (4) If the person has not notified the Tribunal of an address for service under regulation 4.39, the summons must be served in one of the following ways:
- (a) by handing it to the person personally;
  - (b) by handing it to another person who:
    - (i) is at the person's last residential or business address known to the Tribunal; and
    - (ii) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
    - (iii) appears to be at least 16 years of age;
  - (c) by dating it, and then dispatching it:
    - (i) within 3 working days (in the place of dispatch) of the date of the document; and
    - (ii) by prepaid post or by other prepaid means; to the person's last residential or business address known to the Tribunal.

**[18] Regulation 4.21, notes***substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[19] Regulation 4.27A, note***substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[20] Subregulation 4.31 (2), note***substitute*

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

**[21] Subregulation 4.31B (2)***substitute*

- (2) The fee is payable within 7 days of the time when notice of the decision of the Tribunal is taken to be received by the applicant in accordance with section 441C of the Act.

*Note* Under regulation 4.40, notice of a decision of the Tribunal is given by one of the methods specified in section 441A of the Act.

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**[22] Subregulation 4.35 (6), notes**

*substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[23] Subregulation 4.35A (3), notes**

*substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[24] Subregulation 4.35B (4), notes**

*substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[25] Subregulation 4.35C (2), notes**

*substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[26] Regulation 4.35D, notes***substitute*

*Note 1* If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**[27] Regulation 4.35E, note***substitute*

*Note* If the Tribunal gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

**[28] Regulations 4.40 and 4.41***substitute***4.40 Notice of decision of Tribunal**

- (1) A notice or statement to be given to an applicant in relation to a decision of the Migration Review Tribunal must be given by one of the methods specified in section 379A of the Act.

*Note 1* If the Migration Review Tribunal gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

*Note 2* A document served on a person in immigration detention is served in the manner specified in regulation 5.02.

- (2) A notice or statement to be given to an applicant in relation to a decision of the Refugee Review Tribunal must be given by one of the methods specified in section 441A of the Act.

*Note 1* If the Refugee Review Tribunal gives a person a document by a method specified in section 441A of the Act, the


person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

## **[29] Regulations 5.02A and 5.03**

*omit*

### **Notes**

1. These Regulations amend Statutory Rules 1994 No. 268, as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155, 198, 220 (as amended by 1999 Nos. 259 and 321), 243, 259 (as amended by 2000 No. 259), 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108, 192, 259 (as amended by 2000 No. 284) (item [4108] of Schedule 4 was disallowed by the Senate on 1 November 2000), 284 and 335; 2001 Nos. 27, 47, 86, 142 and 162.
2. Notified in the *Commonwealth of Australia Gazette* on  2001. *2 August*