

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 147

Issued by the Minister for Immigration and
Multicultural and Indigenous Affairs

Subject – *Migration Act 1958*

Migration Amendment Regulations 2005 (No. 5)

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, 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, the following provisions may apply:

- subsection 31(3) of the Act, which provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 40(1) of the Act, which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 72(1) of the Act, which provides in part that an eligible non-citizen means a non-citizen who is in a prescribed class of persons for the purposes of the grant of a bridging visa;
- section 73 of the Act, which provides that the Minister may grant a bridging visa to an eligible non-citizen, permitting the non-citizen to remain in Australia during a specified period or until a specified event happens.

The purpose of the Regulations is to amend the *Migration Regulations 1994* (the Principal Regulations) to broaden the range of circumstances in which a person will be eligible for the grant of a Bridging R (Class WR) Bridging (Removal Pending) (Subclass 070) visa.

In particular, the Regulations amend the class of eligible non-citizens in so far as it applies to people seeking to satisfy the criteria for the grant of a Bridging (Removal Pending) (Subclass 070) visa. A person will be an eligible non-citizen in this context if:

- the non-citizen is in immigration detention; and
- any visa applications made by the non-citizen, other than an application made following the exercise of the Minister's power under section 48B of the Act, have been finally determined; and
- the Minister is satisfied that the non-citizen's removal from Australia is not reasonably practicable at that time, for reasons other than the non-citizen being a party to proceedings in a court or tribunal related to an issue in connection with visas; and
- the Minister is satisfied that the non-citizen will do everything possible to facilitate the non-citizen's removal from Australia.

Details of the Regulations are set out in the Attachment.

No consultations have occurred given the urgency of the Regulations, and given the Regulations were assessed as being not likely to have a direct, or a substantial indirect, effect on business, or restrict competition.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commence on 16 June 2005.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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ATTACHMENT**Details of the proposed *Migration Amendment Regulations 2005 (No. 5)*****Regulation 1 – Name of Regulations**

This regulation provides that these Regulations are the *Migration Amendment Regulations 2005 (No. 5)*.

Regulation 2 – Commencement

This regulation provides that these Regulations commence on 16 June 2005.

Regulation 3 – Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 1 amends the *Migration Regulations 1994* (the Principal Regulations).

Schedule 1 – Amendments**Item [1] – Paragraph 2.20(12)(c)**

This item substitutes paragraph 2.20(12)(c) in Part 2 of the Principal Regulations. The existing paragraph 2.20(12)(c) provides that the Minister is satisfied that the non-citizen has done everything possible to facilitate the non-citizen's removal from Australia, and has not attempted to obstruct efforts to arrange and effect the non-citizen's removal from Australia.

New paragraph 2.20(12)(c) provides instead that for the purposes of the definition of eligible non-citizen in section 72 of the Act (which deals with non-citizens eligible to be granted a bridging visa), this subregulation applies to a non-citizen if the Minister is satisfied that the non-citizen will do everything possible to facilitate the non-citizen's removal from Australia.

The purpose of new paragraph 2.20(12)(c) is so to allow a person to be eligible for the grant of a Bridging R (Class WR) Bridging (Removal Pending) (Subclass 070) visa if (among other things) the Minister is satisfied that person will do everything to facilitate their removal in the future.

Item [2] – Paragraph 2.20(12)(d)

This item omits paragraph 2.20(12)(d) in Part 2 of the Principal Regulations. Paragraph 2.20(12)(d) provides that the non-citizen has undertaken in writing to cooperate fully with all efforts to arrange and effect the non-citizen's removal from Australia, including making himself or herself available for removal once removal has been arranged and leaving Australia when advised to do so, and to abide by any conditions to which a visa granted to the non-citizen may be subject.

The purpose of this amendment is to broaden the range of circumstances in which a person will be eligible for the grant of a Bridging R (Class WR) Bridging (Removal Pending) (Subclass 070) visa.

Item [3] – Paragraph 2.20(12)(e)

This item amends paragraph 2.20(12)(e) in Part 2 of the Principal Regulations by inserting the words ‘other than an application made following the exercise of the Minister’s power under section 48B of the Act,’ after the expression ‘non-citizen’.

New paragraph 2.20(12)(e) provides that for the purposes of the definition of eligible non-citizen in section 72 of the Act, this subregulation applies to a non-citizen if any visa application made by the non-citizen, other than an application made following the exercise of the Minister’s power under section 48B of the Act (which gives the Minister the power to make a determination that a non-citizen refused a protection visa may make a further application for a protection visa), have been finally determined.

The purpose of this amendment is to allow a person to be eligible for the grant of a Bridging R (Class WR) Bridging (Removal Pending) (Subclass 070) visa if all visa applications are finally determined (other than an application for a Protection visa following the Minister’s determination pursuant to section 48B of the Act).

Item [4] – Paragraph 2.20(12)(f)

This item omits paragraph 2.20(12)(f) in Part 2 of the Principal Regulations. Paragraph 2.20(12)(f) provides that there are no current proceedings in a court or tribunal to which the non-citizen is a party, and that raise an issue in connection with visas (including if a visa is not granted or has been cancelled), deportation, or removal of unlawful non-citizens.

The purpose of this amendment is to broaden the range of circumstances in which a person will be eligible for the grant of a Bridging R (Class WR) Bridging (Removal Pending) (Subclass 070) visa.

Item [5] – After subregulation 2.20(12)

This item inserts new subregulation 2.20(13) after subregulation 2.20(12) in Part 2 of the Principal Regulations.

New subregulation 2.20(13) provides that for paragraph 2.20(12)(b) of the Principal Regulations, a non-citizen’s removal from Australia is not to be taken to be not reasonably practicable only because the non-citizen is a party to proceedings in a court or tribunal related to an issue in connection with a visa.

The purpose of this amendment is to ensure that a person will not be eligible for the grant of a Bridging R (Class WR) Bridging (Removal Pending) (Subclass 070) visa purely because that person is a party to proceedings in a court or tribunal related to an issue in connection with a visa.