



Migration Amendment Regulations 2008 (No. 8)¹

Select Legislative Instrument 2008 No. 237

I, QUENTIN BRYCE, 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 28 November 2008

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS EVANS
Minister for Immigration and Citizenship

1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2008 (No. 8)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 9 August 2008 — regulations 1 to 3 and Schedule 1;
- (b) on 5 December 2008 — the remainder.

3 Amendment of *Migration Regulations 1994* — Schedule 1

- (1) Schedule 1 amends the *Migration Regulations 1994*.
- (2) The amendment made by Schedule 1 applies in relation to a Resolution of Status (Class CD) visa held on or after 9 August 2008.

4 Amendment of *Migration Regulations 1994* — Schedule 2

- (1) Schedule 2 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 2 apply in relation to an application for a visa made on or after 5 December 2008.

5 Amendment of *Migration Regulations 1994* — Schedule 3

- (1) Schedule 3 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 3 apply in relation to a document given, dispatched or transmitted on or after 5 December 2008.

**6 Amendment of *Migration Regulations 1994* —
Schedule 4**

- (1) Schedule 4 amends the *Migration Regulations 1994*.
- (2) The amendment made by Schedule 4 applies in relation to an application for a visa made on or after 5 December 2008.

**Schedule 1 Amendment relating to
Resolution of Status (Class
CD) visas**
(regulation 3)

**[1] Regulation 1.03, definition of *permanent
humanitarian visa*, after paragraph (a)**

insert

(aa) a Resolution of Status (Class CD) visa; or

Schedule 2 Amendments relating to a safe third country

(regulation 4)

[1] Regulation 2.12A, including the notes
substitute

**2.12A Safe third country and prescribed connection
(Act, s 91D)**

- (1) For paragraph 91D (1) (a) of the Act, PRC is a safe third country in relation to a person who entered Australia without lawful authority on or after 1 January 1996 and, as covered by the agreement between Australia and PRC, meets any of the following criteria:
- (a) is a Vietnamese refugee settled in PRC;
 - (b) has been a Vietnamese refugee settled in PRC;
 - (c) is a close relative of a person mentioned in paragraph (a) or (b);
 - (d) is dependent on a person mentioned in paragraph (a) or (b).
- (2) For paragraph 91D (1) (b) of the Act, a person mentioned in subregulation (1) has a prescribed connection with PRC if, at any time before the person entered Australia:
- (a) the person resided in PRC; or
 - (b) a parent of the person resided in PRC.

(3) In this regulation:

- (a) ***agreement between Australia and PRC*** means the agreement constituted by the Memorandum of Understanding, the English text of which is set out in Schedule 11, together with the exchange of letters between representatives of Australia and PRC dated 18 September 2008 and 7 October 2008, the text of which is set out in Schedule 12; and
- (b) the use of the word ***Vietnamese*** is a reference to nationality or country of origin, and is not an ethnic description.

Note 1 **PRC** is defined in regulation 1.03.

Note 2 This regulation ceases to be in force at the end of 4 December 2010 — see subsection 91D (4) of the Act.

[2] **Schedule 12**

substitute

Schedule 12 Exchange of letters

(subregulation 2.12A (3))

Part 1

AMBASSADOR

AUSTRALIAN EMBASSY
BEIJING

18 September 2008

Mr Kang Peng
Director-General
Department of Foreign Affairs
Ministry of Civil Affairs
Beijing
People's Republic of China

Dear Mr Kang

I am writing to seek the renewal of the Memorandum of Understanding of 25 January 1995 between the Department of Immigration and Ethnic Affairs (now the Department of Immigration and Citizenship) and the Ministry of Civil Affairs relating to unauthorised arrivals in Australia of Vietnamese refugees settled in the People's Republic of China.

I note that the Memorandum of Understanding, established with regard to Vietnamese refugees settled in China who have arrived in Australia as unauthorised arrivals after 25 January 1995, expired on 30 June 2008. I note further that the Memorandum of Understanding will come into effect again on the date on which the Government of Australia notifies the Government of the People's Republic of China that it has completed its domestic legislative processes for the entry into effect of the Memorandum of Understanding.

Upon your confirmation of this, this exchange of letters replaces the previous exchange of letters of 17 March 2006, and together with the Memorandum of Understanding constitutes an agreement between our two countries on this subject.

Yours sincerely

Geoff Raby (Dr)

Part 2

H.E. Geoff Raby Dr.
Ambassador to China
Australian Embassy
Beijing

October 7, 2008

Dear Ambassador Raby,

I refer to your letter of 18 September, 2008, and confirm that the Memorandum of Understanding of 25 January 1995, established with regard to Vietnamese refugees settled in China who have arrived Australia as unauthorised arrivals after 25 January 1995, will come into effect again on the date on which the Government of Australia notifies the Government of the People's Republic of China of the completion of its domestic legislative process. I look forward to receiving your letter of notification.

Yours sincerely

Kang Peng
Director-General
Department of Foreign Affairs
Ministry of Civil Affairs
People's Republic of China

Schedule 3 Amendments relating to giving of documents

(regulation 5)

[1] Regulation 2.54, heading

substitute

2.54 Definitions for Division 2.10

[2] Regulation 2.54, before definition of *document*

insert

carer of the minor means an individual:

- (a) who is at least 18 years of age; and
- (b) who the Minister reasonably believes:
 - (i) has day-to-day care and responsibility for the minor;
or
 - (ii) works in or for an organisation that has day-to-day care and responsibility for the minor and whose duties, whether alone or jointly with another person, involve care and responsibility for the minor.

[3] Subregulation 2.55 (3)

omit

For

insert

Subject to subregulation (3A), for

[4] Subregulation 2.55 (3), at the foot*insert*

Note Subregulation (3A) deals with giving documents mentioned in paragraphs (1) (a) and (c) to minors.

[5] After subregulation 2.55 (3)*insert*

- (3A) If the person is a minor, the Minister must give a document mentioned in paragraph (1) (a) or (c) in 1 of the following ways:
- (a) by handing it to the minor personally;
 - (b) by handing it to another person who:
 - (i) is at the last residential or business address for the minor that is 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 and then dispatching the document:
 - (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 minor'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 minor's last fax number, e-mail address or other electronic address known to the Minister;
 - (e) by dating and then dispatching the document:
 - (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 a carer of the minor at the last residential address, business address or post box address for the carer of the minor that is known to the Minister;

(f) by transmitting the document by:

- (i) fax; or
- (ii) e-mail; or
- (iii) other electronic means;

to a carer of the minor at the last fax number, e-mail address or other electronic address for the carer of the minor that is known to the Minister.

[6] Subregulation 2.55 (4)

omit

For

insert

Subject to subregulation (4A), for

[7] Subregulation 2.55 (4), at the foot

Note Subregulation (4A) deals with giving documents mentioned in paragraph (1) (b) to minors.

[8] After subregulation 2.55 (4)

(4A) If the person is a minor:

- (a) the Minister must give a document mentioned in paragraph (1) (b) in 1 of the ways mentioned in subregulation (3A); and
- (b) if the minor has held the visa for at least 1 year when the document is to be given, Immigration must try to find the minor.

(4B) If the Minister gives a document to a carer of the minor in accordance with this regulation, the Minister is taken to have given the document to the minor.

(4C) Nothing in subregulation (4B) prevents the Minister giving the minor a copy of the document.

[9] After subregulation 2.55 (8)*insert*

(9) If:

- (a) the Minister purports to give a document to a person by a method specified in this regulation but makes an error in doing so; and
- (b) the person nonetheless receives the document or a copy of the document;

the Minister is taken to have given the document to the person and the person is taken to have received the document:

- (c) at the time specified by this regulation for that method; or
- (d) if the person can show that he or she received the document at a later time — at that later time.

Schedule 4 Amendment relating to Subclass 651 (eVisitor) visas

(regulation 6)

[1] Schedule 4, Part 1, paragraph 4013 (2) (d)

after

(k),

insert

(ka),

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.