

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 84

Issued by the Minister for Immigration and Citizenship

Migration Act 1958

Migration Amendment Regulations 2009 (No. 4)

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, regulations may be made pursuant to the provisions of the Act in Attachment A.

The purpose of the Regulations is to amend the *Migration Regulations 1994* (the Principal Regulations) to ensure that applicants for General Skilled Migration (GSM) visas have completed, where relevant, a significant length of study at a registered educational institution in Australia and been awarded a qualification that Australian employers recognise and value.

In particular, the Regulations amend the Principal Regulations to:

- give the Minister the power to specify by instrument the length of an “academic year”. This is relevant to the determination of the 2 year study requirement and the points test for most GSM visas; and
- rename the 2 year study requirement the “Australian study requirement” in accordance with the fact that the length of the study requirement is to be specified by the Minister.

Details of the Regulations are set out in Attachment B.

The Regulations commence on 15 May 2009.

The Office of Best Practice Regulation’s Business Cost Calculator and Assessment Checklist were used to determine that there was no compliance cost on business or impact on competition in relation to the amendment. No consultation was necessary in relation to the amendment because the amendment does not have any potential implications relating to other government departments or agencies, non-government organisations, or any other organisation or interested party.

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

ATTACHMENT A

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.

Subsection 5(1) of the Act provides, amongst other things, that “prescribed” means prescribed by the regulations.

In addition to subsection 504(1), the following provisions may apply:

- section 31 of the Act, which deals with classes of visa, in particular:
 - subsection 31(3) of the Act, which provides that the regulations may prescribe criteria for a visa or visas of a specified class; and
- subsection 41(1) of the Act, which provides that regulations may provide that visas, or visas of a specified class, are subject to specified conditions.

ATTACHMENT B**Details of the Migration Amendment Regulations 2009 (No. 4)****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Migration Amendment Regulations 2009 (No. 4)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 15 May 2009.

Regulation 3 – Amendment of *Migration Regulations 1994*

This regulation provides that the *Migration Regulations 1994* (the Principal Regulations) are amended as set out in Schedule 1.

Regulation 4 – Transitional

This regulation provides that the amendments apply in relation to an application for a visa made on or after the commencement day.

Schedule 1 – Amendments**Item [1] – Regulation 1.03**

This item substitutes the definition of “2 year study requirement” in regulation 1.03 of the Principal Regulations with a new definition of “academic year”, which means a period that is specified by the Minister as an academic year in an instrument in writing.

The effect of this new definition is that the Minister will be able to specify the length of an academic year. This is relevant to the determination of whether visa applicants satisfy the new “Australian study requirement”, and the determination of the points score for General Skilled Migration (GSM) visa applicants under Schedule 6B to the Principal Regulations.

One requirement of the Australian study requirement in regulation 1.15F is that the person satisfies the Minister that the person has completed 1 or more degrees, diplomas or trade qualifications for award by an Australian educational institution as a result of a course or courses that, among five requirements, were completed as a result of a total of at least 2 academic years study (paragraph 1.15F(1)(c)).

The purpose of this amendment is to ensure that the Government’s policy in relation to the length of an academic year, which is currently expressed in policy only, is incorporated in a legislative instrument.

Item [2] – Regulation 1.03

This item inserts the definition of “Australian study requirement”, which has the meaning given by regulation 1.15F, in regulation 1.03 of the Principal Regulations. The effect of this amendment is to rename the “2 year study requirement” the “Australian study requirement”.

Item [3] – Regulation 1.15F

This item substitutes the heading “2 year study requirement” in regulation 1.15F with “Australian study requirement”.

Item [4] – Subregulation 1.15F (1)

This item omits the words “2 year study requirement” in subregulation 1.15F(1) and inserts “Australian study requirement”.

Item [5] – After subregulation 1.15F(1)

This item inserts a note after subregulation 1.15F(1) that refers the reader to the definition of “academic year” in regulation 1.03.

Item [6] – Schedule 2, clause 175.111, note 1

This item substitutes note 1 in clause 175.111, which previously referred to “2 year study requirement”, with a new note that refers the reader to regulation 1.03 which provides that “Australian study requirement” has the meaning set out in regulation 1.15F.

Items [7] and [8] – Schedule 2, subparagraphs 175.211(b)(i) and (ii)

These items amend subparagraphs 175.211(b)(i) and (ii) to omit the words “2 year study requirement” and insert “Australian study requirement”.

Items [9] and [12] – Schedule 2, clause 176.111, note 1 and clause 475.111, note 1

Item 9 substitutes note 1 in clause 176.111 and item 12 substitutes note 1 in clause 475.111, which previously referred to “2 year study requirement”, with a new note that refers the reader to regulation 1.03 which provides that “Australian study requirement” has the meaning set out in regulation 1.15F.

Items [10] and [11] – Schedule 2, subparagraphs 176.211(b)(i) and (ii)

These items amend subparagraphs 176.211(b)(i) and (ii) to omit the words “2 year study requirement” and insert “Australian study requirement”.

Items [13] and [14] – Schedule 2, subparagraphs 475.211(b)(i) and (ii)

These items amend subparagraphs 475.211(b)(i) and (ii) to omit the words “2 year study requirement” and insert “Australian study requirement”.

Items [15] and [18] – Schedule 2, clause 485.111, note 1 and clause 487.111, note 1

Item 15 substitutes note 1 in clause 485.111 and item 18 substitutes note 1 in clause 487.111, which previously referred to “2 year study requirement”, with a new note that refers the

reader to regulation 1.03 which provides that “Australian study requirement” has the meaning set out in regulation 1.15F.

Items [16] and [17] – Schedule 2, paragraphs 485.213(a) and (b)

These items amend paragraphs 485.213(a) and (b) to omit the words “2 year study requirement” and insert “Australian study requirement”.

Items [19], [20] and [21] – Schedule 2, paragraphs 487.212(2)(a), (2)(b) and (3)(b)

These items amend paragraphs 487.212(2)(a), (2)(b) and (3)(b) to omit the words “2 year study requirement” and insert “Australian study requirement”.

Items [22] and [26] – Schedule 2, clause 885.111, note 1 and clause 886.111, note 1

Item 22 substitutes note 1 in clause 885.111 and item 26 substitutes note 1 in clause 886.111, which previously referred to “2 year study requirement”, with a new note that refers the reader to regulation 1.15F for “Australian study requirement”.

Items [23], [24] and [25] – Schedule 2, paragraphs 885.211(2)(a), (2)(b) and (3)(b)

These items amend paragraphs 885.211(2)(a), (2)(b) and (3)(b) to omit the words “2 year study requirement” and insert “Australian study requirement”.

Items [27], [28] and [29] – Schedule 2, paragraphs 886.211(2)(a), (2)(b) and (3)(b)

These items amend paragraphs 886.211(2)(a), (2)(b) and (3)(b) to omit the words “2 year study requirement” and insert “Australian study requirement”.

Item [30] – Schedule 6B, item 6B64

This item substitutes item 6B64 of Schedule 6B with a new item that refers to “Australian study requirement”. It also inserts a note referring the reader to the definition of “academic year” in regulation 1.03. This item also replaces the existing note that incorrectly referred to “2 year study requirement” being explained in Division 2.6 of the Regulations with a new note that correctly refers the reader to regulation 1.03 which provides that “Australian study requirement” has the meaning set out in regulation 1.15F.

Items [31] and [32] – Schedule 6B, item 6B91, paragraph (a) and item 6B101, subparagraph (g)(i)

Item 31 omits the words “2 year study requirement” in paragraph (a) of item 6B91 and inserts the words “Australian study requirement”.

Item 32 omits the words “2 year study requirement” in subparagraph (g)(i) of item 6B101 and inserts the words “Australian study requirement”.