



Migration Legislation Amendment Regulations 2010 (No. 2)¹

Select Legislative Instrument 2010 No. 297

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*, the *Immigration (Education) Act 1971* and the *Australian Citizenship Act 2007*.

Dated 24 November 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS BOWEN
Minister for Immigration and Citizenship

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1 Name of Regulations

These Regulations are the *Migration Legislation Amendment Regulations 2010 (No. 2)*.

2 Commencement

These Regulations commence on 1 January 2011.

3 Amendment of *Migration Regulations 1994* — Schedule 1

- (1) Schedule 1 amends the *Migration Regulations 1994*.

- (2) The amendments made by Part 1 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 1 January 2011; or
 - (b) made on or after 1 January 2011.
- (3) The amendment made by Part 2 of Schedule 1 applies in relation to an application for a visa made on or after 1 January 2011.

4 Amendment of *Immigration (Education) Regulations 1992* — Schedule 2

Schedule 2 amends the *Immigration (Education) Regulations 1992*.

5 Amendment of *Australian Citizenship Regulations 2007* — Schedule 3

- (1) Schedule 3 amends the *Australian Citizenship Regulations 2007*.
- (2) The amendment made by Schedule 3 applies in relation to an application made under Division 2, 3 or 4 of Part 2 of the *Australian Citizenship Act 2007* on or after 1 January 2011.

Schedule 1 **Amendments of *Migration Regulations 1994* — skilled visas**

(subregulation 3 (1))

Part 1 **Amendments of references to legislation**

[1] Schedule 2, clause 475.612

omit

subclause 475.213 (2),

insert

subitem 1228 (3A) of Schedule 1,

[2] Schedule 2, clause 475.613

omit

subclause 475.213 (3),

insert

subclause 475.222 (3),

[3] Schedule 2, clause 487.612

omit

subclause 487.213 (2),

insert

subitem 1229 (3A) of Schedule 1,

[4] Schedule 2, clause 487.613*omit*

subclause 487.213 (3),

insert

subclause 487.225 (3),

Part 2 Specified regional area**[5] Schedule 2, clause 887.111***substitute*

887.111 (1) In this Part:

specified regional area, for an applicant who applies for a Subclass 887 visa, means a part of Australia identified in accordance with subclause (2) or (3).

(2) If an applicant applies for the Subclass 887 visa on the basis of having held:

- (a) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; or
- (b) a Skilled (Provisional) (Class VC) visa that is subject to condition 8549; or
- (c) a Skilled (Provisional) (Class VF) visa that is subject to condition 8549; or
- (d) a Subclass 475 (Skilled — Regional Sponsored) visa in relation to which:
 - (i) the application for the visa was made on or after 1 July 2010; and
 - (ii) the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010; and
 - (iii) the visa was granted on the basis that the requirements of subclause 475.222 (3) were satisfied; or
- (e) a Subclass 487 (Skilled — Regional Sponsored) visa in relation to which:
 - (i) the application for the visa was made on or after 1 July 2010; and

- (ii) the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010; and
- (iii) the visa was granted on the basis that the requirements of subclause 487.225 (3) were satisfied;

a specified regional area is a part of Australia that, at the time at which a visa of that kind was first granted to the applicant, was specified by the Minister in an instrument in writing under item 6701 of Schedule 6.

(3) If an applicant applies for the Subclass 887 visa on the basis of having held:

- (a) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) a Skilled (Provisional) (Class VC) visa that is subject to condition 8539; or
- (c) a Skilled (Provisional) (Class VF) visa that is subject to condition 8539; or
- (d) a Subclass 475 (Skilled — Regional Sponsored) visa in relation to which:
 - (i) the application for the visa was made on or after 1 July 2010; and
 - (ii) in making the application, the requirements of subitem 1228 (3A) of Schedule 1 were satisfied; and
 - (iii) the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010; or
- (e) a Subclass 487 (Skilled — Regional Sponsored) visa in relation to which:
 - (i) the application for the visa was made on or after 1 July 2010; and
 - (ii) in making the application, the requirements of subitem 1229 (3A) of Schedule 1 were satisfied; and
 - (iii) the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010;

a specified regional area is a part of Australia that, at the time at which a visa of that kind was first granted to the applicant,

was specified by the Minister in an instrument in writing under item 6A1001 of Schedule 6A.

Schedule 2 **Amendments of *Immigration (Education) Regulations 1992***

(regulation 4)

[1] **Regulations 3 to 6**

substitute

3 Definition

Act means the *Immigration (Education) Act 1971*.

Note Several other words and phrases used in these Regulations have the meaning given by section 3 of the Act. For example:

- Secretary
- visa commencement day.

4 Ineligibility for English courses — application for extension of period for registration or commencement

- (1) For paragraph 4C (4) (a) of the Act, this regulation sets out arrangements in relation to an application for an extension of a period mentioned in subsection 4C (2) of the Act.

Applicant under 18

- (2) If the applicant is aged under 18 years on the applicant's visa commencement day, the application must be made:
- (a) in writing; and
- (b) by the earlier of:
- (i) 14 days after the day on which the applicant (or a person acting for the applicant) requests the extension through the provider of the approved English course with which the applicant has registered or proposes to register; and
 - (ii) 12 months after the applicant's visa commencement day.

Applicant 18 or over

- (3) If the applicant is aged 18 years or over on the applicant's visa commencement day, the application must be made:
- (a) in writing; and
 - (b) no later than 14 days after the day on which the applicant (or a person acting for the applicant) requests the extension through the provider of the approved English course with which the applicant has registered or proposes to register.

5 Ineligibility for English courses — decision on application for extension of period for registration or commencement

- (1) For paragraph 4C (6) (a) of the Act, this regulation sets out matters to which the Secretary must have regard in making a decision on an application for an extension of a period mentioned in subsection 4C (2) of the Act.

Applicant under 18

- (2) Subregulation (3) applies in relation to:
- (a) an applicant who was aged under 18 years on the applicant's visa commencement day; and
 - (b) the period of 12 months starting on the applicant's visa commencement day.
- (3) The matters to which the Secretary must have regard are:
- (a) any serious illness or injury suffered by the applicant during the period, including the duration of the illness or injury; and
 - (b) the kinds of commitments that the applicant had to members of the applicant's family during the period; and
 - (c) whether any compelling and compassionate reasons for making a particular decision on the application existed during the period.

Applicant 18 or over

- (4) Subregulation (5) applies in relation to:
- (a) an applicant who was aged 18 years or over on the applicant's visa commencement day; and
 - (b) the period starting on the applicant's visa commencement day and ending at the earlier of:
 - (i) 5 years after that day; and
 - (ii) the day on which the applicant makes the application.
- (5) The matters to which the Secretary must have regard are:
- (a) the applicant's employment record during the period; and
 - (b) the applicant's record during the period in learning English; and
 - (c) any serious illness or injury suffered by the applicant during the period, including the duration of the illness or injury; and
 - (d) the kinds of commitments that the applicant had to members of the applicant's family during that period; and
 - (e) whether the applicant was not in Australia at any time during the period; and
 - (f) whether any compelling and compassionate reasons for making a particular decision on the application existed during the period.

6 Ineligibility for English courses — application for extension of time limit on tuition

For paragraph 4D (4) (a) of the Act, an application for an extension of the period mentioned in subsection 4D (2) of the Act must be made:

- (a) in writing; and
- (b) no later than 14 days after the day on which the applicant (or a person acting for the applicant) requests the extension through the provider of the approved English course with which the applicant has registered.

7 Ineligibility for English courses — decision on application for extension of time limit on tuition

- (1) For paragraph 4D (6) (a) of the Act, this regulation sets out matters to which the Secretary must have regard in making a decision on an application for an extension of the period mentioned in subsection 4D (2) of the Act.
- (2) If the application is made less than 5 years after the applicant's visa commencement day, the Secretary must have regard to the time remaining before the end of 5 years after that day.
- (3) The Secretary must also have regard to:
 - (a) any serious illness or injury suffered by the applicant during the period starting on the applicant's visa commencement day and ending at the earlier of:
 - (i) 5 years after that day; and
 - (ii) the day on which the applicant makes the application;including the duration of the illness or injury; and
 - (b) whether a close family member of the applicant died during that period; and
 - (c) whether the applicant experienced a traumatic experience during that period; and
 - (d) whether any reasons of a compelling and compassionate nature existed during that period to prevent the applicant from completing 510 hours of English tuition during that period.

8 Citizenship courses

For section 4E of the Act, a person to whom citizenship courses may be provided is a person who:

- (a) has made an application under subsection 21 (1) of the *Australian Citizenship Act 2007* to become an Australian citizen; and
- (b) claims to be able to satisfy the Minister of the matters set out in subsection 21 (2) of that Act.

Schedule 3 **Amendment of Australian Citizenship Regulations 2007**

(subregulation 5 (1))

[1] **Subregulation 12A (7)**

substitute

(7) In this regulation:

conversion instrument means the instrument titled *Payment of Visa Application Charges and Fees in Foreign Currencies*, (IMMI 10/065), that commenced on 1 January 2011.

places and currencies instrument means the instrument titled *Places and Currencies for Paying of Fees*, (IMMI 10/066), that commenced on 1 January 2011.

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>.