



# Migration Amendment Regulations 2011 (No. 5)<sup>1</sup>

**Select Legislative Instrument 2011 No. 147**

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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 4 August 2011

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 Amendment Regulations 2011 (No. 5)*.

**2 Commencement**

These Regulations commence on 15 August 2011.

**3 Amendment of *Migration Regulations 1994* —  
Schedule 1**

- (1) Schedule 1 amends the *Migration Regulations 1994*.
- (2) The amendment made by item [1] of Schedule 1 applies 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 15 August 2011; or
  - (b) made on or after 15 August 2011.

**Schedule 1 Amendments**

(regulation 3)

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

*after*

(ia),

*insert*

(j),

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**[2] Regulation 2.12A***substitute***2.12A Safe third countries and prescribed connection**

- (1) For paragraph 91D (1) (a) of the Act, PRC is a safe third country in relation to a person who:
  - (a) entered Australia without lawful authority on or after 1 January 1996; and
  - (b) meets any of the following criteria, as covered by the agreement between Australia and PRC:
    - (i) the person is a Vietnamese refugee settled in PRC;
    - (ii) the person has been a Vietnamese refugee settled in PRC;
    - (iii) the person is a close relative of a person mentioned in subparagraph (i) or (ii);
    - (iv) the person is dependent on a person mentioned in subparagraph (i) or (ii).
- (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 19 October 2010 and 6 May 2011, 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* By force of subsection 91D (4) of the Act, this regulation will cease to be in force at the end of 14 August 2013.

**[3] Schedule 12***substitute***Schedule 12 Exchange of letters**

(subregulation 2.12A (3), definition of ***agreement between Australia and PRC***)

**Part 1**

AMBASSADOR

AUSTRALIAN EMBASSY  
BEIJING

19 October 2010

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

Dear Director-General

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, expires on 4 December 2010.

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.

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Upon your confirmation of this, this exchange of letters replaces the previous exchange of letters of 18 September and 7 October 2008, and together with the Memorandum of Understanding constitutes an agreement between our two countries on this subject.

Yours sincerely

Geoff Raby (Dr)

## Part 2

6 May 2011

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

Dear Ambassador Raby,

I refer to your letter of 19 October 2010, and confirm that the Memorandum of Understanding of 25 January 1995, established with regard to Vietnamese refugees settled in the People's Republic of China who have arrived in 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.

Yours sincerely

Kang Peng  
Director General  
Department of International Cooperation  
Ministry of Civil Affairs  
People's Republic of China

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### 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>.