

Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015

Select Legislative Instrument No. 48, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 16 April 2015

Peter Cosgrove

Governor‑General

By His Excellency’s Command

Peter Dutton

Minister for Immigration and Border Protection

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1 Name

This is the *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015*.

2 Commencement

Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | |
| --- | --- |
| Column 1 | Column 2 |
| Provisions | Commencement |
| 1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table | The day after this instrument is registered. |
| 2. Schedule 1, Part 1 | The later of:  (a) the start of the day after this instrument is registered; and  (b)the commencement of Schedule 4 to the *Migration* *and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*. |
| 3. Schedule 1, Part 2 | The later of:  (a) the start of the day after this instrument is registered; and  (b) the commencement of Schedule 4 to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*; and  (c)the commencement of Part 2 of Schedule 1 to the *Migration* *Amendment (Protection and Other Measures) Act 2015*.  However, the provisions do not commence at all if the event mentioned in paragraph (c) does not occur. |
| 4. Schedule 2 | The later of:  (a) the start of the day after this instrument is registered; and  (b)the commencement of Part 2 of Schedule 5 to the *Migration* *and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*. |
| 5. Schedule 3 | The later of:  (a) the start of the day after this instrument is registered; and  (b) immediately after the commencement of Division 2 of Part 1 of Schedule 2 to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*. |
| 6. Schedule 4 | The later of:  (a) the start of the day after this instrument is registered; and  (b)the commencement of Part 2 of Schedule 5 to the *Migration* *and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*. |

3 Authority

This instrument is made under the *Migration Act 1958.*

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments relating to the fast track assessment process

Part 1—Main amendments

Migration Regulations 1994

1 After sub‑subparagraph 2.15(1)(b)(ii)(A)

Insert:

(B) in the case of a fast track applicant—14 days after the applicant is notified of the invitation; or

2 After subparagraph 2.15(3)(b)(i)

Insert:

(ii) in the case of a fast track applicant—14 days after the applicant is notified of the invitation; or

3 At the end of Part 4

Add:

Division 4.4—Review of protection visa decisions by the Immigration Assessment Authority

4.41 New information not required to be given to referred applicant

For paragraph 473DE(3)(c) of the Act, new information given to the Immigration Assessment Authority by a referred applicant for the purposes of the Authority’s review of a fast track reviewable decision in relation to the referred applicant is prescribed.

4.42 Periods for giving information or comments

For subsection 473DF(2) of the Act, the period for giving information or comments in response to an invitation given by the Immigration Assessment Authority to a referred applicant is as follows:

(a) for a referred applicant in immigration detention—3 working days after the referred applicant is notified of the invitation; and

(b) in any other case:

(i) for an oral invitation to give information or comments in writing—7 days after the invitation is given; and

(ii) for an oral invitation to give information or comments at an interview—14 days after invitation is given; and

(iii) for a written invitation to give information or comments in writing or at an interview—14 days after the referred applicant is notified of the invitation.

4.43 Permissible directions on remittal

(1) For paragraph 473CC(2)(b) of the Act, this regulation prescribes directions that the Immigration Assessment Authority is permitted to make in relation to the review of a fast track reviewable decision in respect of a protection visa application by a referred applicant.

(2) It is a permissible direction that:

(a) the referred applicant must be taken to have satisfied the criteria for the visa that are specified in the direction; or

(b) the referred applicant is a refugee within the meaning of subsection 5H(1) of the Act; or

(c) subsection 36(3) of the Act does not apply to the referred applicant; or

(d) the referred applicant satisfies each matter, specified in the direction, that relates to establishing whether the referred applicant is a person to whom Australia has protection obligations because the criterion mentioned in paragraph 36(2)(aa) of the Act is satisfied in relation to the applicant.

(3) However, it is not a permissible direction that:

(a) subsection 5H(1) of the Act applies to the referred applicant; or

(b) subsection 5H(1) does not apply to the referred applicant because of subsection 5H(2); or

(c) the referred applicant satisfies, or does not satisfy, the criterion in subsection 36(1C) of the Act; or

(d) the referred applicant satisfies a matter that relates to establishing whether there are serious reasons for considering that:

(i) the referred applicant has committed a crime against peace, a war crime or a crime against humanity, as defined by an international instrument mentioned in regulation 2.03B; or

(ii) the referred applicant committed a serious non‑political crime before entering Australia; or

(iii) the referred applicant has been guilty of acts contrary to the purposes and principles of the United Nations; or

(e) the referred applicant satisfies a matter that relates to establishing whether there are reasonable grounds that:

(i) the referred applicant is a danger to Australia’s security; or

(ii) the referred applicant, having been convicted by a final judgment of a particularly serious crime, including a crime that consists of the commission of a serious Australian offence or serious foreign offence, is a danger to the Australian community.

4 After subparagraph 050.511(b)(iii) of Schedule 2

Insert:

(iiia) if the substantive visa application is refused and the refusal decision is referred to the Immigration Assessment Authority under section 473CA of the Act—28 days after notification by the Immigration Assessment Authority of its decision under subsection 473CC(2) of the Act; or

5 Subparagraph 050.511(b)(vii) of Schedule 2

After “review authority”, insert “or the Immigration Assessment Authority”.

6 After paragraph 051.511(b) of Schedule 2

Insert:

(ba) if that application is refused and the refusal decision is referred to the Immigration Assessment Authority under section 473CA of the Act—28 days after notification by the Immigration Assessment Authority of its decision under subsection 473CC(2) of the Act; or

7 Paragraph 051.511(f) of Schedule 2

After “review authority”, insert “or the Immigration Assessment Authority”.

8 After paragraph 051.513(1)(b) of Schedule 2

Insert:

(ba) if the protection visa application is refused and the refusal decision is referred to the Immigration Assessment Authority under section 473CA of the Act—28 days after notification by the Immigration Assessment Authority of its decision under subsection 473CC(2) of the Act; or

Part 2—Other amendments

Migration Regulations 1994

9 At the end of regulation 4.43

Add:

(4) It is a permissible direction that the grant of the visa is not prevented by section 91WB of the Act.

Schedule 2—Amendments relating to the refugee framework

Migration Regulations 1994

1 Regulation 2.03B

Before “subparagraph 36(2C)(a)(i)”, insert “paragraph 5H(2)(a) and”.

2 Subregulation 4.31B(3)

Repeal the subregulation, substitute:

(3) No fee is payable if the Tribunal remits a matter to which the decision relates with a permissible direction under regulation 4.33.

3 Paragraph 4.31C(1)(a)

Repeal the paragraph, substitute:

(a) both:

(i) on review by a court, the decision is remitted for reconsideration by the Tribunal; and

(ii) the Tribunal remits a matter to which the decision relates with a permissible direction under regulation 4.33; or

4 Paragraph 4.31C(1)(aa)

Repeal the paragraph.

5 Paragraphs 4.33(3)(a) and (b)

Repeal the paragraphs, substitute:

(a) it is a permissible direction that the applicant is a refugee within the meaning of subsection 5H(1) of the Act; and

(aa) it is a permissible direction that subsection 36(3) of the Act does not apply to the applicant; and

(b) it is not a permissible direction that:

(i) subsection 5H(1) of the Act applies to the applicant; or

(ii) subsection 5H(1) does not apply to the applicant because of subsection 5H(2); or

(iii) the applicant satisfies, or does not satisfy, the criterion in subsection 36(1C) of the Act.

6 Clause 866.111 of Schedule 2

Repeal the clause, substitute:

Note 1: For ***member of the same family unit***, see subsection 5(1) of the Act.

Note 2: There are no interpretation provisions specific to this Part.

Schedule 3—Safe haven enterprise visas

Migration Regulations 1994

1 Regulation 1.03 (at the end of the definition of *member of the family unit*)

Add:

Note: For ***member of the same family unit***, see subsection 5(1) of the Act.

2 Subregulation 2.01(2) (after table item 3)

Insert:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 3A | subsection 35A(3A) | safe haven enterprise visas | Safe Haven Enterprise (Class XE) | Subclass 790 (Safe Haven Enterprise) |

3 After subregulation 2.05(4AA)

Insert:

(4AB) For subsection 41(2A) of the Act, further circumstances in which the Minister may waive condition 8503 in relation to a visa are that the holder of the visa:

(a) either:

(i) holds a safe haven enterprise visa; or

(ii) is a lawful non‑citizen who has ever held a safe haven enterprise visa; and

(b) satisfies the requirements of subregulation 2.06AAB(2).

4 At the end of subitem 1127AA(3) of Schedule 1

Add:

Note: For ***member of the same family unit***, see subsection 5(1) of the Act.

5 Subitem 1127AA(5) of Schedule 1

Repeal the subitem.

6 At the end of paragraph 1302(3)(bb) of Schedule 1

Add:

; or (iii) the holder of a Subclass 790 (Safe Haven Enterprise) visa; or

(iv) a person whose last substantive visa was a Subclass 790 (Safe Haven Enterprise) visa.

7 At the end of subitem 1403(3) of Schedule 1

Add:

(e) Either:

(i) the applicant has not made a valid application for a Safe Haven Enterprise (Class XE) visa (a ***SHEV***); or

(ii) the applicant has made a valid application for a SHEV and the SHEV application has been refused (whether or not it has been finally determined) or withdrawn; or

(iii) a SHEV has been granted to the applicant.

Note: A person to whom subparagraph (ii) applies, whose SHEV application has been refused, is prevented by section 48A of the Act from making the Temporary Protection visa application unless the Minister has made a determination in relation to the person under section 48B of the Act.

(f) The application for the visa was not made at the same time as an application for a SHEV.

8 Subitem 1404(1) of Schedule 1

Repeal the subitem, substitute:

(1) Form: The approved form specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

9 Paragraph 1404(3)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

10 Paragraph 1404(3)(e) of Schedule 1

Repeal the paragraph, substitute:

(e) The application includes an indication, in writing, that the applicant, or a member of the same family unit as the applicant who is also an applicant for a Safe Haven Enterprise (Class XE) visa, intends to work or study while accessing minimum social security benefits in a regional area specified under subclause (4).

11 At the end of subitem 1404(3) of Schedule 1

Add:

(f) Either:

(i) the applicant has not made a valid application for a Temporary Protection (Class XD) visa (a ***TPV***); or

(ii) the applicant has made a valid application for a TPV, and the TPV application has been refused (whether or not it has been finally determined) or withdrawn; or

(iii) a TPV has been granted to the applicant; or

(iv) the application for the Safe Haven Enterprise (Class XE) visa is made at the same time as an application for a TPV.

Note 1: A person to whom subparagraph (ii) applies, whose TPV application has been refused, is prevented by section 48A of the Act from making the Safe Haven Enterprise visa application unless the Minister has made a determination in relation to the person under section 48B of the Act.

Note 2: If subparagraph (iii) applies, the TPV application will be invalid: see paragraph 1403(3)(f)).

12 Clause 785.111 of Schedule 2

Repeal the clause, substitute:

Note 1: For ***member of the same family unit***, see subsection 5(1) of the Act.

Note 2: There are no interpretation provisions specific to this Part.

13 Paragraph 785.511(a) of Schedule 2

Repeal the paragraph, substitute:

(a) in a case in which the holder of the temporary visa (the ***first visa***) makes a valid application for another Subclass 785 (Temporary Protection) visa, or a Subclass 790 (Safe Haven Enterprise) visa, within 3 years after the grant of the first visa:

(i) if the application is withdrawn—the later of:

(A) the day the application is withdrawn; or

(B) the end of 3 years from the date of the grant of the first visa, or the end of any shorter period specified by the Minister, whichever occurs earlier; and

(ii) if the application is not withdrawn—the day the application is finally determined; and

14 Clause 790.111 of Schedule 2

Repeal the clause, substitute:

Note 1: For ***member of the same family unit***, see subsection 5(1) of the Act.

Note 2: There are no interpretation provisions specific to this Part.

15 Paragraph 790.511(a) of Schedule 2

Repeal the paragraph, substitute:

(a) in a case in which the holder of the temporary visa (the ***first visa***) makes a valid application for another Subclass 790 (Safe Haven Enterprise) visa or a Subclass 785 (Temporary Protection) visa, within 5 years after the grant of the first visa:

(i) if the application is withdrawn—the later of the day the application is withdrawn, and the end of 5 years from the date of the grant of the first visa; and

(ii) if the application is not withdrawn—the day the application is finally determined; or

16 Clause 866.112 of Schedule 2

Repeal the clause.

17 Subparagraphs 8570(a)(i) and (ii) of Schedule 8

Omit “to whom”, substitute “in respect of whom”.

Schedule 4—Application provisions

Migration Regulations 1994

1 Schedule 13

Insert in its appropriate numerical position:

Part 40—Amendments made by the Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015

4001 Operation of Schedule 2

The amendments of these Regulations made by Schedule 2 to the *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015* apply in relation to the review of an RRT‑reviewable decision made on or after the commencement of that Schedule in relation to an application for a protection visa made on or after 16 December 2014.