



Migration Amendment (Subclass 100 and 309 Visas) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 18 August 2022

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

Contents

| | | |
|-----------------------------------|--------------------|----------|
| 1 | Name..... | 1 |
| 2 | Commencement | 1 |
| 3 | Authority..... | 1 |
| 4 | Schedules..... | 1 |
| Schedule 1—Amendments | | 2 |
| Part 1—Main amendments | | 2 |
| <i>Migration Regulations 1994</i> | | 2 |
| Part 2—Application of amendments | | 5 |
| <i>Migration Regulations 1994</i> | | 5 |

1 Name

This instrument is the *Migration Amendment (Subclass 100 and 309 Visas) Regulations 2022*.

2 Commencement

- (1) 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 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. | 20 August 2022 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Part 1—Main amendments

Migration Regulations 1994

1 Clause 100.111 of Schedule 2 (paragraph (a) of the definition of sponsoring partner)

Omit “or (4A)(a)”, substitute “, (4A)(a), (4B)(a) or (4C)(a)”.

2 Subclause 100.221(1) of Schedule 2

Omit “or (4A)”, substitute “, (4A), (4B) or (4C)”.

3 After subclause 100.221(4A) of Schedule 2

Insert:

- (4B) The applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 309 (Partner (Provisional)) visa to which subclause 309.412(2) applies; and
 - (b) the applicant would meet the requirements of subclause (2) or (2A) of this clause except that the sponsoring partner has died; and
 - (c) either of the following circumstances applies:
 - (i) the Subclass 309 (Partner (Provisional)) visa was granted on the basis of the applicant meeting the requirements of subclause 309.221(2);
 - (ii) the applicant satisfies the Minister that the applicant would have continued to be the spouse or de facto partner of the sponsoring partner if the sponsoring partner had not died.
- (4C) The applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 309 (Partner (Provisional)) visa to which subclause 309.412(2) applies; and
 - (b) the applicant would meet the requirements of subclause (2) or (2A) of this clause except that the relationship between the applicant and the sponsoring partner has ceased; and
 - (c) any of the following circumstances applies:
 - (i) the Subclass 309 (Partner (Provisional)) visa was granted on the basis of the applicant meeting the requirements of subclause 309.221(3);
 - (ii) either or both of the following:
 - (A) the applicant;
 - (B) a member of the family unit of the sponsoring partner or of the applicant or of both of them;
has suffered family violence committed by the sponsoring partner;
 - (iii) the applicant:
 - (A) has custody or joint custody of, or access to; or
 - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to;
at least 1 child in respect of whom the sponsoring partner:
 - (C) has been granted joint custody or access by a court; or

- (D) has a residence order or contact order made under the *Family Law Act 1975*; or
- (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

Note: For special provisions relating to family violence, see Division 1.5.

4 Paragraph 100.221(7)(b) of Schedule 2

Omit “or (4)”, substitute “, (4), (4B) or (4C)”.

5 Paragraph 100.226(b) of Schedule 2

Omit “or (4)”, substitute “, (4), (4B) or (4C)”.

6 Subclause 309.211(3) of Schedule 2 (note)

After “309.211(3),”, insert “then, except in certain circumstances,”.

7 Clause 309.221 of Schedule 2

Repeal the clause, substitute:

309.221

- (1) Either:
 - (a) the applicant continues to meet the requirements of clause 309.211; or
 - (b) if the applicant is in Australia—both of the following apply:
 - (i) subclause 309.412(2) would apply to the visa if granted;
 - (ii) the applicant meets the requirements of subclause (2) or (3) of this clause.
- (2) The applicant meets the requirements of this subclause if the applicant:
 - (a) would continue to meet the requirements of clause 309.211 except that the sponsoring partner has died; and
 - (b) satisfies the Minister that the applicant would have continued to be the spouse or de facto partner of the sponsoring partner if the sponsoring partner had not died.
- (3) The applicant meets the requirements of this subclause if:
 - (a) the applicant would continue to meet the requirements of clause 309.211 except that the relationship between the applicant and the sponsoring partner has ceased; and
 - (b) either or both of the following circumstances applies:
 - (i) either or both of the following:
 - (A) the applicant;
 - (B) a member of the family unit of the sponsoring partner or of the applicant or of both of them;has suffered family violence committed by the sponsoring partner;
 - (ii) the applicant:
 - (A) has custody or joint custody of, or access to; or
 - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to;at least 1 child in respect of whom the sponsoring partner:

- (C) has been granted joint custody or access by a court; or
- (D) has a residence order or contact order made under the *Family Law Act 1975*; or
- (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

Note: For special provisions relating to family violence, see Division 1.5.

8 Clause 309.223 of Schedule 2

Repeal the clause, substitute:

309.223

In the case of an applicant who meets the requirements of subclause 309.211(2), either:

- (a) the applicant continues to be the spouse or de facto partner of the person referred to in paragraph 309.211(2)(a), (b) or (c) who was the applicant's spouse or de facto partner at the time of the application; or
- (b) paragraph 309.221(1)(b) applies.

9 Clause 309.224 of Schedule 2

Repeal the clause, substitute:

309.224

If the applicant is an applicant referred to in subclause 309.211(3), either:

- (a) the marriage referred to in that subclause has taken place and the applicant continues to be the spouse of the intended spouse; or
- (b) both of the following:
 - (i) paragraph 309.221(1)(b) applies;
 - (ii) before the intended spouse died, or before the relationship between the applicant and the intended spouse ceased, the applicant was the spouse or de facto partner of the intended spouse.

Part 2—Application of amendments

Migration Regulations 1994

10 In the appropriate position in Schedule 13

Insert:

Part 113—Amendments made by the Migration Amendment (Subclass 100 and 309 Visas) Regulations 2022

11301 Operation of Schedule 1 (Subclasses 100 (Partner) and 309 (Partner (Provisional)) visas)

The amendments made by Part 1 of Schedule 1 to the Migration Amendment (Subclass 100 and 309 Visas) Regulations 2022 apply in relation to a decision to grant or not to grant a Subclass 100 (Partner) visa or a Subclass 309 (Partner (Provisional)) visa made on or after the commencement of that Schedule, whether the application for the visa was made before, on or after that commencement.