



## **Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016**

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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 27 October 2016

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 Legislation Amendment (2016 Measures No. 4) Regulation 2016*.

## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	19 November 2016.	19 November 2016

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Visa condition 8107**

### ***Migration Regulations 1994***

#### **1 Paragraph 8107(3)(b) of Schedule 8**

Omit “90”, substitute “60”.

#### **2 Subclause 8107(3B) of Schedule 8**

Repeal the subclause.

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## **Schedule 2—Subclass 462 (Work and Holiday) visas**

### ***Migration Regulations 1994***

#### **1 Regulation 1.03**

Insert:

*specified Subclass 462 work* means work that:

- (a) was carried out in one or more areas of Australia specified for the purposes of this definition by the Minister under regulation 1.15FA; and
- (b) was of one or more kinds specified for the purposes of this definition by the Minister under regulation 1.15FA.

#### **2 After regulation 1.15F**

Insert:

##### **1.15FA Specified Subclass 462 work**

The Minister may, by legislative instrument, specify areas of Australia and kinds of work for the purposes of the definition of *specified Subclass 462 work* in regulation 1.03.

#### **3 Subregulation 2.05(4A)**

Repeal the subregulation.

#### **4 Paragraph 1224A(3)(b) of Schedule 1**

Omit “If the applicant does not hold a Subclass 462 (Work and Holiday) visa at the time of application,”, substitute “If the applicant is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa,”.

#### **5 Subparagraph 1224A(3)(b)(ii) of Schedule 1**

Omit “or a Subclass 462 (Work and Holiday) visa”.

#### **6 Paragraph 1224A(3)(c) of Schedule 1**

Repeal the paragraph, substitute:

- (c) If the applicant is, or has previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa:
  - (i) the applicant may be in or outside Australia, but not in immigration clearance; and
  - (ii) the application must be accompanied by a declaration by the applicant that he or she has carried out specified Subclass 462 work for a total period of at least 3 months as the holder of that visa; and
  - (iii) the applicant must not have held more than one Subclass 462 (Work and Holiday) visa in Australia before making the application; and
  - (iv) if the applicant is in Australia, the applicant must hold a substantive visa or have held a substantive visa at any time in the period of 28 days immediately before making the application.

## **7 Subclause 020.611(2A) of Schedule 2**

Repeal the subclause.

## **8 Division 462.1 of Schedule 2 (note)**

Omit “and *Foreign Affairs student*”, substitute “, *Foreign Affairs student* and *specified Subclass 462 work*”.

## **9 Paragraph 462.211(a) of Schedule 2**

Repeal the paragraph, substitute:

- (a) is not, and has not previously been, in Australia as the holder of a Subclass 462 visa; and

## **10 Clause 462.211A of Schedule 2**

Repeal the clause, substitute:

### **462.211A**

If the applicant:

- (a) is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa; and
- (b) is a member of a class of persons specified by the Minister, by an instrument in writing, for the purposes of subparagraph 1224A(3)(b)(iii) of Schedule 1;

the applicant satisfies the criteria in clause 462.212 and clauses 462.214 to 462.217.

### **462.211B**

If the applicant is, or has previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa, the applicant satisfies the criteria in clauses 462.212, 462.214, 462.217 and 462.218.

## **11 At the end of Subdivision 462.21 of Schedule 2**

Add:

### **462.218**

If the applicant is, or has previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa, the Minister is satisfied that:

- (a) the applicant has, after 18 November 2016, carried out a period or periods of specified Subclass 462 work as the holder of the visa; and
- (b) the total period of the work carried out is at least 3 months; and
- (c) the applicant has been remunerated for the work in accordance with relevant Australian legislation and awards.

## **12 Clause 462.221 of Schedule 2**

Omit “The”, substitute “If the applicant is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa, the”.



**13 After clause 462.221 of Schedule 2**

Insert:

**462.221A**

If the applicant is, or has previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa, the applicant:

- (a) continues to satisfy the criteria in clauses 462.217 and 462.218; and
- (b) continues to hold the passport mentioned in paragraph 1224A(3)(a) of Schedule 1, or a valid replacement passport issued by the country concerned; and
- (c) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4011, 4013, 4014, 4019 and 4020; and
- (d) is not a Foreign Affairs student or a Foreign Affairs recipient.

**14 Clause 462.512 of Schedule 2**

After “time of grant”, insert “and did not hold a Subclass 462 (Work and Holiday) visa at the time of application”.

**15 At the end of Division 462.5 of Schedule 2**

Add:

**462.513**

If the applicant is in Australia at the time of grant and held a Subclass 462 (Work and Holiday) visa (the *old visa*) at the time of application—temporary visa permitting the holder to travel to, enter and remain in Australia until 12 months after the date that the old visa would have otherwise ceased to be in effect.

## **Schedule 3—Information to be provided before identification test**

### ***Migration Regulations 1994***

#### **1 Paragraphs 3.20(1)(e), (f), (g) and (h)**

Omit “non-citizen”, substitute “person”.

#### **2 Subregulation 3.20(2)**

Omit “non-citizen” (wherever occurring), substitute “person”.

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## **Schedule 4—Member of the family unit—direct family**

### *Migration Regulations 1994*

#### **1 Regulation 1.03 (definition of *dependent child*)**

After “a child” (wherever occurring), insert “or step-child”.

#### **2 Regulation 1.03 (subparagraph (b)(ii) of the definition of *dependent child*)**

After “the child’s”, insert “or step-child’s”.

#### **3 Regulation 1.12**

Repeal the regulation, substitute:

##### **1.12 Member of the family unit**

###### *Scope*

- (1) This regulation has effect for the purposes of the definition (the *main definition*) of *member of the family unit* in subsection 5(1) of the Act.

###### *General rule*

- (2) A person is a member of the family unit of another person (the *family head*) if the person:
- (a) is a spouse or de facto partner of the family head; or
  - (b) is a child or step-child of the family head or of a spouse or de facto partner of the family head (other than a child or step-child who is engaged to be married or has a spouse or de facto partner) and:
    - (i) has not turned 18; or
    - (ii) has turned 18, but has not turned 23, and is dependent on the family head or on the spouse or de facto partner of the family head; or
    - (iii) has turned 23 and is under paragraph 1.05A(1)(b) dependent on the family head or on the spouse or de facto partner of the family head; or
  - (c) is a dependent child of a person who meets the conditions in paragraph (b).
- This subregulation has effect subject to the later subregulations of this regulation.

###### *Protection, refugee and humanitarian visas*

- (3) Subregulation (4) has effect for the purposes of the main definition so far as it is relevant to a provision of the Act or these Regulations applying in relation to any of the following visas:
- (a) a Protection (Class XA) visa;
  - (b) a Refugee and Humanitarian (Class XB) visa;
  - (c) a Temporary Protection (Class XD) visa;
  - (d) a Safe Haven Enterprise (Class XE) visa;
  - (e) a Resolution of Status (Class CD) visa;
  - (f) a Temporary Safe Haven (Class UJ) visa;
  - (g) a Temporary (Humanitarian Concern) (Class UO) visa;
  - (h) a Territorial Asylum (Residence) (Class BE) visa.

- (4) A person is a member of the family unit of another person (the *family head*) if the person is:
- (a) a spouse or de facto partner of the family head; or
  - (b) a dependent child of:
    - (i) the family head; or
    - (ii) a spouse or de facto partner of the family head; or
  - (c) a dependent child of a dependent child of:
    - (i) the family head; or
    - (ii) a spouse or de facto partner of the family head; or
  - (d) a relative, of the family head or of a spouse or de facto partner of the family head, who:
    - (i) does not have a spouse or de facto partner; and
    - (ii) is usually resident in the family head's household; and
    - (iii) is dependent on the family head.

*Member of the family unit of applicant for a new visa on the basis of earlier status as member of the family unit*

- (5) In addition to subregulation (2), a person is a member of the family unit, of an applicant for a visa (the *new visa*) described in column 1 of an item of the following table who seeks to satisfy the primary criteria for the new visa, if, at the time of the application for the new visa, the person:
- (a) is included in the application for the new visa; and
  - (b) holds a visa (the *old visa*) described in column 2 of the item granted on the basis that the person was a member of the family unit of a person who held a visa of the same kind as the old visa.

**Members of the family units of applicants for new visas**

	<b>Column 1 New visa applied for</b>	<b>Column 2 Old visa person holds at time of application for new visa</b>
1	Contributory Parent (Migrant) (Class CA) visa	Contributory Parent (Temporary) (Class UT) visa
2	Contributory Aged Parent (Residence) (Class DG) visa	Contributory Aged Parent (Temporary) (Class UU) visa
3	Business Skills (Residence) (Class DF) visa	Business Skills (Provisional) (Class UR) visa
4	Business Skills (Permanent) (Class EC) visa	Business Skills (Provisional) (Class EB) visa
5	Employer Nomination (Permanent) (Class EN) visa	Subclass 457 (Temporary Work (Skilled)) visa
6	Regional Employer Nomination (Permanent) (Class RN) visa	Subclass 457 (Temporary Work (Skilled)) visa
7	Skilled (Residence) (Class VB) visa	Any of the following visas: <ul style="list-style-type: none"> <li>(a) Skilled—Independent Regional (Provisional) (Class UX) visa;</li> <li>(b) Bridging A (Class WA) visa or Bridging B (Class WB) visa granted on the basis of a valid application for:                             <ul style="list-style-type: none"> <li>(i) a Skilled—Independent Regional (Provisional) (Class UX) visa; or</li> <li>(ii) a Skilled (Provisional) (Class VC)</li> </ul> </li> </ul>

<b>Members of the family units of applicants for new visas</b>	
<b>Column 1</b> <b>New visa applied for</b>	<b>Column 2</b> <b>Old visa person holds at time of application for new visa</b>
	visa; or (iii) a Skilled—Regional Sponsored (Provisional) (Class SP) visa; (c) Skilled—Designated Area-sponsored (Provisional) (Class UZ) visa; (d) Subclass 475 (Skilled—Regional Sponsored) visa; (e) Subclass 487 (Skilled—Regional Sponsored) visa; (f) Skilled—Regional Sponsored (Provisional) (Class SP) visa
8 Subclass 457 (Temporary Work (Skilled)) visa	Subclass 457 (Temporary Work (Skilled)) visa

*Student (Temporary) (Class TU) visas*

- (6) A person is a member of the family unit of an applicant for, or of a holder of, a Student (Temporary) (Class TU) visa if the person is:
- (a) a spouse or de facto partner of the applicant or holder; or
  - (b) a dependent child of the applicant or holder, or of that spouse or de facto partner of the applicant or holder, who is unmarried and has not turned 18.

*Distinguished talent visas*

- (7) A person is a member of the family unit of an applicant for a Distinguished Talent (Migrant) (Class AL) visa or a Distinguished Talent (Residence) (Class BX) visa who has not turned 18 at the time of application if:
- (a) the person is:
    - (i) a parent of the applicant who has made a combined application with the applicant for the visa; or
    - (ii) under subregulation (2), a member of the family unit of a parent of the applicant who has made a combined application with the applicant for the visa; and
  - (b) no person is being treated under subregulation (2) as a member of the family unit of the applicant, in relation to the applicant's application for the visa; and
  - (c) no other parent of the applicant is being treated as a member of the family unit of the applicant in accordance with this subregulation.

**4 Regulation 2.07AF (note)**

Omit "1.12(2)", substitute "1.12(6)".

**5 Regulation 2.07AP (example)**

Omit "the spouse, de facto partner or dependent child", substitute "a member of the family unit".

**6 Subparagraph 3.01(2)(e)(ii)**

Omit “the spouse, de facto partner or dependent child”, substitute “a member of the family unit”.

**7 Subregulation 3.03AA(2) (table items 102 and 103)**

Repeal the items, substitute:

- 102 a document that indicates that the person is a member of the family unit of a member of the crew of a non-military ship (for example, a marriage certificate, a birth certificate or an adoption certificate)

**8 Subregulation 3.03AA(2) (table item 104, column headed “Information”, paragraphs (b), (c), (d) and (e))**

Repeal the paragraphs, substitute:

- (b) a member of the family unit of a member of the crew of the non-military ship; or  
(c) a member of the family unit of a person who is under an offer to become a member of the crew of the non-military ship

**9 Subregulation 3.03AA(2) (table item 201, column headed “Information”)**

Omit “which”, substitute “that”.

**10 Subregulation 3.03AA(2) (table items 202 and 203)**

Repeal the items, substitute:

- 202 a document that indicates that the person is a member of the family unit of:  
(a) a member of the crew of a non-military ship; or  
(b) a prospective member of the crew;  
(for example, a marriage certificate, a birth certificate or an adoption certificate)

**11 Subregulation 3.03AA(2) (table item 204, column headed “Information”, paragraphs (b), (c), (d) and (e))**

Repeal the paragraphs, substitute:

- (b) a member of the family unit of a member of the crew of the non-military ship; or  
(c) a member of the family unit of a person who is a prospective member of the crew

**12 Paragraphs 3.03AA(3)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) a member of the family unit of a member of the crew of a non-military ship;

**13 Paragraph 1227(3)(e) of Schedule 1**

Omit “the spouse, de facto partner or a dependent child”, substitute “a member of the family unit”.

**14 Division 124.3 of Schedule 2 (note 2)**

Repeal the note, substitute:

- Note 2: Whether a person is a member of the family unit of an applicant for a Distinguished Talent (Migrant) (Class AL) visa who has not turned 18 is worked out under subregulation 1.12(2) or (7). Only subregulation 1.12(2) is relevant if the applicant has turned 18.

**15 Subparagraph 457.511(d)(ii) of Schedule 2**

Omit “1.12(10)”, substitute “1.12(5)”.

**16 Subparagraph 457.511(d)(iv) of Schedule 2**

Omit “21st”, substitute “23rd”.

**17 Division 858.3 of Schedule 2 (note 2)**

Repeal the note, substitute:

Note 2: Whether a person is a member of the family unit of an applicant for a Distinguished Talent (Resident) (Class BX) visa who has not turned 18 is worked out under subregulation 1.12(2) or (7). Only subregulation 1.12(2) is relevant if the applicant has turned 18.

**18 Division 890.1 of Schedule 2 (note 3)**

Omit “1.12(1)”, substitute “1.12(2)”.

**19 Clause 891.111 of Schedule 2 (note 3)**

Omit “1.12(1)”, substitute “1.12(2)”.

**20 Division 892.1 of Schedule 2 (note 3)**

Omit “1.12(1)”, substitute “1.12(2)”.

**21 Clause 893.111 of Schedule 2 (note 3)**

Omit “1.12(1)”, substitute “1.12(2)”.

**22 Division 988.2 of Schedule 2 (note)**

Omit “The spouse, de facto partner or dependent child”, substitute “A member of the family unit”.

**23 Division 988.3 of Schedule 2 (note)**

Omit “the spouse, de facto partner or dependent child”, substitute “a member of the family unit”.

**24 Clause 988.321 of Schedule 2**

Repeal the clause, substitute:

**988.321**

The applicant is a member of the family unit of a person who is the holder of a Subclass 988 visa on the basis of having satisfied the primary criteria for the grant of the visa.

**25 Clause 988.512 of Schedule 2 (table item 1, column headed “Circumstances”, subparagraph (a)(ii))**

Omit “the spouse, de facto partner or a dependent child”, substitute “a member of the family unit”.

**26 Clause 988.512 of Schedule 2 (table item 1, column headed “Circumstances”, paragraph (b))**

Omit “spouse, de facto partner or dependent child”, substitute “member of the family unit”.

**27 Clause 988.512 of Schedule 2 (table item 2, column headed “Circumstances”, subparagraph (b)(ii))**

Omit “the spouse, de facto partner or a dependent child”, substitute “a member of the family unit”.

**28 Clause 988.512 of Schedule 2 (table item 2, column headed “Circumstances”, paragraph (c))**

Omit “the spouse, de facto partner or a dependent child”, substitute “a member of the family unit”.

**29 Clause 988.512 of Schedule 2 (table item 2A, column headed “Circumstances”, subparagraph (b)(ii))**

Omit “the spouse, de facto partner or a dependent child”, substitute “a member of the family unit”.

**30 Clause 988.512 of Schedule 2 (table item 2A, column headed “Circumstances”, paragraph (e))**

Omit “the spouse, de facto partner or a dependent child”, substitute “a member of the family unit”.

**31 Clause 988.512 of Schedule 2 (table item 3, column headed “Circumstances”, subparagraph (b)(ii))**

Omit “the spouse, de facto partner or dependent child of the spouse or de facto partner”, substitute “a member of the family unit”.

**32 Clause 988.512 of Schedule 2 (table item 3, column headed “Circumstances”, paragraph (c))**

Omit “the spouse, de facto partner or a dependent child”, substitute “a member of the family unit”.



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## **Schedule 5—Application and transitional provisions**

### ***Migration Regulations 1994***

#### **1 In the appropriate position in Schedule 13**

Insert:

### **Part 57—Amendments made by the Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016**

#### **5701 Operation of Schedule 1**

The amendments of these Regulations made by Schedule 1 to the *Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016* apply to a visa granted on or after 19 November 2016.

#### **5702 Operation of Schedule 2**

The amendments of these Regulations made by Schedule 2 to the *Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016* apply in relation to an application for a visa made on or after 19 November 2016.

#### **5703 Operation of Schedule 3**

The amendments of these Regulations made by Schedule 3 to the *Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016* apply to the provision of information in connection with an identification test carried out on or after 19 November 2016.

#### **5704 Operation of Schedule 4**

- (1) The amendments of these Regulations made by Schedule 4 to the *Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016* apply in relation to:
  - (a) an application for a visa made on or after 19 November 2016; or
  - (b) a visa granted as a result of such an application.
- (2) To avoid doubt, despite the amendment of subparagraph 3.01(2)(e)(ii), regulation 3.01 (as amended) does not apply to a person who:
  - (a) enters Australia on a non-military ship; and
  - (b) holds a Subclass 988 (Maritime Crew) visa that was granted (before, on or after 19 November 2016):
    - (i) as a result of an application made before 19 November 2016; and
    - (ii) on the basis that the person was a dependent child of a member of the crew of that non-military ship.
- (3) Despite subclause (1), the amendment of subparagraph 457.511(d)(iv) of Schedule 2 applies to a visa granted to a person on or after 19 November 2016, whether it was granted:

**Schedule 5** Application and transitional provisions

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- (a) on the basis that he or she was a member of the family unit of the holder of a visa in the circumstances described in subregulation 1.12(10) (as in force before 19 November 2016); or
- (b) as a result of an application made on or after 19 November 2016.