



REPUBLIC OF NAURU

Immigration (Amendment) Regulations 2012

SL No. 3 of 2012

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S.L. No. 3 of 2012

Notified on 14 September 2012

Preamble

- 1 The Republic and the Commonwealth of Australia have entered into an arrangement for regional processing of asylum seekers in Nauru.
- 2 The terms of the arrangement are that the Commonwealth of Australia will take responsibility for the resettlement or removal of each person on completion of the processing.
- 3 These regulations are made to give effect to the arrangement between the Republic and the Commonwealth of Australia.

Cabinet makes the following regulations under the *Immigration Act 1999*:

1 Citation

These Regulations may be cited as the *Immigration (Amendment) Regulations 2012*.

2 Commencement

These Regulations commence on the day on which they are published in the Gazette.

3 Amendment of Immigration Regulations 2000

The Schedule amends the *Immigration Regulations 2000*.

Note for section 3

The Regulations state that they may be cited as the Immigration Regulations 1999. The Regulations were published by Gazette Notice No. 201/2000 and are known as the Immigration Regulations 2000. The short title is amended by these Regulations.

**SCHEDULE – AMENDMENT OF IMMIGRATION
REGULATIONS 2000**

regulation 3

[1] Amendment of regulation 1 (Short title)

Regulation 1

omit

1999

insert

2000

[2] Amendment of regulation 2 (Interpretation)

Regulation 2

insert (in alphabetical order)

‘Australian regional processing visa’ means an Australian regional processing visa granted under regulation 9A;

‘Commonwealth Act’ means the *Migration Act 1958* of the Commonwealth of Australia;

‘health and security clearance’ means a clearance granted to the holder of an Australian regional processing visa by or on behalf of the Republic or the Commonwealth of Australia following an assessment of the identity of the person and any risk to public health, safety or security arising as a result of:

- (a) any disease or medical condition suffered by the person or the potential exposure of the person to any disease or medical condition; or
- (b) the character or reputation of the person or the person’s associates; or
- (c) any other relevant factor;

'offshore entry person' and the **'spouse'**, **'de facto partner'** and **'dependent child'** of an offshore entry person have the respective meanings given by the Commonwealth Act;

'refugee' means a person who is a refugee under the Refugees Convention as modified by the Refugees Protocol;

'Refugees Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951;

'Refugees Protocol' means the Protocol relating to the Status of Refugees done at New York on 31 January 1967;

'refugee status determination' means a determination by or on behalf of the Republic or the Commonwealth of Australia as to whether a person is or is not a refugee;

'Secretary of Justice' means the Head of the Department responsible for justice matters;

'service provider' means a person assigned duties relating to holders of Australian regional processing visas by or on behalf of the Republic or under an arrangement between the Republic and the Commonwealth of Australia;

[3] Amendment of regulation 3 (Classes of visas)

After regulation 3(e)

insert

(f) Australian regional processing visa.

[4] Insertion of regulation 9A

After regulation 9

insert

9A Australian regional processing visa

- (1) An Australian regional processing visa may be granted to:
- (a) an offshore entry person who is to be or has been brought to Nauru under the Commonwealth Act; or

- (b) the spouse, de facto partner or dependent child of an offshore entry person who is to be or has been brought to Nauru under section 199 of the Commonwealth Act.
- (2) An Australian regional processing visa is granted only for the purposes of:
- (a) making a refugee status determination in respect of the offshore entry person; and
 - (b) determining whether or not to grant the holder a health and security clearance; and
 - (c) if the offshore entry person is determined to be a refugee, the refugee remaining in Nauru but only until a durable solution for the refugee's permanent settlement in Australia or elsewhere is found by or on behalf of the Commonwealth of Australia; and
 - (d) if the offshore entry person is determined not to be a refugee, the offshore entry person remaining in Nauru but only until all avenues for review and appeal are exhausted and arrangements for the removal of the person from Nauru are made by or on behalf of the Commonwealth of Australia; and
 - (e) in the case of a visa granted to the spouse, de facto partner or dependent child of an offshore entry person, to enable the person to remain with the offshore entry person.
- (3) Subject to subregulation (4), an Australian regional processing visa is subject to the following conditions:
- (a) the holder must reside in premises notified to the holder by a service provider as being premises set aside for the holder; and
 - (b) until a health and security clearance is granted to the holder – the holder must remain at those premises or at common areas notified to the holder by a service provider, except:
 - (i) in case of emergency or other extraordinary circumstances; or

- (ii) in circumstances where the absence is organised by a service provider and the holder is under the care and control of a service provider or of another person into whose care and control the person is delivered by a service provider; and
- (c) after a health and security clearance is granted to the holder:
 - (i) during the hours between 7 pm each night and 7 am the following morning the holder must be present at those premises or common areas, except in case of emergency or other extraordinary circumstances or in circumstances where the absence is organised by a service provider; and
 - (ii) the holder must, whenever the holder is not present at those premises or common areas, be in the company of a service provider or another person approved by a service provider; and
 - (iii) if the holder is informed that, due to the conduct of the holder or to a public health risk or public safety risk, the holder must remain at those premises or common areas – the holder must remain at those premises or common areas for a period notified to the holder by a service provider or if no such period is notified until further notice, except:
 - in case of emergency or other extraordinary circumstances; or
 - in circumstances where the absence is organised by a service provider and the holder is under the care and control of a service provider or of another person into whose care and control the person is delivered by a service provider; and
- (d) the holder must not engage in any business, profession or employment in Nauru (except in a voluntary capacity); and
- (e) the holder must cooperate in the refugee status determination and risk assessment; and
- (f) the holder must cooperate with any reasonable request of a service provider; and
- (g) the holder must comply with the law of Nauru.

- (4) If the Secretary of Justice notifies the holder of an Australian regional processing visa in writing that the refugee status determination is that the offshore entry person is a refugee and that the security risk assessment in respect of the holder is not adverse, the Australian regional processing visa is subject to the following conditions instead of the conditions set out in subregulation (3):
- (a) the holder must reside in premises notified to the holder by a service provider as being premises set aside for the holder; and
 - (b) the holder must cooperate with any reasonable request of a service provider; and
 - (c) the holder must comply with the law of Nauru.
- (5) The Australian regional processing visa of an offshore entry person is also subject to a condition that the person take all reasonable steps to ensure that any spouse, de facto partner or dependent child of the person brought to Nauru under section 199 of the Commonwealth Act complies with the conditions of his or her visa.
- (6) No other conditions may be imposed on an Australian regional processing visa but the conditions may be modified at any time by amendment of these regulations.
- (7) An Australian regional processing visa expires after 3 months or such shorter period as is specified in the visa, but a further visa may be granted on payment of the appropriate fee by or on behalf of the Commonwealth of Australia without further application.
- (8) If the Australian regional processing visa of an offshore entry person is cancelled, the Australian regional processing visa of any spouse, de facto partner or dependent child of the person brought to Nauru under section 199 of the Commonwealth Act is also cancelled.

[5] Amendment of regulation 12 (Passports)

Regulation 12(3)

omit, substitute

- (3) This regulation does not apply:

- (a) to the holder of an Australian regional processing visa; or
- (b) to a person whose arrival in Nauru is caused by stress of weather, medical or other emergency; or
- (c) if there is other reasonable cause for the arrival of the person in Nauru without a passport.

[6] Amendment of regulation 13 (Applications for visas)

6.1 After regulation 13(1)

insert

- (1a) An application for an Australian regional processing visa may be made by or on behalf of the Commonwealth of Australia for:
 - (a) an offshore entry person who is to be or has been brought to Nauru under the Commonwealth Act; or
 - (b) the spouse, de facto partner or dependent child of an offshore entry person who is to be or has been brought to Nauru under section 199 of the Commonwealth Act.
- (1b) No other person may make an application for an Australian regional processing visa.

6.2 After regulation 13(2)(e)

insert

and

- (f) an Australian regional processing visa may be made before, on or after arrival in Nauru.

6.3 After regulation 13(3)

insert

- (4) The holder of an Australian regional processing visa may not apply for a visa of any other class.

[7] Amendment of regulation 19 (Cancellation of visas)

After regulation 19(1)(a)

insert

- (ab) in the case of an Australian regional processing visa, if the offshore entry person requests its cancellation on the grounds that he or she does not want a refugee status determination to be made; or

[8] Amendment of Schedule

Schedule, table, entry relating to Special purpose visa and entry commencing with the heading "SCHEDULE OF FEES FOR SPECIAL PURPOSE VISAS FOR ASYLUM SEEKERS" and ending "and thereafter as Cabinet may determine on a case by case basis"

omit, substitute

Special purpose visa under regulation 8(1)(e)	
- single entry	\$50
- multiple entry	\$100
in any other case	
- single entry	\$100
- multiple entry	\$200
Australian regional processing visa	\$3,000