

## Immigration (Amendment) Regulations 2012

### EXPLANATORY MEMORANDUM

The *Immigration (Amendment) Regulations 2012* are made under the *Immigration Act 1999*.

#### Rationale

The regulations amend the *Immigration Regulations 2000* to give effect to the arrangement between the Republic and the Commonwealth of Australia for regional processing of asylum seekers.

The regulations provide for a new category of visa to accommodate the people who will be brought to Nauru by Australia and set out the conditions that will apply to the visas.

#### Explanation of clauses

**Regulations 1 and 2** provide for the citation and commencement of the Regulations.

**Regulation 3** is the enabling provision for the Schedule, which amends the Regulations.

**The Schedule** makes the following amendments:

**Item 1** is a technical amendment to correct a wrong citation for the current Regulations.

**Item 2** inserts definitions required for the measure. The definition of *refugee* and *refugee status determination* link to the Refugees Convention and Protocol.

*Health and security clearance* is defined for the purposes of ensuring a higher level of restrictions apply as a condition of visa until the holder is given such a clearance.

**Item 3** adds “Australian regional processing visa” to the classes of visa.

**Item 4** inserts new regulation 9A dealing with the new class of visa. The visa is for an offshore entry person or the spouse, de facto partner or dependent child of an offshore entry person brought to Nauru. In the latter case, coming to Nauru is a voluntary action of the person.

The purposes of the visa cover all stages of the processing of the asylum seekers – that of determining their refugee status, determining whether to give them a health and security clearance and their presence on Nauru following the determination of their refugee status while they await resettling or removal, both of which are to be arranged by the Commonwealth of

Australia. In the case of the spouse, de facto partner or dependent child of an offshore entry person, the visa is designed to enable the person to remain with the offshore entry person.

The new regulation sets out the conditions that will apply to the visa. These include conditions relating to residence, curfew, being accompanied in the community and not working except in a voluntary capacity. A requirement to cooperate is also a condition of the visa. Once a person is determined to be a refugee the conditions are less restrictive as required by the Refugees Convention.

Each visa expires after 3 months or such shorter period as is nominated in the visa, but further visas may be issued without further application.

**Item 5** is a technical amendment disapplying the requirement to hold a passport to be issued a visa.

**Item 6** amends regulation 13 which governs applications for visas. Only the Commonwealth of Australia may make an application for a new class of visa and the visa holder may not make an application for any other class of visa.

**Item 7** enables the holder of a visa to seek cancellation of the visa if they do not want their refugee status to be determined.

**Item 8** amends the Schedule that fixes fees. The fee fixed for an Australian regional processing visa is \$3,000.