

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

MIGRATION AMENDMENT BILL 1991

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SCHEDULE

MINOR AMENDMENTS OF PRINCIPAL ACT

1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 17 April 1991

(Minister for Immigration, Local Government and Ethnic Affairs)

A BILL

FOR

An Act to amend the *Migration Act 1958*

The Parliament of Australia enacts:

Short title etc.

1. (1) This Act may be cited as the *Migration Amendment Act 1991*.

(2) In this Act, “Principal Act” means the *Migration Act 1958*¹.

5 **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 4 of the Principal Act is amended:

10 (a) by omitting from subsection (1) the definition of “valid visa”
and substituting the following definition:

“**valid visa**” means a document, notation or visa that has not been cancelled under this Act or otherwise stopped being in force, being:

- (a) a document or notation permitting a person to return to Australia that was issued before 1 November 1979; or 5
- (b) a visa granted under this Act, whether before or after the commencement of section 4 of the *Migration Legislation Amendment Act 1989* ;”;
- (b) by omitting from subsection (1) the definition of “visa” and substituting the following definition: 10
 - “**visa**” means an entry visa or a travel-only visa;”;
- (c) by adding “or” at the end of paragraphs (a), (b) and (c) of the definition of “officer” in subsection (1);
- (d) by adding at the end of the definition of “officer” in subsection (1) the following word and paragraph: 15
 - “; or (f) any other person authorised by the Minister in writing for the purposes of this paragraph;”;
- (e) by inserting in subsection (1) the following definitions:
 - “**entry visa**” has the meaning given in section 17;
 - processing area** means an area nominated by the Minister under section 54A; 20
 - prohibited person** means a person who has become a prohibited person under section 54D;
 - refugee** has the same meaning as it has in Article 1 of the Refugees Convention or in that Article as amended by the Refugees Protocol; 25
 - 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; 30
 - travel-only visa** means any visa except an entry visa;
 - unprocessed person** has the meaning given by section 54B;”;
- (f) by adding at the end the following subsections:
 - “(27) To avoid doubt, in this Act **is taken**’, when followed by the infinitive form of a verb, has the same force and effect as **is deemed**’ when followed by the infinitive form of that verb. 35
 - “(28) To avoid doubt, except as provided by subsections 115 (5) and (6) and 137 (1) and (2):
 - (a) there is no power to grant an entry visa except under section 24; and 40
 - (b) there is no power to grant an entry permit except under section 34.”.

Period of grace

4. Section 13 of the Principal Act is amended:

(a) by adding at the end of paragraph (2) (a) “or”;

(b) by inserting after paragraph (2) (c) the following word and paragraph:

“; or (d) if the person withdraws his or her application for an entry permit, a review under Part 3 or a review by the Federal Court before the decision referred to in paragraph (a), (b) or (c) respectively is made—starting when the person makes the application and ending when he or she withdraws it;”.

5. After section 16 of the Principal Act the following sections are inserted:

Visas

“16A. The holder of a valid visa may travel to Australia.

Travel-only visas

“16B. A travel-only visa does not entitle its holder to enter Australia or be granted an entry permit.”.

Entry visas etc.

6. Section 17 of the Principal Act is amended by omitting subsections (1), (2) and (3) and substituting the following subsections:

“(1) An entry visa may be granted to a person who has entered Australia or who is in another country.

“(2) The holder of an entry visa that is in force may enter Australia.

“(3) If the holder of an entry visa leaves Australia while the entry visa is in force, the holder may re-enter Australia if it is still in force.

“(3A) The holder of an entry visa may enter Australia only if he or she:

(a) travelled to Australia by aircraft and disembarked at a proclaimed airport; or

(b) travelled to Australia on a pre-cleared flight and did not land in any other country after leaving the country of embarkation of the pre-cleared flight and before arriving in Australia.

“(3B) An entry visa must not be granted to a statutory visitor.”.

7. Section 18 of the Principal Act is repealed and the following section is substituted:

Effect of entry visas

“18. (1) While the holder of an entry visa is not in Australia, the entry visa has effect as if it were a travel-only visa until the holder enters Australia (whether or not the holder has previously entered Australia while the entry visa was in force).”

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“(2) When the holder of an entry visa enters or re-enters Australia, the entry visa has effect as if it were an entry permit.

“(3) If an entry visa is granted in Australia to a person who has entered Australia, the entry visa has effect, when granted, as if it were an entry permit.”

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“(4) An entry visa has effect subject to any limitation on the period during which the holder is authorised to travel to or remain in Australia, and to any conditions, to which the entry visa is subject.”.

Circumstances in which non-citizens may become illegal entrants

8. Section 20 of the Principal Act is amended:

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(a) by inserting in paragraph (1) (a) “has ever” after “the person”;

(b) by adding “or” at the end of paragraphs (1) (a) and (b);

(c) by inserting in paragraph (1) (b) “on any occasion” after “Australia”;

(d) by inserting in paragraph (1) (c) “on any occasion” after “issued”;

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(e) by inserting after paragraph (1) (c) the following paragraph:

“(ca) the person has ever made a false or misleading statement in a declaration under section 107A; or”;

(f) by inserting in paragraph (1) (d) “on any occasion” before “when the person entered Australia”;

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(g) by inserting after subsection (1) the following subsection:

“(1A) If:

(a) a person who leaves Australia was the holder of a permanent entry permit before leaving Australia; and

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(b) the person is the holder of a prescribed visa permitting him or her to return to Australia and to apply for a permanent entry permit; and

(c) the person was suffering from a prescribed disease or a prescribed physical or mental condition when he or she left Australia or he or she developed a prescribed disease or a prescribed physical or mental condition after leaving Australia;

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subparagraph (1) (d) (i) does not apply to the person in relation to that disease or condition unless the person was suffering from the disease or condition when the person was first granted

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a permanent entry permit and he or she did not disclose that fact at that time.”;

(h) by inserting after subsection (4) the following subsection:

“(4A) If:

(a) the holder of a visa gives the Secretary a section 20 notice; and

(b) the visa is not cancelled by an authorised officer at a proclaimed port;

the authorised officer must endorse the visa with a statement that he or she recognises the holder of the visa to be a person to whom subsection 20 (1) applies, or would apply, for the reasons set out in the notice.”;

(j) by inserting after subsection (14) the following subsection:

“(14A) In subsection (1A):

‘prescribed disease’ means a disease prescribed for the purposes of subparagraph (1) (d) (i);

‘prescribed physical or mental condition’ means a physical or mental condition prescribed for the purposes of subparagraph (1) (d) (i).”.

20 Regulations may provide for visas

9. Section 23 of the Principal Act is amended by omitting paragraph (4) (a) and substituting the following paragraph:

“(a) in the case of an entry visa—the condition that, despite section 18, the entry visa will be taken not to be a valid entry permit for the purposes of section 47;”.

10. Section 47 of the Principal Act is repealed and the following section is substituted:

Permanent entry permit not to be granted to non-citizen after entry into Australia unless the non-citizen holds a temporary entry permit

“47. (1) A permanent entry permit must not be granted to a non-citizen after entry into Australia unless the non-citizen is the holder of a valid temporary entry permit.

“(2) In this section:

‘valid temporary entry permit’ does not include:

(a) a temporary entry permit granted subject to a condition set out in paragraph 33 (4) (a) or (b); or

(b) an entry visa granted subject to a condition set out in paragraph 23 (4) (a) or (b).”.

Circumstances in which entry permits may be granted to statutory visitors after entry into Australia

11. Section 53 of the Principal Act is amended by omitting paragraph (1) (b) and substituting the following paragraph:

“(b) the Minister has determined, in writing, that the statutory visitor is a refugee.”. 5

12. After Division 4 of Part 2 the following Division is inserted:

“Division 4A—Unprocessed persons

Processing areas

“54A. The Minister may, by notice published in the *Gazette*, nominate areas to which unprocessed persons may be taken for the purposes of section 54B. 10

Unprocessed persons

“54B. (1) If:

- (a) an authorised officer reasonably supposes that a person would, on entry to Australia, become an illegal entrant; and 15
- (b) in the authorised officer’s opinion, it is impracticable or inconvenient to decide immediately whether or not to grant the person an entry permit (whether or not the person has applied for an entry permit); 20

the following provisions have effect:

- (c) the person becomes an unprocessed person;
- (d) at the direction of an authorised officer, the person may be removed:
 - (i) from the vessel on which the person travelled to Australia; 25
 - or
 - (ii) if the person has disembarked at a proclaimed airport but has not left the airport—from the airport;
- (e) at the direction of an authorised officer, the person may be taken to a processing area. 30

“(2) The unprocessed person:

- (a) is taken not to enter Australia unless he or she is granted an entry permit; and
- (b) if he or she is granted an entry permit—is taken to enter Australia when he or she first leaves the processing area after being granted the permit. 35

“(3) Within 7 days after an unprocessed person is taken to a processing area, an authorised officer may cause a written notice to be served on the master, owner, agent or charterer of the vessel on which the unprocessed person travelled to Australia to the effect that, if the 40

unprocessed person becomes a prohibited person, the master, owner, agent and charterer of the vessel:

- (a) may be required under subsection 54F (2) of this Act to remove the person from Australia at no cost to the Commonwealth, whether or not the person is able or willing to pay, or agrees to pay, a charge for his or her removal from Australia; and
- (b) may be liable under section 54E of this Act to pay to the Commonwealth:
 - (i) the cost of transporting the person and a custodian of the person to a processing area, or from one processing area to another; and
 - (ii) the daily maintenance amount for each custody day until the person is removed from Australia; and
 - (iii) the cost of transporting the person and a custodian of the person from the processing area or the place where the person has been kept in custody to the vessel on which the person is to leave Australia.

Restraint of unprocessed persons

“54C. An officer may:

- (a) keep an unprocessed person in custody until the person has been transported to a processing area or while the person is being transported from one processing area to another; and
- (b) prevent an unprocessed person from leaving a processing area until he or she:
 - (i) is granted an entry permit; or
 - (ii) becomes a prohibited person;
 whichever happens first.

Prohibited persons

“54D. An unprocessed person becomes a prohibited person if the person:

- (a) gives a written request to leave Australia to an authorised officer; or
- (b) does not apply for an entry permit before the end of the prescribed period; or
- (c) is refused an entry permit.

Maintenance of prohibited persons

“54E. (1) If an unprocessed person becomes a prohibited person, the master, owner, agent and charterer of the vessel on which the person travelled to Australia are jointly and severally liable to pay the Commonwealth:

- (a) the cost of transporting the person and a custodian of the

person to the processing area, or from one processing area to another; and

- (b) the daily maintenance amount for each custody day until the person is removed from Australia; and
- (c) the cost of transporting the person and a custodian of the person from the processing area or the place where he or she is being kept in custody to the vessel on which the prohibited person is to leave Australia. 5

“(2) Subsection (1) does not apply to the master, owner, agent or charterer of the vessel if the master, owner, agent or charterer was not given a notice under subsection 54B (3) in relation to the prohibited person within 7 days after the prohibited person was first taken to a processing area as an unprocessed person. 10

Removal of prohibited persons

“54F. (1) A prohibited person: 15

- (a) must be removed from Australia as soon as practicable; and
- (b) may be kept in custody as directed by an authorised officer until removed from Australia.

“(2) When an unprocessed person becomes a prohibited person, an authorised officer may, by written notice served on the master, owner, agent or charterer of the vessel on which the person travelled to Australia, require the master, owner, agent or charterer to remove the person from Australia at no cost to the Commonwealth, whether or not the person is able or willing to pay, or agrees to pay, a charge for his or her removal from Australia. 20 25

“(3) The master, owner, agent or charterer must:

- (a) give reasonable notice to an authorised officer of his or her willingness to receive the prohibited person on board a specified vessel, at a specified place and time, for removal from Australia, being a time not later than 72 hours after the notice was served; and 30
- (b) if the prohibited person is made available in the custody of an officer at that place and time—remove the prohibited person from Australia at no cost to the Commonwealth, whether or not the prohibited person is able or willing to pay, or agrees to pay, a charge for his or her removal from Australia. 35

Penalty: \$10,000.

“(4) Subsection (3) does not apply to the master, owner, agent or charterer unless:

- (a) a notice under subsection 54B (3) in relation to the prohibited person was served on one of them within 7 days after the person was first taken to a processing area as an unprocessed person; and 40

- (b) a notice under subsection (2) of this section in relation to the person was served on one of them.

“(5) Failure to serve a notice in relation to a person under subsection (2) of this section or subsection 54B (3) does not prevent the person from being removed from Australia in accordance with arrangements made by an authorised officer.

Officers’ powers of arrest

“54G. An officer may:

- (a) without warrant, arrest an unprocessed person or a prohibited person who:
- (i) leaves a processing area:
 - (A) without being required to do so by an authorised officer; or
 - (B) without having been given written permission by an authorised officer to be temporarily absent from the processing area for a prescribed purpose; or
 - (ii) having been given written permission by an authorised officer to be temporarily absent from a processing area for a prescribed purpose, refuses or fails to return to the processing area before the end of that period of temporary absence; or
 - (iii) escapes from custody; and
- (b) take the person to the processing area, or keep the person in custody, as directed by an authorised officer.

Daily maintenance amount

“54H. (1) For the purposes of this Division, the Minister may, by notice published in the *Gazette*, determine, in relation to each State and Territory, a daily maintenance amount in relation to the State or Territory.

“(2) In making a determination under subsection (1) in respect of a State or Territory, the Minister must have regard to the cost to the Commonwealth of persons kept in custody in that State or Territory on behalf of the Commonwealth.

“(3) An amount payable to the Commonwealth under this Division may be recovered by the Commonwealth, as a debt due to the Commonwealth, in a court of competent jurisdiction.

“(4) In this Division:

‘**custody day**’, in relation to a person, means a day during the whole of which the person is or was in custody, or in a processing area, or partly in custody and partly in a processing area;

‘**daily maintenance amount**’, in relation to a custody day in relation to a person, means the daily maintenance amount most recently determined

by the Minister under subsection (1) before that day, in relation to the State or Territory in which the person was, on that day, in custody, or in a processing area, or partly in custody and partly in a processing area;

‘day’ means a period of 24 hours ending at midnight.”.

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Deportation of illegal entrants

13. Section 60 of the Principal Act is amended by adding at the end of subsection (2) “unless the person consents, in writing, to being deported sooner”.

Deportation order to be executed

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14. Section 63 of the Principal Act is amended by adding at the end the following subsection:

“(3) If a person who is the subject of a deportation order leaves Australia voluntarily before the order is executed, the person is taken, for the purposes of this Act, to have been deported in accordance with the order.”.

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Carriage of persons to Australia without documentation

15. Section 76 of the Principal Act is amended by omitting from subsection (2) “\$5,000” and substituting “\$10,000”.

Custody of prohibited entrant during stay of vessel in port

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16. Section 88 of the Principal Act is amended:

- (a) by omitting from paragraph (3) (c) “of the Commonwealth or of” and substituting “in force in the Commonwealth or in”;
- (b) by omitting subsection (8) and substituting the following subsection:

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“(8) A person who is taken ashore under subsection (1), (2) or (3):

- (a) is taken not to enter Australia unless he or she is granted an entry permit; and
- (b) if he or she is granted an entry permit—is taken to enter Australia when the entry permit is granted.”.

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Custody of prohibited entrant during stay of aircraft in Australia

17. Section 89 of the Principal Act is amended:

- (a) by omitting from subsections (1), (2) and (3) all the words after “removed from Australia”;
- (b) by inserting after subsection (7) the following subsections:

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“(7A) Subsection (7) does not apply to the master, owner, agent or charterer of the aircraft unless a notice was served on the master, owner, agent or charterer in accordance with subsection (4).

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“(7B) A person who is taken into custody under subsection (1), (2) or (3) may be kept in custody until the person is removed from Australia in accordance with arrangements made by an authorised officer.

5 “(7C) Failure to give a notice in accordance with subsection (4):

(a) does not prevent the person concerned from being kept in custody as mentioned in subsection (7B); and

10 (b) does not prevent the person concerned from being removed from Australia as mentioned in subsection (7B).”;

(c) by omitting subsection (8) and substituting the following subsections:

15 “(8) A person who is taken into or held in custody under this section:

(a) is taken not to enter Australia unless he or she is granted an entry permit; and

(b) if the person is granted an entry permit:

20 (i) if the entry permit is granted while the person is at a proclaimed airport—he or she is taken to enter Australia when he or she first leaves the airport after the entry permit is granted; and

25 (ii) if the entry permit is granted after the person has been taken from a proclaimed airport—he or she is taken to enter Australia when the entry permit is granted.

“(8A) An officer may, without warrant, arrest a person who has escaped from custody in which the person was being held under this section and return the person to custody.”.

30 **18.** After section 89 of the Principal Act the following section is inserted:

Transfer of person in custody under section 88 or 89 to a processing area

35 “89A. A person taken into custody under section 88 or 89:

(a) may be taken to a processing area; and

(b) if he or she is taken to a processing area, Division 4A of Part 2 applies to the person as if he or she had:

(i) become an unprocessed person upon being taken to the processing area; and

40 (ii) been taken to the processing area under section 54B; and

(c) if he or she is taken to a processing area—the person is taken to have ceased to be in custody under section 88 or 89, as the case may be.”.

19. After section 107 of the Principal Act the following section is inserted:

Declarations about character or conduct

“107A. In prescribed circumstances, an applicant for a visa or an entry permit may be required to make a declaration in the prescribed form about his or her character or conduct or both.”.

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Internal review of certain decisions

20. Section 115 of the Principal Act is amended:

(a) by omitting subsections (3) and (4) and substituting the following subsection:

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“(3) The regulations must not provide a period during which an application for review of a reviewable decision may be made that is longer than:

(a) if the applicant is physically present in Australia—28 days; or

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(b) if the applicant is not physically present in Australia—70 days.”;

(b) by omitting paragraph (5)(b) and substituting the following paragraph:

“(b) substitute for the reviewed decision:

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(i) the decision sought by the applicant in the primary application; or

(ii) another decision in terms to which the applicant agrees.”;

(c) by omitting paragraph (6)(b) and substituting the following paragraph:

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“(b) substitute for the reviewed decision:

(i) the decision sought by the applicant in the primary application; or

(ii) another decision in terms to which the applicant agrees.”.

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Applications for review by Tribunal

21. Section 116 of the Principal Act is amended by omitting subsections (3) and (4) and substituting the following subsection:

“(3) The regulations must not provide a period during which an application for review of a reviewable decision may be made that is longer than:

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(a) if the applicant is physically present in Australia—28 days; or

(b) if the applicant is not physically present in Australia—70 days.”.

Non-reviewable decisions

22. Section 120 of the Principal Act is amended:

(a) by inserting in paragraph (1)(a) “(other than a prescribed decision made under prescribed regulations made before 1 July 1991)” after “a decision”;

(b) by omitting paragraph (1)(d) and substituting the following paragraph:

“(d) a decision by the Minister that a person is not a refugee;”.

Remuneration and allowances of other members

23 Section 156 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) The Senior Members must be paid remuneration and allowances equal to the maximum remuneration and allowances payable to the holder of an SES office classified as SES Band 1.

“(2) The other full-time members must be paid remuneration and allowances equal to the minimum remuneration and allowances payable to the holder of an SES office classified as SES Band 1.”.

Regulations

24. Section 181 of the Principal Act is amended by omitting from paragraph (1)(j) “\$1,500” and substituting “\$3,000”.

Further amendments of Principal Act

25 The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 25

MINOR AMENDMENTS OF PRINCIPAL ACT

Paragraph 57 (7) (a):

Insert “or her” after “his”.

Subsection 69 (6) (definition of “arrested person”):

Omit “applied”, substitute “applies”.

Subsection 89 (5):

Insert “or her” after “him”.

Subsection 118 (6):

Omit “a review authority”, substitute “the Tribunal”.

NOTE

1. No. 62, 1958, as amended. For previous amendments, see No. 87, 1964; No. 10, 1966; Nos. 16 and 216, 1973; Nos. 37 and 91, 1976; Nos. 117 and 118, 1979; Nos. 89 and 175, 1980; No. 61, 1981; No. 51, 1982; Nos. 73 and 112, 1983; Nos. 22, 72 and 123, 1984; Nos. 71, 102 and 168, 1986; Nos. 86, 104, 133 and 141, 1987; Nos. 5, 38, 49 and 151, 1988; and Nos. 59 and 61, 1989.

NOTE ON ALTERATION OF SECTION HEADING

On the commencement of this Act, the heading to section 37 of the *Migration Act 1958* is altered by omitting “**review not applied for**” and substituting “**illegal entrants**”.

