

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Immigration and Ethnic Affairs)

MIGRATION LAWS AMENDMENT BILL 1993

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

PART 2—AMENDMENT OF THE MIGRATION REFORM ACT 1992

Division 1—Principal Act

3. Principal Act

*Division 2—Deferral of the commencement date of certain provisions of the
Principal Act from 1 November 1993 to 1 September 1994*

4. Object of Division
5. Commencement
6. Transitional—refugee applications
7. Transitional—application
8. Repeal of section 41

Division 3—Technical corrections

9. Object of Division
10. Commencement
11. Interpretation

TABLE OF PROVISIONS—*continued*

Section

PART 3—AMENDMENT OF THE MIGRATION ACT 1958

Division 1—Principal Act

12. Principal Act

Division 2—Amendments consequential on the deferral of the commencement date of certain provisions of the Migration Reform Act 1992 from 1 November 1993 to 1 September 1994

13. Object of Division

14. Interpretation

15. Lawful non-citizens

16. Unlawful non-citizens

17. Application of Subdivision

18. Interpretation

19. Powers of entry and search

20. Decisions reviewable by Refugee Review Tribunal

Division 3—Technical corrections

21. Object of Division

22. Interpretation

23. Period of grace

24. Heading to Subdivision AA of Division 2 of Part 2

25. Minister may substitute more favourable decision

26. Minister may substitute more favourable decision

Division 4—Amendments to up-date a cross-reference to the regulations

27. Object of Division

28. Decisions reviewable by Refugee Review Tribunal

Division 5—Amendments to allow the Refugee Review Tribunal to deal with the backlog of review applications

29. Object of Division

30. Insertion of new section:

166BAA. Refugee Review Tribunal to deal with the backlog of review applications

Division 6—Amendments relating to pre-commencement decisions made by members of the Refugee Review Tribunal in their capacity as delegates of the Minister

31. Object of Division

32. Insertion of new section:

166BG. Certain decisions made by members of the Tribunal in their capacity as delegates of the Minister to be treated as decisions of the Tribunal for certain purposes

Division 7—Amendments relating to custody of certain non-citizens

33. Object of Division

34. Interpretation

35. Designated persons to be in custody

TABLE OF PROVISIONS—*continued*

Section

PART 4—AMENDMENT OF THE MIGRATION (DELAYED VISA APPLICATIONS) TAX ACT 1992

- 36. Principal Act
- 37. Object of Part
- 38. Commencement

PART 5—AMENDMENT OF THE MIGRATION (OFFENCES AND UNDESIRABLE PERSONS) AMENDMENT ACT 1992

- 39. Principal Act
- 40. Object of Part
- 41. Commencement

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Immigration and Ethnic Affairs)

A BILL

FOR

An Act to amend the law relating to migration

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Migration Laws Amendment Act 1993*.

5 Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

- (2) The following provisions commence on 1 September 1994:

- 10 (a) sections 6 to 8 (inclusive);
(b) section 11;
(c) sections 14 to 17 (inclusive);
(d) section 19.

(3) The following provisions are taken to have commenced on 1 July 1993:

- (a) sections 9 and 10;
- (b) Division 1 of Part 3;
- (c) sections 21, 22 and 23;
- (d) sections 25 and 26;
- (e) section 33;
- (f) section 35.

5

PART 2—AMENDMENT OF THE MIGRATION REFORM ACT 1992

10

Division 1—Principal Act

Principal Act

3. In this Part, “**Principal Act**” means the *Migration Reform Act 1992*¹.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Division 2—Deferral of the commencement date of certain provisions of the Principal Act from 1 November 1993 to 1 September 1994

15

Object of Division

4. The object of this Division is to provide for the deferral of the commencement date of certain provisions of the Principal Act from 1 November 1993 to 1 September 1994.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Commencement

20

5. Section 2 of the Principal Act is amended by omitting from subsection (3) “1 November 1993” and substituting “1 September 1994”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Transitional—refugee applications

6. Section 39 of the Principal Act is amended by omitting “1 November 1993” and substituting “1 September 1994”.

25

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Transitional—application

7. Section 40 of the Principal Act is amended by omitting “1 November 1993” (wherever occurring) and substituting “1 September 1994”.

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Repeal of section 41

8. Section 41 of the Principal Act is repealed.

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Division 3—Technical corrections

Object of Division

9. The object of this Division is to make some technical corrections to the Principal Act.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Commencement

10. Section 2 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Paragraphs 4(e) and (f) and sections 21 and 22 commence on 1 July 1993.”.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Interpretation

11. Section 4 of the Principal Act is amended by omitting from paragraph (c) the definitions of “migration zone”, “Refugee Review Tribunal” and “RRT-reviewable decision”.

Note: Under section 2, the commencement date of this provision is 1 September 1994.

PART 3—AMENDMENT OF THE MIGRATION ACT 1958

Division 1—Principal Act

Principal Act

12. In this Part, “Principal Act” means the *Migration Act 1958*.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Division 2—Amendments consequential on the deferral of the commencement date of certain provisions of the Migration Reform Act 1992 from 1 November 1993 to 1 September 1994

Object of Division

13. The object of this Division is to make certain amendments of the Principal Act that are consequential on the deferral of the commencement date of certain provisions of the *Migration Reform Act 1992* from 1 November 1993 to 1 September 1994.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Interpretation

14. Section 4 of the Principal Act is amended by omitting “1 November 1993” from paragraph (b) of the definition of “old visa” in subsection (1) and substituting “1 September 1994”.

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Lawful non-citizens

15. Section 14 of the Principal Act is amended by omitting from paragraphs (3)(c) and (d) "1 November 1993" and substituting "1 September 1994".

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Unlawful non-citizens

5

16. Section 15 of the Principal Act is amended by omitting from subsection (2) "1 November 1993" and substituting "1 September 1994".

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Application of Subdivision

17. Section 50AA of the Principal Act is amended by omitting "1 November 1993" (wherever occurring) and substituting "1 September 1994". 10

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Interpretation

18. Section 54K of the Principal Act is amended by omitting "1 November 1993" from paragraph (a) of the definition of "designated person" and substituting "1 September 1994". 15

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Powers of entry and search

19. Section 90 of the Principal Act is amended by omitting from subparagraph (6)(c)(iia) "1 November 1993" and substituting "1 September 1994".

Note: Under section 2, the commencement date of this provision is 1 September 1994.

Decisions reviewable by Refugee Review Tribunal

20

20. Section 166B of the Principal Act is amended by omitting from paragraphs (1)(a) and (b) "1 November 1993" and substituting "1 September 1994".

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Division 3—Technical corrections**Object of Division**

25

21. The object of this Division is to make some technical corrections to the Principal Act.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Interpretation

22.(1) Section 4 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“ **‘migration zone’** means the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes:

(a) land that is part of a State or Territory at mean low water; and

(b) sea within the limits of both a State or a Territory and a port; and

(c) piers, or similar structures, any part of which is connected to such land or to ground under such sea;

but does not include sea within the limits of a State or Territory but not in a port;”;

(b) by omitting from subsection (28) “(6) and” and substituting “(6),”;

(c) by inserting in subsection (28) “, 166BE(1) and 166HL(1)” after “(2)”.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

(2) Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ **‘Refugee Review Tribunal’** means the Refugee Review Tribunal established by section 166J;

‘RRT-reviewable decision’ has the meaning given by section 166B;”.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Period of grace

23. Section 13 of the Principal Act is amended by omitting “(b)” (second occurring) from paragraph (d) of the definition of “excluded day” in subsection (2) and substituting “(ba)”.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Heading to Subdivision AA of Division 2 of Part 2

24. The heading to Subdivision AA of Division 2 of Part 2 of the Principal Act is amended by omitting “AA” and substituting “AH”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Minister may substitute more favourable decision

25. Section 166BE of the Principal Act is amended by inserting in subsection (2) “on or after 1 September 1994” after “(1)”.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Minister may substitute more favourable decision

26. Section 166HL of the Principal Act is amended by inserting in subsection (2) “on or after 1 September 1994” after “(1)”.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Division 4—Amendments to up-date a cross-reference to the regulations**Object of Division**

27. The object of this Division is to up-date a cross-reference to the regulations in paragraph 166B(1)(b) of the Principal Act.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Decisions reviewable by Refugee Review Tribunal

5

28. Section 166B of the Principal Act is amended by inserting in paragraph (1)(b) “the Migration (Review) (1993) Regulations or under the repealed” after “other than such a decision made under”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Division 5—Amendments to allow the Refugee Review Tribunal to deal with the backlog of review applications

10

Object of Division

29. The object of this Division is to allow the Refugee Review Tribunal to deal with the backlog of review applications.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Insertion of new section

30. After section 166BA of the Principal Act the following section is inserted: 15

Refugee Review Tribunal to deal with the backlog of review applications

“166BAA.(1) This section applies to an RRT-reviewable decision covered by paragraph 166B(1)(a) or (b) if: 20

- (a) an application was made before 1 July 1993 for review of the RRT-reviewable decision; and
- (b) if, at the time when the application was made, there were in force regulations dealing with applications for review of such a decision—the application was made in accordance with those regulations; and 25
- (c) any of the following subparagraphs applies:
 - (i) no decision on the review was made before the commencement of this section;
 - (ii) all of the following sub-subparagraphs apply: 30
 - (A) a decision (the ‘initial review decision’) on the review was made before the commencement of this section;

- (B) the initial review decision was quashed or set aside by a court before the commencement of this section;
- (C) the matter to which the initial review decision relates was referred by the court for further consideration;
- (D) no decision on that further consideration was made before the commencement of this section;

(iii) all of the following sub-subparagraphs apply:

- (A) a decision (the '**initial review decision**') on the review was made before the commencement of this section;
- (B) the initial review decision is quashed or set aside by a court after the commencement of this section;
- (C) the matter to which the initial review decision relates is referred by the court for further consideration;

(iv) all of the following sub-subparagraphs apply:

- (A) a decision (the '**initial review decision**') on the review was made before the commencement of this section;
- (B) an application for judicial review (the '**judicial review application**') of the initial review decision was made before the commencement of this section;
- (C) before the judicial review application was or is determined by the court, the Minister agreed or agrees, in writing, to reconsider the initial review decision;
- (D) no decision on that reconsideration was made before the commencement of this section;

(v) all of the following sub-subparagraphs apply:

- (A) a decision (the '**initial review decision**') on the review was made before the commencement of this section;
- (B) an application for judicial review (the '**judicial review application**') of the initial review decision is made after the commencement of this section;
- (C) before the judicial review application is determined by the court, the Minister agrees in writing to reconsider the initial review decision.

“(2) A valid application is taken to have been made under section 166BA for review of the RRT-reviewable decision.

“(3) No action is to be taken to review the RRT-reviewable decision otherwise than under this Part.

“(4) This section has effect despite any other provision of this Act or the regulations.

“(5) A reference in this section (other than sub-subparagraphs (1)(c)(iv)(B) or (1)(c)(v)(B)) to review does not include a reference to judicial review.”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Division 6—Amendments relating to pre-commencement decisions made by members of the Refugee Review Tribunal in their capacity as delegates of the Minister 5

Object of Division

31. The object of this Division is to provide that certain decisions made by members of the Refugee Review Tribunal in their capacity as delegates of the Minister are to be treated as if they were decisions of the Tribunal for certain purposes. 10

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Insertion of new section

32. After section 166BF of the Principal Act the following section is inserted:

Certain decisions made by members of the Tribunal in their capacity as delegates of the Minister to be treated as decisions of the Tribunal for certain purposes 15

“166BG.(1) This section applies to a decision under section 22AA if the decision was made:

- (a) by a member in his or her capacity as a delegate of the Minister; and 20
- (b) after 30 June 1993 and before the commencement of this section.

“(2) Despite anything in section 166B, the decision is not an RRT-reviewable decision.

“(3) For the purposes of sections 166BD and 166BE:

- (a) the decision is taken to be a decision of the Tribunal made under section 166BC by way of the determination of an application for review of an RRT-reviewable decision; and 25
- (b) the applicant in relation to the decision is taken to have made that application for review.”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Division 7—Amendments relating to custody of certain non-citizens 30

Object of Division

33. The object of this Division is to make some technical amendments to Division 4B of Part 2 of the Principal Act.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

Interpretation

34. Section 54K of the Principal Act is amended by inserting the following definition:

“ ‘boat’ means a vessel of any description, but does not include an aircraft;”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

5 Designated persons to be in custody

35. Section 54L of the Principal Act is amended by omitting from paragraph (2)(b) “or 115” and substituting “, 115, 166BE or 166HL”.

Note: Under section 2, the commencement date of this provision is 1 July 1993.

PART 4—AMENDMENT OF THE MIGRATION (DELAYED VISA APPLICATIONS) TAX ACT 1992

10 Principal Act

36. In this Part, “Principal Act” means the *Migration (Delayed Visa Applications) Tax Act 1992*³.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Object of Part

15 37. The object of this Part is to defer the commencement date of the Principal Act from 1 November 1993 to 1 September 1994.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Commencement

38. Section 2 of the Principal Act is amended by omitting “1 November 1993” and substituting “1 September 1994”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

20 PART 5—AMENDMENT OF THE MIGRATION (OFFENCES AND UNDESIRABLE PERSONS) AMENDMENT ACT 1992

Principal Act

39. In this Part, “Principal Act” means the *Migration (Offences and Undesirable Persons) Amendment Act 1992*⁴.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Object of Part

25 40. The object of this Part is to defer the commencement date of certain provisions of the Principal Act from 1 November 1993 to 1 September 1994.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

Commencement

41. Section 2 of the Principal Act is amended by omitting from subsection (2) “1 November 1993” and substituting “1 September 1994”.

Note: Under section 2, the commencement date of this provision is the day on which this Act receives the Royal Assent.

NOTES

1. No. 184, 1992.
2. 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; Nos. 59 and 61, 1989; No. 37, 1990; Nos. 70, 86, 196 and 198, 1991; and Nos. 24, 84, 85, 175, 176, 184, 213, 220 and 235, 1992.
3. No. 178, 1992.
4. No. 213, 1992.

NOTE ABOUT SECTION HEADINGS

1. The note about section headings set out at the end of the *Migration Reform Act 1992* has effect as if “1 November 1993” were omitted and “1 September 1994” were substituted.