

Migration Amendment Act (No. 2) 1980

No. 175 of 1980

An Act to amend the *Migration Act 1958* and for purposes connected therewith

[Assented to 17 December 1980]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Migration Amendment Act (No. 2) 1980*.

(2) The *Migration Act 1958*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(2) Sub-section 3 (2), section 4, sub-section 7 (2) and sections 9, 12 and 13 shall come into operation on a date to be fixed by Proclamation.

Interpretation

3. (1) Section 5 of the Principal Act is amended by omitting the definition of “officer” in sub-section (1) and substituting the following definition:

“ ‘officer’, in relation to the exercise of any power or the discharge of any duty or function under this Act, means—

- (a) an officer of the Department of Immigration and Ethnic Affairs;
- (b) a person who is an officer for the purposes of the *Customs Act 1901*;
- (c) a member of the Australian Federal Police or of the police force of a State or an internal Territory; or
- (d) any other person who is, or who is included in a class of persons who are, authorized by the Minister to exercise that power or to discharge that duty or function;”.

(2) Section 5 of the Principal Act is further amended—

- (a) by omitting the definitions of “proclaimed airport” and “proclaimed port” in sub-section (1), and substituting the following definitions:
 - “ ‘proclaimed airport’ means—
 - (a) an airport appointed under section 15 of the *Customs Act* 1901; or
 - (b) an airport appointed by the Minister under sub-section (1A);
 - “ ‘proclaimed port’ means—
 - (a) a port appointed under section 15 of the *Customs Act* 1901; or
 - (b) a port appointed by the Minister under sub-section (1A);”;
- (b) by omitting the definition of “Territory” in sub-section (1) and substituting the following definition:
 - “ ‘Territory’ means—
 - (a) an internal Territory; or
 - (b) the Territory of Christmas Island;”;
- (c) by inserting after sub-section (1) the following sub-section:
 - “(1A) The Minister may, by notice published in the *Gazette*—
 - (a) appoint ports in the Territory of Christmas Island as proclaimed ports for the purposes of this Act and fix the limits of those ports; and
 - (b) appoint airports in the Territory of Christmas Island as proclaimed airports for the purposes of this Act and fix the limits of those airports.”;
- (d) by omitting from paragraph (b) of sub-section (4) “a Territory outside Australia” and substituting “an external Territory other than the Territory of Christmas Island”.

4. After section 5 of the Principal Act the following section is inserted in Part I:

Act to extend to Territory of Christmas Island

“5A. (1) This Act extends to the Territory of Christmas Island.

“(2) Subject to this Act, the Territory of Christmas Island—

(a) shall be deemed to be part of Australia for the purposes of this Act; and

(b) shall be deemed not to be a place outside Australia.”.

Immigrant not to enter Australia without entry permit

5. Section 6 of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-section:

“(2A) The Minister may, in accordance with this section and at the request or with the consent of an immigrant who has entered

Australia, grant to the immigrant an entry permit other than a temporary entry permit.”; and

- (b) by inserting in sub-section (5) “, subject to section 6A,” after “or” (first occurring).

6. After section 6 of the Principal Act the following section is inserted:

Conditions on which entry permits may be granted to immigrants after entry into Australia

“6A. (1) An entry permit shall not be granted to an immigrant after his entry into Australia unless one or more of the following conditions is fulfilled in respect of him, that is to say—

- (a) he has been granted, by instrument under the hand of a Minister, territorial asylum in Australia;
- (b) he is the spouse, child or aged parent of an Australian citizen or of the holder of an entry permit;
- (c) he is the holder of a temporary entry permit which is in force and the Minister has determined, by instrument in writing, that he has the status of refugee within the meaning of the Convention relating to the Status of Refugees that was done at Geneva on 28 July 1951 or of the Protocol relating to the Status of Refugees that was done at New York on 31 January 1967;
- (d) he is the holder of a temporary entry permit which is in force, is authorized to work in Australia and is not a prescribed immigrant; or
- (e) he is the holder of a temporary entry permit which is in force and there are strong compassionate or humanitarian grounds for the grant of an entry permit to him.

“(2) An entry permit shall not be granted to an immigrant in respect of whom the condition specified in paragraph (1) (a) is fulfilled (whether or not any other condition specified in sub-section (1) is also fulfilled in respect of him) otherwise than by the Minister.

“(3) Subject to sub-section (2), an entry permit shall not be granted to an immigrant after his entry into Australia otherwise than by—

- (a) the Minister; or
- (b) an officer authorized by the Minister, by instrument in writing, to be an authorized officer for the purposes of this section.

“(4) In sub-section (1)—

- (a) a reference to an aged parent shall be read as a reference to a parent who has attained the age upon the attainment of which an age pension might be granted to him under the *Social Services Act 1947*;
- (b) a reference to a child of a person shall be read as a reference to a child of the person who is not married and—
 - (i) has not attained the age of 18 years; or

- (ii) has attained the age of 18 years but has not attained the age of 21 years and has been determined by the Minister to be an integral part of the family of that person; and
- (c) a reference to a prescribed immigrant shall be read as a reference to—
 - (i) the holder of a temporary entry permit who, in connection with his application, or last application, for a visa in respect of his travel to Australia acknowledged, in writing, that he understood and accepted that he would leave Australia on the completion of his studies or training in Australia;
 - (ii) the holder of a temporary entry permit who is the spouse or a child of a person referred to in sub-paragraph (i) and was granted a temporary entry permit permitting him to enter Australia only by reason that he was the spouse or child of that person; or
 - (iii) the holder of a temporary entry permit who, immediately before the grant of that temporary entry permit, was a person referred to in paragraph 8 (1) (b) or the spouse or dependent relative of such a person.

“(5) For the purposes of sub-section (4), the reference to a visa in sub-paragraph (c) (i) shall be read as including a reference to any visa or similar notation, or form of provisional authority to enter Australia, that was issued before 1 November 1979.

“(6) For the purposes of sub-section (1), but without limiting the manner in which a person may have been, or may be, authorized to work in Australia, the holder of a temporary entry permit granted before 29 October 1979 shall be taken to be authorized to work in Australia if, in the application or last application to visit Australia made by him or on his behalf—

- (a) in a case where the application was made by the holder—he did not declare that he would not engage in employment in Australia;
- (b) in a case where the application was made on behalf of the holder—the person making the application did not declare that the holder would not engage in employment in Australia.

“(7) For the purposes of sub-section (1), a person who is the holder of a temporary entry permit granted after 28 October 1979 shall be taken to be authorized to work in Australia—

- (a) if that temporary entry permit was not granted subject to any condition imposing restrictions with respect to the work that may be performed by him in Australia;
- (b) if that temporary entry permit was granted subject to a condition imposing restrictions on his performing work other than specified work or work of a specified kind in Australia; or
- (c) if that temporary entry permit was granted subject to a condition imposing restrictions on his performing any work without the permission, in writing, of an authorized officer, and such a permission in writing has been given and has not been revoked.

“(8) In this section, a reference to an entry permit shall be read as a reference to an entry permit other than a temporary entry permit.”.

Persons entering Australia in certain circumstances to be prohibited immigrants

7. (1) Section 16 of the Principal Act is amended—

- (a) by inserting in paragraph (ba) of sub-section (1) “to the Minister or” after “produced”; and
- (b) by omitting from sub-section (1) “the officer granting that permit” and substituting “the person granting that permit”.

(2) Section 16 of the Principal Act is further amended by adding at the end thereof the following sub-sections:

“(5) Where a person is deemed, by virtue of the operation of sub-section 12 (1) of the *Migration Amendment Act (No. 2) 1980*, to have entered Australia as an immigrant, this section does not apply to or in relation to that entry.

“(6) Where a person who is the holder of a re-entry permit within the meaning of section 12 of the *Migration Amendment Act (No. 2) 1980*, makes, at any time while he is in Australia and before the expiration of that re-entry permit or upon his arrival in Australia at any time before the expiration of that re-entry permit, a request for the grant of an entry permit to him, sub-section (1) applies to and in relation to him as if there was substituted for paragraph (c) of that section the following paragraph:

- “(c) at the time he makes a request for the grant of an entry permit is a person referred to in paragraph 12 (7) (c), (d), (e), (f) or (g) of the *Migration Amendment Act (No. 2) 1980*.”.

False papers, &c.

8. Section 31 of the Principal Act is amended by inserting in sub-section (1) “to the Minister or” before “to an officer” (wherever occurring).

Proof of certain matters

9. Section 57 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) In sub-section (1), the reference to official documents of a Territory shall be read, in the case of the Territory of Christmas Island, as including official documents of that Territory that were in existence at the commencement of this sub-section.”.

Obstructing or deceiving Minister or officers

10. Section 65 of the Principal Act is amended by inserting “the Minister or” after “mislead”.

Transitional provision

11. (1) The amendments made by sections 5 and 6, sub-section 7 (1) and sections 8 and 10 do not apply to or in relation to the grant of an entry permit (not being a temporary entry permit) to an immigrant after the commencement of this section if—

- (a) the application for the grant of the permit was or is made after 19 June 1980 and before 1 January 1981; and
- (b) the immigrant entered, or last entered, Australia before 1 January 1980.

(2) The amendments made by the provisions referred to in sub-section (1) do not apply to or in relation to the grant of an entry permit (not being a temporary entry permit) to an immigrant after the commencement of this section if—

- (a) the application for the grant of the permit was or is made after 19 June 1980 and before 1 January 1981;
- (b) a previous application for the grant of such an entry permit in respect of the immigrant had been made before 19 June 1980; and
- (c) the immigrant entered, or last entered, Australia after 31 December 1979 and—
 - (i) in a case where the previous application had not been determined by 19 June 1980—was at the time of the making of the previous application the holder of a temporary entry permit; or
 - (ii) in any other case—was on 19 June 1980 the holder of a temporary entry permit.

(3) For the purpose of this section, a request that an application for the grant to an immigrant of an entry permit (not being a temporary entry permit) that was made before 19 June 1980 but not determined before that date be considered under the Government's Regularization of Status Program shall be treated, for the purpose only of this section, as a further application for the grant, to him, of such an entry permit.

Entitlements of persons present in the Territory of Christmas Island, &c.

12. (1) Subject to sub-section (2), every person who was present in the Territory immediately before the commencing date shall be deemed, for the purposes of the *Migration Act* 1958, to have entered Australia as an immigrant on that date.

(2) Sub-section (1) does not apply to—

- (a) an Australian citizen;
- (b) a person who, if he had entered Australia immediately before the commencing date, would not have been an immigrant for the purposes of the *Migration Act* 1958; or
- (c) a member of the crew of an overseas vessel that was in port in the Territory immediately before the commencing date, including a member

Migration Amendment (No. 2) No. 175, 1980

of the crew of such a vessel who was absent from the vessel immediately before the commencing date.

(3) An Australian citizen who was present in the Territory immediately before the commencing date (including an Australian citizen whose right to remain in the Territory was subject to the provisions of the Immigration Ordinance) shall not be taken to have become an immigrant for the purposes of the *Migration Act 1958* by reason that, by virtue of the operation of sub-section 5A (2) of the Principal Act as amended by this Act, he is to be treated, for the purposes of the *Migration Act 1958*, as having become present in Australia on the commencing date.

(4) As soon as practicable after the commencing date—

- (a) there shall be granted, under section 6 of the *Migration Act 1958*, to each relevant resident who is deemed, by virtue of sub-section (1), to have entered Australia on the commencing date as an immigrant, an entry permit, not being a temporary entry permit, permitting him, from and including that date, to remain in Australia; and
- (b) there shall be granted, under section 6 of the *Migration Act 1958*, to each relevant visitor who is deemed, by virtue of sub-section (1), to have entered Australia on the commencing date as an immigrant, a temporary entry permit permitting him to remain in Australia for the period specified in the permit, being a period commencing on the commencing date and ending on or after the date of expiration of the period during which he was, immediately before the commencing date, authorized to remain in the Territory.

(5) Where—

- (a) there is included in the passport or document of identity of a person the name of the spouse of the person;
- (b) the person and the spouse of the person are both relevant residents or are both relevant visitors; and
- (c) the entry permit that is granted to the person in pursuance of sub-section (4) is written on the passport or document of identity of a person,

then, unless the contrary is stated in that entry permit, the spouse shall be deemed, for the purposes of the *Migration Act 1958*, to be included in that entry permit, and that entry permit shall be deemed to have been granted to the person and to the spouse of the person for the purposes of sub-section (4).

(6) Where—

- (a) there is included in the passport or document of identity of a person the name of a child of the person who is under the age of 16 years;
- (b) the person and the child are both relevant residents or are both relevant visitors; and
- (c) the entry permit that is granted to the person in pursuance of sub-section (4) is written on the passport or document of identity of the person,

then, unless the contrary is stated in the entry permit, the child shall be deemed, for the purposes of the *Migration Act* 1958, to be included in that entry permit, and that entry permit shall be deemed to have been granted to the person and to the child for the purposes of sub-section (4).

(7) Where a person who was, immediately before the commencing date, the holder of a re-entry permit would, but for his absence from that Territory immediately before that date, be entitled to be granted an entry permit (not being a temporary entry permit) in pursuance of sub-section (4), the person is entitled to be granted, under section 6 of the *Migration Act* 1958, such an entry permit, upon his making a request to an officer under that section—

- (a) at any time while he is in Australia and before the expiration of that re-entry permit; or
- (b) upon his arrival in Australia at any time before the expiration of that re-entry permit,

unless, at the time when he makes that request, he is—

- (c) a person who has been convicted of a crime committed on or after the commencing date and sentenced to death, to imprisonment for life or to imprisonment for a period of not less than 1 year;
- (d) a person who has been convicted, of 2 or more crimes, committed on or after the commencing date and sentenced to imprisonment for periods aggregating not less than 1 year;
- (e) a person who has been charged with a crime committed on or after the commencing date and either found guilty of having committed the crime while of unsound mind or acquitted on the ground that the crime was committed while he was of unsound mind;
- (f) a person who has, on or after the commencing date, been deported from Australia or another country; or
- (g) a person who has, on or after the commencing date, been excluded from another country in circumstances that are prescribed circumstances for the purposes of sub-paragraph 16 (1) (c) (vi) of the *Migration Act* 1958.

(8) Where a person has been convicted of a crime and ordered to be confined in a corrective institution other than a prison, sub-section (7) applies to and in relation to him as if he had been convicted of that crime and sentenced to imprisonment for the period during which he was so confined.

(9) In sub-section (7), a reference to a crime shall be read as a reference to an offence punishable by death, by imprisonment for life or by imprisonment for a period of not less than 6 months.

(10) Nothing in sub-section (7) shall be taken to imply that a person who is not entitled, under that sub-section, to the grant, upon request, of an entry permit, may not be granted an entry permit otherwise than in pursuance of that sub-section.

(11) Where there is included in the passport or document of identity of a person to whom a re-entry permit has been granted the name of the spouse or child of that person—

- (a) the spouse or child shall be deemed, for the purposes of this section, to be the holder of that re-entry permit; and
- (b) the re-entry permit shall be deemed, for the purposes of this section, to have been duly granted to the spouse or child under the Immigration Ordinance.

(12) Nothing in section 6 of the *Migration Act* 1958 shall be taken to limit the power of an officer to grant an entry permit in pursuance of sub-section (4) or (7) of this section.

(13) A fee is not payable in respect of an application for an entry permit in pursuance of sub-section (7).

(14) A re-entry permit shall be deemed, for the purposes of this section, to expire at the expiration of the period during which the permit is expressed to be valid or upon the grant to the holder of that permit of an entry permit (not being a temporary entry permit), whichever first occurs.

(15) In this section—

“commencing date” means the date fixed by Proclamation for the purposes of sub-section 2 (2);

“Immigration Ordinance” means the Immigration Ordinance of the Colony of Singapore in its application as part of the law of the Territory;

“overseas vessel”, in relation to the Territory, means a vessel that had entered the Territory from overseas;

“re-entry permit” means an authority, in whatever form and however described, to re-enter the Territory granted under the Immigration Ordinance;

“relevant resident” means a person (not being a person who has been deported from Australia) who, immediately before the commencing date was present in the Territory, was not the subject of a removal order in force under the Immigration Ordinance and—

- (a) was, immediately before that date, employed in the Territory by the British Phosphate Commissioners or by the Minister administering the *Christmas Island Act* 1958 under the Administration Ordinance 1968 of the Territory;
- (b) had, at any time before that date, been employed in the Territory by the Christmas Island Phosphate Company Limited or the British Phosphate Commissioners or by the Minister administering the *Christmas Island Act* 1958 under the Administration Ordinance 1958, or the Administration Ordinance 1968, of the Territory; or
- (c) was, at any time before that date, wholly or partly dependent upon a person who was, or had been, so employed;

“relevant visitor” means a person (not being a relevant resident, a person who has been deported from Australia or a member of the crew of an overseas vessel that was in port in the Territory immediately before the commencing date) who—

- (a) was, immediately before the commencing date, present in the Territory;
- (b) had, at any time before that date, become entitled, under the Immigration Ordinance, to remain in the Territory for a period which had not expired before that date; and
- (c) was not, immediately before that date, the subject of a removal order in force under the Immigration Ordinance;

“Territory” means the Territory of Christmas Island.

Vessels in port in the Territory of Christmas Island

13. (1) Where an overseas vessel (within the meaning of section 12) was in port in the Territory of Christmas Island immediately before the commencement of this section, the Principal Act as amended by this Act applies to and in relation to the vessel and to members of the crew of the vessel as if the vessel had arrived at a port in Australia immediately after the commencement of this section.

(2) Where a member of the crew of an overseas vessel (within the meaning of section 12) that was in port in the Territory of Christmas Island immediately before the commencement of this section was absent from the vessel immediately before the commencement of this section, the Principal Act as amended by this Act applies to and in relation to that member of the crew, and to and in relation to the master of the vessel, as if the member of the crew had entered Australia from the vessel immediately after the commencement of this section.

NOTE

1. No. 62, 1958, as amended. For previous amendments, see No. 87, 1964; No. 10, 1966; No. 16, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 91, 1976; Nos. 117, 118 and 143, 1979; and No. 89, 1980.