



Migration Legislation Amendment (Consequential Amendments) Act 1989

No. 159 of 1989

An Act to amend the *Migration Legislation Amendment Act 1989*, and to amend certain other Acts in consequence of the enactment of the *Migration Legislation Amendment Act 1989*

[Assented to 18 December 1989]

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

Short title

1. This Act may be cited as the *Migration Legislation Amendment (Consequential Amendments) Act 1989*.

Commencement

2. (1) This Act, other than section 4, commences immediately before the commencement of section 4 of the *Migration Legislation Amendment Act 1989*.

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(2) Section 4 commences on the commencement of section 4 of the *Migration Legislation Amendment Act 1989*.

Amendments of *Migration Legislation Amendment Act 1989*

3. The *Migration Legislation Amendment Act 1989* is amended as set out in Schedule 1.

Amendments of other Acts

4. The Acts specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1

Section 3

AMENDMENTS OF *MIGRATION LEGISLATION AMENDMENT ACT 1989*

Paragraph 4 (b):

After the definition of “properly endorsed valid entry permit” insert the following definition:

“‘properly endorsed valid entry visa’, in relation to a person to whom subsection 11A (1) applies, means a valid visa, being an entry visa under section 9, that is endorsed with a statement that the Secretary recognises the holder of the visa to be a person to whom subsection 11A (1) would apply, if the person entered Australia, for the reasons set out in a section 11A notice, where those are the only reasons for which subsection 11A (1) applies to the person;”.

Paragraph 4 (b), definition of “valid entry permit”:

Omit “but does not include”, substitute “and includes a visa that has effect as if it were an entry permit because of section 10, but does not include”.

Section 5, new paragraph 5G (b):

Omit the paragraph, substitute the following paragraph:

“(b) in the company of, and restrained by:

- (i) an officer; or
- (ii) another person directed by the Secretary to accompany and restrain the person.”.

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SCHEDULE 1—continued

Subsection 6 (1), new paragraph 6 (2) (c):

Add at the end of the paragraph “or a properly endorsed valid entry visa”.

Subsection 6 (1), new section 10:

Omit “on and”, substitute “immediately”.

Subsection 6 (1), new section 11A:

(a) Omit subsection (3), insert the following subsections:

“ (3) A person:

(a) to whom subsection (1) would apply if the person entered Australia; or

(b) to whom subsection (1) or (2) applies;

may give to the Secretary a notice in the prescribed form stating that the person is, for reasons specified in the notice, a person to whom the subsection concerned would apply, or applies, as the case requires.

“ (3A) Where:

(a) a person has given the Secretary a section 11A notice; and

(b) a visa is granted to the person;

the person granting the visa must endorse the visa with a statement that he or she recognises the holder of the visa to be a person to whom subsection 11A (1) applies or would apply for the reasons set out in the section 11A notice.”.

(b) Omit from subsection (4) “the date of the section 11A notice and”.

(c) Insert after subsection (4) the following subsection:

“ (4A) Without limiting the generality of section 67, the regulations may make provision for visas and entry permits to be endorsed for the purposes of subsections (3A) and (4) using codes or abbreviations.”.

Subsection 6 (1), new subsection 11E (3):

Omit “the applicant”, substitute “an applicant for a visa other than an exempt visa”.

Subsection 6 (1):

Insert after new subsection 11E (5) the following subsection:

“ (5A) Where it appears to the Minister that an applicant for an exempt visa is, under the regulations, entitled to be granted a visa of the class concerned:

(a) the Minister shall, subject to section 11J, grant the visa; and

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SCHEDULE 1—continued

(b) the Minister:

- (i) may impose such conditions in connection with the grant of the visa as are permitted by the regulations; and
- (ii) shall impose such conditions in connection with the grant of the visa as are required by the regulations.”.

Subsection 6 (1), new section 11E:

Add at the end the following subsection:

“(9) In this section:

“**exempt visa**” means a visa included in a prescribed class of visas.”.

Subsection 6 (1), new subsection 11L (1):

Omit “for each of the prescribed characteristics possessed by the applicant”, substitute “for each prescribed qualification that is satisfied in relation to the applicant”.

Subsection 6 (1), new subsection 11R (2):

Omit “a prohibited non-citizen”, substitute “an illegal entrant”.

Subsection 6 (1), new subsection 11X (2):

Omit “for each of the prescribed characteristics possessed by the applicant”, substitute “for each prescribed qualification that is satisfied in relation to the applicant”.

Section 8, new subsection 17A (2):

Insert “, after following the prescribed procedures,” after “Minister” (first occurring).

Section 8, new subsection 18 (1):

Insert “, after considering the prescribed matters and no other matters,” after “may”.

Section 10, new paragraph 19 (1) (b):

Omit “dependant”, substitute “dependent”.

After section 10, insert the following section:

Deportation order to be executed

“10A. Section 20 of the Principal Act is amended by inserting ‘, after considering the prescribed matters and no other matters,’ after ‘Minister’ (second occurring).”.

Paragraph 15 (a), new subsection 31A (1):

Insert “, after considering the prescribed matters and no other matters,” after “may”.

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SCHEDULE 1—continued

Paragraph 16 (1) (a), new subsection 31B (1):

Omit “(b)” (wherever occurring), substitute “(c)”.

Paragraph 17 (n):

Omit the paragraph, substitute the following paragraph:

“(n) by omitting subsection (4) and substituting the following subsections:

‘(4) A person who is taken ashore pursuant to subsection (1), (1A) or (1B) is to be deemed for the purposes of this Act not to enter Australia unless and until the person is granted a valid entry permit.

‘(4A) An officer may, without warrant, arrest a person who has escaped from lawful custody in which that person has been kept in accordance with this section, and may return that person to that custody.’”.

Section 19:

After paragraph (d), insert the following paragraph:

“(da) by omitting from subsection (3) ‘a prohibited non-citizen’ and substituting ‘an illegal entrant’;”.

Paragraph 19 (g), new paragraph (3A) (a):

Insert “, willing and able” after “ready”.

Section 19:

Add at the end the following paragraph:

“(k) by omitting from subsection (8) ‘a prohibited non-citizen’ and substituting ‘an illegal entrant’.”.

Paragraph 24 (d), new subsection 57 (4):

Omit the subsection, substitute the following subsection:

“(4) In this section:

“migration proceedings” means:

(a) proceedings in a court or the Immigration Review Tribunal:

(i) under this Act; or

(ii) in relation to a deportation order; or

(b) proceedings in the Administrative Appeals Tribunal under section 66E.’”.

After section 29 insert the following section:

Offences in relation to escaping from custody

“29A. Section 66A of the Principal Act is amended by omitting from subsection (3) ‘or (1A)’ and substituting ‘, (1A) or (1B)’.”.

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SCHEDULE 1—continued

Section 33:

Before paragraph (a) insert the following paragraph:

“(aa) by omitting from subsection (1) ‘in particular—’ and substituting ‘without limiting the generality of the foregoing, may make regulations:’”.

Paragraph 33 (a), new paragraph 67 (1) (a):

Omit the new paragraph, substitute the following paragraph:

“(a) making provision for and in relation to:

- (i) the charging and recovery of fees in respect of any matter under this Act or the regulations, including the fees payable in connection with the review of decisions made under this Act or the regulations, whether or not such review is provided for by or under this Act; or
- (ii) the charging and recovery of fees in respect of English language tests conducted by or on behalf of the Department;”.

Paragraph 33 (c):

Insert after new paragraph 67 (1)(ad) the following paragraph:

“(ae) specifying the procedures to be followed:

- (i) in determining whether an illegal entrant is liable to deportation for the purposes of section 17A; or
- (ii) in establishing the prescribed matters for the purposes of section 18, 20 or 31A;”.

Section 33:

After paragraph (c), insert the following paragraph:

“(ca) by omitting from paragraph (1)(ca) ‘11C’ and substituting ‘26A’;”.

Schedule 2, amendment of subsection 22 (3):

Omit the amendment, substitute the following amendment:

“**Subsection 22 (3):**

Insert ‘or she’ after ‘he’.”.

Schedule 2, amendment of subsection 39 (5):

Omit “her”, substitute “she”.

SCHEDULE 2

Section 4

AMENDMENT OF OTHER ACTS

Administrative Decisions (Judicial Review) Act 1977

Subparagraph (d) (i) of Schedule 2:

Omit “6”, substitute “11Q”.

Sub-subparagraph (d) (i) (A) of Schedule 2:

Omit the sub-subparagraph, substitute the following sub-subparagraph:

“(A) a decision relating to a person who, at the time of the decision, was, within the meaning of that Act, the holder of a valid visa; or”.

Subparagraph (d) (iii) of Schedule 2:

Omit the subparagraph, substitute the following subparagraph:

“(iii) decisions whether a person is a person referred to in paragraph (b) of the definition of ‘exempt non-citizen’ in subsection 5 (1) of that Act; or”.

Australian Security Intelligence Organization Act 1979

Section 4 (subparagraph (a) (iv) of the definition of “permanent resident”):

Omit “a prohibited non-citizen”, substitute “an illegal entrant”.

Subparagraph 36 (1) (b) (ii):

Omit the subparagraph, substitute the following subparagraph:

“(ii) a person who is, within the meaning of the *Migration Act 1958*, the holder of a valid permanent entry permit; or”.

Subparagraph 36 (1) (b) (iii):

Omit “to whom an instrument of exemption under paragraph 8 (1) (e) of the *Migration Act 1958* applies”, substitute “who is exempted, by an instrument under subsection 53A (2) of the *Migration Act 1958*, from the operation of subsection 6 (1) of that Act”.

Subsection 36 (2):

Omit the subsection.

Commonwealth Electoral Act 1918

Paragraphs 93 (7) (a) and (b):

Omit the paragraphs, substitute the following paragraphs:

“(a) within the meaning of the *Migration Act 1958*, the holder of a valid temporary entry permit; or

(b) an illegal entrant under that Act;”.

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SCHEDULE 2—continued

Inspector-General of Intelligence and Security Act 1986

Subsection 3 (1) (paragraph (c) of the definition of “permanent resident”):

Omit “a prohibited non-citizen”, substitute “an illegal entrant”.

States Grants (Schools Assistance) Act 1988

Subsection 3 (1) (paragraphs (b) and (c) of the definition of “permanent resident”):

Omit the paragraphs, substitute the following paragraph:

“(b) a person who is, within the meaning of the *Migration Act 1958*, the holder of a valid permanent entry permit;”.

Subsection 3 (1) (paragraph (d) of the definition of “permanent resident”):

Omit “6A (1) (c)”, substitute “11ZD (1) (d)”.

States Grants (Technical and Further Education Assistance) Act 1989

Subsection 3 (1) (paragraph (a) of the definition of “overseas student”):

Omit all the words after “business college,”, substitute “but does not include a person who is, for the purposes of the *Migration Act 1958*, an exempt non-citizen or a person who is, within the meaning of that Act, the holder of a valid permanent entry permit; and”.

Subsection 3 (1) (definitions of “permanent entry permit” and “temporary entry permit”):

Omit the definitions.

States Grants (Tertiary Education Assistance) Act 1987

Subsection 25 (6):

Omit the subsection, substitute the following subsection:

“(6) In this section:

‘overseas student’ means a person (including a person who has not attained the age of majority) who is not an Australian citizen and is receiving instruction at a non-government business college, but does not include:

- (a) a person who is, for the purposes of the *Migration Act 1958*, an exempt non-citizen; or
- (b) a person who is, within the meaning of the *Migration Act 1958*, the holder of a valid permanent entry permit.”.

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***[Minister's second reading speech made in—
House of Representatives on 26 October 1989
Senate on 14 December 1989]***