



# Migration Amendment Act 1992

No. 24 of 1992

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## An Act to amend the *Migration Act 1958*

[Assented to 6 May 1992]

The Parliament of Australia enacts:

### Short title etc.

1.(1) This Act may be cited as the *Migration Amendment Act 1992*.

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

### 5 Commencement

2.(1) Sections 1, 2, 3 and 7 commence on the day on which this Act receives the Royal Assent.

(2) Sections 4 and 6 commence on the 28th day after the day on which this Act receives the Royal Assent.

10 (3) Sections 5 and 8 commence on a day to be fixed by Proclamation.

(4) If the provisions referred to in subsection (3) do not commence within the period of 6 months commencing on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

15 3. After Division 4A of Part 2 of the Principal Act the following Division is inserted:

**“Division 4B—Custody of certain non-citizens**

**Reason for Division**

“54J. This Division is enacted because the Parliament considers that it is in the national interest that each non-citizen who is a designated person should be kept in custody until he or she:

- (a) leaves Australia; or
- (b) is given an entry permit.

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**Interpretation**

“54K. In this Division:

‘commencement’ means the commencement of this Division;

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‘custody’ means custody under this Act within the meaning of section 11, and includes being held in a processing area;

‘designated person’ means a non-citizen who:

- (a) has been on a boat in the territorial sea of Australia after 19 November 1989 and before 1 December 1992; and
- (b) has not presented a visa; and
- (c) is in Australia; and
- (d) has not been granted an entry permit; and
- (e) is a person to whom the Department has given a designation by:

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- (i) determining and recording which boat he or she was on; and

- (ii) giving him or her an identifier that is not the same as an identifier given to another non-citizen who was on that boat;

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and includes a non-citizen born in Australia whose mother is a designated person;

‘entry application’, in relation to a person, means an application for:

- (a) a determination by the Minister that the person is a refugee; or
- (b) an entry permit for the person.

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**Designated persons to be in custody**

“54L.(1) Subject to subsection (2), after commencement, a designated person must be kept in custody.

“(2) A designated person is to be released from custody if, and only if, he or she is:

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- (a) removed from Australia under section 54P; or
- (b) given an entry permit under section 34 or 115.

“(3) This section is subject to section 54Q.

**Beginning of custody of certain designated persons**

“54M.(1) If, immediately after commencement, a designated person is in a place described in paragraph 11(a) or a processing area, he or she then begins to be in custody for the purposes of section 54L.

5 “(2) If, immediately after commencement, a designated person is in the company of, and restrained by, a person described in paragraph 11(b), the designated person then begins to be in custody for the purposes of section 54L.

**Detention of designated person**

10 “54N.(1) If a designated person is not in custody immediately after commencement, an officer may, without warrant:

(a) detain the person; and

(b) take reasonable action to ensure that the person is kept in custody for the purposes of section 54L.

15 “(2) Without limiting the generality of subsection (1), that subsection even applies to a designated person who was held in a place described in paragraph 11(a) or a processing area before commencement and whose release was ordered by a court.

20 “(3) If a designated person escapes from custody after commencement, an officer may, without warrant:

(a) detain the person; and

(b) take reasonable action to ensure that the person is kept in custody for the purposes of section 54L.

**Removal from Australia of designated persons**

25 “54P.(1) An officer must remove a designated person from Australia as soon as practicable if the designated person asks the Minister, in writing, to be removed.

“(2) An officer must remove a designated person from Australia as soon as practicable if:

30 (a) the person has been in Australia for at least 2 months or, if a longer period is prescribed, at least that prescribed period; and

(b) there has not been an entry application for the person.

“(3) An officer must remove a designated person from Australia as soon as practicable if:

35 (a) there has been an entry application for the person; and

(b) the application has been refused; and

(c) all appeals against, or reviews of, the refusal (if any) have been finalised.

“(4) If:

40 (a) 2 designated persons are liable to be removed from Australia under this section; and

- (b) they are the parents of another designated person in Australia who is under 18;  
the other designated person is to be removed from Australia.
- “(5) If: 5
- (a) a designated person is liable to be removed from Australia under this section; and
  - (b) he or she is the only parent in Australia of another designated person in Australia who is under 18;  
the other designated person is to be removed from Australia.
- “(6) If: 10
- (a) 2 designated persons are liable to be removed from Australia under this section; and
  - (b) they have the care and control of another designated person in Australia who:
    - (i) is under 18; and 15
    - (ii) does not have a parent who is a designated person;
- the other designated person is to be removed from Australia.
- “(7) If: 20
- (a) a designated person is liable to be removed from Australia under this section; and
  - (b) he or she is the only person who has the care and control of another designated person in Australia who:
    - (i) is under 18; and
    - (ii) does not have a parent who is a designated person;
- the other designated person is to be removed from Australia. 25
- “(8) This section is subject to section 54Q.
- No custody or removal after certain period**
- “54Q.(1) Sections 54L and 54P cease to apply to a designated person who was in Australia on 27 April 1992 if the person has been in application custody after commencement for a continuous period of, or periods whose sum is, 273 days. 30
- “(2) Sections 54L and 54P cease to apply to a designated person who was not in Australia on 27 April 1992, if:
- (a) there has been an entry application for the person; and
  - (b) the person has been in application custody, after the making of the application, for a continuous period of, or periods whose sum is, 273 days. 35
- “(3) For the purposes of this section, a person is in application custody if:
- (a) the person is in custody; and 40
  - (b) an entry application for the person is being dealt with;

unless one of the following is happening:

- (c) the Department is waiting for information relating to the application to be given by a person who is not under the control of the Department;
- 5 (d) the dealing with the application is at a stage whose duration is under the control of the person or of an adviser or representative of the person;
- (e) court or tribunal proceedings relating to the application have been begun and not finalised;
- 10 (f) continued dealing with the application is otherwise beyond the control of the Department.

#### **Courts must not release designated persons**

“54R. A court is not to order the release from custody of a designated person.

#### **15 Effect of Division on status etc.**

“54S.(1) This Division does not affect the other status that a designated person has under this Act except so far as the status is inconsistent with section 54L, 54M, 54N, 54P or 54R.

20 “(2) This Division does not affect the rights of a designated person under this Act except so far as they, or their exercise, are inconsistent with section 54L, 54M, 54N, 54P or 54R.

25 “(3) This Division does not affect any application made by a designated person under this Act except so far as the application, or the success of the application, is inconsistent with section 54L, 54M, 54N, 54P or 54R.

#### **Division applies despite other laws**

“54T. If this Division is inconsistent with another provision of this Act or with another law in force in Australia, whether written or unwritten, other than the Constitution:

- 30 (a) this Division applies; and
- (b) the other law only applies so far as it is capable of operating concurrently with this Division.

#### **Evidence**

35 “54U. A statement by an officer, on oath or affirmation, that the Department has given a particular person a designation described in paragraph (e) of the definition of ‘designated person’ in section 54K is conclusive evidence that the Department has given that person that designation.”.

40 **4.** After section 121 of the Principal Act the following section is inserted:

**Review of assessments made under section 30**

“121A. In reviewing an assessment of the Minister under section 30, the only regulations for the purpose of that section which the review authority is to have regard to are whichever of the following are more favourable to the applicant:

- (a) the regulations for that purpose that were in force at the time the assessment was made by the Minister;
- (b) the regulations for that purpose that are in force at the time the decision is made by the review authority about the assessment.”

**Amendments relating to custody**

5. The Principal Act is amended as set out in Schedule 1.

**Amendments of penalty provisions**

6. The Principal Act is amended as set out in Schedule 2.

**Other amendments**

7. The Principal Act is further amended as set out in Schedule 3.

**Transitional—custody**

8. If, immediately before the commencement of this section, a person was in custody under the Principal Act as a result of being arrested under section 92 or 93 of that Act, the person is taken to have been detained in custody under section 92 or 93 of that Act as amended by this Act, as the case may be, immediately after the commencement of this section.

**SCHEDULE 1**

Section 5

**AMENDMENTS RELATING TO CUSTODY**

**Subsection 68(1):**

Omit “arrested” (first occurring), substitute “detained in custody”.

**Section 68:**

Omit “arrested” (other than first occurring), substitute “detained”.

**Subsections 69(3) to (5) (inclusive):**

Omit “arrested”, substitute “detained”.

**Subsection 69(6):**

(a) Omit the definition of “arrested person”.

(b) Insert:

“‘**detained person**’ means the person served with the notice under section 68.”.

**Subsection 92(1):**

Omit “arrest”, substitute “detain in custody”.

**Subsection 92(2):**

Omit “arrested”, substitute “detained”.

**Subsection 92(3):**

(a) Omit “arrests”, substitute “detains”.

(b) Omit “arrested” (wherever occurring), substitute “detained”.

(c) Omit “arrest” (wherever occurring), substitute “detention”.

**Subsection 92(8):**

Omit “arrested”, substitute “detained in custody”.

**Subsection 92(10):**

Omit “arrest”, substitute “detain in custody”.

**Subsection 93(1):**

Omit “arrest”, substitute “detain in custody”.

**Subsection 93(2):**

Omit “arrested”, substitute “detained”.

**Subsection 93(3):**

(a) Omit “arrests”, substitute “detains”.

(b) Omit “arrested”.

**SCHEDULE 1—continued**

(c) Omit “arrest”, substitute “detention in custody”.

**Subsection 93(4):**

(a) Omit “arrested” (wherever occurring), substitute “detained”.

(b) Omit “arrest”, substitute “detention in custody”.

**Subsection 93(5):**

(a) Omit “an arrested”, substitute “a detained”.

(b) Omit “the arrested”, substitute “the”.

**Subsection 93(7):**

Omit “arrested”, substitute “detained”.

**Subsection 93(10):**

Omit “arrest”, substitute “detain in custody”.

**Subsection 94(3):**

Omit “arrested”, substitute “detained in custody”.

**Subsection 97(1):**

Omit “has been arrested and”.



**SCHEDULE 2**

Section 6

**AMENDMENTS OF PENALTY PROVISIONS**

**Subsection 64(5):**

Omit “\$5,000”, substitute “\$10,000”.

**Subsection 67(8):**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

**Subsection 68(7):**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “\$30,000”.

**Subsection 68(8):**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “By imprisonment for 2 years”.



**SCHEDULE 2—continued**

**Subsection 70(1):**

Omit “\$5,000”, substitute “\$10,000”.

**Section 71:**

Omit “\$2,000”, substitute “\$4,000”.

**Section 72:**

Omit “\$2,000”, substitute “\$4,000”.

**Section 73:**

Omit “\$2,000”, substitute “\$4,000”.

**Section 74:**

Omit “\$2,000”, substitute “\$4,000”.

**Subsection 77(1):**

Omit all the words after “conviction,”, substitute “by imprisonment for a period not exceeding 2 years.”.

**Subsection 77(2):**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

**Subsection 77(5):**

Omit all the words after “conviction,”, substitute “by imprisonment for a period not exceeding 2 years.”.

**Section 78:**

Omit “\$5,000”, substitute “\$10,000”.

**Section 79:**

Omit “\$5,000”, substitute “\$10,000”.

**Subsection 80(2):**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

**Section 81:**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

**Subsection 82(1):**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

**SCHEDULE 2—continued**

**Subsection 83(5):**

Omit “\$5,000”, substitute “\$10,000”.

**Subsection 85(1):**

Omit “\$10,000”, substitute “\$20,000”.

**Subsection 85(2):**

Omit “\$10,000”, substitute “\$20,000”.

**Subsection 85(3):**

Omit “\$10,000”, substitute “\$20,000”.

**Subsection 85(4):**

Omit “\$10,000”, substitute “\$20,000”.

**Subsection 85(7):**

Omit “\$5,000”, substitute “\$10,000”.

**Subsection 89(5):**

Omit “\$5,000”, substitute “\$10,000”.

**Subsection 90(2):**

Omit “\$5,000”, substitute “\$10,000”.

**Subsection 97(2):**

Omit “\$1,000 or imprisonment”, substitute “Imprisonment”.

**Section 99:**

Omit “\$10,000”, substitute “\$20,000”.

**Subsection 101(2):**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

**Section 102:**

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

**Section 141:**

Omit “\$1,000 or imprisonment for 6 months, or both”, substitute “Imprisonment for 6 months”.

**Subsection 142(1):**

Omit “\$1,000 or imprisonment for 6 months, or both”, substitute “Imprisonment for 6 months”.

**SCHEDULE 2—continued**

**Subsection 142(2):**

Omit "\$1,000 or imprisonment for 6 months, or both", substitute "Imprisonment for 6 months".

**Subsection 142(3):**

Omit "\$2,000 or imprisonment for 12 months, or both", substitute "Imprisonment for 12 months".

**Section 143:**

Omit "\$2,000 or imprisonment for 12 months, or both", substitute "Imprisonment for 12 months".

**Subsection 148(3):**

Omit "\$5,000 or imprisonment for 2 years, or both", substitute "Imprisonment for 2 years".

**Section 149:**

Omit "\$5,000 or imprisonment for 2 years, or both", substitute "Imprisonment for 2 years".

**Section 167:**

Omit "\$1,000 or imprisonment", substitute "Imprisonment".

**Subsection 168(1):**

Omit "\$5,000 or imprisonment for 2 years, or both", substitute "Imprisonment for 2 years".

**Subsection 168(2):**

Omit "\$20,000 or imprisonment for 10 years, or both", substitute "Imprisonment for 10 years".

**Subsection 171(1):**

Omit the subsection.

**Subsection 171(2):**

Omit "\$5,000 or imprisonment for 2 years, or both", substitute "Imprisonment for 2 years".

**SCHEDULE 3**

Section 7

**OTHER AMENDMENTS**

**Subsection 4(1) (paragraph (b) of definition of “properly endorsed valid entry permit”):**

Omit “20(4)”, substitute “20(5)”.

**Subsection 4(1) (definition of “properly endorsed valid entry visa”):**

Omit “Secretary”, substitute “person granting the visa or the authorised officer required to endorse the visa under subsection 20 (4A)”.

**After subsection 20(4A):**

Insert:

“(4B) A visa is taken to be endorsed under subsection (4) or (4A) with a statement if the statement is recorded in a notified data base, but the person required to endorse the visa with the statement may still do so.”.

**After subsection 20(5):**

Insert:

“(5A) An entry permit is taken to be endorsed under subsection (5) with a statement if the statement is recorded in a notified data base, but the person required to endorse the visa with the statement may still do so.”.

**Section 37:**

Add at the end:

“(3) Nothing in this section prevents a person making a further application for an entry permit while he or she remains in Australia if:

- (a) he or she has been notified under subsection 121(2); and
- (b) the further application is made, because of that notification, within 10 working days after he or she is so notified.”.

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**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; Nos. 59 and 61, 1989; No. 37, 1990; and Nos. 70, 86, 196 and 198, 1991.

**NOTE ABOUT SECTION HEADINGS IN THE MIGRATION ACT 1958**

On the day on which the *Migration Act 1958* is amended by this Act:

- (a) the heading to section 36 is altered by omitting “review applied for” and substituting “notification under section 121”;

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**NOTE—continued**

- (b) the heading to section 87 is altered by omitting “**Prohibited entrants etc.**” and substituting “**Certain persons**”;
- (c) the headings to sections 88 and 89 are altered by omitting “**prohibited entrant**” and substituting “**certain persons**”.

[*Minister's second reading speech made in—  
Senate on 19 December 1991  
House of Representatives on 5 May 1992*]