



# Migration Reform Act 1992

No. 184 of 1992

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## An Act to reform the law relating to migration

[Assented to 7 December 1992]

The Parliament of Australia enacts:

### Short title etc.

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

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

### 5 Commencement

2.(1) Sections 1, 2 and 31 commence on the day on which this Act receives the Royal Assent.

(2) Sections 6 and 32 commence on 1 July 1993.

10 (3) The remaining provisions of this Act commence on 1 November 1993.

3. After section 3 of the Principal Act the following section is inserted:

**Object of Act**

“3A.(1) The object of this Act is to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.

“(2) To advance its object, this Act provides for visas permitting non-citizens to enter or remain in Australia and the Parliament intends that this Act be the only source of the right of non-citizens to so enter or remain. 5

“(3) To advance its object, this Act requires persons entering Australia to identify themselves so that the Commonwealth government can know who are the non-citizens so entering. 10

“(4) To advance its object, this Act provides for the removal or deportation from Australia of non-citizens whose presence in Australia is not permitted by this Act.”.

**Interpretation**

4. Section 4 of the Principal Act is amended: 15

(a) by omitting from subsection (1) the definitions of “accompanying child”, “accompanying spouse”, “holder”, “port”, “score” and “visa” and substituting respectively the following definitions:

“**holder**”, in relation to a visa, means, subject to section 26ZR (visas only held if in force) the person to whom it was granted or a person included in it; 20

**port** means:

(a) a proclaimed port; or

(b) a proclaimed airport;

**score**’, in relation to a visa applicant, means the total number of points given to the applicant under section 30 in the most recent assessment or re-assessment under Subdivision B of Division 2 of Part 2; 25

**visa**’ has the meaning given by section 24 and includes an ‘old visa’;” 30

(b) by omitting from subsection (1) the definitions of “entry permit”, “entry visa”, “exempt non-citizen”, “member”, “period of grace”, “permanent entry permit”, “presiding member”, “Principal Member”, “processing area”, “prohibited person”, “properly endorsed valid entry permit”, “properly endorsed valid entry visa”, “refugee”, “review authority”, “reviewable decision”, “review officer”, “review under Part 3”, “section 20 notice”, “Senior Member”, “statutory visitor”, “stowaway”, “temporary entry permit”, “travel only visa”, “Tribunal”, “unprocessed person”, “valid entry permit”, “valid temporary entry permit”, “valid permanent entry permit” and “valid visa”; 35 40

(c) by inserting in subsection (1) the following definitions:

“ **‘allowed inhabitant of the Protected Zone’** means an inhabitant of the Protected Zone, other than such an inhabitant:

(a) to whom a declaration under section 17 applies (presence declared undesirable); or

5 (b) who is a behaviour concern non-citizen; or

(c) who is a health concern non-citizen;

**‘approve’**, in relation to an application for a visa, means approve the grant of the visa;

**‘behaviour concern non-citizen’** means a non-citizen who:

10 (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least one year; or

(b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least one year if:

15 (i) any period concurrent with part of a longer period is disregarded; and

(ii) any periods not disregarded that are concurrent with each other are treated as one period;

whether or not:

20 (iii) the crimes were of the same kind; or

(iv) the crimes were committed at the same time; or

(v) the convictions were at the same time; or

(vi) the sentencings were at the same time; or

(vii) the periods were consecutive; or

25 (c) has been charged with a crime and either:

(i) found guilty of having committed the crime while of unsound mind; or

(ii) acquitted on the ground that the crime was committed while the person was of unsound mind;

30 (d) has been removed or deported from Australia or removed or deported from another country; or

(e) has been excluded from another country in prescribed circumstances;

35 where **‘sentenced to imprisonment’** includes ordered to be confined in a corrective institution;

**‘bridging visa’** has the meaning given by section 26C;

**‘bypass immigration clearance’** has the meaning given by subsection 54HS(4);

**‘criminal justice visa’** has the meaning given by section 26D;

40 **‘detain’** means:

(a) take into immigration detention; or

(b) keep, or cause to be kept, in immigration detention;

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and includes taking such action and using such force as are reasonably necessary to do so;

**'detainee'** means a person detained;

**'enter Australia'**, in relation to a person, means enter the migration zone; 5

**'health concern non-citizen'** means a non-citizen who is suffering from a prescribed disease or a prescribed physical or mental condition;

**'health criterion'**, in relation to a visa, means a prescribed criterion for the visa that is satisfied if the applicant for the visa: 10

(a) does not have a specified disease; or

(b) does not have a specified physical or mental condition; or

(c) has a specified physical or mental condition; or 15

(d) has had a specified examination; or

(e) has had specified treatment to prevent disease;

**'immigration cleared'** has the meaning given by subsection 54HS(1);

**'immigration detention'** means: 20

(a) being in the company of, and restrained by:

(i) an officer; or

(ii) in relation to a particular detainee—another person directed by the Secretary to accompany and restrain the detainee; or 25

(b) being held by, or on behalf of, an officer in:

(i) a detention centre established under this Act; or

(ii) a prison or remand centre of the Commonwealth, a State or a Territory; or

(iii) a police station or watch house; or 30

(iv) another place approved by the Minister in writing;

**'Immigration Review Tribunal'** means the Immigration Review Tribunal established by section 151;

**'in immigration clearance'** has the meaning given by subsection 54HS(2); 35

**'internally-reviewable decision'** has the meaning given by section 115A;

**'IRT-reviewable decision'** has the meaning given by section 116;

**'judicially-reviewable decision'** has the meaning given by section 166LA; 40

**'lawful non-citizen'** has the meaning given by section 14;

**'leave Australia'**, in relation to a person, means, subject to section 26ZU (leaving without going to other country), leave the migration zone;

**'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 a Territory but not in a port;

**'non-disclosable information'** means information or matter:

(a) whose disclosure would, in the Minister's opinion, be contrary to the national interest because it would:

(i) prejudice the security, defence or international relations to Australia; or

(ii) involve the disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet; or

(b) whose disclosure would, in the Minister's opinion, be contrary to the public interest for a reason which could form the basis of a claim by the Crown in right of the Commonwealth in judicial proceedings; or

(c) that is information or matter that was given to the Minister or an officer in confidence;

and includes any document containing, or any record of, such information or matter;

**'old visa'** means a visa, document, or notation, that:

(a) permits a person to travel to Australia; and

(b) was issued before 1 November 1993; and

(c) has not been cancelled or otherwise stopped being in force;

**'permanent visa'** has the meaning given by subsection 25(1);

**'protected area'** means an area that is:

(a) part of the migration zone; and

(b) in, or in an area in the vicinity of, the Protected Zone;

**'questioning detention'** means detention under section 54Z;

**'Refugee Review Tribunal'** means the Refugee Review Tribunal established by section 166J;

**'refused immigration clearance'** has the meaning given by subsection 54HS(3);

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**'remain in Australia'**, in relation to a person, means remain in the migration zone;

**'remove'** means remove from Australia;

**'removee'** means an unlawful non-citizen removed, or to be removed, under Division 4D of Part 2;

**'RRT-reviewable decision'** has the meaning given by section 166B;

**'special category visa'** has the meaning given by section 26A;

**'substantive visa'** means a visa other than a bridging visa or a criminal justice visa;

**'temporary visa'** has the meaning given by subsection 25(2);

**'unlawful non-citizen'** has the meaning given by section 15;

**'visa'** includes an old visa;

**'visa applicant'** means an applicant for a visa and, in relation to a visa, means the applicant for the visa;

**'visa holder'** means the holder of a visa and, in relation to a visa, means the holder of the visa;

**'visa tax'** means tax under the *Migration (Delayed Visa Applications) Tax Act 1992*;"

(d) by omitting subsections (5), (5A), (8), (9), (10) and (10A);

(e) by omitting from paragraph (12)(a) "Part 3" and substituting "Part 3 or 4A";

(f) by omitting from paragraph (12)(b) "Part III" and substituting "Part 3 or 4A";

(g) by omitting subsections (26) and (28)."

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

**Effect of limited meaning of enter Australia etc.**

"4AA. To avoid doubt, although subsection 4(1) limits, for the purposes of this Act, the meanings of 'enter Australia', 'leave Australia' and 'remain in Australia' and as well, because of section 18A of the *Acts Interpretation Act 1901*, the meaning of parts of speech and grammatical forms of those phrases, this does not mean:

(a) that, for those purposes, the meaning of 'in Australia', 'to Australia' or any other phrase is limited; or

(b) that this Act does not extend to parts of Australia outside the migration zone; or

(c) that this Act does not apply to persons in those parts."

**Period of grace .**

6. Section 13 of the Principal Act is amended:

(a) by inserting after paragraph (b) of the definition of "excluded day" in subsection (2) the following paragraph:

“(ba) starting when the person applies to the Refugee Review Tribunal for a review of a decision refusing him or her an entry permit and ending when the person is notified of the decision on the review; or”;

5 (b) by inserting “, a review by the Refugee Review Tribunal” after “Part 3” in paragraph (d) of the definition of “excluded day” in subsection (2);

(c) by inserting “, (b)” after “(b)” in paragraph (d) of the definition of “excluded day” in subsection (2).

10 7. The headings to Part 2 and Division 1 of Part 2, and sections 14 to 18, of the Principal Act are repealed and the following headings and sections substituted:

**“PART 2—CONTROL OF ARRIVAL AND PRESENCE OF NON-CITIZENS**

15 **“Division 1—Immigration status**

**Lawful non-citizens**

“14.(1) A non-citizen in the migration zone who holds a visa is a lawful non-citizen.

20 “(2) An allowed inhabitant of the Protected Zone who is in a protected area in connection with the performance of traditional activities is a lawful non-citizen.

“(3) A non-citizen in the migration zone who:

(a) on 2 April 1984 was in Australia; and

(b) before that date, had ceased to be an immigrant; and

25 (c) on or after that date, has not left Australia, where left Australia has the meaning it had in this Act before 1 November 1993; and

(d) immediately before 1 November 1993, was not a person to whom section 20 of this Act as in force then applied;

30 is a lawful non-citizen.

**Unlawful non-citizens**

“15.(1) A non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen.

35 “(2) To avoid doubt, a non-citizen in the migration zone who, immediately before 1 November 1993, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an unlawful non-citizen.

**Effect of cancellation of visa on status**

“16. To avoid doubt, subject to subsection 14(2) (certain inhabitants of protected zone), if a visa is cancelled its former holder, if in the migration zone, becomes, on the cancellation, an unlawful non-citizen.

**Removal of immigration rights of inhabitant of Protected Zone** 5

“17. The Minister may declare, in writing, that it is undesirable that a specified inhabitant of the Protected Zone continue to be permitted to enter or remain in Australia.”.

**Pre-cleared flights**

8. Section 19 of the Principal Act is amended: 10

(a) by omitting “section 17” and substituting “this Act”;

(b) by adding at the end the following subsections:

“(2) The Minister may declare, in writing, a specified class of flights conducted by a specified air transport enterprise or by another specified person to be pre-cleared flights for the purposes of this Act. 15

“(3) A particular flight to which a declaration under subsection (1) or (2) applies is not a pre-cleared flight if an authorised officer decides, before the passengers on it disembark in Australia, that it is inappropriate to treat it as such.”. 20

**Refugees**

9. Division 1AA of Part 2 of the Principal Act is repealed.

10. The headings to Division 2 of Part 2 and Subdivision A of that Division, and sections 23 to 26, of the Principal Act are repealed and the following headings and sections are substituted: 25

*“Division 2—Visas for non-citizens*

*“Subdivision A—General provisions about visas*

**Interpretation**

“23. In this Division:

‘specified period’ includes the period until a specified date. 30

**Visas**

“24.(1) Subject to this Act, the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following:

(a) travel to and enter Australia; 35

(b) remain in Australia.

“(2) Without limiting subsection (1), a visa to travel to, enter and remain in Australia may be one to:



- (a) enter Australia during a specified period; and
- (b) if, and only if, the holder enters during that period, remain in Australia during a specified period or indefinitely.

5 “(3) Without limiting subsection (1), a visa to travel to, enter and remain in Australia may be one to:

- (a) enter Australia during a specified period; and
- (b) if, and only if, the holder enters during that period:
  - (i) remain in it during a specified period or indefinitely; and
  - 10 (ii) if the holder leaves Australia during a specified period, re-enter it during a specified period.

“(4) Without limiting section 27 (person taken to be included in visa) or section 26ZS (newborn child included in visa), the regulations may provide for a visa being held by 2 or more persons.

#### **Kinds of visas**

15 “25.(1) A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a permanent visa, to remain indefinitely.

“(2) A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain:

- (a) during a specified period; or
- (b) until a specified event happens; or
- (c) while the holder has a specified status.

#### **Classes of visas**

25 “26.(1) There are to be prescribed classes of visas.

“(2) As well as the prescribed classes, there are the classes provided for by sections 26A, 26B, 26C and 26D.

30 “(3) The regulations may prescribe criteria for a visa or visas in a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 26A, 26B or 26C but not by section 26D).

#### **Special category visas**

“26A.(1) There is a class of temporary visas to be known as special category visas.

35 “(2) A criterion for a special category visa is that the applicant is:

- (a) a non-citizen:
  - (i) who is a New Zealand citizen and holds, and has shown an officer, a New Zealand passport that is in force; and
  - 40 (ii) is neither a behaviour concern non-citizen nor a health concern non-citizen; or

- (b) a person declared by the regulations, to be a person for whom a visa in another class would be inappropriate; or
- (c) a person in a class of persons declared by the regulations, to be persons for whom a visa in another class would be inappropriate.

**Protection visas**

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“26B.(1) There is a class of temporary visas to be known as protection visas.

“(2) A criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.

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**Bridging visas**

“26C. There is a class of temporary visas, to be known as bridging visas, to be granted under Subdivision AF.

**Criminal justice visas**

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“26D. There is a class of temporary visas, to be known as criminal justice visas, to be granted under Subdivision D of Division 3.

**Criterion limiting number of visas**

“26E.(1) In spite of section 49A of the *Acts Interpretation Act 1901*, a prescribed criterion for visas in a class, other than protection visas, may be the criterion that the grant of the visa would not cause the number of visas in that class granted in a particular financial year to exceed whatever number is fixed by the Minister, by notice published in the *Gazette*, as the maximum number of such visas that may be granted in that year (however the criterion is expressed).

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“(2) For the purposes of this Act, when a criterion allowed by subsection (1) prevents the grant in a financial year of any more visas in a particular class, any outstanding applications for the grant in that year of visas in that class are taken not to have been made.

**Circumstances for granting visas**

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“26F.(1) The regulations may provide that visas or visas in a specified class may only be granted in specified circumstances.

“(2) Without limiting subsection (1), the circumstances may be that, when the person is granted the visa, the person:

- (a) is outside Australia; or
- (b) is in immigration clearance or has been refused immigration clearance; or
- (c) is in the migration zone and, on last entering Australia, was immigration cleared or bypassed immigration clearance.

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**Conditions on visas**

“26G.(1) The regulations may provide that visas, or visas in a specified class, are subject to specified conditions.

- 5 “(2) Without limiting subsection (1), the regulations may provide that a visa, or visas in a specified class, are subject to:
- (a) a condition that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a visa while he or she remains in Australia; or
  - 10 (b) a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restrictions on doing:
    - (i) any work; or
    - (ii) work other than specified work; or
    - (iii) work of a specified kind.

15 **Visas essential for travel**

“26H.(1) Subject to subsections (2) and (3), a non-citizen must not travel to Australia without a visa.

20 “(2) Subsection (1) does not apply to an allowed inhabitant of the Protected Zone travelling to a protected area in connection with traditional activities.

“(3) The regulations may permit a specified non-citizen or a non-citizen in a specified class to travel to Australia without a visa.

**Visa holders must usually enter at a port**

25 “26J. Subject to the regulations, a visa to enter Australia is permission for the holder to enter Australia:

- (a) at a port; or
- (b) on a pre-cleared flight; or
- 30 (c) if the holder travels to Australia on a vessel and the health or safety of a person or a prescribed reason, make it necessary to enter in another way, that way; or
- (d) in a way authorised in writing by an authorised officer.

***“Subdivision AA—Applications for visas***

**Extent of following Subdivisions**

35 “26K. This Subdivision and the later Subdivisions of this Division, other than this section, Subdivision AG and subsection 50E(1), do not apply to criminal justice visas.

**Application for visa**

“26L.(1) A non-citizen who wants a visa must apply for it.

40 “(2) Without limiting subsection (1), the regulations may prescribe the way for making:

- (a) an application in specified circumstances; or
- (b) an application for a visa in a specified class; or
- (c) an application in specified circumstances for a visa in a specified class.

“(3) Without limiting subsection (1), the regulations may provide that, when an application in a specified class is made, the applicant: 5

- (a) must be outside Australia; or
- (b) must be in immigration clearance or have been refused immigration clearance; or
- (c) must be in the migration zone and, on last entering Australia, been immigration cleared or bypassed immigration clearance. 10

#### **Valid visa application**

“26M. An application for a visa is valid if, and only if:

- (a) it is for a visa in a class specified in the application; and
- (b) it is made in the way required by subsection 26L(2), including any way required by subsection 26L(3); and 15
- (c) any fees payable in respect of it under the regulations have been paid; and
- (d) it is not prevented by section 26P (visa refused or cancelled earlier), 54HH (criminal justice) or 54ZC (detainees); and 20
- (e) in a case where the applicant is in the migration zone and the application is not for a protection visa or a bridging visa, the applicant has not, since last entering Australia, held a visa subject to a condition described in paragraph 26G(2)(a).

#### **Consideration of valid visa application 25**

“26N.(1) The Minister is to consider a valid application for a visa.

“(2) The requirement to consider an application continues until:

- (a) it is withdrawn, approved or refused; or
- (b) the further consideration is prevented by section 26E (limiting number of visas) or 28 (suspension of consideration). 30

“(3) To avoid doubt, the Minister is not to consider an application that is not a valid application.

“(4) To avoid doubt, a decision by the Minister that an application is not valid and cannot be considered is not a decision to refuse the application. 35

#### **Non-citizens whose application refused or visa cancelled may only apply for particular visas**

“26P.(1) A non-citizen in Australia who:

- (a) does not hold a substantive visa; and
- (b) either: 40

- (i) made an application for a visa, other than a bridging visa, that was refused after he or she last entered Australia (whether or not the application has been finally determined); or
- 5 (ii) held a visa that was cancelled under section 45 (incorrect information), 50AB (general power to cancel); or section 50A (business visas);

may apply for a visa in a class prescribed for the purposes of this section or a bridging visa but not for any other visa.

- 10 “(2) One of the criteria for a visa in a class prescribed for the purposes of this section is that there has been a prescribed change in circumstances since the refused application or cancellation.

#### **Withdrawal of visa application**

- 15 “26Q.(1) An applicant for a visa may, by written notice given to the Minister, withdraw the application.

“(2) An application that is withdrawn is taken to have been disposed of.

- 20 “(3) To avoid doubt, an application that is withdrawn before it is refused is not taken for the purposes of section 26P to have been refused.

“(4) Subject to the regulations, fees payable in respect of an application that is withdrawn are not refundable.

#### **Only new information to be considered in later protection visa applications**

- 25 “26R. If a non-citizen who has made:
  - (a) an application for a protection visa that has been refused and finally determined; or
  - (b) applications for protection visas that have been refused and finally determined;
- 30 makes a further application for a protection visa, the Minister, in considering the further application:
  - (c) is not required to reconsider any information considered in the earlier application or an earlier application; and
  - 35 (d) may have regard to, and take to be correct, any decision that the Minister made about or because of that information.

#### **Order of consideration**

“26S.(1) The Minister may consider and dispose of applications for visas in such order as he or she considers appropriate.

- 40 “(2) The fact that an application has not yet been considered or disposed of although an application that was made later has been

considered or disposed of does not mean that the consideration or disposal of the earlier application is unreasonably delayed.

***“Subdivision AB—Code of procedure for dealing fairly, efficiently and quickly with visa applications***

**Communication of applicant with Minister**

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“26T.(1) A visa applicant must communicate with the Minister in the prescribed way.

“(2) The regulations may prescribe different ways of communicating and specify the circumstances when communication is to be in a particular way.

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“(3) If the applicant purports to communicate anything to the Minister in a way that is not the prescribed way, the communication is taken not to have been received unless the Minister in fact receives it.

**Communication of Minister with applicant**

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“26U.(1) A visa applicant is to tell the Minister the address at which the applicant intends to live while the application is being dealt with.

“(2) If the applicant proposes to change the address at which he intends to live for at least 14 days, the applicant must tell the Minister the address and the period of proposed residence.

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“(3) If the Minister sends or leaves a notification to the applicant at the address for the applicant given under subsection (1) or (2), the notification is taken to have been received by the applicant even if it was not received.

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“(4) A visa applicant may tell the Minister that a specified person at a specified address may be given notifications for the applicant about the application.

“(5) If the Minister has been given the name and address of a person under subsection (4), the Minister may give, but is not required to give, notifications to the applicant by giving them to that person at that address and a notification so given is taken to have been received by the applicant.

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“(6) If, in accordance with the regulations, 2 or more non-citizens apply for visas together, notifications given to any of them about the application are taken to be given to each of them.

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**Application may be decided on basis of information in application**

“26V.(1) Subject to this Subdivision, a visa application may be decided on the basis of the information given in it.

“(2) For the purposes of subsection (1), information is in an application if, and only if, the information is set out in the application or in a document attached to it when it is made.

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“(3) Without limiting subsection (1), a decision about an application may be made without giving the applicant an opportunity to make oral or written submissions.

**Further information may be given**

5 “26W.(1) Until the Minister has made a decision whether to approve or refuse an application for a visa, the applicant may give the Minister any additional relevant information and the Minister must have regard to that information in making the decision.

10 “(2) Subsection (1) does not mean that the Minister is required to delay making a decision because the applicant might give, or has told the Minister that the applicant intends to give, further information.

**Further information may be sought**

15 “26X.(1) In considering an application for a visa, the Minister may, if he or she wants to, get any information that he or she considers relevant and may have regard to that information in making the decision about the application.

“(2) Without limiting subsection (1), the Minister may invite, orally or in writing, the applicant for a visa to give additional information in a specified way.

20 **Certain information must be given to applicant**

“26Y.(1) Subject to subsection (2), if the Minister has information, not being non-disclosable information, that he or she considers:

- (a) would be the reason, or part of the reason, for refusing the application for a visa; and
- 25 (b) is specifically about the applicant or another person and not just about a class of persons of which the applicant or other person is a member; and
- (c) was not given by, or with the permission of, the applicant for the purpose of the application;
- 30 the Minister is to:
  - (d) give particulars of the information to the applicant; and
  - (e) invite the applicant to comment on the information.

“(2) This section does not apply to an application for a visa if:

- 35 (a) the application is to be made when the applicant is outside Australia; and
- (b) this Act does not provide for an application in accordance with Part 3 or 4A for review of a decision to refuse the application for the visa.

40 “(3) The particulars and invitation are to be given in the way that the Minister considers appropriate in the circumstances, which may be orally or in writing.

“(4) The Minister is to ensure, as far as reasonably practicable, that the applicant understands why the information is relevant to the application.

**Invitation to give further information or comments**

- “26Z.(1) If an applicant for a visa is: 5
- (a) invited under section 26X to give additional information; or
  - (b) invited under section 26Y to comment on information;
- the invitation is to specify whether the additional information or the comments may be given:
- (c) in writing; or 10
  - (d) at an interview between the applicant and an officer; or
  - (e) by telephone.
- “(2) Subject to subsection (4), if the invitation is to give additional information or comments otherwise than at an interview, the information or comments are to be given within a period specified in the invitation, being a prescribed period or, if no period is prescribed, a reasonable period. 15
- “(3) Subject to subsection (5), if the invitation is to give information or comments at an interview, the interview is to take place:
- (a) at a place specified in the invitation, being a prescribed place or if no place is prescribed, a reasonable place; and 20
  - (b) at a time specified in the invitation, being a time within a prescribed period or, if no period is prescribed, a reasonable period.
- “(4) If a person is to respond to an invitation within a prescribed period, that period may be extended by the Minister for a prescribed further period, and then the response is to be made in the extended period. 25
- “(5) If a person is to respond to an invitation at an interview at a time within a prescribed period, that time may be changed by the Minister to:
- (a) a later time within that period; or
  - (b) a time within that period as extended by the Minister for a prescribed further period;
- and then the response is to be made at an interview at the new time. 35

**Interviews**

“26ZA.(1) An applicant must make every reasonable effort to be available for, and attend, an interview.

“(2) Section 26Z and this section do not mean that the Minister cannot obtain information from an applicant by telephone or in any other way. 40



**Medical examination**

5 “26ZB.(1) If the health or physical or mental condition of an applicant for a visa is relevant to the approval of the application, the Minister may require the applicant to visit, and be examined by, a specified person, being a person qualified to determine the applicant’s health, physical condition or mental condition, at a specified reasonable time and specified reasonable place.

“(2) An applicant for a visa must make every reasonable effort to be available for, and attend, an examination.

10 **Prescribed periods**

“26ZC. If this Subdivision requires or allows the regulations to prescribe a period or other time limit relating to a step in considering an application for a visa, the regulations may prescribe different limits relating to that step and specify when that specified limit is to apply, 15 which, without limiting the generality of the power, may be to:

- (a) applications in a specified class; or
- (b) applications in specified circumstances; or
- (c) applicants in a specified class; or
- (d) applicants in a specified class in specified circumstances.

20 **Failure to receive information not require action**

“26ZD.(1) If an applicant for a visa:

- (a) is invited to give additional information; and
- (b) does not give the information before the time for giving it has passed;

25 the Minister may make a decision about the application without taking any action to obtain the additional information.

“(2) If an applicant for a visa:

- (a) is invited to comment on information; and
- (b) does not give the comments before the time for giving them 30 has passed;

the Minister may make the decision without taking any further action to obtain the applicant’s views on the information.

**When decision about visa application may be made**

35 “26ZE.(1) Subject to sections 26Y (give applicant information) and 31 (delay under points system) and subsections (2) and (3), the Minister may approve, or refuse, an application for a visa at any time after the application has been made.

“(2) The Minister is not to refuse an application after inviting the applicant to give information and before whichever of the following 40 happens first:

- (a) the information is given;

- (b) the applicant tells the Minister that the applicant does not wish to give the information or does not have it;
- (c) the time in which the information may be given ends.

“(3) The Minister is not to refuse an application after inviting the applicant to comment on information and before whichever of the following happens first: 5

- (a) the comments are given;
- (b) the applicant tells the Minister that the applicant does not wish to comment;
- (c) the time in which the comments are to be given ends. 10

**“Subdivision AC—Decision about application**

**Decision about application**

“26ZF.(1) After considering a valid application for a visa, the Minister:

- (a) if satisfied that: 15
  - (i) the health criteria for it (if any) have been satisfied; and
  - (ii) the other criteria for it prescribed by this Act or the regulations have been satisfied; and
  - (iii) the approval of the application is not prevented by this Act or another law of the Commonwealth; and 20
  - (iv) any visa tax, any English Education Charge under the *Immigration (Education) Charge Act 1992* and any charge under the *Migration (Health Services) Charge Act 1991* payable in relation to the application if the application is approved have been paid; 25
- is to approve the application; or
- (b) if not so satisfied, is to refuse the application.

“(2) To avoid doubt, an application set aside under section 31 is not taken for the purposes of subsection (1) to have been considered until it has been reconsidered under the regulations under subsection 31(4) for the last time. 30

“(3) For the purposes of subparagraph (1)(a)(iv), visa tax in relation to an application for a visa is taken to be payable if the application is approved even though the tax might not become payable because of subsection 5(4) of the *Migration (Delayed Visa Applications) Tax Act 1992* (not payable if applicant leaves Australia before grant). 35

**Notification of decision**

“26ZG.(1) When the Minister approves or refuses a visa application, he or she is to notify the applicant of the decision in the prescribed way. 40

5 “(2) Notification of a decision to approve an application for a visa must, if there are any prescribed requirements or requirements under any other law of the Commonwealth for the grant that have to be met, include particulars of them and a statement that the visa will not be granted unless they are met within a specified time.

“(3) A time specified for the purposes of subsection (2) must begin on the date of notification and not be longer than 12 months.

“(4) Notification of a decision to refuse an application for a visa must:

- 10 (a) if the visa was refused because the applicant did not satisfy a criterion for the visa—specify that criterion; and
- (b) if the visa was refused because a provision of this Act or the regulations prevented approval—specify that provision; and
- 15 (c) unless subsection (5) applies to the application—give the reasons (not being non-disclosable information) why the criterion was not satisfied or the provision prevented approval; and
- (d) if the applicant has a right to have the decision reviewed under Part 3 or 4A or section 180—state:
- 20 (i) that the decision can be reviewed; and
- (ii) the time in which the application for review may be made; and
- (iii) who can apply for the review; and
- (iv) where the application for review can be made.

“(5) This subsection applies to an application for a visa if:

- 25 (a) the application is to be made when the applicant is outside Australia; and
- (b) this Act does not provide for an application in accordance with Part 3 for review of a decision to refuse the application for the visa.

30 “(6) Failure to give notification of a decision does not affect the validity of the decision.

#### **Effect of compliance or non-compliance**

35 “26ZH.(1) Non-compliance with Subdivision AA or AB in relation to a visa application does not mean that a decision to approve or refuse the application is not a valid decision but only means that the decision might have been the wrong one and might be set aside if reviewed.

40 “(2) If the Minister deals with a visa application in a way that complies with Subdivision AA, AB and this Subdivision, the Minister is not required to take any other action in dealing with it.

***“Subdivision AD—Grant of visas***

**Grant of visa**

“26ZI.(1) If:

- (a) the Minister has approved the application for a visa; and
- (b) any prescribed requirements or requirements under any other law of the Commonwealth for the grant have been met within the time for doing so specified in the notice of approval; and
- (c) the grant is not prevented by section 26F (circumstances when granted) or any other provision of this Act or any other law of the Commonwealth;

the visa must be granted.

“(2) To avoid doubt, if the time within which a visa can be granted ends without it being able to be granted, the visa cannot be granted and the application lapses and is taken to have been finally determined.

“(3) To avoid doubt, the prevention by subsection (2) of the grant of a visa is not a decision to refuse the application for the visa.

**Way visa granted**

“26ZJ. A visa is to be granted by the Minister causing a record of it to be made.

**When visa operates**

“26ZK.(1) Subject to subsection (2), a visa has effect as soon as it is granted.

“(2) A visa may provide that it is to have effect from a date specified in it, being a date after its grant.

***“Subdivision AE—Evidence of visas***

**Evidence of visa**

“26ZL. Subject to the regulations, if a non-citizen is granted a visa, an officer is to give the non-citizen evidence of the visa.

**Ways of giving evidence**

“26ZM.(1) Evidence of a visa is to be given in a way prescribed for giving the evidence.

“(2) The regulations may provide that the way in which evidence of a visa or a visa in a class is to be given is to depend on the circumstances in which it is given.

“(3) If a regulation provides that evidence of a non-citizen’s visa may be given by endorsing a valid passport or other valid travel document issued to the non-citizen or another non-citizen associated with him or her, the Minister may direct that a specified document is

not to be taken to be a passport or travel document for the purposes of the regulation. (Australia does not recognise the issue of the document or other reason.)

**“Subdivision AF—Bridging visas**

**5 Interpretation**

“26ZN. In this Subdivision:

**‘detention non-citizen’** means a non-citizen who:

- (a) either:
  - 10 (i) has been immigration cleared; or
  - (ii) is in a prescribed class; and
- (b) is a detainee, is liable to be detained or will become so liable within a prescribed period.,

**Bridging visas**

15 “26ZO. The Minister may grant a detention non-citizen who satisfies the criteria for a bridging visa prescribed under subsection 26(3) a bridging visa permitting the non-citizen to remain in Australia:

- (a) during a specified period; or
- (b) until a specified event happens.

**Further applications for bridging visa**

20 “26ZP.(1) A detention non-citizen:

- (a) who is in immigration detention; and
  - (b) who made an unsuccessful application for a bridging visa, whether before or after being detained;
- 25 may make a further application for a bridging visa, but, unless the application is made in prescribed circumstances, not earlier than 30 days after:
- (c) if he or she did not make an application for review of the decision to refuse the application—the refusal; or
  - 30 (d) if he or she made an application for such review—the application was finally determined.

**Bridging visa not affect visa applications**

“26ZQ.(1) The fact that a non-citizen holds a bridging visa does not prevent or affect:

- 35 (a) an application by the non-citizen for a visa in another class; or
- (b) the approval of such an application; or
- (c) the grant of such a visa.

“(2) To avoid doubt, the holding by a non-citizen of a bridging visa is not to be taken to be, for the purposes of an application for a visa in another class, the holding of a visa.

***“Subdivision AG—Other provisions about visas***

**Only visas in force are held**

“26ZR. To avoid doubt, for the purposes of this Act, a non-citizen does not hold a particular visa at a particular time unless the visa is in force at that time.

5

**Children born included in parents visa**

“26ZS.(1) If:

(a) a child born in Australia is a non-citizen when born; and

(b) at the time of the birth:

(i) one of the child’s parents holds a visa; and

10

(ii) the other parent is, under section 27, included in that visa or does not hold a visa;

the child is taken to be included in that visa.

“(2) If:

(a) a child born in Australia is a non-citizen when born; and

15

(b) at the time of the birth, each of the child’s parents holds a visa;

the child is taken to be included in each of those visas.

**Effect on visa of leaving Australia**

“26ZT. If the holder of a visa leaves Australia the holder may only re-enter Australia because of the visa if:

20

(a) the visa is permission for the re-entry; and

(b) the visa is in force on re-entry.

**Certain persons taken not to leave Australia**

“26ZU. For the purposes of section 26ZT, a person is not taken to leave Australia if:

25

(a) he or she goes outside the migration zone for no longer than a prescribed period; and

(b) while outside, goes to neither a foreign country nor an external Territory to which this Act does not extend (fishermen and others).

30

**Extent of visa authority**

“26ZV.(1) A visa to travel to Australia during a period is not permission to travel to it outside that period.

“(2) A visa to enter Australia within a period is not permission to so enter outside that period.

35

“(3) A visa to remain in Australia during a period is not permission to so remain outside that period.

**When visas cease**

“26ZW.(1) A cancelled visa ceases to be in force on cancellation.

“(2) A visa held by a non-citizen ceases to be in force if another visa for the non-citizen comes into force.

5 “(3) A visa to enter Australia during a particular period or until a particular date ceases to be in force at the end of that period or on that date unless the holder of the visa:

(a) has entered Australia in that period or on or before that date; and

10 (b) is in Australia at the end of that period or on that date.

“(4) A visa to enter Australia during a particular period or until a particular date ceases to be in force if the holder leaves Australia after that period or date.

15 “(5) A visa to remain in Australia during a particular period or until a particular date ceases to be in force at the end of that period or on that date.

“(6) A visa to remain in, but not re-enter, Australia that is granted to a non-citizen in Australia ceases to be in force if the holder leaves Australia.

20 “(7) This section does not affect the operation of other provisions of this Act under which a visa ceases to be in force (such as sections 54HT and 54HU)”.

**11.** The heading to Division 3 of Part 2, and sections 33 to 50 are repealed and the following headings and sections are substituted:

25 “***Subdivision C—Visas based on incorrect information may be cancelled***

**Interpretation**

“33. In this Subdivision:

30 **‘application form’**, in relation to a non-citizen, means a form on which non-citizen applies for a visa, being a form that subsection 26L(2) allows to be used for making the application;

**‘bogus document’**, in relation to a person, means a document that the Minister reasonably suspects is a document that:

(a) purports to have been, but was not, issued in respect of the person; or

35 (b) is counterfeit or has been altered by a person who does not have authority to do so; or

(c) was obtained because of a false or misleading statement, whether or not made knowingly;

40 **‘passenger card’** has the meaning given by subsection 183(2) and, for the purposes of section 50AA, includes any document provided for by regulations under paragraph 181(1)(c).

**Completion of visa application**

“34. A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

**Information is answer**

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“35. Any information that a non-citizen gives, causes to be given or that is given on his or her behalf to the Minister, an officer or a person or Tribunal reviewing a decision under this Act in relation to the non-citizen’s application for a visa is taken for the purposes of section 36, paragraphs 37(b) and 38(b) and sections 40 and 41 to be an answer to a question in the non-citizen’s application form, whether the information is given orally or in writing and whether at an interview or otherwise.

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**Incorrect answers**

“36. For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave the answer or caused the answer to be given did not know that it was incorrect.

15

**Visa applications to be correct**

“37.(1) A non-citizen must fill in his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given.

20

“(2) If a question on a non-citizen’s application form is not answered, not only will the non-citizen have failed to comply with this section, but the question is to be taken to have been answered in the way that is most adverse for the application.

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**Passenger cards to be correct**

“38.(1) A non-citizen must fill in his or her passenger card in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given.

30

“(2) If a question on a non-citizen’s passenger card is not answered, not only will the non-citizen have failed to comply with this section, but the question is to be taken to have been answered in the way that is most adverse for the non-citizen.

**Bogus documents not to be given**

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“39. A non-citizen must not give an officer a bogus document or cause such a document to be so given.

**Changes in circumstances to be notified**

“40.(1) If circumstances change so that an answer to a question on a non-citizen’s application form or an answer under this section is incorrect in the new circumstances, he or she must inform an officer

40



on an approved form of the new circumstances and of the correct answer in them.

“(2) If the application for the visa was made in Australia, subsection (1) only applies to changes in circumstance before the visa is granted.

5       “(3) If the application for the visa was made outside Australia, subsection (1) only applies to changes in circumstances after the application and before the applicant is immigration cleared.

10       “(4) If circumstances change so that an answer to a question on a non-citizen’s passenger card is incorrect in the new circumstances, he or she must inform an officer on an approved form of the new circumstances and of the correct answer in them.

“(5) Subsections (1) and (4) apply despite the grant of any visa.

**Particulars of incorrect answers to be given**

“41.(1) If a non-citizen becomes aware that:

- 15       (a) an answer in his or her application form; or  
         (b) an answer in his or her passenger card; or  
         (c) information given by him or her under section 40 about the form or card; or  
         (d) a response given by him or her under section 43;

20       is incorrect, he or she must notify an officer, on an approved form, of the incorrectness and of the correct answer.

“(2) Subsection (1) applies despite the grant of any visa.

**Obligations to give information is not affected by other sources of information**

25       “42. The requirement for a non-citizen to comply with sections 37, 38, 39, 40 and 41, is not removed or otherwise affected by the fact that the Minister or an officer had, or had access to:

- (a) any information given by the non-citizen for purposes unrelated to the non-citizen’s visa application; or  
30       (b) any other information.

**Notice of incorrect applications**

35       “43.(1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 37, 38, 39, 40 or 41 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:

- (a) giving particulars of the possible non-compliance; and  
         (b) stating that, within 14 days, the holder may give the officer a written response to the notice that:  
40       (i) shows that there was compliance; or

(ii) both:

- (A) gives reasons for the non-compliance; and
- (B) shows cause why the visa should not be cancelled;  
and

- (c) stating that, at the end of those 14 days, the officer will consider cancelling the visa; and 5
- (d) setting out the effect of sections 44, 45, 47 and 48; and
- (e) informing the holder that the holder's obligations under section 40 or 41 are not affected by the notice under this section.

“(2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement. 10

**Decision about non-compliance**

“44. The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 43(1)(b); and 15
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

**Cancellation of visa if information incorrect**

“45.(1) The Minister, after:

- (a) deciding under section 44 that there was non-compliance by the holder of a visa; and 20
- (b) considering any response to the notice about the non-compliance given in a way required by paragraph 43(1)(b); and
- (c) having regard to any prescribed circumstances of the non-compliance; 25

may cancel the visa.

“(2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.

**Cancellation provisions apply whatever source of knowledge of non-compliance 30**

“46. To avoid doubt, sections 43, 44 and 45 apply whether or not the officer became aware of the non-compliance because of information given by the holder.

**Cancellation provisions apply whether or not non-compliance deliberate 35**

“47. To avoid doubt, sections 43, 44 and 45 apply whether the non-compliance was deliberate or inadvertent.

**Action because of one non-compliance not prevent action because of other non-compliance**

5 “48.(1) A notice under section 43 to a person because of an instance of possible non-compliance does not prevent another notice under that section to that person because of another instance of possible non-compliance.

10 “(2) The non-cancellation of a visa under section 45 despite an instance of non-compliance does not prevent the cancellation, or steps for the cancellation, of the visa because of another instance of non-compliance.

**No cancellation if full disclosure**

15 “49. If the holder of a visa who has been immigration cleared complied with sections 37, 38, 39, 40 and 41 in relation to the visa, it cannot be cancelled under this Subdivision because of any matter that was fully disclosed in so complying.

**Effect of setting aside decision to cancel visa**

20 “50.(1) If the Federal Court, the Administrative Appeals Tribunal, the Immigration Review Tribunal or the Refugee Review Tribunal, or a review officer within the meaning of Part 3, sets aside a decision under section 45 to cancel a person’s visa, the visa is taken never to have been cancelled.

25 “(2) In spite of subsection (1), any detention of the non-citizen between the purported cancellation of the visa and the decision to set aside the decision to cancel is lawful and the non-citizen is not entitled to make any claim against the Commonwealth or an officer because of the detention.

**Application of Subdivision**

“50AA.(1) This Subdivision applies to:

30 (a) applications for visas made; and

(b) passenger cards filled in;

on or after 1 November 1993.

“(2) This Subdivision, other than sections 37 and 38, applies to:

35 (a) applications for visas, or entry permits, within the meaning of the *Migration Act 1958* as in force before 1 November 1993, that under the regulations are taken to be applications for visas and that have not been finally determined before that date; and

(b) passenger cards filled in before 1 November 1993.

40 “(3) This Subdivision applies to a visa granted otherwise than because of an application on or after 1 November 1993 and does so as if:

(a) this Subdivision had applied to:

- (i) the application for the visa; and
- (ii) passenger cards filled in before that date; and
- (b) the application for any other visa, or entry permit, (within the meaning of the *Migration Act 1958* as in force immediately before that date) because of which the visa is held had been the application for the visa; and 5
- (c) for the purposes of sections 43 to 50, non-compliance by the holder of the visa with the sections referred to in section 43 included any action or condition of the holder because of which section 20 of that Act as so in force applied to the holder. 10

***“Subdivision D—Visas may be cancelled on certain grounds***

**Power to cancel**

“50AB.(1) Subject to subsections (2) and (3), the Minister may cancel a visa if he or she is satisfied that:

- (a) any circumstances which permitted the approval of the application for the visa no longer exist; or 15
- (b) its holder has not complied with a condition of the visa; or
- (c) another person required to comply with a condition of the visa has not complied with that condition; or
- (d) if its holder has not entered Australia or has so entered but not been immigration cleared—it would be liable to be cancelled under Subdivision C (incorrect information given by holder) if its holder had so entered and been immigration cleared; or 20
- (e) the presence of its holder in Australia is, or would be, a risk to the health, safety or good order of the Australian community; or 25
- (f) the visa should not have been granted because the application for it, the approval of its grant or its grant was in contravention of this Act or of another law of the Commonwealth; or
- (g) a prescribed ground for cancelling a visa applies to the holder. 30

“(2) The Minister is not to cancel a visa if there exist prescribed circumstances in which a visa is not to be cancelled.

“(3) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist prescribed circumstances in which a visa must be cancelled. 35

**When visa may be cancelled**

“50AC.(1) Subject to subsection (2), a visa held by a non-citizen may be cancelled under section 50AB:

- (a) before the non-citizen enters Australia; or
- (b) when the non-citizen is in immigration clearance; or 40
- (c) when the non-citizen leaves Australia; or

(d) while the non-citizen is in Australia.

“(2) A permanent visa cannot be cancelled under section 50AB if the holder of the visa:

(a) is in the migration zone; and

5 (b) was immigration cleared on last entering Australia.

**Cancellation powers not limit each other**

“50AD. The powers to cancel a visa:

(a) under section 50AB; or

(b) under section 45 (incorrect information); or

10 (c) under section 50A (business visas);

are not limited, or otherwise affected, by each other.

***“Subdivision E—Procedure for cancelling visas under Subdivision D  
in or outside Australia***

**Notice of proposed cancellation**

15 “50AE.(1) Subject to Subdivision F (non-citizens outside Australia), if the Minister is considering cancelling a visa, whether its holder is in or outside Australia, under section 50AB, the Minister must notify the holder that there appear to be grounds for cancelling it and:

20 (a) give particulars of those grounds and of the information (not being non-disclosable information) because of which the grounds appear to exist; and

(b) invite the holder to show within a specified time, being, subject to sections 50AK and 50AL, a prescribed time that:

(i) those grounds do not exist; or

25 (ii) there is a reason why it should not be cancelled.

“(2) The holder is to be notified in the prescribed way or, if there is no prescribed way, a way that the Minister considers to be appropriate.

30 “(3) The way of notifying the holder, whether prescribed or considered appropriate, may, without limiting the generality of subsection (2), be orally.

“(4) The other provisions of this Subdivision do not apply to a cancellation:

(a) under a provision other than section 50AB; or

(b) to which Subdivision F applies.

35 **Certain information must be given to visa holder**

“50AF.(1) If the Minister has information, not being non-disclosable information, that he or she considers:

(a) would be the reason, or part of the reason, for cancelling it; and

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(b) is specifically about the visa holder or another person and not just about a class of persons of which the holder or other person is a member; and

(c) was not given by, or with the permission of, the visa holder for the purpose of considering cancellation; and

(d) was not disclosed in the notification under section 50AG to the holder;

the Minister is to:

(e) give particulars of the information to the holder; and

(f) invite the holder to comment on the information.

“(2) The particulars and invitation are to be given in the way that the Minister considers appropriate in the circumstances.

“(3) The Minister is to ensure, as far as reasonably practicable, that the holder understands why the information is relevant to the cancellation.

**Invitation to give comments etc.**

“50AG.(1) An invitation under paragraph 50AE(1)(b) or 50AF(1)(f) is to specify whether the response to the invitation may be given:

(a) in writing; or

(b) at an interview between the holder and an officer; or

(c) by telephone.

“(2) Subject to subsection (4), if the invitation is to respond otherwise than at an interview, the response is to be given within a period specified in the invitation, being a prescribed period or, if no period is prescribed, a reasonable period.

“(3) Subject to subsection (5), if the invitation is to respond at an interview, the interview is to take place:

(a) at a place specified in the invitation, being a prescribed place or, if no place is prescribed, a reasonable place; and

(b) at a time specified in the invitation, being a time within a prescribed period or, if no period is prescribed, within a reasonable period.

“(4) If a person is to respond to an invitation within a prescribed period, that period may be extended by the Minister for a prescribed further period, and then the response is to be given in the extended period.

“(5) If a person is to respond to an invitation at an interview at a time within a prescribed period, that time may be changed by the Minister to:

(a) a later time within that period; or

(b) a time within that period as extended by the Minister for a prescribed further period;

and then the response is to be given at an interview at the new time.

“(6) This section is subject to sections 50AK and 50AL.

**Prescribed periods**

5 “50AH. Regulations prescribing a period or other time limit relating to a step in considering the cancellation of a visa may prescribe different limits relating to that step and specify when a particular limit is to apply, which, without limiting the generality of the power, may be to:

- (a) visas in a specified class; or
- 10 (b) visa holders in specified circumstances; or
- (c) visa holders in a specified class (which may be visa holders in a specified place); or
- (d) visa holders in a specified class (which may be visa holders in a specified place) in specified circumstances.

15 **Failure to accept invitation not require action**

“50AI. If a visa holder does not respond to an invitation under paragraph 50AE(1)(b) or 50AF(1)(f) before the time for giving it has passed or tells the Minister that the visa holder does not wish to respond, the Minister may make the decision about cancellation without taking any further action about the information.

**When decision about visa cancellation may be made**

25 “50AJ.(1) Subject to section 50AF (give information) and subsection (2), the Minister may cancel a visa at any time after notice about the cancellation has been given under section 50AE and after whichever one of the following happens first:

- (a) the holder responds to the notice;
- (b) the holder tells the Minister that the holder does not wish to respond;
- (c) the time for responding to the notice passes.

30 “(2) The Minister is not to cancel a visa after inviting the visa holder to comment on information and before whichever one of the following happens first:

- (a) the comments are given;
- 35 (b) the holder tells the Minister that the holder does not wish to comment;
- (c) the time for commenting passes.

**Application of Subdivision to non-citizen in immigration clearance**

40 “50AK. If a non-citizen in immigration clearance who is not taken into questioning detention is given an invitation under paragraph 50AE(1)(b) or 50AF(1)(f), the period within which he or she may

respond to the invitation is to end when, or before, he or she ceases to be in immigration clearance.

**Application of Subdivision to non-citizen in questioning detention**

“50AL.(1) If a non-citizen in questioning detention who is not released before the end of the 4 hours for which he or she may be detained is given an invitation under paragraph 50AE(1)(b) or 50AF(1)(f), the period within which he or she may respond to the invitation is to end when, or before, those 4 hours end. 5

“(2) If a non-citizen who has been given an invitation under paragraph 50AE(1)(b) or 50AF(1)(f) (whether in immigration clearance or otherwise) is taken into questioning detention and not released before the end of the 4 hours for which he or she may be detained, the period within which he or she is to respond to the invitation is to end when, or before, those 4 hours end. 10

**Notification of decision 15**

“50AM.(1) When the Minister decides to cancel a visa, he or she is to notify the visa holder of the decision in the prescribed way.

“(2) Notification of a decision to cancel a visa must:

- (a) specify the ground for the cancellation; and
- (b) if the decision is reviewable under Part 3 or 4A; and 20
- (c) if the former visa holder has a right to have the decision reviewed under Part 3 or 4A—state:
  - (i) that the decision can be reviewed; and
  - (ii) the time in which the application for review may be made; and 25
  - (iii) who can apply for the review; and
  - (iv) where the application for review can be made.

“(3) Failure to give notification of a decision does not affect the validity of the decision.

***“Subdivision F—Other procedure for cancelling visas under Subdivision D outside Australia 30***

**Cancellation of visas of people outside Australia**

“50AN. If:

- (a) the Minister is satisfied that:
  - (i) there is a ground for cancelling a visa under section 50AB; and 35
  - (ii) it is appropriate to cancel in accordance with this Subdivision; and
- (b) the non-citizen has not entered Australia;



the Minister may, without notice to the holder of the visa, cancel the visa.

**Notice of cancellation**

5 “50AO.(1) If the Minister cancels a visa under section 50AN, he or she must give the former holder of the visa a notice:

- (a) stating the ground on which it was cancelled; and
- (b) giving particulars of that ground and of the information (not being non-disclosable information) because of which the ground was considered to exist; and
- 10 (c) inviting the former holder to show that:
  - (i) that ground does not exist; or
  - (ii) there is a reason why the visa should not have been cancelled; and
- 15 (d) stating that, if the former holder shows, within a specified time, being a prescribed time, that the ground does not exist, the cancellation will be revoked; and
- (e) stating that, if the former holder shows that there is a reason why the visa should not have been cancelled, the cancellation might be revoked.

20 “(2) The notice is to be given in the prescribed way.

**Prescribed periods**

25 “50AP. Regulations prescribing a period for the purpose of paragraph 50AO(1)(d) may prescribe different periods and specify when a particular period is to apply, which, without limiting the generality of the power, may be to:

- (a) visas in a specified class; or
- (b) former visa holders in specified circumstances; or
- (c) former visa holders in a specified class (which may be former visa holders in a specified place); or
- 30 (d) former visa holders in a specified class (which may be former visa holders in a specified place) in specified circumstances.

**Decision about revocation of cancellation**

35 “50AQ.(1) Subject to subsection (2), after considering any response to a notice under section 50AO of the cancellation of a visa, the Minister:

- (a) if not satisfied that there was a ground for the cancellation; or
- (b) if satisfied that there is another reason why the cancellation should be revoked;

is to revoke the cancellation.

40 “(2) The Minister is not to revoke the cancellation of a visa if there exist prescribed circumstances in which the visa must be cancelled.

**Notification of decision about revocation of cancellation**

“50AR. When, under section 50AQ, the Minister revokes or does not revoke the cancellation of a visa, he or she is to notify the visa holder or former visa holder of the decision in the prescribed way.

**Effect of revocation**

5

“50AS.(1) If the cancellation of a visa is revoked, then, without limiting its operation before cancellation, it has effect as if it were granted on the revocation.

“(2) If the cancellation of a visa is revoked, the Minister may vary the time the visa is to be in force or any period in which, or date until which, the visa permits its holder to enter Australia. 10

**“Subdivision G—Cancellation of business visas”.**

12. Divisions 4 and 4A of Part 2 of the Principal Act are repealed and the following headings, sections and Divisions are substituted:

**“Subdivision H—General provisions on cancellation**

15

**Way visa cancelled or cancellation revoked**

“50E.(1) A visa is cancelled by the Minister causing a record of it to be made.

“(2) The cancellation of a visa is revoked under section 50AQ by the Minister causing a record of the revocation to be made. 20

**Visas held by 2 or more**

“50F. If a visa is held by 2 or more non-citizens:

- (a) Subdivisions C, D, E and F and this Subdivision apply as if each of them were the holder of the visa; and
- (b) to avoid doubt, if the visa is cancelled because of one non-citizen being its holder, it is cancelled so that all those non-citizens cease to hold the visa. 25

**Cancellation of visa results in other cancellation**

“50G.(1) If a person’s visa is cancelled under section 45 (incorrect information) or 50AB, a visa held by another person because of being a member of the family unit of the person (within the meaning of the regulations) is also cancelled. 30

“(2) If:

- (a) a person’s visa is cancelled under section 45 (incorrect information) or 50AB; and 35
- (b) another person to whom subsection (1) does not apply holds a visa only because the person whose visa is cancelled held a visa;

the Minister may, without notice to the other person, cancel the other person's visa.

“(3) If:

- 5 (a) a visa is cancelled under subsection (1) or (2) because another visa is cancelled; and  
(b) the cancellation of the other visa is revoked under section 50AQ;  
the cancellation under subsection (1) or (2) is revoked.

“*Division 3—Criminal justice visitors*

10 “*Subdivision A—Preliminary*

**Object of Division**

“51. This Division is enacted so that, if the administration of criminal justice requires the presence in Australia of a non-citizen whose presence would otherwise not be in the national interest, that  
15 non-citizen may be brought to, or allowed to stay in, Australia for the purposes of that administration.

**Interpretation**

“52. In this Division: .

**‘administration of criminal justice’** means:

- 20 (a) an investigation to find out whether an offence has been committed; or  
(b) the prosecution of a person for an offence; or  
(c) the punishment by way of imprisonment of a person for the commission of an offence;

25 **‘Australia’** means the migration zone;

**‘authorised official’**, in relation to a State, means a person authorised under section 54 to be an authorised official for that State;

**‘criminal justice certificate’** means:

- (a) a criminal justice entry certificate; or  
30 (b) a criminal justice stay certificate;

**‘criminal justice entry certificate’** means:

- (a) a certificate given under section 54A; or  
(b) a certificate given under subsection 54B(1) and endorsed under subsection 54B(2);

35 **‘criminal justice entry visa’** has the meaning given by section 54HB;

**‘criminal justice stay certificate’** means a certificate given under section 54C or 54D;

**‘criminal justice stay visa’** has the meaning given by section 54HB;

40 **‘criminal justice stay warrant’** means a warrant described in section 54G;

'criminal justice visa' has the meaning given by section 26D;  
'State' includes Territory.

**Delegation by Attorney-General**

"53. The Attorney-General may, in writing, delegate any of his or her powers under this Division to: 5

- (a) the Secretary to the Attorney-General's Department; or
- (b) an officer of that Department who is a member of the Senior Executive Service.

**Authorised officials**

"54. The Attorney-General may, in writing, appoint as an authorised official for a State for the purposes of this Division: 10

- (a) the Attorney-General of the State; or
- (b) a person holding an office under a law of the State that is like the office of the Director of Public Prosecutions; or
- (c) the highest ranking member of the police force of the State. 15

***"Subdivision B—Criminal justice certificates for entry***

**Commonwealth criminal justice entry certificate**

"54A. If the Attorney-General considers that:

- (a) the temporary presence in Australia of a non-citizen who is outside Australia is required for the purposes of: 20
  - (i) the *Extradition Act 1988*; or
  - (ii) the *Mutual Assistance in Criminal Matters Act 1987*; or
  - (iii) the administration of criminal justice in relation to an offence against a law of the Commonwealth; and
- (b) the presence of the non-citizen in Australia for the relevant purposes would not hinder the national interest in any way to such an extent that the non-citizen should not be present in Australia; and 25
- (c) satisfactory arrangements have been made to make sure that the person or organisation who wants the non-citizen for the relevant purposes or the non-citizen or both will meet the cost of bringing the non-citizen to, keeping the non-citizen in, and removing the non-citizen from, Australia; 30

the Attorney-General may give a certificate that the presence of the non-citizen in Australia is required for the administration of criminal justice. 35

**State criminal justice entry certificate**

"54B.(1) If an authorised official for a State considers that:

- (a) the temporary presence in Australia of a non-citizen who is outside Australia is required for the purposes of the 40

administration of criminal justice in relation to an offence against a law of the State; and

- 5 (b) satisfactory arrangements have been made to make sure that the person or organisation who wants the non-citizen for those purposes or the non-citizen or both will meet the cost of bringing the non-citizen to, keeping the non-citizen in, and removing the non-citizen from, Australia;

10 the official may give a certificate that the presence of the non-citizen in Australia is required for the administration of criminal justice by the State.

“(2) If:

- (a) a certificate has been given under subsection (1) about a non-citizen; and
- 15 (b) the Attorney-General considers that the temporary presence of the non-citizen in Australia in order to advance the administration of criminal justice by the State would not hinder the national interest in any way to such an extent that the non-citizen should not be present in Australia;

20 the Attorney-General may endorse the certificate with a statement that it is to be a criminal justice certificate for the purposes of this Division.

***“Subdivision C—Criminal justice certificates etc. staying removal or deportation***

**Commonwealth criminal justice stay certificate**

“54C. If:

- 25 (a) an unlawful non-citizen is to be, or is likely to be, removed or deported; and
- (b) the Attorney-General considers that the non-citizen should remain in Australia temporarily for the purposes of:
- 30 (i) the *Extradition Act 1988*; or
- (ii) the *Mutual Assistance in Criminal Matters Act 1987*; or
- (iii) the administration of criminal justice in relation to an offence against a law of the Commonwealth; and
- 35 (c) the Attorney-General considers that satisfactory arrangements have been made to make sure that the person or organisation who wants the non-citizen for the relevant purposes or the non-citizen or both will meet the cost of keeping the non-citizen in Australia;

40 the Attorney-General may give a certificate that the stay of the non-citizen’s removal or deportation is required for the administration of criminal justice.

**State criminal justice stay certificate**

“54D. If:

(a) an unlawful non-citizen is to be, or is likely to be, removed or deported; and

(b) an authorised official for a State considers that the non-citizen should remain in Australia temporarily for the purposes of the administration of criminal justice in relation to an offence against a law of the State; and 5

(c) that authorised official considers that satisfactory arrangements have been made to make sure that the person or organisation who wants the non-citizen for those purposes or the non-citizen or both will meet the cost of keeping the non-citizen in Australia; 10

the official may give a certificate that the stay of the non-citizen’s removal or deportation is required for the administration of criminal justice by the State. 15

**Application for visa not to prevent certificate**

“54E. A criminal justice stay certificate for a non-citizen may be given even though an application for a visa for the non-citizen has been made but not finalised.

**Criminal justice stay certificates stay removal or deportation 20**

“54F. If a criminal justice stay certificate about a non-citizen is in force, the non-citizen is not to be removed or deported.

**Certain warrants stay removal or deportation**

“54G.(1) If an unlawful non-citizen is to be, or is likely to be, removed or deported, this Act does not prevent a court issuing for the purposes of the administration of criminal justice in relation to an offence against a law a warrant to stay the removal or deportation. 25

“(2) If a criminal justice stay warrant about a non-citizen is in force, the non-citizen is not to be removed or deported.

“(3) If a court issues a criminal justice stay warrant about a non-citizen, the applicant for the warrant is responsible for the costs of any maintenance, accommodation or immigration detention of the non-citizen while the warrant is in force. 30

**Certain subjects of stay certificates and stay warrants may be detained etc. 35**

“54H. If:

(a) a criminal justice stay certificate or a criminal justice stay warrant about a non-citizen is in force; and

(b) the non-citizen does not have a visa to remain in Australia; the certificate or warrant does not limit any power under this Act relating to the detention of the non-citizen. 40

**Removal or deportation not contempt etc. if no stay**

“54HA. If:

- (a) this Act requires the removal or deportation of a non-citizen; and
- 5 (b) there is no criminal justice stay certificate or criminal justice stay warrant about the non-citizen;

any other law, or anything done under any other law, of the Commonwealth or a State (whether passed or made before or after the commencement of this section), not being an Act passed after that  
10 commencement expressed to be exempt from this section, does not prevent the removal or deportation.

***“Subdivision D—Criminal justice visas***

**Criminal justice visas**

“54HB.(1) A criminal justice visa may be a visa permitting a non-citizen to travel to and enter, and remain temporarily in, Australia, to  
15 be known as a criminal justice entry visa.

“(2) A criminal justice visa may be a visa permitting a non-citizen to remain temporarily in Australia, to be known as a criminal justice stay visa.

**20 Criterion for criminal justice entry visas**

“54HC. A criterion for a criminal justice entry visa for a non-citizen is that a criminal justice entry certificate about the non-citizen is in force.

**Criterion for criminal justice stay visas**

25 “54HD. A criterion for a criminal justice stay visa for a non-citizen is that either:

- (a) a criminal justice stay certificate about the non-citizen is in force; or
- (b) a criminal justice stay warrant about the non-citizen is in force.

**30 Criteria for criminal justice visas**

“54HE. The criteria for a criminal justice visa for a non-citizen are, and only are:

- (a) the criterion required by section 54HC or 54HD; and
- (b) the criterion that the Minister, having had regard to:
  - 35 (i) the safety of individuals and people generally; and
  - (ii) in the case of a criminal justice entry visa, arrangements to ensure that if the non-citizen enters Australia, the non-citizen can be removed; and
  - (iii) any other matters that the Minister considers relevant;

has decided, in the Minister's absolute discretion, that it is appropriate for the visa to be granted.

**Procedure for obtaining criminal justice visa**

“54HF.(1) If a criminal justice certificate, or a criminal justice stay warrant, in relation to a non-citizen is in force, the Minister may consider the grant of a criminal justice visa for the non-citizen. 5

“(2) If the Minister, after considering the grant of a criminal justice visa for a non-citizen, is satisfied that the criteria for it have been met, the Minister may, in his or her absolute discretion:

- (a) approve its grant; and 10
- (b) grant it by causing a record of it to be made; and
- (c) give such evidence of it as the Minister considers appropriate.

**Conditions of criminal justice visa**

“54HG.(1) The regulations may provide that criminal justice visas are subject to specified conditions. 15

“(2) It is a condition of a criminal justice visa for a non-citizen that the non-citizen must not do any work in Australia, whether for reward or otherwise.

“(3) In subsection (2):  
‘work’, in relation to a non-citizen, does not include work for the purposes for which there is a criminal justice certificate or criminal justice stay warrant about the non-citizen, including, if those purposes are or include the imprisonment of the non-citizen, work as a prisoner. 20

**Effect of criminal justice visas**

“54HH.(1) A criminal justice entry visa for a non-citizen is permission for the non-citizen to travel to and enter and remain in Australia while it is in force. 25

“(2) A criminal justice stay visa for a non-citizen:

- (a) is permission for the non-citizen to remain in Australia while it is in force; and 30
- (b) if the non-citizen is in immigration detention, entitles the non-citizen to be released from that detention.

“(3) A criminal justice visa for a person does not prevent the non-citizen leaving Australia.

“(4) Subsection (3) does not limit the operation of any order or warrant of a court. 35

“(5) The holder of a criminal justice entry visa may not apply for a visa other than a protection visa.



“(6) If a non-citizen who has held a criminal justice entry visa remains in Australia when the visa is cancelled, the non-citizen may not make an application for a visa other than a protection visa.

5                   “*Subdivision E—Cancellation etc. of criminal justice certificates and criminal justice visas*

**Criminal justice certificates to be cancelled**

“54HI.(1) If the presence in Australia of a non-citizen in respect of whom a criminal justice certificate has been given is no longer required for the purposes for which it was given, then:

- 10           (a) if it was given under section 54A or 54C, the Attorney-General;  
                  or  
                  (b) if it was given under section 54B or 54D—an authorised official;  
is to cancel it.

15           “(2) Before cancelling the certificate, the Attorney-General or authorised official is, an adequate time before doing so, to tell the Secretary:

- (a) when it is to be cancelled; and  
                  (b) the expected whereabouts of the non-citizen when it is cancelled;  
                  and  
20           (c) the arrangements for the non-citizen’s departure from Australia.

**Stay warrant to be cancelled**

“54HJ.(1) If:

- (a) the presence in Australia of a non-citizen in respect of whom a  
                  criminal justice stay warrant has been given is no longer required  
25           for the purposes for which it was given; and  
                  (b) if the warrant is to expire at a certain time—that time has not  
                  been reached;

a person entitled to apply for the warrant’s cancellation must apply to the court for the cancellation.

30           “(2) The applicant for a criminal justice stay warrant in respect of a non-citizen is to tell the Secretary a reasonable time before the warrant expires:

- (a) the time it will expire; and  
                  (b) the expected whereabouts of the non-citizen at the time of  
35           expiry; and  
                  (c) the arrangements for the non-citizen’s departure from Australia.

“ (3) An applicant for the cancellation of a criminal justice stay warrant is to tell the Secretary, as soon as practicable:

- 40           (a) the time of cancellation for which application will be made;  
                  and

- (b) if the time of cancellation is different from that applied for, the time of cancellation; and
- (c) the expected whereabouts of the non-citizen at the expected time, and, if paragraph (b) applies, the time of cancellation; and
- (d) the arrangements for the non-citizen's departure from Australia.

5

**Effect of cancellation etc. on criminal justice visa**

“54HK. If:

- (a) a criminal justice certificate is cancelled; or
- (b) a criminal justice stay warrant is cancelled or expires;

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any criminal justice visa granted because of the certificate or warrant is cancelled and the Minister is to make a record of the cancellation.

**“Division 4—Immigration clearance**

**Interpretation**

“54HL. In this Subdivision:

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‘clearance officer’ means an officer, or other person, authorised by the Minister to perform duties for the purposes of this Division;

‘on-port’, in relation to a person, means a port in Australia to which the person will travel after entering Australia at another port;

‘overseas vessel’ means:

20

- (a) a vessel on which persons travel from outside Australia to a port and then to an on-port or ports; or
- (b) a vessel on which persons travel from a port to another port or ports and then to a place outside Australia.

**Arriving person to give certain evidence of identity etc.**

25

“54HM.(1) Subject to subsections 54HN(3) and (4) and sections 54HO and 54HP, a person, whether a citizen or a non-citizen, who enters Australia must, without unreasonable delay:

(a) show a clearance officer:

- (i) if the person is a citizen (whether or not the person is also the national of a country other than Australia), the person's Australian passport or prescribed other evidence of the person's identity and Australian citizenship; and
- (ii) if the person is a non-citizen, evidence of the person's identity and of any visas held by the person;

30

35

(b) give the clearance officer any information required to be given by this Act or the regulations.

“(2) Subject to section 54HN, a person is to comply with paragraphs (1)(a) and (b) in a prescribed way.

**When and where evidence to be given**

“54HN.(1) Subject to this section, a person required to comply with section 54HM who enters Australia at a port must comply:

- 5 (a) if paragraph (b) or (c) does not apply—at that port; or  
(b) if the person is required by an officer to comply at a particular on-port—at that on-port; or  
(c) if the person is allowed by an officer to comply at the port or a particular on-port—at either of them.

10 “(2) Subject to subsection (4), a person required to comply with section 54HM who enters Australia otherwise than at a port must comply at a prescribed place within a prescribed period after entering.

“(3) If:

- 15 (a) a person proposes to enter Australia; and  
(b) with the permission of a clearance officer, complies with paragraphs 54HM(1)(a) and (b) on the vessel on which the person travels to Australia and before entering Australia;  
the person is taken to have complied with section 54HM.

“(4) A person who travels to Australia on a pre-cleared flight:

- 20 (a) must comply with paragraphs 54HM(1)(a) and (b) before beginning the flight; and  
(b) if he or she so complies, is taken to have complied with section 54HM.

**Section 54HM not to apply**

25 “54HO.(1) An allowed inhabitant of the Protected Zone who enters a protected area in connection with the performance of traditional activities is not required to comply with section 54HM.

“(2) If an allowed inhabitant of the Protected Zone:

- 30 (a) enters a protected area in connection with the performance of traditional activities; and  
(b) goes from the protected area to a part of the migration zone outside that area;

he or she must comply with section 54HM at a prescribed place within a prescribed period.

35 “(3) A person in a prescribed class is not required to comply with section 54HM.

**Section 54HM not usually apply**

“54HP. If:

- 40 (a) a person goes outside the migration zone; and  
(b) under section 26ZU is not taken to leave Australia (fishermen and others);

the person is not, on re-entering the migration zone, taken to enter Australia for the purposes of section 54HM but may be directed by a clearance officer to comply with that section.

**Certain persons to give evidence of identity**

“54HQ. A person, whether a citizen or a non-citizen, who travels, or appears to intend to travel, on an overseas vessel from a port to another port may be required by a clearance officer at either port or by officers at both ports: 5

- (a) to show the officer prescribed evidence of the person’s identity; and 10
- (b) give the officer any information required to be given by this Act or the regulations.

**Assistance with evidence**

“54HR. If a person:

- (a) cannot comply with section 54HM by showing evidence; and 15
- (b) requests the Department to assist him or her to obtain that evidence;

that assistance may be given but only on payment of, or agreement to pay, a prescribed fee to meet the cost of doing so.

**Immigration clearance 20**

“54HS.(1) A person is immigration cleared if, and only if:

- (a) the person:
  - (i) enters Australia at a port; and
  - (ii) complies with section 54HM; and
  - (iii) leaves the port at which the person complied and so leaves with the permission of a clearance officer and otherwise than in immigration detention; or 25
- (b) the person:
  - (i) enters Australia otherwise than at a port; and
  - (ii) complies with section 54HM; and 30
  - (iii) leaves the prescribed place at which the person complied and so leaves with the permission of a clearance officer and otherwise than in immigration detention.

“(2) A person is in immigration clearance if the person:

- (a) is with an officer to whom the person has gone for the purpose of complying with section 54HM; and 35
- (b) has not been refused immigration clearance while with that officer.

“(3) A person is refused immigration clearance if the person complied with section 54HM and, on complying: 40

- (a) the person had his or her visa cancelled and:

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- (i) did not make an application for another visa; or
  - (ii) had an application for another visa refused; or
  - (iii) made a valid application for another visa that, in the opinion of an officer, was one that it was impossible or impracticable to decide immediately; or
- 5
- (b) the person did not have a visa and:
    - (i) did not make an application for a visa; or
    - (ii) had an application for a visa refused; or
    - (iii) made a valid application for a visa that, in the opinion of an officer, was one that it was impossible or impracticable to decide immediately.
- 10
- “(4) A person bypasses immigration clearance if:
- (a) the person:
    - (i) enters Australia at a port; and
    - (ii) is required to comply with section 54HM; and
    - (iii) leaves that port without complying; or
  - (b) the person:
    - (i) enters Australia otherwise than at a port; and
    - (ii) is required to comply with section 54HM; and
    - (iii) does not comply within the prescribed period for doing so.
- 15
- 20

**Visa ceases if holder enters in way not permitted**

“54HT. If the holder of a visa enters Australia in a way that contravenes section 26J, the visa ceases to be in force.

25 **Visa ceases if holder remains without immigration clearance**

“54HU. If the holder of a visa:

- (a) is required to comply with section 54HM; and
  - (b) does not comply;
- the visa ceases to be in force.

30 **Departing person to give certain evidence etc.**

“54HV. A clearance officer may require a person who is on board, or about to board, a vessel that is to leave Australia (whether or not after calling at places in Australia) to:

- (a) show the officer:
    - (i) if the person is a citizen (whether or not the person is also the national of a country other than Australia), the person’s Australian passport or prescribed other evidence of the person’s identity and Australian citizenship; and
    - (ii) if the person is a non-citizen, evidence of the person’s identity and permission to remain in Australia; and
- 35
- 40

(b) give any information required to be given by this Act or the regulations.”.

13. After Division 4B of Part 2 of the Principal Act the following Divisions are inserted:

**“Division 4C—Detention of unlawful non-citizens** 5

**Lawful non-citizen to give evidence of being so**

“54V.(1) An officer may require a person who the officer knows or reasonably suspects is a non-citizen to show the officer evidence of being a lawful non-citizen.

“(2) The person must comply with the requirement within a period specified by the officer, being a prescribed period or such further period as the officer allows. 10

“(3) Regulations prescribing a period for compliance may prescribe different periods and the circumstances in which a particular prescribed period is to apply which may be: 15

- (a) when the requirement is oral; or
- (b) when the requirement is in writing.

**Detention of unlawful non-citizens**

“54W.(1) If an officer knows or reasonably suspects that a person in the migration zone is an unlawful non-citizen, the officer must detain the person. 20

“(2) If an officer reasonably suspects that a person in Australia but outside the migration zone:

- (a) is seeking to enter the migration zone; and
  - (b) would, if in the migration zone, be an unlawful non-citizen; 25
- the officer must detain the non-citizen.

**Non-compliance with immigration clearance basis of detention**

“54X. For the purposes of section 54W, an officer suspects on reasonable grounds that a person in Australia is an unlawful non-citizen if, but not only if, the officer knows, or suspects on reasonable grounds, that the person: 30

- (a) was required to comply with section 54HM; and
- (b) did one or more of the following: 35
  - (i) evaded, attempted to evade or appeared to attempt to evade going to a clearance officer;
  - (ii) went to a clearance officer but was not able to show, or otherwise did not show, evidence required by that section to be shown;
  - (iii) if a non-citizen, went to a clearance officer but was not

able to give, or otherwise did not give, information required by that section to be given.

**End of certain detention**

5 “54Y. A person detained because of section 54X must be released from immigration detention if he or she:

(a) gives evidence of his or her identity and Australian citizenship;  
or

(b) complies with section 54HM and either:

10 (i) shows an officer evidence of being a lawful non-citizen;  
or

(ii) is granted a visa.

**Detention of visa holders whose visas liable to cancellation**

15 “54Z.(1) Subject to subsection (2), if an officer knows or reasonably suspects that a non-citizen holds a visa that may be cancelled under Subdivision C, D or G of Division 2, the officer may detain the non-citizen.

“(2) An officer must not detain an immigration cleared non-citizen under subsection (1) unless the officer reasonably suspects that if the non-citizen is not detained, the non-citizen would:

20 (a) attempt to evade the officer and other officers; or

(b) otherwise not co-operate with officers in their inquiries about the non-citizen’s visa and matters relating to the visa.

“(3) An officer may question a non-citizen detained because of this section about the visa and matters relevant to the visa.

25 “(4) A non-citizen detained under subsection (1) must be released from questioning detention if the officer becomes aware that the non-citizen’s visa is not one that may be cancelled under Subdivision C, D or G of Division 2.

30 “(5) A non-citizen detained under subsection (1) must be released from detention within 4 hours after being detained.

“(6) If the non-citizen has been detained because of subsection (1) more than once in any period of 48 hours, the 4 hours provided for by subsection (2) is reduced by so much of the earlier period of detention as occurred within that 48 hours.

35 “(7) In finding out whether 4 hours have passed since a non-citizen was detained, the following times are to be disregarded:

(a) if the detainee is detained at a place that is inappropriate for questioning the person, the time that is reasonably required to take the detainee from that place to the nearest place that is  
40 appropriate;

(b) any time during which the questioning is suspended or delayed

- to allow the detainee, or someone else on the detainee's behalf, to communicate with a legal practitioner, friend, relative, guardian, interpreter or consular representative of the country of which the person is a citizen;
- (c) any time during which the questioning is suspended or delayed to allow a person so communicated with or an interpreter required by an officer to arrive at the place where the questioning is to take place; 5
  - (d) any time during which the questioning is suspended or delayed to allow the detainee to receive medical attention; 10
  - (e) any time during which the questioning is suspended or delayed because of the detainee's intoxication;
  - (f) any reasonable time during which the questioning is suspended or delayed to allow the detainee to rest or recuperate.
- Sections not apply** 15
- “54ZA. Section 54ZB does not apply to a person detained under section 54W on being refused immigration clearance or detained under section 54Z.
- Detainee to be told consequences of detention**
- “54ZB. As soon as reasonably practicable after an officer detains a person under section 54W, the officer must ensure that the person is made aware of the provisions of sections 54ZC and 54ZD. 20
- Detainee may apply for visa**
- “54ZC.(1) A detainee may apply for a visa:
- (a) within 2 days after the day on which section 54ZB was complied with in relation to his or her detention; or 25
  - (b) if he or she informs an officer in writing within those 2 days of his or her intention to so apply—within the next 5 days after those 2 days.
- “(2) A detainee who does not apply for a visa within the time allowed by subsection (1) may not apply for a visa, other than a bridging visa or a protection visa, after that time. 30
- Period of detention**
- “54ZD.(1) An unlawful non-citizen detained under section 54W must be kept in immigration detention until he or she is: 35
- (a) removed from Australia under section 54ZF or 54ZG; or
  - (b) deported under section 55A; or
  - (c) granted a visa.
- “(2) To avoid doubt, subsection (1) does not prevent the release from immigration detention of a citizen or a lawful non-citizen. 40



5 “(3) To avoid doubt, subsection (1) prevents the release, even by a court, of an unlawful non-citizen from detention (otherwise than for removal or deportation) unless the non-citizen has made a valid application for a visa and he or she has satisfied all of the criteria for the visa.

**Effect of escape from immigration detention**

“54ZE. If a non-citizen:

- (a) was in immigration detention; and
- (b) escaped from that detention; and
- 10 (c) was taken back into that detention;

then, for the purposes of sections 54ZB and 54ZC, the non-citizen is taken not to have ceased to be in immigration detention.

***“Division 4D—Removal of unlawful non-citizens***

**Removal from Australia of uncleared unlawful non-citizens**

15 “54ZF.(1) An officer must remove as soon as reasonably practicable an unlawful non-citizen who asks the Minister, in writing, to be so removed.

“(2) An officer must remove as soon as reasonably practicable an unlawful non-citizen:

- 20 (a) who has been refused immigration clearance; and
- (b) either:
  - (i) has not made a valid application for a substantive visa; or
  - 25 (ii) has made a valid application for a substantive visa that has been finally determined.

“(3) The fact that an unlawful non-citizen is eligible to apply for a substantive visa but has not done so does not prevent the application of subsection (2) to him or her.

30 “(4) An officer must remove as soon as reasonably practicable an unlawful non-citizen if the non-citizen:

- (a) is a detainee; and
- (b) was entitled to apply for a visa in accordance with section 54ZC but did not do so.

35 “(5) An officer must remove as soon as reasonably practicable an unlawful non-citizen if:

- (a) the non-citizen is a detainee; and
- (b) the non-citizen made a valid application for a substantive visa; and
- (c) one of the following applies:
  - 40 (i) the application has been refused and finally determined;

- (ii) the application cannot be approved;
- (iii) the visa cannot be granted; and
- (d) the non-citizen has not made another valid application for a substantive visa.

**Dependants of removed non-citizens** 5

“54ZG.(1) If:

- (a) an officer removes, or is about to remove, an unlawful non-citizen; and
- (b) the spouse of that non-citizen requests an officer to also be removed from Australia;

10

an officer may remove the spouse as soon as reasonably practicable.

“(2) If:

- (a) an officer removes, or is about to remove an unlawful non-citizen; and
- (b) the spouse of that non-citizen requests an officer to also be removed from Australia with a dependent child or children of that non-citizen;

15

an officer may remove the spouse and dependent child or children as soon as reasonably practicable.

“(3) If:

20

- (a) an officer removes, or is about to remove, an unlawful non-citizen; and
- (b) that non-citizen requests an officer to remove a dependent child or children of the non-citizen from Australia;

an officer may remove the dependent child or children as soon as reasonably practicable.”. 25

14. Before section 55 of the Principal Act the following section is inserted in Division 5 of Part 2:

**Deportation of certain non-citizens**

“55A. The Minister may order the deportation of a non-citizen to whom this Division applies.”. 30

**Deportation order to be executed**

15. Section 63 of the Principal Act is amended:

- (a) by omitting from subsection (1) “, after considering the prescribed matters and no other matters,”;
- (b) by omitting subsection (3).

35

16. Sections 64, 65 and 66 of the Principal Act are repealed and the following heading and sections are substituted:

***“Division 5A—Costs etc. of detention, removal and deportation***

**Interpretation**

“64. In this Division:

5 ‘carrier’, in relation to an unlawful non-citizen, means a controller of the vessel on which the non-citizen was last brought to Australia;

‘controller’, in relation to a vessel, means the master, owner, agent or charterer of the vessel;

‘costs’ means:

(a) in relation to a non-citizen’s detention:

10 (i) the cost to the Commonwealth of transporting the non-citizen and a custodian of the non-citizen between a place where the non-citizen is detained and:

(A) another place where the non-citizen is to be detained; or

15 (B) a place from which the non-citizen is to be removed or deported; or

(C) a place at which the non-citizen is to be released from detention (whether or not the person is to be arrested, or taken into custody, under another law); or

20 (ii) the daily maintenance amount for each day of the non-citizen’s detention; or

25 (b) in relation to a non-citizen’s removal or deportation, the fares and other costs to the Commonwealth of transporting the non-citizen and a custodian of the non-citizen from Australia to the place outside Australia to which the non-citizen is removed or deported;

30 ‘daily maintenance amount’, in relation to a non-citizen and a day and place, means the amount determined under section 65 as the daily maintenance amount for non-citizens detained at that place in the period in which the day falls.

**Determination of daily maintenance amount**

35 “65.(1) The Minister may determine in writing a daily amount for the maintenance of a non-citizen detained at a specified place in a specified period.

“(2) An amount determined is to be no more than the cost to the Commonwealth of detaining a person at that place in that period.

**Detainees liable for costs of detention**

40 “66. Subject to section 66C, a non-citizen who is detained is liable to pay the Commonwealth the costs of his or her detention.

**Removed or deported non-citizen liable for costs of removal or deportation**

“66A. Subject to section 66D, a non-citizen who is removed or deported, other than an unlawful non-citizen who came to Australia on a criminal justice visa, is liable to pay the Commonwealth the costs of his or her removal or deportation. 5

**Costs of detained spouses and dependants**

“66B.(1) If:

- (a) 2 non-citizens are the spouses of each other within the meaning of the regulations; and 10
- (b) they are both detained at the same time;

each of them is liable to pay the Commonwealth the costs of their detentions.

“(2) If:

- (a) 2 non-citizens are the spouses of each other within the meaning of the regulations; and 15
- (b) they are both detained at the same time; and
- (c) their dependent child, or dependent children, within the meaning of the regulations are detained at that time;

then: 20

- (c) the child or children are not liable to pay the Commonwealth the costs of the child’s or children’s detention; and
- (d) the unlawful non-citizens are liable to pay the Commonwealth those costs.

“(3) If: 25

- (a) a non-citizen is detained at a particular time; and
- (b) the non-citizen either:
  - (i) does not have a spouse within the meaning of the regulations; or
  - (ii) does not have such a spouse who is detained at that time; and 30
- (c) the non-citizen has a dependent child, or dependent children, within the meaning of the regulations detained at that time;

then:

- (d) the child or children are not liable to pay the Commonwealth the costs of their detention; and 35
- (e) the non-citizen is liable to pay to the Commonwealth those costs.

**Costs of removed or deported spouses and dependants**

“66C.(1) If: 40

- (a) 2 persons are the spouses of each other within the meaning of the regulations; and

(b) either:

(i) they are both removed or deported; or

(ii) one of them is deported and the other is removed;

5 each of them is liable to pay the Commonwealth the costs of their removals, their deportations, or the deportation and removal.

“(2) If:

(a) 2 persons are the spouses of each other within the meaning of the regulations; and

(b) either:

10 (i) they are both removed or deported; or

(ii) one is deported and the other is removed; and

(c) their dependent child, or dependent children, within the meaning of the regulations are also removed;

then:

15 (d) the child or children are not liable to pay the Commonwealth the costs of the child’s or children’s removal; and

(e) the persons are liable to pay the Commonwealth those costs.

“(3) If:

(a) a non-citizen is removed or deported; and

20 (b) the non-citizen either:

(i) does not have a spouse within the meaning of the regulations; or

(ii) does not have such a spouse who is deported or removed; and

25 (c) the non-citizen has a dependent child, or dependent children, within the meaning of the regulations who are removed;

then:

(d) the child or children are not liable to pay the Commonwealth the costs of their removal; and

30 (e) the non-citizen is liable to pay the Commonwealth those costs.

**Carriers may be liable for costs of detention, removal and deportation**

“66D.(1) If a non-citizen who enters Australia:

(a) is required to comply with section 54HM (immigration clearance); and

35 (b) either:

(i) does not comply; or

(ii) on complying, is detained under section 54W as an unlawful non-citizen;

40 then, as soon as practicable after the Secretary becomes aware that paragraphs (a) and (b) apply to the non-citizen, the Secretary may give a carrier of the non-citizen a written notice requiring the carriers of the non-citizen to pay:

- (c) if the non-citizen is detained—the costs of the non-citizen’s detention; and
- (d) if the non-citizen is removed or deported from Australia, the costs of the non-citizen’s removal or deportation.

“(2) The notice is to: 5

- (a) give particulars of the calculation of the costs; and
- (b) state that an account for the costs will be given to at least one of the carriers of the non-citizen when they have been incurred.

“(3) If a notice is given, each carrier of the non-citizen is liable to pay the Commonwealth the costs described in the notice and for which an account is given. 10

**Non-citizens and carriers jointly liable**

“66E. If, under this Division, 2 or more persons are liable to pay the Commonwealth the costs of a non-citizen’s detention, removal or deportation they are jointly and severally liable to pay those costs. 15

**Costs are debts due to the Commonwealth**

“66F. Without limiting any other provision of this Act, costs payable by a person 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. 20

**Use of existing ticket for removal or deportation**

“66G. If:

- (a) a non-citizen is to be removed or deported; and
- (b) the non-citizen or another person holds a ticket for the conveyance of the non-citizen from a place within Australia to a place outside Australia; 25

the Secretary may, on behalf of the ticket holder arrange (with or without the ticket holder’s consent) for the ticket to be applied for or towards the conveyance of the non-citizen.

**Vessels required to convey removed or deported non-citizens 30**

“66H.(1) If a person is to be removed or deported, the Secretary may give the controller of a vessel or vessels a written notice requiring the controller to transport the person from Australia to a destination of the vessel or one of the vessels specified in the notice.

“(2) Subject to sections 66J and 66K, the controller must comply with the notice within 72 hours of the giving of the notice or such further term as the Secretary allows. 35

Penalty: \$10,000.

**Exemption from complying**

“66J.(1) It is a defence to a prosecution for an offence against section 66H of failing to comply with a notice to transport a non-citizen if the defendant proves:

- 5 (a) that the defendant was prevented from complying with the notice because of stress of weather or other reasonable cause; or
- 10 (b) the defendant gave reasonable notice to the Secretary of the person’s willingness to receive the non-citizen on board a specified vessel at a specified port on a specified day within 72 hours of the giving of the notice for removal or deportation, but the non-citizen was not made available at that port on that date for boarding the vessel.

**Waiver of requirement**

- 15 “66K.(1) If:
- (a) a notice has been given under section 66H requiring the transport of an unlawful non-citizen to a country; and
- (b) the government of that country notifies the Minister that the non-citizen would not be permitted to enter that country;
- 20 the Minister is to give the controller written notice revoking the notice under that section.

“(2) The revocation of a notice does not prevent another notice under section 66H or affect any liability for costs.

**Cost of removal under notice**

- 25 “66L.(1) If:
- (a) the controller of a vessel is given a notice under section 66H to transport a non-citizen; and
- (b) the controller was a carrier of the non-citizen; and
- (c) paragraphs 66D(1)(a) and (b) apply to the non-citizen;
- 30 then the Commonwealth is not liable for the costs of transporting the non-citizen.

“(2) If:

- (a) the controller of a vessel is given a notice under section 66H to transport a non-citizen; and
- 35 (b) subsection (1) does not apply;
- then:
- (c) the Commonwealth is liable to pay the controller’s costs of the transport; and
- (d) sections 66A to 66G apply to the transport and those costs.”.

- 40 17. Section 77 of the Principal Act is repealed and the following sections are substituted:

**Carriage of concealed persons to Australia**

“77.(1) The master, owner, agent and charterer of a vessel are each guilty of an offence against this section if an unlawful non-citizen is concealed on the vessel when it arrives in Australia.

“(2) Subsection (1) does not apply to an unlawful non-citizen if the master of the vessel: 5

(a) as soon as it arrives at a port, gives notice to an officer that the non-citizen is on board; and

(b) prevents the non-citizen from landing without an officer having had an opportunity to question the non-citizen. 10

Penalty: \$10,000.

**Master of vessel to comply with certain requests**

“77A.(1) The master of a vessel arriving in Australia must comply with any request by an authorised officer to:

(a) give the authorised officer a list of all persons on the vessel and prescribed particulars of each of them; or 15

(b) gather together those persons or such of them as are specified by the officer; or

(c) make sure of the disembarkation from the vessel of those persons or such of them as are specified by the officer. 20

“(2) If:

(a) a person is on a vessel that has arrived in Australia; and

(b) that person’s name is not on a list of persons on the vessel given under subsection (1);

the person is taken, for the purposes of section 77, to have been concealed on the vessel when it arrived.”. 25

**Offences in relation to work**

18. Section 83 of the Principal Act is amended:

(a) by omitting subsections (1) and (2) and substituting the following subsections: 30

“(1) If:

(a) the temporary visa held by a non-citizen is subject to a prescribed condition restricting the work that the non-citizen may do in Australia; and

(b) the non-citizen contravenes that condition; 35  
the non-citizen commits an offence against this section.

“(1A) For the purposes of subsection (1), a condition restricts the work that a non-citizen may do if, but not only if, it prohibits the non-citizen doing:

(a) any work; or 40

(b) work other than specified work; or



(c) specified work.

“(2) An unlawful non-citizen who performs work in Australia whether for reward or otherwise commits an offence against this subsection.”;

5 (b) by omitting subsection (3) and substituting the following subsection:

“(3) If:

(a) there is a criminal justice certificate or a criminal justice stay warrant about a non-citizen; and

10 (b) the person does any work within the meaning of subsection 54HG(2), in Australia, whether for reward or otherwise;

then without limiting the operation of any other provision of this Act, the person commits an offence against this subsection.

15 (c) by omitting subsections (4), (6) and (7);

(d) by omitting from subsection (8) “temporary entry permit” and substituting “visa”.

19. Section 88 of the Principal Act is repealed and the following section is substituted:

20 **Detention of suspected offenders**

“88.(1) In this section:

‘suspect’ means a non-citizen who:

(a) travelled, or was brought, to the migration zone; and

25 (b) is believed by an authorised officer on reasonable grounds to have been on board a vessel (not being an aircraft) when it was used in connection with the commission of an offence against a law in force in the whole or any part of Australia.

30 “(2) For the purposes of section 54W, an officer has a suspicion described in that section about a person if, but not only if, the person is a suspect.

“(3) A non-citizen detained because of subsection (2) may be kept in immigration detention for:

(a) such period as is required for:

35 (i) the making of a decision whether to prosecute the suspect in connection with the offence concerned; or

(ii) instituting such a prosecution; and

(b) if such a prosecution is instituted within that period—such further period as is required for the purposes of the prosecution.

40 “(4) Without limiting the generality of paragraph (3)(b), the period that is required for the purposes of a prosecution includes any period required for:

- (a) any proceedings in connection with the prosecution; and
- (b) the serving of any custodial sentence imposed because of the prosecution; and
- (c) the institution of, and any proceedings in connection with, any appeal from any decision in relation to the prosecution. 5

“(5) If the period for which a person may be kept in immigration detention under subsection (3) ends, he or she:

- (a) must, unless he or she has become the holder of a visa to remain in Australia, be expeditiously removed from Australia under section 54ZF; and 10
- (b) may, at the direction of an authorised officer, continue to be detained under section 54W until so removed.”.

20. After section 100 of the Principal Act the following section is inserted in Division 8 of Part 2:

**Disposal of dilapidated vessels etc.** 15

“100AA.(1) If a non-citizen who enters Australia:

- (a) is required to comply with section 54HM (immigration clearance); and
- (b) either: 20
  - (i) does not comply; or
  - (ii) on complying, is detained under section 54W;

the Secretary may, in writing, direct an officer to seize the vessel on which the non-citizen came to Australia.

“(2) If:

- (a) a vessel is seized under subsection (1); and 25
- (b) the vessel has not been forfeited and condemned under section 100; and
- (c) the vessel has not been ordered by a court to be delivered to a person or otherwise dealt with; and
- (d) the Secretary is satisfied that the vessel is in such a poor condition that its custody or maintenance involves expense out of proportion to its value; and 30
- (e) a person other than the Commonwealth does not meet, or make arrangements that the Secretary considers are satisfactory to meet, that expense; 35

the Secretary may in writing, direct an officer to sell, destroy or otherwise dispose of the vessel.

“(3) The officer must comply with the direction.

“(4) The proceeds of a sale are to be applied firstly in payment of costs incurred by the Commonwealth in the custody or maintenance of the vessel and the balance is to be paid to the owner and any other persons with interests in the vessel before its sale.”. 40

**Proof of certain matters**

21. Section 111 of the Principal Act is amended:

(a) by inserting after paragraph (a) of the definition of “migration proceedings” in subsection (4) the following paragraph:

5 “(aa) proceedings in the Refugee Review Tribunal under this Act; or”;

(b) by omitting from paragraph (4)(b) “under section 180” and substituting “under this Act”.

**Interpretation**

10 22. Section 114A of the Principal Act is amended by inserting the following definition:

“‘review authority’ means:

(a) the Immigration Review Tribunal; or

(b) the Refugee Review Tribunal; or

15 (c) a person who is a review officer for the purposes of Part 3.”.

23. Divisions 1 and 2 of Part 3 of the Principal Act are repealed and the following Divisions are substituted:

**“Division 1A—Interpretation**

**Interpretation**

20 “115. In this Part:

‘company’ includes any body or association (whether or not it is incorporated), but does not include a partnership;

‘member’ means a member of the Tribunal;

‘nominated’ has the same meaning as in the regulations;

25 ‘Part 3 reviewable decision’ means a decision:

(a) to refuse an application by a non-citizen, made while the non-citizen was in the migration zone, for a visa that could be granted while the non-citizen was in that zone (other than such a decision made at a time when the non-citizen was in immigration clearance or had been refused immigration clearance); or

30 (b) to cancel a visa held by a non-citizen who is in the migration zone at the time of the cancellation (other than such a decision made at a time when the non-citizen was in immigration clearance); or

35 (c) to refuse an application by a non-citizen for a visa where:

(i) the visa is a visa that could not be granted while the applicant is in the migration zone; and

40 (ii) the decision was made while the non-citizen was outside the migration zone; and

(iii) the non-citizen, as required by a criterion for the visa, was sponsored or nominated by:

- (A) an Australian citizen; or
- (B) a company that operates in the migration zone; or
- (C) a partnership that operates in the migration zone; or
- (D) the holder of a permanent visa; or
- (E) a person covered by subsection 14(3); or
- (F) a citizen of New Zealand who holds a special category visa;

5

10

**'presiding member'**, in relation to a review by the Tribunal, means:

(a) if the Tribunal is, for the purposes of review, constituted by 2 or 3 members—the member who, in accordance with section 127, is to preside at the review; or

(b) if the Tribunal is, for the purpose of the review, constituted by one member—that member;

15

**'Principal Member'** means the Principal Member of the Tribunal;

**'Registrar'** means the Registrar of the Tribunal;

**'review officer'** means an officer of the Department:

(a) declared by the Secretary, in writing specifying the officer, to be a review officer for the purposes of this definition; or

20

(b) holding, or performing the duties of, a position in the Department declared by the Secretary, in writing identifying the position, to be the position of a review officer for the purposes of this definition;

25

**'sponsored'** has the same meaning as in the regulations;

**'Senior Member'** means a Senior Member of the Tribunal;

**'Tribunal'** means the Immigration Review Tribunal.

### ***"Division 1—Internal review of decisions***

#### **Internally-reviewable decisions**

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"115A.(1) Subject to subsection (2), Part 3 reviewable decisions are internally-reviewable decisions.

"(2) The following decisions are not internally-reviewable decisions:

(a) a decision made by the Minister personally;

(b) a decision in relation to which the Minister has issued a conclusive certificate under subsection (3);

35

(c) a decision prescribed to be an IRT-reviewable decision;

(d) an RRT-reviewable decision.

"(3) The Minister may issue a conclusive certificate in relation to a decision if the Minister believes that:

40

- (a) it would be contrary to the public interest to change the decision, because any change in the decision would prejudice the security, defence or international relations of Australia; or
- 5 (b) it would be contrary to the public interest for the decision to be reviewed because such review would require consideration by the review officer of deliberations or decisions of the Cabinet or of a committee of the Cabinet.

**Application for internal review**

10 “115B.(1) An application for review of an internally-reviewable decision must:

- (a) be made in writing in the form approved by the Secretary; and
- (b) be given to the Secretary, at a prescribed place, within the prescribed period, being a period ending not later than:
  - 15 (i) if the decision is covered by paragraph (a) or (b) of the definition of Part 3 reviewable decision—28 days after the notification of the decision; or
  - (ii) if the decision is covered by paragraph (c) of that definition—70 days after the notification of the decision; and
- 20 (c) be accompanied by the prescribed fee (if any).

“(2) An application for review may only be made by:

- (a) if the decision is covered by paragraph (a) or (b) of the definition of Part 3 reviewable decision—the non-citizen who is the subject of that decision; or
- 25 (b) if the decision is covered by paragraph (c) of that definition—the sponsor or nominator.

“(3) An application for review of a decision covered by paragraph (a) or (b) of the definition of Part 3 reviewable decision may only be made by a non-citizen who is physically present in the migration zone when the application for review is made.

30

“(4) Regulations made for the purposes of paragraph (1)(b) may specify different periods in relation to different classes of internally-reviewable decisions (which may be decisions that relate to non-citizens in a specified place).

**35 Review officer must review decisions**

“115C.(1) Subject to subsection (2), if an application is properly made under section 115B for review of an internally-reviewable decision, a review officer must review the decision.

“(2) A review officer must not review, or continue to review, a decision in relation to which the Minister has issued a conclusive certificate under subsection 115A(3).

40

**Powers of review officer**

“115D.(1) The review officer may, for the purposes of the review of an internally-reviewable decision, exercise all the powers and discretions that are conferred by this Act on the person who made the decision.

5

“(2) The review officer may:

(a) affirm the decision; or

(b) vary the decision; or

(c) if the decision relates to a prescribed matter—remit the matter for reconsideration in accordance with such directions or recommendations of the review officer as are permitted by the regulations; or

10

(d) set the decision aside and substitute a new decision.

“(3) If the review officer:

(a) varies the decision; or

15

(b) sets aside the decision and substitutes a new decision;

the decision as varied or substituted is taken (except for the purpose of applications to the Tribunal for review) to be a decision of the Minister.

“(4) To avoid doubt, a review officer must not, by varying a decision or setting a decision aside and substituting a new decision, purport to make a decision that is not authorised by the Act or the regulations.

20

**Notification of decision**

“115E.(1) When the review officer makes a decision, he or she is to notify the applicant of the decision in the prescribed way.

“(2) Notification of a decision, the effect of which is to approve an application for a visa, must include:

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(a) if there are any prescribed requirements or requirements under any other law of the Commonwealth for the grant that have to be met—particulars of them and a statement that the visa will not be granted unless they are met within a specified time; and

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(b) the address of the office of the Department that will be responsible for granting the visa and providing evidence of the visa.

“(3) A time specified for the purposes of paragraph (2)(a) must begin on the date of the notification and not be longer than 12 months.

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“(4) Notification of a decision, the effect of which is to refuse an application for a particular visa, must:

(a) if the visa was refused because the applicant did not satisfy a criterion for the visa—specify that criterion; and

(b) if the visa was refused because a provision of this Act or the regulations prevented approval—specify that provision; and

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(c) give the reasons why the criterion was not satisfied or the provision prevented approval; and

(d) give notice:

- (i) that the decision can be reviewed; and
- 5 (ii) the time in which the application for review may be made; and
- (iii) who can apply for the review; and
- (iv) where the application for review can be made.

10 “(5) Notification of a decision to remit a decision for reconsideration must include:

(a) notice of the directions or recommendations with which the decision is remitted; and

(b) the address of the office of the Department to which the decision has been remitted; and

15 (c) notice:

(i) that the decision can be reviewed; and

(ii) the time in which the application for review may be made; and

(iii) who can apply for the review; and

20 (iv) where the application for review can be made.

“(6) Failure to give notification of a decision does not affect the validity of the decision.

**Review of assessments made under section 30**

25 “115F. In reviewing an assessment of the Minister under section 30, the only regulations for the purpose of that section which the review officer 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;

30 (b) the regulations for that purpose that are in force at the time the decision is made by the review officer about the assessment.

**Minister may substitute more favourable decision**

35 “115G.(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of a review officer under section 115D another decision being:

(a) the decision sought by the applicant; or

(b) another decision in terms to which the applicant agrees;

whether or not the review officer had the power to make that other decision.

“(2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 2 of Part 2 or by the regulations, but is bound by all other provisions of this Act.

“(3) The power under subsection (1) may only be exercised by the Minister personally. 5

“(4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

- (a) sets out the decision of the review officer; and
- (b) sets out the decision substituted by the Minister; and 10
- (c) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.

“(5) A statement made under subsection (4) is not to include:

- (a) the name of the applicant; or 15
- (b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.

“(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after: 20

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
- (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

“(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances. 25

***“Division 2—Review of decisions by Immigration Review Tribunal***

**Decisions reviewable by Immigration Review Tribunal 30**

“116.(1) Subject to subsection (2), the following decisions are IRT-reviewable decisions:

- (a) decisions made by a review officer under section 115D;
- (b) Part 3 reviewable decisions made by the Minister personally;
- (c) other decisions prescribed to be IRT-reviewable decisions. 35

“(2) The following decisions are not IRT-reviewable decisions:

- (a) a decision in relation to which the Minister has issued a conclusive certificate under subsection (4) or 115A(3);
- (b) an RRT-reviewable decision.



“(3) A decision may not be prescribed as an IRT-reviewable decision unless the decision is a Part 3 reviewable decision.

“(4) The Minister may issue a conclusive certificate in relation to a decision if the Minister believes that:

- 5 (a) it would be contrary to the public interest to change the decision, because any change in the decision would prejudice the security, defence or international relations of Australia; or
- 10 (b) it would be contrary to the public interest for the decision to be reviewed because such review would require consideration by the Tribunal of deliberations or decisions of the Cabinet or of a committee of the Cabinet.

**Application for review by Immigration Review Tribunal**

“117.(1) An application for review of an IRT-reviewable decision must:

- 15 (a) be made in the approved form; and
- (b) be given to the Tribunal within the prescribed period, being a period ending not later than:
- 20 (i) if the primary decision is covered by paragraph (a) or (b) of the definition of Part 3 reviewable decision—28 days after the notification of the IRT-reviewable decision; or
- (ii) if the primary decision is covered by paragraph (c) of that definition—70 days after the notification of the IRT-reviewable decision; and
- (c) be accompanied by the prescribed fee (if any).

25 “(2) An application for review may only be made by:

- (a) if the primary decision is covered by paragraph (a) or (b) of the definition of Part 3 reviewable decision—the non-citizen who is the subject of that decision; or
- 30 (b) if the primary decision is covered by paragraph (c) of that definition—the sponsor or nominator.

“(3) If the primary decision was covered by paragraph (a) or (b) of the definition of Part 3 reviewable decision, an application for review may only be made by a non-citizen who is physically present in the migration zone when the application for review is made.

35 “(4) Regulations made for the purposes of paragraph (1)(b) may specify different periods in relation to different classes of IRT-reviewable decisions (which may be decisions that relate to non-citizens in a specified place).

**Immigration Review Tribunal must review decisions**

40 “118.(1) Subject to subsection (2), if an application is properly made under section 117 for review of an IRT-reviewable decision, the Tribunal must review the decision.

“(2) The Tribunal must not review, or continue to review, a decision in relation to which the Minister has issued a conclusive certificate under subsection 115A(3) or 116(4).

**Powers of Immigration Review Tribunal**

“119.(1) The Tribunal may, for the purposes of the review of an IRT-reviewable decision, exercise all the powers and discretions that are conferred by this Act on the person who made the decision. 5

“(2) The Tribunal may:

(a) affirm the decision; or

(b) vary the decision; or 10

(c) if the decision relates to a prescribed matter—remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations; or

(d) set the decision aside and substitute a new decision. 15

“(3) If the Tribunal:

(a) varies the decision; or

(b) sets aside the decision and substitutes a new decision;

the decision as varied or substituted is taken (except for the purpose of appeals from decisions of the Tribunal) to be a decision of the Minister. 20

“(4) To avoid doubt, the Tribunal must not, by varying a decision or setting a decision aside and substituting a new decision, purport to make a decision that is not authorised by the Act or the regulations.

**Review of assessments made under section 30**

“120. In reviewing an assessment of the Minister under section 30, the only regulations for the purpose of that section which the Tribunal is to have regard to are whichever of the following are more favourable to the applicant: 25

(a) the regulations for that purpose that were in force at the time the assessment was made by the Minister; 30

(b) the regulations for that purpose that are in force at the time the decision was made by the Tribunal about the assessment.

**Minister may substitute more favourable decision**

“121.(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 119 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision. 35

“(2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 2 of Part 2 or by the regulations, but is bound by all other provisions of this Act. 40

“(3) The power under subsection (1) may only be exercised by the Minister personally.

“(4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

- (a) sets out the decision of the Tribunal; and
- (b) sets out the decision substituted by the Minister; and
- (c) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.

“(5) A statement made under subsection (4) is not to include:

- (a) the name of the applicant; or
- (b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.

“(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
- (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

“(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

**Secretary to be notified of application for review by Immigration Review Tribunal**

“122.(1) If an application for review is made to the Immigration Review Tribunal, the Registrar must, as soon as practicable, give the Secretary written notice of the making of the application.

“(2) The Secretary must, within 10 working days after being notified of the application, give to the Registrar the prescribed number of copies of a statement about the decision under review that:

- (a) sets out the findings of fact made by the person who made the decision; and
- (b) refers to the evidence on which those findings were based; and
- (c) gives the reasons for the decision.

“(3) The Secretary must, as soon as is practicable after being notified of the application, give to the Registrar each other document, or part of a document, that is in the Secretary’s possession or control and is considered by the Secretary to be relevant to the review of the decision.”.

**Repeal of Sections**

24. Sections 137, 138, 139 and 140 of the Principal Act are repealed.

**Protection of members and persons giving evidence**

25. Section 144 of the Principal Act is amended:

- (a) by omitting from subsection (1) all the words after “immunity” and substituting “as a member of the Administrative Appeals Tribunal.”; 5
- (b) by omitting from subsection (2) all the words after “proceedings” and substituting “in the Administrative Appeals Tribunal.”.

26. After section 150 of the Principal Act the following Division is inserted in Part 3: 10

***“Division 8—Referral of decisions to Administrative Appeals Tribunal***

**Interpretation**

“150A. In this Division:

‘AAT Act’ means the *Administrative Appeals Tribunal Act 1975*. 15

**Referral of decisions to Administrative Appeals Tribunal**

“150B.(1) The Principal Member of the Immigration Review Tribunal may, if the Principal Member considers that an IRT-reviewable decision involves an important principle, or issue, of general application, refer the decision to the President of the Administrative Appeals Tribunal. 20

“(2) A referral under subsection (1) may be made at any time:

- (a) after the receipt by the Immigration Review Tribunal of an application for a review of the decisions; and
- (b) before that Tribunal makes a decision on the application. 25

“(3) The following material must be sent with the referral:

- (a) a request for a review by the Administrative Appeals Tribunal of that decision;
- (b) a statement of the Principal Member’s reasons for concluding that the decision involves an important principle, or issue, of general application; 30
- (c) any documents or other records that the Principal Member considers relevant.

“(4) The Principal Member must give written notice of the making of a referral under subsection (1) to the applicant and the Secretary. 35

“(5) The Immigration Review Tribunal must not commence any action in relation to the proceeding before it with respect to the decision, or, if it has commenced such action, must cease that action

until notified by the President of the Administrative Appeals Tribunal in accordance with section 150C.

- 5 “(6) If the President of the Administrative Appeals Tribunal directs that the Administrative Appeals Tribunal will accept the referral, the review by the Immigration Review Tribunal is taken to be closed.

**Administrative Appeals Tribunal may accept or decline referral**

“150C.(1) The President of the Administrative Appeals Tribunal must consider a request under section 150B and either:

- 10 (a) direct that the Administrative Appeals Tribunal will accept the referral of the decision; or  
(b) direct that the Administrative Appeals Tribunal will decline the referral of the decision.

“(2) The President must notify the Principal Member of the direction made under subsection (1).

- 15 “(3) If the President accepts the referral of an IRT-reviewable decision:

- (a) the application to the Immigration Review Tribunal is taken to have been properly made to the Administrative Appeals Tribunal by the applicant to the Immigration Review Tribunal; and  
20 (b) the AAT Act applies to the review of the IRT-reviewable decision subject to the modifications in this Division.

**Modification of definition of ‘member’ in section 3 of the AAT Act**

25 “150D. Section 3 of the AAT Act applies in relation to an IRT-reviewable decision as if the definition of member were omitted and the following definition substituted:

“**“member”** means a presidential member, a senior member, or any other member of the Tribunal and includes the Principal Member of the Immigration Review Tribunal;’

**Modification of section 21 of the AAT Act**

30 “150E. Section 21 of the AAT Act applies in relation to an IRT-reviewable decision as if:

- (a) subsection (1) were omitted and the following subsections substituted:  
35 (1) Subject to subsection (1AA), the Tribunal is, for the purposes of the exercise of its powers in relation to a matter, to be constituted by:  
(a) a presidential member who is a Judge, the Principal Member of the Immigration Review Tribunal and one other member (not being a Judge); or  
40 (b) a Deputy President, the Principal Member of the

Immigration Review Tribunal and one non-presidential member.

‘(1AA) If the Principal Member of the Immigration Review Tribunal had constituted that Tribunal, in whole or in part, for the review by the Immigration Review Tribunal of the IRT-reviewable decision that is the subject of a matter, the Tribunal in relation to proceedings for the purposes of the exercise of its power in relation to that matter, is to be constituted by: 5

(a) a presidential member who is a Judge and two other members (not being Judges or the Principal Member of the Immigration Review Tribunal); or 10

(b) a Deputy President and two non-presidential members (not being the Principal Member of the Immigration Review Tribunal).’; and 15

(b) subsections (2), (3) and (4) were omitted.

**Certain sections of the AAT Act do not apply to IRT-reviewable decisions**

“150F. Sections 21A, 27, 28 and 29 of the AAT Act do not apply in relation to IRT-reviewable decisions. 20

**Modification of section 25 of the AAT Act**

“150G. Section 25 of the AAT Act applies in relation to an IRT-reviewable decision as if subsections (6) and (6A) were omitted.

**Modification of section 30 of the AAT Act**

“150H. Section 30 of the AAT Act applies in relation to an IRT-reviewable decision as if paragraphs (1)(a). and (b) were omitted and the following paragraphs substituted: 25

(a) the person who, under section 150C of the *Migration Act 1958*, is taken to have applied to the Tribunal for review of the decision; and 30

(b) the person who is the Minister for the purposes of the *Migration Act 1958*; and’.

**Modification of section 37 of the AAT Act**

“150I. Section 37 of the AAT Act applies in relation to an IRT-reviewable decision as if: 35

(a) subsections (1) to (1D) (inclusive) were omitted and the following subsection substituted:

‘(1) The Principal Member of the Immigration Review Tribunal must forward to the Administrative Appeals Tribunal all documents and other records relating to the proceeding before the Immigration Review Tribunal with respect to the IRT-reviewable decision within 14 days after receiving notice 40

of the acceptance of the referral of the decision to the Administrative Appeals Tribunal.

5       ‘(1A) Documents provided under subsection 150B(3) of the *Migration Act 1958* are taken to have been provided in accordance with subsection (1) of this section.’; and

(b) subsection (4) were omitted.

**Modification of section 38 of the AAT Act**

10       “150J. Section 38 of the AAT Act applies in relation to an IRT-reviewable decision as if the reference in that section to a statement referred to in paragraph 37(1)(a) that is lodged by a person with the Tribunal were a reference to a statement that was lodged with the Immigration Review Tribunal by a person under section 122 of the *Migration Act 1958*.

**Modification of section 43 of the AAT Act**

15       “150K. Section 43 of the AAT Act applies in relation to an IRT-reviewable decision as if subsection (1) were omitted and the following subsections were substituted:

20       ‘(1) The Tribunal may, for the purposes of the review of an IRT-reviewable decision, exercise all the powers and discretions that are conferred by the *Migration Act 1958* on the person who made the decision.

‘(1A) The Tribunal may:

- 25       (a) affirm the decision; or  
(b) vary the decision; or  
(c) if the decision relates to a matter prescribed for the purposes of paragraph 119(2)(c) of the *Migration Act 1958*—remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations under that Act; or  
30       (d) set the decision aside and substitute a new decision.

‘(1B) If the Tribunal:

- 35       (a) varies the decision; or  
(b) sets aside the decision and substitutes a new decision;  
the decision as varied or substituted is taken (except for the purpose of appeals from decisions of the Tribunal) to be a decision of the Minister.

‘(1C) To avoid doubt, the Tribunal must not, by varying a decision or setting a decision aside and substituting a new decision, purport to make a decision that is not authorised by the *Migration Act 1958* or the regulations under that Act.’.

**Minister may substitute more favourable decision**

“150L.(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Administrative Appeals Tribunal in relation to an IRT-reviewable decision another decision, being a decision that is more favourable to the applicant, whether or not the Administrative Appeals Tribunal had the power to make that other decision. 5

“(2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 2 of Part 2 or by the regulations, but is bound by all other provisions of this Act. 10

“(3) The power under subsection (1) may only be exercised by the Minister personally.

“(4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that: 15

- (a) sets out the decision of the Administrative Appeals Tribunal; and
- (b) sets out the decision substituted by the Minister; and
- (c) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest. 20

“(5) A statement made under subsection (4) is not to include:

- (a) the name of the applicant; or
- (b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person. 25

“(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or 30
- (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

“(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances. 35

**Provision of material to which section 147 applies**

“150M. If the Immigration Review Tribunal gives to the Administrative Appeals Tribunal a document or information to which section 147 of this Act applies, the Immigration Review Tribunal must give the Administrative Appeals Tribunal written notice of the application of that section. 40



**Section 9 of AAT Act not to apply to Principal Member**

“150N. In spite of anything in this Act or in any other enactment, section 9 of the AAT Act does not apply to the Principal Member of the Immigration Review Tribunal.”.

5 **Period of appointment of members**

27. Section 154 of the Principal Act is amended by inserting in subsections (2) and (3) “full-time” before “member”.

**Leave of absence**

10 28. Section 157 of the Principal Act is amended by inserting “full-time” before “member”.

**Removal from office**

29. Section 161 of the Principal Act is amended by inserting in paragraph (2)(f) “, being a full-time member,” after “member”.

**Delegation**

15 30. Section 163 of the Principal Act is amended by adding at the end “other than the power under section 150B to refer decisions to the AAT.”.

31. After section 166 of the Principal Act the following Part is inserted:

20 **“PART 4A—REVIEW OF PROTECTION VISA DECISIONS**

*“Division 1—Interpretation*

**Interpretation**

“166A. In this Part:

- ‘member’ means a member of the Tribunal;  
25 ‘Principal Member’ means the Principal Member of the Tribunal;  
‘Registrar’ means the Registrar of the Tribunal;  
‘Tribunal’ means the Refugee Review Tribunal.

*“Division 9—Establishment and membership of the Refugee Review Tribunal*

30 **Establishment of the Refugee Review Tribunal**

“166J. A Refugee Review Tribunal is established.

**Membership of Refugee Review Tribunal**

“166JA. The Refugee Review Tribunal consists of:

- (a) a Principal Member; and

- (b) such other members (not exceeding the prescribed number) as are appointed in accordance with this Act.

**Appointment of members**

“166JB.(1) The members of the Tribunal are to be appointed by the Governor-General. 5

“(2) The Principal Member is to be appointed as a full-time member.

“(3) Any other member may be appointed either as a full-time member or as a part-time member.

**Principal Member**

“166JC.(1) The Principal Member is the executive officer of the Tribunal and is responsible for the overall operation and administration of the Tribunal. 10

“(2) The Principal Member is responsible for:

(a) monitoring the operations of the Tribunal to ensure that those operations are as fair, just, economical, informal and quick as practicable; and 15

(b) allocating the work of the Tribunal among the members (including himself or herself) in accordance with guidelines under subsection (3).

“(3) The Principal Member may lay down written guidelines for the allocation of the work of the Tribunal. 20

“(4) Without limiting the generality of subsection (3), guidelines laid down under that subsection must provide that cases where a person affected by the decision under review is being held in custody under this Act must be given priority over other cases. 25

**Period of appointment of members**

“166JD.(1) Subject to this Part, a member holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

“(2) A person who has turned 65 must not be appointed as a full-time member. 30

“(3) A person must not be appointed as a full-time member for a period that extends beyond the day on which the person will turn 65.

**Remuneration and allowances of Principal Member**

“166JE.(1) The Principal Member is to be paid such remuneration as is determined by the Remuneration Tribunal but if no determination of that remuneration is in operation, the Principal Member is to be paid such remuneration as is prescribed. 35

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“(2) The Principal Member is to be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**5 Remuneration and allowances of other members**

“166JF.(1) 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.

10 “(2) The part-time members must be paid remuneration and allowances as are determined by the Minister in writing.

“(3) This section has effect subject to the regulations.

“(4) In this section:

‘SES office’ means an office in the Senior Executive Service of the Australian Public Service.

**15 Leave of absence**

“166JG. The Minister may grant leave of absence to a full-time member on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

**Other terms and conditions**

20 “166JH. A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

**Resignation**

25 “166JI. A member may resign by writing signed by him or her and sent to the Governor-General.

**Disclosure of interests**

“166JJ.(1) A member who has a conflict of interest in relation to a review by the Tribunal:

30 (a) must disclose the matters giving rise to that conflict to the applicant and:

(i) if the member is the Principal Member—to the Minister; and

(ii) in any other case—to the Principal Member; and

35 (b) the member must not take part in the review or exercise any powers in relation to the review unless:

(i) if the member is the Principal Member—the applicant and the Minister consent; or

(ii) in any other case—the applicant and the Principal Member consent.

“(2) For the purposes of this section, a member has a conflict of interest in relation to a review by the Tribunal if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member’s functions in relation to that review.

**Removal from office**

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“166JK.(1) The Governor-General may remove a member from office on the ground of proved misbehaviour or physical or mental incapacity.

“(2) The Governor-General may remove a member from office if:

- (a) the member becomes bankrupt; or 10
- (b) the member applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) the member compounds with his or her creditors; or
- (d) the member makes an assignment of remuneration for the benefit of his or her creditors; or 15
- (e) the member has a direct or indirect pecuniary interest in an immigration advisory service; or
- (f) the member, being a full-time member, is absent from duty, except on leave of absence granted under section 166JG, for 14 consecutive days or 28 days in any 12 months; or 20
- (g) the member, being a full-time member, engages in paid employment outside the duties of the office of member without the written consent of the Minister; or
- (h) the member fails, without reasonable excuse, to comply with his or her obligations under section 166JJ. 25

“(3) In this section:

**‘immigration advisory service’** means a body that provides services in relation to the seeking by non-citizens of permission to enter or remain in Australia.

**Acting appointments**

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“166JL.(1) The Minister may appoint a person to act in the office of Principal Member:

- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Principal Member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office. 35

“(2) Subject to this section, a person appointed to act during a vacancy in the office must not continue to act for more than 12 months.

“(3) If a person is acting in the office, the Minister may direct that, for the purposes specified in the direction, the person is to be taken to continue to act in the office after the normal terminating event occurs. 40

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“(4) A direction under subsection (3) must specify the period during which the person is to be taken to continue to act in the office.

5 “(5) The period specified under subsection (4) may be specified by reference to the happening of a particular event or the existence of particular circumstances.

“(6) A direction under subsection (3):

- (a) is to be given only if there is a pending review or other special circumstances justifying the giving of the direction; and
- 10 (b) may only be given before the normal terminating event occurs; and
- (c) has effect according to its terms even if the holder of the office is also performing the duties of the office; and
- (d) ceases to have effect 12 months after the normal terminating event occurs.

15 “(7) If the Tribunal is constituted for the purposes of a review by a person acting or purporting to act under this section, any decision of, or any direction given or other acts done by, the Tribunal as so constituted is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- 20 (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

25 “(8) Anything done by or in relation to a person acting or purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- 30 (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

“(9) In this section:

**‘normal terminating event’**, in relation to an appointment to act in an office, means:

- 35 (a) if the appointment is made under paragraph (1)(a)—the filling of the vacancy in the office; or
- (b) if the appointment is made under paragraph (1)(b)—the holder of the office ceasing to be absent or ceasing to be unable to perform the duties of the office.

**Delegation**

“166JM. The Principal Member may, by writing signed by him or her, delegate to a member all or any of the Principal Member’s powers under this Act other than the power under section 166HA to refer decisions to the AAT.

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**“Division 10—Registry and officers**

**Registry**

“166K. The Minister is to cause a Registry of the Tribunal to be established.

**Officers of Tribunal**

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“166KA.(1) There is to be a Registrar of the Tribunal and such other officers of the Tribunal as are required.

“(2) The Registrar and the other officers of the Tribunal are to be appointed by the Minister.

“(3) The officers of the Tribunal have:

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(a) such duties, powers and functions as are provided by this Act and the regulations; and

(b) such other duties and functions as the Principal Member directs.

“(4) The Registrar and the other officers of the Tribunal are to be persons appointed or employed under the *Public Service Act 1922*.

20

**Acting appointments**

“166KB.(1) The Minister may appoint a person appointed or employed under the *Public Service Act 1922* to act in a Tribunal office:

(a) during a vacancy in the office; or

(b) during a period when the holder of the office is absent from duty.

25

“(2) In this section:

‘**Tribunal office**’ means the office of the Registrar of the Tribunal, or the office of any other officer of the Tribunal appointed under section 166KA.”.

30

32. After section 166A of the Principal Act the following Divisions are inserted:

**“Division 2—Review of decisions by Refugee Review Tribunal**

**Decisions reviewable by Refugee Review Tribunal**

“166B.(1) Subject to subsection (2), the following decisions are RRT-reviewable decisions:

35

(a) a decision, made before 1 November 1993, that a non-citizen is not a refugee under the Refugees Convention as amended by

the Refugees Protocol (other than such a decision made after a review by the Minister of an earlier decision that the person was not such a refugee);

- 5 (b) a decision, made before 1 November 1993, to refuse to grant, or to cancel, a visa, or entry permit (within the meaning of this Act as in force immediately before that date), a criterion for which is that the applicant for it is a non-citizen who has been determined to be a refugee under the Refugees Convention as amended by the Refugees Protocol (other than such a decision  
10 made under Part 2A of the Migration (Review) Regulations);
- (c) a decision not to approve an application for a protection visa;
- (d) a decision to cancel a protection visa.

“(2) The following decisions are not RRT-reviewable decisions:

- 15 (a) decisions made in relation to a non-citizen who is not physically present in the migration zone when the decision is made;
- (b) decisions in relation to which the Minister has issued a conclusive certificate under subsection (3).

“(3) The Minister may issue a conclusive certificate in relation to a decision if the Minister believes that:

- 20 (a) it would be contrary to the public interest to change the decision, because any change in the decision would prejudice the security, defence or international relations of Australia; or
- (b) it would be contrary to the public interest for the decision to be reviewed because such review would require consideration  
25 by the Tribunal of deliberations or decisions of the Cabinet or of a committee of the Cabinet.

#### **Application for review by the Refugee Review Tribunal**

“166BA.(1) An application for review of an RRT-reviewable decision must:

- 30 (a) be made in the approved form; and
- (b) be given to the Tribunal within the period prescribed, being a period ending not later than 28 days after the notification of the decision; and
- (c) be accompanied by the prescribed fee (if any).

35 “(2) An application for review may only be made by the non-citizen who is the subject of the primary decision.

“(3) An application for review may only be made by a non-citizen who is physically present in the migration zone when the application for review is made.

40 “(4) Regulations made for the purposes of paragraph (1)(b) may specify different periods in relation to different classes of RRT-reviewable decisions (which may be decisions that relate to non-citizens in a specified place).

**Refugee Review Tribunal must review decisions**

“166BB.(1) Subject to subsection (2), if a valid application is made under section 166BA for review of an RRT-reviewable decision, the Tribunal must review the decision.

“(2) The Tribunal must not review, or continue to review, a decision in relation to which the Minister has issued a conclusive certificate under subsection 166B(3). 5

**Powers of Refugee Review Tribunal**

“166BC.(1) The Tribunal may, for the purposes of the review of an RRT-reviewable decision, exercise all the powers and discretions that are conferred by this Act on the person who made the decision. 10

“(2) The Tribunal may:

(a) affirm the decision; or

(b) vary the decision; or

(c) if the decision relates to a prescribed matter—remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations; or 15

(d) set the decision aside and substitute a new decision.

“(3) If the Tribunal: 20

(a) varies the decision; or

(b) sets aside the decision and substitutes a new decision;

the decision as varied or substituted is taken (except for the purpose of appeals from decisions of the Tribunal) to be a decision of the Minister.

“(4) To avoid doubt, the Tribunal must not, by varying a decision or setting a decision aside and substituting a new decision, purport to make a decision that is not authorised by the Act or the regulations. 25

**Only new information to be considered in later applications for review**

“166BD. If a non-citizen who has made:

(a) an application for review of an RRT-reviewable decision that has been determined by the Tribunal or the Administrative Appeals Tribunal; or 30

(b) applications for reviews of RRT-reviewable decisions that have been determined by the Tribunal or the Administrative Appeals Tribunal; 35

makes a further application for review of an RRT-reviewable decision, the Tribunal, in considering the further application:

(c) is not required to consider any information considered in the earlier application or an earlier application; and

(d) may have regard to, and take to be correct, any decision that 40



the Tribunal or the Administrative Appeals Tribunal made about or because of that information.

**Minister may substitute more favourable decision**

5 “166BE.(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 166BC another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.

10 “(2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 2 of Part 2 or by the regulations, but is bound by all other provisions of this Act.

“(3) The power under subsection (1) may only be exercised by the Minister personally.

15 “(4) If the Minister substitutes a decision under subsection (1), he or she must cause to be laid before each House of the Parliament a statement that:

- (a) sets out the decision of the Tribunal; and
- (b) sets out the decision substituted by the Minister; and
- 20 (d) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.

“(5) A statement made under subsection (4) is not to include:

- (a) the name of the applicant; or
- (b) any information that may identify the applicant; or
- 25 (c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.

30 “(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
- (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

35 “(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

**Secretary to be notified of application for review by Refugee Review Tribunal**

“166BF.(1) If an application for review is made to the Refugee Review Tribunal, the Registrar must, as soon as practicable, give the Secretary written notice of the making of the application. 5

“(2) The Secretary must, within 10 working days after being notified of the application, give to the Registrar the prescribed number of copies of a statement about the decision under review that:

- (a) sets out the findings of fact made by the person who made the decision; and 10
- (b) refers to the evidence on which those findings were based; and
- (c) gives the reasons for the decision.

“(3) The Secretary must, as soon as is practicable after being notified of the application, give to the Registrar each other document, or part of a document, that is in the Secretary’s possession or control and is considered by the Secretary to be relevant to the review of the decision. 15

**“Division 3—Exercise of Refugee Review Tribunal’s powers**

**Refugee Review Tribunal’s way of operating**

“166C.(1) The Tribunal, in carrying out its functions under this Act, is to pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick. 20

“(2) The Tribunal, in reviewing a decision:

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act according to substantial justice and the merits of the case. 25

**Constitution of Refugee Review Tribunal for exercise of powers**

“166CA.(1) For the purpose of a particular review, the Tribunal is to be constituted, in accordance with a direction under subsection (2), by a single member. 30

“(2) The Principal Member may give a written direction about who is to constitute the Tribunal for the purpose of a particular review.

**Reconstitution of Refugee Review Tribunal**

“166CB.(1) If the member who constitutes the Tribunal for the purposes of a particular review: 35

- (a) stops being a member; or
- (b) for any reason, is not available for the purpose of the review at the place where the review is being conducted;

the Principal Member must direct another member to constitute the Tribunal for the purpose of finishing the review. 40

“(2) If a direction is given, the Tribunal as constituted in accordance with the direction is to continue to finish the review and may, for that purpose, have regard to any record of the proceedings of the review made by the Tribunal as previously constituted.

5 “(3) In exercising powers under this section, the Principal Member must have regard to the objective set out in subsection 166C(1).

**“Division 4—Conduct of review**

**Documents to be given to the Refugee Review Tribunal**

10 “166D.(1) An applicant for review by the Tribunal may give the Registrar:

- (a) a statutory declaration in relation to any matter of fact that the applicant wishes the Tribunal to consider; and
- (b) written arguments relating to the issues arising in relation to the decision under review.

15 “(2) The Secretary may give the Registrar written argument relating to the issues arising in relation to the decision under review.

**Review “on the papers”**

20 “166DA.(1) If, after considering the material contained in the documents given to the Registrar under sections 166BE and 166D, the Tribunal is prepared to make the decision or recommendation on the review that is most favourable to the applicant, the Tribunal may make that decision or recommendation without taking oral evidence.

25 “(2) For the purposes of subsection (1), a decision or recommendation made on a review is taken to be the decision or recommendation most favourable to the applicant if there is no other decision or recommendation that:

- (a) the Tribunal could make; and
- (b) in the Tribunal’s opinion, the applicant would prefer the Tribunal to make.

30 **Where review “on the papers” is not available**

“166DB.(1) Where section 166DA does not apply, the Tribunal:

- (a) must give the applicant an opportunity to appear before it to give evidence; and
- (b) may obtain such other evidence as it considers necessary.

35 “(2) Subject to paragraph (1)(a), the Tribunal is not required to allow any person to address it orally about the issues arising in relation to the decision under review.

**Applicant may request Refugee Review Tribunal to call witnesses**

“166DC.(1) Where section 166DA does not apply, the Tribunal must notify the applicant:

- (a) that he or she is entitled to appear before the Tribunal to give evidence; and 5
- (b) of the effect of subsection (2) of this section.

“(2) The applicant may, within 7 days after being notified under subsection (1), give the Tribunal written notice that the applicant wants the Tribunal to obtain oral evidence from a person or persons named in the notice. 10

“(3) If the Tribunal is notified by an applicant under subsection (2), the Tribunal must have regard to the applicant’s wishes but is not required to obtain evidence (orally or otherwise) from a person named in the applicant’s notice.

**Powers of the Refugee Review Tribunal etc. 15**

“166DD.(1) For the purpose of the review of a decision, the Tribunal may:

- (a) take evidence on oath or affirmation; or
- (b) adjourn the review from time to time; or
- (c) subject to sections 166GC and 166GE, give information to the applicant and to the Secretary; or 20
- (d) require the Secretary to arrange for the making of any investigation, or any medical examination, that the Tribunal thinks necessary with respect to the review, and to give to the Tribunal a report of that investigation or examination. 25

“(2) The Tribunal must combine the reviews of 2 or more RRT-reviewable decisions made in respect of the same non-citizen.

“(3) Subject to subsection (4), the Tribunal in relation to a review may:

- (a) summon a person to appear before the Tribunal to give evidence; and 30
- (b) summon a person to produce to the Tribunal such documents as are referred to in the summons; and
- (c) require a person appearing before the Tribunal to give evidence either to take an oath or affirmation; and 35
- (d) administer an oath or affirmation to a person so appearing.

“(4) The Tribunal must not summon a person under paragraph (3)(a) or (b) unless the person is in Australia.

“(5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true. 40

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“(6) A person appearing before the Tribunal to give evidence is not entitled:

- (a) to be represented before the Tribunal by any other person; or
- 5 (b) to examine or cross-examine any other person appearing before the Tribunal to give evidence.

“(7) If a person appearing before the Tribunal to give evidence is not proficient in English, the Tribunal may direct that communication with that person during his or her appearance proceed through an interpreter.

10 **Tribunal member may authorise another person to take evidence**

“166DE.(1) The power of the Tribunal under paragraph 166DD(1)(a) to take evidence on oath or affirmation for the purpose of a review may be exercised by the Tribunal or on behalf of the Tribunal by:

- 15 (a) a person appointed or employed under the *Public Service Act 1922*; or
- (b) another person approved in writing by the Minister for the purposes of this section;

who is authorised in writing by the Tribunal.

20 “(2) The power of the Tribunal may be exercised under subsection (1):

- (a) inside or outside Australia; and
- (b) subject to such limitations (if any) as are specified by the Tribunal.

25 “(3) If a person other than the Tribunal is authorised under subsection (1) to take evidence for the purpose of a review:

- (a) the person has, for the purpose of taking that evidence:
  - (i) all the powers of the Tribunal under subsection 166DD(1); and
  - 30 (ii) the power to administer an oath or affirmation to a person appearing before the first-mentioned person to give evidence; and

35 (b) for the purpose of the exercise of those powers by that person, this Part has effect (except where the context otherwise requires) as if a reference to the Tribunal included a reference to that person.

40 “(4) If a person (other than the Tribunal as constituted for the purpose of the review) exercises the power of the Tribunal to take evidence on oath or affirmation for the purpose of a review, the person must cause a written record of the evidence taken to be made and sent to the Tribunal.

“(5) If the Tribunal receives, under subsection (4), a record of evidence given by the applicant, the Tribunal, for the purposes of section 166DB, is taken to have given the applicant an opportunity to appear before it to give evidence.

**Review to be in private**

5

“166DF. The hearing of an application for review by the Tribunal must be in private.

**“Division 5—Decisions of Refugee Review Tribunal**

**Refugee Review Tribunal to record its decisions etc. and to notify parties**

10

“166E.(1) Where the Tribunal makes its decision on a review, the Tribunal must prepare a written statement that:

- (a) sets out the decision of the Tribunal on the review; and
- (b) sets out the reasons for the decision; and
- (c) sets out the findings on any material questions of fact; and
- (d) refers to the evidence or any other material on which the findings of fact were based.

15

“(2) The Tribunal must give the applicant and the Secretary a copy of the statement prepared under subsection (1) within 14 days after the decision concerned is made.

20

“(3) Where the Tribunal has prepared the written statement, the Tribunal must:

- (a) return to the Secretary any document that the Secretary has provided in relation to the review; and
- (b) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

25

**Refugee Review Tribunal decisions to be published**

“166EA.(1) Subject to subsection (2), and to any direction under section 166GE, the Registrar must ensure that statements prepared by the Tribunal in accordance with subsection 166E(1) are published.

30

“(2) The Tribunal must not publish any statement which may identify an applicant or any relative or other dependent of an applicant.

**“Division 6—Offences**

**Failure of witness to attend**

“166F. A person who has been served, as prescribed, with a summons, under subsection 166DD(3), to appear before the Tribunal to give evidence and tendered reasonable expenses must not, without reasonable excuse:

35

- (a) fail to attend as required by the summons; or

- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Tribunal.

Penalty: Imprisonment for 6 months.

**Refusal to be sworn or to answer questions etc.**

5 “166FA.(1) A person appearing before the Tribunal to give evidence must not, without reasonable excuse:

- (a) when required under section 166DD either to take an oath or to make an affirmation—refuse or fail to comply with the requirement; or

10 (b) refuse or fail to answer a question that the person is required to answer by the Tribunal.

Penalty: Imprisonment for 6 months.

15 “(2) Subject to section 166GB, a person must not, without reasonable excuse, refuse or fail to produce a document that a person is required to produce by a summons under section 166DD served on the person as prescribed.

Penalty: Imprisonment for 6 months.

20 “(3) A person appearing before the Tribunal to give evidence must not knowingly give evidence that is false or misleading in a material particular.

Penalty for a contravention of this subsection: Imprisonment for 12 months.

**Contempt of Tribunal**

“166FB. A person must not:

25 (a) obstruct or hinder the Tribunal or a member in the performance of the functions of the Tribunal; or

(b) disrupt the taking of evidence by the Tribunal.

Penalty: Imprisonment for 12 months.

**“Division 7—Miscellaneous**

30 **Protection of members and persons giving evidence**

“166G.(1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a member of the Administrative Appeals Tribunal.

35 “(2) Subject to this Part, a person summoned to attend, or appearing, before the Tribunal to give evidence has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in proceedings in the Administrative Appeals Tribunal.

**Fees for persons giving evidence**

“166GA.(1) A person, other than the applicant, summoned to appear before the Tribunal to give evidence is entitled to be paid, in respect of his or her attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations.

5

“(2) The fees and allowances must be paid:

- (a) if the applicant notifies the Tribunal under subsection 166DC(2) that he or she wants the Tribunal to obtain evidence from the person—by the applicant; or
- (b) in any other case—by the Commonwealth.

10

**Restrictions on disclosure of certain information etc.**

“166GB. In spite of anything else in this Act, the Secretary must not give to the Tribunal a document, or information, if the Minister certifies, in writing, that the disclosure of any matter contained in the document, or the disclosure of the information, would be contrary to the public interest:

15

- (a) because it would prejudice the security, defence or international relations of Australia; or
- (b) because it would involve the disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet.

20

**Refugee Review Tribunal’s discretion in relation to disclosure of certain information etc.**

“166GC.(1) This section applies to a document or information if:

- (a) the Minister has certified, in writing, that the disclosure of any matter contained in the document, or the disclosure of the information, would be contrary to the public interest for any reason specified in the certificate (other than a reason set out in paragraph 166GB(a) or (b)) that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the matter contained in the document, or the information, should not be disclosed; or
- (b) the document, the matter contained in the document, or the information was given to the Minister, or to an officer of the Department, in confidence.

25

30

“(2) If, in compliance with a requirement of or under this Act, the Secretary gives to the Tribunal a document or information to which this section applies, the Secretary:

35

- (a) must notify the Tribunal in writing that this section applies in relation to the document or information; and
- (b) may give the Tribunal any written advice that the Secretary thinks relevant about the significance of the document or information.

40



“(3) If the Tribunal is given a document or information and is notified that this section applies in relation to it, the Tribunal:

- 5 (a) may, for the purpose of the exercise of its powers, have regard to any matter contained in the document, or to the information; and
- (b) may, if the Tribunal thinks it appropriate to do so having regard to any advice given by the Secretary under subsection (2), disclose any matter contained in the document, or the information, to the applicant.

10 “(4) If the Tribunal discloses any matter to the applicant, under subsection (3), the Tribunal must give a direction under section 166GE in relation to the information.

**Disclosure of confidential information**

“166GD.(1) This section applies to a person who is or has been:

- 15 (a) a member of the Tribunal; or
- (b) a person acting as a member of the Tribunal; or
- (c) an officer of the Tribunal; or
- (d) a person providing interpreting services in connection with a review by the Tribunal.

20 “(2) This section applies to information or a document if the information or document concerns a person and is obtained by a person to whom this section applies in the course of performing functions or duties or exercising powers under this Act.

“(3) A person to whom this section applies must not:

- 25 (a) make a record of any information to which this section applies; or
- (b) divulge or communicate to any person any information to which this section applies;

30 unless the record is made or the information is divulged or communicated:

- (c) for the purposes of this Act; or
- (d) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act.

Penalty: Imprisonment for 2 years.

35 “(4) Subsection (3) applies to the divulging or communication of information whether directly or indirectly.

“(5) A person to whom this section applies must not be required to produce any document, or to divulge or communicate any information, to which this section applies to or in:

- 40 (a) a court; or
- (b) a tribunal; or

(c) a House of the Parliament of the Commonwealth, of a State or of a Territory; or

(d) a committee of a House, or the Houses, of the Parliament of the Commonwealth, of a State or of a Territory; or

(e) any other authority or person having power to require the production of documents or the answering of questions; 5

except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

“(6) Nothing in this section affects a right that a person has under the *Freedom of Information Act 1982*. 10

“(7) For the purposes of this section, a person who is providing interpreting services in connection with a review by the Tribunal is taken to be performing a function under this Act.

“(8) In this section:

‘produce’ includes permit access to. 15

**Refugee Review Tribunal may restrict publication or disclosure of certain matters**

“166GE.(1) If the Tribunal is satisfied, in relation to a review, that it is in the public interest that:

(a) any evidence given before the Tribunal; or 20

(b) any information given to the Tribunal; or

(c) the contents of any document produced to the Tribunal;

should not be published or otherwise disclosed, or should not be published or otherwise disclosed except in a particular manner and to particular persons, the Tribunal may give a written direction accordingly. 25

“(2) If the Tribunal has given a direction under subsection (1) in relation to the publication of any evidence or information or of the contents of a document, the direction does not:

(a) excuse the Tribunal from its obligations under section 166E; or

(b) prevent a person from communicating to another person a matter contained in the evidence, information or document, if the first-mentioned person has knowledge of the matter otherwise than because of the evidence or the information having been given or the document having been produced to the Tribunal. 30

“(3) A person must not contravene a direction given by the Tribunal under subsection (1) that is applicable to the person. 35

Penalty: Imprisonment for 2 years.

**Sittings of the Refugee Review Tribunal**

“166GF.(1) Sittings of the Tribunal are to be held from time to time as required, in such places in Australia as are convenient.

5 “(2) The Tribunal constituted by a member may sit and exercise the powers of the Tribunal even though the Tribunal constituted by another member is at the same time sitting and exercising those powers.

**“Division 8—Referral of decisions to Administrative Appeals Tribunal**

**Interpretation**

“166H. In this Division:

10 ‘AAT Act’ means the *Administrative Appeals Tribunal Act 1975*.

**Referral of decisions to Administrative Appeals Tribunal**

15 “166HA.(1) The Principal Member of the Refugee Review Tribunal may, if the Principal Member considers that a RRT-reviewable decision involves an important principle, or issue, of general application, refer the decision to the President of the Administrative Appeals Tribunal.

“(2) A referral under subsection (1) may be made at any time:

- (a) after the receipt by the Refugee Review Tribunal of an application for a review of the decision; and
- (b) before that Tribunal makes a decision on the application.

20 “(3) The following material must be sent with the referral:

- (a) a request for a review by the Administrative Appeals Tribunal of that decision;
- (b) a statement of the Principal Member’s reasons for concluding that the decision involves an important principle, or issue, of general application;
- 25 (c) any documents or other records that the Principal Member considers relevant.

“(4) The Principal Member must give written notice of the making of a referral under subsection (1) to the applicant and the Secretary.

30 “(5) The Refugee Review Tribunal must not commence any action in relation to the proceeding before it with respect to the decision, or, if it has commenced such action, must cease that action until notified by the President of the Administrative Appeals Tribunal in accordance with section 166HB.

35 “(6) If the President of the Administrative Appeals Tribunal directs that the Administrative Appeals Tribunal will accept the referral, the review by the Refugee Review Tribunal is taken to be closed.

**Administrative Appeals Tribunal may accept or decline referral**

“166HB.(1) The President of the Administrative Appeals Tribunal must consider a request under section 166HA and either:

- (a) direct that the Administrative Appeals Tribunal will accept the referral of the decision; or
- (b) direct that the Administrative Appeals Tribunal will decline the referral of the decision.

5

“(2) The President must notify the Principal Member of the direction made under subsection (1).

“(3) If the President accepts the referral of an application for review of an RRT-reviewable decision:

10

- (a) the application to the Refugee Review Tribunal is taken to have been properly made to the Administrative Appeals Tribunal by the applicant to the Refugee Review Tribunal; and
- (b) the AAT Act applies to the review of the RRT-reviewable decision subject to the modifications in this Division.

15

**Modification of definition of ‘member’ in section 3 of the AAT Act**

“166HC. Section 3 of the AAT Act applies in relation to an RRT-reviewable decision as if the definition of member were omitted and the following definition substituted:

20

‘“member” means a presidential member, a senior member or any other member of the Tribunal and includes the Principal Member of the Refugee Review Tribunal;’.

**Modification of section 21 of the AAT Act**

“166HD. Section 21 of the AAT Act applies in relation to an RRT-reviewable decision as if:

25

- (a) Subsection (1) were omitted and the following subsections substituted:

‘(1) Subject to subsection (1AA), the Tribunal is, for the purposes of the exercise of its powers in relation to a matter, to be constituted by:

30

- (a) a presidential member who is a Judge, the Principal Member of the Refugee Review Tribunal and one other member (not being a Judge); or
- (b) a Deputy President, the Principal Member of the Refugee Review Tribunal and one non-presidential member.

35

‘(1AA) If the Principal Member of the Refugee Review Tribunal had constituted that Tribunal for the review by the Refugee Review Tribunal of the RRT-reviewable decision that is the subject of a matter, the Tribunal in relation to proceedings for the purposes of the exercise of its power in relation to that matter, is to be constituted by:

40

- (a) a presidential member who is a Judge and two other members (not being Judges or the Principal Member of the Refugee Review Tribunal); or
- 5 (b) a Deputy President and two non-presidential members (not being the Principal Member of the Refugee Review Tribunal).'; and
- (b) subsections (2), (3) and (4) were omitted.

**Certain sections of the AAT Act do not apply to RRT-reviewable decisions**

10 "166HE. Sections 21A, 27, 28 and 29 of the AAT Act do not apply in relation to RRT-reviewable decisions.

**Modification of section 25 of the AAT Act**

"166HF. Section 25 of the AAT Act applies in relation to an RRT-reviewable decision as if subsections (6) and (6A) were omitted.

15 **Modification of section 30 of the AAT Act**

"166HG. Section 30 of the AAT Act applies in relation to an RRT-reviewable decision as if paragraphs (1)(a) and (b) were omitted and the following paragraphs substituted:

- 20 '(a) the person who, under section 166HB of the *Migration Act 1958*, is taken to have applied to the Tribunal for review of the decision; and
- (b) the person who is the Minister for the purposes of the *Migration Act 1958*; and'.

**Modification of section 37 of the AAT Act**

25 "166HH. Section 37 of the AAT Act applies in relation to an RRT-reviewable decision as if:

- (a) subsections (1) to (1D) (inclusive) were omitted and the following subsections substituted:

30 '(1) The Principal Member of the Refugee Review Tribunal must forward to the Administrative Appeals Tribunal all documents and other records relating to the proceeding before the Refugee Review Tribunal with respect to the RRT-reviewable decision within 14 days after receiving notice of the acceptance of the referral of the decision to the

35 Administrative Appeals Tribunal.

'(1A) Documents provided under subsection 166HA(3) of the *Migration Act 1958* are taken to have been provided in accordance with subsection (1) of this section.'; and

- (b) subsection (4) were omitted.

**Modification of section 38 of the AAT Act**

“166HI. Section 38 of the AAT Act applies in relation to an RRT-reviewable decision as if the reference in that section to a statement referred to in paragraph 37(1)(a) that is lodged by a person with the Tribunal were a reference to a statement that was lodged with the Refugee Review Tribunal by a person under section 166BE of the *Migration Act 1958*. 5

**Modification of section 43 of the AAT Act**

“166HJ. Section 43 of the AAT Act applies in relation to an RRT-reviewable decision as if subsection (1) were omitted and the following subsections were substituted: 10

‘(1) The Tribunal may, for the purposes of the review of a RRT-reviewable decision, exercise all the powers and discretions that are conferred by the *Migration Act 1958* on the person who made the decision. 15

‘(1A) The Tribunal may:

(a) affirm the decision; or

(b) vary the decision; or

(c) if the decision relates to a matter prescribed for the purposes of paragraph 166BC(2)(c) of the *Migration Act 1958*—remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations under that Act; or 20

(d) set the decision aside and substitute a new decision.

‘(1B) If the Tribunal: 25

(a) varies the decision; or

(b) sets aside the decision and substitutes a new decision;

the decision as varied or substituted is taken (except for the purpose of appeals from decisions of the Tribunal) to be a decision of the Minister.

‘(1C) To avoid doubt, the Tribunal must not, by varying a decision or setting a decision aside and substituting a new decision, purport to make a decision that is not authorised by the *Migration Act 1958* or the regulations under that Act. 30

**Only new information to be considered in later applications for review**

“166HK. If a non-citizen who has made: 35

(a) an application for review of an RRT-reviewable decision that has been determined by the Administrative Appeals Tribunal or the Refugee Review Tribunal; or

(b) applications for reviews of RRT-reviewable decisions that have been determined by the Administrative Appeals Tribunal, or the Refugee Review Tribunal; 40

makes a further application for review of an RRT-reviewable decision, the Administrative Appeals Tribunal, in considering the further application:

- 5 (c) is not required to consider any information considered in the earlier application or an earlier application; and
- (d) may have regard to, and take to be correct, any decision that the Administrative Appeals Tribunal or the Refugee Review Tribunal made about or because of that information.

**Minister may substitute more favourable decision**

10 “166HL.(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Administrative Appeals Tribunal in relation to an RRT-reviewable decision another decision, being a decision that is more favourable to the applicant, whether or not the Administrative Appeals Tribunal had the power to  
15 make that other decision.

“(2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 2 of Part 2 or by the regulations, but is bound by all other provisions of this Act.

20 “(3) The power under subsection (1) may only be exercised by the Minister personally.

“(4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

- 25 (a) sets out the decision of the Administrative Appeals Tribunal; and
- (b) sets out the decision substituted by the Minister; and
- (c) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.

30 “(5) A statement made under subsection (4) is not to include:

- (a) the name of the applicant; or
- (b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or  
35 any information that may identify that other person.

“(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
- 40 (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

“(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

**Provision of material to which section 166GC applies** 5

“166HM. If the Refugee Review Tribunal gives to the Administrative Appeals Tribunal a document or information to which section 166GC of this Act applies, the Refugee Review Tribunal must give the Administrative Appeals Tribunal written notice of the application of that section. 10

**Section 9 of AAT Act not to apply to Principal Member**

“166HN. In spite of anything in this Act or in any other enactment, section 9 of the AAT Act does not apply to the Principal Member of the Refugee Review Tribunal.”

**33.** After section 166KC of the Principal Act the following Part is inserted: 15

**“PART 4B—REVIEW OF DECISIONS BY FEDERAL COURT**

*“Division 1—Interpretation*

**Interpretation**

“166L. In this Part: 20  
‘judicially-reviewable decision’ has the meaning given by section 166LA.

*“Division 2—Review of decisions by Federal Court*

**Decisions reviewable by Federal Court**

“166LA.(1) Subject to subsection (2), the following decisions are judicially-reviewable decisions: 25

- (a) decisions of the Immigration Review Tribunal;
- (b) decisions of the Refugee Review Tribunal;
- (c) other decisions made under this Act, or the regulations, relating to visas.

“(2) The following decisions are not judicially-reviewable decisions: 30

- (a) a decision in relation to a criminal justice visa or a criminal justice certificate within the meaning of Division 3 of Part 2;
- (b) an internally-reviewable decision;
- (c) an IRT-reviewable decision;
- (d) an RRT-reviewable decision; 35
- (e) a decision of the Minister not to exercise, or not to consider the exercise of, his or her power under section 115F, 121, 150L, 166BD or 166HL;



- (f) a decision of the Principal Member of the Immigration Review Tribunal or of the Principal Member of the Refugee Review Tribunal to refer a matter to the Administrative Appeals Tribunal;
- 5 (g) a decision of the President of the Administrative Appeals Tribunal to accept, or not to accept, the referral of a decision under section 150C or 166HB.

**Application for review**

10 “166LB.(1) Subject to subsection (2), application may be made for review by the Federal Court of a judicially-reviewable decision on any one or more of the following grounds:

- (a) that procedures that were required by this Act or the regulations to be observed in connection with the making of the decision were not observed;
- 15 (b) that the person who purported to make the decision did not have jurisdiction to make the decision;
- (c) that the decision was not authorised by this Act or the regulations;
- 20 (d) that the decision was an improper exercise of the power conferred by this Act or the regulations;
- (e) that the decision involved an error of law, being an error involving an incorrect interpretation of the applicable law or an incorrect application of the law to the facts as found by the person who made the decision, whether or not the error appears
- 25 on the record of the decision;
- (f) that the decision was induced or affected by fraud or by actual bias;
- (g) that there was no evidence or other material to justify the making of the decision.

30 “(2) The following are not grounds upon which an application may be made under subsection (1):

- (a) that a breach of the rules of natural justice occurred in connection with the making of the decision;
- 35 (b) that the decision involved an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power.

“(3) The reference in paragraph (1)(d) to an improper exercise of a power is to be construed as being a reference to:

- 40 (a) an exercise of a power for a purpose other than a purpose for which the power is conferred; and
- (b) an exercise of a personal discretionary power at the direction or behest of another person; and
- (c) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;

but not as including a reference to:

- (d) taking an irrelevant consideration into account in the exercise of a power; or
- (e) failing to take a relevant consideration into account in the exercise of a power; or
- (f) an exercise of a discretionary power in bad faith; or
- (g) any other exercise of the power in such a way that represents an abuse of the power that is not covered by paragraphs (a) to (c).

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“(4) The ground specified in paragraph (1)(g) is not to be taken to have been made out unless: 10

- (a) the person who made the decision was required by law to reach that decision only if a particular matter was established, and there was no evidence or other material (including facts of which the person was entitled to take notice) from which the person could reasonably be satisfied that the matter was established; or
- (b) the person who made the decision based the decision on the existence of a particular fact, and that fact did not exist.

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**Applications in respect of failures to make decisions**

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“166LC.(1) If:

- (a) a person, other than a tribunal, has a duty to make a judicially-reviewable decision; and
- (b) there is no provision that specifies a period within which the person is required to make the decision; and
- (c) the person has failed to make the decision;

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application may be made to the Federal Court for an order of review in respect of the failure to make the decision on the ground that there has been an unreasonable delay in making the decision.

“(2) If:

30

- (a) a person, other than a tribunal, has a duty to make a judicially-reviewable decision; and
- (b) there is a provision that specifies a period within which the person is required to make the decision; and
- (c) the person has failed to make the decision before the expiration of that period;

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application may be made to the Federal Court for an order of review in respect of the failure to make the decision within that period on the ground that the person has a duty to make the decision in spite of the expiration of that period.

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**Application for review by Federal Court**

“166LD.(1) An application under section 166LB or 166LC must:

- (a) be made in such manner as is specified in the Rules of Court made under the *Federal Court of Australia Act 1976*; and
- 5 (b) be lodged with a Registry of the Federal Court within 28 days of the applicant being notified of the decision.

“(2) The Federal Court must not make an order allowing, or which has the effect of allowing, an applicant to lodge an application outside the period specified in paragraph (1)(b).

10 **Persons who may make application**

“166LE. An application under section 166LB or 166LC may only be made by:

- (a) if the judicially-reviewable decision is covered by paragraph 166LA(1)(a) or (b)—the Minister or the applicant in the review
- 15 by the relevant Tribunal; or
- (b) if the judicially-reviewable decision is covered by paragraph 166LA(1)(c)—the person who is the subject of the decision.

**Parties to review**

20 “166LF. The parties to the review of a judicially-reviewable decision are the Minister and:

- (a) if the judicially-reviewable decision is covered by paragraph 166LA(1)(a) or (b)—the applicant in the review by the relevant Tribunal; or
- 25 (b) if the judicially-reviewable decision is covered by paragraph 166LA(1)(c)—the person who is the subject of the decision.

**Powers of the Federal Court**

“166LG.(1) On an application for review of a judicially-reviewable decision, the Federal Court may, in its discretion, make all or any of the following orders:

- 30 (a) an order affirming, quashing or setting aside the decision, or a part of the decision, with effect from the date of the order or such earlier date as the Court specifies;
- (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration,
- 35 subject to such directions as the Court thinks fit;
- (c) an order declaring the rights of the parties in respect of any matter to which the decision relates;
- (d) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the
- 40 doing, of which the Federal Court considers necessary to do justice between the parties.

“(2) On an application for a review in respect of a failure to make a judicially-reviewable decision, or in respect of a failure to make a decision within the period within which the decision was required to be made, the Federal Court may make any or all of the following orders:

- (a) an order directing the making of the decision;
- (b) an order declaring the rights of the parties in respect of any matter to which the decision relates;
- (c) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the Federal Court considers necessary to do justice between the parties.

“(3) The Federal Court may, at any time, of its own motion or on the application of any party, revoke, vary, or suspend the operation of, any order made by it under this section.

**Operation etc. of decision**

“166LH.(1) Subject to this section, the making of an application under section 166LB to the Federal Court in relation to a judicially-reviewable decision does not:

- (a) affect the operation of the decision; or
- (b) prevent the taking of action to implement the decision; or
- (c) prevent the taking of action in reliance on the making of the decision.

“(2) If an an application is made to the Federal Court under section 166LB or 166LC in relation to a judicially-reviewable decision, the Federal Court or a Judge of the Federal Court may make such orders of the kind referred to in subsection (3) as that Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

“(3) The orders that may be made under subsection (2) are orders staying, or otherwise affecting the operation or implementation of the judicially-reviewable decision, or a part of that decision.

“(4) The Federal Court or a Judge of that Court may, by order, vary or revoke an order in force under subsection (2) (including an order that has previously been varied under this subsection).

“(5) An order in force under subsection (2):

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until:
  - (i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or

- (ii) if no period is so specified—the giving of a decision on the appeal.

**Change in person holding, or performing the duties of, an office**

“166LI. If:

- 5 (a) a person has, in the performance of the duties of an office, made a judicially-reviewable decision; and  
(b) the person no longer holds, or, for whatever reason, is not performing the duties of, that office;

this Part has effect as if the decision had been made by:

- 10 (c) the person for the time being holding or performing the duties of that office; or  
(d) if there is no person for the time being holding or performing the duties of that office or that office no longer exists—such person as the Minister specifies.

15 **Intervention by Attorney-General**

“166LJ.(1) The Attorney-General may, on behalf of the Commonwealth, intervene in a proceeding under this Part.

- 20 “(2) If the Attorney-General intervenes in a proceeding, the Court may, in the proceeding, make such order as to costs against the Commonwealth as the Court thinks fit.

“(3) If the Attorney-General intervenes in a proceeding he or she is taken to be a party to the proceeding.

**Federal Court does not have any other jurisdiction in relation to judicially-reviewable decisions**

- 25 “166LK.(1) In spite of any other law, including section 39B of the *Judiciary Act 1903*, the Federal Court does not have any jurisdiction in respect of judicially-reviewable decisions or decisions covered by subsection 166LA(2), other than the jurisdiction provided by this Part or by section 44 of the *Judiciary Act 1903*.

- 30 “(2) Subsection (1) does not affect the jurisdiction of the Federal Court in relation to appeals under section 44 of the *Administrative Appeals Tribunal Act 1975*.

- 35 “(3) If a matter relating to a judicially-reviewable decision is remitted to the Federal Court under section 44 of the *Judiciary Act 1903*, the Federal Court does not have any powers in relation to that matter other than the powers it would have had if the matter had been as a result of an application made under this Part.

**Jurisdiction of Federal Court**

- 40 “166LL. The Federal Court has jurisdiction with respect to judicially-reviewable decisions and that jurisdiction is exclusive of the jurisdiction of all other courts other than the jurisdiction of the High Court under section 75 of the Constitution.

**Tampering with movements records**

34. Section 168 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

- “(1) A person must not:
- (a) read; or 5
  - (b) examine; or
  - (c) reproduce by any means; or
  - (d) use; or
  - (e) disclose by any means;
- any part of the movement records, otherwise than in accordance with 10  
an authority given under subsection (1A).
- Penalty: Imprisonment for 2 years.
- “(1A) The Minister may:
- (a) authorise an officer to perform for the purposes of one or more 15  
of the following:
    - (i) this Act;
    - (ii) the *Family Law Act 1975*;
    - (iii) a law relating to customs or excise;
    - (iv) a law relating to quarantine or health;
    - (v) law enforcement; 20
- one or more of the actions prohibited by subsection (1); or
- (b) authorise an officer of the Attorney-General’s Department to 25  
perform for the purposes of the *Family Law Act 1975* one or  
more of those actions; or
  - (c) authorise an officer of Customs, within the meaning of the 25  
*Customs Act 1901*, to perform for the purposes of a law relating  
to customs or excise one or more of those actions; or
  - (d) authorise a quarantine officer, within the meaning of the 30  
*Quarantine Act 1908*, to perform for the purposes of a law  
relating to quarantine or health one or more of those actions; 30  
or
  - (e) authorise a member of the Australian Federal Police to perform  
for the purposes of law enforcement one or more of those  
actions.
- “(1B) Authority under subsection (1A) to disclose any part of the 35  
movement records may be limited to authority to so disclose to a  
specified person, a person in a specified class, or a specified organisation,  
only.”.

**Delegation**

35. Section 176 of the Principal Act is amended by adding at the end the following subsections:

- 5 “(3) If an application for a visa that has a health criterion is made, the Minister may:
- (a) delegate to a person the power to consider and decide whether that criterion is satisfied; and
  - (b) consider and decide, or delegate to another person the power to consider and decide, all other aspects of the application.
- 10 “(4) To avoid doubt, if there is a delegation described in paragraph (3)(a) in relation to an application for a visa:
- (a) Subdivision AB of Division 2 of Part 2 has effect accordingly; and
  - (b) for the purposes of subsection 26ZF(1), the Minister is satisfied or not satisfied that the health criterion for the visa has been
- 15 satisfied if the delegate who was given that delegation is so satisfied or not so satisfied, as the case may be.”.

**Regulations**

36. Section 181 of the Principal Act is amended:

- 20 (a) by adding at the end of paragraph (1)(a):
- “(iii) the way, including the currency, in which fees for visa applications are to be paid; or
  - (iv) the persons who may be paid on behalf of the Commonwealth fees for visa applications;”;
- 25 (b) by inserting in paragraph (1)(j) “or 77” after “76”;
- (c) by omitting paragraph (1)(f).

37. The Principal Act is amended by adding at the end the following section:

**Regulations about passenger cards**

30 “183.(1) Regulations under paragraph 181(1)(c) may provide for the giving of different information about different classes of people.

“(2) The regulations are to provide for the giving of information, in the form of answers to questions on a form, to be known as a passenger card, by non-citizens travelling to Australia, other than

35 non-citizens exempted by the regulations.

“(3) The questions for a non-citizen required by subsection (2) are to include questions about:

- (a) the non-citizen’s health; and
- (b) any criminal convictions in Australia or a foreign country of

40 the non-citizen; and

- (c) the purpose of the new arrival’s going to Australia; and

- (d) any unpaid debts to the Commonwealth of the non-citizen; and
- (e) any removal or deportation from, or refusal of admission into, Australia or a foreign country of the non-citizen.”.

**Further amendments**

**38.** The Principal Act is further amended as set out in the Schedule. 5

**Transitional—refugee applications**

**39.** The application for a determination by the Minister that a person is a refugee within the meaning of the Principal Act as in force immediately before 1 November 1993 that was made, and not finally determined (within the meaning of the Principal Act), before that date is taken, on that date, to be an application for a protection visa (within the meaning of the Principal Act as in force on that date). 10

**Transitional—application**

**40.(1)** In this section:

“**amended Act class**” means a class of visas that is provided for by, or by regulations under, the Principal Act as amended by this Act; 15

“**Principal Act class**” means a class of visas or permits that is provided for by regulations under the Principal Act;

“**specified persons**” includes:

- (a) persons in a specified class; and 20
- (b) persons in specified circumstances; and
- (c) persons in a specified class in specified circumstances.

**(2)** The regulations may provide that a specified provision of the Principal Act repealed or amended by this Act is to continue to apply:

- (a) to specified persons; or 25
- (b) in specified circumstances; or
- (c) in relation to visas in a specified amended Act class.

**(3)** The regulations may provide that a specified provision of the amended Act is not to apply:

- (a) to specified persons; or 30
- (b) in specified circumstances.

**(4)** Regulations under subsection (2) or (3) providing that a provision is to apply or not apply may provide that the provision is to apply or not apply:

- (a) to a specified extent; or 35
- (b) with specified modifications, not being the modification of a penalty; or
- (c) as if a specified status or specified situation were another specified status or specified situation; or
- (d) without limiting paragraph (c), as if a person who had a specified 40



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status, specified visa or specified permit had another specified status, specified visa or specified permit.

5 (5) The regulations may provide that, from 1 November 1993, visas or permits in a specified Principal Act class and held by specified persons immediately before that date are to continue in force as visas in a specified amended Act class.

(6) The regulations may provide that, from 1 November 1993, specified persons are to be taken to have been granted visas in a specified amended Act class.

10 (7) The regulations may provide that, from 1 November 1993, applications made after a specified date, or other specified applications, for visas or permits in a specified Principal Act class are to be taken to be applications for visas in a specified amended Act class.

15 (8) The regulations may provide that, despite the amendments of the Principal Act made by this Act:

(a) applications made before a specified date or other specified applications for visas in a specified Principal Act class may continue to be dealt with as if that section had not been enacted; and

20 (b) visas or permits in a specified Principal Act class granted because of paragraph (a) are to be taken to be visas in a specified amended Act class.

25 (9) A regulation allowed by this section ceases to have effect at the end of 90 sitting days of either House of the Parliament after the regulation commences.

**Transitional—modification**

30 41. The regulations may provide that on and after 1 November 1993 and until a specified date before 1 January 1994, a reference in another Act to a specified visa, or permit, provided for by regulations under the Principal Act is to be taken to be a reference to a specified visa provided for by, or by regulations, under the Principal Act as amended by this Act.

**SCHEDULE**

**FURTHER AMENDMENTS**

**PART 1—GENERAL**

**Subsection 4(1) (definition of “applicable priority mark”):**

Omit the definition, substitute:

“‘**applicable priority mark**’, in relation to a visa of a particular class, means the number of points specified as the priority mark for that class in a notice under section 32 in force at the time concerned;”.

**Subsection 4(1) (definition of “passport”):**

After “a passport” insert “, but does not include a document, which may be a document called or purporting to be a passport, that the regulations declare is not to be taken to be a passport”.

**Subsection 4(26):**

Omit the subsection.

**Subsections 7A(2) and (5):**

Omit the subsections.

**Section 8:**

Omit “Australia” (first occurring), substitute “the migration zone”.

**Section 10:**

- (a) Before “that visa” (second occurring) insert “evidence of ”.
- (b) Omit “visa” (last occurring), substitute “evidence”.

**Subsection 27(1) and (2):**

Omit “and noted”, substitute “evidence of which is endorsed”.

**Subsection 27(1):**

Omit “visa” (second occurring), substitute “endorsement”.

**Subsection 27(2):**

Omit “visa” (second occurring), substitute “endorsement”.

**Subsection 50A(1):**

Omit “a business permit or”.

**Subsection 50A(2):**

Omit “a business permit or”.

**Paragraph 50A(4)(a):**

Omit “a business permit or a”.

**SCHEDULE—continued**

**Paragraph 50A(4)(b):**

- (a) Omit “a business permit or”.
- (b) Omit “permit or”.

**Paragraph 50A(4)(c):**

- (a) Omit “business permit or”.
- (b) Omit “permit or”.

**Subsection 50A(4):**

Omit “a business permit or”.

**Subsection 50A(5):**

- (a) Omit “business permit or”.
- (b) Omit “permit or”.

**Subsection 50A(6):**

Omit “business permit or” (wherever occurring).

**Subsection 50A(7):**

Omit “business permit or”.

**Subsection 50A(8):**

Omit “permit or” (wherever occurring).

**Subsection 50A(9):**

- (a) Omit “business permit or” (wherever occurring).
- (b) Omit “permit or” (wherever occurring).

**Subsection 50A(10) (definition of “business permit”):**

Omit the definition.

**Subsection 50A(10) (definition of “member of the family unit”):**

Omit “business permit or”.

**Subsection 50B(1):**

- (a) Omit “a permit or”.
- (b) Omit “permit or”.

**Subsection 50D(1):**

Omit “a business permit or” (wherever occurring).

**Paragraph 50D(1)(b):**

Omit “permit or”.

**SCHEDULE—continued**

**Subsection 50D(3):**

- (a) Omit “business permit or” (wherever occurring).
- (b) Omit “permit or” (wherever occurring).

**Subsection 50D(10) (definition of “business permit”):**

Omit the definition.

**Section 54K (definition of “custody”):**

Omit the definition.

**Division 4B:**

- (a) Omit “custody” (wherever occurring), substitute “immigration detention”.
- (b) Omit “entry permit” (wherever occurring), substitute “visa”.

**Section 55:**

Omit all words after paragraph (c), substitute “section 55A applies to the person”.

**Subsection 56(1):**

Omit all words after paragraph (b), substitute “then, subject to this section, section 55A applies to the non-citizen”.

**Subsection 56(2):**

Omit all words after paragraph (c), substitute “section 55A does not apply to the non-citizen.”.

**Subsection 56(3):**

Omit “the Minister shall not order the deportation of the non-citizen”, substitute “section 55A does not apply to the non-citizen.”.

**Subsection 56(4):**

Omit “deported pursuant to this section”, substitute “deported under section 55A because of section 56”.

**Subsection 57(1):**

Omit all words after paragraph (c), substitute “then, subject to this section, section 55A applies to the non-citizen”.

**Subsection 57(2):**

Omit “The Minister shall not order the deportation of a non-citizen under this section”, substitute “Section 55A does not apply to a non-citizen because of this section”;

**SCHEDULE—continued**

**Subsection 57(7):**

Omit “the Minister shall not order the deportation of the non-citizen under this section”, substitute “section 55A does not apply to the non-citizen because of this section”.

**Subsection 58(2) (paragraphs (b) and (c) of definition of “permanent resident”):**

Omit the paragraphs, substitute:

- “; or (b) in relation to any period starting on or after 2 April 1984 and ending on or before 19 December 1989—the person who was, during that period, a prohibited non-citizen within the meaning of this Act as in force in that period; or
- (c) in relation to any period starting on or after 20 December 1989 and ending before the commencement of section 7 of the *Migration Reform Act 1992*—the person who was, during that period, an illegal entrant within the meaning of this Act as in force in that period; or
- (d) in relation to any later period—the person who is, during that later period, an unlawful non-citizen.”.

**Subsections 62(1) and (2):**

Omit “order the deportation of”, substitute “remove”.

**Subsection 67(1):**

Omit “65 or 66” (wherever occurring), substitute “66, 66A, 66B or 66C”.

**Subsections 67(1), (2) and (7):**

Omit “deportee”, substitute “non-citizen”.

**Paragraph 67(1)(a):**

Insert “or removal” after “deportation”.

**Paragraphs 67(2)(a) and (7)(a):**

Omit “deportee’s”, substitute “non-citizen’s”.

**Subsection 67(9) (definition of “deportee”):**

Omit the definition.

**Section 68:**

- (a) Omit subsection (1), substitute:

“(1) This section applies in relation to a person who has been detained.”.

- (b) Omit “detained person” (wherever occurring), substitute “detainee”.

**SCHEDULE—continued**

- (c) Omit “detained person’s” (wherever occurring), substitute “detainee’s”.
- (d) After “deportation” (wherever occurring) insert “or removal”.
- (e) Omit “65 or 66” (wherever occurring), substitute “66, 66A, 66B or 66C”.
- (f) Omit “illegal entrant” (wherever occurring), substitute “unlawful non-citizen”.

**Paragraph 68(16)(a):**

After “vehicle” insert “, vessel”.

**Subsection 68(18):**

Add “or vessel”.

**Subsection 69:**

- (a) Omit “detained person” (wherever occurring), substitute “notified detainee”.
- (b) Omit “65 or 66” (wherever occurring), substitute “66, 66A, 66B or 66C”.

**Paragraph 69(3)(b):**

Omit the paragraph, substitute:

- “(b) the notified detainee:
- (i) is granted a visa; or
  - (ii) stops being a deportee;”.

**Section 70:**

Insert “removee or” before “deportee” (wherever occurring).

**Paragraph 76(1)(a):**

Before “a valid visa” insert “evidence of”.

**Paragraphs 76(1)(b) and (c):**

Omit the paragraphs, substitute:

“; or (b) is a person who is eligible for a special category visa.”.

**Subsection 76(4):**

Before “a valid visa” insert “evidence of”.

**Paragraph 76(5)(a):**

After “possession” insert “of evidence”.

**Paragraph 76(5)(b):**

Omit all words after “person was”, substitute “eligible for a special category visa; or”.

**SCHEDULE—continued**

**Subsection 76(6):**

Omit the subsection.

**Paragraph 78(a):**

- (a) Omit “person”, substitute “non-citizen”.
- (b) Add “or”.

**Subparagraph 78(a)(ii):**

Insert “or because of section 54HT,” before “becomes”.

**Paragraph 78(b):**

Omit the paragraph.

**Paragraph 78(c):**

- (a) Before “deportee” insert “removee or”.
- (b) Before “deportation” insert “removal or”.
- (c) Omit “custody” insert “immigration detention”.

**Subsection 80(1):**

Omit “secretly or without the knowledge of an officer (wherever occurring)”, substitute “in contravention of this Act”.

**Subsection 80(2):**

Omit the subsection, substitute:

“(2) A person must not knowingly or recklessly harbour an unlawful non-citizen, a removee or a deportee.”.

**Subsections 80(3), (4), (5) and (6):**

Omit the subsections.

**Subsection 81(1):**

Omit “or proposed entry”, substitute “proposed entry or immigration clearance,”.

**Paragraph 81(2)(a):**

After “Australia” insert “or to be immigration cleared”.

**Subsection 83(5):**

Omit “, (3) or (4)”, substitute “or (3)”.

**Subsection 83(8):**

Omit the subsection.

**Section 83A:**

Omit “permits and” (wherever occurring).

**SCHEDULE—continued**

**Section 83B (definitions of “preliminary permit” and “stay permit”):**

Omit the definitions, substitute the following definitions:

“‘**preliminary visa**’, means a visa that is usually applied for by persons applying, or intending to apply, for a permanent visa;

‘**stay visa**’ means:

- (a) a permanent visa; or
- (b) a preliminary visa;”.

**Sections 83D, 83E, 83F, 83G and 83H:**

Omit “permit” (wherever occurring), substitute “visa”.

**Paragraph 87(1)(a):**

Omit the paragraph, substitute:

“(a) prevent an unlawful non-citizen from leaving a vessel on which the non-citizen arrived in Australia; or”.

**Paragraph 87(1)(b):**

Before “deportee” insert “removee or”.

**Subsection 90(1):**

Omit “a stowaway”, substitute “an unlawful non-citizen”.

**Subsection 90(6):**

After “premises”, insert “vessel,”.

**Paragraphs 90(6)(a) and (d):**

Before “or” insert “, a removee”.

**Subparagraph 90(6)(c)(i):**

Add at the end “or”.

**After subparagraph 90(6)(c)(ii):**

Insert the following subparagraph:

“(iia) would have been an illegal entrant within the meaning of the Act as in force from time to time after the commencement of section 4 of the *Migration Legislation Amendment Act 1989* but before 1 November 1993; or”.

**Paragraph 91(1)(a):**

Omit “arrested under, or is in custody under, this Act”, substitute “detained”.

**Paragraph 91(1)(b):**

Omit the paragraph, substitute the following paragraph:

“(b) the person is a non-citizen who has not been immigration



**SCHEDULE—continued**

cleared and an authorised officer has reasonable grounds for suspecting there are reasonable grounds for cancelling the person's visa.”.

**Paragraph 91(2)(b):**

Omit all words after “evidence”, substitute “for grounds for cancelling the person's visa”.

**Subsection 93(1):**

Omit “in custody”.

**Subsection 93(2):**

Omit “custody”, substitute “immigration detention or in detention”.

**Subsection 93(3):**

Omit “in custody”.

**Subsection 93(4):**

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

**Subsection 93(7):**

Omit “custody”, substitute “detention”.

**Subsection 93(8):**

Omit “such custody”, substitute “immigration detention or such detention”.

**Subsection 93(9):**

Omit “custody”, substitute “detention”.

**Subsection 93(10):**

Omit “in custody”.

**Paragraph 93(10)(a):**

Omit “custody”, substitute “detention”.

**Subsection 93(11):**

Omit “custody” (wherever occurring), substitute “detention”.

**Section 96:**

- (a) Omit “custody” (wherever occurring), substitute “immigration detention”.
- (b) Omit “person having”, substitute “person responsible for”.

**SCHEDULE—continued**

**Subsection 97(1):**

- (a) Omit “custody”, substitute “immigration detention”.
- (b) Insert “, a removee” before “or a deportee”.

**Section 98:**

Omit “custody”, substitute “immigration detention”.

**Section 99:**

- (a) Omit “stowaways”, substitute “unlawful non-citizens”.
- (b) Omit “illegal entrants”, substitute “unlawful non-citizens”.

**Section 100B:**

- (a) Omit “custody” (wherever occurring), substitute “immigration detention”.
- (b) Omit “custodian of” (wherever occurring), substitute “person holding”.

**Paragraph 100B(a):**

Omit the paragraph, substitute:

“(a) is in immigration detention because of subsection 88(2); and”.

**Paragraphs 100B(c) and (e):**

Omit words in brackets.

**Paragraph 108(1)(h):**

After “Australia” insert “, or for the purpose of remaining in Australia,”.

**Subparagraph 111(1)(c)(i):**

- (a) Omit “or a valid entry permit”.
- (b) Add “or”.

**Subparagraph 111(1)(c)(ii):**

- (a) Omit “or entry permit”.
- (b) Omit “time; or”, substitute “period”.

**Subparagraph 111(1)(c)(iii):**

Omit the subparagraph.

**Paragraph 111(1)(f):**

Omit “entered Australia from that airport”, substitute “was immigration cleared”.

**Paragraph 111(1)(g):**

Omit “from” (last occurring), substitute “on”.

**SCHEDULE—continued**

**Paragraph 111(1)(h):**

Omit “from”, substitute “on”.

**Paragraph 111(1)(j):**

(a) Omit “entered Australia from, or left Australia in” (wherever occurring), substitute “entered Australia on, or left Australia on”.

(b) Omit “in that” (wherever occurring), substitute “on that”.

**Subsection 113(4) (definition of “detention centre”):**

Omit “in custody”.

**Paragraph 114(1)(b):**

Omit the paragraph, substitute:

“(b) is a removee who has not yet been removed; or

(c) has entered Australia but has been refused immigration clearance.”.

**Subsection 171(2):**

Omit “custody” (wherever occurring), substitute “immigration detention”.

**Subsection 171(3):**

Omit all words after “reference to” (second occurring), substitute “section 54W, 88 or 93”.

**Subsection 177(1):**

(a) Omit “grant visas or entry permits”, substitute “approve applications for visas”.

(b) Omit “granting of visa or entry permits”, substitute “approval”.

**Subsections 178(2) and (3):**

Omit the subsections.

**Paragraph 182(a):**

Omit “, or entry permit”.

**PART 2—REPEAL**

**Sections 9, 11, 13, 20, 21, 22, 52, 54, 59, 60, 61, 70, 79, 82, 89, 89A, 89B, 95, 100A, 106 and 109:**

Repeal the sections.

**SCHEDULE—continued**

**PART 3—REFERENCES TO ILLEGAL ENTRANTS**

**Heading to Division 1A of Part 2:**

Omit “illegal entrants”, substitute “unlawful non-citizens”.

**Sections 22A, 22D, 58, 61, 62, 67, 77, 78, 80, 83, 83G, 83H, 87, 90, 91, 92, 96, 97, 99 and 181:**

Omit “illegal entrant” (wherever occurring), substitute “unlawful non-citizen”.

**PART 4—REFERENCES TO ENTRY PERMITS**

**Paragraph 3(4)(a), paragraph 28(3)(b), subparagraph 78(a)(ii), section 81, paragraph 90(6)(b), subparagraph 90(1)(b)(ii), subsection 108(1), section 114A, subsection 117(1) and subparagraph 91(2)(b)(ii):**

Omit “entry permit”, substitute “visa”.

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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; Nos. 70, 86, 196 and 198, 1991; and Nos. 24, 84 and 85, 1992.

**NOTE ON SECTION HEADINGS**

1. On 1 November 1993:
  - (a) the headings to section 22A and 67 are altered by omitting “illegal entrants” and substituting “unlawful non-citizens”;
  - (b) the heading to section 50A is altered by omitting “business permits and”;
  - (c) the heading to section 50B is altered by omitting “business permit or”;
  - (d) the heading to section 50D is altered by omitting “business permits or”;
  - (e) the heading to section 67 is altered by omitting “deportees and illegal entrants” and substituting “certain non-citizens”;
  - (f) the heading to section 68 is altered by omitting “deportee or illegal entrant”, and substituting “detained non-citizens”;
  - (g) the heading to section 92 is altered by omitting “illegal entrant” and substituting “unlawful non-citizen”;
  - (h) the heading to section 96 is altered by omitting “custody” and substituting “immigration detention”;
  - (i) the heading to section 100B is altered by adding “because of section 88”.

*Migration Reform No. 184, 1992*

*[Minister's second reading speech made in—  
House of Representatives on 4 November 1992  
Senate on 12 November 1992]*