



# Migration Legislation Amendment Act 1994

**No. 60 of 1994**

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# Migration Legislation Amendment Act 1994

No. 60 of 1994

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## **An Act to amend the *Migration Act 1958*, and for related purposes**

The Parliament of Australia enacts:

[Assented to 9 April 1994]

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Migration Legislation Amendment Act 1994*.

#### **Commencement**

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

(2) Section 84 and Schedule 2 are taken to have commenced immediately after the *Migration Reform Act 1992* received the Royal Assent.

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(3) The remaining provisions of this Act commence immediately after the commencement of section 3 of the *Migration Reform Act 1992*.

Note: Section 3 of the *Migration Reform Act 1992* commences on 1 September 1994

**PART 2—AMENDMENTS OF THE MIGRATION ACT 1958**

**Principal Act**

3. In this Part, “**Principal Act**” means the *Migration Act 1958*<sup>1</sup>.

**Interpretation**

4. Section 4 of the Principal Act is amended:

- (a) by omitting “only held if in force” from the definition of “holder” in subsection (1) and substituting “held during visa period”;
- (b) by omitting paragraph (b) of the definition of “immigration detention” in subsection (1) and substituting the following paragraph:
  - “(b) being held by, or on behalf of, an officer:
    - (i) in a detention centre established under this Act; or
    - (ii) in a prison or remand centre of the Commonwealth, a State or a Territory; or
    - (iii) in a police station or watch house; or
    - (iv) in relation to a non-citizen who is prevented, under section 87, from leaving a vessel—on that vessel; or
    - (v) in another place approved by the Minister in writing;”;
- (c) by omitting “or installation” (wherever occurring) from the definition of “master” in subsection (1);
- (d) by omitting “to” from subparagraph (a)(i) of the definition of “non-disclosable information” in subsection (1) and substituting “of”;
- (e) by omitting paragraph (c) of the definition of “non-disclosable information” in subsection (1) and substituting the following paragraph:
  - “(c) whose disclosure would found an action by a person, other than the Commonwealth, for breach of confidence;”;
- (f) by omitting “force” from paragraph (c) of the definition of “old visa” in subsection (1) and substituting “effect”;
- (g) by omitting “, except in paragraph (9)(b),” from the definition of “Territory” in subsection (1);
- (h) by inserting “or an installation” after “aircraft” in the definition of “vessel” in subsection (1);

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- (i) by omitting from subsection (1) the definitions of “allowed inhabitant of the Protected Zone”, “applicable pass mark”, “assessed score” and “health criterion” and substituting the following definitions:
- “**‘allowed inhabitant of the Protected Zone’** means an inhabitant of the Protected Zone, other than an inhabitant to whom a declaration under section 17 (presence declared undesirable) applies;
- ‘applicable pass mark’**, in relation to a visa of a particular class, means the number of points specified as the pass mark for that class in a notice, under section 32, in force at the time concerned;
- ‘assessed score’**, in relation to an applicant for a visa, means the total number of points given to the applicant in an assessment under section 30;
- ‘health criterion’**, in relation to a visa, means a prescribed criterion for the visa that:
- (a) relates to the applicant for the visa, or the members of the family unit of that applicant (within the meaning of the regulations); and
  - (b) deals with:
    - (i) a prescribed disease; or
    - (ii) a prescribed kind of disease; or
    - (iii) a prescribed physical or mental condition; or
    - (iv) a prescribed kind of physical or mental condition; or
    - (v) a prescribed kind of examination; or
    - (vi) a prescribed kind of treatment;”;
- (j) by omitting from subsection (1) the definitions of “approve” and “visa” (second occurring);
- (k) by inserting in subsection (1) the following definitions:
- “**‘absorbed person visa’** has the meaning given by section 26AB;
- ‘ex-citizen visa’** has the meaning given by section 26AC;
- ‘special purpose visa’** has the meaning given by section 26AA;
- ‘visa period’**, in relation to a visa, means the period:
- (a) beginning when the visa is granted; and
  - (b) ending:
    - (i) in the case of a visa other than a bridging visa—when the visa ceases to be in effect; or
    - (ii) in the case of a bridging visa—when the visa ceases to be in effect otherwise than under subsection 26ZW(2A);”.

**Lawful non-citizens**

5. Section 14 of the Principal Act is amended:

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- (a) by inserting in subsection (1) “that is in effect” after “visa”;
- (b) by omitting subsection (3).

**Effect of cancellation of visa on status**

6. Section 16 of the Principal Act is amended by adding at the end “unless, immediately after the cancellation, the former holder holds another visa that is in effect”.

**Classes of visas**

7. Section 26 of the Principal Act is amended:

- (a) by inserting in subsection (2) “, 26AA, 26AB, 26AC” after “26A”;
- (b) by omitting from subsection (3) “in a” and substituting “of a”;
- (c) by omitting from subsection (3) “section 26D” and substituting “section 26AA, 26AB, 26AC or 26D”;
- (d) by adding at the end the following subsections:

“(4) The regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both.

“(5) A visa is a visa of a particular class if this Act or the regulations specify that it is a visa of that class.”.

**Insertion of new sections**

8. After section 26A of the Principal Act the following sections are inserted:

**Special purpose visas**

“26AA.(1) There is a class of temporary visas to travel to, enter and remain in Australia, to be known as special purpose visas.

“(2) Subject to subsection (3), a non-citizen is taken to have been granted a special purpose visa if:

- (a) the non-citizen:
  - (i) has a prescribed status; or
  - (ii) is a member of a class of persons that has a prescribed status;or
- (b) the Minister declares, in writing, that:
  - (i) the non-citizen is taken to have been granted a special purpose visa; or
  - (ii) persons of a class, of which the non-citizen is a member, are taken to have been granted special purpose visas.

“(3) A non-citizen is not taken to have been granted a special purpose visa if a declaration under subsection (9) is in force in relation to the non-citizen or a class of persons of which the non-citizen is a member.



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“(4) A special purpose visa granted under subsection (2) is granted at the beginning of the later or latest of the following days:

(a) if paragraph (2)(a) applies:

- (i) the day the non-citizen commences to have the prescribed status;
- (ii) the day the class of persons, of which the non-citizen is a member, commences to have the prescribed status;
- (iii) the day the non-citizen commences to be a member of the class of persons that has a prescribed status;

(b) if paragraph (2)(b) applies:

- (i) the day the declaration is made;
- (ii) if a day is specified in the declaration as the day the visa comes into effect—that day;
- (iii) the day the non-citizen commences to be a member of the class of persons specified in the declaration.

“(5) A special purpose visa ceases to be in effect at the end of the earlier or earliest of the following days:

(a) if paragraph (2)(a) applies:

- (i) if the non-citizen ceases to have a prescribed status—the day the non-citizen so ceases;
- (ii) if the non-citizen ceases to be a member of a class of persons that has a prescribed status—the day the non-citizen so ceases;
- (iii) if the Minister makes a declaration under subsection (9) in relation to the non-citizen, or a class of persons of which the non-citizen is a member—the day that declaration is made;

(b) if paragraph (2)(b) applies:

- (i) if a day is specified in the declaration as the day the visa ceases to be in effect—that day;
- (ii) if an event is specified in the declaration as the event that causes the visa to cease to be in effect—the day the event happens;
- (iii) if the non-citizen ceases to be a member of a class of persons specified in the declaration—the day the non-citizen so ceases;
- (iv) if the declaration is revoked—the day of the revocation;
- (v) if the Minister makes a declaration under subsection (9) in relation to the non-citizen, or a class of persons of which the non-citizen is a member—the day that declaration is made.

“(6) If the Minister makes a declaration under paragraph (2)(b), he or she is to cause to be laid before each House of the Parliament a statement that:

- (a) sets out the contents of the declaration; and
- (b) sets out the Minister’s reasons for the declaration.

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“(7) A statement under subsection (6) is not to include:

- (a) the name of the non-citizen; 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.

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

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

“(9) The Minister may make a written declaration, for the purposes of this section, that it is undesirable that a person, or any persons in a class of persons, travel to and enter Australia or remain in Australia.

“(10) Section 26J and Subdivisions AA, AB, AC (other than section 26ZK), AE, AG, AH, C, D, E, F and H do not apply in relation to special purpose visas.

**Absorbed person visas**

“26AB.(1) There is a class of permanent visas to remain in, but not re-enter, Australia, to be known as absorbed person visas.

“(2) 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
- (c) on or after that date, has not left Australia, where left Australia has the meaning it had in this Act before 1 September 1994; and
- (d) immediately before 1 September 1994, was not a person to whom section 20 of this Act as in force then applied;

is taken to have been granted an absorbed person visa on 1 September 1994.

“(3) Subdivisions AA, AB, AC (other than section 26ZK), AE and AH do not apply in relation to absorbed person visas.

**Ex-citizen visas**

“26AC.(1) There is a class of permanent visas to remain in, but not re-enter, Australia, to be known as ex-citizen visas.

“(2) A person who:

- (a) before 1 September 1994, ceased to be an Australian citizen while in the migration zone; and
- (b) did not leave Australia after ceasing to be a citizen and before that date;

is taken to have been granted an ex-citizen visa on that date.

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“(3) A person who, on or after 1 September 1994, ceases to be an Australian citizen while in the migration zone is taken to have been granted an ex-citizen visa when that citizenship ceases.

“(4) Subdivisions AA, AB, AC (other than section 26ZK), AE and AH do not apply in relation to ex-citizen visas.”.

**Protection visas**

9. Section 26B of the Principal Act is amended by omitting from subsection (1) “temporary”.

**Bridging visas**

10. Section 26C of the Principal Act is amended by omitting “is a class” and substituting “are classes”.

**Circumstances for granting visas**

11. Section 26F of the Principal Act is amended:

(a) by omitting from subsection (1) “in a” and substituting “of a”;

(b) by omitting from paragraph (2)(b) “or has been refused immigration clearance”;

(c) by inserting after paragraph (2)(b) the following paragraph:

“(ba) has been refused immigration clearance and has not subsequently been immigration cleared; or”;

(d) by omitting paragraph (2)(c) and substituting the following paragraph:

“(c) is in the migration zone and, on last entering Australia:

(i) was immigration cleared; or

(ii) bypassed immigration clearance and had not subsequently been immigration cleared.”.

**Conditions on visas**

12. Section 26G of the Principal Act is amended:

(a) by omitting from subsection (1) “in a” and substituting “of a”;

(b) by omitting from subsection (2) “in a” and substituting “of a”;

(c) by omitting from paragraph (2)(a) “a visa” and substituting “a substantive visa (other than a protection visa)”;

(d) by adding at the end the following subsection:

“(3) In addition to any conditions specified under subsection (1), the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purposes of this subsection.”.

**Visa essential for travel**

13. Section 26H of the Principal Act is amended by inserting in subsections (1) and (3) “that is in effect” after “visa”.

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

14. Section 26J of the Principal Act is amended:

- (a) by inserting “travel to and” before “enter” (first occurring);
- (b) by inserting “that is in effect” after “Australia” (first occurring);
- (c) by adding at the end the following subsection:

“(2) For the purposes of subsection (1), a holder who travels to and enters Australia on an aircraft is taken to have entered Australia when that aircraft lands.”.

**Application for visa**

15. Section 26L of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Subject to this Act and the regulations, a non-citizen who wants a visa must apply for a visa of a particular class.”;

- (b) by omitting from paragraphs (2)(b) and (c) “in a” and substituting “of a”;
- (c) by omitting from subsection (3) “in a” and substituting “for a visa of a”;
- (d) by omitting from paragraph (3)(b) “or have been refused immigration clearance”;
- (e) by inserting after paragraph (3)(b) the following subparagraph:
  - “(ba) must have been refused immigration clearance and not have subsequently been immigration cleared; or”;
- (f) by omitting paragraph (3)(c) and substituting the following paragraph:

“(c) must be in the migration zone and, on last entering Australia:

- (i) have been immigration cleared; or
- (ii) have bypassed immigration clearance and not have subsequently been immigration cleared;”.

**Valid visa application**

16. Section 26M of the Principal Act is amended:

- (a) by omitting “An application” and substituting “Subject to subsection (2), an application”;
- (b) by omitting from paragraph (a) “in a” and substituting “of a”;

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(c) by adding at the end the following subsection:

“(2) An application for a visa is also valid if:

- (a) it is an application for a visa of a class prescribed for the purposes of this subsection; and
- (b) under the regulations, the application is taken to have been validly made.”.

**Consideration of valid visa application**

17. Section 26N of the Principal Act is amended:

- (a) by inserting in subsection (2) “for a visa” after “application”;
- (b) by omitting from paragraph (2)(a) “it” and substituting “the application”;
- (c) by omitting from paragraph (2)(a) “, approved or refused”;
- (d) by inserting after paragraph (2)(a) the following paragraph:  
“(aa) the Minister grants or refuses to grant the visa; or”;
- (e) by omitting from subsection (4) “the application” and substituting “to grant the visa”.

**Repeal of section and substitution of new section**

18. Section 26P of the Principal Act is repealed and the following section is substituted:

**Non-citizen refused a visa or whose visa cancelled may only apply for particular visas**

“26P. A non-citizen in the migration zone who:

- (a) does not hold a substantive visa; and
- (b) either:
  - (i) after last entering Australia, was refused a visa, other than a bridging visa, for which the non-citizen had applied (whether or not the application has been finally determined); or
  - (ii) held a visa that was cancelled under section 45 (incorrect information), 50AB (general power to cancel), 50A (business visas) or 180A (special power to refuse or cancel);

may, subject to the regulations, apply for a visa of a class prescribed for the purposes of this section, but not for a visa of any other class.”.

**Withdrawal of visa application**

19. Section 26Q of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) For the purposes of section 26P, the Minister is not taken to have refused to grant the visa if the application is withdrawn before the refusal.”.

**Communication of applicant or interested person with Minister**

20. Section 26T of the Principal Act is amended:

- (a) by inserting in subsections (1) and (3) “or interested person” after “applicant”;
- (b) by adding at the end the following subsection:

“(4) In this section, ‘**interested person**’ means a person who wants, or who is requested, to give information about the applicant to the Minister.”.

**Communication of Minister with applicant**

21. Section 26U of the Principal Act is amended:

- (a) by omitting from subsection (4) “A visa” and substituting “An”;
- (b) by inserting after subsection (4) the following subsection:

“(4A) Subject to the regulations, only one person may be specified, under subsection (4), in relation to an applicant at any particular time.”;

- (c) by omitting from subsection (5) “may give, but is not required to give,” and substituting “must give”;
- (d) by inserting after subsection (5) the following subsection:

“(5A) Subsection (5) does not prevent the Minister from communicating with the applicant, provided that the person specified under subsection (4) is notified of that communication.”.

**Repeal of section and substitution of new section**

22. Section 26V of the Principal Act is repealed and the following section is substituted:

**Minister must have regard to all information in application**

“26V.(1) The Minister must, in deciding whether to grant or refuse to grant a visa, have regard to all of the information in the application.

“(2) For the purposes of subsection (1), information is in an application if the information is:

- (a) set out in the application; or
- (b) in a document attached to the application when it is made; or
- (c) given under section 26W.

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

**Repeal of section and substitution of new section**

23. Section 26Y of the Principal Act is repealed and the following section is substituted:

**Certain information must be given to applicant**

“26Y.(1) In this section, ‘**relevant information**’ means information (other than non-disclosable information) that the Minister considers:

- (a) would be the reason, or a part of the reason, for refusing to grant a visa; and
- (b) is specifically about the applicant or another person and is not just about a class of persons of which the applicant or other person is a member; and
- (c) was not given by the applicant for the purpose of the application.

“(2) Subject to subsection (3), the Minister must:

- (a) give particulars of the relevant information to the applicant in the way that the Minister considers appropriate in the circumstances; and
- (b) ensure, as far as is reasonably practicable, that the applicant understands why it is relevant to consideration of the application; and
- (c) invite the applicant to comment on it.

“(3) This section does not apply in relation to an application for a visa unless:

- (a) the visa can be granted when the applicant is in the migration zone; and
- (b) this Act provides, under Part 3 or 4A, for an application for review of a decision to refuse to grant the visa.”.

**Invitation to give further information or comments**

24. Section 26Z of the Principal Act is amended by omitting from subsection (1) “an applicant for a visa” and substituting “a person”.

**When decision about visa may be made**

25. Section 26ZE of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Subject to sections 26E (criterion limiting number of visas), 26Y (give applicant information), 28 (no further processing), 28B (effect of limit on visas) and 31 (put aside under points system) and subsections (2) and (3) of this section, the Minister may grant or refuse to grant a visa at any time after the application has been made.”;

- (b) by omitting from subsections (2) and (3) “an application” and substituting “to grant a visa”.

**Insertion of new section**

26. After section 26ZE of the Principal Act the following section is inserted in Subdivision AB of Division 2 of Part 2:

**Notice of assessment**

“26ZEA.(1) This section applies to a valid application for a visa if the Minister, after considering the application, has made an assessment that:

- (a) the health criteria for it (if any) have been satisfied; and
- (b) the other criteria for it, prescribed by this Act or the regulations, have been satisfied.

“(2) If this section applies and regulations made under paragraph 181(1)(h) require an assurance of support to be given in relation to the applicant, the Minister must give the applicant written notice stating that a visa cannot be granted unless the charge payable under the *Migration (Health Services) Charge Act 1991* has been paid.

“(3) If this section applies and:

- (a) paragraphs 5(a) and (c) of the *Immigration (Education) Charge Act 1992* apply to the applicant; and
- (b) the applicant is at least 18; and
- (c) the applicant does not have functional English;

the Minister must give the applicant written notice stating that a visa cannot be granted unless the English Education Charge payable under that Act has been paid.

“(4) If this section applies and any visa tax under the *Migration (Delayed Visa Applications) Tax Act 1992* is payable on the application, the Minister must give the applicant written notice stating that a visa cannot be granted unless the tax payable under that Act has been paid.

“(5) If the Minister is required to give an applicant more than one notice under this section in relation to an application, the notices may be included in the same document.”.

**Omission of heading and substitution of new heading**

27. The heading to Subdivision AC of Division 2 of Part 2 of the Principal Act is omitted and the following heading is substituted:

“*Subdivision AC—Grant of visas*”.

**Decision to grant or refuse to grant visa**

28. Section 26ZF of the Principal Act is amended:

- (a) by omitting subparagraph (1)(a)(iii) and substituting the following subparagraph:

“(iii) the grant of the visa is not prevented by section 26F (circumstances when granted), 180A (special power to refuse or cancel) or any other provision of this Act or of any other law of the Commonwealth; and”;



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- (b) by omitting from subparagraph (1)(a)(iv) “if the application is approved”;
- (c) by omitting from paragraph (1)(a) “approve the application” and substituting “grant the visa”;
- (d) by omitting from paragraph (1)(b) “the application” and substituting “to grant the visa”;
- (e) by omitting from subsection (2) “set” and substituting “put”;
- (f) by omitting from subsection (2) “reconsidered under the regulations under subsection 31(4) for the last time” and substituting “removed from the pool under subsection 31A(3)”;
- (g) by omitting subsection (3).

**Notification of decision**

**29.** Section 26ZG of the Principal Act is amended:

- (a) by omitting from subsection (1) “approves or refuses a visa application” and substituting “grants or refuses to grant a visa”;
- (b) by omitting subsections (2) and (3);
- (c) by inserting in paragraphs (4)(a) and (b) “grant of the” after “if the”;
- (d) by omitting from paragraph (4)(b) “approval” and substituting “the grant of the visa”;
- (e) by omitting from paragraph 4(c) “the reasons (not being” and substituting “written reasons (other than”;
- (f) by omitting from paragraph (4)(c) “approval” and substituting “the grant of the visa”;
- (g) by omitting subsection (5) and substituting the following subsection:
  - “(5) This subsection applies to an application for a visa if:
    - (a) the visa is a visa that cannot be granted while the applicant is in the migration zone; and
    - (b) this Act does not provide, under Part 3 or 4A, for an application for review of a decision to refuse to grant the visa.”.

**Effect of compliance or non-compliance**

**30.(1)** Section 26ZH of the Principal Act is amended:

- (a) by inserting in subsection (1) “by the Minister” after “Non-compliance”;
- (b) by omitting from subsection (1) “approve or refuse the application” and substituting “grant or refuse to grant the visa”.

(2) Section 26ZH of the Principal Act as amended by subsection (1) is renumbered as 26ZKA and relocated so that it appears after section 26ZK immediately before the heading to Subdivision AE of Division 2 of Part 2.

**Omission of heading**

31. The heading to Subdivision AD of Division 2 of Part 2 of the Principal Act is omitted.

**Repeal of section**

32. Section 26ZI of the Principal Act is repealed.

**When visa is in effect**

33. Section 26ZK of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

“(2) A visa may provide that it comes into effect at the beginning of a day, being a day after its grant:

- (a) specified in the visa; or
- (b) when an event, specified in the visa, happens.

“(3) A visa can only be in effect during the visa period for the visa.

“(4) A bridging visa (the ‘**reactivated bridging visa**’), held by a non-citizen, that has ceased to be in effect under subsection 26ZW(2A), will come into effect again during the visa period for the visa if:

- (a) the non-citizen does not hold a substantive visa that is in effect; and
- (b) either:
  - (i) the non-citizen does not hold any other bridging visa; or
  - (ii) the reactivated bridging visa is determined, in accordance with the regulations, to be the most beneficial of the bridging visas held by the applicant.”.

**Repeal of section and substitution of new section**

34. Section 26ZN of the Principal Act is repealed and the following section is substituted:

**Interpretation**

“26ZN. In this Subdivision:

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

- (a) has been immigration cleared; or
- (b) is in a prescribed class of persons.”.

**Repeal of section and substitution of new sections**

35. Section 26ZP of the Principal Act is repealed and the following sections are substituted:

**Further applications for bridging visa**

“26ZP.(1) Subject to subsection (2), if:

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- (a) an eligible non-citizen who is in immigration detention makes an application for a bridging visa; and
- (b) the Minister refuses to grant the visa;

the eligible non-citizen may make a further application for a bridging visa.

“(2) Unless the further application for a bridging visa is made in prescribed circumstances, the further application may be made not earlier than 30 days after:

- (a) if the eligible non-citizen did not make an application for review of the decision to refuse to grant the visa—the refusal; or
- (b) if the eligible non-citizen made an application for such review—the application is finally determined.

**When eligible non-citizen in immigration detention granted visa**

“26ZPA.(1) If:

- (a) an eligible non-citizen who is in immigration detention makes an application for a bridging visa of a prescribed class; and
- (b) the Minister does not make a decision, within the prescribed period, to grant or refuse to grant the bridging visa;

the non-citizen is taken to have been granted a bridging visa of the prescribed class on prescribed conditions (if any) at the end of that period.

“(2) The period in subsection (1) may be extended in relation to a particular application by agreement between the applicant and the Minister.”.

**Visas held during visa period**

**36.** Section 26ZR of the Principal Act is amended by omitting all the words after “non-citizen” and substituting “holds a visa at all times during the visa period for the visa.”.

**Children born in Australia**

**37.** Section 26ZS of the Principal Act is amended:

- (a) by inserting “(other than a special purpose visa)” after “a visa” (wherever occurring);
- (b) by omitting from subsection (1) “be included in” and substituting “have been granted, at the time of the birth, a visa of the same kind and class and on the same terms and conditions (if any) as”;
- (c) by omitting from subsection (2) “be included in” and substituting “have been granted, at the time of the birth, visas of the same kind and class and on the same terms and conditions (if any) as”;
- (d) by adding at the end the following subsection:

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“(3) Subdivisions AA, AB, AC (other than section 26ZK), AE and AH do not apply in relation to visas granted under this section.”.

**Repeal of section and substitution of new section**

**38.** Section 26ZU of the Principal Act is repealed and the following section is substituted:

**Certain persons taken not to leave Australia**

“26ZU. A person is taken not to leave Australia if the person goes outside the migration zone on a vessel and:

- (a) does not go (other than for transit purposes) to a foreign country; and
- (b) remains a passenger, or a member of the crew, of that vessel while outside the migration zone; and
- (c) is outside the migration zone for no longer than the prescribed period.”.

**When visas cease to be in effect**

**39.** Section 26ZW of the Principal Act is amended:

- (a) by omitting from subsection (1) “cancelled visa” and substituting “visa that is cancelled”;
- (b) by omitting from subsections (1), (3), (4), (5), (6) and (7) “in force” and substituting “in effect”;
- (c) by omitting subsection (2) and substituting the following subsections:

“(2) A substantive visa held by a non-citizen ceases to be in effect if another substantive visa (other than a special purpose visa) for the non-citizen comes into effect.

“(2A) A bridging visa held by a non-citizen ceases to be in effect if another visa (other than a special purpose visa) for the non-citizen comes into effect.

“(2B) A visa ceases to be in effect when the holder leaves Australia because of a deportation order made under section 55A.”;

- (d) by inserting in subsections (3) and (4) “travel to and” after “visa to”;
- (e) by inserting in subsections (3) and (4) “(whether also a visa to remain in Australia)” after “enter Australia”;
- (f) by inserting in subsection (5) “(whether also a visa to travel to and enter Australia)” after “Australia”;
- (g) by omitting from subsection (7) “54HU)” and substituting “54HU).”;
- (h) by adding at the end the following subsection:

“(8) For the purposes of subsections (3), (4) and (5), ‘**particular date**’ includes:

- (a) the date an event, specified in the visa, happens; or
- (b) the date the holder ceases to have a status specified in the visa or the regulations.”.

### **Changes in circumstances to be notified**

**40.** Section 40 of the Principal Act is amended:

- (a) by omitting subsection (4);
- (b) by omitting from subsection (5) “Subsections (1) and (4) apply” and substituting “Subsection (1) applies”.

### **Notice of incorrect applications**

**41.** Section 43 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “officer” and substituting “Minister”;
- (b) by omitting subparagraphs (1)(b)(i) and (ii) and substituting the following subparagraphs:
  - “(i) if the holder disputes that there was non-compliance:
    - (A) shows that there was compliance; and
    - (B) in case the Minister decides under section 44 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
  - (ii) if the holder accepts that there was non-compliance:
    - (A) give reasons for the non-compliance; and
    - (B) shows cause why the visa should not be cancelled; and”;
- (c) by omitting paragraph (1)(c) and substituting the following paragraph:
  - “(c) stating that the Minister will consider cancelling the visa:
    - (i) if the holder gives the Minister oral or written notice, within the 14 days mentioned in paragraph (b), that he or she will not give a written response—when that notice is given; or
    - (ii) if the holder gives the Minister a written response within those 14 days—when that response is given; or
    - (iii) in any other case—at the end of those 14 days; and”.

### **Cancellation of visa if information incorrect**

**42.** Section 45 of the Principal Act is amended by omitting from paragraph (1)(c) “of the non-compliance”.

**Repeal of section and substitution of new section**

43. Section 50AD of the Principal Act is repealed and the following section is substituted:

**Cancellation powers do not limit or affect each other**

“50AD. The powers to cancel a visa under:

- (a) section 45 (incorrect information); or
- (b) section 50AB (general power to cancel); or
- (c) section 50AN (when holder outside Australia); or
- (d) section 50A (cancellation of business visas); or
- (e) section 50G (consequential cancellation of other visas); or
- (f) section 180A (special power to refuse or cancel);

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

**Repeal of section and substitution of new section**

44. Section 50AF of the Principal Act is repealed and the following section is substituted:

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

“50AF.(1) In this section, ‘**relevant information**’ means information (other than non-disclosable information) that the Minister considers:

- (a) would be the reason, or a part of the reason, for cancelling a visa; and
- (b) is specifically about the holder or another person and is not just about a class of persons of which the holder or other person is a member; and
- (c) was not given by the holder; and
- (d) was not disclosed to the holder in the notification under section 50AE.

“(2) The Minister must:

- (a) give particulars of the relevant information to the holder; and
- (b) ensure, as far as reasonably practicable, that the holder understands why it is relevant to the cancellation; and
- (c) invite the holder to comment on it.

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

**Notice of cancellation**

45. Section 50AO of the Principal Act is amended:

- (a) by inserting in paragraph (1)(c) “, within a specified time, being a prescribed time,” after “show”;
- (b) by omitting from paragraph (1)(d) “a specified time, being a prescribed” and substituting “the specified”.

**Effect of revocation of cancellation**

**46.** Section 50AS of the Principal Act is amended:

- (a) by omitting from subsection (2) “If” and substituting “Subject to subsection (1), if”;
- (b) by omitting from subsection (2) “force” and substituting “effect”;
- (c) by omitting from subsection (2) “enter Australia” and substituting “travel to, enter and remain in Australia, or to remain in Australia”.

**Cancellation of visa results in other cancellation**

**47.** Section 50G of the Principal Act is amended:

- (a) by inserting after subsection (2) the following subsection:

“(2A) If:

- (a) a person’s visa (the ‘**cancelled visa**’) is cancelled under any provision of this Act; and
- (b) the person is a parent of another person; and
- (c) the other person holds a particular visa (the ‘**other visa**’), that was granted under section 26ZS (child born in Australia) because the parent held the cancelled visa;

the other visa is also cancelled.”;

- (b) by omitting from subsection (3) “(1) or (2)” (wherever occurring) and substituting “(1), (2) or (2A)”.

**Delegation by Attorney-General**

**48.** Section 53 of the Principal Act is amended by adding at the end the following subsections:

“(2) Subject to subsection (3), the Attorney-General may, in writing, delegate his or her power under section 54C to a member of the Australian Federal Police of a rank not lower than Superintendent.

“(3) A delegation under subsection (2) must provide that:

- (a) the power may only be exercised in relation to a person at a port; and
- (b) any certificate that is issued by the member is to remain in force for no longer than 5 days.

“(4) The Attorney-General may, at any time, by written notice, revoke a certificate issued by a person exercising a power delegated under subsection (2).”.

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

**49.** Section 54HA of the Principal Act is amended:

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(a) by omitting from subsection (1) “If” and substituting “Subject to subsection (2), if”;

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

“(2) Subsection (1) does not permit the removal or deportation of a non-citizen if that removal or deportation would be in breach of an order of the High Court or the Federal Court.”.

**Insertion of new section**

**50.** After section 54HA of the Principal Act the following section is inserted in Subdivision C of Division 3 of Part 2:

**Officer not liable—criminal justice stay certificates or warrants**

“54HAA. An officer is not liable to any civil or criminal action for doing in good faith, or failing in good faith to do, any act or thing for the purpose of exercising a power under this Act to keep a person who is the subject of a criminal justice stay certificate or criminal justice stay warrant in immigration detention.”.

**Persons entering to give certain evidence of identity etc.**

**51.** Section 54HM of the Principal Act is amended:

(a) by inserting in subsection (1) “, this section” after “(4)”;

(b) by omitting from subparagraph (1)(a)(ii) “any visas” and substituting “a visa that is in effect and is”;

(c) by adding at the end the following subsection:

“(3) A person is taken to have complied with subparagraph (1)(a)(i) if a clearance officer knows or reasonably believes that the person is an Australian citizen.”.

**Immigration clearance**

**52.** Section 54HS of the Principal Act is amended:

(a) by adding at the end of subsection (1) the following word and paragraph:

“; or (c) the person is refused immigration clearance, or bypasses immigration clearance, and is subsequently granted a substantive visa.”;

(b) by omitting from paragraph (2)(a) “to whom the person has gone for the purpose of complying with” and substituting “for the purposes of”;

(c) by omitting from paragraph (2)(b) “while with that officer”;

(d) by omitting subsection (3) and substituting the following subsection:



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- “(3) A person is refused immigration clearance if the person:
- (a) is with a clearance officer for the purposes of section 54HM; and
  - (b) either:
    - (i) has his or her visa cancelled; or
    - (ii) refuses, or is unable, to:
      - (A) show a clearance officer evidence required under paragraph 54HM(1)(a); or
      - (B) give a clearance officer information required under paragraph 54HM(1)(b).”;
  - (e) by inserting in subsection (4) “, other than a person who is refused immigration clearance,” after “A person”.

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

**53.** Section 54X of the Principal Act is amended:

- (a) by omitting subparagraph (b)(i) and substituting the following subparagraph:

“(i) bypassed, attempted to bypass, or appeared to attempt to bypass, immigration clearance;”;
- (b) by omitting from subparagraphs (b)(ii) and (iii) “that section” and substituting “section 54HM”.

**End of certain detention**

**54.** Section 54Y of the Principal Act is amended:

- (a) by omitting “he or she”;
- (b) by inserting in paragraph (a) “the person” before “gives”;
- (c) by inserting after paragraph (a) the following paragraph:

“(aa) an officer knows or reasonably believes that the person is an Australian citizen; or”;
- (d) by inserting in paragraph (b) “the person” before “complies”.

**Repeal of section and substitution of new section**

**55.** Section 54ZA of the Principal Act is repealed and the following section is substituted:

**Sections do not apply**

“54ZA.(1) Sections 54ZB and 54ZC do not apply to a person:

- (a) detained under subsection 54W(1):
    - (i) on being refused immigration clearance; or
    - (ii) after bypassing immigration clearance; or
    - (iii) after being prevented from leaving a vessel under section 87;
- or

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- (b) detained under subsection 54W(1) who:
    - (i) has entered Australia after 30 August 1994; and
    - (ii) has not been immigration cleared since last entering ; or
  - (c) detained under subsection 54W(2).
- “(2) Nothing in subsection (1) requires the Minister or any officer to:
- (a) advise a person covered by subsection (1) as to whether the person may apply for a visa; or
  - (b) give a person covered by subsection (1) any opportunity to apply for a visa; or
  - (c) allow a person covered by subsection (1) access to advice (whether legal or otherwise) in connection with applications for visas.”.

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

**56.** Section 54ZF of the Principal Act is amended:

- (a) by omitting paragraph (2)(a) and substituting the following paragraphs:
  - “(a) who is covered by subsection 54ZA(1); and
  - (aa) who has not subsequently been immigration cleared; and”;
- (b) by inserting in subparagraph (2)(b)(i) “that can be granted when the applicant is in the migration zone” after “visa”;
- (c) by inserting in subparagraph (2)(b)(ii) “, that can be granted when the applicant is in the migration zone,” after “visa”;
- (d) by omitting from subsection (3) “than” and substituting “that”;
- (e) by inserting in subsection (3) “that can be granted when the applicant is in the migration zone” after “visa”;
- (f) by inserting after subsection (3) the following subsection:
  - “(3A) Nothing in subsection (2) requires the Minister or any officer to:
    - (a) advise a non-citizen covered by subsection 54ZA(1) as to whether the non-citizen may apply for a visa; or
    - (b) give a non-citizen covered by subsection 54ZA(1) any opportunity to apply for a visa; or
    - (c) allow a non-citizen covered by subsection 54ZA(1) access to advice (whether legal or otherwise) in connection with applications for visas.”;
- (g) by inserting in paragraph (5)(b) “that can be granted when the applicant is in the migration zone” after “visa”;
- (h) by omitting subparagraphs (5)(c)(i) and (ii) and substituting the following subparagraph:
  - “(i) the grant of the visa has been refused and the application has been finally determined;”;

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- (i) by adding at the end of paragraph (5)(d) “that can be granted when the applicant is in the migration zone”.

**Deportation of non-citizens in Australia for less than 10 years who are convicted of crimes**

**57.** Section 55 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- “(b) when the offence was committed the person was a non-citizen who:
- (i) had been in Australia as a permanent resident:
    - (A) for a period of less than 10 years; or
    - (B) for periods that, when added together, total less than 10 years; or
  - (ii) was a citizen of New Zealand who had been in Australia as an exempt non-citizen or a special category visa holder:
    - (A) for a period of less than 10 years as an exempt non-citizen or a special category visa holder; or
    - (B) for periods that, when added together, total less than 10 years, as an exempt non-citizen or a special category visa holder or in any combination of those capacities; and”.

**Deportation of non-citizens upon security grounds**

**58.** Section 56 of the Principal Act is amended by omitting from paragraph (1)(a) all the words from and including “(not being a person” to and including “at least 10 years)” and substituting “referred to in paragraph 55(b)”.

**Determination of time for sections 55 and 56**

**59.** Section 58 of the Principal Act is amended by adding at the end of subsection (1) “or as an exempt non-citizen or a special category visa holder.”.

**Insertion of new section**

**60.** After section 66G of the Principal Act the following section is inserted:

**Vessels required to convey certain removees**

“66GA.(1) If a person covered by subsection 54ZA(1) is to be removed, the Secretary may give the controller of the vessel on which the person travelled to and entered Australia written notice requiring the controller to transport the person from Australia.

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“(2) Subject to section 66J, the controller must comply with the notice within 72 hours of the giving of the notice or such further time as the Secretary allows.

Penalty: 100 penalty units.”.

**Vessels required to convey deportees or other removees**

**61.** Section 66H of the Principal Act is amended:

- (a) by omitting from subsection (1) “If” and substituting “Subject to section 66GA, if”;
- (b) by omitting from subsection (2) “term” and substituting “time”;
- (c) by omitting “\$10,000” and substituting “100 penalty units”.

**Carriage of non-citizens to Australia without documentation**

**62.** Section 76 of the Principal Act is amended:

- (a) by omitting from subsection (1) “person, on arrival in” and substituting “non-citizen, when entering”;
- (b) by omitting paragraph (1)(a) and substituting the following paragraph:
  - “(a) is in possession of evidence of a visa that is in effect and that permits him or her to travel to and enter Australia;”;
- (c) by inserting after paragraph (1)(a) the following paragraph:
  - “(aa) holds a special purpose visa; or”;
- (d) by omitting from paragraph (1)(b) “person” and substituting “non-citizen”;
- (e) by omitting from subsection (3) “arrived in” and substituting “travelled to and entered”;
- (f) by omitting from subsection (3) “on arrival” (wherever occurring) and substituting “when entering”;
- (g) by omitting subsection (4) and substituting the following subsection:
  - “(4) In any proceeding for an offence against subsection (1), evidence that a non-citizen who entered Australia on board a vessel failed, when entering, to produce to an officer, upon demand by that officer, evidence of a visa:
    - (a) that is in effect; and
    - (b) that permits the non-citizen to travel to and enter Australia;is prima facie evidence that the non-citizen did not, when entering, hold such a visa.”;
- (h) by omitting from subsection (5) “person” (first occurring) and substituting “non-citizen”;

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- (i) by omitting from paragraph (5)(a) “person” and substituting “non-citizen”;
- (j) by omitting from paragraph (5)(a) “granted under this Act applicable to his or her travel to Australia on that occasion” and substituting “that was in effect and that permitted him or her to travel to and enter Australia”;
- (k) by omitting from subparagraph (5)(a)(ii) “force” and substituting “effect”;
- (l) by omitting from subparagraph (5)(a)(ii) “person’s expected arrival” and substituting “non-citizen’s expected entry”;
- (m) by omitting paragraph (5)(b) and substituting the following paragraph:
  - “(b) that the master of the vessel had reasonable grounds for believing that, when the non-citizen boarded or last boarded the vessel for travelling to and entering Australia, the non-citizen:
    - (i) was eligible for a special category visa; or
    - (ii) was the holder of a special purpose visa; or
    - (iii) would, when entering Australia, be the holder of a special purpose visa; or”;
- (n) by omitting subsection (7).

**Removees and deportees held in other custody**

**63.** Section 94 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:
  - “(1) This section applies if a person is a removee or a deportee and is in the custody of an authority of the Commonwealth, a State or a Territory, otherwise than under this Act.
  - “(2) The Secretary may give the person written notice:
    - (a) if the person is a deportee:
      - (i) stating that a deportation order has been made; and
      - (ii) setting out particulars of the deportation order; and
    - (b) if the person is a removee—stating that the person is to be removed; and
    - (c) in any case—stating that, from the time when the person would otherwise be entitled to be released from the custody referred to in subsection (1) (the ‘**custody transfer time**’), the person will be kept in immigration detention.”;
- (b) by omitting from subsection (3) “person” (wherever occurring) and substituting “deportee”;
- (c) by omitting from subsection (3) “in custody”.

**Repeal of section**

**64.** Section 108 of the Principal Act is repealed.

**Secretary may issue documents containing information concerning certain persons**

**65.** Section 114 of the Principal Act is amended by omitting paragraph (1)(c) and substituting the following paragraph:

“(c) has been refused immigration clearance and has not subsequently been immigration cleared.”.

**Interpretation**

**66.** Section 115 of the Principal Act is amended:

- (a) by omitting “means a decision” from the definition of “Part 3 reviewable decision” and substituting “means”;
- (b) by omitting paragraph (a) of the definition of “Part 3 reviewable decision” and substituting the following paragraph:
  - “(a) a decision (other than a decision covered by paragraph (ba) or made under section 180A) to refuse to grant a non-citizen a visa where:
    - (i) the visa could be granted while the non-citizen is in the migration zone; and
    - (ii) the non-citizen made the application for the visa while in the migration zone; and
    - (iii) the decision was not made when the non-citizen:
      - (A) was in immigration clearance; or
      - (B) had been refused immigration clearance and had not subsequently been immigration cleared; or”;
- (c) by inserting “a decision” before “to cancel” in paragraph (b) of the definition of “Part 3 reviewable decision”;
- (d) by omitting all the words after “cancellation” in paragraph (b) of the definition of “Part 3 reviewable decision” and substituting the following words and subparagraphs:
  - “, other than a decision:
    - (i) covered by paragraph (bb); or
    - (ii) made at a time when the non-citizen was in immigration clearance; or
    - (iii) made under subsection 50A(1) or (4) or section 180A; or”;

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- (e) by inserting after paragraph (b) of the definition of “Part 3 reviewable decision” the following paragraphs:
  - “(ba) a decision to refuse to grant a bridging visa to a non-citizen who is in immigration detention because of that refusal; or
  - (bb) a decision to cancel a bridging visa held by a non-citizen who is in immigration detention because of that cancellation; or”;
- (f) by omitting “to refuse an application by a non-citizen for” from paragraph (c) of the definition of “Part 3 reviewable decision” and substituting “a decision to refuse to grant a non-citizen”;
- (g) by omitting subparagraph (c)(ii) of the definition of “Part 3 reviewable decision”;
- (h) by omitting sub-subparagraph (c)(iii)(E) of the definition of “Part 3 reviewable decision”;
- (i) by adding at the end of the definition of “Part 3 reviewable decision” the following word and paragraphs:
  - “or (d) a decision to refuse to grant a non-citizen a visa where:
    - (i) the visa is a visa that could not be granted while the non-citizen is in the migration zone; and
    - (ii) a criterion for the grant of the visa is that the non-citizen has been an Australian permanent resident; and
    - (iii) a parent, spouse, child, brother or sister of the non-citizen is an Australian citizen or an Australian permanent resident; or
  - (e) a decision to refuse to grant a non-citizen a visa where:
    - (i) the visa is a visa that could not be granted while the non-citizen is in the migration zone; and
    - (ii) a criterion for the grant of the visa is that the non-citizen intends to visit an Australian citizen, or an Australian permanent resident, who is a parent, spouse, child, brother or sister of the non-citizen; and
    - (iii) particulars of the relative concerned are included in the application; or
  - (f) a decision, under section 30, as to the assessed score of an applicant for a visa where:
    - (i) the visa is a visa that could not be granted while the applicant is in the migration zone; and
    - (ii) the non-citizen, as required by a criterion for the visa, was sponsored or nominated by:

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- (A) an Australian citizen; or
  - (B) the holder of a permanent visa; or
  - (C) a citizen of New Zealand who holds a special category visa; and
- (iii) the Minister has not refused to grant the visa;”;
- (j) by inserting the following definition:  
“ ‘**Australian permanent resident**’ means an Australian permanent resident within the meaning of the regulations;”.

**Internally-reviewable decisions**

67. Section 115A of the Principal Act is amended by inserting after paragraph (2)(b) the following paragraph:

- “(ba) a decision covered by paragraph (ba) or (bb) of the definition of Part 3 reviewable decision;”.

**Application for internal review**

68. Section 115B of the Principal Act is amended:

- (a) by inserting in subparagraph (1)(b)(ii) “, (d), (e) or (f)” after “(c)”;
- (b) by inserting in paragraph (2)(b) “or (f)” after “(c)”;
- (c) by adding at the end of subsection (2) the following word and paragraph:  
“; or (c) if the decision is covered by paragraph (d) or (e) of that definition—the relative referred to in the paragraph concerned.”.

**Insertion of new section**

69. After section 115D of the Principal Act the following section is inserted:

**Code of procedure applies to review officer**

“115DA. Subdivision AB of Division 2 of Part 2 applies in relation to a review by a review officer as if:

- (a) all references to the Minister were references to the review officer; and
- (b) all references to an applicant or to a visa applicant were references to an applicant for review; and
- (c) all references to an application were references to an application for review; and
- (d) subsection 26Y(2) were omitted; and
- (e) subsection 26ZB(1) were amended by omitting ‘to the grant of a visa’.”.



**Notification of decision**

**70.** Section 115E of the Principal Act is amended:

(a) by omitting subsection (2) and substituting the following subsection:

“(2) Notification of a decision to grant a visa must include the address of the Departmental office that is responsible for providing evidence of the visa.”;

(b) by omitting subsection (3);

(c) by omitting from subsection (4) “an application for a particular visa” and substituting “to grant a visa”;

(d) by inserting in paragraphs (4)(a) and (b) “grant of the” after “if the”;

(e) by omitting from paragraph (4)(b) “approval” and substituting “the grant of the visa”;

(f) by omitting from paragraph (4)(c) “the reasons” and substituting “written reasons (other than non-disclosable information)”;

(g) by omitting from paragraph (4)(c) “approval” and substituting “the grant of the visa”;

(h) by omitting from paragraph (5)(b) “remitted; and” and substituting “remitted.”;

(i) by omitting paragraph (5)(c).

**Review of assessments made under section 30**

**71.** Section 115F of the Principal Act is amended by adding at the end the following subsection:

“(2) In determining whether the regulations mentioned in paragraph (1)(a) or (1)(b) are more favourable to the applicant, the only applicable pass mark and applicable pool mark that the review officer may have regard to are:

(a) in relation to regulations covered by paragraph (1)(a)—the applicable pass mark and the applicable pool mark that applied at the time the assessment was made by the Minister; and

(b) in relation to regulations covered by paragraph (1)(b)—the applicable pass mark and the applicable pool mark that applied at the time the decision is made by the review officer about the assessment.”.

**Decisions reviewable by Immigration Review Tribunal**

**72.** Section 116 of the Principal Act is amended by inserting after paragraph (1)(b) the following paragraph:

“(ba) decisions covered by paragraph (ba) or (bb) of the definition of Part 3 reviewable decision;”.

**Application for review by Immigration Review Tribunal**

**73.** Section 117 of the Principal Act is amended:

*Migration Legislation Amendment No. 60, 1994*

- (a) by omitting from subparagraph (1)(b)(i) “or (b)” and substituting “, (b), (ba) or (bb)”;
- (b) by inserting in subparagraph (1)(b)(ii) “, (d), (e) or (f)” after “(c)”;
- (c) by omitting from paragraph (2)(a) “or (b)” and substituting “, (b), (ba) or (bb)”;
- (d) by inserting in paragraph (2)(b) “or (f)” after “(c)”;
- (e) by inserting after paragraph (2)(b) the following word and paragraph:
  - “; or (c) if the decision is covered by paragraph (d) or (e) of that definition—the relative referred to in the paragraph concerned.”;
- (f) by omitting from subsection (3) “or (b)” and substituting “, (b), (ba) or (bb)”;
- (g) by inserting after subsection (3) the following subsection:
  - “(3A) If the decision was covered by paragraph (ba) or (bb) of the definition of Part 3 reviewable decision, the approved form for an application for review must include a statement advising the applicant that the applicant may:
    - (a) request the opportunity to appear before the Tribunal; and
    - (b) request the Tribunal to obtain oral evidence from a specified person or persons.

A request must be made in the approved form and must accompany the application for review.”.

**Review of assessments made under section 30**

**74.** Section 120 of the Principal Act is amended by adding at the end the following subsection:

- “(2) In determining whether the regulations mentioned in paragraph (1)(a) or (1)(b) are more favourable to the applicant, the only applicable pass mark and applicable pool mark that the Tribunal may have regard to are:
- (a) in relation to regulations covered by paragraph (1)(a)—the applicable pass mark and the applicable pool mark that applied at the time the assessment was made by the Minister; and
  - (b) in relation to regulations covered by paragraph (1)(b)—the applicable pass mark and the applicable pool mark that applied at the time the decision is made by the Tribunal about the assessment.”.

**Secretary to be notified of application for review by Immigration Review Tribunal**

**75.** Section 122 of the Principal Act is amended:

*Migration Legislation Amendment No. 60, 1994*

- (a) by omitting from subsection (2) “The Secretary” and substituting “Subject to subsection (2A), the Secretary”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) If the application is for review of a decision covered by paragraph (ba) or (bb) of the definition of Part 3 reviewable decision, the Secretary must comply with the requirements of subsection (2) within 2 working days after being notified of the application.”.

**Applicant may request Tribunal to call witness**

**76.** Section 131 of the Principal Act is amended by adding at the end the following subsection:

“(4) This section does not apply to the review of a decision covered by paragraph (ba) or (bb) of the definition of Part 3 reviewable decision.”.

**Insertion of new section**

**77.** After section 131 of the Principal Act the following section is inserted:

**Applicant may request Tribunal to call witnesses**

“131A.(1) This section applies to the review of a decision covered by paragraph (ba) or (bb) of the definition of Part 3 reviewable decision if:

- (a) the applicant, in a request in the approved form that accompanied the application, requested the Tribunal to:
  - (i) give the applicant the opportunity to appear before it; or
  - (ii) obtain oral evidence from a specified person or persons; and
- (b) section 129 does not apply.

“(2) If this section applies, the Tribunal:

- (a) must have regard to the applicant’s request; but
- (b) is not required to obtain evidence (oral or otherwise) from a person named in the applicant’s request.

“(3) To avoid doubt, nothing in this Division requires the Tribunal to adjourn the review or to delay making a decision so that:

- (a) the applicant may give evidence (oral or otherwise); or
- (b) the Tribunal may obtain evidence (oral or otherwise) from any other person.”.

**Review to be in public**

**78.** Section 134 of the Principal Act is amended:

- (a) by inserting after subsection (2) the following subsection:

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“(2A) If the Tribunal is satisfied that it is impracticable to take particular oral evidence in public, the Tribunal may direct that the evidence is to be taken in private.”;

(b) by inserting in subsection (3) “or (2A)” after “(2)”.

**Insertion of new sections**

79. After section 134 of the Principal Act the following sections are inserted in Division 4 of Part 3:

**Oral evidence by telephone etc.**

“134A.(1) For the purposes of the review of a decision, the Tribunal may allow a person to appear before the Tribunal, or to give evidence, by:

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

“(2) If, when a review is in public, a person appears or gives evidence by a means allowed under subsection (1), the Tribunal must take such steps as are reasonably necessary to ensure the public nature of the review is preserved.

**Certain decisions to be made within prescribed period**

“134B.(1) Subject to subsection (2), if the application is for review of a decision covered by paragraph (ba) or (bb) of the definition of Part 3 reviewable decision, the Tribunal must make its decision on review, and notify the applicant of the decision, within the prescribed period.

“(2) The Tribunal may, with the agreement of the applicant, extend the period in subsection (1) for the purposes of a particular application.”.

**Delegate not required to perform certain administrative tasks**

80. Section 177 of the Principal Act is amended:

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

“(1) If the Minister delegates the power to grant or refuse to grant visas, the delegation does not require the delegate personally to perform any task in connection with the grant or refusal, except the taking of a decision in each case whether or not a visa should be granted.

“(1A) If the Minister delegates the power to cancel visas, the delegation does not require the delegate personally to perform any task in connection with the cancellation, except the taking of a decision in each case whether a visa should be cancelled.”;

(b) by inserting in subsection (2) “or (1A)” after “(1)”.

**Exclusion of certain persons from Australia**

**81.** Section 180C of the Principal Act is amended:

(a) by omitting from paragraph (1)(c) “an application for” and substituting “to grant”;

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

“(4) This section does not apply to a holder of a criminal justice visa.”.

**Other amendments of the *Migration Act 1958***

**82.** The Principal Act is further amended as set out in Schedule 1.

**Renumbering and relettering of the *Migration Act 1958***

**83.(1)** In this section:

“**amended Act**” means the *Migration Act 1958* as amended by this Act (other than this section);

“**provision**” includes a paragraph of a section or of a subsection, a subparagraph of a paragraph and a Schedule.

(2) The amended Act is further amended as provided by this section.

(3) The several Parts of the amended Act are renumbered so that they bear consecutive arabic numerals starting with “1”.

(4) The several Divisions of each Part of the amended Act are renumbered so that they bear consecutive arabic numerals starting with “1”.

(5) The several sections of the amended Act are renumbered in a single series so that they bear consecutive arabic numerals starting with “1”.

(6) The several subsections of each section of the amended Act are renumbered so that they bear consecutive arabic numerals enclosed in parentheses starting with “(1)”.

(7) The several paragraphs of each section, of each subsection, or of each definition, of the amended Act are relettered so that they bear lower case letters in alphabetical order enclosed in parentheses starting with “(a)”.

(8) The several subparagraphs of each paragraph of each section, of each paragraph of each subsection, or of each paragraph of each definition, of the amended Act are renumbered so that they bear consecutive lower case roman numerals enclosed in parentheses starting with “(i)”.

(9) The several sub-subparagraphs of each subparagraph of each paragraph of each section, of each subparagraph of each paragraph of each subsection, or of each subparagraph of each paragraph of each definition, of the amended Act are renumbered so that they bear upper case letters in alphabetical order enclosed in parentheses starting with “(A)”.

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(10) Each provision of the amended Act that refers to a provision of that Act that has been renumbered or relettered under this section is amended by omitting the reference and substituting a reference to the last-mentioned provision as so renumbered or relettered.

(11) A reference in a provision of a law of the Commonwealth or of a Territory enacted before the commencement of this section (whether or not that provision has come into operation), or in an instrument or document, to a provision of the *Migration Act 1958* that has been renumbered or relettered under this section is to be construed as a reference to that provision as so renumbered or relettered.

**PART 3—AMENDMENTS OF OTHER ACTS**

**Amendments of the *Migration Reform Act 1992***

**84.** The *Migration Reform Act 1992* is amended as set out in Schedule 2.

**Amendments of other Acts**

**85.** The Acts specified in Schedule 3 are amended as set out in that Schedule.

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**SCHEDULE 1**

**OTHER AMENDMENTS OF THE MIGRATION ACT 1958**

- 1. Subsection 3A(3):**  
After “persons” insert “, whether citizens or non-citizens,”.
- 2. Section 7A:**  
Repeal the section.
- 3. Section 10:**  
Omit “arrival in” (wherever occurring), substitute “entering”.
- 4. Section 24:**  
Before “specified” (wherever occurring), insert “prescribed or”.
- 5. Paragraph 24(2)(a):**  
Before “enter” insert “travel to and”.
- 6. Paragraph 24(2)(b):**  
After “holder” insert “travels to and”.
- 7. Paragraph 24(3)(a):**  
Before “enter” insert “travel to and”.
- 8. Paragraph 24(3)(b):**  
After “holder” (first occurring) insert “travels to and”.
- 9. Subparagraph 24(3)(b)(ii):**  
Before “re-enter” insert “travel to and”.
- 10. Subsection 24(4):**  
Omit “or section 26ZS (newborn child included in visa)”.
- 11. Paragraphs 26A(2)(b) and (c):**  
Omit “in another”, substitute “of another”.
- 12. Subsection 26E(1):**
  - (a) Omit “in a class”, substitute “of a class”.
  - (b) Omit “in that class”, substitute “of that class”.
- 13. Subsection 26E(2):**
  - (a) Omit “in a particular”, substitute “of a particular”.
  - (b) Omit “in that class”, substitute “of that class”.
- 14. Paragraph 26R(a):**  
Omit “that has been refused and finally determined”, substitute “, where the grant of the visa has been refused and the application has been finally determined”.

**SCHEDULE 1—continued**

**15. Paragraph 26R(b):**

Omit “that have been refused and finally determined”, substitute “, where the grants of the visas have been refused and the applications have been finally determined”.

**16. Subsection 26W(1):**

Omit “approve or refuse an application for”, substitute “grant or refuse to grant”.

**17. Subsection 26X(1):**

Omit all the words after “relevant”, substitute “but, if the Minister gets such information, the Minister must have regard to that information in making the decision whether to grant or refuse the visa.”.

**18. Subsection 26ZB(1):**

Omit “approval of the application”, substitute “grant of a visa”.

**19. Subsection 26ZB(2):**

Omit “for a visa”.

**20. Paragraph 26ZC(a):**

Omit “in”, substitute “for a visa of”.

**21. Paragraphs 26ZC(c) and (d):**

After “class” insert “of persons”.

**22. Subsection 26ZD(1):**

Omit “about the application”, substitute “to grant or refuse to grant the visa”.

**23. Subsection 26ZD(2):**

Omit “the decision”, substitute “a decision to grant or refuse to grant the visa”.

**24. Subsection 26ZM(2):**

Omit “in a”, substitute “of a”.

**25. Subsection 26ZM(3):**

Omit all the words after “the regulation.”.

**26. Section 26ZO:**

(a) Omit “a detention”, substitute “an eligible”.

(b) After “to remain in” insert “, or to travel to, enter and remain in”.

**27. Paragraph 26ZQ(1)(a):**

Omit “in”, substitute “of”.



**SCHEDULE 1—continued**

- 28. Paragraph 26ZQ(1)(b):**  
Omit the paragraph.
- 29. Subsection 26ZQ(2):**  
Omit “in”, substitute “of”.
- 30. Paragraph 26ZT(b):**  
Omit “in force”, substitute “in effect”.
- 31. Paragraph 28(3)(b):**  
Omit “valid permit visa”, substitute “permanent visa that is in effect”.
- 32. Subsection 28(4):**  
Omit “or refuse”, substitute “or to refuse to grant”.
- 33. Paragraph 28C(1)(b):**  
Omit “valid permanent entry permit”, substitute “permanent visa that is in effect”.
- 34. Section 28E:**  
Omit “about the application for”, substitute “to grant or refuse to grant”.
- 35. Subsection 31(6):**  
Omit “about the application”, substitute “to grant or refuse to grant a visa”.
- 36. Section 33 (definition of “application form”):**  
After “which” insert “a”.
- 37. Subsections 37(2) and 38(2):**  
Omit the subsections.
- 38. Section 39:**  
After “officer” insert “, the Minister, or a tribunal performing a function or purpose under this Act,”.
- 39. Paragraphs 41(1)(a) and (b):**  
After “answer” insert “given”.
- 40. Subsection 41(1):**  
Omit “is incorrect”, substitute “was incorrect when it was given”.
- 41. Section 46:**  
Omit “officer”, substitute “Minister”.
- 42. Paragraph 50AB(1)(a):**  
Omit “approval of the application for”, substitute “grant of”.

**SCHEDULE 1—continued**

- 43. Paragraph 50AB(1)(d):**  
After “but” insert “has”.
- 44. Paragraph 50AB(1)(f):**  
Omit “, the approval of its grant”.
- 45. Paragraph 50AC(1)(b):**  
After “clearance” insert “(see section 54HS)”.
- 46. Paragraph 50AC(1)(d):**  
Omit “Australia”, substitute “the migration zone”.
- 47. Paragraph 50AE(1)(b):**  
Omit “, being, subject to sections 50AK and 50AL, a prescribed time”.
- 48. Subsection 50AG(1):**  
Omit “50AF(1)(f)”, substitute “50AF(2)(c)”.
- 49. Paragraph 50AH(a):**  
Omit “in”, substitute “of”.
- 50. Paragraphs 50AH(c) and (d):**  
After “class” insert “of persons”.
- 51. Section 50AI:**  
Omit “50AF(1)(f)”, substitute “50AF(2)(c)”.
- 52. Section 50AK:**  
Omit “50AF(1)(f)”, substitute “50AF(2)(c)”.
- 53. Section 50AL:**  
Omit “50AF(1)(f)” (wherever occurring), substitute “50AF(2)(c)”.
- 54. Section 50AP:**  
Omit “50AO(1)(d)”, substitute “50AO(1)(c)”.
- 55. Paragraph 50AP(a):**  
Omit “in”, substitute “of”.
- 56. Paragraphs 50AP(c) and (d):**  
After “class” insert “of persons”.
- 57. Paragraph 50A(4)(a):**  
Omit “business permit or”.
- 58. Section 51:**  
Omit “whose presence would otherwise not be in the national interest”.

SCHEDULE 1—continued

- 59. Paragraph 54HF(2)(a):**  
Omit the paragraph.
- 60. Subsection 54HH(1):**  
Omit “in force”, substitute “in effect”.
- 61. Paragraph 54HH(2)(a):**  
Omit “force”, substitute “effect”.
- 62. Paragraph 54HP(b):**  
Omit “(fishermen and others)”.
- 63. Section 54HT:**  
Omit “force”, substitute “effect”.
- 64. Section 54HU:**  
Omit “force”, substitute “effect”.
- 65. Division 4B of Part 2 (heading):**  
Omit the heading, substitute:  
  
*“Division 4B—Certain non-citizens to be kept in immigration detention”.*
- 66. Paragraph 54J(b):**  
Omit “an entry permit”, substitute “a visa”.
- 67. Section 54K (paragraph (c) of the definition of “designated person”):**  
Omit “Australia”, substitute “the migration zone”.
- 68. Section 54K (paragraph (d) of the definition of “designated person”):**  
Omit “an entry permit”, substitute “a visa”.
- 69. Section 54K (paragraph (b) of the definition of “entry application”):**  
Omit “an entry permit”, substitute “a visa”.
- 70. Paragraph 54L(2)(b):**  
Omit the paragraph, substitute:  
“(b) granted a visa under section 26ZF, 115G, 121, 150L, 166BE or 166HL.”.
- 71. Subsection 54M(1):**  
After “11(a)” insert “(as in force at that time)”.

**SCHEDULE 1—continued**

**72. Subsection 54M(2):**

After “11(b)” insert “(as in force at that time)”.

**73. Subsection 54N(2):**

After “11(a)” insert “(as in force at that time)”.

**74. Paragraph 54P(3)(b):**

Omit “application”, substitute “grant of the visa”.

**75. Subsection 54W(2):**

Omit “the non-citizen”, substitute “the person”.

**76. Subsection 54Z(6):**

Omit “(2)”, substitute “(5)”.

**77. Paragraphs 54Z(7)(a) and (b):**

Omit “person”, substitute “detainee”.

**78. Subsection 54ZC(1):**

(a) After “2” (wherever occurring) insert “working”.

(b) After “5” insert “working”.

**79. Subsection 54ZD(3):**

Omit all the words after “has”, substitute “been granted a visa”.

**80. Section 66:**

Omit “66C”, substitute “66B”.

**81. Section 66A:**

Omit “66D”, substitute “66C”.

**82. Subparagraph 78(a)(i):**

Omit “from”, substitute “on”.

**83. Subparagraph 78(a)(ii):**

Omit “valid visa”, substitute “visa that is in effect”.

**84. Section 78:**

Omit “\$10,000”, substitute “100 penalty units”.

**85. Subsection 81(1):**

(a) Omit “an entry permit”, substitute “a visa”.

(b) Omit “further entry permit”, substitute “further visa”.

**86. Subsection 85(1):**

Omit “\$20,000”, substitute “200 penalty units”.

**SCHEDULE 1—continued**

**87. Subsection 85(2):**

Omit “ship” (wherever occurring), substitute “vessel (other than an aircraft)”.

**88. Subsections 85(2), (3) and (4):**

Omit “\$20,000”, substitute “200 penalty units”.

**89. Subsection 85(7):**

Omit “\$10,000”, substitute “100 penalty units”.

**90. Paragraph 88(5)(a):**

After “visa” insert “, that is in effect,”.

**91. Paragraph 91(2)(a):**

Omit “custody”, substitute “immigration detention”.

**92. Section 92:**

Repeal the section.

**93. Section 95:**

Omit “sections 92 and” (wherever occurring), substitute “section”.

**94. Paragraph 100(2)(b):**

Before “owner” insert “master,”.

**95. Subparagraph 111(1)(c)(i):**

Omit “valid visa”, substitute “visa that was in effect”.

**96. Section 114A (definition of “entrance applicant”):**

Omit the definition, substitute:

“‘**entrance applicant**’ means an applicant for a visa under this Act;”.

**97. Section 114A (definition of “entrance application”):**

Omit “, visa or determination”.

**98. Section 114A:**

Insert:

“‘**cancellation review applicant**’ means an applicant for review of a decision to cancel a visa held by the applicant;

‘**cancellation review application**’, in relation to a cancellation review applicant, means the application by the applicant;”.

**99. Section 114A (paragraph (a) of the definition of “immigration case”):**

(a) After “entrance application” insert “or cancellation review application”.

(b) After “entrance applicant” insert “or cancellation review applicant”.

**SCHEDULE 1—continued**

**100. Section 114A (paragraph (b) of the definition of “immigration case”):**

- (a) After “entrance applications” insert “or cancellation review applications”.
- (b) After “entrance applicant” insert “or cancellation review applicant”.

**101. Section 114A (paragraph (c) of the definition of “immigration case”):**

- (a) After “entrance applications” insert “or cancellation review applications”.
- (b) After “entrance applicants” insert “or cancellation review applicants”.

**102. Section 114B:**

- (a) After “entrance applicant” (wherever occurring) insert “or cancellation review applicant”.
- (b) After “entrance application” (wherever occurring) insert “or cancellation review application”.

**103. Section 114C:**

- (a) After “entrance applicant” (wherever occurring) insert “or cancellation review applicant”.
- (b) After “entrance application” (wherever occurring) insert “or cancellation review application”.

**104. Subsection 114H(4):**

- (a) After “entrance applicant” insert “or cancellation review applicant”.
- (b) After “entrance application” insert “or cancellation review application”.

**105. Section 114ZQ:**

After “entrance applicant” (wherever occurring) insert “or cancellation review applicant”.

**106. Paragraph 166B(1)(c):**

Omit “not to approve an application for”, substitute “to refuse to grant”.

**107. Subsection 166JC(4):**

Omit “custody under this Act”, substitute “immigration detention”.

**108. Paragraph 166LA(2)(e):**

- (a) Omit “115F”, substitute “115G”.
- (b) Omit “166BD”, substitute “166BE”.

**SCHEDULE 1—continued**

**109. Subsection 166LH(2):**

Omit “an” (second occurring).

**110. Subsection 171(3):**

(a) After “section” (second occurring) insert “54L,”.

(b) After “54W” insert “, 54Z”.

**111. Paragraph 180(1)(c):**

Omit “an application for”, substitute “to grant”.

**112. Paragraph 180(2)(b):**

Omit “non-citizen (other than an illegal entrant)”, substitute “lawful non-citizen”.

**113. Section 180A:**

(a) Omit “or an entry permit” (wherever occurring).

(b) Omit “valid visa” (wherever occurring), substitute “visa”.

(c) Omit “or a valid entry permit” (wherever occurring).

**114. Subparagraph 180B(1)(a)(iii):**

Omit “an application for”, substitute “to grant”.

**115. Section 182:**

(a) Omit “, or entry permits, in”, substitute “of”.

(b) Omit “, or entry permit, in”, substitute “of”.

**SCHEDULE 2**

**AMENDMENTS OF THE MIGRATION REFORM ACT 1992**

**1. Section 33:**

Omit “116KC”, substitute “116KB”.

**2. Section 39:**

Repeal the section, substitute:

**Transitional—refugee applications**

“39. If:

(a) an application for:

(i) a determination by the Minister that a person is a refugee within the meaning of the Principal Act as in force immediately before 1 September 1994; or

(ii) an entry permit (within the meaning of the Principal Act as in force immediately before that date), a criterion of which is that the Minister has made such a determination in relation to the person, or in relation to a member of the family unit of the person (within the meaning of the regulations);

was made before that date; and

(b) before that date, the application has not been finally determined (within the meaning of the Principal Act);

then, on and after that date, the provisions of the Principal Act (including provisions relating to review of decisions) apply as if the application was an application for a protection visa (within the meaning of the Principal Act as in force on that date).”.

**3. After subsection 40(1):**

Insert:

“(1A) For the purposes of the definition of ‘Principal Act class’:

(a) permits granted before 19 December 1989 are taken to be a class of permits provided for by regulations under the Principal Act; and

(b) visas granted before 19 December 1989 are taken to be a class of visas provided for by regulations under the Principal Act.”.

**4. Subsection 40(5):**

Omit “force”, substitute “effect”.

**5. Paragraph 40(8)(a):**

(a) After “visas” insert “or permits”.

(b) Omit “that section”, substitute “this Act”.



**SCHEDULE 2—continued**

**6. After subsection 40(8):**

Insert:

“(8A) Deportation orders issued under section 60 of the Principal Act cease to have effect on 1 September 1994.

“(8B) The regulations may provide that, from 1 September 1994, a certificate issued under a section of the Principal Act that is in force in relation to specified persons is taken to be a certificate issued under a specified section of the Principal Act as amended by this Act.”.

**7. Subsection 40(9):**

Omit the subsection.

**8. After section 40:**

Insert:

**Transitional**

“41.(1) This section applies if:

- (a) because of the operation of regulations under section 40, a person holds a particular visa (the ‘**new visa**’) on or after 1 September 1994; and
- (b) before 1 September 1994, the person:
  - (i) had entered Australia; or
  - (ii) held, or had applied for, an entry permit or visa (the ‘**old entry permit or visa**’) under the Principal Act as then in force.

“(2) The following are taken to have been produced, or caused to have been produced, in relation to an application for the new visa:

- (a) any document (including a passenger card) that the person produced, or caused to be produced, in relation to the entry; or
- (b) any document (including a passenger card) that the person produced, or caused to be produced, in relation to the old entry permit.

“(3) The following are taken to have been made, or caused to have been made, in respect of an application for the new visa:

- (a) any statement that the person made, or caused to be made, to an officer or a person exercising powers or performing functions under this Act, in respect of the entry; or
- (b) any statement that the person made, or caused to be made, to an officer or a person exercising powers or performing functions under this Act, in respect of the old entry permit.

**SCHEDULE 2—continued**

**Regulations**

“42. The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.”.

**9. Schedule (Part 1) (amendment of paragraph 50A(4)(a)):**

Omit the amendment.

**10. Schedule (Part 1) (amendment of section 10):**

Omit “second”, substitute “first”.

**11. Schedule (Part 1) (amendment of paragraph 50D(1)(b)):**

Omit the amendment.

**12. Schedule (Part 1) (amendment of Division 4B):**

Omit paragraph (b) of the amendment.

**13. Schedule (Part 1) (amendment of section 70):**

Omit the amendment.

**14. Schedule (Part 1) (amendment of subsection 83(8)):**

Omit the amendment.

**15. Schedule (Part 1) (amendment of paragraph 182(a)):**

Omit the amendment.

**16. Schedule (Part 2):**

Omit “95,”.

**17. Schedule (Part 3):**

- (a) Omit “62,”.
- (b) Omit “96,”.

**18. Schedule (Part 4):**

- (a) Omit “section 81,”.
- (b) Omit “subparagraph 90(1)(b)(ii),”.
- (c) Omit “, subsection 117(1)”.

**SCHEDULE 3**

**AMENDMENTS OF OTHER ACTS**

**PART 1—AMENDMENTS OF THE AUSTRALIAN CITIZENSHIP ACT 1948**

**1. Subsection 5(1) (definition of “illegal entrant”):**

Omit all the words after “force”, substitute “immediately before 1 September 1994;”.

**2. Subsection 5(1) (definition of “valid entry permit”):**

Add at the end “as in force immediately before 1 September 1994;”.

**3. Subsection 5(1) (definition of “valid permanent entry permit”):**

Add at the end “as in force immediately before 1 September 1994;”.

**4. Subsection 5(1) (definition of “valid visa”):**

Add at the end “as in force immediately before 1 September 1994;”.

**5. Subsection 5(1):**

Insert:

“‘**permanent visa**’ has the same meaning as in the *Migration Act 1958*;  
‘**special category visa**’ has the same meaning as in the *Migration Act 1958*;  
‘**special purpose visa**’ has the same meaning as in the *Migration Act 1958*;  
‘**unlawful non-citizen**’ has the same meaning as in the *Migration Act 1958*;  
‘**visa**’ has the same meaning as in the *Migration Act 1958*.”.

**6. Paragraph 5A(1)(ba):**

After “prescribed date” insert “and before 1 September 1994”.

**7. After paragraph 5A(1)(ba):**

Insert:

“(bb) in relation to a period on or after 1 September 1994 if:

(i) the person was present in Australia and held a permanent visa; or

(ii) a declaration under subsection (2) applied to the person;”.

**8. Paragraph 5A(2)(c):**

After “prescribed date” insert “but before 1 September 1994”.

**9. After paragraph 5A(2)(c):**

Insert:

“or (d) are the holders of special category visas or special purpose visas; or

**SCHEDULE 3—continued**

- (e) are, or have been, the holders of special category visas and who are either:
- (i) ordinarily resident in Australia; or
  - (ii) the spouse, widow or widower of an Australian citizen;”.

**10. After subsection 5A(5):**

Insert:

“(5A) In spite of anything in this section, if a person who has travelled to Australia by virtue of a criminal justice visa has entered Australia, the person is not to be taken, under this section, to be a permanent resident for the purpose of this Act at any time when:

- (a) the criminal justice visa is in effect; and
- (b) the person is not the holder of a permanent visa.”.

**11. Subsection 5A(6) (paragraph (b) of the definition of “statutory visitor’s visa”):**

Add at the end “and before 1 September 1994”.

**12. Subsection 5A(6):**

Insert:

“‘criminal justice visa’ has the same meaning as in the *Migration Act 1958*.”.

**13. Sub-subparagraph 10B(1)(b)(ii)(B):**

After “illegal entrant,” insert “as an unlawful non-citizen,”.

**14. Subparagraph 13(4)(b)(iv):**

After “illegal entrant,” insert “as an unlawful non-citizen,”.

**15. Paragraph 13(9)(c):**

After “who” insert “a permanent resident and”.

**16. Subparagraph 13(9)(d)(ii):**

After “is” insert “a permanent resident and”.

**17. Subsection 14(1):**

Omit “Minister” (last occurring), substitute “Minister’s”.

**18. After section 14:**

Insert:

**Deferral of consideration of application under section 13—visa liable to cancellation**

“14A.(1) If:

**SCHEDULE 3—continued**

- (a) an application is made to the Minister under section 13; and
- (b) it appears to the Minister that:
  - (i) a visa held by the applicant may be cancelled under a provision of the *Migration Act 1958* (whether or not the person has been given any notice to that effect); or
  - (ii) the person has been charged, or may be charged, with an offence under a law of the Commonwealth, a State or a Territory;

the Minister may defer consideration of the application until the end of a period determined by the Minister.

“(2) The Minister must not defer consideration of an application for a period, or for periods that in total, exceed 12 months.

“(3) If:

- (a) the Minister decides to defer consideration of an application; and
- (b) the applicant is present in Australia;

the Minister must give the applicant written notice setting out the decision.

“(4) If the Minister decides to defer consideration of an application, section 13 and subsection (1) of this section apply in relation to the application as if it had been furnished immediately before the end of that period.

“(5) Nothing in this section prevents:

- (a) an applicant from withdrawing the application; or
- (b) a person whose application under section 13 has been refused from making a further application or applications under that section.”.

**19. Subparagraph 23AA(1)(b)(iii):**

After “illegal entrant” insert “, as an unlawful non-citizen,”.

**20. Subsection 52A(2):**

Omit “subsection 13(9)”, substitute “paragraph 13(9)(a) or (b)”.

**PART 2—AMENDMENTS OF THE COMMONWEALTH  
ELECTORAL ACT 1918**

**21. Paragraph 93(7)(a):**

Omit “valid temporary entry permit”, substitute “temporary visa”.

**22. Paragraph 93(7)(b):**

Omit “illegal entrant”, substitute “unlawful non-citizen”.

**SCHEDULE 3—continued**

**PART 3—AMENDMENTS OF THE DEPARTURE TAX  
COLLECTION ACT 1978**

**23. Subsection 5(1):**

Omit “his departure”, substitute “his or her departure”.

**24. Paragraph 5(1)(b):**

Omit “he”, substitute “he or she”.

**25. Paragraph 5(1)(c):**

(a) Before “a person” insert “if the departure is before 1 September 1994—”.

(b) After “1958” insert “as in force at the time of the departure”.

**26. Paragraph 5(1)(d):**

(a) Before “a person who” insert “if the departure is before 1 September 1994—”.

(b) After “1958” insert “as in force at the time of the departure”.

**27. After paragraph 5(1)(g):**

Insert:

“(ga) a person being removed from Australia under section 54ZF of the *Migration Act 1958*; or”.

**28. Subsection 9(1):**

Omit “by him”, substitute “by the person”.

**29. Subsection 14(1):**

After “his” insert “or her”.

**PART 4—AMENDMENT OF THE FOREIGN ACQUISITIONS  
AND TAKEOVERS ACT 1975**

**30. Subsection 5A(2):**

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

**PART 5—AMENDMENTS OF THE HEALTH INSURANCE  
ACT 1973**

**31. Subsection 3(1) (paragraph (b) of the definition of “Australian resident”):**

Omit “valid permanent entry permit”, substitute “permanent visa”.

**32. Subsection 3(1) (paragraph (d) of the definition of “Australian resident”):**

After “(b)” insert “, (ba)”.

**SCHEDULE 3—continued**

**33. Subsection 3(1) (paragraph (e) of the definition of “Australian resident”):**

After “(b)” insert “, (ba)”.

**34. Subsection 3(1) (subparagraph (e)(i) of the definition of “Australian resident”):**

Omit “valid temporary entry permit”, substitute “temporary visa”.

**35. Subsection 3(1) (subparagraph (e)(ii) of the definition of “Australian resident”):**

Add at the end:

“, or for a permanent visa under that Act;”.

**36. Subsection 3(1) (subparagraph (e)(iv) of the definition of “Australian resident”):**

Omit “an entry permit that is not intended to operate as a temporary entry permit”, substitute “a permanent visa”.

**37. Subsection 3(1) (subparagraph (e)(vi) of the definition of “Australian resident”):**

Omit the subparagraph, substitute:

“(vi) an authority to work in Australia is in force; or”.

**38. Subsection 3(1) (subparagraph (e)(vii) of the definition of “Australian resident”):**

Omit “an entry permit”, substitute “a permanent visa under the *Migration Act 1958*”.

**PART 6—AMENDMENTS OF THE IMMIGRATION  
(EDUCATION) ACT 1971**

**39. Section 3 (definition of “permanent entry permit”):**

Add at the end “as in force immediately before the commencement of section 3 of the *Migration Reform Act 1992*;”.

**40. Section 3 (definition of “temporary entry permit”):**

Omit the definition.

**41. Section 3:**

Insert:

“‘permanent visa’ has the same meaning as in the Migration Act;  
‘temporary visa’ has the same meaning as in the Migration Act;”.

**42. Subparagraphs 4(b)(i) and (ii):**

Omit “entry permit”, substitute “visa”.

**SCHEDULE 3—continued**

**43. Subparagraphs 4(b)(iii) and (iv):**

After “permit” insert “or a permanent visa”.

**44. Subparagraph 4(b)(v):**

Omit the subparagraph, substitute:

“(v) are citizens of New Zealand who hold a special category visa; and”.

**45. Subparagraphs 4(c)(i) and (ii):**

Omit “entry permit”, substitute “visa”.

**46. Subparagraphs 4(c)(iii) and (iv):**

After “permit” insert “or a permanent visa”.

**PART 7—AMENDMENTS OF THE IMMIGRATION  
(EDUCATION) CHARGE ACT 1992**

**47. Subsection 3(2) (definition of “stay visa”):**

(a) After “entry permit” insert “within the meaning of the *Migration Act 1958* as in force immediately before 1 September 1994”.

(b) Omit paragraph (b), substitute:

“(b) a permanent visa.”.

**48. Paragraph 5(b):**

Omit all the words after “a notice”, substitute:

“including:

(i) a statement of the kind mentioned in paragraph 24(3)(ab) of the *Migration Act 1958* as in force immediately before 1 September 1994 or a notice under paragraph 24(6)(aa) or 34(3)(aa) of that Act as in force at that time; or

(ii) a notice including a statement of the kind mentioned in subsection 26ZEA(3) of the *Migration Act 1958*; and”.

**PART 8—AMENDMENT OF THE MIGRATION (DELAYED VISA  
APPLICATIONS) TAX ACT 1992**

**49. Subsection 5(3):**

Omit “that is not approved”, substitute “if a visa is not granted”.

**PART 9—AMENDMENTS OF THE MIGRATION (HEALTH  
SERVICES) CHARGE ACT 1991**

**50. Section 3 (definition of “entry permit”):**

Add at the end “as in force immediately before 1 September 1994;”.



**SCHEDULE 3—continued**

**51. Section 3 (definition of “visa”):**

Omit the definition.

**52. Section 3:**

Add at the end:

“(2) In this Act, unless the contrary intention appears, an expression defined for the purposes of the *Migration Act 1958* has the same meaning as in that Act.”.

**53. Paragraph 5(1)(b):**

Omit “in any other case”, substitute “if the visa or entry permit has been, or is, granted before 1 September 1994”.

**54. Subsection 5(1):**

Add at the end:

“; or (c) in any other case:

- (i) regulations made under paragraph 181(1)(h) of the *Migration Act 1958* require that an assurance of support be given in relation to the applicant in respect of the applicant seeking to enter, or remain in, Australia; and
- (ii) the Minister has given the applicant a notice including a statement of the kind mentioned in subsection 26ZEA(2) of that Act; and
- (iii) the applicant would, apart from subparagraph 26ZF(1)(iv) of that Act, be granted a visa.”.

**55. Subsection 7(2):**

Add at the end “or the Minister refuses to grant the entry permit or visa.”.

**PART 10—AMENDMENTS OF THE VETERANS’  
ENTITLEMENTS ACT 1986**

**56. Subparagraph 5G(1)(b)(ii):**

Omit “valid permanent entry permit”, substitute “permanent visa”.

**57. Sub-subparagraph 5G(1)(b)(iv)(A):**

Omit “an exempt non-citizen”, substitute “the holder of a special category visa or a special purpose visa”.

**58. Subsection 5G(1):**

Omit the note at the end of the subsection.

*Migration Legislation Amendment No. 60, 1994*

**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 (as amended by No. 59, 1989), 1980; No. 61, 1981; No. 51 (as amended by No. 165, 1984), 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 (as amended by Nos. 159 and 180, 1989) and 61, 1989; No. 37, 1990; Nos. 70, 86, 196 (as amended by No. 175, 1992) and 198, 1991; Nos. 24, 84, 85, 175, 176, 184 (as amended by No. 59, 1993), 213 (as amended by No. 59, 1993), 220 and 235, 1992; No. 59, 1993; and Nos. 14 and 20, 1994.

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

1. On the commencement of section 3 of this Act, the heading to section 54L of the *Migration Act 1958* is altered by omitting “custody” and substituting “immigration detention”.
2. On the commencement of section 3 of this Act, the heading to section 54M of the *Migration Act 1958* is altered by omitting “custody” and substituting “immigration detention”.
3. On the commencement of section 3 of this Act, the heading to section 54Q of the *Migration Act 1958* is altered by omitting “custody” and substituting “immigration detention”.
4. On the commencement of section 3 of this Act, the heading to section 54RA of the *Migration Act 1958* is altered by omitting “custody” and substituting “immigration detention”.
5. On the commencement of section 3 of this Act, the heading to section 80 of the *Migration Act 1958* is altered by omitting “secretly into Australia” and substituting “into Australia in contravention of this Act”.

[*Minister's second reading speech made in—  
Senate on 24 February 1994  
House of Representatives on 24 March 1994*]