



Migration Legislation Amendment Act (No. 5) 1995

No. 100 of 1995

An Act to amend the law relating to migration

[Assented to 15 September 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Migration Legislation Amendment Act (No. 5) 1995*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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(2) Items 2, 3, 4, 6, 7, 11 and 12 of Schedule 1 are taken to have commenced immediately after the commencement of section 83 of the *Migration Legislation Amendment Act 1994*.

Note: Section 83 of the *Migration Legislation Amendment Act 1994* commenced on 1 September 1994.

(3) Item 17 of Schedule 1 is taken to have commenced immediately after the commencement of the *Migration (Delayed Visa Applications) Tax Act 1992*.

Note: The *Migration (Delayed Visa Applications) Tax Act 1992* commenced on 1 September 1994.

(4) Subject to subsection (5), item 19 of Schedule 1 to this Act commences on the day on which this Act receives the Royal Assent.

(5) If this Act receives the Royal Assent after the day on which the *Migration Legislation Amendment Act (No. 6) 1995* receives the Royal Assent, items 19 and 20 of Schedule 1 to this Act are repealed on that day.

Schedule 1

3. The Acts specified in Schedule 1 to this Act are amended in accordance with the applicable items in that Schedule, and the other items in that Schedule have effect according to their terms.

SCHEDULE 1

Section 3

Immigration (Education) Act 1971

1. Certain persons not entitled to tuition

(1) Despite section 4C of the *Immigration (Education) Act 1971*, the Commonwealth is not obliged to provide, or arrange for the provision of, any tuition in an approved English course to a person if the person was granted a visa, whether or not after the commencement of this item, because the person satisfied paragraph 816.721(1)(a) or 818.721(1)(a) of the Migration (1993) Regulations.

(2) If, immediately before the commencement of this item, the Commonwealth had an obligation under that Act to a person covered by subitem (1), that obligation ceases at the commencement of this item.

Migration Act 1958

2. Subsection 5(1) (definition of “visa tax”):

Omit the definition.

3. Subsection 64(4):

Omit the subsection.

4. Subparagraph 65(1)(a)(iv):

Omit “any visa tax,”.

5. Section 72:

Add at the end:

“; or (c) the Minister has determined to be an eligible non-citizen.

“(2) The Minister may make a determination under paragraph (1)(c) that a non-citizen is an eligible non-citizen if:

- (a) the non-citizen was an unlawful non-citizen when he or she entered the migration zone; and
- (b) the non-citizen made a valid application for a protection visa after he or she arrived in Australia; and
- (c) the non-citizen has been in immigration detention for a period of more than 6 months after the application for a protection visa was made; and
- (d) the Minister has not made a primary decision in relation to the application for a protection visa; and
- (e) the Minister thinks that the determination would be in the public interest.

SCHEDULE 1—continued

“(3) The power to make a determination under paragraph (1)(c) may only be exercised by the Minister personally.

“(4) If the Minister makes a determination under paragraph (1)(c), he or she is to cause to be laid before each House of the Parliament a statement that:

- (a) sets out the determination; and
- (b) sets out the reasons for the determination, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.

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

- (a) the name of any non-citizen who is the subject of the determination; or
- (b) any information that may identify the non-citizen; or
- (c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person, or any information that may identify the person.

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

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

“(7) The Minister does not have a duty to consider whether to make a determination under paragraph (1)(c) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or any other person, or in any other circumstances.”.

6. Paragraph 84(3)(b):

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

7. Paragraph 222(7)(a):

Omit “deportee’s” (wherever occurring), substitute “non-citizen’s”.

8. Division 7 of Part 3 (heading):

Omit “3 years”, substitute “4 years”.

9. Subsection 333(1):

Omit “3 years”, substitute “4 years”.

Note: The heading to section 333 is altered by omitting “3 years” and substituting “4 years”.

SCHEDULE 1—continued

10. Subsection 333(4):

Omit “2 years”, substitute “3 years”.

11. Subsection 424(1):

Omit “sections 417”, substitute “sections 418”.

12. Section 451:

Omit “section 417”, substitute “section 418”.

13. Paragraph 475(2)(e):

Omit the paragraph, substitute:

“(e) a decision of the Minister not to exercise, or not to consider the exercise of, his or her power under section 48B, paragraph 72(1)(c), section 91F, 345, 351, 391, 417 or 454;”.

14. Subsection 506(3):

Omit “are to include”, substitute “may include, but are not limited to,”.

15. Subsection 506(3):

After “about” insert “any or all of the following”.

16. Subsection 506(3):

Omit “and” (wherever occurring).

17. Application of amendment of section 475:

The amendment made by item 13 applies to decisions whether made before or after the commencement of this item.

Migration (Delayed Visa Applications) Tax Act 1992

18. Repeal the Act.

19. Transitional—cancellation of debts and refunds of tax paid

(1) If, apart from this item, a person would be liable to pay an amount to the Commonwealth as a result of a debt arising under the *Migration (Delayed Visa Applications) Tax Act 1992*, the debt ceases to be payable at the commencement of this item.

(2) If a person has paid an amount of tax imposed, or purportedly imposed, by the *Migration (Delayed Visa Applications) Tax Act 1992* and the person is not entitled to a refund of that amount, the person is entitled, at the commencement of this item, to be paid by the Commonwealth an amount equal to that amount. The Consolidated Revenue Fund is appropriated for the purposes of this subsection.

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SCHEDULE 1—continued

Migration Legislation Amendment Act (No. 6) 1995

20. Section 17:

Repeal the section.

21. Section 18:

Repeal the section.

*[Minister's second reading speech made in—
House of Representatives on 11 May 1995
Senate on 29 May 1995]*