



Migration Legislation Amendment Act (No. 1) 1995

No. 110 of 1995

**An Act to amend the law relating to migration, and for
related purposes**

[Assented to 29 September 1995]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

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

(2) Schedule 2 commences on a day to be fixed by Proclamation.

(3) If Schedule 2 does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

PART 2—THE SCHEDULES OF AMENDMENTS

Schedule 1—Amendments of the *Migration Act 1958*

3. Schedule 1 makes amendments of the *Migration Act 1958*¹.

Schedule 2—Amendments of the *Immigration (Education) Act 1971*

4. Schedule 2 makes amendments of the *Immigration (Education) Act 1971*².

PART 3—TRANSITIONAL AND APPLICATION PROVISIONS

Application of certain amendments relating to Immigration Review Tribunal

5. The amendments made by items 16 to 30 (inclusive) and items 32 and 33 of Schedule 1 apply to applications for review of decisions received by the Immigration Review Tribunal on or after the day on which this section commences.

Remuneration of members of IRT affected by amendments not to be reduced below current rates

6.(1) In this section:

“**amended Act**” means the *Migration Act 1958* as in force after the commencement;

“**commencement**” means the commencement of this section;

“**full-time ordinary member rate**” means the rate at which a full-time member of the IRT (other than the Principal Member or a Senior Member) was being paid remuneration immediately before the commencement;

“**IRT**” means the Immigration Review Tribunal;

“**part-time rate**” means the rate at which a part-time member of the IRT was being paid remuneration immediately before the commencement;

“**Senior Member rate**” means the rate at which a Senior Member of the IRT was being paid remuneration immediately before the commencement.

(2) The rate of remuneration prescribed, or determined by the Remuneration Tribunal, for the purposes of section 398 of the amended Act in relation to a member of the IRT (other than the Principal Member) appointed before the commencement must not be less than:

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- (a) if, immediately before the commencement, the member was a Senior Member—the Senior Member rate; or
- (b) if, immediately before the commencement, the member was a full-time member (other than a Senior Member)—the full-time ordinary member rate; or
- (c) if, immediately before the commencement, the member was a part-time member—the part-time rate.

Remuneration of members of RRT affected by amendments not to be reduced below current rates

7.(1) In this section:

“**amended Act**” means the *Migration Act 1958* as in force after the commencement;

“**commencement**” means the commencement of this section;

“**full-time rate**” means the rate at which a full-time member of the RRT (other than the Principal Member) was being paid remuneration immediately before the commencement;

“**part-time rate**” means the rate at which a part-time member of the RRT was being paid remuneration immediately before the commencement;

“**RRT**” means the Refugee Review Tribunal.

(2) The rate of remuneration prescribed, or determined by the Remuneration Tribunal, for the purposes of section 462 of the amended Act in relation to a member of the RRT (other than the Principal Member) appointed before the commencement must not be less than:

- (a) if, immediately before the commencement, the member was a full-time member—the full-time rate; or
- (b) if, immediately before the commencement, the member was a part-time member—the part-time rate.

Prescribed number of members of Refugee Review Tribunal

8. Regulations prescribing a number for the purposes of paragraph 458(b) of the *Migration Act 1958* as in force before the commencement of this section have effect, after that commencement, as if the number were prescribed for the purposes of subsection 458(2) of that Act as amended by this Act.

Application of amendments of the *Immigration (Education) Act 1971*

9. The amendments of the *Immigration (Education) Act 1971* made by Schedule 2 apply to enrolments made on or after the day on which that Schedule commences.

SCHEDULE 1

AMENDMENTS OF THE MIGRATION ACT 1958

1. Subsection 134(1):

After “business visa” insert “(other than an established business in Australia visa, an investment-linked visa or a family member’s visa)”.

2. After subsection 134(3):

Insert:

“(3A) Subject to section 135, the Minister may cancel an investment-linked visa (other than a family member’s visa), by written notice to its holder, if the Minister is satisfied that the person, or any of the persons, who held the relevant designated investment when the visa was granted has or have ceased, for any reason, to hold that investment within 3 years of that investment being made.”.

3. Paragraph 134(4)(a):

After “subsection (1)” insert “or (3A)”.

4. Subsection 134(9):

After “subsection (1)” insert “, (3A)”.

5. Subsection 134(10) (paragraphs (a) and (b) of the definition of “business visa”):

Omit the paragraphs, substitute:

“(a) a visa included in a class of visas, being a class that:

(i) has the words ‘Business Skills’ in its title; and

(ii) is prescribed for the purposes of this paragraph; or

(b) a visa:

(i) to which a prescribed provision of the Migration Reform (Transitional Provisions) Regulations applies; and

(ii) that is of a kind prescribed for the purposes of this paragraph; or”.

6. Subsection 134(10) (paragraph (c) of the definition of “business visa”):

Omit “or” (last occurring).

7. Subsection 134(10) (paragraph (d) of the definition of “business visa”):

Omit the paragraph.

8. Subsection 134(10) (definition of “member of the family unit”):

Omit the definition, substitute:

SCHEDULE 1—continued

“ **‘member of the family unit’** has the meaning given by the regulations;”.

9. Subsection 134(10):

Insert:

“ **‘designated investment’** has the meaning given by the regulations;
‘established business in Australia visa’ means a business visa a criterion for whose grant:

(a) relates to the applicant having an established business in Australia;
or

(b) is that the applicant is a member of the family unit of the holder of a visa a criterion for whose grant is as mentioned in paragraph (a);

‘family member’s visa’ means a business visa held by a person:

(a) who is or was a member of the family unit of another person who held a business visa; and

(b) who would not have held the business visa if he or she had never been a member of the family unit of the other person;

‘investment-linked visa’ means a business visa a criterion for whose grant:

(a) relates to the holding of a designated investment; or

(b) is that the applicant is a member of the family unit of the holder of a visa a criterion for whose grant is as mentioned in paragraph (a);

‘relevant designated investment’, in relation to an investment-linked visa (other than a family member’s visa), means the designated investment that was, in deciding to grant the visa, regarded as satisfying the criterion referred to in paragraph (a) of the definition of ‘investment-linked visa’;”.

10. Subsection 135(1):

After “subsection 134(1)” insert “, (3A)”.

11. Section 136:

After “subsection 134(1)” insert “, (3A)”.

12. Subsection 289(3):

Omit “subsection 6(2)”, substitute “subparagraph 6(2)(a)(i) or 6(2)(b)(i) (whichever is relevant)”.

13. Subsection 301(2):

Omit “subsection 6(2)”, substitute “subparagraph 6(2)(a)(i) or 6(2)(b)(i) (whichever is relevant)”.

14. Section 337 (subparagraph (b)(iii) of the definition of “Part 5 reviewable decision”):

After “subsection 134(1)” insert “, (3A)”.

SCHEDULE 1—continued

15. After section 353:

Insert:

Principal Member may give directions

“353A. The Principal Member may, in writing, give directions, not inconsistent with this Act or the regulations, as to:

- (a) the operation of the Tribunal; and
- (b) the conduct of reviews by the Tribunal.”.

16. Paragraph 358(1)(a):

Omit “statutory declaration”, substitute “written statement”.

17. Paragraph 360(1)(a):

Omit the paragraph, substitute:

“(a) must give the applicant the opportunity to appear before it to give evidence and present arguments relating to the issues arising in relation to the decision under review; and”.

18. Subsection 360(2):

Omit “The”, substitute “Except as provided in paragraph (1)(a), the”.

19. Paragraph 361(1)(a):

Omit the paragraph, substitute:

“(a) that he or she is entitled to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review; and”.

20. Paragraph 361(1)(b):

Omit “subsection (2)”, substitute “subsections (2) and (2A)”.

21. After subsection 361(2):

Insert:

“(2A) The applicant may, within 7 days after being notified under subsection (1), give the Tribunal written notice that the applicant wants the Tribunal to obtain:

- (a) written evidence from a person or persons named in the notice; or
- (b) other written material relating to the issues arising in relation to the decision under review.”.

22. Subsection 361(3):

Omit the subsection, substitute:

“(3) If the Tribunal is notified by an applicant under subsection (2) or (2A), the Tribunal must have regard to the applicant’s notice but is not required to comply with it.”.

SCHEDULE 1—continued

23. After section 362:

Insert:

Applicant entitled to have access to written material before Tribunal

“362A.(1) This section applies if:

- (a) section 359 does not apply to the review of a decision; and
- (b) the Tribunal has not yet given the applicant a copy of the statement required by subsection 368(1).

“(2) The applicant, and any assistant under section 366A, are entitled, subject to sections 375A and 376, to have access to any written material, or a copy of any written material, given or produced to the Tribunal for the purposes of the review.”.

24. Subsections 363(6) and (7):

Omit the subsections.

25. After section 363:

Insert:

Tribunal does not have power to permit a person to do something he or she is not entitled to do

“363A. If a provision of this Part states that a person is not entitled to do something, or to be assisted or represented by another person, then, unless a provision expressly provides otherwise, the Tribunal does not have power to permit the person to do that thing, or to be assisted or represented by another person.”.

26. After section 366:

Insert:

Applicant may be assisted by another person while appearing before Tribunal

“366A.(1) The applicant is entitled, while appearing before the Tribunal, to have another person (the ‘assistant’) present to assist him or her.

“(2) The assistant is not entitled to present arguments to the Tribunal, or to address the Tribunal, unless the Tribunal is satisfied that, because of exceptional circumstances, the assistant should be allowed to do so.

“(3) Except as provided in this section, the applicant is not entitled, while appearing before the Tribunal, to be represented by another person.

“(4) This section does not affect the entitlement of the applicant to engage a person to assist or represent him or her otherwise than while appearing before the Tribunal.

SCHEDULE 1—continued

Other persons not to be assisted or represented while appearing before Tribunal

“366B.(1) A person, other than the applicant, is not entitled, while appearing before the Tribunal, to:

- (a) have another person present to assist him or her; or
- (b) be represented by another person.

“(2) This section does not affect the entitlement of the person to engage a person to assist or represent him or her otherwise than while appearing before the Tribunal.

Interpreters

“366C.(1) A person appearing before the Tribunal to give evidence may request the Tribunal to appoint an interpreter for the purposes of communication between the Tribunal and the person.

“(2) The Tribunal must comply with a request made by a person under subsection (1) unless it considers that the person is sufficiently proficient in English.

“(3) If the Tribunal considers that a person appearing before it to give evidence is not sufficiently proficient in English, the Tribunal must appoint an interpreter for the purposes of communication between the Tribunal and the person, even though the person has not made a request under subsection (1).

Examination and cross-examination not permitted

“366D. A person is not entitled to examine or cross-examine any person appearing before the Tribunal to give evidence.”

27. Subsection 368(1):

Omit “shall”, substitute “must, subject to paragraph 375A(2)(b),”.

28. After section 375:

Insert:

Certain information only to be disclosed to Tribunal

“375A.(1) This section applies to a document or information if the Minister:

- (a) has certified, in writing, that the disclosure, otherwise than to the Tribunal, of any matter contained in the document, or of the information, would be contrary to the public interest for any reason specified in the certificate (other than a reason set out in paragraph 375(a) or (b)); and

SCHEDULE 1—continued

(b) has included in the certificate a statement that the document or information must only be disclosed to the Tribunal.

“(2) If, pursuant to a requirement of or under this Act, the Secretary gives to the Tribunal a document or information to which this section applies:

- (a) the Secretary must notify the Tribunal in writing that this section applies to the document or information; and
- (b) the Tribunal must do all things necessary to ensure that the document or information is not disclosed to any person other than a member of the Tribunal as constituted for the purposes of the particular review.”.

29. Paragraph 376(1)(a):

Omit the paragraph, substitute:

“(a) the Minister:

- (i) has certified, in writing, that the disclosure of any matter contained in the document, or of the information, would be contrary to the public interest for any reason specified in the certificate (other than a reason set out in paragraph 375(a) or (b)) that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the matter contained in the document, or the information, should not be disclosed; and
- (ii) has not included a statement in the certificate that the document or information must only be disclosed to the Tribunal; or”.

30. Paragraph 376(1)(b):

Add at the end:

“and section 375A does not apply to the document or information”.

31. Paragraph 376(3)(b):

Add at the end “or to any other person who has given oral or written evidence to the Tribunal”.

32. Subsection 381(3):

Omit “The following material”, substitute “Subject to paragraph 375A(2)(b), the following material”.

33. Paragraph 388(a):

Omit “The Principal Member”, substitute “Subject to paragraph 375A(2)(b) of the *Migration Act 1958*, the Principal Member”.

SCHEDULE 1—continued

34. Subsection 398(1):

Omit “The Principal Member shall”, substitute “A member is to”.

35. Subsection 398(2):

Omit “the remuneration of the Principal Member”, substitute “a member’s remuneration”.

36. Subsection 398(2):

Omit “Principal Member shall be”, substitute “member is to be”.

37. Section 399:

Repeal the section.

38. Section 410:

Insert:

“ ‘Deputy Principal Member’ means the Deputy Principal Member of the Tribunal;”.

39. Paragraph 458(b):

Omit the paragraph, substitute:

“(b) a Deputy Principal Member; and

(c) such number of Senior Members and other members as are appointed in accordance with this Act.”.

40. Section 458:

Add at the end:

“(2) The total number of persons appointed under paragraphs (1)(b) and (1)(c) must not exceed the prescribed number.”.

41. Subsection 462(1):

Omit “The Principal Member”, substitute “A member”.

42. Subsection 462(1):

Omit “Principal Member” (last occurring), substitute “member”.

43. Subsection 462(2):

Omit “The Principal Member”, substitute “A member”.

44. Section 463:

Repeal the section.

SCHEDULE 1—continued

45. After subsection 469(1):

Insert:

“(1A) The Minister may appoint a person to act in the office of Deputy Principal Member:

- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Principal Member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.”.

46. Subsection 469(2):

Omit “the office”, substitute “an office”.

47. Subsection 469(3):

Omit “the office” (first occurring), substitute “an office”.

48. Subsection 469(4):

Add at the end “concerned”.

49. Paragraph 469(6)(c):

After “holder of the office” insert “concerned”.

50. Subsection 469(9) (paragraph (a) of the definition of “normal terminating event”):

After “paragraph (1)(a)” insert “or (1A)(a)”.

51. Subsection 469(9) (paragraph (b) of the definition of “normal terminating event”):

After “paragraph (1)(b)” insert “or (1A)(b)”.

SCHEDULE 2

Section 4

AMENDMENTS OF THE IMMIGRATION (EDUCATION) ACT 1971

1. Subsection 4A(1):

Omit "\$250", substitute "the applicable fee limit".

2. After subsection 4A(3):

Insert:

"(3A) The **applicable fee limit** in relation to a course that a person enrolls in during a financial year starting on or after 1 July 1995 is, subject to subsection (3B), the amount worked out under the formula:

$$\frac{\text{new CGFCE number}}{\text{base CGFCE number}} \times \$260$$

where:

'**new CGFCE number**' means the number worked out as follows:

- (a) take the first set of Commonwealth Government Final Consumption Expenditure Implicit Price Deflators to be issued by the Department of Finance after 1 January in the previous financial year;
- (b) find the number that relates to the period ending on 31 December in the previous financial year;
- (c) that number is the new CGFCE number;

'**base CGFCE number**' means the number worked out as follows:

- (a) take the first set of Commonwealth Government Final Consumption Expenditure Implicit Price Deflators to be issued by the Department of Finance after 1 January in the previous financial year;
- (b) find the number that relates to the period ending on 31 December 1993;
- (c) that number is the base CGFCE number.

"(3B) If an amount worked out under the formula in subsection (3A) is not a multiple of \$5, the amount is to be rounded as follows:

- (a) if the amount exceeds the nearest lower multiple of \$5 by \$2.50 or more—round the amount up to the nearest higher multiple of \$5;
- (b) in any other case—round the amount down to the nearest lower multiple of \$5."

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NOTES

Migration Act 1958

1. No. 62, 1958, as amended. For previous amendments, see No. 87, 1964; No. 10, 1966; Nos. 16 and 216, 1973; Nos. 37 and 91, 1976; Nos. 117 and 118, 1979; Nos. 89 and 175, 1980; No. 61, 1981; No. 51, 1982; Nos. 73 and 112, 1983; Nos. 22, 72 and 123, 1984; Nos. 71, 102 and 168, 1986; Nos. 86, 104, 133 and 141, 1987; Nos. 5, 38, 49 and 151, 1988; Nos. 59 and 61, 1989; No. 37, 1990; Nos. 70, 86, 196 and 198, 1991; Nos. 24, 84, 85, 175, 176, 184, 213, 220 and 234, 1992; No. 59, 1993; and Nos. 14, 20, 60 and 136, 1994.

Immigration (Education) Act 1971

2. No. 3, 1971, as amended. For previous amendments, see Nos. 110 and 216, 1973; No. 37, 1976; No. 76, 1986; No. 35, 1991; No. 176, 1992; and No. 60, 1994.

NOTES ABOUT SECTION HEADINGS

1. On the commencement of items 20, 21 and 22 of Schedule 1 to this Act, the heading to section 361 of the *Migration Act 1958* is altered by adding at the end “**and obtain written material**”.
2. On the commencement of items 34, 35 and 36 of Schedule 1 to this Act, the heading to section 398 of the *Migration Act 1958* is altered by omitting “**Principal Member**” and substituting “**members**”.
3. On the commencement of items 41, 42 and 43 of Schedule 1 to this Act, the heading to section 462 of the *Migration Act 1958* is altered by omitting “**Principal Member**” and substituting “**members**”.

[*Minister's second reading speech made in—
House of Representatives on 9 February 1995
Senate on 27 February 1995*]