



Migration Legislation Amendment Act (No. 1) 1997

No. 27, 1997

An Act to amend the Australian Citizenship Act 1948, the Immigration (Education) Act 1971, the Immigration (Education) Charge Act 1992, the Migration Act 1958 and the Migration (Health Services) Charge Act 1991, and for related purposes

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An Act to amend the *Australian Citizenship Act 1948*, the *Immigration (Education) Act 1971*, the *Immigration (Education) Charge Act 1992*, the *Migration Act 1958* and the *Migration (Health Services) Charge Act 1991*, and for related purposes

[Assented to 10 April 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment Act (No. 1) 1997*.

2 Commencement

- (1) Schedule 1 commences on a day to be fixed by Proclamation.
- (2) If Schedule 1 does not commence under subsection (1) within 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.
- (3) The remaining provisions of this Act commence on the day on which this Act receives the Royal Assent.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments related to visa application charge

Part 1—Amendments

Immigration (Education) Act 1971

1 Section 3 (definition of *Charge Act*)

Repeal the definition.

2 Section 3 (definition of *exempt entry permit*)

Repeal the definition.

3 Section 3 (definition of *exempt visa*)

Repeal the definition.

4 Section 3 (definition of *stay visa*)

Repeal the definition.

5 Section 3

Insert:

functional English has the same meaning as in the Migration Act.

6 Paragraph 4B(a)

Omit “stay visa that is covered by paragraph 5(a) of the Charge Act”, substitute “permanent visa”.

7 At the end of paragraph 4B(c)

Add “at the time of making the application”.

8 Paragraph 4B(d)

Repeal the paragraph, substitute:

- (d) have paid, or are exempt from paying, visa application charge under section 45A of the Migration Act; and
- (e) are not excluded from being provided with English tuition by the regulations.

9 Paragraph 4C(a)

Omit “stay visa that is covered by paragraph 5(a) of the Charge Act”, substitute “permanent visa”.

10 Paragraph 4C(b)

Omit “stay visa”, substitute “permanent visa”.

11 At the end of paragraph 4C(c)

Add “at the time of making the application”.

12 Paragraph 4C(d)

Repeal the paragraph, substitute:

- (d) has paid, or is exempt from paying, visa application charge under section 45A of the Migration Act; and
- (e) is not excluded from being provided with English tuition by the regulations; and

13 At the end of section 4C

Add:

- (f) has not previously been entitled under this Act to 510 hours of tuition in an approved English course.

14 Subsection 4D(4) (definition of *relevant visa or entry permit*)

Repeal the definition.

15 Subsection 4D(4) (definition of *visa commencement date*)

Omit “or entry permit” (wherever occurring).

16 Section 4E

Repeal the section.

17 Section 4F

Repeal the section.

Immigration (Education) Charge Act 1992

18 Paragraph 5(a)

After “1993”, insert “and before the commencement of the *Migration (Visa Application) Charge Act 1997*”.

19 After paragraph 5(a)

Insert:

- (aa) any visa application fee payable in relation to the application has been paid before the commencement of the *Migration (Visa Application) Charge Act 1997*; and

Migration Act 1958

20 Subsection 5(1) (after the definition of *visa applicant*)

Insert:

visa application charge means the charge payable under section 45A.

visa application charge limit is the amount determined under section 5 of the *Migration (Visa Application) Charge Act 1997*.

21 After section 45

Insert:

45A Visa application charge

A non-citizen who makes an application for a visa is liable to pay visa application charge if, assuming the charge were paid, the application would be a valid visa application.

45B Amount of visa application charge

- (1) The amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application.

Note: The visa application charge limit is determined under section 5 of the *Migration (Visa Application) Charge Act 1997*.

- (2) The amount prescribed in relation to an application may be nil.

45C Regulations about visa application charge

- (1) The regulations may:
 - (a) provide that visa application charge may be payable in instalments; and
 - (b) specify how those instalments are to be calculated; and
 - (c) specify when instalments are payable.
- (2) The regulations may also:
 - (a) make provision for and in relation to:
 - (i) the recovery of visa application charge in relation to visa applications; or
 - (ii) the way, including the currency, in which visa application charge is to be paid; or
 - (iii) working out how much visa application charge is to be paid; or
 - (iv) the time when visa application charge is to be paid; or
 - (v) the persons who may be paid visa application charge on behalf of the Commonwealth; or
 - (b) make provision for the remission, refund or waiver of visa application charge or an amount of visa application charge; or
 - (c) make provision for exempting persons from the payment of visa application charge or an amount of visa application charge; or
 - (d) make provision for crediting visa application charge, or an amount of visa application charge, paid in respect of one application against visa application charge payable in respect of another application.

22 After paragraph 46(1)(b)

Insert:

- (ba) subject to the regulations providing otherwise, any visa application charge that the regulations require to be paid at the time when the application is made, has been paid; and

23 At the end of section 63

Add:

- (4) The Minister is not to refuse to grant a visa after giving a notice under section 64 and before whichever of the following happens first:
- (a) the applicant pays the visa application charge; or
 - (b) the applicant tells the Minister that the applicant does not intend to pay the visa application charge; or
 - (c) the end of the period set out in the notice.

24 Subsections 64(2), (3) and (5)

Repeal the subsections, substitute:

- (2) If this section applies and an amount of visa application charge is unpaid, the Minister must give the applicant written notice stating that:
- (a) an amount of visa application charge is payable within the prescribed period; and
 - (b) subject to the regulations providing otherwise, a visa cannot be granted unless that amount is paid; and
 - (c) the Minister may refuse to grant the visa unless that amount is paid within the prescribed period.
- (3) If, in accordance with the regulations, 2 or more non-citizens apply for a visa together, the Minister may give notices under this section in the same document.

Note: The heading to section 64 is replaced by the heading “**Notice that visa application charge is payable**”.

25 Subparagraph 65(1)(a)(iv)

Repeal the subparagraph, substitute:

- (iv) any amount of visa application charge payable in relation to the application has been paid;

26 Subparagraph 504(1)(a)(iii)

Omit “for visa applications”.

27 Subparagraph 504(1)(a)(iv)

Omit “on behalf of the Commonwealth fees for visa applications”, substitute “fees on behalf of the Commonwealth”.

Migration (Health Services) Charge Act 1991

28 Subsection 5(1)

After “1991”, insert “and before the commencement of the *Migration (Visa Application) Charge Act 1997*”.

Part 2—Application and transitional

29 Application

- (1) The amendment made by item 13 of this Schedule applies in relation to applications whether made before, at or after the commencement of this item.
- (2) The remaining amendments of the *Immigration (Education) Act 1971* and the *Migration Act 1958* made by this Schedule apply in relation to applications for visas made at or after the commencement of the *Migration (Visa Application) Charge Act 1997*.

Note: Under item 30, some applications that are made before the commencement of the *Migration (Visa Application) Charge Act 1997* are taken to be made immediately after that time.

30 Transitional

If:

- (a) an application for a visa is made before the commencement of the *Migration (Visa Application) Charge Act 1997*; and
- (b) a visa application fee, or part of a visa application fee, payable under the *Migration Act 1958* in respect of the application has not been paid at that time;

then, for the purposes of the *Immigration (Education) Act 1971*, the *Migration (Health Services) Charge Act 1991* and sections 45A, 45B and 45C of the *Migration Act 1958*, the application is taken to have been made immediately after the commencement of the *Migration (Visa Application) Charge Act 1997*.

Schedule 2—Amendments related to limits on visas

Migration Act 1958

1 Subsection 5(1) (definition of *aged parent*)

Omit the definition.

2 Subsection 84(3)

Omit “, dependent child or aged parent”, substitute “or dependent child”.

3 Subsection 87(1)

Omit “, dependent child or aged parent”, substitute “or dependent child”.

Schedule 3—Amendments related to marital status

Migration Act 1958

1 At the end of the Act

Add:

507 Marital status

- (1) The *Sex Discrimination Act 1984*, to the extent that it applies to the status or condition of being married or being the de facto spouse of another person, does not operate in relation to:
 - (a) regulations, or the making of regulations, that, for the purposes of dealing with an application for a visa, specify:
 - (i) the nature and incidents of the relationship between a person and another person; or
 - (ii) the period for which a relationship of a specified kind must have existed between a person and another person; before the person is taken to be the de facto spouse of the other person; or
 - (b) the performance of any function, the exercise of any power or the fulfilment of any responsibility, in connection with the administration of any such regulation.
- (2) To avoid doubt, subsection (1) does not prevent the *Sex Discrimination Act 1984* from applying in relation to the marital status of persons making or administering regulations covered by subsection (1).

Schedule 4—Amendment of the Australian Citizenship Act 1948 and the Migration Act 1958 in relation to deprivation of citizenship

Part 1—Amendment of the Australian Citizenship Act 1948

1 At the end of subparagraph 21(1)(a)(ii)

Omit “and”, substitute “or”.

2 After subparagraph 21(1)(a)(ii)

Insert:

- (iii) in respect of a person who was granted the certificate of Australian citizenship as a result of an application for the certificate made after the commencement of this subparagraph—obtained the certificate as a result of migration-related fraud; and

3 After subsection 21(1)

Insert:

- (1A) For the purposes of subparagraph (1)(a)(iii), a person is taken to have obtained a certificate of Australian citizenship as a result of migration-related fraud if, and only if:
 - (a) at any time (including a time after the grant of the certificate) the person was convicted of an offence against section 234, 236, 243 or 244 of the *Migration Act 1958*, or section 29A, 29B or 29D of the *Crimes Act 1914*, that was committed at any time before the grant of the certificate (including a time before the making of the application); and
 - (b) the act or omission that constituted the offence was connected with the person’s entry into Australia or the grant to the person of a visa or of a permission to enter and remain in Australia.

- (1B) Subsection (1A) does not apply to a person in respect of an offence if the Minister is satisfied that the act or omission that constituted that offence was not in any way (whether directly or indirectly) material to the person becoming a permanent resident.

4 Subsection 50(2)

Omit “A prosecution”, substitute “Subject to subsection (3), a prosecution”.

5 At the end of section 50

Add:

- (3) If a person:
- (a) is an Australian citizen pursuant to a certificate of Australian citizenship; and
 - (b) made the application for the certificate after the commencement of this subsection;

a prosecution of the person for an offence against subsection (1) in connection with the person’s application for the certificate may be commenced at any time.

Part 2—Amendment of the Migration Act 1958

6 Section 492

Omit “A prosecution”, substitute “Subject to subsection (2), a prosecution”.

7 At the end of section 492

Add:

- (2) A prosecution of a person for an offence against section 234, 236, 243 or 244 that is alleged to have been committed after the commencement of this subsection may be instituted at any time.
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*[Minister’s second reading speech made in—
House of Representatives on 16 October 1996
Senate on 5 February 1997]*

(141/96)
