



Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013

No. 35, 2013

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Main amendments		4
Part 1—Amendments		4
<i>Migration Act 1958</i>		4
Part 2—Application, transitional and saving provisions		13
Schedule 2—Contingent amendments		15
<i>Migration Act 1958</i>		15



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No. 35, 2013

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

[Assented to 20 May 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Amendment (Unauthorised
Maritime Arrivals and Other Measures) Act 2013*.

Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013 No.
35, 2013 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	20 May 2013
2. Schedule 1, items 1 to 14	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 June 2013 (see F2013L00880)
3. Schedule 1, items 15 and 16	The day after this Act receives the Royal Assent.	21 May 2013
4. Schedule 1, items 17 to 62	At the same time as the provision(s) covered by table item 2.	1 June 2013
5. Schedule 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of section 69 of the <i>Maritime Powers Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	27 March 2014 (paragraph (b) applies)
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

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.

Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013 No.
35, 2013 3

Schedule 1—Main amendments

Part 1—Amendments

Migration Act 1958

1 Subsection 4(5)

Omit “offshore entry persons”, substitute “unauthorised maritime arrivals”.

2 Subsection 5(1) (note at the end of the definition of *excised offshore place*)

Repeal the note.

3 Subsection 5(1) (definition of *offshore entry person*)

Repeal the definition.

4 Subsection 5(1) (paragraphs (a) and (aa) of the definition of *transitory person*)

Omit “an offshore entry person”, substitute “a person”.

5 Subsection 5(1) (subparagraph (c)(iii) of the definition of *transitory person*)

Omit “country;”, substitute “country.”.

6 Subsection 5(1) (definition of *transitory person*)

Omit all the words after subparagraph (c)(iii) of the definition.

7 Subsection 5(1)

Insert:

unauthorised maritime arrival has the meaning given by section 5AA.

8 After section 5

Insert:

5AA Meaning of *unauthorised maritime arrival*

- (1) For the purposes of this Act, a person is an ***unauthorised maritime arrival*** if:
- (a) the person entered Australia by sea:
 - (i) at an excised offshore place at any time after the excision time for that place; or
 - (ii) at any other place at any time on or after the commencement of this section; and
 - (b) the person became an unlawful non-citizen because of that entry; and
 - (c) the person is not an excluded maritime arrival.

Entered Australia by sea

- (2) A person ***entered Australia by sea*** if:
- (a) the person entered the migration zone except on an aircraft that landed in the migration zone; or
 - (b) the person entered the migration zone as a result of being found on a ship detained under section 245F and being dealt with under paragraph 245F(9)(a); or
 - (c) the person entered the migration zone after being rescued at sea.

Excluded maritime arrival

- (3) A person is an ***excluded maritime arrival*** if the person:
- (a) is a New Zealand citizen who holds and produces a New Zealand passport that is in force; or
 - (b) is a non-citizen who holds and produces a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island; or
 - (c) is included in a prescribed class of persons.

Definitions

- (4) In this section:

aircraft has the same meaning as in section 245A.

ship has the meaning given by section 245A.

9 Subparagraphs 5A(3)(j)(ii) and (iii)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

10 Section 46A (heading)

Repeal the heading, substitute:

46A Visa applications by unauthorised maritime arrivals

11 Subsections 46A(1) and (2)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

12 Subsection 46A(2)

Omit “the person”, substitute “the unauthorised maritime arrival”.

13 Paragraphs 46A(5)(a) and (b)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

14 Subsection 46A(7)

Omit “offshore entry person” (wherever occurring), substitute “unauthorised maritime arrival”.

15 Subsection 189(2)

Omit “must detain”, substitute “may detain”.

16 Paragraph 189(3A)(a)

Repeal the paragraph, substitute:

(a) is a citizen of Papua New Guinea; and

17 Subsection 198(11)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

18 Paragraph 198AA(b)

Omit “offshore entry persons” (wherever occurring), substitute “unauthorised maritime arrivals”.

19 Section 198AD (heading)

Repeal the heading, substitute:

198AD Taking unauthorised maritime arrivals to a regional processing country

20 Subsections 198AD(1) and (2)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

21 Paragraphs 198AD(3)(a) to (c)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

22 Subparagraph 198AD(3)(c)(i)

Omit “the person”, substitute “the unauthorised maritime arrival”.

23 Subsection 198AD(4)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

24 Subsection 198AD(4)

Omit “the person” (wherever occurring), substitute “the unauthorised maritime arrival”.

25 Paragraph 198AD(4)(b)

Omit “the person’s”, substitute “the unauthorised maritime arrival’s”.

26 Subsection 198AD(5)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

27 Subsection 198AD(5)

Omit “offshore entry persons”, substitute “unauthorised maritime arrivals”.

28 Subsection 198AD(8)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

29 Subsection 198AD(8)

Omit “offshore entry persons”, substitute “unauthorised maritime arrivals”.

30 Subsections 198AD(11) and 198AE(1)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

31 After subsection 198AE(1)

Insert:

(1A) The Minister may, in writing, vary or revoke a determination made under subsection (1) if the Minister thinks that it is in the public interest to do so.

32 Subsection 198AE(2)

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

33 At the end of subsection 198AE(3)

Add “or (1A)”.

34 Subsection 198AE(4)

After “subsection (1)”, insert “or varies or revokes a determination under subsection (1A)”.

35 Paragraph 198AE(4)(a)

After “determination”, insert “, the determination as varied or the instrument of revocation”.

36 Paragraph 198AE(4)(b)

After “determination”, insert “, variation or revocation”.

37 Paragraphs 198AE(5)(a) and (b)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

38 Paragraphs 198AE(6)(a) and (b)

After “made”, insert “, varied or revoked”.

39 Subsection 198AE(7)

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

40 Subsection 198AE(7)

Omit “offshore entry person” (wherever occurring), substitute “unauthorised maritime arrival”.

41 Subsection 198AE(8)

Omit “A determination under subsection (1)”, substitute “An instrument under subsection (1) or (1A)”.

42 Sections 198AF and 198AG

Omit “offshore entry person” (wherever occurring), substitute “unauthorised maritime arrival”.

43 Section 198AH

Before “Section 198AD”, insert “(1)”.

44 Paragraph 198AH(a)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

45 Paragraph 198AH(c)

Omit “achieved); and”, substitute “achieved).”

46 Paragraphs 198AH(d) and (e)

Repeal the paragraphs.

47 At the end of section 198AH

Add:

- (2) Subsection (1) of this section applies whether or not the transitory person has been assessed to be covered by the definition of *refugee* in Article 1A of the Refugees Convention as amended by the Refugees Protocol.

47A At the end of Subdivision B of Division 8 of Part 2

Add:

198AI Ministerial report

The Minister must, as soon as practicable after 30 June in each year, cause to be laid before each House of Parliament a report setting out:

- (a) the activities conducted under the Bali Process during the year ending on 30 June; and
- (b) the steps taken in relation to people smuggling, trafficking in persons and related transnational crime to support the Regional Cooperation Framework during the year ending on 30 June; and
- (c) the progress made in relation to people smuggling, trafficking in persons and related transnational crime under the Regional Cooperation Framework during the year ending on 30 June.

198AJ Reports about unauthorised maritime arrivals

- (1) The Minister must cause to be laid before each House of the Parliament, within 15 sitting days of that House after the end of a financial year, a report on the following:
 - (a) arrangements made by regional processing countries during the financial year for unauthorised maritime arrivals who make claims for protection under the Refugees Convention as amended by the Refugees Protocol, including arrangements for:
 - (i) assessing those claims in those countries; and
 - (ii) the accommodation, health care and education of those unauthorised maritime arrivals in those countries;
 - (b) the number of those claims assessed in those countries in the financial year;
 - (c) the number of unauthorised maritime arrivals determined in those countries in the financial year to be covered by the definition of *refugee* in Article 1A of the Refugees Convention as amended by the Refugees Protocol.
- (2) However, a report under this section need deal with a particular regional processing country in accordance with subsection (1) only

so far as information provided by the country makes it reasonably practicable for the report to do so.

- (3) A report under this section must not include:
- (a) the name of a person who is or was an unauthorised maritime arrival; or
 - (b) any information that may identify such a person; or
 - (c) the name of any other person connected in any way with any person covered by paragraph (a); or
 - (d) any information that may identify that other person.

48 Sections 198C and 198D

Repeal the sections.

49 Subparagraphs 336F(3)(a)(ii) and (iii) and (4)(a)(ii) and (iii)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

50 Paragraphs 336F(5)(c) to (cc)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

51 Section 494AA (heading)

Repeal the heading, substitute:

494AA Bar on certain legal proceedings relating to unauthorised maritime arrivals

52 Paragraph 494AA(1)(a)

Omit “offshore entry by an offshore entry person”, substitute “unauthorised entry by an unauthorised maritime arrival”.

53 Paragraphs 494AA(1)(b) and (c)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

54 Paragraph 494AA(1)(c)

Omit “the person”, substitute “the unauthorised maritime arrival”.

55 Paragraph 494AA(1)(e)

Omit “offshore entry person”, substitute “unauthorised maritime arrival”.

56 Subsection 494AA(4) (definition of *ineligibility period*)

Omit “offshore”, substitute “unauthorised”.

57 Subsection 494AA(4) (definition of *offshore entry*)

Repeal the definition.

58 Subsection 494AA(4)

Insert:

unauthorised entry means an entry into Australia that occurs:

- (a) at an excised offshore place after the excision time for that place; or
- (b) at any other place on or after the commencement of section 5AA.

Part 2—Application, transitional and saving provisions

59 Definitions

In this Part:

commencement means the commencement of this item.

Migration Act means the *Migration Act 1958*.

60 Application provision—subparagraph 5AA(1)(a)(i) of the Migration Act

- (1) This item applies to an unauthorised maritime arrival who entered Australia by sea as mentioned in subparagraph 5AA(1)(a)(i) of the Migration Act, as inserted by this Schedule.
- (2) The amendments made by items 18 to 47 of this Schedule apply in relation to the unauthorised maritime arrival only if he or she entered Australia by sea as mentioned in that subparagraph on or after 13 August 2012.

61 Application provision—subsection 198AE(1A) of the Migration Act

Subsection 198AE(1A) of the Migration Act, as inserted by this Schedule, applies in relation to a determination under subsection 198AE(1) of that Act that is made before or after commencement.

61A Transitional provision—section 198AJ of the Migration Act

Section 198AJ of the Migration Act applies to the period beginning on 13 August 2012 and ending on the first 30 June after commencement as if that period were a financial year.

62 Saving provision

- (1) This item applies to:
 - (a) an authorisation (the *access authorisation*) under section 336D of the Migration Act; or
 - (b) an authorisation (the *disclosure authorisation*) under section 336F of the Migration Act;that was in force immediately before commencement.

Schedule 1 Main amendments

Part 2 Application, transitional and saving provisions

Access authorisation

- (2) The access authorisation is taken, after commencement, to authorise access to identifying information relating to unauthorised maritime arrivals to the extent that, immediately before commencement, the authorisation authorised access to identifying information relating to offshore entry persons.

Disclosure authorisation

- (3) The disclosure authorisation is taken, after commencement, to authorise the disclosure of identifying information relating to unauthorised maritime arrivals to the extent that, immediately before commencement, the authorisation authorised the disclosure of identifying information relating to offshore entry persons.

References to offshore entry person

- (4) Any reference in the access authorisation or disclosure authorisation to an offshore entry person is taken, after commencement, to be a reference to an unauthorised maritime arrival.

Schedule 2—Contingent amendments

Migration Act 1958

1 Paragraph 5AA(2)(b)

After “section 245F”, insert “(as in force before the commencement of section 69 of the *Maritime Powers Act 2013*)”.

2 Paragraph 5AA(2)(b)

After “paragraph 245F(9)(a)”, insert “(as in force before that commencement)”.

3 After paragraph 5AA(2)(b)

Insert:

- (ba) the person entered the migration zone as a result of being on a vessel detained under section 69 of the *Maritime Powers Act 2013* and being dealt with under paragraph 72(4)(a) of that Act; or

4 Subsection 5AA(4) (at the end of the definition of *ship*)

Add “(as in force before the commencement of section 69 of the *Maritime Powers Act 2013*)”.

5 Subsection 5AA(4)

Insert:

vessel has the same meaning as in the *Maritime Powers Act 2013*.

*[Minister's second reading speech made in—
House of Representatives on 31 October 2012
Senate on 5 February 2013]*

(192/12)

16 *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013*
No. 35, 2013