



Migration Amendment (Protection and Other Measures) Act 2015

No. 35, 2015

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

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

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Migration Amendment (Protection and Other Measures) Act 2015

No. 35, 2015

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

[Assented to 13 April 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Amendment (Protection and Other Measures) Act 2015*.

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.	13 April 2015
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	14 April 2015
3. Schedule 1, Part 2	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.	18 April 2015 (F2015L00541)
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	14 April 2015
9. Schedule 3	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.	18 April 2015 (F2015L00541)
10. Schedule 4	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.	18 April 2015 (F2015L00541)
11. Schedule 5	The day after this Act receives the Royal Assent.	14 April 2015

Note: This table relates only to the provisions of this Act as originally enacted.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.

- (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.

Schedule 1—Protection visas

Part 1—Amendments commencing on day after Royal Assent

Migration Act 1958

1 After section 5

Insert:

5AAA Non-citizen's responsibility in relation to protection claims

- (1) This section applies in relation to a non-citizen who claims to be a person in respect of whom Australia has protection obligations (however arising).
- (2) For the purposes of this Act, it is the responsibility of the non-citizen to specify all particulars of his or her claim to be such a person and to provide sufficient evidence to establish the claim.
- (3) The purposes of this Act include:
 - (a) the purposes of a regulation or other instrument under this Act; and
 - (b) the purposes of any administrative process that occurs in relation to:
 - (i) this Act; or
 - (ii) a regulation or instrument under this Act.
- (4) To remove doubt, the Minister does not have any responsibility or obligation to:
 - (a) specify, or assist in specifying, any particulars of the non-citizen's claim; or
 - (b) establish, or assist in establishing, the claim.

Part 2—Amendments commencing on Proclamation

Migration Act 1958

2 Subsection 5(1)

Insert:

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

3 Subparagraph 65(1)(a)(iii)

After “section 40 (circumstances when granted),”, insert “91W (evidence of identity and bogus documents), 91WA (bogus documents and destroying identity documents), 91WB (applications for protection visas by members of same family unit),”.

4 Section 91W (heading)

Repeal the heading, substitute:

91W Evidence of identity and bogus documents

5 Subsection 91W(2)

Omit “If”, substitute “The Minister must refuse to grant the protection visa to the applicant if”.

6 Paragraph 91W(2)(b)

After “request”, insert “, or produces a bogus document in response to the request”.

7 Paragraph 91W(2)(c)

After “request”, insert “, or for producing the bogus document”.

8 Paragraph 91W(2)(d)

Repeal the paragraph, substitute:

- (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.

9 Subsection 91W(2)

Omit all the words after paragraph (d).

10 At the end of section 91W

Add:

- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

11 After section 91W

Insert:

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
-

- (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

91WB Application for protection visa by member of same family unit

- (1) This section applies to a non-citizen in Australia (the *family applicant*):
 - (a) who applies for a protection visa; and
 - (b) who is a member of the same family unit as a person (the *family visa holder*) who has been granted a protection visa.
- (2) Despite anything else in this Act, the Minister must not grant the protection visa to the family applicant on the basis of a criterion mentioned in paragraph 36(2)(b) or (c) unless the family applicant applies for the protection visa before the family visa holder is granted a protection visa.

12 Section 97 (definition of *bogus document*)

Repeal the definition.

13 At the end of section 97

Add:

Note: *Bogus document* is defined in subsection 5(1).

14 After section 423

Insert:

423A How Tribunal is to deal with new claims or evidence

- (1) This section applies if, in relation to an application for review of an RRT-reviewable decision (the *primary decision*) in relation to a protection visa, the applicant:
 - (a) raises a claim that was not raised in the application before the primary decision was made; or
 - (b) presents evidence in the application that was not presented in the application before the primary decision was made.
- (2) In making a decision on the application, the Tribunal is to draw an inference unfavourable to the credibility of the claim or evidence if the Tribunal is satisfied that the applicant does not have a reasonable explanation why the claim was not raised, or the evidence was not presented, before the primary decision was made.

Part 3—Application

15 Application of amendments

- (1) Section 5AAA of the *Migration Act 1958* as amended by Part 1 of this Schedule applies to an application:
 - (a) made on or after the commencement of that Part; or
 - (b) made before the commencement of that Part but not finally determined as at the commencement of that Part.
- (2) Section 5AAA of the *Migration Act 1958* as amended by Part 1 of this Schedule also applies in relation to an administrative process:
 - (a) starting on or after the commencement of that Part; or
 - (b) starting before the commencement of that Part and not completed as at the commencement of that Part.
- (3) Sections 91W, 91WA and 91WB of the *Migration Act 1958* as amended by Part 2 of this Schedule apply to an application for a protection visa:
 - (a) made on or after the commencement of that Part; or
 - (b) made before the commencement of that Part but not finally determined as at the commencement of that Part.
- (4) Section 423A of the *Migration Act 1958* as amended by Part 2 of this Schedule applies to an application for a protection visa made on or after the commencement of Part 1 of this Schedule.

Schedule 3—Unauthorised maritime arrivals and transitory persons

Part 1—Amendments

Migration Act 1958

1 Paragraph 46A(1)(b)

Repeal the paragraph, substitute:

(b) either:

- (i) is an unlawful non-citizen; or
- (ii) holds a bridging visa or a temporary protection visa, or a temporary visa of a kind (however described) prescribed for the purposes of this subparagraph.

Note: Temporary protection visas are provided for by subsection 35A(3).

2 After subsection 46A(2)

Insert:

- (2A) A determination under subsection (2) may provide that it has effect only for the period specified in the determination and, if it does so, the determination ceases to have effect at the end of the specified period.
- (2B) The period specified in a determination may be different for different classes of unauthorised maritime arrivals.
- (2C) The Minister may, in writing, vary or revoke a determination made under subsection (2) if the Minister thinks that it is in the public interest to do so.

3 Subsection 46A(3)

After “subsection (2)”, insert “or (2C)”.

4 Subsection 46A(4)

Repeal the subsection, substitute:

- (4) If the Minister makes, varies or revokes a determination under this section, the Minister must cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination, the determination as varied or the instrument of revocation; and
 - (b) sets out the reasons for the determination, variation or revocation, referring in particular to the Minister's reasons for thinking that the Minister's actions are in the public interest.

5 Subsection 46A(7)

After "subsection (2)", insert "or (2C)".

6 Paragraph 46B(1)(b)

Repeal the paragraph, substitute:

- (b) either:
- (i) is an unlawful non-citizen; or
 - (ii) holds a bridging visa or a temporary protection visa, or a temporary visa of a kind (however described) prescribed for the purposes of this subparagraph.

Note: Temporary protection visas are provided for by subsection 35A(3).

7 After subsection 46B(2)

Insert:

- (2A) A determination under subsection (2) may provide that it has effect only for the period specified in the determination and, if it does so, the determination ceases to have effect at the end of the specified period.
- (2B) The period specified in a determination may be different for different classes of transitory persons.
- (2C) The Minister may, in writing, vary or revoke a determination made under subsection (2) if the Minister thinks that it is in the public interest to do so.

8 Subsection 46B(3)

After "subsection (2)", insert "or (2C)".

9 Subsection 46B(4)

Repeal the subsection, substitute:

- (4) If the Minister makes, varies or revokes a determination under this section, the Minister must cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination, the determination as varied or the instrument of revocation; and
 - (b) sets out the reasons for the determination, variation or revocation, referring in particular to the Minister's reasons for thinking that the Minister's actions are in the public interest.

10 Subsection 46B(7)

After "subsection (2)", insert "or (2C)".

11 Section 91H

Omit "non-citizen who holds", substitute "non-citizen (other than an unauthorised maritime arrival or a transitory person) who holds".

12 Section 91J

Before "This", insert "(1)".

13 At the end of section 91J

Add:

- (2) This Subdivision does not apply to an unauthorised maritime arrival or a transitory person.

Note: Unauthorised maritime arrivals are covered by section 46A and transitory persons are covered by section 46B.

Part 2—Application and transitional

14 Definitions

In this Part:

amended Act means the *Migration Act 1958* as in force on and after the commencement time.

commencement time means the commencement of this Schedule.

old Act means the *Migration Act 1958* as in force immediately before the commencement time.

15 Transitional arrangements for unauthorised maritime arrivals who hold or have held temporary safe haven visas

- (1) This item applies in relation to an unauthorised maritime arrival to whom Subdivision AJ of Division 3 of Part 2 of the old Act applies immediately before the commencement time.
- (2) On and after the commencement time:
 - (a) that Subdivision of the old Act ceases to apply to the unauthorised maritime arrival; and
 - (b) subject to subitem (3), section 46A of the amended Act applies in relation to an application for a visa by the unauthorised maritime arrival made on or after the commencement time.
- (3) For the purposes of subitem (2), section 46A of the amended Act applies as if each of the following classes of visa were a kind of temporary visa prescribed for the purposes of subparagraph 46A(1)(b)(ii) of the amended Act on and after the commencement time:
 - (a) a temporary safe haven visa;
 - (b) a temporary humanitarian concern visa;
 - (c) a temporary protection visa granted before 2 December 2013.

16 Transitional arrangements for transitory persons who hold or have held temporary safe haven visas

- (1) This item applies in relation to a transitory person to whom Subdivision AJ of Division 3 of Part 2 of the old Act applies immediately before the commencement time.
- (2) On and after the commencement time:
 - (a) that Subdivision of the old Act ceases to apply to the transitory person; and
 - (b) subject to subitem (3), section 46B of the amended Act applies in relation to an application for a visa by the transitory person on or after the commencement time.
- (3) For the purposes of subitem (2), section 46B of the amended Act applies as if each of the following classes of visa were a kind of temporary visa prescribed for the purposes of subparagraph 46B(1)(b)(ii) of the amended Act on and after the commencement time:
 - (a) a temporary safe haven visa;
 - (b) a temporary humanitarian concern visa;
 - (c) a temporary protection visa granted before 2 December 2013.

Schedule 4—Migration Review Tribunal and Refugee Review Tribunal

Part 1—Amendments

Migration Act 1958

1 Subsection 5(9)

After “For the purposes of this Act,”, insert “subject to subsection (9A),”.

2 Subsection 5(9A)

Omit “Without limiting subsection (9), if”, substitute “If”.

3 Section 337

Insert:

decision on a review means any of the following decisions of the Tribunal in relation to an application for review of an MRT-reviewable decision:

- (a) a decision to affirm the MRT-reviewable decision;
- (b) a decision to vary the MRT-reviewable decision;
- (c) a decision under paragraph 349(2)(c) to remit a matter in relation to the MRT-reviewable decision for reconsideration;
- (d) a decision to set the MRT-reviewable decision aside and substitute a new decision;
- (e) a decision under paragraph 362B(1C)(b) or subsection 362B(1E) to confirm a decision to dismiss the application.

4 At the end of subsection 349(2)

Add:

- ; or (e) if the applicant fails to appear—exercise a power under section 362B in relation to the dismissal or reinstatement of an application.

5 Subsection 353A(2)

Repeal the subsection, substitute:

- (2) Without limiting subsection (1), the directions may:
- (a) relate to the application of efficient processing practices in the conduct of reviews by the Tribunal; or
 - (b) set out procedures to be followed by applicants and their representatives in relation to proceedings before the Tribunal.

6 Subsection 353A(3)

After “review”, insert “(or a decision under paragraph 362B(1A)(b) or (1C)(a))”.

7 After section 353A

Insert:

353B Guidance decisions

- (1) The Principal Member may, in writing, direct that a decision (the **guidance decision**) of the Tribunal specified in the direction is to be complied with by the Tribunal in reaching a decision on a review of an MRT-reviewable decision of a kind specified in the direction.
- (2) In reaching a decision on a review of a decision of that kind, the Tribunal must comply with the guidance decision unless the Tribunal is satisfied that the facts or circumstances of the decision under review are clearly distinguishable from the facts or circumstances of the guidance decision.
- (3) However, non-compliance by the Tribunal with a guidance decision does not mean that the Tribunal’s decision on a review is an invalid decision.

8 Section 359AA

Before “If”, insert “(1)”.

9 At the end of section 359AA

Add:

- (2) A reference in this section to affirming a decision that is under review does not include a reference to the affirmation of a decision that is taken to be affirmed under subsection 362B(1F).

10 At the end of section 359A

Add:

- (5) A reference in this section to affirming a decision that is under review does not include a reference to the affirmation of a decision that is taken to be affirmed under subsection 362B(1F).

11 Subsection 362B(1)

Repeal the subsection, substitute:

Scope

- (1) This section applies if the applicant:
- (a) is invited under section 360 to appear before the Tribunal; but
 - (b) does not appear before the Tribunal on the day on which, or at the time and place at which, the applicant is scheduled to appear.

Tribunal may make a decision on the review or dismiss proceedings

- (1A) The Tribunal may:
- (a) by written statement under section 368, make a decision on the review without taking any further action to allow or enable the applicant to appear before it; or
 - (b) by written statement under section 362C, dismiss the application without any further consideration of the application or information before the Tribunal.

Note 1: Under section 368A, the Tribunal must notify the applicant of a decision on the review.

Note 2: Under section 362C, the Tribunal must notify the applicant of a decision to dismiss the application.

Reinstatement of application or confirmation of dismissal

- (1B) If the Tribunal dismisses the application, the applicant may, within 14 days after receiving notice of the decision under section 362C, apply to the Tribunal for reinstatement of the application.

Schedule 4 Migration Review Tribunal and Refugee Review Tribunal
Part 1 Amendments

Note: Section 379C sets out when a person (other than the Secretary) is taken to have received a document from the Tribunal for the purposes of this Part.

- (1C) On application for reinstatement in accordance with subsection (1B), the Tribunal must:
- (a) if it considers it appropriate to do so—reinstatement the application, and give such directions as it considers appropriate in the circumstances, by written statement under section 362C; or
 - (b) confirm the decision to dismiss the application, by written statement under section 368.

Note 1: Under section 362C, the Tribunal must notify the applicant of a decision to reinstate the application.

Note 2: Under section 368A, the Tribunal must notify the applicant of a decision to confirm the dismissal of the application.

- (1D) If the Tribunal reinstates the application:
- (a) the application is taken never to have been dismissed; and
 - (b) the Tribunal must conduct (or continue to conduct) the review accordingly.
- (1E) If the applicant fails to apply for reinstatement within the 14-day period mentioned in subsection (1B), the Tribunal must confirm the decision to dismiss the application, by written statement under section 368.
- Note: Under section 368A, the Tribunal must notify the applicant of a decision to confirm the dismissal of the application.
- (1F) If the Tribunal confirms the decision to dismiss the application, the decision under review is taken to be affirmed.
- (1G) To avoid doubt, the Tribunal cannot give a decision orally under subsection (1A), (1C) or (1E).

Other measures to deal with failure of applicant to appear

12 After section 362B

Insert:

**362C Failure to appear—Tribunal’s decisions, written statements
and notifying the applicant**

Decisions to which this section applies

- (1) This section applies in relation to the following decisions (each of which is a ***non-appearance decision***):
- (a) a decision to dismiss an application under paragraph 362B(1A)(b);
 - (b) a decision to reinstate an application under paragraph 362B(1C)(a) and to give directions (if any) under that paragraph.

Note: For similar provisions applying to a decision to confirm the dismissal of an application under section 362B, see sections 368 and 368A.

Written statement of decision

- (2) If the Tribunal makes a non-appearance decision, the Tribunal must make a written statement that:
- (a) sets out the decision; and
 - (b) sets out the reasons for the decision; and
 - (c) in the case of a decision to reinstate an application:
 - (i) sets out the findings on any material questions of fact; and
 - (ii) refers to the evidence or any other material on which the findings of fact were based; and
 - (d) records the day and time the statement is made.
- (3) A non-appearance decision is taken to have been made:
- (a) by the making of the written statement; and
 - (b) on the day, and at the time, the written statement is made.

- (4) The Tribunal has no power to vary or revoke a non-appearance decision after the day and time the written statement is made.

Note: However, if the application is reinstated, the application is taken never to have been dismissed (see subsection 362B(1D)).

Notice to applicant

- (5) The Tribunal must notify the applicant of a non-appearance decision by giving the applicant a copy of the written statement

made under subsection (2). The copy must be given to the applicant:

- (a) within 14 days after the day on which the decision is taken to have been made; and
 - (b) by one of the methods specified in section 379A.
- (6) In the case of a decision to dismiss the application, the copy of the statement must be given to the applicant together with a statement describing the effect of subsections 362B(1B) to (1F).

Notice to Secretary

- (7) A copy of the written statement made under subsection (2) must also be given to the Secretary:
- (a) within 14 days after the day on which the decision is taken to have been made; and
 - (b) by one of the methods specified in section 379B.

Validity etc. not affected by procedural irregularities

- (8) The validity of a non-appearance decision, and the operation of subsection (4), are not affected by:
- (a) a failure to record, under paragraph (2)(d), the day and time when the written statement was made; or
 - (b) a failure to comply with subsection (5), (6) or (7).

13 Subsection 368(1)

After “decision on a review”, insert “(other than an oral decision)”.

14 Paragraphs 368(1)(e) and (f)

Repeal the paragraphs, substitute:

- (e) in the case of a decision under paragraph 362B(1C)(b) or subsection 362B(1E) to confirm the dismissal of an application—indicates that under subsection 362B(1F), the decision under review is taken to be affirmed; and
- (f) records the day and time the statement is made.

15 At the end of subsection 368(1)

Add:

Note: Decisions on a review made under paragraph 362B(1A)(a) or (1C)(b), or under subsection 362B(1E), must be made by a written statement under this section. They cannot be given orally. These decisions may be made following the failure of an applicant to appear before the Tribunal.

16 Paragraph 368(4)(a)

Repeal the paragraph, substitute:

- (a) a failure to record, under paragraph (1)(f), the day and time when the written statement was made; or

17 Section 368D

Repeal the section, substitute:

368D Tribunal's decisions given orally

How and when oral decisions are taken to have been made

- (1) A decision on a review that is given orally by the Tribunal is taken to have been made, and notified to the applicant for the review, on the day and at the time the decision is given orally.

Statement in relation to oral decision

- (2) If a decision on a review is given orally, the Tribunal must:
 - (a) make an oral statement that:
 - (i) describes the decision of the Tribunal on the review; and
 - (ii) describes the reasons for the decision; and
 - (iii) describes the findings on any material questions of fact; and
 - (iv) refers to the evidence or any other material on which the findings of fact were based; and
 - (v) identifies the day and time the decision is given orally; or
 - (b) make a written statement that:
 - (i) sets out the decision of the Tribunal on the review; and
 - (ii) sets out the reasons for the decision; and
 - (iii) sets out the findings on any material questions of fact; and

- (iv) refers to the evidence or any other material on which the findings of fact were based; and
 - (v) records the day and time the decision is given orally.
- (3) The Tribunal has no power to vary or revoke the decision after the day and time the decision is given orally.

Written statement to be provided on request of applicant

- (4) If the Tribunal makes an oral statement under paragraph (2)(a) and, within the period prescribed by regulation, the applicant makes a written request for the statement to be provided in writing, the Tribunal must:
- (a) reduce the oral statement to writing; and
 - (b) within 14 days after the day the request is received by the Tribunal, give a copy of the written statement:
 - (i) to the applicant by one of the methods specified in section 379A; and
 - (ii) to the Secretary by one of the methods specified in section 379B.

Written statement to be provided on request of Minister

- (5) If the Tribunal makes an oral statement under paragraph (2)(a) and, at any time after the oral statement is made, the Minister makes a written request for the oral statement to be provided in writing, the Tribunal must:
- (a) reduce the oral statement to writing; and
 - (b) within 14 days after the day the request is received by the Tribunal, give a copy of the written statement:
 - (i) to the Secretary by one of the methods specified in section 379B; and
 - (ii) to the applicant by one of the methods specified in section 379A.

Return of documents etc.

- (6) After the Tribunal makes a statement under subsection (2), the Tribunal must:
- (a) return to the Secretary any document that the Secretary has provided in relation to the review; and
-

- (b) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

Validity etc. not affected by procedural irregularities

- (7) The validity of a decision on a review, and the operation of subsection (3), are not affected by:
 - (a) a failure to identify or record, under subsection (2), the day and time when the decision was given orally; or
 - (b) a failure to comply with subsection (4), (5) or (6).

Note: Decisions on a review made under paragraph 362B(1A)(a) or (1C)(b), or under subsection 362B(1E), must be made by a written statement under section 368. They cannot be given orally. These decisions may be made following the failure of an applicant to appear before the Tribunal.

18 Section 410

Insert:

decision on a review means any of the following decisions of the Tribunal in relation to an application for review of an RRT-reviewable decision:

- (a) a decision to affirm the RRT-reviewable decision;
- (b) a decision to vary the RRT-reviewable decision;
- (c) a decision under paragraph 415(2)(c) to remit a matter in relation to the RRT-reviewable decision for reconsideration;
- (d) a decision to set the RRT-reviewable decision aside and substitute a new decision;
- (e) a decision under paragraph 426A(1C)(b) or subsection 426A(1E) to confirm a decision to dismiss the application.

19 At the end of subsection 415(2)

Add:

- ; or (e) if the applicant fails to appear—exercise a power under section 426A in relation to the dismissal or reinstatement of an application.

20 Subsection 420A(2)

Repeal the subsection, substitute:

- (2) Without limiting subsection (1), the directions may:
 - (a) relate to the application of efficient processing practices in the conduct of reviews by the Tribunal; or
 - (b) set out procedures to be followed by applicants and their representatives in relation to proceedings before the Tribunal.

21 Subsection 420A(3)

After “review”, insert “(or a decision under paragraph 426A(1A)(b) or (1C)(a))”.

22 After section 420A

Insert:

420B Guidance decisions

- (1) The Principal Member may, in writing, direct that a decision (the *guidance decision*) of the Tribunal specified in the direction is to be complied with by the Tribunal in reaching a decision on a review of an RRT-reviewable decision of a kind specified in the direction.
- (2) In reaching a decision on a review of a decision of that kind, the Tribunal must comply with the guidance decision unless the Tribunal is satisfied that the facts or circumstances of the decision under review are clearly distinguishable from the facts or circumstances of the guidance decision.
- (3) However, non-compliance by the Tribunal with a guidance decision does not mean that the Tribunal’s decision on a review is an invalid decision.

23 Section 424AA

Before “If”, insert “(1)”.

24 At the end of section 424AA

Add:

- (2) A reference in this section to affirming a decision that is under review does not include a reference to the affirmation of a decision that is taken to be affirmed under subsection 426A(1F).

25 At the end of section 424A

Add:

- (4) A reference in this section to affirming a decision that is under review does not include a reference to the affirmation of a decision that is taken to be affirmed under subsection 426A(1F).

26 Subsection 426A(1)

Repeal the subsection, substitute:

Scope

- (1) This section applies if the applicant:
- (a) is invited under section 425 to appear before the Tribunal; but
 - (b) does not appear before the Tribunal on the day on which, or at the time and place at which, the applicant is scheduled to appear.

Tribunal may make a decision on the review or dismiss proceedings

- (1A) The Tribunal may:
- (a) by written statement under section 430, make a decision on the review without taking any further action to allow or enable the applicant to appear before it; or
 - (b) by written statement under section 426B, dismiss the application without any further consideration of the application or information before the Tribunal.

Note 1: Under section 430A, the Tribunal must notify the applicant of a decision on the review.

Note 2: Under section 426B, the Tribunal must notify the applicant of a decision to dismiss the application.

Reinstatement of application or confirmation of dismissal

- (1B) If the Tribunal dismisses the application, the applicant may, within 14 days after receiving notice of the decision under section 426B, apply to the Tribunal for reinstatement of the application.

Note: Section 441C sets out when a person (other than the Secretary) is taken to have received a document from the Tribunal for the purposes of this Part.

- (1C) On application for reinstatement in accordance with subsection (1B), the Tribunal must:
- (a) if it considers it appropriate to do so—reinstatement the application, and give such directions as it considers appropriate in the circumstances, by written statement under section 426B; or
 - (b) confirm the decision to dismiss the application, by written statement under section 430.

Note 1: Under section 426B, the Tribunal must notify the applicant of a decision to reinstate the application.

Note 2: Under section 430A, the Tribunal must notify the applicant of a decision to confirm the dismissal of the application.

- (1D) If the Tribunal reinstates the application:
- (a) the application is taken never to have been dismissed; and
 - (b) the Tribunal must conduct (or continue to conduct) the review accordingly.

- (1E) If the applicant fails to apply for reinstatement within the 14-day period mentioned in subsection (1B), the Tribunal must confirm the decision to dismiss the application, by written statement under section 430.

Note: Under section 430A, the Tribunal must notify the applicant of a decision to confirm the dismissal of the application.

- (1F) If the Tribunal confirms the decision to dismiss the application, the decision under review is taken to be affirmed.
- (1G) To avoid doubt, the Tribunal cannot give a decision orally under subsection (1A), (1C) or (1E).

Other measures to deal with failure of applicant to appear

27 After section 426A

Insert:

426B Failure to appear—Tribunal’s decisions, written statements and notifying the applicant

Decisions to which this section applies

- (1) This section applies in relation to the following decisions (each of which is a ***non-appearance decision***):
 - (a) a decision to dismiss an application under paragraph 426A(1A)(b);
 - (b) a decision to reinstate an application under paragraph 426A(1C)(a) and to give directions (if any) under that paragraph.

Note: For similar provisions applying to a decision to confirm the dismissal of an application under section 426A, see sections 430 and 430A.

Written statement of decision

- (2) If the Tribunal makes a non-appearance decision, the Tribunal must make a written statement that:
 - (a) sets out the decision; and
 - (b) sets out the reasons for the decision; and
 - (c) in the case of a decision to reinstate an application:
 - (i) sets out the findings on any material questions of fact; and
 - (ii) refers to the evidence or any other material on which the findings of fact were based; and
 - (d) records the day and time the statement is made.
- (3) A non-appearance decision is taken to have been made:
 - (a) by the making of the written statement; and
 - (b) on the day, and at the time, the written statement is made.
- (4) The Tribunal has no power to vary or revoke a non-appearance decision after the day and time the written statement is made.

Note: However, if the application is reinstated, the application is taken never to have been dismissed (see subsection 426A(1D)).

Notice to applicant

- (5) The Tribunal must notify the applicant of a non-appearance decision by giving the applicant a copy of the written statement made under subsection (2). The copy must be given to the applicant:
- (a) within 14 days after the day on which the decision is taken to have been made; and
 - (b) by one of the methods specified in section 441A.
- (6) In the case of a decision to dismiss the application, the copy of the statement must be given to the applicant together with a statement describing the effect of subsections 426A(1B) to (1F).

Notice to Secretary

- (7) A copy of the written statement made under subsection (2) must also be given to the Secretary:
- (a) within 14 days after the day on which the decision is taken to have been made; and
 - (b) by one of the methods specified in section 441B.

Validity etc. not affected by procedural irregularities

- (8) The validity of a non-appearance decision, and the operation of subsection (4), are not affected by:
- (a) a failure to record, under paragraph (2)(d), the day and time when the written statement was made; or
 - (b) a failure to comply with subsection (5), (6) or (7).

28 Subsection 430(1)

After “decision on a review”, insert “(other than an oral decision)”.

29 Paragraphs 430(1)(e) and (f)

Repeal the paragraphs, substitute:

- (e) in the case of a decision under paragraph 426A(1C)(b) or subsection 426A(1E) to confirm the dismissal of an application—indicates that under subsection 426A(1F), the decision under review is taken to be affirmed; and
-

(f) records the day and time the statement is made.

30 At the end of subsection 430(1)

Add:

Note: Decisions on a review made under paragraph 426A(1A)(a) or (1C)(b), or under subsection 426A(1E), must be made by a written statement under this section. They cannot be given orally. These decisions may be made following the failure of an applicant to appear before the Tribunal.

31 Paragraph 430(4)(a)

Repeal the paragraph, substitute:

(a) a failure to record, under paragraph (1)(f), the day and time when the written statement was made; or

32 Section 430D

Repeal the section, substitute:

430D Refugee Review Tribunal's oral decision and oral statement

How and when oral decisions are taken to have been made

(1) A decision on a review that is given orally by the Tribunal is taken to have been made, and notified to the applicant for the review, on the day and at the time the decision is given orally.

Statement in relation to oral decision

(2) If the Tribunal makes an oral decision on a review, the Tribunal must:

- (a) make an oral statement that:
 - (i) describes the decision of the Tribunal on the review; and
 - (ii) describes the reasons for the decision; and
 - (iii) describes the findings on any material questions of fact; and
 - (iv) refers to the evidence or any other material on which the findings of fact were based; and
 - (v) identifies the day and time the decision is given orally; or

- (b) make a written statement that:
 - (i) sets out the decision of the Tribunal on the review; and
 - (ii) sets out the reasons for the decision; and
 - (iii) sets out the findings on any material questions of fact; and
 - (iv) refers to the evidence or any other material on which the findings of fact were based; and
 - (v) records the day and time the decision is given orally.
- (3) The Tribunal has no power to vary or revoke the decision after the day and time the decision is given orally.

Written statement to be provided on request of applicant

- (4) If the Tribunal makes an oral statement under paragraph (2)(a) and, within the period prescribed by regulation, the applicant makes a written request for the oral statement to be provided in writing, the Tribunal must:
 - (a) reduce the oral statement to writing; and
 - (b) within 14 days after the day the request is received by the Tribunal, give a copy of the written statement:
 - (i) to the applicant by one of the methods specified in section 441A; and
 - (ii) to the Secretary by one of the methods specified in section 441B.

Written statement to be provided on request of Minister

- (5) If the Tribunal makes an oral statement under paragraph (2)(a) and, at any time after the oral statement is made, the Minister makes a written request for the oral statement to be provided in writing, the Tribunal must:
 - (a) reduce the oral statement to writing; and
 - (b) within 14 days after the day the request is received by the Tribunal, give a copy of the written statement:
 - (i) to the Secretary by one of the methods specified in section 441B; and
 - (ii) to the applicant by one of the methods specified in section 441A.

Return of documents etc.

- (6) After the Tribunal makes a statement under subsection (2), the Tribunal must:
- (a) return to the Secretary any document that the Secretary has provided in relation to the review; and
 - (b) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

Validity etc. not affected by procedural irregularities

- (7) The validity of a decision on a review, and the operation of subsection (3), are not affected by:
- (a) a failure to identify or record, under subsection (2), the day and time when the decision was given orally; or
 - (b) a failure to comply with subsection (4), (5) or (6).

Note: Decisions on a review made under paragraph 426A(1A)(a) or (1C)(b), or under subsection 426A(1E), must be made by a written statement under section 430. They cannot be given orally. These decisions may be made following the failure of an applicant to appear before the Tribunal.

33 Subsection 477(3) (paragraphs (b) and (c) of the definition of date of the migration decision)

Repeal the paragraphs, substitute:

- (b) in the case of a migration decision made by the Migration Review Tribunal—the day the decision is taken to have been made under subsection 362C(3), 368(2) or 368D(1); or
- (c) in the case of a migration decision made by the Refugee Review Tribunal—the day the decision is taken to have been made under subsection 426B(3), 430(2) or 430D(1); or

Part 2—Application

34 Application of amendments

General rule

- (1) Subject to subitem (2), the amendments of the *Migration Act 1958* made by Part 1 apply in relation to an application to the Migration Review Tribunal or the Refugee Review Tribunal for review of a decision if:
 - (a) the application is made on or after the commencement of this Schedule; or
 - (b) the application was made before the commencement of this Schedule, but a decision on the review had not been made as at the commencement of this Schedule.

Amendments relating to dismissal of Tribunal applications

- (2) The amendments of the *Migration Act 1958* made by Part 1 that are covered by subitem (3) apply in relation to an application to the Migration Review Tribunal or the Refugee Review Tribunal for review of a decision if:
 - (a) the application is made on or after the commencement of this Schedule; or
 - (b) both:
 - (i) the application was made before the commencement of this Schedule, but a decision on the review had not been made as at the commencement of this Schedule; and
 - (ii) on or after the commencement of this Schedule, the applicant is invited to appear before the Migration Review Tribunal under section 360 of that Act, or the Refugee Review Tribunal under section 425 of that Act, as the case may be, for the purposes of the review.
- (3) The following amendments of the *Migration Act 1958* made by Part 1 of this Schedule are covered by this subitem:
 - (a) amendments of sections 337, 349, 359AA, 359A, 362B, 410, 415, 424AA, 424A and 426A;
 - (b) the insertion of new sections 362C and 426B.

Schedule 5—Technical corrections

Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014

1 Subsection 2(1) (table items 6, 7, 9, 11 and 12)

Omit “*Migration Amendment (Protection and Other Measures) Act 2014*”, substitute “*Migration Amendment (Protection and Other Measures) Act 2015*”.

Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014

2 Subsection 2(1) (table items 4A, 13 and 15)

Omit “*Migration Amendment (Protection and Other Measures) Act 2014*”, substitute “*Migration Amendment (Protection and Other Measures) Act 2015*”.

3 Division 2 of Part 1 of Schedule 5 (heading)

Repeal the heading, substitute:

Division 2—Amendments if this Act commences after the Migration Amendment (Protection and Other Measures) Act 2015

4 Division 1 of Part 3 of Schedule 5 (heading)

Repeal the heading, substitute:

Division 1—Amendments if this Act commences before the Migration Amendment (Protection and Other Measures) Act 2015

*[Minister's second reading speech made in—
House of Representatives on 25 June 2014
Senate on 25 September 2014]*

(158/14)

34

Migration Amendment (Protection and Other Measures) Act 2015

No. 35, 2015