Migration Amendment (Strengthening Biometrics Integrity) Act 2015

No. 115, 2015

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

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

[*Assented to 26 August 2015*]

The Parliament of Australia enacts:

1 Short title

 This Act may be cited as the *Migration Amendment (Strengthening Biometrics Integrity) 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 |
| Provisions | 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. | 26 August 2015 |
| 2. Schedule 1 | A single day to be fixed by Proclamation.However, if the provisions 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. | 16 February 2016(F2015L02005) |

Note: This table relates only to the provisions of this Act as originally enacted.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

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Personal identifiers

Part 1—Amendments

Migration Act 1958

1 Subsection 4(3)

Repeal the subsection, substitute:

 (3) To advance its object, this Act provides for non‑citizens and citizens to be required to provide personal identifiers for the purposes of this Act or the regulations.

2 Subsection 5(4A)

Repeal the subsection.

3 After paragraph 5A(3)(f)

Insert:

 (fa) to assist in determining whether a person is an unlawful non‑citizen or a lawful non‑citizen; and

4 Section 5B

Omit “sections 40, 46, 166, 170, 175, 188 and 192”, substitute “section 257A”.

5 Paragraph 5B(b)

Before “an authorised”, insert “the Minister,”.

6 Subparagraph 5B(b)(i)

After “integrity”, insert “or quality”.

7 Subparagraph 5B(b)(ii)

Omit “identifier; or”, substitute “identifier.”.

8 Paragraph 5B(c)

Repeal the paragraph.

9 Subsections 40(3) to (5)

Repeal the subsections, substitute:

 (3) Without limiting subsection (1), the circumstances may be, or may include, that a person has complied with any requirement to provide one or more personal identifiers made under section 257A.

10 Paragraph 46(2A)(a)

Repeal the paragraph.

11 Paragraph 46(2A)(ab)

Repeal the paragraph, substitute:

 (ab) the applicant has been required to provide one or more personal identifiers under section 257A for the purposes of this subsection; and

12 Subsections 46(2AA) to (2C)

Repeal the subsections.

13 Paragraph 166(1)(a)

Omit “referred to in subsection (5)”.

14 Paragraph 166(1)(c)

After “officer”, insert “under section 257A”.

15 Paragraph 166(1)(c)

Omit “referred to in subsection (5)”.

16 Subsections 166(5), (7) and (8)

Repeal the subsections.

17 Paragraph 170(1)(a)

Omit “referred to in subsection (2A)”.

18 Paragraph 170(1)(c)

After “officer”, insert “under section 257A”.

19 Paragraph 170(1)(c)

Omit “referred to in subsection (2A)”.

20 Subsection 170(2)

Repeal the subsection, substitute:

 (2) A person is to comply with paragraphs (1)(a) and (b) in a prescribed way.

21 Subsections 170(2A), (4) and (5)

Repeal the subsections.

22 Paragraph 175(1)(a)

Omit “referred to in subsection (2A)”.

23 Paragraph 175(1)(c)

After “officer”, insert “under section 257A”.

24 Paragraph 175(1)(c)

Omit “referred to in subsection (2A)”.

25 Subsection 175(2)

Repeal the subsection, substitute:

 (2) A person is to comply with paragraphs (1)(a) and (b) in a prescribed way.

26 Subsections 175(2A), (4) and (5)

Repeal the subsections.

27 Paragraphs 188(1)(a) and (b)

Omit “referred to in subsection (4A)”.

28 Subsections 188(4) to (7)

Repeal the subsections.

29 Section 190 (heading)

Repeal the heading, substitute:

190 Non‑compliance with immigration clearance or requirement to provide personal identifier

30 Subsection 190(2)

Omit all the words after “non‑citizen”, substitute:

if, but not only if:

 (a) that person fails to provide a personal identifier, under section 257A, of a type or types prescribed; and

 (b) prescribed circumstances exist.

31 Subsections 192(2A) to (2C)

Repeal the subsections.

32 Section 192A

Repeal the section.

33 Division 13 of Part 2 (heading)

Repeal the heading, substitute:

Division 13—Examination, search, detention and identification

34 After section 257

Insert:

257A Person may be required to provide personal identifiers

 (1) Subject to subsection (3), the Minister or an officer may, in writing or orally, require a person to provide one or more personal identifiers for the purposes of this Act or the regulations.

 (2) Without limiting subsection (1), the purposes referred to in that subsection include any of the purposes referred to in subsection 5A(3).

Only citizens entering Australia etc. may be required to provide personal identifiers

 (3) If the Minister or officer knows or reasonably believes that a person is a citizen, the person must not be required to provide one or more personal identifiers under subsection (1) unless section 166, 170 or 175 applies in relation to the person.

When requirement under subsection (1) must be made

 (4) The Minister or an officer must require a person to provide one or more personal identifiers under subsection (1) if prescribed circumstances exist.

How personal identifiers must be provided

 (5) If a person is required to provide one or more personal identifiers under subsection (1), those personal identifiers must be:

 (a) provided by way of one or more identification tests carried out by an authorised officer or an authorised system; or

 (b) if another way is specified by the Minister or officer—provided in that specified way.

Note: If the types of identification tests that the authorised officer may carry out are specified under section 5D, then each identification test must be of a type so specified.

 (6) If paragraph (5)(b) applies, the person must comply with any requirements specified by the Minister or officer in providing one or more personal identifiers in the way specified under that paragraph.

Multiple requirements for personal identifiers may be made

 (7) A person may be required to provide one or more personal identifiers under subsection (1):

 (a) more than once; and

 (b) whether or not the person has previously complied with a requirement under this Act or the regulations to provide one or more personal identifiers.

Other provisions not limited or otherwise affected

 (8) This section does not limit, or otherwise affect, any other provision of this Act under which a personal identifier may be required, provided or presented.

35 Section 258

Repeal the section, substitute:

258 Minister may determine that specified persons are not to be required to provide personal identifiers etc.

 The Minister may determine, by legislative instrument, that:

 (a) a specified person, or a person included in a specified class of persons, must not be required to provide under section 257A:

 (i) any personal identifiers; or

 (ii) one or more specified kinds of personal identifiers; or

 (b) a specified person, or a person included in a specified class of persons, must not be required in specified circumstances to provide under section 257A:

 (i) any personal identifiers; or

 (ii) one or more specified kinds of personal identifiers.

36 Section 258A (heading)

Repeal the heading, substitute:

258A When detainees must not be required to provide personal identifiers under section 257A

37 Section 258A

Omit “cannot be required under section 40, 46, 166, 170, 175, 188 or 192 to provide a personal identifier”, substitute “must not be required to provide a personal identifier under section 257A”.

38 Subsection 258B(1)

Repeal the subsection, substitute:

 (1) Before an authorised officer carries out an identification test on a person for the purposes of section 257A, the authorised officer must inform the person of such matters as are prescribed.

39 Section 258C

Repeal the section.

40 Subsection 258D(1)

Omit “section 40, 46, 166, 170, 175, 188 or 192”, substitute “section 257A”.

41 Subsection 258D(2)

Omit “those sections”, substitute “section 257A”.

42 Section 258E

Omit “section 40, 46, 166, 170, 175, 188 or 192”, substitute “section 257A”.

43 Paragraph 258E(d)

Omit “test; and”, substitute “test.”.

44 Paragraph 258E(e)

Repeal the paragraph.

45 Section 258F

Repeal the section, substitute:

258F Person must not be required to provide personal identifiers in a cruel, inhuman or degrading way etc.

 For the purposes of this Act, a requirement to provide a personal identifier, or the provision of a personal identifier, in a particular way under section 257A is not of itself taken:

 (a) to be cruel, inhuman or degrading; or

 (b) to be a failure to treat a person with humanity and with respect for human dignity.

However, nothing in this Act authorises the Minister or an officer to require a person to provide a personal identifier under section 257A in a cruel, inhuman or degrading way, or in a way that fails to treat the person with humanity and with respect for human dignity.

46 Paragraph 261AA(3)(b)

Omit “that section”, substitute “section 257A”.

47 Paragraph 261AB(1)(a)

After “require”, insert “, in writing or orally,”.

48 Subsection 261AL(1)

Omit “this Act”, substitute “Division 13AA of this Part”.

49 Subsections 261AL(2) to (4)

Repeal the subsections.

50 Subsection 261AL(5)

Omit “this Act”, substitute “Division 13AA of this Part”.

51 Subsection 261AM(1)

Omit “this Act”, substitute “Division 13AA of this Part”.

52 Subsections 261AM(2) and (3)

Repeal the subsections.

53 Subsection 261AM(4)

Omit “this Act”, substitute “Division 13AA of this Part”.

54 After paragraph 495A(3)(a)

Insert:

 (aa) section 257A;

Part 2—Transitional and savings provisions

55 Transitional provision—requirement to provide personal identifiers

(1) This item applies if:

 (a) before the commencement of this item, a person was required to provide a personal identifier under:

 (i) section 46, 166, 170, 175 or 188 of the *Migration Act 1958*; or

 (ii) regulations made for the purposes of section 40 of that Act; and

 (b) immediately before that commencement, both of the following apply:

 (i) the person has not complied with the requirement;

 (ii) the period for complying with the requirement has not ended.

(2) Despite the amendments of the *Migration Act 1958* made by this Schedule, that Act continues to apply in relation to the requirement as if those amendments had not been made.

56 Transitional provision—request for an authorisation under section 192A of the *Migration Act 1958*

(1) This item applies if:

 (a) before the commencement of this item, a person requested that an authorisation be obtained under section 192A of the *Migration Act 1958*; and

 (b) immediately before that commencement, either of the following applies:

 (i) an application for the authorisation has not been made under that section;

 (ii) an application for the authorisation has been made under that section but no decision on the application has been made.

(2) Despite the repeal of section 192A of that Act by this Schedule, that section continues to apply in relation to the requested authorisation as if that repeal had not occurred.

57 Savings provision—authorisation given under section 192A of the *Migration Act 1958*

(1) This item applies to an authorisation if:

 (a) the authorisation was given under section 192A of the *Migration Act 1958*; and

 (b) the authorisation is in force immediately before the commencement of this item.

(2) After the commencement of this item, the authorisation continues in force as if section 192A of that Act had not been repealed by this Schedule.

58 Savings provision—regulations made for the purposes of subsection 258B(1) of the *Migration Act 1958*

(1) This item applies to regulations if:

 (a) the regulations were made for the purposes of subsection 258B(1) of the *Migration Act 1958*; and

 (b) the regulations were in force immediately before the commencement of this item.

(2) After the commencement of this item, the regulations continue in force (and may be dealt with) as if they had been made under that subsection as amended by this Schedule.

[*Minister’s second reading speech made in—*

*House of Representatives on 5 March 2015*

*Senate on 13 May 2015*]

(24/15)