



Migration Amendment (Giving Documents and Other Measures) Act 2023

No. 26, 2023

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 26, 2023

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

[Assented to 23 June 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Giving Documents and Other Measures) Act 2023*.

No. 26, 2023

Migration Amendment (Giving Documents and Other Measures) Act
2023

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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.	23 June 2023
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.	1 November 2023 (F2023N00438)
3. Schedule 2	The day after this Act receives the Royal Assent.	24 June 2023

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Documents

Migration Act 1958

1 Subsection 107(1)

Omit “holder a notice”, substitute “holder a written notice”.

2 After subsection 107(1B)

Insert:

(1C) The notice under subsection (1) must be given in the prescribed way.

3 At the end of section 109

Add:

- (3) If the Minister cancels a visa under subsection (1), the Minister must give the former holder of the visa a written notice that:
- (a) sets out the decision; and
 - (b) specifies the ground for the cancellation; and
 - (c) states whether the decision is reviewable under Part 5 or 7; and
 - (d) if the former holder has a right to have the decision reviewed under Part 5 or 7—states:
 - (i) that the decision can be reviewed; and
 - (ii) the time in which the application for review may be made; and
 - (iii) who can apply for the review; and
 - (iv) where the application for review can be made.
- (4) The notice under subsection (3) must be given in the prescribed way.
- (5) Failure to give notice of a decision does not affect the validity of the decision.

4 Subsection 119(1)

Omit “must notify”, substitute “must, in writing, notify”.

5 Subsections 119(2) and (3)

Repeal the subsections, substitute:

- (2) The notification under subsection (1) must be given in the prescribed way.

6 Subsection 120(2)

After “must”, insert “by written notice”.

7 Paragraph 120(2)(b)

Omit “ensure, as far as reasonably practicable, that the holder understands”, substitute “set out”.

8 Subsection 120(3)

Repeal the subsection, substitute:

- (3) The notice under subsection (2) must be given in the prescribed way.

9 Subsection 127(1)

Omit “the prescribed way”, substitute “writing”.

10 After subsection 127(2)

Insert:

- (2A) The notification under subsection (1) must be given in the prescribed way.

11 Subsection 129(1)

Before “notice”, insert “written”.

12 Section 132

Before “When,”, insert “(1)”.

13 Section 132

Omit “the prescribed way”, substitute “writing”.

14 At the end of section 132

Add:

- (2) The notification under subsection (1) must be given in the prescribed way.

15 Subsection 133E(2)

Omit “manner”, substitute “way”.

16 Paragraph 133F(3)(a)

Omit “way that the Minister considers appropriate in the circumstances”, substitute “prescribed way”.

17 Subsection 134E(1)

Before “notice”, insert “written”.

18 After subsection 134(7)

Insert:

- (7A) The notice under subsection (7) must be given in the prescribed way.

19 At the end of section 135

Add:

- (6) A notice under subsection (1) or (5) must be given in the prescribed way.

20 At the end of section 137R

Add:

- (4) A notice under subsection (1) or (3) must be given in the prescribed way.

21 After subsection 137S(1)

Insert:

- (1A) The notice under subsection (1) must be given in the prescribed way.

22 At the end of section 494A

Add:

- (5) This section does not apply to the giving of any of the following documents:
- (a) a document relating to the proposed cancellation of a visa;
 - (b) a document relating to the cancellation of a visa;
 - (c) a document relating to the revocation of the cancellation of a visa;
 - (d) a document relating to a decision not to revoke the cancellation of a visa.

Note 1: The Minister must give a person a document mentioned in this subsection in the way prescribed by the regulations for the document (see, for example, subsections 119(2), 127(2A) and 501G(3) and paragraph 504(1)(e)).

Note 2: For the giving of such a document to the person's authorised recipient, see section 494D.

23 Subsection 494C(7)

Repeal the subsection, substitute:

- (7) If:
- (a) the Minister purports to give a document to a person in accordance with a method (the *relevant method*) specified in section 494B (including in a case covered by section 494A) but makes an error in doing so; and
 - (b) the person nonetheless receives the document or a copy of it;
- then, despite the error:
- (c) the document is taken to have been given in accordance with the relevant method; and
 - (d) the person is taken to have received the document:
 - (i) at the time mentioned in this section for the relevant method; or
 - (ii) if the person can show that the person received the document at a later time—at that later time.

24 After section 494D

Insert:

494E When documents are taken to comply with content requirements

- (1) This section applies in relation to a document if:
 - (a) a provision of this Act or the regulations requires or permits the Minister to give the document to a person; and
 - (b) a provision of this Act or the regulations requires (the **content requirements**) the document to include particular information.
- (2) For the purposes of this Act or the regulations, the document is taken to comply with the content requirements if:
 - (a) there is substantial compliance with those requirements; and
 - (b) the failure to strictly comply with those requirements does not, or is not likely to, cause substantial prejudice to the person's rights (including, but not limited to, rights to seek review in connection with the matter to which the document relates).
- (3) Subsection (2) applies despite any other provision of this Act or the regulations.
- (4) Without limiting paragraph (2)(a), there may be substantial compliance with the content requirements even if there is an error, omission, misstatement or misdescription in the document.
- (5) Without limiting paragraph (2)(b), a failure by the person to:
 - (a) exercise any rights (including, but not limited to, rights to seek review) in connection with the matter to which the document relates; or
 - (b) take any other action (including, but not limited to, the making of representations) in connection with the matter to which the document relates;is not on its own to be taken to imply that the failure to strictly comply with the content requirements has caused substantial prejudice to the person's rights (including, but not limited to, rights to seek review in connection with the matter to which the document relates).

Example 1: Andrew, George and Daniel each make an application for the grant of a visa. The Minister refuses to grant each applicant the visa and gives notice of the refusal decision to each applicant. The notice states that

the applicant may make an application for review of the refusal decision within 30 days after the notice is received by the applicant.

While the notice substantially complies with the requirement in the Act to state the period within which an application for review must be made, the notice misstates the period. The correct period is 28 days after the notice is received by the applicant.

Andrew makes an application for review of the refusal decision 25 days after receiving the notice. As the misstatement in the notice does not cause substantial prejudice to Andrew's right to seek review, it is intended that subsection (2) would apply in relation to the notice given to Andrew.

George makes an application for review of the refusal decision 29 days after receiving the notice. The misstatement in the notice causes substantial prejudice to George's right to seek review as the application for review is not made within the required period but is made within the misstated period specified in the notice. It is intended that subsection (2) would not apply in relation to the notice given to George.

Daniel makes an application for review of the refusal decision 40 days after receiving the notice. The misstatement in the notice does not cause substantial prejudice to Daniel's right to seek review as the application for review is made well after the required period. It is intended that subsection (2) would apply in relation to the notice given to Daniel.

Example 2: Anne applies for a visa and has an authorised recipient under section 494D. The Minister refuses to grant Anne the visa and gives notice of the refusal decision by sending an email to the authorised recipient. The authorised recipient receives the notice and 2 days later forwards it on to Anne.

The notice states that Anne may make an application for review of the refusal decision within 21 days after the day Anne receives the notice. The notice does not explain that the effect of sections 494C and 494D is that the period of 21 days begins to run on the day after the day the notice is received by the authorised recipient, rather than by Anne.

While the notice substantially complies with the requirement in the Act to state the period within which an application for review must be made, the notice misdescribes when that period begins to run.

Anne makes an application for review of the refusal decision 35 days after receiving the notice. The misdescription in the notice does not cause substantial prejudice to Anne's right to seek review as the application for review is made well after the required period. It is intended that subsection (2) would apply in relation to the notice given to the authorised recipient.

25 Subsection 500A(10)

After “Minister must”, insert “, in writing”.

26 After subsection 500A(10)

Insert:

- (10A) If the notification under subsection (10) relates to a decision to cancel a person’s temporary safe haven visa, the notification must be given in the prescribed way.

27 Paragraph 501C(3)(a)

Omit “, in the way that the Minister considers appropriate in the circumstances”.

28 After subsection 501C(3)

Insert:

- (3A) If the notice under subsection (3) relates to an original decision to cancel a visa, the notice must be given in the prescribed way.

29 Paragraph 501CA(3)(a)

Omit “, in the way that the Minister considers appropriate in the circumstances”.

30 After subsection 501CA(3)

Insert:

- (3A) The notice under subsection (3) must be given in the prescribed way.

31 Subsection 501G(3)

Omit “manner”, substitute “way”.

32 After subsection 504(2)

Insert:

- (2A) The regulations that may be made under paragraph (1)(e) include, but are not limited to, regulations specifying circumstances in

which a document is to be taken to have been given in a specified way.

33 Application provision

The amendments made by this Schedule apply in relation to a notice, notification or document given on or after the commencement of this item.

Schedule 2—Visa applications by dual nationals etc.

Migration Act 1958

1 Subsection 5(1) (subparagraph (a)(i) of the definition of *excluded fast track review applicant*)

Omit “or 91N”.

2 Subparagraphs 46(1)(e)(v) and (vi)

Repeal the subparagraphs, substitute:

(v) section 91K (temporary safe haven visas).

3 Subdivision AK of Division 3 of Part 2

Repeal the Subdivision.

4 Subsection 198(9)

Repeal the subsection.

5 At the end of subsection 474(7)

Add:

Note: Section 91Q was repealed by the *Migration Amendment (Giving Documents and Other Measures) Act 2023*.

6 Application provision—validity of visa applications

- (1) The repeal of subparagraph 46(1)(e)(vi) and Subdivision AK of Division 3 of Part 2 of the *Migration Act 1958* by this Schedule applies in relation to the following:
- (a) an application for a visa made on or after the commencement of this item;
 - (b) an application for a visa made before the commencement of this item if, immediately before that commencement, a decision has not been made that the application is not a valid application.

Schedule 2 Visa applications by dual nationals etc.

- (2) For an application of a kind mentioned in paragraph (1)(b) of this item, subparagraph 46(1)(e)(vi) and Subdivision AK of Division 3 of Part 2 of the *Migration Act 1958* are to be taken to have been repealed immediately before the application was made.
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*[Minister's second reading speech made in—
House of Representatives on 24 May 2023
Senate on 13 June 2023]*

(68/23)

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