



Migration Amendment (Bridging Visa Conditions) Act 2023

No. 93, 2023

**An Act to amend the law relating to migration, 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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Migration Amendment (Bridging Visa Conditions) Act 2023

No. 93, 2023

An Act to amend the law relating to migration, and for related purposes

[Assented to 17 November 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Bridging Visa Conditions) Act 2023*.

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. The whole of this Act	The day after this Act receives the Royal Assent.	18 November 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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of the *Migration Regulations 1994* amended or inserted by this Act, and any other provisions of those regulations, may be amended or repealed by regulations made under the *Migration Act 1958* (see subsection 13(5) of the *Legislation Act 2003*).

Schedule 1—Amendments of the Act

Migration Act 1958

1 Subsection 5(1) (at the end of the definition of *visa period*)

Add:

Note: See subsection 68(6) for when certain bridging visas are to be taken to have ceased to be in effect otherwise than under subsection 82(3).

2 At the end of section 68

Add:

- (5) Subsection (4) does not apply in relation to a Subclass 070 (Bridging (Removal Pending)) visa (the *first visa*) for a non-citizen that ceases to be in effect under subsection 82(3) if:
- (a) the first visa ceases to be in effect under subsection 82(3) because another Subclass 070 (Bridging (Removal Pending)) visa (the *second visa*) for the non-citizen comes into effect after the commencement of this subsection; and
 - (b) at the time the second visa was granted, there was no real prospect of the removal of the non-citizen from Australia becoming practicable in the reasonably foreseeable future.
- (6) For the purposes of subparagraph (b)(ii) of the definition of *visa period* in subsection 5(1), the first visa is to be taken to have ceased to be in effect otherwise than under subsection 82(3).

Note: This means that the visa period for the first visa ends when the second visa comes into effect.

3 At the end of section 73

Add:

Note: A bridging visa may be granted to an eligible non-citizen on application, or without an application, made by the eligible non-citizen (see section 45).

4 At the end of Subdivision AF of Division 3 of Part 2

Add:

76A Cessation by operation of law of certain bridging visas etc.

- (1) This section applies if:
- (a) a non-citizen holds a Subclass 070 (Bridging (Removal Pending)) visa (the *first visa*) immediately before the commencement of this section; and
 - (b) the first visa was granted to the non-citizen without an application for the first visa being made by the non-citizen; and
 - (c) the first visa was granted during the period that:
 - (i) starts at the start of 8 November 2023; and
 - (ii) ends immediately before the commencement of this section; and
 - (d) at the time the first visa was granted, there was no real prospect of the removal of the non-citizen from Australia becoming practicable in the reasonably foreseeable future.
- (2) Despite any other provision of this Act or the regulations, the first visa ceases to be in effect immediately after the commencement of this section.

Note: The visa period for the first visa ends when it ceases to be in effect under this subsection.

- (3) Despite any other provision of this Act or the regulations:
- (a) the non-citizen is taken, immediately after the first visa ceases to be in effect under subsection (2), to have been granted another Subclass 070 (Bridging (Removal Pending)) visa (the *second visa*); and
 - (b) the second visa is taken to come into effect as soon as it is taken to be granted under paragraph (a) of this subsection.

Note: The visa period for the second visa begins when it is taken to be granted.

- (4) This Act and the regulations apply, after the commencement of this section, in relation to the second visa in the same way as they would apply in relation to a Subclass 070 (Bridging (Removal Pending)) visa granted under the regulations.
- (5) Without limiting subsection (4), the following provisions of the regulations, as in force at the time the second visa is taken to be granted under paragraph (3)(a), apply in relation to the second visa:

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- (a) a provision specifying when a Subclass 070 (Bridging (Removal Pending)) visa is in effect;
 - (b) a provision prescribing that a Subclass 070 (Bridging (Removal Pending)) visa permits the visa holder to remain in Australia;
 - (c) a provision specifying the mandatory conditions to which a Subclass 070 (Bridging (Removal Pending)) visa that is taken to be granted under paragraph (3)(a) is subject.

76B Offence relating to monitoring conditions of certain bridging visas

- (1) A person commits an offence if:
 - (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
 - (b) at the time the visa was granted, there was no real prospect of the removal of the person from Australia becoming practicable in the reasonably foreseeable future; and
 - (c) the visa is subject to a monitoring condition; and
 - (d) the person fails to comply with a requirement of the monitoring condition.

Note: Section 4K of the *Crimes Act 1914*, which deals with continuing and multiple offences, applies to this offence.

Penalty: 5 years imprisonment or 300 penalty units, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) In this section:

monitoring condition is a mandatory condition that:

- (a) requires the holder of a Subclass 070 (Bridging (Removal Pending)) visa to do any of the following things:
 - (i) to notify the Minister or Department of specified matters within a specified period or before or by a specified day;

- (ii) to report at a specified time or times, and at a specified place or in a specified manner;
 - (iii) to attend at a specified place, on a specified day and at a specified time; and
- (b) is not a prescribed condition.

76C Offence relating to requirement to remain at notified address

- (1) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
 - (b) the visa is subject to a condition requiring the person to remain, between certain times of a day, at a particular address for the person for the day; and
 - (c) the person fails to comply with the requirement of the condition.

Penalty: 5 years imprisonment or 300 penalty units, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

76D Offences relating to monitoring device and related monitoring equipment

Requirement to wear monitoring device at all times

- (1) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
 - (b) the visa is subject to a condition requiring the person to wear a monitoring device at all times; and
 - (c) the person fails to comply with the requirement of the condition.

Penalty: 5 years imprisonment or 300 penalty units, or both.

Requirement to fit a monitoring device etc.

- (2) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
 - (b) the visa is subject to a condition requiring the person to allow an authorised officer to fit, install, repair or remove:
 - (i) the person's monitoring device; or
 - (ii) any related monitoring equipment for the person's monitoring device; and
 - (c) the person fails to comply with the requirement of the condition.

Penalty: 5 years imprisonment or 300 penalty units, or both.

Requirements relating to good working order of monitoring device etc.

- (3) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
 - (b) the visa is subject to a condition requiring the person to take any specified steps, and any other reasonable steps, to ensure that the following remain in good working order:
 - (i) the person's monitoring device;
 - (ii) any related monitoring equipment for the person's monitoring device; and
 - (c) the person fails to comply with the requirement of the condition.

Penalty: 5 years imprisonment or 300 penalty units, or both.

- (4) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
 - (b) the visa is subject to a condition requiring that, if the person becomes aware that:
 - (i) the person's monitoring device is not in good working order; or

- (ii) any related monitoring equipment for the person's monitoring device is not in good working order; the person must notify an authorised officer of that as soon as practicable; and
- (c) the person fails to comply with the requirement of the condition.

Note: Section 4K of the *Crimes Act 1914*, which deals with continuing and multiple offences, applies to this offence.

Penalty: 5 years imprisonment or 300 penalty units, or both.

Exception

- (6) Subsections (1), (2), (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Definitions

- (7) In this section:

monitoring device means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

related monitoring equipment, for a monitoring device, means any electronic equipment necessary for operating the monitoring device.

76DA Mandatory 1 year imprisonment for offences

If a person is convicted of an offence against section 76B, 76C or 76D, the court must impose a sentence of imprisonment of at least 1 year.

76E Rules of natural justice do not apply to decision to grant certain bridging visas

- (1) This section applies in relation to a decision to grant a non-citizen a Subclass 070 (Bridging (Removal Pending)) visa (the ***first visa***) if:

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- (a) the first visa is subject to one or more prescribed conditions;
and
 - (b) at the time the first visa is granted, there is no real prospect of the removal of the non-citizen from Australia becoming practicable in the reasonably foreseeable future.
- (2) For the avoidance of doubt, the rules of natural justice do not apply to the making of the decision.
- (3) As soon as practicable after making the decision, the Minister must:
- (a) give the non-citizen, in the way that the Minister considers appropriate in the circumstances:
 - (i) a written notice that sets out the decision; and
 - (ii) any other prescribed information; and
 - (b) invite the person to make representations to the Minister, within the period and in the manner specified by the Minister, as to why the first visa should not be subject to one or more of the conditions prescribed for the purposes of paragraph (1)(a).
- (4) The Minister must grant the non-citizen another Subclass 070 (Bridging (Removal Pending)) visa (the ***second visa***), under a prescribed provision of the regulations, that is not subject to any one or more of the conditions prescribed for the purposes of paragraph (1)(a) if:
- (a) the non-citizen makes representations in accordance with the invitation; and
 - (b) the Minister is satisfied that the non-citizen does not pose a risk to the community.
- Note: If the Minister grants the second visa, the first visa will cease to be in effect, and the visa period for the first visa will end, on the grant of the second visa (see subsections 68(4) and (5)).
- (5) The Minister must give the non-citizen written notice of the decision and the reasons for the decision.

5 At the end of subsection 338(4)

Add:

- ; (c) a decision to not grant a non-citizen a Subclass 070 (Bridging (Removal Pending)) visa under a provision of the regulations prescribed for the purposes of subsection 76E(4) that is not subject to any one or more of the conditions prescribed for the purposes of paragraph 76E(1)(a).

6 Application provisions

- (1) Section 76B of the *Migration Act 1958*, as inserted by this Schedule, applies in relation to a Subclass 070 (Bridging (Removal Pending)) visa that is granted, or taken to have been granted, after the commencement of this item.
- (2) Sections 76C, 76D, 76DA and 76E of the *Migration Act 1958*, as inserted by this Schedule, apply in relation to a Subclass 070 (Bridging (Removal Pending)) visa that is granted after the commencement of this item.

Schedule 2—Amendments of the regulations

Part 1—Amendments

Migration Regulations 1994

1 Subregulation 2.20(1)

Omit “(17)”, substitute “(18)”.

2 At the end of regulation 2.20

Add:

- (18) This subregulation applies to a non-citizen if there is no real prospect of the removal of the non-citizen from Australia becoming practicable in the reasonably foreseeable future.

3 At the end of Division 2.5 of Part 2

Add:

2.25AB Grant of Bridging R (Class WR) visas to certain non-citizens without application

- (1) This regulation applies to a non-citizen who:
- (a) is an eligible non-citizen under subregulation 2.20(18); and
 - (b) holds a Bridging R (Class WR) visa.
- (2) Despite anything in Schedule 1 and Divisions 070.2 to 070.4 of Part 070 of Schedule 2, the Minister may grant the non-citizen another Bridging R (Class WR) visa if the Minister is satisfied that, if the visa is granted, the non-citizen will abide by the conditions to which the visa will be subject under Division 070.6 of that Part.

2.25AC Conditions not engaging offence relating to mandatory conditions

For the purposes of paragraph (b) of the definition of *monitoring condition* in subsection 76B(4) of the Act, the following conditions are prescribed:

- (a) condition 8617;

- (b) condition 8618;
- (c) condition 8619;
- (d) condition 8621.

2.25AD Matters prescribed for the purposes of section 76E of the Act

- (1) For the purposes of paragraph 76E(1)(a) of the Act, condition 8620 and condition 8621 are prescribed.
- (2) For the purposes of subsection 76E(4) of the Act, regulation 2.25AB is prescribed.

4 Subclause 050.211(2) of Schedule 2

Omit “or (17)”, substitute “, (17) or (18)”.

5 Paragraph 070.511(a) of Schedule 2

After “grant”, insert “or as soon as the visa is taken to be granted under paragraph 76A(3)(a) of the Act”.

6 Paragraph 070.511(c) of Schedule 2

Repeal the paragraph, substitute:

- (c) ceasing at the earliest of the following:
 - (i) when the Minister gives a written notice to the holder, by one of the methods specified in section 494B of the Act, stating that the Minister is satisfied that the holder’s removal from Australia is reasonably practicable;
 - (ii) when the Minister gives a written notice to the holder, by one of the methods specified in section 494B of the Act, stating that the holder has breached a condition to which the visa is subject;
 - (iii) when the Minister grants the holder another Bridging R (Class WR) visa under regulation 2.25AB.

7 Subclause 070.612(1) of Schedule 2

Repeal the subclause, substitute:

- (1) If the visa was granted under regulation 2.25AA or 2.25AB or is taken to have been granted under paragraph 76A(3)(a) of the Act, conditions 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8560, 8561, 8562, 8563, 8612, 8613, 8614, 8615, 8616, 8617, 8618, 8619, 8622 and 8623 must be imposed, in addition to any condition mentioned in clause 070.611.

8 After clause 070.612 of Schedule 2

Insert:

070.612A

- (1) If subclause (3) applies to the visa, condition 8620 must be imposed unless the Minister is satisfied that the holder does not pose a risk to the community.
- (2) If subclause (3) applies to the visa, condition 8621 must be imposed unless the Minister is satisfied that the holder does not pose a risk to the community.
- (2A) A condition imposed under subclause (1) or (2) is in addition to any other condition imposed by another provision of this Division.
- (3) This subclause applies to a visa if:
 - (a) the visa was granted under regulation 2.25AA and, at the time of grant, there was no real prospect of the removal of the holder from Australia becoming practicable in the reasonably foreseeable future; or
 - (b) the visa was granted under regulation 2.25AB.

070.612B

If the holder has been convicted of an offence involving violence or sexual assault, condition 8624 must be imposed in addition to any other condition imposed by another provision of this Division.

9 Clause 8401 of Schedule 8

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

10 Clause 8542 of Schedule 8

Repeal the clause, substitute:

8542 The holder must report in person for removal from Australia in accordance with instructions given, orally or in writing, by the Minister to the holder for the purpose of that removal.

11 Clause 8543 of Schedule 8

Omit “by Immigration”, substitute “, orally or in writing, by the Minister”.

12 Clause 8561 of Schedule 8

Omit “by the Minister to attend”, substitute “, orally or in writing, by the Minister to attend, at a specified place, on a specified day and at a specified time,”.

13 At the end of Schedule 8

Add:

8612 The holder:

- (a) must, within 5 working days of the grant, notify Immigration of the full name, and date of birth, of each person who ordinarily resides with the holder at the holder’s residential address; and
- (b) must notify Immigration of any change in the persons who ordinarily reside with the holder at the holder’s residential address within 2 working days after the change occurs.

8613 (1) The holder must obtain the Minister’s approval before commencing to perform work, or a regular organised activity, involving more than incidental contact with a minor or any other vulnerable person.

(2) Subclause (1) applies:

- (a) whether the work or activity is for reward or otherwise; and
- (b) whether or not a working with children or vulnerable people check (however described) is required in relation to the work.

8614 (1) The holder must notify Immigration of any travel interstate or overseas by the holder at least 7 working days before undertaking the travel.

- (2) If the holder does not comply with subclause (1), the holder must notify Immigration of the travel within 2 working days after departing on the travel.
- 8615 The holder:
- (a) must, within 5 working days of the grant, notify Immigration of the details of the holder's association with, or membership of, any organisation (other than an organisation formed for a purpose of engaging in communications on governmental or political matters); and
 - (b) must notify Immigration of any change in those details (including the beginning or end of any association or membership) within 2 working days after the change occurs.
- 8616 (1) The holder must notify Immigration of the details of any contact with the following within 2 working days after the contact occurs:
- (a) any individual, group or organisation that is alleged, or is known by the holder, to be engaging in criminal or other illegal activities;
 - (b) any individual, group or organisation that has previously engaged in, or has expressed an intention to engage in, criminal or other illegal activities.
- (2) Subclause (1) does not apply to:
- (a) contact in the course of attending a therapeutic or rehabilitative service; or
 - (b) contact in connection with legal proceedings or legal advice.
- 8617 The holder must notify Immigration of each of the following matters within 5 working days after the matter occurs:
- (a) the holder receives, within any period of 30 days, an amount or amounts totalling AUD10 000 or more from one or more other persons;
 - (b) the holder transfers, within any period of 30 days, an amount or amounts totalling AUD10 000 or more to one or more other persons;
 - (c) the holder's banking arrangements change.
- 8618 (1) If the holder incurs a debt or debts totalling AUD10 000 or more, the holder must notify Immigration within 5 working days after the holder incurs the debt or debts.
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Schedule 2 Amendments of the regulations
Part 1 Amendments

- (2) If the holder is declared bankrupt or otherwise experiences significant financial hardship, the holder must notify Immigration within 5 working days after the holder is so declared or the financial hardship begins, as the case may be.
- (3) The holder must notify Immigration of any significant change in relation to the holder's debts, bankruptcy or financial hardship within 5 working days after the change occurs.
- 8619 The holder must, within 7 days after receiving an oral or written request from the Minister, provide evidence of the holder's current financial circumstances.
- 8620 (1) The holder must, between 10 pm on one day and 6 am the next day or between such other times as are specified in writing by the Minister, remain at a notified address for the holder for those days.
- (2) If the Minister specifies other times for the purposes of subclause (1), the times must not be more than 8 hours apart.
- (3) In this clause:
- notified address*** for a holder for a particular day or days means any of the following:
- (a) the address notified by the holder under condition 8513 or 8550;
 - (b) an address at which the holder stays regularly because of a close personal relationship with a person at that address, and which the holder has notified to Immigration for the purposes of this paragraph;
 - (c) if, for the purposes of this paragraph, the holder notifies Immigration of an address for that day or those days no later than 12 pm on the day before that day or the earliest day of those days (as the case may be)—that address.
- 8621 (1) The holder must wear a monitoring device at all times.
- (2) The holder must allow an authorised officer to fit, install, repair or remove the following:
- (a) the holder's monitoring device;
 - (b) any related monitoring equipment for the holder's monitoring device.

- (3) The holder must take any steps specified in writing by the Minister, and any other reasonable steps, to ensure that the following remain in good working order:
- (a) the holder's monitoring device;
 - (b) any related monitoring equipment for the holder's monitoring device.

- (4) If the holder becomes aware that either of the following is not in good working order:
- (a) the holder's monitoring device;
 - (b) any related monitoring equipment for the holder's monitoring device;
- the holder must notify an authorised officer of that as soon as practicable.

- (5) In this clause:

monitoring device means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

related monitoring equipment, for a monitoring device, means any electronic equipment necessary for operating the monitoring device.

- 8622 (1) If the holder has been convicted of an offence that involves a minor or any other vulnerable person, the holder must not perform any work, or participate in any regular organised activity, involving more than incidental contact with a minor or any other vulnerable person.
- (2) Subclause (1) applies:
- (a) whether the work or activity is for reward or otherwise; and
 - (b) whether or not a working with children or vulnerable people check (however described) is required in relation to the work.
- 8623 If the holder has been convicted of an offence that involves a minor or any other vulnerable person, the holder must not go within 200 metres of a school, childcare centre or day care centre.

Schedule 2 Amendments of the regulations
Part 1 Amendments

8624 If the holder has been convicted of an offence involving violence or sexual assault, the holder must not contact, or attempt to contact, the victim of the offence or a member of the victim's family.

Part 2—Application provisions

Migration Regulations 1994

14 In the appropriate position in Schedule 13

Insert:

Part 126—Amendments made by the Migration Amendment (Bridging Visa Conditions) Act 2023

12601 Operation of amendments

The amendments of these Regulations made by Part 1 of Schedule 2 to the *Migration Amendment (Bridging Visa Conditions) Act 2023* apply in relation to a visa granted on or after the commencement of those amendments.

[*Minister's second reading speech made in—
House of Representatives on 16 November 2023
Senate on 16 November 2023*]

(214/23)
