



Migration Legislation Amendment Act (No. 1) 2008

No. 85, 2008

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

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

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Migration Legislation Amendment Act (No. 1) 2008

No. 85, 2008

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

[Assented to 15 September 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment Act (No. 1) 2008*.

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 on which this Act receives the Royal Assent.	15 September 2008
2. Schedules 1 and 2	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 3, Part 1	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
4. Schedule 3, Part 2	The day on which this Act receives the Royal Assent.	15 September 2008
5. Schedule 3, Parts 3 and 4	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
6. Schedule 4	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	on the first day after the end of that period.	
7. Schedule 5, items 1A to 16	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
8. Schedule 5, items 17 and 18	Immediately before the commencement of items 5B and 7 of Schedule 3 to the <i>Australian Citizenship (Transitionals and Consequentials) Act 2007</i> .	1 July 2007
9. Schedule 5, item 19	The day on which this Act receives the Royal Assent.	15 September 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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—Amendments relating to merits review

Migration Act 1958

1 Section 337

Insert:

Deputy Principal Member means the Deputy Principal Member of the Tribunal.

2 Subsections 354(2) and (3)

Repeal the subsections, substitute:

- (2) The following members may give a written direction about who is to constitute the Tribunal for the purpose of a particular review:
 - (a) the Principal Member;
 - (b) the Deputy Principal Member acting in accordance with guidelines under subsection (3);
 - (c) a Senior Member acting in accordance with guidelines under subsection (3).
- (3) The Principal Member may give written guidelines to the Deputy Principal Member and the Senior Members for the giving of directions about who is to constitute the Tribunal for the purpose of particular reviews.

3 After subsection 357(2)

Insert:

- (2A) If the Tribunal as constituted for the purpose of the review:
 - (a) does not include the Principal Member; and
 - (b) includes the Deputy Principal Member;the Deputy Principal Member is to preside at the review.

4 Paragraph 357(3)(a)

After “Principal Member”, insert “or the Deputy Principal Member”.

5 Subsection 357(4)

Omit “neither subsection (2) nor (3) applies”, substitute “none of subsections (2), (2A) and (3) applies”.

6 After subsection 368(1)

Insert:

- (2) A decision on a review (other than an oral decision) is taken to have been made on the date of the written statement.

7 Sections 368A to 368C

Repeal the sections, substitute:

368A Notifying parties of Tribunal’s decision (decision not given orally)

- (1) The Tribunal must notify the applicant of a decision on a review (other than an oral decision) by giving the applicant a copy of the written statement prepared under subsection 368(1). 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.
- (2) A copy of that statement 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.
- (3) A failure to comply with this section in relation to a decision on a review does not affect the validity of the decision.

8 Subsection 368D(1)

Omit “(1)” (first occurring).

Note: The heading to section 368D is replaced by the heading “**Notifying parties when Tribunal gives an oral decision**”.

9 Subsection 368D(2)

Repeal the subsection.

10 Division 8A of Part 5 (heading)

Repeal the heading, substitute:

Division 8A—Giving and receiving review documents etc.

11 At the end of section 379AA (before the note)

Insert:

Note 1: If 2 or more persons apply for a review of a decision together, a document given to a person is taken to be given to each of them, see section 379EA.

12 Section 379AA (note)

Omit “Note”, substitute “Note 2”.

13 After section 379E

Insert:

379EA Giving documents by Tribunal—combined applications

If 2 or more persons apply for a review of a decision together, documents given to any of them in connection with the review are taken to be given to each of them.

Note 1: If the Tribunal gives a person a document by a method specified in section 379A, the person is taken to have received the document at the time specified in section 379C in respect of that method.

Note 2: Section 379G deals with giving documents to a person’s authorised recipient.

14 After paragraph 395(a)

Insert:

(aa) if a person is appointed as a Deputy Principal Member—a Deputy Principal Member; and

15 Subsection 396(1)

Omit “The”, substitute “Subject to subsection (1A), the”.

16 After subsection 396(1)

Insert:

(1A) The Governor-General may appoint a person as the Deputy Principal Member.

17 Subsection 404(9) (definition of *senior office*)

Repeal the definition, substitute:

senior office means:

- (a) the office of Principal Member; or
- (b) the office of Deputy Principal Member; or
- (c) an office of Senior Member.

18 Section 405

After “delegate to”, insert “the Deputy Principal Member or”.

19 After subsection 430(1)

Insert:

- (2) A decision on a review (other than an oral decision) is taken to have been made on the date of the written statement.

20 Sections 430A to 430C

Repeal the sections, substitute:

430A Notifying parties of Tribunal’s decision (decision not given orally)

- (1) The Tribunal must notify the applicant of a decision on a review (other than an oral decision) by giving the applicant a copy of the written statement prepared under subsection 430(1). 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.
- (2) A copy of that statement 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.
- (3) A failure to comply with this section in relation to a decision on a review does not affect the validity of the decision.

21 Subsection 430D(1)

Omit “(1)” (first occurring).

Note: The heading to section 430D is replaced by the heading “**Notifying parties when Tribunal gives an oral decision**”.

22 Subsection 430D(2)

Repeal the subsection.

23 Division 7A of Part 7 (heading)

Repeal the heading, substitute:

Division 7A—Giving and receiving review documents etc.

24 At the end of section 441AA (before the note)

Insert:

Note 1: If 2 or more persons apply for a review of a decision together, a document given to a person is taken to be given to each of them, see section 441EA.

25 Section 441AA (note)

Omit “Note”, substitute “Note 2”.

26 After section 441E

Insert:

441EA Giving documents by Tribunal—combined applications

If 2 or more persons apply for a review of a decision together, documents given to any of them in connection with the review are taken to be given to each of them.

Note 1: If the Tribunal gives a person a document by a method specified in section 441A, the person is taken to have received the document at the time specified in section 441C in respect of that method.

Note 2: Section 441G deals with giving documents to a person’s authorised recipient.

27 Paragraph 458(1)(b)

Repeal the paragraph, substitute:

(b) if a person is appointed as a Deputy Principal Member—a Deputy Principal Member; and

28 Subsection 459(1)

Omit “The”, substitute “Subject to subsection (1A), the”.

29 After subsection 459(1)

Insert:

- (1A) The Governor-General may appoint a person as the Deputy Principal Member.

36 Section 486AB

Omit “subsection 486A(1)”, substitute “section 486A”.

37 Application

- (1) The amendments made by items 6 and 7 of this Schedule apply in relation to a decision on a review if:
- (a) before the day on which those items commence, written notice of the day on which, and the time and place at which, the decision on the review is to be handed down has not been given by the Migration Review Tribunal to the applicant and the Secretary; or
 - (b) the decision on the review is made on or after the day on which those items commence.

Note: For a transitional provision, see item 38.

- (2) The amendments made by items 13 and 26 of this Schedule apply in respect of:
- (a) an application for a review of a decision that is made before the day on which those items commence, if the application has not been decided before that day; and
 - (b) an application for a review of a decision that is made on or after the day on which those items commence.
- (3) The amendments made by items 19 and 20 of this Schedule apply in relation to a decision on a review if:
- (a) before the day on which those items commence, written notice of the day on which, and the time and place at which, the decision on the review is to be handed down has not been given by the Refugee Review Tribunal to the applicant and the Secretary; or
 - (b) the decision on the review is made on or after the day on which those items commence.

Note: For a transitional provision, see item 39.

38 Transitional provision—handing down of decisions by Migration Review Tribunal

- (1) This item applies if, before the day on which items 6 and 7 of this Schedule commence, written notice of the day on which, and the time and place at which, a decision on a review is to be handed down is given by the Migration Review Tribunal to the applicant and the Secretary under section 368A of the *Migration Act 1958*.
- (2) Despite the amendment of section 368 of that Act made by item 6 of this Schedule and the repeal of sections 368A to 368C of that Act made by item 7 of this Schedule, those sections continue to apply, after the day on which those items commence, in relation to the decision on the review.

39 Transitional provision—handing down of decisions by Refugee Review Tribunal

- (1) This item applies if, before the day on which items 19 and 20 of this Schedule commence, written notice of the day on which, and the time and place at which, a decision on a review is to be handed down is given by the Refugee Review Tribunal to the applicant and the Secretary under section 430A of the *Migration Act 1958*.
- (2) Despite the amendment of section 430 of that Act made by item 19 of this Schedule and the repeal of sections 430A to 430C of that Act made by item 20 of this Schedule, those sections continue to apply, after the day on which those items commence, in relation to the decision on the review.

40 Transitional provision—appointment of Deputy Principal Member of the Refugee Review Tribunal

The person holding office as the Deputy Principal Member of the Refugee Review Tribunal under section 459 of the *Migration Act 1958*, as in force immediately before the commencement of items 28 and 29 of this Schedule, is taken to have been duly appointed as the Deputy Principal Member of the Refugee Review Tribunal by the Governor-General under section 459 of that Act, as amended by this Schedule, for the balance of the person's term of appointment that remained immediately before the day on which those items commence.

Schedule 2—Amendments relating to border protection

Part 1—Special purpose visas

Migration Act 1958

1 Subsection 33(5)

Omit “the end of the earlier or earliest of the following days”, substitute “the earliest of the following times”.

2 Subparagraphs 33(5)(a)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) if the non-citizen ceases to have a prescribed status—the end of the day on which the non-citizen so ceases; or
- (ii) if the non-citizen ceases to be a member of a class of persons that has a prescribed status—the end of the day on which the non-citizen so ceases; or

3 Subparagraphs 33(5)(b)(i) to (iv)

Repeal the subparagraphs, substitute:

- (i) if a day is specified in the declaration as the day the visa ceases to be in effect—the end of that day; or
- (ii) if an event is specified in the declaration as the event that causes the visa to cease to be in effect—the end of the day on which the event happens; or
- (iii) if the non-citizen ceases to be a member of a class of persons specified in the declaration—the end of the day on which the non-citizen so ceases; or
- (iv) if the declaration is revoked—the end of the day of the revocation; or

Part 2—Reporting on passengers and crew of aircraft and ships

Customs Act 1901

4 Subsection 64ACA(1)

Omit “the passengers”, substitute “each passenger”.

5 Subsection 64ACB(1)

Omit “the crew”, substitute “each member of the crew”.

6 Paragraph 64ACC(1)(a)

Omit “particular passengers or crew”, substitute “a particular passenger or member of the crew”.

7 Paragraph 64ACC(1)(b)

Omit “those passengers or crew”, substitute “that passenger or member of the crew”.

8 Subsection 64ACC(2) (note)

Omit “a complete report under this Act is required (even if some of the same passengers or crew are still on board)”, substitute “a report under this Act is required”.

8A At the end of section 64ACD

Add:

- (4) An operator of an aircraft or ship commits a separate offence under subsection (1) or (2) in relation to each passenger or member of the crew in relation to whom the operator contravenes section 64ACA or 64ACB.

9 Application—amendments to the *Customs Act 1901*

The amendments of the *Customs Act 1901* made by this Part apply in relation to arrivals on or after the commencement of this item at an airport or port in Australia.

Migration Act 1958

10 After subsection 245J(2)

Insert:

- (2A) The information about passengers or crew that is to be reported by a system must be about:
- (a) if the system is for reporting on passengers—passengers individually; or
 - (b) if the system is for reporting on crew—members of the crew individually; or
 - (c) if the system is for reporting on both passengers and crew—passengers individually and members of the crew individually.

11 After subsection 245K(1)

Insert:

- (1A) The information about passengers or crew that is to be reported by a system must be about:
- (a) if the system is for reporting on passengers—passengers individually; or
 - (b) if the system is for reporting on crew—members of the crew individually; or
 - (c) if the system is for reporting on both passengers and crew—passengers individually and members of the crew individually.

12 Paragraph 245L(2)(a)

Omit “the passengers”, substitute “each passenger”.

13 Paragraph 245L(2)(b)

Omit “the crew”, substitute “each member of the crew”.

14 Subsection 245L(5)

Repeal the subsection, substitute:

Deadline for reporting—ships

- (5) A report on passengers or crew on a ship must be given not later than:
- (a) the start of the prescribed period before the ship's estimated time of arrival; or
 - (b) if the journey is of a kind described in regulations made for the purposes of this paragraph—the start of the shorter period specified in those regulations before the ship's estimated time of arrival.
- (5A) Regulations made for the purposes of paragraph (5)(b) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

15 Application—amendments to section 245L

Subject to the regulations, the amendments of section 245L of the *Migration Act 1958* made by this Part apply in relation to journeys begun on or after the commencement of this item.

16 At the end of subsection 245N(2)

Add:

Note: See also paragraph 504(1)(jaa) (which deals with the payment of a penalty as an alternative to prosecution).

16A At the end of section 245N

Add:

- (4) An operator of an aircraft or ship commits a separate offence under subsection (1) or (2) in relation to each passenger or member of the crew in relation to whom the operator contravenes subsection 245L(2).

17 After paragraph 504(1)(j)

Insert:

- (jaa) enabling a person who is alleged to have committed an offence against subsection 245N(2) to pay to the Commonwealth, as an alternative to prosecution, a prescribed penalty, not exceeding 10 penalty units; and

Part 3—Round trip cruises

Migration Act 1958

18 Section 169

Before “If:”, insert “(1)”.

Note: The heading to section 169 is altered by inserting “to” after “usually”.

19 At the end of section 169

Add:

International passenger cruise ships

- (2) However, subsection (1) does not apply if the person goes outside the migration zone on an international passenger cruise ship (see subsection (4)).

Note: The effect of this subsection is that people on international passenger cruise ships are required to be immigration cleared under section 166 (unless the Minister or Secretary determines otherwise under subsection (3) of this section).

- (3) However, the Minister or Secretary may, in writing, determine that, despite subsection (2), subsection (1) does apply to a class of persons that includes the person.
- (4) In this section, a ship is an *international passenger cruise ship* if:
- (a) the ship has sleeping facilities for at least 100 persons (other than crew members); and
 - (b) the ship is being used to provide a service of sea transportation of persons from a place outside Australia to a port in Australia; and
 - (c) that service:
 - (i) is provided in return for a fee payable by persons using the service; and
 - (ii) is available to the general public.
- (5) A determination made under subsection (3) is not a legislative instrument.

20 Application

The amendments made by items 18 and 19 of this Schedule apply in relation to persons who go outside the migration zone on or after the commencement of those items.

Part 4—Enforcement visas

Migration Act 1958

21 Subsection 31(2)

After “, 38”, insert “, 38A”.

22 Subsection 31(3)

Omit “or 38”, substitute “, 38 or 38A”.

Schedule 3—Amendments relating to visa integrity

Part 1—Immigration clearance status of non-citizen children born in Australia

Migration Act 1958

1 After paragraph 172(1)(b)

Insert:

(ba) the person:

- (i) enters Australia by virtue of the operation of section 10; and
- (ii) at the time of the person's birth, had at least one parent who was immigration cleared on his or her last entry into Australia; or

2 Application

The amendment made by item 1 of this Schedule applies to a non-citizen child born in Australia on or after 1 September 1994.

3 At the end of subsection 172(1)

Add:

; or (d) the person is in a prescribed class of persons.

4 Subsection 173(1)

After “section 43,”, insert “or regulations to which that section is subject,”.

5 At the end of section 173

Add:

- (2) To avoid doubt, a non-citizen child who is taken to have been granted a visa or visas, at the time of the child's birth, by virtue of the operation of section 78, is not to be taken, by virtue of that birth, to have entered Australia in a way that contravenes section 43 or regulations to which that section is subject.

6 Application

The amendment made by item 5 of this Schedule applies to a non-citizen child born in Australia on or after 1 September 1994 who is taken to have been granted a visa or visas under section 78 of the *Migration Act 1958*.

Part 2—Criminal Code harmonisation amendments

Migration Act 1958

7 Subsection 229(1)

Omit “unless”, substitute “if”.

8 Paragraphs 229(1)(a) to (e)

Repeal the paragraphs, substitute:

- (a) is not in possession of evidence of a visa that is in effect and that permits him or her to travel to and enter Australia; and
- (b) does not hold a special purpose visa; and
- (c) is not eligible for a special category visa; and
- (d) does not hold an enforcement visa; and
- (e) is a person to whom subsection 42(1) applies.

9 After subsection 229(3)

Insert:

- (4) For the purposes of subsection (1), the defendant bears an evidential burden in relation to establishing that subsection 42(1) does not apply to a person because of subsection 42(2) or (2A) or regulations made under subsection 42(3).

Note: For *evidential burden*, see section 13.3 of the *Criminal Code*.

10 After subsection 232(1A)

Insert:

- (1B) For the purposes of paragraph (1)(a), the defendant bears an evidential burden in relation to establishing that subsection 42(1) does not apply to a person because of subsection 42(2) or (2A) or regulations made under subsection 42(3).

Note: For *evidential burden*, see section 13.3 of the *Criminal Code*.

11 Section 232A

Before “A person”, insert “(1)”.

12 At the end of section 232A

Add:

- (2) For the purposes of subsection (1), the defendant bears an evidential burden in relation to establishing that subsection 42(1) does not apply to a person because of subsection 42(2) or (2A) or regulations made under subsection 42(3).

Note: For *evidential burden*, see section 13.3 of the *Criminal Code*.

13 After subsection 233(1)

Insert:

- (1A) Strict liability applies to the element of an offence against paragraph (1)(a) that the bringing or coming to Australia of the relevant non-citizen was under circumstances from which it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of this Act.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

14 Subsection 268BJ(1)

Omit “an authorised officer”.

15 Section 268CM

Omit “section 268CJ or 268CK (officer may ask questions)”, substitute “a request under section 268CJ or a requirement under section 268CK”.

16 Subsection 268CN(1)

Omit “an authorised officer”.

17 Subsection 268CN(1)

Omit “section 268CJ or 268CK (officer may ask questions)”, substitute “a request under section 268CJ or a requirement under section 268CK”.

Part 3—The taking of securities

Migration Act 1958

18 Subsection 269(1)

After “authorized officer may”, insert “, subject to subsection (1A),”.

19 After subsection 269(1)

Insert:

- (1A) The power of an authorized officer to require and take security under subsection (1) in relation to an application for a visa applies only if:
- (a) the security is for compliance with conditions that will be imposed on the visa in pursuance of, or for the purposes of, this Act or the regulations, if the visa is granted; and
 - (b) the officer has indicated those conditions to the applicant.

20 Application

The amendments made by items 18 and 19 of this Schedule apply in relation to all applications for visas made after the commencement of those items.

Part 4—Minor amendments

Migration Act 1958

21 Subsection 48(2)

After “section” (first occurring), insert “(which applies only in respect of applications made while a non-citizen is in the migration zone)”.

22 At the end of section 48

Add:

- (3) For the purposes of this section (which applies only in respect of applications made while a non-citizen is in the migration zone), a non-citizen who, while holding a bridging visa, leaves and re-enters the migration zone is taken to have been continuously in the migration zone despite that travel.

23 Application

Section 48 of the *Migration Act 1958*, as amended by item 22 of this Schedule, applies to all applications for visas made after the commencement of that item (the *commencement time*), regardless of:

- (a) whether the bridging visa mentioned in subsection 48(3) of that Act was granted before or after the commencement time; and
- (b) whether the travel mentioned in subsection 48(3) of that Act took place before or after the commencement time.

24 After subsection 82(7)

Insert:

- (7A) A bridging visa permitting the holder to remain in, or to travel to, enter and remain in, Australia until a specified event happens, ceases to be in effect the moment the event happens.

25 Application

The amendment made by item 24 of this Schedule applies in relation to all bridging visas that are held at any time after the commencement of that item, regardless of whether the bridging visas were granted before or after that time.

Schedule 4—Miscellaneous

Migration Act 1958

1 Subsection 52(3C) (note 2)

Repeal the note, substitute:

Note 2: Section 494D deals with giving documents to a person's authorised recipient.

2 Subparagraph 193(1)(d)(ii)

Omit "a lawful non-citizen", substitute "granted a substantive visa".

3 Section 494A (note)

Repeal the note, substitute:

Note: Section 494D deals with giving documents to a person's authorised recipient.

4 At the end of section 494D

Add:

- (5) The Minister need not comply with subsection (1), or the requirement in subsection (4) to give a notice, if:
- (a) the authorised recipient is not a registered migration agent (within the meaning of Part 3); and
 - (b) the Minister reasonably suspects that the authorised recipient is giving immigration assistance (within the meaning of that Part); and
 - (c) the Minister has given the first person a notice, by one of the methods specified in section 494B, stating that he or she does not intend to give the authorised recipient documents as mentioned in subsection (1).

5 After section 501H

Insert:

501HA Application of sections 501 to 501H to transitional (permanent) visas and transitional (temporary) visas

If, under the Migration Reform (Transitional Provisions) Regulations, a person:

- (a) held a permanent return visa, permanent entry permit or permanent visa that continues in effect as a transitional (permanent) visa; or
- (b) held a temporary entry permit or temporary visa that continues in effect as a transitional (temporary) visa; or
- (c) is taken to hold a transitional (permanent) visa;

the person is also taken, for the purposes of sections 501 to 501H, to have been granted a visa.

6 Application

- (1) The amendment made by item 2 of this Schedule applies in respect of a person who has been granted:
 - (a) a bridging visa (within the meaning of the *Migration Act 1958*); or
 - (b) a criminal justice visa (within the meaning of that Act);on or after the day on which that item commences.
- (2) The amendment made by item 4 of this Schedule applies in relation to an authorised recipient, whether the notice under subsection 494D(1) of the *Migration Act 1958* in relation to the authorised recipient is given before, on or after the day on which that item commences.
- (3) The amendment made by item 5 of this Schedule applies in respect of a decision to cancel a visa that is made under the *Migration Act 1958* on or after the day on which that item commences.

7 Validation of pre-commencement decisions in relation to transitional (permanent) visas and transitional (temporary) visas

- (1) To avoid doubt, any decision made or purported to have been made:
 - (a) by the Minister under section 501, 501A, 501B, 501C or 501F of the *Migration Act 1958* (as in force at any time on or after 1 September 1994 and before the day on which this item commences) before the day on which item 5 of this Schedule commences; or

(b) by a delegate of the Minister under section 501 of the *Migration Act 1958* (as in force at any time on or after 1 September 1994 and before the day on which this item commences) before the day on which item 5 of this Schedule commences;

to cancel a transitional (permanent) visa or a transitional (temporary) visa is as valid, and is taken always to have been as valid, as it would have been if the transitional (permanent) visa or transitional (temporary) visa were a visa that had been granted.

(2) In subitem (1):

transitional (permanent) visa means a transitional (permanent) visa referred to in the Migration Reform (Transitional Provisions) Regulations.

transitional (temporary) visa means a transitional (temporary) visa referred to in the Migration Reform (Transitional Provisions) Regulations.

Schedule 5—Amendments relating to Australian citizenship

Australian Citizenship Act 2007

1A Section 3

Insert:

Stateless Persons Convention means the Convention Relating to the Status of Stateless Persons, done at New York on 28 September 1954 [1974] ATS 20.

Note: The text of the Convention is set out in Australian Treaty Series 1974 No. 20. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

1 Paragraph 16(2)(c)

After “if the person”, insert “is or has ever been a national or a citizen of any country, or if article 1(2)(iii) of the Stateless Persons Convention applies to the person, and the person”.

2 Paragraph 16(3)(c)

Repeal the paragraph, substitute:

- (c) if the person is or has ever been a national or a citizen of any country, or if article 1(2)(iii) of the Stateless Persons Convention applies to the person—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

3 Paragraphs 21(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) is a permanent resident:
 - (i) at the time the person made the application; and
 - (ii) at the time of the Minister’s decision on the application; and
- (c) satisfies the residence requirement (see section 22), or has completed relevant defence service (see section 23), at the time the person made the application; and

4 Paragraphs 21(3)(b) to (d)

Repeal the paragraphs, substitute:

- (b) is a permanent resident:
 - (i) at the time the person made the application; and
 - (ii) at the time of the Minister's decision on the application; and
- (c) satisfies the residence requirement (see section 22), or has completed relevant defence service (see section 23), at the time the person made the application; and
- (d) has a permanent physical or mental incapacity, at the time the person made the application, that means the person is not capable of understanding the nature of the application at that time; and

5 Paragraphs 21(4)(b) to (d)

Repeal the paragraphs, substitute:

- (b) is a permanent resident:
 - (i) at the time the person made the application; and
 - (ii) at the time of the Minister's decision on the application; and
- (c) understands the nature of the application at the time the person made the application; and
- (d) satisfies the residence requirement (see section 22), or has completed relevant defence service (see section 23), at the time the person made the application; and

6 Paragraph 21(6)(d)

Repeal the paragraph, substitute:

- (d) if the person is aged 18 or over at the time the person made the application—the person is of good character at the time of the Minister's decision on the application.

7 Paragraph 21(8)(b)

Omit “at the time the person made the application,”.

8 Paragraphs 21(8)(d) and (e)

Repeal the paragraphs, substitute:

- (d) the person:

- (i) is not entitled to acquire the nationality of a foreign country; and
- (ii) is not entitled to acquire the citizenship of a foreign country.

9 Paragraph 22(1B)(b)

Omit “3 months”, substitute “90 days”.

10 Subparagraph 23(a)(i)

Omit “3 months”, substitute “90 days”.

12 Subsection 24(2)

Omit “(6), (7) or (8)”, substitute “(6) or (7)”.

13 After subsection 24(4C)

Insert:

- (4D) To avoid doubt, subsection (4A) applies to a person who is eligible to become an Australian citizen under subsection 21(8).

14 Application

The amendments made by items 1A to 13 of this Schedule apply in relation to applications to become an Australian citizen made after those items commence.

15 Paragraph 34(3)(a)

Repeal the paragraph, substitute:

- (a) the Minister may revoke the person’s Australian citizenship under that subsection only because of the application of subparagraph (2)(b)(ii); and

16 Application

The amendment made by item 15 of this Schedule applies in relation to a decision, in relation to a revocation of a person’s citizenship, that is made after that item commences.

Australian Citizenship (Transitionals and Consequential)
Act 2007

17 Item 5B of Schedule 3

Repeal the item, substitute:

5B Citizenship by conferral—persons who are permanent residents at commencement

- (1) This item applies if:
 - (a) a person is a permanent resident (worked out under the old Act) immediately before the commencement day; and
 - (b) the person makes an application under subsection 21(1) of the new Act within the period of 3 years beginning on the commencement day.
- (2) In applying section 22 of the new Act to an application covered by subitem (1), subsections 22(1) to (2), (4A) and (5A) of the new Act do not apply and the following subsections of section 22 of the new Act apply instead:
 - (1) For the purposes of section 21, a person satisfies the *residence requirement* if the person has been present in Australia as a permanent resident for:
 - (a) a total period of at least 1 year in the period of 2 years before the day the person made the application; and
 - (b) a total period of at least 2 years in the period of 5 years before that day.
 - (2) Paragraph (1)(b) does not apply if the person:
 - (a) was born in Australia; or
 - (b) was an Australian citizen at any time before the person made the application.
 - (3) For the purposes of subsection (1), the Minister must not take into account any period during which the person has been:
 - (a) confined in a prison; or
 - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (3) In applying section 22 of the new Act to an application covered by subitem (1), subsections 22(5), (6) and (11) of the new Act have effect as if the reference in those subsections to “paragraph (1)(c)” were a reference to “subsection (1)” (as applied by subitem (2) of this item).

18 At the end of item 7 of Schedule 3

Add:

- (9) In applying section 22 of the new Act to a new application covered by subitem (2), subsections 22(5), (6) and (11) of the new Act have effect as if the reference in those subsections to “paragraph (1)(c)” were a reference to “subsection (1)” (as applied by subitem (8) of this item).

19 Validation of past decisions

A decision in relation to an application covered by subitem 5B(1) or 7(2) of Schedule 3 to the *Australian Citizenship (Transitionals and Consequential) Act 2007* before the commencement of items 17 and 18 of this Schedule is as valid, and is taken always to have been as valid, as it would have been if the amendments made by those items had been in force at the time of the decision.

*[Minister’s second reading speech made in—
Senate on 25 June 2008
House of Representatives on 4 September 2008]*

(143/08)
