



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

No. 135, 2014

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

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

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No. 135, 2014

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

[Assented to 15 December 2014]

The Parliament of Australia enacts:

1 Short title

*This Act may be cited as the **Migration and Maritime Powers
Legislation Amendment (Resolving the Asylum Legacy Caseload)
Act 2014**.*

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.	15 December 2014
2. Schedule 1	The day after this Act receives the Royal Assent.	16 December 2014
3. Schedule 2, Part 1, Division 1	The day after this Act receives the Royal Assent.	16 December 2014
4. Schedule 2, Part 1, Division 2	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.	
4A. Schedule 2, Part 1, Division 2A	The later of: (a) the commencement of the provisions covered by table item 4; and (b) the commencement of Schedule 3 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 2, Part 1, Division 3	The day after this Act receives the Royal Assent.	16 December 2014
6. Schedule 2, Parts 2 and 3	The day after this Act receives the Royal Assent.	16 December 2014

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
7. Schedule 2, Part 4, Division 1	The day after this Act receives the Royal Assent.	16 December 2014
8. Schedule 2, Part 4, Division 2	Immediately after the commencement of the provisions covered by table item 7.	16 December 2014
9. Schedule 2, Part 4, Divisions 3 and 4	The day after this Act receives the Royal Assent.	16 December 2014
9A. Schedule 2A	The day after this Act receives the Royal Assent.	16 December 2014
10. Schedule 3	The day after this Act receives the Royal Assent.	16 December 2014
11. Schedule 4	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.	
12. Schedule 5, items 1 and 2	The day after this Act receives the Royal Assent.	16 December 2014
13. Schedule 5, item 3	Immediately after item 4 of Schedule 2 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> commences.	
14. Schedule 5, Part 2	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.	
15. Schedule 5, item 18	At the same time as the provisions covered by table item 3. However, if item 3 of Schedule 2 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> commences at or before that time, the provisions do not commence at all.	16 December 2014

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
16. Schedule 5, items 19 to 22	At the same time as the provisions covered by table item 3. However, if Schedule 1 to the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2014</i> commences at or before that time, the provisions do not commence at all.	16 December 2014
17. Schedule 5, item 23	Immediately after the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2014</i> commences.	
18. Schedule 5, item 24	Immediately after item 3 of Schedule 3 to the <i>Migration Amendment Act 2014</i> commences.	
19. Schedule 5, item 25	Immediately after item 5 of Schedule 3 to the <i>Migration Amendment Act 2014</i> commences.	
20. Schedule 5, item 26	Immediately after the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2014</i> commences.	
21. Schedule 5, item 27	The day after this Act receives the Royal Assent.	16 December 2014
22. Schedule 5, items 28 and 29	At the same time as the provisions covered by table item 3.	16 December 2014
23. Schedules 6 and 7	The day after this Act receives the Royal Assent.	16 December 2014

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

- (1) 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.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

Schedule 1—Amendments relating to maritime powers

Part 1—Main amendments

Maritime Powers Act 2013

1 Section 7

Omit:

In accordance with international law, the exercise of powers is limited in places outside Australia.
--

2 Section 8

Insert:

destination:

- (a) in relation to a vessel or aircraft detained under subsection 69(1)—see subsections 69(2), (3) and (3A); or
- (b) in relation to a person detained under subsection 72(4)—see subsections 72(4), (4A) and (4B).

Note: See also section 75C.

Marine Safety (Domestic Commercial Vessel) National Law has the meaning given by section 17 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

3 Section 8 (paragraph (e) of the definition of *monitoring law*)

After “Division”, insert “73 or”.

4 Section 11

Before “For the purposes”, insert “(1)”.

5 At the end of section 11

Add:

- (2) To avoid doubt, a *continuous exercise of powers* does not end merely because the destination to which a vessel, aircraft or person is to be taken (or caused to be taken) is changed to a different place under subsection 69(3A) or 72(4B).

6 At the end of Division 2 of Part 2

Add:

22A Failure to consider international obligations etc. does not invalidate authorisation

- (1) The exercise of a power to give an authorisation under a provision of this Division is not invalid:
- (a) because of a failure to consider Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (b) because of a defective consideration of Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (c) because the exercise of the power is inconsistent with Australia's international obligations.
- (2) Subsection (1) is not to be taken to imply that the exercise of a power under any other provision of this Act is invalid for a reason of a kind specified in paragraph (1)(a), (b) or (c).

22B Rules of natural justice do not apply to authorisations

- (1) The rules of natural justice do not apply to the exercise of a power to give an authorisation under a provision of this Division.
- (2) Subsection (1) is not to be taken to imply that the rules of natural justice do apply in relation to the exercise of powers under any other provision of this Act.

7 Paragraph 31(a)

After "investigate", insert "or prevent".

8 Subsection 41(1) (note)

Omit "Note:", substitute "Note 1:".

9 At the end of subsection 41(1)

Add:

Note 2: This section does not apply to the exercise of powers under Divisions 7 and 8 of Part 3 in some circumstances: see section 75D.

10 At the end of subsection 69(1)

Add:

Note: For other provisions affecting powers under this section, see section 69A and Division 8A.

11 Subsections 69(2) and (3)

Repeal the subsections, substitute:

(2) The officer may:

- (a) take the vessel or aircraft, or cause the vessel or aircraft to be taken, to a place (the *destination*); and
- (b) remain in control of the vessel or aircraft, or require the person in charge of the vessel or aircraft to remain in control of the vessel or aircraft, at the destination, until whichever of the following occurs first:
 - (i) the vessel or aircraft is returned to a person referred to in subsection 87(1);
 - (ii) action is taken as mentioned in subsection 87(3) in relation to the vessel or aircraft.

(3) The destination may be:

- (a) in the migration zone; or
- (b) outside the migration zone (including outside Australia).

Note: Section 75C contains additional provisions about the place that may be the destination.

(3A) A maritime officer may change the destination to a different place at any time (including a time after arrival at the place that was previously the destination). If the destination is changed to a different place:

- (a) that different place is then the destination; but
- (b) this does not affect the exercise of powers under this Act before the change.

Note: It is possible that the destination may change more than once.

12 After section 69

Insert:

69A Additional provisions relating to taking a vessel or aircraft to a destination under section 69

- (1) For the purpose of taking a vessel or aircraft (or causing a vessel or aircraft to be taken) to a destination under paragraph 69(2)(a), the vessel or aircraft may be detained under subsection 69(1):
 - (a) for any period reasonably required:
 - (i) to decide which place should be the destination; or
 - (ii) to consider whether the destination should be changed to a different place under subsection 69(3A), and (if it should be changed) to decide what that different place is; and
 - (b) for any period reasonably required for the Minister to consider whether to make or give a determination or direction under section 75D, 75F or 75H in relation to:
 - (i) a matter referred to in subparagraph (a)(i) or (ii); or
 - (ii) any other matter relating to the exercise of powers in relation to the vessel or aircraft, or in relation to persons on (or suspected as having been on) the vessel or aircraft; and
 - (c) for the period it actually takes to travel to the destination.

Note: The total period for which the vessel or aircraft is detained may be longer than the periods covered by this subsection: see subsection (3) and section 87.

- (2) For the purpose of paragraph (1)(c):
 - (a) the period it actually takes to travel to the destination may include stopovers at other places on the way to the destination, and time for other logistical, operational or other contingencies relating to travelling to the destination; and
 - (b) there is no requirement that the most direct route to the destination must be taken.
- (3) Days in periods covered by subsection (1) do not count towards the 28 day limit specified in paragraph 87(2)(a).

13 Subsection 72(1) (note)

Omit “Note:”, substitute “Note 1:”.

14 At the end of subsection 72(1)

Add:

Note 2: For other provisions affecting powers under this section, see section 72A and Division 8A.

15 Subsections 72(3) and (4)

Repeal the subsections, substitute:

- (3) A maritime officer may require the person to remain on the vessel or aircraft until whichever of the following occurs first:
- (a) the vessel or aircraft is returned to a person referred to in subsection 87(1);
 - (b) action is taken as mentioned in subsection 87(3) in relation to the vessel or aircraft.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (4) A maritime officer may detain the person and take the person, or cause the person to be taken, to a place (the *destination*).

(4A) The destination may be:

- (a) in the migration zone; or
- (b) outside the migration zone (including outside Australia).

Note: Section 75C contains additional provisions about the place that may be the destination.

(4B) A maritime officer may change the destination to a different place at any time (including a time after arrival at the place that was previously the destination). If the destination is changed to a different place:

- (a) that different place is then the destination; but
- (b) this does not affect the exercise of powers under this Act before the change.

Note: It is possible that the destination may change more than once.

16 Subsection 72(5)

Omit “another place”, substitute “the destination”.

17 Paragraphs 72(5)(a) and (b)

After “or aircraft”, insert “, or in a particular place on a vessel or aircraft”.

18 After section 72

Insert:

72A Additional provisions relating to taking a person to a destination under subsection 72(4)

- (1) A person may be detained under subsection 72(4):
 - (a) for any period reasonably required:
 - (i) to decide which place should be the destination; or
 - (ii) to consider whether the destination should be changed to a different place under subsection 72(4B), and (if it should be changed) to decide what that different place is; and
 - (b) for any period reasonably required for the Minister to consider whether to make or give a determination or direction under section 75D, 75F or 75H in relation to:
 - (i) a matter referred to in subparagraph (a)(i) or (ii); or
 - (ii) any other matter relating to the exercise of powers in relation to the person; and
 - (c) for the period it actually takes to travel to the destination; and
 - (d) for any period reasonably required to make and effect arrangements relating to the release of the person.
- (2) For the purpose of paragraph (1)(c):
 - (a) the period it actually takes to travel to the destination may include stopovers at other places on the way to the destination, and time for other logistical, operational or other contingencies relating to travelling to the destination; and
 - (b) there is no requirement that the most direct route to the destination must be taken.

- (3) The person must not be detained under subsection 72(4) for any longer than is permitted by subsection (1) of this section.
- (4) Powers may be exercised in accordance with subsection 72(5) in relation to the person at any time while the person continues to be detained under subsection 72(4).
- (5) Subsection (3) does not prevent:
 - (a) the arrest of the person; or
 - (b) the detention of the person under another Australian law; or
 - (c) the exercise of any other power in relation to the person.

19 After Division 8 of Part 3

Insert:

Division 8A—General provisions relating to powers under Divisions 7 and 8

75A Failure to consider international obligations etc. does not invalidate exercise of powers

- (1) The exercise of a power under section 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H is not invalid:
 - (a) because of a failure to consider Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (b) because of a defective consideration of Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (c) because the exercise of the power is inconsistent with Australia's international obligations.
- (2) Subsection (1) is not to be taken to imply that the exercise of a power under any other provision of this Act is invalid for a reason of a kind specified in paragraph (1)(a), (b) or (c).

75B Rules of natural justice do not apply to exercise of powers

- (1) The rules of natural justice do not apply to the exercise of powers under section 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H.

- (2) Subsection (1) is not to be taken to imply that the rules of natural justice do apply in relation to the exercise of powers under any other provision of this Act.

75C Additional provisions about destination to which a vessel, aircraft or person may be taken

- (1) To avoid doubt:
- (a) the destination to which a vessel, aircraft or person is taken (or caused to be taken) under section 69 or 72:
 - (i) does not have to be in a country; and
 - (ii) without limiting subparagraph (i)—may be just outside a country; and
 - (iii) may be a vessel; and
 - (b) a vessel, aircraft or person may be taken (or caused to be taken) to a destination under section 69 or 72:
 - (i) whether or not Australia has an agreement or arrangement with any other country relating to the vessel or aircraft (or the persons on it), or the person; and
 - (ii) irrespective of the international obligations or domestic law of any other country.

Note: The definition of *country* in section 8 includes the territorial sea and archipelagic waters of the country, as well as various other areas.

- (2) However, if the destination is in another country, section 40 (exercising powers in other countries) must be complied with.

75D Exercising powers between countries

- (1) Section 41 (foreign vessels between countries) does not apply to an exercise of power under section 69, 69A, 71, 72, 72A or 74 if:
- (a) the exercise of power is:
 - (i) covered by a determination in force under subsection (2); or
 - (ii) required by a direction in force under paragraph 75F(2)(a); and

- (b) the exercise of power is part of a continuous exercise of powers that commenced in accordance with any applicable requirements of Division 5 of Part 2.
- (2) For the purpose of subparagraph (1)(a)(i), the Minister may make a written determination that is expressed to cover the exercise, in a specified circumstance, of powers under one or more of the sections referred to in subsection (1).
- (3) The Minister may, in writing, vary or revoke a determination made under subsection (2).
- (4) The only condition for the exercise of the power to make a determination under subsection (2), or to vary a determination, is that the Minister thinks that it is in the national interest to make or vary the determination.

Note: There are no conditions for the exercise of the power to revoke a determination.
- (5) A determination under subsection (2), or an instrument varying or revoking a determination, comes into force:
 - (a) unless paragraph (b) applies—when it is made; or
 - (b) if the determination or instrument specifies a later time as the time when it is to come into force—at that later time.
- (6) A determination under subsection (2) remains in force until whichever of the following occurs first:
 - (a) an instrument revoking the determination comes into force;
 - (b) if the determination is expressed to cease to be in force at a specified time—the time so specified.
- (7) A determination under subsection (2), or a variation or revocation of a determination, is not a legislative instrument.

75E Powers are not limited by the *Migration Act 1958*

- (1) Powers under sections 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H are not in any respect subject to, or limited by, the *Migration Act 1958* (including regulations and other instruments made under that Act).

- (2) Subsection (1) of this section is not to be taken to imply that other powers under this Act are subject to, or limited by, the *Migration Act 1958* (including regulations and other instruments made under that Act).

75F Minister may give directions about exercise of powers

- (1) This section applies in relation to the powers in sections 69, 69A, 71, 72 and 72A.
- (2) The Minister may, in writing, give directions:
- (a) requiring the exercise of a power or powers in a specified circumstance, or in circumstances in a specified class, in a specified manner; or
 - (b) relating to the exercise of a power or powers in a specified circumstance, in a specified class of circumstances or more generally.
- (3) Without limiting subsection (2), the Minister may give a direction under that subsection:
- (a) specifying a place that is to be, or is not to be, the destination to which a vessel, aircraft or person is taken under paragraph 69(2)(a) or subsection 72(4); or
 - (b) specifying matters to be taken into account in deciding the destination to which a vessel, aircraft or person is to be so taken.
- (4) The Minister may, in writing, vary or revoke a direction given under subsection (2).
- (5) The only condition for the exercise of the power to give a direction under subsection (2), or to vary a direction, is that the Minister thinks that it is in the national interest to give or vary the direction.
- Note: There are no conditions for the exercise of the power to revoke a direction.
- (6) A direction under subsection (2) may specify circumstances in which the direction need not be complied with.
- (7) A direction under subsection (2), or an instrument varying or revoking a direction, comes into force:

- (a) unless paragraph (b) applies—when it is made; or
 - (b) if the direction or instrument specifies a later time as the time when it is to come into force—at that later time.
- (8) A direction under subsection (2) remains in force until whichever of the following occurs first:
 - (a) an instrument revoking the direction comes into force;
 - (b) if the direction is expressed to cease to be in force at a specified time—the time so specified.
- (9) If the Minister gives a direction as mentioned in paragraph (2)(a):
 - (a) the direction is taken to constitute an authorisation of the exercise of the power or powers in accordance with the direction; and
 - (b) that authorisation is taken (despite section 23) to remain in force while the direction is in force.
- (10) A direction under subsection (2), or an instrument varying or revoking a direction, is not a legislative instrument.

75G Compliance with directions

- (1) Subject to subsections (2) and (3) of this section, and subsection 75F(6), a maritime officer must comply with any applicable directions in force under section 75F. However, a failure to comply does not invalidate any exercise of power by a maritime officer.
- (2) A maritime officer who is a member of the Australian Defence Force is not required to comply with a direction under section 75F to the extent that the direction is inconsistent with an order or other exercise of command under sections 8 and 9 of the *Defence Act 1903*.
- (3) A maritime officer is not required to comply with a direction under section 75F to the extent that he or she reasonably believes that it would be unsafe to do so.

75H Certain maritime laws do not apply to certain vessels detained or used in exercise of powers

Vessels detained under section 69

- (1) The laws specified in subsection (3) (including regulations and other instruments made under those laws) do not apply in relation to a vessel at any time when the vessel is detained in exercise (or purported exercise) of powers under section 69.

Vessels used in exercise of powers under subsections 72(4) or (5)

- (2) The laws specified in subsection (3) (including regulations and other instruments made under those laws) do not apply in relation to a vessel at any time when the following paragraphs are satisfied:
 - (a) the vessel is being used in the exercise (or purported exercise) of powers under subsection 72(4) or (5), or the Commonwealth intends that the vessel is for use in the exercise of such powers;
 - (b) the vessel is specified in, or is included in a class of vessels specified in, a determination under subsection (4) that is in force;
 - (c) if the determination states that it has effect, in relation to the vessel or class of vessels, only in specified circumstances—those circumstances exist;
 - (d) if the determination states that it has effect, in relation to the vessel or the class of vessels, only in one or more specified periods—the time is in that period, or one of those periods.

Note: Paragraph (c) and (d) do not have to be satisfied unless the determination states as mentioned in those paragraphs.

The laws that are disapplied

- (3) The laws that, because of subsection (1) or (2), do not apply in relation to a vessel are:
 - (a) the *Navigation Act 2012*; and
 - (b) the *Shipping Registration Act 1981*; and
 - (c) the Marine Safety (Domestic Commercial Vessel) National Law.

Determinations of vessels and classes of vessels

- (4) For the purpose of paragraph (2)(b), the Minister may make a written determination specifying a vessel, or a class of vessels. The determination may also state either or both of the following:
- (a) that it has effect, in relation to the vessel or class of vessels, only in specified circumstances;
 - (b) that it has effect, in relation to the vessel or the class of vessels, only in one or more specified periods.
- (5) The Minister may, in writing, vary or revoke a determination made under subsection (4).
- (6) The only condition for the exercise of the power to make a determination under subsection (4), or to vary a determination, is that the Minister thinks that it is in the national interest to make or vary the determination.
- Note: There are no conditions for the exercise of the power to revoke a determination.
- (7) A determination under subsection (4), or an instrument varying or revoking a determination, comes into force:
- (a) unless paragraph (b) applies—when it is made; or
 - (b) if the determination or instrument specifies a later time as the time when it is to come into force—at that later time.
- (8) A determination under subsection (4) remains in force until whichever of the following occurs first:
- (a) an instrument revoking the determination comes into force;
 - (b) if the determination is expressed to cease to be in force at a specified time—the time so specified.
- (9) A determination under subsection (4), or a variation or revocation of a determination, is not a legislative instrument.

20 Section 79

Omit:

Written notice must be given to the owner or person who was in possession or control of a seized, retained or detained thing.

substitute:

Written notice must be given to the owner of a seized, retained or detained thing, or to a person who had possession or control of the thing.

21 Paragraph 80(1)(b)

Omit “the person”, substitute “a person”.

22 At the end of section 81

Add:

- (3) If a detained vessel or aircraft is to be taken to a destination under paragraph 69(2)(a), the information must also explain the effect of subsection 69A(3).

23 Paragraphs 86(1)(b) and 87(1)(b)

Omit “the person”, substitute “a person”.

24 At the end of subsection 87(2)

Add:

Note: In the case of a detained vessel or aircraft that is taken to a destination under paragraph 69(2)(a), days in periods covered by subsection 69A(1) (such as the period it takes to travel to the destination) do not count towards the 28 day limit: see subsection 69A(3).

25 Subsection 93(1)

Repeal the subsection, substitute:

- (1) If the thing is disposed of under paragraph 91(1)(a), (b) or (c) (reasons for disposal), the Minister must give written notice, as soon as practicable after the disposal, to:
- (a) the person who owned the thing; or
 - (b) a person who had possession or control of the thing immediately before it was seized, retained or detained.

26 Subsection 93(3)

Omit “the person”, substitute “any person to whom the notice may be given under that subsection”.

27 Section 94

Omit:

Persons from detained vessels and aircraft may be required to remain on the vessel or aircraft, or may be taken to another place.

28 Section 97

Repeal the section.

29 Section 107

After “proceeding”, insert “, whether civil or criminal,”.

30 Subsection 121(1)

After “this Act”, insert “, other than the powers under section 75D, 75F or 75H,”.

Part 2—Other amendments

Administrative Decisions (Judicial Review) Act 1977

31 After paragraph (p) of Schedule 1

Insert:

(pa) decisions under section 75D, 75F or 75H of the *Maritime Powers Act 2013*;

Immigration (Guardianship of Children) Act 1946

32 At the end of paragraph 6(2)(d)

Add “, or under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013*”.

33 Paragraph 8(2)(b)

After “migration law”, insert “or the *Maritime Powers Act 2013*”.

34 Paragraph 8(2)(c)

Repeal the paragraph, substitute:

(c) imposes any obligation on the Minister or another Minister to exercise, or to consider exercising, any power conferred by or under the migration law or the *Maritime Powers Act 2013*.

35 At the end of paragraph 8(3)(d)

Add “, or under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013*”.

Migration Act 1958

36 Subsection 5(1) (paragraph (b) of the definition of *transitory person*)

Omit “or paragraph 72(4)(b) of the *Maritime Powers Act 2013*”, substitute “or under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013*”.

37 Paragraph 5AA(2)(ba)

Repeal the paragraph, substitute:

- (ba) the person entered the migration zone as a result of the exercise of powers under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013*; or

38 Subparagraph 42(2A)(c)(i)

Omit “or 72(4) of the *Maritime Powers Act 2013*”, substitute “or under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013*”.

Part 3—Application

39 Application of amendments of the *Maritime Powers Act 2013*

- (1) Subject to this item, the amendments of the *Maritime Powers Act 2013* made by Part 1 of this Schedule (the **amending Part**) apply in relation to the exercise (or continued exercise) of powers under that Act after the commencement of the amending Part, even if:
 - (a) an authorisation for the exercise of the powers was given under Division 2 of Part 2 of that Act before the commencement of the amending Part; or
 - (b) the powers are exercised:
 - (i) in the course of a continuous exercise of powers that started before the commencement of the amending Part; or
 - (ii) without limiting subparagraph (i)—in relation to a person, vessel or aircraft who or that started to be detained, or otherwise held, under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013* before that commencement; or
 - (iii) in any other situation in relation to which powers were (or could have been) exercised under that Act before that commencement.
- (2) The amendments of the *Maritime Powers Act 2013* made by item 3 (so far as it affects the giving of authorisations), and item 6, of the amending Part apply in relation to authorisations given under Division 2 of Part 2 of that Act after the commencement of the amending Part.
- (3) Section 75H of the *Maritime Powers Act 2013*, as inserted by item 19 of the amending Part, applies to:
 - (a) vessels that, after the commencement of the amending Part, are detained as mentioned in subsection 75H(1), even if the vessels started to be so detained before that commencement; and
 - (b) vessels that, after the commencement of the amending Part, are being used, or that are intended for use, as mentioned in

paragraph 75H(2)(a), even if the vessels started to be so used, or intended for use, before that commencement.

- (4) The amendments of the *Maritime Powers Act 2013* made by items 21, 23, 25 and 26 of the amending Part apply after the commencement of the amending Part in relation to a seized, retained or detained thing (including a vessel or aircraft), even if the exercise of power by which the thing was first seized, retained or detained occurred before that commencement.
- (5) The amendments of the *Maritime Powers Act 2013* made by the amending Part do not, by implication, affect the interpretation of that Act, as in force before the commencement of the amending Part, in relation to the exercise of powers, or the giving of authorisations, under that Act before that commencement.

Schedule 2—Protection visas and other measures

Part 1—Protection visas

Division 1—Protection visas generally

Migration Act 1958

1 Subsection 5(1)

Insert:

protection visa has the meaning given by section 35A.

Note: Section 35A covers the following:

- (a) permanent protection visas (classified by the *Migration Regulations 1994* as Protection (Class XA) visas when this definition commenced);
- (b) other protection visas formerly provided for by subsection 36(1);
- (c) temporary protection visas (classified by the *Migration Regulations 1994* as Temporary Protection (Class XD) visas when this definition commenced);
- (d) any additional classes of permanent or temporary visas that are prescribed as protection visas by the regulations.

See also section 36 and Subdivision AL of Division 3 of Part 2.

2 At the end of subsection 31(1)

Add:

Note: See also subsection 35A(4), which allows additional classes of permanent and temporary visas to be prescribed as protection visas by regulations made for the purposes of this subsection.

3 Subsection 31(2)

Omit “sections 32, 33, 34, 35, 36, 37, 37A, 38, 38A and 38B”, substitute:

the following provisions:

- (a) section 32 (special category visas);
- (b) section 33 (special purpose visas);
- (c) section 34 (absorbed person visas);

- (d) section 35 (ex-citizen visas);
- (e) subsection 35A(2) (permanent protection visas);
- (f) subsection 35A(3) (temporary protection visas);
- (g) section 37 (bridging visas);
- (h) section 37A (temporary safe haven visas);
- (i) section 38 (criminal justice visas);
- (j) section 38A (enforcement visas);
- (k) section 38B (maritime crew visas).

4 Subsection 31(3)

Omit “36”, substitute “35A”.

5 After section 35

Insert:

35A Protection visas—classes of visas

- (1) A *protection visa* is a visa of a class provided for by this section.
- (2) There is a class of permanent visas to be known as permanent protection visas.

Note: These visas were classified by the *Migration Regulations 1994* as Protection (Class XA) visas when this section commenced.

- (3) There is a class of temporary visas to be known as temporary protection visas.

Note: These visas were classified by the *Migration Regulations 1994* as Temporary Protection (Class XD) visas when this section commenced.

- (4) Regulations made for the purposes of subsection 31(1) may prescribe additional classes of permanent and temporary visas as protection visas.

- (5) A class of visas that was formerly provided for by subsection 36(1), as that subsection was in force before the commencement of this section, is also a class of protection visas for the purposes of this Act and the regulations.

Example: An example of a class of visas for subsection (5) is the class of visas formerly classified by the *Migration Regulations 1994* as Protection (Class AZ) visas. These visas can no longer be granted.

Note: This section commenced, and subsection 36(1) was repealed, on the commencement of Part 1 of Schedule 2 to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

- (6) The criteria for a class of protection visas are:
- (a) the criteria set out in section 36; and
 - (b) any other relevant criteria prescribed by regulation for the purposes of section 31.

Note: See also Subdivision AL.

6 Section 36 (heading)

Repeal the heading, substitute:

36 Protection visas—criteria provided for by this Act

7 Subsection 36(1)

Repeal the subsection.

8 Subparagraph 36(2)(b)(ii)

After “protection visa”, insert “of the same class as that applied for by the applicant”.

9 At the end of subparagraph 36(2)(c)(ii)

Add “of the same class as that applied for by the applicant”.

10 Subsection 48A(2) (definition of *application for a protection visa*)

Omit “includes”, substitute “means”.

11 Subsection 48A(2) (paragraph (aa) of the definition of *application for a protection visa*)

Repeal the paragraph, substitute:

- (aa) an application for a visa of a class provided for by section 35A (protection visas—classes of visas), including (without limitation) an application for a visa of a class formerly provided for by subsection 36(1) that was made before the commencement of this paragraph; or

Schedule 2 Protection visas and other measures

Part 1 Protection visas

Note: Visas formerly provided for by subsection 36(1) are provided for by subsection 35A(5). Subsection 36(1) was repealed by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*, which also inserted section 35A and this paragraph.

12 Subsection 48A(2) (paragraphs (a) and (b) of the definition of application for a protection visa)

Omit “; and”, substitute “; or”.

Division 2—Safe haven enterprise visas

Migration Act 1958

13 Subsection 5(1) (after paragraph (b) of the note at the end of the definition of protection visa)

Insert:

(ba) safe haven enterprise visas;

14 After paragraph 31(2)(f)

Insert:

(fa) subsection 35A(3A) (safe haven enterprise visas);

15 After paragraph 31(3A)(c)

Insert:

(ca) safe haven enterprise visas (see subsection 35A(3A));

16 After subsection 35A(3)

Insert:

(3A) There is a class of temporary visas to be known as safe haven enterprise visas.

(3B) The purpose of safe haven enterprise visas is both to provide protection and to encourage enterprise through earning and learning while strengthening regional Australia.

Note: If a person satisfies the requirements for working, study and accessing social security prescribed for the purposes of paragraph 46A(1A)(c), section 46A will not bar the person from making a valid application for any of the onshore visas prescribed for the purposes of

paragraph 46A(1A)(b). This does not include permanent protection visas.

17 After paragraph 46(5)(c)

Insert:

(ca) safe haven enterprise visas (see subsection 35A(3A));

18 After paragraph 46AA(1)(c)

Insert:

(ca) safe haven enterprise visas (see subsection 35A(3A));

18A At the end of subsection 85(2)

Add “or safe haven enterprise visas”.

Migration Regulations 1994

18B After subparagraph 1401(3)(d)(i)

Insert:

(ia) does not hold, and has not ever held, a Safe Haven Enterprise (Class XE) visa; and

18C After subparagraph 1403(3)(d)(i)

Insert:

(ia) holds, or has ever held, a Safe Haven Enterprise (Class XE) visa; or

18D At the end of Schedule 1

Add:

1404. Safe Haven Enterprise (Class XE)

(1) Form: 790.

(2) Visa application charge:

(a) first instalment (payable at the time the application is made):

(i) for an applicant who is in immigration detention and has not been immigration cleared:

Schedule 2 Protection visas and other measures

Part 1 Protection visas

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

(ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$35
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

- (a) Application must be made in Australia.
- (b) Applicant must be in Australia.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Safe Haven Enterprise (Class XE) visa may be made at the same time and place as, and combined with, the application by that person.
- (d) An application by a person for a Safe Haven Enterprise (Class XE) visa is valid only if the person:
 - (i) holds, or has ever held, a Temporary Protection (Class XD) visa or a Subclass 785 (Temporary Protection) visa, including such a visa granted before 2 December 2013; or
 - (ii) holds, or has ever held, a Safe Haven Enterprise (Class XE) visa; or

- (iii) holds, or has ever held, a Temporary Safe Haven (Class UJ) visa; or
 - (iv) holds, or has ever held, a Temporary (Humanitarian Concern) (Class UO) visa; or
 - (v) did not hold a visa that was in effect on the person's last entry into Australia; or
 - (vi) is an unauthorised maritime arrival; or
 - (vii) was not immigration cleared on the person's last entry into Australia.
- (e) An application by a person for a Safe Haven Enterprise (Class XE) visa is valid only if the person indicates in writing an intention to work or study while accessing minimum social security benefits in a regional area specified under subclause (4).
- (4) The Minister may, by legislative instrument, specify a regional area for the purposes of these regulations.
- Note: See also regulation 2.06AAB (visa applications by holders and certain former holders of safe haven enterprise visas).
- (5) Subclasses:
790 (Safe Haven Enterprise)

18E After Part 785 of Schedule 2

Insert:

Subclass 790—Safe Haven Enterprise

790.1—Interpretation

790.111

For the purposes of this Part, a person (A) is a member of the same family unit as another person (B) if:

- (a) A is a member of B's family unit; or
- (b) B is a member of A's family unit; or
- (c) A and B are members of the family unit of a third person.

790.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

790.21—Criteria to be satisfied at time of application

790.211

- (1) Subclause (2) or (3) is satisfied.
- (2) The applicant:
 - (a) claims that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant; and
 - (b) makes specific claims as to why that criterion is satisfied.

Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

- (3) The applicant claims to be a member of the same family unit as a person:
 - (a) to whom subclause (2) applies; and
 - (b) who is an applicant for a Subclass 790 (Safe Haven Enterprise) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

790.22—Criteria to be satisfied at time of decision

790.221

- (1) Subclause (2) or (3) is satisfied.
- (2) The Minister is satisfied that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant.

Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

- (3) The Minister is satisfied that:

- (a) the applicant is a member of the same family unit as an applicant mentioned in subclause (2); and
- (b) the applicant mentioned in subclause (2) has been granted a Subclass 790 (Safe Haven Enterprise) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

790.222

The applicant has undergone a medical examination carried out by any of the following (a *relevant medical practitioner*):

- (a) a Medical Officer of the Commonwealth;
- (b) a medical practitioner approved by the Minister for the purposes of this paragraph;
- (c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

790.223

- (1) One of subclauses (2) to (4) is satisfied.
- (2) The applicant has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia.
- (3) The applicant is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested the examination mentioned in subclause (2).
- (4) The applicant is a person:
 - (a) who is confirmed by a relevant medical practitioner to be pregnant; and
 - (b) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
 - (c) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and
 - (d) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

790.224

- (1) A relevant medical practitioner has considered:
 - (a) the results of any tests carried out for the purposes of the medical examination required under clause 790.222; and
 - (b) the radiological report (if any) required under clause 790.223 in respect of the applicant.
- (2) If the relevant medical practitioner:
 - (a) is not a Medical Officer of the Commonwealth; and
 - (b) considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community;the relevant medical practitioner has referred any relevant results and reports to a Medical Officer of the Commonwealth.

790.225

If a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

790.226

The applicant:

- (a) satisfies public interest criteria 4001 and 4003A; and
- (b) if the applicant had turned 18 at the time of application—satisfies public interest criterion 4019.

790.227

The Minister is satisfied that the grant of the visa is in the national interest.

790.228

- (1) If the applicant is a child to whom subregulation 2.08(2) applies, subclause (2) is satisfied.
- (2) The Minister is satisfied that:
 - (a) the applicant is a member of the same family unit as an applicant to whom subclause 790.221(2) applies; and
 - (b) the applicant to whom subclause 790.221(2) applies has been granted a Subclass 790 (Safe Haven Enterprise) visa.

Note 1: Subregulation 2.08(2) applies, generally, to a child born to a non-citizen after the non-citizen has applied for a visa but before the application is decided.

Note 2: Subclause 790.221(2) applies if the Minister is satisfied that Australia has protection obligations in respect of the applicant as mentioned in paragraph 36(2)(a) or (aa) of the Act.

790.3—Secondary criteria

Note: All applicants must satisfy the primary criteria.

790.4—Circumstances applicable to grant

790.411

The applicant must be in Australia when the visa is granted.

790.5—When visa is in effect

790.511

Temporary visa permitting the holder to travel to, enter and remain in Australia until:

- (a) if the holder of the temporary visa (the *first visa*) makes a valid application for another Subclass 790 (Safe Haven Enterprise) visa within 5 years after the grant of the first visa—the day when the application is finally determined or withdrawn; or
- (b) in any other case—the end of 5 years from the date of grant of the first visa.

790.6—Conditions

790.611

Conditions 8565 and 8570.

Note: There is nothing in the Act or these regulations which restricts the ability of the holder of the visa to study or work as he or she sees fit.

Division 2A—Safe haven enterprise visas: pathways to other visas

Migration Act 1958

18F After subsection 46A(1)

Insert:

- (1A) Subsection (1) does not apply in relation to an application for a visa if:
- (a) either:
 - (i) the applicant holds a safe haven enterprise visa (see subsection 35A(3A)); or
 - (ii) the applicant is a lawful non-citizen who has ever held a safe haven enterprise visa; and
 - (b) the application is for a visa prescribed for the purposes of this paragraph; and
 - (c) the applicant satisfies any employment, educational or social security benefit requirements prescribed in relation to the safe haven enterprise visa for the purposes of this paragraph.

Migration Regulations 1994

18G After regulation 2.06AAA

Insert:

2.06AAB Visa applications by holders and certain former holders of safe haven enterprise visas.

(1) For paragraph 46A(1A)(b) of the Act, visas of the subclasses listed in the following table are prescribed:

Visas for which holders and certain former holders of safe haven enterprise visas may apply	
Item	Visa subclass
1	Subclass 132 (Business Talent)
2	Subclass 143 (Contributory Parent)
3	Subclass 186 (Employer Nomination Scheme)
4	Subclass 187 (Regional Sponsored Migration Scheme)
5	Subclass 188 (Business Innovation and Investment (Provisional))
6	Subclass 189 (Skilled—Independent)
7	Subclass 190 (Skilled—Nominated)
8	Subclass 402 (Training and Research)
9	Subclass 405 (Investor Retirement)
10	Subclass 416 (Special Program)
11	Subclass 445 (Dependent Child)
12	Subclass 457 (Temporary Work (Skilled))
13	Subclass 476 (Skilled—Recognised Graduate)
14	Subclass 489 (Skilled—Regional (Provisional))
15	Subclass 570 (Independent ELICOS Sector)
16	Subclass 571 (Schools Sector)
17	Subclass 572 (Vocational Education and Training Sector)
18	Subclass 573 (Higher Education Sector)
19	Subclass 574 (Postgraduate Research Sector)
20	Subclass 575 (Non-Award Sector)
21	Subclass 580 (Student Guardian)
22	Subclass 801 (Partner)
23	Subclass 802 (Child)
24	Subclass 804 (Aged Parent)
25	Subclass 820 (Partner)

Schedule 2 Protection visas and other measures

Part 1 Protection visas

Visas for which holders and certain former holders of safe haven enterprise visas may apply

Item	Visa subclass
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26	Subclass 835 (Remaining Relative)
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27	Subclass 836 (Carer)
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28	Subclass 837 (Orphan Relative)
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29	Subclass 838 (Aged Dependent Relative)
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30	Subclass 858 (Distinguished Talent)
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31	Subclass 864 (Contributory Aged Parent)
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32	Subclass 884 (Contributory Aged Parent (Temporary))
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(2) For the purposes of paragraph 46A(1A)(c) of the Act, an applicant for a visa who currently holds, or has ever held, a safe haven enterprise visa must, for a period or periods totalling 42 months (which need not be continuous) while the visa is (or was) in effect, satisfy one of the following requirements:

(a) the applicant does not receive any social security benefits determined under subregulation (3), and is engaged in employment, as determined under that subregulation, in a regional area specified under subclause 1404(4) of Schedule 1;

(b) the applicant is enrolled in full-time study at an educational institution, as determined under subregulation (3), in a regional area specified under subclause 1404(4) of Schedule 1;

(c) the applicant satisfies a combination of the requirements in paragraph (a) and paragraph (b), at different times.

(3) The Minister may, by legislative instrument, make a determination for the purposes of paragraphs (2)(a) and (b).

Division 3—Application

19 Application of amendments

(1) The amendments of the *Migration Act 1958* made by Division 1 of this Part:

- (a) apply in relation to an application for a visa that had not been finally determined immediately before the commencement of that Division; and
 - (b) apply in relation to an application for a visa made on or after the commencement of that Division; and
 - (c) in the case of the amendments of section 48A of that Act made by that Division—apply in relation to an application for a protection visa mentioned in paragraph 48A(1)(a) or (b), or paragraph 48A(1AA)(a) or (b), of that Act that was made, or taken to have been made:
 - (i) on or after the commencement of that Division; or
 - (ii) at any time before the commencement of that Division (whether or not the application had been finally determined at that time).
- (2) The amendments of the *Migration Act 1958* made by Division 2 of this Part apply in relation to an application for a visa made on or after the commencement of that Division.
- (3) The amendments of the *Migration Act 1958* and the *Migration Regulations 1994* made by Division 2A of this Part apply in relation to an application for a visa made on or after the commencement of that Division.

Part 2—Visa applications taken to be applications for a different visa

Division 1—Amendments

Migration Act 1958

20 After section 45

Insert:

45AA Application for one visa taken to be an application for a different visa

Situation in which conversion regulation can be made

- (1) This section applies if:
 - (a) a person has made a valid application (a *pre-conversion application*) for a visa (a *pre-conversion visa*) of a particular class; and
 - (b) the pre-conversion visa has not been granted to the person, whether or not a migration decision has been made in relation to the pre-conversion application; and
 - (c) since the application was made, one or more of the following events has occurred:
 - (i) the requirements for making a valid application for that class of visa change;
 - (ii) the criteria for the grant of that class of visa change;
 - (iii) that class of visa ceases to exist; and
 - (d) had the application been made after the event (or events) occurred, because of that event (or those events):
 - (i) the application would not have been valid; or
 - (ii) that class of visa could not have been granted to the person.
- (2) To avoid doubt, under subsection (1) this section may apply in relation to:

- (a) classes of visas, including protection visas and any other classes of visas provided for by this Act or the regulations; and
- (b) classes of applicants, including applicants having a particular status; and
- (c) applicants for a visa who are taken to have applied for the visa by the operation of this Act or the regulations.

Example: If a non-citizen applies for a visa, and then, before the application is decided, gives birth to a child, in some circumstances the child is taken, by the operation of the regulations, to have applied for a visa of the same class at the time the child is born (see regulation 2.08).

Conversion regulation

- (3) For the purposes of this Act, a regulation (a **conversion regulation**) may provide that, despite anything else in this Act, the pre-conversion application for the pre-conversion visa:
 - (a) is taken not to be, and never to have been, a valid application for the pre-conversion visa; and
 - (b) is taken to be, and always to have been, a valid application (a **converted application**) for a visa of a different class (specified by the conversion regulation) made by the applicant for the pre-conversion visa.

Note: This section may apply in relation to a pre-conversion application made before the commencement of the section (see the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*).

For example, a conversion regulation (made after the commencement of this section) could have the effect that a pre-conversion application for a particular type of visa made on 1 August 2014 (before that commencement):

- (a) is taken not to have been made on 1 August 2014 (or ever); and
 - (b) is taken to be, and always to have been, a converted application for another type of visa made on 1 August 2014.
- (4) Without limiting subsection (3), a conversion regulation may:
 - (a) prescribe a class or classes of pre-conversion visas; and
 - (b) prescribe a class of applicants for pre-conversion visas; and
 - (c) prescribe a time (the **conversion time**) when the regulation is to start to apply in relation to a pre-conversion application,

including different conversion times depending on the occurrence of different events.

Visa application charge

- (5) If an amount has been paid as the first instalment of the visa application charge for a pre-conversion application, then, at and after the conversion time in relation to the application:
- (a) that payment is taken not to have been paid as the first instalment of the visa application charge for the pre-conversion application; and
 - (b) that payment is taken to be payment of the first instalment of the visa application charge for the converted application, even if the first instalment of the visa application charge that would otherwise be payable for the converted application is greater than the actual amount paid for the first instalment of the visa application charge for the pre-conversion application; and
 - (c) in a case in which the first instalment of the visa application charge payable for the converted application is less than the actual amount paid for the first instalment of the visa application charge for the pre-conversion application, no refund is payable in respect of the difference only for that reason.

Note: For the visa application charge, see sections 45A, 45B and 45C.

Effect on bridging visas

- (6) For the purposes of this Act, if, immediately before the conversion time for a pre-conversion application, a person held a bridging visa because the pre-conversion application had not been finally determined, then, at and after the conversion time, the bridging visa has effect as if it had been granted because of the converted application.
- (7) For the purposes of this Act, if, immediately before the conversion time for a pre-conversion application, a person had made an application for a bridging visa because of the pre-conversion application, but the bridging visa application had not been finally determined, then, at and after the conversion time:

- (a) the bridging visa application is taken to have been applied for because of the converted application; and
- (b) the bridging visa (if granted) has effect as if it were granted because of the converted application.

Note: This Act and the regulations would apply to a bridging visa to which subsection (6) or (7) applies, and to when the bridging visa would cease to have effect, in the same way as this Act and the regulations would apply in relation to any bridging visa.

For example, such a bridging visa would generally cease to be in effect under section 82 if and when the substantive visa is granted because of the converted application.

Conversion regulation may affect accrued rights etc.

- (8) To avoid doubt:
 - (a) subsection 12(2) of the *Legislative Instruments Act 2003* does not apply in relation to the effect of a conversion regulation (including a conversion regulation enacted by the Parliament); and
 - (b) subsection 7(2) of the *Acts Interpretation Act 1901*, including that subsection as applied by section 13 of the *Legislative Instruments Act 2003*, does not apply in relation to the enactment of this section or the making of a conversion regulation (including a conversion regulation enacted by the Parliament).

Division 2—Application

21 Application of amendments

The amendment of the *Migration Act 1958* made by Division 1 of this Part, to insert section 45AA of that Act, applies in relation to an application for a pre-conversion visa made before, on or after the commencement of this Part.

Part 3—Deemed visa applications

Division 1—Amendments

Migration Act 1958

22 At the end of section 48

Add:

- (4) In paragraphs (1)(b) and (1A)(b):
- (a) a reference to an application for a visa made by or on behalf of a non-citizen includes a reference to an application for a visa that is taken to have been made by the non-citizen by the operation of this Act or a regulation; and
 - (b) a reference to the cancellation of a visa includes a reference to the cancellation of a visa for which an application is taken to have been made by the operation of this Act or a regulation.

23 After subsection 48A(1C)

Insert:

- (1D) In paragraphs (1)(a) and (b) and (1AA)(a) and (b), a reference to an application for a protection visa made by or on behalf of a non-citizen includes a reference to an application for a protection visa that is taken to have been made by the non-citizen by the operation of this Act or a regulation.
- (1E) In subsection (1B), a reference to the cancellation of a protection visa includes a reference to the cancellation of a protection visa in relation to which an application for a protection visa is taken to have been made by the operation of this Act or a regulation.

24 After subsection 501E(1A)

Insert:

- (1B) In paragraph (1)(a) and subsection (1A), a reference to a refusal to grant a visa, or to the cancellation of a visa, includes a reference to such a refusal or cancellation in relation to a visa for which an

application is taken to have been made by the operation of this Act or a regulation.

Division 2—Application

25 Application of amendments

The amendments of the *Migration Act 1958* made by Division 1 of this Part apply in relation to an application for a visa that is taken to have been made before, on or after the commencement of this Part.

Part 4—Permanent protection visas and temporary protection visas

Division 1—Main amendments

Migration Regulations 1994

26 Regulation 1.03

Insert:

protection visa has the meaning given by section 35A of the Act.

Note: Section 35A of the Act covers the following:

- (a) permanent protection visas (classified by these Regulations as Protection (Class XA) visas when this definition commenced);
- (b) other protection visas formerly provided for by subsection 36(1) of the Act;
- (c) temporary protection visas (classified by these Regulations as Temporary Protection (Class XD) visas when this definition commenced);
- (d) any additional classes of permanent or temporary visas that are prescribed as protection visas by the regulations.

See also section 36 and Subdivision AL of Division 3 of Part 2 of the Act.

27 Subparagraph 1401(2)(a)(i) of Schedule 1

Repeal the subparagraph.

28 Subparagraph 1401(2)(a)(ii) of Schedule 1

Omit “(ii) for any other applicant.”.

29 At the end of subitem 1401(3) of Schedule 1

Add:

- (d) An application by a person for a Protection (Class XA) visa is valid only if the person:
 - (i) does not hold, and has not ever held, a Subclass 785 (Temporary Protection) visa, including such a visa granted before 2 December 2013; and

- (ii) does not hold, and has not ever held, a Temporary Safe Haven (Class UJ) visa; and
- (iii) does not hold, and has not ever held, a Temporary (Humanitarian Concern) (Class UO) visa; and
- (iv) held a visa that was in effect on the person's last entry into Australia; and
- (v) is not an unauthorised maritime arrival; and
- (vi) was immigration cleared on the person's last entry into Australia.

30 At the end of Schedule 1

Add:

1403. Temporary Protection (Class XD)

- (1) Form: 866.
- (2) Visa application charge:
 - (a) first instalment (payable at the time the application is made):
 - (i) for an applicant who is in immigration detention and has not been immigration cleared:

First instalment		
Item	Component	Amount
1	Base application charge	Nil
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

- (ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$35
2	Additional applicant charge for an applicant who is at least 18	Nil
3	Additional applicant charge for an applicant who is less than 18	Nil

Schedule 2 Protection visas and other measures

Part 4 Permanent protection visas and temporary protection visas

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) the second instalment (payable before grant of visa) is nil.

(3) Other:

(a) Application must be made in Australia.

(b) Applicant must be in Australia.

(c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Temporary Protection (Class XD) visa may be made at the same time and place as, and combined with, the application by that person.

(d) An application by a person for a Temporary Protection (Class XD) visa is valid only if the person:

(i) holds, or has ever held, a Temporary Protection (Class XD) visa or a Subclass 785 (Temporary Protection) visa, including such a visa granted before 2 December 2013; or

(ii) holds, or has ever held, a Temporary Safe Haven (Class UJ) visa; or

(iii) holds, or has ever held, a Temporary (Humanitarian Concern) (Class UO) visa; or

(iv) did not hold a visa that was in effect on the person's last entry into Australia; or

(v) is an unauthorised maritime arrival; or

(vi) was not immigration cleared on the person's last entry into Australia.

(4) Subclasses:

785 (Temporary Protection)

31 After Part 773 of Schedule 2

Insert:

Subclass 785—Temporary Protection

785.1—Interpretation

785.111

For the purposes of this Part, a person (A) is a member of the same family unit as another person (B) if:

- (a) A is a member of B's family unit; or
- (b) B is a member of A's family unit; or
- (c) A and B are members of the family unit of a third person.

785.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

785.21—Criteria to be satisfied at time of application

785.211

- (1) Subclause (2) or (3) is satisfied.
- (2) The applicant:
 - (a) claims that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant; and
 - (b) makes specific claims as to why that criterion is satisfied.

Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

- (3) The applicant claims to be a member of the same family unit as a person:
 - (a) to whom subclause (2) applies; and
 - (b) who is an applicant for a Subclass 785 (Temporary Protection) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

785.22—Criteria to be satisfied at time of decision

785.221

- (1) Subclause (2) or (3) is satisfied.
- (2) The Minister is satisfied that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant.

Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

- (3) The Minister is satisfied that:
 - (a) the applicant is a member of the same family unit as an applicant mentioned in subclause (2); and
 - (b) the applicant mentioned in subclause (2) has been granted a Subclass 785 (Temporary Protection) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

785.222

The applicant has undergone a medical examination carried out by any of the following (a *relevant medical practitioner*):

- (a) a Medical Officer of the Commonwealth;
- (b) a medical practitioner approved by the Minister for the purposes of this paragraph;
- (c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

785.223

- (1) One of subclauses (2) to (4) is satisfied.
 - (2) The applicant has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia.
 - (3) The applicant is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested the examination mentioned in subclause (2).
-

- (4) The applicant is a person:
- (a) who is confirmed by a relevant medical practitioner to be pregnant; and
 - (b) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
 - (c) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and
 - (d) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

785.224

- (1) A relevant medical practitioner has considered:
- (a) the results of any tests carried out for the purposes of the medical examination required under clause 785.222; and
 - (b) the radiological report (if any) required under clause 785.223 in respect of the applicant.
- (2) If the relevant medical practitioner:
- (a) is not a Medical Officer of the Commonwealth; and
 - (b) considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community;
- the relevant medical practitioner has referred any relevant results and reports to a Medical Officer of the Commonwealth.

785.225

If a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

785.226

The applicant:

- (a) satisfies public interest criteria 4001 and 4003A; and
- (b) if the applicant had turned 18 at the time of application—
satisfies public interest criterion 4019.

785.227

The Minister is satisfied that the grant of the visa is in the national interest.

785.228

- (1) If the applicant is a child to whom subregulation 2.08(2) applies, subclause (2) is satisfied.
- (2) The Minister is satisfied that:
 - (a) the applicant is a member of the same family unit as an applicant to whom subclause 785.221(2) applies; and
 - (b) the applicant to whom subclause 785.221(2) applies has been granted a Subclass 785 (Temporary Protection) visa.

Note 1: Subregulation 2.08(2) applies, generally, to a child born to a non-citizen after the non-citizen has applied for a visa but before the application is decided.

Note 2: Subclause 785.221(2) applies if the Minister is satisfied that Australia has protection obligations in respect of the applicant as mentioned in paragraph 36(2)(a) or (aa) of the Act.

785.3—Secondary criteria

Note: All applicants must satisfy the primary criteria.

785.4—Circumstances applicable to grant

785.411

The applicant must be in Australia when the visa is granted.

785.5—When visa is in effect

785.511

Temporary visa permitting the holder to remain in, travel to and enter Australia until:

- (a) if the holder of the temporary visa (the *first visa*) makes a valid application for another Subclass 785 (Temporary Protection) visa within 3 years after the grant of the first visa—the day when the application is finally determined or withdrawn; or
- (b) in any other case—the earlier of:
 - (i) the end of 3 years from the date of grant of the first visa; and
 - (ii) the end of any shorter period, specified by the Minister, from the date of grant of the first visa.

785.6—Conditions

785.611

Conditions 8503, 8570 and 8565.

32 Clause 866.211 of Schedule 2

Repeal the clause, substitute:

866.211

- (1) Subclause (2) or (3) is satisfied.
- (2) The applicant:
 - (a) claims that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant; and
 - (b) makes specific claims as to why that criterion is satisfied.

Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

- (3) The applicant claims to be a member of the same family unit as a person:

- (a) to whom subclause (2) applies; and
- (b) who is an applicant for a Subclass 866 (Protection) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

33 Clause 866.221 of Schedule 2

Repeal the clause, substitute:

866.221

- (1) Subclause (2) or (3) is satisfied.
- (2) The Minister is satisfied that a criterion mentioned in paragraph 36(2)(a) or (aa) of the Act is satisfied in relation to the applicant.

Note: Paragraphs 36(2)(a) and (aa) of the Act set out criteria for the grant of protection visas to non-citizens in respect of whom Australia has protection obligations.

- (3) The Minister is satisfied that:
 - (a) the applicant is a member of the same family unit as an applicant mentioned in subclause (2); and
 - (b) the applicant mentioned in subclause (2) has been granted a Subclass 866 (Protection) visa.

Note: See paragraphs 36(2)(b) and (c) of the Act.

34 Clause 866.223 of Schedule 2

Omit “relevant medical practitioner”, substitute “*relevant medical practitioner*”.

35 Paragraph 866.225(a)

Omit “, 4002”.

36 Clause 866.230 of Schedule 2

Repeal the clause, substitute:

866.230

- (1) If the applicant is a child to whom subregulation 2.08(2) applies, subclause (2) is satisfied.

- (2) The Minister is satisfied that:
- (a) the applicant is a member of the same family unit as an applicant to whom subclause 866.221(2) applies; and
 - (b) the applicant to whom subclause 866.221(2) applies has been granted a Subclass 866 (Protection) visa.

Note 1: Subregulation 2.08(2) applies, generally, to a child born to a non-citizen after the non-citizen has applied for a visa but before the application is decided.

Note 2: Subclause 866.221(2) applies if the Minister is satisfied that Australia has protection obligations in respect of the applicant as mentioned in paragraph 36(2)(a) or (aa) of the Act.

36A At the end of Schedule 8

Add:

- 8570 The holder must not:
- (a) enter a country by reference to which:
 - (i) the holder was found to be a person to whom Australia has protection obligations; or
 - (ii) for a member of the family unit of another holder—the other holder was found to be a person to whom Australia has protection obligations; or
 - (b) enter any other country unless:
 - (i) the Minister is satisfied that there are compassionate or compelling circumstances justifying the entry; and
 - (ii) the Minister has approved the entry in writing.

37 After clause 8564 of Schedule 8

Insert:

- 8565 The holder must notify Immigration of any change in the holder's residential address within 28 days after the change occurs.

Division 2—Main amendments commencing immediately after Division 1

Migration Regulations 1994

38 After regulation 2.08E

Insert:

2.08F Certain applications for Protection (Class XA) visas taken to be applications for Temporary Protection (Class XD) visas

Conversion regulation

- (1) For section 45AA of the Act, despite anything else in the Act, a valid application (a *pre-conversion application*) for a Protection (Class XA) visa made before the commencement of this regulation by an applicant prescribed by subregulation (2) is, immediately after this regulation starts to apply in relation to the application under subregulation (3):
 - (a) taken not to be, and never to have been, a valid application for a Protection (Class XA) visa; and
 - (b) taken to be, and always to have been, a valid application for a Temporary Protection (Class XD) visa, made by the prescribed applicant.

Note 1: As a result, the Minister is required to make a decision on the pre-conversion application as if it were a valid application for a Temporary Protection (Class XD) visa.

Note 2: If the first instalment of visa application charge for the pre-conversion application had been paid before this regulation starts to apply, the first instalment of visa application charge for an application for a Temporary Protection (Class XD) visa (if any) is taken to have been paid. See section 45AA of the Act.

Prescribed applicants

- (2) The following are prescribed applicants:
 - (a) an applicant who holds, or has ever held, any of the following visas:

- (i) a Subclass 785 (Temporary Protection) visa granted before 2 December 2013;
- (ii) a Temporary Safe Haven (Class UJ) visa;
- (iii) a Temporary (Humanitarian Concern) (Class UO) visa;
- (b) an applicant who did not hold a visa that was in effect on the applicant's last entry into Australia;
- (c) an applicant who is an unauthorised maritime arrival;
- (d) an applicant who was not immigration cleared on the applicant's last entry into Australia.

When this regulation starts to apply

- (3) This regulation starts to apply in relation to a pre-conversion application immediately after the occurrence of whichever of the following events is applicable to the application:
 - (a) if, before the commencement of this regulation, the Minister had not made a decision in relation to the pre-conversion application under section 65 of the Act—the commencement of this regulation;
 - (b) in a case in which the Minister had made such a decision before the commencement of this regulation—one of the following events, if the event occurs on or after the commencement of this regulation:
 - (i) the Refugee Review Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 415(2)(c) of the Act;
 - (ii) the Administrative Appeals Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 43(1A)(c) of the *Administrative Appeals Tribunal Act 1975* (as substituted in relation to an RRT-reviewable decision by section 452 of the Act);
 - (iii) a court quashes a decision of the Minister in relation to the pre-conversion application and orders the Minister to reconsider the application in accordance with the law.

Division 3—Consequential amendments

Migration Regulations 1994

39 Regulation 2.06AA

Repeal the regulation.

40 Subregulation 2.07AQ(3) (table item 1, column headed “Criterion 2”, paragraph (c))

Omit “; or”.

41 Subregulation 2.07AQ(3) (table item 1, column headed “Criterion 2”, paragraph (d))

Repeal the paragraph.

42 Subregulation 2.07AQ(3) (table item 2, column headed “Criterion 1”)

Omit “Protection (Class XA)”, substitute “protection”.

43 Subregulation 2.07AQ(3) (table item 2, column headed “Criterion 2”)

After “item 1,”, insert “or a Subclass 785 (Temporary Protection) visa granted before 9 August 2008,”.

44 Subregulation 2.07AQ(5)

Omit “Protection (Class XA)” (wherever occurring), substitute “protection”.

45 Subregulation 2.07AQ(7)

After “Subclass 785 (Temporary Protection) visa”, insert “granted before 9 August 2008”.

46 Subregulation 2.43(3) (paragraph (i) of the definition of *relevant visa*)

Repeal the paragraph, substitute:

- (i) Subclass 785, including a Subclass 785 visa granted before 2 December 2013;

47 Subitem 1127AA(3) of Schedule 1 (table item 1, column headed “Criterion 1”, paragraph (c))

Omit “; or”.

48 Subitem 1127AA(3) of Schedule 1 (table item 1, column headed “Criterion 1”, paragraph (d))

Repeal the paragraph.

49 Subitem 1127AA(3) of Schedule 1 (table item 2, column headed “Criterion 1”)

After “item 1,”, insert “or a Subclass 785 (Temporary Protection) visa granted before 9 August 2008,”.

50 Subparagraphs 1302(3)(bb)(i) and (ii) of Schedule 1

After “visa”, insert “, including a Subclass 785 (Temporary Protection) visa granted before 2 December 2013”.

51 Paragraphs 773.213(2)(zf) and (zfa) of Schedule 2

Repeal the paragraphs, substitute:

(zf) protection visas (including Protection (Class AZ) visas, see subsection 35A(5) of the Act);

52 Amendments of listed provisions—protection visas

The provisions listed in the following table are amended as set out in the table.

Amendments relating to protection visas			
Item	Provision	Omit	Substitute
1	Regulation 1.03 (paragraph (a) of the definition of <i>relative</i>)	Protection (Class XA)	protection
2	Paragraph 1.05A(2)(d)	Protection (Class XA)	protection
3	Paragraph 2.04(2)(a)	Protection (Class XA)	protection
4	Paragraph 2.12(1)(c)	Protection (Class XA)	protection visas
5	Regulation 2.20	Protection (Class XA) (wherever occurring)	protection

Schedule 2 Protection visas and other measures

Part 4 Permanent protection visas and temporary protection visas

Amendments relating to protection visas			
Item	Provision	Omit	Substitute
6	Regulation 4.31A	Protection (Class XA) (wherever occurring)	protection
7	Subregulation 4.33(1)	Protection (Class XA)	protection
8	Paragraph 010.211(4)(b) of Schedule 2	Protection (Class XA)	protection
9	Clause 010.611 of Schedule 2	Protection (Class XA) (wherever occurring)	protection
10	Clause 020.611 of Schedule 2	Protection (Class XA) (wherever occurring)	protection
11	Paragraph 030.612(a) of Schedule 2	Protection (Class XA)	protection
12	Paragraph 050.212(8)(c) of Schedule 2	Protection (Class XA)	protection
13	Paragraph 050.613A(1)(a) of Schedule 2	Protection (Class XA)	protection
14	Paragraph 050.614(1)(a) of Schedule 2	Protection (Class XA)	protection
15	Paragraph 051.611A(1)(a) of Schedule 2	Protection (Class XA)	protection

Division 4—Amendments relating to application

Migration Regulations 1994

53 At the end of Schedule 13

Add:

Part 50—Amendments made by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014

5000 Operation of Divisions 1 and 3 of Part 4 of Schedule 2

The amendments of these Regulations made by Divisions 1 and 3 of Part 4 of Schedule 2 to the *Migration Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* apply in relation to:

- (a) a visa application made on or after the commencement of Division 1 of that Part; and
- (b) a visa application that is taken to be, and always to have been, a valid application for a Temporary Protection (Class XD) visa by the operation of paragraph 2.08F(1)(b) of these Regulations (as inserted by Division 2 of that Part).

Note: Regulation 2.08F applies, by its own terms, in relation to some protection visa applications made before the commencement of that Part.

Schedule 2A—Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas

Migration Act 1958

1 After section 39

Insert:

39A Minimum annual numbers of Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas

- (1) Despite any legislative instrument made for the purposes of section 39, the Minister must take all reasonably practicable measures to ensure the grant in a financial year of at least the minimum total number of Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas that is determined by the Minister under subsection (3) of this section for that year.
- (2) Subsection (1) applies subject to this Act, and to any regulation or instrument made under or for the purposes of this Act (other than section 39 of this Act).
- (3) The Minister may, by legislative instrument, determine a minimum total number of Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas for a financial year specified in the determination.
- (4) Despite subsection 44(2) of the *Legislative Instruments Act 2003*, section 42 (disallowance) of that Act applies to a legislative instrument made under subsection (3) of this section.
- (5) In this section:

Protection (Class XA) visas means visas classified by regulation as Protection (Class XA) visas.

Note: For this class of visas, see clause 1401 of Schedule 1 to the *Migration Regulations 1994*.

Refugee and Humanitarian (Class XB) visas means visas classified by regulation as Refugee and Humanitarian (Class XB) visas.

Note: For this class of visas, see clause 1402 of Schedule 1 to the *Migration Regulations 1994*.

Schedule 3—Act-based visas

Part 1—Amendment of the Migration Act 1958

Division 1—Amendments

Migration Act 1958

1 After subsection 31(3)

Insert:

(3A) To avoid doubt, subsection (3) does not require criteria to be prescribed for a visa or visas including, without limitation, visas of the following classes:

- (a) special category visas (see section 32);
- (b) permanent protection visas (see subsection 35A(2));
- (c) temporary protection visas (see subsection 35A(3));
- (d) bridging visas (see section 37);
- (e) temporary safe haven visas (see section 37A);
- (f) maritime crew visas (see section 38B).

Note 1: An application for any of these visas is invalid if criteria relating to both the application and the grant of the visa have not been prescribed (see subsection 46AA(2)).

Note 2: If criteria are prescribed by the regulations for any of these visas, the visa cannot be granted unless any criteria prescribed by this Act, as well as any prescribed by regulation, are satisfied (see subsection 46AA(4)).

2 Before subsection 46(1)

Insert:

Validity—general

3 Paragraph 46(1)(d)

Repeal the paragraph, substitute:

- (d) it is not prevented by any provision of this Act, or of any other law of the Commonwealth, including, without limitation, the following provisions of this Act:

- (i) section 48 (visa refused or cancelled earlier);
 - (ii) section 48A (protection visa refused or cancelled earlier);
 - (iii) section 161 (criminal justice visa holders);
 - (iv) section 164D (enforcement visa holders);
 - (v) section 195 (detainee applying out of time);
 - (vi) section 501E (earlier refusal or cancellation on character grounds); and
- (e) it is not invalid under any provision of this Act, or of any other law of the Commonwealth, including, without limitation, the following provisions of this Act:
- (i) section 46AA (visa applications, and the grant of visas, for some Act-based visas);
 - (ii) section 46A (visa applications by unauthorised maritime arrivals);
 - (iii) section 46B (visa applications by transitory persons);
 - (iv) section 91E or 91G (CPA and safe third countries);
 - (v) section 91K (temporary safe haven visas);
 - (vi) section 91P (non-citizens with access to protection from third countries).

4 Before subsection 46(2A)

Insert:

Provision of personal identifiers

5 Before subsection 46(3)

Insert:

Prescribed criteria for validity

6 At the end of section 46

Add:

- (5) To avoid doubt, subsections (3) and (4) do not require criteria to be prescribed in relation to the validity of visa applications, including, without limitation, applications for visas of the following classes:
- (a) special category visas (see section 32);

- (b) permanent protection visas (see subsection 35A(2));
- (c) temporary protection visas (see subsection 35A(3));
- (d) bridging visas (see section 37);
- (e) temporary safe haven visas (see section 37A);
- (f) maritime crew visas (see section 38B).

7 After section 46

Insert:

46AA Visa applications, and the grant of visas, for some Act-based visas

Visa classes covered by this section

- (1) The following classes of visas are covered by this section:
 - (a) special category visas (see section 32);
 - (b) permanent protection visas (see subsection 35A(2));
 - (c) temporary protection visas (see subsection 35A(3));
 - (d) bridging visas (see section 37);
 - (e) temporary safe haven visas (see section 37A);
 - (f) maritime crew visas (see section 38B).

Applications invalid if no prescribed criteria

- (2) An application for a visa of any of the classes covered by this section is invalid if, when the application is made, both of the following conditions are satisfied:
 - (a) there are no regulations in effect prescribing criteria that must be satisfied for a visa of that particular class to be a valid application;
 - (b) there are no regulations in effect prescribing criteria that must be satisfied for a visa of that particular class to be granted.

Note: This subsection does not apply if regulations are in effect prescribing criteria mentioned in paragraph (a) or (b) (or both) for a visa.

- (3) The criteria mentioned in subsection (2) do not include prescribed criteria that apply generally to visa applications or the granting of visas.

Example: The criteria mentioned in subsection (2) do not include the criteria set out in regulation 2.07 of the *Migration Regulations 1994* (application for visa—general).

Criteria in the Act and the regulations

- (4) If regulations are in effect prescribing criteria mentioned in paragraph (2)(a) or (b) (or both) for a visa of a class covered by this section:
- (a) an application for the visa is invalid unless the application satisfies both:
 - (i) any applicable criteria under this Act that relate to applications for visas of that class; and
 - (ii) any applicable criteria prescribed by regulation that relate to applications for visas of that class; and
 - (b) the visa must not be granted unless the application satisfies both:
 - (i) any applicable criteria under this Act that relate to the grant of visas of that class; and
 - (ii) any applicable criteria prescribed by regulation that relate to the grant of visas of that class.

Note: For visa applications generally, see section 46. For the grant of a visa generally, see section 65.

Division 2—Application

8 Application of amendments

The amendments of the *Migration Act 1958* made by Division 1 apply in relation to an application for a visa made on or after the commencement of the amendments.

Part 2—Amendment of the Migration Regulations 1994

Migration Regulations 1994

9 Regulation 2.01 (heading)

Repeal the heading, substitute:

2.01 Classes of visas

Classes of visas prescribed by section 31 of the Act

10 Regulation 2.01

Before “For”, insert “(1)”.

11 Paragraph 2.01(a)

Omit “created by the Act”, substitute “identified by an item in the table in subregulation (2)”.

12 Regulation 2.01 (note)

Repeal the note, substitute:

Classes of visas provided for by the Act

- (2) A class of visas provided for by the Act that is identified by an item in the following table is classified under these Regulations, by Class and Subclass, as indicated in the item.

Classes of visas provided for by the Act				
Item	Provision of the Act	Class of visa provided for by the Act	Classification by Class under these Regulations	Classification by Subclass under these Regulations
1	section 32	special category visas	Special Category (Temporary) (Class TY)	Subclass 444 (Special Category)

Classes of visas provided for by the Act				
Item	Provision of the Act	Class of visa provided for by the Act	Classification by Class under these Regulations	Classification by Subclass under these Regulations
2	subsection 35A(2)	permanent protection visas	Protection (Class XA)	Subclass 866 (Protection)
3	subsection 35A(3)	temporary protection visas	Temporary Protection (Class XD)	Subclass 785 (Temporary Protection)
4	section 37	bridging visas	Bridging A (Class WA)	Subclass 010 (Bridging A)
5	section 37	bridging visas	Bridging B (Class WB)	Subclass 020 (Bridging B)
6	section 37	bridging visas	Bridging C (Class WC)	Subclass 030 (Bridging C)
7	section 37	bridging visas	Bridging D (Class WD)	Subclass 040 (Bridging (Prospective Applicant))
8	section 37	bridging visas	Bridging D (Class WD)	Subclass 041 (Bridging (Non-applicant))
9	section 37	bridging visas	Bridging E (Class WE)	Subclass 050 (Bridging (General))
10	section 37	bridging visas	Bridging E (Class WE)	Subclass 051 (Bridging (Protection Visa Applicant))
11	section 37	bridging visas	Bridging F (Class WF)	Subclass 060 (Bridging F)
12	section 37	bridging visas	Bridging R (Class WR)	Subclass 070 (Bridging (Removal Pending))
13	section 37A	temporary	Temporary Safe	Subclass 449

Schedule 3 Act-based visas

Part 2 Amendment of the Migration Regulations 1994

Classes of visas provided for by the Act				
Item	Provision of the Act	Class of visa provided for by the Act	Classification by Class under these Regulations	Classification by Subclass under these Regulations
		safe haven visas	Haven (Class UJ)	(Humanitarian Stay (Temporary))
14	section 38B	maritime crew visas	Maritime Crew (Temporary) (Class ZM)	Subclass 988 (Maritime Crew)

Note 1: Subsection 35A(4) of the Act provides that additional classes of permanent and temporary visas may be prescribed as protection visas for the purposes of section 31.

Note 2: For table items 4-12, section 37 provides that there are classes of temporary visas, to be known as bridging visas.

Schedule 4—Amendments relating to fast track assessment process

Part 1—Fast track assessment process

Migration Act 1958

1 Subsection 5(1)

Insert:

excluded fast track review applicant means a fast track applicant:

- (a) who, in the opinion of the Minister:
 - (i) is covered by section 91C or 91N; or
 - (ii) has previously entered Australia and who, while in Australia, made a claim for protection relying on a criterion mentioned in subsection 36(2) in an application that was refused or withdrawn; or
 - (iii) has made a claim for protection in a country other than Australia that was refused by that country; or
 - (iv) has made a claim for protection in a country other than Australia that was refused by the Office of the United Nations High Commissioner for Refugees in that country; or
 - (v) without reasonable explanation provides, gives or presents a bogus document to an officer of the Department or to the Minister (or causes such a document to be so provided, given or presented) in support of his or her application; or
- (aa) who makes a claim for protection relying on a criterion mentioned in subsection 36(2) in, or in connection with, his or her application, if, in the opinion of the Minister, the claim is manifestly unfounded because, without limiting what is a manifestly unfounded claim, the claim:
 - (i) has no plausible or credible basis; or
 - (ii) if the claim is based on conditions, events or circumstances in a particular country—is not able to be substantiated by any objective evidence; or

- (iii) is made for the sole purpose of delaying or frustrating the fast track applicant's removal from Australia; or
- (b) who is, or who is included in a class of persons who are, specified by legislative instrument made under paragraph (1AA)(a).

fast track applicant means:

- (a) a person:
 - (i) who is an unauthorised maritime arrival and who entered Australia on or after 13 August 2012, but before 1 January 2014, and who has not been taken to a regional processing country; and
 - (ii) to whom the Minister has given a written notice under subsection 46A(2) determining that subsection 46A(1) does not apply to an application by the person for a protection visa; and
 - (iii) who has made a valid application for a protection visa in accordance with the determination; or
- (b) a person who is, or who is included in a class of persons who are, specified by legislative instrument made under paragraph (1AA)(b).

Note: Some unauthorised maritime arrivals born in Australia on or after 13 August 2012 may not be ***fast track applicants*** even if paragraph (a) applies: see subsection (1AC)

fast track decision means a decision to refuse to grant a protection visa to a fast track applicant, other than a decision to refuse to grant such a visa:

- (a) because the Minister or a delegate of the Minister is not satisfied that the applicant passes the character test under section 501; or
- (b) relying on:
 - (i) subsection 5H(2); or
 - (ii) subsection 36(1B) or (1C); or
 - (iii) paragraph 36(2C)(a) or (b).

Note: Some decisions made in the circumstances mentioned in paragraph (a), or subparagraph (b)(i) or (iii), of the definition of ***fast track decision*** are reviewable by the Administrative Appeals Tribunal in accordance with section 500.

fast track reviewable decision has the meaning given by section 473BB.

fast track review applicant means a fast track applicant who is not an excluded fast track review applicant.

Immigration Assessment Authority means the Authority established by section 473JA.

referred applicant has the meaning given by section 473BB.

2 After subsection 5(1)

Insert:

(1AA) The Minister may make a legislative instrument for the purposes of the following provisions:

- (a) paragraph (b) of the definition of ***excluded fast track review applicant*** in subsection (1);
- (b) paragraph (b) of the definition of ***fast track applicant*** in subsection (1).

(1AB) A legislative instrument made under subsection (1AA) may apply, adopt or incorporate, with or without modification, the provisions of any other legislative instrument, whether or not the other legislative instrument is disallowable, as in force at a particular time or as in force from time to time.

(1AC) A person is not a fast track applicant only because of paragraph (a) of the definition of ***fast track applicant*** in subsection (1) if:

- (a) the person is born in Australia on or after 13 August 2012; and
- (b) the person is the child of an unauthorised maritime arrival who entered Australia before 13 August 2012.

(1AD) Despite subsection 44(2) of the *Legislative Instruments Act 2003*, section 42 (disallowance) of that Act applies to an instrument made under subsection (1AA).

3 Subsection 5(9)

Omit “either”.

4 At the end of subsection 5(9)

Add:

- ; or (c) in relation to an application for a protection visa by an excluded fast track review applicant—a decision has been made in respect of the application.

5 Subsection 5(9A)

Omit “Part 5 or 7”, substitute “Part 5, 7 or 7AA”.

6 At the end of subsection 5(9A)

Add:

- ; (e) subsection 473EA(2) (Immigration Assessment Authority decisions).

7 At the end of subsection 5(9B)

Add:

- ; (c) a decision of the Immigration Assessment Authority under paragraph 473CC(2)(b).

8 Subsection 5(9B) (note)

Omit “Tribunal”, substitute “review body”.

9 Paragraph 57(1)(a)

Repeal the paragraph, substitute:

- (a) would be the reason, or part of the reason:
 - (i) for refusing to grant a visa; or
 - (ii) for deciding that the applicant is an excluded fast track review applicant; and

10 At the end of subsection 57(1)

Add:

Note: *Excluded fast track review applicant* is defined in subsection 5(1).

11 Paragraph 57(3)(b)

Repeal the paragraph, substitute:

- (b) either:
-

- (i) this Act provides, under Part 5 or 7, for an application for review of a decision to refuse to grant the visa; or
- (ii) the applicant is a fast track applicant.

Note: Some applicants for protection visas are *fast track applicants*. The term is defined in subsection 5(1).

12 Subsection 65(1) (note)

Omit “Note”, substitute “Note 1”.

13 At the end of subsection 65(1)

Add:

Note 2: Decisions to refuse to grant protection visas to fast track review applicants must generally be referred to the Immigration Assessment Authority: see Part 7AA.

14 At the end of subsection 66(2)

Add:

- ; and (e) in the case of a fast track reviewable decision—state that the decision has been referred for review under Part 7AA and that it is not subject to review under Part 5 or Part 7; and
- (f) in the case of a fast track decision that is not a fast track reviewable decision—state that the decision is not subject to review under Part 5, 7 or 7AA.

15 Section 275 (at the end of the definition of *review authority*)

Add:

; or (c) the Immigration Assessment Authority.

16 At the end of subsection 338(1)

Add:

; or (d) the decision is a fast track decision.

17 At the end of subsection 411(2)

Add:

; (c) fast track decisions.

18 At the end of subsection 460(2)

Add:

Note: The Principal Member is also responsible for the overall operation and administration of the Immigration Assessment Authority under Part 7AA.

19 At the end of section 470

Add “and the Principal Member’s powers under Part 7AA”.

20 Paragraph 473A(a)

Repeal the paragraph, substitute:

- (a) the following persons constitute a Statutory Agency:
- (i) the Principal Member of the Refugee Review Tribunal;
 - (ii) the persons mentioned in subsection 407(4) (officers of the Migration Review Tribunal);
 - (iii) the persons mentioned in subsection 472(4), including the persons who are made available to the Immigration Assessment Authority under subsection 473JE(2) (officers of the Refugee Review Tribunal);
 - (iv) the persons mentioned in subsection 473JE(1) (Reviewers of the Immigration Assessment Authority);
- and

21 After Part 7A

Insert:

Part 7AA—Fast track review process in relation to certain protection visa decisions

Division 1—Introduction

473BA Simplified outline of this Part

This Part provides a limited form of review of certain decisions (*fast track decisions*) to refuse protection visas to some applicants, including unauthorised maritime arrivals who entered Australia on or after 13 August 2012, but before 1 January 2014, and who have

not been taken to a regional processing country. These applicants are known as *fast track review applicants* and decisions to refuse to grant them protection visas are known as *fast track reviewable decisions*.

Fast track decisions made in relation to some applicants are excluded from the fast track review process. These applicants are known as *excluded fast track review applicants*.

Fast track review applicants and excluded fast track review applicants are collectively known as *fast track applicants*.

Fast track reviewable decisions must be referred by the Minister to the Immigration Assessment Authority as soon as reasonably practicable after a decision is made. A person cannot make an application for review directly to the Immigration Assessment Authority.

Decisions to refuse to grant protection visas to fast track applicants are generally not reviewable by any other Tribunal under this Act, although some decisions are reviewable by the Administrative Appeals Tribunal.

The Immigration Assessment Authority consists of the Principal Member of the Refugee Review Tribunal, the Senior Reviewer and other Reviewers. The Principal Member is responsible for the overall administration and operation of the Immigration Assessment Authority. The Reviewers are appointed by the Minister.

In reviewing fast track reviewable decisions, the Immigration Assessment Authority is required to pursue the objective of providing a mechanism of limited review that is efficient, quick, free of bias and consistent with Division 3 (conduct of review).

The Immigration Assessment Authority does not hold hearings and is required to review decisions on the papers that are provided to it when decisions are referred to it. However, in exceptional circumstances the Immigration Assessment Authority may consider new material and may invite referred applicants to

provide, or comment on, new information at an interview or in writing.

The Immigration Assessment Authority may affirm a referred decision or may remit the decision for reconsideration in accordance with directions.

The Immigration Assessment Authority may give directions restricting the disclosure of information. There are also specific requirements for the giving and receiving of documents.

473BB Definitions

In this Part:

fast track reviewable decision means:

(a) a fast track decision in relation to a fast track review applicant; or

(b) a fast track decision determined under section 473BC;

but does not include a fast track decision in relation to which the Minister has issued a conclusive certificate under section 473BD.

Note: ***Fast track decisions*** are decisions (subject to some exceptions) to refuse to grant protection visas to certain applicants, known as ***fast track applicants***. Some specified fast track applicants are known as ***excluded fast track review applicants***; all others are known as ***fast track review applicants***. The highlighted terms are defined in subsection 5(1).

new information has the meaning given by subsection 473DC(1).

Principal Member means the Principal Member of the Refugee Review Tribunal.

referred applicant means an applicant for a protection visa in respect of whom a fast track reviewable decision is referred under section 473CA.

Reviewer means a Reviewer engaged in accordance with Division 8, and includes the Senior Reviewer.

review material has the meaning given by section 473CB.

Senior Reviewer means the Senior Reviewer appointed under section 473JC.

473BC Minister may determine that certain decisions are to be reviewed under this Part

The Minister may, by legislative instrument, determine that a specified fast track decision, or a specified class of fast track decisions, in relation to an excluded fast track review applicant should be reviewed under this Part.

Note 1: *Excluded fast track review applicant* and *fast track decision* are defined in subsection 5(1).

Note 2: If the Minister makes a determination, the fast track decision is a fast track reviewable decision (see paragraph (b) of the definition of *fast track reviewable decision* in section 473BB).

473BD Minister may issue conclusive certificate in relation to certain decisions

The Minister may issue a conclusive certificate in relation to a fast track decision if the Minister believes that:

- (a) it would be contrary to the national interest to change the decision; or
- (b) it would be contrary to the national interest for the decision to be reviewed.

Note: If the Minister issues a conclusive certificate, the fast track decision is not a fast track reviewable decision (see definition of *fast track reviewable decision* in section 473BB).

Division 2—Referral of fast track reviewable decisions to Immigration Assessment Authority

473CA Referral of fast track reviewable decisions

The Minister must refer a fast track reviewable decision to the Immigration Assessment Authority as soon as reasonably practicable after the decision is made.

473CB Material to be provided to Immigration Assessment Authority

- (1) The Secretary must give to the Immigration Assessment Authority the following material (*review material*) in respect of each fast track reviewable decision referred to the Authority under section 473CA:
- (a) a statement that:
 - (i) sets out the findings of fact made by the person who made the decision; and
 - (ii) refers to the evidence on which those findings were based; and
 - (iii) gives the reasons for the decision;
 - (b) material provided by the referred applicant to the person making the decision before the decision was made;
 - (c) any other material that is in the Secretary's possession or control and is considered by the Secretary (at the time the decision is referred to the Authority) to be relevant to the review;
 - (d) the following details:
 - (i) the last address for service provided to the Minister by the referred applicant for the purposes of receiving documents;
 - (ii) the last residential or business address provided to the Minister by the referred applicant for the purposes of receiving documents;
 - (iii) the last fax number, email address or other electronic address provided to the Minister by the referred applicant for the purposes of receiving documents;
 - (iv) if an address or fax number mentioned in subparagraph (i), (ii) or (iii) has not been provided to the Minister by the referred applicant, or if the Minister reasonably believes that the last such address or number provided to the Minister is no longer correct—such an address or number (if any) that the Minister reasonably believes to be correct at the time the decision is referred to the Authority;

- (v) if the referred applicant is a minor—the last address or fax number of a kind mentioned in subparagraph (i), (ii), (iii) or (iv) (if any) for a carer of the minor.
- (2) The Secretary must give the review material to the Immigration Assessment Authority at the same time as, or as soon as reasonably practicable after, the decision is referred to the Authority.

473CC Review of decision

- (1) The Immigration Assessment Authority must review a fast track reviewable decision referred to the Authority under section 473CA.
- (2) The Immigration Assessment Authority may:
 - (a) affirm the fast track reviewable decision; or
 - (b) remit the decision for reconsideration in accordance with such directions or recommendations of the Authority as are permitted by regulation.

Division 3—Conduct of review

Subdivision A—Natural justice requirements

473DA Exhaustive statement of natural justice hearing rule

- (1) This Division, together with sections 473GA and 473GB, is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to reviews conducted by the Immigration Assessment Authority.
- (2) To avoid doubt, nothing in this Part requires the Immigration Assessment Authority to give to a referred applicant any material that was before the Minister when the Minister made the decision under section 65.

Subdivision B—Review on the papers

473DB Immigration Assessment Authority to review decisions on the papers

- (1) Subject to this Part, the Immigration Assessment Authority must review a fast track reviewable decision referred to it under section 473CA by considering the review material provided to the Authority under section 473CB:
 - (a) without accepting or requesting new information; and
 - (b) without interviewing the referred applicant.
- (2) Subject to this Part, the Immigration Assessment Authority may make a decision on a fast track reviewable decision at any time after the decision has been referred to the Authority.

Note: Some decisions to refuse to grant a protection visa to fast track applicants are not reviewable by the Immigration Assessment Authority (see paragraphs (a) and (b) of the definition of *fast track decision* in subsection 5(1)).

Subdivision C—Additional information

473DC Getting new information

- (1) Subject to this Part, the Immigration Assessment Authority may, in relation to a fast track decision, get any documents or information (*new information*) that:
 - (a) were not before the Minister when the Minister made the decision under section 65; and
 - (b) the Authority considers may be relevant.
- (2) The Immigration Assessment Authority does not have a duty to get, request or accept, any new information whether the Authority is requested to do so by a referred applicant or by any other person, or in any other circumstances.
- (3) Without limiting subsection (1), the Immigration Assessment Authority may invite a person, orally or in writing, to give new information:
 - (a) in writing; or

- (b) at an interview, whether conducted in person, by telephone or in any other way.

473DD Considering new information in exceptional circumstances

For the purposes of making a decision in relation to a fast track reviewable decision, the Immigration Assessment Authority must not consider any new information unless:

- (a) the Authority is satisfied that there are exceptional circumstances to justify considering the new information; and
- (b) the referred applicant satisfies the Authority that, in relation to any new information given, or proposed to be given, to the Authority by the referred applicant, the new information:
 - (i) was not, and could not have been, provided to the Minister before the Minister made the decision under section 65; or
 - (ii) is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims.

473DE Certain new information must be given to referred applicant

- (1) The Immigration Assessment Authority must, in relation to a fast track reviewable decision:
 - (a) give to the referred applicant particulars of any new information, but only if the new information:
 - (i) has been, or is to be, considered by the Authority under section 473DD; and
 - (ii) would be the reason, or a part of the reason, for affirming the fast track reviewable decision; and
 - (b) explain to the referred applicant why the new information is relevant to the review; and
 - (c) invite the referred applicant, orally or in writing, to give comments on the new information:
 - (i) in writing; or
 - (ii) at an interview, whether conducted in person, by telephone or in any other way.

- (2) The Immigration Assessment Authority may give the particulars mentioned in paragraph (1)(a) in the way that the Authority thinks appropriate in the circumstances.
- (3) Subsection (1) does not apply to new information that:
 - (a) is not specifically about the referred applicant and is just about a class of persons of which the referred applicant is a member; or
 - (b) is non-disclosable information; or
 - (c) is prescribed by regulation for the purposes of this paragraph.

Note: Under subsection 473DA(2) the Immigration Assessment Authority is not required to give to a referred applicant any material that was before the Minister when the Minister made the decision under section 65.

473DF Invitation to give new information or comments in writing or at interview

- (1) This section applies if a referred applicant is:
 - (a) invited under section 473DC to give new information in writing or at an interview; or
 - (b) invited under section 473DE to give comments on new information in writing or at an interview.
- (2) The information or comments are to be given within a period that is prescribed by regulation and specified in the invitation.
- (3) The Immigration Assessment Authority may determine the manner in which, and the place and time at which, an interview is to be conducted.
- (4) If the referred applicant does not give the new information or comments in accordance with the invitation, the Immigration Assessment Authority may make a decision on the review:
 - (a) without taking any further action to get the information or the referred applicant's comments on the information; or
 - (b) without taking any further action to allow or enable the referred applicant to take part in a further interview.

Division 4—Decisions of Immigration Assessment Authority

473EA Immigration Assessment Authority's decision and written statement

Written statement of decision

- (1) If the Immigration Assessment Authority makes a decision on a review under this Part, the Authority must make a written statement that:
 - (a) sets out the decision of the Authority on the review; and
 - (b) sets out the reasons for the decision; and
 - (c) records the day and time the statement is made.

How and when written decisions are taken to be made

- (2) A decision on a review 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.
- (3) The Immigration Assessment Authority has no power to vary or revoke a decision to which subsection (2) applies after the day and time the written statement is made.

Return of documents etc.

- (4) After the Immigration Assessment Authority makes the written statement, the Authority 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

- (5) The validity of a decision on a review, and the operation of subsection (3), are not affected by:

- (a) a failure to record, under paragraph (1)(c), the day and time when the written statement was made; or
- (b) a failure to comply with subsection (4).

473EB Notification of Immigration Assessment Authority's decision

- (1) The Immigration Assessment Authority must notify the referred applicant of a decision on a review by giving the referred applicant a copy of the written statement prepared under subsection 473EA(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 473HB.
- (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 473HC.
- (3) A failure to comply with this section in relation to a decision on a review does not affect the validity of the decision.

473EC Certain decisions of the Immigration Assessment Authority to be published

- (1) Subject to subsection (2), and to any direction under section 473GD, the Immigration Assessment Authority may publish any statements prepared under subsection 473EA(1) that the Principal Member thinks are of particular interest.
- (2) The Immigration Assessment Authority must not publish any statement which may identify a referred applicant or any relative or other dependent of a referred applicant.

Note: Section 5G may be relevant for determining relationships for the purposes of subsection (2).

Division 5—Exercise of powers and functions by Immigration Assessment Authority

473FA How Immigration Assessment Authority is to exercise its functions

- (1) The Immigration Assessment Authority, in carrying out its functions under this Act, is to pursue the objective of providing a mechanism of limited review that is efficient, quick, free of bias and consistent with Division 3 (conduct of review).

Note: Under section 473DB the Immigration Assessment Authority is generally required to undertake a review on the papers.

- (2) The Immigration Assessment Authority, in reviewing a decision, is not bound by technicalities, legal forms or rules of evidence.

473FB Practice directions

- (1) The Principal Member may, in writing, issue directions, not inconsistent with this Act or the regulations as to:
 - (a) the operations of the Immigration Assessment Authority; and
 - (b) the conduct of reviews by the Authority.
- (2) Without limiting subsection (1), the directions may:
 - (a) relate to the application of efficient processing practices in the conduct of reviews by the Immigration Assessment Authority; or
 - (b) set out procedures to be followed by persons giving new information to the Authority in writing or at interview.
- (3) The Immigration Assessment Authority must, as far as practicable, comply with the directions. However, non-compliance with any direction does not mean that the Authority's decision on a review is an invalid decision.
- (4) If the Immigration Assessment Authority deals with a review of a decision in a way that complies with the directions, the Authority is not required to take any other action in dealing with the review.
- (5) The Immigration Assessment Authority is not required to accept new information or documents from a person, or to hear or

continue to hear a person at an interview, if the person fails to comply with a relevant direction that applies to the person.

473FC Guidance decisions

- (1) The Principal Member may, in writing, direct that a decision (the **guidance decision**) of the Refugee Review Tribunal or the Immigration Assessment Authority specified in the direction is to be complied with by the Authority in reaching a decision on a review of a fast track reviewable decision of a kind specified in the direction.
- (2) In reaching a decision on a review of a decision of that kind, the Immigration Assessment Authority must comply with the guidance decision unless the Authority 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 Immigration Assessment Authority with a guidance decision does not mean that the Authority's decision on a review is an invalid decision.

Division 6—Disclosure of information

473GA Restrictions on disclosure of certain information etc.

- (1) Despite anything else in this Act, the Secretary must not give to the Immigration Assessment Authority a document, or information, if the Minister certifies, under subsection (2), that the disclosure of any matter contained in the document, or the disclosure of the information, would be contrary to the public interest:
 - (a) because it would prejudice the security, defence or international relations of Australia; or
 - (b) because it would involve the disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet.
- (2) The Minister may issue a written certificate for the purposes of subsection (1).

473GB Immigration Assessment Authority's discretion in relation to disclosure of certain information etc.

- (1) This section applies to a document or information if:
 - (a) the Minister has certified, under subsection (5), that the disclosure of any matter contained in the document, or the disclosure of the information, would be contrary to the public interest for any reason specified in the certificate (other than a reason set out in paragraph 473GA(1)(a) or (b)) that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the matter contained in the document, or the information, should not be disclosed; or
 - (b) the document, the matter contained in the document, or the information was given to the Minister, or to an officer of the Department, in confidence.
- (2) If, in compliance with a requirement of or under this Act, the Secretary gives to the Immigration Assessment Authority a document or information to which this section applies, the Secretary:
 - (a) must notify the Authority in writing that this section applies in relation to the document or information; and
 - (b) may give the Authority any written advice that the Secretary thinks relevant about the significance of the document or information.
- (3) If the Immigration Assessment Authority is given a document or information and is notified that this section applies in relation to it, the Authority:
 - (a) may, for the purpose of the exercise of its powers in relation to a fast track reviewable decision in respect of a referred applicant, have regard to any matter contained in the document, or to the information; and
 - (b) may, if the Authority thinks it appropriate to do so having regard to any advice given by the Secretary under subsection (2), disclose any matter contained in the document, or the information, to the referred applicant.

- (4) If the Immigration Assessment Authority discloses any matter to the referred applicant under subsection (3), the Authority must give a direction under section 473GD in relation to the information.
- (5) The Minister may issue a written certificate for the purposes of subsection (1).

473GC Disclosure of confidential information

- (1) This section applies to a person who is or has been:
 - (a) a Reviewer; or
 - (b) a person acting as a Reviewer; or
 - (c) a person mentioned in subsection 473JE(2) who is assisting the Immigration Assessment Authority; or
 - (d) a person providing interpreting services in connection with a review by the Authority.
 - (2) This section applies to information or a document if the information or document concerns a person and is obtained by a person to whom this section applies in the course of performing functions or duties or exercising powers under this Act.
 - (3) A person to whom this section applies must not:
 - (a) make a record of any information to which this section applies; or
 - (b) divulge or communicate to any person any information to which this section applies;unless the record is made or the information is divulged or communicated:
 - (c) for the purposes of this Act; or
 - (d) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act.
- Penalty: Imprisonment for 2 years.
- (4) Subsection (3) applies to the divulging or communication of information whether directly or indirectly.
 - (5) A person to whom this section applies must not be required to produce any document, or to divulge or communicate any information, to which this section applies to or in:

- (a) a court; or
 - (b) a tribunal; or
 - (c) a House of the Parliament of the Commonwealth, of a State or of a Territory; or
 - (d) a committee of a House, or the Houses, of the Parliament of the Commonwealth, of a State or of a Territory; or
 - (e) any other authority or person having power to require the production of documents or the answering of questions; except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.
- (6) Nothing in this section affects a right that a person has under the *Freedom of Information Act 1982*.
- (7) For the purposes of this section, a person who is providing interpreting services in connection with a review by the Immigration Assessment Authority is taken to be performing a function under this Act.
- (8) In this section:
produce includes permit access to.

473GD Immigration Assessment Authority may restrict publication or disclosure of certain matters

- (1) If the Principal Member is satisfied, in relation to a review, that it is in the public interest that:
- (a) any information given to the Immigration Assessment Authority; or
 - (b) the contents of any document produced to the Authority;
- should not be published or otherwise disclosed, or should not be published or otherwise disclosed except in a particular manner and to particular persons, the Principal Member may give a written direction accordingly.
- (2) A direction under subsection (1):
- (a) must be in writing; and
 - (b) must be notified in a way that the Principal Member considers appropriate.

- (3) If the Principal Member has given a direction under subsection (1) in relation to the publication of any information or of the contents of a document, the direction does not:
- (a) excuse the Immigration Assessment Authority from its obligations under section 473EA; or
 - (b) prevent a person from communicating to another person a matter contained in the evidence, information or document, if the first-mentioned person has knowledge of the matter otherwise than because of the evidence or the information having been given or the document having been produced to the Authority.
- (4) A person must not contravene a direction given by the Principal Member under subsection (1) that is applicable to the person
- Penalty: Imprisonment for 2 years.

Division 7—Giving and receiving review documents etc.

473HA Giving documents by Immigration Assessment Authority where no requirement to do so by section 473HB or 473HC method

- (1) If:
- (a) a provision of this Act or the regulations requires or permits the Immigration Assessment Authority to give a document to a person; and
 - (b) the provision does not state that the document must be given:
 - (i) by one of the methods specified in section 473HB or 473HC; or
 - (ii) by a method prescribed for the purposes of giving documents to a person in immigration detention;
- the Authority may give the document to the person by any method that it considers appropriate (which may be one of the methods mentioned in subparagraph (b)(i) or (ii) of this section).

Note: Under section 473HG a referred applicant may give the Immigration Assessment Authority the name of an authorised recipient who is to receive documents on the referred applicant's behalf.

- (2) If a person is a minor, the Immigration Assessment Authority may give a document to an individual who is at least 18 years of age if the Authority reasonably believes that:
 - (a) the individual has day-to-day care and responsibility for the minor; or
 - (b) the individual works in or for an organisation that has day-to-day care and responsibility for the minor and the individual's duties, whether alone or jointly with another person, involve care and responsibility for the minor.
- (3) If the Immigration Assessment Authority gives a document to an individual, as mentioned in subsection (2), the Authority is taken to have given the document to the minor. However, this does not prevent the Authority giving the minor a copy of the document.

473HB Methods by which Immigration Assessment Authority gives documents to a person other than the Secretary

Coverage of section

- (1) For the purposes of provisions of this Part or the regulations that:
 - (a) require or permit the Immigration Assessment Authority to give a document to a person (the *recipient*); and
 - (b) state that the Authority must do so by one of the methods specified in this section;the methods are as follows.
- (2) If the recipient is a minor, the Immigration Assessment Authority may use the methods mentioned in subsections (5) and (6) to dispatch or transmit, as the case may be, a document to an individual (a *carer of the minor*):
 - (a) who is at least 18 years of age; and
 - (b) who the Authority reasonably believes:
 - (i) has day-to-day care and responsibility for the minor; or
 - (ii) works in or for an organisation that has day-to-day care and responsibility for the minor and whose duties, whether alone or jointly with another person, involve care and responsibility for the minor.

Note: If the Immigration Assessment Authority gives an individual a document by the method mentioned in subsection (5) or (6), the

Schedule 4 Amendments relating to fast track assessment process

Part 1 Fast track assessment process

individual is taken to have received the document at the time specified in section 473HD in respect of that method.

Giving by hand

- (3) One method consists of a Reviewer, a person authorised in writing by the Senior Reviewer, or a person mentioned in subsection 473JE(2), handing the document to the recipient.

Handing to a person at last residential or business address

- (4) Another method consists of a Reviewer, a person authorised in writing by the Senior Reviewer, or a person mentioned in subsection 473JE(2), handing the document to another person who:
- (a) is at the last residential or business address of the recipient provided to the Immigration Assessment Authority in connection with the review; and
 - (b) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
 - (c) appears to be at least 16 years of age.

Dispatch by prepaid post or by other prepaid means

- (5) Another method consists of a Reviewer or a person mentioned in subsection 473JE(2) dating the document, and then dispatching it:
- (a) within 3 working days (in the place of dispatch) of the date of the document; and
 - (b) by prepaid post or by other prepaid means; and
 - (c) to:
 - (i) the last address for service of the recipient provided to the Immigration Assessment Authority in connection with the review; or
 - (ii) the last residential or business address of the recipient provided to the Authority in connection with the review; or
 - (iii) if the recipient is a minor—the last address for a carer of the minor provided to the Authority.

Transmission by fax, email or other electronic means

- (6) Another method consists of a Reviewer or a person mentioned in subsection 473JE(2), transmitting the document by:
- (a) fax; or
 - (b) email; or
 - (c) other electronic means;
- to:
- (d) the last fax number, email address or other electronic address, as the case may be, of the recipient provided to the Immigration Assessment Authority; or
 - (e) if the recipient is a minor—the last fax number, email address or other electronic address, as the case may be, for a carer of the minor that is provided to the Authority.

Documents given to a carer

- (7) If the Immigration Assessment Authority gives a document to a carer of a minor, the Authority is taken to have given the document to the minor. However, this does not prevent the Authority giving the minor a copy of the document.

473HC Methods by which Immigration Assessment Authority gives documents to the Secretary

Coverage of section

- (1) For the purposes of provisions of this Part or the regulations that:
- (a) require or permit the Immigration Assessment Authority to give a document to the Secretary; and
 - (b) state that the Authority must do so by one of the methods specified in this section;
- the methods are as follows.

Giving by hand

- (2) One method consists of a Reviewer, a person authorised in writing by the Senior Reviewer or a person mentioned in subsection 473JE(2), handing the document to the Secretary or to an authorised officer.

Dispatch by post or by other means

- (3) Another method consists of a Reviewer or a person mentioned in subsection 473JE(2), dating the document, and then dispatching it:
- (a) within 3 working days (in the place of dispatch) of the date of the document; and
 - (b) by post or by other means; and
 - (c) to an address, notified to the Immigration Assessment Authority in writing by the Secretary, to which such documents can be dispatched.

Transmission by fax, e-mail or other electronic means

- (4) Another method consists of a Reviewer or a person mentioned in subsection 473JE(2), transmitting the document by:
- (a) fax; or
 - (b) email; or
 - (c) other electronic means;
- to the last fax number, email address or other electronic address notified to the Authority in writing by the Secretary for the purpose.

473HD When a person other than the Secretary is taken to have received a document from the Immigration Assessment Authority

- (1) This section applies if the Immigration Assessment Authority gives a document to a person other than the Secretary by one of the methods specified in section 473HB (including in a case covered by section 473HA).

Giving by hand

- (2) If the Immigration Assessment Authority gives a document to a person by the method in subsection 473HB(3) (which involves handing the document to the person), the person is taken to have received the document when it is handed to the person.

Handing to a person at last residential or business address

- (3) If the Immigration Assessment Authority gives a document to a person by the method in subsection 473HB(4) (which involves handing the document to another person at a residential or business address), the person is taken to have received the document when it is handed to the other person.

Dispatch by prepaid post or by other prepaid means

- (4) If the Immigration Assessment Authority gives a document to a person by the method in subsection 473HB(5) (which involves dispatching the document by prepaid post or by other prepaid means), the person is taken to have received the document 7 working days (in the place of that address) after the date of the document.

Transmission by fax, email or other electronic means

- (5) If the Immigration Assessment Authority gives a document to a person by the method in subsection 473HB(6) (which involves transmitting the document by fax, email or other electronic means), the person is taken to have received the document at the end of the day on which the document is transmitted.
- (6) Subsection (5) applies despite sections 14, 14A and 14B of the *Electronic Transactions Act 1999*.

Document not given effectively

- (7) If:
- (a) the Immigration Assessment Authority purports to give a document to a person in accordance with a method specified in section 473HB (including in a case covered by section 473HA) but makes an error in doing so; and
 - (b) the person nonetheless receives the document or a copy of it;
- then the person is taken to have received the document at the times mentioned in this section as if the Authority had given the document to the person without making an error in doing so, unless the person can show that he or she received it at a later time, in which case, the person is taken to have received it at that time.

473HE When the Secretary is taken to have received a document from the Immigration Assessment Authority

- (1) This section applies if the Immigration Assessment Authority gives a document to the Secretary by one of the methods specified in section 473HC (including in a case covered by section 473HA).

Giving by hand

- (2) If the Immigration Assessment Authority gives a document to the Secretary by the method in subsection 473HC(2) (which involves handing the document to the Secretary or to an authorised officer), the Secretary is taken to have received the document when it is handed to the Secretary or to the authorised officer.

Dispatch by post or by other means

- (3) If the Immigration Assessment Authority gives a document to the Secretary by the method in subsection 473HC(3) (which involves dispatching the document by post or by other means), the Secretary is taken to have received the document 7 working days (in the place of that address) after the date of the document.

Transmission by fax, email or other electronic means

- (4) If the Immigration Assessment Authority gives a document to the Secretary by the method in subsection 473HC(4) (which involves transmitting the document by fax, email or other electronic means), the Secretary is taken to have received the document at the end of the day on which the document is transmitted.
- (5) Subsection (4) applies despite sections 14, 14A and 14B of the *Electronic Transactions Act 1999*.

473HF Giving documents etc. to the Immigration Assessment Authority

- (1) If, in relation to the review of fast track reviewable decision, a person is required or permitted to give a document or thing to the Immigration Assessment Authority, the person must do so:
- (a) by a method set out in directions under section 473FB; or
-

- (b) if the regulations set out a method for doing so—by that method.
- (2) Directions under section 473FB may make provision for a person to give a copy of a document, rather than the document itself, to the Immigration Assessment Authority.

473HG Authorised recipient

- (1) If:
 - (a) a fast track reviewable decision in respect of a referred applicant is referred for review; and
 - (b) the referred applicant gives the Immigration Assessment Authority written notice of the name and address of another person (the *authorised recipient*) authorised by the referred applicant to receive documents in connection with the review;

the Authority must give the authorised recipient, instead of the referred applicant, any document that it would otherwise have given to the referred applicant.

Note: If the Immigration Assessment Authority gives a person a document by a method specified in section 473HB, the person is taken to have received the document at the time specified in section 473HD in respect of that method.

- (2) If the Immigration Assessment Authority gives a document to the authorised recipient, the Authority is taken to have given the document to the referred applicant. However, this does not prevent the Authority giving the referred applicant a copy of the document.
- (3) Subject to subsection (4), the referred applicant may vary or withdraw the notice under paragraph (1)(b) at any time, but must not (unless the regulations provide otherwise) vary the notice so that any more than one person becomes the referred applicant's authorised recipient.
- (4) In addition to the referred applicant being able to vary the notice under paragraph (1)(b) by varying the address of the authorised recipient, that recipient may also vary that notice by varying that address.

- (5) This section does not apply to the Immigration Assessment Authority giving documents to, or communicating with, the referred applicant when the referred applicant is appearing at an interview with the Authority.

Division 8—The Immigration Assessment Authority

473JA The Immigration Assessment Authority

- (1) The Immigration Assessment Authority is established within the Refugee Review Tribunal.
- (2) The Immigration Assessment Authority consists of the following persons:
 - (a) the Principal Member;
 - (b) the Senior Reviewer and other Reviewers.
- (3) The Principal Member, the Senior Reviewer and the other Reviewers are to exercise the powers, and perform the functions, of the Immigration Assessment Authority under this Part.

473JB Administrative arrangements

- (1) The Principal Member is responsible for the overall operation and administration of the Immigration Assessment Authority and, for that purpose, may issue directions and determine policies.
- (2) The Senior Reviewer is to manage the Immigration Assessment Authority subject to the directions of, and in accordance with policies determined by, the Principal Member.

473JC Appointment of Senior Reviewer

- (1) The Principal Member must, by written instrument, appoint an SES employee to be the Senior Reviewer.
- (2) Before appointing a person as the Senior Reviewer, the Principal Member must consult the Minister.

473JD Acting Senior Reviewer

The Principal Member may appoint a person to act as the Senior Reviewer:

- (a) during a vacancy in the office of Senior Reviewer, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the Senior Reviewer is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Senior Reviewer.

473JE Staff

- (1) The Senior Reviewer and the other Reviewers are to be persons engaged under the *Public Service Act 1999*.
- (2) The Principal Member must make available officers of the Refugee Review Tribunal to assist the Immigration Assessment Authority in the performance of its administrative functions.

473JF Delegation by Principal Member

- (1) The Principal Member may delegate, in writing, all or any of the Principal Member's powers or functions under this Part to the Senior Reviewer.
- (2) In exercising a power under a delegation, the Senior Reviewer must comply with any written directions of the Principal Member.

22 Subsection 476(4) (at the end of the definition of *primary decision*)

Add:

- ; or (c) that has been, or may be, referred for review under Part 7AA (whether or not it has been reviewed).

23 Subsection 477(3) (after paragraph (c) of the definition of *date of the migration decision*)

Insert:

- (ca) in the case of a migration decision made by the Immigration Assessment Authority—the date of the written statement under subsection 473EA(1); or

24 Paragraphs 478(a) and 479(a)

After paragraph (a), insert:

- (aa) if the migration decision concerned is made on review under Part 7AA—the referred applicant in the review by the Immigration Assessment Authority; or

25 Subsection 486D (5) (definition of *tribunal decision*)

Repeal the definition, substitute:

tribunal decision means a privative clause decision, or purported privative clause decision, made on review:

- (a) by a Tribunal under Part 5 or 7 or section 500; or
(b) by the Immigration Assessment Authority under Part 7AA.

26 At the end of subsection 500(1)

Add:

Note: Decisions to refuse to grant a protection visa to fast track applicants are generally not reviewable by the Administrative Appeals Tribunal. However, some decisions of this kind are reviewable by that Tribunal, in the circumstances mentioned in paragraph (a), or subparagraph (b)(i) or (iii), of the definition of *fast track decision* in subsection 5(1).

Part 2—Application

27 Application of amendments

The amendments made by Part 1 of this Schedule apply in relation to an application for a protection visa made by a fast track applicant on or after the commencement of this Schedule.

28 Application of fast track review process in relation to decisions based on complementary protection

- (1) A decision made, before the day Part 1 of this Schedule commences, to refuse to grant a protection visa is not a fast track reviewable decision to the extent that:
- (a) the decision was made relying on paragraph 36(2)(aa) or (c) of the *Migration Act 1958*; and
 - (b) the application for the visa is not finally determined before the day that Part commences; and
 - (c) those paragraphs are repealed before the application is finally determined.

Note: For when an application is finally determined, see subsections 5(9) and (9A) of the *Migration Act 1958*.

- (2) Subitem (1) does not prevent a decision to refuse to grant a protection visa from being a fast track reviewable decision to the extent that the decision was made relying on another provision in the *Migration Act 1958*.

Schedule 5—Clarifying Australia's international law obligations

Part 1—Removal of unlawful non-citizens

Division 1—Amendments commencing on the day after Royal Assent

Migration Act 1958

1 Subsection 5(1)

Insert:

Convention Against Torture means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984.

Note: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is in Australian Treaty Series 1989 No. 21 ([1989] ATS 21) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

non-refoulement obligations includes, but is not limited to:

- (a) non-refoulement obligations that may arise because Australia is a party to:
 - (i) the Refugees Convention; or
 - (ii) the Covenant; or
 - (iii) the Convention Against Torture; and
- (b) any obligations accorded by customary international law that are of a similar kind to those mentioned in paragraph (a).

2 Before section 198

Insert:

197C Australia's non-refoulement obligations irrelevant to removal of unlawful non-citizens under section 198

- (1) For the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen.
- (2) An officer's duty to remove as soon as reasonably practicable an unlawful non-citizen under section 198 arises irrespective of whether there has been an assessment, according to law, of Australia's non-refoulement obligations in respect of the non-citizen.

Division 2—Amendments if this Act commences after the Migration Amendment (Protection and Other Measures) Act 2014

3 Subsection 6A(4)

Repeal the subsection, substitute:

- (4) In this section:

protection obligations means any obligations that may arise because Australia is a party to:

- (a) the Covenant; or
- (b) the Convention Against Torture.

Part 2—Amendments commencing on Proclamation

Migration Act 1958

4 Subsection 5(1)

Insert:

refugee has the meaning given by section 5H.

well-founded fear of persecution has the meaning given by section 5J.

5 Paragraph 5A(3)(f)

Repeal the paragraph, substitute:

- (f) to improve the procedures for determining claims from people seeking protection as refugees; and

6 Subparagraph 5A(3)(j)(ii)

Repeal the subparagraph, substitute:

- (ii) an unauthorised maritime arrival who makes a claim for protection as a refugee; or

7 After section 5G

Insert:

5H Meaning of *refugee*

- (1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a *refugee* if the person:
 - (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
 - (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

- (2) Subsection (1) does not apply if the Minister has serious reasons for considering that:
- (a) the person has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments prescribed by the regulations; or
 - (b) the person committed a serious non-political crime before entering Australia; or
 - (c) the person has been guilty of acts contrary to the purposes and principles of the United Nations.

5J Meaning of *well-founded fear of persecution*

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a *well-founded fear of persecution* if:
- (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.

- (2) A person does not have a *well-founded fear of persecution* if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.

- (3) A person does not have a *well-founded fear of persecution* if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
- (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person;
- or

- (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of *serious harm* for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

- (6) In determining whether the person has a *well-founded fear of persecution* for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the *first person*), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
- (i) the first person has ever experienced; or
 - (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:

- (i) the characteristic is an innate or immutable characteristic;
- (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
- (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

5M Particularly serious crime

For the purposes of the application of this Act and the regulations to a particular person, paragraph 36(1C)(b) has effect as if a reference in that paragraph to a particularly serious crime included a reference to a crime that consists of the commission of:

- (a) a serious Australian offence; or
- (b) a serious foreign offence.

8 Paragraph 36(1A)(a)

Repeal the paragraph, substitute:

- (a) both of the criteria in subsections (1B) and (1C); and

9 After subsection 36(1B)

Insert:

- (1C) A criterion for a protection visa is that the applicant is not a person whom the Minister considers, on reasonable grounds:
 - (a) is a danger to Australia's security; or
 - (b) having been convicted by a final judgment of a particularly serious crime, is a danger to the Australian community.

Note: For paragraph (b), see section 5M.

10 Paragraph 36(2)(a)

Omit "under the Refugees Convention as amended by the Refugees Protocol", substitute "because the person is a refugee".

11 Subsection 48A(2) (after paragraph (aa) of the definition of *application for a protection visa*)

Insert:

- (aaa) an application for a visa, a criterion for which is that the applicant is a non-citizen who is a refugee; or

12 Sections 91R to 91U

Repeal the sections.

13 Subsection 228B(2)

Omit all the words after "the non-citizen", substitute "because the non-citizen is or may be a refugee, or for any other reason".

14 Subparagraphs 336F(3)(a)(ii), (4)(a)(ii) and (5)(c)(i)

Omit "under the Refugees Convention as amended by the Refugees Protocol", substitute "as a refugee".

15 Subparagraph 336F(5)(c)(ii)

Omit “under the Refugees Convention as amended by the Refugees Protocol”.

16 Subparagraph 502(1)(a)(iii)

Repeal the subparagraph, substitute:

- (ii) to refuse under section 65 to grant a protection visa relying on subsection 5H(2) or 36(1C);

17 Paragraph 503(1)(c)

Repeal the paragraph, substitute:

- (c) to refuse under section 65 to grant a protection visa relying on subsection 5H(2) or 36(1C);

Part 3—Contingent amendments

Division 1—Amendments if this Act commences before the Migration Amendment (Protection and Other Measures) Act 2014

Migration Act 1958

18 Subsection 5(1) (definition of *receiving country*)

Repeal the definition, substitute:

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

Division 2—Amendments if this Act commences before the Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2014

Migration Act 1958

19 Subparagraphs 411(1)(c)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) subsection 5H(2), or 36(1B) or (1C); or

20 Subparagraph 411(1)(d)(i)

Repeal the subparagraph, substitute:

- (i) subsection 5H(2) or 36(1C); or

21 Subparagraph 500(1)(c)(i)

Repeal the subparagraph, substitute:

(i) subsection 5H(2) or 36(1C); or

22 Subparagraph 500(4)(c)(i)

Repeal the subparagraph, substitute:

(i) subsection 5H(2) or 36(1C); or

**Division 3—Amendments if this Act commences after the
Migration Amendment (Regaining Control Over
Australia's Protection Obligations) Act 2014**

Migration Act 1958

23 Subsection 5(1) (definition of *receiving country*)

Insert:

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

24 Paragraph 411(1)(c)

Omit all the words after “made”, substitute “relying on subsection 5H(2), or 36(1B) or (1C);”.

25 Subparagraph 411(1)(d)(i)

Repeal the subparagraph, substitute:

(i) subsection 5H(2) or 36(1C); or

26 Paragraphs 500(1)(c) and (4)(c)

Repeal the paragraphs, substitute:

- (c) a decision to refuse to grant a protection visa, or to cancel a protection visa, that was made relying on subsection 5H(2) or 36(1C);

Part 4—Application and transitional provisions

27 Application—Part 1

The amendments made by Part 1 of this Schedule apply in relation to the removal of an unlawful non-citizen on or after the day this item commences.

28 Application—Parts 2 and 3

The amendments made by Parts 2 and 3 of this Schedule apply in relation to an application for a protection visa that is made on or after the day this item commences.

29 References to amended provisions

If a regulation or other instrument made under the *Migration Act 1958* contains a reference to a provision of the *Migration Act 1958* listed in column 2 of the following table in relation to an item, the reference in the regulation or other instrument is to be construed as a reference to the provision of the *Migration Act 1958* listed in column 3 of the item:

References to amended provisions of the <i>Migration Act 1958</i>		
Column 1	Column 2	Column 3
Item	Old reference	New reference
1	section 91R	subsections 5J(4), (5) and (6)
2	section 91S	section 5K
3	section 91U	section 5M

Schedule 6—Unauthorised maritime arrivals and transitory persons: newborn children

Part 1—Amendments

Migration Act 1958

1 Subsection 5(1) (at the end of the definition of *transitory person*)

Add:

- ; or (d) the child of a transitory person mentioned in paragraph (aa) or (b), if:
 - (i) the child was born in a regional processing country to which the parent was taken as mentioned in the relevant paragraph; and
 - (ii) the child was not an Australian citizen at the time of birth; or
- (e) the child of a transitory person mentioned in paragraph (aa) or (b), if:
 - (i) the child was born in the migration zone; and
 - (ii) the child was not an Australian citizen at the time of birth.

Note 1: For who is a child, see section 5CA.

Note 2: A transitory person who entered Australia by sea before being taken to a place outside Australia may also be an unauthorised maritime arrival: see section 5AA.

Note 3: Paragraphs (d) and (e) apply no matter when the child was born, whether before, on or after the commencement of those paragraphs. See the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

2 After subsection 5AA(1)

Insert:

- (1A) For the purposes of this Act, a person is also an ***unauthorised maritime arrival*** if:

- (a) the person is born in the migration zone; and
- (b) a parent of the person is, at the time of the person's birth, an unauthorised maritime arrival because of subsection (1) (no matter where that parent is at the time of the birth); and
- (c) the person is not an Australian citizen at the time of birth.

Note 1: For who is a *parent* of a person, see the definition in subsection 5(1) and section 5CA.

Note 2: A parent of the person may be an *unauthorised maritime arrival* even if the parent holds, or has held, a visa.

Note 3: A person to whom this subsection applies is an *unauthorised maritime arrival* even if the person is taken to have been granted a visa because of section 78 (which deals with the birth in Australia of non-citizens).

Note 4: For when a person is an Australian citizen at the time of his or her birth, see section 12 of the *Australian Citizenship Act 2007*.

Note 5: This subsection applies even if the person was born before the commencement of the subsection. See the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

(1AA) For the purposes of this Act, a person is also an *unauthorised maritime arrival* if:

- (a) the person is born in a regional processing country; and
- (b) a parent of the person is, at the time of the person's birth, an unauthorised maritime arrival because of subsection (1) (no matter where that parent is at the time of the birth); and
- (c) the person is not an Australian citizen at the time of his or her birth.

Note 1: A parent of the person may be an *unauthorised maritime arrival* even if the parent holds, or has held, a visa.

Note 2: This Act may apply as mentioned in subsection (1AA) even if either or both parents of the person holds a visa, or is an Australian citizen or a citizen of the regional processing country, at the time of the person's birth.

Note 3: This subsection applies even if the person was born before the commencement of the subsection. See the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

3 At the end of section 5AA

Add:

Note: An unauthorised maritime arrival who has been taken to a place outside Australia may also be a transitory person: see the definition of *transitory person* in subsection 5(1).

4 Before subsection 198(1)

Insert:

Removal on request

5 Before subsection 198(1A)

Insert:

Removal of transitory persons brought to Australia for a temporary purpose

6 At the end of subsection 198(1A)

Add:

Note: Some unlawful non-citizens are transitory persons. Section 198B provides for transitory persons to be brought to Australia for a temporary purpose. See the definition of *transitory person* in subsection 5(1).

7 After subsection 198(1A)

Insert:

(1B) Subsection (1C) applies if:

- (a) an unlawful non-citizen who is not an unauthorised maritime arrival has been brought to Australia under section 198B for a temporary purpose; and
- (b) the non-citizen gives birth to a child while the non-citizen is in Australia; and
- (c) the child is a transitory person within the meaning of paragraph (e) of the definition of *transitory person* in subsection 5(1).

(1C) An officer must remove the non-citizen and the child as soon as reasonably practicable after the non-citizen no longer needs to be

in Australia for that purpose (whether or not that purpose has been achieved).

Removal of unlawful non-citizens in other circumstances

8 After subsection 198AD(2)

Insert:

- (2A) However, subsection (2) does not apply in relation to a person who is an unauthorised maritime arrival only because of subsection 5AA(1A) or (1AA) if the person's parent mentioned in the relevant subsection entered Australia before 13 August 2012.

Note 1: Under subsection 5AA(1A) or (1AA) a person born in Australia or in a regional processing country may be an unauthorised maritime arrival in some circumstances.

Note 2: This section does not apply in relation to a person who entered Australia by sea before 13 August 2012: see the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012*.

9 Subsection 198AH(1)

Repeal the subsection, substitute:

- (1) Section 198AD applies, subject to sections 198AE, 198AF and 198AG, to a transitory person if, and only if, the person is covered by subsection (1A) or (1B).
- (1A) A transitory person is covered by this subsection if:
- (a) the person is an unauthorised maritime arrival who is brought to Australia from a regional processing country under section 198B for a temporary purpose; and
 - (b) the person is detained under section 189; and
 - (c) the person no longer needs to be in Australia for the temporary purpose (whether or not the purpose has been achieved).
- (1B) A transitory person (a *transitory child*) is covered by this subsection if:
- (a) a transitory person covered by subsection (1A) gives birth to the transitory child while in Australia; and
 - (b) the transitory child is detained under section 189; and

- (c) the transitory child is a transitory person because of paragraph (e) of the definition of *transitory person* in subsection 5(1).

Part 2—Application of amendments

10 Definitions

In this Part:

applicable matter has the meaning given by item 11 (retrospective application of Part 1 amendments).

commencement day means the day this Schedule commences.

Part 1 amendments means the amendments of the *Migration Act 1958* made by Part 1 of this Schedule.

11 Retrospective application of Part 1 amendments

The Part 1 amendments apply on and after the commencement day, and are taken to have applied before that day, subject to this Part, in relation to each of the following matters (an ***applicable matter***):

- (a) the entry of a person into Australia at any time, whether before, on or after the commencement day (or that entry as it is taken to have occurred on birth under section 10 of the *Migration Act 1958*);
- (b) the status of a person as an unauthorised maritime arrival or a transitory person at any time:
 - (i) whether before, on or after the commencement day; and
 - (ii) whether the person is born before, on or after the commencement day;
- (c) the status of a person as an unlawful non-citizen at any time, whether before, on or after the commencement day;
- (d) the detention of a person at any time, whether before, on or after the commencement day, and the performance or exercise of a function, duty or power in relation to such detention;
- (e) the performance or exercise of a function, duty or power in relation to a person under Division 8 of Part 2 of that Act at any time, whether before, on or after the commencement day;
- (f) an application for a visa by a person made at any time, whether before, on or after the commencement day, including the performance or exercise of a function, duty or power in relation to such an application.

Schedule 6 Unauthorised maritime arrivals and transitory persons: newborn children
Part 2 Application of amendments

Note 1: The Part 1 amendments provide for a person to be an unauthorised maritime arrival or a transitory person, in some circumstances, if a parent of the person is an unauthorised maritime arrival or a transitory person for the purposes of the *Migration Act 1958*.

Note 2: Division 8 of Part 2 of the *Migration Act 1958* provides for:

- (a) the removal of unlawful non-citizens from Australia to a place outside Australia (Subdivision A); and
- (b) the taking of unauthorised maritime arrivals from Australia to a regional processing country (Subdivision B); and
- (c) transitory persons to be brought to Australia from a place outside Australia (Subdivision C).

12 Applications under the *Migration Act 1958* that are finally determined

The Part 1 amendments do not apply, and are not taken to have applied, in relation to an application under the *Migration Act 1958* concerning (or consisting of) an applicable matter if the application was finally determined, within the meaning of that Act, before the commencement day.

13 Retrospective application of section 46A (visa applications by unauthorised maritime arrivals)

Scope

- (1) This item applies if the operation of item 11 (retrospective application of Part 1 amendments) results in a person being taken to have been an unauthorised maritime arrival at a particular time.

Subsection 46A(1) taken to apply despite the holding of certain visas

- (2) Subsection 46A(1) of the *Migration Act 1958* is taken to have applied in relation to the person at that time despite the fact that the person was a lawful non-citizen at the time, if the person was a lawful non-citizen only because he or she held one or more of the following visas:
 - (a) a bridging visa;
 - (b) a temporary safe haven visa;
 - (c) a temporary (humanitarian concern) visa;
 - (d) a temporary protection visa granted before 2 December 2013.

Note: Subsection 46A(1) of that Act prevents visa applications by unauthorised maritime arrivals in Australia who are unlawful non-citizens, unless the Minister makes a determination under subsection 46A(2).

Determinations under section 46A made for parent

- (3) Subsection 46A(1) of the *Migration Act 1958* does not apply in relation to an application for a visa by the person (the *child*) if:
- (a) the application is made at any time, whether before, on or after the commencement day; and
 - (b) the Minister has made a determination under subsection 46A(2) of that Act in relation to an application by a parent of the child, made before the commencement day, for the same kind of visa.

14 Retrospective application of section 46B (visa applications by transitory persons)

Scope

- (1) This item applies if the operation of item 11 (retrospective application of Part 1 amendments) results in a person being taken to have been a transitory person at a particular time.

Subsection 46B(1) taken to apply despite the holding of certain visas

- (2) Subsection 46B(1) of the *Migration Act 1958* is taken to have applied in relation to the person at that time despite the fact that the person was a lawful non-citizen at the time, if the person was a lawful non-citizen only because he or she held one or more of the following visas:
- (a) a bridging visa;
 - (b) a temporary safe haven visa;
 - (c) a temporary (humanitarian concern) visa;
 - (d) a temporary protection visa granted before 2 December 2013.

Note: Subsection 46B(1) of the *Migration Act 1958* prevents visa applications by transitory persons in Australia who are unlawful non-citizens, unless the Minister makes a determination under subsection 46B(2).

Determinations under section 46B made for parent

- (3) Subsection 46B(1) of the *Migration Act 1958* does not apply in relation to an application for a visa by the person (the *child*) if:
- (a) the application is made at any time, whether before, on or after the commencement day; and
 - (b) the Minister has made a determination under subsection 46B(2) of that Act in relation to an application by a parent of the child, made before the commencement day, for the same kind of visa.

15 Prospective application for some matters

- (1) The Part 1 amendments apply on and after the commencement day in relation to any matter apart from an applicable matter (for applicable matters, see item 11).
- (2) For the purposes of the application of the Part 1 amendments on and after the commencement day under subitem (1):
- (a) a person may be an unauthorised maritime arrival because of subsection 5AA(1A) or (1AA) of the *Migration Act 1958* no matter when the person was born, whether before, on or after the commencement day; and
 - (b) a person may be a transitory person because of paragraph (d) or (e) of the definition of *transitory person* in subsection 5(1) of that Act no matter when the person was born, whether before, on or after the commencement day.
- (3) The Part 1 amendments apply on and after the commencement day in relation to the status of a person as an unauthorised maritime arrival for the purposes of section 336F of the *Migration Act 1958*.

Note: Section 336F of the *Migration Act 1958* deals with the disclosure of information to some foreign countries and to some bodies.

Schedule 7—Caseload management

Part 1—Amendments

Migration Act 1958

1 Subsection 65(1)

Omit “After considering”, substitute “Subject to sections 84 and 86, after considering”.

2 Subsection 65(1) (before the note)

Insert:

Note 1: Section 84 allows the Minister to suspend the processing of applications for visas of a kind specified in a determination made under that section. Section 86 prevents the Minister from granting a visa of a kind specified in a determination under section 85 if the number of such visas granted in a specified financial year has reached a specified maximum number.

3 Subsection 65(1) (note)

Omit “Note”, substitute “Note 2”.

4 Section 65A

Repeal the section.

5 Subsection 84(1)

Omit “notice in the *Gazette*”, substitute “legislative instrument”.

6 Subsection 84(1)

After “visas”, insert “(including protection visas)”.

7 Subsection 84(1)

Omit “the notice”, substitute “the determination”.

8 Subsection 84(2)

Omit “Where a notice under subsection (1) is published in the *Gazette*”, substitute “On and after the commencement of an instrument made under subsection (1)”.

9 Subsection 84(3)

Omit “A notice”, substitute “A determination”.

10 Subsection 84(4)

Omit “notice”, substitute “determination”.

10A Section 85

Omit “The”, substitute “(1) Subject to subsection (2), the”.

11 Section 85

Omit “notice in the *Gazette*”, substitute “legislative instrument”.

12 Paragraphs 85(a) and (b)

After “visas”, insert “(including protection visas)”.

12A At the end of section 85

Add:

- (2) Subsection (1) does not apply in relation to temporary protection visas.

13 Section 91Y

Repeal the section.

14 Section 414A

Repeal the section.

15 Section 440A

Repeal the section.

Part 2—Application and savings

16 Application of amendments

- (1) The amendments of sections 65, 84 and 85 of the *Migration Act 1958* made by Part 1 of this Schedule apply in relation to an application for a 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.
- (2) The repeal of section 65A of the *Migration Act 1958* made by Part 1 of this Schedule applies in relation 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.
- (3) The repeals of sections 91Y and 440A of the *Migration Act 1958* made by Part 1 of this Schedule apply in relation to reporting periods commencing on or after the commencement of that Part.
- (4) The repeal of section 414A of the *Migration Act 1958* made by Part 1 of this Schedule applies in relation to an application for a review:
 - (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.

17 Saving provision—notices in Gazette

- (1) A notice in force under subsection 84(1) of the *Migration Act 1958* immediately before the commencement of Part 1 of this Schedule continues in force after that commencement as if the amendments of section 84 of that Act made by that Part had not been made.
- (2) A notice in force under section 85 of the *Migration Act 1958* immediately before the commencement of Part 1 of this Schedule continues in force after that commencement as if the amendments of section 85 of that Act made by that Part had not been made.

*[Minister's second reading speech made in—
House of Representatives on 25 September 2014
Senate on 28 October 2014]*

(209/14)

*128 Migration and Maritime Powers Legislation Amendment (Resolving
the Asylum Legacy Caseload) Act 2014 No. 135, 2014*