

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Presented and read a first time

(Immigration and Ethnic Affairs)

A BILL

FOR

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

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Migration Legislation Amendment Act (No. 4) 1994*.

5 Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Schedule

10 3. The *Migration Act 1958* is amended in accordance with items 1 and 2 in the Schedule, and item 3 in the Schedule has effect according to its terms.

SCHEDULE

Section 3

AMENDMENT OF THE MIGRATION ACT 1958

1. After Subdivision AH of Division 3 of Part 2:

Insert:

*“Subdivision AI—Certain non-citizens unable to apply for certain visas***Reason for Subdivision**

“91A. This Subdivision is enacted because the Parliament considers that certain non-citizens who are covered by the CPA, or in relation to whom there is a safe third country, should not be allowed to apply for a protection visa or, in some cases, any other visa. Any such non-citizen who is an unlawful non-citizen will be subject to removal under Division 8.

Interpretation

“91B.(1) In this Subdivision:

‘agreement’ includes a written arrangement or understanding, whether or not binding;

‘CPA’ means the Comprehensive Plan of Action approved by the International Conference on Indo-Chinese Refugees, held at Geneva, Switzerland, from 13 to 14 June 1989.

“(2) For the purposes of this Subdivision, if, apart from this section:

- (a) a colony, overseas territory or protectorate of a foreign country; or
- (b) an overseas territory for the international relations of which a foreign country is responsible;

is not a country in its own right, the colony, territory or protectorate is taken to be a country in its own right.

Non-citizens covered by Subdivision

“91C.(1) This Subdivision applies to a non-citizen at a particular time if:

- (a) the non-citizen is in Australia at that time; and
- (b) at that time, the non-citizen is covered by:
 - (i) the CPA; or
 - (ii) an agreement, relating to persons seeking asylum, between Australia and a country that is, or countries that include a country that is, at that time, a safe third country in relation to the non-citizen (see section 91D); and
- (c) the non-citizen is not excluded by the regulations from the application of this Subdivision.

SCHEDULE—continued

“(2) To avoid doubt, a country does not need to be prescribed as a safe third country at the time that the agreement referred to in subparagraph (1)(b)(ii) is made.

Safe third countries

“91D.(1) A country is a ‘safe third country’ in relation to a non-citizen if:

- (a) the country is prescribed as a safe third country in relation to the non-citizen, or in relation to a class of persons of which the non-citizen is a member; and
- (b) the non-citizen has a prescribed connection with the country.

“(2) Without limiting paragraph (1)(b), the regulations may provide that a person has a prescribed connection with a country if:

- (a) the person is or was present in the country at a particular time or at any time during a particular period; or
- (b) the person has a right to enter and reside in the country (however that right arose or is expressed).

“(3) The Minister must, within 2 sitting days after a regulation under paragraph (1)(a) is laid before a House of the Parliament, cause to be laid before that House a statement, covering the country, or each of the countries, prescribed as a safe third country by the regulation, about:

- (a) compliance with relevant international law concerning the protection of persons seeking asylum; and
- (b) the meeting of relevant human rights standards for the persons in relation to whom the country is prescribed as a safe third country; by the country, or each of the countries.

“(4) A regulation made for the purposes of paragraph (1)(a) ceases to be in force at the end of 3 years after the regulation commences.

Non-citizens to which this Subdivision applies unable to make valid applications for certain visas

“91E. Despite any other provision of this Act, if this Subdivision applies to a non-citizen at a particular time and, at that time, the non-citizen applies, or purports to apply, for a protection visa then, subject to section 91F:

- (a) if the non-citizen has not been immigration cleared at that time—neither that application nor any other application made by the non-citizen for a visa is a valid application; or
- (b) if the non-citizen has been immigration cleared at that time—neither that application nor any other application made by the non-citizen for a protection visa is a valid application.

SCHEDULE—continued**Minister may determine that section 91E does not apply to non-citizen**

“91F.(1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 91E does not apply to an application for a visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given.

“(2) The power under subsection (1) may only be exercised by the Minister personally.

“(3) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

- (a) sets out the determination; and
- (b) sets out the reasons for the determination, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.

“(4) A statement under subsection (3) is not to include:

- (a) the name of the non-citizen; or
- (b) any information that may identify the non-citizen; or
- (c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.

“(5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the determination is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
- (b) if the determination is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

“(6) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.”.

2. Section 198:

Add at the end:

“(7) An officer must remove as soon as reasonably practicable an unlawful non-citizen if:

- (a) the non-citizen is a detainee; and

SCHEDULE—continued

- (b) Subdivision AI of Division 3 of this Part applies to the non-citizen; and
- (c) either:
 - (i) the non-citizen has not been immigration cleared; or
 - (ii) the non-citizen has not made a valid application for a substantive visa that can be granted when the applicant is in the migration zone; and
- (d) either:
 - (i) the Minister has not given a notice under subsection 91F(1) to the non-citizen; or
 - (ii) the Minister has given such a notice but the period mentioned in that subsection has ended and the non-citizen has not, during that period, made a valid application for a substantive visa that can be granted when the applicant is in the migration zone.”.

3. Transitional

- (1) Subject to subitem (3), if:
 - (a) Subdivision AI of Division 3 of Part 2 of the amended Act (“**Subdivision AI**”) applies to a non-citizen immediately after its commencement; and
 - (b) during the period (the “**transitional period**”) from the beginning of 1 September 1994 until immediately before the commencement of Subdivision AI, the non-citizen made an application for a protection visa;
- then:
- (c) if the non-citizen had not been immigration cleared at the time of making the application—that application and any other application by the non-citizen for a visa made during the transitional period ceases to be a valid application at the commencement of Subdivision AI; and
 - (d) if the non-citizen had been immigration cleared at the time of making the application—that application and any other application by the non-citizen for a protection visa made during the transitional period ceases to be a valid application at the commencement of Subdivision AI; and
 - (e) on and after the commencement of Subdivision AI, the amended Act applies as if the person had applied for a protection visa immediately after that commencement.
- (2) To avoid doubt:

SCHEDULE—continued

(a) paragraphs (1)(c) and (d) apply even if an application referred to in the paragraph concerned, or a decision in relation to such an application, is the subject of a review by, or appeal or application to, the Immigration Review Tribunal, the Refugee Review Tribunal, the Administrative Appeals Tribunal, a Federal Court or any other body or court; and

(b) no visa may be granted to the non-citizen as a direct, or indirect, result of such an application.

(3) Subitem (1) does not apply in relation to a non-citizen who, before the commencement of Subdivision AI, has been granted a substantive visa as a result of the application referred to in subitem (1).

(4) In this Item:

“amended Act” means the *Migration Act 1958* as amended by this Act.