

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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) 1995*.

Commencement

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

Schedule

3. The *Migration Act 1958* is amended in accordance with the applicable items in the Schedule, and the other items in the Schedule have effect 5 according to their terms.
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SCHEDULE

Section 3

AMENDMENT OF THE MIGRATION ACT 1958

1. Objects of amendments

The objects of these amendments are:

- (a) to amend section 36 of the *Migration Act 1958* as a response to the decision of the Federal Court in NG 327 of 1994 (unreported); and
- (b) to amend the *Migration Act 1958* to prevent non-citizens from making further applications for protection visas in certain cases.

2. Section 36:

Add at the end:

“(3) When applying the Refugees Convention as amended by the Refugees Protocol in considering an application for a protection visa:

- (a) a class of persons is not to be treated as a particular social group if the description of the class contains a reference to the whole or any part of the fertility control policies of the government of a foreign country; and
- (b) the fertility control policies of the government of a foreign country are to be disregarded in determining if a class of persons is a particular social group; and
- (c) if, after applying paragraphs (a) and (b), the applicant is found to be a member of a particular social group—the fertility control policies of the government of a foreign country may be taken into account in determining if the applicant has a well founded fear of being persecuted.

“(4) The fertility control policies of the Government of the People’s Republic of China are an example of the policies referred to in subsection (3).

“(5) To avoid doubt:

- (a) paragraph (3)(a) does not prevent a class of persons from being treated as a particular social group where the class could be described in the same terms even if the fertility control policies of the government of a foreign country did not exist; and
- (b) paragraph (3)(b) does not prevent a class of persons from being determined to be a particular social group where the class of persons would be a particular social group even if the fertility control policies of the government of a foreign country did not exist.”.

3. Paragraph 46(1)(d):

Before “161” insert “48A (protection visa), 91E (CPA and safe third countries),”.

SCHEDULE—continued**4. After section 48:**

Insert:

Non-citizen refused a protection visa may not make further application for protection visa

“48A.(1) Subject to section 48B, a non-citizen who, while in the migration zone, has made:

- (a) an application for a protection visa, where the grant of the visa has been refused (whether or not the application has been finally determined); or
- (b) applications for protection visas, where the grants of the visas have been refused (whether or not the applications have been finally determined);

may not make a further application for a protection visa while in the migration zone.

“(2) In this section:

‘**application for a protection visa**’ includes:

- (a) an application for a visa, or entry permit (within the meaning of this Act as in force immediately before 1 September 1994), a criterion for which is that the applicant is a non-citizen who has been determined to be a refugee under the Refugees Convention as amended by the Refugees Protocol; and
- (b) an application for a decision that a non-citizen is a refugee under the Refugees Convention as amended by the Refugees Protocol; and
- (c) an application covered by paragraph (a) or (b) that is also covered by section 39 of the *Migration Reform Act 1992*.

Minister may determine that section 48A does not apply to non-citizen

“48B.(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 48A does not apply to prevent an application for a protection 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 on which 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

SCHEDULE—continued

- (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.”.

5. Subsection 49(3):

Omit “section 48”, substitute “sections 48 and 48A”.

6. Section 50:

Add at the end:

“Note: Section 48A prevents repeat applications for protection visas in most circumstances where the applicant is in the migration zone.”.

7. Paragraph 475(2)(e):

After “section” insert “48B, 91F”.

8. Application of amendments

(1) Subject to subitem (2), the amendment made by item 2 applies in relation to applications that have not been finally determined at the commencement of that item.

(2) The amendment made by item 2 does not apply in relation to applications where the applicant has, before the commencement of that item, been determined under this Act to be a non-citizen who satisfies the criterion mentioned in subsection 36(2) of the *Migration Act 1958*.

SCHEDULE—continued

(3) The amendment made by item 7 applies to decisions whether made before or after the commencement of this item.



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