

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MIGRATION LAWS AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and Ethnic Affairs
Senator the Hon. Nick Bolkus)

MIGRATION LAWS AMENDMENT BILL 1993

OUTLINE

This Bill defers the commencement of certain provisions contained in the *Migration Reform Act 1992* and other migration legislation until 1 September 1994. The Bill makes technical amendments to the *Migration Act 1958*, the *Migration Reform Act 1992*, the *Migration (Delayed Visa Applications) Tax Act 1992* and the *Migration (Offences and Undesirable Persons) Amendment Act 1992* in order to defer the commencement of certain provisions from 1 November 1993 until 1 September 1994.

The amendments also extend the operation of Division 4B of Part 2 of the *Migration Act 1958* to any unauthorised boat arrivals between 1 November 1993 and 1 September 1994. A definition of the word "boat" is included to remove doubt as to the application of the Division to certain unauthorised arrivals. Division 4B is also amended to provide that a designated person may be released from detention under that Division where the Minister has used the special powers of intervention contained in sections 166BE and 166HL of the *Migration Act 1958* to grant that person a visa and entry permit.

The purpose of the deferment of commencement until 1 September 1994 is to assure the smooth implementation of the *Migration Reform Act 1992* by allowing sufficient time for the drafting of regulations, the design and printing of new application forms, the development of new information technology systems and programs, and the training of Departmental officers. It will also allow time for making consequential amendments to other legislation and for making minor technical amendments to the *Migration Reform Act 1992*.

The provisions in the *Migration Reform Act 1992* concerning review of refugee-related decisions by the Refugee Review Tribunal (the RRT) will not be affected by the deferment. The RRT commenced operations on 1 July 1993, and the Bill contains a number of technical corrections to ensure its smooth and effective operation. The Bill also provides a mechanism whereby the backlog of refugee status review applications to the former Refugee Status Review Committee (RSRC) is transferred to the RRT.

Under the proposed amendments, the RRT will be the sole review authority for the backlog of RSRC cases that remained undecided at 1 July 1993. Prior to the commencement of the amendment effecting this transfer, members of the RRT were empowered to consider such review applications as delegates of the Minister. The Bill provides that any decisions on such cases taken by a member of the RRT as the delegate of the Minister are to be taken to be decisions of the RRT.

FINANCIAL IMPACT STATEMENT

The amendments in the Bill will have no financial impact.

MIGRATION LAWS AMENDMENT BILL 1993**NOTES ON INDIVIDUAL CLAUSES****PART 1 - PRELIMINARY****Clause 1 Short title**

1 This clause provides that this Act may be cited as the *Migration Laws Amendment Act 1993*.

Clause 2 Commencement

2 This clause details when different provisions of this Act are to commence. Essentially, the effect of this clause is that those provisions which defer the commencement of the *Migration Reform Act 1992* and other legislation, and which transfer the backlog of Refugee Status Review Committee (RSRC) cases to the Refugee Review Tribunal (RRT), commence upon Royal Assent. Those provisions which make minor technical corrections to the *Migration Reform Act 1992*, and to the *Migration Act 1958* as it will be on 1 September 1994, will commence on that date. Those provisions which make minor technical amendments to the provisions which affect the RRT's operations have retrospective operation, and are taken to have commenced on 1 July 1993 which is the date on which the RRT commenced operations.

PART 2 - AMENDMENT OF THE MIGRATION REFORM ACT 1992***Division 1 - Principal Act*****Clause 3 Principal Act**

3 This clause provides that, in Part 2, the term "Principal Act" refers to the *Migration Reform Act 1992*.

Division 2 - Deferral of the commencement date of certain provisions of the Principal Act from 1 November 1993 to 1 September 1994**Clause 4 Object of Division**

4 This clause provides that the object of the Division is to defer the commencement date of certain provisions of the Principal Act from 1 November 1993 to 1 September 1994.

Clause 5	Commencement
Clause 6	Transitional - refugee applications
Clause 7	Transitional - application

5 These clauses amend sections 2, 39 and 40, respectively, of the Principal Act by replacing references in these sections to "1 November 1993" with references to "1 September 1994". The effect of the amendments is to defer the commencement date of the majority of the provisions of the Principal Act, and to ensure that transitional arrangements provided for in the Principal Act take effect from the new date of commencement.

Clause 8 Repeal of section 41

6 This clause repeals section 41 of the Principal Act. Section 41 was enacted to provide a temporary mechanism whereby references to visas and entry permits in other legislation could be altered by regulations - pending the making of consequential amendments to that other legislation - so as to be consistent with the terminology applicable following the commencement of the provisions of the Principal Act. This interim measure is no longer regarded as necessary due to the deferment of the commencement date of the majority of the provisions of the Principal Act until 1 September 1994.

Division 3 - Technical corrections

Clause 9 Object of Division

7 This clause provides that the object of the Division is to make some technical corrections to the Principal Act.

Clause 10 Commencement

8 This clause amends section 2 of the Principal Act to ensure that provisions (namely paragraphs 4(e) and (f) and sections 21 and 22 of the Principal Act) which should have commenced when the RRT began its operations on 1 July 1993, are taken to have commenced on that day.

Clause 11 Interpretation

9 This clause omits the definitions of the terms "migration zone", "Refugee Review Tribunal" and "RRT-reviewable decision" from paragraph 4(c) of the Principal Act. The definitions in question are inserted into the *Migration Act 1958* instead, and with effect from 1 July 1993, by clause 22 of this Act.

PART 3 - AMENDMENT OF THE MIGRATION ACT 1958***Division 1 - Principal Act*****Clause 12 Principal Act**

10 This clause provides that, in Part 3, the term "Principal Act" refers to the *Migration Act 1958*.

Division 2 - Amendments consequential on the deferral of the commencement date of certain provisions of the Migration Reform Act 1992 from 1 November 1993 to 1 September 1994**Clause 13 Object of Division**

11 This clause provides that the object of the Division is to make certain amendments of the Principal Act that are consequential on the deferral of the commencement date of certain provisions of the *Migration Reform Act 1992* from 1 November 1993 to 1 September 1994.

Clause 14 Interpretation**Clause 15 Lawful non-citizens****Clause 16 Unlawful non-citizens****Clause 17 Application of Subdivision****Clause 18 Interpretation****Clause 19 Powers of entry and search****Clause 20 Decisions reviewable by Refugee Review Tribunal**

12 These clauses make amendments to the Principal Act which are consequential upon the deferral of the commencement date of certain provisions of the *Migration Reform Act 1992*. The clauses substitute references in the Principal Act to "1 November 1993" by references to "1 September 1994" in paragraph (b) of the definition of "old visa" in subsection 4(1), in paragraphs 14(3)(c) and (d), subsection 15(2), section 50AA, paragraph 54K(a), subparagraph 90(6)(c)(ia), and paragraphs 166B(1)(a) and (b).

Division 3 - Technical corrections**Clause 21 Object of Division**

13 This clause provides that the object of the Division is to make some technical corrections to the Principal Act.

Clause 22 Interpretation

14 This clause inserts the definitions, omitted from the *Migration Reform Act 1992* by clause 11 of this Act - of the terms "migration zone", "Refugee Review Tribunal" and "RRT-reviewable decision" into subsection 4(1) of the Principal Act. It also inserts a reference to subsections 166BE(1) and 166HL(1) into subsection 4(28) of the Principal Act, with effect from 1 July 1993, to make it clear that the Minister has power to grant a visa or an entry permit pursuant to those subsections in the course of substituting a decision more favourable to the applicant than the decision of the RRT or the Administrative Appeals Tribunal in relation to an RRT-reviewable decision. The clause also makes a minor grammatical amendment to subsection 4(28).

Clause 23 Period of grace

15 This clause replaces an incorrect reference in paragraph 13(2)(d) to "paragraph 13(2)(b)" second occurring with a reference to "paragraph 13(2)(ba)".

Clause 24 Heading to Subdivision AA of Division 2 of Part 2

16 This clause has the effect of changing the name of "subdivision AA" of Division 2 of Part 2, which will, on its commencement, consist of sections 28A to 28G, to "subdivision AH". This amendment is necessary because the *Migration Reform Act 1992* will insert a new "subdivision AA", consisting of sections 26K to 26S, into the Principal Act. As other amendments in section 10 of the *Migration Reform Act 1992* will insert subdivisions AB to AG, the existing "subdivision AA" is renamed "subdivision AH".

Clause 25 Minister may substitute more favourable decision

Clause 26 Minister may substitute more favourable decision

17 These clauses insert the words "on or after 1 September 1994" into subsections 166BE(2) and 166HL(2) so that those subsections - which provide that the Minister, in exercising the power under subsection 166BE(1) or 166HL(1), is not bound by Subdivision AA or AC of Division 2 of Part 2 or by the regulations, but is bound by all other provisions of the Principal Act - have practical effect only from that date. This amendment is necessary because the provisions referred to in these subsections will not commence until 1 September 1994.

Division 4 - Amendments to up-date a cross-reference to the regulations

Clause 27 Object of Division

18 This clause provides that the object of the Division is to update a cross-reference to the regulations in paragraph 166B(1)(b) of the Principal Act.

Clause 28 Decisions reviewable by Refugee Review Tribunal

19 This clause inserts a reference to the "Migration (Review) (1993) Regulations", which were made after the enactment of section 166B and which superseded the Migration (Review) Regulations, in paragraph 166B(1)(b) of the Principal Act. That paragraph currently provides that a decision, made before 1 November 1993, to refuse to grant, or to cancel, a visa or entry permit, a criterion for which is that the applicant is a non-citizen who has been determined to be a refugee, is an RRT-reviewable decision, provided it is not a decision made under Part 2A of the Migration (Review) Regulations.

Division 5 - Amendments to allow the Refugee Review Tribunal to deal with the backlog of review applications

Clause 29 Object of Division

20 This clause provides that the object of the Division is to allow the Refugee Review Tribunal to deal with the backlog of review applications.

Clause 30 Insertion of new section

21 This clause inserts new section 166BAA - "Refugee Review Tribunal to deal with the backlog of review applications" - after section 166BA of the Principal Act.

22 Subsection (1) provides that section 166BAA applies to certain RRT-reviewable decisions in respect of which applications for review had been made prior to 1 July 1993 in accordance with any applicable regulations. The review applications affected are:

- those in respect of which no decision was made before the commencement of this section;
- those in respect of which a decision was made before the commencement of this section, and:
 - . that decision was quashed or set aside by a court before the commencement of this section and was referred by the court for further consideration, and no decision on the further consideration was made prior to the commencement of this section; or
 - . that decision is quashed or set aside by a court after the commencement of this section and is referred by the court for further consideration; or
 - . an application for judicial review of the decision was made before the commencement of this section, and before the judicial review application was or is determined by the court the Minister agreed or agrees in writing to reconsider the decision, and no decision on that reconsideration was made before the commencement of this section; or

- . an application for judicial review of the decision is made after the commencement of this section, and before the judicial review application is determined by the court the Minister agrees in writing to reconsider the decision.

23 Subsection (2) provides that a valid application for review under section 166BA has been made in respect of decisions to which section 166BAA applies. The practical effect of this subsection is that outstanding applications for review made before 1 July 1993 are regarded as having been validly made to the RRT.

24 Subsection (3) provides that such decisions are only reviewable under Part 4A of the Principal Act, so that review either under Part 3 or administratively is precluded. It is intended to confer exclusive jurisdiction in the relevant applications to the Refugee Review Tribunal, apart from judicial review which is referred to in subsection (5) below.

25 Subsection (4) provides that section 166BAA has effect despite any other provision of the Principal Act or the regulations.

26 Subsection (5) provides that a reference in section 166BAA (other than sub-subparagraphs (1)(c)(iv)(B) or (1)(c)(v)(B)) to "review" does not include a reference to "judicial review".

Division 6 - Amendments relating to pre-commencement decisions made by members of the Refugee Review Tribunal in their capacity as delegates of the Minister

Clause 31 Object of Division

27 This clause provides that the object of the Division is to provide that certain decisions made by members of the RRT in their capacity as delegates of the Minister are to be treated for certain purposes as if they were decisions of the Tribunal.

Clause 32 Insertion of new section

28 This clause inserts section 166BG - "Certain decisions made by members of the Tribunal in their capacity as delegates of the Minister to be treated as decisions of the Tribunal for certain purposes" - into the Principal Act after section 166BF.

29 Subsection 166BG(1) provides that section 166BG applies to a decision under section 22AA of the Principal Act by a member of the RRT as a delegate of the Minister that a person is a refugee if that decision was made after 30 June 1993 and before the commencement of section 166BG

30 Subsection 166BG(2) precludes further review of such decisions by the RRT under Part 4A by providing that such decisions are not RRT-reviewable decisions.

31 Subsection 166BG(3) has the effect that, for the purposes of sections 166BD and 166BE, decisions to which section 166BG applies are taken to be decisions of the RRT under section 166BC rather than decisions of the Minister's delegate under section 22AA, and that the applicant is taken to have applied for that review.

Division 7 - Amendments relating to custody of certain non-citizens**Clause 33 Object of Division**

32 This clause provides that the object of the Division is to make some technical amendments to Division 4B of Part 2 of the Principal Act.

Clause 34 Interpretation

33 This clause inserts a definition of the word "boat" into section 54K of the Principal Act - "'Boat' means a vessel of any description, but does not include an aircraft". The purpose of this amendment is to make it clear that, for the purposes of Division 4B of the Principal Act, a person may be a "designated person" as defined in section 54K regardless of the size or nature of the vessel, excluding an aircraft, on which the person arrived in Australia.

Clause 35 Designated persons to be in custody

34 This clause inserts into paragraph 54L(2)(b) a reference to the Minister's powers under sections 166BE and 166HL to grant a visa or an entry permit in the course of substituting a decision more favourable to the applicant than a decision of the RRT or the Administrative Appeals Tribunal in relation to an RRT-reviewable decision. The effect of this amendment is that a designated person is to be released from custody if the person is granted an entry permit not only under section 34 or 115, but also under sections 166BE or 166HL.

PART 4 - AMENDMENT OF THE MIGRATION (DELAYED VISA APPLICATIONS) TAX ACT 1992**Clause 36 Principal Act**

35 This clause provides that, in Part 4, the term "Principal Act" refers to the *Migration (Delayed Visa Applications) Tax Act 1992*.

Clause 37 Object of Part

36 This clause provides that the object of the Part is to defer the commencement date of the Principal Act from 1 November 1993 until 1 September 1994.

Clause 38 Commencement

37 This clause replaces the reference, in section 2 of the Principal Act, to "1 November 1993" with a reference to "1 September 1994" to ensure that the commencement of the Principal Act coincides with the commencement of the majority of the provisions of the *Migration Reform Act 1992*.

PART 5 - AMENDMENT OF THE MIGRATION (OFFENCES AND UNDESIRABLE PERSONS) AMENDMENT ACT 1992

Clause 39 Principal Act

38 This clause provides that, in Part 5, the term "Principal Act" refers to the *Migration (Offences and Undesirable Persons) Amendment Act 1992*.

Clause 40 Object of Part

39 This clause provides that the object of the Part is to defer the commencement date of certain provisions of the Principal Act from 1 November 1993 to 1 September 1994.

Clause 41 Commencement

40 This clause replaces the reference, in subsection 2(2) of the Principal Act, to "1 November 1993" with a reference to "1 September 1994" to ensure that the commencement of the Principal Act coincides with the commencement of the majority of the provisions of the *Migration Reform Act 1992*.





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