



Migration Act 1958

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About this compilation

This compilation

This is a compilation of the *Migration Act 1958* that shows the text of the law as amended and in force on 22 December 1975 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to Immigration, Deportation and Emigration

Part I—Preliminary

1 Short title

This Act may be cited as the *Migration Act 1958*.

2 Commencement

The several Parts of this Act shall come into operation on such dates as are respectively fixed by Proclamation.

4 Repeal and savings

- (1) The Acts specified in the Schedule to this Act are repealed.
- (2) Section nine of the *War Precautions Act Repeal Act 1920* and the heading to that section, and the Schedule to that Act, are repealed.
- (3) The *War Precautions Act Repeal Act 1920*, as amended by this section, may be cited as the *War Precautions Act Repeal Act 1920*.
- (4) Notwithstanding the repeals effected by this section—
 - (a) a certificate of exemption in force under the *Immigration Act 1901* immediately before the date of commencement of this Part shall, for all purposes of this Act, be deemed to be a temporary entry permit granted under this Act to the person specified in the certificate and authorizing that person to remain in Australia for a period ending on the date on which the certificate would have expired if this Act had not been passed;
- (5) For the purposes of paragraph (a) of the last preceding subsection, where, before the commencement of this Part, an immigrant who had previously entered Australia re-entered Australia and, upon or

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after the re-entry, a certificate of exemption purported to be issued to him, the certificate shall be deemed to have been as validly issued as if he had not previously entered Australia.

5 Interpretation

(1) In this Act, unless the contrary intention appears—

alien means a person who is not—

- (a) a British subject;
- (b) an Irish citizen; or
- (c) a protected person;

authorized officer, in relation to the exercise of any power or the discharge of any duty or function under this Act, means an officer authorized by the Minister to exercise that power or discharge that duty or function;

crime includes any offence;

deportation means deportation from Australia;

deportation order means an order for the deportation of a person made under, or continued in force by, this Act;

deportee means a person in respect of whom a deportation order is in force;

enter includes re-enter;

entered includes re-entered;

entry includes re-entry;

entry permit means a permit issued under section six of this Act;

identity document, in relation to a member of the crew of a vessel, means—

- (a) an identification card, in accordance with a form approved by the Minister, in respect of the member signed by the master of the vessel; or

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- (b) a document, of a kind approved by the Minister as an identity document for the purposes of this Act, in respect of the member

immigrant includes a person intending to enter, or who has entered, Australia for a temporary stay only, where he would be an immigrant if he intended to enter, or had entered, Australia for the purpose of staying permanently;

master, in relation to a vessel, means the person in charge or command of the vessel;

member of the crew means—

- (a) in relation to a vessel other than an aircraft—the master of the vessel, or a person whose name is on the articles of the vessel as a member of the crew; or
- (b) in relation to an aircraft—the master of the aircraft, or a person employed by the operator of the aircraft and whose name is included in a list of members of the crew of the aircraft furnished by the master as prescribed;

officer means an officer of the Department of Immigration and Ethnic Affairs, a person who is an officer for the purposes of the *Customs Act 1901* or a member of the Police Force of the Commonwealth or of a State or Territory;

passport includes a document of identity issued from official sources, whether in or outside Australia, and having the characteristics of a passport;

port means a proclaimed port or a proclaimed airport;

proclaimed airport means an airport appointed by a Proclamation in force under section fifteen of the *Customs Act 1901*;

proclaimed port means a port established by a Proclamation in force under section fifteen of the *Customs Act 1901* or a port that is continued under section eighteen of that Act as if established under that Act;

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protected person has the same meaning as in the *Nationality and Citizenship Act 1948*;

stowaway means a person who is or was on board a vessel at the time of the arrival of the vessel from a place outside Australia at a port or place in Australia and is not or was not—

- (a) a *bona fide* passenger on the vessel; or
- (b) a member of the crew of the vessel;

temporary entry permit means an entry permit referred to in subsection (6) of section six of this Act;

Territory means a Territory being part of the Commonwealth;

the holder, in relation to an entry permit, means the person to whom the entry permit was granted or a person who is deemed to be included in the entry permit;

vessel includes an aircraft.

- (2) For the purposes of this Act, a person shall be deemed to enter Australia—
 - (a) in the case of a person arriving in Australia by a vessel other than an aircraft—when he disembarks from the vessel in Australia; or
 - (b) in the case of a person arriving in Australia by an aircraft—when he disembarks from the aircraft in Australia or, if he so disembarks at a proclaimed airport, when he leaves the airport,
whether or not he intends to return to the vessel or aircraft.
- (3) For the purposes of this Act, a person shall be deemed to have left Australia if he has gone outside the territorial limits of Australia.
- (4) For the purposes of this Act, a person shall not be deemed to have entered or re-entered Australia, or to enter or re-enter Australia, where, having left Australia—
 - (a) he returned or returns to Australia, within the prescribed time after the date on which he left Australia, in the vessel in

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which he left Australia after having remained, at all times during his absence from Australia, a passenger in, or a member of the crew of, that vessel; or

(b) he returned or returns to Australia without having entered any country other than a Territory outside Australia, unless he was, at the time when he left Australia, a person whose deportation had been ordered.

(5) In the last preceding subsection, *the prescribed time*, in relation to a person, means—

(a) thirty days; or

(b) where, at the time when that person left Australia, there was in force an instrument under the hand of an authorized officer approving a longer time as the prescribed time in the case of that person or a class of persons in which that person was included—that longer time.

Part II—Immigration and Deportation

Division 1—Entry Permits

6 Immigrant not to enter Australia without entry permit

- (1) An immigrant who, not being the holder of an entry permit that is in force, enters Australia thereupon becomes a prohibited immigrant.
- (2) An officer may, in accordance with this section and at the request or with the consent of an immigrant, grant to the immigrant an entry permit.
- (3) An entry permit shall be in a form approved by the Minister and shall be expressed to permit the person to whom it is granted to enter Australia or to remain in Australia or both.
- (4) For the purposes of the last preceding subsection, where a notation in a form approved by the Minister as a form of entry permit is made by an officer in a passport or other document of identity held by a person and the notation does not specify the name of any person as the person to whom it relates, the notation has effect as if it were expressed to relate to the person holding the passport or other document.
- (5) An entry permit may be granted to an immigrant before he enters Australia or after he has entered Australia (whether before or after the commencement of this Part).
- (6) An entry permit that is intended to operate as a temporary entry permit shall be expressed to authorize the person to whom it relates to remain in Australia for a specified period only, and such a permit may be granted subject to conditions.
- (7) A woman who enters Australia in the company of, and whose name is included in the passport of, or any other document of identity of, her husband shall be deemed to be included in any

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entry permit granted to her husband before his entry and written on that passport or other document of identity, unless the contrary is stated in the entry permit.

- (8) A child under the age of sixteen years who enters Australia in the company of, and whose name is included in the passport of, or any other document of identity of, a parent of the child shall be deemed to be included in any entry permit granted to that parent before the entry of that parent and written on that passport or other document of identity, unless the contrary is stated in the entry permit.

7 Cancellation, expiration and renewal of temporary entry permits

- (1) The Minister may, in his absolute discretion, cancel a temporary entry permit at any time by writing under his hand.
- (2) At any time while a temporary entry permit is in force or after the expiration or cancellation of a temporary entry permit, a further entry permit may, at the request of the holder, be granted to the holder and, where such a further entry permit is granted while a temporary entry permit is in force, the further entry permit shall come into force only upon the expiration or cancellation of the existing entry permit.
- (3) Upon the expiration or cancellation of a temporary entry permit, the person who was the holder of the permit becomes a prohibited immigrant unless a further entry permit applicable to him comes into force upon that expiration or cancellation.
- (4) Notwithstanding section ten of this Act, a person who has become a prohibited immigrant by virtue of the last preceding subsection ceases to be a prohibited immigrant at the expiration of a period of five years from the time at which he became a prohibited immigrant unless, at the expiration of that period, a deportation order in relation to him is in force.
- (5) An authorized officer may require a person who is a prohibited immigrant by virtue of subsection (3) of this section to leave Australia within the time specified by the authorized officer, and that person shall comply with the requirement.

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Penalty for any contravention of this subsection: Four hundred dollars or imprisonment for three months.

8 Exemptions

- (1) Nothing in this Division applies in relation to the entry into Australia of an immigrant being—
- (a) a member of the armed forces of the Crown entering Australia in the course of his duty;
 - (b) a diplomatic or consular representative or official trade commissioner of a country other than Australia, or a member of the staff of such a representative or commissioner who has been sent to Australia by the government of that country, or the wife or dependent relative of such a representative, commissioner or member;
 - (c) a person included in the complement of a vessel of the regular armed forces of a government recognized by the Commonwealth entering Australia with leave from that vessel during the vessel's stay in a port, not being a person in respect of whom a declaration is in force under the next succeeding subsection;
 - (d) a member of the crew of any other vessel entering Australia with leave from that vessel during the vessel's stay in a port, where the master of the vessel has duly complied with the provisions of Division 3 of this Part that are applicable upon arrival of the vessel at that port, not being a person in respect of whom a declaration is in force under the next succeeding subsection; or
 - (e) a person who—
 - (i) is for the time being exempted, by instrument under the hand of the Minister, from the requirements of this Division relating to entry permits; or
 - (ii) is included in a class of persons who are for the time being so exempted,
not being a person in respect of whom a declaration is in force under the next succeeding subsection.

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- (2) The Minister or an authorized officer may, by writing under his hand, declare, in relation to a person referred to in paragraph (c) or (d), or a person included in a class of persons exempted under paragraph (e), of the last preceding subsection, that it is undesirable that he be permitted to enter Australia or to remain in Australia.
- (3) Where a person to whom subsection (1) of this section applies has entered Australia and an entry permit has not been granted to that person since that entry, that person becomes a prohibited immigrant—
 - (a) in the case of a person referred to in paragraph (a) of that subsection, not being a member of the Australian armed forces—if he becomes absent without leave or ceases to be a member of the armed forces of the Crown;
 - (b) in the case of a person referred to in paragraph (b) of that subsection—if he ceases to be such a person;
 - (c) in the case of a person referred to in paragraph (c) or (d) of that subsection—
 - (i) if he remains in Australia after the vessel has left the port at which he entered, or last entered, Australia; or
 - (ii) if, before the vessel has so left, he becomes absent without leave or a declaration in relation to him is made under the last preceding subsection; or
 - (d) in the case of a person referred to in paragraph (e) of that subsection—if he ceases to be such a person, whether by his own act, by act of the Minister or otherwise.

9 Entry permit to lapse upon departure from Australia

- (1) Where an immigrant who is the holder of an entry permit leaves Australia, the entry permit has no force or effect in relation to him upon or after his re-entry into Australia.
- (2) The last preceding subsection does not apply in relation to a temporary entry permit upon or after a re-entry of the holder into Australia after having left Australia if—
 - (a) within six months before that re-entry, an authorized officer made a notation on the entry permit to the effect that the

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permit would not be invalidated by absence of the holder from Australia; and

- (b) at the time of the re-entry, the entry permit has not, or had not, expired or been cancelled.

10 Person to cease to be prohibited immigrant if granted entry permit

A person who has become a prohibited immigrant ceases to be a prohibited immigrant if and when an entry permit or further entry permit is granted to him, and not otherwise.

11 Visas, &c., not to entitle persons to enter Australia

A visa or similar notation or a form of provisional authority to enter Australia issued to a person on behalf of the Commonwealth shall not be deemed to be an entry permit and does not entitle that person to enter Australia or to be granted an entry permit.

Division 2—Deportation

12 Aliens convicted of crimes

Where (whether before or after the commencement of this Part) an alien has been convicted in Australia of a crime of violence against the person or of extorting any money or thing by force or threat, or of an attempt to commit such a crime, or has been convicted in Australia of any other offence for which he has been sentenced to imprisonment for one year or longer, the Minister may, upon the expiration of, or during, any term of imprisonment served or being served by that alien in respect of the crime, order the deportation of that alien.

13 Deportation of immigrants in respect of matters occurring within five years after entry

Subject to section fifteen of this Act, where (whether before or after the commencement of this Part) an immigrant—

- (a) has been convicted in Australia of an offence punishable by death or by imprisonment for one year or longer, being an offence committed within five years after any entry by him into Australia;
 - (b) has been convicted in Australia of an offence by reason of being a prostitute or of having lived on, or received any part of, the earnings of prostitution or of having procured persons for the purposes of prostitution, being an offence committed within five years after any entry by the immigrant into Australia; or
 - (c) is, within five years after any entry by him into Australia, an inmate of a mental hospital or public charitable institution,
- the Minister may order the deportation of the immigrant from Australia.

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14 Certain persons may be deported after report by Commissioner

- (1) If it appears to the Minister that the conduct of an alien (whether in Australia or elsewhere) has been such that he should not be allowed to remain in Australia, the Minister may, subject to this section, order the deportation of that alien.
- (2) Subject to the next succeeding section, if it appears to the Minister that, in the case of an immigrant who entered Australia (whether before or after the commencement of this Part) not more than five years previously—
 - (a) his conduct (whether in Australia or elsewhere) has been such that he should not be allowed to remain in Australia; or
 - (b) he is a person who advocates the overthrow by force or violence of the established government of the Commonwealth or of a State or of any other civilized country or of all forms of law, or advocates the abolition of organized government or the assassination of public officials, or advocates or teaches the unlawful destruction of property, or is a member of an organization which entertains and teaches any of the doctrines and practices specified in this paragraph,the Minister may, subject to this section, order the deportation of that immigrant.
- (3) The Minister shall not order the deportation of a person under this section unless he has first served on that person a notice informing that person that he proposes to order the deportation of that person, on the ground specified in the notice, unless that person requests, by notice in writing to the Minister, within thirty days after receipt by him of the Minister's notice, that his case be considered by a Commissioner appointed for the purposes of this section.
- (4) If a person on whom a notice is served by the Minister under the last preceding subsection duly requests, in accordance with the notice, that his case be considered by a Commissioner appointed for the purposes of this section, the Minister may, by notice in writing, summon that person to appear before a Commissioner specified in the notice at the time and place specified in the notice.

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- (5) A Commissioner for the purposes of this section shall be appointed by the Governor-General and shall be a person who is or has been a Judge of a Federal Court or of the Supreme Court of a State or Territory, or a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory of not less than five years' standing.
- (6) The Commissioner shall, after investigation in accordance with the next succeeding subsection, report to the Minister whether he considers that the ground specified in the notice under subsection (3) of this section has been established.
- (7) The Commissioner shall make a thorough investigation of the matter with respect to which he is required to report, without regard to legal forms, and shall not be bound by any rules of evidence but may inform himself on any relevant matter in such manner as he thinks fit.
- (8) Where a notice has been served on a person under subsection (3) of this section, the Minister shall not order the deportation of that person under this section unless—
 - (a) that person does not request, in accordance with the notice, that his case be considered by a Commissioner;
 - (b) that person, having been summoned under this section to appear before a Commissioner, fails so to appear at the time and place specified in the summons; or
 - (c) a Commissioner reports under this section in relation to that person that he considers that the ground specified in the notice has been established.

15 Re-entry not to be entry in certain cases

For the purposes of the last two preceding sections, where an immigrant who has lived in Australia continuously for a period of two years or more has thereafter left Australia, a re-entry of that immigrant into Australia (whether before or after the commencement of this Part) after he has so left Australia shall not be deemed to be or to have been an entry of that immigrant into Australia unless—

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- (a) he had, at the time of the re-entry, been absent from Australia for a period exceeding five years; or
- (b) he was, at the time of leaving Australia—
 - (i) the holder of a temporary entry permit;
 - (ii) a person in respect of whom there was in force a certificate of exemption issued under the *Immigration Restriction Act 1901* or that Act as amended at any time;
 - (iii) a prohibited immigrant by virtue of this Act or any of the Acts repealed by this Act; or
 - (iv) a person whose deportation had been ordered.

16 Persons entering Australia in certain circumstances to be prohibited immigrants

- (1) Where, after the commencement of this Part or before the commencement of this Part but after the commencement of the *Immigration Restriction Act 1901*, a person who enters or entered Australia as an immigrant—
 - (a) evades or evaded an officer for the purpose of entering Australia;
 - (b) for the purpose of securing entry into Australia, produces or produced to an officer a permit, certificate, passport, visa, identification card or other document which was not issued to him or is or was forged or was obtained by false representations; or
 - (c) at the time of entry is or was a person of any of the following descriptions, namely:—
 - (i) a person suffering from a prescribed disease;
 - (ii) a person who has been convicted of a crime and sentenced to imprisonment for one year or more; or
 - (iii) a person who has been deported from Australia or any other country,that person shall, notwithstanding section ten of this Act, be deemed to be a prohibited immigrant unless he is the holder of an entry permit endorsed with a statement that the officer

granting that permit recognizes him to be a person referred to in this subsection.

- (2) For the purpose of the making of a deportation order against a person on the ground that he is a prohibited immigrant by virtue of this section, the reference in this section to a prescribed disease shall be read as a reference to a disease, or a physical or mental disability or defect, that is prescribed for the purposes of this section by the regulations as in force at the time when the deportation order is made.
- (3) In this section, **officer** includes a person who was an officer for the purposes of the *Immigration Restriction Act 1901*, or that Act as amended at any time.
- (4) For the purposes of this section—
 - (a) a person who—
 - (i) while he was a member of the crew of, or a person included in the complement of, a vessel, entered Australia before the commencement of this Part; and
 - (ii) at the time of entering Australia, or at any time thereafter, deserted or deserts the vessel or became or becomes absent without leave; or
 - (b) a person who enters or has entered Australia (whether before or after the commencement of this Part) at a place where no officer (other than a member of a Police Force) is or was stationed,shall be deemed to have evaded or to evade an officer for the purpose of entering Australia.

18 Deportation of prohibited immigrants

The Minister may order the deportation of a person who is a prohibited immigrant under any provision of this Act.

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19 Dependants of deportee

Where the Minister makes or has made an order for the deportation of a person, the Minister may, in his discretion, at the request of the wife of that person, order the deportation of the wife, or of the wife and a dependent child or children, of that person.

20 Deportation order to be executed

Where the Minister has made an order for the deportation of a person, that person shall, unless the Minister revokes the order, be deported accordingly.

21 Duty of master, &c., of vessel which brought deportee to Australia to provide passage

- (1) Where the Minister has ordered the deportation of a person by virtue of, or by reference to, subsection (1) of section six, paragraph (c) of subsection (3) of section eight, or paragraph (a) of subsection (1) of section sixteen, of this Act, an authorized officer may, by notice in writing, require the master, owner, agent or charterer of the vessel in which the deportee arrived in Australia to remove him from Australia without charge to the Commonwealth.
- (2) An authorized officer may make a requirement under the last preceding subsection in respect of a deportee notwithstanding that such a requirement has previously been made by that authorized officer or another authorized officer in respect of that deportee, if the time for compliance with the previous requirement has expired and the deportee is still in Australia.
- (3) Subject to subsection (6) of this section, where the Minister has ordered the deportation of a person by virtue of, or by reference to, section thirteen or paragraph (b) or (c) of subsection (1) of section sixteen, of this Act, an authorized officer may, by notice in writing, require the master, owner, agent or charterer of the vessel in which the deportee arrived in Australia to provide, without charge to the Commonwealth, a passage for the deportee to the place at which he boarded the vessel when he came to Australia.

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- (4) A person on whom a requirement has been made under subsection (1) or (3) of this section shall comply with the requirement within thirty days after receipt of the requirement or within such further time as the Minister allows, whether or not the deportee is able or willing to pay, or agrees to pay, a charge in respect of his passage.

Penalty: One thousand dollars.

- (5) It is a defence to a prosecution in respect of a failure to comply with a requirement under subsection (1) of this section if the defendant proves that, after the date of the requirement, he gave reasonable notice to an authorized officer of his willingness to receive the deportee on board a specified vessel at a specified port on a specified date for removal from Australia and the deportee was not made available at that port on that date in the custody of an officer for placing on board that vessel.
- (6) Where subsection (3) of this section applies in relation to a deportee but the Minister is satisfied that the deportee will not or may not be permitted to re-enter the place referred to in that subsection, the Minister shall exempt the persons on whom a requirement under that subsection has been or could be made from liability under the preceding provisions of this section in respect of the deportee if arrangements to the satisfaction of the Minister are made by all or any of those persons for payment to the Commonwealth of such sum as the Minister thinks reasonable in the circumstances in respect of the cost, or part of the cost, of a passage for the deportee to some other place outside Australia.
- (7) Where a deportee in respect of whom a requirement has been made under this section is being maintained at the expense of the Commonwealth or of a State, the person on whom the requirement has been made is liable to pay to the Commonwealth a fair sum in respect of the cost of maintaining the deportee from the date on which the requirement was made until the deportee is placed on board the vessel or until an exemption is granted to that person under the last preceding subsection and, where any such sum is received by the Commonwealth in respect of the maintenance of a

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deportee at the expense of a State, the Commonwealth shall pay an amount equal to that sum to the State.

- (8) The master, owner, agent or charterer of a vessel shall not be required, under this section, to remove a deportee from Australia or to provide a passage for a deportee if—
- (a) the passage money paid in respect of the conveyance of the deportee to Australia was paid, in whole or in part, by or on behalf of the Commonwealth;
 - (b) the deportee, when he came to Australia, was the holder of a passport endorsed by a person acting under the authority of the Commonwealth with a migrant's visa;
 - (c) the deportee, being a woman, was, when she came to Australia, the wife of, and in the company of, the holder of a passport so endorsed in which she was named as the wife of the holder; or
 - (d) the deportee, when he came to Australia, was under the age of twenty-one years and was in the company of the holder of a passport so endorsed in which he was named as a child of the holder.
- (9) In this section, a reference to the owner or charterer of the vessel in which a deportee arrived in Australia shall be read as a reference to the person who was the owner or charterer of the vessel at the time when that deportee arrived in Australia (whether or not he continues to be the owner or charterer of the vessel), and a reference to the agent of such a vessel shall be read as a reference to the present agent of the person who, in accordance with the foregoing provisions of this subsection, is referred to as the owner or charterer of the vessel.
- (10) In this section, a reference to the master of the vessel in which a deportee arrived in Australia shall, in relation to the making of a requirement on the master under this section, be read as a reference to the person who is the master of the vessel at the time when the requirement is made, but no such requirement shall be made on the master unless, at that time, the vessel is still owned or chartered by

the person who was the owner or charterer of the vessel at the time when the deportee arrived in Australia.

22 Deportees to be received on board vessels

- (1) The master, owner, agent or charterer of a vessel shall, on being required in writing by an authorized officer so to do, receive a deportee on board for conveyance to a place specified in the requirement, being a place to which the vessel is bound, and also receive on board, for such time as is required by the authorized officer, a person charged with the custody of the deportee.

Penalty: Four hundred dollars.

- (2) For the services specified in the last preceding subsection, the Commonwealth is liable to pay such reasonable passage money and other charges as are demanded.
- (3) An officer shall not make a requirement under subsection (1) of this section unless he is satisfied on reasonable grounds that the deportee will be permitted to land at the place specified in the requirement, and it is a defence to a prosecution for a contravention of that subsection if the defendant proves that, if the requirement had been complied with, the deportee would not have been permitted to land at the place specified in the requirement.

Section 23

Division 3—Duties of Masters in relation to Crews

23 Production of identity documents and mustering of crew

The master of a vessel, other than a vessel of the regular armed forces of a government recognized by the Commonwealth, which has entered Australia from overseas—

- (a) shall, upon the arrival of the vessel at a port, have in his possession an identity document in respect of each member of the crew who is on board the vessel;
- (b) shall, upon the arrival of the vessel at a port, if so required by an officer, produce to the officer the identity documents referred to in the last preceding paragraph;
- (c) shall, before the departure of the vessel from a port, if so required by an officer, muster the crew in the presence of the officer and produce to the officer the identity documents referred to in paragraph (a) of this section; and
- (d) shall not, where a requirement has been made on him in accordance with the last preceding paragraph, depart with the vessel from the port unless the requirement has been complied with.

Penalty: Two hundred dollars.

24 Master to report absences

Where a member of the crew of a vessel, other than a vessel of the regular armed forces of a government recognized by the Commonwealth, that has entered Australia from overseas was on board the vessel at the time of its arrival at a port and is absent from the vessel at the time of its departure from the port, the master of the vessel shall, at that departure—

- (a) deliver to an officer a report in writing specifying the name of the member, stating that the member was a member of the crew of the vessel on board the vessel at the time of its arrival at that port and is absent from the vessel at the time of

Section 26

its departure from that port and further stating whether that member left the vessel at that port with leave or without leave; and

- (b) on demand by an officer, deliver to the officer the identity document in respect of that member.

Penalty: Two hundred dollars.

26 Exemptions

- (1) Where the Minister is satisfied that it is no longer necessary for the purposes of this Act that a provision of this Division should continue to apply in relation to a vessel, he shall, by writing under his hand, exempt the master of that vessel from liability to comply with that provision.
- (2) An authorized officer may, by writing under his hand, exempt the master of a vessel in whole or in part from liability to comply with any of the provisions of section twenty-three of this Act.

Section 27

Division 4—Offences in relation to Entry

27 Irregular entry

- (1) An immigrant who—
 - (a) enters Australia in such circumstances that he becomes a prohibited immigrant by virtue of section six of this Act;
 - (b) becomes a prohibited immigrant by reason of being a person to whom paragraph (a) or (c) of subsection (3) of section eight of this Act applies; or
 - (c) enters Australia after having produced to an officer, for the purpose of securing entry into Australia, a permit, certificate, passport, visa, identification card or other document which was not issued to him or was forged or was obtained by false representations,shall be deemed to be guilty of an offence against this Act punishable upon conviction by imprisonment for a period not exceeding six months.
- (2) A deportee who has been placed on board a vessel for deportation shall not leave the vessel in Australia otherwise than in custody under this Act.

Penalty: Imprisonment for six months.
- (3) The conviction of a person under this section does not prevent the making of an order for the deportation of that person or the further execution of a deportation order, as the case may be, and any imprisonment in respect of such a conviction shall cease for the purpose of deportation.
- (4) Where a person is convicted of an offence under this section and appeals against his conviction, he shall not be released on bail unless he finds two sureties, each in the sum of One thousand dollars and each approved by an authorized officer, for his appearance at the hearing of the appeal.

28 Penalty on master, owner, agent and charterer of vessel

Where—

- (a) a person enters Australia from a vessel and, by reason of his not being the holder of an entry permit, that person becomes, upon entry, a prohibited immigrant;
- (b) a member of the crew of a vessel referred to in paragraph (d) of subsection (1) of section eight of this Act becomes a prohibited immigrant by reason of the operation of paragraph (c) of subsection (3) of that section; or
- (c) a deportee who has been placed on board a vessel for deportation leaves the vessel in Australia otherwise than in custody under this Act,

the master, owner, agent and charterer of the vessel shall each be deemed to be guilty of an offence against this Act punishable by a fine not exceeding One thousand dollars.

29 Stowaways

- (1) If a vessel having on board one or more stowaways comes into a port or place in Australia, the master, owner, agent and charterer of the vessel shall each be deemed to be guilty of an offence against this Act punishable by a fine not exceeding One thousand dollars for each stowaway.
- (2) If the master of the vessel has, within one year preceding his conviction for an offence against the last preceding subsection, been convicted of a previous offence against that subsection, the penalty for the first-mentioned offence shall be a fine not exceeding Two thousand dollars for each stowaway.
- (3) Subsection (1) of this section does not apply in relation to a stowaway if the master of the vessel, forthwith after the arrival of the vessel at the port or place, gives notice to an officer that the stowaway is on board and prevents the stowaway from landing before an officer has had an opportunity of interrogating him.

Section 30

**30 Persons concerned in bringing immigrants secretly into
Commonwealth or harbouring prohibited immigrants**

- (1) A person shall not take any part in—
 - (a) the bringing or coming to Australia of an immigrant under circumstances from which it might reasonably have been inferred that the immigrant intended to enter Australia secretly or without the knowledge of an officer;
 - (b) the concealing of an immigrant with intent to enable him to enter Australia secretly or without the knowledge of an officer; or
 - (c) the concealing of a prohibited immigrant or a deportee with intent to prevent his discovery by an officer.
- (2) A person shall not—
 - (a) aid or incite a person to enter or remain in Australia in circumstances in which he would become a prohibited immigrant; or
 - (b) knowingly harbour a prohibited immigrant or a deportee.

Penalty: Four hundred dollars or imprisonment for six months.

31 False papers, &c.

- (1) A person shall not, in connexion with the entry, or proposed entry, of an immigrant (including that person himself) into Australia—
 - (a) present to an officer a document which is forged or false;
 - (b) falsely represent to an officer that he or another person is the person named in a document;
 - (c) produce a document to an officer with intent to deceive or mislead him; or
 - (d) deliver to an officer, or otherwise furnish for official purposes of the Commonwealth, a document containing a statement or information that is false or misleading in a material particular.
- (2) A person shall not transfer or part with possession of a document with intent that the document be used to assist a person, being a

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person not entitled to use it, to gain entry to, or to remain in,
Australia or where he has reason to suspect that the document may
be so used.

Penalty: Four hundred dollars or imprisonment for six months.

Section 32

Division 5—Examination, Search and Detention

32 Appointment of boarding stations

- (1) The Governor-General may, by Proclamation, appoint a place in a port to be the boarding station for that port for the purposes of this Act.
- (2) Where a boarding station for a port is for the time being appointed or continued under the *Customs Act 1901*, that boarding station shall be deemed to be appointed under this section as the boarding station for that port for the purposes of this Act.

33 Vessels to enter ports and be brought to boarding stations

- (1) The master of a vessel which has entered Australia from overseas shall not suffer his vessel to enter any place other than a port unless from stress of weather or other reasonable cause.

Penalty: One thousand dollars.

- (2) The master of a ship from overseas bound to or calling at a port—
 - (a) shall, if so required by an authorized officer, bring his ship to for boarding under this Act at the boarding station appointed for that port; and
 - (b) shall not move his ship from that boarding station, except for the purpose of leaving that port, until permitted to do so by an authorized officer.

Penalty: One thousand dollars.

- (3) The master of an aircraft from overseas arriving in Australia shall not suffer the aircraft to land at any other proclaimed airport until the aircraft has first landed—
 - (a) at such proclaimed airport for which a boarding station is appointed as is nearest to the place at which the aircraft entered Australia; or

- (b) at such other airport for which a boarding station is appointed as has been approved by an authorized officer, in writing, as an airport at which that aircraft, or a class of aircraft in which that aircraft is included, may land on arriving in Australia from overseas.

Penalty: One thousand dollars.

- (4) The master of an aircraft which is engaged on an air service or flight from a place overseas to a place in Australia—
 - (a) shall not suffer the aircraft to land at a proclaimed airport for which a boarding station is not appointed;
 - (b) shall, as soon as practicable after the aircraft lands at a proclaimed airport, bring the aircraft for boarding to the boarding station appointed for that airport; and
 - (c) shall not move his aircraft from that boarding station until permitted to do so by an authorized officer.

Penalty: One thousand dollars.

- (5) It is a defence to a prosecution for an offence against a provision of either of the last two preceding subsections if the person charged proves that he was prevented from complying with the provision by stress of weather or other reasonable cause.
- (6) While a vessel is at a boarding station, an officer may go and remain on board the vessel for the purposes of this Act.
- (7) The master of a vessel shall do all things reasonably required by an officer to facilitate the boarding of the vessel under this section and the performance by the officer of duties for the purposes of this Act.

Penalty for any contravention of this subsection: Four hundred dollars.

34 Exemption

Where the Minister is satisfied that it is no longer necessary for the purposes of this Act that a provision of the last preceding section

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should continue to apply in relation to a vessel, he shall, by writing under his hand, exempt the master of that vessel from liability to comply with that provision.

35 Prohibited immigrants, &c., may be prevented from landing

- (1) An officer may—
 - (a) prevent a person from entering Australia where that person would, if he so entered, be a prohibited immigrant; or
 - (b) prevent a deportee from leaving a vessel on which he has been placed,and may take such action and use such force as are necessary for that purpose.
- (2) The master of a vessel may, in relation to persons on board the vessel, do all things which an officer is, under the last preceding subsection, authorized to do.

36 Custody of prohibited immigrant during stay of vessel in port

- (1) A person who is on board a vessel at the time of the arrival of the vessel at a port, whether or not that port is the first port of call of the vessel in Australia, being a stowaway or a person whom an authorized officer reasonably believes to be seeking to enter Australia in circumstances in which he would become a prohibited immigrant (in this section referred to as *the prohibited immigrant*), may—
 - (a) if an authorized officer so directs; or
 - (b) if the master of the vessel so requests and an authorized officer approves,be taken ashore by an officer and kept in such custody as an authorized officer directs until the departure of the vessel from its last port of call in Australia or until such earlier time as an authorized officer directs.
- (2) A person in custody under the last preceding subsection may be returned to the vessel or, with the consent of the master of another vessel, placed on board that other vessel, at any time by an officer.

- (3) The master, owner, agent and charterer of the vessel are, jointly and severally, liable to pay to the Commonwealth a fair sum for the cost of keeping and maintaining the prohibited immigrant while he is kept in custody in pursuance of subsection (1) of this section and the cost of transporting the prohibited immigrant, and a custodian of the prohibited immigrant, from the vessel to the place of custody and, if the prohibited immigrant is returned to the vessel or another vessel, from the place of custody to the vessel or that other vessel.
- (4) A person shall not, for the purposes of this Act, be deemed to have entered Australia by reason only of his having been taken ashore in pursuance of subsection (1) of this section.

37 Powers of entry and search

- (1) An officer may at any time go on board and search a vessel in which he has reason to suspect that there may be found a stowaway or a person seeking to enter Australia in circumstances in which he would become a prohibited immigrant.
- (2) The master of a vessel shall do all things reasonably required by an officer to facilitate the boarding and searching of the vessel by the officer under the last preceding subsection.

Penalty: Four hundred dollars.

- (3) An authorized officer may issue to an officer a search warrant in accordance with the prescribed form.
- (4) A search warrant shall be expressed to remain in force for a specified period not exceeding three months and ceases to be in force at the expiration of the specified period.
- (5) An officer having with him a search warrant issued to him under this section and remaining in force may, at any time in the day or night, enter and search any building, premises, vehicle or place in which he has reasonable cause to believe there may be found—
 - (a) a prohibited immigrant or a deportee;

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- (b) a person to whom a temporary entry permit has been issued subject to a condition with respect to the work that is to be performed by that person; or
 - (c) any documents, books or papers relating to the immigration or proposed immigration of persons in circumstances in which they would have become, or would become, prohibited immigrants,
- and may seize any such documents, books or papers and impound and detain them for such time as he thinks necessary.
- (6) For the purposes of the exercise of his powers under this section an officer may stop any vessel or vehicle.
 - (7) An officer may use such reasonable force as is necessary for the exercise of his powers under this section.

38 Arrest of prohibited immigrant

- (1) An officer may, without warrant, arrest a person whom he reasonably supposes to be a prohibited immigrant, and a person so arrested may, subject to this section, be kept in the custody of the officer or of another officer.
- (2) Where an officer arrests a person in pursuance of this section, the officer shall forthwith inform the person arrested of the reason for the arrest, and that officer or another officer having the custody of that person shall take him before a prescribed authority within forty-eight hours after the arrest or, if it is not practicable to bring him before a prescribed authority within that period, as soon as practicable after that period, and, if the arrested person is not so brought before a prescribed authority, he shall be released.
- (3) Where a person is brought before a prescribed authority under this section, the prescribed authority shall inquire into the question whether there are reasonable grounds for supposing that that person is a prohibited immigrant and, if the prescribed authority is satisfied that there are such reasonable grounds, he may, by writing under his hand, authorize the detention of that person in custody for such period, not exceeding seven days from the date of the

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authorization, as the prescribed authority is satisfied is reasonably required in order to enable the Minister to consider whether that person is a prohibited immigrant and whether a deportation order should be made in respect of him, but otherwise the prescribed authority shall order that person to be released.

- (4) A prescribed authority may, from time to time, extend the period of detention referred to in the last preceding subsection.
- (5) Subject to the next succeeding subsection, at the expiration of the period of detention of a person under this section, that person shall be released.
- (6) If, while a person is in custody under this section, an officer informs that person (whether before or after he has been brought before a prescribed authority) that a deportation order is in force in relation to him, the preceding provisions of this section cease to apply in relation to that person and he shall be deemed to have been thereupon arrested under the next succeeding section by the officer having his custody.
- (7) Notwithstanding anything contained in this section, an authorized officer may at any time order the release of a person who is in custody under this section.
- (8) Nothing contained in, or done under, this section prevents the Supreme Court of a State or Territory or the High Court from ordering the release from custody of a person held in custody under this section where the court finds that he is not a prohibited immigrant.

39 Arrest of deportee

- (1) Where an order for the deportation of a person is in force, an officer may, without warrant, arrest a person whom he reasonably supposes to be that person, and a person so arrested may, subject to this section, be kept in custody as a deportee in accordance with subsection (6) of this section.

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- (2) Where an officer arrests a person in accordance with this section, the officer shall forthwith inform the person arrested of the reason for the arrest and shall, if that person so requests, furnish to him, as soon as practicable, particulars of the deportation order.
- (3) If a person arrested under this section claims, within forty-eight hours after his arrest, that he is not the person in respect of whom the deportation order is in force, the officer having his custody shall ask him to make a statutory declaration to that effect and, if the person arrested makes such a declaration, take him before a prescribed authority within forty-eight hours after the making of the declaration or, if it is not practicable to take him before a prescribed authority within that period, as soon as practicable after that period, and, if the arrested person is not so brought before a prescribed authority, he shall be released.
- (4) Where a person is brought before a prescribed authority under this section, the prescribed authority shall inquire into the question whether there are reasonable grounds for supposing that that person is a deportee and, if the prescribed authority is satisfied that there are such reasonable grounds, he shall, by writing under his hand, declare accordingly.
- (5) Where a prescribed authority makes a declaration in accordance with the last preceding subsection, the arrested person may be held in custody as a deportee in accordance with the next succeeding subsection, but otherwise the prescribed authority shall direct the release of that person and he shall be released accordingly.
- (6) A deportee may be kept in such custody as the Minister or an officer directs—
 - (a) pending deportation, until he is placed on board a vessel for deportation;
 - (b) at any port or place in Australia at which the vessel calls after he has been placed on board; or
 - (c) on board the vessel until her departure from her last port or place of call in Australia.

- (7) Notwithstanding anything contained in this section, an authorized officer may at any time order the release of a person who is in custody under this section.
- (8) Nothing contained in, or done under, this section prevents the Supreme Court of a State or Territory or the High Court from ordering the release from custody of a person held in custody under this section where the Court finds that there is no valid deportation order in force in relation to that person.

40 Prescribed authorities

- (1) The Minister may appoint as a prescribed authority for the purposes of the last two preceding sections a person who is or has been a Judge of a Federal Court or of the Supreme Court of a State or Territory or a barrister or solicitor of the High Court or of the Supreme Court of a State of not less than five years' standing.
- (2) The Governor-General may arrange with the Governor-in-Council of a State for the performance by persons who hold office as Police, Stipendiary or Special Magistrates in that State of the functions of a prescribed authority under the last two preceding sections.
- (3) Notice of an arrangement under the last preceding subsection shall be published in the *Gazette*.
- (4) Where an arrangement under subsection (2) of this section is in force, a person who holds an office specified in the arrangement is a prescribed authority for the purposes of the last two preceding sections.
- (5) A person who holds office as a Police, Stipendiary or Special Magistrate of a Territory is a prescribed authority for the purposes of the last two preceding sections.
- (6) A prescribed authority shall make a thorough investigation of the matter which he is required to inquire into, without regard to legal forms, and shall not be bound by any rules of evidence but may

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inform himself on any relevant matter in such manner as he thinks fit.

41 Persons in custody to have access to legal advice

Where a person is in custody under this Act, the person having his custody shall, at the request of the person in custody, afford to him all reasonable facilities for making a statutory declaration for the purposes of this Act or for obtaining legal advice or taking legal proceedings in relation to his custody.

42 Persons may be required to answer questions

- (1) For the purpose of determining whether a person who has been arrested and is in custody under this Act is a prohibited immigrant or a deportee, an officer may put to that person such questions as he considers necessary and may move that person from place to place.
- (2) Where an officer puts a question to a person in accordance with the last preceding subsection after having informed that person that he is required to answer the question, that person shall not—
 - (a) refuse or fail to answer the question; or
 - (b) in answer to the question, make a statement which is false or misleading in a material particular.

Penalty: Four hundred dollars or imprisonment for six months.

- (3) Where the last preceding subsection is applicable in relation to a question put to a person, that person is not excused from answering the question on the ground that the answer might tend to incriminate him, but the answer to the question shall not be used as evidence against that person in any proceedings other than proceedings under that subsection.

43 Identification of persons in custody

Where a person is in custody by virtue of this Act, an authorized officer may do all such things as are reasonably necessary for

photographing or measuring that person or otherwise recording matters in order to facilitate his present or future identification.

44 Detention of vessel for purpose of search

- (1) An authorized officer may, by notice in writing to the master of a vessel which has arrived in Australia not more than one month before the date of the notice, order that the vessel remain at a port or place for a reasonable time specified in the notice for the purpose of enabling a search of the vessel to be made in order to ascertain whether there are on the vessel any stowaways or any persons seeking to enter Australia in circumstances in which they would become prohibited immigrants.
- (2) The master of a vessel in respect of which an order is in force under this section shall not, during the time specified in the order, move the vessel without the consent of an authorized officer.

Penalty: One thousand dollars.

45 Detention of vessel pending recovery of penalty

- (1) An authorized officer may, by writing under his hand, direct an officer to detain a vessel where, in the opinion of the authorized officer, the master, owner, agent or charterer of the vessel has been guilty of an offence against this Act.
- (2) Where a direction is given under the last preceding subsection—
 - (a) the officer specified in the direction may detain the vessel at the place where she is found or cause her to be brought to another place specified by the authorized officer and detain her at that place; and
 - (b) the authorized officer shall forthwith give notice of the detention to the owner, charterer or agent of the vessel.
- (3) For the purposes of the detention and other lawful dealings with the vessel, the officer specified in the direction is entitled to obtain such writ of assistance or other aid as may be obtained under the

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law relating to the Customs with respect to the seizure of vessels or goods.

- (4) The detention of a vessel under this section shall cease if a bond with two sufficient sureties to the satisfaction of an authorized officer is given by the master, owner, agent or charterer of the vessel for the payment of any penalties that may be imposed in respect of the alleged offence.
- (5) If, while the vessel is detained under this section, default is made in payment of any penalties imposed in respect of an offence against this Act by the master, owner, agent or charterer of the vessel, an authorized officer may seize the vessel, and the like proceedings shall thereupon be taken for forfeiting and condemning the vessel as in the case of a vessel seized for breach of the law relating to the Customs, and the vessel shall be sold.
- (6) The proceeds of the sale shall be applied firstly in payment of the penalties referred to in the last preceding subsection and of all costs awarded in connexion with the proceedings in which the penalties were imposed or incurred in and about the sale and the proceedings leading to the sale, and the balance shall be payable to the owner and other persons having interests in the vessel before the condemnation and sale.

Division 6—Immigration Agents

46 Interpretation

For the purposes of this Division, a person shall be deemed to act as an immigration agent if he demands or receives a fee, commission or other reward for or in relation to services rendered or to be rendered by him in relation to—

- (a) an application or representations to a Minister, Department or authority of the Commonwealth with a view to the entry of a person into Australia as an immigrant; or
- (b) arranging or securing the passage of an intending immigrant to Australia.

47 Persons proposing to act as immigration agents to give notice to Department

- (1) A person shall not act as an immigration agent unless he has—
 - (a) delivered to the Secretary to the Department of Immigration and Ethnic Affairs a notice of his intention to do so in accordance with the prescribed form and containing such information as is prescribed; and
 - (b) received an acknowledgment in writing of receipt of the notice.

Penalty: Four hundred dollars or imprisonment for six months.

- (2) Upon receipt by the Secretary to the Department of Immigration and Ethnic Affairs from a person of a notice referred to in paragraph (a) of the last preceding subsection, the Secretary shall send, or cause to be sent, by post to that person, at the address specified by that person in the notice, an acknowledgment in writing of receipt of the notice.
- (3) A person shall not, in a notice under this section, furnish information that is false or misleading in a material particular.

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Penalty: Four hundred dollars or imprisonment for six months.

- (4) Subsection (1) of this section does not apply to a person who was a registered agent under the *Immigration Act 1901* immediately before the commencement of this Part.

48 Minister may direct persons not to act as immigration agents

- (1) Where the Minister is satisfied that a person is not a fit and proper person to act as an immigration agent, the Minister may, by notice in writing, direct that person not to act as an immigration agent.
- (2) Where a direction under the last preceding subsection is in force in relation to a person, that person shall not—
- (a) act as an immigration agent;
 - (b) describe himself as an immigration agent or by words which suggest that he is a person who acts, or is prepared to act, as an immigration agent; or
 - (c) advertise that he renders or is prepared to render services of a kind referred to in section forty-six of this Act.

Penalty: Four hundred dollars or imprisonment for six months.

- (3) A person in respect of whom a direction is in force under subsection (1) of this section is not entitled to sue for or set-off any fee, commission or other reward for services of a kind referred to in section forty-six of this Act.

49 Persons not to describe themselves as registered or approved immigration agents

A person shall not describe himself by words which suggest that he is registered or approved as a person who may act as an immigration agent.

Penalty: Four hundred dollars or imprisonment for six months.

50 Maximum charges

- (1) The regulations may prescribe the maximum charges that may be made for any services of a kind referred to in section forty-six of this Act, and any regulation made by virtue of this subsection is applicable to services rendered while the regulation is in force.
- (2) Where a person proposes to render, or has, after the commencement of this Part, rendered, a service of a kind referred to in section forty-six of this Act and the maximum charge for that service is not prescribed, or was not prescribed at the time the service was rendered, as the case may be, the Minister may, by notice in writing to that person, fix the maximum charge that may be made for that service.
- (3) The Minister shall not fix the maximum charge for a service later than one year after the service was rendered.
- (4) Where the maximum charge for a service has been prescribed or fixed in pursuance of this section, then, notwithstanding the terms of any agreement, a person shall not demand or receive in respect of that service an amount which, together with any amount previously received in respect of that service, exceeds the maximum charge so prescribed or fixed.

Penalty: Four hundred dollars or imprisonment for six months.

- (5) An amount received in respect of a service referred to in the last preceding subsection, whether before or after the maximum charge was prescribed or fixed, is, to the extent that it exceeds that maximum, repayable and may be sued for and recovered in a court of competent jurisdiction.

51 Immigration agents liable to furnish particulars of fees, &c.

- (1) A person shall, if required so to do by an authorized officer by notice in writing, furnish in writing to the authorized officer particulars of any fee, commission or other reward charged or proposed to be charged by him, or of any agreement entered into or

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proposed to be entered into by him, in respect of any services of a kind referred to in section forty-six of this Act.

- (2) A person shall not—
- (a) refuse or fail to furnish, within the time specified in the requirement, any particulars which he is required under this section to furnish; or
 - (b) make a false statement in or in connexion with those particulars.

Penalty: Four hundred dollars or imprisonment for six months.

52 Undertaking to provide passage to be carried out within a reasonable time

Where a person has, whether before or after the commencement of this Part, been paid moneys in consideration of a promise to provide or arrange a passage to Australia for an intending immigrant, the Minister may, by notice in writing served on that person, determine a time within which it is reasonable that the passage should be provided or arranged, and where such a determination has been made, that person shall, notwithstanding the terms of any agreement, either—

- (a) provide or arrange the passage within the time determined by the Minister; or
- (b) within that time refund those moneys to the person by whom they were so paid.

Penalty: One thousand dollars or imprisonment for two years.

53 Provisions relating to offences

- (1) Where a person convicted of an offence against this Division is a body corporate, the penalty for the offence is—
- (a) where the prescribed penalty for the offence apart from this section is Four hundred dollars or imprisonment for six months—a fine not exceeding Eight hundred dollars; and

- (b) where the prescribed penalty for the offence apart from this section is One thousand dollars or imprisonment for two years—a fine not exceeding Two thousand dollars.
- (2) Where a person is convicted by a court of an offence against this Division and another person has suffered loss by reason of that offence, the court may, in addition to any penalty imposed upon the offender, order the offender to make to the person who suffered the loss such reparation, by way of money payment or otherwise, as the court thinks fit.
- (3) Where a court has made an order under this section for the making of reparation by way of money payment, a certificate under the hand of the clerk or other appropriate officer of the court, specifying the amount ordered to be paid and the persons by whom and to whom the amount is payable, may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that court.
- (4) For the purposes of this section, where a person is convicted of an offence against subsection (4) of section fifty of this Act and the person from whom the amount in respect of the service was demanded or received has paid to the offender, in respect of the service, an amount exceeding the fixed maximum, that person shall be deemed to have suffered loss by reason of the offence to the extent of the amount of the excess.

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Division 7—General

54 Securities

- (1) An authorized officer may require and take security for compliance with the provisions of this Act or the regulations or with any condition imposed in pursuance of, or for the purposes of, this Act or the regulations—
 - (a) by a deposit of cash, Treasury Bonds or negotiable instruments, together with a memorandum of deposit in a form approved by the Minister; or
 - (b) in accordance with a form of security approved by the Minister.
- (2) A security given in accordance with a form approved by the Minister shall, without sealing, bind its subscribers as if it were sealed and, unless otherwise provided in the security, jointly and severally and for the full amount.
- (3) Whenever a security under this Act is put in suit, the production of the security without further proof shall entitle the Commonwealth to judgment for their stated liabilities against the persons appearing to have executed the security unless the defendants prove compliance with the conditions of the security or that the security was not executed by them or release or satisfaction.
- (4) If it appears to the court that a non-compliance with a condition of a security under this Act has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability, by reason of—
 - (a) an extension of time or other concession;
 - (b) any consent to, or acquiescence in, a previous non-compliance with a condition; or
 - (c) any failure to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

55 Proof of certain matters recited in deportation orders

- (1) In any proceedings before a court in which the validity or application of a deportation order is in issue, the production of the deportation order, or of a document certified under the hand of the Minister to be a copy of the deportation order, if it contains a statement, in relation to the person to whom the order relates, that—
- (a) he was not born in Australia;
 - (b) he is, or was at a particular time, an alien;
 - (c) he entered Australia before, on or after a specified date;
 - (d) he was not, at the time he entered Australia or at any other specified time, the holder of, or a person included in, an entry permit;
 - (e) he was the holder of a temporary entry permit which has expired or been cancelled;
 - (f) within the meaning of a provision of this Act, he evaded an officer for the purpose of entering Australia; or
 - (g) for the purpose of securing entry into Australia, he produced to an officer a permit, certificate, passport, visa, identification card or other document which was not issued to him or was forged or was obtained by false representations,
- shall, in the absence of proof to the contrary, be deemed to be proof of that statement.
- (2) Proof to the contrary for the purposes of the last preceding subsection on behalf of the person to whom the deportation order relates shall be by the personal evidence of that person, with or without other evidence.
- (3) Proof to the contrary by the personal evidence of a person in respect of a matter referred to in paragraph (c), (d), (f) or (g) of subsection (1) of this section shall not (unless it is proved that that person was born in Australia) be deemed to have been given unless that person in his personal evidence states truly the name of the vessel or, if the vessel was an aircraft, the name of the owner or operator of the aircraft, by which he travelled to Australia and the date and place of his arrival in Australia.
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- (4) Where a party to proceedings applies to the court for an adjournment of the proceedings for the purpose of enabling him to obtain evidence in rebuttal of any evidence tendered as proof to the contrary for the purposes of this section, the court shall grant an adjournment for such reasonable time as is necessary for that purpose.
- (5) In any proceedings in which a person gives personal evidence by way of proof to the contrary in relation to a matter for the purposes of this section, that person is not excused from answering a question put to him on the ground that the answer may tend to incriminate him or make him liable to a penalty, but his answer is not admissible in evidence against him in any other proceedings, other than a prosecution for perjury.
- (6) Nothing in this section shall be construed as placing on a party the onus of proving any matter of which evidence may be given under this section by production of a deportation order or of a copy of a deportation order.

56 Averments

- (1) In a prosecution under section twenty-seven of this Act, an averment of the prosecutor, contained in the information or complaint, stating, in relation to the defendant, a matter specified in any of the paragraphs of subsection (1) of the last preceding section shall be deemed to be proved in the absence of proof to the contrary by the personal evidence of the defendant either with or without other evidence.
- (2) The provisions of subsections (3), (4) and (5) of the last preceding section apply in relation to proceedings in which an averment is made in accordance with this section in like manner as they apply in relation to proceedings in which a deportation order, or a copy of a deportation order, is admitted in evidence in accordance with that section.

56A Reports of absences of crews of vessels

- (1) Where, at or after the departure from a port in Australia of a vessel that has entered Australia from overseas, the master, owner, charterer or agent of the vessel reports in writing to an officer that a specified person was a member of the crew of the vessel on board the vessel at the time of its arrival at that port and is or was absent from the vessel at the time of its departure from that port, and states in the report whether that member left the vessel at that port with leave or without leave, that report is, for the purposes of proceedings under or in relation to this Act, evidence of the matters contained in the report and—
 - (a) if the report states that the member left the vessel with leave—that the member entered Australia, with leave, from the vessel during the vessel's stay at that port and remained in Australia after the vessel left that port; or
 - (b) if the report states that the member left the vessel without leave—that the member entered Australia, without leave, from the vessel during the vessel's stay at that port.
- (2) Where, during the stay at a port in Australia of a vessel that has entered Australia from overseas, the master of the vessel reports in writing to an officer that a specified person was included in the complement of the vessel, or a member of the crew of the vessel, on board the vessel at the time of its arrival at that port and—
 - (a) at any time during the vessel's stay at that port, left the vessel without leave; or
 - (b) at any time during the vessel's stay at that port, left the vessel with leave, but has become absent without leave,the report is, for the purposes of proceedings under or in relation to this Act, evidence of the matters contained in the report.

57 Proof of certain other matters

In proceedings in a court under this Act or in relation to a deportation order—

- (a) official documents of the Commonwealth or of a State or Territory, and letters and telegrams, or copies of letters and

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telegrams, and affidavits produced out of official custody and purporting to have been sent or made by an officer, are, if they contain information or statements upon matters relevant to the proceedings, admissible as evidence of that information or of the matters stated;

(b) where—

- (i) there is produced to the court a document that purports to be an identification card or other document of identification in respect of a person and to bear the personal description and photograph of the person to whom the document relates, together with a certificate purporting to be signed by an officer certifying that the document was delivered to an officer by the master, owner, charterer or agent of a specified vessel as relating to a person who was a member of the crew of the vessel when the vessel arrived at a specified port in Australia on a specified date; and
- (ii) the personal description and photograph appear to be, or to be capable of being, those of a particular person, being a person having a connexion with the proceedings,

the document and certificate are evidence that that person is the person to whom the document relates and was a member of the crew of that vessel when that vessel arrived at that port on that date;

- (c) the production out of official custody of a document purporting to be a report made by the master, owner, charterer or agent of a vessel to an officer as to a matter relevant to the operation of this Act is evidence that the document is such a report;
- (d) for the purpose of proving that a person entered Australia from, or left Australia in, a vessel, a list of any passengers in that vessel, or a passenger card relating to a passenger in that vessel, furnished in accordance with the regulations is admissible in evidence, and production of such a list or passenger card bearing a name that is the same as the name of that person shall be deemed to be proof that that person

entered Australia from, or left Australia in, that vessel on the voyage in respect of which the list or passenger card was furnished, unless the contrary is proved; and

- (e) for the purpose of proving that a person has, in a place outside Australia, been convicted of a particular crime (including an attempt to commit a crime) and has been sentenced to a particular sentence in respect of the conviction, fingerprint records, photographs and documents or copies thereof, and certificates in relation to any fingerprint records, photographs or documents or copies thereof, are admissible in evidence if they—
 - (i) are produced out of the custody of a police or prison officer of the Commonwealth or of a State or Territory; and
 - (ii) purport to be certified or given under the hand of a police or prison officer, or like authority, of a place outside Australia,and any such certificate is evidence of the matters stated in the certificate.

58 Immigrant centres

- (1) The Minister may, on behalf of the Commonwealth, cause to be established and maintained premises and places (in this section referred to as ***immigrant centres***) for the reception, accommodation or training of immigrants.
- (2) Immigrants may be admitted to immigrant centres on such terms and conditions, and subject to the payment of such charges, as the Minister approves.
- (3) The regulations may make provision for and in relation to the regulation of immigrant centres, including provision with respect to the establishment and operation of canteen services in immigrant centres, the conduct or control of persons in immigrant centres and the removal of persons from immigrant centres.

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- (4) Nothing in this section shall be deemed to affect any arrangements made or to be made in relation to, or the carrying on of the business of, the company known as Commonwealth Hostels Limited.

Part III—Emigration of Certain Children

59 Definition

In this Part, *child* means a person under the age of seventeen years.

61 Preservation of State laws

Nothing in this Part shall be read as intended to prevent or restrict the operation of any law of a State or Territory under which—

- (a) action may be taken to prevent a child from leaving Australia or being taken or sent out of Australia; or
- (b) a person may be punished in respect of the taking or sending of a child out of Australia.

62 Taking of certain children out of Australia prohibited

(1) Where—

- (a) there is in force in relation to a child an order (including an interim order) of a court in Australia entitling a person, either wholly or partly, to the custody or guardianship of, or to access to, a child; or
- (b) a person has instituted proceedings in a court in Australia in which he seeks the making of such an order in his favour in relation to a child and those proceedings are pending,

a person (other than the person referred to in paragraph (a) or (b) of this subsection, as the case may be) who was or is a party to the proceedings in which the order was made or is sought, or is acting on behalf of, or at the request of, a person who was or is such a party, shall not take or send, or attempt to take or send, the child from Australia to a place outside Australia except with the consent in writing of the person referred to in paragraph (a) or (b) of this subsection or in accordance with an order of a court made in pursuance of the law of a State or Territory or a law of the Commonwealth (other than this Act) at the time of or after the

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making of the order or the institution of the proceedings, as the case may be.

Penalty: One thousand dollars or imprisonment for six months.

- (2) For the purposes of this section, proceedings shall be deemed to be pending in a court if an appeal against a decision of that court in those proceedings has been instituted and is pending.
- (3) Subsection (1) of this section applies to a person notwithstanding that that person is one of the persons having or claiming rights to the custody or guardianship of, or of access to, the child.

63 Obligations of owners, &c., of vessels

- (1) Where a person referred to in paragraph (a) or (b) of subsection (1) of the last preceding section has served on the master, owner, agent or charterer of a vessel a statutory declaration of that person, in relation to the order or proceedings, in accordance with the next succeeding subsection, the master, owner, agent or charterer shall not, without reasonable excuse, while the order continues in force or the proceedings remain pending, permit the child referred to in the declaration to leave a port or place in Australia in the vessel for a destination outside Australia otherwise than in the company of, or with the consent in writing of, that person or in accordance with an order of a court made in pursuance of the law of a State or Territory or a law of the Commonwealth (other than this Act) at the time of or after the making of the order, or the institution of the proceedings, referred to in the declaration, as the case may be.

Penalty: One thousand dollars.

- (2) A statutory declaration for the purposes of the last preceding subsection shall be made within seven days before the date of its service and shall contain full particulars of the order or proceedings to which it relates, including—
 - (a) the full name of the child and the date of its birth;
 - (b) the full names of the parties to the proceedings in which the order was made or is sought;

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- (c) where the declaration relates to pending proceedings, the name of the court and the nature and date of institution of the proceedings and a statement that the proceedings are pending at the date of the declaration; and
 - (d) where the declaration relates to an order, the terms of the order,
- and shall contain such other matters, if any, as are prescribed.
- (3) Service of a declaration under this section on the owner, agent or charterer of a vessel may be effected by delivering the declaration at, or sending it by registered post addressed to him at, his principal place of business in Australia.
- (4) The master, owner, agent or charterer of a vessel is not liable in any civil or criminal proceedings in respect of anything done by him in good faith for the purpose of complying with his obligations under this section.

Part IV—Miscellaneous

65 Obstructing or deceiving officers

A person shall not obstruct, hinder, deceive or mislead an officer in the exercise of his powers or the performance of his duties under or for the purposes of this Act or the regulations.

Penalty: Four hundred dollars or imprisonment for six months.

65A Identification card to be deemed to continue to be in a form approved by the Minister

Where the Minister revokes his approval of a form of identification card in relation to members of the crews of vessels, an identification card in accordance with that form signed by the master of a vessel not later than three months after the date of that revocation shall, notwithstanding that revocation, be deemed, for the purposes of this Act, to continue to be an identification card in accordance with a form approved by the Minister.

66 Institution of prosecutions

A prosecution for an offence against this Act or the regulations, other than an offence under Part III of this Act, shall not be instituted except by an authorized officer.

67 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

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- (a) imposing and providing for the collection of fees in respect of documents issued under or for the purposes of this Act or the regulations;
 - (aa) making provision for or in relation to the furnishing or obtaining of information with respect to—
 - (i) persons on board a vessel arriving at a port in Australia in the course of, or at the conclusion of, a voyage or flight that commenced at, or during which the vessel called at, a place outside Australia; and
 - (ii) persons on board a vessel leaving a port in Australia and bound for, or calling at, a place outside Australia;
 - (b) prescribing the practice and procedure in relation to proceedings before a Commissioner or a prescribed authority under this Act, including the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, the administering of oaths or affirmations and the payment of expenses of witnesses;
 - (c) requiring maintenance guarantees to be given, in such circumstances as are prescribed or as the Minister thinks fit, in relation to persons seeking to enter, or remain in, Australia and providing for the enforcement of such guarantees and the imposition on persons who give such guarantees of liabilities in respect of the maintenance of, and other expenditure in connexion with, the persons in respect of whom the guarantees are given; and
 - (d) prescribing penalties not exceeding a fine of Four hundred dollars or imprisonment for six months in respect of offences against the regulations.
- (2) Regulations in respect of a matter referred to in paragraph (c) of the last preceding subsection may apply in relation to maintenance guarantees given before the commencement of this Part in accordance with the regulations that were in force under any of the Acts repealed by this Act.

The Schedule—Acts relating to immigration and deportation repealed

Section 4

Immigration Restriction Act 1901.
Immigration Restriction Amendment Act 1905.
Immigration Restriction Act 1908.
Immigration Restriction Act 1910.
Immigration Act 1912.
Immigration Act 1920.
Immigration Act 1924.
Immigration Act 1925.
Immigration Act 1930.
Immigration Act 1932.
Immigration Act 1933.
Immigration Act 1935.
Immigration Act 1940.
Immigration Act 1948.
Immigration Act 1949.
Pacific Island Labourers Act 1901.
Pacific Island Labourers Act 1906.
Aliens Deportation Act 1948.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnotes

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	orig = original
am = amended	p = page(s)
amdt = amendment	para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
ch = Chapter(s)	prev = previous
cl = clause(s)	(prev...) = previously
cont. = continued	pt = Part(s)
def = definition(s)	r = regulation(s)/Court rule(s)
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
div = Division(s)	rep = repealed
ed = editorial change	rs = repealed and substituted
exp = expires/expired or ceases/ceased to have effect	s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)
gaz = gazette	sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	SLI = Select Legislative Instrument
LIA = <i>Legislative Instruments Act 2003</i>	SR = Statutory Rules
(md) = misdescribed amendment can be given effect	sub ch = Sub-Chapter(s)
(md not incorp) = misdescribed amendment cannot be given effect	sub div = Subdivision(s)
mod = modified/modification	sub pt = Subpart(s)
No. = Number(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Migration Act 1958 (C1958A00062)	62, 1958	8 Oct 1958	s 59-64: 10 Nov 1958 (s 2 and gaz 1958, p 3857) Remainder: 1 June 1959 (s 2 and gaz 1959 p 1831)	
Migration Act 1964 (C1964A00087)	87, 1964	5 Nov 1964	5 Nov 1964 (s 2)	—
Migration Act 1966 (C1966A00010)	10, 1966	6 May 1966	6 May 1966 (s 2)	s 3(2)
Migration Act 1973 (C1973A00016)	16, 1973	11 Apr 1973	11 Apr 1973 (s 2)	—
Statute Law Revision Act 1973 (C1973A00216)	216, 1973	19 Dec 1973	sch 1, 2: 31 Dec 1973 (s 2)	s 9(1), 10
Administrative Changes (Consequential Provisions) Act 1976 (C2004A01522)	91, 1976	20 Sept 1976	s 4: <u>20 Sept 1976 (s 2(1))</u> sch: 22 Dec 1975 (s 2(7))	s 4

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 3.....	am No 16, 1973 rep No 216, 1973
s 4.....	am No 216, 1973
s 5.....	am No 10, 1966; No 216, 1973; No 91, 1976
Part II	
Division 1	
s 7.....	am No 10, 1966
s 8.....	am No 87, 1964; No 10, 1966
Division 2	
s 16.....	am No 10, 1966
s 17.....	rep No 216, 1973
s 21.....	am No 10, 1966; No 216, 1973
s 22.....	am No 10, 1966
Division 3	
s 23.....	am No 10, 1966
s 24.....	rs No 10, 1966
s 25.....	rep No 216, 1973
Division 4	
s 27.....	am No 10, 1966
s 28.....	am No 10, 1966
s 29.....	am No 10, 1966
s 30.....	am No 10, 1966
s 31.....	am No 10, 1966
Division 5	
s 33.....	am No 10, 1966
s 37.....	am No 10, 1966
s 42.....	am No 10, 1966

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 44.....	am No 10, 1966
Division 6	
s 47.....	am No 10, 1966; No 216, 1973; No 91, 1976
s 48.....	am No 10, 1966
s 49.....	am No 10, 1966
s 50.....	am No 10, 1966
s 51.....	am No 10, 1966
s 52.....	am No 10, 1966
s 53.....	am No 10, 1966
Division 7	
s 56A.....	ad No 10, 1966
s 57.....	am No 87, 1964; No 10, 1966
Part III	
Heading to Part III	rs No 16, 1973
s 59.....	rs No 16, 1973
s 60.....	rep No 216, 1973
s 61.....	am No 216, 1973
s 62.....	am No 10, 1966
s 63.....	am No 10, 1966
s 64.....	am No 10, 1966
	rep No 16, 1973
Part IV	
s 65.....	am No 10, 1966
s 65A.....	ad No 10, 1966
s 67.....	am No 87, 1964; No 10, 1966