Migration Legislation Amendment (Temporary Safe Haven Visas) Act 1999

No. 34, 1999

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

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

[*Assented to 20 May 1999*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment (Temporary Safe Haven Visas) Act 1999*.

2 Commencement

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Item 11 of Schedule 1 commences immediately after the commencement of item 10 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Applications for certain visas made before the commencement of this Act

(1) If during the period beginning on 6 April 1999 and ending immediately before the commencement of this section:

(a) a non-citizen is in Australia; and

(b) the non-citizen:

(i) holds a temporary visa that falls within Class UJ under the regulations; or

(ii) has not left Australia since ceasing to hold such a visa; and

(c) the non-citizen makes an application for a visa; and

(d) the non-citizen is not granted a substantive visa as a result of the application;

then the application ceases to be a valid application on the commencement of this section, despite any provision of the *Migration Act 1958* or any other law.

(2) To avoid doubt:

(a) subsection (1) applies even if the application, or a decision in relation to the application, is the subject of a review by, or an appeal or application to, a review officer, body, tribunal or court; and

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

5 Visas taken to be temporary safe haven visas

A visa that falls within Class UJ under the regulations is taken to be a temporary safe haven visa on the commencement of this section.

Schedule 1—Amendment of the Migration Act 1958

1 Subsection 31(2)

After "37", insert ", 37A".

2 Subsection 31(3)

Omit "or 37", substitute ", 37 or 37A".

3 After section 37

Insert:

37A Temporary safe haven visas

(1) There is a class of temporary visas to travel to, enter and remain in Australia, to be known as temporary safe haven visas.

Note: A temporary safe haven visa is granted to a person to give the person temporary safe haven in Australia.

(2) The Minister may, by notice in the *Gazette*, extend the visa period of a temporary safe haven visa so that the visa ceases to be in effect on the day specified in the notice.

(3) The Minister may, by notice in the *Gazette*, shorten the visa period of a temporary safe haven visa so that the visa ceases to be in effect on the day specified in the notice if, in the Minister's opinion, temporary safe haven in Australia is no longer necessary for the holder of the visa because of changes of a fundamental, durable and stable nature in the country concerned.

(4) If a notice under subsection (3) is published in the *Gazette*, the Minister must cause a copy of the notice to be laid before each House of the Parliament within 3 sitting days of that House after the publication of the notice, together with a statement that sets out the reasons for the notice, referring in particular to the Minister's reasons for thinking that changes of a fundamental, durable and stable nature have occurred in the country concerned.

(5) If a notice under subsection (2) or (3) is published in the *Gazette* and has not been revoked, then the visa ceases to be in effect on the day specified in the notice, despite any other provision of this Act.

(6) The Minister does not have a duty to consider whether to exercise the power under subsection (2) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

(7) In this section:

country concerned means the country or countries in which the circumstances exist that give rise to the grant of temporary safe haven visas.

4 Paragraph 46(1)(d)

Before "161", insert "91K (temporary safe haven visa),".

5 Subparagraph 65(1)(a)(iii)

Before "501", insert "500A (refusal or cancellation of temporary safe haven visas),".

6 Subdivision AI of Division 3 of Part 2 (heading)

Repeal the heading, substitute:

Subdivision AI—Safe third countries

7 After Subdivision AI of Division 3 of Part 2

Insert:

Subdivision AJ—Temporary safe haven visas

91H Reason for this Subdivision

This Subdivision is enacted because the Parliament considers that a non-citizen who holds a temporary safe haven visa, or who has not left Australia since ceasing to hold such a visa, should not be allowed to apply for a visa other than another temporary safe haven visa. Any such non-citizen who ceases to hold a visa will be subject to removal under Division 8.

Note: For temporary safe haven visas, see section 37A.

91J Non-citizens to whom this Subdivision applies

This Subdivision applies to a non-citizen in Australia at a particular time if, at that time, the non-citizen:

(a) holds a temporary safe haven visa; or

(b) has not left Australia since ceasing to hold a temporary safe haven visa.

91K Non-citizens to whom this Subdivision applies are unable to make valid applications for certain visas

Despite any other provision of this Act but subject to section 91L, if this Subdivision applies to a non-citizen at a particular time and, at that time, the non-citizen applies, or purports to apply, for a visa (other than a temporary safe haven visa), then that application is not a valid application.

91L Minister may determine that section 91K does not apply to a non-citizen

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

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

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

(a) sets out the determination; and

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

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

(a) the name of the non-citizen; or

(b) any information that may identify the non-citizen; or

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

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

(a) if the determination is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or

(b) if the determination is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

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

8 After paragraph 118(e)

Insert:

(ea) section 500A (refusal or cancellation of temporary safe haven visas); or

9 At the end of section 198

Add:

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

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

(b) Subdivision AJ of Division 3 of this Part applies to the non-citizen; and

(c) either:

(i) the Minister has not given a notice under subsection 91L(1) to the non-citizen; or

(ii) the Minister has given such a notice but the period mentioned in that subsection has ended and the non-citizen has not, during that period, made a valid application for a substantive visa that can be granted when the applicant is in the migration zone.

10 Section 337 (at the end of the definition of *Part 5 reviewable decision*)

Add "but does not include a decision to refuse to grant, or to cancel, a temporary safe haven visa".

11 At the end of subsection 338(1)

Add:

; or (c) the decision is to refuse to grant, or to cancel, a temporary safe haven visa.

12 After paragraph 475(2)(d)

Insert:

(da) a decision of the Minister not to exercise, or not to consider the exercise of, his or her power to extend the visa period of a temporary safe haven visa under subsection 37A(2);

(db) a decision of the Minister to shorten the visa period of a temporary safe haven visa under subsection 37A(3);

13 Paragraph 475(2)(e)

After "91F", insert ", 91L".

14 After section 500

Insert:

500A Refusal or cancellation of temporary safe haven visas

Refusal or cancellation of temporary safe haven visas

(1) The Minister may refuse to grant to a person a temporary safe haven visa, or may cancel a person's temporary safe haven visa if, in the Minister's opinion:

(a) the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or

(b) having regard to either or both of the following:

(i) the person's past and present criminal conduct;

(ii) the person's past and present general conduct;

the person is not of good character; or

(c) in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:
  (i) engage in criminal conduct in Australia; or
  (ii) harass, molest, intimidate or stalk another person in Australia (see subsection (2)); or
  (iii) vilify a segment of the Australian community; or
  (iv) incite discord in the Australian community or in a segment of that community; or
  (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way; or
(d) the person is a threat to national security; or
(e) the person's presence in Australia would prejudice Australia's international relations.

(2) For the purposes of subsection (1), conduct may amount to harassment or molestation of a person even though:
  (a) it does not involve violence, or threatened violence, to the person; or
  (b) it consists only of damage, or threatened damage, to property belonging to, in the possession of, or used by, the person.

Refusal or cancellation of temporary safe haven visas

(3) The Minister may refuse to grant to a person a temporary safe haven visa, or may cancel a person's temporary safe haven visa if:
  (a) the person has been sentenced to death (see subsection (4)); or
  (b) the person has been sentenced to imprisonment for life (see subsection (4)); or
  (c) the person has been sentenced to a term of imprisonment of 12 months or more (see subsections (4) and (5)).

(4) For the purposes of subsection (3), a sentence imposed on a person is to be disregarded if:
  (a) the conviction concerned has been quashed or otherwise nullified; or

(b) the person has been pardoned in relation to the conviction concerned.

(5) For the purposes of subsection (3), if a person has been convicted of an offence and the court orders the person to participate in:

(a) a residential drug rehabilitation scheme; or

(b) a residential program for the mentally ill;

the person is taken to have been sentenced to a term of imprisonment equal to the number of days the person is required to participate in the scheme or program.

Minister to exercise power personally

(6) The powers under subsections (1) and (3) may only be exercised by the Minister personally.

Minister to table decision

(7) If the Minister makes a decision under subsection (1) or (3) to refuse to grant, or to cancel, a temporary safe haven visa, the Minister is to cause to be laid before each House of the Parliament a statement that:

(a) sets out the decision; and

(b) sets out the reasons for the decision.

(8) A statement under subsection (7) is not to include:

(a) the name of the non-citizen; or

(b) any information that may identify the non-citizen; or

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

(9) A statement under subsection (7) is to be laid before each House of the Parliament within 15 sitting days of that House after:

(a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or

(b) if the decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

Minister to notify person of decision

(10) If the Minister makes a decision under subsection (1) or (3) to refuse to grant a person a temporary safe haven visa, or to cancel a person's temporary safe haven visa, the Minister must notify the person of the decision. However, failure to do so does not affect the validity of the decision.

Natural justice and code of procedure not to apply to decision

(11) The rules of natural justice, and the code of procedure set out in Subdivision AB of Division 3 of Part 2, do not apply to a decision under subsection (1) or (3).

Automatic refusal to grant visa to an immediate family member

(12) If the Minister refuses to grant a person a temporary safe haven visa under subsection (1) or (3), then the Minister is also taken to have refused to grant a temporary safe haven visa to each immediate family member of the person. The immediate family member need not be notified of the refusal.

Automatic cancellation of immediate family member's visa

(13) If a person's temporary safe haven visa is cancelled under subsection (1) or (3), then a temporary safe haven visa held by each immediate family member of the person is also cancelled. The immediate family member need not be notified of the cancellation.

Definitions

(14) In this section:

court includes a court martial or similar military tribunal.

immediate family member of a person means another person who is a member of the immediate family of the person (within the meaning of the regulations).

imprisonment includes any form of punitive detention in a facility or institution.

sentence includes any form of determination of the punishment for an offence.

[*Minister's second reading speech made in—*
Senate on 21 April 1999
House of Representatives on 11 May 1999]

(78/99)