



Migration Amendment Act (No. 2) 1991

No. 196 of 1991

An Act to amend the *Migration Act 1958*

[Assented to 18 December 1991]

[Date of commencement 15 January 1992]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Migration Amendment Act (No. 2) 1991*.

(2) In this Act, “Principal Act” means the *Migration Act 1958*¹.

Interpretation

2. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘offence against this Act’ includes:

- (a) an offence against a provision of this Act because of section 5 of the *Crimes Act 1914*; and
- (b) an offence against section 6, 7 or 7A of that Act that relates to an offence against a provision of this Act; and

- (c) an offence against subsection 86(1) of that Act because of paragraph (a) of that subsection, being an offence that relates to an offence against a provision of this Act.”.

3. After section 22 of the Principal Act the following Division is inserted:

“Division 1A—Power to obtain information and documents about illegal entrants

Power to obtain information and documents about illegal entrants

“22A.(1) If the Minister has reason to believe that a person (in this subsection called the ‘first person’) is capable of giving information which the Minister has reason to believe is, or producing documents (including documents that are copies of other documents) which the Minister has reason to believe are, relevant to ascertaining the identity or whereabouts of another person whom the Minister has reason to believe is an illegal entrant, the Minister may, by notice in writing served on the first person, require the first person:

- (a) to give to the Minister, within the period and in the manner specified in the notice, any such information; or
- (b) to produce to the Minister, within the period and in the manner specified in the notice, any such documents; or
- (c) to make copies of any such documents and to produce to the Minister, within the period and in the manner specified in the notice, those copies.

“(2) A notice under subsection (1) must set out the effects of sections 22D, 22E and 22F.

Scales of expenses

“22B. The regulations may prescribe scales of expenses to be allowed to persons required to give information or produce documents under this Division.

Reasonable compensation

“22C. A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph 22A(1)(c).

Failure to comply with section 22A notice

“22D.(1) A person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection 22A(1) to the extent that the person is capable of complying with it.

“(2) The following are 2 of the reasonable excuses for refusing or failing to comply with a notice:

- (a) the person whom the Minister had reason to believe was an

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illegal entrant was not an illegal entrant at the time the notice was given;

- (b) the information or documents which the Minister had reason to believe were relevant to ascertaining the identity or whereabouts of a person were not relevant to ascertaining the identity or whereabouts of the person.

Penalty: Imprisonment for 6 months.

Giving false or misleading information

“22E. A person must not, in purported compliance with a notice under subsection 22A(1), knowingly give information that is false or misleading.

Penalty: Imprisonment for 12 months.

Provision of false or misleading document

“22F.(1) A person must not, in compliance with a notice under subsection 22A(1), produce a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular.

“(2) Subsection (1) does not apply to a person who produces a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular if the document or copy is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document or copy is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the first-mentioned person, false or misleading.

Penalty: Imprisonment for 12 months.

Information and documents that incriminate a person

“22G. A person is not excused from giving information or producing a document or a copy of a document under this Division on the ground that the information or the production of the document or copy might tend to incriminate the person, but:

- (a) giving the information or producing the document or copy; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;

is not admissible in evidence against the person in any criminal proceedings other than proceedings under, or arising out of, this Division.

Copies of documents

“22H.(1) The Minister may inspect a document or copy produced under this Division and may make and retain copies of, or take and retain extracts from, such a document or copy.

“(2) The Minister may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 22A(1)(c).

Minister may retain documents

“22J.(1) The Minister may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, possession of a document produced under this Division.

“(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Minister to be a true copy.

“(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

“(4) Until a certified copy is supplied, the Minister must, at such times and places as the Minister thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

Division binds the Crown

“22K.(1) This Division binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

“(2) Nothing in this Division permits the Crown in right of the Commonwealth, of a State, of the Australian Capital Territory or of the Northern Territory to be prosecuted for an offence.”

Regulations may provide for visas

4. Section 23 of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) In spite of section 49A of the *Acts Interpretation Act 1901*, a prescribed criterion for visas of a class may be the criterion that the grant of the visa would not cause the number of visas of that class granted in a particular financial year to exceed whatever number is fixed by the Minister, by notice published in the *Gazette*, as the maximum number of such visas that may be granted in that year (however the criterion is expressed).

“(3B) For the purposes of this Act, when a criterion allowed by subsection (3A) prevents the grant in a financial year of any more visas

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of a particular class, any outstanding applications for the grant in that year of visas of that class are taken not to have been made.”.

Regulations may provide for entry permits

5. Section 33 of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) In spite of section 49A of the *Acts Interpretation Act 1901*, a prescribed criterion for permits of a class may be the criterion that the grant of the permit would not cause the number of permits of that class granted in a particular financial year to exceed whatever number is fixed by the Minister, by notice published in the *Gazette*, as the maximum number of such permits that may be granted in that year (however the criterion is expressed).

“(3B) For the purposes of this Act, when a criterion allowed by subsection (3A) prevents the grant in a financial year of any more permits of a class, any outstanding applications for the grant in that year of permits of that class are taken not to have been made.”.

Cancellation of entry permits

6. Section 35 of the Principal Act is amended by inserting in subsection (2) “or 83G(2)” after “subsection 14(2)”.

Heading to Division 7

7. The Principal Act is amended by inserting after the heading to Division 7 the following subheading:

“Subdivision A—General Offences”.

8. After section 83 of the Principal Act the following Subdivision is inserted in Division 3:

“Subdivision B—Offences relating to abuse of laws allowing spouses etc. of Australian citizens or of permanent residents to become permanent residents

Reason for Subdivision

“83A. This Subdivision was enacted because:

- (a) under the regulations, a person satisfies a criterion for certain permits and visas that give, or might lead to, authorisation for the person’s permanent residence in Australia if the person is married to, or is the de facto spouse of, and has a genuine and continuing marital relationship with, either an Australian citizen or a permanent resident of Australia; and
- (b) under the regulations, a person satisfies a criterion for certain other permits and visas that give, or might lead to, authorisation for the person’s permanent residence in Australia if the person has an interdependency relationship with either an Australian

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citizen or a permanent resident of Australia that is genuine and will continue; and

- (c) some persons attempt to get permanent residence under the regulations by:
 - (i) entering into a marriage that is not intended to result in a genuine and continuing marital relationship; or
 - (ii) pretending to be a de facto spouse; or
 - (iii) pretending to have an interdependency relationship.

Interpretation

“83B. In this Subdivision:

‘**criterion**’ includes part of a criterion;

‘**interdependency relationship**’ means a relationship:

- (a) between 2 persons who are not:
 - (i) spouses, or other relatives, of each other under any of the regulations; or
 - (ii) members of the same family unit under any of the regulations otherwise than because of an agreement to marry; and
- (b) that is acknowledged by both; and
- (c) that involves:
 - (i) residing together; and
 - (ii) being closely interdependent; and
 - (iii) having a continuing commitment to mutual emotional and financial support;

‘**preliminary permit**’ means:

- (a) an extended eligibility (spouse) entry permit; or
- (b) another permit, or a visa, under the regulations that is usually applied for by persons applying, or intending to apply, for a permanent entry permit;

‘**stay permit**’ means:

- (a) a permanent entry permit; or
- (b) a preliminary permit.

Application of Subdivision

“83C.(1) This Subdivision applies in and outside Australia.

“(2) This Subdivision applies to marriages solemnized outside Australia as well as those solemnized in Australia.

Offence to arrange marriage to obtain permanent residence

“83D.(1) A person must not arrange a marriage between other persons for the purpose of assisting one of those other persons to get a stay permit by satisfying a criterion for the permit because of the marriage.

“(2) Subsection (1) applies whether or not the purpose is achieved.

“(3) It is a defence to an offence against subsection (1) if the defendant proves that, although one purpose of the marriage was to assist a person to get a stay permit, the defendant believed on reasonable grounds that the marriage would result in a genuine and continuing marital relationship.

Penalty: \$100,000 or imprisonment for 10 years, or both.

Offence to arrange pretended de facto relationship to obtain permanent residence

“83E.(1) If a person knows or believes on reasonable grounds that 2 other persons are not de facto spouses of each other for the purposes of the regulations, the person must not make arrangements that make, or help to make, it look as if those other persons are such spouses for the purpose of assisting one of those other persons to get a stay permit by appearing to satisfy a criterion for the permit because of being such spouses.

“(2) Subsection (1) applies whether or not the purpose is achieved.

Penalty: \$100,000 or imprisonment for 10 years, or both.

Offence to arrange pretended interdependency relationship to obtain permanent residence

“83F.(1) If a person knows or believes on reasonable grounds that there is no interdependency relationship between 2 other persons, the person must not make arrangements to make, or help to make, it look as if there is such a relationship between those other persons for the purpose of assisting one of those other persons to get a stay permit by appearing to satisfy a criterion for the permit because of the relationship.

“(2) Subsection (1) applies whether or not the purpose is achieved.

Penalty: \$100,000 or imprisonment for 10 years, or both.

Offences relating to application for permanent residence because of marriage or de facto relationship

“83G.(1) A person must not apply for a stay permit on the basis of satisfying a criterion for the permit because of being married to, or being, for the purposes of the regulations, the de facto spouse of, another person if, at the time of the application, the applicant does not intend to live permanently with the other person in a genuine and continuing marital relationship.

“(2) A non-citizen in Australia convicted of an offence under subsection (1) becomes an illegal entrant.

“(3) A person must not nominate an applicant for a stay permit on the basis of the applicant satisfying a criterion for the permit because of being married to, or being, for the purposes of the regulations, the de facto spouse of, the person if, at the time of the application, the

person does not intend to live permanently with the applicant in a genuine and continuing marital relationship.

Penalty: Imprisonment for 2 years.

Offences relating to an application for permanent residence because of interdependency relationship

“83H.(1) A person must not apply for a stay permit on the basis of satisfying a criterion for the permit because of having an interdependency relationship with another person if, at the time of the application, the applicant does not intend to have such a relationship with the other person that is genuine and will continue.

“(2) A non-citizen in Australia convicted of an offence under subsection (1) becomes an illegal entrant.

“(3) A person must not nominate an applicant for a stay permit on the basis of the applicant satisfying a criterion for the permit because of an interdependency relationship between them if, at the time of the application, the person does not intend to have such a relationship with the applicant that is genuine and will continue.

Penalty: Imprisonment for 2 years.

Offences of making false or unsupported statements

“83J.(1) A person must not make a statement, or give information, in writing, to an officer in relation to the consideration for the purposes of this Act or the regulations of any of the following questions:

- (a) whether or not other persons have a genuine and continuing marital relationship between them;
- (b) whether or not other persons lived together on a genuine domestic basis as spouses without being married to each other;
- (c) whether or not there is an interdependency relationship between 2 other persons;

if the person knows that the statement or information is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

“(2) Subsection (1) does not apply unless the statement or information was made in a document that describes, and shows the penalty for, an offence against that subsection.

“(3) A person must not make a statement, or give information, in writing, to an officer in relation to the consideration for the purposes of this Act or the regulations of any of the following questions:

- (a) whether or not other persons have a genuine and continuing marital relationship between them;
- (b) whether or not other persons lived together on a genuine domestic basis as spouses without being married to each other;

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- (c) whether or not there is an interdependency relationship between 2 other persons;

if:

- (d) the statement or information is false or misleading in a material particular; and
- (e) the person making the statement, or giving the information, did not make appropriate inquiries to satisfy himself or herself that the statement or information was neither false nor misleading.

Penalty: \$12,000.

“(4) Subsection (3) does not apply unless the statement or information was made in a document that describes, and shows the penalty for, an offence against that subsection.”.

Regulations

9. Section 181 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Section 49A of the *Acts Interpretation Act 1901* does not prevent, and has not prevented, regulations whose operation depends on a country or other matter being specified or certified by the Minister in a notice published in the *Gazette* after the taking effect of the regulations.”.

Application of sections inserted by section 8

10.(1) If a person begins before, and continues after, the commencement of section 83D of the Principal Act as amended by this Act to arrange a marriage, then that section applies to the arranging of the marriage.

(2) If a person begins before, and continues after, the commencement of section 83E of the Principal Act as amended by this Act to make arrangements of the kind described in that section, then that section applies to those arrangements.

(3) If a person began before, and continues after, the commencement of section 83F of the Principal Act as amended by this Act to make arrangements of the kind described in that section, then that section applies to those arrangements.

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NOTE

1. No. 62, 1958, as amended. For previous amendments, see No. 87, 1964; No. 10, 1966; Nos. 16 and 216, 1973; Nos. 37 and 91, 1976; Nos. 117 and 118, 1979; Nos. 89 and 175, 1980; No. 61, 1981; No. 51, 1982; Nos. 73 and 112, 1983; Nos. 22, 72 and 123, 1984; Nos. 71, 102 and 168, 1986; Nos. 86, 104, 133 and 141, 1987; Nos. 5, 38, 49 and 151, 1988; Nos. 59 and 61, 1989; and No. 86, 1991.

[*Minister's second reading speech made in—
House of Representatives on 15 October 1991
Senate on 12 November 1991*]