



Migration Laws Amendment Act 1992

No. 175 of 1992

An Act to amend the law relating to migration

[Assented to 16 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Migration Laws Amendment Act 1992*.

Commencement

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

(2) Part 3 is taken to have commenced immediately after the commencement of the *Migration Amendment Act (No. 2) 1991*.

PART 2—AMENDMENT OF THE MIGRATION ACT 1958

Principal Act

3. In this Part, “Principal Act” means the *Migration Act 1958*¹.

Regulations may provide for visas

4. Section 23 of the Principal Act is amended by omitting from paragraph (2)(b) “section 28” and substituting “sections 28 and 28B”.

Grant or refusal of visas

5. Section 24 of the Principal Act is amended by omitting from paragraphs (3)(b) and (6)(a) “section 28” and substituting “sections 28 and 28B”.

Minister may suspend processing of visa applications

6. Section 28 of the Principal Act is amended:

(a) by omitting subsection (3) and substituting the following subsection:

“(3) A notice under this section does not have any effect in relation to an application for a visa made by a person on the ground that he or she is the spouse, dependent child or aged parent of:

- (a) an Australian citizen; or
- (b) the holder of a valid permanent entry permit; or
- (c) a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law.”;

(b) by inserting after subsection (4) the following subsection:

“(4A) For the purposes of this section, a child of a person is a dependent child if the child:

- (a) is unmarried; and
- (b) either:
 - (i) is under 18; or
 - (ii) is 18, 19 or 20 and is dependent on the person for:
 - (A) financial and psychological support; or
 - (B) physical support.”;

(c) by omitting from subsection (5) the definition of “child”.

7. After Subdivision A of Division 2 of Part 2 of the Principal Act the following Subdivision is inserted:

“Subdivision AA—Limit on visas

Limit on visas

“28A. The Minister may, by notice in the *Gazette*, determine the maximum number of:

- (a) the visas of a specified class; or
 - (b) the visas of specified classes;
- that may be granted in a specified financial year.

Effect of limit

“28B. If:

- (a) there is a determination of the maximum number of visas of a class or classes that may be granted in a financial year; and
- (b) the number of visas of the class or classes granted in the year reaches that maximum number;

no more visas of the class or classes may be granted in the year.

Limit does not prevent visas for certain persons

“28C.(1) Section 28B does not prevent the grant of a visa to a person who applied for it on the ground that he or she is the spouse, dependent child or aged parent of:

- (a) an Australian citizen; or
- (b) the holder of a valid permanent entry permit; or
- (c) a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law.

“(2) For the purposes of this section, a child of a person is a dependent child if the child:

- (a) is unmarried; and
- (b) either:
 - (i) is under 18; or
 - (ii) is 18, 19 or 20 and is dependent on the person for:
 - (A) financial and psychological support; or
 - (B) physical support.

Limit does not affect processing of applications

“28D. Section 28B’s prevention of the grant of a visa does not prevent any other action related to the application for it.

Determination of limit not to mean failure to decide

“28E. The fact that the Minister has neither granted nor refused to grant a visa of a class or classes to which a determination under section 28A applies does not mean, for any purpose, that the Minister has failed to make a decision about the application for the visa.

Order of dealing with limited visas

“28F. The fact that an application for a visa of a class or classes to which a determination under section 28A applies has not been considered or disposed of although an application for another visa of the class or classes that was made later has been considered or disposed

of does not mean, for any purpose, that the consideration or disposal of the earlier application is unreasonably delayed.

Order of dealing with visas

“28G. If a determination under section 28A applies, or has applied, to visas of a class or classes, the Minister may consider or, subject to section 28B, dispose of outstanding and further applications for such visas in such order as he or she considers appropriate.”.

Minister may suspend processing of entry permit applications where the applicants are in Australia

8. Section 40 of the Principal Act is amended:

(a) by omitting subsection (3) and substituting the following subsection:

“(3) A notice under this section does not have any effect in relation to an application for an entry permit made by a person on the ground that he or she is the spouse, dependent child or aged parent of:

- (a) an Australian citizen; or
- (b) the holder of a valid permanent entry permit; or
- (c) a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law.”;

(b) by inserting after subsection (4) the following subsection:

“(4A) For the purposes of this section, a child of a person is a dependent child if the child:

- (a) is unmarried; and
- (b) either:
 - (i) is under 18; or
 - (ii) is 18, 19 or 20 and is dependent on the person for:
 - (A) financial and psychological support; or
 - (B) physical support.”;

(c) by omitting from subsection (5) the definition of “child”.

**PART 3—AMENDMENT OF
THE MIGRATION AMENDMENT ACT (NO. 2) 1991**

Principal Act

9. In this Part, “Principal Act” means the *Migration Amendment Act (No. 2) 1991*².

Insertion of Subdivision

10. Section 8 of the Principal Act is amended by omitting “Division 3” and substituting “Division 7”.

Migration Laws Amendment No. 175, 1992

NOTES

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; No. 37, 1990; Nos. 70, 86, 196 and 198, 1991; and Nos. 24, 84 and 85, 1992.
2. No. 196, 1991.

[*Minister's second reading speech made in—
House of Representatives on 19 August 1992
Senate on 3 November 1992*]