



Migration (Offences and Undesirable Persons) Amendment Act 1992

No. 213 of 1992

An Act to amend the *Migration Act 1958*

[Assented to 24 December 1992]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Migration (Offences and Undesirable Persons) Amendment Act 1992*.

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

Commencement

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

10 (2) Subsection 4(2) and sections 6 and 7 commence on 1 November 1993.

Migration (Offences and Undesirable Persons)
Amendment No. 213, 1992

3. After section 83 of the Principal Act the following section is inserted:

Offences relating to visas

“83AA. A person must not:

- (a) for purpose of travel to Australia, remaining in Australia or identification, use a visa that was granted to another person; 5
or
- (b) without reasonable excuse, have in his or her possession or under his or her control a visa that was not granted to him or her. 10

Penalty: Imprisonment for 2 years.”.

Review of decisions

4.(1) Section 180 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection: 15

“(1) Applications may be made to the Administrative Appeals Tribunal for review of:

- (a) decisions of the Minister under section 55; or
- (b) decisions of the Minister under section 180A; 20
other than decisions to which a certificate under section 180B applies.”;

- (b) by omitting from subsection (2) “subsection (1)” and substituting “paragraph (1)(a)”; 25
- (c) by omitting subsection (3) and substituting the following subsections:

“(3) A person who is the subject of a decision referred to in paragraph (1)(b) is not entitled to make an application under subsection (1) for review of the decision unless the person has entered Australia and has not left Australia.

“(3A) A person other than the person who is the subject of a decision referred to in paragraph (1)(b) is not entitled to make an application under subsection (1) for review of the decision unless the person would be entitled to seek review of the decision under Part 3 if the decision had been made on another ground. 30 35

“(3B) Decisions referred to in subsection (1) are not reviewable under Part 3.”.

(2) Section 180 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(a) “section 55” and substituting “section 55 because of circumstances specified in section 55”; 40

Migration (Offences and Undesirable Persons)
Amendment No. 213, 1992

(b) by inserting after paragraph (1)(b) the following word and paragraph:

5 “; or (c) a decision to refuse an application for a protection visa, or to cancel a protection visa, relying on one or more of the following Articles of the Refugees Convention, namely, Article 1F, 32 or 33(2).”;

(c) by omitting subsections (3) and (3A) and substituting the following subsection:

10 “(3) A person is not entitled to make an application under subsection (1) for review of a decision referred to in paragraph (1)(b) or (c) unless the person would be entitled to seek review of the decision under Part 3 or 4A if the decision had been made on another ground.”;

(d) by inserting in subsection (3B) “or 4A” after “Part 3”.

15 5. After section 180 of the Principal Act the following sections are inserted:

Special power to refuse or to cancel visa or entry permit

20 “180A.(1) The Minister may refuse to grant a visa or an entry permit to a person, or may cancel a valid visa or a valid entry permit that has been granted to a person, if:

(a) subsection (2) applies to the person; or

(b) the Minister is satisfied that, if the person were allowed to enter or to remain in Australia, the person would:

25 (i) be likely to engage in criminal conduct in Australia; or

(ii) vilify a segment of the Australian community; or

(iii) incite discord in the Australian community or in a segment of that community; or

30 (iv) 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 violence threatening harm to, that community or segment, or in any other way.

“(2) This subsection applies to a person if the Minister:

(a) having regard to:

35 (i) the person’s past criminal conduct; or

(ii) the person’s general conduct;

is satisfied that the person is not of good character; or

40 (b) is satisfied that the person is not of good character because of the person’s association with another person, or with a group or organisation, who or that the Minister has reasonable grounds to believe has been or is involved in criminal conduct.

Migration (Offences and Undesirable Persons)
Amendment No. 213, 1992

“(3) The power under this section to refuse to grant a visa or an entry permit to a person, or to cancel a valid visa or a valid entry permit that has been granted to a person, is in addition to any other power under this Act, as in force from time to time, to refuse to grant a visa or an entry permit to a person, or to cancel a valid visa or a valid entry permit that has been granted to a person. 5

Minister may decide in the national interest that certain persons are to be excluded persons

“180B.(1) If:

- (a) the Minister, acting personally, intends to make a decision under section 55 or 180A in relation to a person; and 10
- (b) the Minister decides that, because of the seriousness of the circumstances giving rise to the making of that decision, it is in the national interest that the person be declared to be an excluded person; 15

the Minister may, as part of the decision, include a certificate declaring the person to be an excluded person.

“(2) A decision under subsection (1) must be taken by the Minister personally.

“(3) If the Minister makes a decision under subsection (1), the Minister must cause notice of the making of the decision to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the decision was made. 20

Exclusion of certain persons from Australia

“180C.(1) A person in relation to whom a decision under section 55 or 180A has been made is not entitled to enter Australia or to be in Australia at any time during the period determined under the regulations. 25

“(2) The period referred to in subsection (1) commences, in the case of a person who has been deported or removed from Australia, when the person is so deported or removed. 30

“(3) Different periods may be prescribed under subsection (1) in relation to different situations.”.

Minister may decide in the national interest that certain persons are to be excluded persons 35

6. Section 180B of the Principal Act is amended by omitting paragraph (1)(a) and substituting the following paragraph:

- “(a) the Minister, acting personally, intends to make a decision:
 - (i) under section 55A because of circumstances specified in section 55; or 40
 - (ii) under section 180A; or

Migration (Offences and Undesirable Persons)
Amendment No. 213, 1992

- (iii) to refuse an application for a protection visa, or to cancel a protection visa, relying on one or more of the following Articles of the Refugees Convention, namely, Article 1F, 32 or 33(2);
- 5 in relation to a person; and”.

Exclusion of certain persons from Australia

7. Section 180C of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- “(1) A person in relation to whom a decision has been made:
- 10 (a) under section 55A because of circumstances specified in section 55; or
- (b) under section 180A; or
- (c) to refuse an application for a protection visa, or to cancel a protection visa, relying on one or more of the following Articles
- 15 of the Refugees Convention, namely, Article 1F, 32 or 33(2);
- is not entitled to enter Australia or to be in Australia at any time during the period determined under the regulations.”.
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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; No. 37, 1990; Nos. 70, 86, 196 and 198, 1991; and Nos. 1992.

*[Minister's second reading speech made in—
Senate on 12 November 1992
House of Representatives on 17 December 1992]*