2004-2005-2006

The Parliament of the Commonwealth of Australia

THE SENATE

Presented and read a first time

Migration Amendment (Visa Integrity) Bill 2006

No. , 2006

(Immigration and Multicultural Affairs)

A Bill for an Act to amend the Migration Act 1958, and for related purposes
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A Bill for an Act to amend the Migration Act 1958, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Migration Amendment (Visa Integrity) Act 2006.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
## Commencement information

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<th>Column 1</th>
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<tr>
<td>Provision(s)</td>
<td>Commencement</td>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
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<td>2. Schedule 1</td>
<td>A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
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<td>3. Schedule 2</td>
<td>The day on which this Act receives the Royal Assent.</td>
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<td>4. Schedule 3</td>
<td>A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
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<tr>
<td>5. Schedule 4</td>
<td>A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td></td>
</tr>
</tbody>
</table>

### Note:

This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

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.
Schedule 1—Immigration clearance status of non-citizen children born in Australia

Migration Act 1958

1 After paragraph 172(1)(b)

Insert:

(ba) the person:
   (i) enters Australia by virtue of the operation of section 10;
   and
   (ii) at the time of the person’s birth, had at least one parent
   who was immigration cleared on his or her last entry
   into Australia; or

2 Application provision

The amendment of the Migration Act 1958 made by item 1 of this Schedule applies to a non-citizen child born in Australia on or after 1 September 1994.

3 At the end of subsection 172(1)

Add:

; or (d) the person is in a prescribed class of persons.

4 Section 173

Before “If”, insert “(1)”.

5 At the end of section 173

Add:

(2) To avoid doubt, a non-citizen child who is taken to have been granted a visa or visas, at the time of the child’s birth, by virtue of the operation of section 78, is not to be taken, by virtue of that birth, to have entered Australia in a way that contravenes section 43.

6 Application provision
The amendment of the *Migration Act 1958* made by item 5 of this Schedule applies to a non-citizen child born in Australia on or after 1 September 1994 who is taken to have been granted a visa or visas under section 78 of that Act.
Schedule 2—Criminal Code harmonisation amendments

Migration Act 1958

1 Subsection 229(1)
Omit “unless”, substitute “if”.

2 Paragraphs 229(1)(a) to (e)
Repeal the paragraphs, substitute:
  (a) is not in possession of evidence of a visa that is in effect and
    that permits him or her to travel to and enter Australia; and
  (b) does not hold a special purpose visa; and
  (c) is not eligible for a special category visa; and
  (d) does not hold an enforcement visa; and
  (e) is a person to whom subsection 42(1) applies.

3 After subsection 229(3)
Insert:
  (4) For the purposes of subsection (1), the defendant bears an
    evidential burden in relation to establishing that subsection 42(1)
    does not apply to a person because of subsection 42(2) or (2A) or
    regulations made under subsection 42(3).

Note: For evidential burden, see subsection 13.3(3) of the Criminal Code.

4 After subsection 232(1A)
Insert:
  (1B) For the purposes of paragraph (1)(a), the defendant bears an
    evidential burden in relation to establishing that subsection 42(1)
    does not apply to a person because of subsection 42(2) or (2A) or
    regulations made under subsection 42(3).

Note: For evidential burden, see subsection 13.3(3) of the Criminal Code.

5 Section 232A
Before “A person”, insert “(1)”. 
6 At the end of section 232A

Add:

(2) For the purposes of subsection (1), the defendant bears an evidential burden in relation to establishing that subsection 42(1) does not apply to a person because of subsection 42(2) or (2A) or regulations made under subsection 42(3).

Note: For evidential burden, see subsection 13.3(3) of the Criminal Code.

7 After subsection 233(1)

Insert:

(1A) Strict liability applies to the element of an offence against paragraph (1)(a) that the bringing or coming to Australia of the relevant non-citizen was under circumstances from which it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of this Act.

Note: For strict liability, see section 6.1 of the Criminal Code.

8 Subsection 268BJ(1)

Omit “an authorised officer”.

9 Section 268CM

Omit “section 268CJ or 268CK (officer may ask questions)”, substitute “a request under section 268CJ or a requirement under section 268CK”.

10 Subsection 268CN(1)

Omit “an authorised officer”.

11 Subsection 268CN(1)

Omit “section 268CJ or 268CK (officer may ask questions)”, substitute “a request under section 268CJ or a requirement under section 268CK”.

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Schedule 3—The taking of securities

Migration Act 1958

1 Subsection 269(1)
   Omit “authorized officer may”, substitute “authorised officer may, subject to subsection (1A),”.

2 After subsection 269(1)
   Insert:
   (1A) The power of an authorised officer to require and take security under subsection (1) in relation to an application for a visa applies only if:
       (a) the security is for compliance with conditions that will be imposed on the visa in pursuance of, or for the purposes of, this Act or the regulations, if the visa is granted; and
       (b) the officer has indicated those conditions to the applicant.

3 Application provision
   The amendments of the Migration Act 1958 made by items 1 and 2 of this Schedule apply in relation to all applications for visas made after the commencement of those items.
Schedule 4—Minor amendments

Migration Act 1958

1 At the end of section 48

Add:

(3) For the purposes of this section, a non-citizen who, while holding a bridging visa, leaves and re-enters the migration zone is taken to have been continuously in the migration zone despite that travel.

2 Application provision

Section 48 of the Migration Act 1958, as amended by item 1 of this Schedule, applies to all applications for visas made after the commencement of that item (the commencement time), regardless of:

(a) whether the bridging visa mentioned in subsection 48(3) of that Act was granted before or after the commencement time; and

(b) whether the travel mentioned in subsection 48(3) of that Act took place before or after the commencement time.

3 After subsection 82(7)

Insert:

(7A) A bridging visa ceases to be in effect the moment an event happens if the happening of the event results in the bridging visa ceasing to permit the holder to:

(a) remain in Australia; or

(b) travel to, enter and remain in Australia.

4 Application provision

The amendment of the Migration Act 1958 made by item 3 of this Schedule applies in relation to all bridging visas that are held at any time after the commencement of that item, regardless of whether the bridging visas were granted before or after that time.