THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MIGRATION AMENDMENT (VISA INTEGRITY) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Immigration and Multicultural Affairs,
Senator the Honourable Amanda Vanstone)
MIGRATION AMENDMENT (VISA INTEGRITY) BILL 2006

OUTLINE

The Migration Amendment (Visa Integrity) Bill 2006 (“the Bill”) is an omnibus Bill that amends the Migration Act 1958 (“the Act”) to:

- provide certainty in relation to the immigration clearance and immigration status of non-citizen children born in Australia;
- harmonise certain offence provisions with the Criminal Code;
- amend section 269 to ensure that a security may be imposed for compliance with visa conditions before grant; and
- clarify certain provisions in relation to Bridging Visas
  - ensure that a person who leaves and re-enters Australia on a Bridging Visa B cannot avoid the provisions of section 48; and
  - ensure that a Bridging Visa which ceases when an event occurs will cease the moment the event occurs rather than at the end of that day.

The Bill does not make any substantial changes to the existing policy settings in the Act. The amendments are designed to promote the integrity of the Act, and ensure that certain provisions operate as originally intended.

FINANCIAL IMPACT STATEMENT

These amendments will have minimal financial impact.
NOTES ON INDIVIDUAL CLAUSES

Clause 1  Short title

1. The short title by which this Act may be cited is the *Migration Amendment (Visa Integrity) Act 2006*.

Clause 2  Commencement

2. Subclause 2(1) contains a table setting out the commencement information for the Act. The subclause also provides that each provision of the Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

3. The effect of items 1 and 3 of the table is that the following provisions commence on the day on which the Act receives the Royal Assent:
   - sections 1, 2 and 3 of the Act;
   - Schedule 2 to the Act.

4. The effect of items 2, 4 and 5 of the table is that the following provisions commence on a day or days to be fixed by Proclamation or 6 months after the day of Royal Assent (whichever is earlier):
   - Schedules 1, 3 and 4 to the Act.

5. The note in subclause 2(1) makes it clear that the table only relates to the provisions of the Act as originally passed by the Parliament and assented to. The table will not be expanded to deal with provisions inserted into the Act after it receives the Royal Assent.

6. Subclause 2(2) provides that column 3 of the table in subclause 2(1) is for additional information that may be included in any published version of the Act but which is not part of the Act – eg: the actual date of commencement of the provisions.

Clause 3  Schedule(s)

7. This clause provides that each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. In addition, 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

Item 1  After paragraph 172(1)(b)

8. This item inserts new paragraph 172(1)(ba) after paragraph 172(1)(b) of the Act.

9. Section 172 deals with the immigration status of non-citizens on entry to Australia. It outlines the circumstances in which a non-citizen is “immigration cleared”, “in immigration clearance”, “refused immigration clearance” or “bypasses immigration clearance”.

10. Subsection 172(1) sets out the circumstances in which a non-citizen is “immigration cleared”. Currently, none of these circumstances apply to non-citizen children born in Australia who are taken under section 10 of the Act, to have entered Australia at the time of their birth, nor are these children explicitly exempted from the need to be immigration cleared on “entry by birth”.

11. To clarify the immigration status of these non-citizen children, new paragraph 172(1)(ba) provides that a person who enters Australia by virtue of the operation of section 10 is immigration cleared if:

   • at the time of his or her birth at least one of the person’s parents was immigration cleared on his or her last entry into Australia.

12. New paragraph 172(1)(ba) only provides immigration clearance to non-citizen children on entry to Australia by birth. It does not provide immigration clearance for any subsequent entry to Australia.

Item 2  Application provision

13. This item provides that the amendment made by item 1 of this Schedule applies to a non-citizen child born in Australia on or after 1 September 1994. This date corresponds with the introduction of the concept of “immigration clearance” into the Act by the Migration Reform Act 1992.

Item 3  At the end of subsection 172(1)

14. This item inserts new paragraph 172(1)(d) at the end of subsection 172(1) of the Act.

15. Section 172 deals with the immigration status of non-citizens on entry to Australia. It outlines the circumstances in which a non-citizen is “immigration cleared”, “in
immigration clearance”, “refused immigration clearance” or “bypasses immigration clearance”.

16. Subsection 172(1) sets out the circumstances in which a non-citizen is “immigration cleared”.

17. New paragraph 172(1)(d) provides that a person is also immigration cleared if, he or she is in a prescribed class of persons. The purpose of new paragraph 172(1)(d) is to provide flexibility to prescribe in the *Migration Regulations 1994* (“the Regulations”), where necessary in the future, further classes of persons who are immigration cleared for the purposes of section 172.

**Item 4 Section 173**

18. This item is a technical amendment converting the current section 173 into new subsection 173(1) to be followed by new subsection 173(2). See below.

**Item 5 At the end of section 173**

19. This item inserts new subsection 173(2) at the end of section 173 of the Act.

20. Section 173 provides that if the holder of a visa enters Australia in a way that contravenes section 43 of the Act, the visa ceases to be in effect. Section 43 provides that visa holders must enter at a port or on a pre-cleared flight.

21. Under section 78, a non-citizen child born in Australia is taken to have been granted a visa if, at the time of his or her birth, at least one of the child’s parents holds a visa. This non-citizen child is taken to have been granted the same visa as his or her parents.

22. On a literal interpretation of section 173, a non-citizen child’s visa taken to have been granted under section 78 would *appear* to cease when the child enters Australia under section 10 in a way that “contravenes” section 43.

23. New subsection 173(2) *puts it beyond doubt* that a non-citizen child born in Australia who, under section 78, is taken to have been granted a visa or visas at the time of his or her birth, is not to be taken to have entered Australia in a way that contravenes section 43 of the Act such that the visa taken to have been granted at birth cease to be in effect at the same time.

**Item 6 Application Provision**

24. This item provides that the amendment 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 the Act.
25. This date corresponds with the introduction of the relevant provisions (ceasing visas where the holder fails to enter Australia at a port or on a pre-cleared flight) into the Act by the *Migration Reform Act 1992*. 
SCHEDULE 2 – Criminal Code harmonisation amendments

Migration Act 1958

Item 1 Subsection 229(1)

26. This item makes a technical amendment consequential to the introduction of Item 2 of this Schedule by omitting the word “unless” from subsection 229(1) and substituting “if”.

Item 2 Paragraphs 229(1)(a) to (e)

27. These items amend subsection 229(1) of the Act by repealing the existing paragraphs 229(1)(a) to (e) and substituting a new provision.

28. Current subsection 229(1) makes it an offence for the master, owner, agent, charterer and operator of a vessel to bring a non-citizen into Australia unless the non-citizen, when entering Australia satisfies paragraphs 229(1)(a), (b), (c), (d) or (e).

29. The current wording of the offence make it unclear as to whether the matters in paragraphs 229(1)(a) to (e) constitute issues of exception or are elements of the offence. It is considered that the matters in paragraphs 229(1)(a) to (e) are elements of the offence in subsection 229(1). This interpretation is made for two reasons.

30. The existence of the defences in subsection 229(5) implies that the matters in paragraphs 229(1)(a) to (e) are not intended to be exceptions to the offence in subsection 229(1). If those matters were exceptions, they would co-exist with the defences in subsection 229(5), for which the defendant would bear a legal burden. If that were the case, it would be unlikely that a defendant would raise the matters in subsection 229(5) because they impose a legal burden (rather than an evidential burden) on the defendant.

31. If the matters in paragraphs 229(1)(a) to (e) were matters of exception, the subsection 229(1) absolute liability offence would be a very wide offence. This is not intended to be the case.

32. For these reasons, this item amends subsection 229(1) to clarify that the matters in paragraphs 229(1)(a) to (e) are elements of the offence in subsection 229(1).

33. Redrafting makes this clearer by specifying that the non-citizen:
   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.

1. The effect is that the prosecution bears the legal burden of proving all of the 
elements of the subsection 229(1) offence as provided paragraphs 229(1)(a) to 
229(1)(e).

2. The prosecution must prove the existence of the matters in paragraphs 229(1)(a) to 
229(1)(e) beyond reasonable doubt.

Item 3 After subsection 229(3)

3. This item inserts new subsection 229(4) into the Act as a consequence of the 
amendments made to subsection 229(1) by items 1 and 2 of this Schedule.

4. Currently, subsection 229(1) makes it an offence for the master, owner, agent, 
charterer and operator of a vessel to bring a non-citizen into Australia unless the 
non-citizen, when entering Australia satisfies paragraphs 229(1)(a), (b), (c), (d) or 
(e).

5. New subsection 229(4) makes it clear that 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).

6. Subsection 42(1) provides that a non-citizen must not travel to Australia without a 
visa that is in effect. However, subsection 42(1) is subject to subsections 42(2), 
42(2A) and 42(3) which provide a number of exceptions to the requirement that a 
non-citizen must not travel to Australia without a visa.

7. The effect of this amendment is that the defendant must adduce or point to evidence 
that suggests a reasonable possibility that the matters in subsections 42(2), 42(2A) 
or 42(3) exist.

8. If the defendant does this, then the prosecution is required to prove beyond 
reasonable doubt that the matter does not exist.

Note at the end of Item 3

9. After this item a note is inserted referring the reader to section 13.3(3) of the 
Criminal Code in relation to the evidential burden.

Item 4 After subsection 232(1A)

10. This item inserts new subsection 232(1B) into the Act.
11. The effect of subsection 232(1) is that the master, owner, agent and charterer of a vessel is guilty of an offence if a non-citizen on a vessel enters Australia without a visa and upon that entry becomes an unlawful non-citizen, or enters Australia in contravention of section 43 and as a result of section 173 becomes an unlawful non-citizen.

12. An element of the offence in subsection 232(1) is that the non-citizen “is a person to whom subsection 42(1) applies”.

13. Subsection 42(1) provides that a non-citizen must not travel to Australia without a visa that is in effect. However, subsection 42(1) is subject to subsections 42(2), 42(2A) and 42(3) which provide a number of exceptions to the requirement that a non-citizen must not travel to Australia without a visa.

14. The purpose of new subsection 232(1B) is to put it beyond doubt that the matters in subsections 42(2), 42(2A) and 42(3) are exceptions to the requirement in subsection 42(1). It does this by clarifying that the defendant bears an evidential burden in relation to establishing that subsection 42(1) does not apply to the relevant person because of subsection 42(2) or 42(2A) or regulations made under subsection 42(3).

15. This is consistent with subsection 13.3(3) of the Criminal Code, which provides that a defendant bears an evidential burden in relation to any matters of exception to an offence.

16. This means that the defendant must adduce or point to evidence that suggests a reasonable possibility that the matters in subsections 42(2), 42(2A) or 42(3) exist. If the defendant does this, then the prosecution is required to prove beyond reasonable doubt that the matter does not exist.

Note at the end of Item 4

17. After this item a note is inserted referring the reader to refer to section 13.3(3) of the Criminal Code in relation to the evidential burden.

Item 5 Section 232A

18. This item makes a technical amendment at the beginning of section 232A, by inserting (1) before the words “A person”.

Item 6 At the end of section 232A

19. This item inserts new subsection 232A(2) into the Act.

20. Section 232A in general terms, makes it an offence to bring a group of 5 or more non-citizens into Australia reckless as to whether if they have a lawful right to come
to Australia. An element of the offence in section 232A is that the non-citizens are people “to whom subsection 42(1) applies”.

21. New subsection (2) makes provision in relation to the evidential burden borne by the defendant in subsection (1). It provides that 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).

22. Subsection 42(1) provides that a non-citizen must not travel to Australia without a visa that is in effect. Subsection 42(1) is subject to subsections 42(2), 42(2A) and 42(3) which provide a number of exceptions to the requirement that a non-citizen must not travel to Australia without a visa.

23. The purpose of new subsection 232A(2) is to put it beyond doubt that the matters in subsections 42(2), 42(2A) and 42(3) are exceptions to the requirement in subsection 42(1). It does this by clarifying that the defendant bears an evidential burden in relation to establishing that subsection 42(1) does not apply to the relevant person because of subsection 42(2) or 42(2A) or regulations made under subsection 42(3).

24. This is consistent with subsection 13.3(3) of the Criminal Code, which provides that a defendant bears an evidential burden in relation to any matters of exception to an offence.

25. This means that the defendant must adduce or point to evidence that suggests a reasonable possibility that the matters in subsections 42(2), 42(2A) or 42(3) exist. If the defendant does this, then the prosecution is required to prove beyond reasonable doubt that the matter does not exist.

Note at the end of Item 6

26. After this item a note is inserted referring the reader to section 13.3(3) of the Criminal Code in relation to the evidential burden.

Item 7 After subsection 233(1)

27. This item inserts new subsection 233(1A) into the Act, which applies to the offence in paragraph 233(1)(a).

28. New subsection 233(1A) makes it clear that strict liability applies to the physical element of circumstance of the offence in paragraph 233(1)(a).

29. Paragraph 233(1)(a) makes it an offence for a person to take part in the bringing or coming to Australia of a non-citizen under circumstances where it might reasonably be inferred that the non-citizen intended to enter Australia in contravention of the Act.
30. Prior to the application of the *Criminal Code* to all offences against the Act, strict liability applied to the physical element of circumstance of the offence.

31. The physical element (ie: the circumstance element) in this offence is:

- ‘the bringing of the non-citizen to Australia *under circumstances* where it might reasonably be inferred that the non-citizen intended to enter in contravention of the Migration Act’.

32. At the time the *Criminal Code* was applied to the Act, no provision was made for strict liability to apply to the physical element of circumstance of the offence in paragraph 233(1)(a).

33. The *Criminal Code* requires that if an offence is intended to be one of strict liability, it must be expressly stated. This is because there is a strong presumption that proof of fault is required in relation to an offence. As there was no such express statement of strict liability in relation to this aspect of the offence in paragraph 233(1)(a), the default element provisions provided for in subsection 5.6(2) of the *Criminal Code* were applied. These default provisions applied the fault element of “recklessness” to the circumstance of the offence. This changes the offence as it had been construed prior to the application of the *Criminal Code* to the Act.

34. New subsection 233(1A) makes it clear that strict liability applies to the circumstance of the offence in paragraph 233(1)(a). In this way, it ensures that the offence in paragraph 233(1)(a) operates as it did prior to the application of the *Criminal Code*.

35. It should be noted that the conduct element of the offence remains unchanged – ie: the prosecution needs to prove that the defendant intended to take part in ‘the bringing or coming to Australia of a non-citizen’.

**Note at the end of Item 7**

36. After this item a note is inserted referring the reader to section 6.1 of the Criminal Code in relation to the matter of strict liability.

37. “Strict liability” is defined in section 6.1 of the *Criminal Code* and means that the prosecution does not need to prove any fault element in relation to an offence. In cases of strict liability, the defence of mistake of fact is available to a defendant (see section 9.2 of the *Criminal Code*).

**Item 8 Subsection 268BJ(1)**
38. This item amends subsection 268BJ(1) of the Act, which makes it an offence for a person to give or show false or misleading documents to an *authorised officer* in the course of complying with a production or attendance notice.

39. Under subsection 5(1) of the Act, an *authorised officer* is defined to mean an officer authorised in writing by the Minister or Secretary for the purposes of a provision of the Act.

40. Currently, the fault element applicable to the conduct element of the offence in subsection 268BJ(1) requires proof that the person was aware that they were giving or showing a false or misleading document to an *authorised officer*.

41. This could make it difficult to enforce the offence in practice, because it may be difficult for the prosecution to demonstrate that the defendant was aware that the person they were giving or showing false or misleading documents to was an *authorised officer* within the meaning of the Act.

42. For example, the required fault element could not be established if the evidence established that the defendant was aware that the person to whom he or she gave the false or misleading document was an officer of the Department, but not that he or she was aware that the officer had been authorised in writing by the Minister or Secretary for the purposes of section 268BJ.

43. The purpose of the amendment to subsection 268BJ(1) is to ensure that the offence it creates can be effectively enforced. This is achieved by ensuring that it is not an element of the offence that the person was aware that they were giving or showing a false or misleading document to an *authorised officer*.

**Item 9 Section 268CM**

44. This item amends section 268CM of the Act, which makes it an offence for a person to give false or misleading information whilst complying or purporting to comply with section 268CJ or 268CK of the Act.

45. Currently, the wording of the offence in section 268CM is inconsistent with the nature of the powers in sections 268CJ and 268CK of the Act. The amendment will omit the words “section 268CJ or 268CK (officer may ask questions)” and substitute “a request under section 268CJ or a requirement under section 268CK”.

46. In summary, section 268CJ allows an authorised officer to enter the premises of an education provider with consent and ask the occupier or another person on the premises to answer any questions that are relevant to a visa monitoring purpose (as defined in section 268AA). In addition, the authorised officer can ask the occupier to give or show the officer any document that is relevant to the matter.
47. There is no obligation for an occupier or another person on the premises to comply with the request of the authorised officer.

48. Section 268CK, by comparison, allows an authorised officer to require an occupier or another person on the premises to answer questions or to give or show a document for visa monitoring purposes.

49. The purpose of the amendment to section 268CM is to ensure that the wording of the offence it creates is in line with:

- section 268CJ – which does not require a person to comply with a request made under the section; and
- section 268CK – which does require a person to comply with a request made under the section.

Item 10 Subsection 268CN(1)

50. This item amends subsection 268CN(1) of the Act, by omitting the term “authorised officer”.

51. 268CN(1) makes it an offence for a person to give or show false or misleading documents to an authorised officer in the course of complying with a production or attendance notice.

52. Under subsection 5(1) of the Act, an authorised officer is defined to mean an officer authorised in writing by the Minister or Secretary for the purposes of a provision of the Act.

53. Currently, the fault element applicable to the conduct element of the offence requires proof that the person was aware that they were giving or showing a false or misleading document to an authorised officer.

54. This could make it difficult to enforce the offence in practice, because it may be difficult for the prosecution to demonstrate that the defendant was aware that the person they were giving or showing false or misleading documents to was an authorised officer within the meaning of the Act.

- For example, the required fault element could not be established if the evidence established that the defendant was aware that the person to whom he or she gave the false or misleading document was an officer of the Department, but not that he or she was aware that the officer had been authorised in writing by the Minister or Secretary for the purposes of section 268CN.
55. The purpose of the amendment to subsection 268CN(1) is to ensure that the offence it creates can be effectively enforced. This is achieved by ensuring that it is not an element of the offence that the person was aware that they were giving or showing false or misleading documents to an authorised officer.

**Item 11 Subsection 268CN(1)**

56. This item amends subsection 268CN(1) of the Act, which makes it an offence for a person to give or show false or misleading documents whilst complying or purporting to comply with section 268CJ or 268CK of the Act.

57. Currently, the wording of the offence in subsection 268CN(1) is inconsistent with the nature of the powers in sections 268CJ and 268CK of the Act. The amendment will omit the words “section 268CJ or 268CK (officer may ask questions)” and substitute “a request under section 268CJ or a requirement under section 268CK”.

58. Section 268CJ allows an authorised officer to enter the premises of an education provider with consent and ask the occupier or another person on the premises to answer any questions that are relevant to a visa monitoring purpose (as defined in section 268AA).

59. In addition the authorised officer can ask the occupier to give or show the officer any document that is relevant to the matter.

60. There is no obligation for an occupier to comply with the request of the authorised officer to answer questions or to give or show documents.

61. Section 268CK, by comparison, allows an authorised officer to require an occupier or another person on the premises to answer questions or require an occupier to give or show a document for visa monitoring purposes.

62. The purpose of the amendment to subsection 268CN(1) is to ensure that the wording of the offence it creates is in line with:

- section 268CJ – which does not require a person to comply with a request made under the section; and

- section 268CK – which does require a person to comply with a request made under the section.
SCHEDULE 3 – The taking of securities

Migration Act 1958

Item 1 Subsection 269(1)

63. This item makes minor technical amendment to subsection 269(1). It changes the spelling of the word “authorized” to “authorised” which reflects the spelling throughout the remainder of the Act. In addition, it takes account of the amendment made by item 2 of this Schedule which inserts new subsection 269(1A) by making subsection 269(1) subject to new subsection 269(1A).

Item 2 After subsection 269(1)

64. This item inserts new subsection 269(1A) after subsection 269(1) of the Act. The amendment clarifies the power of an authorised officer to require and take security in relation to an application for a visa.

65. New subsection 269(1A) provides that, in certain circumstances, an authorised officer may require and take security under subsection 269(1), in relation to an application for a visa before a visa is granted.

66. Under new subsection 269(1A), an authorised officer may do this only if:

- 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
- the officer has indicated those conditions to the visa applicant.

67. The purpose of the amendment is intended to clear the uncertainty raised in the Federal Court decision of Tutugri v Minister for Immigration and Multicultural Affairs [1999] FCA 1785.

68. In that case, the Federal Court raised significant doubts about the power of an authorised officer to request and take security for compliance with conditions to be imposed on a visa at a time before the visa is actually granted. The court considered that a condition on a visa does not bind the applicant until after the visa is granted. As such, a condition cannot be said to have been “imposed” prior to grant. This has presented difficulties from a practical point of view in the administration of these arrangements – the reason being, that a security must be able to be required before a visa grant. Once the visa is granted, the holder can simply refuse to provide the security requested.

69. The amendments address this uncertainty by allowing officers to take securities before the visa is granted. Any security taken by an officer is intended to apply...
only if the visa is granted. As such, the security will be returned to the individual if for some reason the visa is no longer required.

**Item 3 Application provision**

70. This item provides that the amendments made by items 1 and 2 of this Schedule apply in relation to all visa applications made after the commencement of those items.
SCHEDULE 4 – Minor amendments

Migration Act 1958

Item 1  At the end of section 48

71. This item inserts new subsection 48(3) at the end of section 48 of the Act.

72. Subsection 48(1) provides that a non-citizen who does not hold a substantive visa and who after last entering Australia was refused a visa, or had a visa cancelled, may only apply for a prescribed class of visa. This is to prevent non-citizens refused a visa or who have had a visa cancelled, from applying for another visa in Australia other than certain prescribed visas.

73. At present, an identified anomaly exists in the legislation which enables certain bridging visa holders, to circumvent the section 48 limitation. This occurs where a non-citizen leaves and re-enters Australia as the holder of a certain class of bridging visa (Bridging Visa B). Unlike other types of visa or bridging visas, this particular bridging visa enables the holder to leave and re-enter Australia. All other bridging visas cease on departure from Australia.

74. As a result, on re-entering Australia, the non-citizen holder of this particular bridging visa has not technically had a visa refused or cancelled “after last entering Australia” as specified by section 48. This enables person to apply for a visa of a class other than those prescribed in the Regulations.

75. It was never intended that these bridging visa holders who leave and re-enter Australia be exempted from the restriction imposed by section 48.

76. New subsection 48(3) corrects this situation. It provides that a non-citizen who leaves and re-enters the migration zone while holding a bridging visa, is taken to have been continuously in the migration zone despite that travel.

77. This ensures that the restrictions imposed by section 48 on further visa applications will apply as originally intended.

Item 2  Application of amendment

78. This item provides that section 48, as amended by item 1 of this Schedule, applies to all visa applications made or purported to be made after the commencement of that item (the commencement time), regardless of:
   • whether the bridging visa mentioned in subsection 48(3) was granted before or after the commencement time; and
• whether the travel mentioned in subsection 48(3) took place before or after the commencement time.

79. This means that a non-citizen is subject to the section 48 limitation on making further visa applications in the following circumstances:
• where they leave and re-enter Australia before the commencement time on a bridging visa and apply for a subsequent visa after the commencement time;
• where they leave Australia before the commencement time, re-enter Australia after the commencement time and apply for a subsequent visa after the commencement time; and
• where they leave and re-enter Australia after the commencement time on a bridging visa that allows such travel and apply for a subsequent visa after the commencement time.

80. The proposed new subsection 48(3) applies only to visa applications made in the migration zone. It does not prevent a non-citizen from travelling outside Australia and making a valid application for a visa that can be applied for outside Australia whilst outside Australia.

**Item 3 After subsection 82(7)**

81. This items inserts new subsection 82(7A) after subsection 82(7) of the Act.

82. Proposed subsection (7A) clarifies the time at which a bridging visa ceases to be in effect.

83. Under section 73 of the Act a bridging visa may be granted to an eligible non-citizen to permit the non-citizen to remain in, or to travel to, enter and remain in, Australia. A bridging visa has effect during a specified period or until a specified event happens.

84. Schedule 2 of the Regulations specifies the events which will result in the cessation of a bridging visa.

85. Section 82 sets out the general rules for determining when visas cease to be in effect and qualifies the manner in which section 73 and Schedule 2 of the Regulations should be interpreted.

86. Subsection 82(7A) provides that a bridging visa ceases to be in effect the moment a certain event happens. This event is one where the happening of the event results in the bridging visa ceasing to permit the holder to either remain in Australia or travel to, enter and remain in Australia.

87. If the ‘event’ is the cancellation of the substantive visa, this means that the bridging visa would cease the moment that the non-citizen’s substantive visa is cancelled. If a bridging visa is in effect until the holder’s release from criminal detention, the
bridging visa will cease immediately upon the person being released from criminal detention.

88. The purpose of new subsection 82(7A) is to give effect to the original policy intention. It ensures that if an event happens that results in the bridging visa ceasing to permit the holder to remain in Australia or travel to, enter and remain in Australia, the person’s bridging visa ceases immediately upon the happening of that event.

Item 4 Application of amendment

89. This item provides that new subsection 82(7A), as inserted 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.