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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration Amendment (Unauthorised
Maritime Arrivals and Other Measures)
Bill 2012**

No. , 2012

(Immigration and Citizenship)

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

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 14	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, items 15 and 16	The day after this Act receives the Royal Assent.	
4. Schedule 1, items 17 to 62	At the same time as the provision(s) covered by table item 2.	
5. Schedule 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of section 69 of the <i>Maritime Powers Act 2012</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Main amendments**

2 **Part 1—Amendments**

3 *Migration Act 1958*

4 **1 Subsection 4(5)**

5 Omit “offshore entry persons”, substitute “unauthorised maritime
6 arrivals”.

7 **2 Subsection 5(1) (note at the end of the definition of *excised*
8 *offshore place*)**

9 Repeal the note.

10 **3 Subsection 5(1) (definition of *offshore entry person*)**

11 Repeal the definition.

12 **4 Subsection 5(1) (paragraphs (a) and (aa) of the definition of
13 *transitory person*)**

14 Omit “an offshore entry person”, substitute “a person”.

15 **5 Subsection 5(1) (subparagraph (c)(iii) of the definition of
16 *transitory person*)**

17 Omit “country;”, substitute “country.”.

18 **6 Subsection 5(1) (definition of *transitory person*)**

19 Omit all the words after subparagraph (c)(iii) of the definition.

20 **7 Subsection 5(1)**

21 Insert:

22 *unauthorised maritime arrival* has the meaning given by
23 section 5AA.

24 **8 After section 5**

25 Insert:

1 **5AA Meaning of *unauthorised maritime arrival***

2 (1) For the purposes of this Act, a person is an ***unauthorised maritime***
3 ***arrival*** if:

- 4 (a) the person entered Australia by sea:
5 (i) at an excised offshore place at any time after the
6 excision time for that place; or
7 (ii) at any other place at any time on or after the
8 commencement of this section; and
9 (b) the person became an unlawful non-citizen because of that
10 entry; and
11 (c) the person is not an excluded maritime arrival.

12 ***Entered Australia by sea***

13 (2) A person ***entered Australia by sea*** if:

- 14 (a) the person entered the migration zone except on an aircraft
15 that landed in the migration zone; or
16 (b) the person entered the migration zone as a result of being
17 found on a ship detained under section 245F and being dealt
18 with under paragraph 245F(9)(a); or
19 (c) the person entered the migration zone after being rescued at
20 sea.

21 ***Excluded maritime arrival***

22 (3) A person is an ***excluded maritime arrival*** if the person:

- 23 (a) is a New Zealand citizen who holds and produces a New
24 Zealand passport that is in force; or
25 (b) is a non-citizen who holds and produces a passport that is in
26 force and is endorsed with an authority to reside indefinitely
27 on Norfolk Island; or
28 (c) is included in a prescribed class of persons.

29 ***Definitions***

30 (4) In this section:

31 ***aircraft*** has the same meaning as in section 245A.

32 ***ship*** has the meaning given by section 245A.

1 **9 Subparagraphs 5A(3)(j)(ii) and (iii)**

2 Omit “offshore entry person”, substitute “unauthorised maritime
3 arrival”.

4 **10 Section 46A (heading)**

5 Repeal the heading, substitute:

6 **46A Visa applications by unauthorised maritime arrivals**

7 **11 Subsections 46A(1) and (2)**

8 Omit “offshore entry person”, substitute “unauthorised maritime
9 arrival”.

10 **12 Subsection 46A(2)**

11 Omit “the person”, substitute “the unauthorised maritime arrival”.

12 **13 Paragraphs 46A(5)(a) and (b)**

13 Omit “offshore entry person”, substitute “unauthorised maritime
14 arrival”.

15 **14 Subsection 46A(7)**

16 Omit “offshore entry person” (wherever occurring), substitute
17 “unauthorised maritime arrival”.

18 **15 Subsection 189(2)**

19 Omit “must detain”, substitute “may detain”.

20 **16 Paragraph 189(3A)(a)**

21 Repeal the paragraph, substitute:

22 (a) is a citizen of Papua New Guinea; and

23 **17 Subsection 198(11)**

24 Omit “offshore entry person”, substitute “unauthorised maritime
25 arrival”.

26 **18 Paragraph 198AA(b)**

27 Omit “offshore entry persons” (wherever occurring), substitute
28 “unauthorised maritime arrivals”.

1 **19 Section 198AD (heading)**

2 Repeal the heading, substitute:

3 **198AD Taking unauthorised maritime arrivals to a regional**
4 **processing country**

5 **20 Subsections 198AD(1) and (2)**

6 Omit “offshore entry person”, substitute “unauthorised maritime
7 arrival”.

8 **21 Paragraphs 198AD(3)(a) to (c)**

9 Omit “offshore entry person”, substitute “unauthorised maritime
10 arrival”.

11 **22 Subparagraph 198AD(3)(c)(i)**

12 Omit “the person”, substitute “the unauthorised maritime arrival”.

13 **23 Subsection 198AD(4)**

14 Omit “offshore entry person”, substitute “unauthorised maritime
15 arrival”.

16 **24 Subsection 198AD(4)**

17 Omit “the person” (wherever occurring), substitute “the unauthorised
18 maritime arrival”.

19 **25 Paragraph 198AD(4)(b)**

20 Omit “the person’s”, substitute “the unauthorised maritime arrival’s”.

21 **26 Subsection 198AD(5)**

22 Omit “offshore entry person”, substitute “unauthorised maritime
23 arrival”.

24 **27 Subsection 198AD(5)**

25 Omit “offshore entry persons”, substitute “unauthorised maritime
26 arrivals”.

27 **28 Subsection 198AD(8)**

Schedule 1 Main amendments

Part 1 Amendments

1 Omit “offshore entry person”, substitute “unauthorised maritime
2 arrival”.

3 **29 Subsection 198AD(8)**

4 Omit “offshore entry persons”, substitute “unauthorised maritime
5 arrivals”.

6 **30 Subsections 198AD(11) and 198AE(1)**

7 Omit “offshore entry person”, substitute “unauthorised maritime
8 arrival”.

9 **31 After subsection 198AE(1)**

10 Insert:

11 (1A) The Minister may, in writing, vary or revoke a determination made
12 under subsection (1) if the Minister thinks that it is in the public
13 interest to do so.

14 **32 Subsection 198AE(2)**

15 After “subsection (1)”, insert “or (1A)”.

16 **33 At the end of subsection 198AE(3)**

17 Add “or (1A)”.

18 **34 Subsection 198AE(4)**

19 After “subsection (1)”, insert “or varies or revokes a determination
20 under subsection (1A)”.

21 **35 Paragraph 198AE(4)(a)**

22 After “determination”, insert “, the determination as varied or the
23 instrument of revocation”.

24 **36 Paragraph 198AE(4)(b)**

25 After “determination”, insert “, variation or revocation”.

26 **37 Paragraphs 198AE(5)(a) and (b)**

27 Omit “offshore entry person”, substitute “unauthorised maritime
28 arrival”.

1 **38 Paragraphs 198AE(6)(a) and (b)**

2 After “made”, insert “, varied or revoked”.

3 **39 Subsection 198AE(7)**

4 After “subsection (1)”, insert “or (1A)”.

5 **40 Subsection 198AE(7)**

6 Omit “offshore entry person” (wherever occurring), substitute
7 “unauthorised maritime arrival”.

8 **41 Subsection 198AE(8)**

9 Omit “A determination under subsection (1)”, substitute “An instrument
10 under subsection (1) or (1A)”.

11 **42 Sections 198AF and 198AG**

12 Omit “offshore entry person” (wherever occurring), substitute
13 “unauthorised maritime arrival”.

14 **43 Section 198AH**

15 Before “Section 198AD”, insert “(1)”.

16 **44 Paragraph 198AH(a)**

17 Omit “offshore entry person”, substitute “unauthorised maritime
18 arrival”.

19 **45 Paragraph 198AH(c)**

20 Omit “achieved); and”, substitute “achieved).”

21 **46 Paragraphs 198AH(d) and (e)**

22 Repeal the paragraphs.

23 **47 At the end of section 198AH**

24 Add:

25 (2) Subsection (1) of this section applies whether or not the
26 transitory person has been assessed to be covered by the
27 definition of *refugee* in Article 1A of the Refugees
28 Convention as amended by the Refugees Protocol.

29 **48 Sections 198C and 198D**

1 Repeal the sections.

2 **49 Subparagraphs 336F(3)(a)(ii) and (iii) and (4)(a)(ii) and (iii)**

3 Omit “offshore entry person”, substitute “unauthorised maritime
4 arrival”.

5 **50 Paragraphs 336F(5)(c) to (cc)**

6 Omit “offshore entry person”, substitute “unauthorised maritime
7 arrival”.

8 **51 Section 494AA (heading)**

9 Repeal the heading, substitute:

10 **494AA Bar on certain legal proceedings relating to unauthorised**
11 **maritime arrivals**

12 **52 Paragraph 494AA(1)(a)**

13 Omit “offshore entry by an offshore entry person”, substitute
14 “unauthorised entry by an unauthorised maritime arrival”.

15 **53 Paragraphs 494AA(1)(b) and (c)**

16 Omit “offshore entry person”, substitute “unauthorised maritime
17 arrival”.

18 **54 Paragraph 494AA(1)(c)**

19 Omit “the person”, substitute “the unauthorised maritime arrival”.

20 **55 Paragraph 494AA(1)(e)**

21 Omit “offshore entry person”, substitute “unauthorised maritime
22 arrival”.

23 **56 Subsection 494AA(4) (definition of *ineligibility period*)**

24 Omit “offshore”, substitute “unauthorised”.

25 **57 Subsection 494AA(4) (definition of *offshore entry*)**

26 Repeal the definition.

27 **58 Subsection 494AA(4)**

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Insert:

unauthorised entry means an entry into Australia that occurs:

- (a) at an excised offshore place after the excision time for that place; or
- (b) at any other place on or after the commencement of section 5AA.

1 **Part 2—Application and saving provisions**

2 **59 Definitions**

3 In this Part:

4 *commencement* means the commencement of this item.

5 *Migration Act* means the *Migration Act 1958*.

6 **60 Application provision—subparagraph 5AA(1)(a)(i) of the**
7 **Migration Act**

- 8 (1) This item applies to an unauthorised maritime arrival who entered
9 Australia by sea as mentioned in subparagraph 5AA(1)(a)(i) of the
10 Migration Act, as inserted by this Schedule.
- 11 (2) The amendments made by items 18 to 47 of this Schedule apply in
12 relation to the unauthorised maritime arrival only if he or she entered
13 Australia by sea as mentioned in that subparagraph on or after
14 13 August 2012.

15 **61 Application provision—subsection 198AE(1A) of the**
16 **Migration Act**

17 Subsection 198AE(1A) of the Migration Act, as inserted by this
18 Schedule, applies in relation to a determination under subsection
19 198AE(1) of that Act that is made before or after commencement.

20 **62 Saving provision**

- 21 (1) This item applies to:
- 22 (a) an authorisation (the *access authorisation*) under
23 section 336D of the Migration Act; or
- 24 (b) an authorisation (the *disclosure authorisation*) under
25 section 336F of the Migration Act;
- 26 that was in force immediately before commencement.

27 *Access authorisation*

- 28 (2) The access authorisation is taken, after commencement, to authorise
29 access to identifying information relating to unauthorised maritime
30 arrivals to the extent that, immediately before commencement, the
31 authorisation authorised access to identifying information relating to
32 offshore entry persons.

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Schedule 2—Contingent amendments

Migration Act 1958

1 Paragraph 5AA(2)(b)

After “section 245F”, insert “(as in force before the commencement of section 69 of the *Maritime Powers Act 2012*)”.

2 Paragraph 5AA(2)(b)

After “paragraph 245F(9)(a)”, insert “(as in force before that commencement)”.

3 After paragraph 5AA(2)(b)

Insert:

- (ba) the person entered the migration zone as a result of being on a vessel detained under section 69 of the *Maritime Powers Act 2012* and being dealt with under paragraph 72(4)(a) of that Act; or

4 Subsection 5AA(4) (at the end of the definition of *ship*)

Add “(as in force before the commencement of section 69 of the *Maritime Powers Act 2012*)”.

5 Subsection 5AA(4)

Insert:

vessel has the same meaning as in the *Maritime Powers Act 2012*.