

2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Migration Amendment Bill 2013

No. , 2013

(Immigration and Border Protection)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Migration Amendment Act 2013*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.
11

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	The day after this Act receives the Royal Assent.	
3. Schedule 2, items 1 and 2	The day after this Act receives the Royal Assent.	
4. Schedule 2, item 3	Immediately after the start of the day after this Act receives the Royal Assent.	
5. Schedule 2, item 4	Immediately after the commencement of item 10 of Schedule 1 to the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013</i> . However, the provision(s) do not commence at all if that item commences before or on the same day as the provision(s) covered by table item 4.	
6. Schedule 2, item 5	The day after this Act receives the Royal Assent.	
7. Schedule 3, item 1	The day after this Act receives the Royal Assent.	
8. Schedule 3, item 2	The day after this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 17 of Schedule 1 to the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013</i> commences before or on the same day as the provision(s) covered by table item 7.	
9. Schedule 3, item 3	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	item 17 of Schedule 1 to the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
10. Schedule 3, item 4	The day after this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 17 of Schedule 1 to the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013</i> commences before or on the same day as the provision(s) covered by table item 7.	
11. Schedule 3, item 5	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 17 of Schedule 1 to the <i>Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
12. Schedule 3, items 6 and 7	The day after this Act receives the Royal Assent.	

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.

1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.

1 **Schedule 1—When decisions are made and**
2 **finally determined**
3

4 ***Migration Act 1958***

5 **1 Subsection 5(1)**

6 Insert:

7 ***finally determined***: for when an application under this Act is
8 ***finally determined***, see subsections (9) and (9A).

9 **2 Subsection 5(9)**

10 Omit “finally determined”, substitute “***finally determined***”.

11 **3 After subsection 5(9)**

12 Insert:

13 (9A) Without limiting subsection (9), if a review of a decision that has
14 been made in respect of an application under this Act is instituted
15 under Part 5 or 7 as prescribed, the application is ***finally***
16 ***determined*** when a decision on the review in respect of the
17 application is taken to have been made as provided by any of the
18 following provisions:

- 19 (a) subsection 368(2) (Migration Review Tribunal written
20 decisions);
21 (b) subsection 368D(1) (Migration Review Tribunal oral
22 decisions);
23 (c) subsection 430(2) (Refugee Review Tribunal written
24 decisions);
25 (d) subsection 430D(1) (Refugee Review Tribunal oral
26 decisions).

27 (9B) However, subsection (9A) does not apply in relation to the
28 following decisions:

- 29 (a) a decision of the Migration Review Tribunal under
30 paragraph 349(2)(c);
31 (b) a decision of the Refugee Review Tribunal under
32 paragraph 415(2)(c).

1 Note: These decisions are for the remission of some matters by the relevant
2 Tribunal.

3 **4 Section 67**

4 Repeal the section, substitute:

5 **67 Grant and refusal of visa—how and when**

6 (1) The following decisions are taken to be made by the Minister
7 causing a record to be made of the decision:

- 8 (a) a decision to grant a visa;
9 (b) a decision to refuse to grant a visa.

10 (2) The record must state the day and time of its making.

11 (3) The decision is taken to have been made on the day and at the time
12 the record is made.

13 (4) The Minister has no power to vary or revoke the decision after the
14 day and time the record is made.

15 (5) Failure to comply with subsection (2) does not affect the validity of
16 the decision or the operation of subsection (4).

17 **5 Subsection 134(1)**

18 Omit “, by written notice given to its holder,”.

19 **6 Subsection 134(3A)**

20 Omit “, by written notice to its holder,”.

21 **7 Subsection 134(4)**

22 Omit “by giving written notice to that person”.

23 **8 Subsection 134(7)**

24 Omit “include in the notice given to its holder”, substitute “give written
25 notice of the cancellation decision to its holder, including”.

26 **9 Section 138**

27 Repeal the section, substitute:

1 **138 Cancellation and revocation of cancellation of visas—how and**
2 **when**

- 3 (1) The following decisions are taken to be made by the Minister
4 causing a record to be made of the decision:
5 (a) a decision to cancel a visa, or not to cancel a visa;
6 (b) a decision to revoke the cancellation of a visa, or not to
7 revoke the cancellation of a visa.
- 8 (2) The record must state the day and time of its making.
- 9 (3) The decision is taken to have been made on the day and at the time
10 the record is made.
- 11 (4) The Minister has no power to vary or revoke the decision after the
12 day and time the record is made.
- 13 (5) Failure to comply with subsection (2) does not affect the validity of
14 the decision or the operation of subsection (4).

15 **10 After subsection 355(1)**

16 Insert:

- 17 (1A) To avoid doubt, this section does not apply after a decision on the
18 review is taken to have been made as provided by
19 subsection 368(2) (written decisions) or subsection 368D(1) (oral
20 decisions).

21 **11 Paragraph 355A(2)(a)**

22 Repeal the paragraph, substitute:

- 23 (a) the Tribunal's decision on the review has not been taken to
24 have been made as provided by subsection 368(2) (written
25 decisions) or subsection 368D(1) (oral decisions); and

26 **12 Section 368 (heading)**

27 Repeal the heading, substitute:

1 **368 Tribunal’s decision and written statement**

2 *Written statement of decision*

3 **13 Subsection 368(1)**

4 Omit “prepare”, substitute “make”.

5 **14 Paragraph 368(1)(a)**

6 Omit “review;”, substitute “review; and”.

7 **15 Paragraph 368(1)(b)**

8 Omit “decision;”, substitute “decision; and”.

9 **16 At the end of subsection 368(1)**

10 Add:

11 ; and (e) unless the decision is given orally—records the day and time
12 the statement is made; and

13 (f) if the decision is given orally—records the day and time the
14 decision is given orally.

15 **17 Subsection 368(2)**

16 Repeal the subsection, substitute:

17 *How and when written decisions are taken to be made*

18 (2) A decision on a review (other than an oral decision) is taken to
19 have been made:

20 (a) by the making of the written statement; and

21 (b) on the day, and at the time, the written statement is made.

22 Note: For oral decisions, see section 368D.

23 (2A) The Tribunal has no power to vary or revoke a decision to which
24 subsection (2) applies after the day and time the written statement
25 is made.

1 *Return of documents etc.*

2 **18 Subsection 368(3)**

3 Omit “Where the Tribunal has prepared the written statement, the
4 Tribunal shall”, substitute “After the Tribunal makes the written
5 statement, the Tribunal must”.

6 **19 At the end of section 368**

7 Add:

8 *Validity etc. not affected by procedural irregularities*

- 9 (4) The validity of a decision on a review, and the operation of
10 subsection (2A), are not affected by:
- 11 (a) a failure to record, under paragraph (1)(e) or (f), the day and
12 time when the written statement was made or the decision
13 was given orally (as the case requires); or
 - 14 (b) a failure to comply with subsection (3).

15 **20 Section 368D**

16 Repeal the section, substitute:

17 **368D Tribunal’s decision given orally**

- 18 (1) A decision on a review that is given orally by the Tribunal is taken
19 to have been made, and notified to the applicant for the review, on
20 the day and at the time the decision is given orally.
- 21 (2) The Tribunal has no power to vary or revoke the decision after the
22 day and time the decision is given orally.
- 23 (3) The Tribunal must give the applicant and the Secretary a copy of
24 the statement made under subsection 368(1) within 14 days after
25 the decision is given orally.
- 26 (4) Failure to comply with subsection (3) does not affect the validity of
27 the decision or the operation of subsection (2).

28 **21 After subsection 422(1)**

29 Insert:

1 (1A) To avoid doubt, this section does not apply after a decision on the
2 review is taken to have been made as provided by
3 subsection 430(2) (written decisions) or subsection 430D(1) (oral
4 decisions).

5 **22 Paragraph 422A(2)(a)**

6 Repeal the paragraph, substitute:

7 (a) the Tribunal’s decision on the review has not been taken to
8 have been made as provided by subsection 430(2) (written
9 decisions) or subsection 430D(1) (oral decisions); and

10 **23 Section 430 (heading)**

11 Repeal the heading, substitute:

12 **430 Refugee Review Tribunal’s decision and written statement**

13 *Written statement of decision*

14 **24 Subsection 430(1)**

15 Omit “prepare”, substitute “make”.

16 **25 At the end of subsection 430(1)**

17 Add:

18 ; and (e) unless the decision is given orally—records the day and time
19 the statement is made; and

20 (f) if the decision is given orally—records the day and time the
21 decision is given orally.

22 **26 Subsection 430(2)**

23 Repeal the subsection, substitute:

24 *How and when written decisions are taken to be made*

25 (2) A decision on a review (other than an oral decision) is taken to
26 have been made:

27 (a) by the making of the written statement; and

28 (b) on the day, and at the time, the written statement is made.

29 Note: For oral decisions, see section 430D.

1 (2A) The Tribunal has no power to vary or revoke a decision to which
2 subsection (2) applies after the day and time the written statement
3 is made.

4 *Return of documents etc.*

5 **27 Subsection 430(3)**

6 Omit “Where the Tribunal has prepared the written statement, the
7 Tribunal must”, substitute “After the Tribunal makes the written
8 statement, the Tribunal must”.

9 **28 At the end of section 430**

10 Add:

11 *Validity etc. not affected by procedural irregularities*

12 (4) The validity of a decision on a review, and the operation of
13 subsection (2A), are not affected by:

- 14 (a) a failure to record, under paragraph (1)(e) or (f), the day and
15 time when the written statement was made or the decision
16 was given orally (as the case requires); or
17 (b) a failure to comply with subsection (3).

18 **29 Section 430D**

19 Repeal the section, substitute:

20 **430D Tribunal’s decision given orally**

- 21 (1) A decision on a review that is given orally by the Tribunal is taken
22 to have been made, and notified to the applicant for the review, on
23 the day and at the time the decision is given orally.
- 24 (2) The Tribunal has no power to vary or revoke the decision after the
25 day and time the decision is given orally.
- 26 (3) The Tribunal must give the applicant and the Secretary a copy of
27 the statement made under subsection 430(1) within 14 days after
28 the decision is given orally.
- 29 (4) Failure to comply with subsection (3) does not affect the validity of
30 the decision or the operation of subsection (2).

1 **30 Application—Schedule 1**

- 2 (1) The amendments of the *Migration Act 1958* made by items 1 to 3 and
3 items 10 to 29 apply in relation to a decision of the Migration Review
4 Tribunal or the Refugee Review Tribunal that is taken to have been
5 made, as provided by that Act as so amended, on or after the
6 commencement of this Schedule.
- 7 (2) The amendments of the *Migration Act 1958* made by items 4 to 9 apply
8 in relation to a decision of the Minister that is taken to have been made,
9 as provided by that Act as so amended, on or after the commencement
10 of this Schedule.

1 **Schedule 2—Bar on further applications for**
2 **protection visas**
3

4 *Migration Act 1958*

5 **1 Section 48A (heading)**

6 Repeal the heading, substitute:

7 **48A No further applications for protection visa after refusal or**
8 **cancellation**

9 **2 After subsection 48A(1B)**

10 Insert:

11 (1C) Subsections (1) and (1B) apply in relation to a non-citizen
12 regardless of any of the following:

- 13 (a) the grounds on which an application would be made or the
14 criteria which the non-citizen would claim to satisfy;
15 (b) whether the grounds on which an application would be made
16 or the criteria which the non-citizen would claim to satisfy
17 existed earlier;
18 (c) the grounds on which an earlier application was made or the
19 criteria which the non-citizen earlier claimed to satisfy;
20 (d) the grounds on which a cancelled protection visa was granted
21 or the criteria the non-citizen satisfied for the grant of that
22 visa.

23 **3 Subsection 48A(2) (paragraph (aa) of the definition of**
24 ***application for a protection visa*)**

25 Repeal the paragraph, substitute:

- 26 (aa) an application for a visa that, under this Act or the
27 regulations as in force at any time, is or was a visa of the
28 class known as protection visas; and

29 **4 Subsection 48A(2) (paragraph (aa) of the definition of**
30 ***application for a protection visa*)**

31 Repeal the paragraph, substitute:

- 1 (aa) an application for a visa that, under this Act or the
2 regulations as in force at any time, is or was a visa of the
3 class known as protection visas; and

4 Note: This item does not commence at all if item 10 of Schedule 1 to the *Migration*
5 *Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013*
6 commences before or on the same day as the provision(s) covered by table item 4 in
7 subsection 2(1) of this Act. See table item 5 in subsection 2(1) of this Act.

8 **5 Application of amendments**

- 9 (1) For the purposes of the application of section 48A of the *Migration Act*
10 *1958* after the commencement of item 2 of this Schedule, a non-citizen
11 is prevented from making an application for a protection visa after the
12 commencement of the item, because of a refusal or cancellation referred
13 to in subsection 48A(1) or (1B), whether the refusal or cancellation
14 happened before, on or after that commencement.
- 15 (2) For the purposes of determining whether a non-citizen is prevented,
16 after the commencement of item 2 of this Schedule, from making an
17 application for a protection visa under section 48A of the *Migration Act*
18 *1958*, an amendment made by item 3 or 4 of this Schedule applies in
19 relation to any earlier application for a protection visa whether made
20 before, on or after the commencement of the item.

Schedule 3—Security assessments

Migration Act 1958

1 After subsection 36(1)

Insert:

(1A) An applicant for a protection visa must satisfy:

- (a) the criterion in subsection (1B); and
- (b) at least one of the criteria in subsection (2).

(1B) A criterion for a protection visa is that the applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*).

2 Paragraph 411(1)(c)

Repeal the paragraph, substitute:

- (c) a decision to refuse to grant a protection visa, other than a decision that was made relying on:
 - (i) one or more of Articles 1F, 32 or 33(2) of the Refugees Convention; or
 - (ii) subsection 36(1B); or
 - (iii) paragraph 36(2C)(a) or (b);

Note: This item does not commence at all if item 17 of Schedule 1 to the *Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013* commences before or on the same day as the provision(s) covered by table item 7 in subsection 2(1) of this Act. See table item 8 in subsection 2(1) of this Act.

3 Paragraph 411(1)(c)

Repeal the paragraph, substitute:

- (c) a decision to refuse to grant a protection visa, other than a decision that was made relying on:
 - (i) one or more of Articles 1F, 32 or 33(2) of the Refugees Convention; or
 - (ii) subsection 36(1B);

Note: This item does not commence at all if item 17 of Schedule 1 to the *Migration Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013* does not commence. See table item 9 in subsection 2(1) of this Act.

1 **4 Paragraph 411(1)(d)**

2 Repeal the paragraph, substitute:

- 3 (d) a decision to cancel a protection visa, other than a decision
4 that was made because of:
- 5 (i) one or more of Articles 1F, 32 or 33(2) of the Refugees
6 Convention; or
 - 7 (ii) an assessment by the Australian Security Intelligence
8 Organisation that the holder of the visa is directly or
9 indirectly a risk to security (within the meaning of
10 section 4 of the *Australian Security Intelligence*
11 *Organisation Act 1979*); or
 - 12 (iii) paragraph 36(2C)(a) or (b).

13 Note: This item does not commence at all if item 17 of Schedule 1 to the *Migration*
14 *Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013*
15 commences before or on the same day as the provision(s) covered by table item 7 in
16 subsection 2(1) of this Act. See table item 10 in subsection 2(1) of this Act.

17 **5 Paragraph 411(1)(d)**

18 Repeal the paragraph, substitute:

- 19 (d) a decision to cancel a protection visa, other than a decision
20 that was made because of:
- 21 (i) one or more of Articles 1F, 32 or 33(2) of the Refugees
22 Convention; or
 - 23 (ii) an assessment by the Australian Security Intelligence
24 Organisation that the holder of the visa is directly or
25 indirectly a risk to security (within the meaning of
26 section 4 of the *Australian Security Intelligence*
27 *Organisation Act 1979*).

28 Note: This item does not commence at all if item 17 of Schedule 1 to the *Migration*
29 *Amendment (Regaining Control Over Australia's Protection Obligations) Act 2013* does
30 not commence. See table item 11 in subsection 2(1) of this Act.

31 **6 After subsection 500(4)**

32 Insert:

- 33 (4A) The following decisions are not reviewable under this section, or
34 under Part 5 or 7:
- 35 (a) a decision to refuse to grant a protection visa relying on
36 subsection 36(1B);

- 1 (b) a decision to cancel a protection visa because of an
2 assessment by the Australian Security Intelligence
3 Organisation that the holder of the visa is directly or
4 indirectly a risk to security (within the meaning of section 4
5 of the *Australian Security Intelligence Organisation Act*
6 *1979*).

7 **7 Application provision**

8 An amendment made by an item of this Schedule applies in relation to:

- 9 (a) an application for a protection visa made on or after the
10 commencement of the item; and
11 (b) an application for a protection visa made before the
12 commencement of the item but not finally determined as at
13 the commencement of the item; and
14 (c) a decision to cancel a protection visa made on or after the
15 commencement of the item, regardless of whether the visa
16 was granted before, on or after the commencement of the
17 item.