

THIS bill originated in the Senate; and, having
this day passed, is now ready for presentation
to the House of Representatives for its
concurrence.

ARTHUR ROBINSON & HEDDERWICKS
LIBRARY

HARRY EVANS
Clerk of the Senate

The Senate,
Canberra, 1 April 1992

A BILL

FOR

An Act to amend the *Migration Act 1958*

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Migration Amendment Act 1992*.

(2) In this Act, "Principal Act" means the *Migration Act 1958*¹.

5 Commencement

2.(1) Sections 1, 2 and 6 commence on the day on which this Act receives the Royal Assent.

(2) Sections 3 and 5 commence on the 28th day after the day on which this Act receives the Royal Assent.

10 (3) Sections 4 and 7 commence on a day to be fixed by Proclamation.

(4) If the provisions referred to in subsection (3) do not commence within the period of 6 months commencing on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

3. After section 121 of the Principal Act the following section is inserted: 5

Review of assessments made under section 30

“121A. In reviewing an assessment of the Minister under section 30, the only regulations for the purpose of that section which the review authority is to have regard to are whichever of the following are more favourable to the applicant: 10

- (a) the regulations for that purpose that were in force at the time the assessment was made by the Minister;
- (b) the regulations for that purpose that are in force at the time the decision is made by the review authority about the assessment.”. 15

Amendments relating to custody

4. The Principal Act is amended as set out in Schedule 1.

Amendments of penalty provisions

5. The Principal Act is amended as set out in Schedule 2. 20

Other amendments

6. The Principal Act is further amended as set out in Schedule 3.

Transitional—custody

7. If, immediately before the commencement of this section, a person was in custody under the Principal Act as a result of being arrested under section 92 or 93 of that Act, the person is taken to have been detained in custody under section 92 or 93 of that Act as amended by this Act, as the case may be, immediately after the commencement of this section. 25

SCHEDULE 1

Section 4

AMENDMENTS RELATING TO CUSTODY

Subsection 68(1):

Omit “arrested” (first occurring), substitute “detained in custody”.

Section 68:

Omit “arrested” (other than first occurring), substitute “detained”.

Subsections 69(3) to (5) (inclusive):

Omit “arrested”, substitute “detained”.

Subsection 69(6):

(a) Omit the definition of “arrested person”.

(b) Insert:

“**‘detained person’** means the person served with the notice under section 68.”.

Subsection 92(1):

Omit “arrest”, substitute “detain in custody”.

Subsection 92(2):

Omit “arrested”, substitute “detained”.

Subsection 92(3):

(a) Omit “arrests”, substitute “detains”.

(b) Omit “arrested” (wherever occurring), substitute “detained”.

(c) Omit “arrest” (wherever occurring), substitute “detention”.

Subsection 92(8):

Omit “arrested”, substitute “detained in custody”.

Subsection 92(10):

Omit “arrest”, substitute “detain in custody”.

Subsection 93(1):

Omit “arrest”, substitute “detain in custody”.

Subsection 93(2):

Omit “arrested”, substitute “detained”.

Subsection 93(3):

(a) Omit “arrests”, substitute “detains”.

(b) Omit “arrested”.

SCHEDULE 1—continued

(c) Omit “arrest”, substitute “detention in custody”.

Subsection 93(4):

(a) Omit “arrested” (wherever occurring), substitute “detained”.

(b) Omit “arrest”, substitute “detention in custody”.

Subsection 93(5):

(a) Omit “an arrested”, substitute “a detained”.

(b) Omit “the arrested”, substitute “the”.

Subsection 93(7):

Omit “arrested”, substitute “detained”.

Subsection 93(10):

Omit “arrest”, substitute “detain in custody”.

Subsection 94(3):

Omit “arrested”, substitute “detained in custody”.

Subsection 97(1):

Omit “has been arrested and”.

SCHEDULE 2

Section 5

AMENDMENTS OF PENALTY PROVISIONS**Subsection 64(5):**

Omit “\$5,000”, substitute “\$10,000”.

Subsection 67(8):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Subsection 68(7):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “\$30,000”.

Subsection 68(8):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “By imprisonment for 2 years”.

SCHEDULE 2—continued

Subsection 70(1):

Omit “\$5,000”, substitute “\$10,000”.

Section 71:

Omit “\$2,000”, substitute “\$4,000”.

Section 72:

Omit “\$2,000”, substitute “\$4,000”.

Section 73:

Omit “\$2,000”, substitute “\$4,000”.

Section 74:

Omit “\$2,000”, substitute “\$4,000”.

Subsection 77(1):

Omit all the words after “conviction,”, substitute “by imprisonment for a period not exceeding 2 years.”.

Subsection 77(2):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Subsection 77(5):

Omit all the words after “conviction,”, substitute “by imprisonment for a period not exceeding 2 years.”.

Section 78:

Omit “\$5,000”, substitute “\$10,000”.

Section 79:

Omit “\$5,000”, substitute “\$10,000”.

Subsection 80(2):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Section 81:

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Subsection 82(1):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

SCHEDULE 2—continued**Subsection 83(5):**

Omit “\$5,000”, substitute “\$10,000”.

Subsection 85(1):

Omit “\$10,000”, substitute “\$20,000”.

Subsection 85(2):

Omit “\$10,000”, substitute “\$20,000”.

Subsection 85(3):

Omit “\$10,000”, substitute “\$20,000”.

Subsection 85(4):

Omit “\$10,000”, substitute “\$20,000”.

Subsection 85(7):

Omit “\$5,000”, substitute “\$10,000”.

Subsection 89(5):

Omit “\$5,000”, substitute “\$10,000”.

Subsection 90(2):

Omit “\$5,000”, substitute “\$10,000”.

Subsection 97(2):

Omit “\$1,000 or imprisonment”, substitute “Imprisonment”.

Section 99:

Omit “\$10,000”, substitute “\$20,000”.

Subsection 101(2):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Section 102:

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Section 141:

Omit “\$1,000 or imprisonment for 6 months, or both”, substitute “Imprisonment for 6 months”.

Subsection 142(1):

Omit “\$1,000 or imprisonment for 6 months, or both”, substitute “Imprisonment for 6 months”.

SCHEDULE 2—continued

Subsection 142(2):

Omit “\$1,000 or imprisonment for 6 months, or both”, substitute “Imprisonment for 6 months”.

Subsection 142(3):

Omit “\$2,000 or imprisonment for 12 months, or both”, substitute “Imprisonment for 12 months”.

Section 143:

Omit “\$2,000 or imprisonment for 12 months, or both”, substitute “Imprisonment for 12 months”.

Subsection 148(3):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Section 149:

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Section 167:

Omit “\$1,000 or imprisonment”, substitute “Imprisonment”.

Subsection 168(1):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

Subsection 168(2):

Omit “\$20,000 or imprisonment for 10 years, or both”, substitute “Imprisonment for 10 years”.

Subsection 171(1):

Omit the subsection.

Subsection 171(2):

Omit “\$5,000 or imprisonment for 2 years, or both”, substitute “Imprisonment for 2 years”.

SCHEDULE 3

Section 6

OTHER AMENDMENTS**Subsection 4(1) (paragraph (b) of definition of “properly endorsed valid entry permit”):**

Omit “20(4)”, substitute “20(5)”.

Subsection 4(1) (definition of “properly endorsed valid entry visa”):

Omit “Secretary”, substitute “person granting the visa or the authorised officer required to endorse the visa under subsection 20 (4A)”.

After subsection 20(4A):

Insert:

“(4B) A visa is taken to be endorsed under subsection (4) or (4A) with a statement if the statement is recorded in a notified data base, but the person required to endorse the visa with the statement may still do so.”.

After subsection 20(5):

Insert:

“(5A) An entry permit is taken to be endorsed under subsection (5) with a statement if the statement is recorded in a notified data base, but the person required to endorse the visa with the statement may still do so.”.

Section 37:

Add at the end:

“(3) Nothing in this section prevents a person making a further application for an entry permit while he or she remains in Australia if:

- (a) he or she has been notified under subsection 121(2); and
- (b) the further application is made, because of that notification, within 10 working days after he or she is so notified.”.

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; and Nos. 70, 86 and 00, 1991.

NOTE—continued

NOTE ABOUT SECTION HEADINGS IN THE MIGRATION ACT 1958

On the day on which the *Migration Act 1958* is amended by this Act:

- (a) the heading to section 36 is altered by omitting “**review applied for**” and substituting “**notification under section 121**”;
- (b) the heading to section 87 is altered by omitting “**Prohibited entrants etc.**” and substituting “**Certain persons**”;
- (c) the headings to sections 88 and 89 are altered by omitting “**prohibited entrant**” and substituting “**certain persons**”.