

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Presented and read a first time

(Immigration and Ethnic Affairs)

A BILL

FOR

An Act to amend the *Migration Act 1958*, and for related purposes

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Migration Amendment ("Points" System) Act 1993*.

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

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Object of Act

3. The object of this Act is to simplify the immigration "points" system.

10 **Interpretation**

4. Section 4 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definitions of "applicable pool entrance mark", "applicable priority mark" and "score";
- (b) by omitting from subsection (1) the definition of "applicable pass mark" and substituting the following definition:

"**'applicable pass mark'** means:

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(a) in relation to a visa of a particular class—the number of points specified as the pass mark for that class in a notice under section 32 in force at the time concerned; and

(b) in relation to an entry permit of a particular class—the number of points specified as the pass mark for that class in a notice under section 42 in force at the time concerned;";

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- (c) by inserting in subsection (1) the following definitions:

"**'applicable pool mark'**, in relation to a visa of a particular class, means the number of points specified as the pool mark for that class in a notice under section 32 in force at the time concerned;

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'assessed score' means:

(a) in relation to an applicant for a visa—the total number of points given to the applicant in an assessment under section 30; or

(b) in relation to an applicant for an entry permit—the total number of points given to the applicant in an assessment under subsection 41(2);".

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Regulations may provide for visas

5. Section 23 of the Principal Act is amended by omitting from subsection (3) "necessary" and substituting "qualifying".

Grant or refusal of visas

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6 Section 24 of the Principal Act is amended:

(a) by omitting from subsection (4) " , including if necessary by reassessing the applicant's score under section 30,";

(b) by inserting after subsection (4) the following subsection:

"(4A) A reconsideration under subsection (4) does not involve the re-assessment of the applicant's assessed score under section 30.";

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(c) by omitting subsection (8).

Operation of Subdivision

7. Section 29 of the Principal Act is amended by omitting "necessary" and substituting "qualifying".

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Initial application of "points" system

8 Section 31 of the Principal Act is amended by omitting subsections (1), (2), (3), (4) and (5) and substituting the following subsections:

"(1) An applicant whose assessed score is more than or equal to the applicable pass mark at the time when the score is assessed is taken to have received the qualifying score.

5 "(2) An applicant whose assessed score is less than the applicable pool mark at the time when the score is assessed is taken not to have received the qualifying score.

"(3) If an applicant's assessed score is more than or equal to the applicable pool mark, but less than the applicable pass mark, at the time when the score is assessed:

- 10 (a) the Minister must, unless the application is withdrawn, put the application aside and deal with it in accordance with section 31A; and
(b) if the Minister puts the application aside—the Minister is taken to have put the application into a pool."

Insertion of new section

15 9 After section 31 of the Principal Act the following section is inserted:

Applications in pool

When section applies

"31A.(1) This section applies if the Minister puts an application into a pool.

How applications to be dealt with

20 "(2) If, within 12 months after the assessment of the applicant's assessed score, the Minister gives a notice under section 32 varying the applicable pass mark or the applicable pool mark:

- 25 (a) the Minister must, without re-assessing that score, compare that score with the applicable pass mark and the applicable pool mark; and
(b) if that score is more than or equal to the applicable pass mark—the applicant is taken to have received the qualifying score; and
(c) if that score is less than the applicable pool mark—the applicant is taken not to have received the qualifying score; and
30 (d) if that score is more than or equal to the applicable pool mark but less than the applicable pass mark—the application remains in the pool until it is removed from the pool (see subsection (3)).

Removal of applications from pool

35 "(3) An application in the pool is taken to have been removed from the pool at whichever is the earliest of the following times:

- (a) the end of 12 months after the assessment of the applicant's assessed score;

- (b) the earliest time (if any) when the applicant is taken to have received the qualifying score as the result of the operation of subsection (2);
- (c) the earliest time (if any) when the applicant is taken not to have received the qualifying score as the result of the operation of subsection (2).

Removal from pool after 12 months treated as failure to receive qualifying score

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“(4) If an application is removed from the pool because of paragraph (3)(a), the applicant is taken not to have received the qualifying score.”.

Minister may set pool mark and pass mark

10. Section 32 of the Principal Act is amended:

- (a) by omitting from subsection (1) “pool entrance mark and the priority mark” and substituting “pool mark”; 10
- (b) by adding at the end of subsection (3) “and also operates as a variation of the mark specified in the previous notice”;
- (c) by adding at the end the following subsections:

“(5) This Act does not prevent a pool mark and a pass mark from being equal. 15

“(6) This Act does not prevent a pool mark and a pass mark from being varied independently of each other.”.

Regulations may provide for entry permits

11. Section 33 of the Principal Act is amended by omitting from subsection (3) “necessary” and substituting “qualifying”. 20

Operation of “points” system

12. Section 41 of the Principal Act is amended:

- (a) by omitting from subsections (1), (3) and (4) “necessary” and substituting “qualifying”; 25
- (b) by omitting from subsections (3) and (4) “applicable priority mark” and substituting “applicable pass mark”;
- (c) by omitting from subsections (3) and (4) “whose score” and substituting “whose assessed score”.

Minister may set pass mark

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13. Section 42 of the Principal Act is amended by omitting from subsection (1) “priority mark” and substituting “pass mark”.

Application of amendments

14. The amendments made by this Act apply to an application for a visa or an entry permit if the application: 35

- (a) was made after the commencement of this section; or

- (b) was made before the commencement of this section and was not:
- (i) withdrawn; or
 - (ii) granted; or
 - (iii) refused;

5 before the commencement of this section.

Transitional provisions—visas

Applications to which section applies

15 **15.(1)** This section applies in relation to a visa application covered by section 14.

10 *Section 30 assessment*

(2) An assessment made under section 30 of the Principal Act before the commencement of this section in relation to the application has effect, after that commencement, as if the assessment had been made under section 30 of the amended Act immediately after the commencement of this section.

15 *Application set aside*

(3) If the application was set aside under section 31 of the Principal Act before the commencement of this section, the amended Act has effect as if the application had been set aside under subsection 31(3) of the amended Act immediately after the commencement of this section.

20 *Prescribed criterion*

(4) For the purposes of the amended Act, a prescribed criterion of the kind mentioned in subsection 23(3) of the Principal Act has effect, after the commencement of this section, as if it were a prescribed criterion of the kind mentioned in subsection 23(3) of the amended Act.

25 *Gazette notice—pool mark*

30 (5) For the purposes of the amended Act, a notice specifying a pool entrance mark for a class of visas, being a notice in force under subsection 32(1) of the Principal Act immediately before the commencement of this section, has effect, after that commencement, as if it were a notice under subsection 32(1) of the amended Act specifying the pool mark for that class of visas.

Gazette notice—pass mark

35 (6) For the purposes of the amended Act, a notice specifying a pass mark for a class of visas, being a notice in force under subsection 32(2) of the Principal Act immediately before the commencement of this section, has effect, after that commencement, as if it were a notice under subsection 32(2) of the amended Act specifying the pass mark for that class of visas.

Definition of "amended Act"

(7) In this section:

"**amended Act**" means the Principal Act as amended by this Act.

Transitional provisions—entry permits*Applications to which section applies*

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16.(1) This section applies to an application for an entry permit if the application is covered by section 14.

Subsection 41(2) assessment

(2) An assessment made under subsection 41(2) of the Principal Act before the commencement of this section in relation to the application has effect, after that commencement, as if the assessment had been made under subsection 41(2) of the amended Act immediately after the commencement of this section. 10

Prescribed criterion

(3) For the purposes of the amended Act, a prescribed criterion of the kind mentioned in subsection 33(3) of the Principal Act has effect, after the commencement of this section, as if it were a prescribed criterion of the kind mentioned in subsection 33(3) of the amended Act. 15

Gazette notice—priority mark

(4) For the purposes of the amended Act, a notice specifying a priority mark for a class of entry permits, being a notice in force under subsection 42(1) of the Principal Act immediately before the commencement of this section, has effect, after that commencement, as if it were a notice under subsection 42(1) of the amended Act specifying the pass mark for that class of entry permits. 20
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Definition of "amended Act"

(5) In this section:
"amended Act" means the Principal Act as amended by this Act.

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; Nos. 70, 86, 196 and 198, 1991; and Nos. 24, 84, 85, 175, 176, 184, 213, 220 and 235, 1992.

