

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MIGRATION AMENDMENT ("POINTS" SYSTEM) BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and Ethnic Affairs  
Senator the Hon. Nick Bolkus)

## MIGRATION AMENDMENT ("POINTS" SYSTEM) BILL 1993

### OUTLINE

This Bill simplifies the operation of the points system and pooling mechanism provided for in Division 2 of Part 2 of the *Migration Act 1958*. The points system and pooling mechanism are essentially program control measures designed to enable efficient management of changes in total migration program numbers in the independent and concessional family categories. The Bill replaces the three mark system currently in operation with a two mark system consisting of a pass mark and a pool mark.

Under the new arrangements, a qualifying score will be prescribed in the Regulations as a criterion to be met by applicants for certain classes of visas. Following an assessment of the prescribed qualifications of an applicant in one of the relevant visa classes, the applicant's assessed score will be compared with a pass mark and a pool mark which have been notified in the *Gazette*. This comparison will result in one of three outcomes:

- (a) An applicant who achieves a score that is more than, or equal to, the notified pass mark at the time an assessment of the applicant's qualifications is made (in accordance with criteria specified in the Regulations) is taken to have received the qualifying score and is entitled to move on to the next stage of processing.
- (b) An applicant whose assessed score is less than the notified pool mark is taken not to have received the qualifying score with the consequence that the application must be rejected for failure to meet one of the prescribed requirements for the grant of the class of visa applied for.
- (c) If an applicant's assessed score is more than, or equal to, the notified pool mark but less than the notified pass mark, the application is taken to have been put into a pool.

The Bill contains detailed arrangements regarding the manner in which applications in the pool are to be dealt with. Specifically, the Minister is required to compare the applicant's assessed score with any variations in the pass mark or in the pool mark, during the 12 month period following the assessment of the applicant's assessed score. The Bill makes it clear, however, that the Minister is not to re-assess the applicant's assessed score every time a variation is published and a comparison with the new mark is made.

Depending on the outcome of any comparison of an applicant's assessed score against a varied mark the application will, in a manner similar to that outlined above in respect of the initial application of the points system, either be entitled to move on to the next stage of processing, be rejected, or remain in the pool. Once an application has remained in the pool for a period of 12 months following the assessment of the applicant's score, the applicant is taken not to have received the qualifying score and the application must be rejected.

This process streamlines the management of applications which have been pooled by replacing the current arrangements of three pass mark reconsiderations and by incorporating a clear statement which sets out the circumstances and the timeframe within which applications are removed from the pool.

The Bill also makes a small number of technical amendments to the provisions which allow for the operation of a points system for entry permit applications, to ensure that those provisions reflect the new terminology introduced by this Bill in respect of the visa application provisions. These amendments are necessitated by the commencement of this Bill prior to the commencement of the majority of the provisions of the *Migration Reform Act 1992* which will, inter alia, abolish the "entry permit" concept.

#### **FINANCIAL IMPACT STATEMENT**

The implementation of these amendments will have no financial impact.

## MIGRATION AMENDMENT ("POINTS" SYSTEM) BILL 1993

### NOTES ON INDIVIDUAL CLAUSES

#### Clause 1                      Short Title etc.

1        This clause provides that this Act may be cited as the *Migration Amendment ("Points" System) Act 1993*, and that a reference in this Act to the "Principal Act" is a reference to the *Migration Act 1958*.

#### Clause 2                      Commencement

2        This clause provides that this Act will commence on the day on which it receives the Royal Assent.

#### Clause 3                      Object of Act

3        This clause provides that the object of this Act is to simplify the immigration "points" system.

#### Clause 4                      Interpretation

4        This clause amends subsection 4(1) of the Principal Act by omitting the definitions of the terms "applicable pool entrance mark", "applicable priority mark", "applicable pass mark" and "score", and inserting new definitions for the terms "applicable pass mark", "applicable pool mark" and "assessed score". In order to simplify the previous points system and pooling arrangements, the concept of the "applicable priority mark" will not form part of the new scheme, while the concepts of the "applicable pool mark", "applicable pass mark" and "assessed score" are substantially similar to those concepts under the previous scheme.

#### Clause 5                      Regulations may provide for visas

5        This clause amends the regulation-making power in subsection 23(3) of the Principal Act by replacing the word "necessary" with "qualifying". The new terminology is designed to reflect more accurately that, by achieving the qualifying score, an applicant is entitled to move on to the next stage of processing.

#### Clause 6                      Grant or refusal of visas

6        This clause amends subsection 24 (4) of the Principal Act by deleting the reference to reassessing the applicant's score under section 30 where the applicant has advised the Minister of a material change in circumstances.

7        The clause also inserts a new subsection (4A) into section 24 of the Principal Act to make it clear that a reconsideration pursuant to subsection 24(4) is not to involve a reassessment of the applicant's assessed score under section 30 of the Principal Act.

8        The clause also omits subsection 24(8) as no reassessment of an applicant's assessed score will occur under the new scheme.

## **Clause 7                      Operation of Subdivision**

9        This clause amends section 29 of the Principal Act by replacing "necessary" with "qualifying". The new terminology is designed to reflect more accurately that, by achieving the qualifying score, an applicant is entitled to move on to the next stage of processing.

## **Clause 8                      Initial application of "points" system**

10       This clause amends section 31 of the Principal Act by omitting existing subsections 31(1) to 31(5) and substituting new subsections 31(1) to 31(3).

11       Subsection (1) provides that an applicant who achieves an assessed score that is more than, or equal to, the applicable pass mark at the time of assessment is taken to have received the qualifying score. The effect of receiving the qualifying score is that the applicant satisfies the prescribed criterion referred to in subsection 23(3) of the Principal Act and can proceed to the next step in the processing of his or her visa application.

12       Subsection (2) provides that an applicant whose assessed score is less than the applicable pool mark at the time of assessment is taken not to have received the qualifying score. The effect of failing to receive the qualifying score is that the applicant does not satisfy the prescribed criterion referred to in subsection 23(3) of the Principal Act, the applicant is not entitled to be granted a visa pursuant to paragraph 23(2)(b) of the Principal Act, and the application shall be refused pursuant to subsection 24(7) of the Principal Act.

13       Subsection (3) operates in circumstances where an applicant's assessed score is, at the time of assessment, more than or equal to the applicable pool mark but less than the applicable pass mark. Unless the application is withdrawn, paragraph 31(3)(a) requires the Minister to put the application aside and deal with it in accordance with section 31A (a new provision inserted into the Principal Act by clause 9 of this Act). Paragraph 31(3)(b) provides that if the Minister puts the application aside, the Minister is taken to have put the application into a pool.

## **Clause 9                      Insertion of new section**

14       This clause inserts a new section 31A after section 31 of the Principal Act.

15       New section 31A - "Applications in pool" - contains the detailed arrangements in accordance with which applications put into a pool pursuant to subsection 31(3) are to be dealt with.

16       Subsection 31A(1) provides that section 31A applies if the Minister puts an application into a pool.

17       Subsection 31A(2) requires the Minister to compare the applicant's score as previously assessed with any variations in the applicable pass mark or the applicable pool mark that are published in the *Gazette*, pursuant to section 32 of the Principal Act, during the 12 month period following the assessment of the applicant's assessed score.

- Paragraph 31A(2)(a) makes it clear that the Minister is not to re-assess the applicant's assessed score every time a variation is published and a comparison with the new mark is made. The Minister is to compare the score that has previously been assessed with the applicable pass mark and the applicable pool mark as varied.
- Paragraph 31A(2)(b) provides that if, when the applicant's assessed score is compared against the varied applicable pass mark, that score is more than or equal to that mark, the applicant is taken to have received the qualifying score. The applicant will then move on to the next stage of processing.
- Paragraph 31A(2)(c) provides that if, when the applicant's assessed score is compared against the varied applicable pool mark, that score is less than that mark, the applicant is taken not to have received the qualifying score and the application must be rejected.
- Paragraph 31A(2)(d) provides that if, when the applicant's assessed score compared against both the applicable pool mark and the applicable pass mark (both as varied, if applicable), that score is more than or equal to the applicable pool mark but less than the applicable pass mark, then the application remains in the pool until it is removed from the pool (under subsection 31A(3)).

18 Subsection 31A(3) provides that an application in the pool is taken to have been removed from the pool at the earliest of three points in time, namely

- at the end of 12 months after the assessment of the applicant's assessed score (paragraph 31A(3)(a));
- at the earliest time when the applicant is taken to have received the qualifying score as the result of the operation of subsection 31A(2) (paragraph 31A(3)(b));
- at the earliest time when the applicant is taken not to have received the qualifying score as the result of the operation of subsection 31A(2) (paragraph 31A(3)(c)).

19 Subsection 31A(4) provides that if an application is removed from the pool because 12 months have elapsed since the assessment of the applicant's assessed score, the applicant is taken not to have received the qualifying score. The effect of failing to receive the qualifying score is that the applicant does not satisfy the prescribed criterion referred to in subsection 23(3) of the Principal Act, the applicant is not entitled to be granted a visa pursuant to paragraph 23(2)(b) of the Principal Act, and the application shall be refused pursuant to subsection 24(7) of the Principal Act.

#### **Clause 10 Minister may set pool mark and pass mark**

20 This clause amends section 32 of the Principal Act.

21 Subclause (a) replaces the words "pool entrance mark and the priority mark" in subsection 32(1) of the Principal Act with the words "pool mark" to ensure that the subsection reflects the new terminology in the simplified "points" system and that the Minister has the power to set the pool mark by notice published in the *Gazette*.

22 Subclause (b) amends subsection 32(3) of the Principal Act to make it clear that a later notice under subsection 32(1) or (2), which operates to revoke the previous notice under that subsection in relation to the same class of visas, also operates as a variation of the mark specified in the previous notice. This amendment is necessary as a consequence of the introduction of the concept of a "variation" in new subsection 32(6) which is inserted into the Principal Act by subclause (c) of this clause.

23 Subclause (c) inserts new subsections 32(5) and (6) into the Principal Act :

- New subsection 32(5) provides that the Principal Act does not prevent a pool mark and a pass mark from being equal. The effect of gazetting a pool mark and a pass mark which are equal is that any existing pool is "emptied", since all persons who achieve the pool mark also achieve the pass mark and hence are, in accordance with paragraph 31A(2)(b), taken to have received the qualifying score.
- New subsection 32(6) provides that the Principal Act does not prevent a pool mark and a pass mark from being varied independently of each other. This removes the need to publish both marks each time it is decided to vary one of them.

#### **Clause 11 Regulations may provide for entry permits**

24 This clause amends the regulation-making power in subsection 33(3) of the Principal Act by replacing the word "necessary" with "qualifying". The new terminology is designed to reflect more accurately that, by achieving the qualifying score, an applicant is entitled to move on to the next stage of processing.

#### **Clause 12 Operation of "points" system**

25 This clause amends section 41 of the Principal Act as follows:

- subclause (a) amends subsections 41(1), (3) and (4) of the Principal Act by replacing the word "necessary" with "qualifying" in accordance with the new terminology introduced by this Act;
- subclause (b) amends subsections 41(3) and (4) of the Principal Act by replacing the reference to "applicable priority mark" with a reference to "applicable pass mark" to reflect the new terminology used in the simplified "points" system introduced by this Act;
- subclause (c) amends subsections 41(3) and (4) of the Principal Act by replacing the reference to "whose score" with a reference to "whose assessed score" to reflect the new terminology introduced by this Act.

#### **Clause 13 Minister may set pass mark**

26 This clause amends subsection 42(1) of the Principal Act by replacing the reference to "priority mark" with a reference to "pass mark" to reflect the new terminology in the simplified "points" system.

#### **Clause 14      Application of amendments**

27      This clause provides that the amendments made by this Act apply to an application for a visa or an entry permit provided the application was neither withdrawn, granted nor refused before the commencement of this section.

#### **Clause 15      Transitional provisions - visas**

28      Subclause (1) provides that this section applies in relation to a visa application covered by section 14 of this Act.

29      Subclause (2) provides that 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.

30      Subclause (3) provides that 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.

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

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

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

34      Subclause (7) provides that the words "amended Act" in this section refer to the Principal Act as amended by this Act.

#### **Clause 16      Transitional provisions - entry permits**

35      Subclause (1) provides that this section applies in relation to an application for an entry permit covered by section 14 of this Act.

36      Subclause (2) provides that 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.



37 Subclause (3) provides that a prescribed criterion of the kind mentioned in subsection 33(3) of the Principal Act has effect, after the commencement of this section and for the purposes of the amended Act, as if it were a prescribed criterion of the kind mentioned in subsection 33(3) of the amended Act.

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

39 Subclause (5) provides that the words "amended Act" in this section refer to the Principal Act as amended by this Act.















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