

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MIGRATION LEGISLATION AMENDMENT BILL (No. 3) 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

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



MIGRATION LEGISLATION AMENDMENT BILL (No. 3) 1994**OUTLINE**

1 These amendments are intended to stop the use of repeat applications for protection visas by non-citizens to delay their removal and to circumvent Australia's immigration requirements. This measure will contribute to increasing the efficiency of Australia's refugee determination system and to minimising ill-founded protection visa applications. Where the Minister thinks it is in the public interest to do so, he or she will have the power to exercise a non-compellable discretion in favour of allowing a particular individual to lodge a repeat application. The Minister must table a statement in Parliament setting out his or her reasons for thinking this decision is in the public interest.

FINANCIAL IMPACT STATEMENT

2 The barring of repeat applications will result in a reduction in the number of protection visa applications considered. This is likely to result in some savings.

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NOTES ON INDIVIDUAL CLAUSES

1 The references to provision numbers in the *Migration Act 1958* ("the Act") in these notes are references to provision numbers as they are after the renumbering of the Act by section 83 of the *Migration Legislation Amendment Act 1994* on 1 September 1994.

Amendment 1 Clause 2 - Commencement

2 This amendment proposes to amend the commencement provision of the Bill, clause 2, so that the amendments to the Act made by the new clauses 13 to 18 of the Bill added by Amendment 2 also commence on Royal Assent.

Amendment 2

3 This amendment adds clause 13 to the Bill after clause 12 on page 6 of the Bill.

Clause 13 Valid visa application

4 This clause proposes to amend section 46 of the Act to include references to section 91E and proposed section 48A. (Proposed section 48A is also inserted by this amendment.)

Amendment 3

5 This amendment adds clause 14 to the Bill after clause 13 on page 6 of the Bill.

Clause 14 Insertion of sections

6 This clause inserts new sections 48A and 48B, the main operative provisions of the proposed amendments, into the Act.

New section 48A

Non-citizen refused a protection visa may not make further application for protection visa

7 Proposed new section 48A provides that a non-citizen, while he or she remains in the migration zone, who has made an application or applications for protection visas which have been refused, may not make a further application for a protection visa. This provision applies even if a non-citizen's application for a protection visa has not been finally determined (that is, if, for example, it is being reviewed by the RRT). An application for a protection visa, for the purposes of this proposed section, includes any application by a person for refugee status or for a visa or entry permit in existence before or after 1 September 1994, a criterion for which is refugee status. Dependents of such persons are also included in this definition.

New section 48BMinister may determine that section 48A does not apply to non-citizen

8 Proposed new section 48B provides the Minister with the power to exercise a non-compellable discretion in favour of allowing a particular non-citizen to lodge a repeat application if the Minister thinks it is in the public interest to do so. This power may only be exercised by the Minister personally. In exercising this power, the Minister must table a statement in Parliament setting out the determination and the reasons for it, referring particularly to the Minister's reasons for thinking his or her actions are in the public interest.

Amendment 4

9 This amendment adds clause 15 to the Bill after clause 14 on page 6 of the Bill.

Clause 15**Withdrawal of visa application**

10 Section 49 of the Act is amended to ensure that a refused visa application within the meaning of proposed new section 48A does not include an application that has been withdrawn.

Amendment 5

11 This amendment adds clause 16 to the Bill after clause 15 on page 6 of the Bill.

Clause 16**Only new information to be considered in later protection visa applications**

12 Section 50 of the Act is amended by inserting a Note at the end of the section which indicates that new section 48A prevents repeat applications for protection visas in most circumstances where the applicant is in the migration zone.

Amendment 6

13 This amendment adds clause 17 to the Bill after clause 16 on page 6 of the Bill.

Clause 17**Decisions reviewable by Federal Court**

14 This proposed amendment adds sections 48B and 91F to the cross-references in paragraph 475(2)(e) of the Act which lists the Minister's non-compellable powers, which are not judicially reviewable decisions.

Amendment 7

15 This amendment adds clause 18 to the Bill after clause 17 on page 6 of the Bill.

Clause 18**Application of amendment of section 475**

16 This clause inserts a provision that provides that the amendment of paragraph 475(2)(e) of the Act made by new clause 17, inserted by this amendment, applies to decisions whether made before or after the commencement of that amendment.

