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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MIGRATION LEGISLATION AMENDMENT BILL (No. 3) 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Immigration and Multicultural Affairs,
the Hon. Philip Ruddock MP)

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MIGRATION LEGISLATION AMENDMENT BILL (No. 3) 1996

OUTLINE

Overview

1 The Migration Legislation Amendment Bill (No. 3) 1996 ("the Bill") implements a number of Government initiatives in the Immigration and Multicultural Affairs portfolio.

2 The Bill amends the *Migration Act 1958*, the *Immigration (Education) Act 1971* and the *Migration (Health Services) Charge Act 1991* to complete the package of amendments that are needed to introduce the visa application charge. The charge is imposed by the Migration (Visa Application) Charge Bill 1996. The remaining measures in the package are contained in the Immigration (Education) Charge Amendment Bill 1996.

3 The Bill also amends the *Migration Act 1958* to:

provide more flexible means for the Government to determine limits on the number of visas that may be granted within a financial year; and

allow, in relation to visa applications, for a distinction to be made in regulations and decision-making between married people and those in de facto relationships.

4 The Bill amends the *Migration Act 1958* and the *Australian Citizenship Act 1948* to create a mechanism to enable naturalised citizens to lose their Australian citizenship if it was obtained following fraudulent claims in their visa applications or application for Australian citizenship.

FINANCIAL IMPACT STATEMENT

5 The amendments to the *Migration Act 1958*, the *Immigration (Education) Act 1971*, and to the *Australian Citizenship Act 1948* will have no financial impact.

6 The amendments to the *Migration (Health Services) Charge Act 1991* will result in a decline in revenue from the Health Services Charge (which will only apply to existing visa applications), but with compensating revenue being raised under the visa application charge imposed by the Migration (Visa Application) Charge Bill 1996.

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NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short Title

1 The short title by which this Act will be known is the *Migration Legislation Amendment Act (No. 3) 1996*.

Clause 2 Commencement

2 Subclause 2(1) provides that Schedule 1 is to commence by Proclamation. The planned commencement date is 1 January 1997.

3 Subclause 2(2) provides that Schedule 1 will commence 6 months after receiving Royal Assent if it has not already commenced by Proclamation.

4 Subclause 2(3) provides that the remaining provisions of the Act will commence upon Royal Assent.

Clause 3 Schedule(s)

5 Clause 3 provides that the provisions of the various Acts that are set out in the items of the Schedule(s) are amended as indicated.

SCHEDULE 1 - Amendments related to visa application charge

PART 1 - Amendments

IMMIGRATION (EDUCATION) ACT 1971

Item 1 Section 3 (definition of *Charge Act*)

6 The existing definition of "Charge Act" is repealed to remove the reference to the *Immigration (Education) Charge Act 1992*. This is necessary because the existing link between the *Immigration (Education) Act 1971* and the payment of English Education Charge under the *Immigration (Education) Charge Act 1992* will not exist for visa applications that are made after the commencement of the visa application charge.

Item 2 Section 3 (definition of *exempt entry permit*)

7 The term "exempt entry permit" is repealed as a consequence of the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*.

Item 3 Section 3 (definition of *exempt visa*)

8 The term "exempt visa" is repealed as a consequence of the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*.

Item 4 Section 3 (definition of *stay visa*)

9 The term "stay visa" is repealed as a consequence of the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*.

Item 5 Section 3

10 The term "functional English" is defined by reference to the definition in subsection 5(2) of the Migration Act. The insertion of this definition allows consistent use of the term "functional English" under both the *Migration Act 1958* and the *Immigration (Education) Act 1971*.

Item 6 Paragraph 4B(a)

11 This amendment is consequential to the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*. The term "permanent visa", which is consistent with usage in the Migration Act, is now used throughout the *Immigration (Education) Charge Act 1992*.

Item 7 At the end of paragraph 4B(c)

12 The Minister's obligation to provide English language courses is limited to those persons who did not have functional English *at the time of making visa applications*. This is consistent with the operation of the visa application charge, which may (depending on the class of visa) require persons to pay a higher charge if they do not have functional English at the time of making a visa application.

Item 8 Paragraph 4B(d)

13 Existing paragraph 4B(d) (which refers to the English Education Charge payable under the *Immigration (Education) Charge Act 1992*) is replaced by a corresponding reference to visa application charge payable under section 45A of the *Migration Act 1958*.

14 A new paragraph 4B(e) is also inserted. New paragraph 4B(e) provides that the regulations may make provision for excluding persons from the class of persons to whom the Minister has a duty to provide English language tuition under section 4B.

Item 9 Paragraph 4C(a)

15 This amendment is consequential to the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*. The term "permanent visa", which is consistent with usage in the Migration Act, is now used throughout the *Immigration (Education) Charge Act 1992*.

Item 10 Paragraph 4C(b)

16 This amendment is consequential to the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*. The term "permanent visa", which is consistent with usage in the Migration Act, is now used throughout the *Immigration (Education) Charge Act 1992*.

Item 11 At the end of paragraph 4C(c)

17 The obligation of the Commonwealth to provide tuition in an approved English language course is limited to those persons who did not have functional English *at the time of making visa applications*. This is consistent with the operation of the visa application charge, which may (depending on the class of visa) require persons to pay a higher charge if they did not have functional English at the time of making a visa application.

Item 12 Paragraph 4C(d)

18 Existing paragraph 4C(d) (which refers to the English Education Charge payable under the *Immigration (Education) Charge Act 1992*) is replaced by a corresponding reference to visa application charge payable under section 45A of the *Migration Act 1958*. A new paragraph 4C(e) is also inserted.

19 New paragraph 4C(e) provides that the regulations may make provision for excluding persons from the class of persons who are entitled to English language tuition under section 4C.

Item 13 At the end of section 4C

20 New paragraph 4C(f) ensures that a person can only have a single entitlement to 510 hours of English language tuition under the *Immigration (Education) Act 1971*.

Item 14 Subsection 4D(4) (definition of *relevant visa or entry permit*)

21 This amendment is consequential to the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*. The term "permanent visa", which is consistent with usage in the Migration Act, is now used throughout the *Immigration (Education) Act 1971*.

Item 15 Subsection 4D(4) (definition of *visa commencement date*)

22 This amendment is consequential to the removal of the connection between the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992*. The term "entry permit" is now obsolete and the term "permanent visa", which is consistent with current usage in the Migration Act, is now used throughout the *Immigration (Education) Act 1971*.

Item 16 Section 4E

23 This section is repealed because the English Education Charge will no longer be imposed after the commencement of this Act, so there will be no need for a provision to refund the English Education Charge. Any refunds of the English Education Charge arising from visa applications made before the commencement of this Act are protected by the transitional provisions of this Schedule: see Item 28.

Item 17 Section 4F

24 This section is repealed because the English Education Charge will no longer be imposed after the commencement of this Act, so there is no need to provide for refunds of the English Education Charge. Any refunds of the English Education Charge arising from visa applications made before the commencement of this Act are protected by the transitional provisions of this Schedule: see Item 28.

MIGRATION ACT 1958

Item 18 Section 5 (after the definition of *visa applicant*)

25 The term "visa application charge" is defined for the purposes of the Migration Act as the charge that is payable under section 45A of the Migration Act. Visa application charge is imposed by section 4 of the *Migration (Visa Application) Charge Act 1996*.

26 The term "visa application charge limit" is defined for the purposes of the Migration Act as the amount determined in section 5 of the *Migration (Visa Application) Charge Act 1996*. This amount is the ceiling for the amount of the visa application charge that may be prescribed under the regulations as being payable by particular groups of applicants.

Item 19 After section 45

27 This item inserts three new sections into the Migration Act.

28 New section 45A is designed to ensure that only those applicants who make valid visa applications will be liable to pay the visa application charge. The concept of a "valid visa application" is defined in section 46 of the Migration Act.

29 Section 45A provides that:

the visa applicant is the person who is liable to pay the visa application charge; and

the visa application charge is payable on all visa applications that would be valid visa applications if the charge were paid.

30 Section 45A is expressed in hypothetical form ("assuming the charge were paid") to ensure that only those visa applications which satisfy all of the criteria for a valid visa application (as expressed in section 46) will be liable for the visa application charge. It does not mean that the visa application charge must be paid in full before a valid visa application comes into existence.

31 New section 45B deals with the amount of the visa application charge that is payable.

32 Subsection 45B(1) provides that the amount of the visa application charge:

is prescribed in the regulations, thereby providing the level of flexibility that is necessary for prescribing the visa application charge for new visa classes, or differential amounts of the visa application charge; and

must not exceed the visa application charge limit established by section 5 of the *Migration (Visa Application) Charge Act 1996*.

33 Subsection 45B(2) ensures that a nil amount of the visa application charge may be prescribed with respect to classes of applications should policy settings so require.

34 New section 45C confers powers to make regulations with respect to administering the visa application charge, notably the collection, payment, refund and waiver of the charge.

35 Subsection 45C(1) permits regulations to be made concerning instalments of the visa application charge, including:

paying the visa application charge in instalments;

specifying how instalments are to be calculated; and

- specifying the time when instalments are to be paid.

36 Most visa applicants will be required to pay an instalment of the charge at the time of making their application. This payment, which is broadly equivalent to the existing visa application fee that is currently prescribed in Schedule 1 of the Migration Regulations, will be the only payment that is required to be made by most visa applicants.

37 The Regulations will prescribe the amount of the visa application charge, and whether a second instalment is payable. For example, a second instalment of charge will be payable by some persons who do not have "functional English" or who require an assurance of support. This amount will be broadly equivalent to the amount of the existing charges that would be paid by the same people under the existing arrangements.

38 Subsection 45C(2) permits regulations to be made with respect to the administration of the visa application charge, in particular:

the recovery of the visa application charge where it has not been paid;

the method of payment of the visa application charge;

the calculation of the amount of the visa application charge that is payable in a given visa application;

the time when the visa application charge is to be paid, which may be at the time of application, or at some other time prior to the grant of a visa;

the persons to whom the visa application charge may be paid, which may include agents of the Commonwealth;

the remission, refund or waiver of the visa application charge in special cases where the regulations may provide that a particular applicant is to pay less than the full amount of charge;

the exemption of persons from the payment of the visa application charge; and

the crediting of an amount of the visa application charge that has been paid in respect of one application towards payment of another application.

Item 20 After paragraph 46(1)(b)

39 New paragraph 46(1)(ba) provides that an application will not satisfy subsection 46(1), and accordingly will not be a valid visa application, unless any amount of the visa application charge that is payable at the time when the application is made has been paid. This allows the regulations to prescribe an amount of the visa application charge that must be paid at the time of application and without which a valid visa application is not made. The Minister is not obliged to deal with a visa application that is not a valid application.

Item 21 At the end of section 63

40 New subsection 63(4) provides that where the Minister must give a notice under section 64 (see Item 22), the visa is not to be refused until whichever of the following occurs first:

the applicant pays the full amount of the visa application charge;

the applicant informs the Minister that the applicant does not intend to pay the visa application charge; or

the period set out in the notice has expired.

Item 22 Subsections 64(2), (3) and (5)

41 Section 64 controls the giving of a notice to visa applicants where the Minister has determined that the criteria for the grant of a visa have been satisfied.

42 Existing subsections 64(2), (3) and (5) are repealed. Subsections 64(2) and (3) are no longer needed because the English Education Charge and the Health Services Charge are not required to be paid with respect to visa applications that are made after the commencement of this Act. Transitional provisions (see Item 28) preserve the operation of these provisions for visa applications that were made but not decided before the commencement of this Act.

43 New subsection 64(2) provides that where all the other criteria for the grant of a visa are satisfied but an amount of the visa application charge which is payable in respect of the application, but has not yet been paid, the Minister must give the visa applicant a notice stating that an amount of the visa application charge is still payable, that a visa cannot be granted unless it is paid, and that non-payment within the prescribed period will allow the Minister to refuse the application.

44 New subsection 64(3) permits the Minister to give a single notice to two or more persons who have made combined applications in circumstances that are permitted by the regulations.

Item 23 Subparagraph 65(1)(a)(iv)

45 Section 65 requires the Minister to grant a visa if all the criteria for grant of the visa are satisfied and the grant of the visa is not otherwise barred by the legislation.

46 Existing subparagraph 65(1)(a)(iv), which refers to the English Education Charge and the Health Services Charge, is omitted because those charges will not apply to visa applications made after the commencement of this Act.

47 New subparagraph 65(1)(a)(iv) substitutes a similar provision requiring the payment of any amount of the visa application charge that is payable before a visa can be granted.

Item 24 Subparagraph 504(1)(a)(iii)

48 Section 504 contains a regulation-making power that is used to make regulations prescribing many procedures in support of activities authorised by the Migration Act.

49 Existing paragraph 504(1)(a)(iii) is amended to remove the reference to fees for visa applications (which will now be subject to the visa application charge, and to regulations made under new section 45C) and to substitute a general power with respect to fees.

Item 25 Subparagraph 504(1)(a)(iv)

50 Existing paragraph 504(1)(a)(iv) is amended to remove the reference to persons to whom fees for visa applications may be paid (which will now be subject to regulations made under new section 45C) and to substitute a power with respect to the persons to whom any kind of fee payable under the *Migration Act 1958* may be paid.

MIGRATION (HEALTH SERVICES) CHARGE ACT 1991

Item 26 Subsection 5(1)

51 Subsection 5(1) is amended to ensure that the charge imposed under *Migration (Health Services) Charge Act 1991* will cease to apply after the commencement of the visa application charge. This prevents double liability.

PART 2 - Application and transitional

Item 27 Application

52 Subclause (1) provides that the amendments made by Item 13 of this Schedule, which limits the obligation of the Commonwealth to provide English language tuition to certain visa applicants, will apply to all visa applications including those made before the commencement of this Act.

53 Subclause (2) provides that the remaining amendments in this Schedule will only apply to visa applications that are made after the commencement of the *Migration (Visa Application) Charge Act 1996* which imposes the visa application charge. Where a valid visa application was made before the commencement of this Act there will still be liability to pay the English Education Charge and the Health Services Charge, and the provisions of the Migration Act and the Immigration Education Act that are amended by this Act will continue to operate in their unamended form.

Item 28 Transitional

54 This item provides that a visa application is taken to have been made after the commencement of the *Migration (Visa Application) Charge Act 1996* if the visa application was made before the commencement of that Act but was not a valid application because the relevant visa application fee has not been paid in full.

55 This provision ensures that the visa applicant will be liable to pay the visa application charge, but will not be liable to pay the English Education Charge or Health Services Charge.

SCHEDULE 2 - Amendments related to limits on visas

MIGRATION ACT 1958

Item 1 Subsection 39(1)

56 This item repeals subsection 39(1) and substitutes new subsections 39(1), (1A) and (1B).

57 Subsection 39(1), as it currently stands, provides that a prescribed criterion for visas of a class (other than protection visas) may be that the grant of the visa would not cause the total number of visas of that class to exceed a numerical limit set by the Minister by a Gazette notice. The proposed amendments remove the link to a prescribed criterion and replace it with a more flexible means of balancing the Migration Program through the capping of visa classes.

58 The effect of proposed subsection 39(1) is to ensure that the Minister may place limits on the grant of visas of a specified class, or in specified classes. This limit may be numerical, or may take the form of a date after which no visas of the specified class, or specified classes, may be granted. The limit may also be in a form which combines both a numerical limit and a date after which no visas of the specified class, or specified classes, may be granted.

59 Protection visas will continue to be exempt from any determination made by the Minister under proposed subsection 39(1).

60 The effect of proposed subsection 39(1A) is to make clear that, once the numerical limit on visas determined by the Minister has been reached, no further visas of the specified class or classes may be granted. This bar to the grant of further visas is subject to the Minister's determination being revoked pursuant to proposed subsection 39(3).

61 The effect of proposed subsection 39(1B) is to make clear that, once the date determined by the Minister as the date after which no visas of the specified class or classes may be granted has passed, no further visas of that class or those classes may be granted. This bar to the grant of further visas is subject to the Minister's determination being revoked pursuant to proposed subsection 39(3).

62 The effect of determinations made by the Minister under the proposed amendments will extend to all relevant visa applications which are not finally determined, including applications lodged before commencement of the amendments.

Item 2 Subsection 39(2)

63 This item makes a consequential amendment to subsection 39(2). This amendment is required following the insertion into section 39 of new subsections (1A) and (1B).

Item 3 At the end of subsection 39(2)

64 This item makes a consequential amendment to subsection 39(2). This amendment is required because of the insertion into section 39 of a specific power to revoke determinations made by the Minister. This power is found in the proposed new subsection 39(3) which is inserted by Item 4.

Item 4 At the end of section 39

65 This item adds new subsections 39(3) and (4).

66 The proposed subsection 39(3) creates a specific power for the Minister to revoke determinations made under subsection 39(1). Under this power the determinations may be revoked at any time, even if:

the numerical limit on the grant of visas specified in the determination has been reached; or

the date specified in the determination as the date after which no visas may be granted has passed.

67 The proposed subsection 39(4) clarifies the effect of a decision to revoke a determination. It provides that the Minister may make further determinations applying to visas of the class or classes to which the revoked determination applied. It further provides that any new determination may be in the same notice as the revocation.

Item 5 Subsection 63(1)

68 This item makes a consequential amendment to subsection 63(1). This amendment is required because of a minor change to the heading of section 39 (which is referred to in subsection 63(1)).

Item 6 Subsection 84(3)

69 This item repeals subsection 84(3). Subsection 84(3) provides, for certain persons, what amounts to an exemption from any determination of the Minister to suspend processing of visa applications. The exemption extends to persons whose application for a visa was made on the grounds that they were a spouse, dependent child or aged parent of a citizen or lawful permanent resident of Australia.

70 Repeal of subsection 84(3) will allow the Minister to ensure that the Government can determine the numbers of visas to be granted in each category of the Migration Program.

Item 7 Subsection 84(5)

71 This item repeals subsection 84(5). The repeal of this subsection is consequential to the repeal of subsection 84(3).

Item 8 Section 85

72 This item substitutes new paragraphs 85(a) and (b). The effect of proposed paragraphs 85(a) and (b) is to ensure that the Minister may place limits on the grant of visas of a specified class, or in specified classes. This limit may be numerical, or may take the form of a date after which no visas of the specified class, or specified classes, may be granted. The limit may also be in a form which combines both a numerical limit and a date after which no visas of the specified class, or specified classes, may be granted.

73 Determinations made by the Minister under the proposed amendments will extend to all relevant visa applications which are not finally determined, including applications lodged before commencement of the amendments.

Item 9 Section 86

74 This item makes a consequential amendment to section 86. The amendment is required because the proposed section 87 creates a specific power for the Minister to revoke determinations.

75 Section 86 provides a bar to the grant of further visas once a numerical limit in a determination has been reached (or a date mentioned in a determination has passed). The effect of the proposed amendment is to make the bar to grant of visas inoperative where the relevant determination is revoked.

Item 10 Section 86

76 This item adds new subsection 86(2). The effect of proposed subsection 86(2) is to make clear that, once the date determined by the Minister as the date after which no visas of the specified class or classes may be granted has passed, no further visas of that class or those classes may be granted. This bar to the grant of further visas is subject to the Minister's determination being revoked pursuant to proposed section 87.

Item 11 Section 87

77 Item 11 repeals section 87 and substitutes a new section 87.

78 The existing section 87 provides, for certain persons, what amounts to an exemption from any determination of the Minister of the maximum number of visas of a specified class or classes that may be granted in a specified financial year. The exemption extends to persons whose application for a visa was made on the grounds that they were a spouse, dependent child or aged parent of a citizen or lawful permanent resident of Australia.

79 Repeal of section 87 will allow the Minister to ensure that the Government can determine numbers of visas in each category of the Migration Program.

80 The proposed subsection 87(1) creates a specific power for the Minister to revoke determinations made under section 85. Under this power the determinations may be revoked at any time, even if:

- the numerical limit on the grant of visas specified in the determination has been reached; or

  the date specified in the determination as the date after which no visas may be granted has passed.

81 The proposed subsection 87(2) clarifies the effect of a decision to revoke a determination. It provides that the Minister may make further determinations applying to visas of the class or classes to which the revoked determination applied. It further provides that any new determination may be in the same notice as the revocation.

Item 12 Transitional - notices under section 39

82 This item provides transitional arrangements for *Gazette* notices which were made under section 39 before commencement of this provision. Where such a notice is in force, it will be taken to have been made under the proposed section 39(1).

83 The *Gazette* notice will then have effect as a notice under section 39(1) which specifies the number of visas of the class mentioned in the notice, that may be granted in the financial year mentioned in the notice.

SCHEDULE 3 - Amendments related to marital status

MIGRATION ACT 1958

Item 1 At the end of the Act

84 This item adds new section 507 to the Act. The proposed section provides that, to the extent that the *Sex Discrimination Act 1984* applies to the status or condition of being married or being the de facto spouse of another person, it will not operate in relation to allowing the regulations to specify certain characteristics before a person will be taken to be the de facto spouse of another person. It will also not operate in relation to the consequent administration of those regulations.

85 The objective of the new section is to allow for differential treatment of people who are married (as opposed to people who are in de facto relationships) in those parts of the Migration Regulations dealing with applications for visas.

86 For example, the proposed section will permit the regulations to require a 2 year cohabitation period as evidence that a de facto relationship exists. It is believed that couples who have already demonstrated their long-term commitment to each other through marriage should not have to meet any such 2 year cohabitation period requirement. As there would be no similar cohabitation requirement for married couples, such a provision in the Migration Regulations would treat married people differently to people in other relationships.

87 The proposed section makes clear that no question of unlawfulness under the *Sex Discrimination Act 1984* arises by requiring, for example, a 2 year cohabitation period as evidence that people are in a de facto relationship.

SCHEDULE 4 - Amendment of the *Australian Citizenship Act 1948* and the *Migration Act 1958* in relation to deprivation of citizenship

PART 1 - Amendment of the *Australian Citizenship Act 1948*

Item 1 At the end of subparagraph 21(1)(a)(ii)

88 This amendment is consequential to the insertion of an express ground for the deprivation of citizenship where the citizenship was obtained as a result of migration-related fraud - see Item 2.

Item 2 After subparagraph 21(1)(a)(ii)

89 This amendment inserts an express ground for the deprivation of citizenship where the citizenship was obtained as a result of migration-related fraud. This ground is in addition to the two existing grounds for deprivation of citizenship, namely:

fraud in relation to the application for the certificate of Australian citizenship; and

a conviction for a serious offence after applying for a certificate of Australian citizenship where the offence was committed before the grant of citizenship.

90 The provision will operate prospectively. The power to deprive a person of citizenship, where the certificate was obtained as a result of migration-related fraud, will only be enlivened where the person applied for the certificate after the commencement of the amendment.

Item 3 After subsection 21(1)

91 New subsection 21(1A) sets out the circumstances in which a person is taken, for the purposes of new subparagraph 21(1)(a)(iii), to have obtained a certificate of Australian citizenship as a result of migration-related fraud.

92 One requirement is that the person must be convicted of an offence.

93 The relevant offences under the *Migration Act 1958* are:

section 234, which makes it an offence to present forged documents, make false or misleading statements, or present false or misleading documents, in connection with entering Australia or applying for a visa;

section 236, which makes it an offence to use or possess another person's visa;

section 243, which makes it an offence to apply for a visa on the basis of a de facto relationship or marriage where the applicant does not intend to live in a genuine and continuing relationship with the spouse; and

section 244, which makes it an offence to apply for a visa on the basis of an interdependency relationship where the applicant does not intend to have such a relationship with the other person that is genuine and continuing.

94 The relevant offences under the *Crimes Act 1914* are:

section 29A, which makes it an offence, amongst other things, to obtain a benefit from the Commonwealth by any false pretences. An Australian visa is such a "benefit";

section 29B, which makes it an offence to make false representation to the Commonwealth with a view to obtaining, amongst other things, a benefit; and

section 29D, which makes it an offence to defraud the Commonwealth.

95 The other requirements for establishing that a person is taken to have obtained a certificate of Australian citizenship as a result of migration-related fraud are that:

the person was convicted of a relevant offence at any time before, at or after the time the person applied for the certificate of citizenship (including after the grant of the certificate); and

the offence was committed before the grant of citizenship (including a time before the making of the application for citizenship); and

the offence relates to the person's entry to Australia, or to a visa that was held by the person, or to an equivalent form of permission to enter and remain in Australia under previous migration legislation.

96 The purpose of new subsection 21(1B) is to limit the power to deprive persons of citizenship on the ground of migration-related fraud where the offence (in new paragraph 21(1A)(a)) has no connection to the person becoming an Australian permanent resident. For the grant of a certificate of Australian citizenship it is a requirement under paragraph 13(1)(a) that the person be a permanent resident as defined in section 5A of the *Australian Citizenship Act 1948.*

97 The amendment will not enable the deprivation of citizenship where the offence is unrelated to the person's coming into and presence in Australia (unless the offence is a serious offence as set out in subparagraph 21(1)(a)(ii), such as where the person is sentenced to 12 months or more imprisonment).

Item 4 Subsection 50(2)

98 This amendment is consequential to the insertion of a new time limitation for commencing prosecution in item 5.

Item 5 At the end of section 50

99 The purpose of this amendment is to remove the time limitation on commencing prosecution for an offence in relation to a person's application for a certificate of citizenship.

100 Prosecution may be commenced at any time. As a conviction for an offence in relation to an application for a certificate of citizenship enlivens the power to deprive a person of citizenship under section 21, the amendment will have consequential effect on the exercise of the deprivation power. The new provision operates prospectively.

PART 2 - Amendment of the *Migration Act 1958*

Item 6 Section 492

101 This amendment is consequential to the insertion of a new time limit for commencing prosecution in Item 7.

Item 7 At the end of section 492

102 New subsection 492(2) removes the time limitation on commencing prosecution for four offences:

section 234 (False papers etc.);

section 236 (Offences relating to visas);

- section 243 (Offences relating to application for permanent residence because of marriage or de facto relationship); and
- section 244 (Offences relating to an application for permanent residence because of interdependency relationship).

103 Prosecution for any of these offences may be commenced at any time.

104 A conviction for any of these offences may be relevant to the ground for depriving a person of citizenship set out in new subparagraph 21(1)(a)(iii). If the person is found to have obtained a certificate of Australian citizenship as a result of migration-related fraud, then the power to deprive the person of citizenship is enlivened.

105 Removing the time limit on prosecution for these offences enables the Minister to exercise the power to deprive a person of citizenship without time limitation. The new provision operates prospectively.

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