

Chapter 2

Provisions

2.1 The majority of the provisions in the Bill are consequential or transitional amendments which flow from Item 4 and Item 6 of Schedule 1.

2.2 Item 4 repeals paragraph 36(2)(aa). The purpose of this amendment is to give effect to the government's policy intention that complementary protection claims should be considered administratively and not as part of statutory criterion for the grant of a protection visa.

2.3 This paragraph establishes the criterion for the grant of a protection visa on the grounds of complementary protection. The paragraph provides that a criterion for a protection visa is that the applicant is a non-citizen in Australia, in respect of whom the minister is satisfied Australia has protection obligations because the minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm. Significant harm is defined in subsection 36(2A).

2.4 Item 6 repeals paragraph 36(2)(c) which extends the availability of protection visas to family members of those found eligible for complementary protection visas under paragraph 36(2)(aa).

2.5 Item 17 repeals and replaces paragraphs 411(1)(c) and 411(1)(d). These are consequential amendments as a result of the repeal of section 36(2)(aa) by Item 4. Section 411 of the Migration Act deals with decisions which are reviewable by the Refugee Review Tribunal (RRT). Decisions relating to applications for protection visas on the grounds of complementary protection under section 36(2)(aa) are currently reviewable in the RRT.

2.6 Item 18 repeals and replaces paragraphs 500(1)(c). These are consequential amendments as a result of the repeal of section 36(2)(c) by Item 6. Section 501 of the Migration Act deals with decisions which are reviewable by the Administrative Appeals Tribunal (AAT). Decisions relating to applications for protection visas for family members of individuals seeking complementary protection are currently reviewable in the AAT.

2.7 Item 20 sets out the application of the amendments. This item provides that the amendments would apply to any application for a protection visa made after the commencement of this Bill, or any application made prior to the commencement of this Bill, where there has been no primary decision made on that application.

