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## **Migration Act 1958 - Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year - IMMI 14/026 [F2014L00224]**

*Portfolio: Immigration and Border Protection*

*Authorising legislation: Migration Act 1958*

*Last day to disallow: Exempt from disallowance*

### **Purpose**

2.46 The Migration Act 1958 - Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year - IMMI 14/026 operates to set the cap for the Protection (Class XA) visa (protection visa). It determines that the maximum number of protection visas that may be granted in the financial year 1 July 2013 to 30 June 2014 is 2773.<sup>1</sup> The instrument applies to all applicants who have applied for a protection visa, including applicants who have applied before the implementation of this cap.

### **Background**

2.47 The committee reported on the instrument in its *Fifth Report of the 44th Parliament*.

### **Committee view on compatibility**

#### ***Multiple rights***

##### *Statement of compatibility*

2.48 The committee noted that is commented on a substantially similar instrument in its *Second Report of the 44th Parliament*.<sup>2</sup> The committee also noted that a human rights compatibility assessment addressing that committee's previously identified concerns had not been provided with this instrument. The committee reiterated its view that legislative instruments which have the potential to limit human rights should be accompanied by a statement of compatibility, even if one is not technically required under the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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1 Section 85 of the Migration Act 1958 provides that the Minister may determine by instrument in writing the maximum number of the visas of a specified class that may be granted in a specified financial year.

2 Parliamentary Joint Committee on Human Rights, *Second Report of the 44th Parliament*, 11 February 2014, pp 101-102.

2.49 The committee also sought further information from the Minister for Immigration and Border Protection in regards to the following issues:

- whether the cap of 2773 determined for this financial year has already been reached;
- and if so, whether the capping on the issuing of protection visas to those held in immigration detention is compatible with the prohibition on arbitrary detention, the right to humane treatment, the right to health, and children's rights;
- whether the capping on the issuing of protection visas to those who are in the community on bridging visas is compatible with the right to work, the right to social security, and the right to an adequate standard of living; and
- whether the capping on the issuing of protection visas is compatible with rights relating to the protection of the family.

### **Minister's response**

The Government will continue to abide by section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, which outlines when Statements of Compatibility are required to be prepared. This instrument does not fall within the scope of section 9 and therefore does not require a Statement of Compatibility; therefore I do not propose to respond to questions in relation to this instrument.<sup>3</sup>

### **Committee response**

**2.50 The committee thanks the Minister for Immigration and Border protection for his response and has concluded its examination of this instrument.**

**2.51 However, the committee notes that its mandate derives from the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act). Section 7 of the Act states that the committee may examine 'legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both House of the Parliament on that issue.' The committee is therefore required to examine instruments exempt from disallowance.**

**2.52 While the committee acknowledges that the provision of a statement of compatibility is not required for instruments that are exempt from disallowance, the committee routinely provides the proponent of the legislation with the opportunity to provide a statement of compatibility, or further information before determining whether legislation is compatible with human rights. This approach**

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3 See Appendix 2, Letter from the Hon Scott Morrison MP, Minister for Immigration and Border Protection to Senator Dean Smith, 15 April 2014, p. 8.

supports the committee in fulfilling its statutory obligation to assess exempt instruments for compatibility with human rights, and provides a proponent with the opportunity to ensure that the committee's assessment is informed by the views of the proponent. The committee regards this as a best-practice approach, and notes that a number of departments routinely provide statements of compatibility for exempt instruments, notwithstanding there is no legal requirement to do so.

**2.53** The committee notes that the Minister for Immigration and Border Protection has declined the request to provide a statement of compatibility for the instrument, and to provide information in response to the committee's request.

**2.54** On the basis of the information provided, the committee is unable to determine that the Migration Act 1958 - Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year - IMMI 14/026 [F2014L00224] is compatible with human rights.