



Migration Amendment (Visa Integrity) Bill 2006

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Law and Bills Digest Section

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Migration Amendment (Visa Integrity) Bill 2006

Date introduced: 21 June 2006

House: The Senate

Portfolio: Immigration and Multicultural Affairs

Commencement: Sections 1 to 3 and Schedule 2 commence of the date of Royal Assent. Schedules 1, 3 and 4 commence on a day to be fixed by proclamation or 6 months after the date of Royal Assent, whichever comes first.

Purpose

When introducing the Migration Amendment (Visa Integrity) Bill 2006 (the Bill) to the Senate, Senator Eric Abetz stated:

This bill makes several minor amendments to the *Migration Act 1958* which are designed to clarify current procedures, maintain the integrity of various provisions of the Act, and ensure that certain provisions in the Act operate as originally intended.¹

The Bill is intended to:

- provide certainty in relation to the immigration clearance and immigration status of non-citizen children born in Australia
- harmonise certain offence provisions with the Criminal Code
- amend section 269 to ensure that a security may be imposed for compliance with visa conditions before grant, and
- clarify certain provisions in relation to Bridging Visas to ensure that a person who leaves and re-enters Australia on a Bridging Visa B cannot avoid the provisions of section 48; and ensure that a Bridging Visa which ceases when an event occurs will cease the moment the event occurs rather than at the end of that day.²

Background

Basis of policy commitment

This Bill revives some of the provisions of the [Migration Legislation Amendment Bill \(No. 1\) 2002](#) (note Schedules 1, 2, 5 and 6).

The 2002 Bill was introduced to the House of Representatives on 13 March 2002. It was referred to the Senate Legal and Constitutional Legislation Committee ('SLCL Committee') on 20 March 2002; which reported after an extension on 18 June 2002.

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See further:

Natasha Cica and Nathan Hancock, 'Migration Legislation Amendment Bill (No. 1) 2002', [Bills Digest](#), No. 21 (2002-03), 21 August 2002.³

Senate Legal and Constitutional Legislation Committee, Consideration of Legislation Referred to the Committee – [Provisions of the Migration Legislation Amendment Bill \(No 1\) 2002](#), June 2002.

On 12 December 2002, the last day of the 2002 sittings the Bill was debated and some technical Government amendments were made in the House.⁴ The Bill itself was uncontroversial but there was a long debate about children in immigration detention in the House. The ALP sought to pass the following amendment in relation to children in immigration detention:

These amendments provide that for an unaccompanied detained child—a detained child who does not have a guardian with them, and we have used the definition of non-citizen child arising out of the *Immigration (Guardianship of Children) Act 1946*—the government would be compelled as a matter of law, as soon as possible after the commencement of detention, under section 189 of the Migration Act to release that unaccompanied detained child into the care of a foster family or other appropriate community based care arrangement, determined by an appropriately qualified child protection officer.⁵

The ALP amendment failed. On 5 February 2003, the Bill was introduced to Senate but then lapsed.

Note that Detention of children in Australian centres is now subject to *Migration Amendment (Detention Arrangements) Act 2005* (note [Bills Digest no. 190](#) 2004-2005)

This Bill does not resolve constitutional issues around the deportation of Australian-born children. See further Peter Prince, [We are Australian—The Constitution and Deportation of Australian-born Children](#), *Research Paper No. 3* (2003-04), 24 November 2003.

Financial implications

The Explanatory Memorandum states that these amendments will have minimal financial impact.⁶

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Main provisions

Schedule 1 – Amendments to the Migration Act 1958: Immigration clearance status of non-citizen children born in Australia

Item 1 of Schedule 1 deals with 'birth entry' and immigration clearance status.

Australian migration legislation draws a distinction between entry and immigration clearance, and between lawful non-citizens and immigration cleared non-citizens. A person 'enters Australia' if they 'enter the migration zone' (section 5). A person is 'immigration cleared' if they 'enter Australia' at a port or prescribed place, provide evidence of their identity and visa, and leave with permission of a clearance officer (except to be in immigration detention) (paragraphs 172(1)(a) and (b)). A person is also immigration cleared if they are initially refused or bypass immigration clearance, *but* are subsequently granted a 'substantive visa' (paragraph 172(1)(c)). Similarly, a lawful non-citizen is a non-citizen in the migration zone who *holds a valid visa* (section 13). An immigration cleared non-citizen is a non-citizen in the migration zone who has been *immigration cleared* (subsection 172(1)).

A non-citizen child who is born in the 'migration zone' is taken to have 'entered Australia' when s/he was born (section 10). These children are taken to hold a visa on a similar basis as their parents (section 78). However, there is currently no provision clarifying the immigration clearance status of non-citizen children who were born in Australia. This Bill seeks to address that legal silence.

Immigration clearance is one of the various circumstances which affect a non-citizen's access to visas under the *Migration Regulations 1994* (see section 40 of the Act), especially bridging visas. Immigration clearance also affects immigration detention. An unlawful non-citizen, that is a non-citizen in the 'migration zone' without a visa, must be detained (section 189). A lawful non-citizen may be detained if they hold a visa that may be cancelled (subsection 192(1)). An immigration cleared non-citizen may only be detained if they are likely to attempt to evade or otherwise not cooperate with immigration officers (subsection 192(2)).

Immigration clearance also affects access to visas in relation to safe third country rules. If a non-citizen is covered by an agreement between Australia and a 'safe third country', their access to visas will be substantially diminished (Part 2, Division 3, Subdivision AI). If they have been immigration cleared, they are prevented from applying for protection visas. If they have not been cleared they may not apply for any visa at all (section 91E). Similar restrictions on access to visas apply if a non-citizen is a national of two or more countries or has a right of entry into a declared safe third country (section 91P).

Immigration clearance also affects cancellation of visas. The general power to cancel visas - for example, because of non-compliance with visa conditions - does not apply to

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permanent visas if the visa holder is in the migration zone and has been immigration cleared (subsection 117(2)).

Significantly, immigration clearance also affects review rights. Generally, the Migration Review Tribunal (MRT) may not review a decision to refuse to grant or to cancel an onshore visa if that decision was made before the person was immigration cleared (subsections 338(2) and (3)).

Item 1 inserts **proposed paragraph 172(1)(ba)**, which provides that a non-citizen child who is born in Australia is immigration cleared if, at the time of his or her birth, at least one of the child's parents was immigration cleared on their last entry into Australia.

There are two limitations to this change. As the Explanatory Memorandum notes, the proposed change only applies to non-citizen children *on their birth entry to Australia*, and 'does not provide immigration clearance for any subsequent entry to Australia'.⁷

Second, the exemption only applies to children who are born to parents one of which *has been immigration cleared*.

In its 2002 submission to the Senate Legal and Constitutional Legislation Committee, the International Commission of Jurists (Australian Section) raised the issue of children who are born to parents who become immigration cleared at a later date:

We suggest that there needs to be an ... amendment following 172(c). This would provide immigration clearance for children who were born ... to parents who bypassed ... clearance who were subsequently granted a substantive visa. Under the current legislation, a child born to a person who arrived as a stowaway, or on a false document, and was later granted a substantive visa, is not immigration cleared. The child is not covered by the visa if he/she was born prior to the date of the visa.⁸

This suggestion was not taken up by the Senate Committee in its 2002 recommendations⁹ and does not appear in this Bill.

Item 2 of Schedule 1 states that the amendment made by **item 1**, discussed above, applies only to a non-citizen child who was born in Australia on or after **1 September 1994**. The Explanatory Memorandum states that this date 'corresponds with the introduction of the concept of 'immigration clearance' into the Act by the *Migration Reform Act 1992*.'¹⁰

Children born in Australia protected by parents' visa(s)

Item 5 of Schedule 1 introduces **proposed subsection 173(2)** into the Act.

This item addresses an anomaly between the notion of birth entry and the requirement to enter via a port.

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As noted above, a non-citizen child who is born in Australia is taken to hold a visa on a similar basis as his or her parents (section 78). However, strictly speaking, a visa holder usually enters Australia at a port or on a pre-cleared flight (section 43). Entry which fails to comply with these requirements invalidates the visa (section 174). In other words, 'birth entry' of a non-citizen child technically seems to be an entry that offends section 43 of the Act.¹¹

Proposed subsection 173(2) states that these non-citizen children are not to be taken, by virtue of that birth, to have entered Australia in a way that contravenes section 43.

Item 6 of Schedule 1 states that the amendment made by **Item 5**, discussed above, applies only to a non-citizen child who was born in Australia on or after **1 September 1994**, and who is taken to have been granted a visa or visas under section 78 of the Act. The Explanatory Memorandum states that this date 'corresponds with the introduction of the relevant provisions (ceasing visas where the holder fails to enter Australia at a port or on a pre-cleared flight) into the Act by the *Migration Reform Act 1992*.'¹²

Immigration clearance if in a prescribed class of persons

Item 3 of Schedule 1 introduces **proposed paragraph 172(1)(d)** into the Act. It creates a new category of circumstances in which a non-citizen is deemed to be immigration cleared – namely, if that person is in a 'prescribed class of persons.'

It is not clear why this provision has been included in **Schedule 1**, which otherwise seems broadly designed to clarify apparent anomalies in the immigration clearance status of non-citizen children born in Australia. The Bill's Second Reading Speech does not refer to this item. The Explanatory Memorandum does, and says the following:

The purpose of new paragraph 172 (1)(d) is to provide flexibility to prescribe in the *Migration Regulations 1994* ('the Regulations'), where necessary in the future, further classes of persons who are immigration cleared for the purposes of section 172.¹³

No further clarification has been offered of the kind of situations in which it is envisaged this new power may be exercised. Note a similar type of Ministerial discretion in the proposed Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 (see Schedule 1, Item 8, new paragraphs 5F(2)(d) and 5F(2)(e)).

Schedule 2 – Amendments to the *Migration Act 1958*: Criminal Code harmonisation

The Second Reading Speech states that **Schedule 2** corrects any 'unintended consequences of the harmonisation process' between the offence provisions in the Migration Act and the Commonwealth Criminal Code carried out in 2001.¹⁴

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People smuggling offences in sections 229(1), 232(1B) and 232A(2): a reversed onus of proof

The Act contains various offences relating to the ‘unlawful’ entry of non-citizens into Australia. Whilst it is *not* an offence for a non-citizen to arrive in Australia without a visa, it *is* an offence for a person to be involved in bringing such non-citizens to Australia.

There is a lack of clarity in relation to the evidential burden in relation to exemptions to some of these offences.

Absolute liability as set out by section 6.2 of the Criminal Code means that (a) there are no fault elements for any of the physical elements of the offence; and (b) the defence of mistake of fact under section 9.2 is unavailable.

Strict liability under section 6.1 of the Criminal Code sets out that (a) there are no fault elements for any of the physical elements of the offence; but (b) the defence of mistake of fact under section 9.2 is available. All other defences apply to both strict and absolute liability offences.

Subsection 229(1) of the Act makes it an offence for the carriers of non-citizens – defined as the master, owner, agent, charterer and operator of a vessel - to bring a non-citizen into Australia, *unless* any one of the circumstances in paragraphs 229(1)(a)-(e) applies. In sum, these circumstances are: the non-citizen holds a valid visa, is eligible for a special purpose or special category visa, or is covered by an exemption (set out in subsections 42(2), (2A) and (3)) from the requirement to hold a visa. The offence is one of *absolute liability*, subject to defences established in subsection 229(5), which describe circumstances that overlap considerably with the circumstances set out in paragraphs 229(1)(a)-(e). The onus of proof is on the defendant in respect of establishing these defences (subsection 229(6)).

The section 42 exemptions cover an inhabitant of the Protected Zone travelling to a protected area in connection with traditional activities (subsection 42(2)); New Zealanders, Norfolk Islanders and certain compliance cases (subsection 42(2A)); and any class of person covered by regulations (subsection 42(3)).

The stated issue in relation to this offence is ‘whether the matters in paragraphs 229(1)(a) to (e) constitute matters of exception or elements of the offence in subsection 229(1).’¹⁵ As noted, guilt is imposed ‘*unless*’ various circumstances exist. This can be interpreted as imposing guilt on a defendant ‘*unless*’ s/he puts in evidence regarding those circumstances. This evidential burden overlaps with the defences in section 229. The Explanatory Memorandum states that this overlap, and the very wide potential operation of the offence, are unintended consequences.¹⁶

Items 1 and 2 of Schedule 2 clarify that the matters in paragraphs 229(1)(a)-(e) are matters of the offence. Thus guilt is imposed ‘*if*’ the various circumstances in paragraphs 229(1)(a)-(e) do not exist. This removes the unintended consequences described above.

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Item 3 of Schedule 2 preserves the reversal of the onus of proof relating to the exemptions in subsections 42(2)-(3).

The defendant retains the evidential burden in respect of the exemption from the requirement to hold a visa. As the Explanatory Memorandum explains, '[t]his means that the defendant must adduce or point to evidence that suggests a reasonable possibility that the matters in subsections 42(2), (2A) or (3) exist'.¹⁷ If this is done, then the prosecution must prove beyond reasonable doubt that these matters do not exist.

Item 4 applies to a similar *absolute liability* offence established by section 232. This offence applies to the master, owner, agent and charterer of a vessel, where a non-citizen has entered Australia on the vessel without a valid visa, unless s/he is covered by an exemption (set out in subsections 42(2), (2A) and (3)) from the requirement to hold a visa. The offence also applies where a non-citizen has left the vessel in Australia (otherwise than in immigration detention) where s/he has been placed on the vessel for removal or deportation from Australia.

Proposed subsection 232(1B) makes it clear that the evidential burden is on the defendant in relation to establishing that one of the exemptions contained in subsections 42(2) to (3) applies. The Explanatory Memorandum states that this is 'consistent with subsection 13.3(3) of the *Criminal Code*, which provides that a defendant bears an evidential burden in relation to any matters of exception to an offence.'¹⁸

Items 5 and 6 apply to an offence established by section 232A, which makes it an offence to organise or facilitate bringing a group of five or more non-citizens into Australia if they have no lawful right to come to Australia. This is not an absolute liability offence; the defendant must be reckless as to whether the non-citizens had a lawful right to enter, in order for the offence to be established. Again, the offence does not apply if the non-citizen is covered by an exemption - set out in subsections 42(2), (2A) and (3) - to the requirement to hold a visa.

Proposed subsection 232A(2) makes it clear that the evidential burden is on the defendant in relation to establishing that one of the exemptions contained in subsections 42(2) to (3) applies. Again, the Explanatory Memorandum states that this is 'consistent with subsection 13.3(3) of the *Criminal Code*, which provides that a defendant bears an evidential burden in relation to any matters of exception to an offence.'¹⁹

People smuggling offence in s 233(1)(a) – strict liability

Existing paragraph 233(1)(a) of the Act establishes another people smuggling offence, making it offence to 'take any part' in 'the bringing or coming to Australia of a non-citizen under circumstances from which it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of this Act.' The penalty for contravening this provision is imprisonment for 10 years or 1000 penalty units, or both.

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Item 7 of Schedule 2 inserts **proposed subsection 233(1A)**, to make it clear that *strict liability* applies to this offence. As noted above, *strict liability* under section 6.1 of the Criminal Code means that (a) there are no fault elements for any of the physical elements of the offence; but (b) the defence of mistake of fact under section 9.2 is available. The Explanatory Memorandum states that this amendment is necessary to *restore* the application of strict liability to this offence.²⁰ The SLCL Committee's report noted:

The Law Institute of Victoria argued that it was inappropriate for strict liability to apply to any element of an offence which carried a penalty of 10 years in prison and/or a fine of 1000 penalty units (\$110 000).

DIMIA responded that the effect of section 233(1)(a) currently was to make it an offence for someone to participate in the bringing or coming of a non-citizen into Australia being reckless as to whether the non-citizen has a lawful right to come to Australia. It said that the Director of Public Prosecutions wrote to it in September 2001 saying that, because of the application of the Criminal Code, the offence in section 233 had been altered. The courts had interpreted the offence in s 233 as being a strict liability offence, and this had not been picked up in the harmonisation exercise that was undertaken the previous year. The amendment would ensure that the provision operated in the way it always had. It was being made a strict liability offence again.²¹

Commenting on the more general policy question of whether strict liability is appropriate where an offence carries a heavy penalty of this kind, the SLCL Committee's report continued:

DIMIA also referred to a number of provisions in Commonwealth Acts which provided for elements of offences punishable with imprisonment for 10 years or more to be subject to strict (or absolute) liability. However, most of these related to elements which might be seen as subsidiary...

On the other hand, there are some offences where (as is the case with s 233(1)(a)) the element to which strict or absolute liability applies appears to be fundamental to the criminality. ...

It appears that there are very few Commonwealth offences where strict liability applies to a fundamental element. However, as DIMIA pointed out, there is an objective element to the offence, namely, the presence of circumstances from which it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of the Migration Act. There is no such objective element in the strict/absolute liability offences mentioned in paragraphs 2.17-2.18 above. The presence of this objective element in an offence against s 233(1)(a) means that substituting strict liability for recklessness will not greatly reduce the burden on the prosecution

The Committee notes concerns in respect of strict liability raised in other reports of this Committee and of the Scrutiny of Bills Committee. However, in this instance, the change from recklessness to strict liability is justified in the current context. Having

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regard to the above considerations and to the fact that the maximum penalty had already been set at its current level by the *Migration Legislation Amendment Act No 1) 1999* on 22 July 1999 (i.e. before the Application of Criminal Code Act took effect in 2001), the Committee is satisfied that the maximum penalty for the offence is not unacceptably harsh.²²

A different view on this matter was expressed by (then) Australian Labor Party Senator Barney Cooney, in his comments appended to the SLCL Committee's report:

The legislation attaches strict liability to elements of offences set out in sections 233 and 241 of the Migration Act 1958. These crimes carry a maximum penalty of 10 years. It is exceptional for strict liability to be assigned to elements of offences as serious as these. However there is now a trend for this to happen with Commonwealth legislation. This is unacceptable and should be rejected. Most serious crime is dealt with by State and Territory Parliaments and Governments and they appear to be able to cope with it without resorting to strict liability. The Federal Bodies seem to lack the same ability.²³

In his own appended comments, Australian Democrats Senator Andrew Bartlett expressed his support for the conclusions and recommendations contained in the main report of the SLCL Committee, but additionally stated that he retained 'some concerns regarding the implications and potential application of the amendments that introduce strict liability ... My concern is that the penalty for such offences may in some circumstances far outweigh what may be just and reasonable in the circumstances.'²⁴

Other offences

Items 8–11 of Schedule 2 make amendments to subsections 268BJ(1) and 268CN(1) and to section 268CM of the Act in relation to compliance with the requests of *authorised officers*; more detail is given in the Explanatory Memorandum. These proposed changes do not seem to be contentious.

Schedule 3 – Amendment to *Migration Act 1958*: The taking of securities

Generally, an authorized officer may take securities to ensure a person's compliance with any condition imposed in pursuance of the Act or Regulations (subsection 269(1)). If a person fails to comply with a condition of a security, the full amount may be recovered in a court against any or all of the parties or subscribers to the security (subsection 269(4)).

While it is implied in section 269, the provision is not specific as to the taking of securities *before* visa applications are determined. The issue arose in *Tutugri v. Minister for Immigration and Multicultural Affairs* [1999] FCA [1785](#), specifically, over the power of the MRT to take securities in respect of a decision under review.

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Lee J took the view that the power to take securities was specific, flowing from a power to impose conditions in the granting of a visa. The MRT's power to impose conditions was not prospective: '[t]he Tribunal was not empowered to require the applicant to provide a deposit of cash in advance of the grant of a visa and, therefore, before any condition had been imposed on the visa granted'. Neither was it retrospective: '[i]f the Tribunal made a decision to grant a visa its power would then be spent [ie, it would be *functus officio*]'.²⁵

Lee J's reasoning on the first question was that '[p]ersons providing security must know the terms of the condition that is being secured and, therefore, what act, or conduct, will amount to a failure to comply with the condition and make the security liable to forfeiture'.

In the Government's view this raises an issue in relation to the primary decision maker:

In *Tutugri v. MIMIA* [1999] FCA 1785, the Federal Court raised significant doubts about the power of an authorised officer to request and take security for compliance with conditions to be imposed on a visa before the visa is granted. This is because a condition on a visa does not bind the applicant until the visa is granted and a condition cannot be said to have been 'imposed' prior to grant.²⁶

Proposed subsection 269(1A) clarifies this matter. It provides that an authorised officer may require and take securities before a visa is granted if it is for compliance with conditions 'that will be imposed on the visa', and s/he 'has indicated those conditions to the applicant'.

It is worth noting that the prospective/retrospective argument was not the only concern raised by Lee J *Tutugri v. MIMIA*. He also noted the MRT's limited role, drawing on a basic distinction between the status of a primary decision maker and a merits review body:

The function of the Tribunal is to determine whether the decision under review was the correct or preferable decision. In carrying out that function the Tribunal may exercise the powers and discretions conferred on the person who made the decision, *limited, however, to the purpose of the review*. That is not an authority to make a new and separate decision ... [Its task] was to 'address the same question that was before the decision-maker' and not a distinct and separate question and [it] *was not able to make any decision an officer may have been authorised to make under the Act*.²⁷

Taken together, these arguments suggest that it is not appropriate for a tribunal vis-à-vis an officer to impose conditions or sanctions to ensure compliance with the visa regime. Views may differ as to whether a tribunal *can* impose sanctions that were not originally imposed by the original decision maker. But, there is a policy question as to whether a tribunal *should* be able to do so. The amendments do not seem to answer the question.

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Schedule 4 – Minor amendments to *Migration Act 1958*

Item 1 of Schedule 4 deals with the relationship between bridging visas and re-entry into Australia. Subsection 48(1) provides that a non-citizen who does not hold a substantive visa and who after last entering Australia was refused a visa may only apply for a prescribed class of visa. The Explanatory Memorandum states that currently a non-citizen who leaves and re-enters Australia on a bridging visa is able to circumvent this bar on subsequent visa applications, because, on re-entering Australia, s/he has not had a visa refused ‘after *last entering* Australia.’ The Explanatory Memorandum also states that it ‘was never intended that these bridging visa holders would not be subject to the section 48 bar.’²⁸

Item 1 introduces **proposed subsection 48(3)** to address this perceived problem, ensuring that the section 28 bar on further visa applications applies to a non-citizen who leaves and re-enters Australia as the holder of a bridging visa that allows such travel.

In its 2002 report on this Bill, the SLCL Committee noted that there had been considerable confusion about the impact of this amendment, based on a misapprehension that the new provision applied to offshore as well as onshore visa applications. The SLCL Committee discussed this in some detail in its report, and made the following recommendation:

Although the Committee is satisfied that the criticisms of proposed s 48(3) are unfounded, it notes the great amount of confusion caused by its terms. It therefore recommends that it be amended by inclusion of a description of the operation of the section along the following lines:

For the purposes of this section (which deals only with onshore applications for visas)...

(Recommendation 2)²⁹

This recommendation has not been taken up in this 2006 version of the Bill.

Item 3 inserts **new subsection 82(7A)** into the Act. **Proposed subsection (7A)** clarifies the time at which a bridging visa ceases to be in effect. It ensures that if an event happens that results in the bridging visa ceasing to permit the holder to remain in Australia or travel to, enter and remain in Australia, the person’s bridging visa ceases immediately upon the happening of that event.

Endnotes

1. Senator Eric Abetz, ‘Second reading speech’, Senate, *Debates*, 21 June 2006, p. 2.

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2. Explanatory Memorandum, p. 2.
3. The current Bills Digest reflects the language and analysis in the earlier 2002 Digest where possible for consistency.
4. See Migration Legislation Amendment (No. 1) 2002—[Supplementary Explanatory Memorandum \(Government Amendment\)](#), 13 March 2002.
5. Ms Julia Gillard, ‘Consideration in detail’, House of Representatives, *Debates*, 12 December 2002, p. 10407.
6. Explanatory Memorandum, p. 2.
7. *ibid.*, p. 4.
8. ICJ Submission No. 7, 4 April 2002, p. 3.
9. Senate Legal and Constitutional Legislation Committee, Consideration of Legislation Referred to the Committee – Provisions of the Migration Legislation Amendment Bill (No 1) 2002, June 2002, p. 7.
10. Explanatory Memorandum, p. 4.
11. *ibid.*, p. 5.
12. *ibid.*
13. *ibid.*
14. Senator Eric Abetz, ‘Second reading speech’, Senate, *Debates*, 21 June 2006, p. 2.
15. Explanatory Memorandum, paragraph 29, p. 6.
16. *ibid.*, paragraph 31, p. 6.
17. *ibid.*, paragraph 40, p. 7.
18. *ibid.*, paragraph 48, p. 8.
19. *ibid.*, paragraph 57, p. 9.
20. *ibid.*, paragraph 66, p. 10.
21. Senate Legal and Constitutional Legislation Committee, *op. cit.*, pp. 9–10.
22. *ibid.*
23. Senate Legal and Constitutional Legislation Committee, *op. cit.*, ‘Comments of Senator Cooney’, p. 15.
24. Senate Legal and Constitutional Legislation Committee, *op. cit.*, ‘Additional Comments: Australian Democrats’, p. 16.
25. *Tutugri v. Minister for Immigration and Multicultural Affairs* [1999] FCA 1785 per Lee J at [48]-[49].
26. Explanatory Memorandum, paragraph 101, p. 14.

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27. *Tutugri v. Minister for Immigration and Multicultural Affairs* [1999] FCA 1785 per Lee J at [46].
28. Explanatory Memorandum, paragraph 108, p. 16.
29. Senate Legal and Constitutional Legislation Committee, *op. cit.*, p. 14.

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