

CHAPTER 2

OVERVIEW OF THE BILL

Maritime crew visas

2.1 Item 5 of Schedule 1 of the Bill inserts new section 38B into the Migration Act. Proposed subsection 38B(1) provides for a new class of visa, the 'maritime crew visa', a class of temporary visa allowing the holder to travel to and enter Australia by sea and remain in Australia.

2.2 In the course of the second reading speech on the Bill, it was stated:

As with most other visas, the detail governing the new maritime crew visa will be set out in the Migration Regulations. In constructing the regulations for maritime crew visas, care will be taken to minimise the impact and cost to the industry after the new maritime crew visa regime commences.

The visa application process will be available electronically and there will be no charge for the visa. Shipping agents will be able to apply on behalf of members of crew.¹

Declarations in respect of maritime crew visas

2.3 The Minister may make a declaration that it is undesirable that a person, or any person in a class of persons, travel to, enter or remain in Australia (proposed subsection 38B(3)). The effect of a declaration made in respect of a person, pursuant to subsection 38B(3), is that a maritime crew visa held by that person ceases to have effect (proposed subsection 38B(4)).

2.4 The Minister may revoke a declaration made under proposed subsection 38B(4). The effect of revocation is that the Minister is taken to have never made the declaration (proposed subsection 38B(5)).

Entry into Australia on a maritime crew visa

2.5 Item 8 of Schedule 1 inserts new subsections 43(1A) and (1B) into the Migration Act.

2.6 Proposed subsection 43(1A) provides that a maritime crew visa gives the holder permission to enter Australia:

- at a proclaimed port;

1 The Hon. Kevin Andrews, Minister for Immigration and Citizenship, *House of Representatives Hansard*, 15 February 2007, p. 4.

- if the health and safety of a person make it necessary to enter Australia in another way, that way; or
- in a way authorised by an authorised officer.

2.7 Subject to proposed subsection 43(1B), the holder of a maritime crew visa is prohibited from travelling to, or entering Australia by air (proposed subsection 38B(2)). Proposed subsection 43(1B) provides that the holder of a maritime crew visa can enter Australia by air in the following circumstances:

- the health and safety of the person make it necessary to enter Australia by air (see also proposed paragraph 43(1A)(b)); or
- an authorised officer authorises the person's entry into Australia by air (see proposed paragraph 43(1A)(c)).

2.8 Proposed subsection 38B(2) does not prevent the holder of a maritime crew visa from travelling to and entering Australia by air, where they hold another visa that allows them to travel to and enter Australia by air.²

Coexistence of maritime crew visas and other substantive visas

2.9 Item 9 of Schedule 1 inserts new subsection 82(2AA) into the Migration Act. Proposed subsection 82(2AA) provides:

- a maritime crew visa held by a non-citizen does not cease to be in effect when a substantive visa for the non-citizen comes into effect; and
- a substantive visa held by a non-citizen does not cease to be in effect where a maritime crew visa for the non-citizen comes into effect.

2.10 The substantive visas which can co-exist with maritime crew visas will be specified by the Minister by legislative instrument. In the second reading speech for the Bill, the Minister outlined the reason for allowing maritime crew visas to co-exist with substantive visas:

Due to the nature of the maritime crew visa, the government has provided sufficient flexibility in the visa arrangements to enable holders of maritime crew visas to be granted certain other kinds of visas to suit the purpose of their stay in Australia.

This recognises the fact that some crew members will need to fly to Australia to join their ship here. It also takes account of the fact that maritime crew visa holders may wish to spend time in Australia for other purposes, such as holidaying.

It is anticipated that transit visas and electronic travel authorities are two such visas which will be specified by legislative instrument as able to coexist with maritime crew visas.³

2 See the note to proposed subsection 38B(2).

Offences in relation to maritime crew visas

2.11 Item 11 of Schedule 1 inserts a new subsection 229(1A) into the Migration Act. Proposed subsection 229(1A) provides that a person commits an offence if:

- (a) they are the master, owner, agent, charterer or operator of an aircraft; and
- (b) they bring a non-citizen into Australia by air; and
- (c) the non-citizen is the holder of a maritime crew visa.

2.12 Item 13 of Schedule 1 inserts a new subsection 229(5A) into the Migration Act. Proposed subsection 229(5A) sets out the defences to the offences in proposed subsection 229(1A), including:

- on boarding the aircraft to travel to Australia, the non-citizen had evidence that he or she held a class of visa, other than a maritime crew visa, which permitted him or her to travel to, and enter, Australia; or
- the aircraft entered Australia only because of illness of a passenger, or stress of weather, or other circumstances beyond the control of the master.

Amendments contingent on the Migration Amendment (Visa Integrity) Act 2007

2.13 Section 173 of the Migration Act provides that if the holder of a visa enters Australia in a way that contravenes section 43 of the Migration Act, the visa ceases to be in effect. Section 43 provides that visa holders must enter at a port or on a pre-cleared flight.⁴

2.14 The Migration Amendment (Visa Integrity) Bill 2006 proposes to insert a new subsection 173(2) into section 173 of the Migration Act.⁵ Essentially, Items 15, 16, 17 and 18 of Schedule 1 propose to insert a new subsection 173(1A) into the Migration Act. These items are drafted in such a way as to cover the following circumstances:

- where the Migration Amendment (Visa Integrity) Bill 2006 does pass, and subsection 173(2) is inserted into the Migration Act; and

3 *House of Representatives Hansard*, 15 February 2007, p. 4.

4 Migration Amendment (Visa Integrity) Bill 2006, Explanatory Memorandum, p. 5.

5 While not relevant to this Bill, new subsection 173(2) of the Migration Act is a clarifying amendment. The proposed amendment puts beyond doubt that a non-citizen child born in Australia who, under section 78, is taken to have been granted a visa or visas at the time of his or her birth, is not to be taken to have entered Australia in a way that contravenes section 43 of the Act resulting in the visa issued at birth ceasing to be in effect.

- where the Migration Amendment (Visa Integrity) Bill 2006 does not pass, and subsection 173(2) is not inserted into the Migration Act.⁶

2.15 Proposed subsection 173(1A) provides that a maritime crew visa held by a non-citizen does not cease to be in effect under section 173 (or 173(1) as the case may be) if:

- the non-citizen travels to and enters Australia by air; and
- at the time the non-citizen travels to and enters Australia, the non-citizen holds another class of visa that is in effect.

6 The Migration Amendment (Visa Integrity) Bill 2006 was introduced into the Senate on 21 June 2006 and the second reading debate was adjourned on that date. The committee tabled its report on the Migration Amendment (Visa Integrity) Bill 2006 on 11 September 2006.