

2013-2014-2015

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Migration Amendment (Complementary  
Protection and Other Measures) Bill  
2015**

**No.     , 2015**

*(Immigration and Border Protection)*

**A Bill for an Act to amend the *Migration Act 1958*,  
and for related purposes**



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1     **A Bill for an Act to amend the *Migration Act 1958*,**  
2     **and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Migration Amendment*  
6                     (*Complementary Protection and Other Measures*) Act 2015.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

1 **Schedule 1—Amendments**

2 **Part 1—Amendments**

3 ***Migration Act 1958***

4 **1 Subsection 5(1) (subparagraph (b)(iii) of the definition of**  
5 ***fast track decision*)**

6 Repeal the subparagraph, substitute:  
7 (iii) subsection 36(2C).

8 **2 Subsection 5(1) (definition of *significant harm*)**

9 Omit “36(2A)”, substitute “5LAA(3)”.

10 **3 Paragraph 5H(1)(a)**

11 Omit “the country of his or her nationality and, owing to a well-founded  
12 fear of persecution”, substitute “the person’s receiving country and,  
13 owing to a well-founded fear of persecution in relation to that country”.

14 **4 Paragraph 5H(1)(b)**

15 Omit “the country of his or her former habitual residence and owing to  
16 a well-founded fear of persecution”, substitute “the person’s receiving  
17 country and, owing to a well-founded fear of persecution in relation to  
18 that country”.

19 **5 Subsection 5J(1)**

20 After “*persecution*”, insert “in relation to a country”.

21 **6 Paragraph 5J(1)(b)**

22 Omit “returned to the receiving country”, substitute “were in the  
23 country”.

24 **7 Paragraph 5J(1)(c)**

25 Omit “a receiving country”, substitute “the country”.

26 **8 Subsection 5J(2)**

27 Repeal the subsection (not including the note), substitute:

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- 1 (2) A person does not have a *well-founded fear of persecution* in  
2 relation to a country if effective protection measures against  
3 persecution are available to the person in the country.

4 **9 Subsection 5J(3)**

5 After “*persecution*”, insert “in relation to a country”.

6 **10 Subsection 5J(3)**

7 Omit “a receiving country”, substitute “the country”.

8 **11 After section 5L**

9 Insert:

10 **5LAA Real risk that a person will suffer significant harm**

11 (1) For the purposes of the application of this Act and the regulations  
12 to a particular person, there is a real risk that the person will suffer  
13 significant harm in a country if:

- 14 (a) the real risk relates to all areas of the country; and  
15 (b) the real risk is faced by the person personally.

16 (2) For the purposes of paragraph (1)(b), if the real risk is faced by the  
17 population of the country generally, the person must be at a  
18 particular risk for the risk to be faced by the person personally.

19 (3) A person will suffer *significant harm* if:

- 20 (a) the person will be arbitrarily deprived of his or her life; or  
21 (b) the death penalty will be carried out on the person; or  
22 (c) the person will be subjected to torture; or  
23 (d) the person will be subjected to cruel or inhuman treatment or  
24 punishment; or  
25 (e) the person will be subjected to degrading treatment or  
26 punishment.

27 (4) There is not a real risk that a person will suffer significant harm in  
28 a country if effective protection measures against significant harm  
29 are available to the person in the country.

30 Note: For effective protection measures, see section 5LA.



- 1 (5) There is not a real risk that a person will suffer significant harm in  
2 a country if the person could take reasonable steps to modify his or  
3 her behaviour so as to avoid a real risk that the person will suffer  
4 significant harm in the country, other than a modification that  
5 would:
- 6 (a) conflict with a characteristic that is fundamental to the  
7 person's identity or conscience; or
  - 8 (b) conceal an innate or immutable characteristic of the person;  
9 or
  - 10 (c) without limiting paragraph (a) or (b), require the person to do  
11 any of the following:
    - 12 (i) alter his or her religious beliefs, including by  
13 renouncing a religious conversion, or conceal his or her  
14 true religious beliefs, or cease to be involved in the  
15 practice of his or her faith;
    - 16 (ii) conceal his or her true race, ethnicity, nationality or  
17 country of origin;
    - 18 (iii) alter his or her political beliefs or conceal his or her true  
19 political beliefs;
    - 20 (iv) conceal a physical, psychological or intellectual  
21 disability;
    - 22 (v) enter into or remain in a marriage to which that person  
23 is opposed, or accept the forced marriage of a child;
    - 24 (vi) alter his or her sexual orientation or gender identity or  
25 conceal his or her true sexual orientation, gender  
26 identity or intersex status.

27 **12 Subsection 5LA(1)**

28 Omit "are available to the person in a receiving country", substitute  
29 "against persecution or significant harm are available to the person in a  
30 country".

31 **13 Paragraph 5LA(1)(a)**

32 After "persecution", insert "or significant harm (as the case requires)".

33 **14 Subsection 5LA(2)**

34 After "persecution", insert "or significant harm".

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1 **15 Paragraph 36(2)(aa)**

2 After “significant harm”, insert “in the receiving country or another  
3 country (see section 5LAA)”.

4 **16 Subsections 36(2A), (2B) and (2C)**

5 Repeal the subsections, substitute:

6 *Ineligibility for grant of protection visa*

7 (2C) A non-citizen is taken not to satisfy the criterion mentioned in  
8 paragraph (2)(aa) if the Minister has serious reasons for  
9 considering that:

- 10 (a) the non-citizen has committed a crime against peace, a war  
11 crime or a crime against humanity, as defined by  
12 international instruments prescribed by the regulations; or  
13 (b) the non-citizen committed a serious non-political crime  
14 before entering Australia; or  
15 (c) the non-citizen has been guilty of acts contrary to the  
16 purposes and principles of the United Nations.

17 **17 Subsection 36(3)**

18 After “protection obligations”, insert “because of a matter mentioned in  
19 paragraph (2)(a) or (aa)”.

20 **18 Subsection 36(4)**

21 Omit “in respect of which”, substitute “if”.

22 **19 Paragraph 36(4)(a)**

23 Repeal the paragraph, substitute:

24 (a) the non-citizen has a well-founded fear of persecution in  
25 relation to the country (see section 5J); or

26 **20 Paragraph 36(4)(b)**

27 Omit “in relation to the country”, substitute “in the country (see  
28 section 5LAA)”.

29 **21 Subsection 36(5)**

30 Repeal the subsection, substitute:

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- 1 (5) Subsection (3) does not apply in relation to a country if:  
2 (a) the non-citizen has a well-founded fear that the country will  
3 send the non-citizen to another country; and  
4 (b) the non-citizen has a well-founded fear of persecution in  
5 relation to the other country (see section 5J).

6 **22 Paragraph 36(5A)(a)**

7 Omit “return”, substitute “send”.

8 **23 Paragraph 36(5A)(b)**

9 Omit “in relation to the other country”, substitute “in the other country  
10 (see section 5LAA)”.

11 **24 After paragraph 336F(5)(c)**

12 Insert:

13 (caa) the person is an unauthorised maritime arrival:

- 14 (i) who makes a claim for protection as a refugee; and  
15 (ii) who, following assessment of his or her claim, is found  
16 to be a person in respect of whom there are reasonable  
17 grounds for considering that he or she is a danger to  
18 Australia’s security or is a person who, having been  
19 convicted by a final judgment of a particularly serious  
20 crime (including a crime that consists of the commission  
21 of a serious Australian offence or serious foreign  
22 offence), is a danger to the Australian community; or

23 **25 Paragraph 411(1)(c)**

24 Omit all the words after “relying”, substitute “on subsection 5H(2) or  
25 36(1B), (1C) or (2C)”.

26 **26 Subparagraph 411(1)(d)(i)**

27 After “36(1C)”, insert “or (2C)”.

28 **27 Subparagraph 411(1)(d)(ii)**

29 Omit “1979); or”, substitute “1979).”.

30 **28 Subparagraph 411(1)(d)(iii)**

31 Repeal the subparagraph.

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1 **29 Paragraph 500(1)(c)**

2 Omit all the words after “relying”, substitute “on subsection 5H(2) or  
3 36(1C) or (2C)”.

4 **30 Paragraph 500(4)(c)**

5 Omit all the words after “relying”, substitute “on subsection 5H(2) or  
6 36(1C) or (2C)”.

7 **31 Subparagraph 502(1)(a)(ii)**

8 After “36(1C)”, insert “or (2C)”.

9 **32 Paragraph 503(1)(c)**

10 After “36(1C)”, insert “or (2C)”.

1 **Part 2—Application and savings provisions**

2 **33 Application of amendments**

3 (1) The amendments made by Part 1 apply in relation to a protection  
4 obligations assessment that is made as a result of an application for a  
5 visa that is made, or an administrative process that starts, on or after the  
6 day this item commences.

7 (2) For the purposes of subitem (1), a *protection obligations assessment* is  
8 an assessment under:

9 (a) the *Migration Act 1958*; or

10 (b) a regulation or other instrument made under that Act; or

11 (c) an administrative process that occurs in relation to that Act,  
12 regulation or other instrument;

13 of whether Australia has protection obligations in respect of a person,  
14 regardless of whether the assessment is made as a result of an  
15 application for a visa by a person.

16 **34 Savings provision—prescribed international instruments**

17 Regulations in force for the purposes of subparagraph 36(2C)(a)(i) of  
18 the *Migration Act 1958* immediately before the commencement of this  
19 item continue in force, at and after that commencement, for the  
20 purposes of paragraph 36(2C)(a) of that Act.