



Migration Amendment (Aggregate Sentences) Act 2023

No. 1, 2023

An Act to amend the *Migration Act 1958* to provide for the treatment of aggregate sentences, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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An Act to amend the *Migration Act 1958* to provide for the treatment of aggregate sentences, and for related purposes

[Assented to 16 February 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Aggregate Sentences) Act 2023*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	17 February 2023

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Aggregate sentences

Part 1—Amendments

Migration Act 1958

1 After section 5AA

Insert:

5AB Sentencing for offences

The provisions of this Act and the regulations apply **no differently** in relation to a single sentence imposed by a court in respect of 2 or more offences **to the way in which those provisions apply in relation to a sentence imposed by a court in respect of a single offence.**

Example: Paragraph **501(7)(c)** applies in relation to a person sentenced to a term of imprisonment of 12 months or more. Because of this section, that paragraph applies in relation to a person sentenced to such a term, **whether the sentence is imposed for a single offence or for 2 or more offences.**

Part 2—Application of amendments and validation of certain things done

2 Definitions

In this Part:

commencement means the commencement of this Part.

do a thing includes:

- (a) make a decision (however described); and
- (b) exercise a power, perform a function, comply with an obligation or discharge a duty; and
- (c) do anything else;

and *purport to do a thing* has a corresponding meaning.

3 Application of amendments

Section 5AB of the Migration Act 1958, as in force on and after commencement, applies in relation to the doing of a thing on or after commencement:

- (a) whether the thing is done in relation to something else that comes into existence or is obtained before, on or after commencement (subject to paragraph (c)); and
- (b) if the thing is done in relation to a particular person—whether the person committed, or was convicted of or sentenced **for, one or more offences before, on or after commencement**; and
- (c) if the doing of the thing depends on the making of an application by or on behalf of a person—**even if the application was made before commencement**, provided the application had not been finally determined as at commencement.

4 Validation of things done **before** commencement

- (1) This item applies if a thing done, or purportedly done, **before commencement under a law**, or provision of a law, covered by subitem (2) **would, apart from this item, be wholly or partly invalid only because a sentence, taken into account in doing, or purporting to do, the thing, was imposed in respect of 2 or more offences.**

- (2) The laws and provisions are as follows:
- (a) **the *Migration Act 1958***;
 - (b) **any legislative instrument made under that Act**;
 - (c) clauses 51 and 53 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (d) clauses 51 and 53 of Schedule 1A to the *Fisheries Management Act 1991*;
 - (e) clauses 51 and 53 of Schedule 2 to the *Torres Strait Fisheries Act 1984*.

Note: The things referred to in subitem (1) include (for example) the following:

- (a) deciding under **section 501, 501A, 501B or 501BA of the *Migration Act 1958*** to refuse to grant a visa to a person, or to cancel a visa granted to a person;
 - (b) accessing information under Division 2 of Part 4A of that Act, or disclosing information under Division 3 of that Part;
 - (c) giving a notice under subsection 501L(1) of that Act;
 - (d) divulging or communicating information as mentioned in subparagraph 503A(1)(a)(ii) or (b)(ii) of that Act.
- (3) The thing done, or purportedly done, is taken for all purposes to be valid and to have always been valid.
- (4) To avoid doubt, anything done or purported to have been done by a person that would have been invalid except for subitem (3) is taken for all purposes to be valid and to have always been valid, despite any effect that may have on the accrued rights of any person.
- (5) For the purposes of applying this item in relation to civil or criminal proceedings, this item applies in relation to:
- (a) civil and criminal proceedings instituted on or after commencement; and
 - (b) civil and criminal proceedings instituted before commencement, being proceedings that are concluded:
 - (i) before commencement; or
 - (ii) on or after commencement.

5 Effect of validation on review and appeal rights

Taking action after commencement where no action taken before commencement

- (1) If:
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- (a) one or more provisions of the *Migration Act 1958* or the *Migration Regulations 1994* have the effect that a person is able to take any of the following actions in relation to a validated decision only during a particular period (the ***original period***):
- (i) making representations about the revocation of the decision;
 - (ii) applying for the revocation or review of the decision;
 - (iii) bringing an appeal against the decision;
 - (iv) applying to a court for a remedy in relation to the decision;
 - (v) taking any other action for the purpose of having the decision varied, revoked, quashed or set aside; and
- (b) the original period started before commencement and did not end before 22 December 2022; and
- (c) the person did not take the action before commencement;
- then the person may take the action on or after commencement as if the period for taking the action:
- (d) started on commencement; and
 - (e) were the same length as the original period.

Note: 22 December 2022 is the day the Full Court of the Federal Court of Australia gave judgment in *Pearson v Minister for Home Affairs* [2022] FCAFC 203.

Opportunity to take fresh action after commencement where action of the same kind discontinued etc. before commencement

- (2) If:
- (a) before commencement, a person took any of the following kinds of action (the ***pre-commencement action***) in relation to a validated decision:
 - (i) making representations about the revocation of the decision;
 - (ii) applying for the revocation or review of the decision;
 - (iii) bringing an appeal against the decision;
 - (iv) applying to a court for a remedy in relation to the decision;
 - (v) taking any other action for the purpose of having the decision varied, revoked, quashed or set aside; and

- (b) any of the following events occurred during the period starting on 22 December 2022 and ending at commencement:
 - (i) the representations were, or the application, appeal or other action was, withdrawn or otherwise discontinued by the person;
 - (ii) the representations were, or the application, appeal or other action was, dismissed, refused or not considered for the reason (or for reasons that include) that the validated decision was invalid;

then the following paragraphs have effect:

- (c) the person may, on or after commencement, take fresh action of the same kind in relation to the validated decision, despite the taking of the pre-commencement action and the event mentioned in paragraph (b);
- (d) if one or more provisions of the *Migration Act 1958* or the *Migration Regulations 1994* have the effect that the person is able to take action of that kind in relation to the validated decision only during a particular period (the ***original period***) starting before commencement—the person may take the fresh action on or after commencement as if the period for taking the fresh action:
 - (i) started at commencement; and
 - (ii) were the same length as the original period.

Note: 22 December 2022 is the day the Full Court of the Federal Court of Australia gave judgment in *Pearson v Minister for Home Affairs* [2022] FCAFC 203.

Extensions to be disregarded

- (3) For the purposes of subitem (1) or (2), disregard the fact that it may have been possible to extend the original period mentioned in that subitem.

Definitions

- (4) In this item:
validated decision means a decision (however described) that would have been invalid except for item 4.

*[Minister's second reading speech made in—
Senate on 7 February 2023
House of Representatives on 13 February 2023]*

(6/23)

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