

Index

Aborigines, 3, 12	Bentham, J., 315
Absorbed Person Visa, 20, 143-5	Blainey, Geoffrey, 13-14
Administrative Appeals Tribunal,	Bolton, G.C., 11-12
324–5	Bridging Visas, 113, 146-9
adoption, 70-3	Bridging A, 148
bilateral agreements on, 71	Bridging B, 148
customary adoption, 70	Bridging C, 148
definition of 'adoption', 70	Bridging D, 148–9
definition of 'orphan', 73	Bridging E, 149
intercountry adoption, 71, 72, 73	Bridging R (Removal Pending), 149
Aged Dependent Relative visas	classes and subclasses of, 148
Subclass 114, 76–7	principles of, 146–7
Subclass 838, 76–7	business and investment visas, 85–103
Aged Parent (Residence) visa (class BP),	acceptable business activities, 91
74	age criteria, 90
Subclass 804 (Aged Parent),	business owner (provisional) visas,
74	102
Amnesty International, 306	business skills points test, 90, 101–2
assimilation, 12	business skills qualification, 102
Assurance of Support Scheme, 46,	cancellation of, 169–70
57	classes and subclasses of, 86
asylum seekers, 184	criteria and definitions, 89–95, 99–103
numbers of, 306–7	documentation, 89
offshore entry persons, 185	English language skills, 90-1
Australia	established business (residence)
'Asianisation' of, 14	visas, 101–2
Federation, 9–10	financial assessment, 93-4
Federation debates, 8–9	genuine and realistic commitment, 98-9
immigration policy, 10, 12, 24–31	investment visas, 99–100
migration legislation, 24–31	main business, 96–8
multiculturalism, 13	management skills of senior
population of, 9, 15	executives, 103
reception of refugees, 11, 15, 231–2,	onshore applications, 88–9
307	ownership interest in a business, 92–5, 97
self-government, 6-7	permanent visas, 86
state responsibility for selection of	personal and business assets, 94
migrants, 10	public interest criteria, 104
Australian and New Zealand Standard	sponsorship, 87–8
Classification of Occupations, 106,	spouses, 88
116	standard business sponsors, 127
	state/territory sponsorship, 88
Barton J, 17–18	successful business career criteria,
basic human needs, 252, 304	91–2

346



INDEX 347

temporary visas, 86, 125-8 definition of 'carer', 78 threshold criteria, 97 Subclasses 115 and 835, 78-83 turnover, 98, 102 Chamberlain, Joseph, 9 Business Skills - Business Talent (Migrant) character test, 160, 170-1 (class EA), 86 discretion allowed, 160 Subclass 132 (Business Talent), 86, 97, Charlesworth, H., 296 98-9 Child (Migrant) (class AH) visa, 69, 71 Subclass 101 (Child), 69 Business Skills - Established Business (Residence) (class BH), 86 Subclass 102 (Adoption), 69, Subclass 845 (Established Business in 70-3 Australia), 86, 88, 101-2 Subclass 117 (Orphan Relative), 69, Subclass 846 (State/Territory Sponsored 73-4 Regional Established Business in Child (Residence) (class BT), 69 Australia), 86, 88, 101-2 Subclass 837 (Orphan Relative), 69, 73-4 Business Skills (Provisional) (class UR), 86, Subclass 802 (Child), 69, 70-3 children, visas for, 69-74 Subclass 160 (Business Owner and adoption, 70-3 (Provisional)), 86, 88, 97 adult children with a disability, 69 Subclass 161 (Senior Executive definition of 'dependent child', 69 (Provisional)), 86, 88, 98-9 Chinese migrants to Australia, 5, 7, 9 Subclass 162 (Investor Provisional), 88, Chinkin, C., 296 99-100 citizenship, 19, 141 loss of, 142 Subclass 163 (State/Territory Sponsored Business Owner (Provisional)), 86, residence requirement, 142 88, 97, 98-9, 102 citizenship knowledge test, 142 Subclass 164 (State/Territory Sponsored Collins, Jack, 14-15 Investor (Provisional)), 86, 88, 98-9, Collinson, S., 306, 323 common law, effective protection of refugees Subclass 165 (State/Territory Sponsored under, 298-9 compelling and compassionate factors, 42, Investor (Provisional)), 86, 88, 99-100 43-4, 59, 151 Business Skills (Residence) (class DF), Comprehensive Plan of Action, 40 Confirmatory (Residence) (class AK): Sch. 1, Subclass 890 (Business Owner), 86, Item 1111, 152-3 Sch. 2 subclass 808 (Confirmatory), 97 Subclass 891 (Investor), 86, 88 152-3, 154 Subclass 892 (State/Territory Sponsored Contributory Aged Parent (Residence) (class Business Owner), 86, 88, 89, 97 DG), 74 Subclass 893 (State/Territory Sponsored Subclass 864 (Aged Parent), 74 Contributory Aged Parent (Temporary) Investor), 86 (class UU), 75 Calwell, Arthur, 11 Subclass 884 (Contributory Aged Parent (Temporary)) 74, 75 Campbell, T., 311, 312, 313 Canada, Supreme Court, 339 Contributory Parent (Migrant) (class CA), cancellation of visas 74 Subclass 143 (Contributory Parent), 74 because of inaccurate information, Contributory Parent (Temporary) (class business and investment visas, 169-70 UT), 74 Subclass 173 (Contributory Parent on character grounds, 170-1 general cancellation power, 168-9 (Temporary)), 75 student visas, 170 Convention on Protection of Children and

assessment of 'special need relative',

Carer visas, 45

79

Cooperation in Respect of

72

Intercountry Adoption 1993, 71,



Convention Relating to the Status of	crimes against peace, 278-9
Refugees, 176-81, 182, 195	Criminal Justice visa, 48, 154–5
adoption of, 177	Cultural/Social (Temporary) (class TE)
arbitrariness of the Convention	visa, 130–4
grounds, 213	Subclass 411 (Exchange), 130
Article 1A(2), 177, 178, 179, 220, 223,	Subclass 416 (Special Program), 130-1
296, 298, 301	Subclass 420 (Entertainment), 130,
Article 1C, 184, 271-4	131–2
Article 1C(1)–(4): voluntary actions by	Subclass 421 (Sport), 130, 132-3
refugees, 272–3	Subclass 423 (Media and Film Staff), 130,
Article 1C(2), 272	133
Article 1C(3), 273	Subclass 428 (Religious Worker), 130,
Article 1C(4), 273	133–4
Article 1C(5), 273	customary international law, 176
Article 1C(5)–(6): changed country	,,
circumstances, 273–4	de facto relationships, 59-60
Article 1D, 184, 274–6	Deakin, Alfred, 2
Article 1D–F, 184	deportation, 173–4
Article 1E, 276	Designated Parent (Migrant) (class BY),
Article 1F, 184, 276–93, 295, 325	75
Article 1F(a), 277–81, 292, 293	Subclass 118 (Designated Parent),
Article 1F(b), 281–7, 293	75
Article 1F(c), 287–9, 292, 293	Designated Parent (Residence) (class
Article 31, 224	BZ), 75
Article 32, 293–4, 325	Subclass 859 (Designated Parent), 75
Article 33, 224, 293–4, 295, 298, 299, 301,	detention
325	immigration detention, 183
definition of 'refugee', 37, 177, 179, 184,	mandatory immigration detention, 167
191, 213, 303, 308, 309	questioning detention, 168
evidence issues and the scope of individual	determination and review processes for
liability, 290–2	migration and refugee decisions,
exclusion, cessation and exceptions, 270	324–45
expulsion, 293–5	judicial review, 325–7
grounds for refugee status, 180, 191–220,	merits review, 324
304, 307, 308–9, 318	ministerial intervention, 344
history, 176–80, 212–13, 308	discrimination, 233, 242, 246, 249, 250, 253
humanitarian underpinning of, 213, 250,	304
269, 321	direct, 242, 247
interpretation of, 179	indirect, 242, 247
need for reform of, 303	nature of, 246–8
obstacles to reform, 321	and persecution, 246–52
protection obligations under, 183	Distinguished Talent (Migrant) (class
purpose of, 213, 258	AL), 120
reform of, 303, 321	Subclass 124 (Distinguished Talent),
relevance today, 179	120
standard of proof, 292	Distinguished Talent (Residence) (class BX)
Cook, James, 3	visa, 120
Council of Europe Committee on Population	Subclass 858 (Distinguished Talent),
and Refugees, 230	120
country of nationality, 296	distinguished talent visas, 120–2
Craig, Paul, 337, 339	criteria for, 121–2
crime, serious, 282–7	domestic violence, 64, 66, 67
crimes against humanity, 277–81	Domestic Worker (Temporary) (class TG)
definition of, 280–1	visa



INDEX 349

Subclass 426 (Domestic Worker Enforcement visa, 155 (Temporary) - Diplomatic or English language skills, vocational Consular), 129 English, 91 Subclass 427 (Domestic Worker European Union asylum law, 179, 306 (Temporary) - Executive), 129-30 excised offshore places, 184 Extended Eligibility (Temporary) (class East Timor, 262-3 TK), 83 Educational (Temporary) (class TH) Subclass 445 (Dependent Child), 83 visa, 134-6 Subclass 406 (Government family members, visa applications, 44-5 Agreement), 134 balance of family test, 75 Subclass 415 (Foreign Government criteria for, 45 Agency), 134-5 family visas Subclass 419 (Visiting Academic), 134, assurances of support, 76 carer visas, 78-83 Subclass 442 (Occupational definition of 'dependent', 77 definition of 'remaining relative', 77-8 Trainee), 135-6 Electronic Travel Authority (class temporary visas, 83-4 UD), 124-5 fear of persecution Subclass 956 (Electronic Travel Authority assessment of, 261-7 (Business Entrant - Long objective element of, 258-61 Validity)), 124 and relocation, 268-9 Subclass 976 (Electronic Travel authority subjective element of, 257-8, 260-1 (Visitor)), 124, 145 see also persecution Subclass 977 (Electronic Travel Authority Federal Court, jurisdiction to review migration decisions, 22 (Business Entrant - Short Validity)), 124, 125 Fitzgerald Report, 1, 14, 21 eligible non-citizens, 147 freedom Emergency (Temporary) (class TI) visa, of political expression and opinion, Sch. 1 Item 1209(1): Form 1003, 153 of thought, conscience and religion, 197 Sch. 2 subclass 302 (Emergency (Permanent Visa Applicant), 153 Genocide Convention, 281 genocide, definition of, 281 Sch. 2 subclass 303 (Emergency (Temporary Visa Applicant)), 153, Germov, R., 196, 241, 243, 245, 247, 298 154 Gibbs CJ, 18-19 Gillard, Julia, 15 emergency visas, 153-4 Empire Settlement Scheme, 10, 11 Gleeson CJ, 20 Employer Nomination (Migrant) (class Goodwin-Gill, G., 202, 309 AN), 115 Grahl-Madsen, A., 193, 205 Subclass 119 (Regional Sponsored Griffith CJ, 16-18 Migration Scheme), 115 Gummow J, 19 Subclass 121 (Employer Nomination Scheme), 115 Hart, H.L.A., 313 Employer Nomination (Residence) (class Hathaway, J., 253, 323 BW), 115 Convention definition of 'refugee', 178-9, Subclass 856 (Employer Nomination 191, 304 Scheme), 115 persecution, 193, 226, 230 Subclass 857 (Regional Sponsored Migration Scheme), 115 health criteria Employer Nomination Scheme, 116-17 definition, 157 'one fails, all fail' criterion, 45, 153 employer-employee relationship, 116 onshore applications, 118 policy requirements, 157-8 training component, 116 Public Interest Criterion 4005(c), 159



health criteria (cont.)	importance of reasons, 339-40
Public Interest Criterion 4007,	restriction of, 328-9
159	jurisdictional error, 336-41, 342
regulation 2.25A, 157	justice, 38
High Court of Australia, jurisdiction to review	see also natural justice, procedural fairness
migration decisions, 22, 327-8	
human rights, 238, 250	Kimminich, Otto, 323
humanitarian law, and refugee law,	
304–5	Labour Agreement (Migrant) (class AU)
humanitarian visas	visa, 119
caps on, 182, 186	Subclass 120 (Labour Agreement),
components of the program, 186-7	119
	Labour Agreement (Residence) (class BV)
immigration control, constitutional bases	visa, 119
of, 16-21	Subclass 855 (Labour Agreement), 118,
Immigration Department	119–20
decision-making processes, 48-51	law
guidelines for decision-makers, 49-51	immigration law, 10, 21-2
policies and procedures, 13, 30-1,	international human rights law, 179,
94–5	311
Procedures Advice Manual, 30	international law, 278
immigration detention, 167, 183	refugee law, 176, 232, 247, 251, 293,
immigration law, 10, 21-2	308
immigration policy, 24-31	lawful non-citizens, 147
immigration, regulation of, 16-23	laws
Immigration Review Tribunal, merits review	laws of general application, 240-3
procedure, 22	laws that are neutral on their face,
interests, hierarchy of, 318	242
internally displaced people, 322	'legitimate purpose and appropriate and
International Covenant on Civil and Political	adapted' test, 240, 250-2
Rights, 311	and persecution, 240-2
International Covenant on Economic, Social	selective enforcement of, 241, 242–3
and Cultural Rights, 311	League of Nations, 177
International Criminal Court, 278	liability, secondary, 290
international human rights law, 179,	liberty, personal, 319
311	Lubbers, Ruud, 231
international humanitarian principles,	
304	Markus, Andrew, 14
international law, 278	marriage
International Refugee Organisation, 195	arranged marriages, 57, 60
international treaties, interpretation of, 229	assessment of a relationship, 58-9, 61,
Invest Australia Supported Skills	62
Agreement, 119	customary marriages, 60
investment visas	de facto relationships, 59–60
designated investments, 100	definition of 'spouse', 61
eligible investments, 100	evidentiary guidelines for assessing,
management skills required, 99	63–4
personal wealth, 100	proxy marriages, 60
Isaacs, J, 2	and 'real consent', 61
	validity of a marriage, 60
Japanese migrants to Australia, 8	McMillan, John, 344–5
judicial review	Medical Practitioner (Temporary) (class UE)
application of authorities, 331–3	visa, 128–9
current situation, 344–5	Subclass 422 (Medical Practitioner), 128



Medical Treatment (Visitor) (class UB)	and integration, 12
visa, 140	of Japanese, 8
Subclass 675 Medical Treatment (Short	modern debate on, 13-15
Stay), 140	of non-British Europeans, 10
Subclass 685 Medical Treatment (Long	of Pacific Islanders, 7, 9
Stay), 140	post-World War I, 10-11
Migration Act 1958 (Cth), 12, 13, 18, 19,	post-World War II, 11-12
22-3, 300, 324	regulation of, 4, 8, 9-10, 13, 16-21, 23
and the Migration Regulations, 24-6	of skilled labour, 5
preamble, 24	transportation of convicts, 3, 4
privative clause, 22, 328-34, 335-44	Mill, John Stuart, 317
Schedule 4 health criteria, 158	Ministerial Directions, 30
migration decisions, determination and	Ministerial discretion, 40, 41, 160, 186
review process, 324–45	Minister's Guidelines, 40
Migration Internal Review Office, merits	moral standards, 309-10
review procedure, 22	moral theory, 249, 310
migration legislation, 10, 22-3, 24-31	and avoidance of pain and suffering, 310,
amendments to, 23	315
entry, stay and departure, 25	consequentialist, 310, 314-17
Gazette notices, 29–30	deontological, 310-14
ministerial policy, 30-1	majoritism, 249
Migration Legislation Amendment (Judicial	non-consequentialist, 310-14
Review) Bill 2001 (Cth), privative	rights-based theories, 310-12, 313-14
clause, 333-4	utilitarianism, 249, 314
Migration Regulations, 21, 22-3	morality, normative character of, 316
on 'main business', 96	Motta, F., 196, 241, 243, 245, 247, 298
and the Migration Act 1958 (Cth), 24-6	multiculturalism, 13
regulation 1.03, 58	
regulation 1.12, 44	Nathwani, Niraj, 231
regulation 1.15A, 62	nation states, 305, 306
regulation 1.15A(3)(a), 63-4	see also sovereignty
regulation 1.21, 64	nationality as a basis for persecution, 195-7
regulation 2.05, 41-2	296
regulation 2.07(3), 34, 35, 38	natural justice, 335, 342
regulation 2.12, 172-3	need as the criterion for assistance, 252,
schedules and sub-schedules, 27-8	303
structure of, 26-9	New South Wales, Chinese migrants to, 7
Migration Review Tribunal, 22, 324–5	New Zealand citizens, 47-8, 75, 83-4
Migration Series Instructions, 30	non-refoulement, 180
migration to Australia, 1–15	non-state agents, 254-5
1776–1850, 3–4	
1850s-1860s, 4-6	O'Connor J, 18
1860s–1870s, 6–7	Offshore visas: Refugee and Humanitarian
after the gold rushes, 7–8	(Class XB) visa, 183, 186
and assimilation, 12	criteria for, 187–8
assisted migration schemes, 4, 5, 10, 11	Subclass 200 (Refugee), 183, 187
before 1778, 2-3	Subclass 201 (In-country Special
of Chinese, see Chinese migrants to	Humanitarian), 183, 187
Australia	Subclass 202 (Global Special
dictation test, 10, 12	Humanitarian), 183, 186, 187–8
family and interdependency	Subclass 203 (Emergency Rescue), 183,
migration, 53-84	188
family reunion, 5	Subclass 204 (Woman at Risk), 183,
history of, 1–15	188



352 INDEX

Offshore visas (cont.)

Subclass 451 (Secondary Movement Relocation (Temporary)), 183 Subclass 866 (Protection), 183, 190 Onshore visas: Protection (class XA) visa, 183 Subclass 851 (Resolution of Status), 183 Subclass 866 (Protection), 153, 183 ownership interest in a business beneficial interest, 92, 93 definition of, 92-4 Pacific Islanders, migration to Australia, 7 Pacific Solution, 185 Palestine, 275 Parent (Migrant) (class AX), 74 Subclass 103 (Parent), 74 parent visas, 45 particular social group, 308 Partner (Migrant) (class BC), 57 Subclass 100 (Partner), 57 Partner (Provisional) (class UF), 57 Subclass 309 (Partner (Provisional)), 57 Partner (Residence) (class BS), 57 Subclass 801 (Partner), 57 Partner (Temporary) (class UK), 57 Subclass 820 (Spouse), 57 partner visas, 45, 59 persecution, 222, 320-1 case law on, 240 and the Convention grounds, 213 and deprivation of interests, 227 and discrimination, 233, 320 discrimination, systematic conduct, motivation and causation, 233-7 element of causation, 235-7, 245 element of motivation, 234 element of systematic conduct, 234-5, 245, 320 on grounds of membership of a particular social group, 208-21, 308 on grounds of nationality, 195-7 on grounds of political opinion, 201-8 on grounds of race, 193-5, 196 on grounds of religion, 197-201 and human rights and dignity, 227 and the idea of a relevant difference, 249-50 interpretation of, 230, 252 meaning of, 191-2 nexus between the grounds and the serious harm, 232-46, 248-9, 256, 321 personal responsibility to avoid, 255 - 6

and prosecution, 237-45, 246, 253 and selection of particular social groups, 212 serious harm, 223-32 statutory principles, 223 test for, 252-3, 254 well-founded fear of, 257-69 Plender, R., 239 political opinion as a basis for persecution, 201-8 avoidance of coming to the notice of authorities for, 205-7 expression of, 204-5 forms of political opinion, 207-8 interpretation of 'political opinion', 202-3 knowledge of on the part of the persecutor, 203-4 procedural fairness, 39, 42, 186, 335, 342 Procedures Advice Manual, 30 Business Skills Legislated and Policy Terms, 89 evidentiary guidelines for assessing relationships, 63-4 guidelines for business visas, 89 legal nature of, 30-1 proportionality, 251, 252, 283, 292 prosecution, and persecution, 237-45, 246, Prospective Marriage (Temporary) (class TO), 57 Subclass 300 (Prospective Marriage), 57 Prospective Marriage Visas, 45, 46 protection under the Refugees Convention, 180-1, 254 Protocol Relating to the Status of Refugees, 176, 178 public interest criteria, 39 and business and investment visas, 104 character test, 160 health criteria, 157-60 Public Interest Criterion 4005, 158 Public Interest Criterion 4006A, 158 Public Interest Criterion 4007, 158 race as a basis for persecution, 193-5 Ray, Senator Robert, 1 reasonableness, 82, 328, 335 refugee definition of, 303, 309-10, 314-17, 318-21, 322-3 refugee and humanitarian visas, 182-90 caps on, 182, 186 character test, 190



classes and subclasses of, 183	resident return visas, 149-51
general provisions, 189-90	compelling and compassionate
health criteria, 189	factors, 151
national interest criterion, 190	defence force personnel, 152
offshore applications, 186-8, 189	long residence applicants, 152
Offshore Protection Visas, 187	Return (Residence) (class BB): Sch. 1, Item
onshore applications, 183-6, 189	1128, 150
public interest criterion 4001, 190	Subclass 151 (Former Resident) visa, 152
public interest criterion 4002, 190	Return (Residence) (class BB): Sch 1, Item
public interest criterion 4003, 190	1128, 150
public interest criterion 4007, 189	Sch. 2 Subclass 155 (Five Year Resident
Special Humanitarian Program, 186	Return), 150
refugee decisions, determination and review	Sch. 2 Subclass 157 (Three Month
process, 324-45	Resident Return), 150
refugee law, 176, 232, 247, 251, 293,	rights, 206, 305, 311
308	foundation of, 312-13
and humanitarian law, 304-5	and moral theory, 314
Refugee Review Tribunal, 22, 324-5	utilitarian, 316-17
refugee system, global, 231	Rome Statute of the International Criminal
refugee visas, offshore visas, 183	Court, 278
refugees, 11, 15	Article 6, 281
circumstances for expulsion, 295	Article 7, 280–1
country of reference, 295-7	Article 8(2), 279
effective protection in a third	Article 25, 290-1
country, 295-302	Article 31, 291
exclusion, cessation and	Article 32, 291
exceptions, 270-1	Article 33, 291-2
limits on protection of, 270-302	Articles 31–33, 291
need as the criterion for assistance, 252,	Rudd, Kevin, 15
303	
numbers of, 306–7	Sackville J, 345
refugee 'sur place', 263	serious harm
statutory protection in third	case law on, 224–7
countries, 299–302	and the ejusdem generis rule, 228
targeting of, 305–7	interpretation of, 227–32, 319
type of harm that qualifies for	judicial interpretations, 227
assistance, 319	legislation on, 223–4
willingness of the international community	narrow meaning of, 230–1
to accept, 318	Short Stay Sponsored (Visitor) (class
Regional Sponsored Migration Scheme, 116,	UL), 83, 128
117–18	Subclass 439 Sponsored Business Visitor
guidelines for, 118	(Short Stay), 83
onshore applications, 118	Subclass 459 Sponsored Business Visitor
regional certifying bodies, 117	(Short Stay), 128
religion	Subclass 679 Sponsored Family
as a basis for persecution, 197–201	Visitor, 83, 128
restrictions on religious practices, 199	Skilled – Independent Regional (Provisional)
Remaining Relative Visas, 45	(Class UX), 89
Subclasses 115 and 835, 77–8	Skilled – Independent Subclass 175, 343
removal, 173–4	Skilled – Migrant (class VE), 109
Resident Return (Temporary) (class TP):	Subclass 175 (Skilled –
Sch. 1, Item 1216, 150	Independent), 109, 110
Sch. 2 subclass 159 (Provisional Resident	Subclass 176 (Skilled – Sponsored), 109,
Return), 150, 151	110



354 INDEX

Skilled - (Provisional) (class VC), 112 'paradigm' examples of selection of, 214 Subclass 485 (Skilled - Graduate), 112, sovereignty, national, 141, 237, 250, 305 114-15 Special Eligibility (class CB) visa, 152 Subclass 487 (Skilled - Regional Subclass 151 (Former Resident), 152 Sponsored), 112, 114 Special Purpose visa, 154 Skilled (Provisional) (class VF), 109 Specified Regional Areas, 114 Subclass 475 (Skilled - Regional Sponsored Family Visitor (class UL) visa, Sponsored), 109, 111 146 Subclass 476 (Skilled - Recognised 'no further stay' condition, 146 Graduate), 109, 111-12 sponsors, 55-6 Skilled - (Residence) (class VB), 112 definition of a sponsor, 45, 56, 126 Subclass 885 (Skilled relationship with the applicant, 58, 76 Independent), 112-13 restriction on, 58 Subclass 886 (Skilled - Sponsored), 112, 'settled', 77 standard business sponsors, 127 Subclass 887 (Skilled - Regional), 112, sponsorship and assurance of support, 45-7, 113-14 skills-based visas, 105-22 Assurance of Support Scheme, 46 Australian study requirement, 114, 115 assurances of support and bonds, 57 distinguished talent visas, 120-2 classes of sponsor, 47 Employer Nomination Scheme, 116-17 definition of a sponsor, 45 labour agreements, 118-20 employer sponsors, 46-7 Migration Occupations in Demand family sponsors and assurors, 45-6 List, 108 obligations of sponsors, 46 National Office of Overseas Skills standard business sponsors, 47 Recognition, 108-9 state/territory sponsorship, 87-8 for New Zealand citizens, 47 state/territory sponsorship, rules for, 87 Occupations Requiring English List, 108 states, law making power of, 237, 250 offshore applications, 109-12 power to prosecute citizens, 237-9 onshore applications, 112-15 'three strikes' laws, 238 points test, 106-7 responsibility to protect, 254-5 pool marks and pass marks, 107 statutory protection of refugees, 299-302 relevant assessing authority, 109 Straw, Jack, 179 Skilled Occupation List, 107-8 Student (Temporary) (class TU) visas, visas based on employer 137-9 nominations, 115-18 Subclass 570 Independent ELICOS social group Sector, 137 as a basis for persecution, 216-17 Subclass 571 Schools Sector, 137 context-sensitivity of, 211-12, 216 Subclass 572 Vocational Education and and the Convention, 212-13 Training Sector, 137 differentiation of, 215-16 Subclass 573 Higher Education difficulties in applying the formal Sector, 137 Subclass 574 Postgraduate Research test, 210-16 examples of particular social group Sector, 137 claims, 217-18 Subclass 575 Non-Award Sector, 137 the family as a particular social Subclass 576 AusAID or Defence group, 218-21 Sector, 137 formal test for as a ground for Subclass 580 Student Guardian, 137, persecution, 208-10 138 humanitarian approach to defining, student visas assessment level of applicants, 137 and the infinity of personal traits, 210-11 cancellation of, 170 membership of as a ground for Commonwealth Register of Institutions persecution, 208-21 and Courses for Overseas Students



INDEX 355

conditions on, 138 purposes and principles of, 287-9 United Nations Convention on the Rights of Confirmation of enrolment evidentiary requirements, 138 the Child, 72 principal course, 137 Universal Declaration of Human Rights, 205, Schedule 8 condition 8101, 138 Schedule 8 condition 8105, 138 unlawful non-citizens, 165-6 Student (Temporary) (class TU) becoming unlawful, 166-71 visas, 137-9 cancellation of visas, 167-71 Subclass 410 (Retirement) (class TQ) entry without authority, 166-7 visa, 139 offences that can be committed by, Subclass 444 (Special Category) visa, 174-5 options available to, 172-3 47 Subclass 861 (Skilled - Onshore overstayers, 166 Independent New Zealand Citizen) removal and deportation, 173-4 restrictions on applications, 173 visa, 47 US Committee for Refugees and Temporary Business Entry (class UC) Immigrants, 306-7 visa, 125-8 utilitarianism, 249, 314 labour agreements, 127 criticisms of, 315-16 and horror scenarios, 316 persons accorded privileges and immunities, 126 utilitarian rights, 316-17 requirements for, 126 service sellers, 126 Victoria, Chinese migrants to, 6-7 Subclass 456 (Business (Short Stay)), Vienna Convention on the Law of Treaties, 228, 229 Visa Entitlement Verification Online, 51-2 Subclass 457 Business (Long Stay), 47, 125, 128 visa system, 32-52 Temporary Business Entry Class UC visa, visas subclass 457 Business (Long Stay), for adult children with a disability, application charges, 156 temporary visas, 123-40, 303 cancellation of, 168-9 application procedures, 32-52 student visas, 136-9 based on qualifications and/or subclasses of, 139 occupational skills, 105-15 temporary workers, 123-30 bridging visas, 113, 146-9 tourist visas, 145-6 business and investment visas, 85-103 cancellation of, 167-71 Transitional (Permenent) visa, 20 carer visas, 45 **UN Conciliation Commission for** character test, 39 Palestine, 275 for children, 69-74 UN High Commissioner for Refugees, 182, circumstances and conditions of granting of, 25-6 231 classes of, 27, 29 UN Relief and Works Agency in the Near East, 275 common requirements for, 156-64 UNHCR Handbook on the Procedures and compliance, 34, 35, 36, 165-75 Criteria for Determining Refugee Status conditions on, 161-4 interpretation of 'nationality', 195-6 control of numbers of, 26 interpretation of 'political opinion', 201 criminal justice visas, 48 interpretation of 'race', 193 criteria for, 31 prosecution claims, 238-9 decision-making processes, 48-51 UNHCR Note on the Exclusion Clauses, 278, DIAC decision-making process, 48-51 emergency visas, 153-4 279, 280, 282, 283 enforcement visas, 48, 155 United Nations, 288 failings of, 287, 288, 289 evidencing of, 51



356 INDEX

visas (cont.) exclusion periods and re-entry bans, 161 for family members, 44-5, 68-84 family subclasses, 53 humanitarian visas, 182, 186-7 investment visas, 99-100 nature of, 25 'no further stay' condition, 53, 162 for parents, 74-6 partner visas, 55, 57-9, 68 procedures for dealing with applications, 38-9 public interest criteria, 28, 156 refugee and humanitarian visas, 182-90 refusal of applications, 40 resident return visas, restrictions on applications, 39-44 for same-sex couples, 56 second application bar, 40 signature criteria, 28-9 skills-based visas, 105-22 special categories of visa, 154-5 special classes of person, 47-8

special return criteria, 40 sponsorship and assurance of support, 45–7 for spouses and de facto relationships, 56 temporary visas, 303 third-party decision-making power, 48 validity of applications, 32–8 Visa Entitlement Verification Online, 51–2 visa labels, 51

Wakefield principle, 4
war crimes, 277–80, 281
definition of, 279
Wednesbury unreasonableness, 328, 335
'White Australia' policy, 6–7, 9–10
dismantling of, 12–13
Whitlam, E.G., 12
women, as a particular social group, 318
Work and Holiday (Temporary) (class US)
visa, 128–9
Working Holiday (Temporary) (class TZ)
visa, 123–4
Subclass 417 (Working Holiday), 123–4