



Migration Legislation Amendment Act (No. 1) 1998

No. 113, 1998

**An Act to amend the *Migration Act 1958*, and for
other purposes**

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No. 113, 1998

An Act to amend the *Migration Act 1958*, and for other purposes

[Assented to 11 December 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment Act (No. 1) 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), Schedules 1, 2, 3, 4, 5, 6 and 7 commence on a day or days to be fixed by Proclamation.
- (3) If Schedule 1, 2, 3, 4, 5, 6 or 7 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (4) Item 1 of Schedule 8 is taken to have commenced immediately after the commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1997*.
- (5) Item 2 of Schedule 8 is taken to have commenced on 7 December 1992 immediately after the *Migration Reform Act 1992* received the Royal Assent.
- (6) Item 3 of Schedule 8 is taken to have commenced on 15 September 1995, immediately after the commencement of subsection 2(3) of the *Migration Legislation Amendment Act (No. 5) 1995*.
- (7) Item 4 of Schedule 8 is taken to have commenced on 15 September 1995, immediately after the commencement of subsection 2(4) of the *Migration Legislation Amendment Act (No. 5) 1995*.
- (8) Item 5 of Schedule 8 is taken to have commenced on 15 September 1995, immediately after the commencement of subsection 2(5) of the *Migration Legislation Amendment Act (No. 5) 1995*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—MRT-reviewable decisions

Part 1—Amendments

Migration Act 1958

1 Subsection 5(1) (definition of *internally-reviewable decision*)

Repeal the definition.

2 Subsection 5(1) (definition of *IRT-reviewable decision*)

Repeal the definition.

3 Subsection 114(1)

Omit “, or a review officer within the meaning of Part 5,”.

4 Paragraph 178(2)(b)

Omit “345,”.

5 Section 275 (paragraph (b) of the definition of *review authority*)

Omit “or”.

6 Section 275 (paragraph (c) of the definition of *review authority*)

Repeal the paragraph.

7 Section 337

Insert:

MRT-reviewable decision has the meaning given in Division 2.

8 Section 337 (definition of *Part 5 reviewable decision*)

Repeal the definition.

9 Section 337 (definition of *review officer*)

Repeal the definition.

10 Division 2 of Part 5

Repeal the Division, substitute:

Division 2—Decisions reviewable by Migration Review Tribunal

338 Decisions reviewable by Migration Review Tribunal

- (1) A decision is an *MRT-reviewable decision* if this section so provides, unless:
 - (a) the Minister has issued a conclusive certificate under section 339 in relation to the decision; or
 - (b) the decision is an RRT-reviewable decision.
- (2) A decision (other than a decision covered by subsection (4) or made under section 501) to refuse to grant a non-citizen a visa is an *MRT-reviewable decision* if:
 - (a) the visa could be granted while the non-citizen is in the migration zone; and
 - (b) the non-citizen made the application for the visa while in the migration zone; and
 - (c) the decision was not made when the non-citizen:
 - (i) was in immigration clearance; or
 - (ii) had been refused immigration clearance and had not subsequently been immigration cleared.
- (3) A decision to cancel a visa held by a non-citizen who is in the migration zone at the time of the cancellation is an *MRT-reviewable decision* unless the decision:
 - (a) is covered by subsection (4); or
 - (b) is made at a time when the non-citizen was in immigration clearance; or
 - (c) was made under subsection 134(1), (3A) or (4) or section 501.
- (4) The following decisions are *MRT-reviewable decisions*:

- (a) a decision to refuse to grant a bridging visa to a non-citizen who is in immigration detention because of that refusal;
 - (b) a decision to cancel a bridging visa held by a non-citizen who is in immigration detention because of that cancellation.
- (5) A decision to refuse to grant a non-citizen a visa is an ***MRT-reviewable decision*** if:
- (a) the visa is a visa that could not be granted while the non-citizen is in the migration zone; and
 - (b) the non-citizen, as required by a criterion for the grant of the visa, was sponsored or nominated by:
 - (i) an Australian citizen; or
 - (ii) a company that operates in the migration zone; or
 - (iii) a partnership that operates in the migration zone; or
 - (iv) the holder of a permanent visa; or
 - (v) a New Zealand citizen who holds a special category visa.
- (6) A decision to refuse to grant a non-citizen a visa is an ***MRT-reviewable decision*** if:
- (a) the visa is a visa that could not be granted while the non-citizen is in the migration zone; and
 - (b) a criterion for the grant of the visa is that the non-citizen has been an Australian permanent resident; and
 - (c) a parent, spouse, child, brother or sister of the non-citizen is an Australian citizen or an Australian permanent resident.
- (7) A decision to refuse to grant a non-citizen a visa is an ***MRT-reviewable decision*** if:
- (a) the visa is a visa that could not be granted while the non-citizen is in the migration zone; and
 - (b) a criterion for the grant of the visa is that the non-citizen intends to visit an Australian citizen, or an Australian permanent resident, who is a parent, spouse, child, brother or sister of the non-citizen; and
 - (c) particulars of the relative concerned are included in the application.
-

- (8) A decision, under section 93, as to the assessed score of an applicant for a visa is an *MRT-reviewable decision* if:
- (a) the visa is a visa that could not be granted while the applicant is in the migration zone; and
 - (b) the applicant, as required by a criterion for the grant of the visa, was sponsored or nominated by:
 - (i) an Australian citizen; or
 - (ii) the holder of a permanent visa; or
 - (iii) a New Zealand citizen who holds a special category visa; and
 - (c) the Minister has not refused to grant the visa.
- (9) A decision that is prescribed for the purposes of this subsection is an *MRT-reviewable decision*.

339 Conclusive certificates

The Minister may issue a conclusive certificate in relation to the decision if the Minister thinks that:

- (a) it would be contrary to the public interest to change the decision, because any change in the decision would prejudice the security, defence or international relations of Australia; or
- (b) it would be contrary to the public interest for the decision to be reviewed because such review would require consideration by the Tribunal of deliberations or decisions of the Cabinet or of a committee of the Cabinet.

11 Division 3 of Part 5 (heading)

Repeal the heading, substitute:

Division 3—Review of decisions by Migration Review Tribunal

12 Section 346

Repeal the section.

13 Subparagraphs 347(1)(b)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) if the MRT-reviewable decision is covered by subsection 338(2), (3) or (4)—28 days after the notification of the decision; or
- (ii) if the MRT-reviewable decision is covered by subsection 338(5), (6), (7) or (8)—70 days after the notification of the decision; or
- (iii) if the MRT-reviewable decision is covered by subsection 338(9)—the number of days prescribed, in respect of the kind of decision in question prescribed for the purposes of that subsection, after the notification of the decision; and

14 Subsection 347(2)

Repeal the subsection, substitute:

- (2) An application for review may only be made by:
 - (a) if the MRT-reviewable decision is covered by subsection 338(2), (3) or (4)—the non-citizen who is the subject of that decision; or
 - (b) if the MRT-reviewable decision is covered by subsection 338(5) or (8)—the sponsor or nominator referred to in the subsection concerned; or
 - (c) if the MRT-reviewable decision is covered by subsection 338(6) or (7)—the relative referred to in the subsection concerned; or
 - (d) if the MRT-reviewable decision is covered by subsection 338(9)—the person prescribed in respect of the kind of decision in question prescribed for the purposes of that subsection.

15 Subsection 347(3)

Omit “the primary decision was covered by paragraph (a), (b), (c) or (d) of the definition of Part 5 reviewable decision”, substitute “the MRT-reviewable decision was covered by subsection 338(2), (3) or (4)”.

16 Subsection 347(4)

Omit “the decision was covered by paragraph (c) or (d) of the definition of Part 5 reviewable decision”, substitute “the MRT-reviewable decision was covered by subsection 338(4)”.

17 Subsection 347(5)

Omit “IRT-reviewable decisions”, substitute “MRT-reviewable decisions”.

18 Subsection 348(2)

Omit “subsection 338(3) or 346(4)”, substitute “section 339”.

19 Subsection 352(3)

Omit “a decision covered by paragraph (c) or (d) of the definition of Part 5 reviewable decision”, substitute “an MRT-reviewable decision covered by subsection 338(4)”.

20 At the end of section 353A

Add:

- (2) In particular, the directions may relate to the application of efficient processing practices to the conduct of reviews by the Tribunal.
- (3) The Tribunal should, as far as practicable, comply with the directions. However, non-compliance by the Tribunal with any direction does not mean that the Tribunal’s decision on a review is an invalid decision.
- (4) If the Tribunal deals with a review of a decision in a way that complies with the directions, the Tribunal is not required to take any other action in dealing with the review.

21 After section 355

Insert:

355A Reconstitution of Tribunal for efficient conduct of review

- (1) The Principal Member may direct that the Tribunal constituted for the purpose of a particular review be reconstituted by either or both of the following:
-

- (a) adding one or more members to the Tribunal as previously constituted for the purpose of the review;
 - (b) removing one or more members from the Tribunal as so constituted;
- if the Principal Member thinks the reconstitution is in the interests of achieving the efficient conduct of the review in accordance with the objective set out in subsection 353(1).
- (2) However, the Principal Member must not give such a direction unless:
- (a) the Tribunal's decision on the review has not been recorded in writing or given orally; and
 - (b) the Principal Member has consulted:
 - (i) the member, or each member, who constitutes the Tribunal; and
 - (ii) a Senior Member who is not the member, or one of the members, who constitutes the Tribunal; and
 - (c) either:
 - (i) the Principal Member is satisfied that there is insufficient material before the Tribunal for the Tribunal to reach a decision on the review; or
 - (ii) a period equal to or longer than the period prescribed for the purposes of this subparagraph has elapsed since the Tribunal was constituted.
- (3) If a direction under this section is given, the Tribunal as constituted in accordance with the direction is to continue and finish the review and may, for that purpose, have regard to any record of the proceedings of the review made by the Tribunal as previously constituted.

Note: The heading to section 355 is altered by adding at the end "**—unavailability of member**".

22 Sections 359 and 360

Repeal the sections, substitute:

359 Tribunal may seek additional information

- (1) In conducting the review, the Tribunal may get any information that it considers relevant. However, if the Tribunal gets such information, the Tribunal must have regard to that information in making the decision on the review.
- (2) Without limiting subsection (1), the Tribunal may invite a person to give additional information.
- (3) Subject to subsection (4), an invitation to an applicant must be given to the applicant by one of the methods specified in section 379A.
- (4) Subsection (3) does not apply if the applicant is in immigration detention because of:
 - (a) a decision to refuse to grant him or her a bridging visa; or
 - (b) a decision to cancel his or her bridging visa.

359A Applicant must be given certain information

- (1) Subject to subsection (2), the Tribunal must:
 - (a) give to the applicant, in the way that the Tribunal considers appropriate in the circumstances, particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review; and
 - (b) ensure, as far as is reasonably practicable, that the applicant understands why it is relevant to the review; and
 - (c) invite the applicant to comment on it.
- (2) Subject to subsection (3), the invitation must be given to the applicant by one of the methods specified in section 379A.
- (3) Subsection (2) does not apply if the applicant is in immigration detention because of:
 - (a) a decision to refuse to grant him or her a bridging visa; or
 - (b) a decision to cancel his or her bridging visa.
- (4) This section does not apply to information:

- (a) that is not specifically about the applicant or another person and is just about a class of persons of which the applicant or other person is a member; or
- (b) that the applicant gave for the purpose of the application; or
- (c) that is non-disclosable information.

359B Invitation to give additional information or comments

- (1) If a person is:
 - (a) invited under section 359 to give additional information; or
 - (b) invited under section 359A to comment on information;the invitation is to specify the way in which the additional information or the comments may be given, being the way the Tribunal considers is appropriate in the circumstances.
- (2) If the invitation is to give additional information or comments otherwise than at an interview, the information or comments are to be given within a period specified in the invitation, being a prescribed period or, if no period is prescribed, a reasonable period.
- (3) If the invitation is to give information or comments at an interview, the interview is to take place:
 - (a) at the place specified in the invitation; and
 - (b) at a time specified in the invitation, being a time within a prescribed period or, if no period is prescribed, a reasonable period.
- (4) If a person is to respond to an invitation within a prescribed period, the Tribunal may extend that period for a prescribed further period, and then the response is to be made within the extended period.
- (5) If a person is to respond to an invitation at an interview at a time within a prescribed period, the Tribunal may change that time to:
 - (a) a later time within that period; or
 - (b) a time within that period as extended by the Tribunal for a prescribed further period;and then the response is to be made at an interview at the new time.

359C Failure to give additional information or comments

- (1) If a person:
 - (a) is invited under section 359 to give additional information;
and
 - (b) does not give the information before the time for giving it has passed;the Tribunal may make a decision on the review without taking any further action to obtain the additional information.
- (2) If the applicant:
 - (a) is invited under section 359A to comment on information;
and
 - (b) does not give the comments before the time for giving them has passed;the Tribunal may make a decision on the review without taking any further action to obtain the applicant's views on the information.

360 Tribunal must invite applicant to appear

- (1) The Tribunal must invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review.
- (2) Subsection (1) does not apply if:
 - (a) the Tribunal considers that it should decide the review in the applicant's favour on the basis of the material before it; or
 - (b) the applicant consents to the Tribunal deciding the review without the applicant appearing before it; or
 - (c) subsection 359C(1) or (2) applies to the applicant.
- (3) If any of the paragraphs in subsection (2) of this section apply, the applicant is not entitled to appear before the Tribunal.

360A Notice of invitation to appear

- (1) If the applicant is invited to appear before the Tribunal, the Tribunal must give the applicant notice of the day on which, and the time and place at which, the applicant is scheduled to appear.

- (2) Subject to subsection (3), the notice must be given to the applicant by one of the methods specified in section 379A.
- (3) Subsection (2) does not apply if the applicant is in immigration detention because of:
 - (a) a decision to refuse to grant him or her a bridging visa; or
 - (b) a decision to cancel his or her bridging visa.
- (4) The period of notice given must be at least the prescribed period or, if no period is prescribed, a reasonable period.
- (5) The notice must contain a statement of the effect of section 362B.

23 Subsection 361(1)

Omit “Where section 359 does not apply”, substitute “In the notice under section 360A”.

24 Paragraph 361(1)(a)

Omit “entitled”, substitute “invited”.

25 Subsection 361(4)

Omit “paragraph (c) or (d) of the definition of Part 5 reviewable decision”, substitute “subsection 338(4)”.

26 Subsection 362(1)

Omit “paragraph (c) or (d) of the definition of Part 5 reviewable decision”, substitute “subsection 338(4)”.

27 Paragraph 362(1)(b)

Repeal the paragraph, substitute:

- (b) the applicant has been invited to appear before the Tribunal in relation to the decision under review.

28 Section 362A

Repeal the section, substitute:

362A Applicant entitled to have access to written material before Tribunal

- (1) Subject to subsections (2) and (3) of this section and sections 375A and 376, the applicant, and any assistant under section 366A, are entitled to have access to any written material, or a copy of any written material, given or produced to the Tribunal for the purposes of the review.
- (2) This section does not override any requirements of the *Privacy Act 1988*. In particular, this section is not to be taken, for the purposes of that Act, to require or authorise the disclosure of information.
- (3) This section does not apply if the Tribunal has given the applicant a copy of the statement required by subsection 368(1).

362B Failure of applicant to appear before Tribunal

- (1) If the applicant:
 - (a) is invited under section 360 to appear before the Tribunal;
and
 - (b) does not appear before the Tribunal on the day on which, or at the time and place at which, the applicant is scheduled to appear;the Tribunal may make a decision on the review without taking any further action to allow or enable the applicant to appear before it.
- (2) This section does not prevent the Tribunal from rescheduling the applicant's appearance before it, or from delaying its decision on the review in order to enable the applicant's appearance before it as rescheduled.

29 Subsection 365(1)

Repeal the subsection, substitute:

- (1) Subject to this section, any oral evidence that the Tribunal takes while a person is appearing before it must be taken in public.

30 Subsection 366(1)

Omit “a person to appear before the Tribunal, or to give evidence,”, substitute “an appearance by the applicant before the Tribunal, or the giving of evidence by the applicant or any other person, to be”.

31 Subsection 367(1)

Omit “a decision covered by paragraph (c) or (d) of the definition of Part 5 reviewable decision”, substitute “an MRT-reviewable decision covered by subsection 338(4)”.

32 Subsection 368(1)

Omit “paragraph 375A(2)(b)”, substitute “paragraphs 375A(2)(b) and 376(3)(b)”.

33 Subsection 368(2)

Repeal the subsection.

Note: The heading to section 368 is altered by omitting “**and to notify parties**”.

34 After section 368

Insert:

368A Tribunal must invite parties to handing down of decision

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in immigration detention because of:
 - (i) a decision to refuse to grant him or her a bridging visa;
or
 - (ii) a decision to cancel his or her bridging visa.
 - (2) The Tribunal must invite the applicant and the Secretary to be present when the decision is handed down.
 - (3) The Tribunal must give the applicant and the Secretary written notice of the day on which, and the time and place at which, the decision is to be handed down. The period of notice given must be at least the prescribed period or, if no period is prescribed, a reasonable period.
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- (4) The notice to the applicant must:
 - (a) contain a statement of the effect of subsection 368B(6); and
 - (b) be given to the applicant by one of the methods specified in section 379A.

368B Tribunal decision to be handed down

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in immigration detention because of:
 - (i) a decision to refuse to grant him or her a bridging visa;
or
 - (ii) a decision to cancel his or her bridging visa.
- (2) On the day, and at the time and place, specified in the notice referred to in section 368A, the decision on the review is to be handed down (on behalf of the Tribunal) by:
 - (a) the Principal Member; or
 - (b) a person authorised in writing by the Principal Member to hand down decisions.

An authorisation may set out the circumstances in which a person is authorised to hand down decisions.

- (3) The Tribunal's decision may be handed down:
 - (a) by reading the outcome of the decision; and
 - (b) whether or not either or both the applicant and the Secretary are present.
- (4) The date of the decision is the date on which the decision is handed down.
- (5) If the applicant and the Secretary are present at the handing down of the decision, the Tribunal must give each of them a copy of the statement prepared under subsection 368(1).
- (6) If the applicant is not present at the handing down of the decision, the Tribunal must notify the applicant of the decision by giving the

applicant a copy of the statement prepared under subsection 368(1). The copy must be given to the applicant:

- (a) within 14 days after the day on which the decision is handed down; and
 - (b) by one of the methods specified in section 379A.
- (7) If the Secretary is not present at the handing down of the decision, the Tribunal must give to the Secretary a copy of the statement prepared under subsection 368(1) within 14 days after the day on which the decision is handed down.
- (8) Without limiting the generality of subsections (6) and (7), an applicant or the Secretary is taken not to be present at the handing down of a decision if:
- (a) he or she is not at the same location as that of the person who is handing down the decision when the decision is handed down; and
 - (b) the decision is being handed down by:
 - (i) telephone; or
 - (ii) closed-circuit television; or
 - (iii) any other means of communication.
- (9) A reference to the applicant or the Secretary being present at the handing down of the decision includes a reference to a representative of the applicant or Secretary being present.

368C Applicant taken to be notified when representative notified

- (1) If a representative of the applicant is present at the handing down of a decision under section 368B, the applicant is taken to be notified of the decision on the day on which the decision is handed down.
- (2) If a representative of the applicant is notified of a decision under subsection 368B(6), the applicant is taken to be notified of the decision on the day on which the representative is so notified.

368D Tribunal must notify parties (parties not invited to handing down of decision)

- (1) If the Tribunal gives an oral decision on an application for review, the Tribunal must give the applicant and the Secretary a copy of the statement prepared under subsection 368(1) within 14 days after the decision concerned is made. The applicant is taken to be notified of the decision on the day on which the decision is made.
- (2) If the applicant is in immigration detention because of:
 - (a) a decision to refuse to grant him or her a bridging visa; or
 - (b) a decision to cancel his or her bridging visa;the Tribunal must give the applicant and the Secretary a copy of the statement prepared under subsection 368(1) within 14 days after the decision concerned is made.

35 Section 369

Repeal the section, substitute:

369 Certain Tribunal decisions to be published

Subject to any direction under section 378, the Registrar must ensure the publication of any statements prepared under subsection 368(1) that the Principal Member thinks are of particular interest.

36 At the end of section 370

Add:

- (2) To avoid doubt, an invitation under section 360 to appear before the Tribunal is not a summons to appear before the Tribunal to give evidence.

37 At the end of Division 8 of Part 5

Add:

379A Methods of dispatch of certain documents

- (1) A document specified in subsection (3) is taken to be duly given to an applicant for review if:

- (a) the document is sent (physically, electronically or otherwise) to:
 - (i) the last address for service provided by the applicant in connection with his or her application for review; or
 - (ii) the last residential address provided by the applicant in connection with his or her application for review; and
 - (b) the Tribunal has a receipt or other evidence indicating the date of dispatch.
- (2) A document specified in subsection (3) is taken to be duly given to an applicant for review if the document is given:
- (a) by giving it to the applicant or to a person authorised by the applicant to receive documents of that kind on behalf of the applicant; or
 - (b) by leaving it at the applicant's place of residence with a person who appears to live there and appears to have turned 16.
- (3) The documents specified for the purposes of subsections (1) and (2) are:
- (a) an invitation to an applicant under section 359 (other than an invitation to the immigration detainees mentioned in subsection 359(4)); and
 - (b) an invitation under section 359A (other than an invitation to the immigration detainees mentioned in subsection 359A(3)); and
 - (c) a notice under section 360A (other than a notice to the immigration detainees mentioned in subsection 360A(3)); and
 - (d) a notice under section 368A; and
 - (e) a statement given under subsection 368B(6).
- (4) It is sufficient compliance with the requirement to give a document referred to in subsection (3) if a facsimile, or a certified copy, of the document is so given.
- (5) A document posted in accordance with paragraph (1)(a) must bear correct prepaid postage and, if the document is posted to an overseas address, the postage must be at the full airmail rate.
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38 Section 385

Omit “IRT-reviewable decisions”, substitute “MRT-reviewable decisions”.

Note: The heading to section 385 is altered by omitting “**IRT-reviewable decisions**” and substituting “**MRT-reviewable decisions**”.

39 Subsections 347(1), 348(1), 349(1), 381(1), 382(3) and sections 383, 384, 386, 387, 388, 389, 390 and 391

Omit “IRT-reviewable decision” (wherever occurring), substitute “MRT-reviewable decision”.

Part 2—Transitional provisions

40 Internally-reviewable decisions

- (1) For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, if:
- (a) before the commencement of this Schedule, an application had been properly made under section 339 of that Act for review of a decision; and
 - (b) the applicant had not been notified of the decision as provided in section 343 of that Act before that commencement;
- the application is taken to be an application properly made, on the day of that commencement, under section 347 of that Act as amended by this Act.
- (2) If:
- (a) before the commencement of this Schedule, an application could have been properly made under section 339 of the *Migration Act 1958* for review of a decision; and
 - (b) the period under paragraph 339(1)(b) of that Act for making the application had not expired before that commencement;
- an application may be made under section 347 of that Act as amended by this Act for review of the decision under section 348 of that Act as so amended. However, the period for making the application is to be worked out from the day, before that commencement, on which the decision was notified.
- (3) Despite the repeal of Division 2 of Part 5 of the *Migration Act 1958* by this Act, the Minister may, after the commencement of this Schedule, exercise his or her power under subsection 345(1) of the *Migration Act 1958*, in relation to a decision under section 341 of that Act, as if the repeal had not occurred.
- (4) If, after the commencement of this Schedule, the Minister exercises his or her power under subsection 345(1) of the *Migration Act 1958*, section 178 of that Act applies as if the amendment made to that section by item 4 of this Schedule had not been made.
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41 IRT-reviewable decisions

- (1) For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, if:
- (a) before the commencement of this Schedule, an application had been properly made under section 347 of that Act for review of a decision; and
 - (b) the applicant had not been given a statement relating to the review under section 368 of that Act before that commencement;
- the application is taken to be an application properly made, on the day of that commencement, under section 347 of that Act as amended by this Act.
- (2) If:
- (a) before the commencement of this Schedule, an application could have been properly made under section 347 of the *Migration Act 1958* for review of a decision; and
 - (b) the period under paragraph 347(1)(b) of that Act for making the application had not expired before that commencement;
- an application may be made under section 347 of that Act as amended by this Act for review of the decision under section 348 of that Act as so amended. However, the period for making the application is to be worked out from the day, before that commencement, on which the decision was notified.
- (3) To avoid doubt, the Minister may, after the commencement of this Schedule, exercise his or her power under subsection 351(1) of the *Migration Act 1958* in relation to a decision under section 349 of that Act that was made before that commencement.
- (4) Subsection 368(2) of the *Migration Act 1958* as in force immediately before the commencement of this item continues to apply in relation to statements prepared under subsection 368(1) of that Act before that commencement.

42 Decisions referred for further consideration after judicial review

- (1) For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, if:
- (a) before the commencement of this Schedule, a decision under section 349 of the *Migration Act 1958* has been quashed or set aside by a court; and
 - (b) the matter to which the decision under that section relates was referred by the court for further consideration; and
 - (c) no decision on that further consideration was made before that commencement;

the decision under that section is taken, on and after that commencement, to be an MRT-reviewable decision in respect of which an application under section 347 of the *Migration Act 1958* as amended by this Act was made on the day of that commencement.

- (2) For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, if:
- (a) after the commencement of this Schedule, a decision made before that commencement under section 349 of the *Migration Act 1958* is quashed or set aside by a court; and
 - (b) the matter to which the decision under that section relates was referred by the court for further consideration;

the decision under that section is taken, on and after the day of the referral, to be an MRT-reviewable decision in respect of which an application under section 347 of the *Migration Act 1958* as amended by this Act was made on that day.

43 Decisions that the Minister has agreed to reconsider

- (1) For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, if:
- (a) before the commencement of this Schedule, an application has been made to a court for judicial review of a decision under section 349 of the *Migration Act 1958*; and
 - (b) before the judicial review application was determined by the court, and before that commencement, the Minister agreed, in writing, to reconsider the decision; and
 - (c) no decision on that reconsideration was made before that commencement;

Schedule 1 MRT-reviewable decisions

Part 2 Transitional provisions

the decision under that section is taken, on and after that commencement, to be an MRT-reviewable decision in respect of which an application under section 347 of the *Migration Act 1958* as amended by this Act was made on the day of that commencement.

- (2) For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, if:
- (a) before or after the commencement of this Schedule, an application has been or is made to a court for judicial review of a decision, made before that commencement, under section 349 of the *Migration Act 1958*; and
 - (b) before the judicial review application was or is determined by the court, but after that commencement, the Minister agrees, in writing, to reconsider the decision;

the decision under that section is taken, on and after the day of the Minister's agreement, to be an MRT-reviewable decision in respect of which an application under section 347 of the *Migration Act 1958* as amended by this Act was made on that day.

44 Conclusive certificates

For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, a conclusive certificate that:

- (a) was issued under subsection 338(3) or 346(4) of that Act before the commencement of this Schedule; and
- (b) immediately before that commencement was still in force;

is taken to have been issued, on the day of that commencement, under section 339 of that Act as amended by this Act.

Schedule 2—Migration Review Tribunal

Part 1—Amendments

Migration Act 1958

1 Subsection 5(1) (definition of *Immigration Review Tribunal*)

Repeal the definition.

2 Subsection 5(1)

Insert:

Migration Review Tribunal means the Migration Review Tribunal established by section 394.

3 Paragraph 91G(2)(a) and subsection 114(1)

Omit “Immigration Review Tribunal”, substitute “Migration Review Tribunal”.

4 Subsection 271(4) (paragraph (a) of the definition of *migration proceedings*)

Omit “Immigration Review Tribunal”, substitute “Migration Review Tribunal”.

5 Section 275 (paragraph (a) of the definition of *review authority*)

Repeal the paragraph, substitute:

(a) the Migration Review Tribunal; or

6 Paragraph 318(1)(b) and subsection 320(1)

Omit “Immigration Review Tribunal”, substitute “Migration Review Tribunal”.

Note: The heading to section 320 is altered by omitting “**Immigration Review Tribunal**” and substituting “**Migration Review Tribunal**”.

7 Section 337 (definition of *Tribunal*)

Repeal the definition, substitute:

Tribunal means the Migration Review Tribunal.

8 Subsections 352(1) and 381(1), paragraph 381(2)(a), subsections 381(5) and (6), paragraph 382(3)(a) and sections 383, 384, 388, 389, 392 and 393

Omit “Immigration Review Tribunal” (wherever occurring), substitute “Migration Review Tribunal”.

Note: The headings to sections 347, 348, 349 and 352 are altered by omitting “**Immigration Review Tribunal**” and substituting “**Migration Review Tribunal**”.

9 Part 6

Repeal the Part, substitute:

Part 6—Migration Review Tribunal

Division 1—Establishment and membership of the Migration Review Tribunal

394 Establishment of the Migration Review Tribunal

A Migration Review Tribunal is established.

395 Membership of Migration Review Tribunal

The Migration Review Tribunal consists of:

- (a) a Principal Member; and
- (b) such number (not exceeding the prescribed number) of Senior Members as are appointed in accordance with this Act; and
- (c) such number (not exceeding the prescribed number) of other members as are appointed in accordance with this Act.

396 Appointment of members

- (1) The members of the Tribunal are to be appointed by the Governor-General.
-

- (2) The Principal Member and the Senior Members are to be appointed as full-time members.
- (3) Any other member may be appointed either as a full-time member or as a part-time member.

397 Principal Member

- (1) The Principal Member is the executive officer of the Tribunal and is responsible for its overall operation and administration.
- (2) The Principal Member is responsible for:
 - (a) monitoring the operations of the Tribunal to ensure that those operations are as fair, just, economical, informal and quick as practicable; and
 - (b) allocating the work of the Tribunal among the members (including himself or herself) in accordance with guidelines under subsection (3).
- (3) The Principal Member may determine, in writing, guidelines for the allocation of the work of the Tribunal.
- (4) Without limiting the scope of subsection (3), guidelines determined under that subsection must provide that cases where a person affected by the decision under review is being held in immigration detention must be given priority over other cases.

398 Period of appointment of members

Subject to this Part, a member holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for reappointment.

399 Remuneration and allowances of members

- (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration is in operation, the member is to be paid such remuneration as is prescribed.
- (2) A member is to be paid such allowances as are prescribed.

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

400 Other terms and conditions

A member holds office on such terms and conditions in respect of matters not provided for by this Act as are determined by the Minister in writing.

401 Resignation

A member may resign by writing signed by him or her and sent to the Governor-General.

402 Disclosure of interests

- (1) A member who has a conflict of interest in relation to a review by the Tribunal:
- (a) must disclose the matters giving rise to that conflict to the applicant and:
 - (i) if the member is the Principal Member—to the Minister; or
 - (ii) in any other case—to the Principal Member; and
 - (b) the member must not take part in the review or exercise any powers in relation to the review unless:
 - (i) if the member is the Principal Member—the applicant and the Minister consent; or
 - (ii) in any other case—the applicant and the Principal Member consent.
- (2) For the purposes of this section, a member has a conflict of interest in relation to a review by the Tribunal if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review.

403 Removal from office

- (1) The Governor-General may remove a member from office on the ground of proved misbehaviour or physical or mental incapacity.
-

- (2) The Governor-General may remove a member from office if:
- (a) the member becomes bankrupt; or
 - (b) the member applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) the member compounds with his or her creditors; or
 - (d) the member makes an assignment of remuneration for the benefit of his or her creditors; or
 - (e) the member has a direct or indirect pecuniary interest in an immigration advisory service; or
 - (f) the member, being a full-time member, is absent from duty, except on leave of absence granted in accordance with the terms and conditions determined under section 400, for 14 consecutive days or 28 days in any 12 months; or
 - (g) the member, being a full-time member, engages in paid employment outside the duties of the office of member without the Minister's written consent; or
 - (h) the member fails, without reasonable excuse, to comply with his or her obligations under section 402.
- (3) In this section:

immigration advisory service means a body that provides services in relation to the seeking by non-citizens of permission to enter or remain in Australia.

404 Acting appointments

- (1) The Minister may appoint a person to act in a senior office:
- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the holder of the office is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) Subject to this section, a person appointed to act during a vacancy in a senior office must not continue to act for more than 12 months.
- (3) If a person is acting in an office, the Minister may direct that, for the purposes specified in the direction, the person is to be taken to

continue to act in the office after the normal terminating event occurs.

- (4) A direction under subsection (3) must specify the period during which the person is to be taken to continue to act in the office.
- (5) The period specified under subsection (4) may be specified by reference to the happening of a particular event or the existence of particular circumstances.
- (6) A direction under subsection (3):
 - (a) is to be given only if there is a pending review or other special circumstance justifying the giving of the direction; and
 - (b) may only be given before the normal terminating event occurs; and
 - (c) has effect according to its terms even if the holder of the office is also performing the duties of the office; and
 - (d) ceases to have effect 12 months after the normal terminating event occurs.
- (7) If the Tribunal as constituted for the purposes of a review includes a person acting or purporting to act under this section, any decision of, or any direction given or other act done by, the Tribunal as so constituted is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.
- (8) Anything done by or in relation to a person acting or purporting to act under an appointment under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

(9) In this section:

normal terminating event, in relation to an appointment to act in an office, means:

- (a) if the appointment is made under paragraph (1)(a)—the filling of the vacancy in the office; or
- (b) if the appointment is made under paragraph (1)(b)—the holder of the office ceasing to be absent or ceasing to be unable to perform the duties of the office.

senior office means the office of Principal Member or an office of Senior Member.

405 Delegation

The Principal Member may, by writing, signed by him or her, delegate to a Senior Member all or any of the Principal Member's powers under this Act other than the power under section 381 to refer decisions to the Administrative Appeals Tribunal.

Division 2—Registries and officers

406 Registries

- (1) The Minister is to establish such registries of the Tribunal as the Minister thinks fit.
- (2) The Minister must designate one of the registries as the Principal Registry.

407 Officers of Tribunal

- (1) There is to be a Registrar of the Tribunal and such Deputy Registrars and other officers of the Tribunal as are required.
- (2) The Registrar, the Deputy Registrars and the other officers of the Tribunal are to be appointed by the Minister.
- (3) The officers of the Tribunal have:
 - (a) such duties, powers and functions as are provided by this Act and the regulations; and

- (b) such other duties and functions as the Principal Member directs.
- (4) The Registrar, the Deputy Registrar and the other officers of the Tribunal are to be persons appointed or employed under the *Public Service Act 1922*.

408 Acting appointments

- (1) The Minister may appoint a person appointed or employed under the *Public Service Act 1922* to act in a Tribunal office:
 - (a) during a vacancy in the office; or
 - (b) during a period when the holder of the office is absent from duty.
- (2) In this section:

Tribunal office means the office of Registrar of the Tribunal, an office of Deputy Registrar of the Tribunal or the office of any other officer of the Tribunal appointed under section 407.

Part 2—Transitional provision

10 Appointments relating to the Migration Review Tribunal

- (1) If, before the commencement of this Schedule, an appointment as provided for by subsection 4(1) of the *Acts Interpretation Act 1901* is made under Part 6 of the *Migration Act 1958* as amended by this Schedule, the amendments made to that Act by this Schedule apply to the appointment as if those amendments had commenced immediately before the appointment was made.
- (2) This item does not affect the operation of Part 5 of the *Migration Act 1958*.

Schedule 3—Refugee Review Tribunal

Part 1—Amendments

Migration Act 1958

1 After section 420

Insert:

420A Principal Member may give directions

- (1) The Principal Member may, in writing, give directions, not inconsistent with this Act or the regulations as to:
 - (a) the operations of the Tribunal; and
 - (b) the conduct of reviews by the Tribunal.
- (2) In particular, the directions may relate to the application of efficient processing practices to the conduct of reviews by the Tribunal.
- (3) The Tribunal should, as far as practicable, comply with the directions. However, non-compliance by the Tribunal with any direction does not mean that the Tribunal's decision on a review is an invalid decision.
- (4) If the Tribunal deals with a review of a decision in a way that complies with the directions, the Tribunal is not required to take any other action in dealing with the review.

2 After section 422

Insert:

422A Reconstitution of Tribunal for efficient conduct of review

- (1) The Principal Member may direct that:
 - (a) the member constituting the Tribunal for a particular review be removed; and

- (b) another member constitute the Tribunal for the purposes of that review;
if the Principal Member thinks the reconstitution is in the interests of achieving the efficient conduct of the review in accordance with the objective set out in subsection 420(1).
- (2) However, the Principal Member must not give such a direction unless:
- (a) the Tribunal's decision on the review has not been recorded in writing or given orally; and
 - (b) the Principal Member has consulted:
 - (i) the member constituting the Tribunal; and
 - (ii) a Senior Member who is not the member constituting the Tribunal; and
 - (c) either:
 - (i) the Principal Member is satisfied that there is insufficient material before the Tribunal for the Tribunal to reach a decision on the review; or
 - (ii) a period equal to or longer than the period prescribed for the purposes of this subparagraph has elapsed since the Tribunal was constituted.
- (3) If a direction under this section is given, the member constituting the Tribunal in accordance with the direction is to continue and finish the review and may, for that purpose, have regard to any record of the proceedings of the review made by the member who previously constituted the Tribunal.

Note: The heading to section 422 is altered by adding at the end "**—unavailability of member**".

3 Sections 424 and 425

Repeal the sections, substitute:

424 Tribunal may seek additional information

- (1) In conducting the review, the Tribunal may get any information that it considers relevant. However, if the Tribunal gets such information, the Tribunal must have regard to that information in making the decision on the review.

- (2) Without limiting subsection (1), the Tribunal may invite a person to give additional information.
- (3) An invitation to an applicant must be given to the applicant by one of the methods specified in section 441A. However, this subsection does not apply if the applicant is in immigration detention.

424A Applicant must be given certain information

- (1) Subject to subsection (3), the Tribunal must:
 - (a) give to the applicant, in the way that the Tribunal considers appropriate in the circumstances, particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review; and
 - (b) ensure, as far as is reasonably practicable, that the applicant understands why it is relevant to the review; and
 - (c) invite the applicant to comment on it.
- (2) The invitation must be given to the applicant by one of the methods specified in section 441A. However, this subsection does not apply if the applicant is in immigration detention.
- (3) This section does not apply to information:
 - (a) that is not specifically about the applicant or another person and is just about a class of persons of which the applicant or other person is a member; or
 - (b) that the applicant gave for the purpose of the application; or
 - (c) that is non-disclosable information.

424B Invitation to give additional information or comments

- (1) If a person is:
 - (a) invited under section 424 to give additional information; or
 - (b) invited under section 424A to comment on information;the invitation is to specify the way in which the additional information or the comments may be given, being the way the Tribunal considers is appropriate in the circumstances.

- (2) If the invitation is to give additional information or comments otherwise than at an interview, the information or comments are to be given within a period specified in the invitation, being a prescribed period or, if no period is prescribed, a reasonable period.
- (3) If the invitation is to give information or comments at an interview, the interview is to take place:
 - (a) at the place specified in the invitation; and
 - (b) at a time specified in the invitation, being a time within a prescribed period or, if no period is prescribed, a reasonable period.
- (4) If a person is to respond to an invitation within a prescribed period, the Tribunal may extend that period for a prescribed further period, and then the response is to be made within the extended period.
- (5) If a person is to respond to an invitation at an interview at a time within a prescribed period, the Tribunal may change that time to:
 - (a) a later time within that period; or
 - (b) a time within that period as extended by the Tribunal for a prescribed further period;and then the response is to be made at an interview at the new time.

424C Failure to give additional information or comments

- (1) If a person:
 - (a) is invited under section 424 to give additional information; and
 - (b) does not give the information before the time for giving it has passed;the Tribunal may make a decision on the review without taking any further action to obtain the additional information.
- (2) If the applicant:
 - (a) is invited under section 424A to comment on information; and
 - (b) does not give the comments before the time for giving them has passed;

the Tribunal may make a decision on the review without taking any further action to obtain the applicant's views on the information.

425 Tribunal must invite applicant to appear

- (1) The Tribunal must invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review.
- (2) Subsection (1) does not apply if:
 - (a) the Tribunal considers that it should decide the review in the applicant's favour on the basis of the material before it; or
 - (b) the applicant consents to the Tribunal deciding the review without the applicant appearing before it; or
 - (c) subsection 424C(1) or (2) applies to the applicant.
- (3) If any of the paragraphs in subsection (2) of this section apply, the applicant is not entitled to appear before the Tribunal.

425A Notice of invitation to appear

- (1) If the applicant is invited to appear before the Tribunal, the Tribunal must give the applicant notice of the day on which, and the time and place at which, the applicant is scheduled to appear.
- (2) The notice must be given to the applicant by one of the methods specified in section 441A. However, this subsection does not apply if the applicant is in immigration detention.
- (3) The period of notice given must be at least the prescribed period or, if no period is prescribed, a reasonable period.
- (4) The notice must contain a statement of the effect of section 426A.

4 Subsection 426(1)

Omit "Where section 424 does not apply", substitute "In the notice under section 425A".

5 Paragraph 426(1)(a)

Omit "entitled", substitute "invited".

6 After section 426

Insert:

426A Failure of applicant to appear before Tribunal

- (1) If the applicant:
 - (a) is invited under section 425 to appear before the Tribunal;
and
 - (b) does not appear before the Tribunal on the day on which, or at the time and place at which, the applicant is scheduled to appear;the Tribunal may make a decision on the review without taking any further action to allow or enable the applicant to appear before it.
- (2) This section does not prevent the Tribunal from rescheduling the applicant's appearance before it, or from delaying its decision on the review in order to enable the applicant's appearance before it as rescheduled.

7 After section 429

Insert:

429A Oral evidence by telephone etc.

For the purposes of the review of a decision, the Tribunal may allow the appearance by the applicant before the Tribunal, or the giving of evidence by the applicant or any other person, to be by:

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

8 Subsection 430(2)

Repeal the subsection.

Note: The heading to section 430 is altered by omitting “**and to notify parties**”.

9 After section 430

Insert:

430A Tribunal must invite parties to handing down of decision

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in immigration detention.
- (2) The Tribunal must invite the applicant and the Secretary to be present when the decision is handed down.
- (3) The Tribunal must give the applicant and the Secretary written notice of the day on which, and the time and place at which, the decision is to be handed down. The period of notice given must be at least the prescribed period or, if no period is prescribed, a reasonable period.
- (4) The notice to the applicant must:
 - (a) contain a statement of the effect of subsection 430B(6); and
 - (b) be given to the applicant by one of the methods specified in section 441A.

430B Tribunal decision to be handed down

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in immigration detention.
- (2) On the day, and at the time and place, specified in the notice referred to in section 430A, the decision on the review is to be handed down (on behalf of the Tribunal) by:
 - (a) the Principal Member; or
 - (b) a person authorised in writing by the Principal Member to hand down decisions.

An authorisation may set out the circumstances in which a person is authorised to hand down decisions.
- (3) The Tribunal's decision may be handed down:

- (a) by reading the outcome of the decision; and
 - (b) whether or not either or both the applicant and the Secretary are present.
- (4) The date of the decision is the date on which the decision is handed down.
- (5) If the applicant and the Secretary are present at the handing down of the decision, the Tribunal must give each of them a copy of the statement prepared under subsection 430(1).
- (6) If the applicant is not present at the handing down of the decision, the Tribunal must notify the applicant of the decision by giving the applicant a copy of the statement prepared under subsection 430(1). The copy must be given to the applicant:
- (a) within 14 days after the day on which the decision is handed down; and
 - (b) by one of the methods specified in section 441A.
- (7) If the Secretary is not present at the handing down of the decision, the Tribunal must give to the Secretary a copy of the statement prepared under subsection 430(1) within 14 days after the day on which the decision is handed down.
- (8) Without limiting the generality of subsections (6) and (7), an applicant or the Secretary is taken not to be present at the handing down of a decision if:
- (a) he or she is not at the same location as that of the person who is handing down the decision when the decision is handed down; and
 - (b) the decision is being handed down by:
 - (i) telephone; or
 - (ii) closed-circuit television; or
 - (iii) any other means of communication.
- (9) A reference to the applicant or the Secretary being present at the handing down of the decision includes a reference to a representative of the applicant or Secretary being present.

430C Applicant taken to be notified when representative notified

- (1) If a representative of the applicant is present at the handing down of a decision under section 430B, the applicant is taken to be notified of the decision on the day on which the decision is handed down.
- (2) If a representative of the applicant is notified of a decision under subsection 430B(6), the applicant is taken to be notified of the decision on the day on which the representative is so notified.

430D Tribunal must notify parties (parties not invited to handing down of decision)

- (1) If the Tribunal gives an oral decision on an application for review, the Tribunal must give the applicant and the Secretary a copy of the statement prepared under subsection 430(1) within 14 days after the decision concerned is made. The applicant is taken to be notified of the decision on the day on which the decision is made.
- (2) If the applicant is in immigration detention, the Tribunal must give the applicant and the Secretary a copy of the statement prepared under subsection 430(1) within 14 days after the decision concerned is made.

10 Subsection 431(1)

Repeal the subsection, substitute:

- (1) Subject to subsection (2), and to any direction under section 440, the Registrar must ensure the publication of any statements prepared under subsection 430(1) that the Principal Member thinks are of particular interest.

Note: The heading to section 431 is replaced by the heading “**Certain Tribunal decisions to be published**”.

11 At the end of section 432

Add:

- (2) To avoid doubt, an invitation under section 425 to appear before the Tribunal is not a summons to appear before the Tribunal to give evidence.
-

12 At the end of Division 7 of Part 6

Add:

441A Methods of dispatch of certain documents

- (1) A document specified in subsection (3) is taken to be duly given to an applicant for review if:
 - (a) the document is sent (physically, electronically or otherwise) to:
 - (i) the last address for service provided by the applicant in connection with his or her application for review; or
 - (ii) the last residential address provided by the applicant in connection with his or her application for review; and
 - (b) the Tribunal has a receipt or other evidence indicating the date of dispatch.
- (2) A document specified in subsection (3) is taken to be duly given to an applicant for review if the document is given:
 - (a) by giving it to the applicant or to a person authorised by the applicant to receive documents of that kind on behalf of the applicant; or
 - (b) by leaving it at the applicant's place of residence with a person who appears to live there and appears to have turned 16.
- (3) The documents specified for the purposes of subsections (1) and (2) are:
 - (a) an invitation to an applicant under section 424 (other than an invitation to an applicant who is in immigration detention); and
 - (b) an invitation under section 424A (other than an invitation to an applicant who is in immigration detention); and
 - (c) a notice under section 425A (other than a notice to an applicant who is in immigration detention); and
 - (d) a notice under section 430A; and
 - (e) a statement given under subsection 430B(6).

(4) It is sufficient compliance with the requirement to give a document referred to in subsection (3) if a facsimile, or a certified copy, of the document is so given.

(5) A document posted in accordance with paragraph (1)(a) must bear correct prepaid postage and, if the document is posted to an overseas address, the postage must be at the full airmail rate.

13 Subsection 469(1)

Omit “the office of Principal Member”, substitute “a senior office”.

14 Paragraph 469(1)(b)

Omit “the Principal Member”, substitute “the holder of the office”.

15 Subsection 469(1A)

Repeal the subsection.

16 Subsection 469(2)

Omit “an office”, substitute “a senior office”.

17 Subsection 469(9) (paragraph (a) of the definition of *normal terminating event*)

Omit “or (1A)(a)”.

18 Subsection 469(9) (paragraph (b) of the definition of *normal terminating event*)

Omit “or (1A)(b)”.

19 Subsection 469(9)

Insert:

senior office means the office of Principal Member, the office of Deputy Principal Member or an office of Senior Member.

Part 2—Application provisions

20 Existing applications for review

- (1) The amendments made by this Schedule apply to an application made under section 412 of the *Migration Act 1958* for review of an RRT-reviewable decision if:
 - (a) the application was made before the commencement of this Schedule; and
 - (b) the review was not completed under section 414 of that Act before that commencement.
- (2) Subsection 430(2) of the *Migration Act 1958* as in force immediately before the commencement of this item continues to apply in relation to statements prepared under subsection 430(1) of that Act before that commencement.

21 Applications for review of existing RRT-reviewable decisions

The amendments made by this Schedule apply to an application made, on or after the commencement of this Schedule, under section 412 of the *Migration Act 1958* for review of an RRT-reviewable decision made before that commencement.

Schedule 4—“No further stay” conditions applicable to visas

Migration Act 1958

1 After subsection 41(2)

Insert:

- (2A) The Minister may, in prescribed circumstances, by writing, waive a condition of a kind described in paragraph (2)(a) to which a particular visa is subject under regulations made for the purposes of that paragraph or under subsection (3).

2 Paragraph 46(1)(e)

Repeal the paragraph, substitute:

- (e) where the applicant is in the migration zone and the application is not for a protection visa or a bridging visa:
- (i) the applicant has not, since last entering Australia, held a visa subject to a condition described in paragraph 41(2)(a); or
 - (ii) if the applicant has, since last entering Australia, held a visa subject to such a condition—the Minister has waived the condition under subsection 41(2A).

Schedule 5—Cancellation of visas

Part 1—Amendment

Migration Act 1958

1 At the end of section 129

Add:

- (3) Failure to give notification of a decision does not affect the validity of the decision.

Part 2—Application of amendment

2 Application

The amendment made by this Schedule applies to any cancellation of a visa under section 128 of the *Migration Act 1958* after the commencement of this Schedule (whether or not the circumstances, acts or omissions to which the cancellation relates occurred after that commencement).

Schedule 6—Miscellaneous migration matters

Migration Act 1958

1 Subsection 104(1)

After “must”, insert “, as soon as practicable,”.

2 Subsection 105(1)

After “must”, insert “, as soon as practicable,”.

3 Paragraph 107(1)(b)

Omit “14 days”, substitute “a period stated in the notice as mentioned in subsection (1A)”.

4 Subparagraphs 107(1)(c)(i), (ii) and (iii)

Repeal the subparagraphs, substitute:

- (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
- (ii) if the holder gives the Minister a written response within that period—when the response is given; or
- (iii) otherwise—at the end of that period; and

5 At the end of subsection 107(1)

Add:

; and (f) requiring the holder:

- (i) to tell the Minister the address at which the holder is living; and
- (ii) if the holder changes that address before the Minister notifies the holder of the Minister’s decision on whether there was non-compliance by the holder—to tell the Minister the changed address.

6 After subsection 107(1)

Insert:

- (1A) The period to be stated in the notice under subsection (1) must be:
- (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
- (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.

7 After section 107

Insert:

107A Possible non-compliances in connection with a previous visa may be grounds for cancellation of current visa

The possible non-compliances that:

- (a) may be specified in a notice by the Minister under section 107 to a person who is the holder of a visa; and
- (b) if so specified, can constitute a ground for the cancellation of that visa under section 109;

include non-compliances that occurred at any time, including non-compliances in respect of any previous visa held by the person.

8 Paragraph 127(2)(b)

Omit “if”, substitute “state whether”.

9 Paragraph 128(b)

Omit “has not entered”, substitute “is outside”.

10 Subsection 160(2)

After “justice”, insert “entry”.

11 After subsection 235(4)

Insert:

(4A) Subsection (4) does not apply to a non-citizen who holds a criminal justice stay visa, but this subsection does not affect the operation of subsection (1).

Note: The heading to section 253 is replaced by the heading “**Detention of deportee**”.

Schedule 7—False representations etc. under the Australian Citizenship Act 1948

Part 1—Amendments

Australian Citizenship Act 1948

1 Subsection 50(1) (penalty)

Repeal the penalty, substitute:

Penalty: 12 months imprisonment.

2 Subsections 50(2) and (3)

Repeal the subsections.

Part 2—Application of amendments

3 Application

The amendments made by this Schedule apply to acts or omissions after the commencement of this Schedule.

Schedule 8—Technical amendments

Immigration (Education) Act 1971

1 Paragraph 4B(b)

Omit “stay visa”, substitute “permanent visa”.

Migration Reform Act 1992

2 Part 1 of the Schedule (amendment of subsection 4(1) (definition of *applicable priority mark*))

Repeal the amendment.

Migration Legislation Amendment Act (No. 5) 1995

3 Subsection 2(3)

Omit “17”, substitute “18”.

4 Subsection 2(4)

Omit “Subject to subsection (5), item 19”, substitute “Item 20”.

5 Subsection 2(5)

Repeal the subsection.

[*Minister’s second reading speech made in—
Senate on 12 November 1998
House of Representatives on 2 December 1998*]

(161/98)
