



Migration Legislation Amendment Act (No. 1) 2001

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**An Act to amend the law relating to migration, and
for related purposes**

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An Act to amend the law relating to migration, and for related purposes

[Assented to 27 September 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment Act (No. 1) 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Subject to subsection (3), the following provisions commence on a day or days to be fixed by Proclamation:
- (a) Part 2 of Schedule 1;
 - (b) items 5, 6 and 7 of Schedule 2.
- (3) If a provision mentioned in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, the provision commences on the first day after the end of that period.
- (4) Part 1 of Schedule 2 is taken to have commenced on 1 June 1999, immediately after the commencement of item 23 of Schedule 1 to the *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998*.
- (4A) Item 7A of Schedule 2 is taken to have commenced on 16 December 1999, immediately after the commencement of item 11 of Schedule 1 to the *Border Protection Legislation Amendment Act 1999*.
- (5) Items 8 and 9 of Schedule 2 are taken to have commenced on 1 June 1999.
- (6) Item 10 of Schedule 2 is taken to have commenced on 1 March 2000, immediately after the commencement of item 5 of Schedule 2 to the *Migration Legislation Amendment (Migration Agents) Act 1999*.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments commencing on Royal Assent

Migration Act 1958

1 Subsection 485(1)

Omit “or decisions covered by subsection 475(2) or (3)”.

2 Subsection 485(3)

Repeal the subsection, substitute:

- (3) If a matter relating to a judicially-reviewable decision is remitted to the Federal Court under section 44 of the *Judiciary Act 1903*, the Court must treat the matter as if it were a judicially-reviewable decision under section 476 or 477 (as appropriate) of this Act.
- (4) The limitations, powers and requirements of this Division (other than section 478) apply to the matter mentioned in subsection (3). In particular, the only grounds of review available to the Federal Court are those provided for in section 476 or 477 (as appropriate).

3 After section 485

Insert:

485A Federal Court does not have any jurisdiction in relation to non-judicially-reviewable decisions

In spite of any other law, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does not have any jurisdiction in respect of decisions covered by subsection 475(2) or (4).

4 After Part 8

Insert:

Part 8A—Restrictions on court proceedings

486A Time limit on applications to the High Court for judicial review

- (1) An application to the High Court for a writ of mandamus, prohibition or certiorari or an injunction or a declaration in respect of a decision covered by subsection 475(1), (2) or (4) must be made to the High Court within 35 days of the actual (as opposed to deemed) notification of the decision.
- (2) The High Court must not make an order allowing, or which has the effect of allowing, an applicant to make an application mentioned in subsection (1) outside that 35 day period.
- (3) The regulations may prescribe the way of notifying a person of a decision for the purposes of this section.

5 Application of amendments

- (1) The amendments made by items 1 and 3 apply in relation to proceedings (including applications for leave to appeal or other appeal proceedings) begun after this Part commences.
- (2) The amendment made by item 2 applies to matters remitted to the Federal Court after this Part commences.
- (3) The amendment made by item 4 applies to decisions made after this Part commences.

Part 2—Amendments commencing on Proclamation

Migration Act 1958

6 At the end of Part 8A

Add:

486B Multiple parties in migration litigation

Application of section

- (1) This section applies to all proceedings (*migration proceedings*) in the High Court or the Federal Court that raise an issue in connection with visas (including if a visa is not granted or has been cancelled), deportation, or removal of unlawful non-citizens.

Consolidation of proceedings

- (2) Consolidation of any migration proceeding with any other migration proceeding is not permitted unless the court is satisfied that:
 - (a) the consolidation would otherwise be permitted under other relevant laws (including Rules of Court); and
 - (b) the consolidation is desirable for the efficient conduct of the proceedings.
- (3) No appeal lies from a decision by the court not to consolidate proceedings under subsection (2).

Other joint proceedings etc.

- (4) The following are not permitted in or by a migration proceeding:
 - (a) representative or class actions;
 - (b) joinder of plaintiffs or applicants or addition of parties;
 - (c) a person in any other way (but not including as a result of consolidation under subsection (2)) being a party to the proceeding jointly with, on behalf of, for the benefit of, or representing, one or more other persons, however this is described.

Relationship with other laws

- (5) This section has effect despite any other law, including in particular:
 - (a) Part IVA of the *Federal Court of Australia Act 1976*; and
 - (b) any Rules of Court.
- (6) However, this section does not apply to a provision of an Act if the provision:
 - (a) commences after this section commences; and
 - (b) specifically states that this section does not apply.

Exceptions to general rules

- (7) This section does not prevent the following persons from being involved in a migration proceeding:
 - (a) the applicants in the proceeding and any persons they represent, if:
 - (i) the regulations set out a definition of *family* for the purposes of this paragraph; and
 - (ii) all of those applicants and other persons are members of the same family as so defined;
 - (b) a person who becomes a party to the proceeding in performing the person's statutory functions;
 - (c) the Attorney-General of the Commonwealth or of a State or Territory;
 - (d) any other person prescribed in the regulations.

486C Persons who may commence or continue proceedings in the Federal Court

- (1) Only the persons mentioned in this section may commence or continue a proceeding in the Federal Court that raises an issue (the *relevant issue*):
 - (a) in connection with visas (including if a visa is not granted or has been cancelled), deportation, or removal of unlawful non-citizens; and
 - (b) that relates to the validity, interpretation or effect of a provision of this Act or the regulations;(whether or not the proceeding raises any other issue).

- (2) Those persons are:
- (a) in the case of a proceeding under Part 8:
 - (i) if the decision that gives rise to the relevant issue is covered by paragraph 475(1)(a) or (b)—the applicant in the review by the relevant Tribunal; or
 - (ii) if the decision that gives rise to the relevant issue is covered by paragraph 475(1)(c)—the person who is the subject of the decision; or
- Note: A person cannot commence or continue a proceeding in respect of a decision covered by subsection 475(2) or (4) because the Federal Court has no jurisdiction in respect of those decisions. See section 485A.
- (b) in the case of any other proceeding:
 - (i) a person who is the subject of a visa decision (see subsection (7)) that gives rise to the relevant issue; or
 - (ii) a person who is the subject of a deportation decision (see subsection (7)) that gives rise to the relevant issue; or
 - (iii) a person who is the subject of a removal action (see subsection (7)) that gives rise to the relevant issue; or
 - (iv) a person who may appeal to the Federal Court under section 44 of the *Administrative Appeals Tribunal Act 1975* in respect of a visa decision or a deportation decision (see subsection (7)) that gives rise to the relevant issue; or
 - (c) in any case:
 - (i) the Minister; or
 - (ii) the Attorney-General of the Commonwealth or of a State or Territory; or
 - (iii) a person who commences or continues the proceeding in performing the person's statutory functions; or
 - (iv) any other person prescribed in the regulations.

Scope of rule

- (3) This section applies to proceedings in the Federal Court's jurisdiction under Part 8 of this Act, section 39B or 44 of the *Judiciary Act 1903* or any other law.

- (4) To avoid doubt, nothing in this section allows a person to commence or continue a proceeding that the person could not otherwise commence or continue.

Relationship with other laws

- (5) This section has effect despite any other law.
- (6) However, subsection (5) does not apply to a provision of an Act if the provision:
- (a) commences after this section commences; and
 - (b) specifically states that it applies despite this section.

Definitions

- (7) In this section:

deportation decision means a decision relating to the deportation of a person.

removal action means an action to remove a person.

visa decision means a decision relating to a visa (including if the visa is not granted or has been cancelled).

7 Application of amendments

- (1) The amendments made by this Part apply to a proceeding if the application to commence the proceeding is filed in a court on or after 14 March 2000.
- (2) However, the amendments do not apply:
- (a) if the relevant court began the substantive hearing of the proceeding before this Part commenced; or
 - (b) to an application for leave to appeal, or any other appeal proceeding, filed on or after 14 March 2000 if the application to commence the original court proceeding was filed before 14 March 2000.

8 Transitional—proceedings that contravene new section 486B

- (1) If:
- (a) a proceeding was begun before this Part commences; and

- (b) section 486B of the *Migration Act 1958*, as amended by this Part, applies to the proceeding (see item 7); and
- (c) the proceeding contravenes that section when this Part commences;

the court must treat the proceeding as if the court had lacked jurisdiction to hear the proceeding when it was begun.

- (2) Despite any other time limit, a person who has an interest in such a proceeding may commence a fresh proceeding in relation to the matter concerned within 28 days after this Part commences, so long as the person complies with the *Migration Act 1958*, as amended by this Part, and all other laws relating to such proceedings (including a law relating to standing or requiring a fee to be paid).
- (3) However, subitem (2) does not apply to a person in respect of a proceeding if item 9 applies to the proceeding.

9 Transitional—proceedings that contravene new section 486C

If:

- (a) a proceeding was begun before this Part commences; and
- (b) section 486C of the *Migration Act 1958*, as amended by this Part, applies to the proceeding (see item 7); and
- (c) the proceeding contravenes that section when this Part commences;

the court must treat the proceeding as if the court had lacked jurisdiction to hear the proceeding when it was begun.

10 Transitional—refund of application fees

(1) If:

- (a) a person has paid a fee to a court in respect of a proceeding; and
- (b) because of the operation of item 8 or 9, the proceeding does not continue;

then, on application, the Commonwealth must refund the fee to the person.

Note: Section 28 of the *Financial Management and Accountability Act 1997* contains a standing appropriation for the refund of such fees.

- (2) If the fee was paid in respect of a proceeding brought on behalf of more than one person, then the Commonwealth must refund the fee to a person authorised in writing by all such persons to receive the refund.

11 Transitional—regulations

Despite section 48 of the *Acts Interpretation Act 1901*, a regulation made for the purposes of paragraph 486B(7)(a) or (d) or subparagraph 486C(2)(c)(iv) of the *Migration Act 1958*, as amended by this Part, may provide that the regulation is taken to have had effect from the beginning of 14 March 2000.

Schedule 2—Technical amendments

Part 1—Character test

Migration Act 1958

1 Paragraph 501A(1)(c)

Omit “to grant a visa to a person as a result of not exercising”,
substitute “not to exercise”.

2 At the end of subsection 501A(1) (after paragraph (d))

Add:

; whether or not the person satisfies the delegate or Tribunal that
the person passes the character test and whether or not the delegate
or Tribunal reasonably suspects that the person does not pass the
character test.

3 After subsection 501A(4)

Insert:

(4A) Under subsection (2) or (3), the Minister may cancel a visa that has
been granted to a person even if the original decision under
subsection (1) was a decision not to exercise the power conferred
by subsection 501(1) to refuse to grant a visa to the person.

Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998

4 Paragraph 33(1)(c) of Schedule 1

Omit “to grant a visa to a person as a result of not exercising”,
substitute “not to exercise”.

Part 2—Other technical corrections

Migration Act 1958

5 Subsection 140(1)

Omit “or 116”, substitute “, 116 or 128”.

6 Paragraph 140(2)(a)

Omit “or 116”, substitute “, 116 or 128”.

7 Application of amendment

The amendment made by item 6 applies in relation to cancellations of visas under section 128 that take place after the commencement of that item.

7A Subsection 475(3) (second occurring)

Re-number as subsection (4).

Migration Legislation Amendment Act (No. 1) 1998

8 Item 6 of Schedule 2

Repeal the item.

Note: This item repeals a misdescribed amendment of the *Migration Act 1958*.

9 Item 12 of Schedule 3 (heading)

Omit “Part 6”, substitute “Part 7”.

Note: This item corrects a misdescribed amendment of the *Migration Act 1958*.

Migration Legislation Amendment (Migration Agents) Act 1999

10 Item 5 of Schedule 2 (heading)

Repeal the heading, substitute:

5 At the end of subsection 316(1)

Note: This item corrects a misdescribed amendment of the *Migration Act 1958*.

*[Minister's second reading speech made in—
House of Representatives on 14 March 2000
Senate on 26 February 2001]*

(31/00)