



Migration Legislation Amendment Act (No. 2) 1989

No. 180 of 1989

An Act to amend the *Migration Legislation Amendment Act 1989*, and for related purposes

[Assented to 28 December 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Migration Legislation Amendment Act (No. 2) 1989*.

(2) In this Act, “Principal Act” means the *Migration Legislation Amendment Act 1989*¹.

Commencement

2. This Act commences, or is to be taken to have commenced, as the case requires, immediately before the commencement of section 26 of the Principal Act.

Miscellaneous amendments of section 26

3. Section 26 of the Principal Act is amended:

(a) by adding at the end of new section 61 the following subsections:

“(5) Where the Minister thinks that it is in the public interest to do so, the Minister may:

- (a) set aside a decision affirmed, varied or made by a review officer under regulations made under subsection (1); and
- (b) substitute a decision that is more favourable to the applicant.

“(6) Where the Minister thinks that it is in the public interest to do so, the Minister may:

- (a) set aside a decision reviewed by a review officer under regulations made under subsection (1), being a decision in relation to which the review officer had recommendatory powers; and
- (b) substitute a decision that is more favourable to the applicant than the decision recommended by the review officer.

“(7) Where the Minister sets aside a decision under subsection (5) or (6), he or she must cause to be laid before each House of the Parliament a statement that:

- (a) sets out the decision set aside; and
- (b) where the decision is set aside under subsection (6)—sets out the recommendation of the review officer; and
- (c) sets out the decision substituted by the Minister; and
- (d) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reason for thinking that his or her actions are in the public interest.

“(8) A statement under subsection (7) is not to include:

- (a) the name of the applicant; or
- (b) where the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.

“(9) A statement under subsection (7) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) where the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
- (b) where the decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

“(10) The Minister does not have a duty to consider whether to exercise the power under subsection (5) or (6) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

“(11) The power under subsection (5) or (6) is not to be exercised to grant an entry permit to a person who is the holder of a visa or temporary entry permit that was granted subject to the condition set out in paragraph 11D (4) (b) or 11P (4) (b).”;

- (b) by adding at the end of new subsection 64B (1) the following paragraph:

“(e) a decision made by the Minister under subsection 61 (5) or (6) or section 64U.”;

- (c) by omitting new section 64U and substituting the following section:
Minister may set aside Tribunal’s decision etc.

“64U. (1) Where the Minister thinks that it is in the public interest to do so, the Minister may:

- (a) set aside a decision of the Tribunal; and
(b) substitute a decision that is more favourable to the applicant.

“(2) Where the Minister thinks that it is in the public interest to do so, the Minister may:

- (a) set aside a decision reviewed by the Tribunal, being a decision in relation to which the Tribunal had recommendatory powers; and
(b) substitute a decision that is more favourable to the applicant than the decision recommended by the Tribunal.

“(3) Where the Minister sets aside a decision under subsection (1) or (2), he or she must cause to be laid before each House of the Parliament a statement that:

- (a) sets out the decision set aside; and
(b) where the decision is set aside under subsection (2)—sets out the recommendation of the Tribunal; and
(c) sets out the decision substituted by the Minister; and
(d) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.

“(4) A statement under subsection (3) is not to include:

- (a) the name of the applicant; or
(b) where the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.

“(5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after the decision concerned is set aside.

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“(6) The Minister does not have a duty to consider whether to exercise the power under subsection (1) or (2) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

“(7) The power under subsection (1) or (2) is not to be exercised to grant an entry permit to a person who is the holder of a visa or temporary entry permit that was granted subject to the condition set out in paragraph 11D (4) (b) or 11P (4) (b).”.

NOTE

1. No. 59, 1989, as amended. For previous amendments, see No. 159, 1989.

[*Minister's second reading speech made in—
Senate on 14 December 1989
House of Representatives on 21 December 1989*]