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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As read a third time

**Migration Legislation Amendment Bill
(No. 1) 2001**

No. , 2001

**A Bill for an Act to amend the law relating to
migration, and for related purposes**

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1 This Bill originated in the House of
2 Representatives; and, having this day passed,
3 is now ready for presentation to the Senate
4 for its concurrence.

5 I.C. HARRIS
6 *Clerk of the House of Representatives*

7 House of Representatives
8 7 February 2001
9

10 **A Bill for an Act to amend the law relating to**
11 **migration, and for related purposes**

12 The Parliament of Australia enacts:

13 **1 Short title**

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

16 **2 Commencement**

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

19 (2) Subject to subsection (3), the following provisions commence on a
20 day or days to be fixed by Proclamation:

21 (a) Part 2 of Schedule 1;

Schedule 1 Jurisdiction and proceedings of courts
Part 1 Amendments commencing on Royal Assent

- 1 (b) items 5, 6 and 7 of Schedule 2.
- 2 (3) If a provision mentioned in subsection (2) does not commence
3 under that subsection within the period of 6 months beginning on
4 the day on which this Act receives the Royal Assent, the provision
5 commences on the first day after the end of that period.
- 6 (4) Part 1 of Schedule 2 is taken to have commenced on 1 June 1999,
7 immediately after the commencement of item 23 of Schedule 1 to
8 the *Migration Legislation Amendment (Strengthening of Provisions*
9 *relating to Character and Conduct) Act 1998*.
- 10 (4A) Item 7A of Schedule 2 is taken to have commenced on
11 16 December 1999, immediately after the commencement of
12 item 11 of Schedule 1 to the *Border Protection Legislation*
13 *Amendment Act 1999*.
- 14 (5) Items 8 and 9 of Schedule 2 are taken to have commenced on 1
15 June 1999.
- 16 (6) Item 10 of Schedule 2 is taken to have commenced on 1 March
17 2000, immediately after the commencement of item 5 of Schedule
18 2 to the *Migration Legislation Amendment (Migration Agents) Act*
19 *1999*.

20 **3 Schedule(s)**

21 Subject to section 2, each Act that is specified in a Schedule to this
22 Act is amended or repealed as set out in the applicable items in the
23 Schedule concerned, and any other item in a Schedule to this Act
24 has effect according to its terms.

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2 **Schedule 1—Jurisdiction and proceedings of**
3 **courts**

4 **Part 1—Amendments commencing on Royal Assent**

5 *Migration Act 1958*

6 **1 Subsection 485(1)**

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

8 **2 Subsection 485(3)**

9 Repeal the subsection, substitute:

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

18 **3 After section 485**

19 Insert:

20 **485A Federal Court does not have any jurisdiction in relation to**
21 **non-judicially-reviewable decisions**

22 In spite of any other law, including sections 39B and 44 of the
23 *Judiciary Act 1903*, the Federal Court does not have any
24 jurisdiction in respect of decisions covered by subsection 475(2) or
25 (4).

26 **4 After Part 8**

27 Insert:

1 **Part 8A—Restrictions on court proceedings**
2

3 **486A Time limit on applications to the High Court for judicial**
4 **review**

5 (1) An application to the High Court for a writ of mandamus,
6 prohibition or certiorari or an injunction or a declaration in respect
7 of a decision covered by subsection 475(1), (2) or (4) must be
8 made to the High Court within 35 days of the notification of the
9 decision.

10 (2) The High Court must not make an order allowing, or which has the
11 effect of allowing, an applicant to make an application mentioned
12 in subsection (1) outside that 35 day period.

13 (3) The regulations may prescribe the way of notifying a person of a
14 decision for the purposes of this section.

15 **5 Application of amendments**

16 (1) The amendments made by items 1 and 3 apply in relation to
17 proceedings (including applications for leave to appeal or other appeal
18 proceedings) begun after this Part commences.

19 (2) The amendment made by item 2 applies to matters remitted to the
20 Federal Court after this Part commences.

21 (3) The amendment made by item 4 applies to decisions made after this
22 Part commences.

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2 **Part 2—Amendments commencing on Proclamation**

3 *Migration Act 1958*

4 **6 At the end of Part 8A**

5 Add:

6 **486B No multiple parties in migration litigation**

7 (1) In any proceeding in the High Court or the Federal Court that
8 raises an issue in connection with visas (including if a visa is not
9 granted or has been cancelled), deportation, or removal of unlawful
10 non-citizens, the following are not permitted:

- 11 (a) joinder of plaintiffs or applicants;
12 (b) consolidation of the proceeding with any other proceedings;
13 (c) representative or class actions;
14 (d) a person in any other way being a party to the proceeding
15 jointly with, on behalf of, for the benefit of, or representing,
16 one or more other persons, however this is described.

17 *Relationship with other laws*

18 (2) Subsection (1) has effect despite any other law, including in
19 particular:

- 20 (a) Part IVA of the *Federal Court of Australia Act 1976*; and
21 (b) any Rules of Court.

22 (3) However, subsection (2) does not apply to a provision of an Act if
23 the provision:

- 24 (a) commences after this section commences; and
25 (b) specifically states that it applies despite this section.

26 *Exceptions to general rule*

27 (4) Subsection (1) does not prevent the following persons from being
28 involved in a proceeding in any of the ways mentioned in that
29 subsection:

- 30 (a) the applicants in the proceeding and any persons they
31 represent, if:

- 1 (i) the regulations set out a definition of *family* for the
2 purposes of this paragraph; and
3 (ii) all of those applicants and other persons are members of
4 the same family as so defined;
5 (b) a person who becomes a party to the proceeding in
6 performing the person's statutory functions;
7 (c) the Attorney-General of the Commonwealth or of a State or
8 Territory;
9 (d) any other person prescribed in the regulations.

10 **486C Persons who may commence or continue proceedings in the**
11 **Federal Court**

- 12 (1) Only the persons mentioned in this section may commence or
13 continue a proceeding in the Federal Court that raises an issue (the
14 *relevant issue*):
15 (a) in connection with visas (including if a visa is not granted or
16 has been cancelled), deportation, or removal of unlawful
17 non-citizens; and
18 (b) that relates to the validity, interpretation or effect of a
19 provision of this Act or the regulations;
20 (whether or not the proceeding raises any other issue).
21 (2) Those persons are:
22 (a) in the case of a proceeding under Part 8:
23 (i) if the decision that gives rise to the relevant issue is
24 covered by paragraph 475(1)(a) or (b)—the applicant in
25 the review by the relevant Tribunal; or
26 (ii) if the decision that gives rise to the relevant issue is
27 covered by paragraph 475(1)(c)—the person who is the
28 subject of the decision; or
29 Note: A person cannot commence or continue a proceeding in respect
30 of a decision covered by subsection 475(2) or (4) because the
31 Federal Court has no jurisdiction in respect of those decisions.
32 See section 485A.
33 (b) in the case of any other proceeding:
34 (i) a person who is the subject of a visa decision (see
35 subsection (7)) that gives rise to the relevant issue; or

- 1 (ii) a person who is the subject of a deportation decision
2 (see subsection (7)) that gives rise to the relevant issue;
3 or
4 (iii) a person who is the subject of a removal action (see
5 subsection (7)) that gives rise to the relevant issue; or
6 (iv) a person who may appeal to the Federal Court under
7 section 44 of the *Administrative Appeals Tribunal Act*
8 *1975* in respect of a visa decision or a deportation
9 decision (see subsection (7)) that gives rise to the
10 relevant issue; or
11 (c) in any case:
12 (i) the Minister; or
13 (ii) the Attorney-General of the Commonwealth or of a
14 State or Territory; or
15 (iii) a person who commences or continues the proceeding in
16 performing the person's statutory functions; or
17 (iv) any other person prescribed in the regulations.

18 *Scope of rule*

- 19 (3) This section applies to proceedings in the Federal Court's
20 jurisdiction under Part 8 of this Act, section 39B or 44 of the
21 *Judiciary Act 1903* or any other law.
22 (4) To avoid doubt, nothing in this section allows a person to
23 commence or continue a proceeding that the person could not
24 otherwise commence or continue.

25 *Relationship with other laws*

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

31 *Definitions*

- 32 (7) In this section:

1 *deportation decision* means a decision relating to the deportation
2 of a person.

3 *removal action* means an action to remove a person.

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

6 **7 Application of amendments**

7 (1) The amendments made by this Part apply to a proceeding if the
8 application to commence the proceeding is filed in a court on or after 14
9 March 2000.

10 (2) However, the amendments do not apply:

11 (a) if the relevant court began the substantive hearing of the
12 proceeding before this Part commenced; or

13 (b) to an application for leave to appeal, or any other appeal
14 proceeding, filed on or after 14 March 2000 if the application
15 to commence the original court proceeding was filed before
16 14 March 2000.

17 **8 Transitional—proceedings that contravene new section** 18 **486B**

19 (1) If:

20 (a) a proceeding was begun before this Part commences; and

21 (b) section 486B of the *Migration Act 1958*, as amended by this
22 Part, applies to the proceeding (see item 7); and

23 (c) the proceeding contravenes that section when this Part
24 commences;

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

27 (2) Despite any other time limit, a person who has an interest in such a
28 proceeding may commence a fresh proceeding in relation to the matter
29 concerned within 28 days after this Part commences, so long as the
30 person complies with the *Migration Act 1958*, as amended by this Part,
31 and all other laws relating to such proceedings (including a law relating
32 to standing or requiring a fee to be paid).

- 1 (3) However, subitem (2) does not apply to a person in respect of a
2 proceeding if item 9 applies to the proceeding.

3 **9 Transitional—proceedings that contravene new section**
4 **486C**

- 5 If:
- 6 (a) a proceeding was begun before this Part commences; and
 - 7 (b) section 486C of the *Migration Act 1958*, as amended by this
8 Part, applies to the proceeding (see item 7); and
 - 9 (c) the proceeding contravenes that section when this Part
10 commences;
- 11 the court must treat the proceeding as if the court had lacked
12 jurisdiction to hear the proceeding when it was begun.

13 **10 Transitional—refund of application fees**

- 14 (1) If:
- 15 (a) a person has paid a fee to a court in respect of a proceeding;
16 and
 - 17 (b) because of the operation of item 8 or 9, the proceeding does
18 not continue;
- 19 then, on application, the Commonwealth must refund the fee to the
20 person.
- 21 Note: Section 28 of the *Financial Management and Accountability Act 1997* contains a
22 standing appropriation for the refund of such fees.
- 23 (2) If the fee was paid in respect of a proceeding brought on behalf of more
24 than one person, then the Commonwealth must refund the fee to a
25 person authorised in writing by all such persons to receive the refund.

26 **11 Transitional—regulations**

- 27 Despite section 48 of the *Acts Interpretation Act 1901*, a regulation
28 made for the purposes of paragraph 486B(4)(a) or (d) or subparagraph
29 486C(2)(c)(iv) of the *Migration Act 1958*, as amended by this Part, may
30 provide that the regulation is taken to have had effect from the
31 beginning of 14 March 2000.

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Schedule 2—Technical amendments

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Part 1—Character test

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Migration Act 1958

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1 Paragraph 501A(1)(c)

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

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

8

9 Add:

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

3 After subsection 501A(4)

14

15 Insert:

16 (4A) Under subsection (2) or (3), the Minister may cancel a visa that has
17 been granted to a person even if the original decision under
18 subsection (1) was a decision not to exercise the power conferred
19 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

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

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

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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*.

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