
The Parliament of the Commonwealth of Australia

Review of Migration Legislation Amendment Bill (No. 2) 2000

Joint Standing Committee on Migration

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Foreword

The Migration Legislation Amendment Bill (No. 2) 2000 was referred to the Joint Standing Committee on Migration for review on 12 April 2000 by the Minister for Immigration and Multicultural Affairs.

The Bill seeks to:

- restrict access to class actions in the migration jurisdiction in the High Court and Federal Court;
- limit the time within which applications for judicial review can be made to the High Court;
- narrow the 'standing' provisions for migration matters in the Federal Court; and
- clarify the Minister's power in applying the character test.

The Committee received 31 submissions on these very specialised areas of legislation. The Committee also held public hearings in Canberra, Sydney and Melbourne, at which witnesses from 11 organisations appeared.

On behalf of the Committee, I extend our appreciation for the assistance to this review by all who provided submissions or gave evidence at public hearings.

The Bill was referred at a time when the Committee had already embarked upon a fairly demanding work program with respect to two other reports. I am therefore indebted to the members of the Committee who willingly contributed their time and effort to completing the review of the Bill.

Chris Gallus
Chair



Membership of the Committee

Chair Mrs Chris Gallus MP

Deputy Chair Senator Jim McKiernan

Members Hon Dick Adams MP
(from 12 August 1999)

Hon Bruce Baird MP

Mrs Julia Irwin MP

Mrs Margaret May MP

Mr Bernie Ripoll MP

Hon Dr Andrew Theophanous MP
(until 9 August 1999)

Senator Andrew Bartlett

Senator Alan Eggleston

Senator John Tierney

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Terms of reference

The Migration Legislation Amendment Bill (No. 2) 2000 ('the Bill') was introduced into the House of Representatives on Tuesday 14 March 2000. The Bill amends the *Migration Act 1958* ('the Act') to:

- give effect to the Government's policy intention of restricting access to judicial review in visa related matters in all but exceptional circumstances by prohibiting class actions in migration litigation and limiting those persons who may commence and continue proceedings in the courts;
- clarify the scope of the Minister's power under section 501A to set aside a non-adverse section 501 decision of the delegate or the Administrative Appeals Tribunal and substitute his or her own adverse decision; and
- rectify an omission in subsection 140(1) and paragraph 140(2)(a), which allow for the consequential cancellation of visas, so that they also apply where a person's visa is cancelled under section 128.

The Bill also amends the *Migration Legislation Amendment Act (No. 1) 1998* and the *Migration Legislation Amendment (Migration Agents) Act 1999* to correct a number of misdescribed amendments of the Act.

In accordance with the Resolution of Appointment for the Joint Standing Committee on Migration, the Bill was referred by the Minister for Immigration and Multicultural Affairs, the Hon Philip Ruddock MP, on 12 April 2000 for consideration and report to Parliament.



List of abbreviations

AAT	Administrative Appeals Tribunal
ACBC	Australian Catholic Bishops Conference Committee for Migrants and Refugees and Committee for the Family and for Life
ACMRO	Australian Catholic Migration and Refugee Office (alternative identification of ACBC)
Amnesty	Amnesty International Australia
ARC	Administrative Review Council
DIMA	Department of Immigration and Multicultural Affairs
ECC	Ethnic Communities Council of NSW
FAR	Fijian-Australian Resource Centre Inc
FOI	Freedom of Information
HREOC	Human Rights and Equal Opportunity Commission
IARC	Immigration Advice and Rights Centre
ICJ	International Commission of Jurists: Australian Section
ICV	Islamic Council of Victoria
IRT	Immigration Review Tribunal
LCA	Law Council of Australia

MARA	Migration Agents Registration Authority
NCCA	National Council of Churches in Australia
RCA	Refugee Council of Australia
RILC	Refugee and Immigration Legal Centre
RRT	Refugee Review Tribunal
UNHCR	Office of the United Nations High Commissioner for Refugees



List of recommendations

3 Multiple parties – ‘class actions’ (section 486B)

Recommendation 1

The Committee recommends that restriction of access to class actions in the migration jurisdiction, as set out in the Bill, be enacted.

Recommendation 2

The Committee recommends that, in view of the alleged unintended consequences of section 486B, the section be reviewed to clarify:

- that test cases are not precluded; and
- multiple party actions in other jurisdictions are not affected by the Bill.

Recommendation 3

The Committee recommends that DIMA:

- actively examine judicial appeals to identify issues in common which may be resolved through test cases;
- be proactive in seeking resolution of issues through test cases; and
- publicise the test cases to maximise the number of applicants to be bound by the outcomes, and thus use the courts efficiently.

Recommendation 4

The Committee recommends that the activities of migration agents be brought under closer continuing scrutiny by DIMA and the Migration Agents Registration Authority.

4 'Standing' (section 486C)

Recommendation 5

The Committee recommends that the 'standing' arrangements in the proposed section 486C be proceeded with.

5 Technical Amendments: 'character test'

Recommendation 6

The Committee recommends that the technical amendments in Schedule 2 of the Bill be proceeded with.

7 Section 486A - Other Issues

Recommendation 7

The Committee recommends that applicants be allowed a period of 35 days as the time limit in which appeals to the High Court in migration matters may be lodged.

