

APPENDIX FOUR

RELEVANT EXTRACTS OF LEGISLATIVE PROVISIONS

Migration Act 1958

Deportation of certain non-citizens

200. The Minister may order the deportation of a non-citizen to whom this Division applies.

Deportation of non-citizens in Australia for less than 10 years who are convicted of crimes

201. Where:

- (a) a person who is a non-citizen has, either before or after the commencement of this section, been convicted in Australia of an offence;
- (b) when the offence was committed the person was a non-citizen who:
 - (i) had been in Australia as a permanent resident:
 - (A) for a period of less than 10 years; or
 - (B) for periods that, when added together, total less than 10 years; or
 - (ii) was a citizen of New Zealand who had been in Australia as an exempt non-citizen or a special category visa holder:
 - (A) for a period of less than 10 years as an exempt non-citizen or a special category visa holder; or
 - (B) for periods that, when added together, total less than 10 years, as an exempt non-citizen or a special category visa holder or in any combination of those capacities; and
- (c) the offence is an offence for which the person was sentenced to death or to imprisonment for life or for a period of not less than one year;

section 200 applies to the person.

Deportation of non-citizens upon security grounds

202. (1) Where:

- (a) it appears to the Minister that the conduct (whether in Australia or elsewhere and either before or after the commencement of this subsection) of a non-citizen referred to in paragraph 201 (b) constitutes, or has constituted, a threat to the security of the Commonwealth, of a State or of an internal or external Territory; and

- (b) the Minister has been furnished with an adverse security assessment in respect of the non-citizen by the Organization, being an assessment made for the purposes of this subsection;

then, subject to this section, section 200 applies to the non-citizen.

(2) Where:

- (a) subsection (1) applies in relation to a non-citizen;
- (b) the adverse security assessment made in respect of the non-citizen is not an assessment to which a certificate given in accordance with paragraph 38 (2) (a) of the *Australian Security Intelligence Organization Act 1979* applies; and
- (c) the non-citizen applies to the Tribunal for a review of the security assessment before the end of 30 days after the receipt by the non-citizen of notice of the assessment and the Tribunal, after reviewing the assessment, finds that the security assessment should not have been an adverse security assessment;

section 200 does not apply to the non-citizen.

(3) Where:

- (a) subsection (1) applies in relation to a non-citizen;
- (b) the adverse security assessment made in respect of the non-citizen is an assessment to which a certificate given in accordance with paragraph 38 (2) (a) of the *Australian Security Intelligence Organization Act 1979* applies; and
- (c) the Attorney-General has, in accordance with section 65 of that Act, required the Tribunal to review the assessment;
section 200 does not apply to the non-citizen unless, following the receipt by the Attorney-General of the findings of the Tribunal, the Attorney-General advises the Minister that the Tribunal has confirmed the assessment.

- (4) A notice given by the Minister pursuant to subsection 38 (1) of the *Australian Security Intelligence Organization Act 1979* informing a person of the making of an adverse security assessment, being an assessment made for the purposes of subsection (1) of this section, shall contain a statement to the effect that the assessment was made for the purposes of subsection (1) of this section and that the person may be deported under section 200 because of section 202.

- (5) Despite subsection 29(7) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal must not extend beyond the period of 28 days referred to in subsection 29(2) of that Act the time within which a person may apply to the Tribunal for a review of an adverse security assessment made for the purposes of subsection (1) of this section.

- (6) In this section:
"adverse security assessment", "security assessment" and "Tribunal" have the same meanings as they have in Part IV of the *Australian Security Intelligence Organization Act 1979*;
"Organization" means the Australian Security Intelligence Organization.

Deportation of non-citizens who are convicted of certain serious offences

203. (1) Where:

- (a) a person who is a non-citizen has, either before or after the commencement of this subsection, been convicted in Australia of an offence;
- (b) at the time of the commission of the offence the person was not an Australian citizen; and
- (c) the offence is:
 - (i) an offence against section 24, 24AA, 24AB, 24C, 25 or 26 of the *Crimes Act 1914*;
 - (ii) an offence against:
 - (A) section 6 or 7 of that Act; or
 - (B) subsection 86(1) of that Act by virtue of paragraph (a) of that subsection;
being an offence that relates to an offence referred to in subparagraph (1); or
 - (iii) an offence against a law of a State or of any internal or external Territory that is a prescribed offence for the purposes of this subparagraph;

then, subject to this section, section 200 applies to the non-citizen.

- (2) Section 200 does not apply to a non-citizen because of this section unless the Minister has first served on the non-citizen a notice informing the non-citizen that he or she proposes to order the deportation of the non-citizen, on the ground specified in the notice, unless the non-citizen requests, by notice in writing to the Minister, within 30 days after receipt by him or her of the Minister's notice, that his or her case be considered by a Commissioner appointed for the purposes of this section.
- (3) If a non-citizen on whom a notice is served by the Minister under subsection (2) duly requests, in accordance with the notice, that his or her case be considered by a Commissioner appointed for the purposes of this section, the Minister may, by notice in writing, summon the non-citizen to appear before a Commissioner specified in the notice at the time and place specified in the notice.
- (4) A Commissioner for the purposes of this section shall be appointed by the Governor-General and shall be a person who is or has been a Judge of a Federal Court or of the Supreme Court of a State or Territory, or a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory of not less than 5 year's standing.

- (5) The Commissioner shall, after investigation in accordance with subsection (6), report to the Minister whether he or she considers that the ground specified in the notice under subsection (2) has been established.
- (6) The commissioner shall make a thorough investigation of the matter with respect to which he or she is required to report, without regard to legal forms, and shall not be bound by any rules of evidence but may inform himself or herself on any relevant matter in such manner as he or she thinks fit.
- (7) Where a notice has been served on a non-citizen under subsection (2), section 200 does not apply to the non-citizen because of this section unless:
 - (a) the non-citizen does not request, in accordance with the notice, that his or her case be considered by a Commissioner;
 - (b) the non-citizen, having been summoned under this section to appear before a Commissioner, fails so to appear at the time and place specified in the summons; or
 - (c) a Commissioner reports under this section in relation to the non-citizen that he or she considers that the ground specified in the notice has been established.

Determination of time for sections 201 and 202

204. (1) Where a person has been convicted of any offence (other than an offence the conviction in respect of which was subsequently quashed) the period (if any) for which the person was confined in a prison for that offence shall be disregarded in determining, for the purposes of section 201 and subsection 202 (1), the length of time that that person has been present in Australia as a permanent resident or as an exempt non-citizen or a special category visa holder.

(2) In section 201 and subsection 202 (1):

"permanent resident" means a person (including an Australian citizen) whose continued presence in Australia is not subject to any limitation as to time imposed by law, but does not include:

- (a) in relation to any period before 2 April 1984 - a person who was, during that period, a prohibited immigrant within the meaning of this Act as in force at that time; or
- (b) in relation to any period starting on or after 2 April 1984 and ending on before 19 December 1989 - the person who was, during that period, a prohibited non-citizen within the meaning of this Act as in force in that period; or
- (c) in relation to any period starting on or after 20 December 1989 and ending before the commencement of section 7 of the *Migration Reform Act 1992* - the person who was, during that period, an illegal entrant within the meaning of this Act as in force in that period; or
- (d) in relation to any later period - the person who is, during that later period, an unlawful non-citizen.

- (3) For the purposes of this section:
- (a) a reference to a prison includes a reference to any custodial institution at which a person convicted of an offence may be required to serve the whole or a part of any sentence imposed upon him or her by reason of that conviction; and
 - (b) a reference to a period during which a person was confined in a prison includes a reference to a period:
 - (i) during which the person was an escapee from a prison; or
 - (ii) during which the person was undergoing a sentence of periodic detention in a prison.

Dependants of deportee

- 205.** (1) Where the Minister makes or has made an order for the deportation of a person who has a spouse, the Minister may, at the request of the spouse of that person, remove -
- (a) the spouse; or
 - (b) the spouse and a dependent child or children; of that person.
- (2) Where the Minister makes or has made an order for the deportation of a person who does not have a spouse but who does have a dependent child or children, the Minister may, at the person's request, remove a dependent child or children of the person.

Deportation order to be executed

- 206.** (1) Where the Minister has made an order for the deportation of a person, that person shall, unless the Minister, revokes the order, be deported accordingly.
- (2) The validity of an order for the deportation of a person shall not be affected by any delay in the execution of that order.

Review of decisions

- 500.** (1) Applications may be made to the Administrative Appeals Tribunal for review of:
- (a) decisions of the Minister under section 200 because of circumstances specified in section 201; or
 - (b) decisions of the Minister under section 501; or
 - (c) a decision to refuse to grant a protection visa, or to cancel a protection visa, relying on one or more of the following Articles of the Refugees Convention, namely, Article 1F, 32 or 33(2); other than decisions to which a certificate under section 502 applies.
- (2) A person is not entitled to make an application under paragraph (1)(a) unless:
- (a) the person is an Australian citizen; or

- (b) the person is a lawful non-citizen whose continued presence in Australia is not subject to any limitation as to time imposed by law.
- (3) A person is not entitled to make an application under subsection (1) for review of a decision referred to in paragraph (1)(b) or (c) unless the person would be entitled to seek review of the decision under Part 5 or 7 if the decision had been made on another ground.
- (4) Decisions referred to in subsection (1) are not reviewable under Part 5 or 7.
- (5) For the purpose of reviewing a decision referred to in subsection (1), the Tribunal shall be constituted by a presidential member alone.
- (6) Where an application has been made to the Tribunal for the review of a decision under section 201 ordering the deportation of a person, the order for the deportation of the person shall not be taken for the purposes of section 253 to have ceased or to cease to be in force by reason only of any order that has been made by the Tribunal or a presidential member under section 41 of the *Administrative Appeals Tribunal Act 1975* or by the Federal Court of Australia or a Judge of that Court under section 44A of that Act.
- (7) In this section, "decision" has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Special power to refuse or to cancel a visa or entry permit

- 501.** (1) The Minister may refuse to grant a visa to a person, or may cancel a visa that has been granted to a person, if:
- (a) subsection (2) applies to the person; or
 - (b) the Minister is satisfied that, if the person were allowed to enter or to remain in Australia, the person would:
 - (i) be likely to engage in criminal conduct in Australia; or
 - (ii) vilify a segment of the Australian community; or
 - (iii) incite discord in the Australian community or in a segment of that community; or
 - (iv) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or violence threatening harm to, that community or segment, or in any other way.
- (2) This subsection applies to a person if the Minister:
- (a) having regard to:
 - (i) the person's past criminal conduct; or
 - (ii) the person's general conduct;is satisfied that the person is not of good character; or

- (b) is satisfied that the person is not of good character because of the person's association with another person, or with a group or organisation, who or that the Minister has reasonable grounds to believe has been or is involved in criminal conduct.
- (3) The power under this section to refuse to grant a visa to a person, or to cancel a visa that has been granted to a person, is in addition to any other power under this Act, as in force from time to time, to refuse to grant a visa to a person, or to cancel a visa that has been granted to a person.

Minister may decide in the national interest that certain persons are to be excluded persons

502. (1) If:

- (a) the Minister, acting personally, intends to make a decision:
 - (i) under section 200 because of circumstances specified in section 201; or
 - (ii) under section 501; or
 - (iii) to refuse to grant a protection visa, or to cancel a protection visa, relying on one or more of the following Articles of the Refugees Convention, namely, Article 1F, 32 or 33(2);
in relation to a person; and
- (b) the Minister decides that, because of the seriousness of the circumstances giving rise to the making of that decision, it is in the national interest that the person be declared to be an excluded person;

the Minister may, as part of the decision, include a certificate declaring the person to be an excluded person.

- (2) A decision under subsection (1) must be taken by the Minister personally.
- (3) If the Minister makes a decision under subsection (1), the Minister must cause notice of the making of the decision to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the decision was made.

Exclusion of certain persons from Australia

503. (1) A person in relation to whom a decision has been made:

- (a) under section 200 because of circumstances specified in section 201; or
- (b) under section 501; or
- (c) to refuse to grant a protection visa, or to cancel a protection visa, relying on one or more of the following Article of the Refugees Convention, namely, Article 1F, 32 or 33(2);

is not entitled to enter Australia or to be in Australia at any time during the period determined under the regulations.

- (2) The period referred to in subsection (1) commences, in the case of a person who has been deported or removed from Australia, when the person is so deported or removed.
- (3) Different periods may be prescribed under subsection (1) in relation to different situations.
- (4) This section does not apply to a holder of a criminal justice visa.

Migration Regulations

SCHEDULE 4 - PUBLIC INTEREST CRITERIA

4014.

- (1) If the applicant is affected by either of the risk factors specified in subclauses (2) and (4):
 - (a) the application is made more than 3 years after the departure of the person from Australia referred to in that subclause; or
 - (b) the Minister is satisfied that, in the particular case:
 - (i) compelling circumstances that affect the interests of Australia; or
 - (ii) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa within 3 years after the departure.
- (2) Subject to subclause (3), a person is affected by a risk factor if the person left Australia after the expiry of a period of grace that applied to the person under section 13 of the Act as in force before 1 September 1994, being a period of grace that expired before 1 September 1994.
- (3) Subclause (2) does not apply to a person who:
 - (a) applied for review by a review officer, the Immigration Review Tribunal or the Refugee Review Tribunal; and
 - (b) left Australia within 7 days of being notified of the decision on the application for review.
- (4) Subject to subclause (5), a person is affected by a risk factor if the person left Australia as:
 - (a) an unlawful non-citizen; or
 - (b) the holder of a bridging visa class C, D or E.
- (5) Subclause (4) does not apply to a person if:

- (a) the person left Australia within 28 days after a substantive visa held by the person ceased to be in effect or an entry permit held by the person expired, as the case requires; or
- (b) a bridging visa held by the person at the time of departure was granted:
 - (i) within 28 days after a substantive visa held by the person ceased to be in effect or an entry permit held by the person expired, as the case requires; or
 - (ii) while the person held another bridging visa granted:
 - (A) while the person held a substantive visa; or
 - (B) within 28 days after a substantive visa held by the person ceased to be in effect or an entry permit held by the person expired, as the case may be.

SCHEDULE 5 - SPECIAL RETURN CRITERIA

5001.

The applicant is not:

- (a) a person who left Australia while the subject of a deportation order under:
 - (i) section 200 of the Act; or
 - (ii) section 55, 56 or 57 of the Act as in force on and after 19 December 1989 but before 1 September 1994; or
 - (iii) section 12, 13 or 14 of the Act as in force before 19 December 1989; or
- (b) a person whose visa has been cancelled under subsection 501(1) of the Act because the Minister, having regard to the persons's past criminal conduct, was satisfied that the person was not of good character.

5002.

If the applicant is a person who has been removed from Australia under section 198, 199 or 205 of the Act:

- (a) the application is made more than 12 months after the removal; or
- (b) the Minister is satisfied that, in the particular case:
 - (i) compelling circumstances that affect the interests of Australia; or
 - (ii) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa within 12 months after the removal.