

APPENDIX 4

JUDICIAL REVIEW UNDER THE *MIGRATION ACT 1958*

The legislation from Part 8 of the Act is set out below:

Division 2 – Review of decisions by Federal Court

475 Decisions reviewable by Federal Court

- (1) Subject to subsection (2), the following decisions are judicially-reviewable decisions:
 - (a) decisions of the Immigration Review tribunal;
 - (b) decisions of the Refugee Review Tribunal;
 - (c) other decisions made under this Act, or the regulations, relating to visas.
- (2) The following decisions are not judicially-reviewable decisions:
 - (a) a decision in relation to a criminal justice visa or a criminal justice certificate within the meaning of Division 4 of Part 2;
 - (b) an internally-reviewable decision;
 - (d) an RRT-reviewable decision;
 - (da) a decision of the Minister not to exercise, or not to consider the exercise of, his or her power to extend the visa period of a temporary safe haven visa under subsection 37A(2);
 - (db) a decision of the Minister to shorten the visa period of a temporary safe haven visa under subsection 37A(3);
 - (e) a decision of the Minister not to exercise, or not to consider the exercise of, his or her power under section 48B, paragraph 72(1)(c), section 91F, 91L, 345, 351, 391, 417 or 454;
 - (f) a decision of the Principal Member of the Immigration Review Tribunal or of the Principal Member of the Refugee Review Tribunal to refer a matter to the Administrative Review Tribunal.
 - (g) a decision of the President of the Administrative Appeals Tribunal to accept, or not to accept, the referral of a decision under section 382 or 444.

476 Application for review

(1) Subject to subsection (2), application may be made for review by the Federal Court of a judicially-reviewable decision on any one or more of the following grounds:

- (a) that procedures that were required by this Act or the regulations to be observed in connection with the making of the decision were not observed;
- (b) that the person who purported to make the decision did not have jurisdiction to make the decision;
- (c) that the decision was not authorised by this Act or the regulations;
- (d) that the decision was an improper exercise of the power conferred by this Act or the regulations;
- (e) that the decision involved an error of law, being an error involving an incorrect interpretation of the applicable law or an incorrect application of the law to the facts as found by the person who made the decision, whether or not the error appears on the record of the decision;
- (f) that the decision was induced or affected by fraud or by actual bias;
- (g) that there was no evidence or other material to justify the making of the decision.

(2) The following are not grounds upon which an application may be made under subsection (1);

- (a) that a breach of the rules of natural justice occurred in connection with the making of the decision;
- (b) that the decision involved an exercise of a power that is so unreasonable that not reasonable person could have so exercised the power.

(3) The reference in paragraph (1)(d) to an improper exercise of a power is to be construed as being a reference to:

- (a) an exercise of a power for a purpose other than a purpose for which the power is conferred; and
- (b) an exercise of a personal discretionary power at the direction or behest of another person; and

- (c) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;

but not as including a reference to:

- (d) taking an irrelevant consideration into account in the exercise of a power; or
- (e) failing to take relevant consideration into account in the exercise of a power; or
- (f) an exercise of a discretionary power in bad faith; or
- (g) any other exercise of the power in such a way that represents an abuse of the power that is not covered by paragraphs (a) to (c).

480 Parties to review

The parties to the review of a judicially-reviewable decision are the Minister and:

- (a) if the judicially-reviewable decision is covered by paragraph 475(1)(a) or (b) – the applicant in the review by the relevant Tribunal; or
- (b) if the judicially-reviewable decision is covered by paragraph 475(1)(c) – the person who is the subject of the decision.

481 Powers of the Federal Court

- (1) On application for review of a judicially-reviewable decision, the Federal Court may, in its direction, make all or any of the following orders:
 - (a) an order affirming, quashing or setting aside the decision, or a part of the decision, with effect from the date of the order or such earlier date as the Court specifies;
 - (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to the directions as the Court thinks fit;
 - (c) an order declaring the rights of the parties in respect of any matter to which the decision relates;
 - (d) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the Federal Court considers necessary to do justice between the parties.

- (2) On an application for a review in respect of a failure to make a judicially-reviewable decision, or in respect of a failure to make a decision within the period within which the decision was required to be made, the Federal Court may make any or all of the following orders:
- (a) an order directing the making of the decision;
 - (b) an order declaring the rights of the parties in respect of any matter to which the decision relates;
 - (c) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the Federal Court considers necessary to do justice between the parties.
- (3) The Federal Court may, at any time, of its own motion or on the application of any party, revoke, vary, or suspend the operation of, any order made by it under this section.

486 Jurisdiction of Federal Court

The Federal Court has jurisdiction with respect to judicially-reviewable decisions and that jurisdiction is exclusive of the jurisdiction of all other courts other than the jurisdiction of the High Court under section 75 of the Constitution.