

CHAPTER 2

OVERVIEW OF THE BILL

2.1 This chapter briefly outlines the main provisions of the Migration Litigation Reform Bill 2005 (the Bill).

Significant provisions of the Bill

2.1 The main proposals in the Bill aim to:

- direct migration cases to the Federal Magistrates Court (FMC) (Item 17);
- ensure identical grounds of review in migration cases (Item 17);
- impose uniform time limits in migration cases (Item 18 and Items 30-33);
- facilitate quicker handling of migration cases (Item 10 and Item 37); and
- deter unmeritorious applications (Items 7, 8 & 9 and Item 38).

2.2 The Bill also attempts to extend elements of Parts 8 and 8A of the Migration Act so that time limits on judicial review applications and the courts' jurisdiction in migration matters will apply to all decisions, even a decision that is arguably affected by jurisdictional error (a 'purported privative clause provision').

Direct migration cases to the FMC – Item 17

2.3 The Federal Court will have limited jurisdiction under the Migration Act in migration matters. This is restricted, first, to complex cases referred to it by the FMC and, secondly, migration cases involving judicial review of decisions of the Administrative Appeals Tribunal (AAT) under section 500 of the Migration Act or decisions made personally by the Minister for Immigration and Multicultural and Indigenous Affairs under sections 501, 501A, 501B or 501C of the Migration Act. This second group of migration cases involve decisions to refuse to issue or to cancel a visa, or to deport a person, on 'character' grounds.

2.4 Nearly all migration cases remitted from the High Court will be channelled directly to the FMC. Migration cases will only be remitted to the Federal Court where they involve judicial review of character-related decisions made by the AAT or the Minister personally.

Ensure identical grounds of review in migration cases – Item 17

2.5 The grounds of review in migration matters in the FMC will be the same as those in the High Court under section 75(v) of the Constitution. Section 75 of the Constitution states that the High Court has 'original jurisdiction' (the authority to hear cases) in all matters:

(v) in which a writ of Mandamus [*directing that an officer do a certain action*] or prohibition [*preventing an officer from doing a certain action*] or

an injunction [*halting a current or future action for a period of time*] is sought against an officer of the Commonwealth.

Impose uniform time limits in migration cases – Item 18 and Items 30-33

2.6 Applications to the FMC, Federal Court and the High Court must be made within 28 days of actual (not deemed) notification of a decision. The 28 day time limit can be extended by the court for a further 56 days if a request for further time is made within 84 days of actual notification of the decision, and the court is satisfied that it is in the interests of the administration of justice to extend the time limit.

Facilitate quicker handling of migration cases – Items 10 and 37

2.7 The Bill includes amendments which attempt to improve court processes. There is express provision for the High Court to remit migration and other cases to another court without an oral hearing.

2.8 When commencing a proceeding in the FMC, the Federal Court and the High Court in relation to a tribunal decision, applicants must disclose details of any previous application for judicial review in any court in relation to that decision.

Deter unmeritorious applications – Items 7, 8 & 9 and Item 38

2.9 The Bill aims to strengthen the power of the High Court, the Federal Court and the FMC to deal with unmeritorious proceedings by broadening the grounds on which a court can summarily dispose of proceedings. A court would be able to dispose of a matter summarily on its own initiative if it is satisfied that there are 'no reasonable prospects of success'.

2.10 The Bill prohibits persons, including lawyers and migration agents, from encouraging the initiation or continuation of 'unmeritorious' migration litigation, with the risk of a personal costs order for contravening this obligation. Lawyers acting for applicants in migration cases will also be required to certify at the institution of proceedings that an application has merit.