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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

MIGRATION AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Immigration, Local Government and Ethnic Affairs

The Hon Gerry Hand MP

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

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MIGRATION AMENDMENT BILL 1991

OUTLINE

This Bill introduces amendments aimed at improving and streamlining immigration procedures.

2 Various definitions are omitted, amended and inserted.

3 The Bill provides for the clarification of the period of grace. The period of grace will recommence in the event that an applicant for an entry permit withdraws his or her application or a person withdraws certain review requests. The amendment now allows for the recognition of the withdrawal of such an application or request.

4 The concept of an entry visa, which formerly allowed a person to travel to and enter Australia has been broadened to give the document a dual quality. The amendment will enable an entry visa to act as either an entry permit or a visa when it is first issued depending on where it was issued and the circumstances of the application.

5 A provision is introduced to protect returning permanent residents from innocently falling foul of provisions which would render them illegal entrants and susceptible to deportation in situations where they have contracted a prescribed physical or mental condition during their period of residence in Australia or when they are temporarily absent from the country. The Bill also makes provisions to emphasise the existing arrangements that the failure to disclose certain information has continuing consequences.

6 Provision is made to remove redundant provisions under section 47 of the Act. It reinforces the existing powers to grant visas and entry permits in sections 24 and 34, supplemented by the Minister's special powers in sections 115 and 137. The existing provision to grant a permanent entry permit after entry to Australia only to the holder of a valid temporary entry permit is retained.

7 The Bill introduces a new regime for the immigration processing of persons who arrive in Australia and whom it is not practicable or convenient to process for immigration purpose at the point of arrival because of difficulties associated with the place or timing of their arrival. This new regime enables their orderly processing including the capacity for the speedy assessment of and reaction to any medical conditions which they may have. It is a response to the increasing frequency of undocumented and 'unexpected' arrivals and brings more convenience and practicality to the processing of such arrivals at busy airports and remote localities. It

also enables processing outside the strict custodial situation of sections 88 and 89 of the Act, and to this end, persons who are held in section 88 or 89 custody may also be taken from that custody and be brought within the scope of the new processing regime.

8 The Bill also introduces a provision which allows a person to request or consent to deportation before the expiry of the period of grace and which makes it clear that a person ordered deported who in leaving Australia evades the deportation process is taken to have been deported.

9 An amendment to the penalty provision in section 76 of the Act increases the penalty for carrying of undocumented persons to Australia from $5,000 to $10,000.

10 Subsection 88(8) of the Act has been amended to bring its language into line with current drafting techniques. Subsection 89(8) of the Act has been amended to bring it into line with subsection 88(8). In addition section 89 has been amended to ensure that the notice provisions to render a carrier liable for certain costs are not incorrectly linked to the Commonwealth's ability to remove persons who are not permitted to enter Australia and to keep those persons in custody for that purpose.

11 The Bill introduces provisions which will require all visa and entry permit applications to include a requirement for a declaration about the applicant's character or conduct or both. The making of the declaration will be a precondition to the existence of a grantable application. The existing section 20 of the Act, in conjunction with section 14, provides a sanction if the person provides false or misleading information. The sanction is that the person is made an illegal entrant. Section 20 is amended to make it explicit that a false or misleading statement in the said declaration is a 'breach' of section 20.

12 Amendments to the merits review provisions give more generous periods in which a review of certain decisions may be sought and clarifies the Minister powers under section 115 of the Act following first tier merits review.

13 Notwithstanding those changes, the existing powers of the Minister in sections 115 and 137 to remake decisions remain unchanged - that is, those powers remain non-compellable in the sense that the Minister has no duty to consider the exercise of the powers or to exercise them regardless of the circumstances.

14 An amendment to section 120 of the Act increases the classes of decisions in which the Minister may exercise the Minister's powers under sections 115 and 137 following review of decisions by the review authorities under the Act.

15 The remuneration and allowances paid to members of the Immigration Review Tribunal are brought into line with the band structure of the Senior Executive Service (SES) of the Australian Public Service so that senior Tribunal members receive remuneration and allowances equivalent to the maximum rate payable to a Senior Executive Officer classified as SES Band 1 and other full time members receive remuneration and allowances at the minimum level of the SES Band 1. This amendment merely corresponds to the recent changes to the Public Service Act 1922 in relation to SES levels.

16 The prescribable penalty for alleged contravention of section 76 of the Act - the carrying of undocumented persons to Australia - provided for in paragraph 181(1)(j) of the Act, is increased to $3,000.

17 The Bill also contains a schedule of minor amendments to the Act.

FINANCIAL IMPACT STATEMENT

18 The amending provisions will not impact on the costs of administering existing facilities.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short Title etc

1 Provides that the Act is cited as the Migration Amendment Bill 1991 and that the term 'Principal Act' is a reference to the Migration Act 1958. In this document the Migration Act 1958 will be referred to as 'the Act'.

Clause 2 Commencement

2 Provides that some parts of the Bill commence on the day on which it receives Royal Assent and other parts commence on Proclamation. It also provides for automatic commencement of any provisions which remain unproclaimed six months after the date of Royal Assent.

Clause 3 Interpretation

3 This clause omits, amends, and inserts various definitions in section 4 of the Act. Notably:

- 'valid visa' is amended to include a document known as an Authority to Return. These were issued administratively prior to 1 November 1979 to allow travel to Australia before the Act provided for visas and return endorsements. The purpose of this amendment is to allow the Migration Regulations to recognise an authority to return in order that such documents may be removed from circulation by cancellation under the powers provided by the Act and replaced with the current return visas. Cancellation of these documents is necessary to enable compliance with the 'Master Plan' for passenger processing.

- 'visa' is amended so as to recognise both an entry visa and a travel-only visa. The distinction between the two kinds is set out in new sections 16A, 16B, amended section 17 and substituted section 18 which changes are at clauses 6 and 7.

- 'officer' is amended to allow persons, or classes of persons, to be authorised by the Minister, by notice published in the Gazette, to be officers. This is to allow for example, private contractors engaged in entering new records into the Movement Data Base from passenger cards, to be authorised to be 'officers' and thereby satisfy the requirement, in section 168 of the Act, that only authorised officers be permitted to undertake such work.

- "processing area",
- "prohibited person",
- "unprocessed person"

These three expressions are new to the Act and relate to a new regime for the immigration processing of those persons whose claims for entry to Australia may require lengthy investigation. These are elaborated upon in Clause 12 of the Bill.

- 'refugee'
- 'Refugees Convention'
- 'Refugees Protocol'

These expressions are referred to in paragraphs 53(1)(b) and 120(1)(d) of the Act. Their interpretation by reference to the Convention relating to the Status of Refugees that was done at Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees that was done in New York on 31 January 1967 are set out in the interpretation section so that in the relevant paragraphs of the Act a simple reference to 'refugee' is all that is necessary.
No substantive change in meaning is effected by this amendment.

- 'travel-only visa' is an expression introduced to distinguish the old style of visa from an entry visa. It is one which was formerly described as 'permission to travel to Australia'.

- 'is taken to be' is an expression used to assist the adoption of plain language in the drafting of statutes. The expression 'is taken to be' has taken the place of the expression 'deemed to be' and this is officially notified in this amendment to ensure that there is no further confusion in the interpretation of the expression by the Courts.

- The Migration Legislation Amendment Act 1989 introduced a regime in which the grant and refusal of visas and entry permits is controlled by regulations made under the Act. The powers to grant or refuse a visa or entry permit are contained in sections 24 and 34 of the Act respectively (and sections 51 and 52 in relation to statutory visitors only) and nowhere else. The new subsection 4(28) has been introduced to clarify the situation whereby the only exception is the Minister's special powers under sections 115 and 137 of the Act.

Clause 4 Period of Grace

4 This clause amends section 13 of the Act to make it clear that the period of grace recommences where an applicant for an entry permit withdraws his or her application or where a person who is requesting a decision to be reviewed either by a review authority under Part 3 of the Act or the Federal Court, withdraws that request.

Clause 5 Visas/Travel-only visas

5 This clause (and the two following clauses) relate to the streamlining of the processing arrangements. It provides for the insertion of new sections 16A and 16B. Clauses 6 and 7 of the Bill have widened the concept of an entry visa. It is therefore necessary to describe as travel-only visas those which are granted simply to enable a person to travel to Australia. Holders of travel-only visas will still be required to obtain an entry permit when they arrive in Australia to enable them to enter Australia. An entry visa however, will enable a visa to be granted so that it takes effect immediately as an entry permit or can act in a similar way to a travel-only visa save that there will not be the additional step of having to obtain a separate entry permit on arrival in Australia. To ensure that the documents are distinguishable in the legislation:

- new section 16A provides for the effect of visas generally (including entry visas) to enable travel to Australia by a holder; and

- new section 16B provides that the holder of a travel-only visa is not thereby entitled to enter Australia (unlike the holder of a valid entry visa).

Clause 6 Entry Visas etc

6 This clause amends section 17 of the Act by omitting subsections (1), (2) and (3) and substituting subsections (1), (2), (3), (3A) and (3B). These amendments provide that an entry visa may be granted to a person whether the person has entered Australia or is in another country. The entry visa will permit the holder to enter Australia while it is valid if he or she travelled non-stop to Australia on a pre-cleared flight or if he or she travelled to Australia by air and disembarked at a proclaimed airport.

Clause 7 Effect of Entry Visas

7 Section 18 of the Act is repealed and substituted. Section 18 now provides that an entry visa has a dual quality: if the holder of an entry visa is outside Australia, the entry visa takes on the character of a travel-only visa and provides the holder with the authority to travel to Australia. When the holder enters Australia in accordance with subsection 17(3A) of the Act being in possession of an entry visa, it has effect as if it were an entry permit allowing the person to remain in Australia either permanently or for a limited period (according to the nature of the entry visa) and subject to whatever conditions are applicable to the grant. If the entry visa is granted when a person is in Australia, it has effect immediately as an entry permit and will take on the quality of a travel-only visa if the holder leaves Australia during its period of validity, allowing the holder to travel back to Australia while it is valid and to re-enter Australia (in accordance with subsection 17(3A) of the Act) - the entry visa thereby having effect again as an entry permit.

Clause 8 Circumstances in which non-citizens may become illegal entrants

8 This clause amends section 20 of the Act to introduce some concessions and emphasise its operation without disturbing its broad coverage. In conjunction with section 14 of the Act, it causes persons who 'breach' its provisions to become illegal entrants and the amendments reinforce this while effectively preventing a returning permanent resident from being excluded from Australia:

- Each of paragraphs (a) to (d) of subsection 20(1) has had inserted words which emphasise the effects of section 20. That is that a person comes within the scope of the section and requires the appropriate endorsement under the section regardless of the number of times the person has entered and re-entered Australia.

- In addition there is included, by new paragraph 20(1)(ca) and additional words to paragraph 20(2)(b), explicit references to a false or misleading statement in a subsection 24(1A) or 34(1A) declaration being within the coverage of section 20.

- Section 20 of the Act is also amended by the insertion of new subsection 20(1A) which effectively prevents certain returning residents from being excluded from Australia. It does so by protecting a returning permanent resident from the operation of sub-paragraph 20(1)(d)(i) of the Act. To be entitled to this protection the person must have been the holder of a valid permanent entry permit immediately before the temporary absence from Australia. Since a person's permanent entry permit ceases to be effective on leaving Australia - by virtue of section 49 of the Act - the returning 'permanent resident' needs to be regranted a permanent entry permit on arrival in Australia. Generally the permanent entry permit to be valid on entry to Australia would need an endorsement recognising the holder as a person to whom sub-paragraph 20(1)(d)(i) applies. In certain circumstances such an endorsement will no longer be needed. That is, where the permanent resident was suffering from the prescribed medical condition when leaving Australia or developed it after leaving Australia. In order to get the benefit of the provision, the person is required to be the holder of a valid return class of visa which may be prescribed in the regulations from time to time.

- This particular amendment also ensures that the protection does not extend to persons who before a temporary absence from Australia had been in breach of of section 20 but had not been detected. It often happens that a person is not detected as a person to whom section 20 applies upon initial entry to Australia and is granted a permanent entry permit. Despite being the holder of such a permit, the person is an illegal entrant by operation of subsection 14(2), section 20 and subsection 35(2). The amendment ensures that if such a person were to leave Australia on a short leave of absence, that person would not benefit from such temporary absence and escape the effects of section 20 which would have applied before that absence.

- New subsection 20(4A) is inserted and provides for an authorised officer to endorse a visa. Before amendment subsection 20(4) restricted the act of endorsing a visa with section 20 details to the person who granted the visa. The amendment will permit an authorised officer at a proclaimed port to perform this task where it is appropriate to allow entry to the non-citizen.

New subsection 20(14A) is inserted to give meaning to the expressions 'prescribed disease' and 'prescribed physical or mental condition' as used in new subsection 20(1A). These are diseases or conditions which are provided for in the Migration Regulations for the purposes of subparagraph 20(1)(d)(i). These are currently prescribed at regulation 176 of the Migration Regulations and are:

"(a) tuberculosis or any other communicable disease of a fatal or serious nature which is a threat to public health in Australia;

"(b) any other disease or condition which would be a likely to endanger the Australian community during the person's intended stay in Australian;

"(c) any disease or condition which during the person's intended period of stay in Australia:

(i) would require significant care or significant treatment; or

(ii) would require care or treatment (or both) involving the use of community resources in short supply; or

(iii) prevent a person who has entered Australia from pursuing an intended occupation in Australia: or

(iv) would result in such a person becoming a significant charge on public funds".

Clause 9 Regulations may provide for visas

9 This clause amends section 23 of the Act. Subsection 23(4)(a) is replaced to make a technical amendment to take account of the new definition of entry visa.

Clauses 9A and 9B Grant or refusal of visas/Grant or refusal of entry permits

10 Clauses 9A and 9B amend sections 24 and 34 of the Act to require all visa and entry permit application forms to include a requirement for a declaration about the applicant's character or conduct or both. All non-Australian citizen applicants or, in some cases, another person on the applicant's behalf (for example, parents of children), will be required to make the declaration. The making of the declaration will, by virtue of subsections 24(2) and 34(2) of the Act, be a precondition to the existence of a grantable application.

Clause 10 Circumstances in which permanent entry permits may be granted to non-citizens after entry into Australia

11 This clause repeals and amends section 47 of the Act in the wake of the changes brought by the Migration Legislation Amendment Act 1989. That Act ended the discretionary powers to grant entry permits, including the grant of permanent entry permits after entry to Australia under the former equivalent section to section 47 - section 6A - and provided for the grant of all entry permits (and visas) to be made under sections 34 (and 24 respectively) and hence to be controlled by regulations made under the Act. The only exception is the Minister's special powers under sections 115 and 137 (which are clarified in these amendments - see clause 3). That change left section 47 of the Act with certain redundant provisions, namely those parts of it that had acted as the fetter on the previously wide discretion to grant permanent entry permits after entry to Australia. The only remaining relevant part - that the applicant be the holder of a valid temporary entry permit - has been retained.

Clause 11 Circumstances in which entry permits may be granted to statutory visitors after entry into Australia

12 This is a technical amendment to section 53 of the Act which omits paragraph (1)(b) consequential to the terms 'refugee', 'Refugees Convention' and 'Refugees Protocol' being inserted in the interpretation section of the Act. The provision amends section 53 to refer simply to 'refugee'.

Clause 12 Division 4A - Unprocessed Persons

13 This clause introduces a new division into the Migration Act to deal with persons who arrive in Australia, such as 'boat people', whom, because of timing, numbers or needs, it is practicable or convenient to process for immigration purposes outside of the strict custodial regime of sections 88 or 89 of the Act. The new division will allow for the orderly and proper processing of such persons who will generally fall within one of the following categories:

- Persons who arrive in Australia and who have not been authorised for travel to Australia by an overseas immigration post but who make formal claims for entry, or are taken to be applying for entry, to Australia and whose claims may require further investigation (for example 'boat people').

- Persons who may have obtained a visa in the usual way for travel to Australia for a temporary stay but who destroy their documentation in transit and make formal claims for entry, or are taken to be applying for entry, to Australia and whose claims require investigation.

- Persons who while transiting Australia for another destination make claims for entry to Australia which require further investigation.

14 The crucial terms used in this division are included in the definition section of the Act. They are:

"Processing area" which is a place nominated by the Minister where a person (unprocessed person) whose claims for entry to Australia need to be investigated and decided will stay pending a decision

"Prohibited person" who is a person whose claims for entry have been investigated and decided and in respect of whom entry has been refused or a person who has indicated a desire to leave Australia.

"Unprocessed person" who is a person who makes claims at Australia's frontier which require investigation before an informed decision can be taken in respect of the grant of permission to enter.

15 New Division 4A introduces sections 54A - 54G

- **New section 54A Processing areas** - This section provides the Minister with the power to nominate a processing area. This is achieved by gazetting the nominated area.

- **New section 54B Unprocessed persons** - This provides an authorised officer with the power to remove a person from the vessel on which he or she arrived in Australia or from a proclaimed airport and order that such person be taken to a processing area. The power is given to manage those situations where persons arrive in Australia and make claims which require reasonable investigation or inquiry. Until the individual has been identified and the investigation has been completed, a decision cannot be made to allow entry to Australia. The person becomes an unprocessed person and entry into Australia for the purposes of the Act can only occur after the unprocessed person has had his or her claims for entry to Australia formally decided, has been granted an entry permit and leaves the processing area after such grant.

The existing liability of carriers has been extended to the new provisions. Subsection 54B(3) allows for the master, owner, agent and charterer of the vessel conveying a person to Australia, which person becomes an unprocessed person, to be given notice that they may be jointly and severally accountable for certain costs should the unprocessed person become a prohibited person. Those costs are:

- the cost of removing the person from Australia;
- the cost of transporting the person and the person's custodian to the processing area and between processing areas;
- a daily maintenance amount for each day in custody or in a processing area; and
- the cost of transporting the person and the person's custodian from the processing area or a place of custody to the vessel on which the person is to leave Australia.

- **New section 54C Restraint of unprocessed persons** - Section 54C provides for the custody of unprocessed persons being taken to and from processing areas and prevents such persons leaving a processing area until the person is either granted an entry permit or becomes a prohibited person.

- **New section 54D Prohibited persons** - This section provides for the status of an unprocessed person to change to that of a prohibited person where it has been decided that the unprocessed person is not to be given permission to remain in Australia. The status of prohibited person can also arise where an unprocessed person requests to leave Australia voluntarily. The status of prohibited person is more likely to arise where a decision is made after identification of the individual and full consideration of the individual's claims. From a procedural point of view it will not be possible for an unprocessed person to stall proceedings by not applying for an entry permit because provision is made, in effect, to process and refuse an unprocessed person an entry permit even though no formal application is made for such within a prescribed time (prescribed by regulations under the Act). Then the person becomes a prohibited person.
The consequences of becoming a prohibited person are dealt with under new sections 54F.

- **New section 54E Maintenance of prohibited persons** - This section extends the existing coverage under sections 88 and 89 of the Act to make the master, owner, agent and charterer of the vessel which conveyed to Australia a person who became an unprocessed person and then a prohibited person, jointly and severally liable to the Commonwealth for the cost of -

  - transporting the person and any custodian of that person to a processing area or from one processing area to another;

  - keeping and maintaining the person until the persons removal from Australia; and

  - transporting the person and any custodian from a processing area or place of custody to the vessel being used to remove the person from Australia.

  The master, owner, agent, or charterer has to have been given notice under section 54B(3) of the Act within 7 days of the person being taken to a processing area, that they will be held responsible for these costs before any liability for the payment of these costs arises.

- **New Section 54F Removal of prohibited persons** - This section is consequential to the introduction of the processing area regime and among other things picks up the existing liability of carriers. It provides that a person who has become a prohibited person is to be removed from Australia as soon as reasonably practicable and may be kept in custody until that removal is effected.

  After an unprocessed person becomes a prohibited person an authorised officer may serve a notice on the master, owner, agent or charterer of the vessel which conveyed the person to Australia ordering that the prohibited person be removed from Australia. The master, owner, agent or charterer of the vessel will be required to effect removal within 72 hours of service of the notice. The cost of removal will not be the responsibility of the Commonwealth.

  A penalty ($10000) is provided for any failure to obey a notice to remove. But a master, owner, agent or charterer will not be guilty of an offence of failing to obey the notice to remove if it is shown that there was a willingness to comply but that it was thwarted by a failure of the Department to deliver up the prohibited person for removal at the specified time and place.

The penalty provision does not apply unless a notice has been given in the time specified (7 days), and in addition, a notice to remove the person has to be given before liability arises under subsection 54F(2).

Subsection 54F(3) makes it clear that a failure to serve a notice under subsections 54F(2) or 54B(3) does not affect the ability of the Commonwealth to remove the prohibited person from Australia.

- **New section 54G Officers' powers of arrest** - This essentially mirrors the powers provided to officers in sections 88 or 89 of the Act. Provision is made to allow for an unprocessed person or a prohibited person who leaves a processing area without being required to do so by an authorised officer to be arrested and returned to the processing area. The arrest of a prohibited or unprocessed person may also be effected where he or she escapes from custody or where the person leaves the processing area, for a prescribed purpose, with the written permission of an authorised officer and overstays the (temporary) leave of absence. The arrest power may be used by an officer as defined in the Act.

- **New section 54H Daily maintenance amount** - The terms 'custody day', 'daily maintenance amount' and 'day' are defined for the purposes of Division 4A. In addition, it is provided that the 'daily maintenance amount' may be gazetted; the Minister in determining that amount is to have regard to certain custody costs; and an amount payable to the Commonwealth under the Division is recoverable as a debt in a court of competent jurisdiction.

Clause 13 Deportation of Illegal Entrants

16 This clause amends subsection 60(2) of the Act to provide that a person may be deported during the period of grace if the person consents to being deported prior to the expiry of the period of grace. The clause thereby removes a restriction on the execution of a deportation order which might otherwise operate to the detriment of a deportee who wants to be deported but cannot be until expiry of the period of grace, and who during this period while in custody is liable for the cost of his or her detention.

Clause 14 Deportation Order to be executed

17 This clause inserts an additional subsection into section 63 to ensure that persons who are subject to a deportation order, but who are able to evade deportation and leave Australia unsupervised, do not thereby avoid the restrictions in relation to re-entering Australia which apply to persons who have been deported. The amendment provides that a person who is the subject of a deportation order who leaves Australia voluntarily before the order is executed is taken to have been deported for the purposes of the Act.

Clause 15 Carriage of persons to Australia without documentation

18 This clause amends section 76 of the Act to provide for the maximum penalty for a person convicted of the offence of carriage of persons to Australia without documentation to be increased from $5,000 to $10,000 consistent with deterrents in other countries.

Clause 16 Custody of prohibited entrant during stay of vessel in port

19 This clause omits and substitutes subsection 88(8) of the Act. This is purely a technical amendment and brings the language of the subsection into line with current drafting techniques. In addition, a purely technical amendment has been made to paragraph 88(3)(c) of the Act.

Clause 17 Custody of Prohibited entrant during stay of aircraft in Australia

20 This clause, at subclauses (a) and (b), amends section 89 of the Act to ensure that the notice provisions to render the master, owner, agent or charterer (the carrier) of the aircraft that brought the person to Australia, liable for certain costs, are not incorrectly linked to the Commonwealth's ability to remove persons who are not permitted to enter Australia and to keep such persons in custody. The notice provision was only intended to render the carrier liable for the costs of removal of the person and the custody and maintenance of that person pending removal.

21 This clause also amends section 89 of the Act by rewording the existing subsection (8) to bring it into line with the rewording of subsection 88(8) to allow for a person who is held in custody under this section to enter Australia if the person is granted an entry permit under section 34. Unless the person is granted an entry permit the person cannot be taken to have entered Australia for the purposes of the Act.

22 In addition new subsection (8A) is inserted to make it clear that there is a power to arrest a person who escapes from section 89 custody and return the person to that custody.

Clause 18 Transfer of persons in custody under section 88 or 89 to a processing area

23 This clause provides for the insertion of new section 89A which allows for persons who have been previously taken into custody either under sections 88 or 89 to be transferred to a 'processing area' provided for in new Division 4A. This may occur where it is found that it is inappropriate to continue custody under either of those sections. For example, a person in section 88 or 89 custody may make additional claims which require further investigation. It is appropriate in that situation to facilitate removal to new Division 4A during investigation of identification and claims to establish whether the person may be allowed to enter Australia. If a person is transferred to a processing area the custody that the person had been in under section 88 or 89 of the Act terminates.

Clause 20 Internal Review of Certain Decisions

24 This clause in combination with clause 21 brings a positive improvement by allowing for more generous periods in which a review of certain decisions made under the Act may be sought. It does so by omitting subsections 115(3) and 115(4) and substituting a new subsection 115(3) which provides that regulations may provide a period of not more than 28 days for an applicant in Australia to apply for review of a decision at the first tier of review and not more than a further 28 days in which an applicant in Australia may apply for review of that decision at the second tier of review. The clause also makes similar provision for applications for review of decisions by applicants who are outside Australia, although the maximum period which the regulations may provide is 70 days in respect of each tier of review.

25 Paragraph 115(5)(b) of the Act is omitted and a new paragraph is substituted. The new provision will allow the Minister to substitute a decision made by a review authority with a decision which has either been sought by the applicant in the primary application or one whose terms are agreed to by the applicant. A similar amendment is made to paragraph 115(6)(b). The Minister's powers under section 115 (and section 137) of the Act are unique in that they are not subject to the regulations made under Act. Notwithstanding that a reviewed applicant can request the Minister to exercise the Minister's special powers, the Minister cannot be legally compelled to exercise those powers.

Clause 21 Applications for Review by Tribunal

26 This clause omits subsections 116(3) and 116(4) and and provides a new subsection 116(3) which mirrors the amendment to section 115 ie providing that regulations may provide a period of not more than 28 days for an applicant in Australia to apply for review of a decision at the first tier of review and not more than a further 28 days in which an applicant in Australia may apply for review of that decision at the second tier of review. The clause also makes similar provision for applications for review of decisions by applicants who are outside Australia, although the maximum period which the regulations may provide is 70 days in respect of each tier of review.

Clause 22 Non-Reviewable decisions

27 The subclause (a) amendment to section 120 of the Act allows for certain prescribed decisions not to be subject to the non-reviewable bar imposed by paragraph 120(1)(a) prior to amendment. This in turn will allow the Minister to exercise his special powers in relation to such decisions following review of those decisions.

28 There is also a technical amendment to section 120 of the Act similar to the amendment effected to paragraph 53(1)(b) by Clause 11. As with those amendments there is now a similar reference to 'refugee' in the provision and the terms 'refugee', 'Refugees Convention' and "Refugees Protocol' are placed in the interpretation section of the Act.

Clause 23 Remuneration and allowances of other members

29 This amendment is merely consequential to recent changes to the structure of the Senior Executive Service in the Public Service Act 1922. The clause amends section 156 of the Act by omitting subsections (1) and (2) which provide for the level of remuneration and allowances to be paid to senior and other full time members of the Immigration Review Tribunal. The amendment provides for senior members of the Immigration Review Tribunal to receive remuneration and allowances at the rate of the maximum level payable to the holder of a Senior Executive Service office of the Public Service classified as SES Band 1. Other full time members will receive remuneration and allowances at the minimum payable to the holder of a SES office classified as SES Band 1.

Clause 24 Regulations

30 This clause amends section 181 of the Act by increasing the maximum prescribable penalty provided for in paragraph 181(1)(j) in relation to alleged contravention of section 76 of the Act - the carrying of undocumented persons to Australia. The maximum penalty will be $3000.

Clause 25 Further amendments of Principal Act

31 This clause provides a schedule of minor and technical amendments of the Act as follows:

- In paragraph 57(7)(a) of the Act the insertion of 'her' after 'his' to correct sexist language;
- In subsection 69(6) of the Act the substitution of 'applies' for 'applied' to correct the tense of the verb;
- In subsection 89(5) of the Act by the insertion of 'her' after 'him' to correct sexist language; and
- In subsection 118(6) by the substitution of 'the Tribunal' for 'a review authority' to narrow the meaning of the subsection as it is intended to apply only to procedures put in place by section 135 relating to decisions taken by the Immigration Review Tribunal.

32 A note following the schedule provides for the heading to section 37 of the Act to be is changed by omitting the words 'review not applied for' and substituting the words 'illegal entrants'.