

1989  
THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

SENATE

MIGRATION LEGISLATION AMENDMENT  
BILL (NO 2) 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Immigration, Local Government  
and Ethnic Affairs  
(Senator the Hon Robert Ray)

## MIGRATION LEGISLATION AMENDMENT BILL (NO 2) 1989

### OUTLINE

This Bill implements amendments which are designed to introduce into the review process the power of the Minister to substitute a decision after the first tier of review. These amendments will augment a provision in the Migration Legislation Amendment Act 1989, which is also amended by this Bill, where the Minister may set aside a decision of the Immigration Review Tribunal and substitute a decision more favourable to the applicant if the Minister thinks it is in the public interest to do so.

This will enable such cases to be completed more quickly as they can be fast tracked through the first tier review system easier than is possible through the Tribunal. It could take in excess of 12 months before a decision could be reviewed by the Minister after it has been through each tier of review.

The integrity of the Immigration Review Tribunal will also be safeguarded as the Tribunal will not be required to fast track cases which it feels may be overturned later.

If the Minister exercises his or her power under this provision, no review by the Immigration Review Tribunal will be available.

To ensure that the provisions which enable the Minister to substitute a decision after both tiers of review operate in the manner in which they were intended, and that there is no confusion as to the possible operation of the Administrative Decisions (Judicial Review) Act 1977 in respect of the provisions, it is spelt out in the Act that the Minister is not under a duty to consider whether to exercise his or her powers of review.

The Act has also been amended to ensure that the Ministers powers do not override restrictions imposed by regulations made under sections 11D and 11P (after renumbering sections 23 and 33) of the Act on the granting of entry permits, where the grant of a visa or temporary entry permit is conditional upon the holder not being granted an entry permit while he or she remains in Australia.

### Financial Impact Statement

There will be no effect on either Commonwealth revenue or Commonwealth expenditure as a result of this Bill.

## Notes on Individual Clauses

### Clause 1 - Short Title

1 Provides that the Act may be cited as the Migration Legislation Amendment Act (No 2) 1989.

2 In the Act the words 'Principal Act' mean the Migration Legislation Amendment Act 1989.

### Clause 2 - Commencement

3 Provides that the Act shall come into operation immediately before the commencement of section 26 of the Principal Act.

4 Section 26 of the Principal Act commences operation on 19 December 1989.

### Clause 3 - Amends section 26 of the Principal Act

#### New Section 61 (after renumbering section 115)

5 This clause inserts new sub-sections at the end of new section 61 which allows the Minister to set aside a decision made by a review officer and substitute a decision that is more favourable to the applicant where the Minister thinks it is in the public interest to do so. Where this occurs the Minister must then cause a statement in the nature of a periodic return to be laid before both Houses of Parliament within 15 sitting days after, where the decision is made between 1 January and 30 June - 1 July, or where the decision is made between 1 July and 31 December - 1 January in the following year. This allows for a reasonable time to elapse between the making of the decision and the obligation to table.

6 This provision provides that the Minister is not under a duty to consider whether to exercise his or her power to substitute a decision. Where the Minister decides not to exercise his power, that decision is not subject to judicial review by the Federal Court on the grounds that there has been a failure to make a decision pursuant to section 7 of the Administrative Decisions (Judicial Review) Act 1977.

7 The Minister's powers cannot be exercised to grant an entry permit where the grant of a visa pursuant to regulations made under section 11D or temporary entry permit pursuant to regulations made under section 11P is conditional upon the holder not being granted an entry permit while he or she remains in Australia.

New Section 64B (after renumbering section 120)

8 Sub-Section 64B (1) is amended to provide that decisions made by the Minister under sub-sections 61(5) or (6) or section 64U cannot be prescribed in the regulations made under sections 61 or 62 as reviewable decisions.

New Section 64U (after renumbering section 137)

9 New section 64U is omitted and substituted by a provision which is substantially similar to the new provisions inserted at the end of new section 61.

10 Section 64U allows the Minister, where the Minister thinks it is in the public interest to do so, to set aside a decision of the Immigration Review Tribunal and substitute a decision which is more favourable to the applicant. Where this occurs the Minister must then cause a statement to be laid before both Houses of Parliament within 15 sitting days after the decision was set aside.

11 The section provides that the Minister is not under a duty to consider whether to exercise his power to set aside a decision of the IRT. Where the Minister decides not to exercise his power, that decision is not subject to judicial review by the Federal Court on the grounds that there has been a failure to make a decision pursuant to section 7 of the Administrative Decisions (Judicial Review) Act 1977.

12 The Ministers powers to set aside a decision of the IRT cannot be exercised to grant an entry permit where the grant of a visa pursuant to regulations made under section 11D or of a temporary entry permit pursuant to regulations made under section 11P is conditional upon the holder not being granted an entry permit while he or she remains in Australia.