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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

MIGRATION LEGISLATION AMENDMENT BILL (No. 2) 1999

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Immigration and Multicultural Affairs,
the Hon. Philip Ruddock MP)

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MIGRATION LEGISLATION AMENDMENT BILL (No. 2) 1999

OUTLINE

Overview

1 The Migration Legislation Amendment Bill (No. 2) 1999 ("the Bill") implements a number of Government initiatives in the Immigration and Multicultural Affairs portfolio.

2 The amendments to the *Migration Act 1958* ("the Migration Act"):

- provide powers to cancel approvals of business sponsorships;
- introduce monitoring provisions in relation to business sponsorships;
- expand the power under the Migration Act to enact regulations which prescribe the criteria and requirements that must be met for a visa application to be valid;
- permit the authorisation of classes of persons, including future members of these classes, as "officers" and "authorised officers" for the purposes of the Migration Act;
- provide for the gazettal of the authorisation of persons, and classes of persons, as "officers" at a time after the Minister has approved the authorisations;
- enable the transfer of non-citizens, who are deportees or removees, from prison custody into immigration detention without effecting their release from custody;
- provide for merits review of decisions to refuse an application that was made outside Australia for a permanent visa where the visa can be granted while the visa applicant is either in the migration zone or outside Australia;
- exempt applicants from "capping" in certain specified circumstances;
- extend the period applications for certain visa categories may remain in the "pool" from 12 months to 24 months;
- remove the age limit affecting the appointment of full-time members to the Refugee Review Tribunal ("the RRT"); and
- ensure that decisions of the Migration Review Tribunal ("the MRT") are subject to Part 8 of the Migration Act in the same way that decisions of the Immigration Review Tribunal ("the IRT") are currently subject to Part 8.

FINANCIAL IMPACT STATEMENT

3 The amendments to the Migration Act will have a low financial impact.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

4 The short title by which this Act will be known is the *Migration Legislation Amendment Act (No. 2) 1999*.

Clause 2 Commencement

5 Subclause 2(1) provides that, subject to this section, this Act commences on the day on which it receives the Royal Assent.

6 Subclause 2(2) provides that, subject to subsection (3), Schedules 1, 2, 3, 4, 6, 7 and 8 commence on a day or days to be fixed by Proclamation.

7 Subclause 2(3) provides that if Schedules 1, 2, 3, 4, 6, 7 and 8 are not proclaimed within 6 months of this Act receiving the Royal Assent, then these Schedules will commence on the first day immediately after the end of that period.

8 Subclause 2(4) provides that if this Act receives the Royal Assent before, or on the date of, the commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998*, then Part 1 of Schedule 5 to this Act commences on the date of commencement of Schedule 1 to that Act.

9 Subclause 2(5) provides that, subject to subsection (8), if this Act receives the Royal Assent after the date of commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998*, then Part 1 of Schedule 5 to this Act commences on the day to be fixed by Proclamation.

10 Subclause 2(6) provides that, subject to subsection (8), if this Act receives the Royal Assent before the date of commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998,* then Part 2 of Schedule 5 to this Act commences on the day to be fixed by Proclamation.

11 Subclause 2(7) provides that, if this Act receives the Royal Assent on or after the date of commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998,* then Part 2 of Schedule 5 to this Act does not commence and is taken not to have been enacted.

12 Subclause 2(8) provides that if subsection (5) or (6) applies, that is that the commencement of Part 1 or 2 of Schedule 5 is to be on a day fixed by Proclamation, and that Proclamation does not occur within 6 months of this Act receiving the Royal Assent, then

that Part of the Schedule will commence on the first day immediately after the end of that period.

13 Subclause 2(9) provides that if an Act entitled the *Migration Legislation Amendment (Judicial Review) Act 1999* commences on or before 1 June 1999 then Schedule 9 does not commence and is taken not to have been enacted.

14 Subclause 2(10) provides that if an Act entitled the *Migration Legislation Amendment (Judicial Review) Act 1999* does not commence on or before 1 June 1999, or is not enacted on or before 1 June 1999 (or is never enacted), and this Act receives the Royal Assent on or before that date, then Schedule 9 commences on that date.

15 Subclause 2(11) provides that if an Act entitled the *Migration Legislation Amendment (Judicial Review) Act 1999* does not commence on or before 1 June 1999, or is not enacted on or before 1 June 1999 (or is never enacted), and this Act receives the Royal Assent after that date, then Schedule 9 is taken to have commenced on that date.

Clause 3 Schedule(s)

16 This clause provides that, subject to section 2, the provisions of each Act set out in the items of the Schedules to this Act are amended or repealed as indicated and any other item has effect according to its terms.

SCHEDULE 1 – Business sponsors

Migration Act 1958

Item 1 After Subdivision G of Division 3 of Part 2

17 This item inserts new Subdivision GA into Division 3 of Part 2 of the Migration Act, which deals with the sponsorships of temporary visas.

Subdivision GA – Cancellation of approval as a business sponsor

Section 137A Definitions

18 New section 137A sets out specific definitions relevant to new Subdivision GA.

19 The definition of an "approval of a person as a business sponsor" or "approval" means an approval (including a renewal of an approval), under the regulations, of a person as a business sponsor. The definition of a "business sponsor" means a pre-qualified business sponsor or a standard business sponsor under the provisions of the regulations relating to the approval of such sponsors.

Section 137B Power of Minister to cancel approval as a business sponsor

20 New subsection 137B(1) gives the Minister a discretionary power to cancel an approval of a person as a business sponsor if he or she is satisfied that a prescribed ground for cancelling the approval applies to that person.

21 To avoid doubt, new subsection 137B(2) provides that a matter may constitute a ground for cancelling an approval as a business sponsor:

- whether or not the Minister became aware of the matter because of information given by the person; and
- if the matter is an act or omission by the person – whether the act or omission was deliberate or inadvertent.

22 New subsection 137B(3) in effect limits the Minister's discretion under new subsection (1). New subsection 137B(3) provides that if the Minister may cancel an approval under new subsection (1) because prescribed grounds exist for the cancellation, then the Minister must cancel the sponsorship if prescribed circumstances exist.

23 New subsection 137B(4) provides that any cancellation of an approval of a business sponsor under new subsection (1) terminates that approval in the same way as the revocation of such an approval would occur under the regulations.

Section 137C Non-cancellation of approval because of one matter not to prevent cancellation of approval because of another matter

24 New section 137C ensures that the discretion to cancel an approval as a business sponsor can be exercised when a ground for cancellation exists even though that approval was not cancelled when a prior ground for cancellation existed.

Section 137D Notice of decision

25 New section 137D introduces a limited code of procedures in relation to the notification of the cancellation of business sponsorships.

26 New subsection 137D(1) requires the Minister to give written notice of a decision to cancel an approval of a person as a business sponsor, made under new section 137B, to that person.

27 New subsection 137D(2) provides that, subject to subsection (3), the notice is to be addressed to the person and is to be given by the prescribed method. However, if there is no prescribed method then the notice is to be given, by a method the Minister considers to be appropriate, to an address that is an appropriate address for delivery of the notice (referred to in new section 137E).

28 New subsection 137D(3) provides that subsection (2) does not prevent the Minister from giving notice of the decision to the person by another method or to another address so long as the person receives the notice.

29 New subsection 137D(4) provides that the notice of the decision must state the ground for cancellation.

30 New subsection 137D(5) provides that failure to give notice of the decision does not affect the validity of the decision.

Section 137E What constitutes an appropriate address for delivery of notice of a decision

31 New subsection 137E(1) provides that, subject to subsection (2), if a person has notified the Minister of an address at which he or she lives or carries on business, or proposes to live or carry on business for a period of at least 14 days, then that address is taken to be an appropriate address for notification purposes.

32 However, new subsection 137E(2) states that subsection (1) does not apply if the person notifies the Minister of an address to which a notice may be delivered. New subsection 137E(2) also provides that that address is then the appropriate address for delivery of the notice.

33 New subsection 137E(3) provides that if a person has notified the Minister of different addresses at different times, as mentioned in new subsection (1) or (2), then references to the address, in this section, are taken to be references to the later or latest address.

Section 137F Effect of compliance

34 New section 137F ensures that where the Minister complies with the provisions relating to the cancellation of a business sponsorship under this Subdivision, the Minister is not required to take any other action in respect of the cancellation.

Section 137G Effect of setting aside decision to cancel approval

35 New subsection 137G(1) ensures that if the Federal court sets aside a cancellation decision made under new section 137B, the approval is taken never to have been cancelled.

36 New subsection 137G(2) provides that a person is not entitled to make any claim against the Commonwealth or an officer because of a purported cancellation.

Section 137H Provision of information – business sponsors

37 New section 137H relates to the procedures for the provision of certain information that a business sponsor is required to give to the Secretary.

38 New subsection 137H(1) provides that, subject to subsection (2), the Secretary may require a person, who has at any time applied to be approved as a business sponsor (whether or not the person was eligible to be approved as a business sponsor), to give information about any matter stated in a written notice to that person.

39 Under new subsection 137H(2), however, the Secretary may only require information that relates to:

- the person's application for approval as a business sponsor;
- any approval of the person as a business sponsor; or
- anything that is done as a result of the application or of any such approval.

40 New subsection 137H(3) provides that a notice for the purposes of subsection (1) must state that the information must be given within a period as prescribed by the regulations or, if no such period is prescribed, within a reasonable period.

41 New subsection 137H(4) gives the Secretary the discretion to fix a later day, than that stated in the notice, at the request of the person to whom to the notice is given. If a later day is so fixed, the information is to be given by the person on or before that later day.

Item 2 Application

42 The provisions of new Subdivision GA only apply to approvals granted or renewed as a result of applications made on or after 1 August 1996.

SCHEDULE 2 – Circumstances that must be met for a valid visa application

Migration Act 1958

43 These amendments reflect a need to clarify the powers in relation to prescribing requirements that must be met for making a valid visa application. This follows a decision of the Federal Court in April 1997 in *Arnulfo Capistrano v Minister of State for Immigration and Multicultural Affairs* (NG952 of 1996).

44 In that case, the Court held that certain provisions which had been prescribed in the regulations as requirements to be met for the making of a valid application were more in the nature of criteria that had to be met in order for there to be a valid application. The Court further held that there was no power under the Migration Act to prescribe such criteria, and therefore the criteria were to be treated as criteria that must be met before a visa could be granted.

45 These amendments will provide that the regulations may prescribe criteria that must be met for the making of a valid visa application.

Item 1 Subsections 45(2) and (3)

46 This item repeals subsections 45(2) and (3) of the Migration Act. The powers that were formerly under these subsections have been transferred to section 46 by this Act.

Item 2 Paragraph 46(1)(b)

47 This item repeals the existing paragraph 46(1)(b) and substitutes a new paragraph 46(1)(b).

48 New paragraph 46(1)(b) provides that an application for a visa is valid if, and only if, it satisfies the criteria and requirements prescribed under section 46.

Item 3 At the end of section 46

49 This item inserts subsections (3) and (4) at section 46 such that the relevant regulation-making power is transferred from repealed subsections 45(2) and (3) to new subsections 46(3) and (4).

50 New subsection 46(3) provides that the regulations may prescribe criteria that must be satisfied for a valid visa application for a visa of a specified class.

51 Without limiting new subsection 46(3), new subsection 46(4) provides that the regulations may prescribe:

- the circumstances that must exist for an application for a visa of a specified class to be a valid visa application;
- how an application for a visa of a specified class must be made;
- where an application for a visa of a specified class must be made; and
- where an applicant must be when an application for a visa of a specified class is made.

Item 4 Saving

52 This item inserts a "saving" provision to avoid the automatic repeal of the regulations made under the former head of power (that is, under former subsections 45(2) and (3)).

53 This item deems the regulations made and were in force, or purportedly made and were purportedly in force, under section 45 (as it existed immediately prior to the commencement of this Act) to have been validly made under the new sections 46.

SCHEDULE 3 – Authorisation of officers

Migration Act 1958

Item 1 Subsection 5(1) (paragraph (f) of the definition of *officer*)

54 This item repeals the existing paragraph (f) in subsection 5(1) and substitutes new paragraphs 5(1)(f) and (g).

55 New paragraph 5(1)(f) will allow the Minister to authorise a person as an "officer" for the purposes of the Migration Act by way of an instrument in writing.

56 New paragraph 5(1)(g) will permit the Minister to authorise classes of persons as "officers" by way of an instrument in writing. It also ensures that future members of any such class are included in the authorisation without the need for the Minister to sign another instrument.

57 Nothing in these amendments prevents the existing device of authorising by name or position number from continuing.

Item 2 After subsection 5(1)

58 This item inserts new subsection 5(1A) at section 5. The purpose of new subsection 5(1A) is to provide that where the Minister has authorised a person, or a class of persons, under new paragraph 5(f) or (g) respectively of the definition of an "officer", then the Minister must publish a notice of those authorisations in the *Gazette*. This will retain public transparency in the authorisation process.

59 However, notwithstanding the Minister's obligation to publish such authorisations by notice in the *Gazette*, this subsection does not affect those authorisations from taking effect at the time the Minister has authorised such persons, or class of persons, to be "officers" for the purposes of the Act. Furthermore, the validity of those authorisations is not affected should a notice of those authorisations not be published in the *Gazette*.

Item 3 Saving of existing authorisations

60 This item ensures that a person who, after the commencement of this Schedule, was previously authorised as an "officer" under old paragraph 5(1)(f) of the Migration Act is deemed to be so authorised under new paragraph 5(1)(f).

SCHEDULE 4 – People held in non-immigration custody

Migration Act 1958

Item 1 Subsection 254(3)

61 This item repeals the existing subsection 254(3) and substitutes new subsections 254(2A) and (3).

62 These amendments affect persons who are either "removees" or "detainees" and who are in the custody of an authority of the Commonwealth, a State or Territory, otherwise than under the auspices of the Migration Act. These amendments enable those corrective services authorities to continue to detain in their institutions under immigration detention such non-citizens who are liable to removal or deportation, but who would otherwise have been entitled to be released from custody.

63 New subsection 254(2A) relates to a "removee" (as defined under subsection 5(1) of the Migration Act). New paragraph 254(2A)(a) gives corrective services authorities the power to exercise the detention powers in Division 7 of Part 2 of the Migration Act where a removee has been given written notice under existing subsection 254(2).

64 New paragraph 254(2A)(b) makes it clear that the transfer to immigration detention occurs at the "custody transfer time" (as described in existing paragraph 254(2)(c)) rather than at the moment the notice is served on the removee.

65 New subsection 254(3) relates to a "deportee" (as defined under subsection 5(1) of the Migration Act). New paragraph 254(3)(a) gives corrective services authorities the power to exercise the detention power in subsection 253(1) where a deportee has been given written notice under subsection 254(2). But new paragraph 254(3)(c) provides that subsection 253(3) does not apply in relation to the deportee.

66 New paragraph 254(3)(b) makes it clear that the transfer to immigration detention occurs at the "custody transfer time" (as described in existing paragraph 254(2)(c)) rather than at the moment the notice is served on the deportee.

SCHEDULE 5 – Review of decisions refusing to grant permanent visas to non-citizens

Migration Act 1958

Part 1 – Permanent provisions

67 The provisions in this Part are permanent provisions that will come into operation as soon as Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998* has commenced operation, or soon thereafter.

Item 1 After subsection 338(7)

68 This item inserts new subsection 338(7A) after subsection 338(7), where section 338 sets out the type of decisions that are reviewable by the Migration Review Tribunal ("the MRT").

69 New subsection 338(7A) provides that a decision to refuse a non-citizen a permanent visa is an MRT-reviewable decision if:

- the non-citizen applied for the visa when he or she was outside Australia; and
- the visa may be granted while the applicant is either in the migration zone or outside Australia.

Item 2 Subparagraph 347(1)(b)(i)

70 This item makes a technical amendment as a consequence of the insertion of new subsection 338(7A).

71 Subparagraph 347(1)(b)(i) provides that, in relation to an MRT-reviewable decision covered by new subsection 338(7A), an application for review must be given to the Tribunal no later than 28 days after the notification of the decision.

Item 3 Paragraph 347(2)(a)

72 This item also makes a technical amendment as a consequence of the insertion of new subsection 338(7A).

73 Paragraph 347(2)(a) provides that, in relation to an MRT-reviewable decision covered by new subsection 338(7A), an application for review may only be made by the non-citizen who is the subject of that decision.

Item 4 After subsection 347(3)

74 This item inserts new subsection 347(3A) after subsection 347(3).

75 New subsection 347(3A) provides that an application for review of a permanent visa decision covered by new subsection 338(7A) may only be made by a non-citizen who:

- was physically present in the migration zone at the time the decision was made; and
- is physically present in the migration zone when the review application is made.

Part 2 – Temporary provisions

76 The provisions in this Part are temporary only. The provisions will come into operation only if this Act commences before Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998* and will cease to have effect on the commencement of Schedule 1 to that Act.

Item 5 Section 337 (after paragraph (g) of the definition of *Part 5 reviewable decision*)

77 This item inserts new paragraph (ga) into the definition of a "Part 5 reviewable decision" contained within section 337.

78 The insertion of new paragraph 337(ga) means that a Part 5 reviewable decision includes a decision to refuse to grant a non-citizen a permanent visa where:

- the non-citizen applied for the visa when he or she was outside Australia; and
- the visa may be granted while the applicant is either in the migration zone or outside Australia.

Item 6 Subparagraph 339(1)(b)(i)

79 This item makes a technical amendment as a consequence of the insertion of new paragraph 337(ga) into the definition of a Part 5 reviewable decision.

80 Subparagraph 339(1)(b)(i) provides that an application for internal review must be given to the Secretary, at a prescribed place, no later than 28 days after the notification of the decision where that decision is covered by new paragraph 337(ga) of the definition of a Part 5 reviewable decision.

Item 7 Paragraph 339(2)(a)

81 This item also makes a technical amendment as a consequence of the insertion of new paragraph 337(ga) into the definition of a Part 5 reviewable decision.

82 Paragraph 339(2)(a) provides that an application for an internal review may only be

made by the non-citizen who is the subject of that decision where that decision is covered by new paragraph 337(ga) of the definition of a Part 5 reviewable decision.

Item 8 After subsection 339(3)

83 This item inserts new subsection 339(3A) after subsection 339(3).

84 New subsection 339(3A) provides that an application for an internal review of a decision covered by new paragraph 337(ga) of the definition of a Part 5 reviewable decision may only be made by a non-citizen who:

- was physically present in the migration zone at the time the decision was made; and
- is physically present in the migration zone when the review application is made.

Item 9 Subparagraph 347(1)(b)(i)

85 This item makes a technical amendment as a consequence of the insertion of new paragraph 337(ga) into the definition of a Part 5 reviewable decision.

86 Subparagraph 347(1)(b)(i) provides that an application for review of an IRT-reviewable decision must be given to the Tribunal no later than 28 days after the notification of a decision covered by new paragraph 337(ga) of the definition of a Part 5 reviewable decision.

Item 10 Paragraph 347(2)(a)

87 This item also makes a technical amendment as a consequence of the insertion of new paragraph 337(ga) into the definition of a Part 5 reviewable decision.

88 Paragraph 347(2)(a) provides that an application for review of an IRT-reviewable decision may only be made by the non-citizen who is the subject of a decision covered by new paragraph 337(ga) of the definition of a Part 5 reviewable decision.

Item 11 After subsection 347(3)

89 This item inserts new subsection 347(3A) after subsection 347(3).

90 New subsection 347(3A) provides that that an application for review of a decision covered by new paragraph 337(ga) of the definition of Part 5 reviewable decision may only be made by a non-citizen who:

- was physically present in the migration zone at the time the decision was made; and

- is physically present in the migration zone when the review application is made.

SCHEDULE 6 – Exemptions from limits on number of visas

Migration Act 1958

Item 1 After section 87

91 This item inserts new section 87A.

92 New section 87A ensures that section 86 will not prevent the grant of a visa to a person where:

- that person has been affected by section 86 in a previous financial year;
- that person has subsequently been requested to meet health or character requirements;
- that person has met those requirements but not before section 86 has again taken effect; and
- the Minister is satisfied that the person was unable to satisfy the health or character requirements before the operation of section 86 for a second time because of circumstances beyond the person's control.

SCHEDULE 7 – Extension of period in pool for certain applications for visas

Migration Act 1958

Item 1 At the end of section 95

93 This item inserts new subsection 95(5) at section 95.

94 New subsection 95(5) provides that section 95 has effect subject to new section 95A. This item also makes a minor technical amendment to the heading of subsection 95(4).

Item 2 After section 95

95 This item inserts new section 95A. The effect of this provision is to extend the period in which an application is in the pool under section 95.

96 New subsection 95A(1) applies to all applications that are in the pool (under section 95), at the commencement of this Schedule, or are placed in the pool after the commencement of this Schedule.

97 New subsection 95(2) provides that where an application is, or has been, placed in the pool then the references to 12 months in subsections 95(2) and (3) are taken to be references to 2 years.

SCHEDULE 8 – Refugee Review Tribunal

Migration Act 1958

Item 1 Subsections 461(2) and (3)

98 This item repeals subsections 461(2) and (3) thereby removing the age limit affecting the appointment of full-time members to the Refugee Review Tribunal ("the RRT"). This will ensure that there is consistency between the age limits applying to the appointment of full-time members to the RRT and the new MRT.

SCHEDULE 9 – Judicial review

Migration Act 1958

Part 1 – Amendments

99 The amendments to section 475 are consequential to the passage of the *Migration Legislation Amendment Act (No. 1) 1998*, and provide that decisions of the MRT are judicially reviewable in the same way decisions of the Immigration Review Tribunal ("the IRT") are, or were, judicially reviewable.

Item 1 Paragraph 475(1)(a)

100 This item amends paragraph 475(1)(a) by omitting the reference to the IRT and substituting a new reference the MRT, as a consequence of the establishment of the MRT under the *Migration Legislation Amendment Act (No. 1) 1998*. The effect of this provision is to provide that a decision of the MRT may be judicially reviewed.

101 Despite the omission of a reference to a decision of the IRT at paragraph 475(1)(a), such decisions continue to be subject to Part 8 of the Migration Act by virtue of certain transitional provisions.

Item 2 Paragraph 475(2)(b)

102 This item repeals paragraph 475(2)(b) as a consequence of the repeal of "internally-reviewable decisions" by the *Migration Legislation Amendment Act (No. 1) 1998*.

Item 3 Paragraph 475(2)(c)

103 This item amends paragraph 475(2)(c) by omitting the reference to an "IRT-reviewable decision" and substituting a reference to an "MRT-reviewable decision". The effect of this provision is that an application for merits review of a primary decision by the MRT, or a primary decision that could be merits reviewed, are not judicially reviewable decisions.

104 Despite the omission of a reference to an IRT-reviewable decision at paragraph 475(2)(c), such decisions continue to be subject to Part 8 of the Migration Act by virtue of certain transitional provisions, such that judicial review is not available until such time as a merits review decision has been made.

Item 4 Paragraph 475(2)(f)

105 This item amends paragraph 475(2)(f) by omitting the reference to the IRT and substituting a new reference to the MRT. The effect of this provision is to provide that a decision of the Principal Member of the MRT to refer a matter to the Administrative Appeals Tribunal is not a decision that may be judicially reviewed.

Item 5 At the end of section 475

106 This item inserts a new subsection (3) at section 475, as a consequence of the repeal of section 345 by the *Migration Legislation Amendment Act (No. 1) 1998*. The effect of this provision is that where the Minister makes a decision after the commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998* in relation to a request made under old section 345, that decision is not judicially reviewable.

Part 2 – Transitional provisions

107 The purpose of the transitional provisions is to ensure that decisions of the IRT, and decisions that could have applied to the IRT for review of that decision, will continue to be subject to Part 8 of the Migration Act after the commencement of this Act.

Item 6 Application for judicial review of decision of Immigration Review Tribunal pending at commencement

108 This item applies to applications for judicial review of a decision of the IRT made prior to the commencement of this Schedule, where the Court has not made an order under subsection 481(1) of the Migration Act in respect of that application. Such IRT decisions are to be treated as if they were decisions of the MRT, and are taken to be applications (properly made) for judicial review of the MRT decisions. Consequently, such applications for judicial review may only be made if grounds exist under section 476 of the Migration Act.

Item 7 Period for making application for judicial review of decision of Immigration Review Tribunal current at commencement

109 This item applies to decisions of the IRT made prior to the commencement of this Schedule, where the time for making an application for judicial review of that decision has not ceased in accordance with section 478 before the commencement of this Schedule. If the period for making an application has not ceased under section 478, then a person may seek judicial review of that IRT decision under section 476 as if it were a decision of the MRT. Under section 478 the person has 28 days from the date they are notified of the Tribunal's decision to make an application for judicial review of that decision.

110 However, if the period of time for making an application for judicial review has ceased under section 478 then the person cannot make an application for judicial review in respect of the IRT decision.

Item 8 Decision of Immigration Review Tribunal quashed or set aside and matter to which decision relates referred for further consideration

111 This item provides that Part 8 of the Migration Act applies to a decision of the IRT:

- that was made before the commencement of this Schedule;

- that was the subject of judicial review, and either before or after the commencement of this Schedule, where the Court had quashed or set aside that decision; and

- where the matter was then referred for further consideration but that there has been no decision with respect to that further consideration.

In such cases, the decision is taken to be an MRT-reviewable decision.

Item 9 Decision of Immigration Review Tribunal that the Minister has agreed to reconsider

112 This item provides that Part 8 of the Migration Act applies to a decision of the IRT:

- that was made before the commencement of this Schedule;

- that was the subject of an application for judicial review, either before or after the commencement of this Schedule; and

- where before the judicial review application was determined the Minister agreed, in writing, either before or after the commencement of this Schedule, to reconsider the decision, but no decision on that reconsideration had yet been made.

In such cases, the decision is taken to be an MRT-reviewable decision.

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