



Migration Legislation Amendment Act (No. 1) 2009

No. 10, 2009

**An Act to amend the law relating to migration, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the law relating to migration, and for related purposes

[Assented to 25 February 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Legislation Amendment Act (No. 1) 2009*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 25 February 2009 |
| 2. Schedules 1, 2 and 3 | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | 15 March 2009 (see F2009L01026) |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to merits review

Migration Act 1958

1 Subsection 359(2)

After “may invite”, insert “, either orally (including by telephone) or in writing,”.

Note: The heading to section 359 is altered by omitting “**additional**”.

2 Subsection 359(2)

Omit “additional”.

3 Subsection 359(3)

Omit “If an invitation”, substitute “If a written invitation under subsection (2)”.

4 Paragraph 359B(1)(a)

Repeal the paragraph, substitute:

(a) invited in writing under section 359 to give information; or

5 Subsection 359B(1)

Omit “additional” (last occurring).

6 Subsection 359B(2)

Omit “additional”.

7 Paragraph 359C(1)(a)

Repeal the paragraph, substitute:

(a) is invited in writing under section 359 to give information;
and

Note: The heading to section 359C is altered by omitting “**additional**”.

8 Subsection 359C(1)

Omit “additional” (last occurring).

9 Subsection 424(2)

After “may invite”, insert “, either orally (including by telephone) or in writing,”.

Note: The heading to section 424 is altered by omitting “**additional**”.

10 Subsection 424(2)

Omit “additional”.

11 Subsection 424(3)

Omit “The invitation”, substitute “A written invitation under subsection (2)”.

12 Paragraph 424B(1)(a)

Repeal the paragraph, substitute:

(a) invited in writing under section 424 to give information; or

13 Subsection 424B(1)

Omit “additional” (last occurring).

14 Subsection 424B(2)

Omit “additional”.

15 Paragraph 424C(1)(a)

Repeal the paragraph, substitute:

(a) is invited in writing under section 424 to give information;
and

Note: The heading to section 424C is altered by omitting “**additional**”.

16 Subsection 424C(1)

Omit “additional” (last occurring).

17 Application

The amendments made by this Schedule apply to invitations made by the Migration Review Tribunal and the Refugee Review Tribunal on or after the commencement of this Schedule.

Schedule 2—Amendments relating to judicial review

Migration Act 1958

1 Subsection 477(1)

Omit “28 days of the actual (as opposed to deemed) notification of the decision”, substitute “35 days of the date of the migration decision”.

2 Subsections 477(2), (3) and (4)

Repeal the subsections, substitute:

- (2) The Federal Magistrates Court may, by order, extend that 35 day period as the Federal Magistrates Court considers appropriate if:
 - (a) an application for that order has been made in writing to the Federal Magistrates Court specifying why the applicant considers that it is necessary in the interests of the administration of justice to make the order; and
 - (b) the Federal Magistrates Court is satisfied that it is necessary in the interests of the administration of justice to make the order.
- (3) In this section:

date of the migration decision means:

- (a) in the case of a migration decision made under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*—the date of the written decision under that subsection; or
- (b) in the case of a written migration decision made by the Migration Review Tribunal or the Refugee Review Tribunal—the date of the written statement under subsection 368(1) or 430(1); or
- (c) in the case of an oral migration decision made by the Migration Review Tribunal or the Refugee Review Tribunal—the date of the oral decision; or
- (d) in any other case—the date of the written notice of the decision or, if no such notice exists, the date that the Court considers appropriate.

- (4) For the purposes of subsection (1), the 35 day period begins to run despite a failure to comply with the requirements of any of the provisions mentioned in the definition of *date of the migration decision* in subsection (3).
- (5) To avoid doubt, for the purposes of subsection (1), the 35 day period begins to run irrespective of the validity of the migration decision.

3 Subsection 477A(1)

Omit “28 days of the actual (as opposed to deemed) notification of the decision”, substitute “35 days of the date of the migration decision”.

4 Subsections 477A(2), (3) and (4)

Repeal the subsections, substitute:

- (2) The Federal Court may, by order, extend that 35 day period as the Federal Court considers appropriate if:
 - (a) an application for that order has been made in writing to the Federal Court specifying why the applicant considers that it is necessary in the interests of the administration of justice to make the order; and
 - (b) the Federal Court is satisfied that it is necessary in the interests of the administration of justice to make the order.
- (3) In this section:

date of the migration decision has the meaning given by subsection 477(3).
- (4) For the purposes of subsection (1), the 35 day period begins to run despite a failure to comply with the requirements of any of the provisions mentioned in the definition of *date of the migration decision* in subsection 477(3).
- (5) To avoid doubt, for the purposes of subsection (1), the 35 day period begins to run irrespective of the validity of the migration decision.

5 Subsection 486A(1)

Omit “28 days of the actual (as opposed to deemed) notification of the decision”, substitute “35 days of the date of the migration decision”.

6 Subsections 486A(1A), (2) and (3)

Repeal the subsections, substitute:

- (2) The High Court may, by order, extend that 35 day period as the High Court considers appropriate if:
 - (a) an application for that order has been made in writing to the High Court specifying why the applicant considers that it is necessary in the interests of the administration of justice to make the order; and
 - (b) the High Court is satisfied that it is necessary in the interests of the administration of justice to make the order.
- (3) In this section:

date of the migration decision has the meaning given by subsection 477(3).
- (4) For the purposes of subsection (1), the 35 day period begins to run despite a failure to comply with the requirements of any of the provisions mentioned in the definition of *date of the migration decision* in subsection 477(3).
- (5) To avoid doubt, for the purposes of subsection (1), the 35 day period begins to run irrespective of the validity of the migration decision.

7 Application

- (1) The amendments made by this Schedule apply to applications under section 477, 477A or 486A of the *Migration Act 1958* made on or after the commencement of this Schedule.
- (2) If the application relates to a migration decision made before the commencement of this Schedule, for the purposes of applying sections 477, 477A and 486A of the *Migration Act 1958*, treat the date of the migration decision as the date of that commencement.

Schedule 3—Amendments relating to appeals against extension of time decisions

Migration Act 1958

1 At the end of section 476A

Add:

- (3) Despite section 24 of the *Federal Court of Australia Act 1976*, an appeal may not be brought to the Federal Court from:
 - (a) a judgment of the Federal Magistrates Court that makes an order or refuses to make an order under subsection 477(2); or
 - (b) a judgment of the Federal Court that makes an order or refuses to make an order under subsection 477A(2).
- (4) Despite section 33 of the *Federal Court of Australia Act 1976*, an appeal may not be brought to the High Court from a judgment of the Federal Court that makes an order or refuses to make an order under subsection 477A(2).
- (5) In this section:

judgment has the same meaning as in the *Federal Court of Australia Act 1976*.

2 Application

The amendment made by this Schedule applies to judgments made on or after the commencement of this Schedule that make an order or refuse to make an order under subsection 477(2) or 477A(2) of the *Migration Act 1958*.

*[Minister's second reading speech made in—
Senate on 3 December 2008
House of Representatives on 12 February 2009]*

(242/08)