

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 7 May 1992

*(Minister for Immigration, Local Government and Ethnic Affairs)*

## A BILL

FOR

### **An Act to amend the *Migration Act 1958*, and for related purposes**

The Parliament of Australia enacts:

#### **Short title etc.**

1.(1) This Act may be cited as the *Migration Amendment Act (No. 2) 1992*.

5 (2) In this Act, “**Principal Act**” means the *Migration Act 1958*<sup>1</sup>.

#### **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

**Interpretation**

3. Section 4 of the Principal Act is amended:

(a) by omitting from subsection (5) "For" and substituting "Subject to subsection (5A), for";

(b) by inserting after subsection (5) the following subsection: 5

"(5A) If:

(a) under subsection (5), a person would be taken to have entered Australia when he or she disembarked from a vessel (not being an aircraft); and

(b) an authorised officer believes on reasonable grounds that the person was on board the vessel when the vessel was used in connection with the commission of an offence against a prescribed law in force in the Commonwealth or in a State or Territory; 10

then, for the purposes of this Act, the person is taken not to have entered Australia when he or she disembarked from the vessel." 15

**Period of grace**

4. Section 13 of the Principal Act is amended:

(a) by inserting "under section 50A or a decision" after "a decision" in paragraph (c) of the definition of "excluded day" in subsection (2); 20

(b) by adding at the end the following subsection:

"(3) In this section, a reference to an excluded day in relation to a person who becomes an illegal entrant because a permit or visa is cancelled under subsection 50A(4) includes a reference to a day that is an excluded day in relation to the relevant person to whom paragraph 50A(4)(a) applied." 25

**Illegal entrants**

5. Section 14 of the Principal Act is amended: 30

(a) by omitting from subsection (2) "or (2)";

(b) by inserting after subsection (2) the following subsection:

"(2A) If:

(a) because of the production of a bogus document, or the making of a statement, in respect of the grant of an entry permit, subsection 20(2) applies to a person who has entered Australia (whether before or after the commencement of this section); and 35

(b) subsection 20(1) does not apply to the person;

then, at and after: 40

(c) that commencement; or

(d) the grant of that permit;  
whichever is later, the person is an illegal entrant at any time while he or she:

(e) remains in Australia; and

(f) is not a citizen; and

(g) does not hold a properly endorsed valid entry permit or a properly endorsed valid entry visa.”.

### **Exemptions**

6. Section 15 of the Principal Act is amended by adding at the end the following subsection:

“(3) Subsection 14(2) does not apply in relation to a person prescribed for the purposes of this subsection.”.

### **Circumstances in which non-citizens may become illegal entrants**

7. Section 20 of the Principal Act is amended by omitting subparagraph (1)(d)(iii) and substituting the following subparagraph:

“(iii) a person who had been convicted of 2 or more crimes and sentenced to imprisonment for periods that add up to at least one year if:

(A) any period concurrent with part of a longer period is disregarded; and

(B) any periods not disregarded that are concurrent with each other are treated as one period;

whether or not:

(C) the crimes were of the same kind; or

(D) the crimes were committed at the same time; or

(E) the convictions were at the same time; or

(F) the sentencings were at the same time; or

(G) the periods were consecutive;”.

8. After Division 1 of Part 2 of the Principal Act the following Division is inserted:

### **“Division 1AA—Refugees**

#### **Determination of refugee status**

“22AA. If the Minister is satisfied that a person is a refugee, the Minister may determine, in writing, that the person is a refugee.

#### **Procedure for determination of refugee status**

“22AB.(1) The regulations may:

(a) provide that a person may apply for a determination under section 22AA that he or she is a refugee; and

(b) prescribe procedures for the consideration of such an application.

- “(2) Without limiting subsection (1), the regulations may:
- (a) provide for the applications to be made in an approved form; or
  - (b) prescribe time limits relating to the application.

**Only persons in Australia can be determined to be refugees** 5

“22AC. This Division does not:

- (a) entitle a person who is outside Australia to apply for a determination that he or she is a refugee; or
- (b) authorise a determination that a person who is outside Australia is a refugee.

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**Consideration of applications for refugee status**

“22AD.(1) In this section:

‘**application**’ means an application for a determination by the Minister that a person is a refugee, and includes such an application made before the commencement of, and not made under, this Division.

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“(2) The Minister is not required to consider an application if the applicant is the holder of:

- (a) a permanent entry permit; or
- (b) an entry visa that is not subject to any limitation as to the time the holder is authorised to remain in Australia; or
- (c) a PRC (temporary) entry permit within the meaning of regulation 119H.

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“(3) The Minister may consider and dispose of applications in such order as he or she considers appropriate.

“(4) The fact that an application has not yet been considered or disposed of although an application that was made later has been considered or disposed of does not mean that the consideration or disposal of the earlier application is unreasonably delayed.”

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9. After section 50 of the Principal Act the following sections are inserted in Division 3 of Part 2:

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**Cancellation of business permits and business visas**

“50A.(1) Subject to subsection (2) and to section 50B, the Minister may cancel a business permit or a business visa, by written notice given to its holder, if the Minister is satisfied that its holder:

- (a) has not obtained a substantial ownership interest in an eligible business in Australia; or
- (b) is not utilising his or her skills in actively participating at a senior level in the day-to-day management of that business; or
- (c) does not intend to continue to:
  - (i) hold a substantial ownership interest in; and

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(ii) utilise his or her skills in actively participating at a senior level in the day-to-day management of;  
an eligible business in Australia.

5 “(2) The Minister must not cancel a business permit or a business visa under subsection (1) if the Minister is satisfied that its holder:

- (a) has made a genuine effort to obtain a substantial ownership interest in an eligible business in Australia; and
- (b) has made a genuine effort to utilise his or her skills in actively participating at a senior level in the day-to-day management of that business; and
- 10 (c) intends to continue to make such genuine efforts.

15 “(3) Without limiting the generality of matters that the Minister may take into account in determining whether a person has made the genuine effort referred to in subsection (2), the Minister may take into account any or all of the following matters:

- (a) business proposals that the person has developed;
- (b) the existence of partners or joint venturers for the business proposals;
- 20 (c) research that the person has undertaken into the conduct of an eligible business in Australia;
- (d) the period or periods during which the person has been present in Australia;
- (e) the value of assets transferred to Australia by the person for use in obtaining an interest in an eligible business;
- 25 (f) the value of ownership interest in eligible businesses in Australia that are, or have been, held by the person;
- (g) business activity that is, or has been, undertaken by the person;
- (h) whether the person has failed to comply with a notice under section 50D;
- 30 (i) if the person no longer holds a substantial ownership interest in a particular business or no longer utilises his or her skills in actively participating at a senior level of a day-to-day management of a business:
  - 35 (i) the length of time that the person held the ownership interest or participated in the management (as the case requires); and
  - (ii) the reasons why the person no longer holds the interest or participates in the management (as the case requires).

40 “(4) Subject to subsection (5) and to section 50B, if:

- (a) the Minister cancels a person’s business permit or business visa under subsection (1); and
- (b) a business permit or a business visa is held by another person

who is or was a member of the family unit of the holder of the cancelled permit or visa; and

- (c) the other person would not have held that business permit or business visa if he or she had never been a member of the family unit of the holder of the cancelled permit or visa;

the Minister must cancel the other person's business permit or business visa by giving written notice to that person.

“(5) The Minister must not cancel the other person's business permit or business visa under subsection (4) if the cancellation of that permit or visa would result in extreme hardship to the person.

“(6) The Minister is taken not to have cancelled a person's business permit or business visa under subsection (4) if the Administrative Appeals Tribunal has set aside the decision of the Minister to cancel the business permit or business visa of the relevant person to whom paragraph (4)(a) applied.

“(7) If the Minister cancels a business permit or business visa under this section, the Minister must include in the notice given to its holder:

- (a) the Minister's reason for the cancellation; and  
 (b) a statement to the effect that the holder may, within 28 days after receiving the notice, apply to the Administrative Appeals Tribunal for review of the cancellation.

“(8) A cancellation under this section has effect on and from:

- (a) if the person applies to the Administrative Appeals Tribunal for a review of the decision to cancel the permit or visa—the 28th day after the day on which the Administrative Appeals Tribunal gives its decision on that review; or  
 (b) if:

- (i) the person's permit or visa was cancelled under subsection (4); and  
 (ii) the relevant person to whom paragraph (4)(a) applied has applied to the Administrative Appeals Tribunal for a review of the decision to cancel that person's permit or visa;

the 28th day after the day on which the Administrative Appeals Tribunal gives its decision on that review; or

- (c) the 28th day after the day on which the notice of cancellation is given to the holder of the cancelled permit or visa;

whichever is the latest.

“(9) The Minister must not cancel a business permit or business visa under subsection (1) or (4) unless a notice under section 50B was given to its holder within the period of 3 years commencing:

- (a) if its holder was in Australia when he or she was first granted

a business permit or business visa—on the day on which that first permit or visa was granted; or

- (b) if its holder was not in Australia when he or she was first granted a business permit or business visa—on the day on which its holder first entered Australia after that first permit or visa was granted.

“(10) In this section:

**‘business permit’** means:

(a) an entry permit that is granted to a person who is or was the holder of a business visa or business permit; or

(b) a permanent entry permit prescribed for the purposes of this definition, being a permit a criterion for whose grant:

(i) relates to the applicant’s involvement in business in Australia; or

(ii) is that the applicant is a member of the family unit of the holder of a business permit or a business visa;

that is or was granted on or after 17 February 1992;

**‘business visa’** means:

(a) a business skills visa; or

(b) a business skills (senior executive) visa; or

(c) a return visa that is granted to a person who is or was the holder of a business permit or business visa; or

(d) a visa prescribed for the purposes of this definition, being a visa a criterion for whose grant:

(i) relates to the applicant’s involvement in business in Australia; or

(ii) is that the applicant is a member of the family unit of the holder of a business permit or a business visa;

that is or was granted on or after 17 February 1992;

**‘eligible business’** means a business that the Minister reasonably believes is resulting or will result in one or more of the following:

(a) the development of business links with the international market;

(b) the creation or maintenance of employment in Australia;

(c) the export of Australian goods or services;

(d) the production of goods or the provision of services that would otherwise be imported into Australia;

(e) the introduction of new or improved technology to Australia;

(f) an increase in commercial activity and competitiveness within sectors of the Australian economy;

**‘ownership interest’**, in relation to a business, means an interest in the business as:

(a) a shareholder in a company that carries on the business; or

(b) a partner in a partnership that carries on the business; or

(c) the sole proprietor of the business;  
including such an interest held indirectly through one or more interposed companies, partnerships or trusts;

**'member of the family unit'**, in relation to the holder of a business permit or business visa, means a person who, if the holder were an applicant for a business visa, would be a member of the holder's family unit within the meaning of the regulations;

**'return visa'** has the same meaning as in the regulations.

**Representations concerning cancellation of business permit or business visa**

"50B.(1) Before cancelling a permit or a visa under subsection 50A(1) or (4), the Minister must give its holder a written notice:

(a) stating that the Minister proposes to cancel the permit or visa;  
and

(b) inviting its holder to make representations to the Minister concerning the proposed cancellation within:

(i) if the notice is given in Australia—28 days after the notice is given; or

(ii) if the notice is given outside Australia—70 days after the notice is given.

"(2) The holder may make such representations to the Minister within the time specified in the notice.

"(3) The Minister must give due consideration to any representations.

"(4) If:

(a) the time specified in the notice ends after the end of the period referred to in subsection 50A(9); and

(b) at the end of the period of 90 days commencing at the time specified in the notice, the Minister has not made a decision on whether to proceed with the cancellation;

the Minister is not to proceed with the cancellation.

"(5) If the Minister decides not to proceed with the cancellation, the Minister must give its holder written notice to that effect.

**Review of decisions**

"50C. Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under subsection 50A(1) or (4).

**Provision of information—holders of business permits or business visas**

"50D.(1) The Secretary may by written notice require the holder of a business permit or a business visa to give the Secretary such information as is specified in the notice.



“(2) The Secretary may not require information under subsection (1) unless the information is to be used by the Secretary or the Minister for the purpose of the administration of this Act or of regulations made under this Act.

5 “(3) A notice under subsection (1) is only valid in the period of 3 years commencing:

(a) if the holder was in Australia when he or she was first granted a business permit or business visa—on the day on which that first permit or visa was granted; or

10 (b) if the holder was not in Australia when he or she was first granted a business permit or business visa—on the day on which the holder first entered Australia after that first permit or visa was granted.

15 “(4) Without limiting the generality of the information that may be required under subsection (1), the Secretary may require the holder to advise the Secretary in writing of any change in the address of the holder during a period specified in the notice.

20 “(5) A notice under subsection (1) must state that the information must be provided within a period of 28 days commencing on a day specified in the notice.

“(6) The day specified in the notice may be:

(a) the day on which the notice is issued; or

(b) a later particular day; or

(c) the day on which an event specified in the notice occurs.

25 “(7) A person who, without reasonable excuse, fails to comply with a notice under subsection (1) commits an offence at the end of every successive 28 day period that is contained in the period commencing on the day specified in the notice and ending when the person complies with the notice.

30 “(8) Subsection 4K(2) of the *Crimes Act 1914* does not apply to an offence under subsection (7).

“(9) A person must not, in purported compliance with a notice under subsection (1), knowingly give information that is false or misleading in a material particular.

35 “(10) In this section:

‘business permit’ has the same meaning as in section 50A;

‘business visa’ has the same meaning as in section 50A.

Penalty: \$5,000.”

40 10. After section 100 of the Principal Act the following Division is inserted:

**“Division 8A—Recovery of costs from certain persons****Interpretation**

“100A.(1) For the purposes of this Division, a reference to a person who is taken into custody under subsection 88(3) includes a reference to such a person who is later taken to a processing area under section 89A. 5

“(2) For the purposes of this Division, a person taken into custody under subsection 88(3) is taken to be in custody when in a processing area.

**Liability to the Commonwealth for the cost of keeping, maintaining and removing certain persons 10**

“100B. A person who:

- (a) is taken into custody under subsection 88(3); and
- (b) while in that custody, is convicted of an offence against a prescribed law in force in the Commonwealth or in a State or Territory, being a law relating to the control of fishing; 15

and the master, owner, agent and charterer of the vessel on which the person travelled to Australia, are, jointly and severally, liable to pay the Commonwealth:

- (c) a fair amount for the cost of keeping and maintaining the person while the person is in custody (not being custody in a processing area); and 20
- (d) the cost of transporting the person, and a custodian of the person, from the vessel to the place of custody; and
- (e) the cost of transporting the person, and a custodian of the person, between places of custody (not being transport between two processing areas); and 25
- (f) if the person is returned to the vessel or another vessel—the cost of transporting the person, and a custodian of the person, from the place of custody to the vessel or that other vessel; and 30
- (g) if the person is, or is to be, removed from Australia at the expense of the Commonwealth—the cost of that removal (including the cost of transporting a custodian of the person).

**Secretary able to issue notice of debt**

“100C. If: 35

- (a) a person is liable to pay to the Commonwealth an amount under section 100B; and
- (b) the Secretary gives written notice to the person giving particulars of the liability and stating that the Secretary requires payment of a specified amount not exceeding that amount; 40

the specified amount is a debt recoverable by the Commonwealth from the person:

- (c) in a court of competent jurisdiction; or
- (d) by garnishee notice under section 100D.

**Garnishee notice**

5 “100D.(1) If an amount (**‘debt’**) is a debt recoverable from a person (**‘debtor’**) by the Commonwealth under section 100C or 100E, the Secretary may by written notice given to another person:

- (a) from whom any money is due or accruing, or may become due, to the debtor; or
- 10 (b) who holds, or may later hold, money for or on account of the debtor; or
- (c) who holds, or may later hold, money on account of some other person for payment to the debtor; or
- 15 (d) who has authority from some other person to pay money to the debtor;

require the person to whom the notice is given to pay to the Commonwealth:

- (e) an amount specified in the notice, not exceeding the debt or the amount of the relevant money; or
- 20 (f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the debtor until that debt is paid.

25 “(2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in it, not being a time before:

- (a) the relevant money becomes due or is held; or
- (b) the end of the period of 14 days after the notice is given.

“(3) If the debtor is in Australia when the Secretary gives the notice, the Secretary must give a copy of the notice to the debtor.

30 “(4) A person who makes a payment to the Commonwealth in compliance with the notice is taken to have made the payment under the authority of the person who owes the debt to the Commonwealth and of any other person concerned.

35 “(5) If, after the notice is given to a person, an amount is paid by another person in reduction or satisfaction of the debt, the Secretary must notify the person given the notice accordingly, and the amount specified in the notice is taken to be reduced by the amount paid.

40 “(6) If money is not due, or repayable, to a person on demand unless a condition is fulfilled, the money is taken, for the purposes of this section, to be due or repayable on demand, even though the condition has not been fulfilled.

**Debt from failure to comply with garnishee notice**

“100E.(1) If a person (**‘garnishee debtor’**):

- (a) is given a notice under section 100D in respect of a debt; and
- (b) fails to comply with the notice to the extent that the garnishee debtor is capable of complying with it;

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then the amount of the debt outstanding is recoverable from the garnishee debtor by the Commonwealth by:

- (c) legal proceedings in a court of competent jurisdiction; or
- (d) a garnishee notice under section 100D.

“(2) The reference in subsection (1) to the amount of the debt outstanding is a reference to whichever is the lesser of:

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- (a) as much of the amount required by the notice under section 100D to be paid by the garnishee debtor as the garnishee debtor was able to pay; or
- (b) as much of the debt due at the time when the notice was given as remains due from time to time.

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“(3) If the Commonwealth recovers:

- (a) the whole or a part of the debt due by the garnishee debtor; or
- (b) the whole or a part of the debt due by the debtor (within the meaning of section 100D);

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then:

- (c) both debts are reduced by the amount that the Commonwealth has so recovered; and
- (d) the amount specified in the notice under section 100D is taken to be reduced by the amount so recovered.

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**Future debts**

“100F. For the purposes of this Division, an amount is a future debt in relation to a person if the Secretary believes on reasonable grounds that the person will, under section 100B, become liable to pay the amount to the Commonwealth.

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**Secretary may freeze amounts to secure future debts**

“100G.(1) If there is a future debt in relation to a person (**‘future debtor’**), the Secretary may by written notice given to another person:

- (a) from whom any money is due or accruing, or may become due, to the future debtor; or
- (b) who holds, or may later hold, money for or on account of the future debtor; or
- (c) who holds, or may later hold, money on account of some other person for payment to the future debtor; or
- (d) who has authority from some other person to pay money to the future debtor;

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require the other person to retain for the period, not exceeding 28 days, specified in that notice:

(e) an amount specified in the notice, not exceeding the future debt or the amount of the relevant money; or

5 (f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the future debtor until that debt is paid.

10 “(2) If the future debtor is in Australia when the Secretary gives the notice, the Secretary must give a copy of the notice to the future debtor.

“(3) If, after the notice is given to a person, an amount is paid by another person in respect of the future debt, the Secretary must notify the person given the notice accordingly, and the amount specified in the notice is taken to be reduced by the amount paid.

15 “(4) If money is not due, or repayable, to a person on demand unless a condition is fulfilled, the money is taken, for the purposes of this section, to be due or repayable on demand even though the condition has not been fulfilled.

#### **Application of Division to the Crown**

20 “100H.(1) This Division binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

25 “(2) For the purposes of this Division, a notice may be given to the Commonwealth, a State or Territory by giving it to a person employed by the Commonwealth, State or Territory, respectively, being a person who, under a law of the Commonwealth, State or Territory, respectively, has a duty of disbursing public money, and a notice so given is taken, for the purposes of this section, to have been given to the Commonwealth, the State or the Territory, as the case may be.”.

#### **30 Internal review of certain decisions**

11. Section 115 of the Principal Act is amended by inserting in subsection (3) “in the primary application” after “applicant” (wherever occurring).

#### **Applications for review by Tribunal**

35 12. Section 116 of the Principal Act is amended by inserting in subsection (3) “in the primary application” after “applicant” (wherever occurring).

#### **Determinative powers**

13. Section 118 of the Principal Act is amended:

40 (a) by adding at the end of paragraph (4)(a) “or”;

(b) by inserting after paragraph (4)(b) the following paragraph:

“(ba) if the decision relates to a prescribed matter—remit the matter for reconsideration in accordance with such directions or recommendations of the review authority as are permitted by the regulations; or”.

**Minister may set aside Tribunal’s decision etc.**

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14. Section 137 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

“(5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:

- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or 10
- (b) if the decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.”.

**Regulations**

15. Section 181 of the Principal Act is amended by inserting after paragraph (1)(i) the following paragraph: 15

“(ja) enabling a person who is alleged to have contravened section 50D to pay to the Commonwealth, as an alternative to prosecution, a prescribed penalty, not exceeding \$1,000.”.

**Application of amendments—tabling of statements before Parliament** 20

16. The amendments made by section 14 apply to statements in relation to decisions made after the commencement of this section.

**Transitional—illegal entrants**

17.(1) If:

- (a) a person was in Australia at the commencement of this Act; and 25
- (b) subsection 20(1) of the Principal Act as in force immediately before that commencement did not apply to the person; and
- (c) apart from this section, subsection 20(1) of the Principal Act as amended by this Act would apply to the person; 30

then, for the purposes of the application in relation to the person of subparagraph 20(1)(d)(iii) of the Principal Act as so amended, any convictions before the commencement of this Act are to be disregarded.

(2) If:

- (a) a person was not in Australia at the commencement of this Act; and 35
- (b) the person was lawfully in Australia at any time before that commencement; and
- (c) immediately before that commencement, the person:
  - (i) was an exempt non-citizen; or 40
  - (ii) was the holder of a visa; or

- (iii) satisfied the criteria for the grant of a visa; and  
(d) apart from this section, subsection 20(1) of the Principal Act as amended by this Act would apply to the person;
- 5 then for the purposes of the application in relation to the person of subparagraph 20(1)(d)(iii) of the Principal Act as so amended, any convictions before the commencement of this Act are to be disregarded.
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**NOTE**

1. No. 62, 1958, as amended. For previous amendments, see No. 87, 1964; No. 10, 1966; Nos. 16 and 216, 1973; Nos. 37 and 91, 1976; Nos. 117 and 118, 1979; Nos. 89 and 175, 1980; No. 61, 1981; No. 51, 1982; Nos. 73 and 112, 1983; Nos. 22, 72 and 123, 1984; Nos. 71, 102 and 168, 1986; Nos. 86, 104, 133 and 141, 1987; Nos. 5, 38, 49 and 151, 1988; Nos. 59 and 61, 1989; No. 37, 1990; Nos. 70, 86, 196 and 198, 1991; and No. 00, 1992.



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