

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MIGRATION LAWS AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Immigration, Local Government and Ethnic Affairs
the Honourable Gerry Hand MP)

MIGRATION LAWS AMENDMENT BILL 1992

OUTLINE

This Bill establishes a legislative scheme to enhance the delivery of annual migration programs, and corrects a minor technical error in the Migration Amendment Act (No.2) 1991.

Part 2 of the Bill establishes a scheme which will provide the Minister with a flexible power to publish in the Gazette an upper limit or cap on the number of visas in a specified class or classes that may be granted in a particular financial year. The Act will provide that certain visa classes in the Preferential Family category will not be affected.

The Minister will not be able to grant visas in the capped classes in excess of the number set by the cap until the cap is lifted or varied. However, processing of applications up to the point of grant will continue and applicants not satisfying the eligibility criteria will be refused. This feature distinguishes the capping scheme from the scheme provided in s.28 of the Act which empowers the Minister to suspend processing of applications for specified classes of visa until a specified date.

The scheme will also provide for an orderly granting of visas up to the capped number to ensure that no visas are inadvertently granted in excess of the gazetted number. Once the cap is lifted there will be an ordered release of applications that have been processed up to the point of grant but whose grant was prevented while the cap remained in place.

Part 3 of the Bill corrects a technical error in the Migration Amendment Act (No.2) 1991.

FINANCIAL IMPACT STATEMENT

The amendments will have no financial impact.

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NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short Title

1 This clause provides that the Act may be cited as the Migration Laws Amendment Act 1992.

Clause 2 Commencement

2 Sub-clause (1) provides for commencement of the Act, subject to sub-clause (2), on the day it receives the Royal Assent. Sub-clause (2) provides that Part 3, which makes a technical correction to the Migration Amendment Act (No.2) 1991, is deemed to have commenced immediately after the commencement of that Act and thus Part 3 will have retrospective operation.

PART 2 Amendments to the Migration Act 1958

Clause 3 Interpretation

3 This clause provides that in Part 2, the term "Principal Act" refers to the Migration Act 1958.

Clause 4 Amendment of Regulation-making Power

4 This clause amends sub-paragraph (2)(b) of section 23 of the Migration Act 1958 to replace the reference to section 28 with a reference to sections 28 and 28B. The amended section 23(2)(b) confers the power make regulations creating an entitlement, which is to be subject to sections 28 and 28B, for an applicant to be granted a visa if he or she satisfies the relevant prescribed criteria.

Clause 5 Amendment of the Power to Grant Visas

5 This clause amends paragraphs (3)(b) and (6)(a) of section 24 of the Migration Act 1958 which confers the power to grant a visa on the Minister. The amended section 24 will require the Minister, subject to certain other provisions in section 24 and sections 28 and 28B, to grant a visa where it appears to the Minister that the applicant is entitled to be granted a visa of the relevant class.

Clause 6 Insertion of Subdivision AA

6 This clause inserts new Subdivision AA into the Migration Act. Subdivision AA establishes a capping scheme to assist in the delivery of the annual migration program.

7 The following clause notes relate to the sections of new Subdivision AA.

Section 28A Limit on Visas

8 This section gives the Minister the power to establish a cap on the annual migration program. The cap is set by publishing a notice in the Gazette specifying the maximum number of visas in a nominated class, or nominated classes, that can be granted in a particular financial year.

Section 28B Effect of Limit

9 This section limits the Minister's power to grant visas by prohibiting further grants of visas in those classes where a cap has been published and the maximum number of visas set by the cap for that financial year has been granted.

Section 28C Limit does not affect certain persons

10 This section provides that applications for visas made on the basis of one or more of the specified relationships between the applicant and an Australian citizen or permanent resident are not affected by caps. Section 28B will not prevent the grant of a visa to such applicants. The relationships specified are those which form the basis of applications for certain visa classes in the Preferential Family category.

Section 28D Processing may continue

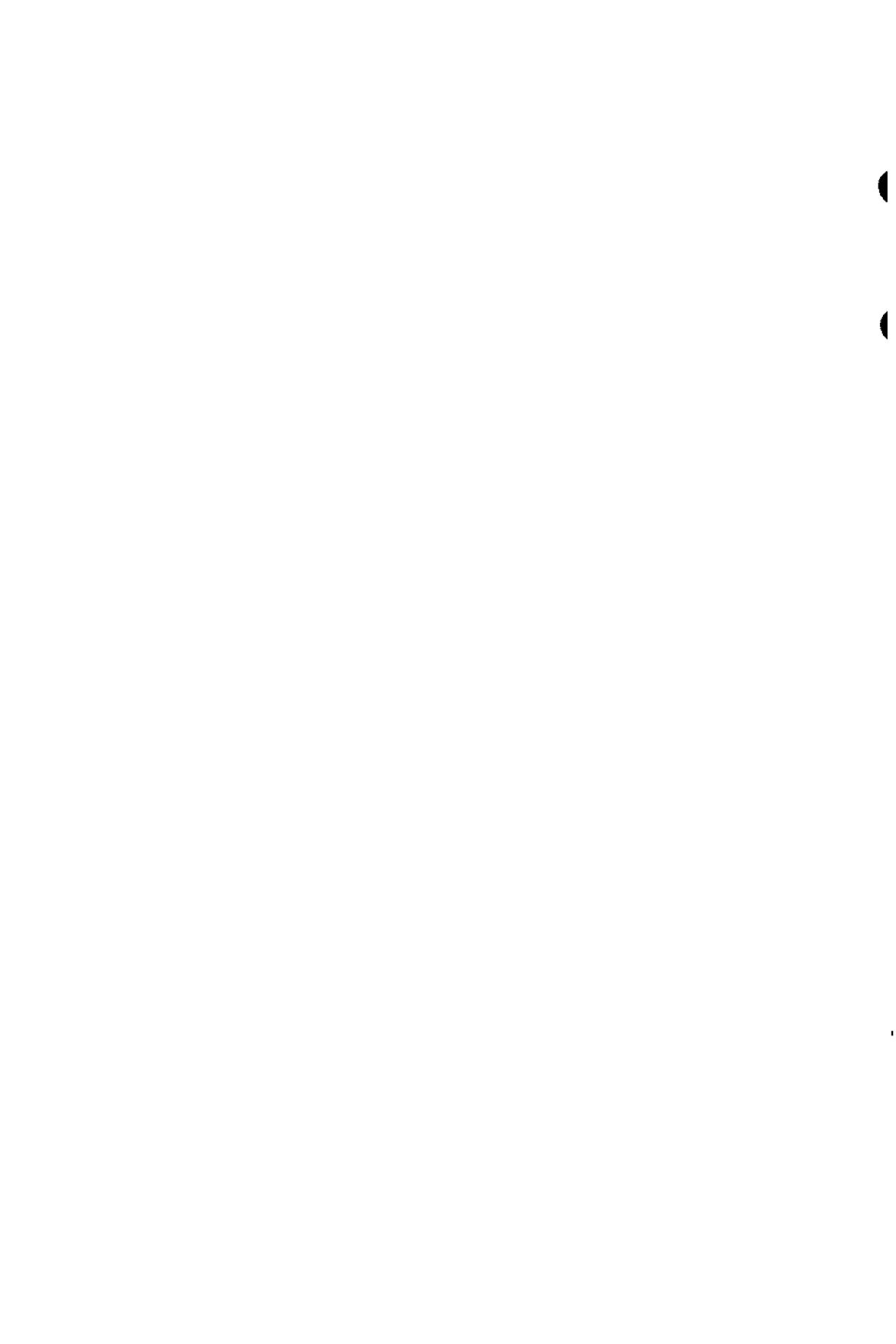
11 This section distinguishes the capping scheme from the suspension scheme established by section 28. The lodgement, processing and rejection of visa applications in the capped classes may continue while section 28B applies to that class. Actions to finalise applications, such as visa issue and recording in the databases, may continue in respect of visas granted before section 28B applied to that class or those classes.

Section 28E No failure to make a decision

12 This section provides that the fact that the Minister has not decided an application for a capped class of visa is not to be regarded as a failure to exercise the power to grant a visa. The section addresses the ground of judicial review that the Minister has failed to exercise a power or perform a duty, and prevents an order by a Court compelling the Minister to make a decision while the cap is in place.

Section 28F No unreasonable delay

13 This section will remove any doubts about the order in which applications are to be processed by providing that the consideration and disposal of applications in other than chronological order will not constitute unreasonable delay. The section will permit decisions to refuse applications to be made in respect of later applications notwithstanding the fact



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