





# **Migration Litigation Reform Act 2005**

**No. 137, 2005**

**An Act to amend legislation in relation to courts  
and litigation, particularly in migration matters,  
and for related purposes**

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



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# Migration Litigation Reform Act 2005

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## **An Act to amend legislation in relation to courts and litigation, particularly in migration matters, and for related purposes**

*[Assented to 15 November 2005]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Migration Litigation Reform Act 2005*.

### **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

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	15 November 2005
2. Schedule 1	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.	
3. Schedule 2	The day on which this Act receives the Royal Assent.	15 November 2005

Note: This table relates only to the provisions of this Act as originally passed by 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 in relation to litigation**

### **Part 1—Amendments**

#### *Administrative Decisions (Judicial Review) Act 1977*

##### **1 After paragraph (da) of Schedule 1**

Insert:

- (db) a purported privative clause decision within the meaning of section 5E of the *Migration Act 1958*;

#### *Federal Court of Australia Act 1976*

##### **2 Subsection 25(1A)**

After “judgment”, insert “, other than a migration judgment,”.

##### **3 After subsection 25(1A)**

Insert:

(1AA) The appellate jurisdiction of the Court in relation to an appeal from a migration judgment of the Federal Magistrates Court is to be exercised by:

- (a) a single Judge; or
- (b) if a Judge considers that it is appropriate for the appellate jurisdiction of the Court in relation to the appeal to be exercised by a Full Court—a Full Court.

##### **4 Subsection 25(1B)**

Omit “Subsection (1A) has”, substitute “Subsections (1A) and (1AA) have”.

##### **5 After paragraph 25(2B)(a)**

Insert:

- (aa) give summary judgment; or

##### **6 At the end of section 25**

Add:

(7) In this section:

*migration judgment* means a judgment involving the exercise of the jurisdiction of the Federal Magistrates Court under section 476 of the *Migration Act 1958*.

## 7 After section 31

Insert:

### 31A Summary judgment

- (1) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
  - (a) the first party is prosecuting the proceeding or that part of the proceeding; and
  - (b) the Court is satisfied that the other party has no reasonable prospect of successfully defending the proceeding or that part of the proceeding.
- (2) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
  - (a) the first party is defending the proceeding or that part of the proceeding; and
  - (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.
- (3) For the purposes of this section, a defence or a proceeding or part of a proceeding need not be:
  - (a) hopeless; or
  - (b) bound to fail;for it to have no reasonable prospect of success.
- (4) This section does not limit any powers that the Court has apart from this section.

## *Federal Magistrates Act 1999*

### 8 After section 17

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Insert:

### **17A Summary judgment**

- (1) The Federal Magistrates Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
  - (a) the first party is prosecuting the proceeding or that part of the proceeding; and
  - (b) the Court is satisfied that the other party has no reasonable prospect of successfully defending the proceeding or that part of the proceeding.
- (2) The Federal Magistrates Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
  - (a) the first party is defending the proceeding or that part of the proceeding; and
  - (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.
- (3) For the purposes of this section, a defence or a proceeding or part of a proceeding need not be:
  - (a) hopeless; or
  - (b) bound to fail;for it to have no reasonable prospect of success.
- (4) This section does not limit any powers that the Federal Magistrates Court has apart from this section.

### ***Judiciary Act 1903***

### **9 After Division 4 of Part III**

Insert:

## **Division 4A—Summary judgment**

### **25A Summary judgment**

- (1) The High Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
  - (a) the first party is prosecuting the proceeding or that part of the proceeding; and
  - (b) the Court is satisfied that the other party has no reasonable prospect of successfully defending the proceeding or that part of the proceeding.
- (2) The High Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
  - (a) the first party is defending the proceeding or that part of the proceeding; and
  - (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.
- (3) For the purposes of this section, a defence or a proceeding or part of a proceeding need not be:
  - (a) hopeless; or
  - (b) bound to fail;for it to have no reasonable prospect of success.
- (4) This section does not limit any powers that the High Court has apart from this section.

### **10 At the end of section 44**

Add:

- (4) The High Court may remit a matter, or any part of a matter, under this section without an oral hearing.

## ***Migration Act 1958***

### **11 Subsection 5(1)**

Insert:

***migration decision*** means:

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- (a) a privative clause decision; or
- (b) a purported privative clause decision; or
- (c) a non-privative clause decision.

## **12 Subsection 5(1)**

Insert:

*non-privative clause decision* has the meaning given by subsection 474(6).

## **13 Subsection 5(1)**

Insert:

*purported privative clause decision* has the meaning given by section 5E.

## **14 After section 5D**

Insert:

### **5E Meaning of *purported privative clause decision***

- (1) In this Act, *purported privative clause decision* means a decision purportedly made, proposed to be made, or required to be made, under this Act or under a regulation or other instrument made under this Act (whether in purported exercise of a discretion or not), that would be a privative clause decision if there were not:
  - (a) a failure to exercise jurisdiction; or
  - (b) an excess of jurisdiction;in the making of the decision.
- (2) In this section, *decision* includes anything listed in subsection 474(3).

## **15 At the end of section 474**

Add:

- (6) A decision mentioned in subsection 474(4), or specified (whether by reference to a particular decision or a class of decisions) in regulations made under subsection 474(5), is a *non-privative clause decision*.

- (7) To avoid doubt, the following decisions are *privative clause decisions* within the meaning of subsection 474(2):
- (a) a decision of the Minister not to exercise, or not to consider the exercise, of the Minister's power under subsection 37A(2) or (3), section 48B, paragraph 72(1)(c), section 91F, 91L, 91Q, 351, 391, 417 or 454 or subsection 503A(3);
  - (b) a decision of the Principal Member of the Migration Review Tribunal or of the Principal Member of the Refugee Review Tribunal to refer a matter to the Administrative Appeals Tribunal;
  - (c) a decision of the President of the Administrative Appeals Tribunal to accept, or not to accept, the referral of a decision under section 382 or 444;
  - (d) a decision of the Minister under Division 13A of Part 2 to order that a thing is not to be condemned as forfeited.

## **16 Division 2 of Part 8 (heading)**

Repeal the heading, substitute:

## **Division 2—Jurisdiction and procedure of courts**

### **17 Sections 475A and 476**

Repeal the sections, substitute:

#### **476 Jurisdiction of the Federal Magistrates Court**

- (1) Subject to this section, the Federal Magistrates Court has the same original jurisdiction in relation to migration decisions as the High Court has under paragraph 75(v) of the Constitution.
- (2) The Federal Magistrates Court has no jurisdiction in relation to the following decisions:
  - (a) a primary decision;
  - (b) a privative clause decision, or purported privative clause decision, of the Administrative Appeals Tribunal on review under section 500;
  - (c) a privative clause decision, or purported privative clause decision, made personally by the Minister under section 501, 501A, 501B or 501C;

- (d) a privative clause decision or purported privative clause decision mentioned in subsection 474(7).
- (3) Nothing in this section affects any jurisdiction the Federal Magistrates Court may have in relation to non-privative clause decisions under section 8 of the *Administrative Decisions (Judicial Review) Act 1977* or section 44AA of the *Administrative Appeals Tribunal Act 1975*.
- (4) In this section:
  - primary decision** means a privative clause decision or purported privative clause decision:
    - (a) that is reviewable under Part 5 or 7 or section 500 (whether or not it has been reviewed); or
    - (b) that would have been so reviewable if an application for such review had been made within a specified period.

#### **476A Limited jurisdiction of the Federal Court**

- (1) Despite any other law, including section 39B of the *Judiciary Act 1903* and section 8 of the *Administrative Decisions (Judicial Review) Act 1977*, the Federal Court has original jurisdiction in relation to a migration decision if, and only if:
  - (a) the Federal Magistrates Court transfers a proceeding pending in that court in relation to the decision to the Federal Court under section 39 of the *Federal Magistrates Act 1999*; or
  - (b) the decision is a privative clause decision, or a purported privative clause decision, of the Administrative Appeals Tribunal on review under section 500; or
  - (c) the decision is a privative clause decision, or purported privative clause decision, made personally by the Minister under section 501, 501A, 501B or 501C; or
  - (d) the Federal Court has jurisdiction in relation to the decision under subsection 44(3) or 45(2) of the *Administrative Appeals Tribunal Act 1975*.

Note: Only non-privative clause decisions can be taken to the Federal Court under subsection 44(3) of the *Administrative Appeals Tribunal Act 1975* (see section 483).

- (2) Where the Federal Court has jurisdiction in relation to a migration decision under paragraph (1)(a), (b) or (c), that jurisdiction is the

same as the jurisdiction of the High Court under paragraph 75(v) of the Constitution.

#### **476B Remittal by the High Court**

- (1) Subject to subsection (3), the High Court must not remit a matter, or any part of a matter, that relates to a migration decision to any court other than the Federal Magistrates Court.
- (2) The High Court must not remit a matter, or any part of a matter, that relates to a migration decision to the Federal Magistrates Court unless that court has jurisdiction in relation to the matter, or that part of the matter, under section 476.
- (3) The High Court may remit a matter, or part of a matter, that relates to a migration decision in relation to which the Federal Court has jurisdiction under paragraph 476A(1)(b) or (c) to that court.
- (4) Subsection (1) has effect despite section 44 of the *Judiciary Act 1903*.

#### **18 Section 477**

Repeal the section, substitute:

#### **477 Time limits on applications to the Federal Magistrates Court**

- (1) An application to the Federal Magistrates Court for a remedy to be granted in exercise of the court's original jurisdiction under section 476 in relation to a migration decision must be made to the court within 28 days of the actual (as opposed to deemed) notification of the decision.
- (2) The Federal Magistrates Court may, by order, extend that 28 day period by up to 56 days if:
  - (a) an application for that order is made within 84 days of the actual (as opposed to deemed) notification of the decision; and
  - (b) the Federal Magistrates Court is satisfied that it is in the interests of the administration of justice to do so.
- (3) Except as provided by subsection (2), the Federal Magistrates Court must not make an order allowing, or which has the effect of

allowing, an applicant to make an application mentioned in subsection (1) outside that 28 day period.

- (4) The regulations may prescribe the way of notifying a person of a decision for the purposes of this section.

#### **477A Time limits on applications to the Federal Court**

- (1) An application to the Federal Court for a remedy to be granted in exercise of the court's original jurisdiction under paragraph 476A(1)(b) or (c) in relation to a migration decision must be made to the court within 28 days of the actual (as opposed to deemed) notification of the decision.
- (2) The Federal Court may, by order, extend that 28 day period by up to 56 days if:
- (a) an application for that order is made within 84 days of the actual (as opposed to deemed) notification of the decision; and
  - (b) the Federal Court is satisfied that it is in the interests of the administration of justice to do so.
- (3) Except as provided by subsection (2), the Federal Court must not make an order allowing, or which has the effect of allowing, an applicant to make an application mentioned in subsection (1) outside that 28 day period.
- (4) The regulations may prescribe the way of notifying a person of a decision for the purposes of this section.

#### **19 Section 478**

Omit "section 477 may only be made by the Minister and", substitute "section 477 or 477A may only be made by the Minister, or where appropriate the Secretary, and".

#### **20 Paragraph 478(a)**

Repeal the paragraph, substitute:

- (a) if the migration decision concerned is made on review under Part 5 or 7 or section 500—the applicant in the review by the relevant Tribunal; or

#### **21 Section 479**

Omit “The parties to a review of a privative clause decision resulting from an application referred to in section 477 are the Minister”, substitute “The parties to a review of a migration decision resulting from an application referred to in section 477 or 477A are the Minister, or where appropriate the Secretary,”.

## **22 Paragraphs 479(a) and (b)**

Repeal the paragraphs, substitute:

- (a) if the migration decision concerned is made on review under Part 5 or 7 or section 500—the applicant in the review by the relevant Tribunal; or
- (b) in any other case—the person who is the subject of the migration decision; or

## **23 Subsection 480(1)**

After “section 477”, insert “or 477A”.

## **24 Subsection 480(2)**

Omit “Federal Court or Federal Magistrates Court”, substitute “Federal Magistrates Court or Federal Court”.

## **25 Section 481**

After “section 477”, insert “or 477A”.

## **26 Paragraph 482(a)**

Omit “privative clause decision”, substitute “migration decision”.

## **27 Section 483**

Repeal the section, substitute:

## **483 Section 44 of the *Administrative Appeals Tribunal Act 1975***

Section 44 of the *Administrative Appeals Tribunal Act 1975* does not apply to privative clause decisions or purported privative clause decisions.

## **28 Section 483A**

Repeal the section.

## **29 Section 484**

Repeal the section, substitute:

**484 Exclusive jurisdiction of High Court, Federal Court and Federal Magistrates Court**

- (1) Only the High Court, the Federal Court and the Federal Magistrates Court have jurisdiction in relation to migration decisions.
- (2) To avoid doubt, subsection (1) is not intended to confer jurisdiction on the High Court, the Federal Court or the Federal Magistrates Court, but to exclude other courts from jurisdiction in relation to migration decisions.
- (3) To avoid doubt, despite section 67C of the *Judiciary Act 1903*, the Supreme Court of the Northern Territory does not have jurisdiction in relation to migration decisions.
- (4) To avoid doubt, jurisdiction in relation to migration decisions is not conferred on any court under the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

**30 Subsection 486A(1)**

Repeal the subsection, substitute:

- (1) An application to the High Court for a remedy to be granted in exercise of the court's original jurisdiction in relation to a migration decision must be made to the court within 28 days of the actual (as opposed to deemed) notification of the decision.

**31 After subsection 486A(1)**

Insert:

- (1A) The High Court may, by order, extend that 28 day period by up to 56 days if:
  - (a) an application for that order is made within 84 days of the actual (as opposed to deemed) notification of the decision; and
  - (b) the High Court is satisfied that it is in the interests of the administration of justice to do so.

**32 Subsection 486A(2)**

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Omit “The High Court”, substitute “Except as provided by subsection (1A), the High Court”.

**33 Subsection 486A(2)**

Omit “35 day”, substitute “28 day”.

**34 Subsection 486C(1)**

Omit “Federal Court or the Federal Magistrates Court”, substitute “Federal Magistrates Court or the Federal Court”.

Note: The heading to section 486C is replaced by the heading “**Persons who may commence or continue proceedings in the Federal Magistrates Court or the Federal Court**”.

**35 Subsections 486C(3) and (3A)**

Repeal the subsections, substitute:

- (3) This section applies to proceedings within the Federal Magistrates Court’s jurisdiction under section 476 of this Act, section 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* or any other law.
- (3A) This section applies to proceedings transferred to the Federal Court under section 39 of the *Federal Magistrates Act 1999* and proceedings in which the Federal Court has jurisdiction under paragraph 476A(1)(b) or (c).

**36 Subsection 486C(7)**

Repeal the subsection.

**37 After section 486C**

Insert:

**486D Disclosing other judicial review proceedings**

- (1) A person must not commence a proceeding in the Federal Magistrates Court in relation to a tribunal decision unless the person, when commencing the proceeding, discloses to the court any judicial review proceeding already brought by the person in that or any other court in relation to that decision.
- (2) A person must not commence a proceeding in the Federal Court seeking the exercise of the court’s original jurisdiction in relation

to a tribunal decision unless the person, when commencing the proceeding, discloses to the court any judicial review proceeding already brought by the person in that or any other court in relation to that decision.

- (3) A person must not commence a proceeding in the High Court seeking the exercise of the court's original jurisdiction in relation to a tribunal decision unless the person, when commencing the proceeding, discloses to the court any judicial review proceeding already brought by the person in that or any other court in relation to that decision.
- (4) Proceedings required to be disclosed under subsection (1), (2) or (3) include proceedings brought before the commencement of this section.
- (5) In this section:

***judicial review proceeding***, in relation to a tribunal decision, means:

- (a) a proceeding in the Federal Magistrates Court in relation to the tribunal decision; or
- (b) a proceeding in the Federal Court seeking the exercise of the court's original jurisdiction in relation to the tribunal decision; or
- (c) a proceeding in the High Court seeking the exercise of the court's original jurisdiction in relation to the tribunal decision.

***tribunal decision*** means a privative clause decision, or purported privative clause decision, made on review by a Tribunal under Part 5 or 7 or section 500.

### **38 After Part 8A**

Insert:

## **Part 8B—Costs orders where proceedings have no reasonable prospect of success**

### **486E Obligation where there is no reasonable prospect of success**

- (1) A person must not encourage another person (the *litigant*) to commence or continue migration litigation in a court if:
  - (a) the migration litigation has no reasonable prospect of success; and
  - (b) either:
    - (i) the person does not give proper consideration to the prospects of success of the migration litigation; or
    - (ii) a purpose in commencing or continuing the migration litigation is unrelated to the objectives which the court process is designed to achieve.
- (2) For the purposes of this section, migration litigation need not be:
  - (a) hopeless; or
  - (b) bound to fail;for it to have no reasonable prospect of success.
- (3) This section applies despite any obligation that the person may have to act in accordance with the instructions or wishes of the litigant.

### **486F Cost orders**

- (1) If a person acts in contravention of section 486E, the court in which the migration litigation is commenced or continued may make one or more of the following orders:
  - (a) an order that the person pay a party to the migration litigation (other than the litigant), the costs incurred by that party because of the commencement or continuation of the migration litigation;
  - (b) an order that the person repay to the litigant any costs already paid by the litigant to another party to the migration litigation, because of the commencement or continuation of the migration litigation;

- (c) where the person is a lawyer who has acted for the litigant in the migration litigation:
  - (i) an order that costs incurred by the litigant in the commencement or continuation of the migration litigation, are not payable to the lawyer;
  - (ii) an order that the lawyer repay the litigant costs already paid by the litigant to the lawyer in relation to the commencement or continuation of the migration litigation.
- (2) If the court, at the time of giving judgment on the substantive issues in the migration litigation, finds that the migration litigation had no reasonable prospect of success, the court must consider whether an order under this section should be made.
- (3) An order under this section may be made:
  - (a) on the motion of the court; or
  - (b) on the application of a party to the migration litigation.
- (4) The motion or application must be considered at the time the question of costs in the migration litigation is decided.
- (5) A person is not entitled to demand or recover from the litigant any part of an amount which the person is directed to pay under an order made under this section.

**486G Person must be given reasonable opportunity to argue against costs order**

The court must not make an order under section 486F unless the person has been given a reasonable opportunity to argue why the order should not be made.

**486H Limited waiver of legal professional privilege**

- (1) If, in proceedings to determine whether an order under section 486F should be made:
  - (a) a person wishes to produce a document, record or information for the purpose of arguing why an order under section 486F should not be made; and
  - (b) to do so would, but for this section, deny legal professional privilege to any person entitled to claim it;

the person may produce the document, record or information for that purpose.

- (2) However:
- (a) the document, record or information does not cease to be subject to legal professional privilege for any other purpose, or in any other circumstances; and
  - (b) the court must make any orders necessary to ensure that legal professional privilege is protected for other purposes and in other circumstances.
- (3) Nothing in this section prevents a person who is entitled to claim legal professional privilege in relation to the document, record or information, from waiving that privilege.
- (4) In this section:

*legal professional privilege* includes privilege (however described) under any provision of Division 1 of Part 3.10 of the *Evidence Act 1995*.

#### **486I Lawyer's certification**

- (1) A lawyer must not file a document commencing migration litigation, unless the lawyer certifies in writing that there are reasonable grounds for believing that the migration litigation has a reasonable prospect of success.
- (2) A court must refuse to accept a document commencing migration litigation if it is a document that, under subsection (1), must be certified and it has not been.

#### **486J Part does not limit other powers to order costs against third parties**

This Part does not limit any power a court may otherwise have to make costs orders against a person who is not a party to proceedings.

#### **486K Definitions**

In this Part:

*lawyer* has the same meaning as in Part 3.

*migration litigation* means a court proceeding in relation to a migration decision.

**39 Subsection 503B(14) (table)**

Repeal the table, substitute:

<b>Applicant</b>		
<b>Item</b>	<b>In the case of these proceedings...</b>	<b>the applicant is...</b>
1	Proceedings within the Federal Magistrates Court’s jurisdiction under section 476 of this Act, including proceedings arising from: (a) a remittal under section 44 of the <i>Judiciary Act 1903</i> ; or (b) a transfer under section 32AB of the <i>Federal Court of Australia Act 1976</i> .	the person seeking the remedy to be granted in exercise of that jurisdiction.
2	Proceedings within the Federal Court’s jurisdiction under section 476A of this Act, including proceedings arising from a remittal under section 44 of the <i>Judiciary Act 1903</i> .	the person seeking the remedy to be granted in exercise of that jurisdiction.
3	Proceedings within the Federal Court’s appellate jurisdiction arising from proceedings (the <i>original proceedings</i> ) mentioned in item 1 or 2.	the person who was the applicant for the original proceedings.
4	(a) proceedings by way of a referral of a question of law arising before the Administrative Appeals Tribunal; (b) proceedings by way of an appeal in relation to proceedings mentioned in paragraph (a).	the person who applied to the Administrative Appeals Tribunal for a review of the decision concerned.

## Part 2—Application of amendments

### 40 Definitions

In this Part:

*commencement day* means the day on which this Schedule commences.

*migration decision* has the same meaning as in the *Migration Act 1958*, as amended by Part 1 of this Schedule.

*migration litigation* has the same meaning as in Part 8B of the *Migration Act 1958*, as amended by Part 1 of this Schedule.

*substantive proceedings* has the same meaning as in paragraph 503B(1)(b) of the *Migration Act 1958*.

### 41 Application of item 1 and items 11 to 36

The amendments made by item 1 and items 11 to 36 of this Schedule apply to proceedings in relation to a migration decision that are commenced on or after the commencement day.

### 42 Transitional provision—migration decision made before commencement day

Where proceedings are commenced on or after the commencement day in relation to a migration decision made before the commencement day, and actual notification of the decision is given before the commencement day:

- (a) section 477 of the *Migration Act 1958* applies as if the actual notification of the decision took place on the commencement day; and
- (b) section 477A of that Act applies as if the actual notification of the decision took place on the commencement day; and
- (c) section 486A of that Act applies as if the actual notification of the decision took place on the commencement day.

### 43 Application of items 2, 3, 4 and 6

The amendments made by items 2, 3, 4 and 6 of this Schedule apply in relation to migration judgments made on or after the commencement day.

### 44 Application of items 5, 7, 8 and 9

The amendments made by items 5, 7, 8 and 9 of this Schedule apply in relation to proceedings commenced on or after the commencement day.

**45 Application of item 10**

The amendment made by item 10 of this Schedule applies in relation to proceedings commenced in the High Court on or after the commencement day.

**46 Application of item 37**

The amendment made by item 37 of this Schedule applies in relation to the commencement of proceedings on or after the commencement day.

**47 Application of item 38**

The amendment made by item 38 of this Schedule applies to migration litigation commenced on or after the commencement day.

**48 Application of item 39**

- (1) The amendment made by item 39 of this Schedule applies in relation to substantive proceedings within the original jurisdiction of the Federal Magistrates Court, or Federal Court, commenced on or after the commencement day.
- (2) The amendment made by item 39 of this Schedule applies in relation to substantive proceedings within the appellate jurisdiction of the Federal Court if the proceedings from which the appeal arose were commenced on or after the commencement day.

## **Schedule 2—Amendments relating to the management of the Federal Magistrates Court**

### ***Federal Magistrates Act 1999***

#### **1 Section 4**

Omit “Federal Magistrates Court is to administer its own affairs”, substitute “Chief Federal Magistrate is to manage the Federal Magistrates Court’s administrative affairs”.

#### **2 Section 4**

Omit “Federal Magistrates Court in managing its”, substitute “Chief Federal Magistrate in managing the Federal Magistrates Court’s”.

#### **3 Subsection 89(1)**

Repeal the subsection, substitute:

- (1) The Chief Federal Magistrate is responsible for managing the administrative affairs of the Federal Magistrates Court.

#### **4 Subsection 89(2)**

Repeal the subsection.

#### **5 Subsection 89(3)**

Omit “The Federal Magistrates Court has power to do all things that are necessary or convenient to be done for or in connection with the administration of its affairs”, substitute “For this purpose, the Chief Federal Magistrate has power to do all things that are necessary or convenient to be done”.

#### **6 After subsection 89(3)**

Insert:

- (3A) The Chief Federal Magistrate’s powers under subsection (3) are in addition to any powers given to the Chief Federal Magistrate by this Act or any other Act.

**7 Subsection 89(4)**

Omit “The Federal Magistrates Court”, substitute “Despite subsection (3), the Chief Federal Magistrate”.

**8 Subsection 90(1)**

Omit “, on behalf of the Federal Magistrates Court,”.

**9 Subsection 91(1)**

Omit “, on behalf of the Federal Magistrates Court,” (first occurring).

**10 Section 92**

Omit “, on behalf of the Federal Magistrates Court,”.

**11 Section 93**

Before “The Federal”, insert “(1)”.

**12 At the end of section 93**

Add:

- (2) The Chief Federal Magistrate may appoint committees consisting of Federal Magistrates, or of Federal Magistrates and other persons, for the purpose of advising the Chief Federal Magistrate in relation to the management of the administrative affairs of the Federal Magistrates Court.

**13 Subsection 96(1)**

Omit “the management of its administrative affairs, the Federal Magistrates Court”, substitute “managing the administrative affairs of the Federal Magistrates Court, the Chief Federal Magistrate”.

**14 Subsection 96(2)**

Omit “Federal Magistrates Court”, substitute “Chief Federal Magistrate”.

**15 Subsection 96(3)**

Omit “Federal Magistrates Court” (first occurring), substitute “Chief Federal Magistrate”.

**16 Subsection 96(4)**

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Omit “Federal Magistrates Court”, substitute “Chief Federal Magistrate”.

**17 Subsection 96(4)**

Omit “his or her”, substitute “the Chief Executive Officer’s”.

**18 Subsection 99(6)**

Repeal the subsection, substitute:

- (6) The officers of the Federal Magistrates Court, other than the Chief Executive Officer, have such duties, powers and functions as are given to them by:
  - (a) this Act; or
  - (b) the Rules of Court; or
  - (c) the Federal Magistrates Court; or
  - (d) the Chief Federal Magistrate.

**19 Section 100**

Omit “Federal Magistrates Court” (first occurring), substitute “Chief Federal Magistrate”.

**20 After section 117**

Insert:

**117A Delegation of the administrative powers of the Chief Federal Magistrate**

The Chief Federal Magistrate may, in writing, delegate all or any of his or her powers under section 89 to any one or more of the Federal Magistrates.

**21 Transitional provision—things done before the commencement of this Schedule**

Anything done under the *Federal Magistrates Act 1999* before the commencement of this Schedule has the same effect, after that commencement, as it would have had if this Schedule had not been enacted.

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*[Minister's second reading speech made in—  
House of Representatives on 10 March 2005  
Senate on 11 May 2005]*

(35/05)