

JOINT STANDING COMMITTEE on MIGRATION**INQUIRY INTO THE
MIGRATION LEGISLATION AMENDMENT BILL (NO2) 2000****SUBMISSION BY THE DEPARTMENT OF IMMIGRATION AND
MULTICULTURAL AFFAIRS****Introduction**

The *Migration Legislation Amendment Bill (No 2) 2000* (the Bill) is an omnibus Bill that makes a number of amendments to the *Migration Act 1958* (the Act), which are set out in two Schedules to the Bill.

Schedule 1, titled "Jurisdiction and proceedings of the courts" makes a number of amendments to the judicial review scheme set out in Part 8 of the Act and introduces a new Part 8A into the Act. These amendments

- prohibit class actions in migration litigation;
- limit the persons who may commence and continue proceedings in the Federal Court;
- introduce time limits for applications to the High Court under section 75(v) of the Constitution for review of migration related matters; and
- clarify the jurisdiction of the Federal Court in relation to remitted matters.

Schedule 2, titled "Technical amendments" makes amendments to the Act:

- to clarify the scope of the Minister's power under section 501A to set aside a non-adverse section 501 decision of the delegate or the Administrative Appeals Tribunal and substitute his or her own adverse decision;
- to rectify an omission in subsection 140(1) and paragraph 140(2)(a), which allow for the consequential cancellation of visas, so that they also apply where a person's visa is cancelled under section 128; and
- to correct several misdescribed amendments to the Act.

This submission focuses on the amendments proposed by Schedule 1 to the Bill. The submission provides further details on the reasons for the proposed amendments. Details of the actual legislative changes are set out in the Explanatory Memorandum to the Bill.

Annexure A provides an outline of the reasons for the changes in Schedule 2 to the Bill (section 501A).

Schedule 1 - Jurisdiction and proceedings of courts

Government's policy

The Bill introduces several measures which will contribute to meeting the Government's policy to restrict access to judicial review in migration matters in all but exceptional circumstances.

The Government reached that view in the light of the extensive merits review rights in the migration legislation, and concerns about the growing cost and incidence of migration litigation. This litigation has been used by many unsuccessful applicants to delay their removal from Australia.

One of the measures in the Bill is to restrict access to class or otherwise grouped court actions.

The Government has brought forward this proposed change in light of the disturbing trend which has seen increasing court challenges in migration matters being made by way of class or otherwise grouped court action. The Government believes class actions are being used to encourage large numbers of people to litigate in circumstances where they would not otherwise have litigated. Large numbers of people are being encouraged to participate in class actions in order to obtain a visa. They do not have a lawful entitlement to be in Australia but use class actions in order to access a bridging visa¹. There are examples of advertisements being placed in various newspapers using the eligibility for a bridging visa as a selling point for joining the class action.

Another measure included in the Bill is to ensure that the standing requirements of Part 8 of the *Migration Act 1958* are extended to any challenge in the Federal Court. That is, the only person who can bring a proceeding in the Federal Court that raises an issue in connection with a visa or deportation decision or a removal action is the person the subject of the visa decision, deportation decision or removal action. This will ensure that applicants no longer abuse the system merely to access a bridging visa and delay their departure from Australia and that applicants who bring Federal Court action will benefit from a result in their favour.

¹ see clauses 050.212(3A), 050.212(4) and 050.212(4A) of Schedule 2 of the *Migration Regulations 1994* - bridging visas are intended to provide interim lawful status whilst some form of processing takes place.

The most effective way to bring a challenge to an administrative decision or action is for one person to bring a court action (a test case). A judgement on an administrative decision or action necessarily has ramifications for all others who can prove that they have been affected. If the test case is in the applicant's favour, then the Department consents to all other similar Court actions being remitted to the relevant decision maker to be reconsidered. The Department also takes note of the Court decision in any similar matter that is still being processed.

Another significant proposal in this Bill is the introduction of a 28 day time limit for applications to the High Court for review of decisions covered by subsection 475(1),(2) and (3)². This brings the Federal Court and the High Court jurisdiction into line on these matters and it addresses concerns that people are using the High Court because they have failed to make an application to the Federal Court within its prescribed time limits of 28 days.

The *Migration Legislation Amendment Bill (No 5) 1997* intended to implement the Government's policy commitment to restrict access to judicial review in all but exceptional circumstances, was introduced into Parliament in June 1997 and was subsequently passed by the House of Representatives. However, that Bill was awaiting debate by the Senate when the Parliament was prorogued for the 1998 federal election. The amendments proposed by that Bill were reintroduced into the Senate in the *Migration Legislation Amendment (Judicial Review) Bill 1998* on 2 December 1998 (the Judicial Review Bill).

The judicial review amendments contained in the *Migration Legislation Amendment Bill (No. 2) 2000* are not a substitute for those in the Judicial Review Bill. They are complementary measures.

Increasing incidence and cost - judicial review

² Please note that as a result of two recent amendments to the *Migration Act 1958*, section 475 of the Act contains two subsections (3). The *Migration Legislation Amendment Act (No. 1) 2000*, which was passed by Parliament on 7 March 2000, inserts a new subsection 475(3). This amendment will be taken to have commenced on 1 June 1999. However, due to an oversight, the *Border Protection Legislation Amendment Act 1999* ("the Border Protection Act"), which commenced on 16 December 1999, also inserted a new subsection 475(3).

The Government proposes to move amendments to the *Migration Legislation Amendment Bill (No. 2) 2000* to renumber the second subsection (3) in section 475, as inserted by the Border Protection Act, as subsection 475(4). A number of cross-references in Schedule 1 to the Bill will also be corrected so that they refer to subsection 475(4) not subsection 475(3).

The Government is concerned about the increasing cost and incidence of migration litigation. Migration litigation cost the Department \$11 million in the last financial year, with a projected cost of more than \$20 million in 2001-02.

There were 401 applications for judicial review of migration decisions in 1994/95. In 1998/99 the number of applications for judicial review had increased to 1139. In this financial year, at the end of April 2000, applications have already exceeded 850. On current trends applications are projected to reach 1800 by 2001/2002.

Around 50% of all applicants in migration matters withdraw their Federal Court applications prior to the hearing. The Minister is successful in approximately 86% of all applications that proceed to a Court hearing.

The *Migration Reform Act 1992*, which came into operation on 1 September 1994, was introduced by the previous Labor Government. That Act increased and enhanced rights to independent merits review and restricted access to judicial review of migration decisions by introduction of the present Part 8. Independent merits review was extended to many decisions previously not covered - most significantly, the creation of the Refugee Review Tribunal (RRT) to provide independent merits review of refugee determinations under Part 7 of the *Migration Act*.

The aim of these amendments was to provide a system that was for both decision-makers and applicants fairer and more certain. It was also intended to increase the accountability of decision-makers as well as providing clarity for all on how applications would be dealt with.

Provisions setting out the code of procedure for primary decisions, in conjunction with the disclosure provisions and merits review, would, the former Government believed, provide effective and comprehensive protection of the applicant's interests as well as providing decision makers with a standardised framework within which to operate. It was also envisaged that with increased merits review, a more certain procedural framework, and reduced grounds of judicial review, there would be less need for applicants to seek judicial review, and less actual applications. This has not been the case.

It is the Government's view that the judicial review system is being abused by people whose main reason for bringing judicial review is to delay their removal from Australia. This view is supported by the above statistics.

Over the past several years there has been an increasing trend to use class actions as a means of encouraging larger numbers of persons to litigate immigration issues and delay removal from Australia.

Class actions in migration matters

The generic term “class actions” is used in this submission to refer to any grouped court actions, however the members may be grouped or joined. (whether by Part IVA of the *Federal Court Act 1976*, Order 6 Rule 2 or 13 of the *Federal Court Rules* or Order 16 Rule 1 or 12 of the *High Court Rules*). In effect, a class action is one in which a person brings proceedings on behalf of a group of people where the claims arise out of the same or similar circumstances, and the claims give rise to substantial common issues of fact or law.³

Zhang De Yong v Minister for Immigration Local Government and Ethnic Affairs (1993) 118 ALR 165 was the first immigration class action following the 1991 amendments to the *Federal Court Act 1976* which introduced Part IVA. It was a class action brought on behalf of all persons who had been refused the grant of refugee status after review by the Refugee Status Review Committee (RSRC), where these refusals occurred between 4 March 1992 and 30 June 1993. The class comprised approximately 2000 people. They claimed that each of those persons should have been offered the opportunity of an oral hearing by the decision-making delegate upon the review of an initial refusal to grant refugee status. Departmental procedure at this time did not preclude the possibility of an oral hearing by the relevant delegate, but did not offer it as of right. The matter was successfully defended at first instance and also on appeal (brought in the name *Chen Zhen Zi & Ors v MIEA* (1994) 121 ALR 83.)

There were no major class actions in the migration arena until the end of 1996, with 14 class actions lodged since October 1997. The recent class actions have collectively involved several thousands of people.

Due to the high numbers of people involved in these actions and to limit the costs and pressures on detention facilities, the Government introduced bridging visas for members of class actions.⁴ Without these changes a very large number of class action members would have no lawful basis for remaining in the Australian community and would have been required to be detained.

The fact that participants in class actions are entitled to a bridging visa has been used as a means of encouraging or recruiting other people to join class actions. See the advertisements at Annexure B.

³ s.33C of the *Federal Court of Australia Act 1976*

⁴ see citation at 1.

Overview of class actions

The issues which have been the subject of the recent class actions relate to challenges to the framework of the legislation or legislative procedures. It is unlikely that applicants would make such challenges as individuals and often the same legal issue is subject to more than one class action:

- *Capistrano*⁵ (Federal Court action filed December 1996) - validity of amendment to *Migration Regulations 1994* closing off access to bridging visas by persons in Australia but making substantive visa applications to overseas posts
 - on 18 April 1997 the Court held that regulation amendments were valid but were relevant to the grant of a visa not to the making of an application. The result was that the applicants who had been told their applications were invalid were entitled to reapply and receive merits review of their decision. The regulations were amended to ensure that the requirements went to grant of the visa. The class originally had 75 members, however, closer examination of claimed members led to the Court orders only relating to 2 of these members.
- *Fazal Din*⁶ (Federal Court action filed February 1997) - whether English proficiency test (STEP test) was properly nominated by Minister
 - on 14 August 1998 the Court found the STEP test had not been properly nominated by the Minister - the result was that the class members were allowed to sit a properly nominated English proficiency test and have their decision reviewed - the class involved 16 members - a further 5 individual Federal Court applications on this issue were set aside by consent - these 5 individuals were allowed to sit a properly nominated English test and have their decisions reviewed.
- *Wasantha*⁷, *De Silva*⁸ & *Wang*⁹ - (Federal Court actions filed October 1997, October 1997 and June 1998 respectively- 643 people involved) - whether cut off date of 1 November 1993 in the *Migration Regulations 1994* for the Resolution of Status visa classes was invalid.
 - the Government was successful in both these matters (*Wasantha* was dismissed on 20 August 1999, *De Silva* was dismissed by Federal Court single judge on 19 Feb 1998, by the Full Federal Court on 24 Nov 1998

⁵ *Capistrano v MIMA* (1997) 74 FCR 154

⁶ *Fazal Din & Ors v MIMA* NG 132/97 unreported judgement of Wilcox J 14 August 1998

⁷ *Wasantha v MIMA* ACTG69/97 - matter dismissed on 20 August 1999 by Finn J as a result of the outcome in *De Silva*. On 4 April 2000 a member of this class applied to Full Federal Court for an extension of time to file a notice of appeal on behalf of the rest of the class. (*Fernando v MIMA* ACTG24/2000)

⁸ *De Silva v MIMA* (1998) 89 FCR 502

⁹ *Wang v MIMA* NG531/98 - matter dismissed on 26 May 1999 by Einfeld J as a result of the outcome in *De Silva*.

and refused leave to appeal to the High Court on 14 May 1999; *Wang* dismissed by the Federal Court on 26 May 1999);

- *Macabenta*¹⁰, *Kagi*¹¹, *Vega*¹², & *Suprianto*¹³ (Federal Court actions filed October 1997, December 1997, December 1997 and November 1998 respectively - 3737 people involved) - whether the Resolution of Status visa classes in the *Migration Regulations 1994* were invalid because they breached the *Racial Discrimination Act 1975*.
 - the Government was successful in all these matters; *Macabenta* was dismissed by a Federal Court single judge on 21 April 1999, dismissed by Full Federal Court on 18 December 1999, the High Court refused leave to appeal on 18 June 1999);
- *Banganay*¹⁴ & *Chowdhury*¹⁵ (Federal Court actions - filed October 1998 and November 1998 respectively - 62 people involved) - whether *Migration Regulations 1994* that prevent applications for bridging visas where the applicant has an outstanding offshore substantive visa application were invalid - (62 people involved.)
 - the Government was successful; the Federal Court dismissed applications by consent (after the Full Federal Court decision in *Ramos* and *Gaire*¹⁶ on the same issue) on 21 July 1999 and 2 August 1999 respectively;
- *Herijanto*¹⁷ & *Muin*¹⁸ (High Court - filed August 1998, March 1999- 1283 people involved) whether the RRT had breached natural justice/substantial justice by failing to bring adverse information to attention of RRT applicants;
- *Lie*¹⁹ (High Court action - filed June 1999 - 2264 people involved) - whether DIMA breached s.418(3) of *Migration Act 1958* re forwarding of all relevant documents to the Refugee Review Tribunal (RRT)

¹⁰ *Macabenta & Ors v MIMA* NG384/98 - Full Federal Court unreported 18 December 1998.

¹¹ *Kagi v MIMA* NG1041/97 - Tamberlin J dismissed the application on 8 July 1999 as a result of the decision in *Macabenta*

¹² *Vega v MIMA* NG1067/97 - Madgwick J dismissed the application on 25 June 1999 as a result of the decision in *Macabenta*.

¹³ *Suprianto v MIMA* NG1294/98 - Tamberlin J dismissed the application on 8 July 1999 as a result of the decision in *Macabenta*.

¹⁴ *Banganay v MIMA* NG1080/98 - Hely J dismissed the application on 21 July 1999 after the decision in the *Ramos*.

¹⁵ *Chowdhury v MIMA* NG1271/98 - Whitlam J dismissed the application on 2 August 1999 after decision in *Ramos*.

¹⁶ *Ramos v MIMA* NG1395 of 1998; *Gaire v MIMA* NG 1396 of 1998 [1999]FCA934

¹⁷ *Herijanto v MIMA* S97/99

¹⁸ *Muin v MIMA* S36/99

¹⁹ *Lie v MIMA* S89/99

- *Herijanto, Muin and Lie* are all still before the High Court and the High Court has decided to hear all three matters together.
- "*SZ*"²⁰ (*name suppressed*)(High Court - filed 1 December 1999 - 119 people involved) - on 16 February 2000 High Court remitted matter to the Federal Court - the action seeks review of both primary and RRT decisions to refuse protection visas. The application claims that the decisions are invalid because the decision makers were exercising judicial power contrary to the Constitution. A secondary argument is that the statutory bar on a person having legal representation in the RRT is invalid.
- *Ruhunuhewa*²¹ (Federal Court - filed 13 April 2000 - 172 people involved) - issues are the same as "*SZ*".

(class action figures current at 27 April 2000)

Why class actions are inappropriate in migration matters

Court rules for commencing and proceeding with class actions do not suit the migration context

Part IVA *Federal Court Act 1976* has been the main avenue for class/representative actions to have been brought in the migration context. This Part was incorporated into the *Federal Court Act 1976*, to overcome the perceived defects in taking grouped court actions via the Federal Court Rules.

Part IVA has many practical problems applying to migration matters:

- Seven or more people are needed to start an action under Part IVA. Section 33E specifies that the consent of a person to be a group member is not required. This raises immediate practical problems for immigration. For example, a compliance officer in the field locates a person who, from a check of all of Departmental databases, appears to have no right to remain in Australia. The compliance officer detains the unlawful non citizen and commences making removal arrangements. The unlawful non citizen finds out that his/her name has been included in a class action and they are eligible for grant of a bridging visa. Compliance action is then halted having consumed significant resources.

²⁰ "*SZ*" v *MIMA* S213/99; Federal Court reference "*SZ*" v *MIMA* N190/2000.

²¹ *Ruhunuhewa* v *MIMA* N354/2000.

- Part IVA of the *Federal Court Act 1976* allows an appeal from a judgement of the Court by a member of the representative proceeding on behalf of the group members (s.33ZC(6)). It also allows the named representative to bring an appeal (s.33ZC(1)). It does not require consent from each individual member to the appeal. DIMA has found that appeals were lodged in the above mentioned matters and applicants were not even aware of whether their names had been added to the appeal. They often arrived at DIMA offices with their solicitor's letter which requested further money so that an appeal could be lodged and run. Persons who hadn't paid the money requested would seek advice from DIMA on what they should do. Under section 33ZC these persons were still part of a class action that was on foot (see letter and file note at Annexure C). The Department was unable to assist in providing advice to people, other than the fact that while they were members of the class action their bridging visas remained valid.

The other main class actions in the migration context have been brought pursuant to Order 16 Rule 12 of the High Court Rules. As there are no detailed procedures in the High Court Rules for dealing with these actions it is left to the discretion of the Court to order its business. The High Court has dealt with the matters similarly to Part IVA of the *Federal Court Act 1976*.

Do class members benefit from the action?

Recent class actions have demonstrated that not all class members would benefit from a successful outcome in the court proceedings. A large number of class action participants had not applied for the visa class that was the subject of the challenge. The only conclusion to be drawn from this is that the class members have been using the class action as a means to delay their removal from Australia.

- At the end of the *Capistrano*²² matter, when negotiations began about settling the group membership, the representatives of the class agreed to drop 73 of the 75 names and agreed to orders over the remaining two.
- In the *Fazal Din*²³ matter, an analysis of the position of group members in this proceeding disclosed that of the original 27 class members involved in the class action: 1 person had never applied for

²² citation at 5

²³ citation at 6

a subclass 816 visa (the visa in issue); 1 had withdrawn his IRT application; 4 were out of time for judicial review as more than 28 days had elapsed between notification of their IRT decision and their application to challenge that decision in the Federal Court; 3 had not applied to the IRT for review; and 2 had outstanding applications for merits review with MIRO and IRT. As these 11 people fell outside of the group that would be affected by the outcome, the Court reduced the number involved in the class action to 16.

- With the larger class actions, the time consuming issue of analysis of who would benefit from an outcome in favour of the class has been delayed until after the matter was finalised. In these larger class actions, as the matters have been finalised in the Government's favour, no analysis has needed to be undertaken of the class and who would benefit from a decision in their favour, that is, who had applied for the relevant visa.

Characteristics of membership of several class actions

- An examination of the members of the *Muin*²⁴ class action on 9 November 1999 (322 people in this action at this time) indicates that only 3% of the members would have been within the time limits to make individual applications to the Federal Court in relation to their own visa decisions.
- In the Department's examination of the visa application and decision details of approximately 50% of the members of the *Macabenta*²⁵ class action, we could not identify any person who, at the time of opting into that action, would have been within time to make a valid application under Part 8 of the Migration Act in respect of the last substantive visa decision made in relation to them. The examination also found:
 - 25% of those members had their last visa application refused more than 3 years before joining that action; and
 - some 40% of those members were identified as moving between class actions. Maria Macabenta herself is now a member of the *Lie* class action. She originally challenged her protection visa refusal in July 1996 in the Federal Court and this matter was finalised on 11 July 1997 when the Federal Court dismissed the matter. The *Macabenta*²⁶ class action commenced on 24 October 1997 and was finalised on 18 June 1999. The *Lie* class action commenced on 10 June 1999 and is yet to be finalised. Attached at Annexure D is a copy of a letter that DIMA received. It shows how class members from one unsuccessful class action are

²⁴ citation at 18

²⁵ citation at 10

²⁶ citation at 10

being enticed into joining other class actions (we are unsure of the origins of the hand markups).

Standing in Federal Court matters

Proposed s.486C of the Bill has been included to bring the intention of s.479 of the *Migration Act 1958* into all challenges in migration matters in the Federal Court. The purpose of these additional standing requirements is to confine any Federal Court challenge to a person who is the subject of a visa or deportation decision, or removal action. That is, only people who may benefit from the ultimate outcome of the matter may bring a challenge in the Federal Court.

Time limits for High Court applications

Proposed section 486A places a 28 day time limit on applications to the High Court in its original jurisdiction under the Constitution for judicial review of a decisions covered by s.475(1),(2) or (3). This time limit runs from date of actual notification of the decision.

This 28 day time period is within constitutional power as it is a reasonable time to access legal advice and to make an application to the High Court.

The 28 day time period is intended to ensure that challenging a subsection 475(1),(2) or (3) decision in the High Court is in line with the Federal Court and does not become a way of circumventing the time limit for applications to the Federal Court. As at 29 March 2000, 42 applications to the High Court that were ultimately remitted to Federal Court would have been out of time to apply to the Federal Court.

Clarification of s.485

Proposed new s.485(3) is included to ensure the original policy intention which was that the Federal Court could only review judicially reviewable decisions (s.475(1)) and could only review them with Part 8 grounds. At present s.485(3), on its face, is silent on the issue of remittal of s.475(2) or (3) decisions (ie. decisions that are not judicially reviewable decisions). The Full Federal Court in the recent case of *Minister for Immigration and Multicultural Affairs v "A"*²⁷ confirmed the Government's view that s.485 has the affect that the High Court can only remit a judicially reviewable decision to the Federal Court.

²⁷ [1999]FCA 1679

Proposed s.485A has been inserted to expressly confirm that the Federal Court does not have any jurisdiction in relation to s.475(2) or (3) decisions. An extensive merits review system was set up for the majority of these decisions and the intention of Part 8 was that an applicant who had chosen not to avail themselves of merits review could not access judicial review in the Federal Court.

Application of amendments

Schedule 1 Part 2 Item 7 ("Application of amendments") ensures that a matter in which the application to commence the proceeding was filed on or after 14 March 2000 and in which the substantive hearing began before this Part commenced, is not affected by the amendments in this Part. To interfere with a matter after the court had begun the substantive hearing (and is therefore seized with jurisdiction) could be an interference with the judicial process and therefore it could be unconstitutional.

Transitional provisions

The transitional provisions ensure that the retroactive application of s.486B and s.486C, in Schedule 1 Part 2 Item 7, are constitutional. The transitional provisions allow any person affected by the operation of the Bill 28 days to commence an individual application (Schedule 1, Part 2, Item 8) unless they do not satisfy the standing requirements in s.486C (note s.486C only applies to the Federal Court). We were advised that interfering with standing requirements in the High Court may be unconstitutional.

Also note that a person who is affected by s.486B and s.486C still has a right to apply to the High Court.

Constitutional validity of the Bill

The Chief General Counsel of the Australian Government Solicitor has advised that interference with judicial power would be unconstitutional. He has advised that, in his view, all aspects of the Bill are constitutionally sound.

ANNEXURE "A"**EXPLANATION OF OPERATION OF CHARACTER PROVISIONS IN MLAB (No 2)****SCHEDULE 2 – Technical amendments****Part 1 – Character Test**

Schedule 2 makes a number of technical amendments to portfolio legislation. The most significant are the amendments to section 501A of the Act to clarify the scope of the Minister's power to set aside a non-adverse section 501 decision of a delegate or the Administrative Appeals Tribunal and substitute his or her own adverse decision.

These amendments do not represent a policy change from that which was considered by the Parliament during deliberation of the *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998* ("the Character Act") which inserted section 501A. Rather, they seek to ensure that the Parliament's intent in inserting that section is given full effect in the legislation.

This intent is outlined in paragraph two of the outline to the explanatory memorandum for the Character Act:

- [to] strengthen the Minister's personal powers to refuse or cancel a visa on character grounds:
 - *to enable the Minister to personally exercise a special power to intervene in any case to substitute his/her own decision to refuse to grant or cancel a visa. This decision may be revoked if made without prior notice to the person.*
(emphasis added)

The amendments to section 501A contained in Schedule 1 to this Bill seek to give full effect to Parliament's original intention by:

- removing the incorrect suggestion in paragraph 501A(1)(c) that the AAT has a power to grant a visa when reviewing a delegate's subsection 501(1) decision;
- putting it beyond doubt that the Minister can intervene under section 501A where a delegate or the AAT makes a decision not to exercise the power in section 501 because:
 - the delegate / Tribunal is satisfied that the person passes the character test; or
 - the delegate / Tribunal is not satisfied that the person passes the character test but exercises his or her discretion not to refuse to grant the visa or to cancel the visa; and

- ensuring that the Minister can intervene under section 501A at any point after a non-adverse decision under subsection 501(1) has been made by a delegate or the AAT whether the intervention occurs immediately or after a decision to grant a visa has been made.

The retrospective commencement of these amendments is unlikely to affect existing or proposed litigation. This is because the amendments seek to clarify, rather than change, the original policy intention behind section 501A.