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Australian Citizenship Amendment (Defence Families) Bill 2012

Date introduced: 24 May 2012

House: House of Representatives

Portfolio: Immigration and Citizenship

Commencement: Sections 1–3 on the day of Royal Assent; Schedule 1 on a day to be fixed by Proclamation but no later than six months after the Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The primary purpose of the Australian Citizenship Amendment (Defence Families) Bill 2012 (the Bill) is to amend the Australian Citizenship Act 2007 (the Act) to provide certain family members of overseas lateral recruits transferring to the Australian Defence Force (ADF) with the same eligibility for Australian citizenship as the transferring ADF member.

Background

Many allied countries have recently experienced major Defence budget cuts as a consequence of the 2008 Global Financial Crisis.¹ In particular, the United Kingdom (UK) plans to reduce its military workforce by 17 000 by 2015 in response to the 2010 Strategic Defence and Security Review (SDSR).² The United States (US) is expected to reduce its Army strength by 72 000 and Marine Corp strength by 20 000 over the next five years.³ Conversely, the Australian military is seeking to increase the number of uniformed personnel, including Reserves, by almost 3000—from a total of 79 132 to

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82 013 by Financial Year 2015–2016. This climate has created a greater opportunity for the ADF to laterally recruit trained personnel from foreign militaries.

While all three Australian military services are open to expressions of interest from prospective overseas lateral recruits, the need to recruit personnel into the Royal Australian Navy (RAN) seems to be a higher priority. From 31 March 2012, the RAN commenced a new round of expressions of interest specifically seeking trained officers and sailors from foreign naval forces, or former members from foreign naval forces that separated within the last three years, to take up positions in the RAN. Suitably qualified overseas lateral recruits are particularly sought after to help operate the RAN’s future capabilities including the new Landing Helicopter Docks (LHDs), Air Warfare Destroyers (AWDs) and helicopter systems. Overseas lateral recruits to the RAN are usually expected to complete six years of service.

The RAN has operated an overseas lateral recruitment program for a number of years to bolster expertise in highly specialised positions. To facilitate this program, a labour agreement was established between the ADF and the Department of Immigration and Citizenship allowing skilled overseas workers to permanently enter Australia to support the ADF. Given that service in the ADF requires Australian citizenship, the labour agreement temporarily waives this requirement allowing the RAN to sponsor permanent residency visas to recommended applicants and their family. Applicants also provide a written undertaking that they will apply for citizenship when they are eligible. If they do not apply, their Service will be terminated.

The RAN has focused much of its overseas lateral recruitment program on the UK to capitalise on the personnel reductions currently taking place. For similar reasons, the RAN is expecting to extend its focus to the US. While the UK and the US appear to be the main focus of RAN overseas lateral recruitment, there are no restrictions on applicants from other countries. In the past the RAN has recruited from Canada, Fiji, India, Papua New Guinea, South Africa, the UK and the US. In some cases, security clearances for active military personnel can be transferred to Australia from Canada, New Zealand, the UK and the US under existing international agreements (conditional on verification...
This Bill should provide a further incentive for trained personnel from foreign militaries to transfer into the ADF.

As it currently stands, the Act offers overseas lateral recruits a reduced residence requirement to apply for Australian citizenship, after completing relevant defence service—that is, serve 90 days in the permanent ADF or six months service in the ADF Reserves. Overseas lateral recruits are also eligible to apply for citizenship should they receive a medical discharge from the ADF where they became medically unfit because of ADF service. Dependents under the age of 16 already receive the same benefit as the overseas lateral recruit however other family members must wait up to four years to be eligible to apply for citizenship. As such, the Act in its current form does not extend the same reduced residence requirements, which are granted to transferring ADF members, to the spouse or family members over the age of 16. Nor does it address circumstances where the overseas lateral recruit dies while on active Service. This Bill seeks to reconcile these issues.

Committee consideration

At the time of writing this Digest, the Bill had not been referred to a committee.

Policy position of non-government parties/independents

The Opposition introduced a Private Member’s Bill into Parliament on 21 May 2012. The Australian Citizenship Amendment (Defence Service Requirement) Bill 2012 proposes similar amendments to those contained in the Government Bill. The Private Member’s Bill was debated in the House of Representatives on 28 May 2012, at which time the Opposition assured Parliament that it would support this Bill should it be voted on first.

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10. Ibid.
11. Subsection 46(2A) of the Australian Citizenship Act 2007 allows an application for citizenship by a child aged under 16 to be set out on the form that also contains the application by one of the responsible parents of the child.
13. The text of the Private Member’s Bill and the Explanatory Memorandum can be viewed on the Bill home page: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4790%22
15. Ibid.
Financial implications

According to the Explanatory Memorandum, the Bill will have minimal financial impact. The costs associated with implementing the amendments will be drawn from existing budgetary allocations within the Department of Immigration and Citizenship.16

Key provisions

Subsection 21(1) of the Act provides that a person may make an application to the Minister to become an Australian citizen. Subsection 21(2) lists all of the matters about which the Minister must be satisfied if the person applying is to be eligible to become an Australian citizen. For a person applying under the general eligibility criteria, paragraph 21(2)(c) of the Act requires potential citizens to satisfy one of the residence requirements outlined in sections 22, 22A or 22B of the Act, or to have ‘completed relevant defence service’ as defined in section 23 of the Act. There is a similar requirement in paragraph 21(3)(c) for those persons applying for citizenship who have a permanent or enduring physical or mental incapacity; and in paragraph 21(4)(d) for those persons applying for citizenship who are aged 60 or over and have a hearing, speech or sight impairment. The amendments to paragraphs 21(3)(c) and 21(4)(d) made by the Bill are consequential amendments.

Item 1 of the Bill proposes to substitute all references in paragraphs 21(2)(c), 21(3)(c) and 21(4)(d) to ‘has completed relevant service’ with ‘satisfies the defence service requirement’.

Item 2 repeals and replaces section 23 of the Act to define the term ‘defence service requirement’ for the purposes of section 21 of the Act.

Proposed subsection 23(1) provides that a person satisfies the defence service requirement if the person has completed ‘relevant defence service’. Under proposed subsection 23(4) a person has completed ‘relevant defence service’ if:

- the person has undertaken a total of at least 90 days service in one or more of the Permanent Forces17, whether continuous or not
- the person has undertaken a total of at least 90 days service on which they were required for, and attended and were entitled to be paid for, duty in one of more of the Reserves18, whether

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17. The term ‘Permanent Forces’ is defined in proposed subsection 23(4) as being Permanent Navy, the Regular Army or the Permanent Air Force.
18. The term ‘Reserves’ is defined in proposed subsection 23(4) as being the Naval Reserve, the Army Reserve or the Air Force Reserve.

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continuous or not—this closes the unintended loophole which came to light in the decision by
the Administrative Appeals Tribunal in the Keenan case\textsuperscript{19} or
\begin{itemize}
\item the person was discharged from service undertaken in one of the Permanent Forces or the
Reserves as medically unfit and the person became unfit because of service undertaken in the
Permanent Forces or the Reserves.
\end{itemize}

**Proposed subsection 23(2)** provides that where an overseas lateral recruit was granted a visa on or
after 1 July 2007 and has completed relevant defence service, relatives of the recruit will also satisfy
the defence service requirement—subject to two provisos.

**First** the relative must have been a member of the defence person’s family unit at the time the
defence person was granted the visa. The term ‘member of a family unit’ in section 23 of the Act is
the same as in the *Migration Act 1958*. Essentially a person is a member of the family unit of
another person (referred to as the family head) if the person is one of the following:
\begin{itemize}
\item a spouse or de facto partner of the family head
\item a dependent child of the family head or of a spouse or de facto partner of the family head
\item a dependent child of a dependent child of the family head or of a spouse or de facto partner of
the family head or
\item a relative of the family head or of a spouse or de facto partner of the family head who does not
have a spouse or de facto partner; and is usually resident in the family head’s household; and is
dependent on the family head.\textsuperscript{20}
\end{itemize}

**Second**, relatives must hold a visa of the same kind as the defence person on the grounds that they
are members of the family unit of the defence person.

The Bill also provides in **proposed subsection 23(3)** that the members of a defence person’s family
unit will satisfy the defence service requirement for the purposes of section 21 of the Act in
circumstances where a defence person who was granted a visa on or after 1 July 2007 is killed while
serving in the Permanent Forces or the Reserves. This is subject to the same provisos outlined
above.

It should be noted that these amendments do not provide a person with automatic citizenship. This
Bill merely provides a pathway for some defence persons and members of their family unit to satisfy
the residence requirements. Those persons are still required to satisfy the other provisions of
section 21 of the Act before the Minister will make a decision whether or not to accept their
applications for citizenship.

\textsuperscript{19}. The Tribunal found that an applicant enrolled in the Army Reserves for six months, who had only completed three
and a half paid service days, was deemed to have completed ‘relevant defence service’ sufficient for Australian
citizenship eligibility. *Keenan v Minister for Immigration and Citizenship* [2008] AATA 860 (25 September 2008),
\textsuperscript{20}. Subregulation 1.12(1), Migration Regulations 1994.

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Item 3 of Schedule 1 to the Bill applies to the Minister’s decision under section 24 of the Act, to approve or refuse to approve a person becoming an Australian citizen. This item provides that the amendments made by the Bill apply to such decisions after commencement of the Bill, regardless of whether the application for citizenship that is the subject of the decision is made before or after commencement.

Comparison with Private Member’s Bill

While the Government and the Private Member’s Bills are similar in purpose, they differ in scope. During the Parliamentary debate of the Private Member’s Bill, the Government stated that it opposed the Private Member’s Bill based on the Bill’s definition of a ‘family unit’. The Government argued the definition is too ‘narrow in scope’ noting that it ‘does not cover all children over 18, such as disabled children and dependent children under 25, and it does not cover a dependent parent who migrates here with their family’. Further, the Private Member’s Bill does not ‘clarify whether or not the family members need to have permanently migrated or whether the family members remain eligible for citizenship in the event that the ADF member dies before they become citizens.’

In addition, it should be noted that the Private Member’s Bill provides that a person has completed relevant defence service if the person has completed at least six months service in the Naval Reserve, the Army Reserve or Air Force Reserve—thereby retaining the unintended loophole which was identified in the Keenan case.

Concluding comments

The recruitment of trained personnel from foreign militaries allows the ADF to fill critical employment categories in a much shorter timeframe as these personnel require less training than new recruits with no transferable skills. This Bill has the potential to facilitate targeted ADF recruitment programs by offering greater support to families of laterally recruited personnel.

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22. Ibid., p. 11 and 15.

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