Migration Legislation Amendment Bill 1989

Date Introduced: 5 April 1989
House: Senate
Presented by: Senator the Hon. Robert Ray, Minister for Immigration, Local Government and Ethnic Affairs

Digest of Bill

Purpose
To introduce new measures relating to the issue of visas and entry permits; to allow those rules to be contained in regulations and to provide for review of immigration decisions.

Background
Immigration has been an important element in the growth of the Australian population, particularly since the end of the Second World War. This immigration has led to Australia having a diverse population mix, with settlers and their descendants from many countries. The principal source countries for migrants in the period October 1945 to June 1988 were the United Kingdom and Ireland (40.4%), Italy (8.2%), Greece (4.9%), New Zealand (4.4%), and Yugoslavia (4.1%). No other country has provided more than 4% of migrants over this period. Recent years have seen a changing trend in the source countries of migrants, with the percentage coming from the traditionally highest source, Europe, declining and new areas increasing. For example, in 1987–88 the highest percentage of settlers came from Asia – including the Middle East – (32.4%), followed by the United Kingdom and Europe (29.9%) and Oceania (20.1%).

There are five categories of migrants: independent and concessional; family; skilled and business; refugee and humanitarian; and special. The independent and concessional category is the largest and caters for Australia's general immigration needs. Concessions are allowed to those with extended family (as distinct from close family members) in Australia and eligibility is based on the number of points attained (simply, under the points system weighting is given to various categories, such as employability, and the number of points achieved added up). In 1987–88, 55,144 people entered under this category and it is estimated that this will be reduced to 45,500 in 1988–89.

The family category is designed to allow previous immigrants to be united with their close family, i.e. spouses, dependant children, fiancés and parents. Such immigrants are sponsored by a family member living in Australia who undertake to support the immigrant. In 1987–88, 30,123 people arrived under this category and it is estimated that this will increase to 35,000 in 1988–89.
The skilled component of the skilled and business category is directed at helping to alleviate shortages of skilled labour in certain industries. The main area of activity is the employer nomination scheme where employers are able to recruit skilled labour that is not available in Australia. The business component aims to attract people with a proven business background to Australia. All applicants for this component must have at least $500,000 to invest in a commercial enterprise that has the potential to reduce imports, increase exports, create or retain jobs or to introduce new technology. The main source countries for this component in 1987–88 were Hong Kong, Britain and Malaysia. Total entry under this category in 1987–88 was 22,761 (7387 entered under the business component including 1852 principal applicants) and the category is estimated to increase to 30,000 in 1988–89.

The refugee and humanitarian category assists those who have a real fear of persecution or suffer gross discrimination in their home country due to their religious or political beliefs or their ethnic background. The determination of refugee status is based on the United Nations Convention Relating to the Status of Refugees and recommendations are made to the Minister by the Determination of Refugee Status Committee which comprises representatives of a number of Departments. The category accounted for 11,400 entries in 1987–88, with the largest number coming from Asia (6750) and Central and Southern America (1676). It is estimated that the number will rise to 12,000 in 1988–89.

The special category covers a number of areas and is designed for such groups as exceptionally talented sports people and retirees who are self supporting. This is the smallest category and accounted for 1742 entries in 1987–88. The number for 1988–89 is estimated at 1500.1

The immigration system was recently reviewed by a committee established to advise on Australia’s immigration policies (the Committee). 2 The Committee was established in 1987 and reported in May 1988. The Committee found a number of problems with the current system, particularly concerning the large powers currently vested in the Minister and the lack of an appropriate review system. At present, the Minister has the power to determine the rules regarding immigration and there is no provision for the scrutiny of any rules made. This has led to situations where there is a perception that certain cases may not have been determined on their merits but on some other basis. While these perceptions may not be true, the current system has appeared to be open to such manipulation. To overcome many of the problems associated with the current system, the Committee recommended that the rules be contained in regulations and that decisions be subject to independent review. In the government’s response to the report of the Committee, delivered in the Senate on 8 December 1988, the Minister set out the major recommendations of the Committee and the Government’s attitude to each.
Main Provisions

Clause 6 will repeal Divisions 1 and 1A of Part II of the *Migration Act 1958* (the Principle Act, which deals with entry permits and visas, and substitute new Divisions. (A visa is only prima facie evidence that a person may enter Australia. The legal authority to enter is the entry permit issued on arrival in Australia.)

Proposed Division 1 deals with the control of entry into Australia. A person who is not a citizen will be an illegal entrant if they enter Australia without a valid entry permit (proposed section 6). However, this will not apply to statutory visitors and exempt non-citizens (e.g. a member of the armed forces of the Crown, a diplomatic representative or a crew member of a vessel who does not intend to stay in Australia for more than 28 days) (clause 7). Clause 8 will allow the Minister to declare an exempt non-citizen to be undesirable and this will revoke the exemption. An entry permit will not be required for those entering on pre-cleared flights (i.e. flights where the passengers are checked before departure for Australia and do not land before reaching Australia) (clause 9).

Proposed section 11A deals with when a non-citizen may be declared to be an illegal entrant and so subject to deportation. This will generally occur when the person has evaded an officer on entering Australia or used false documents or information. A person may also be declared to be an illegal entrant if, when entering Australia, the person was suffering from a prescribed disease, had been convicted of a crime and sentenced to imprisonment for a year or more, had previously been deported from Australia or had been excluded from another country for a prescribed reason. A person may only lose this status while remaining in Australia if an entry permit is issued to them (proposed section 11C).

Proposed Division 1A deals with the issue of visas. Regulations may be made dealing with the granting of visas, including that the applicant is required to score the necessary points under proposed Sub-Division B. Where it appears to the Secretary that a person is entitled to a visa under the regulations, the Minister is to so inform the person and inquire whether there has been a change in circumstances. If there has not been, then subject to proposed section 11J, the Secretary is to grant the visa. Proposed section 11J will allow the Minister to suspend issuing visas of a particular class where the quota for that class has been filled. However, proposed section 11G will give the Secretary an absolute discretion to cancel a visa, so that although a visa may have to be issued as the person has satisfied the regulations, the Secretary may at any time cancel the visa.

The proposed points system is dealt with in proposed Sub-Division B. The Secretary is to assess each applicant by giving them the prescribed number of points for each of the prescribed attributes attained (proposed section 11L).
The Minister may, by notification in the Gazette, set the standard and priority points scores for the various classes of visas. Where a person has achieved the standard score but not the priority score, the Secretary may delay consideration of the application until the next time the Minister determines a score mark under proposed section 11L. The regulations are to determine the maximum number of times this may occur (proposed section 11M).

Proposed Division 1B deals with the issue of entry permits. Regulations may be made concerning the granting and refusal of entry permits, and the regulations may provide that the applicant receives the necessary points score under proposed section 11X. The regulations may also provide that entry permits will be subject to conditions, such as time limits for temporary entry permits (proposed section 11P). The Secretary will be given an absolute discretion to cancel temporary entry permits (proposed section 11R), and may suspend the processing of an application where the applicant is in, and remains in, Australia (proposed section 11W). An entry permit is not to be issued to people outside Australia unless they have a valid visa or are exempt non-citizens (proposed section 11Z).

Proposed section 11ZD deals with the issue of permanent entry permit to non-citizens after their arrival in Australia. This may occur in a number of situations, principally where the person is granted asylum, has a temporary entry permit and is the spouse or child of a citizen or permanent entry permit holder, has a temporary entry permit and is the parent of a citizen or permanent entry permit holder and the balance of their family is in Australia. A permanent entry permit may also be issued to the holder of a temporary entry permit if the Minister has determined that the person has refugee status, or there are strong compassionate or humanitarian grounds for granting the permanent entry permit.

Proposed Division 1C deals with statutory visitors. Proposed section 11ZH provides that where the Secretary of the Attorney-General's Department has certified that the presence of a person in Australia is necessary under the Extradition Act 1988 or the Mutual Assistance in Criminal Matters Act 1987, the Secretary of the Department administering the Principal Act is to issue a visa to enter Australia for the purposes of those Acts. Proposed section 11ZJ provides that the regulations may provide the grounds for the issue of entry permits to statutory visitors. An entry permit may only be granted to other statutory visitors in Australia if the Secretary is satisfied that the person has refugee status or has been granted asylum (proposed section 11ZK).

Where an illegal entrant has been in Australia for longer than the period of grace (28 days) the Secretary must order the deportation of the person. Such an order cannot be revoked (proposed section 17A which will be inserted into the Principal Act by clause 8). Where a deportation order is made, the Secretary may, at the request of the person's spouse, order the deportation of the spouse and any dependant children (proposed section 19 which will be substituted into the Principal Act by clause 10). Where deportation is ordered, the master, owner
agent etc. of the vessel which brought in the illegal entrant may be required to provide passage out of Australia at no cost to the Commonwealth (clause 11 which will amend section 21 of the Principal Act). Deportees will be liable for the cost of deportation, and where the Commonwealth pays as the deportee is unable to do so, the amount involved will remain a debt due to the Commonwealth. Similarly, a deportee will be liable for the costs of keeping the person in custody prior to deportation (proposed section 21B). (Under proposed section 11F a visa is not to be issued to a person with such a debt.) To prevent a person disposing of their assets prior to deportation, proposed section 21C will allow the Secretary to seek a court order restraining how the person's property may be dealt with. Similarly, where a person has been arrested as an illegal entrant, the Secretary may give directions as to how that person's property may be dealt with (proposed section 21D).

It will be an offence for a master, owner, etc. of a vessel (including an aircraft) to bring a person to Australia after 1 November 1979 unless the person has a valid visa or is exempt. The maximum penalty for a breach of this provision will be a $5000 fine (proposed section 26A).

It will also be an offence for an illegal entrant to remain in Australia, with a maximum penalty of a $5000 fine and/or two years imprisonment (clause 14 which will amend section 27 of the Principal Act).

Illegal entrants may be arrested and held in custody pending their departure from Australia (clause 19 which will amend section 38 of the Principal Act).

A new Division 6 will be substituted into the Principal Act by clause 22 and will principally deal with immigration agents. It will be an offence to make false or misleading statements about the person's ability to influence decisions made under the Principal Act (proposed section 46) or to enter an arrangement that a particular decision will be made (proposed section 47). The maximum penalty for a breach of either provision will be a fine of $5000 and/or two years imprisonment. Agents are to give clients a statement of the services performed, and will not be entitled to payment until such a statement is given (proposed section 49).

Review of decisions is dealt with in proposed Part III which will be inserted into the Principal Act by clause 26. Proposed section 61 provides that the regulations may establish a system of internal review. Reviewing authorities will, unless otherwise prescribed, have determinative powers (proposed section 63), i.e the body will be able to affirm, vary or substitute a new decision for the original. However, the bodies will not be able to substitute a new decision that would have the effect of granting an entry permit on humanitarian grounds (proposed section 64). Similarly, decisions to cancel a visa or entry permit, order deportation or determine refugee status, will not be reviewable. The Minister may also certify that it would be against the national interest on the grounds of security, defence or international relations to review a decision.
The Minister may also certify that a review would be against the national interest on the basis that it would involve consideration of a Cabinet decision (proposed section 64B).

Proposed section 64D will allow a person to request that a decision be reviewed by the Immigration Review Tribunal, which will be established by proposed Part IIIA. Proposed section 64V will allow appeals from the Tribunal to the Federal Court on questions of law. It will be an offence to fail to appear before the Tribunal when summoned (proposed section 64Y), to refuse to answer questions (proposed section 64Z), or disrupt the proceedings of the Tribunal (proposed section 64ZA).

Proposed Part IIIA will establish the Tribunal (proposed section 64ZJ). The remainder of the Part generally deals with administrative matters, such as appointments, disclosure of interests, etc.

Proposed section 66D will allow the Minister to give general directions on how a person or body exercising power under this Bill is to exercise that power. Such directions cannot be inconsistent with this Bill, or any regulations made under the Bill, and must be tabled in Parliament.

Schedule 1 of the Bill will amend the Principal Act to increase the maximum penalty for a number of offences.

References


For further information, if required, contact the Education and Welfare or Law and Government Group.

20 April 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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