PASSPORTS AMENDMENT BILL 1984

Date Introduced: 23 August 1984
House: House of Representatives
Presented by: Hon. W.G. Hayden, M.P., Minister for Foreign Affairs

Short Digest of Bill

Purpose

To amend the Passports Act 1938 in three main areas by:

1. removing the existing distinction between British subjects who are not Australian citizens and other non-citizens, and prohibiting the issue of passports to all non-citizens;

2. simplifying procedures for the issue of passports to children in exceptional circumstances;

3. making some decisions under the Act and Regulations subject to review by the Administrative Appeals Tribunal (AAT).

Background

The removal of the existing distinction between British subjects who are not Australian citizens and other non-citizens is one of a number of legislative changes which place all non-citizens on the same footing.[1]

The authority to issue passports to British subjects was included in the original Passports Act 1938 though it is now several years since Australian passports were issued regularly to British subjects. This change implements a recommendation of the Royal Commission of Inquiry into Drug Trafficking in its Interim Report No.2 - Passports that passports should be issued only to Australians to provide tighter control over the issue of
Australian passports and to assist in establishing the identity of passport applicants. Documents of Identity are still issued to British subjects in rare emergencies until they are able to obtain a passport from their national representative. This practice will continue, enabling Australia to meet its obligations to provide consular assistance (including the issue of travel documents) to citizens of Commonwealth countries who are unable to obtain assistance from their own national representative.

The section controlling the issue of passports to children (section 7A) was inserted in 1979 because of concern about the use of Australian passports to facilitate the removal of children from Australia against the wishes of a person entitled to guardianship, custody or access. However, administrative difficulties have arisen in relation to section 7A. For example, often a person whose consent is required cannot be located with reasonable effort and the alternative of obtaining a court order to permit the child to leave the country is unreasonably expensive. The inability of many applicants to obtain the required consents has caused administrative delays resulting in the frequent need to seek Ministerial approval to override consent requirements and issue passports in deserving cases. The Bill proposes to insert in the Act a provision permitting the Minister to designate a senior departmental officer who may approve the issue of a passport where consent cannot be obtained, subject to the circumstances of the case and guidelines laid down by the Minister. Decisions by the designated officer will be subject to reversal by the Minister, and to review by the AAT.

The Bill also makes any decision to issue, renew or endorse a passport, or to refuse to do so, or to cancel a passport or endorsement, under the Passports Act 1938 subject to review by the AAT. However, in some circumstances the AAT's powers are restricted. Where the Minister has certified that Australia's international relations are affected the AAT may only affirm the decision or submit it to the Minister for reconsideration. If the Minister rejects the AAT's recommendation he should table his reasons for do so in Parliament.

Main provisions

The existing distinction between British subjects and other non-citizens is removed by clauses 4 and 12 by deleting references in sections 7(1) and 9C to British subjects who are not Australian citizens.
Clause 5 amends section 7A of the Act to simplify procedures for the issue of a passport to a "prescribed minor" (defined in clause 2 as a person under 18 years who is not or has not been married). It is proposed to add a new sub-section (3) whereby if a prescribed minor applies for a passport and furnishes a written statement declaring that special circumstances exist by reason of which the passport should be issued, an approved senior officer (designated by the Minister in accordance with a new section 6AA) is required by a new sub-section (4) to consider the application, having regard to any guidelines issued by the Minister in accordance with a new sub-section (6). Provided he is satisfied that special circumstances exist which warrant the issuing of a passport, then it should be issued (new sub-sections (4) and (5)). A new sub-section (7) provides that where a passport issued to a prescribed minor has been lost, stolen or destroyed, a new passport for the balance of the period may be issued.

By clause 15 three new sections 11A-11C will be inserted into the Act. The new section 11A makes certain decisions made under the Act reviewable by the AAT. Sub-section (2) permits a person who is dissatisfied with a reviewable decision which affects him or her (defined in sub-section (1) and includes decisions concerning the issue and cancellation of passports, and the cancellation of a passport renewal or endorsement), to apply in writing to the Minister for a review of the decision setting out reasons for the application (sub-section (3)). An application should be made within 28 days after the decision comes to the person's notice though the Minister may extend the period (sub-section (2)). Sub-section (4) requires the Minister to review the decision and affirm, vary or set aside the decision and substitute another decision. Sub-section (5) provides that an application may be made to the AAT for review of a Ministerial decision (defined in sub-section (1) and including decisions to issue or to refuse to issue a passport, or to cancel the renewal or endorsement of a passport). However, sub-section (6) provides that where the determining factors in the Minister's decision were the likelihood that the applicant may prejudice security or endanger the health and safety of others or might interfere with the rights and freedoms of others as set out in the International Convention on Civil and Political Rights, the Minister may certify that his decision involved questions of international relations. Sub-section (7) prevents the AAT from reversing a Ministerial decision where the Minister has issued a certificate under sub-section (6). Where the Minister has reviewed a decision under sub-section (4), he is required by sub-section (9) to give written notice of that decision.
The new section 11B provides by sub-section (1) that where a Minister makes a Ministerial decision, and gives written notice to the person(s) affected, the notice shall include a statement that the person(s) affected may apply to the AAT for a review of the decision. Sub-section (2) provides that where a reviewable decision is made, notice of the decision should be given to the affected person(s). Notice should include a statement that if a person is dissatisfied he or she may seek a review by the Minister in accordance with sub-section 11A(2), and if still dissatisfied after the review, may apply to the AAT for a review of that decision.

A new section 11C provides that the Minister may delegate his powers under the proposed section 11A to an officer of his Department.

For further information, if required, contact:

3 September 1984

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Reference
1. The other legislation which effects similar changes includes the Migration Amendment Act 1983 (proclaimed 2 April 1984), the Migration (Miscellaneous Amendments) Act 1983 (came into operation on 2 April 1984). Other legislation currently before the Parliament is the Aliens Act Repeal Bill (passed the House of Representatives on 22 August 1984, currently before the Senate) and the Australian Citizenship Amendment Bill (passed the House of Representatives on 2 May 1984, currently before the Senate).