MIGRATION AMENDMENT BILL 1983

Date Introduced: 26 May 1983
House: House of Representatives
Presented by: Hon. Stewart West, M.P., Minister for Immigration and Ethnic Affairs

Short Digest of Bill

Purpose

To amend the Migration Act 1958, removing a distinction between Commonwealth citizens and non-Commonwealth citizens ("aliens"), and altering provisions for criminal deportation, following a review of the Act.

Background

The presence in Australia of persons who are not Australian citizens is regulated by the Migration Act 1958. Australian citizenship is regulated under the Australian Citizenship Act 1948.

The constitutional bases for Federal migration and citizenship legislation are to be found in placitum 51(27) of the Constitution and placitum 51(19) respectively.

The Migration Act 1958 applies to immigrants generally, and distinguishes the category of "aliens", comprising persons who are not British subjects, Irish citizens or "protected persons". A "protected person" is defined in the Australian Citizenship Act 1948-1973, subsection 5(3A), as a person declared by regulations to be under the protection of the Government of Australia or a Commonwealth country listed in section 7 of that Act.

The Bill would remove distinctions between aliens and other immigrants in the provisions regulating deportation following conviction for a criminal offence.

These distinctions are made in the legislation, but not reflected in current administrative policies. The legislation does not attach such distinctions in respect of immigration, and in 1973 it became official Australian administrative policy, that in selecting or admitting migrants there would be no discrimination on nationality, race or certain other grounds.[1]
The Migration Act gives the Minister for Immigration a wide discretion in determining whether or not migrants who have committed criminal offences will be deported. An estimated 10,000 migrants a year commit offences rendering them liable to deportation, of which in 1981-82, 250 were finally submitted for deportation and 96 expulsion orders resulted. Of a sample of 862 deportation orders on grounds including commission of a criminal offence and failure to comply with conditions of temporary entry, there were 47 applications for review to the Administrative Appeals Tribunal.[2]

A number of deportation cases received publicity during 1982. Confirmation by the Minister of a deportation order in the Barbaro case, after the original deportation order had been revoked following a review by the Administrative Appeals Tribunal, led to a Federal Court appeal which overturned the Minister's decision, applying principles of administrative law.

The practical extent of the Minister's discretion was widened following the High Court decision in the Pochi case that "aliens" could include migrants from Commonwealth countries. The further argument that the Minister's discretion to deport did not extend to aliens who had become absorbed into the Australian community was rejected.[3]

The earlier decision in Minister for Immigration v. Pochi[4] held that the Minister was not bound to follow a recommendation from the Administrative Appeals Tribunal that the deportation order be revoked.

An editorial following the Pochi case referred to the danger to Australian society as the central issue in such cases, against which should be ranked humane considerations, particularly in a country such as Australia with a high proportion of migrants.[5]

The possibility that wide Ministerial discretions might be misused was adverted to in comments on the Collins case in December 1982 when a New Zealand born prison activist disobeyed a deportation order.[6]

The status of aliens and regulation of immigration, citizenship and deportation have been considered by the Human Rights Commission. In its review of the Australian Citizenship Act, the Commission considered the definition of the term "alien" in that Act inconsistent with the Racial Discrimination Act.[7] The concepts of nationality, in which the term "alien" is defined, and national origin were stated to overlap, quoting Viscount Dilhorne in Ealing L.B.C. v. Race Relation Board [1972] AC 342, 360 that
"...discrimination against aliens is in the vast majority of cases discrimination consequent upon their national origins". In that case, discrimination was not proven, since the differentiation was on the basis of present nationality, not national origin.

Deportation is permitted under sections 12, 13, 14 and 18 of the Migration Act 1958. Of these, only sections 12 and 13 are appealable to the Administrative Appeals Tribunal. The grounds for deportation under section 14 are particularly wide but the procedure requires investigation by a special Commissioner.

A recommendation by the Administrative Review Council that the Administrative Appeals Tribunal have power in proper cases to substitute its own decision for that of the Minister was not implemented.[8]

The policy of the present Government on deportation following a crime was stated by the Minister on 4 May 1983.[9]

Main Provisions

The Bill amends the Migration Act 1958 to remove differentiation between Commonwealth citizens and aliens, and to limit the circumstances where deportation may be ordered.

The definition section, section 5, is to be amended by clause 4, removing the definitions of "alien" and "protected person", and substituting for the term "immigrant" a new term "non-citizen". The change in terms requires corresponding amendment to a number of sections of the Act.

Grounds for deportation of aliens under section 12 and of non-alien immigrants following certain offences within five years of entry under section 13 are to be replaced with a new section 12, applying to non-citizens generally, other than illegal immigrants. Liability for deportation ends after ten years in Australia, excluding periods spent in prison. The offences giving rise to deportation are those for which the penalty imposed was death or imprisonment for life or for a period of at least one year.

Section 14's grounds for deportation are restricted by clause 11. That section previously applied to aliens and other immigrants within five years of entry. The section would apply to all non-citizens, firstly in respect of grounds previously applicable to aliens and secondly in
respect of grounds that conviction for an offence has actually ensued. The relevant offences, of sedition, treason, espionage or similar crimes are enumerated. Relevant offences under State and Territory law may also be prescribed. There is no time limit applicable to deportation on these grounds.

For further information, if required, contact:

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3 June 1983

References


2. The Australian, 7 January 1983.


