Short Digest of Bill

Purpose

To repeal Part III (Sections 59-63) of the Migration Act 1958, containing provisions prohibiting taking certain children out of Australia, a matter henceforth to be dealt with in the Family Law Act.

Background

The Family Law Act 1975 is the major legislation in Australia on matrimonial causes, divorce and the custody of children. The making of a custody order has in some cases been followed by abduction of the child and removal to another jurisdiction at the instance of the other parent.

The Migration Act 1958 has provisions against such conduct in Part III (sections 59 to 63). The Bill would repeal that Part, collaterally with amendments inserting similar provisions in the Family Law Act, contained in the Family Law Amendment Bill 1983.

The Joint Select Committee on the Family Law Act[1] included in its terms of reference the enforcement of orders made in maintenance, property and custody proceedings. The report drew attention to the lack of resources on the part of police forces to enforce custody orders and trace children who had been abducted. The report recommended formal arrangements for cooperation with State police forces[2], and that a police force liaison officer be appointed to the Family Court in each State.

Because the Family Court structure is a Federal creation, child abductors often leave the country. The Act has provision for reciprocal enforcement arrangements with other countries. Section 69 provides for transmission of an Australian custody order to an overseas country, while section 68 provides for enforcement of an "overseas custody order" (defined in section 60) in Australia.
By 1980, twenty-five overseas countries had been approached by the Department of Foreign Affairs with a view to arrangements for enforcing custody orders, and arrangements were made with the two Canadian provinces of Alberta and New Brunswick[3]. Australia was also engaged in negotiations at the Hague for a convention remedying international parent abduction of children.

The proposal that section 62 of the Migration Act be re-enacted in the Family Law Act originated from the Interdepartmental Committee on Prevention of Removal of Children from Australia by One Parent. It was considered and recommended by the Family Law Council, to ensure that more lawyers be aware of the provision.[4] The Family Law Council later reported acceptance of its recommendation.[5]

Main Provisions

Clause 3 would repeal Part III of the Migration Act 1958 and under clause 2 is to commence with Part II (clauses 3-65) of the Family Law Amendment Bill 1983. Part III of the Migration Act 1958 creates an offence in section 62 of taking or sending a child outside Australia without the consent of a person entitled to, or seeking, custody, guardianship or access in respect of that child. The penalty is a $200 fine or 12 months imprisonment. A subsidiary provision in section 63 prohibits owners etc. of ships etc. from conveying the child when a statutory declaration relating to that child has been served. Clause 29 of the latter adds new sections 70A, 70B to the Family Law Act 1975 to prevent removal of certain children from Australia.

Clause 4 deletes an additional reference to Part III in the Migration Act 1958.

For further information, if required, contact:

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References


2. op.cit., p.63.
3. op. cit., p. 64.

