IMMIGRATION (UNAUTHORISED ARRIVALS) BILL 1980

Date Introduced: 1 May 1980
House: House of Representatives
Presented by: Hon. I. Macphee, M.P., Minister for Immigration and Ethnic Affairs

Short Digest of Bill

Purpose

To prevent commercial attempts to bring to Australia, by sea or air, passengers who have not received previous permission to enter.

Background

The perceived need for this legislation has arisen out of the exodus of refugees from Indochina, some of whom have made their way to other countries including Australia in small boats. There have also been several cases of large ships carrying some thousands of refugees into Asian ports, although none have yet come to Australian ports. It is one of the aims of this legislation to deter such arrivals when the organisers of these voyages make them into profit-seeking ventures.

Main Provisions

The Bill is to operate from a date to be fixed by proclamation (clause 2).

It applies to ships or aircraft that come to Australia from overseas carrying more than the prescribed number of relevant persons (clause 4), which shall be five, unless changed by regulation (clause 5).

Clause 6 is the key clause in the Bill. It provides for a fine of $100,000 or imprisonment for ten years or both for the master and members of the crew of an aircraft or ship which brings relevant persons to Australia greater than the prescribed number of persons for that aircraft or ship (clause 6(1)). Relevant persons are defined as those who are not Australian citizens, who do not have a visa or return endorsement or are not otherwise exempted (clause 3). Owners, agents or charterers who are parties to such a bringing to Australia also commit an offence and are liable to the same penalties (clause 6(2)). Any person who unlawfully seizes an aircraft or ship and
uses it for such a bringing, also commits an offence with the same penalties (clause 6(3)), as does a person who seizes an aircraft or ship in Australian waters intending such a use (clause 6(4)).

It is a defence to a prosecution under clause 6 that the vessel was unlawfully seized by persons not charged (clause 6(5) and (6)), that an aircraft landed in Australia because of an emergency (clause 6(7)) or that a ship entered Australian waters because of an emergency or entered the territorial sea of Australia in the exercise of the right of innocent passage (clause 6(8)).

Any person who wilfully disables an aircraft or ship to which the Bill applies commits an offence with a similar penalty (clause 7(1)), unless done to secure the safety of the aircraft or ship or to preserve life (clause 7(2)).

Clause 8 applies to persons who are not Australian citizens, do not hold an entry permit, have not been exempted from holding an entry permit or who do not hold a permit under clause 9 (clause 8(2)). It is the duty of the master of an aircraft or ship to which the Bill applies to prevent disembarkation of persons to which this clause applies, unless the aircraft lands at an appointed airport (clause 8(3) and (4)). If a master or crew member permits such disembarkation he is guilty of an offence with a penalty of $5,000 fine or two years imprisonment, or both, for each person whose disembarkation has been permitted (clause 8(5) and (6)). These offences, with a similar penalty, apply to persons who unlawfully seize an aircraft or ship (clause 8(9) and (10)). It is a defence to a prosecution under this clause that the disembarkation was permitted or aided to save life or prevent injury (clause 8(11)).

An authorised officer may grant permits in writing, which may contain conditions, for persons to disembark from aircraft at other than an appointed airport, to leave an appointed airport from which disembarkation had taken place, or disembark from a ship in Australian waters (clause 9(4) and (5)). Any person who disembarks, or leaves an airport in accordance with such a permit shall, for the purposes of the Migration Act 1958, be deemed not to have so entered Australia (clause 9(7)). Clause 9 only applies to aircraft or ships whose masters have made a claim under sub-clause 18(1) or (2) or sub-clause 19(1) or (2).

Any person with a permit under sub-clause 9(4) may be granted an entry permit under the Migration Act 1958 (clause 10(1)). The Minister may, before an entry permit is
granted, direct that a permit holder is a person to whom the Migration Act 1958 applies, and such a person is deemed to become a prohibited immigrant (clause 10(2) and (3)).

An authorised officer may require the master of a vessel to which clause 9 applies, to convey relevant persons from Australia without charge to the Commonwealth, within a reasonable time (clause 11(1)). Various arrangements for this conveying are set out (clause 11(2), (3), (4) and (5)). If the master of a vessel fails to comply with a requirement under sub-clause 11(1) then an offence is committed with a penalty of a fine of $5,000 or imprisonment for two years, or both, in respect of each relevant passenger (clause 11(6) and (7)).

A member of the Australian Federal Police or a State or Territory Police force or any other officer authorised by the Minister may arrest without warrant a person that he reasonably believes to be a relevant passenger under clause 9 who has disembarked without a permit, failed to comply with the conditions of a permit or failed to comply with sub-clause 11(3), (clause 12(1)). An arrested person shall be brought before a prescribed authority within 48 hours, who if satisfied that there are reasonable grounds, may authorise his detention until conveyed from Australia, granted an entry permit or dealt with under sub-clause 19(2), (clause 12(2) and (3)).

Where a relevant passenger disembarks from an aircraft or ship or leaves an appointed airport under a permit, or is taken into custody under clause 12, the master of the aircraft or ship is liable to pay the Commonwealth the cost of their upkeep (clause 13(1) and (2)).

The Governor-General may arrange with the Governor of a State (or the Administrator of the Northern Territory) for Magistrates to be prescribed authorities under clause 12, (clause 14).

Any person in custody under clause 12 shall be given reasonable facilities to obtain legal advice or take legal proceedings (clause 15).

For the purposes of ascertaining whether an offence has been committed under clauses 6 or 7, officers are given wide powers with respect to aircraft and ships. These powers are to board and search, require the master to give information about the vessel and the persons aboard it, require those on board to give information and require the production of all books and documents, from which copies may be made (clause 16).
If an authorised officer has grounds for believing an offence has been committed under clauses 6 or 7, or if an officer has been prevented from boarding the vessel under clause 16, the vessel may be detained either on the spot or taken elsewhere and detained there (clause 17(1)). It is an offence to move or help to move a detained vessel, punishable by a fine of $1,000 or 6 months imprisonment or both (clause 17(4)).

Where the master of an aircraft or ship to which the Bill applies claims that an unforeseen emergency occurred then the Minister may require the vessel to be made airworthy or seaworthy (clause 18(1) and (2)). Failure by the master to do so is an offence punishable by a fine of $100,000 or 10 years imprisonment or both (clause 18(4)). Where the Minister is satisfied that the emergency no longer exists, he may require the Master to take the aircraft out of Australia or the ship out of Australian waters (clause 19(1) and (2)). Failure by the master to do this is an offence punishable by a fine of $100,000 or 10 years imprisonment or both (clause 19(4)).

If the master, crew member, owner, agent or charterer of a vessel are convicted of certain offences then, in addition to other penalties, the vessel or the vessel and its cargo may be forfeited (clause 20(1)).

It is an offence punishable by a fine of $1,000 or imprisonment for 6 months generally to obstruct action under clauses 16 and 17 or to give false information to an officer (clause 21).

Generally, proceedings are not to be taken without the consent of the Attorney-General (clause 23). Where a person is charged with an indictable offence under the Bill, the charge may be determined by a court of summary jurisdiction with the consent of the defendant, prosecutor and court. In such a case, a penalty of only a $2,000 fine or one years imprisonment, or both, may be imposed (clause 24).

Officers of the Department of Immigration and Ethnic Affairs or an Officer for the purposes of the Customs Act 1901, may arrest without warrant any person they reasonably believe has committed an offence under the proposed Act, but the arrested person must then be taken before a Magistrate or delivered into the custody of the police (clause 26).

The Minister may delegate his powers under the Bill (clause 27).
The Bill, unless sooner repealed, shall cease to be in force twelve months after it is proclaimed to come into force (clause 31(1)). The Governor-General may by proclamation extend the operation of the Bill by periods of up to 12 months but shall not do so except with a resolution of both Houses of Parliament (clause 31(2), (3) and (4)).