

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

IMMIGRATION (UNAUTHORISED ARRIVALS) AMENDMENT BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Immigration and Ethnic Affairs
The Honourable I.M. Macphee M.P.)

IMMIGRATION (UNAUTHORISED ARRIVALS) AMENDMENT BILL 1980

Purpose of the Bill

The Immigration (Unauthorised Arrivals) Act 1980 contains measures designed to discourage the operators of vessels from conveying to Australia large numbers of persons who do not possess proper documentation for travel to Australia. This Bill amends that Act by extending its application to the Territory of Christmas Island and is consequential upon the extension of the Migration Act to the Island by the Migration Amendment Bill (No.2) 1980.

Clause 1 : Short Title

Clause 1 is a formal clause which fixes the citation of the Amendment Act.

Clause 2 : Commencement

Clause 2 provides for the Bill to come into operation on a date to be fixed by Proclamation. Both the Principal Act and the provisions of the Migration Amendment Bill (No. 2) 1980, which extend the Migration Act to Christmas Island, are to commence on a date to be proclaimed.

Clause 3 : Interpretation

Paragraph 3 (a) amends the definition of 'appointed airport' to include an airport in the Territory of Christmas Island appointed under the Migration Act 1958. The term 'appointed airport' is defined in the Principal Act to mean an airport appointed under section 15 of the Customs Act 1901. The Customs Act does not extend to the Territory of Christmas Island. The Migration Amendment Bill (No. 2) 1980 includes provisions to empower the Minister to appoint airports in the Territory for the purposes of that Act. The amendment to the Principal Act will thus include an airport appointed under the Migration Act.

Paragraph 3 (a) also expands the existing definition of 'Australian waters' in the Principal Act to include the territorial sea of the Territory of Christmas Island.

Paragraph 3 (b) expands the definition of 'officer' in sub-section 3 (1) of the Principal Act to include any person, or a class of persons, authorised by the Minister to perform the powers of an officer under the Act. This will enable the Minister to appoint persons on the Island to perform the duties and exercise the powers of officers under the Principal Act.

Paragraphs (c), (d), (e), and (f) of clause 3 make a number of machinery changes to section 3 which are consequential upon the extension of the Principal Act to Christmas Island by clause 4.

Sub-sections 3(2) and 3(4) of the Principal Act provide that all persons on board an aircraft when it lands in Australia, or on board a ship when it enters Australian waters, shall be taken to have been brought to Australia for the purposes of the Principal Act. The Principal Act makes it an offence for the master, owner, agent, charterer and crew of a ship or aircraft to bring a vessel into Australia if it has on board more than 5 persons who do not have proper travel documentation for Australia.

The amendments made by paragraphs (c), (d), (e), and (f) provide that persons shall not be taken to have been brought to Australia for the purposes of the Principal Act if they board an aircraft or ship at Christmas Island which is in the course of a flight or voyage that commenced outside Australia.

Clause 4 : Extension of Act to Christmas Island

Clause 4 inserts a new section 3 A into the Principal Act which extends the application of that Act to the Territory of Christmas Island and deems the Territory to be part of Australia and not a place outside Australia.

Clause 5 : Aircraft or ships to which Act applies

Section 4 of the Principal Act provides that the Act ceases to apply to a ship which departs from Australian waters and to an aircraft which departs from Australia. Although clause 4 treats Christmas Island as a part of Australia and not a place outside Australia, the actual location of the Island at some considerable distance from Australia cannot be ignored.

The Bill treats the departure of a ship from the territorial waters of Australia (including Christmas Island), or a flight beyond territorial waters, to be a departure from Australia. Special provision is made in clause 5 for aircraft that fly beyond territorial waters in the course of flying between places within Australia. Clause 5 makes it clear that flights between the Island and mainland Australia depart from Australia, (while other flights between places within Australia proper do not depart from Australia).

The result of the amendments is that if an aircraft or ship were to arrive in Australia by reason that it arrives in the Island, subsequently depart from Australia, by reason that it departs from the Island and then arrives in mainland Australia, the master and crew commit offences in respect of each arrival.

Clause 6 : Permits to disembark from certain vessels

Section 8 of the Principal Act creates an offence where the master or crew of a vessel to which the Act applies assists or permits a person to disembark from the vessel without the written permission of an authorised officer. Section 9 of the Principal Act empowers an authorised officer to grant a permit to a person to disembark from a vessel.

Clause 6 of the Bill inserts a new sub-paragraph (f) in sub-section 9 (3) of the Principal Act to ensure that persons who have travelled to Australia by ship or aircraft from Christmas Island do not need to obtain a disembarkation permit. The effect of this amendment is that the master and crew will not commit any offence in permitting a person to disembark in mainland Australia, if that person boarded the vessel at Christmas Island for travel to another place in Australia.

Clause 7 : Prescribed Authorities

Clause 7 amends section 14 of the Principal Act to include a Special Magistrate of the Territory of Christmas Island as a prescribed authority for the purposes of section 12 of the Act. Under section 12 of the Principal Act a prescribed authority may authorise the detention of certain persons who have disembarked without permission from a vessel to which the Act applies.