

1987

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MIGRATION AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Immigration, Local Government and Ethnic Affairs,
The Hon Michael J. Young MP)

MIGRATION AMENDMENT BILL 1987

GENERAL OUTLINE

The purpose of this Bill is to amend the Migration Act 1958. The principal amendments are designed to impose new fee for service arrangements which are aimed at increasing revenue and recovering costs incurred by the Department in the provision of certain services.

Fee for Reconsideration of Decisions

2. A scheme is being introduced which will establish a system enabling the charging and recovery of fees in respect of the reconsideration of certain classes of decisions taken under the Act, subject to prescribed conditions and limitations.

3. This measure is associated with a significant increase in resources devoted to reconsideration of decisions under the Act, and is aimed at partial recovery of the costs relating to that process.

4. The above scheme was announced on Budget night (15 September 1987). In order to protect public revenue, the clause of the Bill that relates to the scheme, shall, on enactment of the Bill, be taken to have come into operation on 16 September 1987.

Formal Lodgement of "Requests"

5. Amendments are also being made to the provisions in the Act dealing with "requests" for entry permits and visas. The Bill provides that, in order to make a valid request, it will be necessary for any prescribed fee to be paid, and for the relevant request to be made in accordance with the relevant form approved by the Minister. As with the "fee for reconsideration" provisions outlined above, the arrangements mentioned in this paragraph were announced on Budget night, and shall be taken (on enactment of the Bill) to have come into operation on 16 September 1987.

Immigration Clearance Fee

6. The Bill also provides for the insertion of a new provision, requiring passengers on international flights seeking to enter Australia after 1 January 1988, to pay a fee for the services relating to their immigration clearance. This fee will be collectable by the international airline operator who brought the passenger to Australia. The operator will be responsible for the payment of the fee to the Commonwealth. Arrangements relating to the collection of the fee and its payment to the Commonwealth will be able to be prescribed in regulations. The fee is initially intended to be \$5.

Alternative Penalty Mechanism for Breaches of Section 11C

7. The Bill also provides that regulations may be made enabling an officer of the Department to serve a notice on a person, which states that the person is in breach of section 11C of the Act. A breach of section 11C occurs when a master, owner, agent, charterer or operator of an aircraft or ship carries a passenger to Australia without the necessary visa. The person receiving the notice will have the option of paying a prescribed penalty, not to exceed \$1500, as an alternative to prosecution under section 11C of the Act. It is initially intended to set the penalty at \$1000. The maximum penalty for a breach of section 11C is also to be increased, from \$2000 to \$3000.

8. There will be liaison with international carriers about the arrangements necessary to effect the matters described in paragraphs 6 and 7.

FINANCIAL IMPACT STATEMENT

9. The proposals put forward in the Bill have themselves only a negligible impact on Government expenditure and are expected to increase Government revenue by \$10.9M in 1987/88 and \$21.9M in a full year.

Fee for Reconsideration of Decisions

10. This fee seeks to recover some of the costs associated with providing the reconsideration mechanism. The estimated cost of providing that mechanism in 1987/88 is \$5.9 M.

11. The estimated revenue from the fee is \$1.44M in 1987/88 and \$1.92M in a full year. (The first regulations prescribing the fee for reconsideration will set the level of the fee at \$240).

Immigration Clearance Fee

12. This fee seeks to recover some of the costs associated with providing immigration clearance for incoming passengers. The estimated cost of providing this service is over \$19M. The estimated revenue from this fee is \$8M in 1987/88 and \$17M in a full year.

Alternative Penalty Mechanism for Breaches of Section 11C

13. Experience in other countries indicates that the introduction of similar arrangements has been an incentive to carriers to reduce the number of offences. While there is likely to be a marked increase in the amount of revenue received by way of penalties resulting from the new provision, (\$1.5M in 1987/88 and \$3.0M in a full year), the amount is expected to decline in a year or two as the number of offences committed decreases.

14. The Bill does not directly involve any additional staff resources to the Commonwealth, because it relates to fees for existing services, and because revenue collection facilities are already in place. However, as mentioned in paragraph 3 above, the fee for reconsideration of decisions is being introduced at the same time as an increased level of servicing for that activity.

ABBREVIATIONS

15. The following abbreviations are used in this Explanatory Memorandum:

Act: Migration Act 1958
Bill: Migration Amendment Bill 1987
Department: Department of Immigration, Local Government and Ethnic Affairs

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title

Clause 2: Commencement

16. Sub-clause 2(1) provides that, subject to that clause, the Act shall come into operation on the day on which the Act receives the Royal Assent.

17. Sub-clause 2(2) provides that sections 3, 4, 5 and paragraph 9(a) of the Act, and the first regulations made under paragraph 67(1)(ac), shall be taken to have come into operation on 16 September 1987.

18. Sub-clause 2(3) provides that sections 6 and 7 and paragraphs 9(b) and (c) shall come into operation on 1 January 1988.

Clause 3: Non-citizen not to enter Australia without entry permit

19. This clause provides that, after subsection 6(2) of the Act, a new subsection is to be inserted which will provide that any "request" under subsection (2) will be subject to the following two preconditions:

- i) that any prescribed fee has been paid; and
- ii) that the request is in writing in accordance with the relevant form approved by the Minister.

20. This provision is aimed at correcting an anomaly identified in a recent Federal Court decision, which cast doubts on the requirement that the prescribed fee be paid at the time the application was lodged. The provision thus makes it absolutely clear that the payment of the fee is necessary before the application can be regarded as having been made.

21. The provision is intended also to help overcome problems Departmental officers experience in identifying applications. In the past, it has often been difficult for officers to determine whether correspondence etc is meant to constitute a formal application, or merely a request for information. In practice, the great majority of applications are made on official forms. The provision will require that to be the case with all applications in the future.

22. By virtue of clause 2, this clause shall (once the Bill is enacted) be taken to have come into operation on 16 September 1987 (ie immediately after Budget night).

Clause 4: Cancellation, expiration and renewal of entry permits

23. This clause provides that, after subsection 7(2) in the Act, a new subsection is to be inserted which will provide that any "request" under subsection (2) will be subject to the following two preconditions -

- i) that any prescribed fee has been paid; and
- ii) that the request is in writing in accordance with the relevant form approved by the Minister.

24. The reasons for the inclusion of this provision are identical to those relating to clause 3.

25. By virtue of clause 2, this clause shall (once the Bill is enacted) be taken to have come into operation on 16 September 1987.

Clause 5: Visas and return endorsements

26. This clause provides that, after subsection 11A(1) of the Act a new subsection is to be inserted which will provide that any "request" under subsection (1) will be subject to the following two preconditions -

- i) that any prescribed fee has been paid; and
- ii) that the request is in writing in accordance with the relevant form approved by the Minister.

27. The reasons for the inclusion of this provision are identical to those relating to clause 3.

28. By virtue of clause 2, this clause shall (once the Bill is enacted) be taken to have come into operation on 16 September 1987.

Clause 6: Carriage of persons to Australia without documentation

29. This clause provides that the maximum amount of penalty provided for in section 11C of the Act be increased from \$2000 to \$3000. Section 11C specifies that it is an offence for the master, owner, agent, charterer or operator of a vessel to bring a person to Australia without documentation - ie a visa or return endorsement - unless that person is exempt from the need to hold such a document.

30. This is being done to reflect the seriousness of the offence, and the fact that the penalty has not been increased since 1979.

31. The word "operator" has been included in section 11C to widen the classes of persons who may be prosecuted for an alleged offence of that section. This has been done to clear up anomalies that have arisen in attempting to identify the responsible person or body to be prosecuted.

Clause 7: Immigration clearance fee

32. The Department has for many years carried out an immigration clearance function in relation to persons arriving in Australia from overseas. This function relates to the need to determine whether a person should be allowed to enter Australia. Considerable costs arise through the provision of this service, which until now have been met by the Australian taxpayer. Costs associated with immigration clearance relate to the provision of entry permits, the refusal of entry into Australia of certain persons, document fraud facilities, visa issue overseas, maintenance of warning lists and immigration movement records and salaries and other costs of staff at airports.

33. This clause inserts a new section 34A, which provides that passengers (other than prescribed passengers) seeking to enter Australia are liable to pay a prescribed fee to assist in recovering the costs of immigration clearance. Sub-clauses (2) and (3) provide that a passenger's fee is to be collected, and paid to the Commonwealth, by the international air operator who brought the passenger to Australia.

34. Sub-clause (4) provides that the amount payable to the Commonwealth by the international air operator is a debt due to the Commonwealth.

35. Sub-clause (5) is an evidentiary provision relating to any action taken under sub-clause (4).

36. Sub-clause (6) provides definitions of terms used throughout the new provision. "Passenger" has been defined to exclude the members of the crew of the aircraft.

Clause 8: Proof of certain matters

37. Section 57 of the Act provides that in respect of court proceedings certain documents are admissible as evidence. To assist in prosecutions under section 11C of the Act, a new provision, paragraph 57(1)(ca) is being inserted into the Act. The paragraph provides that the name of the operator or a vessel, as specified on a list of passengers in a vessel or on a passenger card, is prima facie evidence that that person is the operator of the vessel.

Clause 9: Regulations

38. Section 67 of the Act empowers the Governor-General to make regulations in respect of the operation of the Act. New provisions are to be inserted in the section, one making provision for regulations for charging and recovering fees in relation to reconsideration of prescribed decisions, another making provision for regulations establishing alternative penalty mechanisms in relation to breaches of Section 11C, and a third making provision for regulations for the collection and payment of the new immigration clearance fee.

39. Sub-clause 9(a) provides that a fee will be able to be prescribed for appeals against certain prescribed decisions taken under the Migration Act. The fee will be refundable in certain circumstances. The provision, and the first regulations made under the provision, are expressed (by clause 2) to come into effect on 16 September 1987.

40. The matters which the provision enables to be dealt with by regulation include -

- . the level of the fee;
- . the categories of reconsiderable decisions;
- . the standing requirements to make an application for reconsideration;
- . the circumstances in which the fee will be chargeable, recoverable, may be remitted, refunded or waived; and
- . incidental matters, such as the time limits in which applications must be made.

41. Sub-clause 9(c) relates to regulations concerning alleged contraventions of section 11C of the Act, (new paragraph 67(1)(ca)), and regulations concerning the proposed immigration clearance fee (new paragraphs 67(1)(cb) and 67(1)(cc)).

42. Proposed new paragraph 67(1)(ca) will enable regulations to be made establishing a scheme whereby, as an alternative to prosecuting an alleged section 11C offence in the Courts, it will be open to an authorized officer of the Department to issue a notice to a person who is alleged to have committed the offence, requiring that person to pay a prescribed amount. The option will, however, still be open to an authorized officer to institute Court proceedings for a breach of section 11C of the Act.

43. This proposed new provision also provides that the prescribed amount shall not exceed \$1500 (viz, half the maximum penalty imposable on conviction). It is initially intended that the prescribed amount will be \$1000.

44. Proposed paragraphs 67(1)(cb) and (cc) provide that regulations may be made in relation to arrangements for the collection by international air operators of immigration clearance fees, and the payment of those fees to the Commonwealth.

