

1997

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MIGRATION LEGISLATION AMENDMENT BILL (No. 3) 1996

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

(Circulated by authority of the Minister
for Immigration and Multicultural Affairs,
the Hon. Philip Ruddock MP)



MIGRATION LEGISLATION AMENDMENT BILL (No. 3) 1996

OUTLINE

The Migration Legislation Amendment Bill (No. 3) 1996 implements a number of Government initiatives in the Immigration and Multicultural Affairs portfolio.

The Government has decided to move amendments to that Bill which, taken together with the withdrawal of the Immigration (Education) Charge Amendment Bill 1996, will:

- retain the existing mechanism for determining the level of the English Education Charge payable by migrants without functional English who apply for migration before the commencement of the Visa Application Charge Act 1997; and
- address concerns raised by the Senate Legal and Constitutional Legislation Committee in relation to aspects of the proposed exemption from the *Sex Discrimination Act 1984*.

FINANCIAL IMPACT STATEMENT

The bill as amended will allow regulations to be made to increase revenue from the visa application charge to \$4.8 million in 1996-97 (part year 1 April - 30 June 1997) and \$19.3 million in 1997-98.

This compares to projected figures for the overall package at the time of the Bill's introduction of \$12.4 million in 1996-97 (part year 1 January - 30 June 1997) and \$21.9 million in 1997-98.

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NOTES ON INDIVIDUAL CLAUSES

Item 1 Schedule 1 - Amendments related to visa application charge

Immigration (Education) Charge Act 1992

1. These amendments are consequent to the Government's decision not to proceed with the Immigration (Education) Charge Amendment Bill 1996.
2. Item 1 inserts new clauses 17A and 17B into the Migration Legislation Amendment Bill (No. 3) 1996. These clauses will amend section 5 of the *Immigration (Education) Charge Act 1992*.
3. New clause 17A amends paragraph 5(a) to ensure that the imposition of the English Education Charge will only operate with respect to visa applications which were made before the commencement of the proposed *Migration (Visa Application) Charge Act 1996*.
4. This means that the obligation to pay the English Education Charge (which is imposed by the *Immigration (Education) Charge Act 1992*) will not apply to applications for visas which are made after the introduction of the visa application charge. Such applications will attract the new visa application charge.
5. New clause 17B adds new paragraph 5(aa) to provide that only those visa applications where the application fee has been paid in full will come within the scope of the amended Act. This ensures that where a visa application has been made before the commencement of the amendments, but the full application fee has not been paid, the visa applicant will not incur an obligation to pay the English Education Charge (a related provision in the Migration Legislation Amendment Bill (No. 3) 1996 ensures that such visa applications will be subject to visa application charge).

Item 2 Schedule 3 - Amendments related to marital status

6. This item amends item 1 of Schedule 3 in Migration Legislation Amendment Bill (No.3) 1996. It inserts a new subsection (2) in the proposed new section 507 of the *Migration Act 1958*.
7. The objective of section 507 is to allow for differential treatment of people who are in de facto relationships (as opposed to people who are married) in those parts of the Migration Regulations dealing with applications for visas. This will allow the Government to implement its policy commitment to require a cohabitation period for persons seeking entry to Australia on the basis of a de facto relationship.

8. The proposed clause 507(1)(a) provides that, to the extent that the *Sex Discrimination Act 1984* applies to the status or condition of being married or being the de facto spouse of another person, it will not operate in relation to allowing the regulations to specify certain characteristics before a person will be taken to be the de facto spouse of another person. A corresponding provision at clause 507(1)(b) deals with the administration of any regulations made using the limited exemption provided by subsection 507(1).

9. The intention of clause 507(1)(b) is to ensure that no question of unlawfulness arises where persons are administering regulations made using the limited exemption from the *Sex Discrimination Act 1984*. Persons administering such regulations are intended to be subject to the *Sex Discrimination Act 1984* except to the extent required to give effect to those regulations.

10. This item addresses concerns that administrative practices could be authorised under section 507 with the effect of requiring discrimination to occur in relation to the marital status of persons dealing with visa applications from persons in de facto relationships. The proposed subsection 507(2) makes it clear that the *Sex Discrimination Act 1984* continues to apply in relation to the marital status of persons making or administering the relevant regulations.

Item 3 Long Title

11. This item is a technical amendment to the Long Title of Migration Legislation Amendment Bill (No. 3) 1996. It inserts the *Immigration (Education) Charge Act 1992* as one of the Acts sought to be amended by this Bill.