

1988

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MIGRATION AMENDMENT BILL (No. 2) 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration,
Local Government and Ethnic Affairs, Senator The Hon R F Ray)

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GENERAL OUTLINE

This Bill gives legislative effect to elements of the Master Plan for Passenger Processing as they relate to the Migration Act 1958.

To assist in the provision of fast and efficient service to travellers to Australia, the Migration Act 1958 is to be amended to allow for entry to Australia using one document only, in contrast to the current visa and entry permit. The first amendment is to allow the holder of a visa that is in force to travel to Australia, and upon entry at a proclaimed airport, to enter in accordance with the terms and conditions endorsed on the visa. Upon entry after disembarkation at a proclaimed airport, the visa is to have effect as if it were an entry permit. The visa can of course be cancelled at any time prior to entry, as it can now under section 11B of the Migration Act 1958.

The current visa and entry permit provisions in the Migration Act 1958 will remain in force to take account of the travellers who arrive by sea or at non-proclaimed ports, as well as those who seek to change status from temporary entrant to permanent entrant after entry into Australia.

The second amendment is to provide that passengers on certain direct flights to Australia, as declared by the Minister, will be examined for immigration clearance before departure for Australia. Upon disembarkation in Australia, their visa will also have effect as if it were an entry permit.

As a consequence of the above amendments new evidential provisions are also to be inserted into the Migration Act 1958 to give evidential status to the documentation held by a person entering under the new provisions and the Departmental records of that entry. To protect the personal information contained in the records of the Department of Immigration, Local Government and Ethnic Affairs and the integrity of the computer systems involved, new offence provisions are to be inserted to prevent tampering with the records and the systems and unauthorised reading or examining of the records.

Further consequential amendments are also being made to ensure that there are no unforeseen consequences arising out of amendments made to the Migration Act 1958 by the Mutual Assistance in Criminal Matters (Consequential Amendments) Act 1987.

FINANCIAL IMPACT STATEMENT

There will be no effect on either Commonwealth revenue or Commonwealth expenditure as a result of this Bill.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short Title etc

1 Provides for the Act to be cited as the Migration Amendment Act (No. 2) 1988, and formally defines the Migration Act 1958 as the "Principal Act" for the purpose of this Act.

Clause 2 - Commencement

2 Provides that sections 1 and 2, subsection 3(1) and section 11 shall come into operation on the day it receives the Royal Assent, and that the remaining provisions commence on a day or days to be fixed by Proclamation.

Clause 3 - Interpretation

3 This clause omits the definition of "entry permit" from section 5 of the Migration Act 1958 and substitutes a new definition to take account of an entry permit issued to a statutory visitor under subsection 6B(1).

4 Section 5 of the Migration Act 1958 is further amended by omitting the definition of "the holder" and inserting a new definition to include reference to the holder of a "visa" as well as the holder of an "entry permit", to take account of the other amendments dealing with visas. The new definitions of "certified printout", "data base", "movement records", "notified data base", "pre-cleared flight", and "printout" are also included to define terms used in the new provisions inserted elsewhere by the Act into the Migration Act 1958.

Clause 4 - Heading to Division 1 of Part II

5 Provides that the heading to Division 1 of Part II of the Migration Act 1958 is amended to remove the word "Permits" to reflect the fact that not all persons entering Australia will be required to be granted an entry permit as per the existing visa and entry permit regime.

Clause 5 - Insertion of new section 5D

6 Provides that a new section is inserted into the Migration Act 1958 to provide that a non-citizen becomes a prohibited non-citizen on entering Australia unless he or she is the holder of an entry permit that is in force, ie. substantially the current provisions contained in subsection 6(1) of the Migration Act 1958, or he or she is the holder of a visa that is in force at the time of entry and the entry was made under the new subsections 6AA(1) or (2). The "visa" provision reference is necessary as otherwise persons who enter under the provisions in section 6AA visas would become prohibited non-citizens.

Clause 6 - Entry permits

7 Provides that subsection 6(1) of the Migration Act 1958 is repealed as it has been substantially replaced by the new section 5D.

Clause 7 - Entry permitted by visa

8 This clause inserts section 6AA into the Migration Act 1958 to allow, in certain instances, entry into Australia by the holder of a visa. The two instances are outlined in subsections 6AA(1) and (2).

9 Subsection 6AA(1) provides for holders of visas which are in force, and which are granted after the commencement of the section, to enter Australia after disembarkation at a proclaimed airport as if the person had been granted, and were the holder of an entry permit. This will allow travellers to hold only one document in respect of travel and entry to Australia, assuming the visa is not cancelled prior to entry into Australia. By having the conditions of entry and length of stay specified on the visas, and the visa to operate as an entry permit after entry, processing time at the point of entry will be substantially reduced.

10 Subsection 6AA(2) provides for holders of visas which are in force, and which are granted after the commencement of the section, to enter Australia as if the person had been granted, and were the holder of an entry permit provided that the person travelled to Australia on a flight which had been pre-cleared for immigration

purposes before departure and had not landed in any other country from the time of departure for Australia to the time of arrival in Australia. This provision, in conjunction with subsection 6AA(6), will allow the Minister to specify individual flights for immigration preclearance overseas before departure for Australia. All passengers on such flights would be processed in the normal way for immigration clearance overseas prior to departure for Australia. Such flights will operate as direct flights without any stopover prior to landing in Australia. Upon arrival in Australia no further immigration clearance would be necessary, and the passengers can enter Australia quickly and conveniently.

11 Subsection 6AA(3) provides for the visa of a person who enters pursuant to subsections 6AA(1) and (2) to take effect as an entry permit on the person's entry into Australia. That entry permit is subject to the conditions and to any limitations as to the time the holder is authorised to remain in Australia as specified in the visa. This provision provides that the other provisions in the Migration Act 1958 which deal with entry permits or the grant of entry permits apply to such persons.

12 Subsection 6AA(4) provides that a visa whether granted before or after the commencement of section 6AA does not entitle the holder to enter Australia. This preserves the power of the Minister and an authorized officer in section 11B of the Migration Act 1958 to cancel a visa in his or her absolute discretion. In such a case the visa will no longer be in force and subsections 6AA(1) and (2) will not operate. In this manner, the operation of section 6AA does not give the holders of visas any greater expectation of being permitted to enter Australia than currently exists under the Migration Act 1958.

13 Subsection 6AA(5) specifically excludes the visa of a statutory visitor from operating as an entry permit on the holder's arrival and entry into Australia. Because of the special circumstances surrounding such visitors, it is necessary for them to be immigration processed under the existing system.

14 Subsection 6AA(6) provides that the Minister may declare by instrument in writing that certain flights to Australia may be immigration precleared for the purpose of subsection 6AA(2). This will give the Minister control over which flights are to be allowed to be precleared to ensure that the proper immigration controls have been conducted in respect of passengers on those flights.

Clause 8 - Statutory Visitors

15 This clause inserts into section 6B of the Migration Act 1958 reference to section 5D to ensure that statutory visitors will not become prohibited non-citizens upon entry.

Clause 9 - Certain instruments not to entitle person to enter Australia

16 Provides that paragraph 11(2)(a) of the Migration Act 1958 is omitted. This is necessary as otherwise the visas which will operate under new section 6AA would be ineffective as they would not entitle the holder to enter Australia as if they were the holder of an entry permit. The provisions have been subsumed in new subsection 6AA(4).

Clause 10 - Visas

17 This clause inserts an additional paragraph into subsection 11A(2) of the Migration Act 1958 to allow visas to be granted subject to conditions and limitations as to the time the holder is authorised to remain in Australia. There is presently no such power to grant visas subject to conditions other than in respect of the length of time it is to remain valid and to provide for the number of times the holder can travel to Australia.

18 For section 6AA to have the desired effect, it is necessary for the visa to be issued subject to conditions and limitations as to the time the holder can remain in Australia. The holder will enter and remain subject to the conditions and limitations as to time specified on the visa.

19 The clause also inserts subsection 11A(2A) which allows the Minister to determine by instrument in writing classes of visas. This will facilitate the effective administration of visa conditions to be applied to travellers such as tourists, the range of temporary residents and permanent residents, which will in turn provide a greater level of service and convenience to travellers.

Clause 11 - Persons entering Australia to be prohibited non-citizens in certain circumstances

20 This clause amends sub-subparagraph 16(1)(b)(i)(A) and paragraph 16(1AA)(a) of the Migration Act 1958. The amendment to sub-subparagraph 16(1)(b)(i)(A) makes the sub-subparagraph consistent with the use of the term 'entry permit' as used elsewhere in the Migration Act 1958. The amendment to paragraph 16(1AA)(a) is necessary in order that the provision will apply in relation to an entry permit granted under section 6B. This amendment is necessary in order for the provision to apply to statutory visitors who are granted an entry permit after entry pursuant to subsection 6B(1) of the Migration Act 1958.

Clause 12 - Proof in certain matters

21 This clause inserts into subsection 57(1) of the Migration Act 1958 additional paragraphs (cb), (cc) and (cd).

22 Paragraph (cb) is inserted in order that those persons entering Australia pursuant to subsection 6AA(1) will have prima facie evidence of the place and date of their entry into Australia.

23 Paragraph (cc) is inserted in order that persons entering Australia pursuant to subsection 6AA(2) will have prima facie evidence that they entered Australia on the precleared flight specified in the notation.

24 Paragraph (cd) is inserted in order to make a certified printout of the Department's relevant movement records in relation to entry into and departure from Australia prima facie evidence of the matters contained in the printout.

25 The above provisions are inserted to give evidential status to the documentation and records held by both the person entering Australia and the Department.

Clause 13 - Tampering with movement records and Notified data bases

26 This clause inserts two new sections which are included to protect the the personal information contained in the records of the Department and the integrity of the computer systems.

27 New section 65AA makes it an offence for a person, other than an authorised officer carrying out his or her duties or performing functions under or for the purposes of the Migration Act 1958 to tamper with, which includes reading or examining and reproduction of, movement records, computer programs connected with the movement records or notified data bases. Substantial penalties are provided for upon conviction.

28 New section 65AB gives the Minister power to declare by notice in the Gazette that a data base shall be a "notified data base" for the purposes of the Migration Act 1958. This is necessary for the effective protection of the records and systems in making up the movement records.