MIGRATION AMENDMENT BILL 1986

Date introduced: 16 April 1986
House: House of Representatives
Presented by: Hon. Chris Hurford, M.P., Minister for Immigration and Ethnic Affairs

DIGEST OF BILL

Purpose

To provide for the status of children born in Australia and who are not Australian citizens as a consequence of the proposed Australian Citizenship Amendment Bill 1986.

Background

The Australian Citizenship Act 1948 provides the legal basis for Australian citizenship and governs the ways in which citizenship can be acquired or lost. Currently, Australian citizenship is automatically acquired by children born in Australia other than to diplomats or consular officials (section 10 of the Australian Citizenship Act 1948).

The right to automatic citizenship was examined on two occasions by the Human Rights Commission (HRC) in 1985.[1] Both cases related to the rights of children born in Australia when their parents were forced to leave Australia. In both cases the HRC concluded that the decision to deport the parents effectively meant that the child, an Australian citizen, was also deported. This conclusion was rejected by the Minister, who has stated that he did not consider that 'the deportation of prohibited non-citizens amounts, in practice, to the deportation of Australian citizens if the parents choose to take their Australian-born children out of the country with them'.[2]

In both cases the HRC concluded that the expulsion of the family was inconsistent with and contrary to the human rights of the children involved.[3]
In each case the HRC also made recommendations to alleviate this problem. The HRC recommended that the law be changed to remove the right to automatic citizenship through birth in Australia except in cases where the child would otherwise be stateless.[4] Regarding Australia's international obligations the HRC concluded that 'nothing in the ICCPR (International Covenant on Civil and Political Rights) or the Declaration of the Rights of the Child requires the children of prohibited non-citizens to become Australian citizens merely because they are born in Australia'.[5]

The Australian Citizenship Amendment Bill 1986 proposes amending section 10 of the Australian Citizenship Act 1948 to remove the automatic granting of citizenship to children born in Australia. If that amendment is passed, automatic citizenship will only be granted to a child born in Australia if either parent was an Australian citizen or a permanent resident of Australia, or if the child subsequently remains in Australia for ten years.

The present Bill proposes amending the Migration Act 1958 to provide for circumstances where a child is born in Australia and neither parent is an Australian citizen nor a permanent resident of Australia.

Main Provisions

It is proposed by clause 2 that the present Bill commence on the same day as the proposed Australian Citizenship Amendment Bill 1986.

Clause 3 adds a new section 6AAA to the Migration Act 1958 (the Principal Act). The proposed new section applies to the children born in Australia who are not Australians by virtue of the amendments proposed by the Australian Citizenship Amendment Bill 1986. These children will be deemed to have entered Australia at the time of their birth. The immigration status of such children will be the status of the parent with the more favourable terms of entry to Australia. For example, where one parent has a temporary entry permit and the other parent has no entry permit, the child will be treated as having a temporary permit (proposed sub-paragraph 6AAA(b)).

For further information, if required, contact the Law and Government Group.

Bills Digest Service

28 April 1986

LEGISLATIVE RESEARCH SERVICE
References

5. Report No. 15, p.5.