MIGRATION BILL 1958.

EXPLANATORY MEMORANDUM.

(Circulated by Minister for Immigration, Hon. A. R. Downer.)

The Migration Bill with which this Memorandum is circulated seeks to provide an up-to-date and self-contained statement of the law regarding immigration, deportation and emigration. The Bill is necessarily rather long and technical and some explanation of the individual clauses will be of assistance to the Parliament.

2. As a preliminary to examination of the individual Clauses, some general points should be made clear, and these can be described under the two main headings of the Bill—first, " Immigration and Deportation " and second, " Emigration ".

IMMIGRATION AND DEPORTATION.

3. The Bill has nothing to do with the grant of assistance to migrants to come to Australia or with the actual size or composition of the intake of migrants. Parliament's control of the migration programme is ensured by the annual appropriation of funds for it.

4. The Bill has to provide machinery for—

(i) preventing the entry of people who are not eligible to enter Australia under policy;

(ii) admitting persons temporarily for various purposes and ensuring their departure;

(iii) deporting persons who evade controls under (i) or (ii) or who, having been admitted for indefinite residence, are later found unsuitable.

5. As to preventing entry, it should be borne in mind that the visa system normally ensures that people ineligible for entry do not embark on ships or aircraft coming to Australia. With the exception of British people of European descent, prepared to pay their own fares, persons seeking to come here are unable to book passages without first showing to the shipping or aircraft companies that they have visas or other prior authority from the Department or its overseas representatives.

6. The shipping and aircraft companies co-operate in the visa system basically because they know that the immigration laws of the Commonwealth enable the Department to prevent people from landing here if necessary, and if ineligible people are brought to our shores they can be turned back; the

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expense of taking such people away again would fall on the companies operating the vessels on which they came. The visa system, in brief, depends ultimately on our immigration law.

7. At the present time, the device in our law which gives the necessary discretionary power to the Government to prevent the entry of an ineligible immigrant is the " Dictation Test ". This device is objectionable on a number of grounds; and the Bill proposes that the device be supplanted by an " entry permit " system, whereby any person found to be ineligible to land may be prevented from doing so simply by the withholding of an entry permit. Persons who are eligible to land will have permits stamped in their passports as they are examined by officers at the ports—without any delay or formalities additional to present procedures.

8. As to admitting persons temporarily, there is provision in the present Immigration Act for the issue of " certificates of exemption " good for stated periods; and the Minister is empowered to deport the holders of such certificates upon their expiration or cancellation. The Bill contemplates that " temporary entry permits " should replace such certificates.

9. As to deportation of persons other than temporary entry permit holders, it is of course necessary to preserve existing power to deport people who enter irregularly (e.g., ship's deserters) and those who prove undesirable migrants through commission of crimes, *&c.* It is, however, considered essential to make two main changes in the law regarding deportation.

10. One proposed change is the abolition of the Dictation Test as a device for deportation (as well as for preventing entry) because of its objectionable features, namely:—

(*a*) it subjects the immigrant to the bewildering procedure of listening to fifty words in a language which is deliberately chosen as unknown to him but which he is asked to write down;

(*b*) it involves the formality of Court proceedings despite the virtual certainty that a conviction (for the " offence " of failing to pass the Test) is inevitable; and

(*c*) it results in the imposition of a punishment of imprisonment for six months.

The Bill provides more straightforward means of deporting undesirables.

11. The other important proposal in regard to deportation is that there should no longer be a completely arbitrary power in the hands of the Minister to deport persons who were regularly admitted for indefinite residence, who have not been convicted of crime, and who have not become a charge upon public funds in any way. (Such arbitrary power exists at present through the provision in the Immigration Act that any person may within five years after entry to Australia be required to pass the Dictation Test). The Bill contemplates that such a person should not be deported unless an independent Commissioner, after hearing the migrant, reports that he is not a fit and proper person to be allowed to remain in Australia. Such a safeguard was provided in the *Aliens Deportation Act* 1948, and, it is considered, should be provided

for all immigrants. It may be mentioned here that the Bill takes in the Aliens Deportation Act's provisions, it being considered that laws relating to deportation should as far as possible, appear in the one statute.

12. Numerous auxiliary provisions are necessary in the Bill, but these are in the main re-enactments of existing provisions of the Immigration Act and Regulations, reference to which will be found in the marginal notes to the Bill and in the notes on individual Clauses hereunder.

EMIGRATION.

13. The chief objective of the Bill in relation to the emigration of children is to provide more adequate means for parents to ensure that children who are in their custody, by reason of Court orders, or whose custody they are seeking, are not taken out of the country without proper consent of the Courts, or of the parents in question. Recent cases have demonstrated a need for the Commonwealth to use its Constitutional powers, relating to emigration, to supplement State laws in this field.

14. As to aboriginals, the only important change proposed is that those who are not subject to disabilities or controls under State laws should be free to leave Australia without securing emigration permits, in the same way as other free citizens.

NOTES ON INDIVIDUAL CLAUSES.

PART I.—PRELIMINARY.

CLAUSE 1. The short title, " Migration Act ", derives from the fact that the Bill deals with both immigration and emigration.

CLAUSE 2. Part III. of the Bill, relating to emigration, will entail fewer administrative preparations following passing by Parliament than will the immigration provisions and it is therefore likely that Part III. will be proclaimed to commence first.

CLAUSE 3. The classification of the provisions into Parts and Divisions is designed to facilitate reference to the Bill.

CLAUSE 4 (1.). The repeal of all previous Immigration Acts is in line with the general objective of providing in this Bill a comprehensive statement of the law relating to immigration.

CLAUSE 4 (2.). CLAUSE 4 (3.). The *War Precautions Act Repeal Act* 1920–1955 (Section 9) provides that a British subject entering Australia may be required to take an Oath of Allegiance and, if he refuses, may be dealt with as a prohibited immigrant. The section has not so far as is known been used to prevent any person from entering Australia and is not regarded as being of any practical advantage. If it should be desired at any future time to prevent a person's entry on the grounds of disloyalty or otherwise, it will be sufficient to withhold an entry permit.

CLAUSE 4 (4.) (*a*). It has been the practice under the existing Immigration Act to admit certain categories of persons under Certificates of Exemption; upon the expiration or cancellation of these, the holders may, if necessary, be deported. The " temporary entry permits " to be issued under Clause 6 of this Bill will be the equivalent of Certificates of Exemption; and Clause 4 (4.) (*a*) simply says that current Certificates of Exemption are to be temporary entry permits for the purpose of this Bill. This will save issuing very large numbers of temporary permits immediately the new Act commences, to persons already in Australia as holders of certificates of exemption. The clause will avoid inconvenience to those persons as well as unnecessary work for the Department.

CLAUSE 4 (4.) (*b*). It is, of course, necessary to ensure that persons awaiting deportation when the new Act commences, by reason of deportation orders made under the existing Act, do not escape deportation through the repeal of the existing Act; and this is the effect of this clause.

CLAUSE 4 (4.) (*c*). Sections 7AA and 7A of the existing Act set down the nature of sureties to be furnished before release of persons convicted as prohibited immigrants. It is possible that shortly after the date of the new Act's commencement, persons so convicted under the present Act will seek release and in that event Sections 7AA and 7A of the existing Act should continue to have force in those particular cases.

CLAUSE 4 (4.) (*d*). Section 13A of the existing Act sets down the obligations of shipping and aircraft companies to provide passages away from Australia for persons whose deportation has been ordered. These obligations are in this Bill to be revised (see notes to Clauses 21 and 22 below) but the new provisions will operate only upon the issue of deportation orders under the new Act—not in respect of orders issued under the existing Act. Clause 4 (4.) (*d*) continues the existing provisions of Section 13A in relation to deportation of persons under orders made under the existing Act.

CLAUSE 4 (5.). The need for and objectives of this sub-clause can be stated as a series of facts—

(i) as already explained under Clause 4 (4.) (*a*), it is essential that Certificates of Exemption issued under the existing Act should continue to have force as if they were temporary entry permits issued under the new Migration Act;

(ii) a Certificate of Exemption may be validly issued (other than as an extension of a previous certificate) only to a person who is a prohibited immigrant or who may be required to pass the dictation test (Section 4 of the existing Act);

(iii) a person who enters Australia regularly may not be required to pass the dictation test more than five years after he has "*entered the Commonwealth*" (Section 5 (2.) of the existing Act);

(iv) a recent decision of the New South Wales Court of Criminal Appeal held that, where a person has entered Australia more than once, he must be regarded, for the purpose of Section 5 (2.) of the existing Act, as having "entered the Commonwealth" on the date when he *first* entered and not on any later date;

(v) there is in Australia a substantial number of persons who are not and have never been eligible to be admitted for permanent residence but who have been admitted under Certificates of Exemption for temporary purposes (e.g. as students) for extended periods exceeding five years; many of them, especially students, go back to their homelands periodically,

and upon return are issued anew with Certificates of Exemption; these Certificates, if issued more than five years after the *first* entry of the persons concerned, may have been invalidly issued, and the persons concerned may be free to remain permanently in Australia, unless corrective action is taken by Parliament;

(vi) there will be numerous other persons hereunder " Certificates of Exemption " who may pass beyond the deportation power because of the decision in question, although not eligible to remain in Australia; for example, a seaman who has previously entered Australia as a member of the crew of an overseas vessel more than five years ago, may, when his ship next calls, be found to be in need of hospital treatment. It is usual in such circumstances to land the seaman under Certificate of Exemption; but such a certificate might not be valid because of the man's " entry " over five years ago.

(vii) Clause 4 (5.) accordingly provides that the certificates in question shall be deemed to have been as validly issued as if the grantees had not previously entered Australia.

CLAUSE 5. This clause defines words used repeatedly throughout the Bill.

PART II.—IMMIGRATION.

DIVISION 1.—ENTRY PERMITS.

CLAUSE 6. This is one of the " key " clauses of the Bill. It provides the means in simple form of preventing entry of unwanted immigrants, and of admitting persons temporarily. Clause 6 (1.), taken in conjunction with Clause 18, ensures that persons who enter Australia in future, without entry permits, may be deported.

CLAUSE 7 (1.). The proposed power of the Minister to cancel temporary entry permits is the equivalent of the existing power to cancel Certificates of Exemption. The power is and will be exercised to enforce the departure of temporary entrants failing to observe the conditions of their admission.

CLAUSE 7 (2.). Where temporary entrants are observing the conditions of their entry, it will in general be the objective to prevent their temporary entry permits from expiring before the issue of extensions of them.

CLAUSE 7 (3.). This sub-clause is drafted with a view to avoiding legal difficulties associated with Certificates of Exemption under the existing Act, whereby if the holder of a Certificate of Exemption has been resident in Australia for over five years and the Certificate is inadvertently allowed to expire, the holder must either be at once declared by the Minister to be a prohibited immigrant, or must be regarded as a permanent resident of Australia. Clause 7 (3.) is intended to have the effect that upon the expiry of a temporary entry permit, the holder becomes a prohibited immigrant automatically; but ceases to be such as soon as a further permit is issued.

CLAUSE 7 (4.). The preceding Sub-clause (3.) provides that upon the expiration or cancellation of a temporary entry permit, the holder becomes a prohibited immigrant unless a further entry permit is issued to him.

This has to be read in conjunction with Clause 10 which says in effect, that a prohibited immigrant continues to be a prohibited immigrant indefinitely unless a further entry permit is issued.

There is some reason to believe that Clause 10 could be held to be invalid in relation to the holders of expired or cancelled temporary entry permits. It seems quite possible that the High Court might hold that such persons must, in time, be regarded as having become members of the Australian community, i.e., as having ceased to be immigrants. It is, however, thought that the Court would not regard as invalid a law that fixed a reasonable period in which such persons would remain prohibited immigrants.

It is essential to ensure that holders of temporary entry permits are not enabled to avoid deportation by keeping themselves hidden for some time after cancellation or expiration of their permits.

Clause 7 (4.) accordingly provides that such persons cease to be prohibited immigrants five years after the expiration or cancellation of their temporary entry permits; and if deportation orders are in force at the end of five years, the persons concerned continue to be prohibited immigrants.

The effect of this is that when the holder of a temporary entry permit disappears, and the permit expires, the Minister will not be obliged to issue deportation orders at once but can have particulars of him circulated to police, and wait up to five years before signing deportation orders. If such orders are signed within the five years they will remain valid as long as efforts to find the man and deport him are not abandoned.

It is desirable that as long a period as possible should be allowed in which to find the person and then, having heard his story, decide whether he is to be deported. It is just possible that in spite of having kept himself hidden from the Department, there may be considerations against deporting him, e.g., he may have married an Australian, have Australian-born children, have given special service to the community, &c.

CLAUSE 8 (1.). This clause waives the need for entry permits to be issued to certain classes of persons. The existing Immigration Act exempts approximately the same classes of persons from the restrictive provisions of that Act. Some changes of a drafting nature have been necessary. For example, in 1901 when the existing law on this question was passed, the phrase " public vessel of any Government " may not have presented difficulties of interpretation and administration, as the only public vessels in those days were naval vessels; but to-day such difficulties do arise, e.g., in relation to State-owned ships from Communist countries, engaged in normal trading in much the same way as privately owned vessels from other countries. Such ships should clearly be dealt with on the same basis as other trading vessels; and so the exemption in this clause is confined to " a vessel of the regular armed forces of a government recognized by the Commonwealth ".

CLAUSE 8 (2.). It is one of the deficiencies of the existing Act that the exemption of crew members from the restrictive provisions is quite unqualified; so that even the most notorious criminal could not be prevented from landing as the crew member of an overseas ship, while the ship was in port. This clause will remedy this defect by enabling a declaration to be made that a particular crew-member is undesirable as a resident of Australia. The next sub-clause describes the consequences of such a declaration.

CLAUSE 8 (3.). This clause provides for termination of the exemption referred to above, in suitable circumstances—e.g., when a crew member stays in Australia after his ship leaves, or is declared undesirable while the ship is in port. In such circumstances, the person concerned, having entered without an entry permit, becomes a prohibited immigrant, liable to deportation by order of the Minister.

CLAUSE 9. It is necessary that an entry permit should be good for only one entry, so that when an immigrant after living here for a time goes overseas, and is found during his absence to be an undesirable, he may be prevented from re-entering (as he may be under existing law by means of the dictation test). However, departure from Australia in a technical sense only—such as on a fishing expedition outside our territorial waters, or on a " round trip " to adjacent countries (leaving and returning on the same ship)

or a visit to one of Australia's external territories—will not necessitate securing a fresh entry permit on " return " to Australia.

CLAUSE 10. This clause is designed to make it as certain as is constitutionally possible that a person who enters or remains in Australia irregularly (e.g., a seaman who deserts his ship and has no entry permit) will not pass beyond the Government's powers of deportation solely because of passage of time while he remains in hiding from the immigration authorities.

CLAUSE 11. Entry permits will not be the equivalent of visas or other kinds of provisional approvals issued overseas as " embarkation controls ". Entry permits will be issued only at time of or after entry to Australia. The issue of visas overseas will not prevent the grantees from being refused entry permits on arrival if serious reasons for the person's exclusion are discovered after visa-issue but before arrival.

DIVISION 2.—DEPORTATION.

CLAUSE 12. This clause re-enacts the substance of Section 8 of the existing Act. It will be observed that there is no time limit within which the offences must have been committed—as there is in the next clause. In this connexion it is to be noted that Clause 12 relates to aliens only. To the extent that it may relate to aliens who have ceased to be " immigrants " and who therefore cannot be deported under the Constitutional power to make laws relating to " immigration ", Clause 12 is based on the power to make laws with reference to " aliens ", whether they are immigrants or not.

CLAUSE 13. This clause re-enacts the substance of Section 8A (1.) (*a*), (*b*) and (*c*) of the existing Immigration Act, and concerns immigrants only, whether British or alien. It will be observed that the offences which render an immigrant liable to deportation under this clause must be committed within five years after entry, and admission to an institution is grounds for deportation only if it takes place within five years after entry. A number of changes have been made in transposing Section 8A (1.) of the existing Act into this clause. In particular—

(i) the existing Section 8A (1.) (*a*) requires that *convictions* must be recorded within five years after entry; this means that if an immigrant commits an offence within that period, but succeeds in evading arrest until after he has been here for five years, he evades deportation, even though subsequently convicted of the offence; it is considered wrong that a premium should be placed on ability to evade arrest in this way, and Clause 13 accordingly makes deportation

possible so long as the *offence is committed* within five years after entry, provided of course that a conviction is eventually recorded;

(ii) the existing Section 8A (1.) (*a*) refers to an offence punishable by imprisonment for one year or longer; it is desirable that this clause should include offences punishable by death, as sentences of death are sometimes commuted to life imprisonment and it may be desired to deport the person concerned if he is to be released after serving some years in gaol.

(iii) the existing Section 8A (1.) (*b*) refers to a person who, the Minister is satisfied, "is living on the prostitution of others"; it is considered that the new clause should require that a conviction be recorded.

CLAUSE 14 (1.). This sub-clause, taken in conjunction with Sub-clauses (3.) to (7.), re-enacts the substance of the *Aliens Deportation Act* 1948. As it contemplates the deportation of aliens, irrespective of the length of their stay in Australia or whether or not they are still "immigrants", the provision rests on the "aliens" power in the Constitution.

CLAUSE 14 (2.). This sub-clause provides the only power in this Bill whereby a British subject, who has entered Australia regularly without any restriction such as a temporary entry permit, and who has not been convicted of crime or been admitted to an institution, may be deported. Under the existing Act, such a person could be given a Dictation Test at any time within five years after entry, and upon being convicted of failing to pass the test, could be deported. This sub-clause requires that the Minister, if he wishes to deport such a person because of bad conduct, advocacy of violent revolution, &c., must give him an opportunity to have his case considered by a Commissioner.

CLAUSE 14 (3.). CLAUSE 14 (4.). The alien or immigrant is given a month within which to decide whether to seek consideration of his case by a Commissioner; and if he so decides, the Minister must summon him before the Commissioner.

CLAUSE 14 (5.). The classes of persons qualified to be appointed as Commissioners, by the Governor-General, are the same as those specified in Section 21 of the *Nationality and Citizenship Act* 1948, as qualified to be appointed as chairmen of committees of inquiry, to hear persons whom the Minister proposed to deprive of citizenship. It is considered that it may prove difficult on occasion to secure the services of Supreme Court Judges (as at present required by the Aliens Deportation Act) and that it should be possible for the Governor-General to appoint other persons of suitable standing in the legal profession.

CLAUSE 14 (6.). CLAUSE 14 (7.). CLAUSE 14 (8.). These sub-clauses are self-explanatory.

CLAUSE 15. In Clause 5 of the Bill, the word " entry " is defined as including " re-entry " and " entered " as including " re-entered ". Clauses 13 and 14 refer, as mentioned above, to certain happenings within a specified period (five years) after an immigrant's " entry " to Australia. If some such provision as Clause 15 is not enacted, the effect of Clauses 13 and 14 would be that, each time an immigrant left Australia and returned, even after a very short visit to another country, he would once again become liable to deportation during the five years following each *re-entry*. The intention of Clause 15 is that if a person has lived in Australia for over two years without immigration restrictions, the period of five years within which he can be deported, under Clauses 13 and 14, should not begin again each time he re-enters Australia subsequently, unless he has been absent for over five years.

CLAUSE 16 (1.) (*a*). CLAUSE 16 (3.). CLAUSE 16 (4.). CLAUSE 16 (5.). Reference has been made, in the note above regarding Clause 6, to the fact that persons who enter Australia *after the commencement of the new Act* without entry permits will be prohibited immigrants. This will not apply to persons who have entered before the new Act comes into force. It is necessary to have power to deport such persons if they entered irregularly—e.g. as ship's deserters. This is the objective of Clause 16 (1.) (*a*), with such Sub-clauses (3.), (4.) and (5.) are also to be read.

CLAUSE 16 (1.), (*b*) and (*c*). Despite precautions taken by the Department, it is possible that persons described by these paragraphs will enter Australia with entry permits granted by officers who do not know that the documents produced are false or that the persons concerned are suffering from prescribed diseases, have been convicted of serious crime, or have previously been deported from another country. The clause contemplates that such persons should be liable to deportation unless and until special entry permits are granted to them, in recognition that they are persons described by these paragraphs.

CLAUSE 16 (2.). The intention is that the Regulations under the new Act will prescribe only the most serious diseases, &c. The comparable provisions of the present Immigration Act (Section 3) are regarded as too sweeping.

CLAUSE 17 (1.) and (2.). This clause is designed to preserve the power to deport alien visitors, who have been admitted before the new Act's commencement without being issued with certificates of exemption. Under

the existing Act it has been possible to allow such visitors to land without such certificates because the " Dictation Test " could be used as a means of enforcing departure. As the Dictation Test is being abolished by this Bill, some substitute power is necessary, as contemplated by this clause.

CLAUSE 17 (3.). Persons who have already entered Australia as members of the forces, or as staff or servants of diplomatic missions, can be deported under existing law by means of the Dictation Test if they cease to be such members or staff within five years after entry, are found ineligible to stay, but refuse to leave. As this Bill proposes to abolish the Dictation Test, the power of deportation has to be preserved by other means; and this is the objective of Clause 17 (3.).

Clause 8 (3.) effectively caters for such persons entering *after* the Bill becomes law.

CLAUSE 18. This very short clause is a vital one. It authorizes the deportation of persons who are prohibited immigrants under Clauses 6, 7, 8 or 16 of the Bill.

CLAUSE 19. It will be noted that the Minister under this clause may include a deportee's wife and children in a deportation order *if* the wife so requests. This ensures that in such circumstances arrangements can be made for the family to travel together on the same vessel. The clause is a re-enactment of Section 8BA of the existing Act.

CLAUSE 20. This re-enacts the first part of Section 8C of the present Immigration Act. The remaining provisions of Section 8C appear as Clause 39 (6.) of the Bill.

CLAUSE 21. } CLAUSE 22. } These clauses set out the responsibilities of shipping and aircraft operators in regard to the provisions of passages away from Australia for deportees and, in certain circumstances, the payment of the cost of keeping deportees in custody pending deportation. The existing law on such matters is contained in Section 13A of the Immigration Act. The changes contemplated by this Bill are that—

(*a*) a company should be obliged to " remove from Australia " (instead of having to take back " to the place whence he came ") a deportee who originally entered Australia from one of the company's vessels, as a ship's deserter, or by evading officers; it is considered that in such cases the company should not be able at present to plead inability to return the deportee to the place whence he came, but should have an obligation to remove him—if necessary taking him on board as a crew member, so restoring the original position existing before the deportee entered Australia;

(*b*) companies should no longer be liable to provide free passages for deportees who came to Australia as fully-screened migrants; the previous Government agreed in 1949 to this principle in respect of assisted-passage migrants, and it is considered that there is no justification for any different attitude to non-assisted migrants who were fully examined before being granted migrant's visas;

(*c*) companies should continue to be liable to provide free passages for other classes of persons in respect of whom they have obligations under the existing law; and if such a deportee (regularly admitted but not as a fully-screened migrant) cannot be returned to the place where he boarded the company's ship to come here, the company should be liable instead to pay a reasonable sum towards the cost of a passage to another place;

(*d*) a penalty of £500 should be provided for failure by companies to comply with the obligations referred to in (*a*) and (*c*);

(*e*) it should continue to be an obligation of companies, when required to do so, to provide passages at Commonwealth expense for deportees for whom they are not obliged to provide free passages; and a penalty of £200 should be incurred for failure to comply with such a requirement.

DIVISION 3.—DUTIES OF MASTERS IN RELATION TO CREWS.

CLAUSE 23.
CLAUSE 24.
CLAUSE 25.

These clauses reproduce in substance the provisos to paragraph (*k*) of Section 3 (1.) of the existing Immigration Act. They are necessary measures to enable crews of overseas vessels to be checked into and out of Australia, and to be located if they should desert their vessels.

CLAUSE 26.

It may happen that a vessel, after arriving in Australia from overseas, becomes engaged solely in coastal trade in Australian waters with an Australian crew. In such circumstances this clause will enable the master to be exempted from the provisions of this Division which are, of course, concerned with vessels trading between Australia and overseas countries.

DIVISION 4.—OFFENCES IN RELATION TO ENTRY.

CLAUSE 27.

It is not contemplated that prosecutions should be launched under this section unless it is clear that some stronger deterrent than deportation alone is needed to discourage the person concerned from seeking to enter unlawfully again. It is to be observed that the clause refers only to persons entering after the new Act's commencement.

CLAUSE 28. This is a re-enactment of Section 9 of the existing Immigration Act, with an increase in the penalty from £100 (fixed over 50 years ago) to a maximum of £500. As under existing practice, the masters, owners, agents or charterers will not be prosecuted as a matter of course each time an irregular entry takes place from their vessels but only in the more serious cases—e.g., where a passenger has been refused an entry permit, the master has been warned that the passenger should not be allowed to land, but landing is nevertheless permitted by the master.

CLAUSE 29. This clause also is a reproduction of a provision of existing law (Section 9A of the Immigration Act) with the exception that the present penalties of £100 and £200 are raised to £500 and £1,000.

CLAUSE 30. This clause represents a combination of Section 12A of the existing Immigration Act and Regulation 42 of the existing Immigration Regulations.

CLAUSE 31. Reproduces, in substance, Section 12B of the Immigration Act and Regulations 17 and 18 of the existing Immigration Regulations.

DIVISION 5.—EXAMINATION, SEARCH AND DETENTION.

CLAUSE 32.
CLAUSE 33.
CLAUSE 34. These provisions are very similar to those of the Customs Act and are necessary to ensure that the passengers and crews of vessels arriving from overseas are examined by officers before entry. In the case of ships, officers board the vessels before they tie up and it is very desirable that immigration examinations be completed before the ships actually berth; this is the reason why Clause 33 (2.) (*b*) requires the master not to move from the boarding station until permitted to do so.

CLAUSE 35.
CLAUSE 36. It is obviously desirable that officers and ship's masters be empowered to prevent the entry of persons referred to in Clause 35, or to have the persons concerned held in custody ashore while their ship is in port if there is no suitable place on board in which they can safely be kept. Clause 36 (2.) provides that the person may be placed on board another vessel with the consent of the master of that vessel; it occasionally happens that a ship arrives having (e.g.) a stowaway on board who cannot be allowed to stay in Australia, and the ship may not be returning to the stowaway's homeland; the master may wish to have the stowaway transferred to another ship of the same line which is in port and about to go to the stowaway's homeland. Clause 36 (2.) will permit this kind of arrangement which is to the benefit of all concerned. The existing Immigration Regulation No. 7 authorizes the same practice at present. In other respects, Clause 35 re-enacts Section 14 of the existing Act, and Clause 36 re-enacts Section 13C, extending it to cover not only stowaways but other persons who have to be prevented from entering and staying in Australia.

CLAUSE 37 (1.). CLAUSE 37 (2.). These sub-clauses are the equivalent of Sections 9B and 14B (1.) of the existing Immigration Act relating to searching of vessels for stowaways and other persons who may be seeking to enter irregularly.

CLAUSE 37 (3.). CLAUSE 37 (4.). CLAUSE 37 (5.). The existing Act (Section 14B (2.)) empowers officers to enter and search premises &c., in which they suspect there are prohibited immigrants, " at any reasonable hour in the daytime "—without warrant. It is now considered desirable that search warrants should be necessary, issued by an authorized officer (who would in practice be the chief officer of the Department in the State concerned). With this safeguard, it is considered that search should be possible by night as well as day, as experience has shown that prohibited immigrants can often only be found at night. Clause 37 (5.) (*b*) reproduces the substance of existing Immigration Regulation No. 10.

CLAUSE 37 (6.). The equivalent of Section 14B (1.) of the existing Act.

CLAUSE 37 (7.). Seeks to make it clear that only reasonable force, according to the circumstances, may be used by officers.

CLAUSE 38. This clause relates to the arrest of persons against whom no deportation order has been made by the Minister. It is considered that such a person, if he has to be held for any length of time before the Minister decides the question of deportation, should have to be brought before a magistrate or other prescribed authority, to permit independent assessment of the officer's grounds for supposing the arrested person to be a prohibited immigrant. It is not of course, desired that this should interfere with the individual's right to other remedies, such as habeas corpus proceedings. This is ensured by Clause 38 (8.).

CLAUSE 39. This clause relates to the arrest by officers of persons whom the officers reasonably suppose to be the subject of deportation orders. A person so arrested might dispute the arrest on one of two grounds—

(i) that he (the person arrested) is not identical with the person named in the deportation order; or

(ii) that the order, though relating to him, is invalid as a matter of law.

In the event of a dispute as to identity as in (i), it is considered that the person arrested should have a simple and expeditious means of being heard by a magistrate or other independent person, without having to seek release by habeas corpus proceedings (though these should of course, still be open to him if he wishes to be heard by a superior court).

If, however, the dispute is based on invalidity of the Minister's action in signing a deportation order, then it is considered that the question should be decided by the superior courts, and the normal remedies such as habeas corpus proceedings can and should be used.

Accordingly Sub-clauses (3.), (4.) and (5.) provide for the person concerned to be heard by a prescribed authority if identity is disputed, and Sub-clause (8.) explicitly preserves the right of the person concerned to be heard by a superior court, and to be released by that court if it should decide that no valid deportation order is in force in relation to the person arrested.

Sub-clause (6.) authorizes the detention of a deportee pending deportation—provided of course, that release has not been ordered by a prescribed authority or superior court, under the other provisions of the clause. Sub-clause 6 reproduces the detention provisions of Section 8C of the existing Immigration Act.

CLAUSE 40. It is the intention that, if the State Governments are prepared to agree, magistrates should have the function of hearing persons arrested as prohibited immigrants, and those arrested as deportees who claim not to be identical with the persons named in deportation orders. If a State Government is not prepared to agree then Clause 40 (1.) will enable the Minister to appoint other persons with suitable qualifications.

CLAUSE 41. It is considered desirable that there should be a specific direction of this kind to officers, to place beyond any possible doubt the necessity for arrested persons to be given facilities to obtain any legal redress they believe they may be entitled to.

CLAUSE 42. Reproduces in modified form some of the provisions of the existing Immigration Regulations Nos. 14 and 15.

CLAUSE 43. The existing Immigration Regulation No. 14 provides power to take any action necessary to decide whether a person is identical with a prohibited immigrant. Clause 43 aims to empower officers to take such measures and also to secure identification for the future even if it is already clear that the person is, in fact, a prohibited immigrant.

CLAUSE 44. The equivalent of Section 9C of the existing Immigration Act.

CLAUSE 45. Section 10 of the present Immigration Act provides for the detention of vessels (from which prohibited immigrants have entered) until such time as satisfactory sureties are given for the payment of penalties which may be imposed. Clause 45 makes similar provision but permits detention of the vessel, pending such sureties being given, in cases where *any* offence against the new Act appears to have been committed by the master, owner, &c. This is, of course, simply a logical extension of the present Section 10.

DIVISION 6.—IMMIGRATION AGENTS.

CLAUSES 46 TO 53.

The activities of "immigration agents"—i.e., persons handling immigration applications and passage bookings on behalf of others—are controlled at present by Sections 14E to 14N of the Immigration Act. In brief, these Sections, passed in 1948, provide that persons may not act as immigration agents, for reward, unless registered by the Department. Registration may be granted only to persons who satisfy authorized officers that they are fit and proper persons. Registered agents are issued with certificates of registration valid for a specified period—in practice, one year. Authorized officers have the same discretion and powers in relation to the extension of certificates as they have in relation to the original registration of agents. Fees chargeable by agents may be fixed by the Minister and agents are obliged, when required, to furnish information as to their fees. Agents who have taken money for passages to Australia may be ordered by the Minister either to provide the passages within a reasonable time or refund the money.

Clauses 46 to 53 of this Bill do not seek to change these provisions except in the matter of method; it is desired to cease "registering" agents who seem fit and proper persons to be agents, because it can happen that registration is granted to persons who later prove unscrupulous in their activities and such persons should not be able to produce "credentials" from the Department in the shape of certificates of registration. Instead, it is proposed that persons who are regarded as suitable should be allowed to act as agents without being registered provided that they first give notice of their intention so to act; and that those regarded as unsuitable should be directed by the Minister not to act as agents. The consequences of continuing to act, despite such a direction, will be the same as the consequences of acting without being registered under the present Act.

It is a corollary of the changed approach that a person who advertises himself to be an agent registered or approved by the Department should be guilty of an offence and this is provided for in Clause 49. Otherwise each of the Clauses in this Bill relating to agents will be found to have its counterpart in a Section of the existing Act.

DIVISION 7.—GENERAL.

CLAUSE 54.

This obviously essential power to take securities is a re-enactment of Section 14D of the existing Immigration Act.

Sub-clause (3.) which is very similar to Section 48 of the Customs Act, is regarded as a desirable safeguard of securities furnished.

CLAUSES 55 AND 56. It has long been recognized that in the field of deportation of immigrants, it is vital to have provisions casting upon any individual who disputes the validity of deportation action against him, an obligation to give personal evidence as to matters concerning his own personal history and therefore peculiarly within his knowledge such as the matters listed in this sub-clause. In effect these clauses are the equivalent of sub-sections (3.), (3A.), (3B.), (3C.) and (4) of Section 5 of the present Immigration Act. In the event of personal evidence being given which appears to the Court to reflect upon the validity of the deportation order, then of course the onus will be on the Department to satisfy the Court that the deportation order is valid.

CLAUSE 57. This clause also is vital to the administration of immigration control. It would often be impossible to bring officers from distant States, still less from overseas posts, to give personal evidence in deportation cases. The alternative, as contemplated by this clause, is that documents should be admissible in evidence.

CLAUSE 58. It is considered that there should be statutory authority for the establishment of immigration centres. These have, of course, been established for some time but their operation will be assisted by the existence of statutory authority, and particularly of regulations thereunder, regarding the conduct of persons in them and the removal of persons from them.

PART III.—EMIGRATION OF CERTAIN PERSONS.

CLAUSES 59 TO 64. The *Emigration Act* 1910 prohibits the emigration from Australia, except in pursuance of an emigration permit issued by the Minister or an authorized officer, of—

"(*a*) any child who is under contract to perform theatrical, operatic, or other work outside the Commonwealth;

"(*b*) any child of European race or extraction unless in the care or charge of some adult person of European race or extraction; and

"(*c*) any aboriginal native."

(*Emigration Act* 1910, Section 3.)

These provisions may be considered under the two headings of (i) children and (ii) aboriginals.

Children.

Provisions (*a*) and (*b*) above relating to children, have numerous and important deficiencies.

In particular, (*a*) really imposes on the Department the duties of—

(i) enquiring in respect of every child leaving Australia (whether in the care of its parents or not) whether it is under contract for work abroad;

(ii) (if a child is found to be under contract) judging whether it is in the child's interests to be allowed to go abroad—whether or not the child's parents or other guardians have consented or are accompanying the child.

In actual practice it is, of course, quite impossible to carry out these functions effectively. Even if officers were to be given the task of questioning every departing child, or the accompanying guardian, there could never be any certainty that officers were told the truth as to the objects of the journey; and it is, in any case, quite opposed to ordinary ideas that a Government official should have to decide what is in a child's best interests, in opposition to the child's legal guardians.

As to (*b*), it is most undesirable that our legislation should seem to be based on distrust of people of races different to our own; any concern which may have existed in 1910 about Australian children travelling in the care of Asians, as such, no longer exists today; and in any case it is, once again, a matter for the parents or other legal guardians to decide whether a child should or should not emigrate in the care of a particular person.

There can be no doubt, therefore, that the existing provisions relating to emigration of children demand repeal.

In considering what alternative provisions should be made, so far as children are concerned, it has been accepted as fundamental that normally, it is a matter for the parents or other legal guardians—not a Government Department—to decide whether a child should emigrate; and that any dispute on the matter, e.g., between one parent and another or between the parents and the child, can ultimately be resolved only by judicial process in the Courts.

It has been kept in mind, of course, that there are provisions of State law for the hearing of such disputes and for the Courts to make orders and issue injunctions &c., to ensure as far as possible that Court decisions as to custody of children are observed. There have, however, been cases where, for example, children have been taken out of Australia, and out of the lawful custody of their mothers here, by their fathers, in defiance of Court orders awarding sole custody to the mothers. It is considered that existing State law requires to be supplemented by Commonwealth legislation to provide some means whereby parents apprehensive of such happenings can more readily prevent passages out of Australia being afforded to their children.

Clause 63 of the Bill in effect provides that where a Court has awarded custody of a child to a parent, or proceedings relating to custody have been instituted by a parent, then shipping and aircraft companies may be placed on notice by the parent in question not to afford a passage to the child except with the consent of the parent or of the Court. It is also provided that it

shall be an offence (penalty—£500) for a company to afford a passage in such circumstances, without the consent of either the parent or the Court; and the individual (e.g., the other parent not having lawful custody of the child) who procures the child's departure in such circumstances would also be guilty of offence under Clause 62 (Penalty—£500 or six months imprisonment).

It is considered that these proposals, if enacted into law, will provide a worthwhile supplement to existing State law particularly in giving fuller practical effect to custody orders, injunctions, &c., issued by State courts.

Aboriginals.

The chief deficiency of the existing law relating to the emigration of aboriginals is that it makes no distinction between those who have been deemed capable of assuming the normal rights and duties of citizenship, and those who are still subjected to disabilities and controls. The Bill proposes that the former should be free to emigrate without Government permission in the same way as any other free Australian; that those still under disabilities should require emigration permits as a general rule; but that the Minister of the day should be able in exceptional individual cases to waive the need for the aboriginals to apply for emigration permits. It will continue to be an offence to take aboriginals away from Australia without emigration permits, in cases where such permits are still required to be obtained. Penalty—£500 (Clause 64).

PART IV.—MISCELLANEOUS.

CLAUSE 65. Obstructing or hindering an officer is already an offence under Immigration Regulation 19. This clause extends the offence to cover deceiving or misleading officers whether in the immigration or emigration fields and provides an adequate maximum penalty.

CLAUSE 66. In the field of immigration, it is considered that it should be the function of the Department rather than of private citizens to decide whether proceedings should be instituted for offences.

CLAUSE 67. The regulations authorized by this clause are those shown by experience to be necessary.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.