

2010 - 2011 - 2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CITIZENSHIP AMENDMENT (DEFENCE FAMILIES) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and Citizenship,
the Hon. Chris Bowen MP)

Australian Citizenship Amendment (Defence Families) Bill 2012

OUTLINE

The Australian Citizenship (Defence Families) Bill 2012 (“the Bill”) amends the *Australian Citizenship Act 2007* (“the Act”) to enable certain family members of current and future overseas lateral recruits to the Australian Defence Force (ADF) to satisfy the relevant defence service residence requirement and be eligible for conferral of Australian citizenship at the same time as the enlisted ADF member.

The residence requirement for conferral of Australian citizenship generally requires the applicant to be in Australia for the period of 4 years immediately before the day the person made their application for Australian citizenship. There are some exceptions to this requirement. One such exception is where a member of the ADF completes relevant defence service, as they are able to satisfy the residence requirement in a shorter period of time. This Bill seeks to extend this benefit to certain family members to also satisfy the reduced residence requirement.

The amendments in this Bill will improve fairness by extending the same residence requirements to the family of ADF lateral recruits, acknowledging that defence service can be dangerous and the family of ADF lateral recruits bear a share of this danger. Further, families of ADF lateral recruits migrate to Australia as a family unit and all face similar settlement challenges. The amendments in this Bill will assist these families settling in Australia including accessing employment opportunities and education assistance. The amendments in this Bill will also assist Australia to attract personnel to highly specialist roles in the ADF.

In particular, the Bill amends the Act to:

- enable family members of a person who is an ADF lateral recruit who has completed relevant defence service to be eligible for the relevant defence service residence requirement for Australian citizenship;
- clarify that a person will have completed relevant defence service if:
 - the person has completed a total of at least 90 service days in one or more of the Permanent Forces, that is, the Permanent Navy, the Regular Army, or the Permanent Air Force (whether or not that service was continuous);
 - the person has completed a total of at least 90 service days on which he or she was required for, and attended and was entitled to be paid for, duty in one or more of the Naval, Army or Air Force Reserves (whether or not that service was continuous); or
 - the person was discharged from service undertaken in one or more of the Permanent Forces or the Reserves as medically unfit for that service, and became so unfit because of service undertaken in any of the Permanent Forces or the Reserves;
- clarify that a person undertakes service in the Permanent Forces or the Reserves only if the person is appointed, enlisted, or transferred into any of the Permanent Forces or the Reserves; and
- make consequential amendments.

FINANCIAL IMPACT STATEMENT

The financial impact of these amendments is low. The costs of implementing these amendments to the Act will be met from within existing resources of the Department of Immigration and Citizenship.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation has been consulted and has advised that a regulatory impact statement is not required. The advice reference is 12437 and 13862.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at Attachment A.

AUSTRALIAN CITIZENSHIP AMENDMENT (DEFENCE FAMILIES) BILL 2012**NOTES ON INDIVIDUAL CLAUSES****Clause 1 Short title**

1. This clause provides that the short title by which this Act may be cited is the *Australian Citizenship Amendment (Defence Families) Act 2012*.

Clause 2 Commencement

2. Subclause 2(1) provides that each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Further, any other statement in column 2 has effect according to its terms.
3. Table item 1 provides that sections 1 to 3 and anything in this Act not elsewhere covered by this table commence the day this Act receives the Royal Assent.
4. Table item 2 provides that Schedule 1 to this Act commences on a single day to be fixed by Proclamation. It also provides that if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.
5. The note in subclause 2(1) makes clear that the table relates only to the provision of this Act as originally enacted. The table will not be amended to deal with any later amendments of this Act.
6. Subclause 2(2) provides that any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

Clause 3 Schedule(s)

7. This clause provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. In addition, any other item in a Schedule to this Act has effect according to its terms.

SCHEDULE 1 – Amendments

Australian Citizenship Act 2007

Item 1 Paragraphs 21(2)(c), (3)(c) and (4)(d)

8. This item omits each reference to “has completed relevant defence service” and substitutes it with “satisfies the defence service requirement” in paragraphs 21(2)(c), 21(3)(c) and 21(4)(d) of the Act. This is to update the references in each of these paragraphs as a result of the amendments made in item 2.
9. This item is a consequential amendment as a result of item 2.

Item 2 Section 23

10. This item repeals existing section 23 in Subdivision B of Division 2 of Part 2 of the Act and substitutes new section 23.
11. Currently, section 23 of the Act provides that for the purposes of section 21, a person has completed *relevant defence service* if the person:
 - has completed:
 - at least 90 days service in the permanent forces of the Commonwealth; or
 - at least 6 months service in the Naval Reserve, the Army Reserve or Air Force Reserve; or
 - was discharged from that service as medically unfit for that service and who became so unfit because of that service.
12. Section 21 of the Act sets out the application and eligibility requirements for acquiring Australian citizenship by conferral. Paragraphs 21(2)(c), 21(3)(c) and 21(4)(d), as amended by item 1, provide that a person is eligible to become an Australian citizen if the Minister is satisfied that the person satisfies the general residence requirement, or the special residence requirement, or satisfies the defence service requirement, at the time the person made the application.
13. New subsection 23(1) provides that for the purposes of section 21 of the Act, a person satisfies the defence service requirement if the person has completed relevant defence service.
14. New subsection 23(2) provides that if:
 - a person (the *defence person*) was granted, on or after 1 July 2007, a visa prescribed by the regulations; and
 - the defence person has completed relevant defence service; and
 - another person (the *relative*) was a member of the family unit of the defence person when the defence person was granted the visa; and
 - the relative holds a visa of that kind because the relative is a member of the family unit of the defence person;

the relative satisfies the *defence service requirement* for the purposes of section 21.

15. The purpose of new subsection 23(2) is to allow certain relatives, of person who was granted a visa prescribed by the regulations on or after 1 July 2007 and completes the relevant defence service as provided for in new subsection 23(4), to satisfy the defence service

requirement for the purposes of section 21 of the Act. Those relatives are persons who were a member of the family unit of the defence person when the defence person was granted the visa and who hold a visa of that kind because the relative is a member of the family unit of the defence person.

16. The visa will be prescribed in the *Australian Citizenship Regulations 2007* as the kind of visa granted to people recruited by the ADF may change over time. The kinds of visas granted to people recruited by ADF are prescribed in the *Migration Regulations 1994*. The purpose this amendment is to provide flexibility to amend the *Australian Citizenship Regulations 2007* to update the kinds of visas granted to people recruited by the ADF, if and when the *Migration Regulations 1994* are amended, without the need to amend the Act.
17. New subsection 23(2) would allow those relatives to satisfy the defence service requirement, rather than the general residence requirement, or the special residence requirement, for paragraphs 21(2)(c), 21(3)(c) and 21(4)(d) of the Act.
18. Currently, an ADF member and any children under 16 are provided with a reduced residence requirement. That is, they can apply for Australian citizenship after the ADF member has completed 90 days of service in the permanent forces or 6 months service in the Reserve forces. Meanwhile, spouses and other family members such as children over 18 or elderly parents, do not receive the same concession and are required to wait for at least 4 years.
19. As noted above, new subsection 23(2) will extend the same residence requirements to the spouse and family of ADF personnel, and will assist them in facing the challenges associated with permanent migration. It will also assist the families of recruits in accessing employment opportunities and education assistance.
20. New subsection 23(3) provides that if:
 - a person (the *defence person*) who was granted, on or after 1 July 2007, a visa prescribed by the regulations; and
 - the defence person dies while undertaking service in the Permanent Forces or the Reserves; and
 - another person (the *relative*) was a member of the family unit of the defence person when the defence person was granted the visa; and
 - immediately before the death of the defence person, the relative held a visa of that kind because the relative was a member of the family unit of the defence person;

the relative satisfies the *defence service requirement* for the purposes of section 21.
21. The purpose of new subsection 23(3) is to allow certain relatives of a person granted, on or after 1 July 2007 a visa prescribed by the regulations but who dies while undertaking service in the Permanent Forces or the Reserve, to satisfy the defence service requirement for the purposes of section 21 of the Act. Those relatives are persons who were a member of the family unit of the defence person when the defence person was granted the visa and who immediately before the death of the defence person held a visa of that kind because the relative was a member of the family unit of the defence person. New subsection 23(3) allows members of the family unit of a defence person to retain their reduced residence eligibility in the event of the death of the defence member before their eligibility period has been met.

22. New subsection 23(3) will allow those relatives to satisfy the defence service requirement, rather than the general residence requirement, or the special residence requirement, for paragraphs 21(2)(c), 21(3)(c) and 21(4)(d) of the Act, where the defence person dies even if the defence person does not complete the relevant defence service.
23. New subsection 23(4) provides the definitions for section 23 of the Act.
24. “*Member of the family unit*” of a person has the same meaning as in the *Migration Act 1958*. Subsection 5(1) of the *Migration Act 1958* provides that member of the family unit of a person has the meaning given by the regulations made for the purposes of this definition. Regulation 1.12 of the *Migration Regulations 1994* contains the definition of member of the family unit. The definition includes the family head’s spouse or de facto partner, dependent children, and certain dependent relatives.
25. The definition is relevant in the migration context in determining the family status and composition of the ADF lateral recruit when they apply to migrate to Australia with their family. For the purposes of Australian citizenship, the relative need only demonstrate that they hold the relevant visa because they were a member of the family unit of the defence person when the defence person was granted the visa.
26. The term “*Permanent Forces*” means the Permanent Navy, the Regular Army or the Permanent Air Force. This clarifies that it is the Permanent Navy, the Regular Army or the Permanent Air Force which a person may undertake service in to satisfy relevant defence service.
27. “*Relevant defence service*” is defined as:
- a person has completed *relevant defence service* if:
 - the person has undertaken a total of at least 90 days service in one or more of the Permanent Forces (whether or not that service was continuous); or
 - the person has undertaken a total of at least 90 days service on which he or she was required for, and attended and was entitled to be paid for, duty in one or more of the Reserves (whether or not that service was continuous); or
 - the person:
 - was discharged from service undertaken in one of the Permanent Forces or the Reserves as medically unfit for that service; and
 - became so unfit because of service undertaken in any of the Permanent Forces or the Reserves.
28. This clarifies the intention of current section 23 of the Act. It clarifies that the service does not need to be continuous. It also clarifies that the service in the Reserves is at least 90 days service which a person was required for, and attended, and was entitled to be paid for, duty in one or more of the Reserves. As service in the Reserves can be undertaken on a part-time or voluntary basis, this amendment makes it clear that a person in the Reserves is required to undertake service which was required, which they attended, and which they were entitled to be paid for, in order to satisfy the defence service requirement.
29. This amendment also addresses the findings in the Administrative Appeals Tribunal decision in *Keenan and Minister for Immigration and Citizenship [2008] AATA 860*. That decision found that an applicant who was enrolled in the Army Reserves for 6 months, but had only completed 3 and a half paid service days, had completed relevant defence service for the purposes of Australian citizenship eligibility.

30. The term “*Reserves*” is defined to mean the Naval Reserve, the Army Reserve or the Air Force Reserve. This maintains the Naval Reserve, the Army Reserve or the Air Force Reserve as the only Reserves in which a person may undertake service in order to satisfy relevant defence service.
31. The term “*service*” is defined as a person undertakes *service* in the Permanent Forces or the Reserves only if the person is appointed, enlisted or transferred into any of the Permanent Forces or the Reserves.
32. This amendment clarifies that it is only people who are appointed, enlisted or transferred into any of the Permanent Forces or the Reserves who will satisfy the defence service requirement. It clarifies that a contractor or a locally engaged employee will not be able to satisfy the defence service requirement.
33. The note following subsection 23(4) refers readers to the *Naval Defence Act 1910*, the *Defence Act 1903* and the *Air Force Act 1923* for appointments, enlistment or transfers into any of the Permanent Forces or the Reserves.

Item 3 Application

34. This item provides for the application of the amendments made by Schedule 1 to this Bill.
35. This item provides that the amendments made by Schedule 1 to this Bill apply in relation to the making of a decision under section 24 of the *Australian Citizenship Act 2007* after the commencement of this Act, whether the application to which the decision relates was made before or after that commencement.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Citizenship Amendment (Defence Families) Bill 2012

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The objectives of the *Australian Citizenship Amendment (Defence Families) Bill 2012* are to:

- provide that an applicant for citizenship by conferral under subsection 21(2) (General Eligibility) of the *Australian Citizenship Act 2007* (the Act) does not need to satisfy the general residence requirement for citizenship purposes if they obtained permanent residence as a dependent family member of a lateral recruit to the Australian Defence Forces and that lateral recruit subsequently completed relevant defence service;
- specify that a person undertakes service in the Australian Permanent Forces or the Reserves only if the person is appointed, enlisted or transferred into any of the Australian Permanent Forces or the Reserves; and
- in relation to service in the Reserve forces, define relevant defence service, to be at least 90 days paid service days (whether or not that service was continuous) in the Naval, Army or Air Force Reserves.

The Bill will amend the Act to require that an applicant under section 21 of the Act must meet the general or special residence requirement, or satisfy the defence service requirement. Section 23 of the Act will be replaced with a new section that provides, among other matters, that a family member of a lateral recruit who has completed relevant defence service will satisfy the defence service requirement.

The new section 23 will also require, in effect, that:

- the family member made a combined application for and was granted a visa of the same class as the lateral recruit on or after commencement of the Act; and
- subsequent to being granted the visa, the lateral recruit has completed relevant defence service or the lateral recruit has died and immediately before the death of the lateral recruit, the family member held such a visa.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms, however, these provisions will allow family members of lateral recruits to enjoy the benefits of citizenship in an expedited manner.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

The Hon. Chris Bowen, Minister for Immigration and Citizenship