



Migration (Sponsorship Fees) Bill 2007

Patrick O'Neill
Law and Bills Digest Section

Contents

Purpose.....	2
Background.....	2
Concluding comments	3
Endnotes.....	3

Migration (Sponsorship Fees) Bill 2007

Date introduced: 30 May 2007

House: House of Representatives

Portfolio: Immigration and Citizenship

Commencement: On Royal Assent

Purpose

To validate the collection of visa application charges from certain sponsorship applicants during the period 1 May 1997–23 May 2007.

Background

A fee—initially amounting to \$145 for a single application—has been charged to persons or organisations wishing to sponsor a migrant since 1989.¹ The fee is now \$260.²

The *Migration (Visa Application) Charge Act 1997* introduced a new system of ‘visa application charges’ on a cost-recovery principle. This system was fully implemented on 30 April 1997 by amendments to the Migration Regulations 1994.³ Those amendments, however, failed to amend regulation 5.38 in two important respects:

- they failed to replace the concept of ‘fee’ with the concept of ‘visa application charge’ (a change that was implemented elsewhere in the regulations at the time)
- they failed to cater for the practice that had arisen where a visa application was lodged by the person wishing to migrate, rather than by the sponsor—the ‘fee’ was only chargeable where the visa application was made by the sponsor.

Regulation 5.38 was amended in April and May 2007 to correct these two deficiencies. This however left the monies that had been collected during the previous ten years in limbo, effectively unlawfully collected.

There have been previous cases where taxes or fees have been found to have been unlawfully collected and have been subsequently validated, for example:

- the *Customs (Tariff Concession System Validations) Act 1999* was passed to validate ‘certain delegations in consequence of which concessionary customs duty was collected from various importers’⁴

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- in 1997, when the High Court found that the states had been unlawfully collecting tobacco franchise fees,⁵ the Commonwealth passed a package of legislation to ‘collect revenues formerly levied under State franchise laws which the High Court had held either to be invalid or constitutionally doubtful’⁶
- the *Industry Research and Development Amendment Act 1995* was passed to ‘retrospectively validate certain eligibility guidelines and criteria relating to the 150% research and development tax concession’⁷

The 1997 tobacco-fees case is very similar to the present one: without it, the duty collected would have had to be repaid. Without this Bill, the sponsorship fees collected over ten years would also have to be repaid. The Government has given no indication as to how many people have paid the sponsorship fee during this period.

Concluding comments

This Bill corrects a regulatory flaw and validates a payment that was validly collected from 1989 to 1997, but was invalidly collected from 1997 to May 2007.

Endnotes

1. Migration (Criteria and General) Regulations 1989, Statutory Rule 1989, No. 365, r. 192.
2. Migration Regulations 1994, r. 5.38.
3. Migration Regulations (Amendment) 1997, Statutory Rule 1997, No. 91, gazetted and commencing on 1 May 1997.
4. Ian Ireland and Bernard Pulle, ‘[Customs \(Tariff Concession System Validations\) Bill 1999](#)’, *Bills Digest*, no. 60, Department of the Parliamentary Library, Canberra, 1999–2000.
5. [Ha v New South Wales; Walter Hammond & Associates v New South Wales](#) [1997] HCA 34; (1997) 189 CLR 465.
6. Bob Bennett, ‘[Franchise Fees Windfall Tax \(Collection\) Bill 1997](#)’, *Bills Digest*, no. 23, Department of the Parliamentary Library, Canberra, 1997–98.
7. Ian Ireland, ‘Industry Research and Development Amendment Bill 1995’, *Bills Digest*, no. 116, Department of the Parliamentary Library, Canberra, 1995–96.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2522.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.