



PARLIAMENT OF AUSTRALIA
JOINT STANDING COMMITTEE ON MIGRATION REGULATIONS

PARLIAMENT HOUSE
CANBERRA ACT 2600
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The Hon G L Hand, MP
Minister for Immigration, Local
Government and Ethnic Affairs
Parliament House
CANBERRA ACT 2601

Dear Minister

The Joint Standing Committee on Migration Regulations has been considering the issue of change of status on the basis of marriage, including a consideration of the Report of the Working Party on the National Population Council.

The Committee is not in a position to put a final report to the Parliament prior to the end of November, when the current arrangements for change of status by visitors on spouse grounds will cease.

However, the Committee is mindful of your desire to take action on the matter prior to 30 November and in order to assist you in this regard is prepared to make some preliminary recommendations immediately, whilst at the same time flagging those areas where there is a need for further detailed investigation.

After a considerable discussion of the issues the Committee wishes to make the following recommendations:

RE: MARRIAGE

- 1) that the law presently operating until 30 November should continue to apply after that date for those applicants applying to change status on the basis of marriage subject to the additional provisions outlined below;
- 2) it is recognised that because of immediate resource implications it would be impractical for all applicants for change of status and their spouses to be interviewed and that therefore:
 - a) all applicants where it is suspected that a principal purpose is immigration be interviewed; and
 - b) all other applicants be interviewed on a random or risk analysis basis;

3) that in order for an appropriate determination to be made under 2a) and 2b) the application form be extended to include more specific information and corroborative evidence of public commitment to marriage, for example:

- a) the period the parties have known each other;
- b) where the parties have resided before marriage and after marriage and for what period; and

any other questions which might assist Departmental officers in establishing the bona fides of the marriage for the purpose of immigration;

4) that for those people who have married and have not yet gained permanent residence and who:

- a) are proven victims of domestic violence or cruel and unconscionable conduct and are a party to non ex parte proceedings in a court of law; and

- i) can demonstrate that they come from a cultural situation where, to return as a partner in a failed marriage would impose severe hardship or make them subject to discrimination; or

- ii) have a child or children who are Australian citizens who would be entitled to maintenance from the Australian parent; or

- iii) for those people who do not meet criteria i) or ii) above while the presumption is that they will return overseas, if there are circumstances of a compelling and compassionate nature;

provision be made in the regulations for them to be considered for permanent residence, even though their Australian spouse may have withdrawn their sponsorship;

5) that where legal proceedings are not complete the Department of Immigration, Local Government and Ethnic Affairs not initiate any action to disadvantage the applicant;

RE: DE FACTO RELATIONSHIPS

- 6) that for those people who are in a de facto relationship there be a period of 12 months proven cohabitation, with the onus of proof on the applicant, before an application can be made;
- 7) in the first instance that application will be for a two year Temporary Entry Permit, after which period an application for permanent residence can be made and will be granted on the basis of evidence being supplied of a continuing permanent relationship.

(The Committee is divided on the issue of the right to work during this period and will report more fully on the matter in its next report to Parliament).

OTHER ISSUES

- 8) That present penalties in proven cases of fraud by Australian citizens and visitors in cases of change of status should be strengthened;
- 9) that a specific offence in relation to racketeers be created under the Migration Act 1958 with appropriate penalties;
- 10) that applicants for GORS on spouse grounds have a right of review.

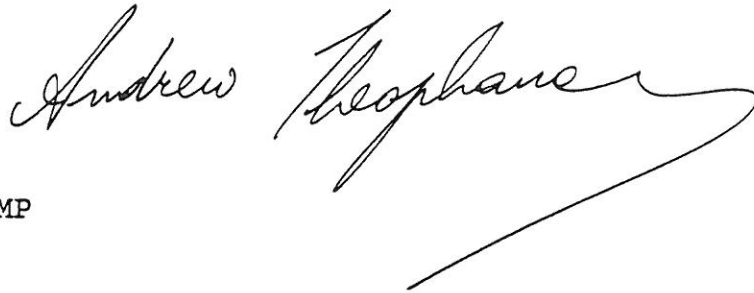
In its report, the Committee will present argument and further comment on the recommendations made above.

In addition, as mentioned earlier, the Committee will continue to inquire into those matters which require further investigation. These include:

- criteria for assessment of the genuineness of marriage and whether the principle applied in the United Kingdom, the "dominant purpose", rule would be appropriate in Australia;
- Procedures Advice Manual guidelines for assessment of the genuineness of marriage;
- resource implications of more detailed assessment and interviewing;
- application of resources and training programmes.

I hope to submit the full report early in the Autumn Session. It is my intention to table this letter in Parliament at soon as possible. I must also advise you that there are aspects of this report with which Senator Cooney disagrees.

Yours sincerely

A handwritten signature in cursive script that reads "Andrew Theophanous". The signature is written in black ink and is positioned to the right of the typed name.

A Theophanous, MP
Chairman

7 November 1990