The Parliament of the Commonwealth of Australia

Joint Standing Committee on
Migration Regulations

# First Report

# Illegal Entrants in Australia—
# Balancing Control and Compassion

September 1990

Australian Government Publishing Service
Canberra

ISBN 0 644 13350 3



Printed by Authority by the Commonwealth Government Printer

# MEMBERS OF THE COMMITTEE

Dr Andrew Theophanous, MP Chairman
Mr Philip Ruddock, MP Deputy Chairman
Senator Barney Cooney
Senator Jean Jenkins (until 30 June 1990)
Senator Jim McKiernan
Senator John Olsen
Senator Sid Spindler (from 1 July 1990)
Dr Robert Catley, MP
Hon Clyde Holding, MP
Rt Hon Ian Sinclair, MP
* Hon Ian Wilson, MP

**Legal Consultant**

Dr Kathryn Cronin

**Staff**

Ms Robina Mills, Secretary
Ms Frances Kleiss
Ms Heidi Quinlan

* Mr Wilson was unable to attend meetings of the Committee and took no part in the deliberations on this report.

# TABLE OF CONTENTS

# APPENDICES

# TERMS OF REFERENCE

The Joint Standing Committee on Migration Regulations was established on 17 May 1990 to inquire into and report upon:

(a) regulations made or proposed to be made under the Migration Act 1958;

(b) all proposed changes to the Migration Act 1958 and any related acts;

(c) such other matters relating to the Migration Act 1958, regulations or reports as may be referred to it by the Minister for Immigration, Local Government and Ethnic Affairs.

# CHAPTER 1

## BACKGROUND TO THE COMMITTEE

- Introduction
- Establishment of the Joint Select Committee
- The Minister's 9 May Statement
- Establishment of the Joint Standing Committee
- The Committee's Program
- Public consultation
- General comments on the Complexity of the Regulations

### Introduction

1 On 8 December 1988 Senator Ray, Minister for Immigration, Local Government and Ethnic Affairs, announced the Government's response to the report of the Committee to Advise on Australia's Immigration Policies (CAAIP). That Committee was chaired by Dr Stephen Fitzgerald.

2 The Minister outlined the major reforms to immigration policy and administration in his response to the CAAIP Report and in April 1989, the Minister introduced a Bill to give legislative effect to the policy changes. The three major features of this legislation package were:

2.1 the codification of the decision criteria governing entry to and stay in Australia;

2.2 the introduction of a "two-tier" review system; and

2.3 the introduction of mechanisms to ensure that planned immigration program intakes were not exceeded.

### Establishment of the Joint Select Committee

3 The amended Migration Act was passed on 31 May 1989. At the same time the Joint Select Committee on Migration Regulations was established to assess the extent to which the regulations reflected current policies. The terms of reference specifically required the Committee to inquire into and report upon the extent to which draft regulations and tabled regulations under the *Migration Act 1958*, which related to decision criteria for the grant of visas and entry permits -

3.1 reflected current and announced policies in relation to the grant of visas and entry permits as at 1 June 1989; and

3.2 were likely to achieve the goals of the policies referred to in subparagraph (a).

4 The membership of the Committee was Dr Andrew Theophanous, Chairman, Mrs Kathy Sullivan, Deputy Chairman, Senator Bob Collins, Senator Jean Jenkins, Senator Jim McKiernan, Senator Baden Teague, Dr Richard Charlesworth, Mr Michael Cobb, Mr Philip Ruddock and Mr Con Sciacca.

5 The Committee met 24 times for a total of 106 hours in the nine months that it was operative. Much of this work was concentrated towards the end of 1989 and during the first two months of 1990.

6 The Select Committee received an incomplete and unfinished draft of almost 200 pages of regulations on 31 October 1989 and was expected to report to the Minister by 21 November 1989. The resolution of appointment required the Committee to report to the Minister by 21 November 1989 on regulations received before 31 October 1989. For regulations received after that date the Committee had 56 days to report to the Minister.

7 Initially, it appears that the intention was to provide the regulations at regular intervals. However, it soon became obvious that this would not be possible and that it would be necessary for the draft regulations to be considered as a whole. The Committee received an incomplete and unfinished draft of the regulations on 31 October 1989.

8 The Committee was concerned at the lack of time available for its deliberations. The Committee had less than four weeks to consider a major and incomplete body of legislation, the implementation of which had serious consequences for people wishing to migrate to Australia and those already here.

9 Given the wording of the Committee's resolution of appointment, the receipt of the regulations on 31 October 1989 placed the Committee in a position where it was not clear by which date a report to the Minister was required. The Committee therefore decided to report to the Minister as soon as possible, notwithstanding the size of the task and the limited time available to the Committee in which to complete it.

10 The Committee was very concerned at the enormous potential for problems were the regulations implemented in the form in which the Committee received them. The view of the Committee was that there were fundamental problems with the regulations, both as to the extent to which they reflected current and announced Government immigration policy and also with regard to technical problems within the regulations themselves.

11 From the outset the Committee has been concerned at the undue haste with which the regulations were implemented and changes made.

12 On 8 November 1989 the Committee discussed with the Minister a proposal that the implementation of the Migration Act and regulations be delayed to allow for a proper consideration of the draft regulations.

13 The Minister responded that such a delay was not acceptable and confirmed this in a letter to the Committee. In summary, his reasons were:

13.1 despite the short time frame the Department had put in a massive effort to get the job done and all was in readiness for a 19 December start;

13.2 the Immigration Review Tribunal had already been established;

13.3 a delayed start would have cost implications - for example, printing costs alone to be thrown away would be above $120,000;

13.4 the delay would prejudice by premature disclosure the implementation of some policy changes which the Minister had planned to announce on the commencement date; and

13.5 the Minister did not regard the commencement date of the regulations as crucial to their refinement and that they would undergo necessary changes with administrative experience.

14 The Department's readiness for a 19 December 1989 start must be questioned. Since that date, both the Criteria and General Regulations and the Review Regulations have been amended at least 16 times.

15 It is also clear there was insufficient time for appropriate staff training, copies of the Regulations were scarce or unavailable during December 1989 and January 1990. The Refugee Council commented in their submission to the Select Committee on the transition:

"This has been appalling. Inadequate briefing and training of officers has resulted in wildly varying interpretations of eligibility and criteria under the new regime".[1]

16 The Committee reported to the Minister on 28 November, 1989 and again two weeks later, on 12 December 1989. Some recommendations from the first report were incorporated into the gazetted regulations.

17 The Committee also wrote to the Minister on 14 February 1990, to bring to his attention problems of major concern to the Committee. These were:

17.1 the extent of ministerial discretion generally and with specific relation to the review processes;

17.2 the transitional arrangements relating to those illegal entrants here before 19 December 1989;

17.3 the review regulations;

17.4 the humanitarian category;

17.5 transitional arrangements; and

17.6 change of status.

18 As a result of this letter further amendments were made to the regulations in February, just prior to the Federal election.

**The Minister's 9 May Statement**

19 Following the Federal Election, the new Minister for Immigration, Local Government and Ethnic Affairs, the Hon Gerry Hand, MP made a statement to Parliament[2] on 9 May 1990 which took account of some of the major concerns expressed in the two reports. The Minister tabled these reports late in May.

---

[1] Refugee Council of Australia, Submission to the Select Committee, p.1

[2] Appendix A

20 In his statement he:

20.1 outlined the objectives of the Government;

20.2 highlighted major problems; and

20.3 described the three phase approach to the review of migration legislation.

21 The Minister stated the objectives as:

21.1 the codification of policies into law;

21.2 minimisation of abuse of the system by illegal entrants, (although the Minister did distinguish between those people who became illegal quite innocently and unintentionally and those who exploited loopholes in the system);

21.3 the strict limiting of the avenues by which ministerial discretion could be accessed.

22 The Minister went on to outline what he saw as the major problem areas to be dealt with;

22.1 the complexity of the regulations;

22.2 the lack of ability within the regulations to accommodate those people whose circumstances fall outside policy and who were previously handled on an ad hoc discretionary basis;

22.3 the illegal entry problem.

23 The final part of the Minister's statement described his planned, three - phase approach to amending the legislation:

23.1 Phase 1, - where an immediate response was required. This phase specifically included:

23.1.1 the provision of greater access to review rights under the transitional arrangements, including the reinstatement of immigration review panels:

23.1.2 the adoption of the recommendations of the Administrative Review Council in relation to the Minister's powers to substitute a decision more favourable to the applicant at the review stage;

23.1.3 the refund of review fees for successful appellants;

23.1.4 the establishment of the Joint Standing Committee on Migration Regulations;

23.1.5 the intention by him to report to Parliament every 6 months on any intervention at any decision-making stage in respect of applications for visas and entry permits. The report is to be subject to scrutiny by the Joint Standing Committee and will include feedback from the Immigration Review Tribunal;

23.1.6 the announcement of a number of, immediate changes to the regulations to meet some of the problems which had emerged.

23.2 phase two, an intermediate phase to be completed by December 1990, which included a consideration of humanitarian entry criteria, health criteria and change of status on the basis of marriage, as well as several other issues.

23.3 phase three, which related to a general redrafting of the Regulations and was envisaged to take approximately 12 months.

**The Establishment of the Joint Standing Committee**

24 The Joint Standing Committee was established on 17 May 1990, with significantly broader terms of reference than those of the Select Committee. The Committee is empowered to consider proposed changes to the Act as well as changes made or proposed to be made to the regulations. Further, it can consider matters referred to it by the Minister, either formally or informally.[3]

---

[3] Appendix B

**The Committee's Program**

25 The Standing Committee held its first meeting on 17 May 1990 and shortly after, decided on a programme of work. The priorities were determined after extensive discussion which concerned two issues:

25.1 a number of important deadlines had been set in earlier regulations, but there existed a need to clarify the processes before those deadlines were reached;

25.2 some issues had not been fully addressed in the regulations. However, because of humanitarian considerations it was urgent that they be finally determined.

26 As a result, it was determined that the Committee would consider the following issues in order of priority shown:

26.1 illegal entrants;

26.2 refugee/humanitarian visas and entry permits;

26.3 review processes; and

26.4 change of status, including the marriage problem.

27 Illegal entrants were adopted as a first priority because there existed a deadline of 1 June and 30 June 1990 respectively for illegal entrants to come forward and either:

27.1 to leave Australia, thereby not incurring any time penalty should they wish to re-apply immediately for entry to Australia; or

27.2 to apply to regularise their status on spouse or economic grounds.

28 This deadline was perceived by the Committee to create serious problems of implementation for the Department and of potential injustice to those affected.

29 Hence, once the Committee decided to inquire into matters affecting illegals, they considered that, it would be unfair if some people were required to leave after 30 June and before the Committee had an opportunity to report to the Parliament. The Chairman of the Committee therefore wrote to the Minister on 20 June 1990, arguing that, while not wishing to encourage illegals currently here to remain:

29.1 the existing regulations were capable of producing unjust and oppressive results for that category of person who may be described as an 'innocent illegal';

29.2 the effect of s37 of the Act and Regulation 40, which prevent certain illegals who have previously applied for a permit and been refused from re-applying, is capable of producing anomalies which can result in inequitable deportations and forced departures; and

29.3 the Committee was seeking further evidence in respect of these matters and therefore requests an extension of time beyond the current 30 June and 1 June dates until 30 September 1990 for the concessional arrangements now applicable, and for the voluntary departure without the re-entry restriction.[4]

30 The Minister agreed to extend the concessionary period until 31 October 1990.[5]

31 The Committee further determined that, in order to give the Minister and Cabinet adequate time to consider the report and draft any necessary legislative amendments it would report as soon as possible in September. This extremely tight reporting deadline has imposed severe constraints on the Committee, its secretariat and its adviser. The Committee is of the view that wherever possible such severe time constraints ought to be avoided because of the pressures they put on all concerned. The Committee trusts that, in future, it will have adequate time to deal fully with those areas of concern already outlined in its programme.

**Public Consultation**

32 In order to deal with the priority issues outlined above, the Committee advertised for public submissions.The Committee has received 90 submissions to date. Hearings have been held in Melbourne, Canberra and Sydney. Details of submissions and hearings can be found in Appendices C and D respectively.

---

[4] See Appendix C, Letter from the Chairman to Minister, 20 June 1990.

[5] Minister's Press Release, 27 June 1990

## General Comments on the Complexity of the Regulations

33 A common complaint raised in many submissions has been the complexity of the regulations, which is daunting to practitioners and many ethnic groups, not to mention individual applicants. The Committee is concerned at the problems which the complexity of the regulations could create and the implications for all those who have been or will be directly affected, including applicants and DILGEA officers themselves.

34 It is necessary at this point to discuss the particular problem of the complexity of the regulations and the implications this has for not only illegal immigrants but DILGEA officers, community workers, lawyers and intending migrants. For example, Amnesty International, in its submission to the Committee, commented on the difficulty for illegals of non-English speaking background to gain access to accurate information after the 19 December regulations came into force. They stated:

> "Confusion over the content of the new regulations was heightened by media coverage which accentuated particular aspects of the new regulations such as mandatory deportation and eligibility for entry permits, while at the same time, officers of DILGEA in various regional offices were not able to clarify the meaning and implication of those aspects."[6]

35 Ms Ros van Weerdenburg, representing the Ethnic Communities Council of NSW, stated at public hearing:

> "I think the difficulty in accessing accurate information at the community level, particularly for illegal immigrants who may be seeking some accurate information about how exactly they can go about legalising their status, is a major problem ... There is so much misinformation circulating in the community at the moment, starting at the level of the people who actually have contact and who are in a position to advise and resource the communities."[7]

---

[6] AAA Amnesty International Australia, Submission, No. 80, p.11

[7] Transcript of Evidence, p.399, 401

36 Ms van Weerdenburg went on to say:

> "From a community worker's point of view the feedback we get constantly is the difficulty of getting consistent information across different offices of the Department."[8]

37 Wilcox J, in a recently decided Federal court case stated:

> "As will already be apparent, understanding the regulations is no easy matter. Apart from the initial problem of obtaining an up-to-date text of the regulations, the reader is confronted with a lengthy and complex document, abounding with cross-references, from one provision to another ... The task of ascertaining the position in relation to a particular applicant or a particular type of visa or entry permit is akin to feeling one's way through a labyrinth."[9]

38 The Committee can only agree with the sentiments expressed to it on the difficulty of understanding the regulations and of obtaining accurate information, even from the Department itself. The Committee looks forward to the time when a revised and simplified version of the regulations is available. This was promised in the Minister's May Statement and the Committee regards that exercise as having a high priority.

39 Nevertheless, it is important that not only should the regulations be clarified, but that they be amended to achieve a fair and efficient result within the policy guidelines as determined by the Government and Parliament.

---

[8] Transcript of Evidence, p.404

[9] Eremin v Minister for Immigration, Local Government and Ethnic Affairs, 386 of 1990, (unreported)

## CHAPTER 2

## ILLEGAL ENTRY IN AUSTRALIA



### Introduction

1 Australia's immigration system limits the number of immigrant visas available. There is a long waiting list of applicants seeking migrant entry. For each immigrant who secures a visa by fraud or each illegal entrant permitted to remain, other qualified applicants may be left behind or left to wait longer for a visa. Illegal immigration severely taxes the resources of immigration staff and may undermine the political resolve needed to maintain the integrity of and public support for the immigration program.

2 The Department of Immigration, Local Government and Ethnic Affairs (DILGEA) describes the policy behind the immigration laws in page 2 of the Procedures Advice Manual booklet 1 dealing with Deportation:

> Australia's migration laws have been developed to control the entry and stay of non-citizens in Australia. There are limits to the number of people which Australia can readily absorb.
>
> There is therefore a need to maintain the Government's migration program within pre-determined levels, and to enable the removal of persons who are either illegally in Australia or whose presence in Australia is not in the best interests of the Australian community.[1]

---

[1] Procedures Advice Manual, Deportation, Booklet 1

3 Mr Brian Murray suggests that Australia's policy on illegal entrants should be directed towards three explicit objectives:

1) to maintain effective control over immigration into Australia;

2) to exclude and evict those who represent either a threat to the Australian community or an unacceptable burden on it; and

3) to reduce, for it cannot be completly eliminated, the consequences of having a twilight society, with the Australian community.[2]

4 The control of illegals has taken on a new urgency in recent years because the problem is coupled with, or compounded by, fears of an increased movement of asylum seekers. The two issues are, and should be seen to be, different, although the undocumented migrant and the claimant for refugee status are often in similar situations and can be, at different times, the same person.[3] The presence of illegal entrants has come, whether correctly or not, to symbolise the inability of governments to control their borders, and in Australia's case, to protect the integrity of its immigration programme.

**The Numbers**

5 It is difficult to ascertain the nature and extent of Australia's illegal entry problem but such a study is necessary in order to judge the appropriateness and efficacy of past and present immigration controls. The Department should ensure that there is adequate and accessible information regarding the level of illegal immigration and the effectiveness of their control procedures.

6 One submission highlighted the possible inadequacy of the Department's figures. The author had attempted to research illegal immigration only to encounter the following problems:

6.1 conflicting statistics

6.2 selective disclosure and withheld information;

6.3 the masking of hard statistical data by poor use of graphs and the tendency to talk in terms of percentages without supplying the figures from which they were derived;

---

[2] Submissions, Vol 16 1, p.17

[3] F. Hawkins, Critical Years in Immigration: Canada and Australia Compared (UNSW Press, 1989) p195.

6.4 numerous instances of statistics being retrospectively given several years later thereby avoiding parliamentary and public scrutiny and analysis when they were relatively fresh; and

6.5 inadequate or in most years non-existent textual discussion of a number of the relevant areas of DILGEA's operations.[4]

7 One can start with the Department's illegal entrant figures, which have been largely based on information derived from their movements records, the details of persons who enter and exit Australia and who obtain entry permits within Australia. The entry and exit data was previously collated from passenger cards which are filled in by persons arriving in and departing Australia.

8 Errors in such data cannot be avoided. On arrival and departure passenger card details are checked against passport details but immigration officers are under pressure to process passengers quickly, the time available being about 40 seconds per person in normal times. Personal details or passport numbers might be wrongly transcribed by passengers. Chinese and Arabic names are not always given in the same romanised form. The passenger card data therefore, does not always match up to existing records.

9 It follows that estimates of overstaying illegals based on such data must be inaccurate. In addition, up until 1988 the Department discounted from the tally those who overstayed less than six months and it also appears that they may exclude from the count "processing" overstayers, those people who have lodged applications to extend their stay or change status while still lawfully here, but whose permit has expired during processing. There are currently 30,000[5] applications in the GORS queue and probably most of these are processing overstayers.

---

[4] Mr G Tucek, Submissions Volume 1, p.130

[5] DILGEA, Regional Operations Branch, "Residence - An Analysis", Issue 90/2, May 1990, p.2 (unpublished).

10 Notwithstanding the above, the official estimates of illegal entrants in Australia from 1980 to 1990 are as follows:

Table T1

Overstayer Estimates 1980-1990

| Applicable Date | Length of Overstay: 6 Months or less | More than 6 Months | Total |
|---|---|---|---|
| 1980 | N/A | 60,000 | N/A |
| 1981 | N/A | 50,000 | N/A |
| 1982 | N/A | 50,000 | N/A |
| 30/6/83 | N/A | 50,000 | N/A |
| 30/6/84 | N/A | 50,000 | N/A |
| 30/6/85 | N/A | 50,000 | N/A |
| 30/6/86 | N/A | 54,000 | N/A |
| 30/6/87 | No estimate made | | |
| 31/1/88 | 16,000 | 58,000 | 74,000 |
| 31/7/88 | 21,000 | 49,000 | 70,000 |
| 31/1/89 | 23,000 | 57,000 | 80,000 |
| 31/7/89 | 11,000 | 49,000 | 60,000 |
| 30/4/90 | 28,800 | 61,200 | 90,000 |

11 The Department, in evidence to the Committee on the 7th August 1990, confirmed the inaccuracy of past illegal figures:

> "the accuracy with which we have been able to calculate the overstay population has improved over the years ... from about 70 per cent accuracy in the mid 70s through to 90 per cent accuracy now".[6]

[6] Transcript of Evidence, p.143

12 The improvement will be brought about by the Department's new computerised visa processing and records system, the Travel and Immigration processing system (TRIPS) and the visa issue system, Immigration Records and Information System, (IRIS), data from which can be fed into TRIPS. The IRIS system issues the visas at overseas posts. The data relating to the person to whom that visa is issued is then transmitted to the TRIPS system and is available on arrival in Australia. The information is retrieved and entry, extensions of stay and/or departures recorded. TRIPS collates more accurate data and will allow a more accurate evaluation of the future illegal population. It is expected that the system will be up and running in November 1990.

13 However, the Committee expresses concern at the sudden revision of figures by the Department as advised to the Committee on 7 June 1990 and as announced in the Minister's statement of 8 August 1990. It is to be hoped that the latest figures are sufficiently accurate for the Department and the Committee to rely on in their determinations in this matter.

**Evasion of border controls**

14 The category of illegals not so easily identified now and even under the new system are those who evade border immigration controls. Entry controls are generally evaded by clandestine landing, by ship crew deserting, by entry though the protected zone, the common travel area which includes the Torres Straits and, as the April 1989 Auditor-General's report noted, by exploiting the "inadequate controls over domestic travel on international flights".[7]

15 As to the total numbers of clandestine illegals, the Department stated in evidence that the numbers "would be in the hundreds" each year, "no higher". Their projections are based, in part on the small numbers of clandestine illegals detected - "the numbers showing up downstream are small".[8] Of the 982

---

[7] Auditor-General Reports on Audits to 31 December 1988, 9.2.68 Re domestic travel on Qantas flights. Audit observed that domestic travellers were not required to produce documentary identification to obtain the one specially marked boarding pass and were required to show only the boarding pass at entry control points ... there is an inherent risk that international travellers may be able to avoid entry control checks by obtaining or forging a marked domestic boarding pass.

[8] Transcript of evidence, pp102-105

illegals' files surveyed by the Department in 1985/86, 80 percent were overstayers, 9 percent were illegals because of deception, 3 percent were stowaways and 5 percent were ship crew deserters.[9] There were no clandestine illegals.

**Entry or stay by deception**

16 A separate but related issue is the question of those people who could be construed to be illegal because of some deception on entry. The deception could be intentional or unintentional. If unintentional they may well believe that they are legal, but will, in fact, be illegal.

17 Those people, who have secured entry or stay by deception, are included in the Department's figures, although it may be difficult to know whether the Department's estimates of these people is reliable. David Bitel, in what may not have been mere hyperbole, suggested in evidence to the previous Committee that hundreds of thousands of people would have entered here by deception in past years.[10] The Department's evidence to the National Population Council also indicates that deception after entry is rife - at least by those who for immigration purposes contract sham marriages or "marriages of convenience".[11]

18 This latter problem will be addressed in a further report. At this stage, however, we turn to an examination of the profile of the 90,000 illegal immigrants identified above.

**The Profile**

19 The Department's figures do assist us to assemble a profile of the illegal entrant population, to determine who are the illegals. The citizenship of illegals as at January 1989 and April 1990 is shown in the following table:

---

[9] DILGEA, "Illegal Immigrants, 1985/86 Case Files Survey", Unpublished Paper August 1986 p.2, appended to submission 39 by G Tucek.

[10] Joint Select Committee, Transcript of Evidence, p. 184

[11] Working Party of the Migration Committee of the National Population Council, "Grant of Resident Status on Spouse/De Facto Spouse Grounds to Visitors", June 1990, p.11 "Case officers' perceptions of the extent of deception vary from 10% to 50% of applications for GORS on spouse grounds and possibly higher on de facto spouse grounds". The Department indicated to the Committee that 70 percent of GORS applications on spouse/de facto grounds require further investigation.

Table T2

| Country of Overstay Citizenship | Jan 1989 Overstayers Number | Percentage of Total | April 1990 Overstayers Number | Percentage of Total | Rate |
|---|---|---|---|---|---|
| United Kingdom | 9,446 | 11.8% | 10,200 | 11% | 1.6% |
| Malaysia | 4,631 | 5.8% | 6,300 | 7% | 3.0% |
| Fiji | 5,653 | 7.1% | 6,100 | 7% | 10.2% |
| Indonesia | 4,094 | 5.1% | 5,500 | 6% | 6.2% |
| USA | 4,210 | 5.3% | 5,100 | 6% | 0.8% |
| Philippines | 4,918 | 6.1% | 4,300 | 5% | 12.3% |
| Korea | 3,684 | 4.6% | 3,800 | 4% | 5.6% |
| Thailand | 2,905 | 3.6% | 3,100 | 3% | 7.0% |
| Tonga | 2,607 | 3.3% | 2,600 | 3% | 24.0% |
| Hong Kong | | | 2,500 | 3% | N/A |
| Japan | | | 2,300 | 3% | 0.3% |
| Singapore | | | 1,600 | 2% | 0.9% |
| India | | | 1,500 | 2% | 4.7% |
| Germany | | | 1,500 | 2% | 0.9% |
| Ireland Rep. | | | 1,400 | 2% | 6.9% |
| Lebanon | | | 1,300 | 1% | 25.6% |
| Yugoslavia | | | 1,300 | 1% | 9.6% |
| France | | | 1,300 | 1% | 1.4% |
| Sri Lanka | | | 1,300 | 1% | 10.0% |
| Poland | | | 1,200 | 1% | 14.2% |
| Canada | | | 1,100 | 1% | 0.7% |
| Pakistan | | | 1,000 | 1% | 19.1% |
| Greece | | | 1,000 | 1% | 6.9% |
| Taiwan | | | 1,000 | 1% | 1.2% |
| All Other | | | 21,700 | 24% | 3.6% |
| China (PRC) | 5,418 | 6.8% | N/G | N/G | |
| Total | 80,000 | 100.0% | 90,000 | 100% | |

(Overstayer numbers rounded to nearest hundred)

20 It is clear that the illegal numbers derived from the "top ten" overstayer countries have remained fairly constant during 1989/1990 with one or two exceptions, although the Chinese (PRC) figure is discounted in the 1990 tally. British nationals comprise the largest single group of illegals but the Department argues that this is a direct consequence of the volume of travel from Britain. Their overstay rate is relatively low. For compliance purposes, the Department tends to concentrate on those communities which have high or relatively high overstay rates - Lebanese, Tongan, Pakistani, Filipino and Fijian. Such rates are recorded with the 1990 figures.

21 Most illegals travel to Australia as visitors, although there is a growing student overstay problem. The visa categories of illegals are recorded as follows:

Table T3

**OVERSTAYERS**

| Visa Category | Jan 88 | Jul 88 | Jan 89 | Jul 89 | Apr 90 |
|---|---|---|---|---|---|
| Visitor | 50,468 | 53,265 | 58,866 | 44,000 | 58,000 |
| Temp Res | 7,622 | 6,317 | 8,287 | 5,000 | 7,000 |
| Student | 6,438 | 8,617 | 10,417 | 9,000 | 16,000 |
| Transit | 3,996 | 1,034 | 1,251 | N/A | N/A |
| Other/Not Recorded | 5,476 | 1,069 | 1,125 | 2,000 | 9,000 |
| Total | 74,000 | 70,302 | 79,946 | 60,000 | 90,000 |

22 When the visa categories are matched against recently arrived illegals from high overstayer communities the following picture emerges:

Overstay Rates for Students, Visitors and Temporary Residents (Major student overstay countries)

(The overstayer figures in this table relate only to persons who arrived during 1988/89 and who were still in Australia as overstayers on 30/4/90).

Table T4

| Country | Visa Category | Overstayers 30/4/90 from 88/89 Arrivals | Arrivals 1988/89 | Overstay Rate |
|---|---|---|---|---|
| Fiji: | Student | 473 | 2,309 | 20.5% |
| | Visitor | 1,218 | 15,044 | 8.1% |
| | Temp Res | 43 | 760 | 5.7% |
| Korea: | Student | 407 | 2,397 | 17.0% |
| | Visitor | 328 | 8,856 | 3.7% |
| | Temp Res | 37 | 758 | 4.9% |
| Thailand: | Student | 423 | 3,681 | 11.5% |
| | Visitor | 602 | 12,538 | 4.8% |
| | Temp Res | 11 | 314 | 3.5% |
| Indonesia: | Student | 318 | 4,817 | 6.6% |
| | Visitor | 1,047 | 19,764 | 5.3% |
| | Temp Res | 35 | 990 | 3.5% |
| Malaysia: | Student | 412 | 8,950 | 4.6% |
| | Visitor | 947 | 43,071 | 2.2% |
| | Temp Res | 37 | 870 | 4.2% |
| Singapore: | Student | 87 | 2,632 | 3.3% |
| | Visitor | 266 | 44,333 | 0.6% |
| | Temp Res | 9 | 1,225 | 0.7% |
| Taiwan: | Student | 31 | 1,231 | 2.5% |
| | Visitor | 191 | 19,154 | 1.0% |
| | Temp Res | 5 | 667 | 0.7% |
| All | Student | 4,571 | 63,482 | 7.2% |
| Countries* | Visitor | 22,323 | 1,487,955 | 1.5% |
| | Temp Res | 4,379 | 151,283 | 2.9% |

*Note: All Countries includes countries listed above.

**Table T3**

23 Each of the overstayer communities shows high numbers of illegal visitors. When viewed over the whole of 1988 and 1989 in Table T3, the total illegal visitor numbers have remained relatively constant, although the April 1990 figure represents a 14,000 figure increase from July 1989. Temporary resident overstayers are likewise fairly uniform. Such illegals seem to come, not from the Asian/Pacific countries but, for example, from Britain. There were 2,782 illegal British temporary residents in January 1989, mainly working holiday makers, a 28 percent increase from 1988. A British overstayer breakdown for 1990 is not given.

24 Leaving aside the "other" category (those in transit or whose visa class was not recorded), the steadily growing illegal groups are students, a pattern reflected in most of the high overstayer communities.

**Length of stay**

25 At a private meeting with the Committee on 7 June 1990 the Department estimated the numbers of people in Australia illegally to be 60,000 (This figure was later shown to be wrong with an estimate of 90,000 illegals published in the Minister's statement of 27 June). However, based on the 60,000 figure, the Department estimated length of stay among the illegal population to be as follows:

Length of time people here illegally

| | | | |
|---|---|---|---|
| - | more than 1 year | - | 36 413 |
| - | more than 2 years | - | 23 668 |
| - | more than 3 years | - | 17 005 |
| - | more than 4 years | - | 13 072 |
| - | more than 5 years | - | 10 159 |
| - | more than 6 years | - | 7 829 |
| - | more than 7 years | - | 5 935 |
| - | more than 8 years | - | 3 532 |
| - | more than 9 years | - | 874 |

Note: The figures are cumulative, the figure for those here more than one year includes those here for more than 2 years, 3 years etc. On an estimated 60,000 illegals, it means that 23,587 have been in Australia illegally for less than 12 months.

## The Student Overstayer Problem

26 The student overstayer problem represents the 'down side' of our exported education services program. In the overseas marketing of education, Australia's "quick and flexible visa approval policy" was a significant drawcard.[12] The Committee advising on Australia's Immigration Policies described this "deregulated program for short term overseas students" as "a matter of considerable concern ... It is open to wide abuse".[13]

27 Some 21,000 overseas students arrived in Australia in 1988, 32,000 in 1989. Approximately half of these students come to take short-term intensive English language (ELICOS) courses.

## People's Republic of China Nationals

28 A significant proportion of the overseas students were from the People's Republic of China - 44 percent of the ELICOS students in 1988, 54 percent of ELICOS in 1989 and almost half of the 9,000 special studies (computer and business course) students in 1989. Many of these students have few incentives to return home. Some have almost certainly come with the intention of staying on in Australia.

29 There were 3,526 PRC overstayers in January 1989 which represents a 108.5 percent increase over their July 1988 overstayer figures. The number of PRC overstayers present in June 1989 has not been published although numerous questions have been addressed to the Department seeking that answer. However, the immediate problem has been addressed by the recent decision granting four year temporary stay to PRC citizens legally or illegally present in Australia on the 20th June 1989.

---

[12] Industries Assistance Commission, "Exporting Health and Education Services", Inquiry into the International Trade in Services, Discussion Paper No 5, AGPS, 1989, p.53.

[13] CAAIP, Report, 1988, p.97.

## Compliance

30 The illegal entry profile disclosed in these statistics is relevent for the Department's compliance functions. Applications for entry from those in high overstayer categories or communities can be closely scrutinised. For example, the rejection rate for Chinese student visa applicants is now 94 percent, having risen from approximately 30 percent in 1989.[14] The Department's field experience suggests that 65 to 70 percent of overstayers work illegally, some at more than one job.[15]

31 The compliance functions to date have been of limited effectiveness. In years where the overstayer population was variously estimated at between 50,000 and 90,000, the numbers of illegals located and forced to depart are very low. These are shown at Table T5.

32 On 5 August 1990 the Minister announced new compliance initiatives to reduce the number of people in Australia illegally. These initiatives are discussed further in Chapter 4.

## Conclusion

33 As can be seen from the above Australia faces an illegal immigration problem of at least 90,000 existing illegals. Even if there is an improvement in compliance activity with increased staff, these officials are unlikely from their own resources to be able to round up all those illegals currently living and working in Australia. Enforcement based on detection is thus only one aspect of dealing with the illegal problem.

---

[14] Operations Management Division, DILGEA, 'Situation Report, PRC Analysis', April 1990, p.4.

[15] Review, 1983, p.39 and Illegal Immigrants, 1985-86 Survey Results, in submission no 39 by G Tucek.

Table T5

## Illegals Located

| | NSW | VIC | QLD | WA | SA | TAS | NT | ACT | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| 83/84 | 690 | 552 | 394 | 173 | 70 | 6 | 91 | 102 | 2078 |
| 84/85 | 546 | 446 | 298 | 166 | 100 | 14 | 52 | 56 | 1678 |
| 85/86 | 805 | 653 | 364 | 286 | 126 | 41 | 97 | 108 | 2480 |
| 86/87 | 710 | 621 | 403 | 297 | 127 | 40 | 67 | 114 | 2379 |
| 87/88 | 607 | 440 | 458 | 344 | 78 | 6 | 86 | 94 | 2113 |
| 88/89 | 1814 | 515 | 551 | 436 | 96 | 6 | 121 | 141 | 3680 |
| 89/90 | 1004 | 283 | 501 | 267 | 128 | 3 | 68 | 36 | 2290 |



## Total Enforced Departures

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 83/84 | 736 | 380 | 114 | 142 | 50 | 5 | 70 | 50 | 1547 |
| 84/85 | 319 | 315 | 163 | 105 | 63 | 5 | 42 | 25 | 1037 |
| 85/86 | 514 | 399 | 281 | 195 | 75 | 22 | 97 | 51 | 1634 |
| 86/87 | 489 | 550 | 302 | 196 | 102 | 15 | 63 | 74 | 1791 |
| 87/88 | 419 | 351 | 195 | 148 | 45 | 2 | 77 | 47 | 1284 |
| 88/89 | 751 | 369 | 367 | 395 | 69 | 2 | 92 | 93 | 2138 |
| 89/90 | 765 | 225 | 285 | 200 | 78 | 1 | 61 | 40 | 2059 |

*89/90 is 1/7/89 to 30/4/90

## CHAPTER 3

## THE ILLEGAL ENTRANT

- The Causes of Illegal Entry
- The definition of 'illegal entrant'
- The innocent illegal
- The positive candour requirement
- Other possible cases of innocent illegals
- Defining innocent illegals
- General Conclusion on Innocent Illegals
- The Problem with Regulation 42

### The Causes of Illegal Entry

1 Illegal or undocumented migration[1] is a major phenomenon affecting national governments, their policies, regional interests and international relations. Even so, there have been relatively few comparative studies or until recently, few international initiatives to deal with illegal migration.[2] One example, in 1983, was the international seminar convened by the Intergovernmental Committee for Migration (ICM) on "Undocumented Migrations or Migrants in an Irregular Situation" which produced a number of useful recommendations. The conference concluded that undocumented migration is mainly spontaneous and is due to a number of specific causes, identified as:

1.1 the absence or inadequacy of migration laws and regulations;

1.2 the complexity of existing laws and regulations, as well as the difficulty of obtaining the necessary documentation for legal immigration;

1.3 quotas and restrictive legislation adopted by certain receiving countries;

1.4 ignorance of existing migration legislation, due to low levels of education, insufficient information, and difficult access to official sources of information and documentation;

---

[1] In 1975 the General Assembly of the United Nations recommended against the use of terms such as "illegal alien" and suggested that UN bodies use the expression "migrant workers in an irregular situation or without documents", Resolution 3449 (30) December 9th, 1975.

[2] On 14 June 1990 12 European countries agreed on a convention to adopt a co-ordinated strategy on asylum, illegal immigration and police co-operation.

1.5 in certain regions, the ignorance or non-recognition of national frontiers where these divide economic, social and ethnic communities;

1.6 the demand by certain unscrupulous employers for cheap, irregular manpower; and

1.7 illegal labour-force trafficking by employers and intermediary agents.

2 In Australia, some of the above factors are more relevant than others, and for example, 1.5 is not relevant in the Australian context.

3 The most relevant factor is 1.3. Many illegal immigrants are people who have failed to pass through the Australian immigration system but who nevertheless felt for a variety of reasons that they ought to be allowed to stay in Australia.

4 Although there was some anecdotal evidence given to the Committee as to the causes of illegal immigration in Australia this is clearly an area which needs more research. We suggest that the Bureau of Immigration Research undertakes a study of the causes of illegal immigration in Australia.

**The Definition of 'Illegal Entrant'**

5 "Illegal entrant" is a term derived from British common law.[3] In Australia in recent years, illegals have been variously termed 'prohibited immigrants' (1958-1983), "prohibited non-citizens" '(1983-1989) and, from the 19th December 1989, "illegal entrants".

6 The term 'illegal entrant' is defined in section 14 of the Act.[4] An illegal entrant is a non-citizen who has entered Australia illegally or who entered legally but no longer has authority to remain. Illegal entry status can only be acquired by non-citizens at or after entry to Australia.[5]

---

[3] Canada and the United States generally use the term "undocumented" immigrant or alien instead of illegal entrant.

[4] See Appendix H

[5] A person is taken to have entered Australia when s/he disembarks from the vessel or aircraft or if arriving by air at a proclaimed airport, when s/he leaves the airport [s4(5)].

7 Frontier asylum claimants, for example, who are permitted to be physically present in Australia while their claims are assessed, are taken not to have entered[6] and are not illegal entrants. The Committee will discuss this issue in greater detail in its report on change of status.

8 In Britain the term 'illegal entrant' is used in a narrow sense to define those whose entry is unlawful, i.e. those who evade border immigration controls or who secure entry by deception. In Britain, illegal entrants can be summarily removed. Overstayers and those who secure residence by deception are liable to deportation, but may have a right of review against the Home Secretary's deportation decision.

9 In Australia, however, the term "illegal entrant", is used in a much broader sense (some would say somewhat inconsistently) in the *Migration Act* to include not just those whose entry is defective but also those whose stay is irregular - those who have overstayed their immigration leave or who have secured an extension of stay or residence by deception.

10 Illegals are liable to deportation. From the 19th December, the Minister is obliged to deport illegals whose 'period of grace' 28 days after becoming an illegal, has expired.[7]

11 From 19 December 1989, people become illegal entrants in the circumstances set out below:

11.1 evading an officer on entry into Australia;

11.2 obtaining entry or stay by deception - by submitting bogus documents; making false or misleading statements to immigration officers - this is so, whether or not the person knew the document was bogus or that their information was false or misleading [s20(10); (11); (12)];

11.3 by withholding information concerning a material change of circumstances before entry [The positive candour system enshrined in s24(9)];

---

[6] Section 88(8)

[7] Section 59

11.4 entry into Australia, in breach of Section 20(1)(d) - ie: without the appropriate endorsement - by a person suffering from a prescribed disease, physical or mental condition or by a person convicted of certain crimes or acquitted of a crime by reason of insanity or by persons deported from Australia or another country or excluded from another country in prescribed circumstances;

11.5 overstaying the term of their temporary leave or having their entry permit invalidated or cancelled by breach of a terminating or other condition attached to the permit;

11.6 cessation of exempt status where the person does not depart and is not granted an entry permit - for example, if a consular official was dismissed or quit his/her Embassy staff and remained in Australia without securing an entry permit [s9; s14(4)];

11.7 a non-citizen child born in Australia after 20 August 1986 where neither parent is lawfully in Australia becomes an illegal entrant at birth (Australian Citizenship Act, s10 and Migration Act, s8);

11.8 all people who were "prohibited non-citizens" before 19 December 1989, become "illegal entrants" on that date. However it is important to note that some people become illegal entrants on 19 December even though they were not prohibited non-citizens before that date.

12 The general circumstances in which a person becomes an illegal entrant are set out in Section 20 of the Act.[8]

13 Many submissions commented that, while they in no way condoned breaches of Australian law including that of immigration and residency, some consideration needed to be given to providing for those cases which merited a hearing, despite the fact that the applicant was illegal. The view was expressed, that:

> "... the complex legislative scheme which prohibits illegals even to apply or be granted an entry permit needs to be examined. Such rules are far to (sic) inflexible and undoubtedly lead to injustice for the exceptional case."[9]

---

[8] Appendix F

[9] FECCA, Submission, no 88, p.4

The most obvious cases, which are almost universally accepted as deserving special consideration are the cases involving innocent illegals.

**The innocent illegal**

14 It is important to note that people can become illegal even if they are honest in their dealings with immigration staff, have no knowledge of the illegality or no intention of becoming an illegal. Certain children born in Australia are illegal entrants from birth. Others acquire illegal entrant status by the fact of overstaying. This is true even if the person did not knowingly overstay. Some become illegal by the fact of securing entry or stay by deception. It is again irrelevant that the person did not have knowledge of the deception.

15 When is an illegal "innocent"? One test is whether the person knew of the illegality. A child is unlikely to know s/he has overstayed the term of a temporary entry permit. A child may not know of a deception practised to secure its entry. In a false identity case, say the child had been permitted to enter with a woman claiming to be the child's mother. The woman had produced false identity papers and had made false representations concerning the child. These had disguised the fact that the child was actually her nephew/niece. The child is illegal but arguably an innocent illegal.

16 The Immigration Advice and Rights Centre gave the following example:

> "One client that I have, a young boy from the Pacific Islands, came to Australia at the age of five with his grandmother on a tourist visa. His grandmother was caring for him because his mother had deserted him at birth. While he was in Australia with his grandmother on a tourist visa, staying with a great aunt, his grandmother died of cancer. He had been here ever since as an illegal immigrant. His application was lodged prior to 19 December. He is now 11 years old, so he has basically grown up in Australia. Post 19 December, under the current regulations, there is no place for that person. He has, basically, no immediate family that he knows or recognises back in Fiji; there is no compassionate scope for that person to stay.[10]

[10] Transcript of Evidence, p.333

17 Some women become innocent illegals because they are unaware of, or have no part in, the irregularity contributing to their illegality. The 'business' of obtaining visas, taking charge of passports and official documents is left to their husbands, their fathers or brothers. There are also documented examples of innocent overstayers who have employed lawyers or migration agents to lodge applications to extend their stay, only to find that the application had not been lodged in time or, sometimes, not at all.

18 Lack of knowledge may also extend to ignorance of immigration requirements and formalities. As Wilcox J recently noted[11] "understanding the regulations is no easy matter... it must be impossible for ordinary people affected by the regulations to do so".

19 As the Committee's second report stated, the imposition and differential classification of visa and permit conditions qualifying entry or stay will likewise cause confusion and produce illegals. As noted by Lee J in the case of Rubrico v Minister of Immigration and Ethnic Affairs (WA, 110, 1989, 31 March 1989]) there is an abiding uncertainty about the requirements imposed on certain illegals who must obtain a visa or re-entry visa endorsement before entering or reentering Australia.

20 Entrants to Australia may be unaware of the continuing legal obligation to obtain an endorsement before re-entry. Entry without the endorsement, even if done unknowingly or innocently, constitutes illegal entry.

**The positive candour requirement**

21 A further example which demonstrates the complexity of the new immigration control model is the new requirement that entrants disclose any material change of circumstances which occurs after they have lodged their application and before the visa is granted. A failure to disclose such material change of circumstances will render the person an illegal entrant.[12] A 'material change of circumstances' is not formally defined, and the PAM definition, modified in the latest edition, does not really assist us to identify those particulars which must be disclosed:

---

[11] Eremin, 386/90, 1 August 1990

[12] Section 24 of the Act

> "A material particular is any particular which has the real potential to influence a decision to grant entry, a visa or an entry permit, for example, criteria of decisions. It is not relevant whether a false statement did or did not actually influence the decision, but whether it had the potential to do so"[13].

22 Entrants to Australia are thus obliged to observe the requirement of positive candour, are not told what they must disclose, but if they neglect to disclose it they may be illegal entrants. For example, a married couple, may have been given permission to migrate to Australia, the man on an Employer Nomination Scheme visa, the woman as his dependent. Their marriage may be unhappy and they decide they will separate after they arrive in Australia and start a new, independent life here. It is not clear that this information must be communicated to the Minister. The criteria requires the dependent spouse to be in a "genuine and continuing" relationship. If, it is a material change of circumstances, the wife who does not disclose this fact is illegal even though she did not know she was required to disclose it. Arguably, because of the lack of knowledge, she is an innocent illegal.

23 The positive candour system requirement can easily produce innocent illegals. The candour provision was operative in Britain and it produced such innocent illegals there. In R v Home Secretary, ex parte Khawaja, H.L. [1983] 2 WLR 321, this comment was made by Lord Scarman:

> "The immigration officer does, or ought to, know the matters relating to the decision he has to make... To allow officers to rely on an entrant honouring a duty of positive candour, by which is meant a duty to volunteer relevant information, would seem perhaps a disingenuous approach to the administration of [immigration] control: some might think it conducive to slack rather than to "sensitive" administration.

24 As a result of such criticism, the positive candour requirement has now been overruled in the UK.

---

[13] PAM; Status of Illegal Entrants (3); 3.2.4.

**Recommendations:**

**25 That:**

**if the positive candour requirement enshrined in Section 24 of the Act is to be retained, the Minister define those material particulars which must be disclosed and takes steps to ensure that such information is communicated to all visa applicants when they are informed of the Minister's intention to grant them a visa.**

**Other possible cases of innocent illegals**

26 The innocent illegals profile might also include those who do know that s/he is doing wrong but who argues s/he had no other choice? Take the overseas student who invites cancellation or the termination of his/her permit by working full time for several months. Is the student "innocent" if, because of riots or upheaval in his home country his parents have been unable to send his tuition fees or an allowance? The student has, temporarily, no source of income.

27 What about the child falsely passed off by her "parents" as a daughter when she is in fact their niece? If on reaching adolescence the young woman is told of the deception and she continues to use the false identity when she travels in and out of Australia, is she still innocent? What if she was to argue that she had no choice but to continue the deception. She didn't want to leave her "parents". She had spent all her life in Australia and would be unable to return to take up life with her natural parents whom she barely knew.

28 The Committee also heard of the following example of a woman with an application for permanent residency pending who, having applied to regularise her stay before the 19th December, was recently given residence on compassionate grounds, the only category available to her. The woman had originally applied for residence on spouse grounds. While that application was being processed the marriage broke down. The woman was pregnant. She petitioned for divorce. Her residence application on spouse grounds was rejected. The woman was an overstayer. She was unable to leave Australia. Her husband refused permission for their child to leave Australia. If she had taken the child out of Australia she would have been liable to arrest, extradition and prosecution for child abduction. She was unable to leave the child here and return home because the child was an infant and she wished to retain custody of the child.[14] In such cases, including when the Family Court may refuse permission for a child to leave Australia, is the parent overstayer remaining with the child, an innocent illegal?[15]

29 In the examples quoted, there are varying degrees of culpability attaching to the illegality. It is difficult to see how the mother of the young baby could be reproached but should the student have borrowed money rather than breached his conditions of stay; should the adolescent girl have approached the immigration department rather than compound or adopt her "parents'" fraud? These issues highlight the difficulties one encounters in attempting to define an innocent illegal.

**Defining innocent illegals**

30 The "innocent illegal" term is not defined in other immigration legal systems, because they tend to operate from the "special case" approach in which the circumstances under which the person became an illegal may be merely one of the factors to consider in deciding whether or not to issue deportation.

31 Some features of an innocent illegal definition are already set down in Regulation 35AA(1)(c)(iv) which states in respect of one class of illegals able to apply for a temporary entry permit:

> (iv) the Minister is satisfied:
>
> (A) that the person became an illegal entrant because of factors beyond his or her control.

---

[14] Transcript of Evidence, pp333-334

[15] The Hague Convention on Child Abduction and Family Law (Child Abduction Convention) Regulations, pursuant to section IIIB of the Family Law Act

32 This definition has the advantage of including not just those who did not know of the illegality, but also some of those who knew but were not culpable. However the definition invites conjecture about what is "beyond" the illegal's control and if given a narrow meaning could exclude several "innocent" examples cited.

**General Conclusion on Innocent Illegals**

33 The Committee argues that the preferred approach would be to adopt a broad, discretionary definition, one designed to incorporate the various innocent illegal case types. In Chapter 6 the Committee has put forward proposals for the Immigration Review Tribunal to make recommendations to the Minister in relation to each case.

**The Problem with Regulation 42**

34 A further issue of concern to the Committee which particularly affects innocent illegals is the requirement in Regulation 42 that, where an applicant for an entry permit is illegal, that the application has been lodged not more than 12 months after becoming illegal.

35 Innocent illegals are predominantly children and/or those who are unaware they are illegal. The illegality may not be discovered until many years after the time when the person became illegal, yet they will be caught by R 42, no matter what their circumstances may be. This is further discussed in Chapter 7.

## CHAPTER 4

## THE IMMIGRATION CONTROL MODEL

- The previous control model
- Amnesties
- The general discretionary scheme
- The absorption principle
- The post-19 December Model
- The Regularisation Process
- Illegals who cannot apply for a Temporary or Permanent Entry Permit
- Illegals who cannot be granted a temporary or permanent entry permit
- Illegals who can be granted a permit
- The concessionary arrangement
- Re-entry restrictions
- Deportation powers
- The effect of the deportation provisions on illegal entrants
- The compliance function
- Conclusions
- Detention

### The previous control model

1 Over the years Australia has developed various strategies for dealing with illegals. It has enacted very effective border controls which, when combined with its natural advantage as an island continent, has protected Australia from the extent of illegal immigrant incursions experienced by most other developed countries.

2 All non-citizens except those who are exempt (eg: New Zealanders), require a visa to travel to and a permit to enter Australia. Those arriving without a valid visa can be refused entry, "turned around" and summarily removed at the carrier's expense. Australia has had carrier sanctions since the first large scale migration of Chinese to Australia in 1855. Carrier sanctions effectively oblige vessel and now airline companies to examine passengers' travel documents and reject those passengers without authority to travel to or to enter Australia.[1]

---

[1] The masters, owners, agents, charterers and operators of such vessels and aircraft can be prosecuted (penalty on conviction, a fine not exceeding $5000) if they land passengers who require but do not possess valid visas applicable to their travel in Australia [Section 70]. In addition the carriers may be liable to bear the cost of passage from Australia of undocumented travellers [Sections 88, 89] or certain illegal entrants whom they brought to Australia [Section 64]

3 There are additional immigration controls imposed after entry. Those given temporary entry permits are permitted to stay for a defined term and may be prevented or restricted from working or studying. Those temporary entrants staying on in Australia are expected to apply to extend their stay or change status before the expiry of their term of stay. Those who overstay their leave or breach their permit conditions are liable to prosecution and/or deportation.

**Amnesties**

4 One method of dealing with illegal immigrants in the past was to call illegals to come forward to regularise their stay. This call to illegals might take the form of a general amnesty - a guarantee to illegals that they would be permitted to remain. The call might also be framed as a regularisation program. Illegals were encouraged to apply by the offer of more generous rules for regularising stay. Such rules, like the general amnesty, operated for a set time period. In order to benefit from the concession, illegals had to lodge applications within the time allowed. Australia promoted three general amnesties in 1974, 1976 and 1980. Commentators gave mixed reviews of the 'success' of such programmes.

5 Australian governments and oppositions have since set their sights firmly against further amnesties, an approach which the Committee supports.[2] In 1976, 8614 people applied during the designated period and, by 30 June that year, 5574 applications had been approved and four had been refused.

6 The 1980 Regularisation of status program resulted in 11 042 applications. By 16 October 1981, 9734 applications had been processed, of which 217 were ineligible and 8 were rejected.

---

[2] (Department of Immigration and Ethnic Affairs, Review '76 and Department of Immigration and Ethnic Affairs, Review of Activities to 30 June 1981, Canberra 1984)

7 On the general question of amnesties, delegates at the Intergovernmental Committee for Migration's 1983 conference believed that, while it may provide a solution to a particular problem, "constant repetition of this process will be self-defeating, in that it will encourage further illegal entry and stay in the country, in the expectation of yet further regularisation". It was strongly held, therefore, that "solutions should be sought in bilateral co-operation between receiving and sending countries and at the multilateral level, where appropriate, in different regions of the world." The conference recommended that:

7.1 Governments should exert greater control over employers to prevent illegal hiring and its negative effects;

7.2 Governments should be invited to collect more relevant data on undocumented migration, as well as undertaking more research studies in this area, and should make this available to international organisations;

7.3 Steps should be taken, at both national and international levels, to ensure that migrants in an irregular situation enjoy their fundamental human rights. This should not, however, imply a *de facto* recognition of the legality of their status;

7.4 Governments should take appropriate measures to foster greater public understanding of the problems of illegal migrants and the acceptance of humane solutions;

7.5 Efforts should be made at an international level to define an appropriate legal framework for co-operation between countries of origin and receiving countries, aimed at solving the problems of illegal migrations; and

7.6 The objectives of such co-operation should be to prevent illegal flows of migrants, to deal humanely with the problems of existing illegal migrations, and to ensure that, as a long-term goal, all migrations take place through legal and controlled channels.[3]

[3] Intergovernmental Committee for Migration, Sixth Seminar on the Adoption and Integration of Immigrants on the theme of "Undocumented Migrants in an Irregular Situation", Geneva, April 11-15, 1983, International Migration, vol 21, no 2, 1983, pp97-116.

**The General Discretionary Scheme**

8 Before the 19th December 1989 Australia's immigration policies were applied as part of a general discretionary scheme. The Minister had a free hand to deport any or all illegal immigrants[4]. The breadth of the Minister's discretion likewise enabled him to intervene at will in individual cases, including illegal cases or to call an amnesty for all illegals. Following the enactment of Section 6A in 1980, illegals and legal immigrants were eligible for permanent residence if they were:

- territorial asylees;
- refugees;
- spouses, unmarried children or aged parents of Australian citizens or residents;
- certain persons wishing to stay on employment grounds; or
- persons who could demonstrate strong compassionate or humanitarian grounds for the grant of a permit.

9 Under Section 6A those applying for residence, except those in the spouse or family category, were required to have a valid temporary entry permit. The Minister could grant such qualifying temporary entry permit to illegal immigrants who otherwise fulfilled the economic, compassionate or humanitarian classes.

10 The government attempted in 1985 to restrict the illegal immigrant's capacity to regularise his/her stay. Under this policy illegals married to Australian citizens or residents were required to leave Australia and apply to enter on spouse grounds from outside Australia. The full Federal Court[5] held that an inflexible application of this policy for all illegals was inconsistent with the intent and operation of Sections 6 and 6A of the Migration Act.

11 It was said that Section 6 intended that an illegal would be entitled to make application for permanent residence and have that application considered on its merits. In Tang the Court observed that "what Parliament had given as a discretion could not be transformed into an absolute rule by administrative fiat" or policy decision.

---

[4] old Section 18

[5] Tang 67 ALR 177

12 The decision in Tang altered the practice of decision making in illegal cases, and was seen by the Government as extending the operation of Section 6 and 6A beyond what the Government had intended. The judicial interpretation was regarded as an unreasonable extension by the Government. The practice overturned by Tang has been revived and is now enshrined in law in the 1989 regulatory scheme.

**The Absorption Principle**

13 Another interesting practice with respect to illegals operating before 19th December ran from 1958 to 1983. During those years the Migration Act included a legal amnesty for "prohibited immigrants" whose temporary entry permit had been cancelled or had expired[6]. Such "prohibited immigrants" ceased to be "prohibited immigrants " after five years. They were no longer liable to be deported as "prohibited immigrants". If they were Commonwealth or Irish citizens they ceased to be liable for criminal deportation too after five years.

14 On the other hand, aliens were liable under the criminal deportation powers up until the time they acquired Australian citizenship[7]. This invidious distinction between Commonwealth non-citizens and alien non-citizens and the formalised amnesty for certain prohibited immigrants were abolished in 1983. The latter, it was said was "an avenue to encourage back door migration"[8].

15 However, most of the debate at that time concerned itself with the undesirability of criminal elements making their way into Australia. There was little debate on the merits or otherwise of the absorption principle.

The Committee, however, does not adopt an absorption principle as in itself a reason for granting status to an illegal to stay in Australia. As will be seen in Chapter 7, we adopt the five year period merely as a threshold for granting a right to apply to a tribunal to regularise status. A number of additional, and important criteria, will need to be met before a person can be granted stay. The period of time in Australia is thus only one in a number of factors to be taken into account.

---

[6] Old Section 7(4)

[7] Old Sections 12, 13

[8] Hansard, House of Representatives, 24 August 1983, p.207, Stewart West

**The post-19 December Model**

16 The Act replaced the old discretionary arrangement with an exhaustive codification, a regulatory model. The Minister's open-ended discretion was taken away. The Minister as a primary decision-maker currently has no discretion to set aside or act outside the rules. The Minister's discretion is a residual one, reserved for those with a domestic right of review. The Minister can set aside a decision of a review authority and substitute one more favourable to the applicant[9]. In the compliance scheme, except for certain illegals who apply within the concessionary period, illegals have no right of review and therefore cannot hope to benefit from the limited ministerial discretion available.

17 The effective entry controls of the past - the universal visa requirement, carrier sanctions and the "turn-around" provisions are maintained and augmented by new strictures, the most notable being the "positive candour " requirement mentioned earlier, which obliges entrants to do more than answer truthfully questions put by immigration officers. They must now volunteer information, even where not specifically asked about it, concerning any material change in their circumstances.

18 The obligation is imposed when a visa is about to be issued. It covers the period from the date of application to the time when the visa is issued. A person whose circumstances had materially changed, who fails to disclose such fact is taken to have notified the Minister that there was no material change in his/her circumstances and is an illegal entrant because of this deemed deception before entry[10].

19 The new system has been described as extremely tough and will lead to a process described by the Chairman 'as the biggest round-up of illegals since the war' and 'a very tough regime'.[11]

---

[9] Sections 115; 137

[10] Section 24

[11] Interview with Chairman, ABC, 17 August 1990

**The Regularisation Process**

20 As the deportation provisions make clear there is no longer simply a discretion to deport or a presumption that illegals be deported. The Minister is mandated to deport illegals whose period of grace has expired. There is very limited scope for illegals to regularize their stay and remain living in Australia. The regularisation provisions are highly complicated and are detailed below:

**Illegals Who Cannot Apply for a Temporary or Permanent Entry Permit**

21 The illegals who cannot apply for or make a "permissible" application for a permit include:

21.1 those in Australia who had applied for a permit and been rejected unless they can show a prescribed change of circumstances and that no deportation order has been signed against them under Section 59[12];

---

[12] Section 37 and Regulation 40. Prescribed change of circumstances are incorporated in Regulation 40 and include:

- the person has been granted refugee status;
- the person has become a dependent child (whose custodial parent became an Australian citizen or resident or whose parents died and whose new custodial parents are citizens or residents);
  the person has qualified in circumstances prescribed in the Regulations as:
  - an aged parent
  - a remaining relative
  - an aged dependent relative
  - a special need relative
  - an orphan relative.
- the PRC citizen qualifies for a PRC (Temporary) Permit;
- the person became the married or defacto spouse of an Australian citizen or resident before 19th December 1989;
  the person satisfies, since 19th December 1989, the criteria for the economic change of status class.

21.2 those who had appealed a permit application refusal to the Tribunal, who were notified by the Tribunal that they may be eligible for a different type of permit but who failed to lodge such new application within ten days of the notification unless they can show a "prescribed change of circumstances" after the expiry of that ten days and that no deportation order has been signed against them under Section 59[13].

**Illegals who Cannot be Granted a Temporary or Permanent Entry Permit**

22 Some illegals can apply for permanent residency and their application will be considered, but it must be rejected. The illegals who cannot be granted an entry permit include:

22.1 those who have not made applications for entry permits in accordance with the regulations and paid the applicable fee [s34(2)(b)];

22.2 those who entered Australia on a permit/visa which prohibited the grant of any other permit; (s33(4)(b);

22.3 those who have a mandatory deportation order signed against them;

22.4 those who were previously deported from Australia and who have not paid (or made satisfactory arrangements to pay) the debts associated with their detention and deportation (s45);

22.5 those who are statutory visitors (unless applying for asylum or refugee status) (s53);

22.6 those who have been arrested under s 92 or s 93, who did not inform the Minister in writing of their intention within 2 working days and lodge an application for an entry permit within seven working days: or if not arrested, those who lodged an application more than 12 months after becoming an illegal entrant unless in <u>either</u> case, they entered Australia in one of the following circumstances or unless the applicant has been granted refugee status or territorial asylum by the Minister:

22.6.1 before 1 January 1975;

22.6.2 before 19 December 1989 as a fiance and subsequently married his or her Australian sponsor;

---

[13] Section 36

22.6.3 as a holder of a conditional resident return visa before 19 December 1989 or a holder of an emergency return visa granted in accordance with Regulation 19, and was an Australian permanent resident at any time within 5 years before being granted that visa, has not departed from Australia since and has close personal ties with Australia;

22.6.4 before 19 December 1989, would have been entitled to a trainee (English language) entry permit or trainee (non-formal course) if the applicant had applied for and been granted that permit after 19 December 1989 and made an application for such permits before 30 April 1990);

22.7 those who do not satisfy the public interest criteria, including those who have been in custody pending consideration of their residency application, that they have no debts to the Commonwealth, unless satisfactory arrangements for payment have been made.

23 Foreshadowed changes by the Government have been announced to these provisions.

24 Under the new tough process all illegals are required to apply to regularise their status within 12 months of becoming an illegal or within 2 or 7 days if within that period of time they are located and arrested. If for any reason they do not make such application and are illegal for more than 12 months they are liable to mandatory deportation under s 59 of the Act.

25 It follows from this that there will be many illegals who are not barred from making an application and are not absolutely barred from being granted an entry permit, but will be unable to qualify to regularize their status because they will not meet the above tough criteria.

26 Illegals by definition do not have a valid entry permit - they may never have had one, their permit may have been cancelled or expired. Thus, any illegal who wants to apply for residency, except those granted refugee status, must first apply for and be granted an extended eligibility temporary entry permit (EETEP), which if granted, makes them eligible to apply for permanent residency. However, the regulations state that no illegal can actually be granted an EETEP unless they meet the following stringent criteria.

**Illegals who can be granted a permit**

27 The end result of all these restrictions is that the only illegals who can be granted a temporary entry permit and possibly a permanent permit are those permitted to make an application, who apply in time, and who: - (R35AA; R42)

27.1 are granted refugee status (who will now be given 4 years temporary stay and can thereafter apply for permanency);

27.2 satisfy the prescribed criteria for the relevant class of entry permit, (other than the need to hold a valid temporary permit, or not be an illegal entrant and provided the person had not departed from Australia since that entry and has developed close personal ties with Australia and the person entered

27.2.1 before 1 January, 1975; or

27.2.2 before or after 19 December, 1989 as a fiance to an Australian citizen or resident and has subsequently married the Australian citizen or resident and who apply before 1 November 1990 and where there are other compelling circumstances;

27.2.3 as the holder of a conditional resident return visa granted before 19 December, 1989 and was an Australian permanent resident at any time within 5 years before being granted that visa;

27.2.4 those who entered Australia before the 19th December, other than those described in 24.2.1-3, who satisfy the prescribed criteria for the relevant permit class, providing the person applies before the 1st November 1990 and the Minister is satisfied that there are compelling reasons for granting the permit

27.2.5 entered on or after the 19th December 1989, who satisfy the prescribed criteria for the relevant permit class providing they became illegal entrants because of factors beyond their control, apply within 28 days of becoming an illegal, complied substantially with any conditions of the intial entry permit and there are compelling reasons for granting the entry permit.

28 The prescribed criteria for the relevant permit class (EETEP) are as follows:

28.1 spouse EETEP - this class is only available for those illegals who are listed at 24.2.1-3, (those entering before 1 January 1975, before 19 December 1989 as a fiance, or the holders of resident return visas granted before 19 December 1989) and for those illegals who entered before the 19th December 1989 and apply before the 1st November 1990, that is, during the period of the operation of the concessionary scheme;

28.2 economic EETEP - available for certain illegals who apply during the period of the concessionary scheme;

28.3 family EETEP - available for all illegals who qualify as follows:

28.3.1 as an aged parent by satisfying the balance of family test;

28.3.2 as a dependent child - by virtue of the death of a last custodial parent;

28.3.3 as an aged dependent relative, remaining relative, orphan relative, special need relative - as the result of a death or permanent incapacitation.

29 All of these people will still have to pass the health, character and public interest tests before they can be granted permanent residency. All these illegals, except the refugees, must apply within 1 year of becoming an illegal or 7 days after arrest.

**The Concessionary Arrangement**

30 Under the current system, after 31st October 1990, the capacity of illegals to regularise their stay in Australia will be extremely tough. Not even spouses of Australians will be able to apply to stay.

31 In order to encourage illegal immigrants to come forward before that date, a so-called concessionary arrangement has been put into place. This arrangement was intended to temper the strictures of the new rules.

32 However, this supposed concession does not preserve, even for the period up to the 31st October 1990, the pre-19 December rules - for example, the old humanitarian and compassionate GORS categories are not available to illegals. And the concession does not allow illegals to apply for an entry permit if, as per s 37 and R 40 they have previously applied for and been refused an entry permit, unless they can show a prescribed change of circumstances.

33 As mentioned, this concession is set down in regulation 35AA. Providing there are compelling reasons those illegals who entered before the 19th December can qualify for a spouse or economic EETEP, ie, for permit classes which will be closed to illegals after 1 November 1990.

**Re-entry Restrictions**

34 Under the new control model there are further restrictions placed on illegals which affect re-entry. Those who cannot regularise their stay and who leave Australia voluntarily or who are deported are restricted from re-entering Australia.

35 The restrictions on grant of a permit for return to Australia are as follows:

35.1 an illegal who leaves within their 28 day period of grace or before 1st November 1990 (whichever is the latest) and is not found by the Department to have breached any other conditions of their permit - no time-ban;

35.2 an illegal who leaves within their period of grace but is found to have breached other conditions of their permit (e.g. working without authority) - 12 months, or six months if applying to re-enter as an immediate family member;

35.3 an illegal who leaves voluntarily after their period of grace but without being detected by the Department - 12 months, or six months if applying to re-enter as an immediate family member;

35.4 those who leave "under supervision" (i.e. do so voluntarily but after being detected by the Department) - three years, or 12 months if applying to re-enter as an immediate family member;

35.5 those who are deported - five years or two and a half years if applying to re-enter as immediate family.

36 These restrictions on re-entry do not apply to persons who apply for and are granted the following visas: refugee, in-country special humanitarian program, global special humanitarian program, emergency rescue visa, woman at risk, special need relative or an orphan relative.

37 This situation is quite different from that which applied before 19 December 1989. Before that date re-entry restrictions operated but they could be applied or not applied in a flexible fashion. Such restrictions are now mandatory. VIARC in its submission criticised the inability to waive re-entry restrictions in compassionate circumstances.[14] However, the Minister is considering giving primary decision makers the power to waive such restrictions. At present exemptions can only be given by the Minister using his residual discretion to set aside a review authority decision.

[14] Submission, vol 1, p.84

**Deportation Powers**

38 The most significant changes have been those made to the regularization and deportation provisions. It should be noted here that no other developed country requires all illegal entrants or undocumented aliens to leave without merits assessment or adjudication. The old Section 18 enabled the Minister to deport any, all or no illegal entrants. The new deportation sections are Sections 59 and 60. Section 60 states that the Minister may after considering prescribed matters and no other matters,[15] order the deportation of an illegal entrant. Section 59 enshrines the Minister's mandatory deportion power. The Minister after following prescribed procedures is required to order the deportation of an illegal entrant whose period of grace has ended - such deportation order is non-revokable.

---

[15] Prescribed matters - subsections 60(1) and 82(1) of the Act

179. For the purposes of subsections 60(1) and 82(1) of the Act respectively, the following matters are prescribed to be considered by the Minister in relation to a person referred to in whichever of those subsections is applicable:

(a) whether the person is an illegal entrant;

(b) whether the person has been given in accordance with these Regulations a notice of the intention to refer to the Minister the question of the exercise of the power:
(i) to order the deportation of the person; or
(ii) to require the person to leave Australia;
as the case requires;

(c) whether the person has been granted, or is an applicant to be granted, refugee status or territorial asylum;

(d) whether the person:
(i) is an applicant for an entry permit; or
(ii) has applied to a review authority following a decision by the Minister refusing to grant an entry permit;

(e) whether the person is subject to a court order that is in force affecting the Minister's exercise of the relevant power referred to in paragraph (b);

(f) whether 2 working days have elapsed after the day on which the person was arrested under section 92 or 93 of the Act, as the case requires.

**The effect of the deportation provisions on illegal entrants**

39 All illegal entrants are granted a "period of grace". It is the period within which the discretionary deportation order, defined above, cannot be executed and the period which must elapse before the illegal becomes liable to mandatory deportation. Under Section 13 of the Act, the period of grace begins when the person becomes an illegal entrant and ends after 28 days, not counting "excluded days", - those days when the clock stops because the illegal has lodged an application for an entry permit, a review application or a first-tier Federal Court application.

40 The period of grace for illegals here before the 19th December ended on the 15th January 1990. All such illegals and others who became illegal after the 19th December whose 28 days have expired, are liable to mandatory deportation[16].

41 Mr Brian Murray stated:

> "The effect of 59, together with the provisions of the Migration Regulations 127, 129, 140 and 141 is to require the deportation of people, regardless of compassion, humanity and commonsense".[17]

42 Although Section 59 on its face, appears to oblige the Minister to sign such non-revocable orders when the illegal's period of grace has ended, the Department, no doubt on legal advice, interprets this provision to be "a reserve power", and has advised the Committee that the Minister will rely "by and large" on the Section 60 discretionary, revocable deportation power[18]. Deportation orders are required to be executed "accordingly", although a delay in execution does not affect the validity of the order[19].

---

[16] Section 59

[17] Submissions, vol 1, p.13

[18] W Gibbons to Committee, 7 August 1990, Hansard, p.196

[19] Section 63

43 The signing of a mandatory order automatically revokes the discretionary deportation order. A discretionary deportation order can be revoked by the Minister after considering the following matters and no other matters[20]:

43.1 where there has been a prescribed change in the person's circumstances;

43.2 where the person has been granted refugee status or territorial asylum;

43.3 where the person has asked to be allowed to leave Australia 'under supervision' and the request is approved by the Minister.

43.4 where the person has applied for reconsideration of a refusal decision[21] or for review of a refusal decision[22] and the reconsideration or review is favourable to the person and the Minister intends to grant an entry permit to the person.

**The Compliance Functions**

44 Many of the compliance functions have remained as they were prior to 19 December 1989. However, on 5 August 1990, the Minister announced new compliance initiatives to reduce the number of illegal immigrants. These initiatives included an increase in the numbers of compliance staff in regional office to 150.

45 The Minister stated that:

45.1 the additional staff would give the Department much more strength to:

45.1.1 follow up temporary entrants, including visitors and students, who overstay their temporary entry permits;

45.1.2 follow up people whose applications to remain are rejected, to ensure they actually leave;

45.1.3 apprehend illegal entrants who are working;

---

[20] Regulation 180

[21] Subregulation 173A(1)

[22] Regulation 21, where 21B applies

45.1.4 carry out checks of employers and educational institutions;

45.1.5 deport criminal illegal entrants; and

45.1.6 investigate organised immigration rackets such as contrived marriages and 'the implementation of foreign prostitutes', with a view to prosecuting the organisers and enforcing migration law.[23]

47 The statement also referred to enhancements to computer systems, which would provide more timely data and which would also enable other Government agencies, such as the Department of Social Security and Medicare to check the resident status of applicants before approving a benefit or service.

48 The Department, in evidence to the Committee[24] spoke of the new compliance procedures and strategies as "a new era in entry control management", information "will be timely and very accurate" and "can be put to effective use". However the "accurate" information is that obtained over recent months from the transmission of visa details, not the old information collated from passenger cards.

**Conclusions**

49 It is not clear whether this "timely, accurate" information includes data on the existing 90,000 illegals. Even the new, accurate data is of little use if the illegal entrant adopts a false name and identity in Australia. Certainly one could expect an improvement in compliance activity but the staff is unlikely, from its own resources to "round up" those illegals currently living and working in Australia. One could expect better detection of recent or future illegals.

---

[23] Ministerial Press Release, 5 August 1990

[24] W Gibbons, 7 August 1990, p.177

**Detention**

50 As before, suspected illegal entrants are liable to arrest and can be held in custody[25]. Illegals arrested must be taken before a "prescribed authority" generally a magistrate, within 48 hours after arrest. The magistrate is required to inquire whether there are reasonable grounds for or supposing the person is an illegal entrant and may, if so satisfied authorise the continuing detention of the person - but for no longer than 7 days unless the person consents. If the reasonable grounds are not made out the magistrate must order the person's release.

51 A deportee, restrained in custody under Section 93, has no automatic right to be brought before a magistrate. Such right only arises if within 48 hours after arrest the deportee claims and makes a statutory declaration that s/he is not the person the subject of the deportation order.

52 On such occasions the person is brought before a prescribed authority who determines whether the person is the deportee. If such a finding is made, the person may be kept in such custody as the Minister or Secretary directs pending deportation; otherwise the person is released. The Minister or Secretary may also, at any time order the release of a deportee from custody - such order might be unconditional or subject to conditions. Those in custody under the Act are entitled to "reasonable facilities" for obtaining legal advice[26]. Certain departmental officers can accept sureties from the illegal entrant or deportee as security against the detainee's release from custody pending investigation or deportation[27].

53 The limited bail facilities for deportees have been criticized in the past[28]. There have been cases where deportees have been held for long periods in custody awaiting arrangements for their deportation. In cases where the illegal entrant is stateless, it may take some time to find a country to receive the illegal.

---

[25] Section 92

[26] Section 96. The Department interprets this provision to mean that there is no requirement to provide such facilities for those detainees who have not 'entered'.

[27] Section 107

[28] For example, Mensa, 2 May 1990, Einfeld J

54 Changes to the custody arrangements effected by the 1989 amendments add a new issue to bail cases. There is not just the issue of the deportees rights or the risk of absconding. The new issue is the extent of the detainee's indebtedness to the Commonwealth for his/her detention costs. From 1989 deportees are liable to repay to the Commonwealth their departure costs and the costs of their detention, including any period of detention as an illegal entrant. Such detention costs are calculated at a set, daily maintenance rate.[29] The detention and departure costs represent a debt to the Commonwealth which can be recovered in a court of competant jurisdiction.

55 In order to protect an existing or anticipated detention/deportation debt, the Secretary is entitled, after serving written notice on the arrested person, to take the person's valuables into safekeeping and to restrain a bank or financial institution from processing any transaction in relation to the arrested person's own or joint account. The notice remains in force for 3 days or for up to 12 months if confirmed by a court. The court order may make provision for meeting the arrested person's reasonable living and legal expenses from an account or valuables[30].

---

[29] Section 65

[30] Section 67; 68

## CHAPTER 5

## SOME PROPOSALS FOR ADJUSTMENT OF THE 1989 CONTROL MODEL

- Curing/Losing Illegal Entry Status
- The endorsement procedure
- Re-entry restrictions
- Section 37
- Time periods for lodgement

1 The new control model appears to have certain inherent legal difficulties or produces anomalies, causing injustice and hardship in otherwise deserving cases.

2 In this regard, the Committee is concerned about the following matters:

2.1 the mechanisms by which illegal entry status is cured or lost;

2.2 the endorsement procedure for those who are illegal entrants under s 20 of the Act;

2.3 the re-entry restrictions, in particular the permanent bar for those deported in relation to the commission of a crime or on security grounds;

2.4 the section 37 bar to the grant of a further entry permit for those illegals who have previously applied for and been refused an entry permit and do not have a prescribed change of circumstances;

2.5 the time constraints for lodging applications for entry permits.

3 The Committee is also concerned about the issue of border refusals for those permanent residents who are returning to Australia some of whom may be innocent illegals or who may, in their absence from Australia, have contracted a prescribed disease or condition, such that they are now within the inadmissable classes set down in s 20(1)(d). Owing to time constraints the Committee was unable to address this issue in any detail and has reserved the matter to be dealt with in a subsequent report on change of status.

**Curing/Losing Illegal Entry Status**

4 Illegal entrant status under the new Act and regulations can be cured. The Act states that a person who secured entry or stay by deception ceases to be an illegal entrant when s/he is granted a properly endorsed entry permit. All other illegals lose their unlawful status when granted an entry permit or further entry permit. Section 22 appears to make it quite clear that this is the only way that illegal entry status is lost:

> **22.** (1) A person who has become an illegal entrant otherwise than under subsection 14 (2) stops being an illegal entrant if and when an entry permit or further entry permit is granted to the person, and not otherwise.
>
> (2) A person who has become an illegal entrant under subsection 14 (2) [Entry or stay by deception] for a particular reason stops being an illegal entrant if and when there is granted to the person a properly endorsed valid entry permit, and does not otherwise stop being an illegal entrant.

5 This provision does not sit well with Section 14 (2) which, in respect of those who enter or secure stay by deception reads:

> **14.** (2) Where a person to whom subsection 20 (1) or (2) applies has entered Australia (whether before or after the commencement of this section) then, at and after that commencement, or that entry, whichever is later, the person is an illegal entrant at any time while he or she:
>
> (a) remains in Australia
> (b) is not a citizen; and
> (c) does not hold a properly endorsed valid entry permit or a properly endorsed valid entry visa.

6 One can argue that Section 14 (2) means that illegal entrants by deception lose that status on departing Australia, acquiring Australian citizenship or by obtaining a properly endorsed entry permit. The proposition is however inconsistent with the restricted cure (only by the properly endorsed entry permit), which is allowed by Section 22. The PAMs[1] state that persons cease to be illegal entrants if they are granted an entry permit or properly endorsed entry permit or if they depart Australia.

7 Given these inconsistent statements it is presently difficult for advisers or illegals themselves to ascertain if a cure of the irregularity has been effected. Take the following example where an illegal entrant obtains Australian citizenship. The illegal entrant may have innocently obtained entry by deception. In such a case, if, as often happens, the person is unaware of the deception and the deception does not come to the attention of the Department, the person may be given a permanent entry permit but because the deception is not known, the permit will not carry the prescribed endorsement which would cure the person's illegal entry status.

8 If the person then acquires Australian citizenship does this effect a cure? In the past the answer was "yes". The person entering by deception would have been a "prohibited non-citizen" and it was plain that one could not be both a prohibited non-citizen and a citizen. The answer is not so clear now. Indeed, given the terms of Section 22 it is clearly arguable that such a person, a citizen, is also an illegal entrant and is liable to deportation, a deportation which may be difficult, if not impossible to execute. The person's citizenship could not be revoked for s/he did not use fraud to obtain citizenship.

---

[1] Status of Illegal Entrant (2); 6.1

9 If this is the position in law, Australian citizens are not about to be deported. But if, theoretically, Australian citizens can be illegal entrants then the government's power to make laws for the deportation of illegal entrants arguably derives not from the Aliens head of power in the Constitution but from the Immigration head of power. Since 1983 the deportation provisions derive from the Aliens power and the issues are simple - is the person a non-citizen and an illegal entrant. If the Immigration power is the source of authority, case law makes it clear that the Minister's power to deport depends on whether the person is an immigrant. Stated simplistically, an immigrant is defined in case-law as a person who entered Australia and is not yet "absorbed".[2] Absorption might be evidenced by the length of stay, by marriage to an Australian, the birth of Australian children or by the acquisition of Australian citizenship. In deportation cases, under the Immigration powers, the issue is not just whether the person is an illegal entrant but also whether s/he is an "immigrant". If such a legal change has occurred, the effect on the control model would be significant.

10 **The Committee recommends that:**

**the Department of Immigration, Local Government and Ethnic Affairs seek legal advice on the question of the conflict between section 22 relating to curing illegal entrant status and section 14(2) and, if necessary make amendments to the Act, including an amendment so as to make plain how illegal entrant status is cured.**

**The endorsement procedure**

11 Illegal entrant status, as noted earlier, is cured by the grant of an entry permit, or for those who became illegal under Section 20, by the grant of a properly endorsed entry permit. Those caught by Section 20 include those who evaded controls, secured entry or stay by deception or those with prescribed diseases or conditions or convicted of certain crimes etc. who entered without an endorsement.

12 The Committee is concerned about problems associated with the endorsement scheme which may also cause confusion and for some, real injustice. The coded endorsement placed on the visa or permit is legal recognition that the person falls within section 20 of the Act, but is nevertheless permitted to enter or stay.

---

[2] Ex parte Walsh and Johnson, (1925) 37 CLR 36; Ex parte Lee Yum Bo; Re Morony, [1964] 6 FLR 235; Donoghoe v Wong San [1925] 36 CLR 404; Pochi v Minister for Immigration and Ethnic Affairs (1982) 43 ALR 261; Nolan v Minister of State for Immigration, (1988) 165 CLR 178.

13 The arrangements for such permit endorsements are complicated, and, as with the positive candour system, the entrant is taken to know the immigration rules and will become illegal if s/he neglects to comply with the endorsement requirement. To be considered for an endorsement, an entrant is now required to submit to the Secretary a prescribed Section 20 notice, specifying all the reasons they are subject to Section 20.

14 The scheme requires the entrant to know of the precise nature of their breach(es) of Section 20 and to make application for the endorsement on the prescribed form. Immigration officers can only make such endorsement when the illegal requests it on the prescribed notice[3].

15 The notice makes no accommodation for the privilege against self-incrimination. Persons signing it may be liable to conviction under Section 77 on the evidence of the Section 20 notice.

16 One problem with the scheme concerns those illegal entrants who secure entry or stay by deception. If such a person admits the deception and obtains a properly endorsed permit it is not clear whether or not this operates as a final cure. Neither the Act nor the PAM's indicate whether such persons require fresh endorsements on each occasion they depart and re-enter Australia.

17 These changes have dealt with some of the issues canvassed in the Rubrico case[4]. In that case the deportation order against a prohibited non-citizen was quashed. Rubrico had made full disclosure of her deception on entry to the Department, and had subsequently been granted an entry permit, but not an endorsed permit. In that case, Lee J held that the Department had a duty to endorse the permit granted after Rubrico's full disclosure. Their failure to endorse the permit was either evidence of the fact that they did not regard her as a prohibited non-citizen who required endorsement or was evidence that their obligation to endorse remained to be done, the judge concluded that, in fairness, the deportation order against her must be quashed.

---

[3] Section 20(4); (5)

[4] Western Australia Federal Court, 31 March 1989

18 Changes made in 1989 place the onus on the applicant to know and to make appropriate arrangements for formal recognition and cure of his/her illegality. The applicant who admits deception but does not know to ask for, or does not ask for endorsement on a section 20 form, cannot get endorsement.

19 The Committee has the following concerns about this provision:

19.1 there will be transitional cases, like Rubrico where people have made full disclosure in the past and have received from the Department a permit, but not a properly endorsed permit. Following the Rubrico principle they may have escaped being prohibited non-citizens liable to deportation before 19th December but may be illegals liable to mandatory deportation on re-entry after the 19th December;

19.2 the scheme requires illegals to know the legal requirements of the Act. In the immigration context that assumption should appropriately be only made of immigration officials;

19.3 the scheme makes particular difficulties for innocent illegals who generally do not know they are illegal, will not know to ask for an endorsement; and may only come to the attention of the Department on occasions when they are re-entering Australia;

19.4 where such illegals are detected at the point of entry they are liable to be summarily "turned around". There is no provision for them to make application for endorsement and no right of review in Australia if such endorsement is refused.

**Recommendations:**

20 **That:**

**The provisions and practice concerning endorsement be re-examined and amended, in particular to put beyond doubt that illegals who entered or secured stay by deception who obtain a properly endorsed permit are not required to have a fresh endorsement on each and every occasion of re-entry;**

21 As noted earlier in this report the position of illegal entrants detected at the point of entry and who are liable to be turned around will be addressed in a subsequent report.

**Re-entry Restrictions**

22 In the Select Committee's second report to the Minister the Committee expressed its concern about the wording of Regulation 36 (1)(b), which placed a permanent re-entry restriction on a person deported from Australia in relation to the commission of a crime or on security grounds.[5] In discussions with the Select Committee the Department undertook to change the wording to allay the Committee's concerns.

23 However, this undertaking has not been honoured. The Committee repeats its concerns in this report. In addition, the Committee notes that the provision as presently worded could have the effect of permanently barring from re-entry the spouse and dependent children deported along with a principal deportee, convicted of a crime or removed on security grounds.

24 The Committee is also concerned that some people deported on criminal grounds in the past, who have been permitted to return to take up residence in Australia may find themselves excluded permanently if they leave then attempt to re-enter Australia. The Committee is aware that the regulations do not operate retrospectively. Even so, Section 44 of the Act states that entry permits stop being in force upon departure from Australia and on the occasion of return a person must requalify for entry. It is the effect of this provision which gives the Committee cause for concern about the potential for retrospective operation of regulation 36 (1)(b).

**Recommendation:**

25 **That:**

**Regulation 36(1)(b) be re-examined and amended so as to put beyond doubt:**

**(a) the fact that the ban applies to those persons deported after 19 December 1990; and**

**(b) the ban applies to the principal deportee and not to those immediate family members deported with the principal deportee.**

---

[5] Joint Select Committee Report to the Minister for Immigration, Local Government and Ethnic Affairs, 12 December 1989, para 2.17-2.18, pp 15-16

**Section 37**

26 Section 37 of the Act states that an illegal entrant who applied in Australia for an entry permit and was refused is not entitled to make any further application for an entry permit while he or she remains in Australia, unless there has been a prescribed change in circumstances since the person applied for an entry permit and no section 59 deportation order has been made in respect of that person.

27 The section is designed to prevent illegals making a succession of applications for an entry permit. The Committee understands this problem and applauds attempts to solve it. However, section 37 as currently drafted produces unsatisfactory and, in some instances, unjust results. It has the practical effect of favouring those illegals who go to ground immediately after entry to Australia over those who sought to maintain regular and lawful immigration status for some part of their stay in Australia. The Committee heard evidence of instances in which section 37 worked injustice in particular cases.

28 One such case concerned an illegal who was applying for regularisation after 19 December 1989. The illegal, in fact, qualified after entry as a last remaining relative. He inadvertently applied on his own for a humanitarian EETEP and was refused because he did not qualify for this category. The illegal has no right of review because his application was for a humanitarian permit. He is unable to reapply for a family EETEP because he has not qualified as a last remaining relative since his humanitarian EETEP refusal.

29 In this particular case the injustice might be redressed if this illegal entrant, and indeed it may be appropriate if all applicants, were entitled to submit an amended application form in such circumstances.

30 The Committee wishes to control the number of applications which an illegal is entitled to lodge. It acknowledges that the current control model imposes various effective measures to deter illegals from lodging unmeritorious applications, for example, illegals in custody are required to pay their maintenance costs.

**Recommendation:**

31 **That:**

**section 37 be amended to permit illegals to make further applications by leave where it would be harsh and unconscionable to deny any such further applications.**

**Time periods for lodgement**

32 The Committee also addressed the time constraints imposed on those in custody who seek to regularise their stay. The Committee notes with approval that the earlier requirement that such applications be lodged within two days has now been extended to seven days, providing the applicant notifies his/her intention to lodge within two days after arrest.

33 The Committee refers to the recent case of Eremin and the comments of Wilcox J concerning the two day time limit. His Honour made the following point:

> "But laws should be administered fairly. Where a department has to administer regulations which require that a particular application be lodged within a period as short as two days, without any provision for extension of time, it has an obligation to ensure that affected persons have an opportunity of complying with that requirement. If it fails in that obligation, to use the consequential delay against the applicant is to embrace tyranny".[6]

34 The Committee is concerned that even under the amended 7 day scheme applicants may be unable, through administrative delay to lodge applications in time.

**Recommendation:**

35 **That:**

**in order for the law to be administered fairly, a waiver provision be incorporated into the regulations to allow for late lodgements in appropriate circumstances.**

---

[6] Eremin case

## CHAPTER 6

## PROPOSALS FOR A LIMITED LEGALISATION PROGRAM

- General criticisms of the new model
- The General Approach of the Committee
- The Tribunal Process
- Criteria for Application to the Tribunal
- Exceptional Circumstances
- The Application Form
- A System for after 31 October 1990
- Current Applications
- Re-entry Rights
- Publicising the new program
- Arguments for the above scheme
- Conclusion

### General criticisms of the New Model

1 The new regime has been the subject of much criticism in submissions and evidence to the Committee. In particular, the lack of discretion for the "hard cases", the ease with which people can become illegal and the severe consequences attached to that illegality have been cited as areas for concern.

2 The Victorian Immigration Advice and Rights Centre requested that "provision be made for the consideration of compelling, compassionate and humanitarian cases".[1]

3 Mr Paul Baker of the Law Institute of Victoria gave an example of the strictness of the new regime and the ease with which somebody could become illegal through no fault of his/her own:

> "In the system as it now stands you have the processing application plus the actual application to change status. So while all that process is going on you are okay, but only until such time as the Department rejects the application. Why should someone who has come here legally, who makes an application during their visa period, and has done absolutely nothing that is incorrect, be put into a position where as soon as the Department notifies them of the fact that their application has been rejected, they are automatically regarded as illegal, when being an illegal entrant carries certain burdens with it".[2]

---

[1] Submission, vol 1, p.79

[2] Transcript of Evidence, p.95

4 VIARC also criticised the very limited grounds for change of status available to illegals, "irrespective of their personal circumstances or the hardship that may be caused to their Australian spouses or family".[3]

5 Although there was widespread support for the principle of codification of immigration practice and procedure, commentators have been critical, of the extent to which the architects of the regulations have attempted to codify the range of human circumstances, without the existence of a "safety valve" to deal with those cases which do not fit into the prescribed criteria or which, because of their humanitarian or compassionate circumstances, nevertheless, deserve to be heard.[4]

6 Where no possibility of regularising stay exists then people will be forced underground. Ms Ros van Weerdenburg stated in evidence that:

> "Currently, I think, the feeling is that it is so difficult to be successful in your application under any of the categories - particularly depending on which country you have come from - given that you may not fit appropriately into any other categories, your only option is to apply under the refugee category. It is known that your chances of being successful are virtually nil. That is contributing to keeping a lot of people illegal ....[5]

7 Amnesty International made a detailed submission to the Committee, in which it stated its concerns regarding, inter alia, the possible infringement of internationally recognised rights. Such rights include the rights of families and in particular of spouses. Amnesty submitted, that as a minimum, provision should be made for due consideration of claims based on family relationships:

> "what is required, however, as a minimum, is that there should be provision for a fair, accessible and effective procedure by which the circumstances of each case may be assessed, including an assessment of the impact of deportation or refusal of entry permit in the rights of members of that family".[6]

---

[3] Submission, vol 1, p.80

[4] Transcript of Evidence, p.36; Transcript of Evidence to the Select Committee, p.146

[5] Transcript of Evidence, p.408

[6] Amnesty International, Submission, No 86, p.10

8 FECCA, in their submission to the Committee, advocated a limited legalisation program for certain categories, arguing that

> "some structural changes in our system are essential if the tradition of respecting and acting according to the law is not to be weakened.[7] It will be strengthened if some persons here now, who should never have been excluded or should no longer be threatened with deportation are allowed to remain."

9 FECCA and Mr Tim Shao, who also provided a submission to the Committee, identified a number of groups as being wrongly disadvantaged, including:

(1) spouses and ex-spouses of Australian residents or citizens;

(2) parents of children who are Australian citizens;

(3) parents of adult Australian residents or citizens;

(4) unmarried adult children of Australian residents and citizens;

(5) other close relatives of Australian residents and citizens;

(6) persons who fear return to their home countries because of persecution or discrimination; and

(7) persons who have been absorbed into the Australian community.

10 Although FECCA recognises that some concessions have been made in the period up to 31 October 1990, it is still concerned about the total absence of concessions for the last three groupings.

**The General Approach of the Committee**

11 The Committee does not condone or encourage illegality as a back door to permanent entry to Australia and supports the efforts of the Government and the Department to firstly, minimise current levels of illegal entry and secondly, prevent a future problem. However, the Committee is unaware of any other developed country which has automatic and mandatory deportation for nearly all illegals, as is the case under the tough provisions of the new model.

---

[7] Submission, No. 89, pp.2-3

12 In these circumstances, the Committee believes that some limited opportunity be made available for a small proportion of the total number of illegals to regularise their status. The people we are concerned about are some of those people who may be innocently illegal, those who have a compelling, compassionate case or those who have been absorbed into Australian society for at least five years and can show that they have made a substantial contribution to Australia. Such a limited window of opportunity will encourage people to come forward before 31 October and will help to minimise the extent of the illegal 'twilight society'.

13 The Committee is further concerned that the Government's intention that illegal entrants should come forward before 31 October 1990 will not be fulfilled unless the new control model is tempered with discretion and compassion.

**The Tribunal Process**

14 The Committee believes that the main way of dealing with the problem of long-term illegal immigrants generally is by empowering the Immigration Review Tribunal to consider applications from illegal immigrants who come forward or are apprehended before 31 October 1990. This Tribunal would be empowered in the case of innocent illegals to make recommendations to the Minister for Immigration, Local Government and Ethnic Affairs and in all other cases to make a determination.

15 Once an application has been lodged, the Registrar of the Tribunal would submit the application to the Department of Immigration and the Department would have the obligation to supply all files and the right to make any submission to the Tribunal which they considered relevant to the Tribunal's determination of the case.

16 The Tribunal would have the power to call before it the applicant, any officers of the Immigration Department and any other relevant witnesses.

17 Using the criteria listed below the Tribunal would be empowered to recommend to the Minister or determine that a person be granted permanent residence. If the person is not approved, they would be given 28 days from the notification of the determination to make arrangements to leave Australia. If they do so they would have the right to re-apply from overseas without penalty and to be considered under the various categories of migration.

18 There would be no appeal available to the Administrative Appeals Tribunal on the determinations of the Tribunal in these matters.

19 Mr Ronald Merkel, QC, in his evidence to the Committee, argued that claims based on compassionate and humanitarian circumstances, whether a person was illegal or not, be heard by an independent tribunal:

> 'we want a process by which their claims can be assessed by an independent tribunal. If they are compelling and if they are exceptional, then why not let them stay? This is a system dealing with human beings. You still have your public interest criteria; you still have your health criteria.'[8]

20 Mr Merkel argued for a 'competent tribunal [which] can administer criteria, such as exceptional and compelling circumstances',[9] although Mr Merkel did agree that he felt appropriate discretion should be vested in the Department, MIRO and the IRT.[10]

21 Mr Merkel's suggestion potentially encompasses giving a right to go to the tribunal to a large number of people, given the difficulty of defining the totality of the range of cases that fall within exceptional and compassionate circumstances.

22 However, in his suggestion Mr Merkel argued against the possibility of a floodgate, given the ability of the IRT to consider applications on the papers, with only those deserving of thorough and proper consideration going to the three member Tribunal[11]. Mr Paul Baker, in supporting this, argued that it was fairly easy to detect frivolous or undeserving applications[12].

---

[8] Transcript of Evidence, p.51

[9] Transcript of Evidence, p.68

[10] Transcript of Evidence, p.68

[11] Transcript of evidence, p.73

[12] Transcript of Evidence, p.

23 The Committee feels that this suggestion is impractical in that it could lead to the vast majority of those coming forward by 31 October seeking to apply to the Tribunal. The Tribunal could thus be faced with tens of thousands of cases.

**Criteria for Application to the Tribunal**

24 The Committee feels that a practical concession needs to be made to delineate further those eligible to apply to the Tribunal.

25 The Committee resolved that an illegal immigrant would be able to apply to the Tribunal provided that they:

(a) believe themselves to be an innocent illegal immigrant as defined in Chapter 3 or
(b) meet the following conditions:

25.1 has been in Australia for at least five years prior to 31 October 1990 (that is arrived in Australia prior to 31 October 1985) and is able to present evidence demonstrating this fact; and

25.2 has come forward and presented themselves to the Registrar of the Immigration Review Tribunal before 31 October 1990 by either

i) completing an application form as outlined below; or
ii) completing firstly a notice of intent to lodge such an application in which they undertake to complete a full application form by the 15th December 1990; and
iii) completing and lodging an application form by 15 December 1990; and

25.3 is able to present information and evidence which would satisfy the Tribunal that they have made a positive and substantial contribution to Australia during the period in which they had been in Australia; or

25.4 can demonstrate that there are compelling, compassionate circumstances which contributed to the applicant's illegal standing and which should be taken into account by the Tribunal as reasons for granting stay in Australia.

26 In making its determination, the Tribunal will take note of the following relevant circumstances (which are adapted from the British immigration rules):

age;
length of residence in Australia;
strength of connections with Australia;
personal history, including character, conduct and employment record;
domestic circumstances;
compassionate circumstances;
any representation received on the person's behalf.

**Exceptional Circumstances**

27 In rare cases where there are compelling and compassionate circumstances and where persons:

(a) have been in Australia less than five years; or

(b) were prevented by serious intervening circumstances from making an application;

such persons may seek leave of the Registrar of the Tribunal to lodge an application for the Tribunal's consideration. This clause is to be used in only rare cases and would be accompanied by a sworn affidavit setting out the circumstances which the Registrar must take into account. In these cases there would be no automatic right to go to the Tribunal.

**The Application Form**

28 In order for the Tribunal to be able to assess such circumstances, each applicant will be required to complete a form giving detailed information necessary for the Tribunal to determine the veracity of their claims.

29 In addition to general information, the applicant would be required to provide the following information:

29.1 information relevant to the public interest criteria;

29.2 their personal history, including character, conduct and employment record;

29.3 the extent to which they have contributed to community organisations and other worthwhile projects including contributions to their particular ethnic community;

29.4 the extent to which they may have assisted other members of their family who are legal Australian residents;

29.5 whether they have any special ability or activity which, in the opinion of the applicant, could be considered a substantial contribution to Australian society;

29.6 whether, and to what degree, the person has attempted to regularise their status; and

29.7 to what degree they are likely to be faced with discrimination and/or serious settlement problems if they return to their country of origin.

30 In addition, applicants would be asked to provide passports, visas, and other evidence demonstrating that they have indeed been in Australia for at least five years.

31 Finally, applicants would be asked to supply at least three references supporting their claims as to the nature of their positive and substantial contribution to Australia.

32 **The Committee therefore recommends that:**

**32.1 the Immigration Review Tribunal be empowered to consider applications from illegals to regularise their stay;**

**32.2 the Tribunal to be empowered to consider applications from illegals who:**

**(a) believe themselves to be an innocent illegal immigrant, i.e. that the person became an illegal entrant because of factors beyond his or her control, or who**
**(b) meet the following conditions:**

**32.2.1 has been in Australia for at least five years prior to 31 October 1990 (that is arrived in Australia prior to 31 October 1985) and is able to present evidence demonstrating this fact; and**

32.2.2 has come forward and presented themselves to the Registrar of the Immigration Tribunal before 31 October 1990 by either

i) completing an application form as outlined below; or
ii) completing a notice of intent to lodge such an application in which they undertake to complete a full application form by the 15th December 1990; and
iii) completes such application form by 15 December;

32.2.3 is able to present information and evidence which would satisfy the Tribunal that they have made a positive and substantial contribution to Australia during the period in which they had been in Australia; or

32.2.4 can demonstrate that there are compelling or compassionate circumstances which contributed to the applicant's illegal standing and which should be taken into account by the Tribunal as reasons for granting stay in Australia.

32.2.5 In making its determination, the Tribunal will take note of the following relevant circumstances in the case of those applying under paragraph 32.2(b):

age;
length of residence in Australia;
strength of connections with Australia;
personal history, including character, conduct and employment record;
domestic circumstances;
compassionate circumstances;
any representation received on the person's behalf.

32.3 In respect of those applying under paragraph 32.2(a) the Tribunal:

32.3.1 will take note of whether they are in the judgement of the Tribunal, an innocent illegal;
32.3.2 will take note of information addressing the factors listed in 32.2.5;
32.3.3 will make a recommendation to the Minister on the grant of a permanent entry permit. Such innocent illegals will also be required to meet the health and public interest criteria.

32.4 In order for the Tribunal to be able to assess such circumstances, each applicant will be required to complete a form giving detailed information necessary for the Tribunal to determine the veracity or merits of their claims:

32.5 that the Department be given an opportunity to make a submission on the case if they so desire;

32.6 that the Tribunal have the authority to access all relevant file and Departmental documents, to call witnesses including the applicant and Departmental officials;

32.7 that, for those applying under 32.2(b) if the Tribunal is satisfied:

(a) the Tribunal be able to determine that a person be granted permanent residence;

(b) that there be no capacity for review of the decision to the Administrative Appeals Tribunal;

(c) that there would be the capacity to access the Minister pursuant to section 137 of the Act.

**A system for after 31 October 1990**

33 It will also be necessary to have some means of addressing those cases which will arise after 31 October 1990, particularly those of innocent illegals. The Committee is particularly mindful of those who became or are illegal entrants pursuant to section 20(1)(2) or are shown to be illegal after 31 October 1990.

**Recommendation:**

34 That:

. the regulations prescribe that in exceptional, compelling and compassionate circumstances the Immigration Review Tribunal may recommend to the Minister that he exercise his absolute discretion or power to grant a permanent temporary entry permit;

in reaching its decision the Tribunal shall have regard to:

(a) the public interest which would normally suggest that deportation would be the proper course;

(b) whether or not the particular circumstances had arisen since the applicant's arrival in Australia; and

(c) the strength of connection with Australia, which would suggest that further residence is a preferable result.

Current Applications

35 The Committee is also aware of the rights of those people who have applications pending with the Department. In the event of refusal the Committee would like to ensure that such applicants have the same opportunity to go to the Tribunal as those who apply direct before 31 October.

Recommendation:

36 That:

(a) any notice of appeal to the Tribunal is treated as a notice of application;

(b) the Immigration Review Tribunal have the ability to consider both the appeal and an application under the above concession.

Re-entry Rights

37 Further the Committee wishes to ensure that, where an illegal entrant who has lodged an application to remain in Australia in accordance with these provisions is refused by the Tribunal, there be no re-entry restrictions on an application from that person from overseas.

Recommendation:

38 . That, where an illegal entrant who has lodged an application to remain in Australia in accordance with these provisions, is refused by the Immigration Review Tribunal, providing the illegal leaves Australia within 28 days of receipt of the refusal decision, there be no time restrictions on the period within which that person can be granted a visa or entry permit, if they apply from overseas.

Publicising the New Program

39 It would also be necessary to widely publicise accurate information regarding this concession. The Committee would wish to see extensive television, newspaper and radio advertising included as part of the campaign.

40 This publicity would emphasise the concessions available and the penalties which will occur if people do not come forward before 31 October.

**Arguments for the above scheme**

41 In its submission to the Committee FECCA stated:

> 'Prior to 1982 the Migration Act allowed persons who had lived in Australia illegally for more than five years to apply for residence on the ground of their absorption into the Australian community, and that it would cause grave hardship if they and their families were forced to leave.
>
> The Federation is of the view that this provision should be re-introduced under a compassionate category on a case-by-case basis with each applicant required to provide evidence that they had made a positive contribution to Australian society, is of good character and generally complied with the requirements of Australian law.'[13]

42 This is the preferred view of the Federation of Ethnic Communities Councils and the preferred option of a number of groups who appeared before the Committee. This approach incorporates and balances both the absorption principle and the tribunal approach as suggested by Mr Merkel.

**The Argument from Numbers**

43 Those who wish to argue against this scheme do so on the basis that it would open the door to too many illegal entrants to be able to stay in Australia.

44 The Department's own estimates of the number of people who have been in Australia for five years or more is as follows:

45 Even if we assume that this figure has been inflated to some degree, it is still very likely that only approximately 10-12,000 people will be eligible to come forward and apply under the concessionary scheme before the 31st October. On previous experience with more generous schemes, such as amnesties, at the most 70% of these will come forward - and this is highly optimistic.

---

[13] FECCA, Submission no 88, p.4

46 Of these 7,000 - 8,400, only a proportion will be accepted by the Tribunal as meeting the criteria outlined above. Even assuming a figure as high as 70% meeting the criteria, this gives us only
4,900 - 5,600 would be approved - and this is based on a highly optimistic outcome. The result is likely to be close to be between 3,000 and 4,000. [This is not a large number in the total illegal population of 90,000. But it is important because it will address the most deserving cases.]

**Conclusion**

47 This approach provides for a total balance between the tough control measures outlined in Chapter 5 and the need for compassion and consideration for some of those illegal immigrants who have made a contribution to Australia.

## CHAPTER 7

## TOUGHER CONTROLS AND OTHER ISSUES OF CONCERN

- **Bogus or sham marriages**
- **Harbouring**
- **Migration Agents**
- **Detention Costs**

1 The Committee is concerned at a number of issues which it has not yet had adequate time to address. Although these issues may be addressed in future reports, the Committee wishes to register its concern now and make some preliminary recommendations.

### Bogus or sham marriages

2 A number of submissions were concerned with the issue of bogus marriages, some from women who had been taken advantage of by unscrupulous men, whose primary objective was to gain entry to Australia. The Committee also noted the concern of the Department and the National Population Council regarding the extent of marriage fraud, both in the form of rackets in which the Australian resident or citizen connives at contracting a marriage of convenience and those arrangements where the Australian citizen or resident is the dupe of the other partner, who has no intention of continuing with the relationship once a residence permit is acquired.

3 The Committee is adamant that in clear cases when such bogus or sham marriages are detected the non-Australian partner, who has used the marriage to gain entry to or stay in Australia, be removed from Australia. If the present law enshrined in Section 20(3) concerning the obtaining of residence by deception does not allow the easy deportation of those who have duped their Australian partner, in this way then such provisions be amended to enable such a result.

4 In its report on change of status the Committee will be considering in detail this and other questions concerning marriage, including the recommendations of the National Population Council Report.

**Harbouring**

5 Section 80 of the Act provides that a person shall not take part in the concealing of an illegal entrant or deportee to prevent discovery by an officer or knowingly harbouring an illegal entrant or deportee. It does not appear that this provision is much utilised to deter those who currently aid or conceal illegal entrants or deportees.

**Recommendation:**

6 **That:**

**in order to deter those assisting illegals this provision be utilised,**

7 The enforcement of this provision should assist in ensuring that all persons who knowingly harbour illegal entrants are subject to penalties. The Committee is particularly concerned that employers who knowingly employ illegal entrants often at below award wages do not escape sanction under the Act.

**Migration Agents**

8 The Committee is concerned about alleged unscrupulous migration agents and the practices employed by such agents. Illegals are particularly vulnerable to exploitation by unscrupulous migration agents, given their reluctance to approach the Department and their probable unfamiliarity with the language. The Committee heard evidence that some migration agents operate marriage bureaux, which appears to encourage the practice of contracting a marriage for immigration purposes. Certain agents apparently confiscate and hold clients' passports until the fees owing are paid in full. It appears to the Committee that such unscrupulous migration agents almost certainly encourage applicants to lodge unmeritorious applications for change of status and at times may themselves contrive or connive at fraud practised on the Immigration Department.

9 The Ethnic Minorities Action Group in its submission argued that illegals were often forced to rely on migration agents because of the lack of information available in community languages, their reluctance to approach the Department and their lack of confidence in their command of the language.

10 The Ethnic Minorities Action Group further stated that:

> The "period of grace" together with the lack of information about its implementation available to the ethnic community, has encouraged the growth of "immigration lawyers". Illegal entrants feel compelled to approach immigration lawyers out of fear and ignorance as outlined above. These self-called "experts" are currently exploiting illegal migrants. They charge extortionate fees to submit applications, "according to their client's instructions", even when they can be sure that the application will be unsuccessful e.g. Thai. The majority of Thai people who are here illegally are ineligible to be given permanent residence, however many have paid up to $3,000 to have their applications submitted to DILGEA by an immigration lawyer.[1]

11 The Ethnic Communities Council of New South Wales also expressed their concern at the increase in numbers and the practices of migration agents[2]. General criticisms include:

- the very large sums of money charged by migration agents for their services;

- the encouragement by agents of clients to put in unmeritorious applications, where there is in fact very little chance of success;

- the offer of bribes to ethnic community groups to direct clients to the migration agency.

12 The National Immigration Forum, in evidence to the Select Committee on 13 February 1990 expressed concerns about the operations of agents.[3] They particularly criticised the lack of political and Departmental will to address effectively the problems which have surfaced with regard to migration agents.

---

[1] Ethnic Minorities Action Group, Submission No 61, p.3

[2] Transcript of evidence, 16 August 1990 p.406-407

[3] Transcript of Evidence 13 February 1990, p.207-209

13 Ms Betty Hounslow from the NIF discussed the situation in the United States where:

> "the Bar Association there has got extremely stringent ethical rules governing lawyers practising on immigration work. They are probably the most stringent that I have ever seen and one of the advantages of having lawyers doing it, and probably the only advantage of having lawyers doing it, is that you have got ethical constraints that you can tie them to so that you can get them struck off and there is a whole list of cases in the United States of lawyers being struck off for overcharging, for giving bad advice, and from running appeals that re bogus appeals."[4]

14 The UK Immigrants' Advisory Service (UKIAS) was established in Britain in 1971. The services of UKIAS are free and are available to all those whose applications to enter or remain in Britain have been rejected. UKIAS received 90% of its funding from the Home Office. The total operating budget for 1986 was less than one million pounds, most of this figure being spent on salaries.[5]

15 The Department could well benefit from the existence of such a body. DILGEA officers would be spared the time consuming task of advising people and could concentrate on the administration of the Act and Regulations. The existence of an advisory service would assist in ensuring that only those applications which have merit were submitted to the Department in the first place, thereby reducing the workload.

16 The Department and the review bodies, both MIRO and IRT, could also benefit from the operation of an independent advisory service. Mary Crock states in her paper:

> UKIAS demonstrates that, in a complex, high volume jurisdiction, the immigration advisory service can play a crucial role in making the system run more smoothly and at less expense to the community that might otherwise be the case.[6]

---

[4] Transcript of Evidence, 13 February 1990, p.209

[5] Mary Crock, Immigration Advisory Service Report, p.23 The ability of the Home Office to starve the UKIAS of funds is a matter of concern to the UKIAS.

[6] Mary Crock, op cit p.29

17 There are precedents within Australia of similar agencies which have been set up to advise clients. For example the Welfare Rights Centres around Australia provide free advice and assistance in relation to all aspects of social security. It has been demonstrated the the existence of Welfare Rights Centres assists in substantially cutting down appeals to the Social Security Appeals Tribunal,[7] thereby contributing to cost savings for the Government.

18 The Committee concludes that an independent immigration advisory service could assist the Minister and the Department in the administration and smooth operation of the Migration Act and Regulations. However, the ability of the Home Office to starve the UKIAS of funds is a matter of concern. The source of funding should not be the Department whose decisions are subject to dispute. For this reason the Committee stresses that such a body must be financially independent of the Department and the Committee concludes that independent funding based on objective measures would be advisable.

19 The Committee therefore recommends that:

- **the Minister for Immigration, Local Government and Ethnic Affairs addresses the issue of migration agents, if necessary referring that issue back to this committee for investigation and report;**

  **in the interim, the Minister for Immigration Local Government and Ethnic Affairs establishes an immigration advisory service for the purposes of giving advice on immigration matters to any person who requests such advice;**

  **that such a service be funded independently of the Department of Immigration, Local Government and Ethnic Affairs.**

**Detention Costs**

20 Illegal entrants or deportees held in custody for long periods will owe the Commonwealth large sums of money. Under these provisions they stand to lose all or most of their assets to defray such debt. Detainees will henceforth have a real incentive either to secure bail or to depart Australia. The spectre of such indebtedness will discourage detainees from initiating or pursuing drawn-out Federal Court litigation.

---

[7] Mary Crock, op cit, p.16

21 It is not only that money is owing and that the detainee's valuables can be seized to defray such costs. Such debts constitute for some a permanent bar to re-entry or remaining in Australia. Visas or permits cannot be granted to persons deported from Australia who owe to the Commonwealth an amount in respect of detention or deportation costs[8], unless the Minister is satisfied that appropriate arrangements have been made for payment.

22 The scheme as it is currently structured may adversely affect the chances of illegal entrants arrested and detained in custody who apply to regularize their stay. Such illegals will almost certainly have a discretionary deportation order signed against them and thereafter are liable to repay their detention costs. A significant injustice could occur where, after lengthy stay in custody, and a Federal Court challenge, it is accepted that the illegal entrant qualifies to remain as a last remaining relative. The illegal entrant may nevertheless be refused the entry permit because of a failure to satisfy the public interest criteria - "the person does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment".

23 The lack of bail provisions and the liability for detention costs are issues of concern to VIARC and the Law Institute of Victoria.

24 At a public hearing in Melbourne Mr Ronald Merkel, on behalf of VIARC, stated:

> "It is a matter of great concern to us that there is no provision for an independent judicial authority to deal with bail ... Therefore they are in prison and imprisoned at their own expense. We say that you may have to look far and wide to find that kind of departmental power existing in any other Commonwealth department. Again it is a matter of human dignity and fundamental right in our community to not be imprisoned or detained without the opportunity of having a judicial officer, independent of that authority detaining you, determine the terms and conditions upon which bail should be granted."[9]

---

[8] Sections 25; 45

[9] Transcript of Evidence, p.55

25 Mr Baker of the Law Institute also raised the issue, arguing that a more formalised approach than that operating at present was required, particularly as those held in custody are held at their own expense.[10]

26 Mr Baker saw no problem with requiring reporting arrangements, which could be on a daily, weekly or whatever period of time thought appropriate basis. In his opinion most people did report.[11]

**Recommendation**

27 **The Committee recommends that:**

**formal arrangements are put in place to permit persons in custody of the Department of Immigration, Local Government and Ethnic Affairs to apply for bail. Such jurisdiction to be devolved to the Immigration Review Tribunal who would have power to grant bail, subject to appropriate sureties and/or reporting arrangements.**

A Theophanous, MP

10 September 1990

---

[10] In 1990 the gazetted charges for detention maintenance at immigration detention centres are:

| | | |
|---|---|---|
| NSW, VIC, WA | - | $117.00 per day |
| QLD | - | $ 58.00 per day |
| TAS | - | $ 68.00 per day |
| NT | - | $103.00 per day |
| ACT | - | $245.00 per day |

[11] Transcript of Evidence, p.83

# DISSENTING REPORT

## MR PHILIP RUDDOCK, MP

## SENATOR JOHN OLSEN

(Senator Olsen's dissent was telephoned through at 6.30pm on Monday, 10 September 1990)

1 Illegal entry as disclosed to the Committee and as revealed in this report is a problem of very significant dimension.

2 In addition, the report discloses that actual estimates by the Department still understate the extent of the problem.

3 To 90,000 illegals should be added most of the 30,000 applicants for grant of residence status. Of 20,000 PRC nationals granted temporary residency most have not been included in illegal calculations, nor have most of the 25,000 PRC students who arrived post Tiananmen Square and are now in breach of visa conditions.

4 This suggests that at least 150,000 people are now in Australia without valid documentation for long stay or permanent entry.

5 This problem unresolved ultimately undermines the credibility and commitment of Australians generally to our immigration programme.

6 Lack of resolve to deal with the issue is the most significant factor in contributing to the growth in illegal entry.

7 Mixed signals have been given by the Government over time since the introduction of amendments to the Migration Act.

8 This has been compounded by flawed and poorly drafted delegated legislation.

9 Each attempt to address the difficulties has led to postponement of compliance activity and held out the prospect of regularisation of status to illegals within Australia whether or not this was the case or the intention.

10 The Committee's recent recommendation to extend to 30th September concessional arrangements to lodge applications for grant-of-residence status and for voluntary departure without re-entry restrictions has only reinforced the view that the earlier announced intention of the Government to crack down on illegal immigration lacks credibility.

11 Further significant steps to expand the circumstances in which claims to remain here in Australia may be advanced will only further serve to undermine the Government's compliance efforts.

12 It is in this context that the principal recommendation of the Committee dealing with criteria to apply to the Tribunal contained on page 69-71 are addressed.

13 The Committee proposes a scheme which, reduced to its single elements:

13.1 accommodates applications from innocent illegals at any time, and

13.2 accommodates those with compelling compassionate claims which can be made at any time, and

13.3 provides for those who apply before 31st October 1990 and have been in Australia five or more years an entitlement to stay permanently on absorption grounds.

14 The scheme is defective in three important respects:

14.1 it is unduly complex and difficult to follow, and

14.2 it again confirms in the minds of prospective illegals that by simply staying on in Australia, eventually Governments will relent and permanent residency is possible, and

14.3 breaches of our law are rewarded. Most illegals who obtain employment whilst in Australia breach Section 83 of the Migration Act.

15 There are really only two matters which need to be dealt with:

15.1 Innocent illegals, that is those identified by the Committee in Chapter Three of the Report should be able to make a claim to stay and have it dealt with at any time, and

15.2 In the most compelling, compassionate and deserving cases where it would be unconscionable to require a person in Australia, temporarily or illegally, to leave then some discretion should exist to enable such claims to be made and processed.

16 It is in this context that I propose the following alternative recommendation.

## RECOMMENDATION:

17 That the regulations prescribe in addition to existing criteria;

17.1 in exceptional compelling, tragic and compassionate circumstances, and

17.2 for innocent illegals as proposed by the Committee,

the Immigration Review Tribunal, comprised of three members (including a senior member) may recommend to the Minister that he exercise in his absolute discretion a power to grant permanent or temporary residence, as the circumstances suggest is most appropriate to an illegal entrant.

18 That in reaching its decision the tribunal shall have regard:

18.1 to the public interest which would normally suggest that deportation would be the proper course;

18.2 such circumstances would have most likely arisen since arrival in Australia;

18.3 strength of connections with Australia which would suggest that further residence is a preferable result;

18.4 absorption of less than nine years would not normally be seen as sufficient on its own to warrant consideration.

19 In addition the Minister may, under Section 129, give directions as to further factors to be considered by the Tribunal in making recommendations to him if it becomes apparent that the number and quality of cases being referred to the Minister are such as to be undermining the integrity of the process as a remedy for only the most compelling, compassionate and deserving cases.

20 A procedure for establishing prima facie claims for review by the Immigration Review Tribunal may be required. This procedure would be by leave obtained from a single member.

21 The Minister and the Tribunal shall report to the Parliament regularly on the exercise of this limited discretion.

# DISSENTING REPORT

## SENATOR J P MCKIERNAN

# RESERVATIONS TO THE REPORT BY THE JOINT COMMITTEE ON MIGRATION REGULATIONS BY SENATOR JIM McKIERNAN, SENATOR FOR WESTERN AUSTRALIA

## Introduction

The Committee states in the introduction to Chapter 2 of the Report that

> *"Australia's immigration system limits the number of immigrant visas available. There is a long waiting list of applicants seeking migrant entry. For each immigrant who secures a visa by fraud or each illegal entrant permitted to remain, other qualified applicants may be left behind or left to wait longer for a visa. Illegal immigration severely taxes resources of immigration staff and may undermine the political resolve needed to maintain an expansive immigration program."*

The Committee then proceeds, by way of recommendations contained in Chapter 6, to refute its own strong words.

The recommendations to allow access by some illegals to the Immigration Review Tribunal will, in my opinion, ensure that Australian immigration laws and systems are going to be further abused and treated with contempt by a large number of people.

The Department of Immigration, Local Government and Ethnic Affairs supplied the Committee with evidence that some 90,000 people currently flout Australia's laws. It is of concern to note that this figure, which represents 75% of Australia's current annual intake of migrants, is growing.

The Department also provided evidence to the effect that many of the 90,000 people compounded their illegal status by working, an act that currently attracts a penalty to those illegals who are apprehended.

I do not accept that enough information is available on the illegal question and I would strongly suggest that detailed studies and investigations be conducted in order to identify what impact, if any, that the presence of large numbers of illegals has on Australia's economy. The studies should also take note of the fact that some 60,000 illegals may be in the workforce at a time when Australia is experiencing relatively high levels of unemployment.

## My Guiding Principles

I am unwilling to grant any further concessions to illegals at present in Australia or to join in any action that would possibly encourage an escalation of their numbers in the future.

I am of the opinion that ample notice has been given to illegals of the Government's intention to act decisively on the illegal problem. I am encouraged by the belief that the Government will have broad community support for strong enforcement policies.

I support the above assertions by quoting from the Report of the Committee to Advise on Australian Immigration Policies (Fitzgerald Report) which stated in recommendation 54 (part)

> *"Anyone who is illegally in Australia by unauthorised stay beyond the expiry of a visa, or by illegal entry, should forfeit the right to apply for immigration while here or be automatically rejected if they have already applied."*

The Fitzgerald Report was tabled in the Parliament over two years ago, in June 1988. Its contents received extensive media coverage.

The then Minister for Immigration, Local Government and Ethnic Affairs, Senator Ray, responded to the Fitzgerald Report on December 8 1988. In a press statement of that date, the Minister said

> *"The Government (in rejecting so-called "criminalisation" proposals) has moved instead to improve, and tighten up, current provisions for handling illegal immigrants, in a way that is consistent with the intentions of C.A.A.I.P."*

The press statement (MPS 150/88) then proceeded to outline proposed amendments to the Migration Act.

The amended Act passed through all stages of debate in both Houses of Parliament by May 1989, some fifteen months ago. Its passage through the Parliament was reported extensively in the media.

It received Royal Assent on June 19 1989 and the Regulations came into effect on December 19 1989.

Illegals in Australia were given two months following proclamation of the Regulations to apply to regularise their status. This concession was later extended to May 31 1990, then June 30 and further extended at the request of the Committee to October 31 1990.

Media outlets in Australia reported each extension of the concession.

I would argue that those illegals who now suggest ignorance of the October 31 deadline simply do not want to know about it. They choose to remain illegal and choose not to make themselves aware of the deadlines that apply to applications to regularise their status. I suggest many would be aware of the limited enforcement resources available to the Department, and are therefore willing to take their chances on being apprehended.

I believe that the initial concessions and the three extensions granted by the Government to illegals has been seen by illegals as an indication that the Government is not willing to implement its tough provisions on the apprehension, detention and possible deportation of illegals. I suspect that some illegals believe that the Government is frightened of sensational and graphic media (particularly television) reports of long-term illegals being forcibly removed from Australia.

The fact that major ethnic community organisations have not developed policies to prepare for the impact of the October 31 and earlier deadlines is a further indication to me that illegals and some ethnic organisations do not believe or accept the Government's strong words and statements on how it will protect the integrity of the immigration system.

I assert that the majority recommendations contained in this Report that suggest further concessions to illegals is unfair and inequitable. I will go further and suggest that the Committee's recommendation on access by illegals to the I.R.T. will be interpreted by illegals as a further signal that the Government is not serious or willing to enforce its announced policies.

Access to Immigration Review Tribunal

I strongly object to the recommendation from a majority of the Committee that would allow certain illegals the ability to make application to the Immigration Review Tribunal (I.R.T.) to regularise their status.

My objections are based on the belief that this procedure would advantage some illegals over potential migrants applying through the normal process. It should be noted that the normal processes are detailed and laborious, that they are generally carried out overseas and that it can take years to reach a final decision. During this time, potential migrants who choose the legal course of action, do not enjoy the benefits of life in Australia.

In making the above assertion, I am influenced by the fact that each illegal accepted for permanent residency in Australia will be taking a position out of a limited and reduced pool.

I do not accept that the I.R.T. is the appropriate body to deal with, what would be in some cases, a first application for permanent residency in Australia. The I.R.T. is by definition a review body. Its function, as defined in the regulations, is to review decisions that are reviewable.

Under the committee's recommendations, the I.R.T. will be required, in some instances, to act as a first body of determination of a migration application. This function is one that is properly the role of the Department.

Time Frame for establishment of Access to I.R.T.

The Committee was motivated to recommend access to the I.R.T. in order to cope with the possible difficult situation that they recognise will arise after October 31 1990 when the concession allowed for illegals to make application to regularise their status lapses.

I have serious reservations that the Department of Immigration, Local Government and Ethnic Affairs, and/or the Immigration Review Tribunal would be able to put the proper mechanisms into place to ensure that such a procedure could operate within the time required, even if the Minister and the Government accept the recommendation and acted immediately to implement it.

I.R.T. Workload

I would suggest that there is a potential, if the Committee's recommendations are accepted, for the I.R.T. to be faced with a flood of applications from illegals seeking to regularise their status. The potential for this to happen is obviously greater in Sydney and Melbourne, where large numbers of illegals are known to reside, than in other parts of Australia.

The Committee accepts that some 10,000 to 12,000 applications could be expected under their concession. The Committee accepts that only 7,000 to 8,400 would be accepted by the Tribunal under their suggested criteria.

Examination and determination of these applications will inevitably divert attention and resources of the I.R.T. away from the functions for which it was established and would inevitably lead to demands by the I.R.T. for increases in their funding allocations.

Period of Time in Australia

The majority of the Committee recommended that illegals who have been in Australia for more than five years (having arrived before October 31 1985) should be able to apply to the I.R.T. for regularisation of their status.

This veiled attempt at absorption is unfair and inequitable. For example, an illegal who arrived in Australia on October 31 1985 would have the ability to apply but another illegal who arrives the next day (November 1 1985) would be prohibited from lodging an application.

I would suggest that the concession, if accepted, will become enshrined in the principles of the migration system. The above-mentioned illegal, (s/he who arrives on November 1 1985), will argue at the expiry of his/her 5 year period that s/he should also be allowed to apply for status regularisation. Indeed the illegal who arrives on September

11 1990 will argue that s/he should have the ability to apply because they have been hidden in Australia for the required five year period.

I would also argue that this concession, if accepted by Government, will be recognised by some as being a reward to illegals and a compliment to their ability to abuse the system.

Employment History

Some submissions to the committees have argued that illegals who have worked and paid proper rates of taxes over a long period of time should be granted preferential treatment. It is conveniently forgotten that illegals are **not** allowed to work. I suggest that in proffering this argument, illegals and their supporters are demonstrating their contempt for the system and their ability to flout the laws of Australia.

Preferential Treatment of Illegals

The majority committee recommendation that an illegal should be able to present information and evidence to the I.R.T. to demonstrate that they have made a positive and substantial contribution to Australia during the period in which they have been in Australia, gives special favours to illegals.

The recommendation, if accepted, would clearly discriminate in favour of an illegal in Australia and against a migrant who applies to migrate at an Australian overseas post. Clearly a potential migrant in an overseas country could not meet this criteria.

The I.R.T. Access Proposal - A Means to Reduce the Illegal Problem

If the majority recommendation to provide access to the I.R.T. for illegals is seen as a solution whereby the illegal problem might be reduced or at least minimised (I do not impute any ulterior motives to my committee colleagues), I believe that it is destined to failure.

It is my opinion that only those illegals who believe they will have success by this process, will make an application. The remainder, the vast majority of illegals (78,000 to 80,000) will not consider coming forward with an application.

I would go further and suggest that Ethnic Community organisations, Migration Advice Centres, Migration Agents and members of the legal profession would not advise illegals to make applications under this concession.

Exceptional Circumstances

The recommendation to create the above can of worms also seeks to create an even bigger can that would contain even more worms. It is suggested later in Chapter 6 that rare cases where compelling humanitarian circumstances exist, illegals could apply to the Registrar of the Tribunal to seek approval for the lodgement of an application.

It is my experience that all illegals will seek to argue that their individual case has not only compelling humanitarian circumstances but that tragic and compassionate circumstances also exist.

Innocent Illegals

In making the above remarks about illegals in Australia, I do not include those people who fall into the category of innocent illegals as mentioned by the Committee in Chapter 3.

Innocent illegals must have the ability to apply to regularise their status. However, I do not agree that their cases ought to be processed through the I.R.T. as suggested by the Majority Report. I favour a procedure being adopted whereby their cases would be considered by the Minister.

Conclusions and Recommendations

I conclude my reservations by re-stating the introduction to Chapter 2, Page 9

> *"Australia's immigration system limits the number of immigrant visas available. There is a long waiting list of applicants seeking migration entry. For each immigrant who secures a visa by fraud or each illegal entrant permitted to remain, other qualified applicants may be left behind or left to wait longer for a visa. Illegal immigration severely taxes the resources of immigration staff and may undermine the political resolve needed to maintain an expansive immigration program."*

I believe that the Government has announced policies that are necessary to implement the above principle. I believe that the necessary legislative framework is in place to enforce the implementation of the principle.

I would suggest that any watering down or backing away from the announced enforcement policies would, yet again, be interpreted as a sign of weakness of Government.

I recommend that Government use all methods of communication available to it, to inform the community that the deadline available to illegals to regularise their status, October 31 1990, will not be extended and that compliance procedures, as enacted in legislation, will be enforced after this date.

The ethnic and foreign language media should not be overlooked by Government in its attempts to publicise the October 31 deadline. All illegals must be made aware of the penalties and consequences of not coming forward by this date.

Further, I recommend that the Government invite the Australian community to support its actions and join with the Government in protecting the integrity of the migration system.

# DISSENTING REPORT

## SENATOR B COONEY

# STATEMENT BY SENATOR COONEY

I am unable to endorse the majority report. I give my reasons.

Other than for that which took place on the 10th September 1990 I was unable to attend the discussions involved in the preparations of this report. On that date I learned it was to be tabled the following day. I read the report and listened to the arguments in support of its contents. I was not persuaded in the time available to adopt it.

The report grapples with the issue of what Australia should do with its illegal immigrants.

It deals with the balance to be struck between the need for Australia to exercise control over who is and who is not to settle within its shores by seeing to it that those unlawfully here leave and the need to spare those who though they be illegally in the country have compelling grounds for being allowed to remain. That balance is to be struck in circumstances where there is room only for a small proportion of the thousands upon thousands of people who want to settle here. The acceptance as a permanent resident of someone who until then has been present illegally means the denial of entry to another who has obeyed the law in seeking entry to Australia. That poses an issue of equity.

As a general rule people who stay within the country unlawfully should be made to leave when discovered. The exceptions to that rule should be of such a nature that it is obvious to most when it occurs. Does it need to be determined by the fairly elaborate process suggested in the majority report?

There are about 90 000 illegal immigrants in Australia. Even were 5% to apply under the scheme suggested in the majority report there would be 4 500 matters for the Tribunal to process. Some of its decisions as to who are innocent illegals are to be recommendatory all others determinative. I do not find this a happy distinction.

All would take time. The deadline for applications is 31st October 1990 with a rider that in certain circumstances it be extended to 15th December 1990. There is an issue as to whether this is practicable given the machinery now available to carry the scheme into effect.

Giving the problem over to a tribunal for resolution puts it at a remove from Government. What to do with illegal immigrants is very much a policy matter and Government ought to determine the issue. In so far as the Tribunal exercises determinative powers that proposition is denied.

The question of what to do with people unlawfully in the country needs careful scrutiny before it is answered. There are time constraints on the Committee and it has striven mightily to meet them. Unfortunately in the time available to me I have been unable to endorse the conclusions it has reached. I have much sympathy for the aspirations it espouses.

# DISSENTING REPORT

## RT HON IAN SINCLAIR, MP

*Received: 7.30pm, Monday 10 September 1990*

# DISSENTING REPORT BY THE RT HON IAN SINCLAIR MP

I concur with the estimate of prospective illegal immigrants set out in the Dissenting Report of Mr Phillip Ruddock namely that by the end of 1990 there will be at least 150,000 people in Australia without valid documentation for long stay or permanent entry.

Evidence submitted to the Committee does not convince me that either with new centralised processing of data relating to new entrants nor with present resources available for tracing illegals that there will be significant reduction in these numbers in the reasonable future. The problem is not one therefore that will disappear by placing a time limit on applications for regularisation.

Indeed if exemptions are to be made for innocent illegals as defined in Chapter 3, by definition they will be unaware of their circumstances at the date of closure of applications.

The challenge is therefore to provide some incentive for those who are illegal immigrants to come forward while also allowing for the special circumstances of innocent illegals. It is also important not to prejudice normal applications for migration waiting for processing.

It should be recognised that regulatory changes made in 1989 and 1990 to codify conditions of migrant entry have complicated processing unduly and by repeated amendment made it near impossible for certainty in determining the present status of possible illegals.

In this respect I concur entirely with Mr Ruddock's observation about flawed and poorly drafted delegated legislation.

Accordingly, I recommend:

1) Changes made to the Act and Regulations should be made to enhance their simplicity and avoid the necessity for further amendment for at least 12 months from the date of promulgation after allowing for their prior consideration by the Committee.

2) All applications be subject to prima facie consideration by the Department and then processed by The Immigration Review Tribunal in the manner set down in the minority report of Mr Ruddock.

3) That having set the criteria for consideration of the visa issue for innocent illegals as defined in Chapter 3 no time limit be imposed for their submission for processing but the timing and nature of innocent illegals identifying themselves as such to be a factor in considering their cases.

4) A final date be set for applications by other illegal migrants being a period of not less than 6 weeks after the coming into force of changes to the Act or Amendments to relevant regulations consequential to the Committee's recommendations.

5) That neither 5 nor 9 years be set as a period for absorption of residence be a factor relevant, but the period in consideration of an application by the Immigration Review Tribunal.

6) To the information required to be provided as set down in paragraph 30 of Chapter 6 of the Committee's Report there be added:

a) The circumstances of the person's entry into Australia;

b) The time and nature of their finding themselves to be illegally in Australia;

c) The places of residence of all close relatives;

d) Any education for training received in Australia or which might have particular relevance to their application to remain;

e) Any exceptional, compelling, tragic or compassionate circumstances which might have relevance to their case.

7) In all instances the final decision as to an applicant's right to remain should be made by the Minister after considering the advice of the Immigration Review Tribunal in accordance with procedures recommended by Mr Ruddock.

8) I concur with the final 3 paragraphs of Mr Ruddock's Dissenting Recommendations.

10/9/90

# APPENDICES

REVIEW OF MIGRATION LEGISLATION

Mr Speaker: I seek leave to make a Ministerial statement on a review which I have commenced of the Migration Legislation.

Honourable Members will be aware of the far reaching changes which were introduced in 1989 into the regime governing our migration administration.

After the Parliament enacted the Migration Legislation Amendment Act in June 1989, Regulations were made on 19 December 1989, as required under that Act.

Large sections of the new Act and Regulations are now being administered smoothly. The Government, however, has heard a good deal of criticism of the operation of parts of the new system not least from the last Parliament's own Committee - the Joint Select Committee set up by resolution moved by my predecessor on 31 May 1989. Accordingly, the Government has decided to act on a number of the criticisms and concerns voiced. I intend to make some changes to the Regulations immediately, and set up a structured process of Parliamentary scrutiny and public consultation to examine further necessary changes.

I should first, however, provide a short overview of the character and direction of the changes to the Migration Act 1958. In amending the Act, my predecessor laid the basis for quite significant and far reaching changes of approach to migration administration.

Prior to these changes, decision making under the Act had largely been a matter of administrative discretion. Accordingly, there was a lack of uniformity and consistency in decision making. Policies and guidance were scattered across a variety of Departmental handbooks. Instructions were frequently expressed only in broad terms and, in some instances, had essentially evolved over time without being articulated in detail anywhere. This meant that individuals, and their representatives, as well as departmental decision makers, had no coherent body of rules to consult to implement the Government's policy requirements.

The Minister, because decision making powers were vested in him, and policy was a matter of discretion, was placed in the unenviable position of being a general avenue of appeal on the merits in respect of any decision made by any officer of the Department.

There was also increasing evidence that illegal entrants and others were using the avenues provided by policy loopholes and procedural complexities to challenge decisions quite properly using the emerging body of administrative law.

The introduction of so large a body of Regulations under the amended legislation in a much compressed time frame compared to what was originally intended was required by the Migration Legislation Amendment Act. This resulted in a lack of clarity, and, in a number of cases, unintended consequences.

Accordingly, my predecessor made it clear on a number of occasions that it would be necessary continually to monitor the regulations and amend them as problems emerged. My predecessor made a number of changes prior to his leaving the portfolio and the changes I am making are part of that ongoing process.

Underlying the Government's approach to any review of the legislative framework are our basic objectives of maintaining Government authority over our non-discriminatory migration program and other entry of people into Australia; continuing to ensure that its migration administration has effective means for minimising the potential for abuse of the system by illegal entrants; and retaining the power, through its control systems (including the discretions available to the Minister) to respond sensitively and with compassion when individual cases arise that require special consideration.

Control over the migration program and entry generally is exercised through the codification of policies into regulation so that they are fixed in law. Codification means that policies are clearly specified in criteria and people are clear on their entitlements and obligations. This narrows the range of discretions needed to make decisions. The correlative of this meant that policies had to be spelt out in fine detail. Further, the Department has to have in place proper administrative procedures consistent with the principles of administrative law and these procedures in turn must also be reflected in the regulations. Because of the scope and complexity of migration policies and procedures, this in turn meant a very extensive body of Regulations. To some extent the sheer volume of the Regulations has given rise to some of the criticisms of complexity.

The second objective of minimising abuse of the system by illegal entrants has also been largely attained by the codification process. By this means it has proved

possible to define clearly the entitlements we are prepared to allow for particular groups of illegal entrants, rather than have broad discretionary criteria for illegal entrants as a group. It is quite clear that we must distinguish between those people who become illegal quite innocently and unintentionally through ignorance of proper procedures, and those who exploit every loophole in immigration policies to stay on in Australia even though they have no right to do so. This is by no means easy as considerable ingenuity is directed towards finding loopholes which must then be plugged. And, of course, the Regulations become increasingly complex as these loopholes are plugged.

Another related objective is to ensure that those who jump the queue are not advantaged to the detriment of those whose family sponsor their coming to Australia in accord with proper procedures.

The other main objective was that of removing from the Minister the almost intolerable burden of being a court of appeal for all the adverse decisions made by Departmental officers. I see my role as principally being responsible for setting and correcting the direction of policy. I have powers to deal with the individual case at the primary decision level but there I am bound by the Regulations. Without going into detail, I also have powers under sections 115 and 137 of the Migration Act to set aside decisions after each review stage. Under these sections I am not bound by the criteria established by the Regulations and have a power to make any decision more favourable to the applicant that I judge to be in the public interest. This is a discretionary power and I am under no obligation to use it. However, I am restricted in the exercise of the power in that the person seeking my intervention must have a review right. I must also report to Parliament if I make such a decision.

I might also emphasise that I have no intention of intervening under my review powers unless there is serious reason. That is, I shall not be setting aside decisions reached in accord with the criteria established by the Regulations unless I am convinced that there is a gap in policy, that the refusal is an unintended consequence of the Regulations or that an individual case requires special consideration. In these circumstances I shall move to amend the Regulations as necessary.

There has been a considerable amount of criticism of the Regulations on the grounds that they are inflexible, harsh and overly complex. Some of the criticisms raise valid concerns and I shall indicate

later how I intend to deal with these. But it is worth noting at the outset that the Regulations work reasonably well in by far the great majority of cases and have caused few problems. The great bulk of the problems have emerged in two general areas. First, people whose circumstances fall outside policy and who were previously handled on an ad hoc discretionary basis. Second, people who are illegally in Australia and who either simply do not wish to leave when they should, or who argue that there is good reason for staying on after they should have left. When numbers of people entering Australia were significantly smaller than they are now, we as a community could accept dealing with these problems by waiving policy on an ad hoc basis. Now, however, the numbers are becoming so large that more formal measures need to be in place to maintain the integrity of the program.

I will be approaching the question of changing the legislation in a 3-phase approach. The first phase incorporates those changes where a response is needed immediately, or where further consultation is not needed. These changes are of some significance. The phase will also include a number of technical changes which have only minor policy or procedural implications but which will improve the working of the Regulations and clarify some of the criteria.

I will also ensure in making changes in the first phase, that provision is made such that people who may have applied after 18 December, but before these changes come into place, are not disadvantaged by any changes relating to their application.

The first phase will, in particular, provide greater access to review rights under the transitional arrangements. That is, I accept that it is quite inequitable to leave people without a review right. I am therefore going to reinstate the Immigration Review Panel to provide a review channel for people who were here before 19 December 1989, had lodged an application before that date and had no review avenue in the event of an adverse decision.

I also intend in the first place to give effect to some recommendations of the Administrative Review Council in relation to the Minister's powers to substitute a decision more favourable to the applicant at the review stage. As the legislation is presently formed some applicants could be disadvantaged if I, as Minister, were to intervene on my own initiative at the internal review stage and remove from the applicant any review of the internal review decision by the Immigration Review Tribunal.

Accordingly, I foreshadow a Bill to amend the Migration Act to ensure that my discretion to make a decision after the first tier can only be exercised at the request of the applicant and where I am prepared to make a decision agreeable to the applicant. The Bill will maintain the situation that I have no duty to exercise that discretion when requested. I will also move to amend the legislation to allow the applicant to appeal to the Immigration Review Tribunal on the internal review decision where I do not intervene.

I will also overcome an anomalous situation with regard to review fees. Where an applicant has appealed to the Immigration Review Tribunal and I have exercised my discretion in favour of the applicant, the applicant will be refunded any fee paid to the Tribunal.

I will also be moving quickly to establish a Joint Committee on Migration Regulations and will seek to ensure that the terms of reference of that Committee facilitate wide consultation.

I also now intend that the Minister should report every six months to Parliament on any intervention at any decision-making stage in respect of applications for visas and entry permits.

My reporting will cover an analysis and cataloging of cases determined by me and will contain my conclusions about possible needs to amend existing regulations or make new regulations. By reporting regularly in this way the proposed Joint Committee will be provided with an opportunity to scrutinise any decisions I have taken and to report to me and the Parliament on the appropriateness of any legislative or regulatory amendments.

My reporting will also include Immigration Review Tribunal comments about the impact of the Regulations in the light of the cases that come before them.

In addition, I will reduce the complexity of the application procedures by collapsing the current 97 entry permit classes down to a possible 7; provide changes to relax certain deadlines; provide for the waiver of appeal fees in hardship cases; eliminate the requirement for preferential family applicants for permanent residence in compassionate circumstances recognised in the Regulations, to leave Australia simply to lodge applications in situations where this requirement is unnecesarily harsh and arbitrary; and provide discretion for relaxing the provisions barring the return to Australia of illegal entrants, other than deportees on criminal or security grounds, so as to recognise compelling compassionate circumstances. These changes will meet a number of the more pressing problems which have emerged.

The second and third phases will deal with changes which require more time to decide. I intend in the process of finalising these to pursue a structured process of Parliamentary scrutiny and public consultation. The proposed Joint Committee will play a central role in this process.

By this consultation process I hope to avoid the problems which emerged because of the tight deadlines within which the Regulations had to be introduced. In particular, I wish to ensure that Departmental manuals setting out the Regulations and procedures are in place when the Regulations are changed, and that officers of the Department are given adequate time to digest the changes and be trained in any new procedures which may result.

One area I am not addressing in the first phase is the general area of asylum and the special case of the long-term future of PRC nationals in Australia. This area is to be the subject of further consideration by Government. I shall, however, be giving early consideration to humanitarian entry criteria and, in particular, the barriers to the entry of persons who have a right of settlement in third countries.

In the second phase I shall be examining such issues as the health criteria; restrictions on the grant of permanent residence to visitors who marry Australian citizens; and the question of tightening criteria for testing the genuineness of marriage; clarifying the entitlements of illegal entrants to remaining in Australia; and restrictions on temporary resident permit holders having access to permanent residence. But I will be looking at these issues in a measured fashion, and will not be rushing into quick ad hoc solutions to meet the exigencies of particular cases. I am also certain that other issues will emerge as public consultations are carried out. I hope to have these changes in place beginning in August and to have completed this phase by December.

The final phase relates to a general redrafting of the Regulations. I accept that the Regulations could be made less difficult to understand. There are two aspects to this: some of the problems stem from Departmental procedures and I am taking steps to change these in the first two stages of my review. The other aspect stems from language and structure. I will shortly be talking to the Attorney-General about undertaking this exercise as matter of priority. It will, however, probably take about 12 months to achieve this.

In the time available to me it was not possible to establish with complete confidence as to which changes in the Regulations that I am foreshadowing today will require changes in the Migration Act itself. This matter is being examined as a matter of priority. The timetable that I have outlined may need to be varied to allow for the processes of any necessary amendment of the Act to take place.

I am confident that by adopting this structured approach to amending the migration legislation we will have a legal regime in place which, on the one hand, will meet the reasonable needs of people seeking to come to or remain in Australia, along with the rights of Australian sponsors. On the other hand, we will continue to meet the legitimate concerns of the Australian community that the numbers of people coming either to stay permanently or temporarily are consistent with the interests of the Australian community.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

# HOUSE OF REPRESENTATIVES

## *Extract from the VOTES AND PROCEEDINGS*

## *No. 6 dated Wednesday, 16 May 1990*

18 MIGRATION REGULATIONS—PROPOSED JOINT STANDING COMMITTEE: Mr Beazley (Leader of the House), pursuant to notice, moved—

(1) That a joint committee, to be known as the Joint Standing Committee on Migration Regulations, be appointed to inquire into and report upon:

(a) regulations made or proposed to be made under the *Migration Act 1958*;

(b) all proposed changes to the *Migration Act 1958* and any related acts; and

(c) such other matters relating to the *Migration Act 1958*, regulations or reports as may be referred to it by the Minister for Immigration, Local Government and Ethnic Affairs.

(2) That the committee consist of 10 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 3 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority groups or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the committee elect a Government member as its chairman.

(5) That the committee elect a non-government Senator or Member of the House of Representatives to be the deputy chairman who shall act as chairman of the committee at any time when the chairman is not present at a meeting of the committee, and at any time when the chairman and deputy chairman are not present at a meeting of the committee the members present shall elect another member to act as chairman at that meeting.

(6) That, in the event of an equality of voting, the chairman, or the deputy chairman when acting as chairman, have a casting vote.

(7) That 5 members of the committee constitute a quorum of the committee.

(8) That the committee have power to send for persons, papers and records.

(9) That the committee have power to move from place to place.

(10) That the committee have leave to report from time to time.

(11) That the committee have power to consider and make use of the evidence and records of the Joint Select Committee on Migration Regulations appointed in the 35th Parliament.

(12) That the members of the committee hold office as a joint committee until the House of Representatives is dissolved or expires by the effluxion of time.

(13) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

(14) That a message be sent to the Senate acquainting it of this resolution and requesting that it concur and take action accordingly.

Question—put and passed.

(A R BROWNING)
Clerk of the House

APPENDIX C

PARLIAMENT OF AUSTRALIA
JOINT STANDING COMMITTEE ON MIGRATION REGULATIONS

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL: (06) 277 4564
FAX: (06) 277 2221

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

Dear Minister

The Committee at its meetings of 19 and 20 June 1990 discussed the regulations as they related to illegal entrants. In the course of the discussion the Committee decided that there were a number of major issues to be resolved which could not be resolved prior to 30 June 1990, the date the concessionary arrangements are to finish. In this regard I wish to advise you of the following motions passed by the Committee for your consideration:

1. the Committee, through its advice to you, does not seek to offer any encouragement to remain in Australia to those persons currently residing in the country illegally. The Committee seeks to advise you that, on the basis of material already recieved:

   (a) the existing regulations are capable of producing unjust and oppressive results for that category of person who may be described as "innocent illegals";

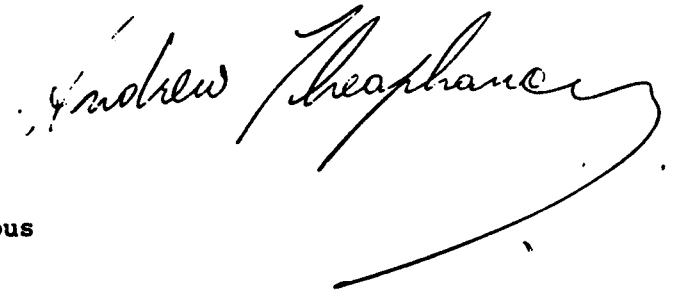
   (b) the effect of Section 37 of the current Act and Regulation 40, which prevent certain illegals who have previously applied for a permit and been refused from re-applying, is capable of producing anomalies which can result in inequitable deportations and forced departures; and

   (c) the Committee is seeking further evidence in respect of these and other matters, and therefore requests an extension of time beyond the current 30 June and 1 June dates, until 30 September 1990 for the concessional arrangements now applicable, and for the voluntary departure without the re-entry restriction;

2. if the advice outlined in motion (1) is accepted by you, that you be requested to give appropriate publicity to the significance and consequences of the 30 September deadline, especially in relation to the re-entry restrictions; and

3. the Committee is concerned at the lack of consistent advice being given by Departmental officers. As a matter of urgency, Departmental officers, both within Australia and overseas, ought to be briefed on the implications of the new regulations and changes to the Regulations, particularly with regard to concessionary arrangements.

I am happy to discuss with you anything relating to the above motions.



Yours sincerely
Andrew Theophanous
Chairman

20 June 1990

APPENDIX D

## LIST OF SUBMISSIONS

| Sub No | Name |
|---|---|
| 1 | Ms S McMullan |
| 2 | Mr M Williams JP |
| 3 | CONFIDENTIAL |
| 4 | Dr R Witton |
| 5 | Mr S Kulatek |
| 6 | CONFIDENTIAL |
| 7 | Mr B Murray<br>Brian Murray & Associates |
| 8 | R W Sellers |
| 9 | Mr K Liston<br>Director<br>Indo-Chinese Refugee Assoc.<br>(SA) Inc. |
| 10 | Mr S J Dent |
| 11 | Mr R Weal<br>Secretary<br>Peruvian Community of SA |
| 12 | NAME WITHHELD |
| 13 | Mr Q J McNaughton |
| 14 | Mr C Bradshaw<br>President<br>Phoenix Alliance (Inc) |
| 15 | Mr S Darsh |
| 16 | Mr J L Horsley |
| 17 | Mr B Murray<br>Brian Murray & Associates |
| 18 | CONFIDENTIAL |
| 19 | Ms C Ma |
| 20 | Ms A E James |

| Sub no | Name |
|---|---|
| 21 | NAME WITHHELD |
| 22 | Mr R Merkel, QC<br>President<br>Vic. Immigration Advice and Rights Centre |
| 23 | Mr S A Monir<br>Amir & Missionary in Charge<br>Ahmadiyya Muslim Assn of Aust |
| 24 | CONFIDENTIAL |
| 25 | CONFIDENTIAL |
| 26 | Mr G Scott |
| 27 | Dr S M Hong |
| 28 | Mrs C Clarke<br>Country Women's Association of WA Inc |
| 29 | J S Shin<br>Chairperson<br>Korean Youth Movement in Aust |
| 30 | Mr G Binkowski<br>Export & Commercial Research Services |
| 31 | Mr C Annesley |
| 32 | Ms C Russell |
| 33 | Mrs B M MacIntyre |
| 34 | M J Park<br>Chairperson<br>Korean Women Society of Sydney Aust |
| 35 | J Y Lee<br>Korean Council for Justice and Peace |
| 36 | V Valevatu<br>Secretary<br>Fijian-Australian Resource Centre Inc |

| Sub no | Name |
|---|---|
| 37 | Mr P J Lee<br>President<br>Korean Teritary Students'<br>Assn in NSW |
| 38 | CONFIDENTIAL |
| 39 | Mr G Tucek |
| 40 | Ms H B Simpson |
| 41 | T H Lee<br>President<br>Korean Taxi Transport Society |
| 42 | Mr J MacGill |
| 43 | Mr J Smith |
| 44 | Mr G White |
| 45 | Ling Du Duong |
| 46 | Commander F Menzies |
| 47 | NAME WITHHELD |
| 48 | D Harvey & H Katzen |
| 49 | Amnesty International Aust |
| 50 | Mr Paul Baker<br>Chairman<br>Migration Committee<br>Law Institute of Victoria |
| 51 | Mr Ron Merkel QC<br>President<br>Victorian Immigration Advice and<br>Rights Centre Inc |
| 52 | Mrs Mira Marchi |
| 53 | W Lim, JP |
| 54 | Mr Denis McCormack<br>Spokesperson<br>Australians Against Further Immigration |
| 59 | Mr E Rodan<br>Committee Member<br>Refugee Advice & Casework Service, (Victoria) |

| Sub No | Name |
|---|---|
| 60 | Mrs B M MacIntyre |
| 61 | Ms Louise Lindsay<br>Ethnic Minorities Action Group |
| 62 | Mr Ian Gollings<br>National Secretary<br>The Returned Services League of Australia |
| 63 | F Clarke |
| 64 | R Subramanaiam<br>President<br>Tamil Association of WA (Inc.) |
| 65 | Mr Des Storer<br>Commissioner<br>Multicultural & Ethnic Affairs Commission of Western Australia |
| 66 | Ms Carol Vleeskens<br>Executive Officer<br>Community Programmes<br>Burnside |
| 67 | Mr Walter Lippmann<br>Executive Vice-President<br>Federation of Australian Jewish Welfare Societies |
| 68 | Mr S A Monir<br>Ahmadiyya Muslim Association of Australia Inc |
| 69 | Dr Gerry Kang<br>Australian Cambodian Association of New South Wales |
| 70 | Mr Brian L Murray |
| 71 | Mr Brian L Murray |
| 72 | Dr Olga Mendis<br>President<br>Sinhala Cultural & Community Services Foundation |
| 73 | Mr T Witjeratne<br>Vice President<br>Sri Lanka Organisation for National Harmony |
| 74 | Mr Terry Murphy<br>Acting Director<br>Legal Aid Commission of NSW |

| Sub No | Name |
|---|---|
| 75 | Mr Zhibin Liu<br>Democratic China |
| 76 | Mr Uri Themal, OAM<br>Director<br>Department of Family Services and Aboriginal & Islander Affairs<br>Bureau of Ethnic Affairs |
| 77 | Mr Luke Hardy<br>Executive Director<br>Refugee Council of Australia |
| 78 | Mr Erskine Rodan<br>Chairman<br>Administrative Law Section<br>Law Institute of Victoria |
| 79 | NAME WITHHELD |
| 80 | Mr Brian Burdekin<br>Federal Human Rights Commissioner<br>Human Rights Australia |
| 81 | Mr Harris van Beek<br>National Director<br>Amnesty International Australia |
| 82 | Mr Ron Merkel QC<br>President<br>The Victorian Immigration Advice and Rights Centre Inc |
| 83 | Mr Mike Palmer |
| 84 | Ms Dagmar Egen<br>Acting Chairman<br>South Australian Multicultural & Ethnic Affairs Commission |
| 85 | Fijian-Australian Resource Centre Inc |
| 86 | Mr Tim Shao |
| 87 | Professor C J Eliezer<br>Chairman<br>Australasian Federation of Tamil Associations |
| 88 | Mr Carl Harbaum MBE<br>Chairperson<br>Federation of Ethnic Communities' Councils of Australia Inc |

| Sub No | Name |
| --- | --- |
| 89 | Ms Louise Lindsay<br>Ethnic Minorities Action Group |
| 90 | NAME WITHHELD |
| 91 | Mr Andrew Cope<br>Migration Consultant<br>Haines & Polites |
| 92 | CONFIDENTIAL |
| 93 | Mr Michael Ross<br>Ross and Laba Migration Services |
| 94 | Ms Margaret Verick<br>Executive Officer<br>National Council on Intellectual Disability |
| 95 | Mr Geoff Binkowski<br>Export & Commercial Research Services Pty Ltd |

APPENDIX E

## HEARINGS AND WITNESSES

**26 July 1990 at Melbourne**

Australian Federation of Tamil Associations
- Professor Christie Eliezer, Chairman

Ceylon Tamil Association
- Dr Rajagunalan Rasiah, President
- Mrs Ranee Eliezer
- Dr Jeyarajan Maheswarah

Afghan Community
- Dr Nouria Salehi
- Mr Sahib Shakaib

Victoria Immigration Advice and Rights Centre
- Mr Ronald Merkel, QC, President
- Ms Mary Crock, Joint Co-ordinator
- Ms Clare Morton, Joint Co-ordinator

Law Institute of Victoria
- Mr Paul Baker, Chairman Migration Committee

Victorian Ethnic Affairs Commission
- Mr George Papadopoulos, Chairman
- Mr Arthur Faulkner, Acting Director, Division of Policy and Research

**27 July 1990 at Melbourne**

In camera

**7 August 1990 at Canberra**

Department of Immigration, Local Govt and Ethnic Affairs
- Mr Christopher Conybeare, Secretary
- Mr Wayne Gibbons, First Assistant Secretary Development and Systems Division
- Mr Laurence Budgen, Assistant Secretary Analysis and Compliance Branch
- Mr Christopher Dear, Acting Assistant Secretary Social Policy Branch
- Ms Jennifer Gordon, Acting Assistant Secretary Procedures Branch
- Ms Sue Ingram, Assistant Secretary Policy Secretariat Branch

Department of Foreign Affairs and Trade
- Ms Penelope Wensley, Acting Principal Adviser Asia North, East & South-East Division

**16 August 1990 at Sydney**

Ahmadiyya Muslim Association
Mr Shakil Monir, Amir & Missionary in Charge
Mr Khalid Saifullah, Secretary

Amnesty International (Australia)
Mr Harris van Bek, National Director
Ms Jennifer Savigny, Refugee Co-ordination
Mr Erik Sidoti, Communications Director

Mr Bruce Henry

Immigration Advice and Rights Centre
Mr George Masri, Solicitor
Ms Roslyn Smidt, Community Worker

Korean Council for Justice and Peace
Mr Edward Kim, Treasurer

Korean University Students Association
Mr Michael Sung Il Kim

Korean Youth Movement in Australia
Mr Keith Kwon, Co-ordinator

Korean Uniting Church
Mr Sang Taek Lee

Fijian-Australian Resource Centre
Reverend Tevita Vuli, Deputy President
Mr Viliame Valevatu, Secretary
Mr Inoke Raikadroka, Treasurer

Vietnamese Community in Australia
Mr Tong van Pham, Vice President

Federation of Ethnic Communities' Councils of Australia
Mr Peter Einspinner, Convenor, Immigration Network

Ethnic Communities Council of NSW
Ms Katherine van Weerdenburg, Community Development Worker

**17 August 1990 at Sydney**

Refugee Council of Australia
Mr Luke Hardy, Executive Director

Iranian Welfare Association
Mr Faramarz Khalifar, President
Mr Ahmad Akbari, Member
Dr Syrus Pour, Member

Ethnic Minorities Action Group
Ms Louise Lindsay, Facilitator
Mr Abduallah Ahmadi, Afghan Community Support Association of NSW
Mr Assefa Bekele, Ethiopian Association in Sydney
Mrs Ambereen Hannan, Bangladesh Association of NSW
Ms Rajanee Kitipornchai, Thai-Aust. Association of NSW
Mr Kennth Oo, All Young Burmese League
Mr Son Soemarjono, Indonesian Association of NSW

Federation of Australian-Jewish Welfare Societies
Mr Walter Lippmann, Executive Vice-President

Australian Arabic Welfare Council
Mr Abdalla Mansour, Member of Management Committee
Mr Hassan Moussa, Co-ordinator

Australian Cambodian Association of NSW
Mr Vandy Kang, Treasurer
Dr Genvieve Kang, Committee Member
Ms Sorathy Michell, Committee Member

Khmer Community of NSW
Mr Cheng Chhor, Secretary

Association of Khmer in Australia
Mrs Nola Randall, Secreary

Burnside Khmer Program
Mrs Joyce Christley, Manager
Mr Lychantha Sok, Welfare Worker

Sri Lanka Organisation for National Harmony
Mr Mukundadura Perera, President
Mr Tiddy Wijeratne, Vice-President

Sri Lanka Association of New South Wales
Mr Cecil Weerakoon, President
Mr Asoka Nanayakkara, Committee Member
Mr Mahindra Ratnapala, Committee Member
Mr Don Wickrama, Committee Member

**Circumstances in which non-citizens may become illegal entrants**

**20.** (1) This subsection applies to a person, being a non-citizen, who has entered Australia, whether before or after the commencement of this section, if:

(a) the person evaded an officer for the purpose of entering Australia;

(b) when, or before, the person entered Australia, he or she:

(i) produced, or caused to be produced, to an officer or person exercising powers or performing functions under this Act, in respect of that entry:

(A) a bogus document; or

(B) a passenger card containing information that was false or misleading in a material particular; or

(ii) made, or caused to be made, to an officer or a person exercising powers or performing functions under this Act, in respect of that entry, a statement that was false or misleading in a material particular;

(c) when, or before, a visa was granted or issued in respect of the person, he or she:

(i) produced, or caused to be produced, to an officer or a person exercising powers or performing functions under this Act, in respect of the grant of that visa, a bogus document; or

(ii) made, or caused to be made, to an officer or a person exercising powers or performing functions under this Act, in respect of the grant of that visa, a statement that was false or misleading in a material particular; or

(d) when the person entered Australia, the person was:

(i) suffering from a prescribed disease or a prescribed physical or mental condition;

(ii) a person who had been convicted of a crime and sentenced to death, to imprisonment for life or to imprisonment for a period of at least one year;

(iii) a person who had been charged with a crime and either:
(A) found guilty of having committed the crime while of unsound mind; or
(B) acquitted on the ground that the crime was committed while the person was of unsound mind;
(v) a person who has been deported from Australia or another country; or
(vi) a person who has been excluded from another country in prescribed circumstances.

**(2)** This subsection applies to a person, being a non-citizen, who has entered Australia, whether before or after the commencement of this section, if:
(a) after entry, an entry permit has been granted to the person authorising the person to remain in Australia; and
(b) in respect of the grant of that entry permit:
(i) the person produced a bogus document, or caused a bogus document to be produced, to an officer or a person exercising powers or performing functions under this Act; or
(ii) the person made, or caused to be made, to an officer or a person exercising powers or performing functions under this Act, a statement that was false or misleading in a material particular.

**(7)** For the purposes of this section, the circumstances in which a person shall be taken to have evaded an officer include, but are not limited to, the circumstances set out in subsections (8) and (9).

**(8)** For the purposes of this section, a person shall be taken to have evaded an officer for the purpose of entering Australia if:
(a) the person entered Australia before 1 June 1959 while he or she was a member of the crew of, or a person included in the complement of, a vessel; and
(b) at the time of entering Australia, or at any time afterwards, the person deserted the vessel or became absent without leave.

**(9)** For the purposes of this section, a person shall be taken to have evaded an officer for the purpose of entering Australia if the person entered Australia (whether before or after the commencement of this section) at a place (other than an Australian resources installation or an Australian sea installation) where no officer (other than a member of a police force) was stationed.

(10) A reference in this section to a person producing, or causing to be produced, a bogus document is a reference to a person producing, or causing to be produced, a bogus document whether or not the person knew that the document was a bogus document.

(11) A reference in this section to a person producing, or causing to be produced, a passenger card containing information that was false or misleading in a material particular is a reference to a person producing, or causing to be produced, such a passenger card, whether or not the person knew that the information contained in it was false or misleading in a material particular.

(12) A reference in this section to a person making, or causing to be made, a statement that was false or misleading in a material particular is a reference to a person making, or causing to be made, such a statement, whether or not the person knew that the statement was false or misleading in a material particular.

(15) In this section:

"bogus document", in relation to a person, means an entry permit, certificate, passport, visa, identification card or any other document that:

(a) was not issued to the person;

(b) was forged or fraudulently altered; or

(c) was obtained by the making of a false or misleading representation;

APPENDIX G

British Deportation Provisions

1. Those liable to deportation include a person who is not a British citizen:

   (a) if, having only a limited leave to enter or remain, he does not observe a condition, attached to the leave or remains beyond the time limited by the leave; or

   (b) if the Secretary of State deems his deportation to be conducive to the public good; or

   (c) if another person to whose family he belongs is or has been ordered to be deported.

   [Immigration Act 1971,S3(5)]

2. The exercise by the Minister (the Home Secretary) of the power to deport is in accordance with the following Rules

   Paragraph 166 Immigration Rules, H.C.251, 23 March 1990

   Deportation will normally be the proper course where the person has failed to comply with or has contravened a condition or has remained without authorisation. Full account is to be taken of all relevant circumstances known to the [Home Secretary] including the following:

   age;
   length of residence in the United Kingdom;
   strength of connections with the United Kingdom;
   personal history, including character, conduct and employment record;
   domestic circumstances;
   compassionate circumstances;
   any representation received on the person's behalf.

   Paragraph 162

   In considering whether deportation is the right course on the merits the public interest will be balanced against any compassionate circumstances of the case. While each case will be considered in the light of the particular circumstances, the aim is an exercise of the power of deportation that is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects.

3. The following is a selection of case reports heard by the Immigration Appeal Tribunal in which the Tribunal was called on to determine the weight to attach to the compassionate circumstances of a deportee.

(i) Ali v Home Secretary, 1978 Imm. A. R. 126

The appellants were a married couple, Kenyan citizens of Asian origin. In 1973 they entered the United Kingdom as visitors, arriving separately. It was accepted that they had misrepresented their intentions and concealed material facts for the purpose of obtaining leave to enter. The husband had engaged in business in breach of his conditions of entry and both had overstayed after their application to remain in the U.K. to pursue a business was refused. The Home Secretary decided to deport them. They argued against deportation because they were ethnically Indian and feared political and racial persecution if returned to Kenya which was pursuing a policy of "Africanisation". They had two children born in the U.K. and a third child was expected quite soon. The Tribunal held the Home Secretary was fully justified in deciding to deport the appellants the wife's impending confinement was a matter for the Home Secretary to consider only in deciding when to implement the deportation order.

(ii) Z Bibi (4311 of 1986; Immigration and Nationality Law and Practice, V.1, No.4, January 1987.

Deportation - s3(5)(a) - elderly woman - strong links with the U.K.

Appellant came to the UK as a dependent wife in 1969 with a number of her children, but left in 1971 to care for another son remaining in Pakistan. Her husband died in 1980. She returned to the UK in 1981 stating that she wished to visit her elder boy. She was granted six months leave to enter and later applied for settlement as a dependent mother. This was refused in February 1983. She remained without authority. In March 1985 she was served with a notice of intention to deport. An adjudicator dismissed her appeal. Before the tribunal the appellant's representative pointed out the appellant's links with the UK (her late husband was British as were her three sons living in this country) and that her family in the UK sent money to Pakistan for the support of their brother. Attention was drawn to the fact that in 1982 had she applied for registration as a Citizen of the UK and Colonies she would have had an absolute right to such citizenship (the law changed on 1 January 1983).

Held: ' ...Having regard to the strength of the appellant's connections with this country and her domestic circumstances - particularly the fact that she has three sons here and only [one son] in Pakistan, who had not been able to satisfy the entry clearance officer or an adjudicator that he was her son; and also having regard to the fact that the appellant at one time could have acquired British citizenship had she taken proper advice; and having regard to the fact that the appellant is 62 years of age and unlikely to become a charge on public funds [her son owning three grocery shops in this country] - having regard to all these matters, we have come to the conclusion that we would have exercised our discretion differently from the Secretary of State and the adjudicator in this case, and the appellant's appeal is allowed.'

(iii) Yunus Mohamed Patel (4719 of 1987; Immigration and Nationality: Law and Practice, V.2, No.2, July 1987).

The appellant applied to remain permanently on the basis of his marriage to a woman settled in the UK. The Secretary of State decided to deport the appellant on the grounds of public good under Immigration Act 1971, S.3(5)(b). Notice of the decision stated that the Secretary of State had reason to believe that the marriage was entered into primarily to obtain settlement in the UK with no intention that the appellant should live permanently with his wife. The explanatory statement alleged that the appellant had obtained leave to remain by deception by misrepresenting the state of his marriage. The evidence of the wife was that the marriage had never been consummated and that the appellant had never invited her to live with him. The appellant called no evidence before the tribunal but cross-examined the appellant's wife.

Held: Dismissing the appeal against the deportation decision the appellant's wife was a convincing witness and confirmed the appellant's misrepresentation to the Home Office. Persons who attempt by deceit to set the immigration regulations at nought should be deported unless compassionate circumstances rendered this undesirable.

(iv) Webb (5387 of 1987) Immigration and Nationality: Law and Practice, V.2, No.4, January 1988.

The respondent appealed against a decision to deport him under the Immigration Act 1971, S.3(5)(a) as an overstayer. The appellant had come to the UK as a working holidaymaker and remained in that capacity until 1983. His subsequent applications for leave to remain for employment were refused. He failed to leave the UK after repeated warnings. Before the adjudicator evidence was given by the respondent's homosexual partner and his brother. They said that the respondent was 'almost one of their family'. He was a great help to their mother who needed medical attention. The adjudicator allowed the appeal in the light of the compassionate circumstances. Before the tribunal the Home Office, while not contending that the adjudicator's decision to allow the appeal was perverse, argued that the compassionate circumstances put forward did not justify allowing the appeal.

Held: The tribunal was not prepared to exercise its discretion differently from the adjudicator. Appeal by Home Office dismissed.

(v) Safaribook - Farahani [5363 of 1987]

Deportation - overstayer - Iranian drugs offender

In considering whether the deportation of an Iranian overstayer convicted of possession of drugs was the right course on the merits the tribunal observed that '... we do not consider that the possession of drugs is a factor which should militate in an applicant's favour to enable him to obtain leave to remain in this country. Furthermore, Iranians know perfectly well what the attitude of their government to drugs is, and that conviction on drugs charges can lead to deportation. Thus, when they participate in the drugs market they must be aware of the possible consequences. Appeal dismissed.

(vi) Ali [5794 of 1988]

The appellant, an Iraqi was an overstayer. Held: the fact that if returned to Iraq the appellant would be conscripted and might be sent to the front, and the general uncertainty of affairs in Iraq, were in the view of the tribunal compassionate factors to be taken into account. However, on the facts, deportation was the right course.

**U.K. Deportation Figures**

The British comparison for deportation purposes is an apt one. The numbers located, recommended for deportation and actually deported are close to the Australian figures (See Table T5).

Table 6 Deportation action (1) United Kingdom 1978-88

| | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Category of Case and Type of Action Undertaken** | | | | | | | | | | | |
| **Breach of conditions of leave to enter or remain (2)** | | | | | | | | | | | |
| Notice of intention to deport | 955 | 985 | 1,189 | 1,343 | 1,532 | 3,152 | 2,278 | 1,578 | 661 | 794 | 1,751 |
| Deportation orders made | 619 | 544 | 1,553 | 1,345 | 1,389 | 1,591 | 1,438 | 1,461 | 451 | 290 | 308 |
| Removals of which | | | | | | | | | | | |
| Deportation orders enforced | 180 | 205 | 268 | 249 | 282 | 267 | 300 | 235 | 210 | 309 | 287 |
| Supervised departure (3) | * | * | * | * | * | * | * | * | 5 | 84 | 584 |
| **Conducive to the public good (4)** | | | | | | | | | | | |
| Notices of intention to deport | 56 | 98 | 66 | 124 | 72 | 111 | 144 | 106 | 135 | 69 | 70 |
| Deportation orders made | 57 | 102 | 97 | 140 | 60 | 86 | 119 | 81 | 116 | 78 | 81 |
| Removals of which | | | | | | | | | | | |
| Deportation orders enforced | 47 | 76 | | 113 | 74 | 65 | 83 | 92 | 97 | 63 | 67 |
| Supervised departure (3) | * | * | | * | * | * | * | * | - | - | - |
| **Following court recommendation (5)** | | | | | | | | | | | |
| Court recommendations made | 980 | 1,075 | ? | 820 | 826 | 844 | 929 | 839 | 831 | 836 | 705 |
| Successful appeal against recommendation (6) | 48 | 51 | 68 | 40 | 15 | 16 | 32 | 22 | 12 | 13 | 7 |
| Decision not to deport | 130 | 124 | 126 | 104 | 89 | 25 | 13 | 20 | 35 | 42 | 38 |
| Left voluntarily | 176 | 166 | 201 | 109 | 70 | 62 | 53 | 26 | 27 | 20 | 7 |
| Deportation orders made | 351 | 626 | 807 | 704 | 529 | 560 | 660 | 603 | 511 | 589 | 468 |
| Removals of which | | | | | | | | | | | |
| Deportation orders enforced | 485 | 509 | 616 | 576 | 508 | 479 | 535 | 315 | 431 | 404 | 391 |
| Supervised departure | 50 | 39 | 61 | 15 | 18 | 8 | 14 | 55 | 75 | 63 | 59 |
| Removal by Immigration Service (7) | .. | .. | .. | .. | .. | .. | .. | .. | .. | 23 | 19 |
| **All Categories - Total (8)** | | | | | | | | | | | |
| Notices of intention to deport | 1,015 | 1,106 | 1,256 | 1,486 | 1,610 | 3,274 | 2,427 | 1,697 | 796 | 863 | 1,822 |
| Court recommendations made | 980 | 1,075 | 1,242 | 820 | 826 | 844 | 929 | 839 | 831 | 836 | 705 |
| Deportation orders made | 1,234 | 1,275 | 2,472 | 2,195 | 1,986 | 2,242 | 2,218 | 2,145 | 1,078 | 957 | 857 |
| Detention orders served (9) | 50 | 57 | 109 | 54 | 58 | 64 | 55 | 29 | 51 | 255 | 768 |
| Restriction orders served (9) | 39 | 25 | 15 | 19 | 18 | 16 | 65 | 130 | 87 | 91 | 225 |
| Removals of which | | | | | | | | | | | |
| Deportation orders enforced | 714 | 792 | 969 | 946 | 866 | 814 | 918 | 842 | 738 | 776 | 745 |
| Supervised departure | 50 | 39 | 81 | 15 | 18 | 8 | 14 | 55 | 80 | 147 | 643 |
| Removal by Immigration Service (7) | .. | .. | .. | .. | .. | .. | .. | .. | .. | 23 | 19 |