

Minister Ray hails start of new era in immigration

Labor Party Immigration Minister Senator Robert Ray made the following response at the end of the process to review Immigration Policies (the FitzGerald Report): it marked the political compromise between the pro- and anti-FitzGerald forces in Cabinet.

Minister for Immigration, Local Government and Ethnic Affairs

Senator the Hon. Robert Ray

News Release

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Tomorrow sees the beginning of an important new chapter in Australia's immigration history.

In a major statement, the Minister for Immigration, Local Government and Ethnic Affairs, Senator Robert Ray, said today that the most fundamental changes to Australia's immigration laws ever introduced in a single package would begin operating from December 19, 1989.

The impact on the migration program and on Immigration Department clients would be far-reaching and, for many people, beneficial.

The Minister said however, that those who failed to abide by the new rules would find life considerably more difficult.

Senator Ray said he was proud to have presided over the long reform process which had culminated in the introduction of the amended Migration Act and its new Regulations.

History

"The changes beginning tomorrow represent the end-product of the process set in train by the

report of the Committee to Advise on Australia's Immigration Policies (CAAIP).

"The Committee was established in September 1987, and it reported its findings to the Government in June 1988.

"I announced the Government's decisions based on CAAIP on December 8, 1988," the Minister said.

"The CAAIP inquiry, and the consultations which followed, resulted in the most exhaustive and comprehensive review of immigration in our history.

"The past year has been devoted to putting in place key elements of the CAAIP report which the Government has accepted," the Minister said.

Fundamental change

Senator Ray said the Migration Act, which CAAIP had seen as being in urgent need of reform, had now been completely overhauled. The extensive amendments had received Royal Assent on June 19 this year.

They would thus come into effect tomorrow, together with the associated Regulations which set out the decision-making criteria under the amended Act.

"In giving effect to the Government's decisions on the CAAIP report, the package of legislation substantially tightens our management of the immigration program," Senator Ray said.

"It also provides for a much fairer system for reviewing migration decisions, and improves our ability to curb abuse of the immigration program by people seeking to come to Australia illegally.

"Perhaps the most important result is the establishment of immigration rules and criteria within the legislation which will ensure accountable and consistent decision-making open and fair to all," Senator Ray said.

Control of program numbers

The Minister said that in line with the Government's decisions announced last December, the Act and Regulations provided for improved program management through the "capping" of the points-tested components of the family and economic program streams.

This would ensure that annual intakes in each stream were met but not exceeded.

The "floating passmark" used to accomplish this and the "points test" used to determine the eligibility of applicants in some categories, would have legislative backing from tomorrow.

This would ensure a sharper economic focus to the overall migration program - a matter which CAAIP had strongly recommended.

Grant of resident status in Australia

Senator Ray drew attention to a major new feature of the legislation which would affect those who sought to change their status after arrival in Australia.

"The provision for people temporarily in Australia, especially as visitors, to change their status to permanent resident will be very much more restricted," he said.

"CAAIP recommended that the present practice of granting resident status to temporary entrants be discontinued.

"The Government, however, recognises that there will continue to be situations - mainly of a compassionate or humanitarian nature - in which it would be unreasonable to expect people to leave Australia and then apply to return from overseas. The Regulations recognise

this.

"However, I stress that the circumstances in which change of status will be granted are very narrow. In the case of visitors, the rules will apply only to situations beyond their control and which occur after entry to Australia."

Illegal entrants

In relation to people in Australia illegally, Senator Ray said the changes coming into force tomorrow were designed to uphold the integrity of the immigration program by making it more difficult for people to circumvent legal migration procedures.

Every person in Australia without legal authority on December 19, or who became an illegal entrant after that date, would be affected by the new rules.

"From tomorrow, the circumstances in which an illegal entrant may apply for and be granted permission to stay either temporarily or permanently will be very limited, and established as rules of law," Senator Ray said.

"For example, being married to an Australian citizen or permanent resident or being in a de facto relationship with one, will not entitle an illegal entrant to be granted permanent residence.

"For twelve months after tomorrow, some limited opportunities will exist to regularise illegal status, but thereafter there will be no opportunity for any person who spends more than twelve months as an illegal entrant to apply to stay, unless he or she is granted refugee status or territorial asylum."

Senator Ray said every person in Australia illegally would become, by law, an "illegal entrant" from midnight tonight, no matter how long they had lived here.

Every illegal entrant would be given a period of grace during which no mandatory deportation orders would be signed.

The period would last 28 days, but it could be extended if an application for an entry permit was lodged, or a permissible review of a refusal decision was sought, or a first instance application for review was made to the Federal Court.

"Every illegal entrant should carefully consider his or her options," the Minister said.

"The period of grace gives them an opportunity to leave Australia of their own accord and to apply to migrate from overseas in the normal manner without, in most cases, being barred from returning for a fixed period of time.

"If they don't leave, or if they don't come forward and lodge an application to remain, then they are liable to mandatory deportation.

"Once a mandatory deportation order is signed, it cannot be withdrawn. A person against whom a mandatory deportation order has been signed must be deported.

"An illegal entrant who is arrested under the Migration Act will - provided he or she has not previously applied for an entry permit and been refused - be given two working days to apply for an entry permit which would entitle them to remain while a case for permanent residence was considered."

Senator Ray said the very limited circumstances in which permanent status could be granted related essentially to compassionate or humanitarian situations which were beyond the applicant's control, and which had arisen since his or her arrival in Australia. They included:

- certain situations involving dependent children, aged parents and certain other special family relationships (but not marriage or a de facto relationship); and -
- certain situations of a humanitarian nature, including the grant of refugee status.

"However, after twelve months as an illegal entrant, the only opportunity to remain will be

for those people granted refugee status or territorial asylum," the Minister said.

"From tomorrow, opportunities for illegal entrants to regularise their status begin to narrow very sharply and virtually disappear after twelve months spent as an illegal entrant.

"I urge every illegal entrant to consider their options as quickly as possible.

"They should either leave Australia voluntarily within the period of grace or, if they believe they have a case for permanent residence, come forward and apply for an entry permit.

"If they do neither, they are liable to be deported mandatorily and excluded by law from returning to Australia for a fixed period of up to five years.

"I want to make it entirely clear that there is no period of amnesty for anyone.

"I also want to stress that I make no apology for the toughness of the new law as far as illegal entrants are concerned.

"The Government would prefer that every person here illegally simply leave Australia. Those who choose to stay and impose themselves on Australia's generosity will feel the full weight of its laws."

Recovery of costs from deportees

Senator Ray said the new legislation also allowed the Government, in some circumstances, to take possession of valuables owned by illegal entrants, to sell them, and to use the proceeds towards recovering the costs of detention and deportation.

The Government could also seek a court order restraining illegal entrants from selling, or otherwise disposing of their property.

The Minister said people deported from Australia would not be allowed to return under

any circumstances unless they had made satisfactory arrangements to pay any outstanding debts arising from detention and deportation.

Refugees

Senator Ray stressed that, contrary to some recent reports, the new Act and Regulations would not disadvantage people in Australia who applied for refugee status.

"Let me make it clear that the Act and Regulations have been drafted to ensure that Australia's international obligations to refugees will continue to be met," he said.

"The situation for people in Australia wishing to remain here on the basis of refugee claims will be basically the same as it was before December 19.

"Experience has shown that the system we have in place for refugee determination is a good one which meets our humanitarian obligations, and the Government saw no reason to change it."

The Regulations

The Minister said the Senate had resolved in June that the Regulations and administrative arrangements necessary to put the amended legislation into effect had to be completed before December 19 - a maximum of six months from the passage of the Bill.

To the extent possible, the Regulations reflected the policies in place under the current Migration Act.

"I have made a commitment to Parliament that the Regulations will be changed and refined in the light of administrative experience, Senator Ray said.

"I will also be taking into account the observations of the Joint Select Committee on Migration Regulations, the Immigration Review Tribunal, the courts, and community organisations.

"In framing the Regulations, I had the benefit of the Joint Select Committee's views.

"I have accommodated some of the Committee's concerns, but Regulations operate as rules of law. They therefore do not offer scope for the exercise of wide-ranging, and very broadly defined discretion.

"The Regulations create entitlements and restrictions at law. These must be clear and precise in intent if decisions are to be made equitably and accountably.

"More importantly perhaps, they allow for consistency of decision-making without undue political influence being brought to bear.

"In setting out selection criteria in Regulations, rather than in the Act itself, we have greater flexibility to amend the criteria quickly.

"This first set of Regulations will be subject to regular review.

"Some modifications are planned in January to pick up the findings of the report of the Joint Select Committee.

"Others will be made in the light of operational experience with the regulatory scheme," the Minister said.

Procedures Advice Manual (PAM)

The Minister said to assist in administering the Act and Regulations, a new set of operating instructions had been prepared covering all classes of visas and entry permits, together with enforcement and compliance procedures.

This "Procedures Advice Manual", or PAM, aimed to provide a comprehensive, consistent and clear set of guidelines and procedures for administering the new rules.

"PAM comprises approximately 190 topics divided into 51 subjects," Senator Ray said.

"For ease of reference the subject booklets are

colour-coded and cross-referenced as necessary.

"All related forms and client information also carry this colour-coding, while a colour-coded leaflet called 'PAM Guide' has been prepared to help users identify the particular subject they require.

"PAM will be revised and reprinted regularly, three times a year, to reflect any amendments to the Migration Act and Regulations. The next substantial changes will be made on May 1, 1990."

Senator Ray said PAM was available to the public through the Australian Government Publishing Service.

It was possible to purchase the complete set of booklets, or buy them singly.

"As purchasers will see, the guidelines spelt out in PAM are clear and unambiguous," he said.

"If someone wishes to know the criteria covering the entry to Australia of, say, a working holiday-maker, a businessman on a short-term posting, or a migrant seeking entry under the points test, they can read it for themselves in the appropriate PAM booklet.

"The same applies to people wishing to know about procedural matters affecting illegal entrants.

"PAM will be in universal use in all migration offices in Australia and around the world, ensuring that there will be no more 'guesswork' in determining who can or can't enter and stay in Australia. Most importantly, it will mean that decisions everywhere will be consistent," the Minister said.

Transitional arrangements

Senator Ray said all applications for visas or entry permits which had been lodged before, but not decided by, December 19 would be finalised in accordance with the provisions of the Migration Act and policies operating before

that date.

The same would apply to Regulation Second Applications for review of unfavourable decisions.

Those applications made on or after December 19 would be decided in accordance with the amended Act and the Regulations.

Applicants would have to meet all the requirements of the Act and Regulations before being granted a visa or entry permit.

"Applicants who made a Regulation Second Application before December 19 will have that application considered by an Immigration Review Panel," the Minister said.

"However no further applications for a Regulation Second Application will be accepted after today.

"Applicants who at the time of the decision are illegal entrants will have only a limited right to make another application under the amended Act and Regulations."

Senator Ray said deportation orders already issued for people classified as prohibited non-citizens before December 19 would remain valid but would not be proceeded with until after January 15, 1990.

However deportation orders for other people such as criminal deportees could still be proceeded with at any time.

New system of review

The Minister said that another major innovation under the new legislation was the introduction of a new two-tiered independent review system for immigration decisions.

First-tier consideration would be by a unit within the Immigration Department, called the Migration Internal Review Office.

The Office was staffed by specially appointed

officers who would work independently from the rest of the Department.

Second-tier consideration would be by the Immigration Review Tribunal, a statutory-based and completely independent body.

"Reviews under the new system will generally result in final determinations, and will not be merely recommendations for the Minister to consider," Senator Ray said.

"The Minister can override a Tribunal decision but only in cases where he or she wishes to substitute a more favourable decision for the applicant.

"In such cases, the Minister will have to provide a detailed statement of reasons to the Parliament.

"An important feature of the new Tribunal will be its absence of formality, and its ability to work without the intimidating atmosphere of a courtroom.

"The new mechanism of review will be fair, just, economical and quick," the Minister said.

Immigration agents

Senator Ray said another important provision of the legislation related to migration agents - people providing immigration advice for a fee.

"The Act has introduced new rules which ensure a responsible commercial relationship between agents and their clients," he said.

"Advisers will be committing an offence if they claim they can influence, or have influenced, the making of a certain decision, either in their own right or through a third party.

"Advisers must also provide a detailed statement of account to their clients.

"Where the adviser makes false claims or fails to furnish an account, no fee will be due," Senator Ray said.

A word of thanks

The Minister thanked everyone who had contributed to the implementation process.

He also thanked those organisations and individuals who had contributed so much to the consultations which led to the framing of the amended legislation and the new Regulations.

Finally he thanked the officers of his Department who had worked long and arduously towards the December 19 deadline.

"I look forward to this exciting new era in Australia's immigration program," Senator Ray said.