

# CHAPTER ONE

## THE INQUIRY

*The Minister for Immigration and Multicultural Affairs requested the Joint Standing Committee on Migration to report on the criminal deportation process. The reference arose from government and community concerns about the integrity of the deportation process. The Minister raised specific concerns about non-citizens convicted of serious crime using current review processes to remain in Australia. This chapter provides an overview of the inquiry process and the terminology used in the report.*

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### Introduction to the inquiry

1.1 On 12 December 1996, the Minister for Immigration and Multicultural Affairs, the Hon. Philip Ruddock, MP, asked the Joint Standing Committee on Migration to inquire into and report on the policies and practices relating to criminal deportation. The terms of reference of the inquiry are set out on p. xiii.

1.2 The criminal deportation scheme is part of the government's protection of the Australian community. The deportation scheme manages the lawful expulsion of non-citizens whose criminal offences while in Australia demonstrate their unsuitability for continued residence.

1.3 The purpose of the inquiry is to examine the adequacy, appropriateness and effectiveness of all aspects of the existing criminal deportation scheme.

### Ministerial concerns

1.4 In February 1997, when announcing the criminal deportation inquiry, the Minister stated "the integrity of our immigration process could be undermined if non-citizens, convicted of serious offences are able to remain in the Australian community." The Minister expressed concern that some AAT review decisions have enabled "permanent residents with substantial convictions ... to successfully oppose or delay criminal deportation orders."<sup>1</sup>

1.5 The terms of reference reflect the Minister's concern. The second term of reference asks the Committee to examine the appropriateness of existing arrangements for the review of deportation decisions.

1.6 This ministerial concern also resulted in other announcements that impact on the existing deportation scheme. In March 1997, the Minister announced sweeping changes to refugee and immigration decision making and review systems "to improve efficiency, credibility and accountability." The Minister announced a:

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1 Minister for Immigration and Multicultural Affairs, *Minister requests inquiry into criminal deportation policies*, Media Release 17/97, 11 February 1997.

two-tier merits assessment of applications .. [and] a number of other legislative measures .. to make my portfolio Tribunals more flexible and to improve their performance, while reducing the scope for abuse.<sup>2</sup>

1.7 In June 1997, the Minister cancelled the visas of two non-citizens convicted of criminal offences. Delegates within the Department of Immigration and Multicultural Affairs (DIMA) had decided not to allow the non-citizens to remain in Australia but the Administrative Appeals Tribunal (AAT) overturned these decisions.<sup>3</sup>

1.8 At the same time, the Minister foreshadowed that the government was considering a range of measures to strengthen powers relating to the removal of non-citizens who are not of good character. The Minister said:

I have been concerned for some time that the Government's views in relation to criminality and other character issues were not being given due weight by the Tribunals and Courts.<sup>4</sup>

## Conduct of the inquiry

1.9 On 16 February 1997, the Chair of the Committee announced the inquiry in a media release and invited submissions from the public and interested parties.

1.10 The Committee advertised the inquiry in major newspapers published nationally or in each capital city in February 1997. In addition, because of the subject of the inquiry, the Committee advertised in the specialist journal, *Australian Lawyer*.

1.11 The Committee wrote to a range of individuals and organisations including State and Commonwealth Government departments, immigration review agencies, immigration interest groups and members of the legal profession, seeking submissions.

1.12 The Committee received 58 submissions. Appendix One contains the list of submissions. The Committee received the written views of persons and organisations most affected by the scheme including:

- Commonwealth departments and agencies;
- state and territory governments;
- the Administrative Appeals Tribunal;
- the Administrative Review Council;
- a number of representative legal organisations;
- bodies representing migrants' interests; and
- a number of academics and other individuals.

1.13 The Committee held public hearings on six occasions in Canberra, Sydney and Melbourne. Appendix Two lists the dates of hearings and witnesses who attended. The

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2 Minister for Immigration and Multicultural Affairs, *Sweeping changes to refugee and immigration decision making*, Media Release 28/97, 20 March 1997.

3 Minister for Immigration and Multicultural Affairs, *Minister cancels visas of convicted criminals*, Media Release 54/97, 13 June 1997.

4 Minister for Immigration and Multicultural Affairs, *Strengthening of immigration 'character' provisions*, Media Release 55/97, 13 June 1997.

Committee finished taking oral evidence in December 1997 and received the last submission in May 1998.

1.14 During the course of the inquiry, the Committee also received submissions and took evidence on matters beyond its terms of reference, specifically the deportation of Australian citizens. Appendix Eight addresses two issues concerning the deportation of Australian citizens who:

- committed crimes in Australia, thereby breaking their citizenship oath; or
- committed crimes against humanity in other countries.

## **Definitions**

1.15 Throughout the report, the term "deportation" refers to the process established under the *Migration Act 1958*, whereby the Minister can order non-citizens to be expelled from Australia because they are a security threat or have committed crimes. The term "removal" refers to the process for the mandatory expulsion of the non-citizens who are unlawfully in Australia, either because they do not have visas or because their visas have been cancelled by the Minister.

1.16 The focus of the inquiry is the criminal deportation process (ie deportation of permanent residents who have committed crimes in Australia), although the last term of reference directs attention to that part of the removal process applied to criminal non-residents. Permanent resident non-citizens convicted of crimes may be liable under either process. Holders of other visa types convicted of crimes may be liable only under the removal process.

1.17 When used in the report, the terms refer to the specific processes defined in the Act and are not used interchangeably as may occur in general community usage.

