

APPENDIX FIVE

AUSTRALIA'S CRIMINAL DEPORTATION POLICY

The following is a statement on Australia's Criminal Deportation Policy made to Parliament in November 1992 by the Minister for Immigration, Local Government and Ethnic Affairs, The Hon. Gerry Hand. The Statement was effective from 24 December 1992.

Introduction

1. The Australian Government, on behalf of the Australian community, has the right to decide who will be accepted for permanent residence in Australia and, ultimately, for absorption into full membership of the community by way of Australian citizenship.
2. Parliament vests in the Minister for Immigration, Local Government and Ethnic Affairs the discretion to determine whether resident non-Australian citizens who have been convicted in Australia of certain serious criminal conduct are to be removed from Australia by deportation. In exercising that discretion the Minister is exercising the right of the Australian community to be protected and to choose who will be permitted to remain as a permanent resident.
3. A person liable for criminal deportation has a right to a decision on his/her case as soon as possible after sentencing and has a right to appeal to the Administrative Appeals Tribunal against a decision that he/she be deported, except where the circumstances set out in paragraph 4 below exist. Where the right of appeal exists, the Administrative Appeals Tribunal is invested with determinative powers of review and it is therefore able to overturn a decision by the Minister.
4. This right of appeal is not open to a person whom the Minister has declared should be an excluded person because of the seriousness of the circumstances giving rise to the deportation decision. Where the Minister makes such a declaration, he has an obligation to table notice of the decision before both Houses of Parliament within 15 sitting days of that house after the day on which the decision was made.
5. As there is no right of appeal against the Minister's decision to deport where he declares a person to be an excluded person, the decision of the Minister to make such a declaration is taken in only the most serious circumstances. Such declarations are only made where it is clear that it is in the national interest for the person to be excluded from Australia.
6. It should be recognised that the decision to deport stems from the Minister's responsibility to the Parliament and to the Australian community to protect the community from the possibility of further criminal behaviour or to expel from Australia those non-citizens who have seriously abused the privilege of residence accorded to them by the Australian community.

7. Consistent with Government policy, most weight should be given to the need to protect Australian society. Conversely, less weight should be given to the views of the offender and that person's family and associates, and to the possibility of adverse consequences for them of deportation.
8. The Government recognises Australia's obligations under international law, particularly to the International Covenant on Civil and Political Rights. However, the Government is mindful of the need to balance a number of very important factors, especially:
 - the need for community protection against criminal behaviour;
 - the requirement to take into consideration the legitimate human rights of an individual;
 - the need to protect the rights of other person, including the family of the person concerned; and
 - the need to avoid discrimination when making deportation decisions.

Guidelines for deportation

9. The purpose of deporting a person who has been convicted of a criminal offence in Australia is to protect the safety and welfare of the Australian community and to exercise a choice on behalf of the community that the benefit accruing to the community as a whole by his/her removal outweighs the hardship to the persons concerned and his/her family.
10. The greater the potential effect on the community or the greater the potential damage to the community the lower is the acceptable level of risk that the person concerned will commit further offences.
11. Deportation of a person convicted of crime may be appropriate when a person:
 - constitutes a threat because there is a risk that he/she will commit further offences if allowed to remain; or
 - has committed a crime so offensive to Australian community standards that the community rebels against having within it a person who has committed such an offence; or
 - has not established sufficient ties with Australia to have become a full member of the community and, by reason of his/her conduct, is unsuitable for permanent residence in Australia.
12. Examples of serious offences which may render non-Australian citizens liable to deportation include:
 - production, importation, distribution, trafficking or commercial dealing in heroin or other 'hard' addictive drugs or involvement in other illicit drugs on a significantly large scale (persons who embark upon drug-related crime for financial gain show a callous disregard for insidious effects on the health and welfare of Australia's young people); this does not necessarily apply to persons who use hard drugs for their own consumption who were not involved in the above illegal actions.

- It would be invidious if non-citizen residents who seek to profit from the import or supply of drugs, whether or not that profit is motivated by their own need for illicit drugs, were likely to be allowed to remain in Australia. It is important both as a deterrent and to protect Australian society that it is clearly understood that a person convicted of drug trafficking, which puts at risk the very lives of young Australians, has no place in our society.
- organised criminal activity (whether within Australia only or internationally);
- serious sexual assaults whether or not accompanied by other violence (especially where there has been more than one sexual offence);
- armed robbery;
- violence against the person;
- terrorist activity and assassination;
- kidnapping;
- blackmail;
- extortion.

Crimes against children, because of their vulnerability, take on a special significance, especially inducement to drugs, sexual assaults, violence, kidnapping and crimes taking unfair advantage of children.

13. Social ties developed after the liability for deportation arose, especially after the liability had been brought to the notice of the offender, can be discounted according to circumstances (eg marriage or the immigration to Australia of further family members).
14. Australia does not have an obligation to provide sanctuary for people who have broken the laws of another country. In any case it is neither feasible nor proper for the Australian Government to consider the propriety of the operation of criminal codes in other countries nor, even if it had the resources to obtain sufficient information, to attempt to anticipate likely outcome of any charges overseas.
15. Thus the possibility of further criminal sanctions in the country in which a potential deportee expects to live if deported are generally not relevant to the main issue of protecting the Australian community and may not be persuasive when making a decision on deportations.
16. Civil or military hostilities are more likely to affect the timing of deportation than to constitute a reason that the offender should continue to live permanently in Australia.
17. Judgements that job opportunities and the overall environment of the country to which a person would be deported are not as favourable to them as in Australia, however compassionately viewed, would not be persuasive against the removal of a person who is a risk to the Australian community.
18. Cogent and substantiated evidence of any claim of likely persecution in the country to which a person is to be deported would need to be produced. In the absence of such evidence it is very difficult to give weight to the unsubstantiated claim.
19. The most important broad criteria on which judgements will be based are the nature of the crime; the possibility of recidivism; the contribution the person has made to the community or may reasonably be expected to make in the future and the family and/or

social ties that already exist. In particular the following factors will be taken into account when making a decision on whether a deportation order should be issued:

- the nature of the offence as outlined in paragraph 12 and the length of sentence imposed by the court;
- the person's previous general record of conduct. The total criminal history of a person should be given significant weight in making a decision to deport. A person who has been previously warned about the liability for deportation and, notwithstanding that warning, commits a further deportable offence, should expect that the warning will be given serious weight in consideration of his case. A person with several previous convictions against Australian society should usually be judged in the light of that past behaviour;
- the risk of further offences;
- the extent of rehabilitation already achieved, the prospect of further rehabilitation and positive contribution to the community the person may reasonably be expected to make;
- the length of lawful residence in Australia, the strength of family, social, business and other ties in Australia.
- the degree of hardship which would be caused to lawful residents of Australia (especially Australian citizens) known to be affected adversely by deportation or conversely the extent of support for deportation from persons directly affected;
- any unreasonable hardship the offender would suffer;
- ties with other countries;
- the relevant obligations of the Commonwealth of Australia under international treaties ratified by the Australian Government;
- the likelihood that deportation of the offender would prevent or inhibit the commission of like offences by other persons.

This list is not exhaustive; if relevant, other factors that come to notice will be taken into account in individual cases.

20. A sensitive issue concerns the liability for deportation of an adult who arrived in Australia as a minor. It is not the Government's intention that such people should never be deported. Where there is a pattern of criminal behaviour indicating a likelihood that the person will commit further serious crimes, deportation should be seriously considered.
21. A person's cultural background should not result in differing applications of the law. While our multicultural society encourages all persons to practise their culture and pursue their ideals, this practise must fall within an adherence to the basic values and institutions which form the essence of Australia. Contrary cultural values do not provide an excuse to persons who offend against Australian society.

Claims for refugee status

22. In cases where issues of protection pursuant to the Convention and Protocol Relating to the Status of Refugees are raised, they are considered individually by the Minister. Advice on the application of the Convention and Protocol and whether a person is entitled to the protection of the Convention is provided to the Minister by his Department.

Deportation action

23. It is the appropriate State authorities (or in the case of Commonwealth prisoners, the Governor-General) to decide such questions as the conditions under which a prisoner is to serve a sentence, the extent of remission of any part of a sentence or the release of a potential deportee on licence or on parole for the purpose of deportation.
24. Whenever possible, departure from Australia will be arranged to coincide with a deportee's release from prison. A deportee may be held in custody pursuant to the Migration Act pending finalisation of the deportation arrangements.

