Attachment 4

Media Release

Minister for Immigration, Local Government and Ethnic Affairs *The Hon. Gerry Hand, MP*

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MPS 54/90

GOVERNMENT TO AMEND MIGRATION LAW RELATING TO CERTAIN ILLEGAL ENTRANTS

The Government is to amend the Migration Regulations to allow certain people who were in Australia illegally before 19 December 1989 to regularise their status.

The Minister for Immigration, Local Government and Ethnic Affairs, Mr Gerry Hand, who announced this today, said the provisions would be in force until 18 December 1993 to allow the people concerned ample time to present their cases.

Mr Hand said the Government would also amend the Regulations to allow certain "innocent" illegal entrants to regularise their status.

In reaching the decisions, Mr Hand said, the Government had had regard to the report of the Joint Standing Committee on Migration Regulations. But the view had been reached that the time for further concessions to the great majority of those who had broken the law was well and truly past.

He said the decisions finalised the Government's consideration of issues relating to illegal entrants, and there should be no expectation of further exceptions or concessions.

The decisions cleared the way for total implementation of the new measures to deal with illegal entrants, announced in August this year.

Provisions for pre-19 December 1989 illegal entrants

Mr Hand said Regulations would be amended to allow certain people who had been in Australia illegally before 19 December 1989, and who are still here, to regularise their status.

A special entry permit would be created, with criteria based on sections of the grant of resident status policy applying before that date.

Such criteria would include:

- whether the person was the spouse (married or de facto), dependent child or aged parent of an Australian citizen or permanent resident (a parent would be required to meet the balance of family test); or

- whether the person was an aged dependent relative, a last remaining relative, a special-need relative or an orphan relative of an Australian citizen or permanent resident.

(NOTE: A full list of criteria is attached.)

The criteria will be based on circumstances applying on 15 October 1990 -- the date of this announcement -- and must still be valid at the time a decision is made. Where an application is based on a spouse or de facto relationship, that relationship must be "genuine and on-going".

"Those who come forward voluntarily while the Regulation is in force -- that is, prior to 19 December 1993 -- will have the right of review of an unfavourable decision," the Minister said.

"A review application will go direct to the second-tier Immigration Review Tribunal. This will ensure a quick resolution of any claims and avoid attempts by applicants to prolong their stay in Australia by being allowed review at both first-tier and second-tier levels.

"People who come forward quickly will have a significant advantage over those who delay their applications.

"A person who applies in the first year of the new arrangements will face no exclusion period from Australia if he or she departs as instructed. In the second year, an unsuccessful applicant will face a two year ban on re-admission, and in the third year a five year ban will apply.

"No waiver of these periods will be possible."

Mr Hand stressed that these concessions would apply only to those people who came forward voluntarily.

People who failed to do so and who were arrested would be given no right of review, and would be subject to readmission bans of one, two and five years in the first, second and third years respectively. Again no waiver would be permitted.

"These measures are designed to encourage a quick response to contain administrative costs," he said. "More importantly, they provide fair and reasonable incentives to individuals to seek to regularise their status."

Mr Hand said those members of the illegal community who had been hoping for some other form of concession from the Government should be under no illusion as to what these decisions meant.

"Unless they meet the limited criteria outlined above, they should waste no time in leaving Australia," he said.

"This warning applies particularly to those who have become illegal since 19 December 1989 -- these decisions contain nothing for them.

"There has been more than ample warning of the provisions of the new legislation for dealing with illegal entrants.

"In addition the Government has been extremely generous in extending on a number of occasions the transitional provisions by which illegal entrants could apply to regularise their status under certain circumstances.

"These concessions, which end on 31 October, have been widely publicised. Those who have a case to make can still do so before 31 October. If they choose not to do so, they should depart or feel the full force of the amended Migration Act."

"Innocent" illegals

In relation to "innocent" illegals, Mr Hand said the Migration Regulations would be amended to specify circumstances of innocence and to allow for such situations to be remedied.

"Innocent" illegals will include:

- those people whose illegal status arose through erroneous decisions of the Immigration Department, and not through any fault of their own; and

- those who became illegal as minors and who meet conditions relating to health, character, age, time in Australia and family relationships.

However, the Minister said, the definition relating to minors will not extend to family members who had been the cause of the illegality and/or who are themselves illegal entrants.

Nor will minors under 18 years of age be eligible for this type of entry permit -- they are not of legal age to make such decisions.

Discretion under the Migration Act

Mr Hand said he would invite the Immigration Review Tribunal and the Secretary of his Department to bring to his attention any case adversely decided, including those of "innocent" illegals, which they believed might warrant the exercise of his Ministerial discretion.

He would then use his existing powers under Sections 115 and 137 of the Migration Act to decide whether the Regulations should be set aside in individual cases.

Cases which might be referred in this way could include:

- those in which the circumstances of the case are such that the legislator could not have anticipated them;

- those in which the consequences of not having recognised the circumstances in the legislation were not intended by the legislator;

- those which present compassionate circumstances of such order that failure to recognise them would result in severe hardship to an Australian citizen or lawful permanent resident of Australia.

Mr Hand said this would create a framework for administration of the exercise of the Minister's powers which, under the Migration Act, require reporting on a regular basis to Parliament.

He said that this would enhance the role of the Immigration Review Tribunal in the decision-making process and facilitate development of the Regulations in the light of experience of that process.

The new administrative framework would address concerns over perceived rigidity in the new legislation.

CANBERRA, 15 October 1990

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CRITERIA TO BE SPECIFIED IN THE MIGRATION REGULATIONS FOR THE GRANT OF ENTRY PERMITS TO PEOPLE WHO WERE ILLEGAL ENTRANTS ON OR BEFORE 18/12/89 - TO TAKE EFFECT FROM 10 DECEMBER 1990

1. Applicants must

   (a) lodge their application in accordance with the requirements of the Regulations (prescribed form, fee and travel document);

   (b) be

      (i) the spouse of a lawful permanent resident of Australia or an Australian citizen in a genuine and on-going marital relationship; or

      (ii) the dependent child of a permanent resident or Australian citizen; or

      (iii) the aged parent of a permanent resident or Australian citizen, and who meets the balance of family test; or

      (iv) the de facto spouse of a lawful permanent resident of Australia or an Australian citizen in a genuine and on-going relationship; or

      (v) an aged dependant relative; remaining relative; special need relative or orphan relative of a lawful permanent resident of Australia or an Australian citizen as described at sub-regulation 127 (iii) (A) and (B); or

      (vi) in circumstances which present compassionate grounds of such magnitude that rejection of the application would create extreme hardship or irreparable prejudice to the interests of Australian parties; and

      (vii) able to satisfy normal health and character requirements.

2. The circumstances outlined above must have existed at the date of announcement of the provision and be continuing at the time of decision.

3. A right of review will attach to those who come forward voluntarily within the three years from the date of announcement of the provision, but only to the

second-tier, Immigration Review Tribunal (to avoid attempts to protract stay through allowing access to review at both levels).

4. Exclusion under Regulation 36 will not apply to unsuccessful applicants who come forward voluntarily within 12 months of announcement of the provision and who subsequently depart voluntarily as instructed.

5. For those who come forward voluntarily in the second and third year of announcement of the provision, exclusion periods of 2 and 5 years respectively will apply with no recourse to waiver.

6. For those who apply after apprehension there will be no review right and exclusion periods of one, two and five years will apply respectively in the first, second and third year from announcement of the provisions, with no recourse to waiver.

7. An entry permit will not be granted to an applicant who fails to keep the DILGEA advised of any change of residential address after lodgement of application.

8. Any existing applications from this group may, at the option of the applicant be converted free of charge to an application under these criteria.