



Senator Chris Evans

Leader of the Government in the Senate
Minister for Immigration and Citizenship

Mrs Julia Irwin MP
Chair
Standing Committee on Petitions
Parliament House
CANBERRA ACT 2600

Dear Mrs Irwin *Julia*

Thank you for your letter of 11 February 2010 relating to two petitions recently submitted to the Standing Committee on Petitions regarding immigration and citizenship in Australia.

The petitions in question, 280/503 and 281/504, are almost identical in their text and cover several immigration and citizenship-related issues. As agreed with your office, I have addressed these issues as though they were contained within one petition.

Each petition asserts that the Australian Government made a commitment on 26 January 1988 to grant amnesty to all immigrants and refugees in Australia at that time, and which, to this day, has not been enacted. These assertions are inaccurate.

In a Ministerial Statement to the House of Representatives on 3 June 1988, the then Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Allan Clyde Holding MP, released the report of the Committee to Advise on Australia's Immigration Policies – *Immigration – a commitment to Australia*. In his address Mr Holding stated that among other items in the Terms of Reference, the Committee was instructed to 'note that the Government has ruled out an amnesty for illegal immigrants.' In a statement on 21 April 1988, former Member of the House of Representatives, Mr Alan Cadman MP, repudiated claims that either he, or the Opposition of the time, supported the notion of an amnesty for illegal immigrants.

Nor is there any consideration at present of providing a general amnesty for people who have overstayed their visa in Australia.

Unlawful non-citizens have no entitlement to remain in Australia and are expected to depart. If an unlawful non-citizen refuses to leave Australia voluntarily, they may be detained and removed from Australia at the earliest practicable opportunity.

Persons who overstay their visa by more than 28 days become subject to an exclusion period that prevents them from being granted a temporary visa to travel to Australia for three years. This exclusion period applies whether they leave voluntarily or not.

In comparison to some European countries, Australia has a much smaller population of people living in the country having overstayed their visas. In recent years the number of overstayers at any one time has remained below 50 000. Many people who are recorded as overstayers are merely extending their stay in Australia by a few days or weeks, and leave of their own accord within a short period. Those who overstay for a longer period may be given temporary lawful status through the grant of a Bridging visa. This allows them to make arrangements for their departure from Australia or, if eligible, to seek a further visa.

The Department now has a Community Status Resolution Service available for non-citizens in the community who have an unresolved immigration status. The Service engages with these individuals to assist to resolve their immigration status either through grant of a substantive visa or through departure.

Departmental officers provide information to clients about their immigration and departure options, as well as connect them with appropriate services on a needs basis, to assist them to achieve an appropriate immigration outcome.

The petitions also seek the recognition of migrants and refugees as 'human'. The National Human Rights Consultation, launched on 10 December 2008, sought to consult with the Australian community to find out 'which human rights and responsibilities should be protected and promoted in Australia, whether human rights are sufficiently protected and promoted, and how Australia could better protect and promote human rights.' The Committee received some 35 014 public submissions, as a result of 66 community roundtables held across Australia and three days of public hearings in Parliament House.

The *National Human Rights Consultation Report* was handed to the Australian Government on 30 September 2009. The full text of the report is available at www.humanrightsconsultation.gov.au. Among other items, the report recommends that immigration legislation, policies and practices be examined in an audit of federal legislation to determine their compliance with Australia's human rights obligations.

On 21 April 2010 the Attorney General launched Australia's Human Rights Framework which outlines a range of key measures to further protect and promote human rights in Australia.

The Framework is based on five key principles and focuses on:

- Reaffirming a commitment to our human rights obligations;
- The importance of human rights education;
- Enhancing our domestic and international engagement on human rights issues;

- Improving human rights protections including greater parliamentary scrutiny; and
- Achieving greater respect for human rights principles within the community.

The situation of those people present in Australia unlawfully, and who might benefit from an amnesty, must, however, be distinguished from that of migrants and refugees who have permission to remain in Australia. An amnesty is not relevant to their circumstances, and they already receive protection, support and recognition where relevant.

The Skill Stream of the Migration program selects people on the basis of their skills and capacity to enter Australia's skilled labour market. Applicants are generally required to have skills which have been recognised for migration purposes by a designated assessing authority. An applicant's age, skilled work experience and English language proficiency are also taken into account. The Skill Stream also includes a number of employer sponsored visa classes where an applicant must be sponsored by an Australian employer to fill a skilled employment vacancy. The Skill Stream selects people on the basis of characteristics which will enable them to integrate readily into the skilled labour force or to invest or establish businesses in Australia. As the focus is on attracting young, highly skilled migrants the requirements for General Skilled Migration (GSM) are tailored to meet this objective. Persons applying for a GSM visa need to:

- Be under 45 years of age when they apply;
- Have a high level of English language skills;
- Nominate an occupation on the Skilled Occupation List and be found suitable for that occupation by the relevant Australian assessing authority; and
- Have recent work experience in a skilled occupation or have recently completed an Australian qualification.

In relation to refugees within Australia, the following information provides an overview of the protection, support and recognition that recognised refugees are provided under relevant legislation, policy and international obligations commitments.

As a signatory to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (the Refugees Convention), Australia is committed to providing protection to refugees consistent with the obligations set out in the Convention.

Australia recognises the right of anyone to make a claim for refugee status in Australia. I would like to assure you that persons who meet the refugee criteria in the Refugees Convention, or other criteria under international human rights treaties to which Australia is a party, are granted Australia's protection, subject to meeting all legal requirements set out in the Migration Act and Regulations. These persons are granted Protection visas and thus, permanent residency and have access to Medicare, Centrelink and work rights.

In recognition of the particular needs of refugees, the Government has put in place support mechanisms for refugees who are newly settled in Australia. The Integrated Humanitarian Settlement Strategy (IHSS) provides initial, intensive settlement assistance for refugee and humanitarian entrants for up to 12 months after arrival. This includes assistance in finding accommodation, the provision of certain household goods, information and assistance to access services and become part of the local community and short term torture and trauma counselling.

The Government also recognises the need to prepare people for entry into the workforce so that their skills can be utilised effectively. The Adult Migrant English Program (AMEP) aims to achieve the economic and social participation of migrants and refugees. The AMEP includes Employment Pathways and Traineeships in English and Work Readiness programs. These programs provide an employment focus, developing pathways to work through work experience placements.

Support is also available to onshore asylum seekers in the community in Australia while their Protection visa applications are being considered. The Asylum Seeker Assistance (ASA) Scheme provides financial assistance to eligible Protection visa applicants living in the community who are unable to meet their most basic needs for food, accommodation and health care as well as meeting torture and trauma counselling costs.

Asylum seekers who are not found to be owed Australia's protection after an assessment of their claims and who have no other basis to remain are required to depart. Australia's *non-refoulement* obligations, found in Article 33(1) of the Refugees Convention, prohibit the return of a refugee to a territory where their life or freedom would be threatened. I can assure you that no one who raises an asylum claim is returned unless it has been determined that they are neither a refugee, nor a person to whom Australia has obligations under other international treaties.

Under Australia's obligations under international law, Australia is not required to provide an amnesty to asylum seekers and there is no consideration at present of doing so.

I trust this information is of assistance to you.

Yours sincerely

CHRIS EVANS

19/7/10