

INSTRUCTION

Unless re-issued or deleted sooner this instruction lapses 12 months from the date of issue.

POLICY CONTROL INSTRUCTION NO. PC 1721

DATE OF ISSUE 10 August 1990

FILE NO.

DECISIONS TAKEN BY THE MINISTER PERSONALLY

BACKGROUND

Decisions taken by the Minister personally fall into five categories:

- . decisions of the Minister as primary decision-maker;
- . decisions of the Minister to intervene after MIRO review;
- . decisions of the Minister to intervene after IRT review;
- . decisions of the Minister not to intervene after MIRO or IRT review; and
- . decisions of the Minister on a reconsideration pursuant to regulation 173A.

2 It is a requirement that the Minister report to Parliament in respect of most decisions taken by him personally. This PC provides details of the decisions in respect of which there is a reporting requirement. It also sets out procedures to facilitate reporting.

DECISIONS BY THE MINISTER AS PRIMARY DECISIONMAKER

3 On May 9 1990 the Minister made a statement to Parliament indicating that he would report to Parliament every six months on any decisions taken by the Minister personally in respect of applications for visas or entry permits.

4 The Minister's statement covers decisions taken by the Minister as the primary decision-maker pursuant to sections 24 or 34 of the Migration Act 1958 (ie. decisions in respect of applications for visas or entry permits lodged after 19 December 1989). The Minister's statement does not cover:

- . decisions of the Minister in respect of pre-19 December applications for visas or entry permits;
- . decisions of the Minister under the Migration Act 1958 that are not in respect of applications for visas or entry permits; and
- . decisions of the Minister under other Acts in his portfolio (eg. the Australian Citizenship Act 1948).

NUMERICAL DISTRIBUTION

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SUBJECTS FOR INDEXING

Administrative Law; MIRO; IRT.

5 The Minister's report to the Parliament will catalogue and analyse the cases determined by him and may express conclusions as to the possible need for amendments to the regulations.

DECISIONS BY THE MINISTER TO INTERVENE FOLLOWING MIRO REVIEW

6 Pursuant to section 115 of the Migration Act 1958 the Minister is empowered, where he considers it in the public interest to do so, to set aside the decision of a review officer and substitute a decision more favourable to the applicant. Where the Minister sets aside a review officer's decision pursuant to this section he is required to lay before each House of Parliament a statement setting out:

- . the decision set aside; and
- . the decision substituted; and
- . the reasons for the decision referring in particular to the reasons for thinking that the public interest required the new decision to be made.

7 This statement is required to be laid before each House of Parliament within 15 sitting days of that House after:

- . where the decision is made between 1 January and 30 June in a year - 1 July in that year;
- . where the decision is made between 1 July and 31 December in that year - 1 January in the following year.

This means, for example, that if a decision is made in November and Parliament has 15 sitting days before it rises for the Christmas recess and does not sit again till February the statement must be made to Parliament within 15 sitting days after Parliament recommences in February. (ie. 15 sitting days after 1 January).

DECISIONS OF THE MINISTER TO INTERVENE AFTER IRT REVIEW

8 Pursuant to section 137 of the Migration Act 1958 the Minister is empowered, where he considers that it is in the public interest to do so, to set aside a decision of the Tribunal and substitute a decision that is more favourable to the applicant. Where the Minister sets aside a Tribunal decision pursuant to this section he is required to lay before each House of Parliament a statement setting out:

- . the decision set aside; and
- . the decision substituted by the Minister; and
- . the reasons for the Minister's decision referring in particular to the Minister's reasons for thinking that the public interest required the new decision to be made.

9 The statement is required to be laid before Parliament within 15 sitting days of the decision being made.

DECISIONS OF THE MINISTER NOT TO INTERVENE FOLLOWING MIRO OR IRT REVIEW

10 Cases will arise where the Minister decides that the public interest does not justify intervention after the decision of a review authority. Where the Minister makes such a decision there is no requirement that the reasons for the decision be tabled.

DECISIONS OF THE MINISTER ON A REGULATION 173A RECONSIDERATION

11 Regulation 173A provides that a person is entitled to a reconsideration of a decision in relation to a visa/entry permit application if:

- . the application was lodged before 19 December 1989;
- . the decision was made after 18 September 1989; and
- . the applicant has not lodge a regulation second application and is not entitled to apply under the Migration (Review) Regulations for a review of the decision.

Decisions taken by the Minister personally pursuant to regulation 173A are not subject to a tabling requirement.

INSTRUCTION TO OFFICERS

FORM OF SUBMISSIONS

12 Officers who prepare submissions to the Minister as primary decision-maker on visa and entry permit applications are asked to ensure that the submission clearly indicates

- . the nature of the decision to be made;
- . the findings on any material questions of fact;
- . refer to the evidence or any other material on which the findings of fact were based; and
- . the reasons for that decision.

13 Where a submission asks the Minister to substitute a decision more favourable to the applicant at the review stage the submission should clearly indicate:

- . the nature of the decision to be set aside;
- . the decision to be substituted;
- . the reasons for the new decision being substituted including a statement as to why it is in the public interest to set aside the decision of the review authority and substitute a more favourable decision.

14 If the above information is clearly specified this will assist in the preparation of the statement to Parliament.

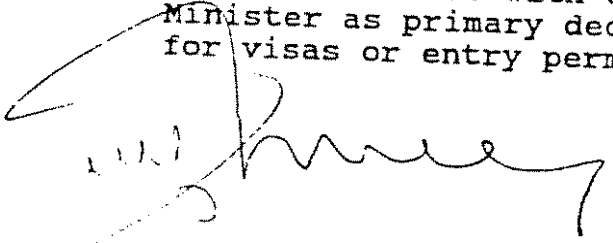
PREPARATION OF TABLING STATEMENT

15 The Legal Policy Section will be responsible for preparing the Tabling statements in respect of decisions taken by the Minister. To facilitate the preparation of the tabling statements a copy of all submissions to the Minister in respect of decisions on which a report to Parliament is required should be sent to the Director, Legal Policy Section, Legal Branch as soon as possible after the Minister has made a decision on the matter.

16 The above instruction applies to all submissions made following the issue of this instruction.

17 As the Minister's statement to Parliament on May 9 related to decisions taken by him personally in respect of applications for visas or entry permits from that date on it is necessary to obtain copies of all submissions in respect of those cases.

18 You are requested to provide Director Legal Policy by 1 September 1990 with copies of all submissions to the Minister as primary decisionmaker in respect of applications for visas or entry permits since 9 May 1990.



W J GIBBONS
First Assistant Secretary
Development & Systems

