

## GUIDELINES FOR STAY IN AUSTRALIA ON HUMANITARIAN GROUNDS

### Purpose

The purpose of these guidelines is to provide a framework for recommending the grant of stay in Australia to persons of humanitarian concern who do not meet the requirements for refugee status but who face hardship if returned to their country of origin which would evoke strong concern in the Australian public.

### Legislative Framework

2. The Minister for Immigration and Ethnic Affairs has a discretion under s417 and s454 of the Migration Act 1958 to grant an entry permit to a person who is physically present in Australia and has been determined by the Refugee Review Tribunal or the Administrative Appeals Tribunal not to be a refugee if the Minister considers such action to be in the public interest.

3. There may also be persons eligible for humanitarian consideration under s345 of the Act where their cases were decided by a review officer prior to 28 October 1993.

### Scope of Guidelines

4. In accordance with Australia's commitment to protection of human rights and the dignity of the individual, it is in the public interest to offer protection to those persons whose particular circumstances and personal characteristics provide them with a sound basis for expecting to face, individually, a significant threat to personal security, human rights or human dignity on return to their country of origin.

5. It is in the public interest to ensure that protection is offered on humanitarian grounds to a person in the following circumstances:

(i) Persons with Convention related claims in the past and continuing subjective fear:

- the applicant may have been a refugee at the time of departure from their country, but due to fundamental changes in their country, is not now a refugee and it would be inhumane to return them to their own country because of their subjective fear. For example, a victim of torture and trauma who is likely to suffer further trauma if returned to their country.

(ii) Persons likely to face treatment closely approximating persecution:

- the applicant has individually been subject to a systematic program of harassment or denial of basic rights available to other residents of their country which falls short of persecution.

(iii) Persons facing serious mistreatment which while not Convention related constitutes persecution:

- the applicant has been personally subjected to human rights violations or personal degradation for non-Convention reasons and protection of their country is not assured.

## Other Considerations

6. Grant of residence on humanitarian grounds must be limited to exceptional cases, where the applicant's fears are well founded and based on serious grounds presenting threat to personal security, intense personal hardship or abuse of human rights. The provision is not intended to address cases where the applicant:

- has a safe third country in which to reside and that country would accept the person;
- could substantially alleviate perceived risk by relocating to a region of safety within the country of origin;
- meets criteria for entry under other programs eg special group concession;
- has been the victim of actions that are more properly classified as criminal in nature, rather than Convention related. This is particularly so where such action is unlikely to be repeated;
- is seeking residence in Australia principally on non refugee related grounds like family, medical or economic reasons, or to secure a more stable environment in which to live.

## Responsibility of Case Officers

7. When the Department receives the decision regarding a rejected case from the Tribunal under s430(2) of the Act, a Departmental officer may, in accordance with these guidelines, refer the case for the Minister's consideration under this public interest provision although the Minister does not have a duty to consider whether to exercise his power.

8. It may not be in the public interest to approve a person who poses a threat to Australian society or security. The Minister's criminal deportation policy should be a consideration.

9. These guidelines are not exhaustive of all the matters which may be taken into account. They are indicative of the types of cases that may be appropriate for consideration by the Minister. They are not intended as a set of criteria but as a framework which can be interpreted broadly where there are compelling claims for consideration of humanitarian access.

**GUIDELINES FOR THE MINISTER'S PUBLIC INTEREST POWERS UNDER  
SECTIONS 345, 351 and 391 OF THE MIGRATION ACT 1958  
NON-HUMANITARIAN CASES**

### Purpose

These guidelines provide a framework for the assessment of cases in relation to the Minister's public interest powers under sections 345, 351 and 391 of the *Migration Act 1958*. They are only "guidelines" and do not define the Minister's power of intervention nor circumscribe it in any way.

2 These guidelines do not apply to requests for ministerial intervention in onshore refugee/protection visa cases. Those cases are subject to separate guidelines.

### Legal framework

3 The *Migration Act 1958* provides that if the Minister thinks that it is in the public interest to do so, the Minister *may* set aside certain merits review decisions and substitute more favourable decisions. These public interest powers of the Minister are only available following certain merits review decisions - see paragraph 4 below - and the Minister is under no duty to consider whether to exercise these powers. The powers are not intended as an automatic additional tier of merits review, nor do they operate as such. When exercising this power, the Minister is not bound by the regulations or sections 44 to 51 and 65 to 69 of the Act.

4 The relevant section of the Act depends on whether the review decision is one of:

- a Migration Internal Review Office (MIRO) review officer - section 345 (or, prior to 1 September 1994, section 115);
- the Immigration Review Tribunal (IRT) - section 351 (or, prior to 1 September 1994, section 137);
- the Administrative Appeals Tribunal (AAT) on an IRT-reviewable decision - section 391.

5 If the Minister does substitute a more favourable decision than the review decision, the Minister is obliged to table in both Houses of Parliament a statement explaining the reasons, including why it was in the public interest to do so.

### The Guidelines

6 Cases which are in the public interest and may attract the Minister's consideration of intervention are those which present unique or exceptional circumstances which may involve but are not limited to:

180

- circumstances such that the legislation could not have anticipated them;
- consequences of not having recognised the circumstances in the legislation which were clearly not intended;
- the applicant presenting strong compassionate circumstances of such an order that failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or a lawful permanent resident aggrieved by the decision; or
- the applicant bringing exceptional economic, scientific, cultural or other benefit to Australia which might extend in appropriate cases to Skilled Category migrants.

7 These guidelines are not necessarily exhaustive of the matters which may be taken into account. They are indicative of the type of cases that may be appropriate for consideration by the Minister and are not intended as a set of criteria but as a framework which can be interpreted broadly where there are compelling claims for consideration.

#### Other Matters

8 A case may come to be assessed against these guidelines in one (or more) of the following ways:

- a representation to the Minister from or on behalf of the applicant;
- a request from the Minister's Office;
- identification by the IRT;
- identification by the AAT;
- identification by a MIRO officer or another departmental officer.

9 All representations to the Minister under the non-humanitarian public interest powers will be acknowledged with advice that the request is being examined and that the outcome will be provided as soon as possible.

10 These Guidelines have been approved by the Minister.