

be viewed as acceptable enforcement of laws and programs of general application in the case of the parents may nonetheless be persecution in the case of the child. Persecution occasioning such a fear attracts the Convention definitions and rights under Australian law”.

Kirby J anticipated potential criticisms of the Court’s decision on the basis that, by simply procuring a pregnancy, the parents of Chen Shi Hai had circumvented Australian migration laws and delayed their own deportation, thereby securing a right

for themselves to stay in Australia. As he logically pointed out, however, the application to the High Court was that of the *child*, and the Minister for Immigration and Multicultural Affairs would still be in a position to make orders deporting the parents and their other children. However, Chen Shi Hai himself could not be deprived of his rights under Australian and international law.

conclusion

In a political climate where refugee status is being restricted by tightening the rules for protection visas, the

decision in *Chen Shi Hai’s* case is one that broadens the scope for protection. Whether or not the decision is one that will be overturned by amending the guidelines for protection visa applicants remains to be seen. In any event the High Court has made it clear that laws of general application in a country can still be the basis for refugee status under the Convention provided the application of the general law is one that has the particular effect of leading to a well-founded fear of persecution.

skilled migrants

a new form of racism?

by Alex Mathey, General Counsel, Crown Ltd

Although the White Australia policy has long disappeared, Australia’s immigration policy continues to be controversial.

The current immigration policy has received criticism from a variety of sources with different, and often competing, interests.

Some detractors have argued, for example, that the policy:

- is unfairly discriminatory and oppressive¹;
- limits accountability and denies justice²;
- emphasises capitalism and nationalism over compassion and human welfare³; and
- is otherwise deficient and defective, exacerbating problems that it is intended to address⁴.

Taken as a whole, these concerns highlight that the policy may disadvantage and potentially harm not only those people to whom the policy applies, but Australian society as a whole.

The purpose of this article is to outline briefly some of these concerns.

focus of australia’s current immigration policy

The Howard Government’s immigration policy has been adjusted to favour skilled immigrants and (compared with previous policies) limit the opportunities to applicants under family and humanitarian categories.

Business groups generally support high levels of skilled immigration on the basis that it generates a number of positive economic outcomes. Indeed, it has been argued that accepting highly skilled people leads to greater productivity and, in effect, “pulls the low-skilled up”⁵.

David Stratton, migration specialist and partner of Melbourne commercial law firm Nevev Ford, believes that “now, more than ever, the Government’s immigration policy favours people who are seen as contributors - young, highly skilled applicants with vocational English and who are prepared to leave their families.”⁶

Whilst immigration policy is not decided on the grounds of race, the current policy is perceived by some to

have a “greater impact on groups from poor, non-Western, Asian and Middle Eastern countries”.⁷

Some commentators have decried the adjustment in migrant “mix” as discriminatory. Others have gone much further, condemning it as reactionary and institutionalised racism:

“[T]his “targeting” of skilled immigration is less about reducing the inflow of migrant labour than it is about more tightly controlling the type of immigrant.

Facilitated by the current resurgence of overt racism in Australia, the Howard government’s immigration policy is increasingly looking like a new version of the old bipartisan white Australia policy.”⁸

The policy is seen to both restrict applicants under family and humanitarian categories in the first place and to fail adequately to assist those migrants whose applications have been successful. For example:

- Two-year waiting limits have been imposed for the availability

of health and welfare assistance (such as public housing, unemployment, sickness allowances, public health care services and concessions on transport and medicines) to certain migrants.

- Certain asylum seekers are prevented from applying for permanent residence, and instead they are given access only to short term (three year) visas.

These and other changes have been introduced to restore public confidence in the immigration program and to address the public's perception that migrants abuse access to welfare.⁹

The changes, however, are perceived by some to contribute to migrant poverty and neglect and to encourage discrimination and exploitation. This is seen to have possibly wider implications, including a rise in social tension and compromised work conditions and entitlements generally:

"The consequences for ... Australian workers are also dire. Fierce competition for too few jobs enables employers to use migrants as battering rams against the wages, working conditions and organisation of workers: 'If you won't work for less pay, in dangerous conditions

and without union coverage, there's plenty of others who would be glad to'."¹⁰

Further, such problems may be exacerbated by what some business groups themselves see as the Government's failure to take into account employer demand for skilled people with particular training and experience: "Inadequate attention is paid to selecting migration applicants with skills in short supply."¹¹

Proposed further changes to migration policy include:

- strengthening and streamlining detection, assessment and deportation procedures;
- imposing significant control over the making of immigration decisions; and
- further limiting the opportunities for review of immigration decisions.

It is argued that improvements in efficiency, certainty and consistency are, perhaps, at the expense of flexibility and fairness: "The losers in this contest are not only the visa applicants seeking to enter or stay, but our own systems of accountability and justice."¹²

According to Stratton, "the policy appears to be responding to

conservative forces that are concerned with business considerations and nationalism. The policy is cutting a wedge between the people we want and their families. It sends potentially the wrong message that we are a heartless, callous society".¹³

From a philosophical perspective, therefore, detractors argue that the immigration policy has the potential to affect fundamentally Australian society including its systems and culture.

Perhaps we may never achieve an immigration policy that is free from controversy.

NOTES

1. See, for example, L Macdonald 'Howard's White Australia Policy', *Green Left Weekly*, 24 September 1997: 6-17; and N Zirngast 'Ruddock revives White Australia policy', *Green Left Weekly*, no 386, 24 November 1999: 28.
2. See, for example, K Cronin 'Controlling immigration: Australian legislation & practice', *REFORM (75)* Spring 1999: 6-9.
3. See, for example, A Myers 'Profits before people: Beazley outlines population policy', *Green Left Weekly*, 29 September 1999: 3, 13
4. See, for example, G Maslen "High Skills Shattered", *The Bulletin*, 26 May 1998, 68.
5. R Skeffington 'New push by business to lift immigration', *Business Review Weekly*, 1 December 1997, 22
6. In a recent interview with the author.
7. N Zirngast, footnote 1.
8. L Macdonald (p 6), footnote 1.
9. See, for example: footnote 1.
10. A Myers, footnote 3.
11. G Maslen, footnote 4.
12. See footnote 3.
13. See footnote 6.

there is no such thing as an illegal refugee

by Georgina Costello, Mallesons Stephen Jacques*

"There is no such thing as an illegal refugee...People are either trying to escape persecution or not"²

On 8 June 2000, hundreds of asylum seekers escaped from the Woomera Detention Centre in South Australia's north and staged a peaceful demonstration, protesting their detention and demanding asylum. This event focused media attention on the issue of the treatment of refugees in Australia. The resulting debate has been characterised by myths and

misinformation, often reinforced by politicians and journalists.

This article aims to outline the law relating to refugees and to equip you with knowledge of the Australia's obligations towards refugees. I hope this will dispel a number of misconceptions and stereotypes which surround the issue and enable you to see through the inaccurate labels and claims currently being splashed across the pages of Australia's newspapers.

who is a refugee?

Terms "illegal immigrant" and "illegal refugee" are currently being used to describe refugees. These terms are inaccurate and objectionable because they represent refugees as criminals and fail to recognise that refugees have the right to seek asylum in Australia under international law. The fact that they arrive without a valid visa does not remove this right. The *Refugee Convention* outlines Australia's obligations towards