

Australian government deporting life-long residents over minor offences

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The plight of hundreds, if not thousands, of foreign citizens who are long-term residents in Australia, but face the prospect of sudden deportation has highlighted the reactionary implications of major changes to the Migration Act, introduced by the Coalition government last year.

Under the new legislation, residents who are sentenced to periods of imprisonment totalling 12 months, often for a series of relatively minor offences, can have their visas revoked, and are liable for deportation.

Around 80 New Zealand citizens have been deported from Australia this year under the new policy. Almost 200 more are being held in detention centres, making them the second largest cohort by nationality. According to some estimates, up to a thousand Australian residents could be deported to New Zealand in the coming months.

A series of other cases, which have received comparatively little coverage, have underscored that workers and young people from all backgrounds are being caught in this dragnet. They face the prospect of separation from their families, and displacement to what for many is an unfamiliar country.

Recent cases include:

* On November 6, the Australian Broadcasting Corporation (ABC) reported that Ian Wightman, a 51-year-old who has lived in Australia for 50 years, was transported to the detention centre on remote Christmas Island on November 4, after having been held in a Western Australian detention centre for 8 weeks. Wightman was convicted of lighting a scrub fire last year, and served 15 months in prison. He now faces the prospect of deportation to the United Kingdom.

Wightman commented, “It’s an open-ended sentence and there’s no information ... There’s a constant struggle every day to keep your sanity, try to maintain who you are without falling into the depths of bloody despair.” He noted that, “Very, very few people are in detention here because they’re arch criminals ... You’ve got people in here for traffic offenses, people that are in here that had a run-in with the law 21-and-a-half years ago.”

* On October 26, the ABC reported the case of Fouad Arja, a 33-year-old father of two facing the prospect of being deported to Lebanon. Arja has been held in Villawood detention centre for 10 months, after serving four months of a 12-month prison sentence for driving a car without a valid licence.

Having lived in Australia since 2010, he now could be separated from his wife, three young children and two step children. Arja’s lawyer, Willem Oostdyk commented, “The Government is breaching the [UN] Convention on the Rights of the Child. Article three states that a child has a right to a parent—or parents—a father and a mother.”

* On October 15, the *Sydney Morning Herald* (SMH) reported that Ricardo Bolvaran, a 41-year-old was advised by the immigration department that his residency visa had been cancelled on character grounds in August.

Bolvaran, who was serving a jail sentence on drug, property and knife possession charges, has lived in Australia since he was one-year-old. According to the article, he was being held at Villawood Detention Centre in Sydney and faced immediate deportation to Chile, which would separate him from his de facto partner, and three children, aged seven, nine and 19.

* On October 15, the *Age* reported on the plight of Daniel Smyth, a 44-year-old who was born in Australia, but risked deportation under the new laws, having lost his citizenship on a bizarre technicality. Smyth lost his passport 18 years ago and returned to Australia on an Irish passport his father had helped him gain. According to the Department of Immigration, in some instances, those who received foreign citizenship automatically forfeited their Australian citizenship prior to 2002.

Smyth was issued with a “notice of intention to consider cancelling a visa,” in August, due to convictions for theft and property offenses a number of years ago. His visa was to expire on November 4, placing him at risk of detention and deportation. Smyth has two children, aged 11 and 13.

All of the above detentions and threatened deportations have been carried out under the “character and general visa

cancellation” amendment to the Migration Act, passed by the Abbott Coalition government in December 2014, with the full support of the Labor Party opposition.

The amendment substantially broadens the already draconian provisions within the legislation enabling the Department of Immigration, and the immigration minister personally to cancel visas on so-called character grounds.

Under the new legislation, a visa can be revoked on the basis that its holder has been sentenced to 12 months in prison, down from the previous threshold of two years. The sentences accumulate, and prison terms served concurrently are also added to each other, meaning that someone can be convicted of several minor offences and have their visa automatically cancelled. No regard is given for the number of years they have lived in the country, or their family connections.

The amendment lowers other thresholds. It provides for the cancellation of a visa, if the minister “reasonably suspects” its holder has “an association” with individuals or groups that, “has been or is involved in criminal conduct.”

Overtly political powers are also strengthened. A visa can now be revoked if “the person has been assessed” by the Australian Security Intelligence Organisation (ASIO) to be “directly or indirectly a risk to security.”

Before the amendment, visas could be cancelled if the minister considered a visa holder to pose an “actual risk” to “the health, safety or good order of the Australian community.” The already sweeping provisions have been broadened from an “actual risk” to “is or may be, or would or might be a risk.”

Alternatively, a visa can be revoked if there is a “risk” (no longer a “significant risk”) that the person would “incite discord in the Australian community or in a segment of that community.”

As a number of legal advocacy and civil liberties organisations have warned, the new standards are so broad as to potentially criminalise any visa holder.

The amendment also broadens the minister’s powers to make decisions without review, and to overrule tribunal decisions to uphold appeals against visa cancellations. The minister’s decisions can be made without “natural justice”—that is, without any form of hearing.

Since the passage of the bill, there has been a spike in visa cancellations. In the three months between December 2014 and late February 2015, some 203 visas were cancelled. By comparison, 372 were terminated in the three years between July 2011 and July 2014. In all, some 780 visas have been cancelled since the introduction of the amendment, resulting in 151 deportations.

Detention rates have also risen dramatically. At the end of September, 547 people were held in detention following visa

cancellations, up from 108 at the same time in 2014. The number of people detained for overstaying visas also rose from 360 last year to 453 this year.

The introduction of the amendment was accompanied by attempts to whip up nationalist hysteria against “foreign criminals.” Promoting the policy in February, Immigration Minister Peter Dutton declared: “Frankly they’re detracting from the Australian society, not adding to it. They should be removed from our shores as quickly as possible.”

In the wake of last weekend’s riots at the Christmas Island detention centre, the government is again seeking to blame “foreign criminals” for the anger that erupted over the unexplained death of Fazel Chegeni and the appalling conditions facing all people held there.

The Labor Party justified the legislation in similar terms. In a Senate debate last November, Senator Kim Carr declared: “Labor recognises that the government must have the capacity to act quickly against non-citizens who pose a threat or who may seek to do harm in our country.”

In reality, the new legislation has seen hundreds of long-term residents placed in a position in which all of their basic democratic rights are abrogated, with many transferred to concentration camp-like centres, where they can be detained for many months if they seek to contest their deportations in court.

The deportations have underscored the far-reaching implications of the decades-long assault on the basic right of refugees, among the most vulnerable of the world’s population, to seek asylum. Successive governments, Labor and Liberal alike, have scapegoated immigrants to divert attention from the social crisis created by their policies and in the process established a vast apparatus to impose their anti-democratic measures. Those powers have now been extended to other members of the working class—“non-citizens”—regardless of how long they have lived in Australia.



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