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Migrant amnesties: what has Australia done in the past?



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The COVID-19 pandemic has prompted calls for a visa amnesty for migrants working irregularly in Australia. A look back at policy history shows that Australia has provided very few instances of any kind of migrant amnesty, whether for people in the country irregularly, visa overstayers, or people working in breach of their visa conditions. These instances were some decades ago, when the migration and visa systems were rather different from now.

The proposals for a visa amnesty have come from corners as diverse as the [National Party](#), [academics](#) and the National Agricultural Labour Advisory Committee's [agricultural workforce strategy report](#). In response to the impacts of the COVID-19 pandemic, the concerns raised are principally worker shortages in the agricultural sector, and that people may be reluctant to come forward for COVID-19 vaccination if they fear deportation.

The idea has been rejected by senior Government figures and public service officials including Home Affairs Secretary Michael Pezzullo in a [Senate Estimates hearing in March](#), saying that an amnesty would 'undermine the integrity' of Australia's visa system. But has Australia tried such amnesties before?

General amnesties for visa overstayers or other irregular entrants were issued in 1974, 1976 and 1980. These programs enabled certain categories of 'illegal entrants' the opportunity, over a set period of time, to apply for permanent status providing they met health and character requirements. The rationales behind the programs were generally to manage an undocumented population which may be subject to exploitation, present health concerns, or contain criminal elements. Public perceptions on the numbers of 'illegal entrants' and the perceived failure of previous measures to address the issue were also factors.

Although there is not scope to discuss refugee and asylum measures in this post, visa arrangements for people in Australia affected by humanitarian situations in their countries of origin have also sometimes been described as 'amnesties'. However, the actual arrangements

in place for groups including Chinese students following the Tiananmen Square protests in 1989, or ‘Safe Haven’ operations in the late 1990s, or the recent [arrangements for Hong Kong passport holders](#), did not constitute anything as broad as an amnesty.

Amnesties 1974–1980

The 1974 ‘[dispensation](#)’ was announced in January 1974 by Minister for Immigration Al Grassby, and was open until 30 June 1974. According to a report of a [Senate Estimates committee](#) later that year, only 367 people came forward, the majority of whom were ship deserters (p. 242).

The 1976 amnesty was [flagged as Coalition policy](#) by Malcolm Fraser ahead of the December 1975 election, and [progressed](#) by Minister for Immigration and Ethnic Affairs Michael MacKellar. The Fraser Government also initiated the 1980 ‘[regularisation of status program](#)’.

The 1990 Joint Standing Committee on Migration Regulations (JSCMR) report on [Illegal Entrants in Australia—balancing control and compassion](#) summarised the latter two programs:

In 1976, 8614 people applied during the designated period and, by 30 June that year, 5574 applications had been approved and four had been refused.

The 1980 Regularisation of status program resulted in 11 042 applications. By 16 October 1981, 9734 applications had been processed, of which 217 were ineligible and 8 were rejected. (p. 35)

In the [announcement](#) of the regularisation of status program, Minister for Immigration and Ethnic Affairs, Ian Macphie, stated that the Government would introduce legislation to restrict the categories of people who would be eligible to change their residence status from temporary to permanent while in Australia. By [incorporating this measure](#) into the *Migration Act 1958*, the Government aimed to effectively rule out any future amnesties, as this would require further legislation.

Further details on the 1980 regularisation program are available in a 1982 International Labour Organization [working paper](#) (by later senior immigration department official Des Storer; see also [North 1984](#)).

Transitory regularisation measures in the early 1990s—‘not an amnesty’

The JSCMR report noted that ‘Australian governments and oppositions have since set their sights firmly against further amnesties, an approach which the Committee supports’. For example, the terms of reference for the Committee to Advise on Australia’s Immigration Policies (the FitzGerald Inquiry) commissioned in 1987 had noted ‘that the Government has ruled out an amnesty for illegal immigrants’.

As a result of the [FitzGerald Inquiry’s report](#), tabled in June 1988, Australia’s migration legislation was significantly amended commencing [on 19 December 1989](#), replacing a range of ministerial and administrative discretion arrangements with a regulatory framework. The 1989 changes included a strict tightening of the circumstances in which an ‘illegal entrant’ could seek to regularise their immigration status, removing for example the reason of a family relationship with an Australian citizen or permanent resident.

A ‘grace period’ applied, in which eligible migrants were encouraged to come forward to either apply for regularisation of status or leave Australia without incurring a re-entry ban or exclusion period. The concessions were available for some of the conditions which applied under the previous system, including family relationships or on exceptional compassionate grounds, but not employment. The concessionary period was extended several times and a [further period of measures introduced](#) before the window was finally closed in December 1993.

These measures were described as transitional arrangements or concessions, with ministers (for example [Robert Ray](#) and [Gerry Hand](#)) explicitly stating there was to be no amnesty.

Current framework—status resolution

The [Home Affairs Portfolio Budget Statement 2020–21](#) describes its visa compliance program as ‘maximising adherence to the entry and stay requirements through an effective and appropriate program of prevention, deterrence and enforcement’.

People whose [visas have expired or are about to expire](#) and need help to resolve their immigration status can access information and assistance on the Department of Home Affairs’ [Status Resolution Service](#) webpage. It sets out the limited circumstances in which a person without a valid visa may obtain assistance or seek ministerial intervention in their case.

As noted above, the Government has maintained its stance on [visa compliance as part of its wider border protection](#) measures, and has shown no indications of adjusting this position.

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