

The background features several decorative elements: a large solid blue circle in the top-left corner, a smaller circle with blue diagonal stripes in the top-right corner, another solid blue circle on the right edge, and a circle with blue diagonal stripes in the bottom-left corner. At the bottom, there are overlapping wavy shapes in various shades of blue.

# **AUSTRALIA EXPERT CONSULTATION**

# MAIN FACTS OF THE CASE

05 December 1993: two Chinese nationals arrive in Australia seeking asylum as refugees.

14 December 1993: the couple lodged applications with the Department of Immigration and Ethnic Affairs for recognition as refugees.

## LEGAL PROCEEDINGS



- 1 Department of Immigration and Ethnic Affairs:  
Application: rejected by a delegate of the Department
- 2 Refugee Review Tribunal: Held that appellants were  
refugees
- 3 Full Federal Court: Decision reversed

### **The main issue presented to the High Court of Australia:**

Whether appellants fear persecution ‘for reasons of membership of a particular social group’. Specifically, whether those who only have one child constitute such a group.

# REASONING OF THE COURT

- Interpretation Principles: the integration of a provision of a treaty into domestic law.
- Context of 'Particular Social Group'
- Approach of the Court to defining 'Particular Social Group'

# CONSEQUENCES FOR THE CLAIMANTS OF THE DEFINITION ADOPTED


The High Court:

- They did not meet the definition of 'Refugee' under the Migration Act 1958
- The claimants fear of persecution, while genuine, was not due to their membership of a 'particular social group'.



## KEY QUESTIONS TO APPLY DEFINITION OF REFUGEE

The judge outlined a series of questions to apply the definition in this case:

- Does the putative refugee fear persecution?
  - Is the fear well-founded?
  - Is the feared persecution practised or likely to be practised because of a characteristic of the victims that is not common to the members of the society at large?
  - Is the persecution practised officially or is it officially tolerated or is the government of the country of the putative refugee's nationality unable to control it?
  - Is the putative refugee unwilling to avail himself or herself of the protection of the country of his or her nationality?
  - Is that unwillingness due to the feared persecution?
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# GROUNDS FOR DISMISSAL



The Court ruled that forced sterilisation could not be considered persecution “for reasons of membership of a particular social group”.

To succeed, the appellants would need to prove membership of a group other than Chinese parents of one child.



## **THE BROADER IMPLICATIONS AND WHETHER THE FINAL DECISION FITS WITH THE UNHCR GUIDELINES:**

Purpose of the Guidelines:

- Complement UNHCR Handbook
- Provide legal interpretive guidance
- ‘Membership of a particular social group’
  - One of the grounds of the 1951 Convention
  - No closed list or specific list of social groups
  - Convention grounds are not mutually exclusive





**The High Court did not accept that the applicants of this case were members of a ‘particular social group’ as the guidelines provide clear substantive analysis for:**

- Summary of a state practise
- The role of persecution
- No requirement of cohesiveness
- Other guidelines:
  - Not all members of the group must be at risk of being persecuted
  - Relevance of size
  - Non-state actors and the casual link (“for reasons of”)

# BROADER IMPLICATIONS

- Australia adopted a narrow approach of interpreting what constitutes a 'Particular Social Group'
- This stricter approach set precedent and makes it more difficult to claim refugee status.
- Australia utilised the UNHCR guidelines to draw distinctions between the applicants violating national law as opposed to them being persecuted based off the guidelines of the UNHCR for who belongs to a 'particular social group'

**THANK  
YOU!**

