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BRIDGING VISAS AND BRIDGING VISA ES

Department of Immigration and Multicultural Affairs

The conditions under which the Bridging Visa E have been issued to persons seeking a Protection Visa in Australia have been criticised by some community groups. This article provides further information on these conditions and the number of persons holding such visas.

The Department of Immigration and Multicultural Affairs (DIMA) welcomes the invitation to provide a response to the article by Andrew Markus and Jessie Taylor entitled 'No Work, No Income, No Medicare—The Bridging Visa E Regime', which appeared in the April 2006 edition of *People and Place*.

Our response seeks to clarify and update certain information in relation to Bridging Visa Es, and to provide information on a review of the whole Bridging Visa regime that is expected to be finalised shortly. The support arrangements available to Bridging Visa E holders are a matter of Government policy, and therefore it is inappropriate for DIMA to comment in our response on the pros and cons of these settings.

BACKGROUND

Bridging visas are the means by which non-citizens who would otherwise not hold a visa can gain or maintain lawful status in Australia in circumstances where they:

- have made an application within Australia for a visa that has not been decided either by a DIMA officer or a merits review tribunal;
- have applied for judicial review in relation to a decision to refuse or cancel a visa;
- are awaiting the outcome of a request for the exercise of the Minister's intervention powers under the *Migration Act 1958*; or

- are making arrangements to depart Australia.

In any given year, around 250,000 bridging visas are granted, and at any one time, there are around 25,000 people in the community holding a bridging visa. Under the current bridging visa arrangements, there are different classes or types of bridging visa which reflect the different circumstances of non-citizens. The majority of bridging visas are granted on the basis that a person has applied for a further visa while they still hold a visa (that is, they are lawful) and this application has not been finalised by either DIMA or a merits review body. These people receive what is known as a Bridging Visa A.

The majority of people applying for a Protection Visa, which allows for the stay in Australia of people to whom Australia has protection obligations under the Refugees Convention 1951 and as amended by the Refugees Protocol 1967, are granted a Bridging Visa A.

BRIDGING VISA E HOLDERS— SOME FACTS

Bridging Visa Es, the subject of Markus and Taylor's article, are the second largest group of bridging visas granted. Bridging Visa Es are granted to people in a range of circumstances so they can remain in the community and are not subject to immigration detention. This includes people who have overstayed their visa and are voluntarily making their own arrange-

ments to leave Australia, people who have overstayed their visa and have a further visa application being considered, and people seeking Ministerial intervention after a decision to refuse a visa application.

The latest data available as at 6 April 2006 shows that there were just over 7000 (7091) people in Australia holding a Bridging Visa E. These can be broken down into three broad groups:

- people who had overstayed their visa and applied for a Protection Visa which has not been decided by either DIMA or the Refugee Review Tribunal—there are around 300 in this group
- people who have applied for a Protection Visa but have been found not to meet Australia's protection obligations and are either challenging this decision through judicial review, or have requested that the Minister use her public interest powers to intervene—around 3,600 people are in these circumstances, and
- other circumstances, of which the majority are people who have overstayed a visa and are voluntarily making arrangements to leave Australia—around 3,100 are in this group.

These data show that most Bridging Visa E holders are people who have never applied for protection, or else have applied for protection and have been found at both primary (DIMA) and merits review (Refugee Review Tribunal) stages not to be owed protection.

As at 28 February this year, the top five nationalities of Bridging Visa Es holders were the Peoples Republic of China (786 persons), Fiji (540), India (453), Sri Lanka (428) and Indonesia (424).

DIMA provides annual data on Bridging Visas including Bridging Visa

Es in its *Managing the Border* publication. This publication is available online on DIMA's website at <http://www.immi.gov.au/illegals/mtb/index.htm>.

SUPPORT FOR BRIDGING VISA HOLDERS

Holders of a Bridging Visa who are also protection visa applicants are eligible to work in Australia if they have been in Australia for less than 45 days in the 12 months before lodging their protection visa application. The '45-day rule' was introduced in 1997 as part of a package of measures aimed at minimising incentives for misuse of Australia's onshore protection process by applicants in the community. Some people with no claims to refugee status who wanted to prolong their stay had been submitting frivolous Protection Visa applications to obtain work rights and delay their departure from Australia.

Regardless of whether those awaiting a department or tribunal decision have work rights, the Commonwealth Government provides financial and other assistance to eligible asylum seekers under the Asylum Seeker Assistance Scheme (ASAS). Direct funds payments are available under ASAS to eligible protection visa applicants living in the community who are otherwise unable to meet their basic needs and who meet certain vulnerability criteria, such as being unable to work due to a disability, illness or the effects of torture and trauma, pregnancy, or being an unaccompanied minor. In 2004–05, some 1276 asylum seekers (who would largely be on a Bridging Visa A or E) were assisted under ASAS at a cost of \$3.4 million.

Under Migration legislation, a Bridging Visa E granted on the basis of a person seeking judicial review or Ministerial intervention (unless the Minister is personally considering a

request) has a 'no work' condition. In other circumstances there is discretion to grant work rights to Bridging Visa E holders who can demonstrate a compelling need to work.

Bridging Visa E holders are on the whole not eligible for Medicare, and two-thirds do not have work rights. This reflects the fact that most of the people holding a Bridging Visa E are people who have been found not to meet Australia's protection obligations, or are people making voluntary arrangements to depart Australia. The expectation is that people who have been found not to meet requirements for a visa to remain in Australia should make arrangements to depart. The fact remains that the overwhelming majority of people who apply for protection in Australia are found not to have protection needs. Less than one in five of those who had a protection visa outcome in the three years to June 2005 were found to require protection.

DIMA has recently commenced a Community Care Pilot as part of a case management framework for people with complex immigration, health and welfare issues. The pilot aims to ensure appropriate support is available to those people who are in particularly vulnerable circumstances, which may include some Bridging Visa E holders. This pilot is being conducted in Sydney and Melbourne.

REVIEW OF THE BRIDGING VISA REGIME

DIMA is currently conducting a review of the bridging visa regime. This review is examining the circumstances under which a bridging visa can be granted, the support arrangements available to bridging visa holders, and how the current arrangements are being administered. The aim of the review is to make recommendations to achieve a regime that is simpler, with greater clarity and consistency, yet with sufficient flexibility to respond to individual circumstances including alternatives to immigration detention.

DIMA has been consulting with a broad range of external stakeholders in relation to the review. Meetings have been held with: community organisations involved in providing support to bridging visa holders (including several of those referred to in Markus and Taylor's article), key associations involved in human rights and asylum issues (such as the United Nations High Commissioner for Refugees, the Refugee Council of Australia and Amnesty International), the legal profession and others providing migration advice, and other government agencies.

External consultations are being finalised and a report on the review will be presented to the Minister for her consideration shortly. The extent of any changes will of course be a matter for the Government.