



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Current Issues Brief
No. 17 2002–03

The East Timorese Asylum Seekers: Legal Issues and Policy Implications Ten Years On

ISSN 1440-2009

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Published by the Department of the Parliamentary Library, 2003

Current Issues Brief
No. 17 2002–03

The East Timorese Asylum Seekers: Legal Issues and
Policy Implications Ten Years On

Dr Kerry Carrington Social Policy Group;
Dr Stephen Sherlock Foreign Affairs, Defence and Trade
Nathan Hancock Law and Bills Digest Group
18 March 2003

Acknowledgments

We would like to acknowledge the contribution of Sudip Sen from the Law and Bills Digest Group in the preparation of this paper. We also acknowledge the contributions of a number of internal and external reviewers in producing the paper: Dy Spooner; Marilyn Harrington; Jane Hearn; Adrienne Millbank; Peter Prince; Dr June Verrier; and Dr Kathryn Robinson, Senior Fellow, Research School of Asian and Pacific Studies, Australian National University.

Enquiries

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

IRS Publications Office
Telephone: (02) 6277 2778

Contents

Executive Summary	i
Introduction	1
Background	1
Claims for Asylum	2
Legal Issues and Decisions.....	4
Overview.....	4
The Convention	4
Legal History	5
Observations	7
Political Response to the Issue	8
Popular Response to the Issue	9
Policy Implications.....	10
Ministerial Discretion	10
Sponsorship.....	11
Special Visa Class.....	12
Visa Class for Unresolved Status of Long-Term Temporary Residents	14
Conclusion	15
Endnotes	16

Executive Summary

In the early to mid 1990s approximately 1650 East Timorese fleeing persecution by the Indonesian authorities sought asylum in Australia. After ten years of delay in the processing of their claims, all applications to date have been rejected. Approximately 150 have so far been identified by the Minister as being looked upon favourably if asked to exercise his discretion. The remainder may soon face deportation.

Lawyers for the East Timorese say that most would have been eligible for refugee status had their claims been processed promptly. However after ten years, most would no longer meet the criteria for refugee status, as their claims are assessed on the current conditions in East Timor, not those from which they fled a decade ago under Indonesian rule.

One of the major issues has been the length of time taken to process their claims for asylum, in some cases, ten years. This delay needs to be seen in the context of the 'delicate and difficult' relations between Australia and Indonesia over the Dili massacre and the persecution of the East Timorese under Indonesian rule. It was more diplomatic to resolve a potential problem for Australia Indonesia relations by having the asylum seekers seek protection in Portugal. This is what successive governments have sought to do through litigation that spanned seven years.

This legal history has been characterised by delays in the processing of claims and, in particular, drawn out litigation over the issue of 'dual nationality'. Litigation involving merits review by the Refugee Review Tribunal, the Administrative Appeals Tribunal and judicial review by the Federal Court has spanned seven of those ten years. The litigation reflects failed attempts by the successive governments of the day to force East Timorese asylum seekers to rely on protection afforded by their right to acquire nationality with Portugal, their former colonial ruler. In other words, to seek asylum from their persecution in Portugal, not Australia. A peripheral, but significant issue has been the administrative delay in processing claims by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), adding almost two extra years to the delay between October 2000 and September 2002.

Another major issue is how to proceed given the widespread popular and political support for these East Timorese asylum seekers. Three different policy options have so far been canvassed in parliamentary debate, given the unique circumstances arising from the ten year delay in processing their claims for asylum. The first is to proceed on a case by case basis, requesting the Minister to use his discretion following review by the Refugee

Review Tribunal. This is the Commonwealth Government's preferred position. The second is to create a special visa class for East Timorese applicants recognising their claims for residency on humanitarian grounds. A third option relies upon East Timorese asylum seekers, after having their claims rejected, to apply for spouse, employer or other kind of sponsorship. Another possible option, not yet canvassed, is to correct the apparent anomaly in excluding these East Timorese asylum seekers from a long term temporary resident visa class announced by the current Commonwealth Government in 1997.



Introduction

This brief provides an overview of the current predicament in which approximately 1650 East Timorese who sought protection from Australia in the early 1990s now find themselves. It begins with a background explaining the general persecution of the East Timorese under Indonesian rule and the difficulty arising from this for Indonesian-Australian relations. It then examines the reasons for the significant delay, of up to ten years, in the processing of their claims for asylum. As seven years of the ten-year delay was consumed with litigation, the paper provides an overview of the pertinent legal history. The central legal issue in these cases and the political context in which they have been considered are key to understanding the significant delay in resolving the issue of their right to remain in Australia. A legal history of the relevant international and domestic law is set out in this brief to assist readers to understand the issues in dispute between the Government and the East Timorese. The brief then summarises the current political and popular responses to the issue. The brief concludes with an analysis of the various implications of the policy options open to the Government that would allow it to resolve the status of the East Timorese without repatriation to East Timor.

Background

The majority of the East Timorese asylum seekers arrived in Australia after the Santa Cruz cemetery massacre in Dili on 12 November 1991.¹ The figures for the number of people killed in the massacre are disputed, but some accounts put the number as high as 270, with another 382 wounded. Many demonstrators were arrested and reports claim the students were tortured and another 68 later killed.² The Indonesian authorities, under international pressure, expressed regret and conducted an inquiry that underplayed the atrocities.³ The inquiry claimed that 51 demonstrators had been killed. The two top military commanders were relieved of their East Timor posts, and a few low-ranking officers were sentenced for disobeying orders.⁴ By contrast, participants in the Santa Cruz protests were given jail sentences from five years to life.⁵

Before this massacre, wider persecution of the East Timorese had flowed from attempts to quash resistance to the Indonesian invasion of East Timor, which took place on 7 December 1975.⁶ There had been on-going civil war between resistance fighters and the Indonesian military over the territory. Between 1975 and 1978 alone around 20 000 Fretilin independence fighters and 16 000 Indonesian soldiers were killed.⁷ Incalculable levels of terror, killing and violence persisted throughout their long struggle for

independence, with some sources claiming that as many as a third of the East Timorese population were killed while under Indonesian rule.⁸

This was the context of persecution from which those East Timorese who fled in the early to mid 1990s sought asylum in Australia. Australia initially condemned the invasion and supported the UN resolution condemning Indonesia, but in 1979 the Australian Government extended *de jure* recognition to the Indonesian incorporation of East Timor. Indonesian actions in the territory continued to be criticised by many Australian political figures.⁹ The then Timorese independence leader and now Foreign Minister of East Timor, Jose Ramos-Horta, claimed that Australia's *de jure* recognition of Indonesia's incorporation of East Timor was given in exchange for Indonesia's concessions on the Timor Sea boundary dispute.¹⁰ Diplomacy between Australia and Indonesia over the Dili massacre at the time, in the words of Senator Gareth Evans, the then Minister for Foreign Affairs and Trade, had 'obviously been a very delicate and difficult situation to handle'.¹¹

The plight of the East Timorese asylum seekers who arrived in Australia in the early 1990s has been wedged between the delicate and difficult politics of Australia-Indonesia relations. The East Timorese posed a major dilemma for successive governments attempting to build sound relations with the Suharto regime (and its successors), on the one hand, while abiding by its international obligations toward refugees on the other. Australia attempted to resolve the problem by arguing that Portugal should provide sanctuary for the asylum seekers on the grounds that Portuguese law provided the right of citizenship for East Timorese. This would be a diplomatic solution that would not threaten the relationship with Indonesia regarded as critical to Australian security.

This solution, however, confronted serious obstacles. In 1976 Portugal adopted a new constitution which did not include East Timor within the territory of Portugal, or within any territories under Portuguese administration. Ultimately the Federal Court and the Administrative Appeals Tribunal decided the asylum seekers could not be compelled to seek protection from Portugal.

Claims for Asylum

Most of the East Timorese asylum seekers in question arrived in Australia between 1992 and 1994. They entered the country legally and have remained lawfully in Australia since. Most came on tourist visas, lodged applications for refugee status, and were granted bridging visas. Over that period many have been absorbed into the Australian community, some have set up businesses, some have married Australian citizens and had children. The majority (around 1400) settled in Victoria, some in Sydney and a group of approximately 80 remained in Darwin.

It is important to distinguish this first group of East Timorese asylum seekers from those who later fled the violence following the independence vote on 30 August 1999.¹² A group of 1450 East Timorese evacuated from a United Nations compound in Dili were given temporary safe haven visas in Australia for several months in late 1999.¹³ Most were

repatriated to East Timor by the end of that year following the stabilisation of the region by United Nations peace operations under International force in East Timor (INTERFET), led by Australia.¹⁴ By then, the United Nations High Commission for Refugees had proclaimed that it was safe for them to return.¹⁵ This latter group is not the subject of the legal argument discussed in this paper.

The key problem for the asylum seekers of the early 1990s is that, had their claims been processed by Australia before the independence of East Timor, most would have probably met the criteria for refugee status and by now have been granted permanent residency and, potentially, citizenship. However after ten years, most would no longer meet the criteria for refugee status, as their claims are assessed on the current conditions in East Timor, not those from which they fled a decade ago under Indonesian rule.

On 25 September 2002, the first group of East Timorese claims for protection visas were all rejected by DIMIA. These decisions covered 168 people. By 12 November 2002, 235 cases covering 564 applicants had been decided.¹⁶ All were rejected. They now face the cost and uncertainty of having to appeal to the Refugee Review Tribunal (RRT) if they do not wish to return to East Timor. The first of these review decisions was handed down on 21 February 2003, confirming the decision of DIMIA.¹⁷

Lawyers for the East Timorese say that most would have been eligible for refugee status had their claims been processed promptly.¹⁸ The present Minister for Immigration and Multicultural and Indigenous Affairs, the Hon. Phillip Ruddock, has attributed the delay in processing to a 'whole lot of legal reasons',¹⁹ including 'several years of litigation'.²⁰ Warren Snowden, Shadow Parliamentary Secretary for the Northern Territory, has claimed the opposite, that '[t]he Australian Government is responsible for putting the East Timorese in the situation where their claims are no longer current'.²¹ Senator Andrew Bartlett, the Leader of the Australian Democrats, asked Senator Ellison why it took so long.²² He received this reply:

Decision making on Protection Visa applications lodged by East Timorese asylum seekers had been delayed for several years because of litigation over nationality issues and more recently due to the need to ensure that the situation in East Timor was clear enough and our information sufficiently sound to enable the Department of Immigration and Multicultural Affairs (sic) and Indigenous Affairs (DIMIA) to finalise these cases reliably.²³

The central legal issue in these cases and the political context in which they have been considered are key to understanding the significant delay in resolving the issue of their right to remain in Australia. A legal history of the relevant international and domestic law is set out below to assist readers to understand the issues in dispute between the Government and the East Timorese.

Legal Issues and Decisions

Overview

From 1992 to 1996 the East Timorese applications for asylum were held up by delays in processing by the then Department of Immigration and Ethnic Affairs and the RRT. From 1996 to 1998 the claims were again held up by appeals to the Federal Court for judicial review. In essence, the issue for the Federal Court was whether the asylum seekers were Portuguese nationals and should therefore have to seek the protection of Portugal, rather than Australia. These claims and the cases arising from them, began in 1992 under the Labor Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand. The Federal Court ultimately resolved the issue in favour of the asylum seekers in 1997²⁴ and 1998,²⁵ rejecting the Government's arguments and sending the matter back to the RRT for decision. But it was not until after one application was referred to and finally decided by the Administrative Appeals Tribunal in favour of the East Timorese on 5 October 2000 that the outstanding claims of the group could be processed.²⁶ By this time there had been a change in the circumstances in East Timor and a change of government in Australia with Phillip Ruddock as the Minister in the new Coalition Government. DIMIA took almost another two years to process the claims, rejecting all of the first 168 considered in September 2002. This can be compared with DIMIA's own stated average processing time.²⁷ In 2002, for example, 47 per cent of applications from asylum seekers in detention were finalised within 42 days, and 57 per cent of those not in detention were finalised in 90 days.²⁸

The Convention

Australia is a party to the United Nations 1951 [Convention relating to the Status of Refugees](#) (the Refugee Convention) and the 1967 [Protocol relating to the Status of Refugees](#) (the Refugee Protocol). These international instruments are binding under international law. Together they define who is a refugee and establish the obligations of signatory states to asylum seekers and those declared as refugees. The underlying purpose of the Refugee Convention (as amended by the 1967 Protocol) is to oblige states to cooperate in sharing the burden of providing protection to people fleeing persecution.²⁹ As a state party to these instruments, Australia is obliged to ensure that its domestic decision making is consistent with the Convention and the Protocol. The Convention is implemented in Australia via the *Migration Act 1958* and regulations. Whether Australia's legislative and policy framework is consistent with its international obligations has become a contentious issue and the interpretation and application of the Convention in Australia is currently the subject of an internal review.

In any event, in Australian law the definition of refugee is that set out in the Convention and turns on whether a person has a well founded fear of persecution, for a Convention reason, in the country from which they have fled. *The Migration Amendment Act 2001* specifically requires that the persecution must amount to serious harm. Neither the Convention nor the Protocol defines key terms, such as 'owing to a well founded fear', 'persecution', 'membership of a particular social group' or 'political opinion'. These terms

are interpreted differently by the courts and tribunals in individual countries. Nor is the meaning of 'nationality' or 'national' for the purpose of the Convention elaborated in the text. Article 1A of the Convention deals with dual nationality in this way:

In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person *shall not be deemed to be lacking the protection of the country of his nationality if ... he has not availed himself of the protection of one of the countries of which he is a national.* [our emphasis]

The key issue for the East Timorese was whether, under Australian law, their right to seek asylum and be declared a refugee, was negated by virtue of their right, under Portuguese law, to acquire the nationality and protection of that country. This question was essentially a question concerning the interpretation of the Refugee Convention by domestic decision makers, tribunals and the Federal Court.

Legal History

A substantial part of the delay in processing the claims was brought about by the Government's argument that the East Timorese were not eligible to make refugee claims in Australia, because they were eligible to make a claim in Portugal, a country in which they had a right to acquire nationality. This argument was based on the apparent requirement of the Convention that refugees must first seek protection in countries of which they are nationals. These arguments were rejected twice by the Federal Court, in 1997 and 1998, and again by the Administrative Appeals Tribunal in 2000 in the following cases.

*Jong Kim Koe v. Minister for Immigration and Multicultural Affairs, 1997*³⁰

Jong Kim Koe was born in East Timor in April 1973 and was one of the protesters who participated in demonstrations preceding the massacre in Dili. Mr Jong arrived in Australia and applied for recognition as a refugee on 30 April 1992. Almost sixteen months later, on 6 August 1993, his application was rejected by DIMIA on the basis that he did not meet the criteria of having a well founded fear of persecution. He then applied for merits review before the Refugee Review Tribunal. This took the RRT another two and half years, prompting the Federal Court to comment '[t]he review of proceedings were by no means quick and it was not until 7 February 1996 that the Tribunal gave its decision'.³¹ The applicant then sought judicial review and, given its importance, the matter was heard by the Full Federal Court.³² Fifteen months later, on 2 May 1997 the Full Federal Court set aside the decision.

The Full Federal Court considered the application of the dual nationality provision in Article 1A of the Refugees Convention to the position of the East Timorese asylum seekers under Portuguese law.

The Court found that it was wrong for the RRT to proceed on the basis that 'once Portuguese nationality was established Mr Jong was not a refugee [if he did not have] a

well founded fear of persecution in Portugal'. The RRT had to consider the potential obstacles to his obtaining the benefit of that protection and the 'effectiveness of his Portuguese nationality' or 'the willingness and ability of Portugal to offer protection' in all the circumstances.

The Federal Court, in rejecting the arguments of the Government, considered that the notion of 'effective nationality' flowed from an interpretation of international refugee law.

Applying the international rules of treaty interpretation the Court interpreted Article 1A 'in accordance with the ordinary meaning of the text but considering also the context and the object and purpose of the Refugees Convention'. The Court also adopted the approach taken by the United Nations High Commissioner for Refugees set out in the UNHCR Handbook. Any other approach, it was said, would defeat the humanitarian purpose of the Convention.

This issue was considered again in *Lay Kon Tji v. Minister for Immigration and Ethnic Affairs*.

*Lay Kon Tji v. Minister for Immigration and Ethnic Affairs, 1998*³³

Lay Kon Tji was born in East Timor in 1964 and applied for recognition as a refugee on 17 April 1992. Two years later in April 1994 DIMIA rejected his application. He appealed to the RRT which found that he did have a well founded fear of persecution should he be returned to Indonesia on account of his race (being Chinese) and political opinions as an independence supporter. However the Tribunal found that as a Portuguese national at birth, he did not have a well founded fear of persecution if returned to Portugal. He then commenced a representative action in the Federal Court on the issue of dual nationality. On 30 October 1998 the Federal Court set aside the RRT decision, applying and extending the notion of 'effective nationality' expressed in *Jong*.³⁴

The judgement concluded that the East Timorese asylum seekers had no 'effective nationality' in Portugal. This was because '[i]f an East Timorean does not wish to become a Portuguese national the protection afforded to Portuguese citizens will not be afforded to that person' and that '[i]f an East Timorean is deported to Portugal it is unlikely that he or she will receive the protection given to Portuguese nationals'.

*SRRP and Minister for Immigration and Multicultural Affairs, 2000*³⁵

The issue of dual nationality was subsequently considered by the Administrative Appeals Tribunal (AAT) in *SRRP and Minister for Immigration and Multicultural Affairs* (SRRP).

The applicant in SRRP³⁶ was born in East Timor in 1969 and arrived in Australia in 1994, applying for a protection visa in February 1995. He claimed a general well founded fear of persecution should he be returned to East Timor on account of his race (being Chinese) and religion (being Catholic). There is no reference to the Santa Cruz massacre. His claim

was rejected and on 23 September 1996 he applied to the RRT for a review. On 2 February 2000, three and half years later, the RRT referred the decision to the AAT on the basis that the decision under review raises important issues of general application. On 5 October that year the AAT handed down its decision.

Essentially, the AAT applied *Jong* and *Lay* using a combined concept of 'effective nationality' and 'effective protection' in its rejection of the Government's arguments that he should seek asylum in Portugal. It said that 'it is not sufficient that the Applicant has the formal nationality of another country if that country is not in fact willing to afford protection against return to the country of persecution'. And, 'if the State of formal nationality does not in fact recognise the existence of that nationality with its attendant rights to travel documents and to enter its territory [it] does not afford effective protection'.

Observations

The legal history of the East Timorese claims for asylum has been characterised by delays relating to processing times by DIMIA, the RRT and litigation on the issue of dual nationality. It took DIMIA two years to process Lay Kon Tji's initial application, and sixteen months to process Jong Kim Koe's. The RRT then took another two and a half years to confirm DIMIA's decision in *Jong*, a decision that fifteen months later the Federal Court found was wrong.³⁷ It took the RRT nearly three and half years to make a decision in *SRRP*.³⁸

These years of litigation reflect failed attempts by the Government to argue that East Timorese asylum seekers should seek protection afforded by their right to claim dual nationality with Portugal. Australia's concern not to damage its relationship with Indonesia was likely a significant motivating factor. At a later stage the continued pursuit of the issue may also have been fuelled in part by the underlying tensions between the self-determination policy adopted by Portugal in relation to East Timor and Australia's recognition of Indonesia's incorporation of East Timor.³⁹

In any event, once parties have embarked on expensive litigation as a way of dealing with such an issue it takes on a momentum of its own and inevitably is left to run its course. The cases point to a requirement for the practical availability and effectiveness of nationality in the second country to satisfy the requirement of the Convention that national protection has primacy over international protection. In the case of the East Timorese, the key issue under Portuguese law was whether they voluntarily wanted to avail themselves of Portuguese nationality. The question of voluntariness may be resolved differently in other cases depending on the internal law and practice of the second state. Importantly, the principle that non-return (refoulement) by the second state of nationality back to a country in which the person has a well founded fear of persecution was reaffirmed and recognised as an indicator (*indicia*) of effective protection.

These cases also illustrate the danger of confusing nationality and effective nationality with the ultimate requirement for effective protection under the Refugee Convention.

Also, the concept of effective nationality in the law of stateless persons is different again from that discussed by the Federal Court and the intersection of these two areas of law have yet to be fully explored.

It might be argued that the outcome could not have been predicted by the Government. On the other hand, it might be argued that the issues and the outcome were predicable. There was precedent for a link between effective protection and effective nationality. Moreover, there was some precedent for a requirement for voluntary repatriation. It is a core principle governing the operations of the United Nations High Commissioner for Refugees (UNHCR) and it may be applicable to the Convention.

Political Response to the Issue

On 25 March 2002, some seventeen months after the AAT decision in favour of the East Timorese asylum seekers, the Minister invited applicants 'to provide any additional information in support of their claim, so that decision making could proceed'.⁴⁰ On 25 September 2002, DIMIA handed down the first decisions, rejecting every one, adding another two years to the overall delay in their processing.

The Minister, Phillip Ruddock, has noted that despite their initial rejection for protection as refugees, there are still avenues following the appeals process for him to exercise his residual discretion under s. 417 of the Migration Act to grant protection visas in certain circumstances. The Minister emphasised that, rather than the creation of a visa subclass, each claim would need to be considered on a case by case basis.⁴¹ The Minister has so far identified approximately 150 applicants of this caseload as being eligible for permanent residency because they are married to Australian citizens.⁴² The Minister's position has been clear and consistent:

East Timorese people who have applications under consideration will be able to remain in Australia until their applications are finally determined. If they are approved, they will be granted a protection visa. If their applications are refused, they will have access to review of these decisions. However, it is reasonable to expect people who are found not to be refugees and so do not have a well-founded fear of persecution, to return home when their country is safe and secure.⁴³

Following the decision the Shadow Minister, Julia Gillard, stated she understood the reasoning for the East Timorese claimants no longer being considered refugees under the Convention. 'However, these asylum-seekers do deserve our compassion. They fled real persecution, the delay in the resolution of their claims was due to the actions of the Australian Government, they have lived for a very extended period of time in Australia, and many have no real ongoing connection with their former homeland.' She urged the Minister 'to resolve this long-running sore by creating a special visa class for these individuals', reassuring him, '[t]here is no reason to fear the setting of a precedent that could be used by others, because the circumstances of these asylum-seekers are truly unique'.⁴⁴ Labor is now proposing an amendment to the *Migration Legislation Amendment*

Bill before the Senate to allow for their residency in Australia under humanitarian entry.⁴⁵ Labor changed its policy toward the East Timorese asylum seekers following the full federal court decision on 30 October 1998.⁴⁶

On 26 November 2002 the Northern Territory (NT) Parliament passed a [bi-partisan motion](#) that the East Timorese who had been part of the NT community for so long be given favourable humanitarian consideration to remain. Mr Burke, the Country Liberal Opposition Leader moved an amendment to strengthen the motion.⁴⁷ The local newspaper described the motion as embodying 'a powerful reflection of the national interest'.⁴⁸ During the parliamentary debate it was suggested that the 76 East Timorese temporary residents affected in the Northern Territory could be sponsored by the Northern Territory Government, or under other sub classes of visa entry.⁴⁹

On 19 November 2002, the Senate debated a similar set of motions, calling on the Government to grant 'these people permanent residency in Australia on humanitarian grounds by means of a special visa'.⁵⁰ On 11 December the Senate resolved a lengthy motion of support for the East Timorese asylum seekers.⁵¹

Unswayed, the Minister responded to the motions by restating the Government's position that it was not considering the establishment of a special visa class for East Timorese in order to allow them to remain in Australia.⁵² Applicants found not to be refugees by the RRT will be returned to East Timor. However he noted that he could substitute the decision of the RRT for a more favourable one using his discretionary powers under s. 417, if he considered it in the public interest to do so. At this stage, while the East Timorese asylum seekers are pursuing merits review, he reassured the Senate that no deportation action was in place. Senators Bartlett⁵³ and Crossin⁵⁴ expressed their disappointment at the Minister's response to the Senate resolution about the East Timorese asylum applicants.

On 11 March 2003, the Victorian Premier Steve Bracks announced \$50 000 in funding towards the East Timorese community's legal costs.⁵⁵

Popular Response to the Issue

The Government is being pressured by an unusual breadth of popular feeling about the East Timorese asylum seekers whose status has been unresolved for a decade. An array of interest groups, communities, employers and religious organisations have lobbied the Government to allow these East Timorese long-term temporary residents to remain within Australia on humanitarian grounds.⁵⁶

The [Australian Catholic Bishop's conference](#) has urged the Minister to allow the East Timorese asylum seekers to stay in Australia, presenting him with 40 000 signatures on a national petition. Five mayors from Melbourne have also made a similar petition.⁵⁷ The Brotherhood of St Lawrence has argued, '[t]here is a special case for protection for those groups, such as the East Timorese, who having fled violence in their country of origin,

have lived in Australia for an extended period of time, even if now unable to qualify as refugees'.⁵⁸ The UNHCR has also said the Government should show some compassion given the special plight of the East Timorese and the extended delay in processing their claims for asylum.⁵⁹ Employers of East Timorese asylum applicants have spoken publicly in their support.⁶⁰ School teachers and headmasters have also voiced their concerns, especially for the children who could possibly be repatriated to East Timor.⁶¹

East Timor's consul to Australia, Abel Guterres, said that 'East Timor would accept the decision to repatriate the asylum seekers but that the country was in no position economically to take them'.⁶² When subsequently asked when would that be, he replied, 'Well if all goes well after 10 years time we may be able to'.⁶³

Policy Implications

Three different policy options have so far been canvassed in the debate, given the unique circumstances arising from the delay in processing the East Timorese claims for asylum. The first is to proceed on a case by case basis, relying on the Minister to use his discretion, following review by the Refugee Review Tribunal. A second option is for the East Timorese to apply for residency under another category of entry such as sponsorship by spouse or employer. A third is to create a special visa class recognising their claims for residency on humanitarian grounds.

A related, but slightly different option, is to grant the East Timorese a visa class for long-term temporary residents as the current Government did in 1997 when it created the special visa class to deal with the unresolved status of asylum seekers from Sri Lanka, former Yugoslavia, Iraq, Kuwait, Lebanon and China.⁶⁴ These groups had been residing in Australia for many years and, like the East Timorese, had entered and remained in the country legally (see below).

Ministerial Discretion

As noted above, the East Timorese asylum seekers can request the Minister to exercise his discretion under s. 417 of the Migration Act on a case by case basis should their applications for review fail. This is the preferred approach of the Government. The advantages of this approach are:

- The Minister has the power, but not a duty to exercise that power in the public interest.
- Given the extenuating circumstances, the length of time, integration into the community, and marriage to Australian citizens, it will be relatively straight forward for the Minister to exercise his discretion under the *Ministerial Guidelines for the Identification of Unique or Exceptional Circumstances* in relation to a number of applicants. He has already identified 150 applicants of being worthy of favourable consideration.

- It is consistent with the Government's existing and stated policy and avoids establishing any kind of policy precedent for other class actions by asylum applicants.

Problems with this policy option are:

- The Minister is unable to exercise his discretion until the RRT has made a decision.
- Given the changed circumstances in East Timor, following its independence from Indonesia, the RRT will be assessing their applications on current circumstances, and not those which prevailed at the time they initially made their claims for asylum in the early 1990s. Therefore many applicants will no longer meet the criteria for refugee status. To put the applicants through what is most likely a doomed process appears wasteful and unnecessary.⁶⁵
- The costs of this process are born by the East Timorese. Unless the Minister decides to substitute the review decision for a more favourable one, the applicant will have to pay \$1000 where the RRT upholds the decision of DIMIA.
- The costs to Government involved in assessing the circumstances of 1650 cases on an individual basis would be much higher compared to dealing with them as a group.
- The outcome is not guaranteed. Where the request is declined by the Minister the applicant will be compelled to leave Australia and return to East Timor. After ten years of successful integration into Australian communities, their large-scale deportation could create disruption with undesirable social and economic consequences. The Catholic communities in Victoria and Darwin, and the small-business community of Darwin, appear most affected by this outcome.
- The Minister has already identified approximately 150 applicants who have married Australian citizens or had children in Australia as a group he would look favourably upon in exercising his discretion. However an unintended consequence is to discriminate against those who have not married Australians or do not have Australian born children. While this difference in treatment is not unlawful, it will seem unfair both to the East Timorese and those sectors of the Australian community which support their claim to remain in Australia.
- Litigation could conceivably continue for an unknown further length of time.
- It does not provide any immediate, guaranteed or cost-effective resolution to the issue.

Sponsorship

In the parliamentary debate in the Northern Territory it was suggested that if all else failed, the Northern Territory Government and community could sponsor the East Timorese families given deportation notices. While this may be possible for some applicants in the long-term, the outcomes are not guaranteed and the process may require

failed asylum applicants to return to East Timor, apply off-shore for re-entry and await the outcome. Only in rare instances are asylum seekers, who have had their applications refused, permitted to apply for other categories of visa to remain in Australia.⁶⁶ This is especially problematic for those who have married Australian citizens and have parental responsibilities to children born in Australia, as they would normally have to apply off-shore. Where spouses are married to Australian residents the process extends the uncertainty should they be required to apply for a spouse visa off-shore. This is a two-stage process, which normally takes at least two years before permanent residency is granted.⁶⁷

The Minister has however indicated that in cases like these, where 'somebody is in a bone fide relationship with an Australian' he would probably intervene in such circumstance.⁶⁸ A spokesperson for the Minister has more recently stated that those with businesses or business acumen would be looked upon favourably in any exercise of his discretion.⁶⁹ Nevertheless they would still have to undergo review by the RRT, pay the \$1000 if the decision upholds DIMIA's decision, apply for ministerial discretion and await the outcome of character and medical checks.⁷⁰ The costs and uncertainties involved in this process have already been canvassed.

Special Visa Class

Another policy option is to establish a special visa category allowing the East Timorese to apply for permanent residency on humanitarian grounds. This policy option is similar in some respects to the way People's Republic of China (PRC) nationals in Australia were treated following the Tiananmen Square massacre of 4 June 1989.⁷¹

Arguments against creating a special visa class of residency for the East Timorese include:

- It is perceived to discriminate against other groups who could make similar class claims.
- It is perceived to create a policy precedent for other cohorts to make class action claims for asylum.
- Opponents may argue it undermines the integrity of the on-shore asylum application system which assesses claims on an individual basis.
- There are possibly other more needy entrants for the humanitarian on-shore intake.

Arguments for granting a special visa class of residency to these East Timorese applicants include:

- The ten year delay in the processing of their claims was due in large part to DIMIA and the RRT incorrectly finding that the East Timorese should avail themselves of protection from Portugal. The delay was further exacerbated by litigation eventually

resolved in their favour and for another two years by processing delays by DIMIA. This makes the East Timorese applicants truly unique and exceptional. Consequently a special visa class would not set a policy precedent but be consistent with the guidelines under which the Minister can also exercise his discretion.

- A special visa class would not discriminate against other groups, as there are no other unresolved large cohorts of asylum seekers who could make similar class claims to have been lawfully long term temporary residents in Australia.
- Had the initial mistake not been made by DIMIA in 1993, in wrongly assuming these East Timorese should seek protection from Portugal, most of the applicants would probably have by now been eligible for permanent residency. It appears unfair to deport them in such circumstances.
- Like the PRC nationals, many are young, well integrated into the Australian community, well educated, relatively unreliant on welfare and would make a contribution to the future of multicultural Australia.
- Some are successful business people whose departure, particularly from Darwin, may have a negative impact on the local economy. It is the local community that will bear the economic loss of the deportation including the lost opportunity of business links with East Timor.
- Given the unique and exceptional circumstances of the East Timorese long-term temporary residents, it is in the public interest to create a visa class on humanitarian grounds.
- It is in the best interests of the children of the East Timor long-term temporary residents to remain in Australia where they will receive better quality education, standard of living and health care. English speaking children will face major cultural and linguistic difficulties adjusting to living in East Timor. This is consistent with the Article 3 of the Convention of the Rights of the Child, which states that decision makers need to take into account the best interests of the child. Australia is a signatory to that Convention.
- While the East Timorese Government has indicated it will respect the Australian Government's decision to repatriate this cohort, the consul to Australia, Abel Guterres, has stated that their repatriation places an additional burden on the East Timorese authorities at a difficult stage of nation building.
- As Australia has a special relationship with the East Timorese, given its significant role in the independence of East Timor and leadership of the international peace keeping force, allowing this group of East Timorese long-term temporary residents, to remain permanently on humanitarian grounds is another measure of Australian support for the new nation, in addition to the \$150 million already pledged in aid by the Australian Government.

Visa Class for Unresolved Status of Long-Term Temporary Residents

While much of the debate has been centred on creating a separate visa class, consideration could be given to the creation of a special visa class for long-term temporary residents. A policy precedent allowing for long-term temporary residents to apply for residency was announced by the present Minister on 13 June 1997. It entailed the creation of a special visa class to resolve the status of people from Sri Lanka, Yugoslavia, Iraq, Kuwait, Lebanon and China who had been temporary residents of Australia since the early 1990s.⁷² The visas offered further temporary stay on humanitarian grounds with the availability of permanent residence after ten years, subject to the usual health and character checks. It affected approximately 8000 long-term temporary residents. At the time the Minister Mr Ruddock said, 'These people have been in Australia for many years. All entered Australia legally and have remained in Australia on humanitarian grounds, approved by the former Government'.⁷³ Exactly the same can be said for the East Timorese asylum seekers who entered and have remained in Australia on humanitarian grounds from the early to mid 1990s.

In 1997 the Minister announced that the visa class applied only to the citizens of the following countries 'who arrived lawfully in Australia' from:

- Kuwait—on or before 31 October 1991
- Iraq—on or before 31 October 1991
- Lebanon—on or before 30 November 1991
- China—on or before 1 November 1993
- Sri Lanka—on or before 1 November 1993
- former Yugoslavia—on or before 1 November 1993.⁷⁴

It seems anomalous that the East Timorese who had arrived in Australia in the early 1990s were not included in this list.

In creating a long-term temporary resident visa class, the Government would be acting in a manner consistent with the Ministerial Guidelines MSI 225, which take into consideration the length of time the person has been in Australia, along with their level of integration into the community.

As the main cost associated with the resettlement of refugees occurs in the first five years,⁷⁵ these people are by now, ten years later, not placing excessive demands on the Commonwealth budget.

Conclusion

When East Timorese asylum seekers sought protection in Australia in the early 1990s, successive Australian Governments attempted to resolve a potential problem for Australia-Indonesia relations by having the asylum seekers seek protection in Portugal. After repeated delays and extensive litigation the attempts ultimately failed, being twice rejected by the Federal Court and once by the AAT. With East Timor's achievement of independence in 2002, these asylum seekers are no longer an issue of any significance for Australia-Indonesia relations, but the Government intends to repatriate the East Timorese on the grounds that they are no longer under threat of persecution. The problem is that, ten years on, with the asylum seekers well integrated into the Australian community and the economic and security situation in East Timor deeply problematic, the Timorese want to stay in Australia. Had the Australian Government not contested the issue of their nationality, the Timorese would likely now have permanent residence or citizenship in Australia.

There are a number of policy options open to the Government that would allow it to resolve the status of the East Timorese without repatriation to East Timor. The Government has indicated a preference to deal with the exceptional circumstances posed by this complex political and legal history on a case by case basis through the exercise of Ministerial discretion. The major problem with this approach is that it does not bring about a complete resolution and as stated, an RRT decision is required first. Litigation could possibly continue for an unknown length of time at considerable expense to the tax payer. The Opposition has indicated a preference for amending the Migration Act to create a special visa class of entry on humanitarian grounds. While this proposal recognises the successive governments' role in creating the current difficulty, it could create a perception of special pleading, even though the East Timorese asylum cases are truly unique. The Northern Territory Parliament canvassed the notion of sponsorship through spouse or employer migration as a way forward, if all else failed. This is the most problematic of approaches as failed asylum seekers usually have to apply off-shore and await an uncertain outcome for re-entry under other visa classes. It places all the responsibility for resolving a problem created by successive governments upon the asylum seekers themselves.

An option canvassed in this brief suggests that the East Timorese asylum seekers could be given a special visa for long-term temporary residents with the availability of permanent residence after ten years. This would follow from the precedent created by the current Government in 1997 when it created the special visa class to resolve the status of asylum seekers from Sri Lanka, former Yugoslavia, Iraq, Kuwait, Lebanon and China who had been in Australia for many years and had entered the country legally. This appears to be an opportunity to correct the apparent anomaly that this status had not originally been extended to the East Timorese, while resolving the long-standing problem of the East Timorese asylum seekers ten years on.

Endnotes

1. For an eye witness account with video footage see: <http://www.uc.pt/Timor/stc2.htm>
2. A. Barbedo de Magalhaes, *East Timor Indonesian Occupation and Genocide*, Oporto University, 1992, pp. 59–64.
3. A. Baredo de Magalhaes, op. cit, p. 63.
4. For a comprehensive account of the political and economic situation in East Timor after the Dili massacre see S. Sherlock, A Pebble in Indonesia's Shoe: Recent Developments in East Timor, *Research Paper*, no. 8, 1995–96, Department of Parliamentary Library.
5. A. Barbedo de Magalhaes, op. cit., p. 17.
6. S. Niner, 'A long journey of resistance', in R. Tanter, M. Selden and S. Shalom, eds, *Bitter Flowers Sweet Flowers: East Timor, Indonesia and the world community*, Pluto Press, Annandale, 2001, p. 17.
7. P. Carey, 'Historical background', in S. Cox and P. Carey, eds, *Generations of Resistance*, Cassell, London, 1995, p. 11.
8. G. Cunn, 'The Five-Hundred Year East Timorese', in R. Tanter, M. Selden, S. Shalom, eds, *Bitter Flowers Sweet Flowers: East Timor, Indonesia and the world community*, Pluto Press, Annandale, 2001, p. 12.
9. For instance, a 1983 Senate Standing Committee report concluded that the East Timorese were 'denied the exercise of the most fundamental of human rights under Indonesian rule', 'subject to arbitrary arrest, torture and summary execution' and denied the freedoms of assembly and free speech. Senate Standing Committee on Foreign Affairs and Defence, *The Human Rights and Conditions of the People of East Timor*, AGPS, 1983, p. 84.
10. Jose Ramos-Horta, *Funu: The Unfinished Saga of East Timor*, Red Sea Press, New Jersey, 1987, p. 80.
11. Transcript of Press Conference by Senator Gareth Evans, Parliament House, Canberra, 16 January 1992, p. 4.
12. G. Robinson, 'If you leave us here, we will die', in N. Mills, And K. Burnner, eds, *The New Killing Fields: Massacre and the Politics of Intervention*, Basic Books, New York, 2002, p. 159.
13. The Hon. Phillip Ruddock MP, *Ministerial Press Release*, 17 September 1999.
14. M. Smith and M. Dee, *Peacekeeping in East Timor: The Path to Independence*, International Peace Academy Occasional Paper Series, 2003, p. 59.
15. The Hon. Phillip Ruddock MP, *Ministerial Press Release*, 6 December 1999.
16. Senator Chris Ellison, Senate *Hansard*, 12 November 2002. Question without Notice (Speech): Immigration: Asylum Seekers.
17. The Hon Warren Snowdon MP, *House Hansard*, 3 March 2003, Appropriation Bill, (No. 3) 2002–2003 Cognate bill: Appropriation Bill (No. 4) 2002–2003: Second Reading.

18. *Sydney Morning Herald*, 18 November 2002.
19. *Insiders*, 17 November 2002, interview with Barrie Cassidy.
20. The Hon. Philip Ruddock, MP, *Ministerial Press Release*, 25 March 2002.
21. The Hon. Warren Snowdon MP, *Press Release*, 14 February 2003.
22. Senator Andrew Bartlett, Senate, *Debates*, 11 November 2002, Question Without Notice.
23. Senator Chris Ellison, Senate, *Debates*, 12 November 2002. Question without Notice (Speech): Immigration: Asylum Seekers.
24. *Jong Kim Koe v. Minister for Immigration & Multicultural Affairs* [1997] 306 FOA (2 May 1997).
25. *Lay Kon Tji v. Minister for Immigration & Ethnic Affairs* [1998] 1380 FCA (30 October 1998).
26. '*SRRP*' and *Minister for Immigration and Multicultural Affairs* (2000) AATA 878 (5 October 2000).
27. In 2002 DIMIA stated that: 'Some 80 per cent of asylum seekers receive a primary decision on their asylum application within 18 weeks and 10 per cent of cases are processed within seven weeks.' *DIMIA Media Release*, 8 May 2002.
28. DIMIA, *Annual Report 2001–2*, p. 74.
29. Under the Refugees Convention no contracting state shall expel a refugee against his/her will to a country where they have a well founded fear of persecution for a Convention reason. Article 33 (1) of the Convention enshrines the core obligation of non-refoulement relating to the status of refugees (UNHCR):

'No contracting state shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.
30. *Jong Kim Koe v. Minister for Immigration & Multicultural Affairs* [1997] [306 FCA](#).
31. *Jong Kim Koe v. Minister for Immigration & Multicultural Affairs* [1997] 306 FCA.
32. Black CJ issued a direction under subsection 20(1A) of the *Federal Court of Australia Act 1976*, which provides that '[i]f the Chief Justice considers that a matter coming before the Court in the original jurisdiction of the Court is of sufficient importance to justify the giving of a direction under this subsection, the Chief Justice may direct that the jurisdiction of the Court in that matter shall be exercised by a Full Court'.
33. *Lay Kon Tji v. Minister for Immigration & Ethnic Affairs* [1998] [1380 FCA](#) .
34. '*SRRP*' and *Minister for Immigration and Multicultural Affairs* [\[2000\] AATA 878](#).
35. '*SRRP*' and *Minister for Immigration and Multicultural Affairs* [2000] AATA 878.
36. SRRP is a pseudonym for the applicant.
37. *Jong Kim Koe v. Minister for Immigration & Multicultural Affairs* [1997] 306 FCA.

38. 'SRRP' and Minister for Immigration and Multicultural Affairs [2000] AATA 878.
39. R. Falk, 'The East Timor Ordeal: International Law and its Limits', in R. Tanter, M. Selden, S. Shalom, eds, *Bitter Flowers Sweet Flowers: East Timor, Indonesia and the world community*, 2001, Pluto Press, Annandale, pp. 149–152.
40. The Hon. Phillip Ruddock MP, *Ministerial Press Statement*, 25 March 2002.
41. The Hon. Phillip Ruddock MP, [Ministerial Press Statement](#), 25 September 2002.
42. ABC radio interview 13 February 2003, referred to in The Hon Warren Snowdon's *Press Statement*, 14 February 2003.
43. The Hon. Phillip Ruddock MP, *Ministerial Press Statement*, 25 September 2002.
44. Julia Gillard MP, *Press Statement*, 25 September 2002.
45. *Joint Statement*, Leader of the Opposition, The Hon. Simon Crean MP and Julia Gillard MP, 5 March 2003.
46. The Hon. Con Sciacca MP, *Media Release*, 12 October 1999.
47. For example: Mr Burke, Opposition Leader, in pledging unrelenting support of the East Timorese in Northern Territory Parliament said: 'The real issue is that we have to then ensure that every applicant in the Northern Territory is successful on all the other grounds on which the minister can make his decision. That is where the Northern Territory government and the Northern Territory people have real power. That power is not there in any legislation. It is not there through any legal mechanism. You can spend a fortune on lawyers; it is not there with lawyers. It is there by the power of Territorians to say: "You are Territorians, we want you to stay in the Northern Territory and we will use people power to ensure the minister makes the right decision". That is the way these people will stay in the Northern Territory.' (Mr Burke, *Hansard Debates*, Northern Territory, 26 November 2002, Motion, Plight of the East Timorese Asylum Seekers.)
48. *Sunday Territorian*, 'Let our Timorese Residents Stay', 1 December 2002.
49. Mr Burke MP, Opposition Leader, *Hansard Debates*, Northern Territory, 26 November 2002, Motion, Plight of the East Timorese Asylum Seekers.
50. Senator Trish Crossin, Senate, *Hansard*, 19 November 2002, Immigration: Asylum Seekers Procedural text.
51. Senator BROWN (Tasmania) (3.44 p.m.)—as amended, by leave—I move:
That the Senate—
 - (a) acknowledges the substantial contribution members of the East Timorese community have made to the Northern Territory community over many years;
 - (b) expresses its support for the East Timorese asylum seekers living in Darwin who are in the process of being served with deportation orders by the Federal Government;
 - (c) extends its support to those affected families, some of whom are facing having their family permanently separated because of the Federal Government's decision to deport individual family members in some instances;

- (d) supports the Northern Territory Government and its agencies in assisting these East Timorese families in their efforts to remain in Darwin;
- (e) commends the individuals, businesses and community organisations that are supporting the East Timorese people affected by the deportation orders;
- (f) recognises that the Northern Territory Government wants the East Timorese to remain at home in the Northern Territory and will use its best endeavours to achieve that end; and
- (g) calls on:
 - (i) the Minister for Immigration and Multicultural and Indigenous Affairs (Mr Ruddock) to create a special visa class for the East Timorese Territorians in Darwin, due to the unique circumstances of their situation, and
 - (ii) federal parliamentary representatives to actively support this resolution and the applications of the deportees to the Minister.

Question agreed to. (Senate, *Hansard*, 11 December 2002, East Timor: Asylum Seekers, Procedural Text).

- 52. Tabled Document, Letter President of the Senate from The Hon. Phillip Ruddock, MP, 4 February 2003, Tabled in Senate, 3 March 2003.
- 53. Senator Andrew Bartlett, Leader of the Australian Democrats, Senate, *Hansard*, 3 March 2003, Speech East Timor: Asylum Seekers.
- 54. Senator Trish Crossin, Labor Senator for the Northern Territory, Senate, *Hansard*, 3 March 2003, Speech East Timor: Asylum Seekers.
- 55. AAP News Story, 'Bracks gives \$50 000 for East Timorese Legal Case', 11 March 2003. <http://news/news.asp>
- 56. See for example: *Sunday Territorian*, 1 December 2002; *The Age*, 26 September 2002; *Sunday Age*, 3 March 2003; Editorial, *The Australian*, 6 March 2003, and *7.30 Report*, 5 March 2003.
- 57. 'Sue Corby– the Mayor of Melbourne's City of Yarra says many of the East Timorese should be allowed to stay on humanitarian grounds, since they've lived here for so long.
CORBY: Now within the sorts of guidelines that the minister can consider there are very sensible matters that include length of stay in Australia; we're talking about people who have mortgages, who have had children, who are going to our primary schools, our kinders, our high schools. We're actually talking about people who have been here for about a decade. So to us it is not unreasonable that when our community asks us to advocate and represent their interests that in fact this is what we are trying to clearly do. So we're really concerned, this is our community, these our people and we're here with them today.' (*ABC Radio*, 13 February 2003).
- 58. Brotherhood of St Lawrence, *Seeking Asylum: Living with fear, uncertainty and exclusion*, 2002, p. 8.
- 59. 'UN urges soft line on Timor refugees', *The Canberra Times*, 28 December 2002.

60. See interview with Mr Michaelides, *Sunday Age*, 2 March 2003.
61. For example: Headmaster Peter Lord at whose school one in every seven pupils is at risk of deportation commented:

'They have no connection with East Timor, they have no experience of it, it is not their home, Australia is their home. They would go back to a country where there's no employment for their parents, where the economy is in ruins, where 90 per cent of the primary schools were destroyed by the departing Indonesians and they would go from a modern Australian school, to a situation that would be totally foreign to them, the trauma would be dramatic and I think we could never, should never put children in such a situation'. ([ABC Radio, 13 February 2003](#))
62. *Sydney Morning Herald*, 18 November 2002.
63. *ABC Radio*, 13 February 2003.
64. The Hon. Phillip Ruddock MP, *Ministerial Press Release*, 13 June 1997.
65. The Hon. Warren Snowdon MP, had this to say about the process: 'This process, by which a group that are part of the Australian community has been subjected to years of uncertainty and neglect, has been atrociously handled from the beginning. The Minister for Immigration and Multicultural and Indigenous Affairs rejected our calls last year, which I make again tonight, to deal with this community humanely by creating a special humanitarian visa class. Instead, he insisted on continuing with the torturous, drawn out, costly legal process that is slowly destroying the spirit of these people—and, I might say, undermining the confidence of many in our community towards the minister and the government in relation to dealing with these issues.' *House Hansard*, 3 March 2003.
66. See *Migration Act*, s. 48, regulations 2.12.
67. DIMIA Fact Sheet 30 <http://www.dimia.gov.au/facts/30partners.htm>

'Usually the permanent visa cannot be granted less than two years from the date of application. However, in certain limited circumstances, it is possible for a permanent visa to be granted in less than two years, for example, where the relationship is 'long-term' at the time of application. This is defined as five years or two years if there are children (excluding stepchildren) of the relationship.'
68. *Insiders*, 17 November 2002.
69. 'Do they still call East Timor Home?', *Sunday Age*, 2 March 2003.
70. For a personal account of the process, see interview with Min In Lay, 2 March 2003, in 'Do they still call East Timor Home?' *Sunday Age*, 2 March 2003.
71. Initially this cohort were granted four-year temporary entry permits, under subclass 437. The expectation was that many would return home during that time frame. Those found not to need continuing protection after the expiry of their visas would not be required to leave Australia against their will, but would not be provided permanent residency either. However

on 1 November 1993 the Government announced that it was providing access to permanent residence to 'some PRC nationals, some asylum seekers and certain people from Sri Lanka and the former Republic of Yugoslavia provided they meet certain (age, skills) criteria' (Ministerial Press Release). One of the reasons given by the government for making this decision was that they had integrated well in Australia, were mainly young, with high labour force participation, and had relatively low reliance on welfare.

72. Visa Class 851 Resolution of Status.
73. The Hon. Phillip Ruddock MP, [Ministerial Press Release](#), 13 June 1997.
74. *ibid.*
75. ACIL Consultants, commissioned report, [Impact of Migrants on the Commonwealth Budget](#), DIMIA, 1999.