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Asylum seekers on Bridging Visa E

The collision between the international asylum system and Australia's highly developed and managed migration system has played out through detention centres, in northern waters and in offshore processing centres. The latest area of concern and contention is asylum seekers in the community for extended periods on Bridging Visa E, without work rights, income support or access to Medicare. Refugee advocates have lobbied parliamentarians and campaigned on behalf of these asylum seekers through the media. A departmental review commenced in 2004 was supposed to bring clarity and flexibility into the bridging visa framework. One reason for the Government's delay in announcing any changes to the bridging visa system could be that the Government is experiencing difficulty in reconciling its policy imperatives of protecting the border and regulating entry into the Australian community, with the demands and expectations of advocates of asylum seekers on Bridging Visa E.

This brief looks at the issues and the arguments, and provides some international comparisons. It concludes that it is likely that more support will be extended to asylum seekers in situations of need in the community. However, advocates' more exaggerated claims and demands could be counterproductive, in that they are hastening the demise of the international asylum system.

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Abbreviations

ASAS	Asylum Seeker Assistance Scheme
BV	Bridging Visa
BVA	Bridging Visa A
BVE	Bridging Visa E
DIAC	Department of Immigration and Citizenship
NASS	(UK) National Asylum Support Service
NHS	(UK) National Health Service
Refugee Convention	1951 United Nations Convention Relating to the Status of Refugees
RRT	Refugee Review Tribunal
RPBV	Removal Pending Bridging Visa
UNHCR	United Nations High Commissioner for Refugees

Executive summary

The situation of asylum seekers in the community, but without work rights or access to Medicare or income support, has become a focus of advocacy groups, media attention and lobbying of members and senators. There could be several thousand such asylum seekers, some of whom have been on Bridging Visa E (BVE) for years, and some of whom are destitute and dependent on the support of charitable organisations.

In the view of the Government, most asylum seekers on BVE are 'failed' asylum seekers who have had a fair go from the Australian taxpayer and should be making arrangements to depart. Australia has invested massively in its highly managed migration (including refugee resettlement) programs: it does not operate a visa system to regulate entry and stay of non-citizens merely to provide open-ended access to benefits and work rights to people who do not qualify for a visa under that system.

In the view of some commentators and advocates, an asylum seeker has not 'failed' until every avenue of appeal is exhausted. All asylum seekers whose presence in the community is lawful (that is, all asylum seekers on bridging visas) should be provided with work rights and access to income support and Medicare and other mainstream services until such time that they are conclusively found not to be refugees, or they are granted resident visas. Denying asylum seekers such rights and support will exacerbate health and dependency problems and prove more costly in the long run. In the view of some, the Government's subjection of asylum seekers in the community to the BVE regime is immoral.

Distinctions in entitlements for asylum seekers in the community based on the stage of the processing of their claim, whether or not time limits for lodging appeals with the Refugee Review Tribunal or the judiciary are met, or whether removal is possible in the short-term, may be clear to immigration officials. However, it is not always clear to others why some asylum seekers receive more or less support than others. A review of bridging visas commenced in 2004 was supposed to bring clarity and flexibility into the bridging visa framework. One reason for the Government's delay in announcing any changes to the bridging visa system could be that the Government is experiencing difficulty in reconciling its policy imperatives of 'protecting the border' and regulating entry into the Australian community, with the demands and expectations of advocates of asylum seekers on BVE.

Unlike countries with larger 'illegal' populations, Australia does not grant periodic amnesties to asylum seekers who have been in the community for years. Cases have, however, often been resolved through use of the Minister's non-compellable power, under section 417 of the *Migration Act 1958*, to grant a visa 'in the public interest'. It is likely that the Government will address the issue of destitute asylum seekers in the community on BVE through extension of a Department of Immigration and Citizenship (DIAC) client 'case-work' approach. However, it is possible that a significant gap will remain between government policy and the demands and expectations of asylum seeker advocates.

Australia is not alone in employing tough measures against asylum seekers. The 'pull factor' of residence in an industrialised country, where average incomes are several times higher than in the country they have left, is strong. The clear trend amongst Western countries has been to reduce 'discretionary' entitlements such as work rights to a bare minimum, and thus reduce particular 'pull factors'. While direct comparisons with Australia's BVE regime are difficult, it would appear that Australia's BVE regime is no tougher on asylum seekers than the regimes of other countries. Australia's BVE regime reflects the problem that the 'asylum-migration nexus' is posing for both signatory governments and the United Nations refugee agency, the UN High Commissioner for Refugees (UNHCR). Anyone in a signatory country can lodge a claim for protection at any time; removal of failed asylum seekers can be difficult, distressing and very expensive; yet if failed asylum seekers do not leave the country the credibility of governments and of the international asylum system is diminished.

Western governments are proving more successful in keeping asylum seekers out than in encouraging 'failed' asylum seekers to leave, and refugee experts have warned that the international asylum system is being shut down. Some have sounded a particular warning to 'rights advocates' that the more exaggerated of their claims and demands are counterproductive, in that they are only adding to the 'asylum crisis'.

Introduction

With fewer boat arrivals, the situation of asylum seekers in the community without work rights or access to Medicare or welfare benefits has become a focus of advocacy groups, media attention and lobbying of members and senators. It would appear that there could be several thousand people who arrived in Australia without any visa or on a short-term visa, in the community on Bridging Visa E (BVE) because they have at some stage lodged an application for a protection visa. (That is, they have claimed the right to remain in Australia as refugees.) BVE is issued to people who are 'making arrangements to depart'. However, these 'asylum seekers' are remaining in the community for extended periods because they are pursuing claims through the courts, or seeking Ministerial intervention after their claims for refugee status have been rejected. Some have been on BVE for years and some are destitute and dependent on the charity of voluntary community agencies and support groups for the most basic of day-to-day needs—shelter, food, clothing and health care.

In the view of the Australian Government, the majority of 'asylum seekers' on BVE are 'failed' asylum seekers; they have not met the criteria for a resident visa and should be making arrangements to leave the country. In the view of advocates, an asylum seeker has not 'failed' until every avenue of appeal, through the courts and ultimately to the minister, is exhausted.

The situation of asylum seekers or 'failed' asylum seekers on BVE, in Australia, with its highly developed settlement support services for new migrants, its long-established social security net and its supposedly egalitarian culture, is disturbing. Australia's reputation as a successful country of immigration has rested on its generosity and inclusiveness to new

arrivals. This reputation has also rested, however, on the highly planned and managed nature of its annual intakes.

To the Government, the regulation of entry is crucial to the continuing success of its migration programs. Bridging visas are supposed to mirror the conditions attached to the visa under which non-citizens enter the country, and/or, in the case of BVE, keep a person out of detention pending their departure. To the Government, managing migration and protecting the border are synonymous with protecting the national interest. To human rights and refugee advocates, Australia's reputation is tarnished by its treatment of asylum seekers, whose right to seek asylum in this country is enshrined in international law.

The dilemma of Australia's BVE regime from the perspective of non-government support agencies and advocates is that asylum seekers on this visa are suffering and their needs are straining the resources of church and other charitable non-government agencies. The solution, they maintain, is simple: provide all asylum seekers, whose presence in the community is lawful (i.e. all asylum seekers on a bridging visa), with work rights, with welfare payments and access to health and other services through to the completion of the assessment of their claims or the grant of resident status. The dilemma from the perspective of the Government, is that granting work rights and welfare benefits to asylum seekers who are pursuing failed claims through the courts, or lodging weak or 'defensive' claims to prevent removal after being located 'illegally' in the community, would be self-defeating. It would negate disincentives that have been built up by successive governments to discourage abuse of the asylum system by people who would otherwise not qualify for a work or resident visa.

The dilemma and debate about asylum seekers in the community on Bridging Visa E is reflected in the following scenarios and reporting.

'Mr X (Personal Identifier: 130/07)' [1]

> Mr X is aged 36 and, although he claims to be a citizen of Sierra Leone, the Nigerian High Commission has confirmed that it is satisfied that he is a citizen of Nigeria...It has not been determined when Mr X arrived in Australia … Mr X lodged an application for a Temporary Protection Visa (February 2000), refused (May 2002); decision appealed to the Refugee Review Tribunal (RRT), affirmed (July 2003); series of Bridging Visas (BVs) granted (February 2000 to August 2003); s 417 request seeking favourable exercise of the Minister's humanitarian discretion lodged (October 2003), declined (May 2004); BV granted on 7 June 2004, valid to 21 June 2004, to enable Mr X to make departure arrangements from Australia; detained (August 2004); BV application refused (August 2004); submission referred to Minister for possible consideration of exercise of detention intervention powers, declined (August 2005).
>
> Mr X is an unlawful non-citizen currently detained at Villawood IDF.
>
> (The Government's response, on 4 May 2007, was that 'removal arrangements for this client are being facilitated by the Department'.)[2]

'Court cycle for asylum'[3]

> Asylum seekers and other would-be immigrants are fighting their way through the legal process to the High Court, losing, then starting all over again on different grounds. High Court of Australia chief executive Chris Doogan yesterday told a Senate estimates committee the process, believed to be a new trend, could take up to two years. Mr Doogan said such cases proceeded from the immigration tribunal to the federal magistrates court, the federal court and then into the high court. 'We are noticing a small trend where they will turn up again in another year, 18 months or two years', he said.

'Case Studies'[4]

> 1. There are a number of single mothers who have no form of income. One mother from South Asia arrived in 2001 with her three children. Having no income in the first few months, she used her remaining funds before being exempted for ASAS (Asylum Seeker Assistance Scheme) payments. Since her RRT (Refugee Review Tribunal) refusal more than 1 year ago and with her case being in the Federal Court, she lost her entitlement to ASAS. With no income she could not afford to pay for food or rent forcing her and her three children into homelessness and severe poverty.
>
> 2. Ismael, a single male asylum seeker from the Middle East approached a Migration Agent within 2 weeks of arrival in Australia. The agent failed to lodge his protection application within 45 days, leaving Ismael without work rights, income support or access to Medicare for 4 years while his protection claim was in process. Ismael was not eligible for ASAS as homelessness and destitution is not sufficient for eligibility. Ismael faced constant homelessness and presented to Hotham Mission ASP (Asylum Seeker Project) in a terrible state regarding his mental health and nutrition, affecting his ability to cope, plan and respond to potential immigration outcomes for his case.
>
> 4. A single woman from Burma approached Hotham Mission. She was homeless and 4 months pregnant and in a worrying mental state. We advised her to approach the Red Cross and apply for ASAS. Her application for ASAS was refused as she did not have sufficient health issues and she was told to reapply after the baby was born. This left her without access to appropriate prenatal care for herself and unborn baby.
>
> 5. A woman from Eastern Europe suffered from cancer and received treatment while eligible for ASAS. While she still required a further 6 months treatment she became ineligible for ASAS after a negative RRT decision and was no longer able to gain appointments without a Medicare card or the capacity for payment.
>
> 15. A family of five, including three young children, lost ASAS following a negative RRT decision. Having missed the 45-day rule, the family had no income and were at extreme risk of homelessness. As a result the family took the only accommodation available to them, a shed behind a house in the west of Melbourne. The shed had no heat or running water, and the family were sharing a fold out couch to sleep on each night. The mother was pregnant with her fourth child, and experiencing serious complications requiring intermittent hospitalisation for monitoring of herself and the baby. The hospital discovered where the family were living and refused to discharge the mother and baby to the accommodation, which they considered to be inadequate, inappropriate and unsafe. The hospital social worker contacted Hotham Mission for assistance.

'How long do people live in the community?'[5]

> ('C interview') … six years plus … It's a lot of time of suffering for me. It's better than back in Sri Lanka because I don't feel scared here. I know that I am safe and that my daughter is safe. But then at times it's like another torture. Looking for the end … to know when we are going to end this…
>
> ('Another comment') … I feel depression because it is a lot of time waiting. From the day when I picked up the application (until) now, it is more than three years. It is a very long process. I understand (it is) not only myself, I am not the only one, but also it is not much different from the system which I emigrated from.

Among Western countries, Australia is not alone in adopting increasingly tough measures against asylum seekers, or in receiving the opprobrium and condemnation of human rights and refugee advocates.

This brief looks at the situation of asylum seekers on BVE in Australia, from the perspectives of both government and advocates, and provides international comparisons. It suggests that the 'unintended consequences' of the BVE regime will force the Government to address at least the most acute of the health and welfare needs of asylum seekers on BVE in the community. It suggests that a significant gap will nevertheless remain between government concessions to asylum seekers and the expectations and demands of advocates. It suggests also that the more strident and exaggerated of advocates' claims and demands, in Australia and overseas, are serving only to hasten the shutting down of the international asylum system.

Australia's bridging visa system and asylum seeker processing

In recent years, asylum has become intertwined with migration. Asylum seekers in Western countries are as likely to be escaping poverty or political instability or conflict as the individually targeted political persecution that renders them 'genuine refugees' under the terms of the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention). The so-called 'asylum-migration nexus' has created problems for signatory governments as well as threatening the viability of the international asylum system.

In Australia, notions of 'lawful' and 'unlawful' status associated with a highly managed and regulated immigration (including humanitarian resettlement) program sit awkwardly with the international asylum system. As the system currently operates, anyone present in the country can apply for a protection visa at any time; refugee determination and ministerial intervention processes can be drawn out over a number of years; asylum seekers in the community can be in vulnerable and needy situations for protracted periods; and forcibly removing people can be difficult and morally fraught.

The bridging visa system

Australia's bridging visa system was introduced in the early 1990s, following the passage of migration reform legislation which codified the rules under which people could enter and stay in the country. The objective was to enhance the integrity of the migration program; to impose clarity and remove discretion in decision-making from both immigration officers and politicians. (And thus reduce lobbying on behalf of people refused visas, including through media campaigns.) It was quite clear-cut. If an individual meets the criteria for a visa, the person is legally entitled to it; if the person doesn't, he or she cannot be given a visa.[6] To remain in Australia as a non-citizen, you need a visa: if you have no visa, you must be detained until you are removed from the country.

A bridging visa is a temporary visa that enables a non-citizen to remain lawfully in Australia, and out of detention, while their application for a visa is being processed, while they are making arrangements to depart Australia, or while they are requesting the minister to exercise his non-compellable power under Section 417 of the Migration Act to grant a visa on 'public interest' grounds.

A principle guiding the issuing of a bridging visa is that it should not confer benefits beyond those attached to the visa that the non-citizen entered the country on. There are currently seven different classes and nine subclasses of bridging visas. Bridging visa eligibility, according to the Department of Immigration and Citizenship (DIAC), 'is pre-determined under the Migration Regulations on the basis of a person's individual circumstances such as whether they are lawful at the time of applying for a further substantive visa, and the stage of processing reached'.

Current classes of bridging visa

• **Bridging Visa A** (**BVA**) – granted where a non-citizen is lawful and applies for a further substantive visa to remain in Australia. A BVA keeps a person lawful while DIAC considers their application, through merits review, and at judicial review providing the application for judicial review is made within set time limits.
• **Bridging Visa B** (**BVB**) – is available to BVA holders who have valid reasons for travelling outside Australia while their application is being considered.
• **Bridging Visa C** (**BVC**) – available to applicants who do not hold a valid visa who voluntarily approach DIAC to lodge a visa application.
• **Bridging Visa D** (**BVD**) – a short-term bridging visa (for 5 days) available to persons who are unlawful or will soon become unlawful and want to make an application for a visa but are temporarily unable to do so (subclass 040), or who do not want to or are unable to apply for a visa but a DIAC Compliance officer is not available to interview them (subclass 041).

• **Bridging Visa E** (**BVE**) - BVEs cover people who are unlawful and making arrangements to depart Australia, people who are unlawful and have a further visa application being considered, people seeking the exercise of the Minister's public interest intervention powers after a decision to refuse a visa, non-citizens in criminal detention, and people seeking a review of a decision to cancel a visa or revoke Australian citizenship other than on character grounds. There are two subclasses - Subclass 050 (General) and Subclass 051 (Protection Visa) for certain unauthorized arrivals including minor children, the elderly, spouses of Australian citizens or residents, and those with special health needs.
• **Bridging Visa F** (**BVF**) – enables the release from immigration detention of certain unlawful non-citizens who may be able to assist with investigations into people trafficking, sexual servitude and/or deceptive recruiting offences.
• **Bridging Visa R (BVR)** – enables the release, pending removal, of people in immigration detention whose removal from Australia is not reasonably practicable at this time. The Minister must personally invite an application for this class of visa.

Source: DIAC

Around 250 000 bridging visas are issued each year; at any one time around 25 000 are in effect. The majority (about 60 per cent) are BVA (the most generous bridging visa, which usually comes with work rights), and BVE (about 33 per cent) (one of the least generous of bridging visas). The most common reason for being issued a BVE is 'making arrangements to depart Australia (about 50 per cent), followed by 'requesting ministerial intervention' (about 35 per cent).[7]

It would appear that at least half of BVE holders in the community have at some stage lodged an application for a protection visa and are therefore, at least in the eyes of advocates, asylum seekers. DIAC has indicated that, as at 6 April 2006, besides the 3100 people who had overstayed their visas and were voluntarily making arrangements to depart, BVE holders comprised:

> People who had overstayed their visa and applied for a Protection Visa which has not been decided by either (DIAC) or the Refugee Review Tribunal—there are around 300 in this group, and
>
> 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 (his) public interest powers to intervene—around 3600 people are in these circumstances.[8]

That is, at 6 April 2006, there were 3900 'asylum seekers' in the community on BVE.

Asylum seeker processing

In the early 1990s Australia opted, in the interests of timeliness and cost-efficiency, for a two-level administrative, rather than judicial, model of onshore refugee claim processing. An

application for a Protection Visa is decided at the first instance by an officer in DIAC; if the application is rejected, the asylum seeker can appeal, on the merits, to the independent Refugee Review Tribunal (RRT). Following refusal at the RRT stage, and following completion of any appeal to the judiciary, failed asylum seekers can request the Minister to use his Section 417 power to grant a visa on public interest (humanitarian) grounds.

Asylum seekers and the courts

The right of anyone in Australia affected by an administrative decision to appeal for redress to the High Court is enshrined in Section 75(v) of the Constitution, and the efforts of successive governments to prevent asylum seekers from pursuing their cases through the courts have not succeeded to the extent they hoped for. Legislative efforts to exclude asylum seekers and to move the process along have included: stipulating that appeals can be made to the judiciary only on matters of law; introducing a privative clause to assert the finality of administrative decisions; and stipulating a time limit (21 days) for lodging an appeal following an RRT decision.

The notion that the establishment of the RRT in 1992 would obviate the need for asylum seekers to appeal to the courts has been proved wrong. At the end of June 2006 there were about 2400 immigration 'matters' before the courts, around 80 per cent of which were for judicial appeal of an RRT decision.[9]

Ministerial discretion

Similarly, the notion that the Minister's non-compellable power to grant a visa to failed asylum seekers would be a rarely-used measure of last resort for unusual cases has also proved wrong. Lodging a request for 'a Section 417 intervention' would appear to have become routine, with thousands lodged each year. In the words of then Immigration Minister Senator Vanstone, in October 2006:

> One reformer of immigration, Sen Robert Ray, as I'm advised, believed the comprehensive codification of the rules meant there was no need for an intervention power. The system should just work according to law and the outcome would be fair. The then opposition believed it was appropriate to have a catch-all in the form of Ministerial intervention so that the occasional unique and exceptional case that fell outside the comprehensive categories of rules could be considered.
>
> With hindsight, neither view has proved to be correct. I'm confident the Ministerial intervention power is required. I'm equally sure that the intervention process is clogged with cases that are depressingly familiar and anything but unique or exceptional. In case after case, the facts that are alleged to make the case unique and exceptional have clearly arisen after the final decision at the relevant tribunal.[10]

Asylum seekers on bridging visas

Most asylum seekers in the community are (at least initially) issued a BVA if they have entered the country lawfully on a visitor or other temporary (e.g. business or student visa). Their BVA remains valid while a decision on their Protection Visa application is made at the 'primary' stage, by DIAC, and if this decision is negative, through merits appeal by the RRT. If the asylum seeker lodges an appeal to the judiciary within the 21-day time limit, their BVA will be renewed; they will have work rights and access to Medicare throughout the determination of their claim for refugee status. If they subsequently appeal for Ministerial intervention, however, they will be issued a BVE.

Asylum seekers who lodge applications for Protection Visas after being located in the community through 'compliance action' as 'visa overstayers' are likely to be issued a BVE. Asylum seekers who pursue a claim through the courts after the 21-day time limit may be issued a BVE; if they subsequently request Ministerial intervention their BVE will be renewed. BVEs are also issued to asylum seekers who have entered illegally, by boat, and are released from detention (e.g. on health grounds) under the care (and support undertaking) of an Australian resident or support organisation.

Asylum seekers on BVE for the most part do not have work rights (or access to Medicare), however they *may* be granted work rights, up to the merits review (RRT) stage, if they can demonstrate a 'compelling need to work'. They may also be granted work rights if they can demonstrate a 'compelling need to work' while the Minister is 'actively considering' a request for intervention, but not while their request is 'awaiting consideration'. They have no work rights during any period of judicial review.

The situation of asylum seekers in the community on bridging visas is complicated, and it is further complicated by the 45-day rule and eligibility criteria for income support under the Asylum Seeker Assistance Scheme (ASAS).

The 45-day rule

The 45-day rule requires Protection Visa applicants who have entered the country on visitor or student or other temporary visas to apply for asylum within 45 days of entering the country. If they do not, a condition of their bridging visa will be that they are not entitled to work or access Medicare while their application is processed.

The 45-day rule came into effect from 1 July 1997. The rationale for this and other measures introduced about the same time, such as the $1000 charge for review by the RRT if they are unsuccessful, was to discourage 'bogus' asylum seekers.

In a speech to the National Administrative Law Forum 1 May 1997, for example, the then Immigration Minister Philip Ruddock stated:

> ... I have particular concerns in relation to those who travel to Australia on a visitor visa, with the necessary documents issued by their own government to travel here, and who seek to claim refugee status in Australia.
>
> I am gravely concerned by reports I have received that people are using the onshore protection system to obtain work rights and access to Medicare. There are people who apply to my Department asking for the $30 work visa who appear not to be bona fide asylum seekers. These applicants seek to delay their departure as long as possible knowing full well they are not refugees.
>
> This abuse costs tax payers millions of dollars, undermines public confidence in the system and causes processing delays, disadvantaging genuine applicants.[11]

The original intention of the Government was to introduce a 14 day time limit for lodgement of protection visa applications. The period was extended to 45 days, following negotiations between Minister Ruddock and then Opposition spokesman Duncan Kerr.[12]

In June 2005 the then Minister Senator Vanstone advised that 'some 65 per cent of asylum seekers in the community' apply for a protection visa within the 45-say time limit.[13] Therefore, some 35 per cent of asylum seekers in the community, regardless of which bridging visa they are on, are without work rights or access to Medicare because of the 45-day rule.

Access to Medicare

Bridging visa holders, including asylum seeker holders of BVE, are eligible for Medicare only if they have work rights (in which case a Medicare levy is payable), or if they have a parent, sponsor or child who is an Australian citizen or permanent resident.[14]

The Asylum Seeker Assistance Scheme (ASAS)

The ASAS is funded by the Commonwealth Government and administered by the Australian Red Cross. It provides financial assistance (to 89 per cent of Centrelink benefits) to people, whether they are on bridging BVA or BVE, 'who are unable to meet their most basic needs for food, accommodation and health care' while their applications for Protection Visas are being assessed up to merits review stage. Eligibility for ASAS formerly cut out after the initial DIAC decision; it was extended in 1999. The then Immigration Minister Ruddock made it clear at the time that ASAS would continue to be unavailable to 'failed' asylum seekers who were taking court action to challenge RRT decisions:

> Sadly, evidence still points to high levels of misuse of the protection visa process by people who are not genuine refugees. Significant numbers of people who have no lawful right to remain in the country continue to pursue every legal means available to stay.
>
> If people continue to refuse to accept the decisions of my Department and the independent merits review tribunals it is entirely appropriate that they are responsible for their own support.[15]

In essence, asylum seekers are not eligible for work rights if they come under the 45-day rule, regardless of the bridging visa they are on, but they may be eligible for income assistance through ASAS, which will cease if they pursue failed claims through the courts.

The average time for both the assessment of a Protection Visa application by DIAC and merits review by the RRT is 90 days. It can take hundreds of days for a case to be determined by the Federal Magistrates' Court and by the Federal Court and by the Full Federal Court and by the High Court. Therefore, asylum seekers on BVE because they are pursuing claims through the courts, or pursuing Ministerial intervention—the vast majority of asylum seekers on BVE—may be in the community but without work rights, access to Medicare, or income support, for years.

The Removal Pending Bridging Visa

The situation of asylum seekers in the community became even more complicated following the softening of the detention regime with the measures announced by the Prime Minister on 17 June 2005.[16] 'Unauthorised arrival' (i.e. boat people) asylum seekers with children are now released into 'alternative detention' in the community; they are provided with housing, income support and health services. The Removal Pending Bridging Visa (RPBV) (introduced at the same time) has enabled the release from detention of long-term boat people detainees who have been determined not to be refugees, but who cannot be easily removed. The RPBV comes with work rights and access to Medicare, and income support. (As at 30 June 2005, there were about 50 people on RPBVs.)

Consistency and equity

Besides being confusing, the different situations of asylum seekers in the community, under different arrangements, on different sorts of bridging visas, and with different entitlements, raise issues of consistency and equity. Distinctions based on modes of entry, time limits, visa compliance and removal obstacles may make sense to certain officials in DIAC. However it is not always clear to asylum seekers, advocates or members of the general public why some asylum seekers receive more public support than others. Indeed, the whole detention and bridging visa and Temporary Protection Visa framework would appear to have become over-complicated. Several academics have accused DIAC of being deliberately opaque and obfuscatory, using the complexity that has arisen from the 'piecemeal' nature of the Government's measures to conceal its real agenda, which they suggest is to limit criticism as well as to limit access to asylum.[17]

The review of the bridging visa system

The Government commissioned in 2004 a departmental review which was supposed to simplify and introduce more 'clarity' and 'flexibility' into the bridging visa framework. A major impetus for this review was the need to respond to concerns raised by non-government organisations involved in advocacy and support work about the impact of the BVE regime and the 45-day rule on long-term asylum seekers in the community.[18] The Government was

supposed to announce changes resulting from the review in 2006. However, the review recommendations have been under consideration by a new Minister.[19] It is likely that the delay in responding reflects difficulties the Government is experiencing in reconciling its policy imperatives of 'protecting the border' and regulating entry into the Australian community, with the demands and expectations of asylum seekers on BVE and their supporters.

Arguments that support the Government's current policy

A number of arguments can be put in support of the Government's BVE regime and its 45-day rule for asylum seekers, such as:

- As a traditional country of immigration, Australia's major contribution to the international refugee effort is through its 13 000-strong annual offshore humanitarian resettlement program.

- A principle guiding the issuing of a particular bridging visa is supposed to be that it should not confer benefits, such as work rights. Most asylum seekers in the community have entered on visitor visas, which have no work rights. Nevertheless, they are given work rights until their applications for protection visas are refused at the merits review stage. Providing work rights and other benefits beyond this stage to people who do not qualify under the regulated visa system undermines the planned temporary entry, migration and refugee resettlement programs.

- Providing work rights to thousands of asylum seekers could adversely impact on the labour market in particular sectors or local areas.

- Assisting asylum seekers to prolong the processing of their claim for refugee status is not conducive to the quick and conclusive assessment of claims necessary to discourage abuse. The UNHCR stipulates, and the organisation itself employs, only two levels of decision-making (one primary decision, and access to one appeal heard by a different person in the organisation). So far as the Government is concerned, asylum seekers whose claims for protection are rejected by DIAC, and rejected again following merits review by the independent RRT, are failed asylum seekers. They have had a fair go from the Australian taxpayer. The fact that they are able to pursue claims through the courts does not entitle them to open-ended access to benefits and support.[20]

- A bridging visa enables people who do not meet criteria for a substantive visa to remain out of detention. If asylum seekers on BVE are unable to support themselves while they are pursuing matters of law or requesting Ministerial intervention or preparing to depart, they could go into detention, where their day to day needs, including health needs, would be provided for.

- Asylum seeker inflows are the antithesis of the sort of managed migration and humanitarian intakes that Australian and other Western governments are currently

pursuing, as in the national interest, and as acceptable to their established populations. Asylum seeker and associated family reunion migrants have high levels of unemployment and welfare dependency.[21]

- If people found not to need protection do not leave, the refugee assessment system in Australia, like those in other in Western countries, while expensive, is pointless.[22] And if the asylum system is seen to be used mainly by people with weak or fraudulent claims in order to remain in a more wealthy country, it will have little public credibility.

The concerns of asylum seeker support groups and advocates

Asylum seeker support groups and advocates have pointed out and argued that:

- Asylum seekers are here legally, and should have work rights and access to welfare and other support services until such time as their claim for refugee status, or to stay on humanitarian grounds, is finally concluded.

- A case is not fully concluded until all avenues of appeal and Ministerial intervention have been exhausted.

- The vulnerability and neediness of asylum seekers is such that their suffering is exacerbated and their integration prospects worsened by their inability to access both 'mainstream' services, especially health services, and the extra settlement support that is provided for 'recognised' and 'offshore' refugees.[23]

Some advocates deny that the asylum system in Australia is being abused, or at least the extent of the abuse, claiming that this perception is a product of government and media spin. For example, Carolyn Graydon, representing the Refugee Advice and Casework Service at a Senate Legal and Constitutional Legislation Committee hearing 16 September 1997, claimed that the 'vast majority' of claimants were genuine:

> It is my submission that there are a lot of issues underlying the whole debate about who is an abusive applicant, what is an unmeritorious claim and what is an abuse of the process. There is no definition of at exactly what point a person applies for refugee status knowing they have no chance or whatever. It is very difficult for us to measure who is considered to be an abusive applicant in the first place. So many of the reforms are premised on most asylum seekers being bogus or most asylum seekers applying for refugee status for other reasons. It is my submission—and through my experience as a practitioner, and part of it will be affected by the kind of organisation I work for—that it is simply not the case that there are enormous numbers of abusive applicants in the refugee system.

Support groups and advocates also question the assumption underlying the 45-day rule, that it provides ample time for legitimate asylum seekers. They describe how, in their experience, delays in lodging claims for refugee status result from misinformation, poor advice, lack of English and poor understanding of Australian immigration law and procedures, rather than from intent to abuse the system.[24]

Research undertaken by several support groups and rights advocates provides lists of 'basic entitlements' and 'rights' that are denied to asylum seekers on BVE: to work, to Centrelink services and benefits, to Medicare, to tertiary education (unless they pay full fees), to settlement services including English tuition, translating and interpreting, and government housing and related services.[25] It also provides case studies of appalling hardship and deprivation, describing people trapped in spirals of debt, homelessness, family breakdown, social isolation, and worsening physical and mental health.[26]

Much of this research is based on the not unreasonable assumption that many asylum seekers in the community will end up staying, whatever hardship is inflicted upon them, given their greater life opportunities in Australia and the investment they have already made in moving.

Some of the research presents pragmatic, self-interest arguments as to why the government should rethink the BVE regime:

- Asylum seekers left destitute for years have become an issue of concern for the broader community and the media.
- Denial of healthcare could lead to public health concerns and increase the likelihood of health issues being a basis for humanitarian 'Section 417' appeals to the Minister.
- In the long run, the regime will prove costly, as taxpayers will end up paying to rectify the physical and mental damage that is being done to people who will become part of the community.
- Many asylum seekers on BVE who are prevented from working have skills that could be utilised during a situation of shortage. Meanwhile these skills are atrophying.
- Asylum seekers who are able to maintain their income, their health, and their dignity will be in a better position to depart, if and when this becomes necessary.[27]

In a submission to DIAC's bridging visa review, the Hotham Mission Asylum Seeker Project puts the case for a separate bridging visa class for asylum seekers, distinguishing the three stages: administrative processing; judicial review and appeals to the Minister; and refused persons preparing to depart. They argue that the Department's compliance objectives could be better met through more extensive and better coordinated case management, pointing out that a high proportion (84 per cent) of the refused cases they have assisted have accepted voluntary repatriation.[28]

Less temperate claims made by advocates and commentators include that:

- The BVE regime as applied to asylum seekers is shameful and punitive.
- The Government is forcing asylum seekers into situations of destitution and desperation in order set an example for others.

- The Government is reneging on its Refugee Convention obligations (as the denial of basic social and economic rights could amount to 'constructive refoulement').

- The BVE regime is the product of a ruthless Government and immigration bureaucracy prepared to play on fears of 'the other' in a xenophobic population still infected by the White Australia Policy.[29]

The Melbourne Catholic Commission for Justice Development and Peace has determined that the Commonwealth Government is guilty of the sin of 'commission' through its harsh policies, while State governments are guilty of the sin of 'omission' for their failure to take responsibility for the housing, health and education needs of asylum seekers in the community.[30]

Overseas comparisons[31]

Under Article 24 of the Refugee Convention, governments are required to provide state support for refugees equivalent to that provided for resident citizens. However, this requirement does not cover asylum seekers, to whom refugee status has not been granted, and it does not cover those to whom it has been refused. Entitlements for asylum seekers vary. The manner and extent to which other countries give effect to other human rights treaties, such as the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman of Degrading Treatment or Punishment, and the Convention on the Rights of the Child within their refugee determination systems, also varies.[32]

The clear trend amongst Western countries, however, has been to reduce 'discretionary' entitlements for asylum seekers to a bare minimum, and thus reduce 'pull factors'. Drawing meaningful comparisons with Australia's BVE regime in any degree of detail is difficult: different countries have different legal systems, different systems of social support, and different migration traditions and cultures. However, it would appear that Australia's BVE regime is no tougher on asylum seekers than the regimes of other countries.

Comparative 'snapshots' are provided in the boxes below.

Work rights

In **Europe**, where most asylum claims (about 75 per cent) have been lodged, few countries have provided asylum seekers with work rights at the front end of the assessment process (Sweden is one exception). Asylum seekers have had no work rights at all in some countries (France, Italy, and Ireland). In other countries they have been able to work after a period of time if no decision has been made on their claim, or after a particular stage in the determination process is reached (the Netherlands, Belgium).

Following EU countries' efforts to 'harmonise' their asylum systems, the European Council issued a directive (2003/9/EC of 27 January 2003) under which asylum seekers are to be allowed to apply for

permission to work if they have not received an initial decision on their asylum claim within 12 months.

In the **UK**, a 'concession' formerly allowed asylum seekers to work after six months if 'a decision' had not been made. This was withdrawn in July 2002 in an attempt to further discourage 'bogus' asylum seekers, and to quarantine the UK's new economic migration programs from asylum inflows. In the words of then Immigration Minister Beverley Hughes:

> I am determined to make it clear that there is a distinct separation between asylum processes and labour migration channels. It is essential that we have a robust asylum process that works effectively and swiftly in the interests of refugees, and also is not open to abuse by those who would seek to come here to work ... (o)ur asylum system exists to help those fleeing persecution—those who want to come here to work must do so through the various economic routes available rather than abuse the asylum system.[33]

Since February 2005, asylum seekers have been granted permission to work after 12 months if the Home Office determines that they were not responsible for the delay in making a decision.

In the **USA**, asylum seekers can apply for work rights after six months if their case remains unresolved. Work rights may also be granted to asylum seekers whose claims are refused, if they cannot be removed.

In **New Zealand**, asylum seekers may be granted a temporary work permit (one per family) if they have arrived with 'legal documentation', but are refused permission to work if they arrive with no or fraudulent papers and/or are on 'conditional release' from detention.

Canada is the most generous of countries, granting work rights to asylum seekers throughout the refugee determination process, and for 12 months following the refusal of their claim for refugee status. It would appear however that asylum seekers may be authorised or directed to work only in specific sectors of the Canadian labour market, associated with temporary or guestworker schemes.

Welfare benefits

Social assistance for asylum seekers in **Europe** is generally paid at a 'basic living cost' or 'subsistence' level, lower than benefits available to the general population, and often administered through a separate agency (e.g. the National Asylum Support Scheme in the UK). Housing is often in the form of hostels, located out of the largest cities in the interest of 'dispersal'. Assistance may be provided in kind, e.g. in **Germany** food and accommodation and a small amount of pocket money are provided through hostels. While asylum seekers are not detained, support is provided only to asylum seekers in these hostels.

In the **USA** asylum seekers are eligible for social assistance only after they have been recognised as refugees. Asylum seekers with no clear means of support may be detained.

In **Canada** asylum seekers are able to access mainstream social assistance throughout the assessment process, however they are excluded from the extra settlement services provided for new migrants and

offshore refugees.

In **New Zealand**, asylum seekers can access social assistance, but support is less generous for those on 'conditional release'. The NZ government funds non-government agencies (including the Auckland Refugee Council) to house asylum seekers.

In **the UK** asylum seekers must apply for refugee status as soon as practical (defined as within three days of arrival) to be eligible for assistance through the National Asylum Support Service (NASS). NASS benefits are set at 70 per cent of the Income Support level. Where asylum seekers opt out of 'dispersal', they are eligible only for subsistence (non-housing) support. Changes were introduced to health legislation in 2004 to exclude asylum seekers and other people in the UK 'without appropriate immigration status' from the National Health Service (NHS) unless they paid in advance.

Very basic 'hard case' support, in the form of vouchers rather than cash, may, on a discretionary basis, be provided for asylum seekers who lodge 'late' or 'opportunistic' claims, i.e. claims lodged to prevent removal after a person is located 'illegally' in the community. 'Hard case' support may also be provided to failed asylum seekers, conditional on their cooperation with reporting and removal arrangements.

The efficacy of governments

Removal

UNHCR statistics show that the majority of asylum seekers who lodged claims in industrialised countries over the last ten years have been determined to be neither refugees, under the terms of the 1951 Refugee Convention, nor people in need of humanitarian protection.[34] However, most have stayed in the countries in which they have lodged their claims. The estimate of the proportion of failed asylum seekers who have left those countries varies from 10 per cent to 30 per cent.[35] In the words of Matthew Gibney the incentive for people with implausible claims to use the asylum channel in OECD countries is strong given that the chance of being removed if a claim is unsuccessful is 'exceedingly low'.[36]

As researchers point out—and as governments and advocates are aware—the longer that asylum seekers are in a country, the less chance there is that that they will leave, and the more point there is in giving them work rights. It would arguably be easier, and less expensive, to allow asylum seekers to stay. Forced removals are difficult, expensive and distressing, and possibly only achievable in small numbers. The problem for governments, as noted earlier, is that the credibility of their asylum systems, as well as their regulated migration programs, is undermined if failed asylum seekers do not leave. Another concern is the resultant 'pull factors' which can flow from this situation.

In some countries, tough measures against asylum seekers in the community who do not comply with deadlines or who do not leave after they have been deemed to have 'failed' are being challenged and unwound by the courts and under the pressure of human rights and

refugee advocates. In the UK, for example, in the cases of several asylum seekers left destitute by the 3-day rule, the Court of Appeal in 2005 judged that as there was no charitable support available to the asylum seekers, the UK government was in breach of its responsibilities under Article 3 of the European Convention on Human Rights. Income support has been reinstated to some asylum seekers following this judgement; however the policy issue remains unresolved. The issue of asylum seeker access to the free National Health Service also remains unresolved because of the refusal of many doctors to police their patients' entitlements, and because of concerns about the risk of the spread of infectious diseases.

Border controls

Western governments are obviously having more success in keeping asylum seekers out of their countries than in processing them quickly and encouraging or forcing those who 'fail' to leave. The number of asylum claims lodged in industrialised countries has dropped from 690 000 in 1992 to 629 000 in 2002, and 303 500 in 2006. The reduction is partly due to the fact that there are fewer refugees in the world (at the end of 2005, there were an estimated 8.4 million refugees within a total 'population of concern' of 20.8 million).[37] It is, however, also due to increasingly tough border controls that have been adopted by all governments.[38]

The array of restrictionist measures currently employed which deliberately target asylum seekers along with—or as—illegal immigrants, includes: visa requirements, pre-embarkation checks, border checks, carrier sanctions, excision of territory, offshore processing, interdiction en route, use of fingerprint and other personal identifiers, regional and international agreements to prevent 'illegal' movements, and penalties for people smugglers.[39]

These 'border protection' or 'non-entrée' type measures prevent 'genuine' as well as 'bogus' asylum seekers from lodging claims in Western countries.[40] However, it is the 'internal' deterrent measures that Western governments have increasingly adopted: detention, reduced access to welfare and removal of work rights, which have been the focus of domestic advocates' attention and anger.

Resident permits and visas

The situation of many asylum seekers in Western countries, especially those who have remained in the community for some years, is in reality solved in the end through the grant of some sort of resident permit or visa. In the UK, an amnesty for an expected 15 000 asylum seeker families who had lodged claims for asylum before 2000 was declared in 2003; there are now calls for another amnesty.[41] The German Government has recently agreed to provide residency permits for asylum seekers whose applications were denied in the 1990s but who have remained (for 'legal' and 'economic' reasons) on 'tolerated' status. This 'tolerated' status has barred them from employment, from free movement within Germany and from accessing most welfare programs. An estimated 50 000–60 000 of the 170 000–180 000

'tolerated' asylums seekers currently in Germany without access to the labour market and living in State-run housing complexes are expected to qualify.[42]

Because of its geography, and the highly managed nature of its migration program and entry and exit controls, including a universal visa requirement, Australia has received fewer asylum claims than many other Western countries. Because of these lower numbers, and a mandatory detention policy, Australia has a better record of 'removing' 'illegal' migrants and failed asylum seekers than most other Western countries.[43] Forcibly removing even small numbers of individual asylum seekers from the community can however be difficult and expensive.[44]

Unlike other countries which have larger 'illegal' populations, Australia does not periodically grant general amnesties to asylum seekers who have been in the community for years. The situation of larger groups of asylum seekers in the community has however often been resolved through the eventual grant of resident status. Resident visas were eventually granted to nearly all of the Chinese students in Australia who applied for asylum following the Tiananmen Square incident in 1989, and to nearly all of the East Timorese asylum seekers who lodged applications for Protection Visas in the early 1990s.[45] Most asylum seekers processed on Nauru under the Pacific Solution have ended up in Australia with Resident Visas, most former Temporary Protection Visa holders in Australia have been granted permanent residence, and many people held in detention have been released into the community.

Alternatively, asylum seekers simply join illegal migrant populations. In April 2004, London boroughs supported 34 818 destitute asylum seekers.[46] In July 2005, the UK Audit Office estimated the 'pool' of failed asylum seekers in the UK to be between 155 000 and 283 000.[47] The number of people among Australia's illegal or visa over-stayer population of about 46 000 who at some stage lodged an application for a protection visas is unknown; it is reasonable to assume that it is significant.

The efficacy of advocates

Assisting asylum seekers in the community

In countries like the UK as well as Australia, asylum seeker support and advocacy groups and other NGO and community welfare agencies have provided for the day-to-day needs of asylum seekers in the community, some of whom have been in abject poverty. They have alerted the media to the plight of these vulnerable and needy asylum seekers, lobbied parliamentarians, and been instrumental in forcing the amelioration of some of the harshest effects of government policy. The situation of asylum seekers in the community on BVE for extended periods would appear to be untenable; as well, neither the BVE regime nor the 45-day rule would appear to have been as effective as hoped for (in encouraging asylum seekers to leave after the merits review stage and to lodge claims quickly).

The Government is already funding several pilot community care projects, through which 'medical, welfare, mental health, housing and living assistance' support is provided for

asylum seekers in the community on BVE. These projects are being run under a new case management approach targeting 'DIAC clients', 'mainly those involved in compliance, detention and removal services'.[48] It is likely that the bridging visa review, following strong representations from support and advocacy groups, will result, at a minimum, in the further extension of welfare support and health care to asylum seekers in the community, with perhaps an extension of the individual casework approach currently applied to asylum seekers in detention. It is also possible that there will be a softening of the 45-day work rule, where there are ameliorating circumstances. However, it is likely that a significant gap will remain between government policy and the objectives of asylum-seeker advocates.

Impact on the international asylum system

Several refugee experts have sounded a warning to 'rights advocates' that their claims and demands may only be adding to the 'asylum crisis'. James Hathaway, for example, points out that international refugee law is 'serving fewer and fewer people, less and less well', and recommends, in the interest of its preservation, that the 'legitimate interests of government' need to be respected. He points out that claiming refugee status under the terms of the 1951 Refugee Convention does not give asylum seekers the right to work or to access public relief systems: such rights come only with the granting of refugee status.[49]

Matthew Gibney directly attributes the increasing array of 'non-entrée' policies of governments to the activities of the judiciary, NGOs and advocates within Western countries who push a 'culture of rights'. The exportation of border controls, he concludes, is a 'backhanded compliment to those domestic actors who have challenged the restrictionist direction of policies towards asylum seekers'.[50] Like Alexander Casella, he observes that public discussion of asylum often degenerates into posturing, and argues that advocates as well as governments 'need to be aware of their hypocrisies and the true costs of the current course of action'.[51] Casella argues further that the problem is 'compounded by the atmosphere of confrontation of advocacy groups who have political agendas, people who are using the asylum theme to challenge the system'.[52]

Michael Teitelbaum points out that '(r)ealistically, if every right of legal due process is guaranteed to every asylum seeker, enforceable immigration laws cannot exist in a practical sense'.[53] Christina Boswell concludes that in the long term, the only humane and sustainable refugee policy is one that reflects a country's national interest, including its humanitarian values. 'A humane refugee and humanitarian policy is only possible if it is politically sustainable'.[54] Helen O'Nion concludes that an honest debate about the future of refugee protection is needed, and that a solution will only be effective where the interests of both the refugee and the state can be adequately protected.[55]

Catherine Phuong also argues that 'the asylum/migration nexus should be taken more seriously for the simple reason that states that provide protection to refugees also have other concerns, such as migration control, to address'. She also concludes that reform of the international asylum system, while contentious, must be debated:

> Any proposal, or even suggestion, that the current international refugee protection regime should be reformed is almost invariably met with suspicion by those concerned with the welfare of refugees. However there should be an honest recognition that states cannot continue to provide refugee protection in the way they have done in the last fifty years and that the general public's support for the institution of asylum is waning. Fresh thinking about how to provide refuge protection in the 21st century, in the context of migration control strategies, is urgently needed.[56]

Conclusion

Australia's BVE regime reflects the problem that the international asylum system poses for all Western governments: once a person lodges a claim for refugee status, their presence is lawful, and their removal is difficult. It illustrates how tough measures against asylum seekers in the community are only partly successful in encouraging people to leave, at least while avenues such as court challenges and possible Ministerial intervention remain.

Parliamentarians continue to proclaim their commitment to the 1951 Refugee Convention. However, observers note that the international asylum system is being shut down by governments (of varying political persuasions) that have not been able to cope with the number of asylum claims, the nature of spontaneous arrivals, the difficulty of efficient processing and removal of failed asylum seekers, or the demands of refugee advocates.

Australia's bridging visa system has no direct correlation with Australia's international obligations under the Refugee Convention. The BVE regime as applied to asylum seekers in the community for extended periods, however, provides a good example of the 'asylum-migration nexus' that has created problems for states parties and is the focus of policy proposals within the UNHCR.[57] Arguably, it provides yet another example of how the international asylum system is not working in the interests of either the signatory governments or the world's refugees.[58]

Australia has received fewer onshore claims for asylum than many comparable countries. However, it has invested more than most countries in the planning and management of its migration and refugee resettlement programs. The right to seek asylum in the developed world would seem to be proving incompatible with systems of managed migration based on economic and other national interests.

Endnotes

1. Dr Vivienne Thom, Acting Commonwealth and Immigration Ombudsman, *Reports for Tabling in Parliament by the Commonwealth and Immigration Ombudsman Under section 4860 of the Migration Act 1958: Personal identifier 126/07–137/07*, Department of Immigration and Citizenship, March 2007.

2. Hon. Kevin Andrews, Statement to Parliament, *Response to Ombudsman's Statement made under section 4860 of the Migration Act 1958*, 4 May 2007.
3. 'Court cycle for asylum', *Daily Telegraph*, 24 May 2007, p. 23.
4. Hotham Mission Asylum Seeker Project, *DIMA Bridging Review: Hotham Mission Submission*, May 2006, in the Parliamentary Library collection at http://dpl/Books/2007/HothamMission_DIMABridgingVisaReview.pdf.
5. Marc Purcell, 'Knife edge: surviving asylum in the Australian community', *Occasional Paper* no. 15, Melbourne Catholic Commission for Justice, Development and Peace, 2004.
6. The exception is where the Minister decides to use his non-compellable power, under sections 417, 351 and 391 of the *Migration Act 1958* to grant a visa in the 'public interest'.
7. Bridging Visas are described in the DIAC publication *Managing the Borders*, Chapter 7, on the departmental website http://www.immi.gov.au
8. Department of Immigration and Multicultural Affairs, 'Bridging Visas and Bridging Visa Es', *People and Place*, vol. 14, no. 2, 2006, p. 9.
9. Australian Government, *Department of Immigration and Citizenship annual report 2005–06*, Commonwealth of Australia, p. 255.
10. Senator the Hon Amanda Vanstone, *What the public wants*, Speech by Minister for Immigration and Multicultural Affairs to the Australian Public Service Commission, 11 October 2006.
11. Hon. Philip Ruddock MP, *The broad implications for administrative law under the Coalition government with particular reference to migration matters*, Address to the Administrative Law Forum, Canberra, 1 May 1997.
12. Minister Ruddock's press release of 25 June 1997 states:

    > The Opposition has accepted and recognised the Government's concern and has agreed to work constructively to address the problem. I have agreed to some adjustments which do not affect the integrity of the measures.

13. Senator Vanstone, response to Question on Notice *Protection Visa Applicants* (No. 391), Senate Hansard, 14 June 2005, p. 163.
14. DIAC form 1024i Bridging Visas states:

    > Non-citizens in Australia are eligible for Medicare if they have applied for a permanent residence visa other than a Parent visa and hold a valid temporary visa (which includes a bridging visa), and either have permission to work on that temporary visa or have a parent/spouse/child who is an Australian citizen or permanent resident.

15. Hon. Philip Ruddock, 'Limited Changes to Asylum Seeker Assistance Scheme', *Media Release*, 11 May 1999.
16. Prime Minister, *Immigration Detention*, 17 June 2005.
17. A. Markus and J. Taylor, 'No Work, No Income, No Medicare—The Bridging Visa E Regime', *People and Place*, vol. 14, no. 1, 2006, p. 43.

18. These concerns are comprehensively set out in the submission to the review by the Hotham Mission Asylum Seeker Project, op.cit.

19. The Hon Kevin Andrews MP became Minister for Immigration and Citizenship on 30 January 2007.

20. The right of anyone in Australia to appeal to the High Court against an administrative decision is enshrined in Article 75(v) of the Constitution.

21. The Longitudinal Survey of Immigrants to Australia (LSIA) shows that refugee and humanitarian entrants have low levels of workforce participation and employment levels well below average. See for example *The Changing Labour Force Experience of New Migrants: Inter-Wave Comparisons for Cohort 1 and 2 of the LSIA*, on the DIAC website at http://www.immi.gov.au/media/publications/pdf/labour-forcev2.pdf.

    Low levels of labour force participation and high levels of unemployment and welfare dependency of asylum seeker and family reunion migrants is an issue of concern in Western European countries. See for example D. Roseveare and M. Jorgensen, 'Migration and Integration of Immigrants in Denmark', *OECD Economics Department Working Papers*, no. 368, OECD, 30 April 2004. The fact that immigrants with refugee or asylum seeker status have problems integrating into the labour market and achieve lower earnings in EU countries has been the basis for recommendations for more tightly managed migration based on skills selection. See for example A. Constant and K. Zimmerman, 'Immigrant Performance and Selective Immigration Policy: A European Perspective', *National Institute Economic Review*, no. 194, October 2005.

    There is little statistical data on employment rates of refugees in the UK. A UK newspaper, *The Daily Express*, has claimed that unemployment rates among successful asylum seekers in the UK are six times the national average. 'Asylum-seekers to get help on how to claim benefits (and you pay)', *The Daily Express*, 4 January 2007.

22. Western countries spend at least ten times as much processing and supporting asylum seekers than is spent by the UNHCR on supporting and resolving the situation of the world's 20.8 million refugees and 'people of concern'.

23. For example, see A. McNevin, *Seeking Safety, Not Charity: A report in support of work-rights for asylum-seekers living in the community on Bridging Visa E*, prepared for the Network of Asylum Seeker Agencies Victoria (NASA-Vic), March 2005.

24. For example, see the Asylum Seekers Centre Inc. Surry Hills, *Submission to the Department of Immigration and Multicultural Affairs (DIMA) Review of Bridging Visas*, http://www.asylumseekerscentre.org.au, May 2006.

25. For example, see A. Markus and J. Taylor, 'No work, no income, no Medicare—the Bridging Visa A regime', *People and Place*, vol. 14, no. 1, 2006.

26. For example, see D. Corlett, 'The forgotten asylum seekers', *AQ* Sep–Oct 2005.

27. For example, see Hotham Mission Asylum Seeker Project, submission to the DIMA Bridging Visa Review, op. cit; see also A. McNevin and I. Correa-Velez, 'Asylum seekers living in the community on Bridging Visa E: Community sector's response to detrimental policies', *Australian Journal of Social Issues*, vol. 41, no. 1, 2006.

28. Hotham Mission Asylum Seeker Project, ibid.

29. For example, see A. Markus and J. Taylor, op. cit.; See also Alice Edwards, 'Reception Standards: Employment', *Discussion Paper* no. 1 2006, UNHCR Regional Office for Australia, NZ, PNG and the South Pacific, 2006.

30. Marc Purcell for the Catholic Commission for Justice, Development and Peace, op.cit.

31. Links to country information are provided in C. Bohm and A. Millbank, Refugees and asylum seekers: a guide to key resources and recent developments, E-brief, at http://www.aph.gov.au/library/intguide/SP/Refugees.htm

32. In some countries asylum seekers found not to be refugees but to need protection under other treaties are given some sort of temporary or 'tolerated' status. In Australia, the Minister's non-compellable (Section 417) power is used to give humanitarian visas to such asylum seekers.

33. Written answers, *Asylum Seekers*, Home Department, UK, 23 July 2002.

34. UNHCR statistics, on the UNHCR website, at http://www.unhcr.org/statistics.html. See for example *Asylum decisions in Europe*, at http://www.unhcr.org/statistics/STATISTICS/4039dccd4.pdf; and *2005 Statistical Handbook*, Chapter 4, 'Asylum and Refugee Status Determination', at http://www.unhcr.org/statistics/STATISTICS/464049e63.pdf.

35. C. Sawyer and P. Turpin, 'Neither here nor there: temporary admission to the UK', *International Journal of Refugee Law*, vol. 17, no. 4, pp. 688–728; and T. Hatton op.cit.

36. Matthew Gibney is Elizabeth Colson Lecturer in Forced Migration at Oxford University. In 'Beyond the bounds of responsibility: western states and measures to prevent the arrival of refugees', *Global Migration Perspectives* No. 22, Global Commission on International Migration, Geneva.

37. UNHCR statistics, op.cit.

38. T. Hatton, 'European Asylum Policy', *National Institute Economic Review*, October 2005. See also J. Riera, Senior Policy Adviser UNHCR, 'Migrants and Refugees: Why Draw Distinction?' *UN Chronicle*, No. 4, 2006.

39. 'Non-entrée' measures are discussed in A. Millbank, 'Dark Victory or Circuit Breaker: Australia and the International Refugee System Post Tampa', *People and Place*, vol. 11, no. 2, 2003.

40. Discussed in S. Taylor, 'From Border Control to Migration Management: The Case for a Paradigm Change in the Western Response to Transborder Population Movement', *Social Policy and Administration*, vol. 39, no. 6, December 2005.

41. UK Home Secretary, *Clearing the Decks for Tough New Asylum Measures*, Press Release, UK Home Office, 24 October 2003.

42. E. Leise, 'Germany to Regularize 'Tolerated' Asylum Seekers', *Migration Information Source*, Migration Policy Institute, Washington DC, April 5, 2007.

43. The estimated number of 'visa overstayers' in Australia as at 31 December 2005 was 46 400; estimates of the number of illegal migrants in the UK are in the order of 670 000. See DIAC

fact sheet No. 8, *Overstayers and People in Breach of Visa Conditions*, on DIAC website http://www.immi.gov.au/index.htm, and UK Migration Watch Briefing Paper No. 9.15, *The Illegal Migrant Population in the UK*, UKMW website http://www.migrationwatchuk.org/default.asp.

44. It cost $45 000 each time for airline costs alone, including 'exclusion zone' seats, over a number of attempts, in order to remove two Chinese nationals in April 2007. Advice from DIAC, plus see 'Costs cited to justify refugee swap with US', *Sydney Morning Herald*, 19 April 2007.

45. K. Carrington, S. Sherlock and N. Hancock, 'The East Timorese asylums seekers: legal issues and political implications ten years on', *Current Issues Brief*, no. 17, 2002–03.

46. P. Dwyer, 'Governance, Forced Migration and Welfare', in *Migration, Immigration and Social Policy*, Catherine Finer (ed.), Blackwell, London, 2006.

47. Report by the Comptroller and Auditor General, *Returning Failed Asylum Applicants, HC 76, 2005–06*, UK.

48. Departmental fact sheets state that the Australian Red Cross and the International Organisation for Migration are working with the department on running a new community care pilot program in NSW and Victoria in 2006–07. They indicate that the pilot 'will assist (DIAC) clients within the community who need access to medical, welfare, mental health, housing and living assistance while their immigration status is being decided. …Services provided under the pilot will meet basic needs such as accommodation, food and medical assistance, with the services provided tailored to each client's situation based on their case management plan.' See Palmer progress fact sheets at http://www.immi.gov.au/media/publications/department/index.htm

49. James Hathaway is Professor of Law at the University of Michigan. See *The Rights of Refugees under International Law*, CUP, London, 2005; 'Rethinking refugee law', *The American Journal of International Law*, July 2004; 'Refugee law Is Not Immigration Law', *in Canadian Council on International Law, Globalism: People, Profits and Progress: Proceedings of the 30th Annual Conference of the Canadian Council on International Law*, Kluwer Law International, The Hague, 2002; and 'Framing Refugee Protection in the New World Disorder', *Cornell International Law Journal*, no. 2, 2001, pp. 257–320.

50. Matthew Gibney is Reader in Forced Migration, Refugee Studies Centre, Oxford University. See 'Beyond the bounds of responsibility: Western states and measures to prevent the arrival of refugees', in *Global Migration Perspectives*, no. 22, Global Commission on International Migration, Geneva, 2005.

51. The larger area of moral confusion lies of course in the discrepancy between the resources expended on, and outcomes achieved by, asylum seekers who lodge claims for refugee status in Western countries, compared with refugees who remain in camps in poor countries.

52. Alexander Casella is former Regional Director, UNHCR, and currently Director, International Centre for Migration Policy Development, Geneva. See 'Out of control', *The World Today*, August/September 2001; and *Humanitarian flow and the system of international protection: issues for developed asylum systems*, paper delivered at the 'Migration: benefiting Australia Conference', Sydney, 2002.

53. Michael Teitelbaum is Demographer at the Alfred P. Sloan Foundation, New York. See 'Right versus right: immigration and refugee policy in the United States, in Messina and Lahar, (Eds.), *The Migration Reader: Exploring Politics and Policies*, Lynne Rienner Publishers, London, 2006.
54. Christina Boswell is former Head, Migration Research Group, Hamburg Institute for International Economics. See 'The liberal dilemma in the ethics of refugee policy', in Messina and Lahar, ibid.
55. Helen O'Nion is Senior Lecturer in Law, London Metropolitan University. See 'The erosion of the right to seek asylum', *Web Journal of Current Legal Issues*, no. 2, Web JCL1.
56. Dr Catherine Phuong is Lecturer in Law at the University of Newcastle, UK. See C. Phuong, 'Protecting Refugees in the Context of immigration Controls', Chapter 2 in Prakash Shah ed., *The Challenge of Asylum to Legal Systems*, Cavendish Publishing, London, 2005.
57. See UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action, UNHCR, revision 1*, January 2007 http://www.unhcr.org/home/RSDLEGAL/44ca0eda4.pdf.
58. Problems with the operation of the 1951 Refugee Convention are described in A. Millbank, 'The Problem with the Refugee Convention', *Parliamentary Library Research Paper*, no. 5, 2000–01.