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Submission to the Department of Immigration and Multicultural Affairs (DIMA) Review of Bridging Visas

Introduction

The Asylum Seekers Centre (ASC) welcomes the opportunity to provide a written submission to the DIMA Review of Bridging Visas, following participation in face-to-face consultations with Wendy Southern and Peter Richards of the Strategic Policy Group, on 22 March and 20 April 2006. Our written submission intends to supplement rather than replicate our verbal input.

We commend DIMA on its initiation of this review, and trust that full consideration will be given to the implementation of appropriate reform measures to rectify deficiencies identified within the existing framework. We understand that this review sits within a compendium of reform initiatives (including the Case Management and Community Care pilots and Residential Determination provisions) and, as such, will draw on the experiences and insights generated through these parallel processes in formulating its final recommendations.

We understand the following paragraph to comprise the terms of reference for the review:

> *The purpose of the review is to examine the existing bridging visa framework with the aim of making recommendations to achieve a regime that is **simpler**, provides **greater clarity and consistency**, yet has **sufficient flexibility to respond to individual circumstances including alternatives to immigration detention**.*[1]

We have focussed our submission accordingly. The submission will also reflect upon measures which we believe would generate a more ***fair and reasonable*** system, ***consistent with our international obligations and recommended standards for the reception of asylum seekers.***

Given the scope of our mandate (see below), our submission is concerned exclusively with Bridging Visas as they relate to community-based asylum seekers, with a particular focus on the conditions that generally apply to the Bridging Visa E (BVE).

[1] 'Community Consultations - Review of Bridging Visas', Peter Richards' email communication, 4/4/6

Given the fact that divergent definitions of the term ‘asylum seeker’ prevail both within DIMA and externally, it is important to clarify that, in using the term ourselves, we are referring to all individuals who have lodged a protection visa application and are awaiting a substantive outcome, whether this be at the primary, merits review, judicial review or Ministerial stage of our existing onshore determination process. Further commentary on this issue is provided below.

Our submission is written in three parts.

- We commence with a profile of the ASC and a broad outline of our critical concerns regarding the devastating health and welfare impacts of aspects of the existing Bridging Visa regime upon the vast majority of our clients. We provide some brief case examples.

- We then sketch our vision of an ideal approach to processing onshore asylum claims. We consider this approach to be simple, clear, consistent, responsive to individual needs, fair, reasonable and consistent with our international obligations and recommended standards for the reception of asylum seekers.

- We conclude by providing commentary and recommendations regarding specific aspects of the existing Bridging Visa system.

Profile of ASC

Established in 1993, the ASC is an independent, not-for-profit, non-government organisation which aims to provide a welcoming environment and practical front-line support for community-based asylum seekers residing in NSW. Our vision is that asylum seekers be welcomed to Australia and afforded a dignified, meaningful and safe existence pending the fair, transparent and expeditious resolution of their claims.

ASC delivers its client services through the following core program areas:

- **Case Management:** ASC assists its clients to secure emergency and short-term accommodation (where available) and to access study (where permitted). It also makes referrals for emergency financial support (where available) and legal advice, and provides individual advocacy and social work support for families and individuals, liaising closely throughout with other relevant services;

- **Health Care:** ASC offers on-site primary health care and physiotherapy (each provided 0.5 days/week by volunteers), finances pharmaceuticals for life-threatening or other extremely serious or painful conditions, makes referrals to pro bono dental care, trauma counselling, optometry and other forms of priority specialist health care, and advocates for fee-waivers or payment plans on emergency hospital procedures;

- **Recreation and Education:** ASC has a volunteer-led program of English, computer, yoga, exercise, art and job-seeking classes, as well as offering asylum seekers excursions, nutritious lunches, internet access and a space in which they can gather and meet others in similar circumstances.

ASC has an active current caseload of 167 clients – 91% of whom hold visas, overwhelming the BVE, which render them both work and Medicare-ineligible. While some are periodically

eligible for the DIMA-funded, Red Cross-administered Asylum Seekers Assistance Scheme (ASAS), they are, in the main, utterly dependent upon charity for their basic subsistence needs - including housing, emergency health care, nutrition and clothing. ASC has assisted over 3 000 adult and child asylum seekers since its inception thirteen years ago.

ASC has a small team of salaried staff (currently 4.5 full-time equivalents), supported by a network of approximately 80 volunteers who contribute to our operations in a variety of ways, including through provision of pro-bono professional services.

Critical concerns regarding health and welfare impacts of Bridging Visa regime

Of paramount concern to ASC is the severely constrained access to income support and health care endured by the vast majority of our clients as a direct result of restrictive conditions imposed under the existing Bridging Visa regime. The vast majority of work-ineligible clients are holders of a BVE.

Under the existing system, asylum seekers are ineligible for work rights, and correspondingly Medicare, where they are:

- affected by the 45-day rule[2], which penalises asylum seekers for late lodgement of their protection visa applications;
- seeking exercise of Ministerial discretion (unless and until their matter is being personally considered by the Minister, at which stage departmental discretion exists to grant work rights where there exists a demonstrable compelling need)[3];
- seeking judicial review (and were unlawful at lodgement of their claim, irrespective of its timing; lodged their claim while lawful but outside of the 45-day period; or have at some prior stage had their work rights revoked);
- released from detention on a BVE.

While ASAS (including access to health care under the General Health Scheme) is available to certain categories of work-ineligible and work-unfit asylum seekers who are experiencing severe financial hardship, coupled with another specified form of vulnerability, eligibility is restricted to those who are at the primary and/or merits review stages of the determination process, with some extremely limited discretion for a special payment grant to those at the Ministerial stage who are in situations of exceptional need. While certainly of assistance to those who receive it, the restrictive eligibility criteria currently render ASAS an insufficient mechanism for alleviating destitution and guaranteeing adequate health care for the full spectrum of vulnerable asylum seekers.

Given the bars to work rights and the limitations of ASAS, the clearest and most extreme ‘destitution traps’ for asylum seekers occur at the judicial review and Ministerial stages of the determination process. This results from the absence of stipulated timeframes for decisions and thus the potential that the timeframes will be excessive. Amongst our current caseload are clients who have waited up two or more years for decisions at each of these stages.

The impact of the widespread, and often protracted, denial of the right to an income and health care (via work rights or state support) is devastating and, in our experience, commonly includes:

[2] as instigated under a Migration Regulation effected 01/07/97
[3] as instigated under a Migration Regulation effected 01/07/98

- acute poverty;
- homelessness;
- malnutrition;
- untreated illnesses;
- deteriorating health;
- family breakdown;
- plummeting self-esteem;
- skills attrition; and
- severe depression.

In severe cases it can (and does) lead to suicidal ideation.

The most immediate and dire challenge confronting ASC staff is to find secure accommodation for clients who are traumatised and deeply distressed. With Sydney currently facing a crisis in emergency accommodation, and most refuges and hostels prioritising access for permanent residents, we are increasingly unable to secure positive outcomes for clients in this extremely important area. While several church groups and charitable organisations make commendable efforts to provide short-term housing for asylum seekers, available places fall well short of demand, and homelessness has become increasingly common amongst our clients.

Securing health care is another major challenge. Many of our clients suffer complex and/or chronic physical and psychological health problems as a direct consequence of their experiences of trauma (including torture) and protracted lack of access to preventive health care, both prior to their arrival in Australia and subsequently (including where they have experienced periods of immigration detention). As such, the impact of Medicare-ineligibility, combined with the lack of capacity to earn, is severe.

As indicated above, the ASC health care program (reliant upon a network of pro bono health practitioners and modest philanthropic funding) endeavours to provide clients with access to treatment and medication for life-threatening and other emergency conditions (including multiple sclerosis, cancer, insulin-dependent diabetes, complications in pregnancies and infant malnutrition). We are, however, hampered in our efforts by a lack of guaranteed access to the public health system, and are regularly called upon to advocate for retrospective fee-waivers on emergency hospital procedures. Many of our clients have been turned away from hospital emergency departments because they are Medicare ineligible and do not have the means to make an upfront payment for treatment. *A notable recent example includes the case of a three-week old baby denied a renal ultrasound because her parents were unable to demonstrate their capacity to pay for the procedure.* In numerous other cases, where hospital treatment or an ambulance service has been provided, clients have been relentlessly pursued for payment after the event. *Indeed, the parents of the above baby continue to be pursued for costs associated with the ambulance passage of their five-year old son to hospital.* Being pursued by debt collectors is extremely distressing for our clients as they not only lack the means to discharge these debts, but are deeply fearful that the debts might have a negative impact on their immigration status.

Securing adequate mental health supports for clients is also extremely difficult, as specialist trauma services and mental health crisis teams within the state public health system are severely constrained in their capacity to meet existing client demand. Furthermore, the amelioration of mental health symptoms which may be substantially attributable to the disempowering circumstances outlined, generally proves extremely difficult without a clear prospect of abatement of those circumstances.

Most asylum seekers who are ineligible to seek paid employment are also forbidden to engage in voluntary work. In addition to the material and psychological impacts of their lack of permission to earn, affected clients manifest acute distress as a result of their inability to not only act upon, but *demonstrate* (including to DIMA and the Minister), their ardent commitment and desire to contribute to Australian society. When the above restrictions are coupled with an ineligibility to undertake formal adult study (as is overwhelmingly the case unless a discretionary waiver has been approved), clients are left in circumstances of enforced passivity - unable to engage in meaningful activity and extremely susceptible to depression and/or intensification of symptoms associated with post-traumatic stress.

Many of our work-ineligible clients are professionally qualified or highly skilled in their trade. Research we recently conducted revealed that 75 percent of our 97 participating work-ineligible clients hold skills and qualifications that match those listed on DIMA's Skilled Occupations List and 47 percent of those are a match for the Migration Occupations in Demand List. We can confidently state that all of our work-fit and work-ineligible clients crave the opportunity to become self-reliant. Significantly, affected clients report that the mental anguish associated with their destitution is compounded by their perception that they are a drain upon the community and corresponding fears that they will exhaust the compassion and resources of their supporters.

Unsurprisingly, visa restrictions which deny certain categories of asylum seekers the right to undertake paid or voluntary work, access Medicare, access other forms of state support and engage in formal study have assumed a punitive dimension in the minds of our clients and their supporters.

As previously mentioned, one of the reasons why asylum seekers find themselves work and Medicare ineligible is that they lodged their application after they had been in the country for more than 45 days. The government's argument for this restriction is that it will deter abusive claims but we contend that there are many legitimate reasons why a bona fide asylum seeker will not lodge soon after arrival. Our clients have reported to us an array of reasons for lodgement of their applications for protection over 45 days after arrival. Typical amongst these are that:

- they were not aware of asylum application procedures;
- they were in Australia on another valid visa when changed circumstances in their country of origin or habitual residence precipitated their application;
- they received inappropriate advice from migration agents or friends;
- they were unaware of the '45-day rule' and awaited improvements in their country of origin, hopeful that they would be able to return and planning to lodge a protection application as a measure of last resort;
- they were fearful of presenting themselves to authorities due to their experiences of persecution.

As such, we reject the implicit supposition that 'late' lodgement automatically renders the validity of a protection claim less credible and argue that the penalties imposed (denial of basic support) are utterly unjust and unjustified.

It is worthy of note that in November 2005 the House of Lords overturned a comparable UK system under which asylum seekers deemed to have not lodged their claims as soon as practicable after their arrival, were denied work rights and state supports, on the grounds that it constituted "inhuman or degrading treatment", and as such contravened the British Human Rights Act as well as European Union and international human rights laws - including the Convention Against Torture (1984) and International Covenant on Civil and Political Rights

(1966).[4] While Australia (unlike other OECD countries) does not have a charter of human rights, the prohibition on inhuman or degrading treatment is one of the few international human rights that is absolute and can never be restricted.

With respect to the second of the circumstances under which asylum seekers are denied work rights, namely seeking an intervention by the Minister under s.417 of the Migration Act, we maintain that while this remains the only mechanism for consideration of non-refugee protection claims, those seeking to use this means should not be subjected to penalties or harsh measures. The bases for this contention are amply set out in an April 2004 paper on complementary protection developed by the Refugee Council of Australia, National Council of Churches in Australia and Amnesty International Australia.[5] (A copy of this paper is attached). In summary, under our international obligations Australia owes protection to several categories of asylum seekers who, while not satisfying the criteria set out within the Refugee Convention (1951) and its Protocol (1967), have legitimate claims for protection under the other international human rights instruments to which we are a signatory.[6] Notable examples are stateless individuals and those subjected to gross human rights violations or the prospect of torture if returned to their country of origin for reasons other than those encompassed within the Refugee Convention and Protocol. Under our existing onshore determination system, the Minister provides the only opportunity for asylum seekers to have the validity of such claims assessed. And the Minister's power to exercise discretion is non-compellable, non-reviewable, non-delegable and only able to be invoked following an asylum seekers' unsuccessful passage through the administrative determination process.

We consider it a measure of their genuine fear that many of our clients have endured a protracted and arduous appeals process in anticipation of a fuller consideration of their claims under s.417. For many of our clients, the appeals process has lasted many years, during which they have predominantly been ineligible for work rights, health care and state support. As a consequence, those who are ultimately determined to not meet requirements for Australia's protection are often extremely debilitated by the harsh circumstances they have endured during their extensive appeals process and, as such, are extremely ill-equipped - financially, physically and psychologically - to cope with the challenges and practicalities of departure. (We acknowledge that the recently stipulated three-month timeframes for primary and merits review decisions may considerably reduce waiting periods for many asylum seekers.)

While we accept the validity of Ministerial rejections where grounds for the granting of protection do not exist, we consider that the suffering experienced by asylum seekers at this final stage of their claims would be significantly lessened were they:

- able to have their non-Refugee Convention-based protection claims assessed at an earlier stage;
- granted full entitlements pending a final determination of their claims; and
- provided reasons for a negative s.417 outcome and a corresponding right to appeal in the interests of natural justice.

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[4] The *Limbuela* case *(R v Secretary of State for the Home Department; ex parte Adam (FC) and others)* [2005] UKHL 66.
[5] available at http://www.refugeecouncil.org.au/docs/current/comp-protection-model.pdf
[6] These include: the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention relating to the Status of Stateless Persons (1954); the Convention on the Reduction of Statelessness (1961); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention on the Rights of the Child (1989); the International Convention on the Elimination of all forms of Racial Discrimination (1965); and the Convention on the Elimination of all forms of Discrimination Against Women (1979).

Furthermore, we are concerned that where the exercise of Ministerial discretion results in a positive immigration outcome, the individuals in question will be significantly hampered in their adjustment to their new life in Australia by the physical and psychological deterioration they are likely to have suffered whilst awaiting a final determination in conditions of enforced deprivation.

The third group excluded from work rights are a significant sub-category of those who are seeking judicial review. We are also deeply concerned that the near absolute ban on work rights applicable to these asylum seekers effectively penalises them for exercising their rights, under our democratic system and enshrined in international law, to appeal to the courts.

Last, but definitely not least in terms of their vulnerability, are the asylum seekers who are released from detention (including on the basis of pressing physical or psychological needs), without access to income support or health care. While we appreciate that detention releases generally occur in the context of a community guarantor, the practical reality is that these arrangements will often fall through given the high costs associated with meeting the full spectrum of needs of highly vulnerable asylum seekers who lack the capacity to self-support. Further, we are unable to fathom the logic or humanity of releasing a person on grounds of their health needs without providing them clear means to gain access to the health care required to respond to those needs.

Following are a small sample of current client case scenarios which exemplify the myriad challenges faced by asylum seekers who are denied work rights, health care and state supports:

> *A young, single, highly traumatised mother, with a toddler born in Australia following a sexual assault suffered while fleeing her country, and four additional children offshore, was recently diagnosed with an extremely rare and aggressive form of cancer, requiring extensive, leading-edge, reconstructive surgery followed by a strong course of chemotherapy. While eligible for ASAS at the primary and review stages of their claim, she and her child had lost their income and access to health care eighteen months prior to her diagnosis, when their matter progressed to the Ministerial stage. Her treating practitioners suggest that the cancer may well have been detected at a less advanced stage, in turn affecting prognosis, had she been able to attend a doctor earlier in relation to emerging symptoms. Indeed, by the time she attended a doctor she was in excruciating pain and had substantially lost the capacity to swallow, hear and breathe. In this instance, the woman was granted a special payment of ASAS due to the compelling nature of her circumstances, and she and her son have since been granted a humanitarian protection visa.*

> *A young, single, traumatised mother of two young teenagers has an untreated hole in the heart, which precipitated a stroke fifteen months ago. Awaiting a decision from the Minister, she has been work, ASAS and health care-ineligible since prior to her initial contact with our centre ten months ago. Unable to secure a pro bono operation on her behalf, we are funding her anticoagulant medication in an effort to mitigate against a repeat stroke. The mother is highly distressed and suffers bouts of extreme anxiety. The family is entirely dependent upon community supporters for their accommodation and other subsistence needs.*

A young family became work and ASAS-ineligible over six years ago, soon after the birth of their child. Four years later the father committed suicide, leaving his wife and son highly traumatised. The child has a range of health conditions requiring medication and care, which has to date been provided pro bono. The mother and child live in church provided accommodation and are completely reliant upon charity for their subsistence needs.

A single mother living with two of her children (aged 26 and 9) was diagnosed with multiple sclerosis five years ago. Now at the Ministerial stage, they have been ineligible for ASAS and health-care for over 3 years. The adult child was recently granted permission to work and endeavours to support her mother and sibling through occasional casual employment. The 9 year old child has now become his mother's primary carer. The mother has received pro bono chemotherapy and is regularly seen by a trauma counsellor. Her emotional state has deteriorated markedly along with her progressive physical decline. Her mobility is now greatly impaired and she requires assistance in performing routine functions. The family currently resides in a small second storey apartment accessible only by stairs.

A young single man was recently released from detention without income support or health care, having swallowed razor blades shortly prior, and following a one week hospital admission. He had been released on a $20 000 bond, paid by a supporter, but advised us that he was being charged $60/week rent for use of a garage until he found alternative accommodation. As he was at the merits review stage when he approached our centre, we referred him to Red Cross for an ASAS assessment. At our behest, the DIMA case management team agreed to pay his rent and a basic subsistence allowance pending commencement of his ASAS payments. He has recently been granted a protection visa, subject to medical and security clearance.

A highly traumatised man, separated from his wife and five children for whom he holds grave concerns, was released into the community on habeus corpus grounds, following twenty months of detention. Eighteen months later his status was regularised through issue of a BVE, without work rights or Medicare. Twelve months later he was granted work rights and Medicare as his matter is being personally considered by the Minister. Six months on, a decision has not been made. Three and a half years ago he requested the department to arrange his removal to any other country. Twelve months ago he was advised that he may be eligible for a Removal Pending Bridging Visa, but this has not been forthcoming. Notwithstanding the relaxation of his visa conditions, he remains entirely dependent upon charity for his subsistence needs as he is unfit to work due to his psychological debilitation. He is extremely isolated and increasingly prone to suicidal ideation. He is currently on a waiting list for trauma counselling. We have made a written submission requesting that he be considered for a special payment of ASAS, but have heard nothing to date.

A young man without work rights or Medicare, whose matter has been at the Federal Court for close to 2 years, was brutally assaulted, requiring complex reconstructive surgery, which we were successful in obtaining pro bono. He was also denied work rights at the primary and merits review stages of his claim following a DIMA processing error which rendered him 45-day rule affected. The error was belatedly acknowledged but he was

provided no apology or compensation for his period of work ineligibility. He has experienced a marked deterioration in his psychological state over the last year and is prone to suicidal ideation - which has required intervention from a crisis team. He is regularly seen by a trauma counsellor. He lives in a church-run shelter for homeless people and is utterly dependent upon community supporters for his subsistence needs.

ASC vision for processing of onshore asylum claims

As cited earlier, the vision of ASC is that asylum seekers be welcomed to Australia and afforded a dignified, meaningful and safe existence pending the fair, transparent and expeditious resolution of their claims.

Consistent with our agency vision, we sketch below our ideal model for the processing of onshore asylum claims. We contend that this is a model in keeping with our international human rights obligations and which reflects the standards and measures recommended within UNHCR Executive Committee Conclusions on the Reception of Asylum Seekers in the Context of Individual Asylum Systems [no. 93 (LIII) - 2002] and on the Provision of International Protection Including Through Complementary Forms of Protection [no. 103 (LVI) - 2005]. It is a model which we believe is simple, consistent and would mitigate against recurrence of some of the extreme hardships which we have described above.

1. Complementary Protection

   We believe that an administrative assessment of non-Refugee Convention based protection claims (as per European Union standards) would ensure a demonstrably fair, transparent and comprehensive onshore assessment process, consistent with our international human rights obligations. Such a system would likely expedite final determinations and significantly ease the burden currently placed upon the Minister to be the first and final arbiter on all non-Refugee Convention based claims. We further believe that those found not to be owed Australia's protection would be far more accepting of their need to depart, under a system of complementary protection, as they would have been provided reasons for and the opportunity to appeal any negative decision.

2. Work rights and Medicare access for all asylum seekers

   We believe that all asylum seekers (as distinct from other categories of bridging visa holders) should be granted work rights and correspondingly health care access from lodgement of their claim through to a final determination. We see this as a simple and appropriate means of mitigating against the further extreme suffering of an already vulnerable population and of ensuring our compliance with international human rights laws and standards. We contend, for reasons previously outlined, that the existing regulatory and policy bars to work rights and health care are an ineffectual mechanism for deterring any would-be misusers of our protection system and, indeed, have an exceptionally harsh impact upon those with legitimate claims and fears. We maintain that significant numbers of asylum seekers have the capacity to self-support where provided the opportunity to do so.

3. <u>State income and health care support for all asylum seekers unable to self-support due to circumstances beyond their control</u>

   We believe that vulnerable asylum seekers who are unfit to work and lack alternative means of self-supporting should be eligible for state-funded income support. This too is essential if Australia is to be compliant with its international human rights obligations. As with work rights, we believe such supports should be available for eligible asylum seekers from lodgement through to a final determination of their claim.

We believe that the above model would result in the more fair, transparent and expeditious processing of onshore protection claims and enable those whose claims are not upheld to leave in conditions of dignity and health, and those who are determined to require our protection to transition more readily into settlement.

Recommendations regarding specific aspects of existing Bridging Visa regime

The Asylum Seekers Centre wishes to make a series of recommendations in relation to the following areas:

i. <u>Definition of Asylum Seekers and Differentiation from other Categories of BV Holders</u>

We have noted with concern that figures recently provided by different sections of DIMA relating to asylum seekers holding particular classes of bridging visa appeared to be at variance with one another. It seems that divergent definitions of who is an asylum seeker, and the lack of differentiation amongst bridging visa holders on the basis of their asylum seeker status, have contributed to difficulties in generating consistent data.

We reiterate our definition of an asylum seeker as an individual who has lodged a protection visa application and is awaiting a substantive outcome, whether this be at the primary, merits review, judicial review or Ministerial stage of our onshore determination process. We consider that the term asylum seeker includes individuals seeking to invoke Australia's protection obligations under relevant human rights instruments other than the Refugee Convention.

We recommend ***that a definition of 'asylum seeker' in keeping with the above principles be adopted by DIMA in the interests of clarity and consistency.***

Implementation of the above recommendations may therefore assist a closer monitoring of statistical trends regarding asylum seekers' passage through the determination system

Further, given that asylum seekers are only one category of non-citizens to whom bridging visas are issued, and recognising that asylum seekers are likely to have specific vulnerabilities not shared by other bridging visa holders, we recommend ***that a separate bridging visa class be created specifically for issue to asylum seekers, defined as per above, in the interests of clarity and consistency.***

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ii. <u>Work Rights</u>

For reasons outlined above, we strongly recommend ***that full work rights and Medicare-eligibility be automatically granted to all community-based asylum seekers, irrespective of the date of lodgement of their application for a protection visa, the***

mode of their arrival (authorised or unauthorised; by air or by sea), the stage of their claim within the determination process (including judicial review and Ministerial intervention), and including those released from immigration detention. We recommend that the grant of work rights remain consistent for all asylum seekers from the time of lodgement of a protection application through to its final determination.

We consider that the above reforms to work rights would contribute to the creation of a more simple, clear and consistent system in keeping with our international obligations.

Further, and for reasons previously outlined, we specifically recommend ***repeal of the 1997 regulation establishing the 45-day rule.***

If the above is not adopted, we strongly recommend that, at minimum, ***the regulation be amended to allow DIMA officers to exercise discretion to waive the restrictions on work rights. We recommend that such discretion be exercised by well-trained officers working to guidelines developed with relevant community stakeholder input, and with a right of appeal granted to those denied a discretionary waiver. We recommend that the examples of legitimate reasons for late lodgement provided on p.5 of this submission form the basis for applicable guidelines.***

Further, ASC specifically recommends:

- ***repeal of the 1998 regulation removing DIMA discretion to grant work rights for those seeking exercise of Ministerial discretion;***

- ***that all asylum seekers seeking judicial review of an earlier decision be granted full work entitlements, consistent with the above recommendations;***

- ***that asylum seekers released from immigration detention on a BV be granted full work entitlements, consistent with the above recommendations.***

If the recommendation to provide comprehensive work entitlements is not adopted, we strongly recommend that, at minimum, and in the interests of consistency and fairness, ***permission to work be automatically granted wherever discretion at present exists for this to occur and criteria appear to be satisfied (without requiring an application trigger from asylum seekers who may not be aware of the existence of discretionary mechanisms).***

If existing discretion does not convert into an automatic grant of work entitlements, we further recommend ***that criteria for the exercise of discretion be provided to asylum seekers, in relevant multilingual form, upon lodgement of their applications and again subsequently if required, and that discretionary decisions of this nature be appealable***. We recommend the above in the interests of clarity, consistency and fairness.

If the recommendation to provide comprehensive work entitlements is not adopted, we strongly recommend ***that any asylum seekers denied the right to seek paid employment, be permitted, at the very least, to engage in voluntary work.***

iii. ASAS

For reasons outlined above, we strongly recommend ***that ASAS entitlements be comprehensively applied across all stages of the onshore determination process to all***

asylum seekers who are unfit to work and lack adequate and reliable alternative means of self-support.

We envisage that ASAS payments would be periodically reviewed and would cease where a recipient regained the capacity to work (eg. through rehabilitation or cessation of carer responsibilities) or acquired another reliable means of self-support. We recommend the above in the interests of simplicity, consistency and fairness.

If the above recommendation is not adopted, we strongly recommend, at minimum, ***that the duration of ASAS payments be made consistent with that of the visa held by the ASAS recipient at the primary or merits review stage - namely until 28 days subsequent to a decision having been made.***

Under existing arrangements, vulnerable asylum seekers may be eligible for ASAS payments at the primary and merits review stages. While the duration of bridging visas accommodates the period following a negative decision during which an asylum seeker may lodge an appeal, ASAS payments automatically and immediately cease upon the issuing of a negative decision. As such, asylum seekers who receive a negative primary decision typically endure an unanticipated period without supports, while they consider whether to lodge an appeal, and then need to reapply if they choose to seek merits review. We are aware of occasions where this 'gap' has precipitated serious difficulties for asylum seeker families and individuals.

Further, we recommend ***that, in order to ensure that vulnerable asylum seekers receive levels of support appropriate and responsive to their individual needs, case management capacity be incorporated into the existing ASAS program***.

Finally, we are not aware of existing mechanisms whereby DIMA officers automatically refer apparently eligible asylum seekers for ASAS assessment through the Red Cross.

We therefore *recommend* ***that multilingual information be provided to all asylum seekers, at the time of lodgement of their claims, regarding the eligibility criteria and means of applying for ASAS support.***

iv. Health Care

As previously indicated, under the existing Bridging Visa system, access to health care is linked to work and ASAS entitlements. As such, those ineligible for either are effectively denied access to our health care systems.

We strongly recommend ***that, if work rights and ASAS entitlements are not made comprehensive for all asylum seekers across all stages of the determination process, measures be introduced to ensure that all remaining asylum seekers be somehow afforded safeguards to guarantee their access to appropriate health care.*** We make this recommendation in the interests of compliance with our international human rights obligations.

v. Study Entitlements

We recommend that in addition to children, ***all adult asylum seekers be granted permission to undertake formal study throughout the processing of their protection claims.***

This measure would enable asylum seekers to develop skills and qualifications which would assist their settlement in Australia if found to require protection or their survival elsewhere if required to depart.

vi. BV Duration

At the primary, merits review and judicial review stages of the determination process, a single bridging visa is issued for the duration of the decision making period plus an additional 28 days, allowing the visa holder to remain in the community lawfully while lodging an appeal or making preparations for departure. At the Ministerial stage, bridging visas are issued for apparently arbitrary periods, including for as short as 2 weeks. Where asylum seekers are eligible for study or Medicare (eg. where they have a child who is a permanent resident), the issuing of short-term visas will often obstruct their capacity to study (they cannot enrol if their visa duration is shorter than that of a study semester) or be issued a Medicare card (due to processing periods on Medicare applications). In the rare event that an asylum seeker is work-eligible at this stage, short visas also deter employers from taking them on. Asylum seekers at the Ministerial stage are often advised by Compliance officers that they have no entitlement to a visa, generating high levels of anxiety, and contrary to our experience that visas are rarely refused where a Ministerial application remains current.

In the interests of simplicity and consistency, we recommend ***that bridging visa durations be standardised so as to become 'event-driven' across all determination stages - namely, that at the Ministerial as at other stages, a single visa be issued for the duration of the decision making process plus an additional 28 days.***

If the above is not adopted, we recommend ***that visas be issued for a minimum six-month period and that compliance offers desist from advising clients that their visas may not be reissued (unless there exists a very real prospect of this occurring) in order to avoid unnecessary anxiety.*** We make this recommendation in the interests of simplicity, consistency and fairness.

vii. Flexibility and Use of Alternatives to Detention

We commend introduction of the Residence Determination provisions and recommend ***that these be expanded to accommodate individuals as well as families who do not meet criteria for detention release, but whose needs cannot be met within a conventional detention environment.***

Introduction of the Removal Pending Bridging Visa (RPBV) for offer to long-term detainees who, while found not to be refugees, are currently unable to be safely removed, is also a welcome development to the extent that it allows access to work rights as well as Medicare and certain Centrelink benefits to an extremely vulnerable group. Notwithstanding the improved conditions afforded, we are concerned that, given its temporary status and negation of family reunion rights, the visa does not provide a durable solution for eligible asylum seekers - notably stateless individuals.

We therefore recommend ***that, where safe removal to another country cannot be arranged for RPBV holders within a strictly delimited timeframe, they be afforded permanent protection in Australia, with full rights to family reunion.***

We welcome the introduction of the Community Care Pilot, as a potentially important mechanism for facilitating delivery of appropriate supports to asylum seekers, which are responsive to their individual circumstances.

We recommend ***that eligibility criteria for the recently initiated Community Care pilot be expanded to include all highly vulnerable asylum seekers currently residing in the community who lack adequate alternative means of support.***

We recommend ***that the recently initiated DIMA case management pilot develop clear program guidelines and that these be released to relevant community stakeholders, in the interests of clarity and in a spirit of collaboration***. We further recommend ***that comprehensive training be provided to case management officers to ensure their sound understanding of external supports both available and currently not available to community-based asylum seekers.***