

CHAPTER 8 – CULTURAL AND SOCIAL STREAM

BACKGROUND

Policy Objective

- 8.1 The role of the Cultural and Social stream is to enrich Australian cultural and social life through the entry of people to take part in a wide range of sporting, entertainment, academic and cultural activities.

Current Arrangements

- 8.2 The nature of the stream is such that it currently includes a diverse range of visas. Arrangements for some of the visas in this stream raise issues of some complexity and they are therefore dealt with in separate chapters as follows:
- Entertainment (subclass 420) visa – see Chapter 10;
 - Sport (subclass 421) visa – see Chapter 12;
 - Religious Worker (subclass 428) visa – see Chapter 11; and
 - Retirement (subclass 410) visa – this visa is not included in this Review.
- 8.3 It is also proposed that the Special Program visa, which is currently in the International Relations Stream, be moved into the Cultural and Social Stream. This visa is discussed in Chapter 9.
- 8.4 This chapter deals with the visas in this stream where the issues, while not necessarily straightforward, are more clear-cut:
- Visiting Academic (subclass 419) visa;
 - Media and Film Staff (subclass 423) visa;
 - Public Lecturer (subclass 424) visa; and
 - Family Relationship (subclass 425) visa.

VISITING ACADEMIC VISA (SUBCLASS 419)

Current Arrangements

- 8.5 The Visiting Academic visa is intended for academics whose primary purpose of stay is to observe or participate in research projects (without remuneration other than for living expenses and travel costs) at the invitation of an Australian tertiary institution or research organisation.
- 8.6 The applicant must either be:
- invited to visit (usually by the Registrar or an equivalent of an Australian tertiary or research institution) for the purposes of observing or participating in research at the institution, or
 - seeking to enter Australia under an agreement between the government of Australia and the government of another country. (Arrangements for applications on the basis of these country-to-country agreements are discussed in Chapter 13.)
- 8.7 Where the applicant is invited to visit, he or she does not receive a salary, scholarship or allowance from the institution (other than for living expenses and travel costs). The visa is intended for people who are doing research, for example, during their sabbatical leave from their normal employment overseas. The applicant is not required to be sponsored but must provide a copy of the invitation from the institution. There is no labour market testing required for such positions.
- 8.8 Over 3,500 visiting academic visas were granted in 2000-01. Many (about a third) stay in Australia for less than three months and most of the remainder leave within twelve months.

8.9 The relatively short periods of stay of many visiting academics is consistent with the purpose of the visa and the fact that they cannot receive a salary. Most visiting academics who wish to stay in Australia for only a short period would be eligible for a short stay business visa (which does not have a sponsorship requirement). Visa arrangements for persons who wish to stay in Australia for up to three months are discussed in more detail in Chapter 6.

Is a Separate Visa Needed?

8.10 This visa facilitates an international collegiate approach to conducting research and is considered important by the institutions that utilise it. The role of these researchers is unique in that they undertake work in a highly specialised field that would normally attract remuneration, but they do not receive payment (other than reimbursement for living expenses) for the activity.

8.11 There is a need to provide for international academic contact and exchange of ideas through this visa. These visa arrangements differ from the temporary business entry which now has a salary threshold and educational visa arrangements that have labour market testing requirements, salary and employment standards. The introduction of such requirements would reduce the flexibility of institutions for research collaborations on the basis that they currently operate and the institutions would therefore be likely to resist such a change. It would therefore seem inappropriate to absorb these provisions into the temporary business visa.

8.12 Visitor visa arrangements would also seem unsuitable for these applicants – it is a standard condition on visitor visas that work is not permitted, including work that would normally attract remuneration (even if the visa holder is not being paid). As the nature of the activity does not fit well

with any other visa, it is proposed to retain the Visiting Academic visa as a separate visa. This visa should be sufficiently flexible to allow for researchers who are normally employed in industry research facilities as well as those working in tertiary institutions. As the Visiting Academic visa meets the needs of the academic community, it should be retained.

MEDIA AND FILM STAFF VISA (SUBCLASS 423)

Current Arrangements

8.13 The Media and Film Staff visa is intended for persons who are:

- representing an overseas news organisation; or
- making a documentary or commercial exclusively for overseas use; or
- entering Australia under a country-to-country agreement.

8.14 Just over 500 media and film staff visas were granted in 2000-01. The majority of users of this visa depart Australia within three months of their arrival and most the remainder leave within six months. Only very small numbers remain for more than twelve months.

Is a Separate Visa Needed?

8.15 There appears to be no justification for these provisions to be contained in a separate visa. The three groups of persons currently provided for under this visa can be more appropriately handled in other visas without disadvantage to clients or sponsors.

- Arrangements for media representatives are also discussed in Chapters 5 and 10 – under those proposals these persons will be able to use the temporary business visa arrangements. If they intend to stay less than three months a short stay temporary business visa (subclass 456) would be more

appropriate while the long stay business visa (subclass 457) would meet the needs of these people if temporary stays of longer than three months are needed.

- Persons who intend to make a documentary or advertisement for overseas use are also discussed in Chapter 10 – under those proposals, provisions for these persons will be transferred to the entertainment visa.
- Arrangements for persons entering under a country-to-country agreement are discussed in Chapter 13 – under those proposals a new visa would be created for these people and there would be no need for these provisions to be separately retained in this visa.

8.16 The combined effect of these proposals means that the Media and Film Staff visa could be abolished. These changes should lead to a simpler visa regime for clients and increased efficiency of processing. This is consistent with recommendations to this effect in Chapters 5, 10 and 13 respectively.

PUBLIC LECTURER VISA (SUBCLASS 424)

Current Arrangements

- 8.17 This visa is intended for persons whose usual occupation is associated with appearing and lecturing regularly in public and whose primary purpose in seeking a visa is to follow that occupation, usually in response to an invitation from an organisation in Australia. The visa caters for persons who normally lecture in public forums, rather than those employed by a university or institution.
- 8.18 If the applicant has been invited to give lectures, they must provide evidence of the invitation. If they intend to stay more than three months they must be sponsored by the person or organisation that has invited them to Australia.

8.19 This visa also includes provisions for persons entering Australia under an agreement between Australia and the government of another country. Arrangements for applications on this basis are discussed in Chapter 13.

8.20 Only twenty-seven public lecturer visas were granted in 2000-01. Most users of this visa depart within three months and the remainder generally depart Australia in less than six months.

Is a Separate Visa Needed?

8.21 There is a need to consider the rationale for a separate visa for the small number of public lecturers who use this visa each year.

Given the small usage of this visa, no separate provision for public lecturers is justified. (Submission from The Australian Lebanese Christian Federation Inc.)

8.22 Appropriate arrangements for persons who wish to stay in Australia for up to three months are discussed in Chapter 6. Under those proposals public lecturers, the vast majority of whom stay in Australia less than three months, would generally be eligible for the short stay business visa. It is proposed that those public lecturers who cannot meet the requirements for a short stay visa or the small number who wish to stay longer than three months, be required to use the Business (long stay) visa arrangements discussed in Chapter 5. The person currently inviting them would need to act as sponsor. Policy would need to indicate how to treat the newly introduced salary threshold in relation to public lecturers who are usually not employed on an ongoing basis but may receive one-off payments.

8.23 The intention of this proposal is to eliminate the administrative burden and client confusion associated with a visa that is rarely used. It is intended that any persons who currently use these provisions would continue to be eligible for a temporary residence visa on broadly comparable grounds, but that it would no longer be the Public Lecturer visa. This is consistent with the recommendation in Chapter 5 that the Public Lecturer visa should be abolished (recommendation at paragraph 5.121 refers).

FAMILY RELATIONSHIP VISA (SUBCLASS 425)

Current Arrangements

8.24 The purpose of this visa is to enable unmarried people of secondary school age to have an extended holiday in Australia for up to twelve months, with an opportunity to learn about Australia and, where appropriate, learn English on an informal basis while staying with relatives or close family friends. However, the main purpose of stay must not be to improve the applicant's proficiency in English or to undertake formal studies, that is, any course or studies over three months. Where this is the case a student visa is the appropriate visa.

8.25 The applicant must be under eighteen years and must be going to live with a family in Australia who are his or her relatives or have close family connections. The connections (relatives or close family friends) in Australia are required to provide the applicant with accommodation and financial support and ensure that they depart Australia prior to the expiry of the visa. It is policy that this visa is only granted for a stay of up to twelve months.

8.26 In 2000-01 ninety-four family relationship visas were granted. Visa holders tend to stay more than three months but, as

required by the visa, none stay more than twelve months.

Is a Separate Visa Needed?

8.27 The primary purpose of this visa is to allow a young relative or friend to visit and experience Australia. As such, these provisions would seem to fit more logically with the purpose of other visitor visa provisions. Moreover, it is difficult to justify the existence of a separate visa for such small numbers of applicants to visit Australia, particularly where the visitor visa arrangements would readily provide for these people.

8.28 This Review recognises the role for this sort of entry and support from the community for its continuation:

The entry of children under 18 to have an extended holiday in Australia is of benefit to Australia in the sense that it allows the children concerned to experience the Australian way of life and to bring that experience about Australia back to their home country... it meets a major social objective of allowing families to be together for some time, as well as the objective of projecting our image abroad. (Submission from the Vietnamese Community in Australia)

8.29 However, there is no reason that provision for this sort of entry could not be made within another visa. It is therefore proposed that this visa be abolished and that provision be made in the visitor visa policy for this group, ensuring that no one will be disadvantaged by this change. DIMIA processing offices support this approach. Consistent with the current family relationship visa policy, it is proposed that the applicant not be allowed to work or undertake formal studies during their stay in Australia. Where a person wishes

to study for over three months, he or she should apply for a student visa, as the visitor visa is not suitable where long-term study is intended.

- 8.30 Transferring these provisions to the visitor visa would have no impact on the visa applicant or their ability to obtain a visa for these purposes. It would have the effect of removing the explicit requirement for the family in Australia to take responsibility for the applicant during their stay. However, under visitor visa policy, applicants are required to show that they have, or have access to, adequate funds to sustain them for the duration of their visit. In the case of the child travelling to Australia without their parents this requirement would be subject to some scrutiny. Minors seeking visitor visas and intending to travel alone to Australia must also have parental consent. Thus, while the mechanism may have changed, the same level of integrity will be maintained in ensuring appropriate financial arrangements exist. Visitor visas also have the same protections as the family relationship visa for children under eighteen staying in Australia with someone who is not their parent, that is, the host in Australia must be of good character.

8.31 **RECOMMENDATION:**
That the Family Relationship (subclass 425) visa be abolished and that persons use either a visitor visa or a student visa, depending on the nature of their stay.

MAJOR ISSUES RAISED

- 8.32 Examination of the visas in the Cultural and Social Stream raised the following general issues:
- Are the visas in the cultural and social Stream meeting their policy objectives?
 - How are employment and labour market issues addressed in this stream?

- 8.33 These issues are addressed in the context of the five policy parameters and the need for client service and administrative efficiency. Of the four visas discussed in this chapter, it is recommended that only the visiting academic (subclass 419) visa be retained as a separate visa. The following discussion therefore relates to the visiting academic visa.

NO NET COST TO THE AUSTRALIAN COMMUNITY

Introduction of Sponsorship

- 8.34 The cost to the Australian community associated with the entry of temporary entrants is minimised through the operation of sponsorship undertakings. As discussed in Chapter 4, it is recommended that, as a general rule, sponsorship undertakings should be standardised across the temporary resident visas (recommendation at paragraph 4.21 refers). There would appear to be no justification for exempting for visiting academics from some form of sponsorship requirement.
- 8.35 Some respondents to the discussion paper expressed the view that it would not be appropriate to have a sponsorship requirement for this visa because it provides substantial benefit to Australia's academic life. While this benefit is acknowledged, it is also noted that many of the temporary residence visas bring substantial benefit to Australia's social, cultural and intellectual life but are nevertheless subject to a sponsorship requirement. Submissions to the Review were against a sponsorship requirement for this visa for other reasons:

We do not believe that this class of visa warrants a sponsorship requirement, and to do so would place an additional administrative burden on employers. (Submission from Murdoch University) and

...[it] would place a financial burden on the University if sponsorship became necessary, and the sponsorship...processes would slow the process of 419 visa holders coming to Australia. (Submission from University of New South Wales)

- 8.36 However, the sponsorship requirement is a means of ensuring that an institution that brings an overseas resident to Australia shares in the responsibility for that person while they are here. Chapter 4 discusses the role of sponsorship and appropriate sponsorship arrangements in more detail. Consistent with its recommendations, visiting academics using the Visiting Academic (419) visa should be sponsored.
- 8.37 It should be noted that under the proposals outlined in Chapter 6, many of the visiting academics who intend to stay in Australia less than three months could use the short stay business visa (subclass 456), which does not have a sponsorship requirement.

experience by allowing persons to observe and undertake research in an unpaid capacity. The visa is not intended to bring in overseas workers to meet local labour market shortages and this is reflected in the lack of labour market testing under current arrangements. Indeed such testing would seem to conflict with the purpose of this visa and is not viewed as appropriate for this visa by users of the visa:

...[introduction of a requirement for a salary and labour market testing] could complicate the process unnecessarily, particularly if applicants are salaried in the home institution, or if they are here for a very short time. (Submission from Deakin University)

Labour market testing is not considered relevant for 419 visas as the individual is normally invited to visit and has some contribution to the research often bringing their intellectual capital to the university without any remuneration. (Submission from the University of Melbourne)

EMPLOYMENT OPPORTUNITIES FOR AUSTRALIANS

- 8.38 Temporary residence policy is designed to avoid a negative impact on the employment opportunities of Australian citizens and permanent residents. Absorbing the provisions of many of these low usage occupation-specific visas into the temporary business entry provisions (and in some cases other temporary visas) would extend the effect of the proposed new arrangement for the business visa for taking into account labour market considerations (discussed in detail in Chapter 2).
- 8.39 However, the purpose of the visiting academic visa is to allow Australian and overseas research institutions to benefit from the exchange of expertise and

- 8.40 For these reasons it would be difficult to absorb provisions for visiting academics into any other visa that has these requirements. Visiting academics would not meet the new salary threshold for the temporary business (subclass 457) visas because they do not receive a salary. It would also not be appropriate to introduce traditional labour market testing arrangements for this visa.
- 8.41 During the consultation process responses indicated that there is considerable support for this visa, particularly from tertiary institutions, and for retaining the current visa arrangements unchanged. Some concerns were raised that the easier requirements for the Visiting Academic visa mean that some educational institutions use it instead of the Educational visa, even

where the latter would be more appropriate. Reiteration of the policy intention for this visa should therefore be undertaken to emphasise that this visa is not intended for employment in Australia to work as a teacher, academic or to carry out a research project. Likewise, it should be made clear that it is expected that the applicant's normal employment overseas is as a researcher or academic.

Improvements in client information should make the specific circumstances in which this visa may be used clearer to clients.

Work Rights for Family Members

8.42 Under current Visiting Academic visa arrangements, family members of 'main' applicants are given full permission to work under this visa. However the nature of this visa is such that visa holders are not permitted to receive a salary, although they may be paid a living allowance. Comments from DIMIA processing offices raised concerns about the use of this visa, given that it does not have the same salary requirements as other temporary resident visas, and the absence of any labour market or comparable testing and given the increasing size of the visa (over 3,500 visas granted in 2000-01).

It is essential that the temporary residence visa system not be open to misuse by family members of visa applicants. By misuse I refer to family members using the visa grant of the principal applicant as a way to access Australia, including accessing the labour market and potentially adversely impacting on the employment prospects of Australians. This may be a particular concern where the principal applicant does not receive a salary. In these cases the access of the family members to the Australian labour market may be the main motivation for the visa application. (Submission from DIMIA overseas post)

8.43 Given that the 'main' applicant may not receive a salary, any accompanying family member may seek work, possibly of an unskilled nature, to help meet family expenses. Any access of overseas workers to the unskilled segment of the labour market is a concern.

8.44 Chapter 3 discussed a new approach for work rights for family members accompanying temporary residents to Australia. Under that proposed approach, family members of Visiting Academics will retain access to work rights where the 'main' visa holder is approved for a period of stay longer than 12 months. This policy balances the potential impact on the unskilled labour market of providing unrestricted work rights to family members against the legitimate aspirations of long-term temporary residents and the benefit these visa holders bring to Australia.

8.45 Holders of the Visiting Academic visa usually stay in Australia for very short periods of time and therefore are unlikely to bring family members with them with the expectation of working in Australia. This policy will, however, allow family members of the small proportion of visa holders who are approved to remain in Australia for more than 12 months the option of obtaining work should they wish. Opportunities for dependants to undertake study, as long as it is not at tax-payers' expense, are not affected.

TRAINING OPPORTUNITIES FOR AUSTRALIANS

8.46 It is a principle of temporary residence policy that the entry of temporary residents does not result in the loss of training opportunities for Australians. Absorbing the provisions of low usage occupation-specific visas into other temporary visas (and, in particular, the temporary business entry visa) provides the opportunity to apply a standardised approach to ensure

that, while they may bring in overseas workers to meet specific skill shortages, employers also participate in training Australians.

- 8.47 In line with Chapter 4 Sponsorship recommendations, the introduction of sponsorship provisions to the visiting academic visa is discussed in this Chapter under 'No Net Cost to the Australian Community'. Introduction of such provisions would extend the commitment to training currently required under the temporary business visa (subclass 457) to sponsors under this visa.

PAY AND CONDITIONS FOR AUSTRALIAN WORKERS

- 8.48 In order not to undermine the pay and conditions of Australian workers, temporary entrants are required to be paid Australian levels of remuneration and be employed under Australian conditions of employment. This requirement is usually assessed as part of a sponsorship application. Moving the provisions of these occupation-specific visas into other visas and standardisation of sponsorship requirements (as discussed in Chapter 4) would extend this requirement to all sponsored employees.
- 8.49 However, the purpose of the Visiting Academic visa is such that it is intended to facilitate an international collegiate approach to conducting research and encourage the transfer of skills and knowledge in highly specialised fields. This visa is not intended to bring in overseas workers to meet local labour market shortages. The visa holder is not permitted to receive a salary, scholarship or allowance from the institution (other than for living expenses and travel costs). As with labour market testing the introduction of a requirement that visiting academics be paid salaries in accordance with salaries paid to

Australian academics would conflict with the purpose of the visa.

- 8.50 It is appropriate to retain the prohibition for holders of Visiting Academic (419) visas from receiving a salary. Academics who are entering Australia to undertake work in return for a salary should apply for another type of visa.
- 8.51 There is, however, a need to clarify the purpose and extent of the living allowance payable to applicants in line with the expectation that they are on leave from their usual research or academic position. Submissions to this Review commented on this:

The definition of 'allowances for living expenses' needs to be clear. The amount that is reasonable should also be specified. (Submission from Murdoch University)

It would be beneficial for DIMIA to expand on the definition of "living expenses" and helpful if institutions were provided with examples of what [to] include. (Submission from the University of Melbourne)

- 8.52 Given that for this visa there is no salary to be paid, it is important that there be scrutiny of living allowances paid to ensure that there are appropriate arrangements to cover the financial needs of the person while in Australia and to ensure that the living allowance mechanism is not used as a de facto salary that may undercut Australian salary levels. The policy guidelines on the purpose and extent of the living allowance payable to visiting academics could benefit from clarification in terms of the upper limit of the dollar amount, the items which could be included and other relevant considerations such as relative locational costs. In

clarifying the appropriate level of living allowance payable to visiting academics the proposed changes to work rights for family members needs to be taken into consideration.

8.54 It is proposed that the other visas discussed in this chapter be abolished and, where necessary, the relevant provisions incorporated into other temporary entry visas.

IMMIGRATION INTEGRITY

8.53 A discussion of generic immigration integrity issues can be found in Chapter 2. No other issues specific to the visas discussed in this chapter were raised in the course of this review. Available departmental statistics support the view that there are no particular areas for concern in relation to the Visiting Academic Visa.

- Over 730 visa holders applied for a further temporary entry visa while in Australia. This represents around one fifth of the number of these visas granted in a year. Over half of these were applying for a further visiting academic visa. (The issue of people extending their stay on another temporary resident visa of the same kind was discussed in Chapter 2 at paragraphs 2.88–2.96.) About a third applied for student or educational visas. About ten per cent applied for tourist visas. This pattern raises no issues of concern.
- A small number applied for permanent visas while onshore, a significant portion of which were for the Employer Nomination Scheme where an employer has nominated the visa holder to fill a skilled permanent vacancy because they cannot find suitably qualified workers in Australia.
- No holders of the visiting academic visa had their visa cancelled in 2000-01.
- Statistics regarding overstayers indicate that only a very small proportion of visiting academic visa holders remain in Australia beyond the validity of their visa, for example less than a third of one per cent in 2000-01.

