



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS21-000110

Date of Clearance: 05/02/2021

To Minister for Home Affairs

Subject Possible Ministerial Intervention under section 195A of the *Migration Act 1958* to grant Final Departure Bridging E visas to Transitory Persons in Held Detention – Group Submission

Timing At your convenience.

Recommendation

That you:

1. indicate whether you wish to consider exercising your power under section 195A of the *Migration Act 1958* (the Act) to grant the persons listed at **Attachment A**, Humanitarian Stay (Temporary) (subclass 449) visas (HSTV) for seven days and Final Departure Bridging E (subclass 050) visas (FDBVE);

- if agreed, please sign the decision documents at **Attachments B-D**.

☒ intervene / ☐ decline to intervene

☒ signed / ☐ not signed

Minister for Home Affairs

Signature 

Date 18/02/2021

RECEIVED

08 FEB 2021

Minister for Home Affairs

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. The Department of Home Affairs (the Department) is referring 69 transitory persons (**Attachment A** refers) who are currently in held detention for your consideration under section 195A to grant Humanitarian Stay (Temporary) (subclass 449) visas (HSTV) for seven days and Final Departure Bridging E (subclass 050) visas (FDBVE).
2. If you are inclined to consider any of the persons listed at **Attachment A** under section 195A, the grant of an FDBVE would provide them with permission to work, in order to be able to support themselves in the community, and with access to Medicare. They would be provided with transitional assistance through the Status Resolution Support Services (SRSS) program, but would not have access to ongoing support.
3. s. 47F(1)
4. Current levels of restrictions in place in response to the COVID-19 pandemic could impact the abilities of individuals to find employment and accommodation. International travel restrictions and reductions in international flights may impact on the ability for individuals to depart Australia, if they are willing to do so.
5. The grant of an FDBVE without access to support services may attract criticism from external scrutiny bodies and community groups.
6. If you decline to intervene in any case, that person will remain in detention.

Background

7. s. 47F(1) and their details are outlined in the attached case summaries at **Attachment A**.

8. The 69 individuals have been split into three groups, comprising 25, 25, and 19 individuals respectively, to enable the Department to operationalise your decision, should you choose to intervene. The groups are listed at Attachment A.

Options for Future Management

9. Section 195A of the Act provides you with the power to grant a visa to a person in immigration detention if you think it is in the public interest to do so. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising your power
10. If you are inclined to consider intervening under section 195A of the Act, the Department considers the grant of a Humanitarian Stay (Temporary) (subclass 449) visas (HSTV) for seven days and a FDBVE valid for six months to be appropriate.
11. For the persons listed in Group 1, the HSTV and FDBVE will come into effect on 1 March 2021. For the persons listed in Group 2, the HSTV and FDBVE will come into effect on 2 March 2021. For the persons listed in Group 3, the HSTV and FDBVE will come into effect on 2 March 2021. The list of individuals in each group can be found at Attachment A.
12. The grant of an FDBVE will enable these persons to reside lawfully in the community, while providing more stringent conditions. The following conditions will be imposed on their FDBVEs:
- conditions to promote engagement - **8401** (report as directed) and **8506** (notify new address);
 - conduct related conditions – **8564** (must not engage in criminal behaviour) and **8566** (not breach Code of Behaviour); and
 - study restricted unless under 18 – **8207** (no study).
13. Each FDBVE would be granted with permission to work, providing them the capacity to financially support themselves, reduce the risk of undesirable behaviour in the community and further promote engagement with Status Resolution. They would have access to Medicare, but no ongoing access to SRSS, including income support.
14. While residing in the community as the holder of an FDBVE, these persons would be required to abide by the associated conditions. Should any person breach their conditions, they would be liable for consideration of discretionary visa cancellation under section 116 of the Act.
15. To manage their transition into the community, each person would be eligible for transitional support, under the SRSS program. After this period of support, all support services including specialist services, will generally cease. Transitional support is designed to link people into the services they need to live independently in Australia and bridge the gap between the support provided in immigration detention and the community.
16. If you intervene under section 195A of the Act to grant FDBVEs, the Department will be unable to cancel visas, in order to detain under section 189 of the Act, unless the individuals breach their visa conditions.

Decline to intervene

17. If you decline to intervene in any of these cases, they will remain in detention and the placement of these persons will continue to be reviewed on a regular basis.

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Consultation – internal/external

18. Status Resolution Network.

Consultation – Secretary

19. The Secretary has not been consulted on this submission.

Client service implications

20. There are no client service implications.

Sensitivities

21. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our longstanding practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

Financial/systems/legislation/deregulation/media implications

22. The Department is unable to provide specific details regarding the financial implications of managing an individual, either in the community or in detention. **S. 47C(1)**



Attachments

Attachment A Brief Case Summaries

Attachment B Section 195A Decision documents – Group 1

Attachment C Section 195A Decision documents – Group 2

Attachment D Section 195A Decision documents – Group 3

Authorising Officer
Cleared by:
s. 22(1)(a)(ii) A/g Assistant Secretary Status Resolution Branch
Date: 5 February 2021 Ph: s. 22(1)(a)(ii)

Contact **s. 22(1)(a)(ii)** A/g Assistant Secretary, Status Resolution Branch, Ph: **s. 22(1)(a)(ii)**

CC	Secretary FAS, Immigration Integrity and Community Protection Commander, Detention Operations Senior Assistant Secretary, Regional Processing & Resettlement Senior Director, Status Resolution Network Status Resolution Directors, Status Resolution Network
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OFFICIAL: Sensitive Personal privacy

Attachment A

Group 1: Grant effect date 1 March 2021

s. 47F(1)




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Attachment A

Group 2: Grant effect date 2 March 2021

s. 47F(1)



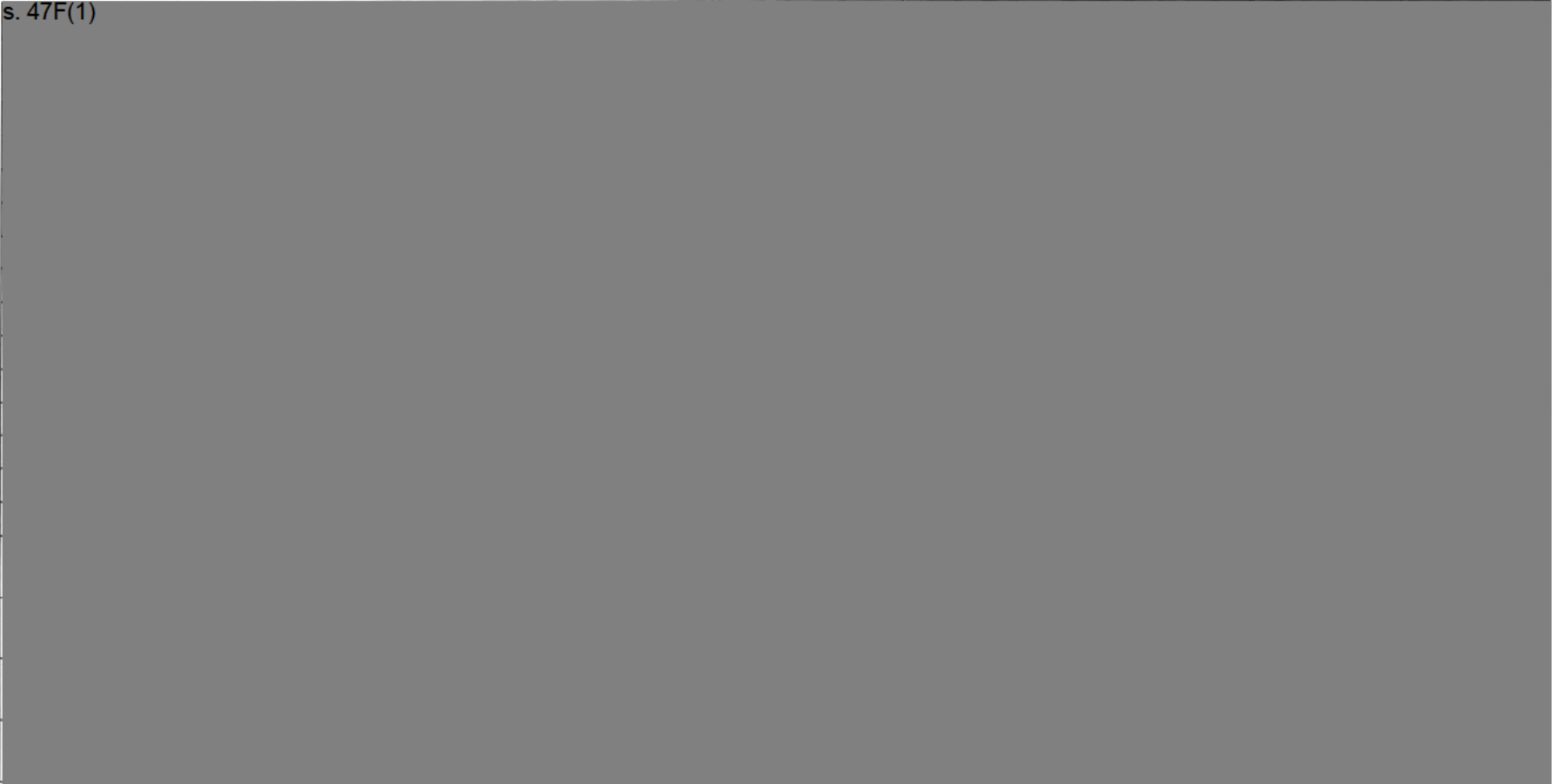
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Attachment A

Group 3: Grant effect date 2 March 2021

s. 47F(1)



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**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

1. The individuals named in the table below are in detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their cases under section 195A of the Act.
2. Pursuant to subsection 195A(2), and thinking it is in the public interest to do, I have decided to grant a Humanitarian Stay (Temporary) (subclass 449) visa and final departure Bridging E (subclass 050) visa and to the individuals named below:

Group 1: Grant effect date 1 March 2021


s. 47F(1)



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s. 47F(1)



THE HON PETER DUTTON MP

Minister for Home Affairs

18 / 02 / 2021

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**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. These persons are detained under section 189 of the Act as unlawful non-citizens.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant these persons a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant these persons a Humanitarian Stay (Temporary) (subclass 449) visa and a Bridging E (subclass 050) visa.



THE HON PETER DUTTON MP
Minister for Home Affairs

18 / 02 2021

2021/004

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**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- DECISION INSTRUMENT -

1. The individuals named in the table below are in detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their cases under section 195A of the Act.
2. Pursuant to subsection 195A(2), and thinking it is in the public interest to do, I have decided to grant a Humanitarian Stay (Temporary) (subclass 449) visa and final departure Bridging E (subclass 050) visa and to the individuals named below:

Group 2: Grant effect date 2 March 2021

s. 47F(1)




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s. 47F(1)



THE HON PETER DUTTON MP

Minister for Home Affairs

18 / 02 / 2021

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**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. These persons are detained under section 189 of the Act as unlawful non-citizens.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant these persons a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant these persons a Humanitarian Stay (Temporary) (subclass 449) visa and a Bridging E (subclass 050) visa.



THE HON PETER DUTTON MP
Minister for Home Affairs

18 / 02 2021

2021/005

OFFICIAL: Sensitive Personal privacy**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958*****- DECISION INSTRUMENT -**

1. The individuals named in the table below are in detention under section 189 of the *Migration Act 1958* (the Act) and I have considered their cases under section 195A of the Act.
2. Pursuant to subsection 195A(2), and thinking it is in the public interest to do, I have decided to grant a Humanitarian Stay (Temporary) (subclass 449) visa and final departure Bridging E (subclass 050) visa and to the individuals named below:


Group 3: Grant effect date 2 March 2021

s. 47F(1)

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s. 47F(1)



THE HON PETER DUTTON MP

Minister for Home Affairs

18 / 02 / 2021

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**EXERCISE OF MINISTERIAL DISCRETION
UNDER SECTION 195A OF THE *MIGRATION ACT 1958***

- STATEMENT TO PARLIAMENT -

Exercising my powers under section 195A of the *Migration Act 1958* (the Act), I have decided to grant a visa under this section.

1. These persons are detained under section 189 of the Act as unlawful non-citizens.
2. Having regard to all the circumstances and personal characteristics, I have decided to exercise my discretionary powers under section 195A of the Act as it would be in the public interest to grant these persons a visa.
3. In the circumstances, I have decided that as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant these persons a Humanitarian Stay (Temporary) (subclass 449) visa and a Bridging E (subclass 050) visa.


THE HON PETER DUTTON MP
Minister for Home Affairs

 2021

2021/007