

REFUGEE COUNCIL OF AUSTRALIA

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Submission by the Refugee Council of Australia on the discussion paper, Building a simpler system to help jobless families and individuals

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1. Introduction

The Refugee Council of Australia (RCOA) welcomes the opportunity to provide input to the Department of Family and Community Services (FACS) on the discussion paper, Building a simpler system to help jobless families and individuals.

The Refugee Council of Australia is the nation's peak non-governmental agency concerned with issues relating to refugees, displaced persons and asylum seekers. The Council represents over 90 organisational members, as well as a considerable number of individual members. The Council works to promote humane, flexible, constructive and legally defensible policy by the Australian Government and the Australian community towards refugees, asylum seekers and displaced peoples. The Council is an advocate for the welfare rights and settlement needs of this most vulnerable group in our community. In its efforts to enhance the dignity and respect accorded to refugees, asylum seekers and displaced persons, the Council monitors and responds to Government policy and represents the views of members to the relevant legislative and policy bodies.

This submission focuses on issues pertinent to refugees (including Special Humanitarian Program (SHP) entrants and Temporary Protection Visa (TPV) holders) and asylum seekers living in the Australian community.

As a broader contribution to the welfare debate is outside the Council's mandate, the Council endorses the submissions made by the National Welfare Rights Network and ACOSS. The Refugee Council of Australia would, however, like to address two (2) areas in the discussion paper:

- Objective and Principles for working-age support (3.1 and 3.2) and
- Major reform – eligibility, structure and incentives (6.2)

2. Objective and Design Principles for Working-Age Income Support

2.1 The Inherent Dignity of the Human Person

Before analyzing the key objectives and design principles for working-age income support outlined in the Consultation paper, it is important to ensure that the conversation about reform is grounded in and takes account of human rights.

We can turn to two (2) international covenants to assist us.

The preambles to the International Covenant on Civil and Political Rights, 1966 [ICCPR] and the International Covenant on Economic, Social and Cultural Rights, 1966 [ICESCR] both recognise that human rights "derive from the inherent dignity of the human person".[1]

Under international law human rights are universal.[2] They belong to every individual in every society equally and in equal measure.[3] They are not transferable, forfeitable, waivable nor are they lost because they are inalienable and imprescriptible.[4]

In other words, human rights do not vary with culture, geography, history, ideology, the political or economic system, or the stage of societal development. Everyone possesses them, regardless of sex, social class, race, age, birth, ethnic or national origin, tribal affiliation, economic circumstances, occupation, talents, religion or immigration status.

As 'ends' in themselves, all human beings have an inherent dignity. All people have human rights. What are the implications of this for a government and for departments such as Family and Community Services or Employment and Workplace Relations?

Put simply, a government must give wholehearted and careful attention to the social and economic progress of its citizens. There are two (2) major tasks that fall to government if this duty is to be fulfilled.

1. A government must make effective efforts to see that all who are able to work can find employment in keeping with their aptitudes; and
2. A government must ensure that no person will be without the necessary means to maintain a decent standard of living.

The Council's position is that the first and primary objective of any government is to protect and promote the dignity and rights of every person under its jurisdiction. A needs-based social support system, such as Australia's, is one of the means by which a government fulfills this objective and obligation.

2.2 The Key Objective of Working Age-Support should be to ensure that Those Who Need Income Support, for whatever reason, Receive That Support

Accordingly, the Council does not and cannot accept that the key objective of 'working-age support' is self-reliance and social inclusion. The key objective of working age-support is to promote and ensure the dignity of every person in the community in such a way that those who need income support, for whatever reason, receive that support.

Furthermore, a person who needs support is entitled to a payment that is adequate and sufficient to protect them from poverty (objectively measured) and which takes account of a person's particular situation. People have different living costs. Payments should take into account whether a person is living with a partner or by themselves, whether a person is supporting dependants (children or elderly relatives or an adult with a disability), the costs of housing, whether a person is engaging in training or study, employed or unemployed.

Self reliance and social inclusion are laudable goals. Government's role is, however, to foster the economic, political and social environment and, where necessary, to provide the financial

support whereby each member of the community is able to be self reliant and to participate in the life of the community. It is not the government's role to decide how a person is to be involved in the community. Work and paid employment are not the only means of social inclusion. People who care for others or who serve as volunteers make valuable contributions. They are socially included and deserve reward and recognition by government.

2.3 The Particular Situation of Refugees

Refugees (whether permanent or temporary visa holders), asylum seekers and displaced people are already marginalised because of their unique and often traumatic personal experiences, the language barriers most face and their cultural and societal displacement. The Council is particularly concerned that this group could be further marginalised in a system predicated on the basis that those who support themselves "through paid work should be better off than people with similar characteristics who get income support" (page 9 of the Consultation paper).

Refugees, whether in paid work or in receipt of benefits, have needs and face dilemmas distinct from and in addition to other people in the community. These include:

- establishing a new home from scratch;
- finding work in a foreign environment, where often their qualifications are not recognised;
- enrolling their children in new schools;
- accessing health services;
- beginning to develop relationships with their neighbours, service providers, government agencies, local migrant communities and the wider Australian community;
- taking in new information about the culture, the environment, the laws and the services available in the area in which they live;
- supporting nuclear and extended family members in the camps, detention centres and/or countries they left behind;
- saving money to pay the medical expenses and travel costs of those they wish to propose to come to Australia as SHP entrants; and
- continuing to deal with the traumatising and the high personal cost of their own flight from persecution; and,
- in most cases, learning a new language and using translating and interpreting services.

These are hidden pressures, which can often keep a family unit in a situation of poverty and marginalisation at the very time when they hope to be re-settled.

A social security system, predicated on the basis suggested in the Consultation document, will unwittingly discriminate against, and further traumatize, a group already suffering precisely because they have not been able to gain access to paid work or adequate benefits. In the case of TPV holders, who are entitled to so much less, the traumatising will be even greater.

Welfare reform involves trade-offs and compromise. However, the Council cannot accept or support any reform that compromises, or potentially compromises, the human dignity and right to a decent standard of living, of any group in society.

2.4 Temporary Protection Visa Holders

The Council continues to be extremely concerned by the lack of basic services funded by the Commonwealth made available to TPV holders. (See the Appendix for a comparison of services available to permanent and temporary visa holders.) Many community organisations have witnessed the day-to-day survival existence and suffering experienced by TPV holders. We believe that the long-term implications of the policy will be severe on individuals and the community as a whole.

All available evidence indicates that TPV holders are a high need, high-risk group. Key issues for TPV holders include:

§ significant traumatisation caused by their time in detention and the perception that the public are against them. This affects the way they view Australia and Australian people;

§ the debilitating effects of institutionalization caused by prolonged detention which affects their ability to operate independently upon release;

§ ongoing effects of past trauma in their country of origin. Many have experienced torture or other deeply traumatic events;

§ alienation from the Australian community due to their lack of language skills and the absence of support programs they can access;

§ despair at the prospect of indefinite separation from immediate family members (spouse and children);

§ anxiety about their future because of the short term nature of their visa and the prospect that they may be returned;

§ poverty brought on by difficulties in obtaining employment due to language skills, lack of recognition of qualifications, lack of local experience and the short-term nature of their visas.

The Council recommends that any reform of the social welfare system include a reform of the benefits paid to TPV holders. TPV holders are entitled to the same support as any other member of the Australian community.

2.5 Conclusion and Recommendation

In summary, the Council's position is that adequate need-based income support is a crucial precondition for self-reliance and social inclusion. Entitlement calculations should take into account the following:

- the person's real cost of living;
- adequate rental assistance;

- the employment opportunities and services available in the region or area where the person lives; and
- the person's personal circumstances, aptitudes and abilities.

TPV holders should have the same entitlements as every other member of the Australian community.

3. Major reform dimensions – eligibility, structure and incentives

3.1 Making It Easier for Individuals to Gain Access to their Entitlements

While the Council supports an approach that takes “account of an individual's own situation and how this affects their standard of living” (pages 13-14 of the Consultation document), the Council believes that the reform should also make it easier for individuals to gain access to the support they need. Rather than focus solely on simplifying the range of benefits, pensions and allowances and restructuring the assistance package, the reform should make it easier for individuals to gain access to their entitlements.

3.2 Single Application Form

A single application form, carefully designed to gather all the information needed to determine the type, level and nature of the entitlement, would ensure that all receive their correct entitlements under legislation and make it easier for people transferring between payments. The form could be available in languages other than English so that migrants and refugees could better understand the information being sought and be able to gain access to their entitlements.

The Council endorses and supports the submission by the National Welfare Rights Network (Section 3.2 Towards a common platform of entitlement to a Social Security payment) on this point. The National Welfare Rights Network states on page 7:

. . . we propose that a entry point for all Social Security payments be introduced as a matter of priority. After this, recipients would be streamed into additional or supplementary payments (such as Pharmaceutical Allowance, Rent Assistance, or Disability Allowance or a general Participation Allowance. At this point an assessment would also be made about the activity requirements that would apply to the individual's circumstances. Technological solutions and advances should be utilised to facilitate the introduction of a single claim form, as a gateway or entry point to entitlements. . . .

A common claim form will establish a person's entitlement for a Social Security payment under the Australian legislation. This eligibility would provide entry into a common Social Security payment. . . .

A single claim form would ensure that all Australians receive their correct entitlements under legislation, and make it easier for people transferring between payments. It could lead to a reduction in the level of appeals against incorrect Social Security decisions and reduce the financial lost that is currently borne by customers that often results from limited ability to obtain back payment of compensation for defective administration.

3.3 Conclusion and Recommendation

The introduction of a single claim form will assist all members of the community to receive their entitlements and to fulfill their obligations.

The form should be available in languages other than English.

Personal Advisors should be available to help Centrelink customers meet the requirements of activity tested payments.

APPENDIX

Permanent Protection Visa
Visa Subclass 866

Temporary Protection Visa

Visa Subclass 785

(and subclasses 447 and 451)

Social Security

Immediate access to the full range of social security benefits

Access only to Special Benefit for which a range of eligibility criteria apply. Ineligible for Newstart, Sickness Allowance, Parenting Payment, Youth Allowance, Austudy and a range of other benefits.

Education

Same access to education as any other permanent resident.

Access to school education subject to state policy. Effective exclusion from tertiary education due to imposition of full fees.

Settlement Support

Access to full range of DIMA settlement support services.

Not eligible for most DIMA funded services such as MRCs and ethno-specific community welfare agencies. Can use Early Health Assessment and Intervention Programs.

Family Reunion

Able to bring members of immediate family (spouse and children) to Australia.

No family reunion rights (including reunion with spouse and children).

Work Rights

Permission to work.

Permission to work but ability to find employment influenced by temporary nature of visa and poor English skills.

Ineligible for most employment assistance programs.

Language Training

Access to 510 hours of English language training.

Not eligible for the federally funded English language programs: the Adult Migrant English Program (AMEP) or the Advance English for Migrants Program (AEMP).

Medical Benefits

Automatic eligibility for Medicare.

Currently eligible for temporary Medicare cards.

Travel

Will be able to leave the country and return without jeopardizing their visa.

No automatic right of return.

[1] Preamble, International Covenant on Civil and Political Rights, 1966 [ICCPR] and International Covenant on Economic, Social and Cultural Rights, 1966 [ICESCR]. See I. Brownie (ed.), *Basic Documents on Human Rights* (Oxford: Clarendon Press, 1992), 125 and 114. The preamble to the Universal Declaration of Human Rights, 1948 states: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". See I. Brownie (ed.), *Basic Documents on Human Rights* (Oxford: Clarendon Press, 1992), 21.

[2] Under international positive law, the justification of human rights is rhetorical and not philosophical. Human rights are self evident, implied in other ideas, commonly intuited and derived from accepted societal ends like peace and justice and accepted individual ends like human dignity, human happiness and fulfillment. L. Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), 2.

There are a number of ways of classifying human rights. Maritain speaks of the rights of the human person, the civic person, the social person, and the working person. Others list human rights under the three headings, "liberty", "equality" and "fraternity". "Liberty" includes freedom of physical activity, freedom of mental activity, freedom of practical or contractual action, economic freedom and political freedom. "Equality" means equality before the law and government as well as equality in the field of opportunities. "Fraternity" includes the collective use of public goods as well as public satisfaction of cultural and material needs.

[3] Human rights include various immunities, limitations on what governments may do to individuals, and positive resource claims which an individual may make on society, claims to particular defined goods and benefits, which are deemed essential for the individual's well-being, dignity and fulfillment. Human rights also include various liberties, for example, freedom from torture, arbitrary detention and so on as well as freedom to speak and assemble

L. Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), 3.

[4] Human rights are "claims as of right", that is they are claimed neither by appeal to grace, charity, brotherhood, or love nor because they have been earned or deserved. L. Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), 3.

Of course one may freely abstain from exercising the rights one possesses. Sometimes public order or the common good may require the suspension of some rights, for example, the right to freedom of movement in the case of a person who has been convicted of a serious criminal offence. Nevertheless, the point remains: a right inheres by virtue of the fact that one is a human being.