



Refugee Council of Australia

BRIEFING ON THE ASYLUM LEGACY CASELOAD BILL 2014

The Refugee Council of Australia (RCOA), the national umbrella body for 200 organisations working with refugees and asylum seekers, has reviewed the *Migration and Maritime Powers Legislation Amendments (Resolving the Asylum Legacy Caseload) Bill 2014* [the Asylum Legacy Caseload Bill]. Many of the provisions of this Bill have not been explained by the Government and do not reflect many Australians' concern that asylum seekers are treated fairly. The Parliamentary Joint Committee on Human Rights has also outlined its concerns about the legislation breaching Australia's core human rights commitments and the lack of justification of some of the key changes.

RCOA believes the following aspects of the Bill are unfair and should be removed:

- **All of the amendments to the Maritime Powers Act** – Schedule 1 of the Bill seeks to give the Immigration Minister extraordinary powers during boat interception operations while also limiting the oversight of the Parliament and the judiciary to know about and examine his actions. This amendment would give the Minister power to detain people at sea (including in the seas outside Australia's jurisdiction) and send them to other countries or vessels, even without the permission or knowledge of those countries. Parliament will have no say in these actions nor will judicial review of any decisions be permitted, as the Bill says that “the laws of natural justice do not apply”.
- **The clause to prohibit a pathway to permanency** – In Schedule 2, the Government seeks to re-introduce Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visa (SHEVs). The addition of condition 8503 to the TPV would mean that a refugee would only ever be able to re-apply for a TPV. This clause differs from how TPVs operated under the Howard Government, when refugees were able to apply for a permanent Protection after their initial TPV expired. Without a genuine pathway to permanency, the children released from detention will face the remainder of their childhood and their entire adult life in limbo. They will not be able to travel, to study without paying high fees (as there will be no access to HECS-style loans) or ever be able to reunite with separated family members. While the SHEV offers the possibility of permanency via another type of visa, RCOA is concerned that the regulations and detail of this visa have yet to be determined. The Minister has said that it will be difficult for SHEV-holders to “clear the hurdles” to be able to apply for another visa while in Australia and that the SHEV will present only a “very limited opportunity” for a pathway to permanency.
- **The fast track assessment process and separate review body for many asylum seekers** – Schedule 4 creates a fast track assessment process that, when combined with the changes outlined in the *Protection and Other Measures Bill* before the Senate, would create an unjust, unfair and inefficient system which would increase the risk of people being returned to face persecution. The fast track system will place strict timeframes and requirements on people often made vulnerable not only by their pre-arrival trauma but also by the stresses of waiting for years to apply for protection. Asylum seekers with limited English will be forced to complete complex forms and navigate an inflexible system without the support of a migration agent or lawyer, as the Government has removed access to affordable advice. The creation of the Immigration Assessment Authority (IAA) as a separate review body for fast track applicants is aimed at reducing applicants' access to a fair and independent review of the Immigration Department's assessment of their refugee claim. Departmental officials will, in effect, decide whether or not a decision of the Department should be reviewed under this arrangement, with each application assessed to see whether or not it falls into a category excluded from assessment by the IAA. Rejected applicants will have no right to take their cases to existing bodies such as the Refugee Review Tribunal.

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- **The redefinitions of Australia's protection obligations** – Schedule 5 sets out to remove most references to the Refugee Convention from the *Migration Act* and replace them with the Government's own interpretation of Australia's protection obligations. These changes will create unreasonably high thresholds for accessing protection in Australia, increasing the risk of people with genuine protection needs being returned to danger. They will also allow (and, in some cases, require) government officials to remove people from Australia without considering our non-refoulement obligations (which prohibit forced return to persecution or danger).
- **The classification of children born in Australia as "unauthorised maritime arrivals"** – Schedule 6 seeks to clarify the status of children born in Australia to parents who arrived by sea without a visa and sought protection. Currently, there are approximately 100 Australian-born children who will not be able to seek protection in Australia or be granted citizenship even though they have Australian birth certificates.
- **The cap on the number of Protection visas** – Schedule 7 would give the Immigration Minister power to cap the number of Protection visas granted in any year. Protection needs will inevitably vary from year to year due to changing conditions in countries across the world. Capping the number of Protection visas would be like capping the number of rescues that surf lifesavers can make at beaches each summer around Australia. The cap and resulting delay in the processing of claims of anyone impacted by the cap would leave people in limbo while also undermining the Government's call for speedy processing and resolution of cases.

Possible modifications to TPVs and SHEVs

RCOA is aware that some Senators, while being prepared to consider changes to the legislation, are intending to support the Bill's introduction of TPVs and Safe Haven Enterprise Visas (SHEVs). If that is the case, there are some mitigating factors that could reduce the harm imposed by the TPVs. The TPV could be improved by:

- **Providing a realistic pathway to permanency.** Refugees should be able to apply for a permanent Protection visa after the initial time on a TPV.
- **Permitting exit and re-entry to Australia.** Refugees that wish to depart Australia and visit family in countries of asylum (e.g. Malaysia) will lose their TPV and will not be able to re-enter Australia.
- **Allowing family reunion, particularly for immediate family members like parents, spouses and children.** Refugees should be able to apply to sponsor their family members through the Special Humanitarian Program, the General Migration Program or some other process. Without family reunion options and without the ability to travel, refugees face separation from their close family members for the rest of their lives. Moreover, their family members (who are often women and children) may remain trapped indefinitely in desperate circumstances overseas.
- **Ensuring access to the full suite of settlement services for refugees on a TPV.** Refugees need access to appropriate English language learning, education and training, employment support services and mental health supports.

Given the growing labour shortages in certain industries, there is a unique opportunity for the SHEV to include not only regional geographic locations but also to be expanded to include **designated industries** such as **hospitality and aged care**. The inclusion of designated industries for the provision of a SHEV would mean that both metropolitan and regional areas with labour shortages in key industries would be options for refugees eager to work and contribute. Refugees would also have access to the support structures that are already in place in many metropolitan areas. The cost of developing support services in regional locations where there has been minimal refugee settlement would be lessened through the expansion of designated locations.

Recommended reading

- RCOA's September 2013 policy brief on Temporary Protection Visas - http://www.refugeecouncil.org.au/r/pb/PB1324_TPVs.pdf
- Parliamentary Joint Committee on Human Rights' assessment of Asylum Legacy Caseload Bill - http://www.aph.gov.au/~media/Committees/Senate/committee/humanrights_ctte/reports/2014/14_44/c01%20Master%20Report%20Template.pdf (see pages 70-92)