

## ASRC submission

Committee Secretary  
Select Committee on Temporary Migration  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

30 July 2020

Dear Committee Secretary

**Re Submission to the inquiry into and report on the impact temporary migration has on the Australian economy, wages and jobs, social cohesion and workplace rights and conditions.**

The Asylum Seeker Resource Centre (ASRC) welcomes the opportunity to provide a submission to this important inquiry.

The ASRC is deeply concerned about the impact of temporary migration in relation to people seeking asylum and refugees. Much of our work is supporting people who arrived in Australia by sea in 2012-2013 ('Legacy Caseload'). This group has experienced significant trauma through their ongoing visa and status uncertainty, poor/insufficient access to any kind of 'safety net' including access to stable work rights, income support, education, and housing. This group also endures the painful and ongoing uncertainty of reuniting with family, as well as the ever-present risk of arbitrary re-detainment.

The culmination of these conditions has created a community of people who are systematically sidelined, denigrated and excluded. Unable to participate fully in our local communities and economy, they endure social isolation, the erosion of their vocational skills and chronic economic uncertainty. This places them at significant risk of institutionalisation, welfare dependency, and labour market exploitation. Their plight threatens wider social cohesion and inclusiveness in our nation.

The exclusion of people on temporary visas from Covid-19 programs such as JobKeeper and JobSeeker further illustrates the uncertainty and systematic barriers facing people on temporary visas.

We would wholeheartedly welcome the opportunity to discuss our submission at any public hearings. Please do not hesitate to contact me for any further discussion.

Yours faithfully



Kon Karapanagiotidis OAM  
CEO, Asylum Seeker Resource Centre (ASRC)

## Background

Founded in 2001, the Asylum Seeker Resource Centre (ASRC) is a place and part of a movement. We are Australia's largest independent aid and advocacy organisation for people seeking asylum and refugees, supporting and empowering people at the most critical junctures of their journey. We are a multi-disciplinary centre which provides an integrated legal service model including counselling, health services, emergency assistance, food, employment, education and other empowerment services intended to holistically address the needs of each person seeking asylum through internal referral in our 'one stop shop' model of wrap-around support.

In 2019 the ASRC directly supported more than 5900 people seeking asylum through our foodbank, housing, health clinic, case work, legal and crisis support programs. Additionally, the ASRC supported three refugees to launch small businesses through our Entrepreneurs Program, helped secure 283 job placements through our Employment Program and referred 352 people to VET courses to enhance their employability in the local labour market.

Our submission is based on nearly 20 years of experience working directly with people seeking asylum and refugees on temporary visas.

## Current situation and summary of concerns

Seeking asylum should be a point in someone's life, not what defines them. However, due to our visa system, people seeking asylum and refugees living on temporary visas face additional barriers and challenges and their journey seeking asylum is protracted. These challenges have led to financial hardship, deteriorating mental health and poorer settlement outcomes.

As outlined in the *Lives on Hold* report<sup>1</sup> by the Australian Human Rights Commission in 2019, Australia's unfair asylum processing system puts the lives of refugees and people seeking on hold as they are forced to live in limbo and uncertainty due to being on temporary visas. Uncertainty about visa status and ongoing entitlement to protection for a prolonged period of time has a devastating impact on people's mental and physical health.

Our submission will focus on our area of expertise and experience being:

1. Barriers to employment
2. Limited access to education and training
3. Social participation - Bridging Visa and their conditions
4. Temporary Protection Visas: TPVs/SHEVS and the need for a more clearly defined pathway to permanent residence
5. Impacts of temporary visa status on victims of family violence

### 1. Employment

The ASRC Employment Program supports people seeking asylum to find their preferred work, succeed on the job, and progress their careers in Australia. We enable people seeking asylum to overcome barriers to employment through a range of tailored interventions including: English for Work classes, identifying pathways to work, and access to vocational education and training.

There are a number of barriers to employment for people on temporary visas, especially for people seeking asylum and refugees as a temporary visa status has a significant negative impact on employment prospects.

<sup>1</sup> Lives on hold: Refugees and asylum seekers in the 'Legacy caseload' (2019), Australian Human Rights Commission, viewed 27 July 2020, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>

Temporary visas include bridging visas, Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs).

(Please note, the restrictions and challenges associated with these visa classifications will be explored later in the submission.)

The ASRC's 2019 *Toward an Optimal Employment Opportunity for People Seeking Asylum*<sup>2</sup> report elaborated on the various restrictions people seeking asylum face due to the temporary nature of their visa - "visa status determination and eligibility criteria have been known to shift between government cycles, causing some visa holders to lose (and re-gain) work rights for periods of time".

Not only does a temporary visa status mean people are living their lives in uncertainty and limbo but employers are often reluctant to hire people on bridging visas when visas will expire in a short period and extra effort and understanding is required.

People on bridging and other temporary visas are overlooked for jobs as it is seen as too hard or an extra burden on the employer. For example, the requirement of the employer to perform routine work rights checks every three months is often interpreted as a visa expiring in three months or is simply seen as too hard.

Additionally, when hiring people on temporary visas, employers are unwilling to invest time and resources in training new staff on bridging visas

#### **Case study Bridging Visa exacerbating difficulties to find work**

Mary is on a Bridging Visa A. She has a nursing background from her country of origin. It is too costly for her to get her qualifications ratified and do any required further study whilst on a temporary visa. She is also unable to put her transferable healthcare skills into practice in a related role such as Aged Care due to requiring completion of a certificate and her ineligibility for subsidised courses that are a mandatory requirement of any role in that industry.

When applying for entry level vacancies in other industries in which she has no experience, employers have been reluctant to consider applications if applicants have: no experience; no visa that guarantees a certain period of employment or long term employment; a visa that does not allow for subsidised training.

Mary's application for work has been rejected by a number of employers as they do not understand the language of a bridging visa and the work rights conditions. Mary's temporary visa status is stopping her from getting a job.

In addition to the barrier a temporary visa causes in securing employment, we have witnessed cases where exploitation in employment has resulted from visa insecurity, where people felt compelled to accept precarious or unsafe conditions of employment due to their lack of access to more stable employment options.

The protracted nature of the visa determination process means that most people who could be found to be owed protection (due to the substantive nature of their claim) but are experiencing significant delay in their determination process leading to limited job opportunities and at risk of exploitation.

As noted in the Lives on Hold report referenced above, *temporary visa status may prevent TPV and SHEV holders from securing stable employment and maintaining an adequate standard of living, while the*

<sup>2</sup> 2019 Asylum Seeker Resource Centre, Towards an optimal employment opportunity for people seeking asylum report, viewed 28 July 2020, Page 24 Finding 4.1.2 [https://www.asrc.org.au/wp-content/uploads/2013/04/ASRC-Employment-Research-Report\\_W\\_FA.pdf](https://www.asrc.org.au/wp-content/uploads/2013/04/ASRC-Employment-Research-Report_W_FA.pdf)

*requirement to maintain employment in order to meet the SHEV pathway requirements (and consequent risk of exploitation) may interfere with their enjoying just and favourable conditions of work.*

Another interviewee from the ASRC *Toward an Optimal Employment Opportunity for People Seeking Asylum report*<sup>3</sup>, 'drew a connection between this issue and the punitive nature of the Australian policy environment: 'Australian Federal Government policies towards people seeking asylum are so punitive that it completely reduces people's ability to feel like they can stand up for their own rights. So we see a huge amount of exploitation that goes on for people, which is a breach of all the Work Safe policies that are designed to support and protect the rights of workers, regardless of who they are. But it's rife and it's happening and it's continuing''.

### **Case study - Wage theft and exploitation**

John is on a Bridging Visa E, having applied for a Safe Haven Enterprise Visa. John has struggled to find consistent employment outside of cash jobs in his community and self employment in the ride-sharing industry. He secured a role with a concreting company that employed him as a junior member of staff, training him up on their processes and activities. Having had some previous construction experience John succeeded in the role and showed his capabilities early on.

However, over time, when supervisors were absent John would be asked to step in and supervise a job whilst remaining on his junior salary. This became a regular pattern and eventually John was expected to supervise jobs as part of his day to day role. He was continuously promised by the company's HR team that his pay would go up to the Supervisor rate and they would backdate his payment. This did not happen.

John did not want to complain or seek outside support from available services as he was fearful of losing the work he had. Having no income safety net to rely on and being concerned that making a formal complaint about his work rights and conditions could impact on his application for protection with the immigration department, John remained in the role as he needed the income to support his family.

As time wore on, John eventually left that job due to lack of action from the company to remunerate him appropriately and his reluctance to engage with external assistance. John remains formally unemployed whilst working casually in the cash economy.

COVID-19 is another classic example of how a temporary visa impacts people seeking asylum and limits employment pathways. This pandemic does not discriminate between people, highlighting the need for strong community and social support to help individuals and businesses survive and recover. Our Government's policy response to COVID-19, however, does discriminate.

People seeking asylum are not eligible for Federal Government support packages for workers who have lost their jobs, or casual workers who have lost shifts, because of COVID-19. Despite being amongst the most marginalised and vulnerable members of our community; despite working and paying taxes (sometimes over several years) to the Australian Government, people seeking asylum on temporary visas are unable to apply for income support during this pandemic due to the temporary nature of their visa.

Employers wishing to keep refugees on temporary visas and people seeking asylum on bridging visas with work rights on their books cannot even register them for the new JobKeeper Allowance due to their exclusion from eligibility due to the temporary nature of their visas.

<sup>3</sup> 2019 Asylum Seeker Resource Centre, Towards an optimal employment opportunity for people seeking asylum report, viewed 28 July 2020, Finding 4.1.3 Industrial discrimination and exploitation [https://www.asrc.org.au/wp-content/uploads/2013/04/ASRC-Employment-Research-Report\\_W\\_FA.pdf](https://www.asrc.org.au/wp-content/uploads/2013/04/ASRC-Employment-Research-Report_W_FA.pdf)

The exclusion of people seeking asylum may constitute impermissible discrimination under human rights instruments, including the International Covenant on Economic Social and Cultural Rights (ICESR) where rights are granted to all, and not only to nationals of States parties, and which oblige State parties to progressively ensure all economic, cultural, and social rights—including the rights to social security and health—to all individuals within their territories, providing specific protection for disadvantaged and vulnerable individuals and groups. Refugees and asylum seekers are a special category of non-nationals and require special protective measures due to their vulnerability. They should enjoy all rights on the same footing as citizens of the State concerned.

Refugees holding temporary protection visas are entitled to additional protection from such discrimination under the Convention Relating to the Status of Refugees, which requires State parties including Australia to accord to refugees the same treatment as is accorded to nationals in regard to social security guarantees. Thus the exclusion of refugees on temporary visas is likely a breach of Australia's international obligations under the Convention in particular, Article 24 which states:

1. **The Contracting States** shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters: remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining.....; (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme),'

The ASRC and our sector partners have consistently raised concerns at all levels of government with the lack of access to JobKeeper on the basis that such discriminatory measures, especially during a situation of a national pandemic emergency, constitutes a human rights violation which threatens the health and safety of people seeking asylum, and the wider community, during perhaps the greatest health and economic crisis Australia has seen. Despite many agencies and new innovative ways to maintain continuity of service for our members and employers, our effort and motivation of our clients are eroded by the lack of financial safety net to maintain employability skills and preparedness.

We are especially concerned for those who have lost their income almost overnight due to COVID-19. These people are job-ready and keen to work, and need to work in ways that we who can access an income safety net, or the support of nearby family and friends, cannot begin to understand.

Having a stable visa outcome such as permanent protection can be deeply healing for people who have been forcibly displaced. We recognise that people seeking asylum feel most empowered when they have a stable future to acquire the skills and resources they need to exercise life choices, support their families, and achieve their goals; ultimately contributing to Australia society and economy.

Refugees can make a great economic contribution to Australia – not just as employees, but also as entrepreneurs and employer of labour if the visa uncertainty is not impacting on their mental health

## 2. Education and training

Accessibility and affordability are the two major barriers to education and training for people seeking asylum and refugees on temporary visas.

People on temporary visas are ineligible for a range of skills and training that would support their employment options and most education opportunities they are eligible for are unaffordable. The result is employment pathways are further limited for people due to their temporary visa classification

Many people seeking asylum become stuck; unable to afford or access training that will develop the skills imperative to improving their opportunities in the Australian labour market and thus their ability to earn a living.

For example people on bridging visas are ineligible for:

- Subsidised funding for apprenticeships, training and certificates that are required as a part of many low-skilled roles.
- Access to English language programs is limited - Adult Migrant English Program (AMEP).
- Job Active employment services provided by the government.
- Higher education government subsidies.

Additionally, bridging visa holders are not eligible for a range of education and training subsidies, therefore, if they have study rights and want to engage in education or training they must pay full international student fees. Most people holding a bridging visa either do not have work or do not have secure or regular work therefore cannot afford to pay for education and training.

While TPV and SHEV holders are permitted to undertake tertiary study in Australia, they are considered to be international students and must pay far higher fees than local students and are ineligible for higher education loans or Commonwealth-supported places. As a result, tertiary education is unaffordable for many TPV and SHEV holders.

For those on SHEVs/TPVs although found to be owed protection in Australia, the punitive temporary visa policies lock people out of the vital vocational skills needed to harness their contribution in society and keeps them in a state of uncertainty and makes their desire to fully engage in education pathways unattainable.

Language, literacy and numeracy is a cornerstone for people seeking asylum to participate in Australian community and gain employment. While many community organisations are offering English tuition for people seeking asylum, it can be difficult to access accredited courses. People holding temporary refugee visas (such as TPVs and SHEVs) can access the AMEP 510 hours of English, but unfortunately those who have bridging visas cannot access AMEP.

People in Victoria holding a bridging visa E (BVE), TPV or SHEV can access accredited foundation English courses through the Victorian Skills First initiative. However people holding other bridging visas are not eligible.

There is a distinct lack of opportunity for people seeking asylum to complete formal on-the-job training. As discussed earlier, employment is a major barrier for people who wish to undertake further training to increase their employability prospects. 'Earn and learn' opportunities, such as apprenticeships and traineeships in skills and job growth areas, would alleviate this issue, particularly for people who may already have prior learning in and or experience in these areas.

Currently, while people who hold BVEs, TPVs and SHEVs may be able to access Skills First courses, and may be able to identify a suitable employer, it is very difficult to register with Apprenticeship Networks due to perceived visa restrictions and time restrictions on their current visas often impact their ability to undertake an apprenticeship or traineeship.

Because people seeking asylum and temporary refugees cannot return to their country of origin, obtaining copies of their original transcripts can be extremely difficult. Furthermore, if a person is able to obtain copies of their original, the cost of getting the transcript translated is for many too prohibitive. In addition, the cost of getting their qualifications recognized by regulatory authorities is also another significant barrier.

At present, people seeking asylum and refugees with temporary visas are not eligible for any type of government loans to undertake undergraduate or postgraduate level courses at University. To be admitted, they have to meet all the university requirements for international students including the full-fees payment. This policy creates a major barrier to pursue their studies at University. Mainly, these prospective students do not have any sort of income or even if they do, the international student fees are prohibitive.

### 3. Social participation - lives in limbo

As noted above, those on temporary visas, including TPVs, SHEVs and bridging visas have been excluded from a range of services and entitlements due their visa status, making it especially difficult for people on temporary visas to fully participate in the community.

According to UNSW research, temporary protection measures on refugees can cause a considerable amount of human suffering.<sup>4</sup>

The research showed the significant consequence temporary visas such as TPV and SHEV have on social participation, emotional and mental wellbeing and the despicable impact on children. Some of our clients have been stuck in processing and stuck on bridging visas for up to ten years. In these circumstances the term 'temporary visa' is a misnomer and masks the long term hardship caused by the 'bridging' visa regime: hardships which have become much more pronounced as the years drag one and especially in the current COVID-19 pandemic.

However, those on bridging visas, including most people seeking asylum, form an even more vulnerable subset within the already at-risk 'temporary visa' category. This is because access to critical entitlements, such as work rights, Medicare or Status Resolution Support Services (SRSS), depend on three further factors: the type of bridging visa held by a person seeking asylum; the conditions attached to their bridging visa; and also often the stage they are at in the refugee determination process.

Bridging visas are governed by a complex patchwork of highly technical regulations, which are so unintelligible that they are almost impossible for specialist immigration lawyers to understand, let alone for visa holders or for other relevant agencies, such as Medicare, who need to navigate their complexity. The Department's own Visa Entitlement Verification Online (VEVO) system does not always provide reliable information on visa status or conditions either, especially for those renewing their temporary protection visas, or those with cases before the courts, further complicating the issue of how a person can evidence their entitlement to Medicare.

We set out some of the basic rules to highlight the inadequacy of this bridging visa regime, where vast portions of the asylum seeking community, have been left without coverage or support of any kind, which has been terrible for people solely based on the temporary and uncertain nature of their visa.

Bridging visas are intended to be a 'stop-gap' measure to maintain a person's lawful status while they are waiting for their substantive visa application to be finalised, or to keep them lawful throughout other processes such as Ministerial requests of judicial review. However for many of our clients, bridging visas are experienced as 'bridging' in name only, with some of our clients stuck in processing on bridging visas for up to ten years.

In these circumstances the term 'bridging visa' is a misnomer and masks the long term hardship caused by the 'bridging' visa regime where maintenance of a bridging visa with work rights and access to Medicare, take on such critical importance. We observe firsthand how the lack of a bridging visa or work rights creates major hardships, which have become even more pronounced during the pandemic context. Bridging visas are poorly governed and comprise a messy patchwork of inconsistency and inequity which renders many of our clients stuck on them for lengthy periods particularly vulnerable to economic and sexual exploitation, as well as entrenched poverty and destitution.

It has been widely reported in the press that the number of bridging visas granted in Australia has more than doubled over the five years to June 2019 to 205,600.<sup>5</sup> This provides a worrying 'red flag' that the kind of maladministration and processing delays of 7-8 years for a primary decision, (referred to earlier regarding temporary protection applications), may be part of a wider problem. The system is clogged up at many stages, resulting in 'blow outs' of processing times and also therefore the periods that people are stuck on bridging visas. We are concerned that our clients have been very adversely affected by the Government's failure to ensure adequate resources are provided for processing of their visas within acceptable time frames. Protracted

<sup>4</sup> [https://www.kaldorcentre.unsw.edu.au/sites/default/files/Research%20Brief\\_TPV\\_SHEV\\_Aug2018.pdf](https://www.kaldorcentre.unsw.edu.au/sites/default/files/Research%20Brief_TPV_SHEV_Aug2018.pdf) Research Brief, April 2019, viewed 29 July 2020

<sup>5</sup> <https://www.macrobusiness.com.au/2019/12/coalition-oversees-massive-blow-out-in-bridging-visas/>.

processing works strongly against the interests of our clients who want to have their cases processed and be granted recognition as refugees as soon as possible, so that they can start to move on in their lives.

If there was adequate resourcing of all protection visa application processing, so that all applications could be promptly assessed but without compromising the quality of such assessment, then this would remove any incentive for some to use bridging visas for purposes other than intended, as a way of 'buying time' to work for some years in Australia. Any measures taken to address this issue must carefully avoid the risk of 'screening out' people who may be owed protection obligations, including those from non-traditional refugee producing countries whose cases will be amongst those less closely scrutinised because they are presumed to have weak protection claims or have been unable to properly articulate their protection claims, due to the lack of legal assistance available.

Adding resources to processing, providing more legal assistance to help clients articulate their full claims upfront and speeding things up at all stages of the process, are the surest ways to address this issue without compromising fairness to all applicants or risking refoulement due to 'screening out' or shot-cut processes for cohorts assumed to have low merit cases. At present we have the worst of both worlds, with unduly harsh bridging visa conditions attached to those in the so-called Fast Track cohort who because they arrived in Australia without visas are only eligible for a Bridging Visa E, which often are without work rights and Medicare and therefore appear low down the hierarchy of most advantageous bridging visas.

Whereas those who arrive with visas, irrespective of the strength of their protection claims, are granted more generous bridging visa conditions, such as automatic work rights and access to Medicare, which will last for years. Both categories of people seeking asylum are subjected to horrendous delays in the processing of their applications, at all stages of the process.<sup>6</sup>

For those without work rights, an application for permission to work will only be granted if the applicant can show both financial hardship and an 'acceptable reason' for any delay in the lodgement of their protection visa application.

*Case study: Lack of work rights leads to continuing economic and sexual exploitation*

*Manita is a 26 year old woman. As a child, she was sold into debt bondage by her father to settle a business debt. She suffered physical and emotional abuse for many years as part of that debt bondage arrangement. The authorities in her home country were unwilling to assist her due to her ethnicity and corruption. To help her escape this horrific situation, her mother assisted her to travel to Australia on a temporary visa.*

*She was sent to live with an acquaintance of her mother in regional Victoria where she was forced to work for the family in exploitative conditions. Her passport and other documents were taken from her and an application for a Protection visa was lodged on her behalf without her being given the opportunity to express her true claims for Protection. She was subsequently granted a Bridging visa C with no work rights and, as a result of being unable to lawfully work, felt trapped. After over a year living in these conditions she fled and obtained work on a fruit farm, also in regional Victoria, where she faced further exploitation including sexual exploitation. She felt unable to leave this farm and approach authorities or support organisations for assistance due to her immigration status as a person with no right to work.*

*It has only been through extensive assistance provided by the Human Rights Law Program at the Asylum Seeker Resource Centre to assist her with an application for Work Rights that Manita has been able to begin lawful work. Without this legal assistance, it is unlikely Manita would have been able to navigate the difficult processes involved in requesting work rights and she would have remained highly vulnerable to further exploitation and abuse.*

The other alarming consequence of denial of work rights is that it also means they have no access to Medicare. This leaves some temporary protection applicants in the alarming situation of being without access to health care during a pandemic, also creating wider community health risks.

Some temporary protection applicants who had work rights at an earlier processing stage may then lose them if they proceed to seek review of their decisions in the courts. Therefore large numbers of temporary protection

<sup>6</sup> Except for the IAA, which as mentioned earlier provides quick but manifestly unjust processing; also clearly not the answer.



applicants whose cases are at the judicial review stage may have no work rights or access to Medicare. In addition, some who hold bridging visas for set periods, rather than linked to a particular stage of visa processing, have struggled to apply for renewal within relevant time frames due to the COVID 19 movement restrictions, and have consequently become unlawful.

For those at later stages of the refugee determination process, they may be subject to 'bars' to being able to lodge a valid application for a bridging visa due to the operation of s 46A or s91K<sup>7</sup> of the Migration Act. At present, in order for a person to have either of these bars lifted to enable them to lodge a valid visa application, the Minister must personally intervene under non-compellable discretionary powers. This is a ridiculously cumbersome and inaccessible process for something so routine as being permitted to lodge a bridging visa application. It is essential that Ministerial powers to lift bar for bridging visas should be delegable to officers of the Department to prevent many from slipping into unlawful status and all that this then entails, as discussed further below.

Thus, in such situations, the grant of a bridging visa is at the Minister's personal discretion. In recent times, the Minister is choosing to grant bridging visas less frequently, and more temporary protection applicants and their children are left without any visa through years of court processes.

Without a visa, these families have an unlawful status and are liable to mandatory immigration detention and removal from Australia, even if they have an ongoing case before the courts. While in practice, the Department does not comply with the law to detain every person without a visa, however people in this situation still live in constant fear that they may be detained if they come to the attention of authorities, including if they seek protection from police as a victim of crime or from other authorities, including the Department, due to economic or sexual exploitation or abuse, as approaching authorities of any kind may trigger their detention and removal from Australia.

#### *Case Study*

*Salem and Khadija from Myanmar, arrived in Australia seeking protection with their two children in 2013 and had a third child in Australia in 2018. They applied to the Court for judicial review in 2019 but were refused bridging visas. Their youngest child is the subject of a statutory bar preventing her from making any valid visa application without the intervention of the Minister, and also doesn't have a bridging visa. The family is undocumented and currently living unlawfully in the community despite being from a refugee-producing country, having a valid ongoing court case and a child whose protection claims have never been assessed.*

*Despite the Covid-19 pandemic environment, Salem and Khadija are not eligible for any government support. Nor do they have work rights or access to Medicare. Their children are unable to study and attend school and kindergarten. They have been advised that their family must rely on community groups and not for profit organisations although without a valid visa they are often ineligible for these services. They live 'hand to mouth' and both Salem and Khadija are suffering terribly with their mental health deteriorating rapidly as they struggle to feed, house and clothe their children.*

In effect, those denied bridging visas are consigned to an underclass existence. They cannot complain about their treatment, seek to enforce their rights or even enrol their primary school-aged children in public schools, also affecting fundamental child rights to education,<sup>8</sup> without risking being detained and removed from Australia.

This makes them particularly vulnerable to economic and sexual exploitation, especially during a pandemic which has caused mass unemployment and made life for those on the margins all the more precarious and difficult. As noted above, those on temporary visas, including Temporary Protection Visas, Safe Haven Enterprise Visas and Bridging Visas) have been excluded from Government safety nets during this period, making it especially difficult for people on temporary visas to even subsist. However, those on bridging visas, including most people seeking asylum, form an even more vulnerable sub-set within the already at-risk 'temporary visa' category. This is because access to critical entitlements, such as work rights, Medicare or

<sup>7</sup> This provisions prevent 'Unauthorised Maritime Arrivals' in Australia from lodging any kind of valid visa applications without the Minister's express provision to do so.

<sup>8</sup> See Article 28(1)(a) of the *Convention on the Rights of the Child* recognizing the right to primary education which is 'compulsory, free and available to all.'

SRSS, depend on three further factors: the type of bridging visa held by a person seeking asylum; the conditions attached to their bridging visa; and also often the stage they are at in the refugee determination process.

We have persistently raised these concerns with the Department over the past five months, urging that in order for the existing measures to be successful at supporting people during this uncertain time, the Government must prevent people losing their legal status by ensuring all people seeking asylum have a valid visa.

In addition, the government must ensure that renewal/grant processes are either automatic or simplified so that people do not have to take health risks in order to renew their visas. In the absence of these steps the Government should have at minimum made public statements assuring undocumented people that they can still approach health services without fear of detention.

Unfortunately none of these suggestions have been taken up by the Federal Government. As has been seen in other countries' COVID 19 responses, the effectiveness of community restrictions on movement are undermined in societies where there are groups of people excluded from social protections, such as undocumented asylum seekers, making cluster outbreaks more likely and difficult to manage when some people in our community have been forced 'underground' and live in fear of all contact with authorities, including health services.

Furthermore, access to Medicare depends on having work rights. No work rights means no access to Medicare. This presents a range of complexities, such as

- Only the minority of people seeking asylum, (being those who arrived by plane and who applied for asylum prior to their visa expiring) are granted automatic work rights and therefore access to Medicare, on their Bridging Visas until they have completed merits review stage.
- The majority of people seeking asylum are granted Bridging Visa C or E, where the grant of work rights, and therefore also Medicare is only discretionary. Many of our clients on Bridging Visas C and E do not have work rights or Medicare rights on their Bridging Visas.
- Some clients who have work rights at an earlier processing stage then lose them if they proceed to seek review of their decisions in the courts. Therefore large numbers of people at judicial review have no work rights or access to Medicare.
- Some clients have Bridging Visas for set periods, rather than linked to a particular stage of the process and due to the COVID 19 movement restrictions have struggled to apply for renewal within relevant time frames.

This is especially critical during the current COVID-19 crisis.

Given the clear public health imperative for all persons in Australia to access medical treatment during a pandemic, we strongly encouraged the Department to direct Medicare to immediately provide all persons seeking asylum with access to Medicare. We repeatedly requested that special measures be taken to automatically extend, or provide bridging visas with work rights and Medicare to undocumented asylum seekers, and to provide all people on bridging visas with these same rights, as an absolute necessity, along with income support. We highlighted to the Department that this change in policy could be made without any legislative amendments. Yet unfortunately the Government took no steps to address this need.

*Case study: Lack of access to COVID testing due to Medicare status*

*Rohan does not have access to Medicare. He was feeling unwell and so went to get tested for COVID 19. He was rejected by two testing stations because he did not have Medicare and was told that he would have to pay \$500 for the test. ASRC health team assisted him to get tested. He tested positive, highlighting the public health implications of leaving people in the community without access to Medicare.*

We further highlight that excluding any people seeking asylum from access to essential support such as Medicare breaches basic human rights under the International Covenant on Economic, Social and Cultural Rights, Article 12(1), the Right to Health. The UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. We further note that this does extend to people seeking asylum as per the General Comment No. 14 on the right to health, by the Committee on Economic Social and Cultural Rights (CESCR) noting that "States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.

Even worse off than those lacking work rights and Medicare are those who have no bridging visa at all. We have at least 50 clients, including families with young children, who have ongoing cases before the courts but have been refused bridging visas. These people have been left for years undocumented in the community, not only without work rights and Medicare, but living in constant fear of being detained and removed from Australia, despite having valid legal proceedings on foot.

Those denied bridging visas are consigned to an underclass existence. They cannot complain about their treatment, seek to enforce their rights or even enrol their primary school-aged children in public schools, without risking being detained. They are particularly vulnerable to economic and other forms of exploitation even during 'normal' periods, let alone during a pandemic which has caused mass unemployment and made life all the more precarious and difficult.

## 4. Temporary protection visas

### Background to temporary protection regime in Australia

Temporary protection, for those owed protection obligations by Australia as refugees, has always been very controversial and never a planned or coherent aspect of temporary migration policy. Predictably, this has led to poor protection outcomes for refugees and also curtailed their ability to make their best possible contributions to Australia, blighting both key objectives of temporary protection.

Prior to 1999, all of those people seeking asylum in Australia who were found to meet the definition of a refugee as per the Refugees Convention or owed protection obligations under other human rights Conventions, were granted permanent protection visas. Once secured, a protection visa also enabled holders to (relatively) swiftly sponsor immediate family members to Australia and provided them eligibility to apply for Australian citizenship after two years.

This model of refugee protection provided the best outcomes, both for refugees and for Australian national interests. For refugees, it provided certainty and security, family support and initial access to support to enable refugees to establish themselves and enabled them to fully invest in their new country. It is why we have been able to successfully settle refugees into our society for more than three generations, with around 900,000 refugees, many also having been accepted onshore, having made their home in Australia. This model of permanent protection is why historically, Australian refugees over many generations have been able to prosper and make such rich and substantial contributions to Australian social cohesion, multiculturalism and to our economy.<sup>9</sup>

Like many others, the ASRC remains strongly opposed to temporary protection visas for the good reasons that they achieve neither their protective nor economic/enterprise related purposes. In addition, TPVs, as they are structured in the Australian context, undermine basic principles of international human rights and refugee law, including the right to seek asylum. This is because under international human rights law, people seeking asylum who arrive without a visa have a right to non-discrimination<sup>10</sup> based on the mode of their arrival, with or without a visa.

<sup>9</sup> 'Investing in Refugees, Investing in Australia: The findings of a Review into Integration, Employment and Settlement Outcomes for Refugees and Humanitarian Entrants in Australia'. <https://www.homeaffairs.gov.au/reports-and-pubs/files/review-integration-employment-settlement-outcomes-refugees-humanitarian-entrants.pdf>

<sup>10</sup> ICCPR, arts 2(1) and 26, Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant, UN Doc HRI/GEN/1/Rev.9 (Vol. I) (1986), paras 2, 5, 7, 9 and 10.

The TPV regime breaches Australia's non-discrimination obligations because it does not meet the criteria for differentiation being that it is 'reasonable, objective, and for a legitimate aim',<sup>11</sup> bearing in mind the requirement that Australia interpret the Refugee and other Conventions that it has ratified, in 'good faith'.<sup>12</sup> In addition, the Australian temporary protection regime contravenes Article 31(1) as denying unauthorised arrivals the opportunity for permanent protection amounts to a penalty contrary to Article 31(1) of the Convention relating to the Status of Refugees.<sup>13</sup> On the world stage, Australia's temporary protection has also set an alarming new low for refugee protection standards globally and further eroded international norms of refugee protection, which has been replicated in other states, which, like Australia, also seek to avoid their obligations to refugees.

TPVs were first introduced by the Coalition Government in 1999 for refugees who came to Australia by boat, but with a pathway to becoming eligible for permanent protection after 3 or 5 years. In 2001, further restrictions were placed on access to a permanent visa pathway for TPV holders based on the period of time spent in a third country en route to Australia. By August 2008 when TPVs were abolished by the Rudd Government, around 95% of the 11,206 refugees granted TPVs had been granted or transitioned into permanent protection.

Key reasons why TPVs were abolished were that they created a 'second class' of refugees pitting those who arrived by boat against others who also had valid claims for protection. TPV holders became trapped in a cycle of poverty and disadvantage, creating fresh psychological trauma and distress and reopening old wounds due to continued uncertainty about their futures. Inability to apply for family reunion contributed heavily to these impacts.

Exclusion from most forms of financial support and lack of access to English classes or translation services, and emergency and other accommodation, trapped people in poverty. Australia was found to be the only country to grant Temporary Protection to refugees who gone through the entire determination process and had been found to be owed protection. Further, the Australian Human Rights Commission inquiry into children held in immigration detention, *A Last Resort?*<sup>14</sup>, found that TPVs also contravened Australia's obligations under the Convention on the Rights of the Child in addition to the other Conventions mentioned above.

### Current temporary protection regime

Despite the negative experience and evidence-base that led to their abolition, TPVs were reintroduced by the Coalition Government on 18 October 2013 as a key election promise. The new TPV regime sought to affect people seeking asylum who arrived by boat before 19 July 2013 and had not had their protection applications finalised, and for plane arrivals who arrived with false documents. As previously, the new TPV regime attracted strong controversy. On 3 December 2013, the Australian Senate disallowed the re-introduction of TPVs and in response the Government implemented a freeze on any type of protection visa being granted, leaving 33,000 people whose bridging visas had expired with no legal recourse. On 14 December 2013, the Government's *Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013* came into effect.

Further radical changes to the refugee status determination process were ushered in by the Migration and Maritime Powers (Resolving the Asylum Legacy Caseload) Act 2015, which amongst other things:

- Reintroduced Temporary Protection Visas (TPVs) and created a new category of visas known as Safe Haven Enterprise Visas (SHEVs);
- Introduced a system of Fast Track processing involving limited merits review on the papers;
- Retrospectively converted permanent Protection visa applications in the 'pipeline' as at 16 December 2014 to applications for TPVs.

### Cohort processing snapshot: gross inefficient and costly on all measures

As a consequence of these new laws, around 31,000 people became applicants for TPVs and SHEVs. Below is a snapshot of the visa processing journey and current status of this caseload as of 30 May 2020:

<sup>11</sup> Human Rights Committee, General Comment No.18: Non-discrimination, UN Doc CCPR/C/21/Rev.1/Add. 1 (1989), para 13.

<sup>12</sup> Article 31(1) of the Vienna Convention on the Law of Treaties, which requires that 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'

<sup>13</sup> Convention Relating to the Status of Refugees, 1951, as amended by the Protocol Relating to the Status of Refugees, 1967.

<sup>14</sup> <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/last-resort-national-inquiry-children-immigration>.

- The total size of the cohort has contracted to 25,581 from 30,793 as of August 2016. It is not clear what has happened to the other 5212 people. Presumably they have left Australia, either 'voluntarily' or involuntarily, or are deceased. It would be helpful for the Department to provide some data about what has become of this 'gap' group.
- 17,505 temporary protection visas have been granted, 11,893 SHEVs and 5612 TPVs, indicating a success rate of almost 70% of applicants.
- 4295 applicants have not yet received even a primary decision from the Department (i.e. they are still at the 'starting line' 7-8 years after arriving in Australia).
- 1195 applicants are in the process of seeking merits review of primary refusal decisions (i.e. their cases are currently before the IAA or AAT).
- 8076 are either at judicial review, seeking Ministerial intervention or have been refused and reached a 'dead end' in the legal process of their case. The Department does not provide a breakdown of these cases, but this would be helpful to have visibility of the different sub-sets of this cohort.
- Of those refused by the IAA, 81% went on to seek judicial review of the IAA decision. Of these, 25% had their cases remitted for reconsideration on the basis,<sup>15</sup> meaning that in one in four court reviewed IAA decisions, there was an error of law made. This statistic highlights the very high levels of legal error impugning IAA decision, creating unreliable and often unjust results for many applicants and undermining public confidence in those processes.
- There are no publicly available statistics on the number of TPV/SHEV holders who have already needed to re-apply for renewal of their temporary protection visas, however this is estimated at around 2,000 and will balloon in 2020/21 as the rest of the current TPV/SHEV grants come up for renewal, it being 3 or 5 years since their initial grant. These renewal applications will sit at the end of the queue of the 4295 cases still waiting for a primary decision, and are expected to take at least another three years minimum to receive a primary decision on whether their next temporary visa is granted.
- In summary, it has taken 6-7 years for primary level processing of most temporary protection visa applicants to be granted a 3 or 5 year visa. It is expected to take at least a further 3 years of processing for them to be granted renewals, even if they receive positive decisions at the primary stage and do not seek review. This would amount to, per person, 9-10 years of primary stage processing for 6 or ten years of visa coverage, not including any review or appeal periods.
- Based on current Government policy, where most SHEV holders will remain ineligible for permanent visa pathways (see below), this visa processing cycle and year-on-year ever-growing backlogs will remain an indefinite feature of temporary protection visas as currently structured. The Committee should request data from the Department regarding the incurred and forecasted costs associated with these extremely inefficient and wasteful visa processing measures. On any view, the administrative burden of temporary protection is immense and raises questions of whether such spending is a justifiable use of tax-payer funds.

### Harsh processing of temporary protection: failure as a means of deterrence and of protection

Aside from being a failure from an administrative perspective, temporary protection visas have also failed on their other measures. Rather than being part of a coherent temporary migration strategy for the benefit of both refugees and Australia, temporary protection visas have been used as 'tacked on' form of collective punishment, along with a suite of other policies designed to harm refugees with an overarching goal that their suffering will deter others from seeking to exercise their right to seek asylum in Australia. As stated in the Explanatory Memorandum of the Migration and Maritime Powers (Resolving the Asylum Legacy Caseload) Bill 2014:

The Bill will address the Government's objective that any illegal arrivals who seek asylum in Australia will not be granted a Permanent Protection visa. The intention is that those who are found to be in need of protection either through existing assessment processes or through the fast track assessment process will be eligible only for grant of temporary protection visas.

There is no evidence that these harsh policies to provide only temporary protection, whether in Australia or elsewhere, has worked to deter people who flee their countries from persecution, from seeking asylum.

<sup>15</sup> <https://www.aat.gov.au/AAT/media/AAT/Files/Reports/AR201819/AAT-Annual-Report-2018-19.pdf>.

However there is plenty of evidence that putting people, who will likely be found to be refugees – and therefore with us in our communities for many years - through protracted senseless legal limbo and waiting, denying them access to basic means of support and putting them through unfair compromised legal processes, has caused them great harm and created major barriers to them being able to make their best contribution to Australia.

Aside from being cruel, these policies make no sense, especially given that such a high proportion of this group have been found to be refugees, despite all the odds stacked against them. The approval rate for this group is so far a very high 69%.<sup>16</sup> It makes no sense that this group who will be remaining with us in Australia, continue to be intentionally set them up for failure, retarding them from quickly establishing themselves so they can become contributing members of the community.

We set out their experiences of 'Fast Track' processing and temporary protection in some detail, to illuminate the reasons why fresh policies are needed which meet current needs: being durable protection for refugees and supported resettlement of refugees to regional areas for the nation.

### Shambolic 'Fast Track' processing

The application process has been, and remains, shambolic. For 3-4 years, this cohort were prevented from applying for protection and left in a legal limbo without any rights. When they were 'invited' to apply they were then given a very short arbitrary deadline within which to lodge their applications, most without any form of state-provided legal assistance: again, a process aimed at ensuring people missed the chance to apply or could only submit low quality applications.

The so-called 'Fast Track' process has been anything but. Despite having already been in Australia for 7-8 years, there are still some 4294 people (out of the total of 31,070) still 'at the starting line' who have not received even a primary decision by the Department on their protection visa application. On any assessment these protracted and unreasonable delays by the Department constitute abject maladministration. During these long years, this cohort have been left to struggle on a patchwork of temporary Bridging Visas, some denied work rights and access to Medicare, and with those most vulnerable trying to remain afloat on an ever-eroded, now tiny island of Status Resolution Support Service payments, leaving many destitute, homeless and in despair, including those with children.

The Immigration Assessment Authority (IAA) invented to 'deal with' the 'Fast Track' caseload may be fast, but also fails to comply with even the most rudimentary definition of a 'merits review' body. Its lack of independence and fairness is a source of embarrassment to its parent body the AAT and to the Australian legal system as a whole. At the heart of its unfairness is the lack of hearings or interviews provided except in very rare cases, and only very limited opportunities to provide even written submissions and new information, which all have to be provided in English and within 21 days.

The lack of hearings in this jurisdiction has enabled the IAA to proceed 'full steam ahead' in processing review applications during the COVID-19 context, without any consideration of the additional difficulties that applicants are facing to engage with the IAA process and to obtain legal assistance. The IAA chooses to apply strict time frames to its processes and has proven itself time and time again to be unreceptive to reasonable requests for extensions of time, even in the most compelling circumstances. While the IAA is of course required to work within its statutory framework, it has been particularly disappointing to see it go beyond its legal constraints and choose to make its processes even more unfair and difficult for applicants to put their best cases forward. The new IAA Practice Direction which came into effect without any consultation with the sector on 1 May 2020, tilted the scales of injustice even further against applicants. It makes it even more difficult for applicants to provide their written submissions/information at first instance and takes an even more restrictive approach to case remitted from the Courts, not allowing even written submissions to address the error of law identified by the Court.

#### *Case Study*

*Arif\* has been in Australia since 2013. Due to Government policy against boat arrivals, he was only allowed to make an application for protection in 2016. He has chronic health issues and a long history*

<sup>16</sup> Department of Home Affairs, latest published statistics May 2020 <https://www.homeaffairs.gov.au/research-and-stats/files/monthly-update-onshore-protection-866-visa-processing-june-2020.pdf>. Compared to 6.7% for other asylum seekers. Department of Home Affairs latest published statistics 2018/19 <https://www.homeaffairs.gov.au/research-and-stats/files/ohp-june-19.pdf>.

*of depression due to previous trauma and the impact of being left in legal limbo for three years, without a visa pathway or support. He then waited a further four years for the Department to process his case. However five weeks ago, at the height of the Covid-19 public health crisis, it was refused by the Department and automatically referred to the Immigration Assessment Authority (IAA). Arif received a letter from the IAA inviting him to make written submissions within 21 days. He did not previously have legal representation. He approached our centre on the 19<sup>th</sup> day, explaining that he had been unwell both physically and mentally and had found it difficult to get legal assistance earlier. With assistance, he wrote to the IAA explaining his circumstances and requesting an extension of two weeks in order to receive assistance with providing written submissions to the IAA. He did not have documentation of his mental and physical health issues he could provide, as his health care has been intermittent and largely unmanaged due to his marginalised status, throughout the whole time he has been in Australia. The IAA refused his request for an extension and proceeded to refuse his case, without providing him an opportunity for interview or the chance to provide any further information in support of his case. He now has 28 days in which to either find scarce free legal assistance to lodge an application in court or he will become unlawful and subject to detention and removal from Australia. Even if he does manage to apply to the court, he may be refused a bridging visa or granted a bridging visa without work rights, meaning he would have no means of support nor access to Medicare to treat his ongoing physical and mental health conditions for the further three to four years his case is likely to take before it is decided by the Court.*

As a consequence of these unfair processes, as of December 2019 the IAA approval rates stood at a mere 11% whereas the AAT approval rate for the same cohort (a smaller group from the same countries who for various legal reasons had review rights at the AAT) stood at 64%. The stark contrast in approval rates of the IAA compared to the AAT for similar cohorts, highlights the bias applicants experience at the IAA and how it is incapable of reliably identifying those owed protection obligations by Australia, leaving many refugees at risk of not being identified as such as facing *refoulement* to situations of persecution. The IAA should be abolished.

### Continuing encumbrances even once granted a TPV/SHEV

Even those who manage to overcome this protracted and gruelling obstacle course and secure temporary protection visas as recognised refugees, then start a new course of suffering. They are plagued by insecure visa status, having to re-apply and re-demonstrate that they continue to meet the stringent protection criteria after 3 or 5 years.

They are denied access to commence family reunion processes, causing them ongoing mental anguish. Many have wives, husbands and children living in ongoing danger in home countries like Afghanistan, Iraq, Iran or Myanmar or in precarious situations in third countries such as in Bangladesh, Indonesia or stuck in Regional Processes centres in PNG or Nauru. Protracted separation has caused the breakdown of many marriages, denied many children love from their parents and their parents the chance to love and parent their children as they grow. Any human being knows the power of love and support gained from family life and can imagine the cruel impact of being denied these, especially as an intentional matter of Government policy.<sup>17</sup> People continuously worrying about their families cannot concentrate on other seeming less important things, like building a life and community in a place of safety, which will always feel impoverished in the absence of family.

#### *Case study*

*Mohib fled from Rakhine state Myanmar to escape a systematic campaign of persecution by the Burmese military against the Rohingya minority. He had no choice but to leave his wife and 3 children aged under 5 years old behind, promising them that he would bring them as soon as he reached safety. He waited for 6 years for his visa to be processed in Australia and still cannot take any steps to assist his surviving family members. Two years after his departure, his youngest son died. Then a year later, his wife died and his children, now aged 10 and 14 have no close family members to care for them. Neither of them even recognize him. He is unable to sponsor them to Australia. He is unable to*

<sup>17</sup> See Refugee Council of Australia 'Addressing the Pain of Separation for Refugee Families', November 2016 accessed at <https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Addressing-the-pain-of-separation-for-refugee-families.pdf> and see also ASRC's submission to the Legal and Constitutional Affairs Legislation Committee, "Inquiry into Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014", 31 October 2014.

*travel to Myanmar to visit or care for them without putting his own life at risk and losing his protection status in Australia. After struggling for so many years for safety in Australia, he comes to us to say that he has decided to return to Myanmar because it is better that he dies there with his children, than continue in Australia being helpless to help them.*

The denial of family reunion rights to refugees also raise issues of Australia's compliance with its international obligation because refugees have a right to reunite with close family members; rights which are explicitly recognised by governments globally.<sup>18</sup> It also interferes with the rights of refugee children. These provisions breach Australia's obligations under the Convention on the Rights of the Child (CRC),<sup>19</sup> the International Covenant on Civil and Political Rights, (ICCPR)<sup>20</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>21</sup>.

While TPV/SHEV holders can apply for permission to travel overseas for short visits to meet family members in third countries, even this is subject to the tightly enforced requirements that the Department be satisfied there are 'compassionate or compelling circumstances' for the travel.<sup>22</sup>

TPV and SHEV holders are also unable to use the passports of their home country and may only access a UN Convention travel document. Travel outside of Australia on a travel document is extremely limited, and many countries do not allow even temporary entry to people who only hold a travel document, not a passport. As such, the practical reality is that any person in Australia who has family members in many countries are effectively prevented from travelling overseas to be with them on a temporary or permanent basis. Where unforeseen issues arise during such travel, temporary protection visa holders are vulnerable to losing their protection visa status or being denied re-entry to Australia, placing them at risk of *refoulement*.

#### *Case Study*

*Ali, a SHEV holder applied to travel to meet family members in a third country. He received a letter from the Department requesting further information in support of his application. He used google translate to understand what it meant, and he then provided the further information believing he had fully complied with the Department's requirements and was permitted to travel. He left Australia and while overseas, remained in touch with the Department seeking to confirm his travel permission details. While he was away COVID travel bans were imposed. He tried to follow Government advice and cut short his trip and return to Australia. He was refused boarding for his return flight back to Australia. He went to the local Australian Embassy to seek their assistance who conducted some checks and informed him he was approved for travel. He then bought another ticket and commenced his journey home. On the final leg of the flight from Indonesia, he was still refused boarding. He was then deported from Indonesia and re-routed back the way he came, which involved a 72 hour route via Russia, where he feared he would then be refouled to his home country, due to the close relations between the two countries. He approached authorities for help when he was in transit in Amsterdam before boarding the plane to Moscow. He then spent 7 days in a precarious situation in 'no man's land' in the international transit lounge while we tried to secure permission for him to return to Australia. He was refused three times on spurious grounds that he had showed a history of non-compliance with travel permissions, which eventually we were able to demonstrate, was not the case, and he was allowed to return to Australia.*

<sup>18</sup> Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 1951, UN doc A/CONF.2/108/Rev.1 (26 November 1952), Recommendation B; Executive Committee of the High Commissioner's Programme, *Conclusion No 88(L) on Protection of the Refugee's Family* (8 October 1999).

<sup>19</sup> Article 8(1) and article 3(1) to give primary consideration to the 'best interests' of children in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

<sup>20</sup> Art 23(1), recognising that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.

<sup>21</sup> Art 10(1) recognizing that 'the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children'.

<sup>22</sup> Under Departmental policy, TPV/SHEV holders wishing to travel must show their need to travel is in order to: visit close relatives who the applicant has not seen in over 1 year; care for close relatives who are seriously ill; attend the funeral of a close relative.



Ali's experience of being a 'refugee in orbit' and his close brush with *refoulement* highlights the dangers of temporary protection for refugees who have precarious rights to re enter Australia and nothing more than a Convention travel document when they travel. One unexpected twist and they can lose their protection in Australia and find themselves facing *refoulement* to situations of persecution.

These insights are not based only on our experience working with TPV and SHEV holders. Some Australian states, notably Queensland and Victoria, have conducted research on the impacts of TPVs and have found that the uncertainty and restrictions has had significant effects on health and employment. In addition, TPVs have put enormous strain on community service providers and shifted costs of refugee resettlement to State Governments, and created tension within ethnic communities.

### Risky, bungled and further protracted renewal processes

The risks, futility and wasted resources involved in this indefinite visa renewal cycle, which is being 'made up on the fly', are already becoming increasingly evident as TPV and SHEV holders' visas come up for renewal. SHEV/TPV visa holders will remain indefinitely trapped in endless visa processing. Based on the experience to date, this indefinite visa processing is likely to continue to be poorly planned for and resourced, poorly executed, poorly socialised, poorly supported with no legal assistance or interpreting available to assist people to comply, cumbersome, protracted, and often bungled. As described by one of our clients on a TPV:

'These processes are designed to drive us mad. They will go on forever. We are mice on their wheel. They wear us down and always make us struggle: we are always scared of making some small mistake because we didn't understand or couldn't get help, or they make the mistake, but it always is us that pays the price. They want us to trip up and miss out. There are no sensible solutions given to all these problems created by this process.'

First and foremost, TPV and SHEV holders must ensure that they do not miss the deadline to re-apply for protection before their existing visa expires, because if they do the Department's policy is that there are no second chances unless there are exceptional circumstances sufficient to persuade the Minister to personally intervene and allow lodgment of the renewal application.

Having held visas for 3 or more years, most are no longer in contact with the legal services who assisted them to apply and have had limited contact with the Department. While the Department sends TPV/SHEV holders a reminder to re-apply some months before their visas expire, this still depends on visa holders keeping their contact details up to date with the Department or they may miss this notification.

Inevitably, some will, and have already, missed this deadline. They are now considered by the Department to be on a 'removal pathway', which legally means mandatory detention (s189) followed by removal as soon 'as reasonably practicable' (s 198) despite them being owed protection obligations (s197C), and despite this constituting a clear breach of Australia's *non-refoulement* obligations under Article 31 of the Refugee Convention. These high stakes place an inappropriately heavy onus on temporary protection visa holders to ensure they remain engaged in visa processes and do not miss this deadline, which is being imposed under Government policy as incurable if it is missed. We have several clients who have missed their deadline, some due to 'exceptional circumstances' but some due to the more common reasons, which the Department says do not meet an 'exceptional' threshold. These include:

- Not having received or understood the Department's reminder to lodge a renewal, which is only provided in English.
- Not having access to legal assistance to help them re-apply. No funded service is available to assist people to complete the x page form in English or prepare any of the attachments needed relating to changes in circumstances since they initially applied. This has placed community legal organisations, already overburdened with demands for legal assistance from those going through their first application processes, under increased strain.

#### *Case Study*

*Bashir has health problems following an accident at work and has since become very depressed. He was unable to find secure accommodation and had to move in and out of emergency housing 3 times within 6 months. During this period, his Temporary Protection Visa came up for renewal. He did not receive the*

*notification as he had just moved again and not yet informed the Department of his change of address. He has now missed his deadline to apply for renewal of his TPV. He has requested that the Minister intervene and allow him to still lodge an application for renewal. His request has not yet been considered by the Minister, and nor is the Minister under any obligation to ever consider it as Ministerial powers are non-compellable. Bashir's status is now unlawful and he has become subject to detention and removal from Australia. His small administrative error in not immediately informing the Department of his change of address, has resulted in him losing his protection visa, and having no reliable means for getting it back despite his continuing need for protection.*

Furthermore, the Departmental Procedure Advice Manual (PAM) allowed those who have applied for renewal to be rejected 'on the papers' without necessarily having the chance to be interviewed, on the basis of changed country information where the Department believes such information is sufficient to ground 'changed circumstances' such that Australia no longer owes protection obligations. We note that the legal test proposed for the TPV renewal process, being the same onus to demonstrate protection obligations anew, is at odds with the provisions of the Refugee Convention, which requires that any cessation of refugee status requires a high threshold of 'substantial change' meaning 'fundamental, durable and effective' change, such that the circumstances which warranted the granted of refugee status 'have ceased to exist'.

Even where such a change has occurred, the Refugee Convention requires that decision makers must be satisfied that the factor which has now ceased is not merely replaced by different circumstances which may also give rise to refugee-related fear and requires careful individual assessment of each case on its merits. These factors include whether the person has a definite legal status in the country of return, a weighing of the human rights considerations of return, including strong family, social and economic links in the country of asylum, especially for someone who has been in that country for a lengthy period, as TPV/SHEV holders have. The TPV/SHEV renewal process as it stands does not comply with any of these standards and will likely result in some refugees losing their refugee status in breach of Australia's obligations under the Refugee Convention, and at worst face *refoulement* to situations of persecution contrary to the fundamental Convention obligations contained in Article 31.

As noted above, refugees will be left in a further three year plus limbo yet again waiting for a decision on whether their temporary protection will be renewed. This will place further strain on the mental health of this already damaged group, compounded by an ever-expanding period of separation from family members.

While applicants for renewal of their TPV/SHEV retain their TPV/SHEV until a decision is made on the renewal,<sup>23</sup> there have in practice been many issues with VEVO records providing a confusing read out status for people in this situation, resulting in employers not being satisfied they continue to hold any visa, or work rights, or being incorrectly told by Medicare staff they are no longer eligible for Medicare. When TPV/SHEV holders attempt to have these problems corrected by the Department, they are essentially told to 'sort it out themselves', and are often bounced fruitlessly back and forth between Medicare or their employers and the Department. These errors in VEVO have been known of now for many months, but still have not been fixed and have cost some refugees their jobs. Similarly, the problems with the Department's database not 'talking to' the Medicare system, has resulted in many refugees being incorrectly told they are no longer eligible for Medicare and denied access to medical treatment they have needed and are entitled to.

#### *Case Study*

*Elahe was employed as a personal carer. She applied on time for renewal of her TPV. Despite her TPV continuing indefinitely while her application remains on foot, including her right to work, her employer dismissed her as when he checked her status on VEVO the expiry date of her TPV still appeared on the system.*

#### *Case Study*

<sup>23</sup> Providing they applied for renewal prior to the expiration of their existing TPV/SHEV.

*Remy, a TPV holder who has applied for renewal of his TPV within time, has a wife who is pregnant and two children including a child with autism. Remy and his family members' Medicare card expired. When he applied for renewal of his card, he was told on repeated visits to Medicare offices that based on the data in their system, he was no longer eligible for Medicare. He contacted the Department several times, who confirmed that he was eligible for Medicare and that Medicare should be aware of this. He asked the Department to provide Medicare with evidence of his eligibility. The Department told him he had to solve the problem himself as the Department does not have the resources to provide Medicare with evidence of his entitlement. We were able to assist him in getting his Medicare reinstated but not before his wife had already missed a scan and his child had missed a specialist appointment he had been waiting for for months, due to lack of Medicare coverage*

More of these issues are likely to emerge because the whole TPV/SHEV renewal process is being muddled through and has not been planned for. Refugees are frequently the innocent victims of this bungling. As noted above, it makes no sense to subject people to a decade of visa processing for an even shorter period of visa coverage, with all of the costs to both refugees and their families from whom they remain separated from, as well as the administrative burden for the Department and the high costs of all this needless process to the tax payer.

### **Incoherence of SHEV visa policy: urgent need for reform**

The title of the 'Safe Haven Enterprise Visa' suggests a dual purpose of providing protection needed for a limited period and in the meanwhile, the opportunity to work or engage in 'enterprise'. In addition, it was also clearly the intention of Parliament to provide a permanent visa pathway for SHEV visa holders if they did everything the Government asked them to do, including living or working in a regional area for 42 months during the five year visa period and not claiming any social security benefits.

### **Failure of protection aspect**

However the SHEV has achieved none of its stated aims. Regarding protection needs, most of those granted the visa come from countries with decades-long conflicts/oppressive regimes without foreseeable end in sight: countries such as Afghanistan, Iraq, Somalia and Iran. The Government has always known that their need for protection is not a temporary 'blip' and that temporary protection is not a suitable response for those from countries where there is little prospect of them being able to return home in the foreseeable future, who clearly require ongoing protection and the chance to start afresh. As noted above, the futility and wasted resources involved in this indefinite visa renewal cycle is already evident.

### **Failure of the economic/enterprise aspect: difficulty meeting pathway requirements**

Regarding the 'enterprise' factor, SHEVs were never designed for a proper regional development strategy and so policy around SHEV remains incoherent and under-developed.

This is indicated by the absence of any federal funding dedicated to facilitate the settlement of people on SHEVs in 'regional Australia', in direct contradiction with wider Government policy to encourage refugee resettlement to Regional Areas. The 'Shergold' report in 2019<sup>24</sup> highlighted how refugees can contribute to regional areas if appropriate resources are in place. However those holding SHEVs have been excluded from such supports, further evidence that this particular group of people continues to be 'set up to fail' despite more than 7-8 years elapsing since their purported infraction of arriving by boat to seek asylum (in accordance with their basic human right to do so.)

As a global leader in refugee re-settlement, Australia well knows the ingredients necessary for successful refugee settlement, especially in regional areas which lack services tailored to refugees' needs. These were highlighted again in the Shergold report which found that further improvement is still needed in government coordination of integration and support services for refugees at all levels, including for finding employment, building on the existing strengths of refugees and supporting existing community initiatives to welcome refugees. The Australian Government responded positively to the Shergold report recommendations and

<sup>24</sup> 'Investing in Refugees: Investing in Australia', Peter Shergold, Kerrin Benson and Margaret Piper, February 2019.

committed itself to engaging a senior public servant to head coordination of refugee services and invest in further initiatives to increase refugee settlement in regional areas.

The Australian Government *is committed to continuing to increase the proportion of refugees and humanitarian entrants that settle in regional areas.* The proportion of humanitarian entrants settling in defined regional areas has grown year-on-year and is expected to exceed 40 per cent in 2019-20. The Department has commenced engagement with state and territory governments on the identification of potential additional regional settlement locations. It is also working with local government, the community and business sectors to support the ongoing success of existing regional settlement sites. *The identification of new regional settlement sites is being progressed through careful planning that takes account of the infrastructure, services, labour market profile, community support and other opportunities needed for successful settlement.* (Emphasis added).

If temporary protection is to be retained, then it is well time to pivot from a punitive model of exclusion from all supports aimed at failure, to a model where refugees are able to access a feasible pathway to permanent residence and able to receive coordinated support to 'make a go' of life in regional areas.

### Lack of accessible and clear pathway to permanent residence

As noted, when SHEVs were first established, the Government's clear intention was to provide a pathway to permanent residence to those who completed 42 months of regional work or study, and did not claim any social security in that period; in other words, for those who demonstrated financial self-sufficiency while contributing to regional economies.

Despite this promise of a permanent visa pathway to those who managed to meet these requirements, this submission highlights the difficulties that the vast majority of SHEV holders will have accessing a permanent visa, no matter how conscientiously and diligently they have followed exactly what the Government asked of them in order to be eligible for a permanent visa.

This is because in addition to completing the SHEV 'pathway requirements' they are still also required to meet all of the ordinary requirements of another specific visa category, without any concessions. While the list of visa categories they can technically apply for is long, (see annex), the vast majority of SHEV holders will never be able to meet the criteria for any of these, even despite the recently introduced skilled regional 5 year temporary visa categories, being the:

- Skilled Work Regional (Provisional) visa (subclass 491) - for people nominated by a State or Territory government or sponsored by an eligible family member to live and work in regional Australia.
- Skilled Employer Sponsored Regional (Provisional) visa (subclass 494) - for people sponsored by an employer in regional Australia;

These visas, both of which require an additional five years of living and working in Regional Australia are the 'stepping stone' for eligibility to the Permanent Residence (Skilled Regional) visa (subclass 191), which can be granted from November 2022.

However securing a 491 or 494 visa will still be beyond the reach of almost all SHEV holders, even if they are fully willing to do a further five years in regional areas before securing a permanent visa due to the requirements that they:

- Pay an application fee of \$4045, most of which must be paid up front.
- Be nominated by an approved work sponsor, relative or state/territory and meet a points test
- Have an occupation on a relevant [skilled occupation from the approved list](#)
- Have at least three years of work experience in the nominated occupation within the past five years, which cannot include casual work
- Have a suitable [skills assessment](#) for the occupation
- Be under 45 years of age

- Meet a standard of 'competent English' meaning IELTS level 6 across all four areas.

Note that the designated regional areas for these categories are wider than those designated for SHEV pathways, being everywhere except Sydney, Melbourne and Brisbane. Whereas for SHEV pathways, there are many exclusions including Perth, some areas of the Pilbara and Goldfields-Esperance regions, Newcastle, the Central Coast, Wollongong, and many areas of Victoria including Alpine, Ararat, Buloke, Campaspe, Cardinia, Central Goldfields, Hepburn, Macedon Ranges, Mansfield, Mitchell, Moira, Moorabool, Mount Alexander, South Gippsland, Southern Grampians, Surf Coast, Towong and Yarra Ranges. This narrower and more disadvantageous designation for SHEV holders is further evidence that labour market needs are not the only factor determining these designations and that there has been no attempt to harmonise these categories to make it possible for SHEV holders to switch into this pathway.

*Case Study: Not able to meet SHEV Pathway requirements due to inconsistent in nominated 'regional' areas.*

*Arash holds a SHEV. He has worked in Perth as a house painter for 4 years. He tried several times to move to other parts of Western Australia in order to find work in a SHEV 'regional area' but could not find any sustainable employment and could not get any help in doing so. The four years that he has spent working in Perth do not count towards his SHEV pathway requirements, as Perth is not a designated regional area for SHEV visas, although it is considered to be 'regional' for other regional skilled visas. Arash will be unable to meet the SHEV pathway criteria and will only be eligible for another five year SHEV, and only if he is able to satisfy the Department that he continues to be owed protection obligations.*

As a consequence, out of the hundreds of SHEV visa holders our Centre has contact with who have met the SHEV pathway requirements, **we estimate that the number who can possibly meet the requirements for any of the available visa categories to be less than 5%.** In our discussions with the Department it seems that no modelling has been done to forecast whether any of these permanent visa options will be practically available to SHEV holders.

### Urgent need for reform of temporary protection pathways to permanence

What is needed is an end to policies preventing TPV and SHEV holders from achieving security and safety and to give them the opportunity to fully invest in Australia as their home. It is now around 6 years since there were any numbers of boat arrivals and so on any view there is no longer any deterrence rationale to be pursued by continuing to punish this group of refugees. This is especially if temporary protection visa holders were to be gradually and quietly transitioned into another visa pipeline, allowing them to secure permanent residence. In short, it is time to realign treatment of this group of refugees with our current national priorities, especially given that on any reckoning 2020 has already qualified as an *annus horribilis*, with the devastating bushfires early in the year and the global COVID-19 pandemic, which has brought all migration to a halt, and may well result in major labour shortages right across Australia, but especially in regional areas, which were hardest hit by bushfires, when these can be least afforded.

There are already precedents for marrying the need for labour to support bushfire recovery, with the labour needs of those stranded on temporary visas due to COVID-19. For example, since February 2020, Working Holiday Makers (WHM) (subclass 417 and subclass 462 visa holders) assisting bushfire recovery efforts were permitted count paid or volunteer bushfire recovery work in a declared disaster area, carried out after 31 July 2019, as 'specified work' towards eligibility for a second or third WHM visa, whereas prior to the change, travellers had to put in 88 days of paid – usually agricultural – work to be able to apply for a second- or third-year working holiday visa and unpaid volunteer work was not counted towards the total number of days.

They were also given the concession that they could paid or unpaid work for up to 12 months with the same employer or organisation without requesting permission from the Department, instead of just six months as was the case before. Construction jobs were also added to the designated work activities traveler can participate in to encourage people with relevant skills and training to find work in affected areas. This program was warmly welcomed by farmers and regional businesses, thus creating a 'win win' for WHM visa holders

and people in regional areas who were only just starting to recover from the bushfires when the pandemic hit. As stated by Alan Tudge, Acting Minister for Immigration:

“Hardworking Australians have been hit by the recent bushfires, but from today they can employ backpackers for six months longer, helping them at a critical time in the recovery effort,” said Tudge. “It means working holidaymakers can help rebuild homes, fences and farms ... and help with demolition, land clearing and repairing dams, roads and railways.”

Why should temporary protection visa holders not be given relevantly tailored opportunities in order to make their contributions?

Now is the right time for a similarly creative response to match the contributions that temporary protection visa holders can make to serving national interests, especially as the Government has already articulated a plan to prioritise resettlement of refugees to regional areas in order to enliven regional economies and place less strain on infrastructure and services in major capital cities.

The Government has recognised that refugee resettlement cannot occur successfully without proper support and that services are currently lacking, especially in regional areas. This acknowledgement is important as it also highlights the great difficulty of what the Government asked those on SHEVs to do: to work or study in a regional area for 42 months, places lacking services or support in place to help them navigate this challenging move from urban centres. SHEV holders should receive some recognition and credit for having managed to meet these requirements, despite the lack of support available. They have proven to be especially resilient and resourceful. Sure they now deserve a break.

## Conclusion regarding temporary protection

With regional labour needs all the more urgent following the bushfires and now the COVID pandemic, and coinciding with fresh Government commitments to providing supported refugee resettlement to regional areas, now is the time to much better align TPV/SHEVs with their dual objectives of providing refugees with proper protection while also supporting them to make lasting contributions to regional Australia.

What is needed is a realistic, attainable permanent visa pathway for both TPV and SHEV holders as part of a planned and supported strategy for providing tailored, coordinated refugee settlement services in regional areas including assistance in securing accommodation and placement in non-exploitative work opportunities to help fill labour gaps and inject new people and life into regional economies. The COVID pandemic is likely to create lasting change in patterns of migration, and will likely result in major contraction of skilled migration to Australia for the foreseeable future. In this environment, TPV and SHEV holders should be freed from their Unauthorised Maritime Arrival (UMA) ‘chains’ and allowed to fully invest in making their best possible contributions to reinvigorating regional communities and economies.

## 5. Temporary visas increase risks of family and sexual violence

We regularly see situations where the temporary nature of a person’s visa is used by another as a means of leverage to control and harm them. This frequently occurs within violent family relationships, but also often arises in employer-employee relationships or others where there are significant power imbalances between the parties, and where the temporary visa holder is the less powerful party. Insecure visa status can further exacerbate existing imbalances of power, making victims of family or other abuse more vulnerable to such abuse and less able to access help to address it.

*Case Study: Threat of visa cancellation prevents victim from reporting family violence*

*Maryam arrived in Australia 2 years ago as a dependent on her husband. Abdul’s student visa. Shortly after arriving in Australia, Abdul started physically, verbally and emotionally abusing Maryam. When Maryam threatened to go to the police in Australia, Abdul told her that if she did that he would have her visa cancelled and she would be detained and sent back to Bangladesh.*

Family violence victims and their children on bridging visas frequently have insecure income or no income, especially those on bridging visas without work rights, no entitlement to income support. Often they cannot even access women's shelters or other emergency accommodation because they cannot be transitioned into longer term accommodation and women's shelters cannot afford to have them staying for longer periods, especially as those on temporary visas also often need other basic essentials like clothing, toiletries and funds for transport, as they have no source of income or support. Lack of support and economic vulnerability can result in victims having no choice but to continue to cohabit with the perpetrator placing themselves and their children at risk of ongoing violence.

*Case study: Lack of support results in continued cohabitation with perpetrator and breaches of orders*

*Leila\* experienced violence by her husband before they came to Australia. She travelled to Australia in 2013 after her husband abducted their two children to Australia and hid her passport. The client reunited with her husband in Australia and they lodged a joint protection visa application together, but as a result of family violence the relationship broke down. The joint protection visa application was refused, and so Leila and her former husband both lodged separate applications at the Administrative Appeals Tribunal.*

*A 2015 Family Law order granted the client with primary responsibility for the children with some time to be spent with the father. At the end of 2019, the client moved back in with her husband because she could not afford to support herself and her two children on her own. She and her former husband now live together in breach of the Family Law Order. As soon as the client moved in with her ex-husband she wrote to the Department of Immigration and Centrelink to inform them of her change in residential address, as she is obligated to do under the Migration Act. She informed Centrelink that she had not reconciled with her ex-husband, but was purely living under the same roof as him out of necessity in order to meet her living expenses. As a result of this information, the client's SRSS payments were cut off because she was deemed to be part of her former partner's family unit and supported by his salary. The client cannot afford to look for new independent accommodation, and has a bag packed ready if she needs to flee the home with her children again. Because the client was previously receiving SRSS payments, she does not have work rights on her bridging visa E.*

These vulnerabilities are not only caused by social or economic disadvantage faced by individuals but emanate directly as a consequence of migration law and policies, which intentionally place people in situations of status insecurity and acute social and economic hardship in order to deter them from pursuing their asylum claims in Australia.

We have recently made a submission to the Standing Committee on Social Policy and Legal Affairs *Inquiry into Family, Domestic and Sexual Violence* in order to highlight how temporary visas, especially bridging visa, not only make (usually) women or children more vulnerable to family violence or sexual or economic exploitation, but how current law and policies makes it so much harder for them to access protection from such abuse because if they seek help it may jeopardise their visa status. This submission also falls within the Terms of Reference of this Committee and so we have also submitted it to this Committee, along with the full recommendations contained within it. Summarised recommendations appear below.

Our submission highlights the lack of coherence in Government policy which one hand, seeks to pursue better protection of women and children especially from family and sexual violence, but on the other, creates migration law systems which make women and children on bridging and other temporary visas much more vulnerable to such abuse and much less able to access effective state protection from such violence. Some victims face, in effect, punishment for reporting family violence as they may even face consequential cancellation of their visas and deportation from Australia due to the perpetrator's acts.

*Case Study: Perpetrator's violence results in consequential cancellation of dependent victims' visas*

*Anvi travelled to Australia as a dependent on her husband's visa with their three children. A few months after arriving in Australia, their daughter began a relationship with a boy at school. Anvi's husband discovered this while he was overseas on a business trip. He sent text messages to his wife (our client) threatening to kill her and the children. He also threatened to have them sent back to their home country.*

*When he returned home, he assaulted the daughter and the client for not maintaining proper discipline over their children.*

*Anvi's husband was charged with domestic violence offences against the wife and daughter. As a result of these charges, the Department cancelled his visa under section 116 of the Migration Act, on the basis that he posed a risk to an individual or individuals in the Australian community. As the wife and children were dependents on his visa, their visas were automatically cancelled by law under section 140 of the Act. The Department of Immigration has reached out to these family members in order to advise them of their immigration options, but at law can only grant them Bridging Visa Es while they await the outcome of any subsequent visa application.*

Such incoherence cannot be addressed unless overarching national goals to effectively tackle family and sexual violence are prioritised, including by bringing laws and policies around temporary visa into alignment with these.



## Specific reform recommendations

### **The ASRC recommends that temporary protection visas be abolished and that permanent protection visas be reinstated including for those currently applying for or on temporary protection visas.**

If this recommendation is not immediately achievable in current circumstances, we suggest some urgent reforms to address some of the greatest difficulties with the current temporary protection regime, so that it becomes capable of providing both meaningful protection to refugees and better alignment with Government priorities to provide supported refugee resettlement in regional areas.

- *Bring TPV/SHEV strands together and provide identical opportunities to TPV and SHEV holders after 5 years who meet SHEV pathway requirements, including regional work or study performed while on bridging visas.*

At the time when applicants had to decide whether to apply for a TPV or SHEV in 2016/17 there was insufficient information available or provided to ensure that applicants could make fully informed decisions about which visa to apply for. For example, there was little information provided about how future SHEV pathway requirements were going to be administered, 'counted' and the requirements to evidence these, or the consequences for those who indicated they intended to meet SHEV pathway requirements but later could not in fact meet those requirements. Had clearer information been available about these aspects of the SHEV visa at the relevant time, many people who chose to apply for TPVs may well have chosen to apply for SHEVs. Given that grant of both visa categories involve exactly the same 'test' of being a person to whom Australia owes protection obligations, and given the often arbitrary nature of applicants' decisions regarding whether to apply for a TPV or SHEV, it is only fair to now bring these strands together and provide both visa categories with equivalent access to a permanent visa pathway after 5 years by meeting the SHEV pathway requirements.

Suggestion: Amend reg 2.06AAB so that work and/or full-time study undertaken by a TPV holder who is subsequently granted a SHEV will be taken into account in meeting the SHEV pathway requirement.

- *Expand eligibility for refugee resettlement services in regional areas to TPV and SHEV holders and applicants*

Now that the Government has made fresh commitments to strengthen refugee resettlement services in regional areas, it should immediately make these services available to both TPV and SHEV holders and to TPV and SHEV applicants on bridging visas. These services are needed to support all refugees trying to fulfil Government policies to live, work or study in regional areas.

Suggestion: Make refugee resettlement services available to TPV and SHEV holders and applicants in regional areas, especially supports for securing suitable non-exploitative employment, accommodation, and access to English language classes.

- *Take into account in pathway requirements regional work or study performed by TPV/SHEV applicants while on bridging visas*

Given that many TPV and SHEV holders and applicants have remained on bridging visas for up to 8 years waiting for visa processing, the Government should include in the 42 month regional requirement any periods of study or work in regional areas completed following lodgement of their applications and while on bridging visa. It is not equitable that TPV/SHEV applicants should continue to pay the 'time cost' of the processing of their visa applications being held up by the Department, through no fault of their own, for so many years. Similar to SHEV applicants on bridging visas, any work or study performed by TPV applicants while on bridging visas should also be 'counted' towards these pathway requirements.

Suggestion: Amending reg 2.06AAB so that work and/or full-time study undertaken by SHEV holders *before the grant* of the SHEV be taken into account towards meeting the SHEV pathway requirement. That is, any work and/or full-time study they engaged in while on a valid Bridging visa would be included.

- *Provide a feasible permanent visa pathway for those who have completed the pathway requirements (or robust documented evidence why they cannot) and can meet a 'civic participation' test.*

Furthermore, having been on a temporary protection visa for 5 years and met the SHEV/TPV pathway requirements of 42 months of study or work in a regional area, TPV/SHEV holders should be eligible for permanent visas through either of the following more feasible and achievable pathways:

**Option 1:** Amend *Migration Regulations 1994* to create a new permanent visa stream within the SHEV/TPV subclass 790 & 785 subclass categories to allow SHEV/TPV holders a permanent visa pathway if they:

- Can demonstrate their commitment to Australian society through their civic participation.<sup>25</sup> Their participation could be objectively evidenced across a variety of activity areas as part of a civic engagement 'simple points test'. Each activity demonstrates that individuals are engaging in activities which prepare them for permanent residence in Australia. Applicants would prepare documentation or a portfolio of the activities they have engaged in which may be drawn from any of the following relevant areas:
  - Work, skills and training
  - Education
    - Formal and informal
    - Children's education where applicable
  - English language attainment
  - Community participation
    - Involvement in local communities, contributing tax
  - Activities undertaken while on a Bridging visa or a TPV could be included in the "portfolio" of evidence demonstrating progressive civic integration into Australia.
  - An exception be allowed for those unable to undertake work or study for 42 months due to a medical condition, psychiatric health condition, carer obligations, family violence, or a combination of these reasons.
- Have been usually resident in Australia for 5 years prior to the application
- Meet mandatory health, character and security criteria.

**Option 2:** Alternatively, amend the *Migration Regulations 1994* to create a new permanent visa stream within the Subclass 189 (Skilled – Independent) visa to include a SHEV/TPV stream, which facilitates SHEV/TPV holders who are already resident in, and contributing to, Australia to become permanent residents if they:

- Meet the pathway requirements in r 2.06AA of the *Migration Regulations 1994* (that is they have worked or studied in a regional area for 42 months and not claimed any Centrelink benefits); and
- Have been contributing to Australia by earning a certain (realistic) level of taxable income; and
- Have been usually resident in Australia for 5 years prior to the application; and
- Meet mandatory health, character and security criteria.
- This alternative criteria may be more attractive from an ease of administration perspective via these easily measurable objective criteria.

**In addition**, as with other permanent protection visa holders, allow holders of the permanent SHEV/TPVs to commence family reunion application and retract subsection 8(g) of Ministerial Direction 80 'Order for considering and disposing of Family visa applications under s47 and 51 of the Migration act 1958', which places visa applications for family members sponsored by refugees holding permanent protection visas who came by boat, at the end of the queue, or as the 'lowest processing priority'. The time for subjecting people who arrived by boat 8 years ago to such discriminatory treatment has ended.

<sup>25</sup> Some of the language and indicators are drawn from the government's proposed changes to citizenship from 2017 see <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/strengthening-the-test-for-australian-citizenship>.

Refugees, whether they arrived with visas or not, should be prioritised for family reunion. They are a special category of non-nationals entitled to particular protective measures under international law, including the right to family reunion, especially as immediate family members of refugees are often also at high risk of persecution and have insecure status and legal protection while they remain overseas.

## Additional recommendations

### 1. Strengthen legal protection and visa security for victims of family violence by:

- Expanding and strengthening the existing family violence provisions available to some partner visa categories to protect all temporary visa categories
- Creating a new subclass of temporary visa to protect victims of family violence who have their visas cancelled as a result of the actions of the perpetrator, or are dependents on a visa/application but cease to be a family member of the perpetrator.
- Amending the Migration Act 1958 (Cth) to prevent 'consequential visa cancellation' where a victim of family violence has their visa cancelled due to the domestic violence perpetrated against them by the primary visa holder.
- Amending the Migration Act 1958 (Cth) to include an overarching guiding principle that all decisions taken under the Act will guarantee family unity in compliance with Australia's international obligations to ensure that victims of family violence and their children are not separated through removal, having received different visa outcomes.

### 2. Strengthen laws and policies regarding assessment of family violence claims by:

- Issuing guidance to primary and merits review decision makers regarding assessment of family violence claims giving greater weight to country information evidence limited state protection in practice, challenges for victims in documenting family violence overseas and as an 'acceptable reason for delay' in putting forward claims or applying for work rights.
- Amending Ministerial guidelines to include grounds of family violence and protection of family unity as grounds for intervention and to include all protection visa applicants.
- Abolishing 'Fast Track' processing of some protection visa applications in its entirety, or if not, re-channel 'Fast Track' applications where issues of family violence are raised, to the ordinary statutory refugee determination process.

### 3. Allow flexibility in timelines and process to take into account barriers caused by family violence by:

- Amending laws and policies to provide discretions for valid 'out of time' lodgement or reinstatement of applications for review or for extensions of time for other visa processing deadlines.
- Creating a waiver for victims of family violence to the requirement for third party consent to access documents in their own file under FOI
- Reviewing the impact of the shift to online visa applications on family violence victims including protection of their confidentiality and ability of abusing partners to control visa application processes.
- Creating an exception to the Departmental requirement that a residential address is required to lodge a valid protection visa application, where the applicant is in crisis or temporary accommodation.

### 4. Provide adequate social support by:

- Providing time-limited access to Special Benefit for those family violence victims who are asylum seekers; amending criteria for Status Resolution Support Service (SRSS) to include family violence as a ground for eligibility, and restoring SRSS to all family violence victim/families already cut off.
- Amending law and policy to provide a bridging visa by right with work rights, Medicare and study rights to all protection visa applicants who experience family violence in Australia at all stages of the refugee determination process

- Providing targeted 'top up' funding to women's safe houses and refuges when they provide services to women and children who are asylum seekers.
- Provide free specialised legal assistance (through the National Partnership Agreement on Legal Assistance) to all protection visa applicants who face family violence either in Australia or their home country, at all stages of the refugee determination process.

## **5. Provide adequate access to employment pathways, education and training opportunities**

- Provide access to a range of education options (non-accredited and accredited), for all bridging visa holders and temporary refugee visa holders (TPV and SHEV) including school leavers who are seeking asylum.
- Increased access to viable further/higher education pathways for all bridging visa holders and temporary refugee visa holders (TPV and SHEV).