Inquiry into the role of permanent migration in nation building



16 March 2023

Committee Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Committee Secretary

The Asylum Seeker Resource Centre (ASRC) welcomes the opportunity to contribute to the Committee's inquiry into the role of permanent migration in nation building.

Founded in 2001, the Asylum Seeker Resource Centre (ASRC) provides essential services to 7,000 people seeking asylum in the community in Victoria and in detention nationally, or held offshore. Our services include casework, legal, housing, medical, education, employment and emergency relief. Based on what we witness through our service delivery, we advocate for change with refugees to ensure their basic rights are met and they are treated fairly.

Modern-day Australia has been built on the contribution of generations of people seeking asylum and refugees. Australia has a history of welcoming refugees and providing permanent protection to enable them to rebuild their lives in safety and dignity, whilst contributing to our society. Australia's response after World War II, the Vietnam War and many other world crises demonstrates that permanent migration for refugees is critical to building a nation that is prosperous whilst retaining its humanity.

Recent Federal Governments have implemented regressive policies that have undermined Australia's successful migration system. This has resulted in establishing a second-class of Australian residents who are denied a fair and efficient pathway to permanency. Thousands of Australian residents are in limbo, unable to fulfil dreams for their families, denied their basic rights and self-determination. Living with constant uncertainty over one's future is debilitating and prevents people from fully participating in their communities. These circumstances also create a precarious situation in which government policy forces people seeking asylum into an insecure migration status which prevents them from accessing basic rights.

The solutions to fix our migration system exist. We strongly urge the Committee to adopt our recommendations to ensure that people seeking asylum and refugees can once again be allowed to rebuild their lives with certainty and contribute their skills, experience and resilience to Australian society.

Summary of recommendations

Recommendation 1: Introduce the '90 day rule' into the Migration Act.

Recommendation 2: Increase funding to the Department of Home Affairs, merits review bodies and courts to improve protection visa processing.

Recommendation 3: Provide people seeking asylum access to government-funded legal assistance throughout the refugee status determination process, including review stages.

Recommendation 4: Ensure that all appointments to merits review and judicial bodies are based on merit and via a transparent appointment process.

Recommendation 5: Grant work and study rights to all people seeking asylum on bridging visas throughout the refugee status determination process, including review stages.

Recommendation 6: Ensure people seeking asylum on bridging visas are eligible for government-funded study support, including subsidised VET courses, CSP, FEE-HELP, funded apprenticeships and traineeships.

Recommendation 7: Establish a swift pathway to permanency for all people seeking asylum who are part of the Legacy Caseload.

Recommendation 8: Abolish Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) and repeal the 'Fast Track' process.

Recommendation 9: Increase Australia's humanitarian intake to at least 32,000 places per year.

Recommendation 10: Delink the offshore humanitarian intake from the onshore humanitarian intake.

Recommendation 11: Provide an emergency and additional humanitarian intake of 20,000 people from Afghanistan in 2023.

Recommendation 12: Permanently close down North West Point Immigration Detention Centre on Christmas Island.

Recommendation 13: Amend the Migration Act to provide that detention of people seeking asylum must be a last resort and include strict timeframes of no more than 30 days for adults and 72 hours for children.

Deficiencies in visa processing create economic and social instability

Protracted delays in visa processing have resulted in people seeking asylum being on temporary bridging visas for up to a decade, which has undermined their rights, their health, their ability to reunite with their families, and their ability to effectively contribute to our society. These delays apply across the Department, merits review and judicial review stages. Living with constant uncertainty prevents people seeking asylum and refugees from investing in their communities for the long-term. It also has a significant impact on social cohesion as the stress of an uncertain future causes poor mental health to visa applicants and their families, many of whom are Australian permanent residents and citizens.

While people seeking asylum await their final outcomes, generally they are granted a bridging visa to regularise their migration status. However, bridging visas were not designed for extended periods due to the limited rights available to visa holders. The temporary nature of bridging visas means that many people can only work for short periods of time as they need to renew these visas on a regular basis and sometimes require the Minister for Immigration, Citizenship and Multicultural Affairs to personally intervene to grant them permission for bridging visa renewal.² While people await the renewal of their bridging visa, many become unlawful and do not have work rights. Not only does this disrupt financial and practical security, it has a severe psychological impact.

The insecure nature of bridging visas also disincentivises employers from hiring people seeking asylum. Understandably employers are hesitant to employ people who will lose their work rights every few months or years while they hold bridging visas. This creates a cruel and precarious situation for people seeking asylum and fosters an environment where predatory employers can engage in exploitative practices. The illegal work conditions that bridging visa holders have been exposed to have been linked to instances of modern slavery.³ People seeking asylum are fearful of speaking out against dangerous conditions as they may lose their jobs and do not have access to mainstream social support.

Establishing a fair and efficient process for assessing protection visa applications is critical to address the inadequacies in visa processing and to ensure just outcomes. The ASRC welcomes the Albanese Government's announcement that the Administrative Appeals Tribunal (AAT) will be abolished. It is imperative that the Immigration Assessment Authority (IAA), technically part of the AAT under the Migration Act 1958 (Cth) (Migration Act), is also abolished and that the unfair Fast Track process ends. Incorrect and unfair decision-making

¹ As of August 2022, the average Department of Home Affairs processing time for a Protection visa was 1,076 days. As of 31 December 2022, the AAT processing times for protection cases was 1,968 days. In addition, applicants seeking judicial review of their Protection visa refusals wait for at least two to three years for their matter to be finalised.

² For example, unauthorised maritime arrivals require the Minister to lift the bar under section 46A of the Migration Act in order to renew their bridging visa.

³ Human Rights Law Centre & Melbourne Social Equity Insitute, *Labour in Limbo: Bridging Visa E Holders and Modern Slavery Risk in Australia*, November 2022,

chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://socialequity.unimelb.edu.au/__data/assets/pdf_file/0011/4368962/Labour-in-Limbo-Bridging-Visa-E-holders-and-Modern-Slavery-Risk-in-Australia.pdf.

at the IAA has resulted in increases in judicial review applications, which has increased delays for protection visa applicants and placed an enormous strain on the judicial system.

It is also essential that people who are appointed to decision-making roles have the requisite skills and experience to competently assess visa applications. A disturbing trend emerged under previous governments where several unmeritorious appointments were made to the AAT, which undermined its efficacy and independence. We strongly urge the government to ensure that all appointments to the new review body are based on merit through a transparent process.

Another key reason for visa processing delays is a lack of resourcing to the Department, merits review bodies and the courts. Adequate funding is integral to providing a fair and efficient refugee status determination process. While the Albanese Government has made significant progress in reducing the backlog of certain visa applications, this has not yet extended to protection and humanitarian visas.⁵

The ASRC's legal program has also observed a concerning trend where certain protection visa applicants are not invited for Department interviews to discuss their protection claims. This approach appears to have been taken to process applications faster. It is vital that fairness and justice are not compromised at the expense of quick processing. Interviews are integral to applicants being afforded procedural fairness and having a proper opportunity to explain their protection claims.

In addition to increased resourcing, clear guidelines to ensure timely refugee status determination processing and accountability towards these standards are required to ensure meaningful and lasting improvements. Labor's platform commits to reintroduce the '90 day rule' into the Migration Act to ensure that all refugee status determinations are concluded within 90 days. We strongly urge the government to introduce this legislative standard to ensure that additional funding is responsibly managed to reduce processing delays.

The defunding of free legal assistance to people seeking asylum has also contributed to ineffective visa processing. Since 2014, successive governments have whittled down funding and since August 2022 there has been no government-funded legal assistance for protection visa applicants.⁶

The lack of free legal assistance to people seeking asylum has had a devastating impact on their ability to engage with the complex visa application process due to barriers including literacy and language skills, poor mental health, and isolation from community support, especially for people in immigration detention. Without legal assistance, people seeking asylum cannot effectively engage in the refugee status determination process, which increases unfair outcomes and inefficient visa processing. It also exposes people seeking asylum to defective advice and covert representation, at great expense to their futures.

⁴ Administrative Appeals Tribunal Annual Report 2021-22,

https://www.transparency.gov.au/annual-reports/administrative-appeals-tribunal/reporting-year/2021-22.

⁵ Financial Review, *Visa backlog cut, as 2 million applications processed*, 13 October 2022,

https://www.afr.com/politics/federal/visa-backlog-cut-as-2m-applications-processed-20221013-p5bpey.

⁶ Settlement Services International, *Immigration Advice and Application Assistance Scheme (IAAAS)*, 2022, https://www.ssi.org.au/services/newcomers-refugees-and-migrants/iaaas.

Recommendation 1: Introduce the '90 day rule' into the Migration Act.

Recommendation 2: Increase funding to the Department of Home Affairs, merits review bodies and courts to improve protection visa processing.

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Bridging visa conditions prevent people seeking asylum from working

Thousands of people seeking asylum in Australia are denied the opportunity to work and contribute their skills due to their visa conditions. This is a missed opportunity for people seeking asylum and our society as a whole. It is estimated that approximately 20 percent of people seeking asylum in the community on Bridging E Visas (BVE) are denied work rights. The Department regularly does not grant work rights to people seeking asylum on bridging visas under visa Condition 8101. However, there is no reasonable justification for this approach and it is bad policy. As stated above, due to the excessive delays in visa processing, people remain on bridging visas for up to a decade and are unable to work during this time. Granting bridging visa holders the right to work enables them to contribute their skills to the labour market, increases their self-sufficiency and prevents destitution.

In addition, people seeking asylum who hold bridging visas are often denied study rights under Condition 8207 or have study rights limited to 3 months under Condition 8201. This precludes people seeking asylum from improving their English language skills, upskilling their existing qualifications or re-skilling in new trades to meet labour market shortages.

Also, the Department often mutually exclusively grants work rights or study rights to BVE holders, which can create further harm and barriers to migrants' economic contribution to Australian society. The ASRC's employment and education programs have observed this trend which prevents people seeking asylum from upskilling and working. For example, people with the right to work are not able to complete basic up-skilling that their employer requires due to restrictions on study rights, and people who secure apprenticeships through study opportunities are not able to proceed because they lack work rights. Providing work and study rights in tandem to people seeking asylum would address this issue and ensure that our country can fully benefit from the skills and experience of people seeking asylum.

Denying people access to work rights for years consequently forces people seeking asylum to accept employment in exploitative conditions, including being underpaid and overworked in dangerous conditions. They are rendered powerless to speak out against illegal work

⁷ This estimate is based on data available from Senate Estimates in October 2021 (SE21-332) and October 2022 (OBE22-124).

conditions because they may lose their only source of income to sustain themselves until the processing of their protection visa application is finalised. Allowing conditions where unscrupulous employers can take advantage of migrants is harmful to the economic and social cohesion of our society and prevents people seeking asylum from accessing basic rights afforded to others in our country.

People who are unable to work are unlikely to be able to afford legal or other assistance, including specialist medical and psychological support. This contributes to inequality of outcomes and a significant resource demand on the not-for-profit sector.

Finally, the denial of work and study rights to bridging visa holders can have a lasting impact after people are granted permanent protection visas in Australia. Without access to work or training opportunities for several years, people are often ill-equipped to enter the job market once they are granted permanent visas. Providing work and study rights to bridging visa holders will deliver immediate benefits to our society and people seeking asylum, and will provide a more stable foundation for refugees to continue rebuilding their lives and contribute to Australian society once they are granted permanent visas.

Recommendation 5: Grant work and study rights to all people seeking asylum on bridging visas throughout the refugee status determination process, including review stages.

Tertiary and vocational training restrictions stymie refugees' potential

Refugees and people seeking asylum on temporary visas, including temporary protection visas, are excluded from subsidised funding for apprenticeships, training and certifications. They are not eligible for any type of government loan for university or vocational training, including VET-FEE HELP and HECS-HELP and are required to pay full international student fees. As a basic degree at an Australian university costs about 400 percent above domestic student rates and many VET programs cost at least \$10,000, this creates an insurmountable barrier to refugees pursuing tertiary or vocational training.

Certain states have implemented pilot initiatives to address these issues. For example, in 2016 the Victorian State Government commenced the Asylum Seeker VET program to support eligible people seeking asylum and refugees on temporary visas to access government-subsidised Skills First VET courses. Between 2016 to 2021, 1,795 people seeking asylum were referred and accessed training and education in areas such as nursing, disability care, childcare, and IT, which will enable them to fill key shortages in Australia's labour market. However, this program was limited to certain temporary visa holders and did not include all people seeking asylum and refugees. Other states and territories have trialled similar initiatives. However, without consistent eligibility criteria and federal government funding, many people seeking asylum will not have access to vital training opportunities to enable them to effectively participate in the labour market as well as reaching their full potential, which is critical to a thriving society.

Recommendation 6: Ensure people seeking asylum on bridging visas are eligible for government-funded study support, including subsidised VET courses, CSP, FEE-HELP, funded apprenticeships and traineeships.

See above Recommendations 2 and 5 regarding permanency for temporary protection visas holders and study rights for bridging visa holders.

Temporary protection regime undermines refugees' contribution to society

Temporary protection denies people the opportunity to invest in their communities and erodes social cohesion, especially as people are separated from their families.

Approximately 31,000 people seeking asylum are part of the Legacy Caseload, a cohort of people who arrived by sea to Australia and are only eligible for temporary protection visas due to their mode of arrival. Most of this cohort arrived in 2012 or 2013 and were subject to the Fast Track processing system; however, there are some who arrived in Australia prior to these dates.

Within the Legacy Caseload, there are approximately 19,000 people living in Australia on Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs); 7,000 people who are still being processed under the Fast Track system at the Department, merits review or judicial stages; 500 people whose TPV/SHEVs have expired; and around 2,500 people whose applications were refused under the unfair Fast Track system and have exhausted all avenues for review.

The ASRC welcomes the Albanese Government's recent announcement that TPV and SHEV holders have a pathway to permanence and will be permitted to apply for a permanent visa, namely a Resolution of Status visa (RoSV).

However, people who are yet to be granted a TPV or SHEV will still need to go through the flawed Fast Track process. The government advised that TPV and SHEV applications on foot before the Department of Home Affairs (Department) will be automatically converted to RoSV applications if the applicants satisfy the TPV/SHEV criteria (i.e. they are found to be owed protection).

A similar situation also applies to people seeking merits review before the Immigration Assessment Authority (IAA), a body established within the Administrative Appeals Tribunal (AAT), as well as those seeking judicial review of IAA decisions at court. This effectively means that around 7,000 people do not have a guaranteed pathway to permanency because their visa applications are being processed under the slow and unjust Fast Track system.

The Albanese Government recognised the inherent flaws of the Fast Track process and the IAA, and committed to abolishing it and providing people seeking asylum with a fair status

determination process.⁸ It is counter-intuitive for the government to accept the IAA's decision-making is unfair and flawed, yet still use this system. The government must provide a solution for the people whose protection claims were unfairly refused through the Fast Track process. This includes people currently seeking review before the IAA and courts, as well as people who had unsuccessful outcomes before the IAA and courts.

There are also 2,500 people who have exhausted their existing options under the Fast Track system and are currently still in the country. There is no announcement on how this group of people, who have lived in the community for a decade with families in Australia, can apply for permanency.

Concerning the group above the government stated:

"there may also be cases where a previously unsuccessful applicant has new claims based on changes in personal circumstances or in the person's country of origin. In those circumstances, the Minister may choose to the lift [sic] the application bar in section 46A and section 48A [of the *Migration Act 1958* (Cth)] to allow another application for a TPV or SHEV to be made". 9

If this further TPV/SHEV application is successful, then the applicant could apply for a Resolution of Status visa and eventually obtain permanent residency. More clarity is needed.

The avenue for seeking ministerial intervention has existed throughout the Fast Track process and rarely results in a visa grant. Historically, the ministerial process is slow, burdensome and opaque, and produces drastically inconsistent results. Department statistics from 2021 indicate that there are over 3,000 people waiting for ministerial intervention, including over 500 people waiting for intervention under section 48B to be permitted to lodge a further protection visa application.¹⁰

Further, ministerial intervention that is limited to an opportunity to apply for a visa (as opposed to a visa grant) will result in further delays for people seeking asylum to have a final outcome. Given that people in this cohort have been waiting for over a decade for a final migration outcome, a ministerial intervention process followed by a further protection visa application process extends that limbo.

It is also important to note that TPV/SHEVs have not yet been abolished. The threat that these harmful visas could be used in the future must be countenanced, after a decade of cruelty these visas must be abolished along with the IAA and Fast Track process.

The introduction of temporary protection visas and the punitive Fast Track process has made Australia's immigration system an international outlier. There can be no positive

⁸ Australian Labor Party, *ALP National Platform - As adopted at the 2021 Special Platform Conference*, 2021, https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf, p. 124.

⁹ Minister for Immigration, Citizenship and Multicultural Affairs, *Explanatory Statement - Migration Amendment* (*Transitioning TPV/SHEV Holders to Resolution of Status Visas*) Regulations 2023, 13 February 2023, https://www.legislation.gov.au/Details/F2023L00099/Download, p. 14.

¹⁰ Senate Standing Committee on Legal and Constitutional Affairs, Additional Budget Estimates, 14 February 2022, AE22-234.

nation-building project concerning Australia's immigration system while people who sought safety are treated as second class. In acknowledging the damage both to Australia's reputation and, more importantly, the lives of people seeking asylum who were denied basic rights for a decade, all people subject to the Fast Track process need a clear, fair and efficient pathway to permanency.

Recommendation 7: Establish a swift pathway to permanency for all people seeking asylum who are part of the Legacy Caseload.

Recommendation 8: Abolish Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) and repeal the 'Fast Track' process.

Limited humanitarian intake and immigration detention separates families and diminishes social cohesion

Family separation inhibits people from living productive and healthy lives, and has a ripple effect on communities and our nation. Permanent migration loses a key element of its appeal if permanent migrants are unable to reunite and live with their loved ones.

Humanitarian intake

Increased avenues for permanent migrants to reunite with their families are required. Labor pledged to increase the humanitarian intake progressively to 27,000 places per year, as well as an additional 5,000 places for community sponsorship. However, the October 2022/23 budget omitted this policy, maintaining the Morrison Government's humanitarian intake maximum of 13,750 people.

Furthermore, during 2021-22 Australia did not meet the ceiling for its humanitarian intake, and only provided 13,307 humanitarian visas,¹¹ following the historically low intake of 5,947 places in 2020-21.¹² This is a woeful and unacceptable situation, especially when people who have lived in Australia for several years, including many permanent residents and Australian citizens, desperately want to reunite with their families who are in life-threatening situations.

Despite the historically low humanitarian the current intake cap imposed by the Morrison Government affects both people seeking asylum onshore and offshore. There are tens of thousands of people currently living and working in Australia and have been for years, waiting for an outcome of their application. Refugees onshore and offshore should not be pitted against each other, the intake must be separated to address both groups.

Since 1947, over 925,000 refugees have permanently settled in Australia, in addition to refugees who are temporary protection visa holders.¹³ This demonstrates that a sizeable

¹¹ Department of Home Affairs, *Australia's Offshore Humanitarian Program: 2021-22*, https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2021-22.pdf.

¹² Department of Home Affairs, *Australia's Offshore Humanitarian Program: 2020-21*,

https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2020-21.pdf.

¹³ Refugee Council of Australia, *How many refugees have come to Australia?*, 31 October 2022, https://www.refugeecouncil.org.au/how-many-refugees-have-come/.

population within Australian society has families located overseas who are very likely to be in need of resettlement.

When Australian residents are separated from family members in dangerous circumstances, this has a flow-on effect for communities, including significant impacts on mental health that diminish social cohesion and economic contribution, divestment of resources from diaspora communities into overseas markets, and loss of skilled migrants who relocate overseas. Increasing the humanitarian intake to permit family reunification does not only have a moral imperative – it is essential for a thriving society with full labour market participation.

Also, it is appropriate that there are additional targeted intakes to address emergency humanitarian situations. For example, the lack of an increase in Australia's humanitarian intake is concerning in relation to Afghanistan, where there has been sustained community advocacy for an additional 20,000 emergency humanitarian places. People from Afghanistan comprised 88 percent of offshore humanitarian visa applications in 2021-22,¹⁴ and many of these people have loved ones who are permanent residents in Australia. The Morrison Government's commitment to 16,750 visa places over four years (not all of which will be additional places to the current intake) is grossly insufficient.

Recommendation 9: Increase Australia's humanitarian intake to at least 32,000 places per year.

Recommendation 10: Delink the offshore humanitarian intake from the onshore humanitarian intake.

Recommendation 11: Provide an emergency and additional humanitarian intake of 20,000 people from Afghanistan in 2023.

Immigration detention

Immigration detention continues to separate families in Australia and has a devastating impact on communities. The average time that people spend in immigration detention has rapidly increased over the previous decade from 74 days in 2012 to 774 days. ¹⁵ This is an extraordinary amount of time for people seeking asylum and refugees to be separated from their loved ones, many of whom are Australian permanent residents. While people are awaiting decisions regarding their protection visa outcomes, they should be allowed to live in the community. This will enable them to contribute their skills and talent, as well as enhance social cohesion for them and their families.

Successive governments have spent an exorbitant amount on immigration detention. The most recent budget allocated a staggering \$1.3 billion to maintain an onshore immigration detention regime. The October 2022-23 budget also committed \$632 million to hold

¹⁴ Department of Home Affairs, *Australia's Offshore Humanitarian Program:* 2021-22, https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2021-22.pdf.

¹⁵ Refugee Council of Australia, *Statistics on people in detention in Australia*, 21 January 2023, https://www.refugeecouncil.org.au/detention-australia-statistics/5/.

¹⁶ Commonwealth of Australia, Budget October 2022-23, *Portfolio Budget Statements 2022-23, Home Affairs Portfolio*, October 2023,

refugees offshore, a steep increase of \$150 million from the previous government's funding.¹⁷ Also, in response to the increasing detention population due to COVID-19, in 2020 the Morrison Government reopened the detention centre on Christmas Island, which cost \$464.7 million. Instead of reducing the number of people held in detention similar to the US, UK and Canada, the government chose the opposite approach and expanded immigration detention during the pandemic.¹⁸

In stark contrast, the annual average cost of a person seeking asylum living in the community on a bridging visa was \$3,962 in 2020-21.¹⁹

Australia's immigration detention regime also affects Australia's global standing and its attractiveness to migrants.

The significant savings from reducing closed immigration detention could be invested in a range of initiatives to strengthen our nation's economy and commitment to human rights. A sound migration system should allocate resources in a responsible and considered manner whilst treating people with humanity. Investing in alternatives to closed detention achieves these objectives.

Recommendation 12: Permanently close down North West Point Immigration Detention Centre on Christmas Island.

Recommendation 13: Amend the Migration Act to provide that detention of people seeking asylum must be a last resort and include strict timeframes of no more than 30 days for adults and 72 hours for children.

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¹⁸ Australian Human Rights Commission, *Management of COVID-19 risks in immigration detention*, 2021, https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immi gration-detention.

¹⁹ 2022-23 Budget estimates, BE22-084,

https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId14-PortfolioId20-QuestionNumber84.