# Policy Paper - Fairness

## Introduction

Everyone should be treated fairly and be able to live with dignity and in safety with their families. However, in Australia, refugees and people seeking asylum are often denied these basic rights.

People subjected to the unjust Fast Track process have been waiting for over a decade for fair protection visa application outcomes. They require a swift pathway to permanent residency and a humane and fair response. Permanent protection is essential for refugees to reunite with their families and rebuild their lives with certainty and hope for their future.

Refugees and people seeking asylum have suffered devastating consequences due to Australia's broken refugee status determination process, including protracted delays and permanent family separation. New laws passed in 2024 allow people seeking asylum to be forcibly removed to third countries and place people at serious risk of refoulement. Immediate action is required to prevent further harm to refugees and people seeking asylum.

Informed by people with lived experience of seeking asylum, this policy position paper will address urgent reforms to ensure pathways to permanency and establish a fair and efficient refugee status determination process.[1]

## Recommendations

1. Provide a clear and swift pathway to permanent residency for all people seeking asylum failed by the Fast Track process, and those part of the wider Legacy Caseload.
2. Provide all people seeking asylum access to a fair and efficient refugee status determination process, including reintroducing the '90 day rule' regarding processing timeframes and access to procedural safeguards in merits review.
3. Abolish the temporary protection regime, which discriminates against refugees who arrive without valid visas, and provide permanent protection to all refugees.
4. Provide family reunion mechanisms to allow dependent family members (including 'aged out' children) to come to Australia.
5. Repeal amendments to the Migration Act that enable the forced removal of people seeking asylum to third countries.

[1] For information on Australia's immigration detention regime and refugees' exclusion from mainstream social support, please refer to the ASRC's policy position papers on Freedom and Safety respectively.

# Policy achievements since 2022

The ASRC's 2022 Fairness policy paper included these recommendations which have been achieved.

## 1. All TPV and SHEV holders to be granted permanent status in Australia

On 13 February 2023, the Albanese Government announced that TPV and SHEV holders would be eligible to apply for permanent Resolution of Status visas (RoS Visa) from March 2023. The Government estimated that the majority of RoS Visa applications would be finalised within 12 months from a person's RoS Visa application date. As of February 2025, 19,820 RoS Visas have been granted.[2]

## 2. Abolition of Ministerial Direction 80 to allow refugees who arrived by sea to reunite with family in Australia

In February 2023, the Albanese Government abolished Ministerial Direction 80, a policy that discriminated against refugees who arrived by sea by deprioritising their family visa applications. Under the new policy, Ministerial Direction 102, all families will be entitled to have their family visa applications dealt with under the usual processes, regardless of how they travelled to Australia.

## 3. Abolition of the AAT and IAA, and the establishment of a new federal review body

In May 2024, the Albanese Government passed legislation to replace the Administrative Appeals Tribunal (AAT) with the Administrative Review Tribunal (ART), which abolished the Immigration Assessment Authority (IAA) and Fast Track process.[3] The establishment of the ART will address concerns regarding protracted delays and bias, including a transparent and merit-based system of appointments. The ART will commence on 14 October 2024,[4] and cases before the IAA at this time will be transferred to the ART for finalisation once the ART is established.

These changes are important steps towards establishing a fair and efficient refugee status determination process. However, the ART legislation maintains an unfair and different set of rules for refugees, people seeking asylum and migrants, which must be reformed.

## 4. Increase in government-funded legal representation for people seeking asylum

In October 2023, the ASRC welcomed the Government's announcement of over $48 million for legal representation for protection visa applicants.[5] However, the details of how this funding has been allocated and how many people seeking asylum have been able to access legal representation through this funding have not been published. It remains to be seen whether the

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[2] Department of Home Affairs, UMA Legacy Caseload, February 2025. https://www.homeaffairs.gov.au/research-and-stats/files/unauthorised-maritime-arrivals-bve-28-feb-2025.pdf

[3] *Administrative Review Tribunal Act 2024* (Cth), *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth).

[4] Attorney-General's portfolio, Administrative Review Tribunal to commence in October, 19 July 2024, https://ministers.ag.gov.au/media-centre/administrative-review-tribunal-commence-october-19-07-2024.

[5] The Hon Andrew Giles MP, Restoring integrity to our protection system, 5 October 2023, https://minister.homeaffairs.gov.au/AndrewGiles/Pages/restoring-integrity-protection-system.aspx.

recent funding will significantly improve access to legal representation for people seeking asylum, particularly people with higher barriers to access to justice, such as those in immigration detention.

### 5. Increased funding to address backlogs of protection visa applications

The Government has increased funding to address backlogs before the Department, merits review and courts regarding protection visa applications. In October 2023, the Government announced a $160 million package to address visa processing delays.[6] Further, the 2024/45 Federal budget included an investment of $854.3 million over four years for the roll-out and sustainable operation of the ART, and $115.6 million over four years from 2024–25 (and an additional $194.2 million from 2028–29 to 2035–36) to address high migration backlogs in the federal courts, including through the establishment of two migration hubs dedicated to hearing migration and protection matters.[7] Adequate resourcing to ensure timely outcomes is an integral part of a fair and efficient refugee status determination process.

## Permanent residency for people subjected to the Fast Track process

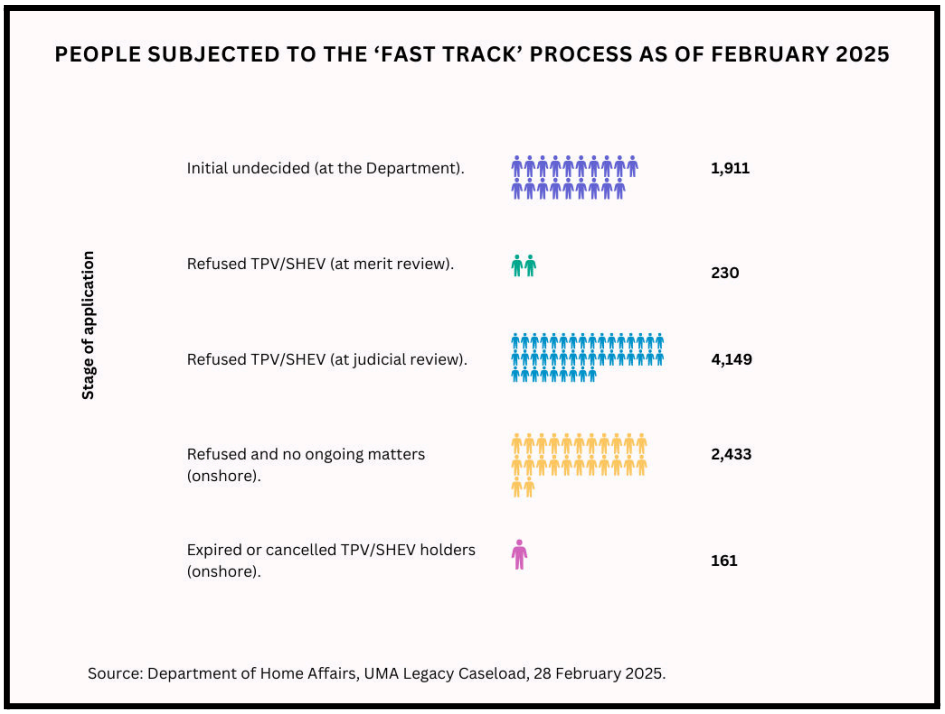
### Recommendation 1: Provide a clear and swift pathway to permanent residency to all people seeking asylum subjected to the Fast Track process.

**8,500 people have been waiting for their protection visa application outcomes for over a decade.** Many are not allowed to work or study, and are ineligible for social supports and healthcare. People have been forced into poverty and destitution, living in uncertainty on bridging visas and separated from their families for over 10 years.

This is due to the failed Fast Track refugee status determination process introduced by the Abbott government in 2014, which produced unfair and legally incorrect decisions, exposed refugees to refoulement, caused protracted delays, re-traumatised people seeking asylum and punished people based on their mode of arrival. **Whilst the Albanese government abolished Fast Track in 2024, clear pathways to permanency have still not been established for the approximately 8,500 people failed by Fast Track.**

[6] Ibid.

[7] Refugee Council of Australia, The 2024-25 Federal Budget: What it means for refugees and people seeking humanitarian protection, 14 May 2024, https://www.refugeecouncil.org.au/the-federal-budget-what-it-means-for-refugees-and-people-seeking-humanitarian-protection/ (RCOA 2024-25 Federal Budget Analysis).




In 2014, the Abbott Government amended Australia's laws to prevent people who sought asylum by sea from accessing permanent protection in Australia. Under Fast Track, if a person seeking asylum had their protection visa application refused by the Department, they could only seek a limited merits review before the Immigration Assessment Authority (IAA), which was a review body within the Administrative Appeals Tribunal (AAT). The IAA was not required to observe minimum standards of procedural fairness. **Since 2021-23, over 48% of IAA decisions (i.e. over 500 decisions) reviewed by the court were found to be unlawful**;[8] many people would not have been able to access judicial review or legal representation, meaning the number of unlawful decisions is likely to be considerably higher. The Department's errors were not rectified through the review process, with the IAA effectively acting as a rubber stamp for the Department by affirming close to 90% of Department decisions.[9]

***Case study***

Joseph fled Sri Lanka in 2013 and sought asylum. His SHEV application was refused by the Department and IAA, and he sought judicial review. Joseph has faced multiple processes before the IAA and court. **He is awaiting the outcome of a judicial review matter of his third IAA decision and has been seeking asylum for over a decade.**

[8] https://www.transparency.gov.au/publications/attorney-general-s/administrative-appeals-tribunal/administrative-appeals-tribunal-annual-report-2022-23/chapter-4-immigration-assessment-authority/performance

[9] Administrative Appeals Tribunal Annual Reports 2021-22 and 2022-23, Chapter 4 - Immigration Assessment Authority, https://www.transparency.gov.au/publications/attorney-general-s/administrative-appeals-tribunal/administrative-appeals-tribunal-annual-report-2021-22/chapter-4-immigration-assessment-authority/performance; https://www.transparency.gov.au/publications/attorney-general-s/administrative-appeals-tribunal/administrative-appeals-tribunal-annual-report-2022-23/chapter-4-immigration-assessment-authority/performance (appeals remitted in relation to total appeals finalised).

Even if Joseph is successful before the courts again, highlighting the repeated failure of the IAA to determine his claim lawfully, he is unlikely to obtain a positive outcome due to the protracted delay, which has impacted his protection claims.

In 2024, the Albanese Government passed legislation to abolish the IAA and the Fast Track process by replacing the AAT with the Administrative Review Tribunal (ART). However, the new Tribunal will not fully remedy the injustice experienced by people exposed to the unfair Fast Track process.

**The new ART does not provide any redress for:**

- Approximately 2,458 people who were subjected to the unjust Fast Track process and have no merits or judicial review matter on foot.
- Approximately 4,227 people seeking judicial review at Court who will only have the opportunity to have their protection claims assessed by the ART if they are successful at Court.

In 2023, the Albanese Government announced a pathway to permanent residency for people who were granted temporary visas under Fast Track. This meant people who were granted Temporary Protection Visas (TPV) or Safe Haven Enterprise Visas (SHEV) through Fast Track could apply for a permanent Resolution of Status Visa (RoSV). Also, TPV/SHEV holders who applied for renewal of their visas could have their applications converted to RoSV applications. **As of March 2025, 19,936[10] TPV/SHEV holders have been granted a permanent RoSV.**

However, approximately **7,071 people seeking asylum have not had their matters resolved, despite the Government's temporary protection visa conversion announcement**,[11] the majority of whom have had their protection visa applications refused under the unfair Fast Track process. The only options available to them are to continue seeking review (if they still have an existing case before the ART or courts, which will take several years) or request Ministerial intervention to submit a further protection visa application.

**During this time, many do not have the right to work or study, do not receive Medicare and cannot access any form of income support, which forces people seeking asylum into destitution and poverty.**

### Breakdown of people in the Fast Track process:

| Stage of application | Numbers (as of March 2025)[12] | Current pathways to permanency |
|---|---|---|
| Initial TPV/SHEV application undecided (at the Department) | 1,946 | Continue with visa processing commenced under Fast Track process - Department must find that person is owed protection |
| Refused TPV/SHEV/ROS - at merits review before IAA/ART | 217 | Continue with visa processing commenced under Fast Track process - IAA/ART must find that person is owed protection |
| Refused TPV/SHEV/RoS - at judicial review (i.e. case is at court) | 3,975 | Both judicial and merits reviews must be successful |
| Refused and no ongoing matters | 2,446 | No pathway |

[10] https://www.homeaffairs.gov.au/research-and-stats/files/unauthorised-maritime-arrivals-bve-31-mar-2025.pdf
[11] Additionally 1.54 people have not received an initial decision from the Department, which increases the total number of people failed by Fast Track to approximately 8,125.
[12] https://www.homeaffairs.gov.au/research-and-stats/files/unauthorised-maritime-arrivals-bve-31-mar-2025.pdf

| | | |
|---|---|---|
| TPV/SHEV/RoS visa cancelled or expired (onshore) | 158 | People with expired TPV/SHEVs can apply for RoSV. People with cancelled TPV/SHEV do not have a pathway. |
| **Total** | **8,742** | Please note this figure includes those whose initial application is still undecided. |

The Albanese Government has stated that an unsuccessful Fast Track applicant who has new protection claims could request the Minister for Home Affairs to intervene in their case and allow them to apply for another TPV or SHEV. **This is not a viable pathway to permanency.** The avenues for ministerial intervention are limited and, at best, enable someone to submit a further protection visa application rather than being granted a visa. The process is inefficient, often taking years, and to date, only a small number of people have had success with Ministerial Intervention. It produces inconsistent and arbitrary outcomes, meaning people with identical circumstances receive different outcomes. There are also other barriers to fair outcomes, including unclear Ministerial intervention guidelines, screening by Department delegates, meaning only some cases reach the Minister, and a lack of merits review.

***Case study***

Ahmad arrived in Australia in 2013 after fleeing Iran. Ahmad's protection claims relate to his statelessness and ethnicity. He applied for a SHEV in 2017, which was unsuccessful, and sought merits review before the IAA. The IAA did not accept that Ahmad was stateless and was Iranian. Ahmad sought judicial review of his IAA decision, however, he could not afford legal representation and was unsuccessful before the courts.

Ahmad managed to obtain evidence from the Iranian authorities that he is not an Iranian citizen. In July 2022, Ahmad sought Ministerial intervention under section 48B of the Migration Act as he had updated information about his protection claims and statelessness. After two years, Ahmad has not received any update about his Ministerial intervention request and is living in uncertainty about his future.

The pathway to permanency for this cohort should not be limited to further assessment of their protection claims. It is grossly unfair to expect everyone in this cohort to still meet this threshold over 10 years after they fled their countries of origin. People have been subjected to protracted delays in seeking review of protection visa refusal decisions, with the courts still processing judicial review applications that were lodged over seven years ago in 2017. People should not be punished for the successive government's bureaucratic failure and ineffective processing, which caused excessive delays that prevented them from obtaining a fair and final outcome for their protection visa applications.

**People subjected to the unfair Fast Track process have been living in Australia for over a decade – they have been working, paying taxes, attending school and rebuilding their lives.** After seeking asylum for over 10 years, living with uncertainty and being separated from their families, the moral and humane response is to provide clear and swift pathways to permanent residency for all people seeking asylum impacted by the unfair and cruel Fast Track system.

***Case study***

Anjali fled Pakistan in 2013 and sought asylum with her husband in Australia. They had a daughter soon after they arrived in Australia, and their family applied for a protection visa. Anjali was subjected to family violence by her husband, and they separated.

Anjali's case was refused by the IAA, and she sought judicial review of her IAA decision. Anjali was not able to raise new information about the family violence she experienced before the Courts, as they can only consider information that was before the IAA. Anjali could not afford legal representation for her court case, and her case was dismissed by the Courts.

Anjali's daughter became an Australian citizen last year after being born in Australia and living here for 10 years. However, **Anjali does not have a pathway to permanency to live in Australia as her child's sole carer after seeking asylum for over a decade.**

# Fair and efficient refugee status determination process

## Recommendation 2: Provide all people seeking asylum with access to a fair and efficient refugee status determination process, including the introduction of the '90 day rule' regarding processing timeframes and access to procedural safeguards in merits review.

People seeking asylum should have access to a fair and efficient refugee status determination process. Australia's current system fails to meet this standard - it denies procedural fairness and is overly bureaucratic, which has resulted in protracted delays, unjust decisions and devastating impacts on people's lives.

In May 2024, the ASRC welcomed the long-overdue passage of legislation to replace the AAT with the Administrative Review Tribunal (ART), which abolished the Fast Track process.[13] The establishment of the ART will also address concerns regarding protracted delays and bias, including a transparent and merit-based system of appointments. The ART commenced on 14 October 2024, and cases before the IAA and AAT at this time will be transferred to the ART for finalisation.

## Fix protracted processing delays

One of the key reasons that Australia's refugee status determination process has failed people seeking asylum is the lengthy processing delays. In 2018-2019, the average time for the Department to process a permanent protection visa application was 334 days; by 2022-23, this

[13] *Administrative Review Tribunal Act 2024* (Cth), *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth).

had more than tripled to 1,076 days.[14] Lawyers at the ASRC have observed that it can take one to three years for an applicant to be invited to a Department interview, and even when a person is found to be owed protection, it can take an additional year for the protection visa to be granted.

If a person's permanent protection visa application is refused by the Department, then they must contend with extraordinary delays seeking review before the tribunals and the courts.[15] **These delays mean that a person seeking asylum could wait over a decade for a final visa outcome.**

Protracted delays cause significant distress to people seeking asylum as they are unable to plan with any certainty for their future. It denies them the right to rebuild their lives and reunite with family and exacerbates mental health issues, which in turn can impact their ability to engage in the refugee status determination process. Also, lengthy processing times force people seeking asylum into destitution because they are denied mainstream social support and often do not have work rights.[16] Timely decision-making, which does not compromise on quality and fairness, is essential to uphold the rights of people seeking asylum to ensure they can live in safety and with dignity.

***Case study***

Benjamin arrived in Australia on a student visa after fleeing his country of origin due to facing serious harm because of his sexuality. He was unaware that he could apply for a protection visa on these grounds. Benjamin's mental health declined due to his trauma. He was unable to meet his student visa requirements, and his student visa was cancelled. Benjamin experienced homelessness and was extremely unwell. He was taken into detention; at this time, he was connected with the ASRC, and he applied for a protection visa and was released from detention on a bridging visa without work rights.

**Benjamin waited over five years for his protection visa to be granted and could not work during this time or access Medicare despite his complex health needs.**

Benjamin applied for work rights on his bridging visa several times, but the Department refused to grant him work rights because it did not consider that he had an 'acceptable reason' for his delay in applying for a protection visa. The protracted delay and lack of work rights caused immense distress and exacerbated Benjamin's mental health conditions, making it very difficult for him to engage in the protection visa application process.

The Albanese Government has started taking steps to address these issues, including the abolition of the AAT, establishment of the ART and increased funding to address backlogs before the

[14] Senate Legal and Constitutional Affairs Committee, 2022-23 Budget estimates October and November, OBE22-180, https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId19-PortfolioId20-QuestionNumber180.

[15] As of March 2023, processing times for AAT protection cases could take up to 2,021 days - see Administrative Appeals Tribunal, Migration and Refugee Division processing times, 2023, https://www.aat.gov.au/resources/migration-and-refugee-division-processing-times. Also, migration cases at the Federal Circuit and Family Court of Australia have increased nearly threefold over the last decade from 1,981 in 2012-13 to 5,236 in 2020-21. Generally applicants seeking judicial review at court of their Protection visa decision wait at least two to three years for their matter to be finalised.

[16] For more information refer to the ASRC policy position on Safety.

Department, Tribunal and courts regarding protection visa applications. However, the Government must take further steps to avoid this situation again and ensure that additional funding for visa processing is responsibly managed to reduce delays. **Clear guidelines to ensure timely refugee status determination processing and accountability towards these standards are required for meaningful and lasting change.**

The 2023 ALP platform committed to reintroducing the '90 day rule'.[17] The rationale for this rule was included in the 2021 ALP Platform as an accountability measure to ensure that all refugee status determinations are concluded in a timely way within 90 days.[18] This legislative standard will reduce the risk of Australia repeating its past mistakes and ensure that people seeking asylum have certainty regarding the timeframes for protection visa processing.

## Remove barriers to procedural fairness in merits review

The abolition of the IAA and AAT and the end of the Fast Track process are important steps towards establishing a fair and efficient refugee status determination process. However, the ART legislation maintains an unfair and different set of rules for refugees, people seeking asylum and migrants, which must be reformed. These laws also disproportionately impact the most disadvantaged people in our community, such as women fleeing gender-based violence and people with severe mental health conditions.

For example, section 367A in the Migration Act requires the ART to draw an unfavourable inference where a protection applicant raises new claims or evidence before the ART if the ART is satisfied the applicant does not have a reasonable explanation for this delay.[19] Protection visa applicants have valid reasons for a delay in providing updated evidence and claims, including trauma and related mental health illness, language barriers, fear of authorities and lack of legal representation. As the legislation does not provide any guidance regarding what would suffice as a 'reasonable explanation', there is no guarantee that these valid explanations would be accepted by the ART. Consequently, this provision is likely to continue to cause severe hardship and unfair outcomes for protection applicants. There is no valid justification for including this requirement, especially as Tribunal members already have discretion to assess any delay as part of an applicant's credibility within their existing powers.

***Case study***

Mindy came to Australia from Nigeria on a student visa. She applied for a protection visa as she was fearful of domestic violence from her family. Mindy is lesbian, however, she was afraid and ashamed to disclose this to the Department, especially as she was worried her family in Nigeria might find out.

Mindy's protection visa was refused by the Department, and she sought review before the Tribunal. Mindy accessed pro bono legal representation and received legal advice about raising protection claims regarding her sexuality. However, the Tribunal was required to draw an unfavourable inference against Mindy when she raised her

[17] Australian Labor Party, ALP National Platform - As Determined by the 49th National Conference, 2023, p 141.
[18] Australian Labor Party, ALP National Platform - As Adopted at the 2021 Special Platform Conference, 2021, p 124.
[19] Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023 (Cth) sch 2 item 170. This clause replicates section 423A in the Migration Act 1958 (Cth).

sexuality claims for the first time, which unfairly disadvantaged Mindy and led to an unjust outcome.

## Abolish the temporary protection regime

### Recommendation 3: Abolish temporary protection visas and provide permanent protection to all refugees.

The Albanese Government's TPV/SHEV conversion announcement did not abolish the existence of the temporary protection regime in Australia. In fact, the Government included specific amendments to the Migration Regulations 1994 (Cth) to clarify that TPVs and SHEVs will continue to exist after the conversion announcement.[20] This means that refugees will be subjected to temporary protection in the future - this applies to refugees who arrive in Australia without a valid visa (e.g. people who arrive by sea or people who arrive by plane and their visas are cancelled at the airport because they intend to seek asylum). In contrast, people who arrive in Australia with a valid visa and then seek asylum are eligible to apply for a permanent protection visa.[21]

**A person's mode of arrival to Australia must not determine their eligibility for permanent protection; this practice is discriminatory, unfair and results in certain refugees being treated as second-class.**

Australia should have learnt from its past mistakes that temporary protection is harmful. Temporary protection visas were first introduced in Australia in 1999 and were abolished in 2008 due to significant community pressure regarding their harmful impact. A 2019 study found that **people seeking asylum on insecure visas were 5 times more likely to report severe mental illness than those on permanent visas**.[22] Further, the Australian Human Rights Commission reported that temporary protection creates uncertainty for children, which worsens their mental health and hinders their participation in education opportunities.[23] Despite the overwhelming evidence indicating that temporary protection visas cause devastating outcomes and are bad policy, they were reintroduced by the Coalition Government in December 2014.

***Case study***

Abdul fled Afghanistan due to his Hazara ethnicity and came to Australia by sea in 2013. As Abdul arrived by sea, he required permission from the Minister for Immigration to apply for a visa. In 2017, he was only permitted to apply for a TPV via the Fast Track process. The Department and IAA refused his protection visa application, and Abdul sought judicial review of his IAA decision. The court remitted his matter to the IAA in 2020, and he was granted a TPV in 2021, but was not able to sponsor his wife and children in Afghanistan. He is now waiting for his TPV to be

[20] Migration Regulations 1994 (Cth), Schedule 1, Item 1403 (3)(ba)(i) and Item 1404 (3)(ba)(i).
[21] Migration Regulations 1994 (Cth), Schedule 1, Item 1401.
[22] https://link.springer.com/article/10.1007/s00038-019-01249-6#citeas
[23] Human Rights and Equal Opportunity Commission, A last resort? National Inquiry into Children in Immigration Detention, 2004, https://humanrights.gov.au/sites/default/files/content/human_rights/children_detention_report/report/PDF/alr_complete.pdf.

converted to a permanent RoS Visa. **Abdul has been in Australia for a decade and unable to reunite with his wife and children during this time.**

By contrast, Mohammed fled Afghanistan due to his Hazara ethnicity and came to Australia by plane on a tourist visa in 2016. As Mohammad arrived by plane on a valid visa, he was able to apply for a permanent protection visa immediately. His visa application was initially refused by the Department, however, he was able to seek review before the AAT with full merits review rights. In 2019, the Tribunal confirmed that Mohammad was owed protection and remitted his matter to the Department. Mohammed was granted a permanent protection visa, and he was able to sponsor his wife and children to live in Australia.

The ALP 2023 Platform acknowledged that people seeking asylum have the right to seek asylum regardless of their mode of arrival, and that seeking asylum is not illegal.[24] Therefore, it is inconsistent for the ALP to maintain temporary protection visas that discriminate against people based on how they arrive in Australia.

Temporary protection is harmful because it creates constant uncertainty, and refugees are forced to live in limbo. Australia's temporary protection regime is also contrary to international law, which provides that temporary protection should only be used in rare circumstances, generally in situations of mass movements of people seeking asylum when individual refugee status determination is impracticable. By contrast, Australia's temporary protection regime exists solely on the basis that people arrived in Australia without a visa - this is not a legitimate reason to deny permanent protection to refugees. Australia's temporary protection regime risks breaching international human rights law by denying refugees their right to seek safety and live with dignity.[25]

## Provide family reunion mechanisms to allow dependent family members (including 'aged out children') to come to Australia

### Recommendation 4: Provide family reunion mechanisms to allow dependent family members (including 'aged out' children) to come to Australia.

Our migration system should value family unity and seek to create a thriving and diverse nation. Many refugee families face significant financial, technical and bureaucratic barriers to family reunification.[26] Family unity is a central component of refugee protection. Many refugees are unable to reunite with their families in Australia due to complex procedures, delays and prohibitive visa fees.[27] People remain separated from their loved ones due to the inflexible and narrow concepts of family, which determine visa eligibility.[28] Family unity is essential for refugees to rebuild

[24] Australian Labor Party, ALP National Platform - As Determined by the 49th National Conference, 2023, p 134.
[25] UNSW Sydney, Andrew & Renata Kaldor Centre for International Refugee Law, Temporary Protection Visas and Safe Haven Enterprise Visas, https://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas.
[26] Human Rights Law Centre, Families Belong Together: Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Family Reunion, May 2021, p. 5.
[27] Asylum Seeker Resource Centre, 2022-2025 Budget Priorities, p. 6.
[28] Narrow definitions of 'family unit' and 'immediate family' in the Migration Regulations also exclude some people from the split family provisions of the Special Humanitarian Program, and prevent some families from applying for protection visas as a family unit (including

their lives in Australia. Refugees should not have to choose between living in safety and reuniting with their families.

The cruelty of temporary protection is heightened by restrictions that prevent family reunion for TPV and SHEV holders, including no family sponsorship and limitations on overseas travel. As a result, **families are torn apart and separated for protracted and indefinite periods**. People subjected to the temporary protection regime have not been eligible to sponsor any family for a decade. Refugees who hold temporary protection visas, which are currently being converted to permanent Resolution of Status visas, will soon be able to sponsor family. However, many of their children have 'aged out' of the ability to be sponsored by their parents in Australia, according to the Migration Regulations requirements for a Child (subclass 101) visa.

These refugees have been punished and denied family reunion due to their mode of arrival in Australia. This issue has been compounded by excessive visa processing delays, which have resulted in refugees and migrants waiting several years to be granted a visa. By the time their visa is granted, their children are 'aged out' of the ability to be sponsored by their parents for a Child (subclass 101) visa. It is almost impossible for children over the age of 18 to reunite with their parents in Australia.

In 2019, the Australian Human Rights Commission published a report on the impact of the Fast Track process and temporary protection on refugees and people seeking asylum.[29] Many people in the Legacy Caseload lack access to any viable opportunity for family reunion and remain separated from their families, including minor children, indefinitely. The report found that this has a significant negative impact on the mental health and resettlement of people seeking asylum. Family reunification assists refugees in integrating into the country of resettlement. People in the Legacy Caseload could not make meaningful plans for their future without knowing whether their families would be part of that future.[30]

In February 2023, the Albanese Government abolished Ministerial Direction 80, a policy that deprioritised family visa applications for people who sought asylum by sea. This was replaced by Ministerial Direction 102, in which people are entitled to have family visa applications dealt with under the usual processes, regardless of how they travelled to Australia.[31] This is a positive step towards reducing barriers to family reunification for refugees and not punishing people based on their mode of arrival.

The Minister for Home Affairs can amend the Migration Regulations 1994 (Cth) to remove the age criteria for dependent applicants for Partner visas, ensuring children do not 'age out' from eligibility and become permanently separated from their families. Amendments could also allow for the waiver of visa application charges applicable to Family stream visas sponsored by people from refugee backgrounds. The government should also waive or postpone certain visa criteria, such as health checks, biometrics collection or the provision of State-issued identity or background documents, if they cannot practically be satisfied by an applicant or sponsor from a refugee background.

The Department of Home Affairs needs to commit sufficient resourcing to urgently resolve the remaining backlog of Partner and Child visa applications pending for more than two years, and to guarantee reasonable processing times into the future.

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where children turn 18 while waiting for a protection application to be processed). See Migration Regulations 1994 (Cth), reg 1.12 and 1.12AA.

[29] Australian Human Rights Commission, Lives on Hold: Refugees and asylum seekers in the 'Legacy Caseload', 2019, https://humanrights.gov.au/sites/default/files/document/publication/ahrc_lives_on_hold_2019.pdf.

[30] Ibid. (p. 91)

[31] https://asrc.org.au/wp-content/uploads/2023/07/ASRC-Submission-2023-National-Platform-2-1.pdf

In 2025, the ASRC conducted consultations with refugees and people seeking asylum, reviewing advocacy priorities. Family reunion was the third most common issue discussed by respondents, with 19% expressing the need for more advocacy on this. Respondents expressed concern that family reunification was extremely difficult, with protracted processes and narrow eligibility that excludes parents, siblings and 'aged out' children. This had significant consequences on respondents' mental health.

*"More focus is needed on ensuring that people seeking asylum have the ability to reunite with their families, as prolonged separation has significant emotional and psychological impacts."*

## Repeal amendments to the Migration Act that enable the forced removal of people seeking asylum to third countries

### Recommendation 5: Repeal amendments to the Migration Act that enable the forced removal of people seeking asylum to third countries.

The new laws passed by the Albanese Government at the end of 2024; the Migration Amendment Act, the Migration Amendment (Removals and Other Measures) Act, and the Migration Amendment (Prohibited Items in Immigration Detention) Act, allows the government to forcibly remove people seeking asylum to third countries, reverse their protection findings and ban people from certain countries from entering Australia. These new laws are the most significant changes to the way we treat refugees since offshore detention was introduced. They attack the freedom and safety of refugees and people seeking asylum, and raise serious concerns about human rights and fairness.

**The new legislation has resulted in many new issues:**

a) The government has entered into a 'third country reception arrangement' with Nauru since the introduction of the Migration Amendment Bill in 2024. There are no details publicly available of the agreement with Nauru, including where these people will be held on Nauru and how much money is being paid to Nauru. There are no details of other countries the government is negotiating with or has negotiated with, for the same purpose.

b) It appears there has been no consideration regarding how removing refugees to Nauru (who have been living peacefully in our community in Australia) may affect them psychologically once they are separated from their immediate family and friends and other protective factors, and how this will impact the Nauran community. As far as we know, Nauru do not have specialist psychological services available.

c) There is no publicly available information about which countries are being considered to be designated as 'removal concern countries' following the Migration Amendment (Removal and Other Measures) Act 2024.

d) The new possibility for criminal penalties for refusal to comply with a 'removal pathway direction', in line with the Migration Amendment (Removal and Other Measures) Act 2024.

## Forced removal to third countries

The Migration Amendment Act and the Migration Amendment (Removals and Other Measures) Act allow the Australian Government to pay third countries to accept people deported from Australia.[32] **These deportation powers are unprecedented, and there is no requirement that a person have any permanent right to reside in the third country, nor any guarantee of their safety and non-refoulement.** A person who does not cooperate with their deportation may face detention of up to 5 years imprisonment with a minimum sentence of 12 months.[33]

Anyone who is in detention and due for removal from Australia could be sent to a third country. People on Bridging R visas can also be sent to a third country, and if accepted, their visa will automatically cease, and they will be taken back into detention.[34] These powers will most likely be used against people who are owed protection or are stateless, and cannot be returned to their country of origin.

The new legislation raises significant concerns regarding the ability to forcibly remove non-citizens to unspecified or undisclosed third countries. It allows a person to be sent to a third country, even if the government of that third country might detain them or return the person to a home country where they may face serious harm. This could include Regional Processing Countries such as Nauru or other countries where people seeking protection face imminent harm and persecution. In February 2025, the Government re-detained 3 men and scheduled them for removal to Nauru, raising serious concerns about human rights, refoulement and procedural fairness.

## Reversing protection findings

The new laws expand the Minister's (and his delegates') power to revisit protection findings for some people in the community. This means the government has already accepted that a person is owed protection under the Migration Act,[35] and that they would face a risk of harm in their country of origin. If a person has a protection finding, they cannot be deported to the country to which the protection finding relates, even if they do not have a visa.[36]

The Minister already has the power to reverse the protection findings of people in detention if the Minister no longer thinks the person faces a risk of harm. Now, this power also applies to people in the community who hold a Bridging R visa or hold a Bridging E visa that has been granted on removal grounds.[37]

## Travel bans

The new laws allow the Minister to impose travel bans on particular countries, to prevent almost anyone from those countries from getting a visa to travel to Australia.[38] There are some limited exceptions for immediate family members of Australian citizens and permanent residents.[39] No travel bans have been introduced yet, but this could happen in the future.

Prior to the legislation being passed, the Refugee Council of Australia, Asylum Seeker Resource Centre, RACS and Human Rights Law Centre attended a public Senate Hearing on the proposed

[32] Migration Act 1958 (Cth), s 198AHB.
[33] Migration Act 1958 (Cth), s 199E.
[34] Migration Act s 76AAA.
[35] Migration Act s 197C(4)-(7).
[36] Migration Act s 197C(3).
[37] Migration Act s 76AAA.
[38] Migration Act s 199F.
[39] Migration Act s 199G(2).

legislation, rejecting the bill in its entirety, citing grave concerns around the ability to remove refugees to unknown third countries, the Minister's sweeping powers to overturn protection findings, and the serious risk of sending people to countries where they could face imminent harm and persecution.

## Here's how you can act

You can support current ASRC campaigns calling for the government to immediately provide clear pathways to permanency for refugees and people seeking asylum who have been living in limbo for over a decade.

https://action.asrc.org.au/home-is-here