

Introduction

The Asylum Seeker Resource Centre (ASRC) welcomes the opportunity to contribute to the Department of Home Affairs' (Department) inquiry into Australia's multicultural framework review. Founded in 2001, the ASRC provides essential services to 7,000 people seeking asylum in the community in Victoria and in detention nationally and 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 and people seeking asylum to ensure their rights are upheld and they are treated fairly.

Australia's approach to refugees and people seeking asylum is critical to any discussion about multiculturalism. These settings dictate whether people can access safety, support, and family unity, and participate in Australian society. Australia's refugee policy also sends a powerful message to communities in Australia and across the globe about how people not born in Australia and people of diverse ethnic backgrounds can expect to be treated in our country. This has a significant impact on whether people feel welcome and a sense of belonging within their communities.

The increasing politicisation of refugees and people seeking asylum by successive governments has damaged Australia's integrity as a multicultural society, and often fuelled racist rhetoric and division within communities. Sadly, refugees and people seeking asylum often bear the brunt of racism which underpins government policies that deny their human rights. The inhumane offshoring of refugee processing to Nauru and Papua New Guinea, extraordinary delays in visa processing, denial of work rights to people seeking asylum, and a mandatory and indefinite detention regime are some of the harmful policies that have undermined the safety and dignity of refugees and people seeking asylum.

This Review is a critical opportunity to end these corrosive policies, and to articulate a clear path to inclusion and cohesion. The necessary solutions include people seeking asylum having the right to work and study, and access to a universal safety net while awaiting the outcome of their visa applications. Also, permanent protection for refugees, ending indefinite detention and reforms to address institutional racism in protection visa processing will enable refugees to live with safety and dignity. In addition, permanent residency is a humane and fair response for people seeking asylum who have been living in our communities and subjected to an unfair process for over a decade.

We urge the Department to adopt the ASRC's recommendations to foster inclusion and address injustices that have harmed multicultural communities and created systemic barriers to their participation in Australian society.

Summary of recommendations

Secure migration status

- Recommendation 1: Provide permanent residency for people seeking asylum who were subjected to the Fast Track process, and abolish the Fast Track process including the Immigration Assessment Authority.
- Recommendation 2: Abolish temporary protection and provide permanent protection to all refugees.
- Recommendation 3: Provide information and support for refugee communities to access Australian citizenship.

Family unity and freedom

- Recommendation 4: Increase the humanitarian intake to at least 32,000 places per year.
- Recommendation 5: Provide an emergency and additional humanitarian intake of 20,000 people from Afghanistan.
- Recommendation 6: Reform the immigration detention framework, including ending mandatory and indefinite detention, providing that detention of people seeking asylum must be a last resort, and instituting maximum timeframes of 30 days for adults and 72 hours for children.
- Recommendation 7: Offer all people held in PNG evacuation to Australia.
- Recommendation 8: Provide resettlement pathways for all people subjected to offshore detention that preserves family unity with Australian permanent residents and citizens.

Seeking asylum with dignity

- Recommendation 9: Grant work and study rights to all people seeking asylum throughout the refugee status determination process, including review stages.
- Recommendation 10: Provide all people seeking asylum with access to mainstream social support, such as the Special Benefit program.
- Recommendation 11: Refund Status Resolution Support Services to pre-2016 levels of \$300 million and expand eligibility.

Addressing institutional racism

- Recommendation 12: Implement mandatory annual anti-racism training for all Department, review body and judicial decision-makers, and for members of law enforcement bodies.
- Recommendation 13: Monitor and assess conduct by Department, review body and court decision-makers, and law enforcement bodies, particularly where apprehended bias concerns arise, to inform training and performance management, including suspension and termination.
- Recommendation 14: Appoint Department, review body and judicial decision-makers from diverse ethnic backgrounds.

Fair protection visa processing

- Recommendation 15: Provide government-funded legal representation to people seeking asylum throughout the refugee status determination process.

Secure migration status

People seeking asylum for over a decade need a solution

There are approximately 10,000 people seeking asylum,¹ who have been living in Australia for over 10 years and subjected to an unfair refugee status determination process called Fast Track. Due to the defective Fast Track system and excessive processing delays, people seeking asylum have been forced to live in uncertainty for over a decade. This group requires an equitable and effective pathway to permanent residency.

The ASRC was heartened to hear that two families in this cohort have been granted permanent residency, including the Nadesalingam family from Biloela.² After years of uncertainty and suffering, it is cause for celebration that they can permanently live in safety in Australia.

However, this individualised response leads to a perception of arbitrariness and injustice for the remaining people who have not been provided with the same opportunity to rebuild their lives with certainty about their future. There is growing distress and confusion within the community regarding why a select few have been able to access permanence and the vast majority have been left without a clear solution. After a decade of uncertainty and being separated from their families, there has been a rapid decline of people's mental health. The ASRC is gravely concerned about their health and well-being, and fears that additional delay in the Government providing a solution could result in further deterioration, and even loss of life.

The unfair 'Fast Track' process - a refugee status determination process for people who sought asylum by sea - commenced in 2015. If a person seeking asylum's protection visa application is refused by the Department, the Fast Track process only provides limited merits review before the Immigration Assessment Authority (IAA). IAA decisions are generally based on a paper review of information before the Department, and people seeking asylum do not have a right to a hearing to present their protection claims. Applicants are only allowed to provide a five-page submission, which must be provided within three weeks from the date their case is referred to the IAA. Consequently, the IAA's decision-making has been unjust and riddled with errors. Since 2020, over 30 percent of IAA decisions (i.e. over 300 decisions) reviewed by the courts were found to be unlawful,³ noting that 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.

¹ Department of Home Affairs, UMA Legacy Caseload, July 2023,

<https://www.homeaffairs.gov.au/research-and-stats/files/unauthorised-maritime-arrivals-bve-july-2023.pdf>.

² ABC News, Asylum seeker Neil Para who walked 1,000km from Ballarat to Sydney granted permanent residency, 9 September 2023,

<https://www.abc.net.au/news/2023-09-10/ballar-at-asylum-seeker-neil-para-completes-walk-to-sydney/102825402>.

³ Administrative Appeals Tribunal Annual Report 2021-22, 2022, Chapter 4 - Immigration Assessment Authority, <https://www.transparency.gov.au/annual-reports/administrative-appeals-tribunal/reporting-year/2021-22-44> (appeals remitted in relation to total appeals finalised).

Case study

Anjali fled Sri Lanka 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 has sought judicial review of her IAA decision. She is still waiting for a court hearing. Her daughter will be eligible for Australian citizenship this year, however **Anjali does not have a secure pathway to permanency after seeking asylum for over 10 years**. Anjali has suffered considerable fear and insecurity over the past decade.

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.

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. These multicultural communities are now part of the fabric of Australia and their home is here. After seeking asylum for over 10 years, living with uncertainty and being separated from their families, the moral and humane response is to provide permanent residency for all people seeking asylum impacted by the unfair and cruel Fast Track system.

Recommendation 1: Provide permanent residency for people seeking asylum who were subjected to the Fast Track process, and abolish the Fast Track process including the Immigration Assessment Authority.

Temporary protection harms refugees

Temporary protection is harmful because it creates constant uncertainty, denies refugees the opportunity to invest in their communities and erodes social cohesion, especially due to protracted family separation. The Albanese Government's February 2023 announcement that Temporary Protection Visa (TPV) and Safe Haven Enterprise Visa (SHEV) holders can apply for permanent visas (namely, the Resolution of Status Visa) did not abolish the existence of the temporary protection regime. 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. 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.

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.

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 temporary protection visa via the Fast Track process with limited merits review rights. The Department and IAA refused his protection visa application, and Abdul is now seeking judicial review of his IAA decision before the Courts. **He has been seeking asylum for a decade and separated from his wife and children in Afghanistan during this time.**

By contrast, Mohammed fled Afghanistan due to his Hazara ethnicity and came to Australia by plane in 2016. As Mohammad arrived by plane, he was permitted to apply for a permanent protection visa immediately. His visa application was refused by the Department, however he was able to seek merits review before the Administrative Appeals Tribunal 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.

Abdul deserves to be treated equally to Mohammed when seeking asylum, including his rights during the refugee status determination process, eligibility for a permanent protection visa and the ability to sponsor his family.

The cruelty of temporary protection is heightened by restrictions that prevent family sponsorship and limitations on overseas travel causing families to be torn apart and separated for protracted and indefinite periods of time. Family unity is essential for refugees to rebuild their lives in Australia. Refugees should not have to choose between living in safety and reuniting with their families.

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 devastating impact. A 2006 Senate Inquiry confirmed that temporary protection causes immense suffering.⁴ **Mental health experts found that refugees on TPVs experienced increased anxiety, depression and post-traumatic stress disorder in comparison to permanent protection visa holders.**⁵ In 2019, the Australian Human Rights

⁴ Senate Legal and Constitutional Affairs Committee, Inquiry into the Administration and Operation of the Migration Act 1958 (Cth), 2006, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2004-07/migration/report/index.

⁵ Australian and New Zealand Journal of Public Health, Killedar, A & Harris, P, Australia's refugee policies and their health impact: a review of the evidence and recommendations for the Australian Government, Volume 4, Issue 41,

Commission published a report on the impact of the Fast Track process and temporary protection on refugees and people seeking asylum, which confirmed that temporary protection continues to inflict immeasurable harm on refugees.⁶ The Commission also reported that temporary protection creates uncertainty for children, which worsens their mental health and hinders their participation in education opportunities.⁷ Despite the overwhelming evidence that temporary protection visas cause devastating outcomes and are bad policy, they were reintroduced by the Coalition Government in December 2014 and wreaked havoc on people's lives.

Recommendation 2: Abolish temporary protection and provide permanent protection to all refugees.

Access to Australian citizenship

Often refugee communities are unaware of their right to apply for Australian citizenship after living in Australia for a certain period of time, and the benefits of becoming an Australian citizen, such as the right to vote. Also, permanent residents may not be aware that their visas could be subject to cancellation in certain circumstances, which may result in detention, permanent family separation and removal from Australia. Removing barriers to applying for Australian citizenship is critical for multicultural communities to access their rights and have new opportunities to contribute to Australian society.

Recommendation 3: Provide information and support for refugee communities to access Australian citizenship.

Family unity and freedom

Family separation inhibits people from living productive and healthy lives, and has a ripple effect on communities and our nation. Since 1947, over 925,000 refugees have permanently settled in Australia, in addition to refugees who are temporary protection visa holders.⁸ This demonstrates that a sizeable population within Australian society has families located overseas who are very likely to be in need of resettlement. Multicultural communities cannot thrive if they are unable to reunite and live with their loved ones.

<https://onlinelibrary.wiley.com/doi/full/10.1111/1753-6405.12663>; Momartin S, Steel Z, Coello M, Aroche J, Silove DM, Brooks R. A comparison of the mental health of refugees with temporary versus permanent protection visas, *Med J Aust*, 2006, 185(7), <https://pubmed.ncbi.nlm.nih.gov/17014402/>.

⁶ 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.

⁷ 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.

⁸ Refugee Council of Australia, *How many refugees have come to Australia?*, 31 October 2022, <https://www.refugeecouncil.org.au/how-many-refugees-have-come/>.

Humanitarian intake

Increased avenues for permanent migrants, including refugees, 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.⁹ However, the October 2022/23 budget omitted this policy, maintaining the Morrison Government's humanitarian intake level of 13,750 people. Some progress was made in August 2023 when the Government announced that it will increase the intake this year by 2,125 places.¹⁰ Yet this number remains significantly lower than the initial target of 27,000 places.

Further, 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 from diverse backgrounds, desperately want to reunite with their families who are in life-threatening situations.

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 has a moral imperative and is also essential for a thriving multicultural society with full economic and social participation.**

Further, it is appropriate that there are additional targeted intakes to address emergency humanitarian situations. For example, there has been sustained community advocacy for 20,000 emergency humanitarian places in response to the fall of Kabul in 2021.¹³ People from Afghanistan comprised 88 percent of offshore humanitarian visa applications in 2021-22,¹⁴ and many of the applicants have loved ones who are permanent residents in Australia. In March 2022, the Morrison Government committed to an additional 4,125 visas for people from Afghanistan per year for four years. This was a welcome announcement, however it remains below the immediate 20,000 additional places and does not respond to the scale of the humanitarian crisis. As crises continue to unfold throughout the world, such as in Myanmar and Sudan, it is necessary that there are

⁹ ALP National Platform - As Adopted at the 2021 Special Platform Conference, March 2021, p 123.

¹⁰ Refugee Council of Australia, Refugee Council welcomes life-changing expansion of Australia's refugee program, 11 August 2023, <https://www.refugeecouncil.org.au/expansion-of-refugee-program/>.

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 Ibid.

¹³ Action for Afghanistan "Open Letter" (2022) <https://www.actionforafghanistan.com.au/open-letter>.

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>.

responsive pathways for Australian residents to sponsor their loved ones who are in dangerous situations.

Recommendation 4: Increase the humanitarian intake to at least 32,000 places per year.

Recommendation 5: Provide an emergency and additional humanitarian intake of 20,000 people from Afghanistan.

Immigration detention

Immigration detention has a disproportionate impact on multicultural communities in Australia. Refugees and people seeking asylum are routinely subjected to indefinite and arbitrary detention, resulting in devastating consequences including irreparable damage to their health and permanent family separation. Concerningly, **the average time that people spend in closed immigration detention has rapidly increased over the previous decade from 81 days in 2013 to 711 days.**¹⁵ The average period of detention remains just above two years largely due to the significant number of people (135) who have been detained for longer than five years.¹⁶ This is an extraordinary amount of time for people seeking asylum and refugees to be denied their liberty and separated from their loved ones, many of whom are Australian permanent residents and citizens. The significant and irreversible damage to people's health and well-being cannot be overstated.

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.¹⁷ In stark contrast, the annual average cost of a person seeking asylum living in the community on a bridging visa was \$3,962 in 2020-21.¹⁸ While people are awaiting decisions regarding their visas, they should be allowed to live in the community. This will reduce the harm from family separation and maintain social cohesion, as well as enable people to contribute to their communities.

Recommendation 6: Reform the immigration detention framework, including ending mandatory and indefinite detention, providing that detention of people seeking asylum must

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

¹⁶ Department of Home Affairs, Immigration Detention and Community Statistics Summary, April 2023, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-april-2023.pdf>.

¹⁷ Commonwealth of Australia, Budget October 2022-23, *Portfolio Budget Statements 2022-23, Home Affairs Portfolio*, October 2023, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.homeaffairs.gov.au/reports-and-pubs/budgets/2022-23-oct-home-affairs-pbs-full.pdf>

¹⁸ 2022-23 Budget Estimates, BE22-084,

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

be a last resort, and instituting maximum timeframes of 30 days for adults and 72 hours for children.

In addition, Australia's offshore detention regime has caused immense suffering to refugees and people seeking asylum in breach of their human rights. During 2012 and 2013, people seeking asylum were transferred to Papua New Guinea (PNG) and Nauru for offshore processing. Since this time, there has been a significant deterioration of people's mental and physical health due to a lack of appropriate medical treatment, indefinite separation from their families (in Australia and overseas), and no permanent pathway to safety in sight. At least 14 people subject to offshore processing have died,¹⁹ and many others have been subjected to human rights abuses and neglect. **62 men remain in PNG unable to rebuild their lives, reunite with family or have any certainty about their future.** After a decade held offshore, there is an urgent need for evacuation.

Also, there are over 1,000 people in Australia who were previously held offshore and transferred to Australia for medical treatment. While options are available to certain people in this cohort to resettle in the United States, Canada and New Zealand, there are many who have no resettlement pathway. In addition, many people have had children in Australia and have family members that are Australian permanent residents and citizens, yet there is no pathway for them to remain with their family in Australia.

Case study

Said is a refugee who spent over nine years in Nauru. His brother is an Australian citizen. In 2021, several of Said's family members were evacuated to Australia, including his wife and three children. However, Said remained in Nauru.

Said was finally transferred to Australia in December 2022 and reunited with his wife and children. However, Said is not able to apply for a permanent visa to live with his family in Australia. He is scared that he will be separated from his wife and children again.

Refugees and people seeking asylum who were held offshore have been subjected to a decade of oppressive policy. Urgent reform is needed to ensure that they can live in safety with their families.

Recommendation 7: Offer all people held in PNG evacuation to Australia.

Recommendation 8: Provide resettlement pathways for all people subjected to offshore detention that preserves family unity with Australian permanent residents and citizens.

¹⁹ Human Rights Law Centre, #9YearsTooLong, July 2022, <https://www.hrlc.org.au/timeline-offshore-detention>.

Seeking asylum with dignity

Right to work

The right to work is essential to ensure that people can live with dignity. However, thousands of people seeking asylum in Australia are denied the right to work while awaiting the outcome of their protection visa application. This is a wasted opportunity for people seeking asylum and our broader society as we miss out on the rich skills, capabilities and experience of people seeking asylum.

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. Due to the excessive delays in visa processing, people seeking asylum remain on bridging visas for up to a decade and are unable to work during this time.

Of the 7,000 people seeking asylum who access the ASRC's services, around 57 percent are without work rights and 66 percent are without study rights. This occurs simply due to the Department not granting work rights to people seeking asylum on bridging visas. Also, it is estimated that approximately 20 percent of people seeking asylum in the community on Bridging E Visas (BVE) are denied work rights.²⁰ **The denial of work rights to people seeking asylum forces them into destitution and prevents them from accessing necessities such as food, housing and healthcare.**

Case study

Benjamin²¹ 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 in Australia. Benjamin's mental health declined due to past experiences of trauma. He was unable to meet his student visa requirements and his visa was cancelled.

Benjamin experienced homelessness, was extremely unwell and unable to seek legal assistance. He was taken into detention and at this time he was connected with the ASRC who advised him about his legal rights.

Benjamin applied for a protection visa and while awaiting the outcome of his protection visa application, he was granted a bridging visa with no work rights. He applied for work rights several times, however the Department refused to grant him work rights.

²⁰ This estimate is based on data available from Senate Estimates in October 2021 (SE21-332) and October 2022 (OBE22-124).

²¹ All the names in the case studies in these submissions have been changed to protect people's identity.

Benjamin waited over five years for his protection visa to be granted and was prohibited from working during this time. Benjamin was ready and willing to work and could have financially supported himself during his protection visa application process and avoided experiencing homelessness if he had work rights.

The denial of work rights fosters an environment where people seeking asylum are forced to accept employment in exploitative conditions, including being underpaid and overworked in dangerous circumstances, in order to financially support themselves and their families. The illegal work conditions that bridging visa holders have been exposed to have been linked to instances of modern slavery.²² People are rendered powerless to speak out against illegal work conditions because they may lose their only source of income and do not have access to mainstream social support. Allowing circumstances 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. Granting people seeking asylum the right to work is crucial for a flourishing multicultural society.

Access to healthcare linked to work rights

People seeking asylum who do not have work rights are ineligible for Medicare and cannot access medical treatment. An estimated 20 percent of people seeking asylum on bridging visas do not have access to Medicare. Also, the constant requirement to renew bridging visas means that people seeking asylum often lose access to Medicare, which can occur at critical times, such as during pregnancy or medical emergencies. The denial of access to healthcare has serious repercussions on people's physical and mental health as well as an adverse impact on public health.

Case study

Ahmed fled his country of origin and sought asylum in Australia by sea in 2012. He has been seeking asylum for over a decade. While he awaits an outcome for his protection visa application, the Department has granted him a temporary bridging visa without work rights. This means that **Ahmed cannot access Medicare despite his serious health conditions including Post-Traumatic Stress Disorder and diabetes.**

As Ahmed cannot access Medicare, he was not aware that he could attend a public hospital for a medical emergency and he became very unwell. Ahmed relies on charities to assist with his medical needs, however they cannot provide the required treatment.

²² Human Rights Law Centre & Melbourne Social Equity Institute, *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.

Right to study

People seeking asylum who hold bridging visas are often denied study rights or have study rights limited to three months. This precludes people seeking asylum from improving their English language skills, upskilling their existing qualifications or re-skilling in new trades.

The Department often mutually exclusively grants work rights or study rights to bridging E visa holders, which can create further harm and barriers to inclusion. 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 upskilling 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 people seeking asylum have the opportunity to contribute their skills and experience.

Finally, the denial of work and study rights to bridging visa holders can have a lasting impact after refugees are granted permanent protection visas. 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 people seeking asylum will deliver immediate benefits to them and our society, and will provide a more stable foundation for refugees to rebuild their lives and contribute to Australian society once they are granted permanent visas.

Recommendation 9: Grant work and study rights to all people seeking asylum throughout the refugee status determination process, including review stages.

Provide a universal safety net to people seeking asylum

Many people seeking asylum face barriers to access basic necessities such as food, clothing and healthcare, and require a universal safety net to prevent destitution. **Currently, 98 percent of people seeking asylum waiting for their protection visa applications to be processed have no access to integral social support systems, including income, housing, educational assistance and legal aid.**²³ Due to protection visa processing times skyrocketing, many people seeking asylum wait for up to a decade for a final outcome. The bridging visas held by people seeking asylum were never designed for protracted periods, and people are often driven into poverty due to the limited rights available to them, including ineligibility for mainstream social support.

²³ Asylum Seeker Resource Centre, Poverty through Policy: The impact of excluding people seeking asylum from mainstream social support, 2023, https://asrc.org.au/wp-content/uploads/2023/04/ASRC_Policy_Through_Poverty_Finalv1.pdf.

Case study

Layla sought asylum from Malaysia due to experiencing family violence. She arrived on a tourist visa and her friend connected her with someone who met her at the airport and took her to a regional area to commence farm work. Layla was unaware that she did not have work rights. Her passport was confiscated by the farm owner and she was paid below the minimum wage. The farm owner handled her migration matters and lodged a protection visa application on her behalf in which her actual claims for protection were not included. Layla was not interviewed by the Department and her protection visa application was refused. The farm owner did not advise Layla of this outcome.

Layla's bridging visa expired. The farm owner told Layla that he could not help her anymore and that she had to return to Malaysia. Layla was too afraid to return to Malaysia given her experiences of family violence so she escaped from the farm. Fortunately, she was connected with support services in the regional town. She received migration advice and lodged a ministerial intervention request to submit another protection visa application on the basis of her experiences of family violence.

As her previous bridging visa did not have work rights, she is ineligible for work rights. She is also ineligible for SRSS. She has several health issues relating to the injuries she sustained as a result of family violence, however without work rights she is unable to access Medicare. She has experienced periods of homelessness during which she has been sexually assaulted. Layla is severely anemic as she is unable to afford food or supplements. It is likely that the Department will take years to assess her ministerial intervention request, during which time she will have no means to support herself.

Over the past seven years, the Federal Government has cut its budget of support for people seeking asylum by nearly 90% from \$300 million a year in 2016 to \$15 million.²⁴ Approximately two percent of people seeking asylum receive Status Resolution Support Services (SRSS), which the government refers to as a 'transitional allowance'.²⁵ SRSS eligibility is very restrictive and many people seeking asylum who are experiencing poverty are unable to access it. Also, the support provided through SRSS is wholly inadequate to meet the cost of living in Australia as SRSS housing and income support are only provided at 89 percent of the rate of mainstream support.

Social security is designed as a safety net to ensure that people can access necessities such as food, clothing and healthcare, in particular when they are facing tough times. Everyone in Australia, including people seeking asylum, should have access to this safety net to ensure that no one lives in poverty. In addition, social support must be provided in tandem with the right to work, study and access to healthcare (as outlined above).

²⁴ ASRC, The Asylum Seeker Resource Centre's response to the 2023-24 Federal Budget: Small changes, but a cruel system remains, 2023, <https://asrc.org.au/2023/05/10/budget-2023-24/>.

²⁵ Department of Home Affairs, Question on Notice: OBE22-233 - Status Resolution Support Services - Income Support, 2022.

Recommendation 10: Provide all people seeking asylum with access to mainstream social support, such as the Special Benefit program.

Recommendation 11: Refund Status Resolution Support Services to pre-2016 levels of \$300 million and expand eligibility.

Addressing institutional racism

Racism underpins the systemic barriers that refugees and people seeking asylum face. In addition to the government policies outlined above, failures to appreciate cultural differences, unwarranted assumptions, bias and unreasonableness by decision-makers in protection visa processing regularly results in unjust decisions which jeopardise people's safety. Racist assumptions regarding a person's circumstances are often relied upon by decision-makers to undermine a person's credibility, and in turn, the validity of their protection claims. It may also be used to question a person's intelligence and capability. People also experience decision-makers speaking to them in a patronising way, becoming exasperated with language difficulties, harassing them, or noticeably preferring to speak with lawyers. Countless Department, review body and court decisions have been overturned due to errors of these kinds by decision-makers.

Case study

During an Administrative Appeals Tribunal hearing, Jehan disclosed that he had been sexually assaulted in his country of origin and explained why he had not felt comfortable disclosing this traumatic event earlier. The Tribunal member asked Jehan whether he associates with people from his ethnic group who live in his town in Australia. The Member then suggested that Jehan had colluded with these people to determine which protection claims would be successful, and that he had fabricated his protection claims. There was no evidence that Jehan had done this, and the Member's questioning was based on negative assumptions regarding people from Jehan's country of origin.

Concerningly, the overpolicing of refugee communities results in disproportionate visa cancellations from these communities with dire consequences, including permanent family separation and refoulement (i.e. return to a country where they face persecution).

For example, young refugee men often present with histories of extensive 'move on orders' from interactions with police where no criminality was involved. It is commonplace for young refugee men to attract attention and negative consequences for behaviour that Anglosaxon Australian citizens do not: for example, jumping up in the street and tapping signs might lead to being followed by police. These approaches underscore exclusion and have extreme flow-on consequences, including alienation and ultimately visa cancellation and detention.

People facing visa cancellation are often subjected to racist questioning and assumptions, which creates significant challenges in obtaining a fair outcome. This in turn results in greater numbers of

people from refugee communities being held in immigration detention, often isolated from their support networks in remote locations such as Christmas Island.

Case study

Deng, who had been working, studying, and living with his family in Australia for the majority of his life and since childhood was told by a decision-maker that he should behave “like Australians do”. The decision-maker declared a perceived problem with people from Deng’s country of origin. These comments were made in front of Deng’s family and friends, with a deeply excluding effect not only on Deng, but on his Australian citizen family.

People from diverse backgrounds, including refugees and people seeking asylum, should be treated equally under the law and not denied a fair process. Reform is required to ensure that administrative decision-making does not unfairly disadvantage multicultural communities in our country and cause undue suffering. Targeted training and evaluation of decision-making, as well as appointment of decision-makers from diverse ethnic backgrounds will promote a culture of impartial decision-making.

Recommendation 12: Implement mandatory annual anti-racism training for all Department, review body and judicial decision-makers, and for members of law enforcement bodies.

Recommendation 13: Monitor and assess conduct by Department, review body and court decision-makers, and law enforcement bodies, particularly where apprehended bias concerns arise, to inform training and performance management, including suspension and termination.

Recommendation 14: Appoint Department, review body and judicial decision-makers from diverse ethnic backgrounds.

Fair protection visa processing

Provide government-funded legal representation to people seeking asylum

In the context of the systemic barriers facing refugees and people seeking asylum, legal representation is crucial to secure fair visa outcomes. The defunding of free legal representation to people seeking asylum has contributed to unfair and 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.²⁶ The ASRC welcomes the Government’s recent announcement in October 2023 that it will invest \$48 million in legal assistance

²⁶ Settlement Services International, Immigration Advice and Application Assistance Scheme (IAAAS), 2022, <https://www.ssi.org.au/services/newcomers-refugees-and-migrants/iaaas>.

to protection visa applicants. However, no details have been provided regarding when this assistance will be available and how protection visa applicants can access these services.

The lack of free legal assistance to people seeking asylum has had a devastating impact on their ability to engage with the complex protection 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. Legal representation is critical to people seeking asylum having a fair opportunity to explain their protection claims. People seeking asylum are seven times more likely to have a positive outcome at review stages if they are represented by a lawyer,²⁷ which is unsurprising given the legal complexities in seeking merits and judicial review.

Case study

Zahra fled Pakistan to escape harm from her abusive husband and her family because she wanted to separate from her husband. Zahra sought asylum in Australia and applied for a protection visa in 2016. Her case was allocated to a male Department delegate. During Zahra's Department interview, she did not feel comfortable disclosing her protection claims to a man and did not know that she could ask to be interviewed by a female delegate. Zahra also did not know the legal definition of a refugee and thought that saying she did not feel safe in Pakistan would be sufficient to be granted a protection visa. She was also unaware that text messages from her family threatening to harm her would be useful evidence for her case.

In 2019, the Department refused Zahra's protection visa application. Zahra's friend connected her with the ASRC where she received legal advice about her situation. Zahra was assisted to seek review at the AAT and she had legal representation at her hearing. In 2023, the AAT found that Zahra was owed protection obligations and remitted her matter to the Department, and she was granted a protection visa.

If Zahra had had legal representation at the Department stage, it is very likely she would have been granted a protection visa before 2019 and avoided an additional four years of seeking asylum.

Without legal assistance, people seeking asylum cannot effectively engage in the refugee status determination process, which increases unfair outcomes and creates a high risk of refoulement with devastating consequences. The risk is particularly great for those facing barriers to access to justice, including women fleeing gender-based violence, people with serious health issues, people experiencing poverty, people in immigration detention, and people who speak languages other than English. It also exposes people seeking asylum to defective advice and covert representation, at great expense to their futures.

²⁷ The Conversation, How refugees succeed in visa reviews: new research reveals the factors that matter, 10 March 2020, <https://theconversation.com/how-refugees-succeed-in-visa-reviews-new-research-reveals-the-factors-that-matter-131763>.

Recommendation 15: Provide government-funded legal representation to people seeking asylum throughout the refugee status determination process.

Conclusion

Australia has a history of welcoming people seeking asylum and refugees, and their diverse cultures and experiences have become part of the fabric of our nation. However, the increasing politicisation of refugees and people seeking asylum by successive governments has threatened the cohesion of our multicultural society. Sadly, racism continues to impact refugees and people seeking asylum, who face systemic barriers to full inclusion and self-determination in our society, which have grave consequences to health, safety and social cohesion.

To foster an inclusive multicultural society, everyone must have the opportunity to live with dignity and in safety with their families. Permanent protection and accessible family sponsorship are essential for refugees to reunite with their families. People seeking asylum must also have the right to work, study and access healthcare. In addition, people seeking asylum who have been subjected to an unfair system and part of our community for over a decade should be granted permanent residency. These reforms to government policy as well as improvements in decision-making will reduce systemic racism to ensure that everyone in our multicultural society, including people seeking asylum and refugees, can thrive.