

## Policy Statement

All people seeking asylum in Australia should be assessed under a single statutory Refugee Status Determination (RSD) process which entitles people to a Permanent Protection visa and independent and fair merits review.

All people seeking asylum in Australia should have access to adequate pro bono legal assistance to allow them to effectively engage with the RSD process and to ensure that Australia's *non-refoulement* obligations are determined meaningfully.

All people seeking asylum in Australia should be allowed sufficient and reasonable time to access legal representation and compile their applications for Protection.

All people seeking asylum in Australia should have access to work rights, study rights, Medicare and financial support for the duration of their legal processes to ensure their safety and physical and mental wellbeing.

The Fast Track system is an unfair process for people arriving by boat and seeks to penalise people because of their mode of arrival to Australia. Such an approach is discriminatory, unreasonable and not in keeping with international obligations under the *Refugee Convention 1951*.

## The Current Situation

In December 2014, the Abbott government amended Australia's migration processes to ensure that people who arrived by boat without a valid visa would no longer be eligible for a Permanent Protection visa. These people would only be eligible for a three year Temporary Protection visa (TPV) or a five year Safe Haven Enterprise visa (SHEV). This change to asylum seeking processes affects approximately 24,500 people who arrived by boat between August 2012 and December 2013.

It also affects a further 6000 people who arrived by boat before this period and did not have their applications for Protection finally determined.

The process is called 'Fast Track' and deliberately discriminates against people who arrived to Australia by sea.

People arriving by plane with a valid visa are eligible for a Permanent Protection visa, funding for legal assistance, full and independent merits review, the ability to seek Ministerial Intervention and work rights throughout their legal process.

The Abbott government also limited the definition of a 'refugee' and included this new limited definition in the *Migration Act 1958*.

Fast Track:

- Denies the right for meaningful review if an application is initially rejected.
- Only grants people three or five-year temporary protection visas.
- Does not allow requests for Ministerial Intervention for unique or compelling circumstances.
- Does not allow for family reunion or for people to secure a stable future.
- Restricts the ability of people to travel outside of Australia to a third country to see family.
- Requires that Protection claims be reassessed at the end of the visa period.

Most people arriving by boat have had to wait with uncertainty for at least three years before being allowed to lodge their application for Protection.

Some people have been here for as many as seven years and still do not have an outcome. Accordingly, many people will have waited with uncertainty for a period that is longer than the visa to which they are entitled.

People are denied the right to work, to study and to access Medicare and income support.

While waiting to lodge their applications for Protection, and while waiting for their applications to be processed, visa applicants have had inconsistent access to work rights, study rights, Medicare and income support. People have spent long periods without the right to support themselves, without access to medical care, without access to education for themselves or their children and without basic financial support to buy essential food and household supplies. People face an increased risk of homelessness and increased risk of deterioration of their mental health as they are stripped of their ability to be self-sufficient and as they face poverty.

This is particularly the case at judicial review, where a person has made an application to court. Court processes can take approximately three years. During this time many people have no opportunity to work and no eligibility for financial assistance.

The Australian Government has cut funding for legal assistance for over 80 per cent of people seeking asylum who arrived by boat.

Most people seeking asylum do not have the English language skills to complete the lengthy and complicated application forms which are provided only in English. Many people are illiterate. Others experience high levels of anxiety, depression and other mental health issues including Post Traumatic Stress Disorder.

The RSD process is a legal process which requires understanding of complex legal concepts, statutory interpretation and the ability to identify, collate and present relevant information in writing and verbally at interview.

The complexity of the RSD system and the vulnerabilities of people seeking asylum along with a lack of English language skills makes engagement with the RSD system extremely difficult and stressful without legal representation. There is great concern that lack of understanding of the system because of lack of legal assistance is resulting in inadequate information being put before decision makers. The real risk is that people who are owed protection in Australia are being refused because of their inability to engage

appropriately with the RSD process and are at risk of being returned to harm in their home countries.

If a person has their application for Protection refused by the Department of Home Affairs (DHA), they will only have access to an unfair review process under the Immigration Assessment Authority (IAA) which encourages decisions to be made on the papers.

People are not interviewed, are rarely allowed to put new information, are limited in their ability to respond to the findings or mistakes made by the DHA. The person making the review decision does not even meet the person seeking asylum and rarely asks them any questions.

People only have 21 days in which to provide a written submission to the IAA which must be limited to five pages. Most people do not have the skills to write their own submission in the English language – often people have not been able to read the decision of the DHA which is provided in English and therefore do not know why they have been refused. The 21 day timeframe does not often allow sufficient time for people to seek legal advice and assistance as *pro bono* legal services cannot meet the demand for services.

There is a real concern that the errors made at the Department level are subsumed into the decision of reviewers as there is little opportunity for meaningful interaction with the IAA.

People who are part of the Fast Track process cannot make an application to the Minister for Home Affairs under s417 of the *Migration Act 1958*.

Section 417 allows the Minister to grant a visa where there are unique or compelling circumstances. Many people who are part of the Fast Track process have Australian citizen partners, spouses and children as they have been living as part of the Australian community for years. People who have Australian citizen or permanent resident family members cannot ask the Minister to allow them to stay with their families if they are unsuccessful under Fast Track. The inability to seek intervention under s417 effectively means that families will be indefinitely separated.

## Recommendations

- The Fast Track process be repealed and a single statutory RSD process reinstated with people entitled to Permanent Protection visas.
- All people seeking asylum are to have access to independent and *de novo* merits review at the Administrative Appeals Tribunal.
- All applications refused under Fast Track to be reassessed pursuant to the single statutory RSD process.
- Legal funding be reinstated to allow for appropriate legal representation at the primary and review stages of the RSD process.
- The Migration Act 1958 be amended to include the Refugee Convention 1951 with all applications assessed against the Convention.
- Access to income support, basic health care, work rights, study rights for all people seeking asylum for the duration of their legal process.
- Access to torture and trauma counselling, or other specialised mental health treatment, for those identified with acute mental health needs.

## Key Facts

- In August 2012 the Gillard government put a freeze on the refugee application process for all people who arrived by sea.
- This left approximately 24,500 people seeking asylum, including 4,395 children, in the community (about 11,000 in Victoria) waiting in limbo to make their claim, many for more than three years.
- These are people who arrived by sea between August 2012 and July 2013, when the Rudd government barred anyone coming by sea from ever entering Australia.
- Additionally, there are another 6000 people who had already commenced their Protection process who had their applications for a Permanent Protection visa frozen and subsequently converted to an application for a TPV or SHEV. These people have been waiting for an outcome for over five years.
- In December 2014 the Abbott government passed legislation that restricted the definition of a refugee and introduced an unfair refugee determination process called 'Fast Track'. This legislation was opposed by the opposition and only made it through the Senate by one vote.
- Temporary protection visas only apply to people who arrive without a visa - people who come with a visa are still granted permanent protection if their applications are accepted.
- Successive governments have unfairly discriminated against this group of 24,500 people, denying many access to work rights, study, and financial support at different times since August 2012.
- In 2015, the government started to gradually invite people to apply for asylum through this new process, imposing a 60-day deadline. By early 2017, around half of the people in this group of roughly 24,500 people had been allowed to apply. In May 2017, the remaining people were all given a 1 October 2017 deadline to prepare their applications. The Government plans to deny any asylum process to people who are unable to meet this deadline. There are 71 people who did not manage to meet this deadline and are at risk for removal to harm in their home countries. One person has already been forcibly removed.
- The Government chose to deny access to funded legal assistance for over 80% of people who previously would have been eligible. This resulted in community legal centres as the only option for many, and with such a surge in demand for their services the chances of people going through this process totally unassisted further increased.