



December 2014

Changes to Refugee Law in Australia: What it means for asylum seekers and refugees

How the laws came about

While in Opposition, the now Abbott Government committed to restoring Temporary Protection Visas (TPVs) in order to 'clear the backlog' of 30,000 asylum seekers living in the community or in detention, waiting for their refugee claims to be assessed.

In its first year in power, the Government tried and failed twice to push TPVs through the Senate.

During this time, many of the asylum seekers living in the community had their bridging visas lapse, with the Government failing to renew them. This meant they lost work rights and access to Medicare, resulting in many people losing their jobs and means of financial independence.

The Immigration Minister also didn't process many refugee applications, because he was not prepared to offer any of the 30,000 people permanent protection, which was their legal right at the time. A small number of people were approved as refugees during this period, but were given a rarely used form of temporary visa, again because the Minister was not prepared to offer permanent protection.

Thousands of people were left in limbo – some going on 2 years – as the Minister waited for a third opportunity to introduce TPVs.

That opportunity presented itself on 1 July 2014, when the composition of the Senate changed and the balance of power passed from the Greens to a number of independent and minor party Senators.

The Government then introduced its new Bill, which included TPVs along with many other draconian, never before seen measures aimed at punishing and deterring asylum seekers and refugees.

More than 5000 individuals and organisations expressed their opposition, sending submissions to the Senate Committee charged with scrutinising the Bill, while tens of thousands of other Australians voiced their grave concerns directly to Senators.

The Bill was passed on December 5, 2014, after a lengthy and impassioned debate in the Senate, with 34 Senators eventually voting in favour of the Bill, with 32 against.

What's so wrong with the new laws?

There are two key areas of concern:

1. **Abuse of Power** – The Immigration Minister now has an unprecedented level of power to make life or death decisions about individual asylum seeker cases, without court oversight.
2. **Harm to People** – The legislation re-introduces temporary protection visas which have been proven to cause significant mental suffering and deny people the permanent protection they deserve. The new 'fast-track' refugee determination process will see people returned to danger, persecution, torture and death in their home countries.

How the laws will impact asylum seekers and refugees – a breakdown of key measures

Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs)

The 30,000 people affected by the new laws will now only be able to apply for a Temporary Protection Visa or a Safe Haven Enterprise Visa. They will not be able to apply for a permanent protection visa.

Those on TPVs will have to re-prove their refugee status every three years. A SHEV will be a five-year visa with strict requirements and extremely limited opportunity to apply for other visas in the future.

Anyone arriving by boat after 19 July 2013 will be subject to offshore processing and will never be resettled in Australia, according to Government policy.

What is a TPV?

Granted for up to three years, a TPV allows the holder to work and access Medicare, but they will remain separated from their family, unable to sponsor them to come to Australia.

They will not be eligible for permanent protection and will be forced to reapply for a new visa every three years. TPVs were previously introduced under John Howard and caused enormous mental and emotional damage, with people living in a state of anxious limbo, separated from family.

The only pathway to a permanent visa for TPV holders will be to apply for a SHEV and then meet the strict eligibility criteria for another type of permanent visa, which could take a long time.

What is a SHEV?

A SHEV holder must live and work/study full-time in a designated regional area for a three and half year period within the five years of the SHEV visa, without accessing income support.

The Minister has admitted that qualifying for a SHEV will be a 'very high bar to clear'.

Like TPVs, people on SHEVs won't be allowed to reunite with their family.

They may have the opportunity to apply for other types of temporary and permanent visas. However, given the very stringent visa requirements, such as proficiency in the English language, relevant work experience, prescribed qualifications and support from their employer, it is unlikely that many people will qualify for a permanent visa.

Fast-track refugee determination process

The 30,000 people affected by the new laws will be put through a 'fast-track' determination process.

They will be forced to make their case to a departmental official in a short time-frame. People will be denied access to funded legal support to assist them to present their case.

This fast-track process is based on a UK model which was recently found by the UK High Court to be unlawful, with Mr Justice Ouseley stating that it *'carries an unacceptably high risk of unfairness'*.¹

It found failings at various stages of the process where survivors of torture, victims of trafficking and other vulnerable people were not identified for protection.

Limited or no merits review under fast-track refugee determination process

People given a negative assessment under the fast-track process will have no right to a full merits review via the independent Refugee Review Tribunal (RRT), as they do under the existing refugee determination process.

The Minister alone will decide whether a person's case is to be reviewed.

Reviews will then be heard by a new body, the Immigration Assessment Authority (IAA), based only on a person's files. They will not have the opportunity of a new hearing.

¹ Detention Action, *'High Court finds operation of Detained Fast Track asylum system unlawful'* July 9 2014.

People will only be allowed to provide new information to the IAA in exceptional circumstances and only if they can explain it could not have been presented in the first place.

They can only take their matter to court to test whether the law has been applied properly, not to have the facts or merits of their case re-heard.

Removing legal obligations under the Refugee Convention and narrowing the definition of a refugee

When determining whether to remove someone from Australia, the new laws remove the Government's legal obligation to consider whether someone will be tortured or their life threatened before sending them home.

They also allow the Government to deny a person protection if they consider that person could modify their behaviour, such as changing their profession, and by changing the test regarding whether it is reasonable for a person to relocate to another part of their country to avoid harm.

Babies born in Australia denied citizenship

Babies born in Australia to at least one parent who arrived by boat will be deemed an 'unauthorised maritime arrival', denying them the right to settle in Australia.

Some 31 babies born in Australia to parents who arrived by boat were due to be sent to the sub-standard Nauru detention facility on 30 January 2015. However the Government announced that they would be allowed to stay to avoid a High Court challenge and following representations from Senator Ricky Muir. This was a one-off deal, with the Government saying that babies born after Thursday 18 December would still to be sent to Nauru with their parents.

Allowing secret maritime boat turn-backs

Under the new laws, the Government will now be able to secretly detain asylum seeker boats on the high seas or tow them back to anywhere outside Australian waters, including to countries that won't accept them. They will be able to do this without any legal ramifications or court oversight.

What about the concessions achieved by cross-bench Senators – won't they help?

In order to secure passage of the Bill, the Minister made promises to the cross bench Senators. None of these promises were legislated, relying solely on the word of the Minister.

- ***Releasing children from detention on Christmas Island – into Darwin detention***

The Minister promised Clive Palmer that 106 children on Christmas Island (including 30 unaccompanied minors) would be released before Christmas. The children were taken off Christmas Island but as of 17 December 2014 were being held in high-security detention in Darwin for an indefinite period. It is unclear what will happen to the hundreds of children in mainland detention centres, while there is no commitment to remove the 167 children from detention on Nauru.

- ***Increasing the humanitarian intake to 18,750 by 2017 – when an increase is still a decrease***

Despite attempts by Senators, the annual humanitarian intake increase promised by Immigration Minister Scott Morrison wasn't legislated as part of the Bill. It is dependent on his word, despite the fact that he decreased Australia's humanitarian intake from 20,000 to 13,750 when he took office. The promised increase over the next three years to 18,750 will take until 2017 and is less than what it was when he came to office.

- ***Reinstating work rights for people on bridging visas***

The Minister promised that people on bridging visas would have work rights reinstated. However, this won't happen automatically. The Minister will notify people if they are eligible for work rights and then the Minister must personally sign off on every application. This could take many months, leaving people in continued limbo and unable to work over this time.

About the Asylum Seeker Resource Centre (ASRC) The Asylum Seeker Resource Centre (ASRC) protects and upholds the human rights, wellbeing and dignity of asylum seekers. We are the largest provider of aid, advocacy and health services for asylum seekers in Australia. Most importantly, at times of despair and hopelessness, we offer comfort, friendship, hope and respite.

We are an independent, registered non-governmental agency and we do not receive any direct program funding from the Australian Government. We rely on community donations and philanthropy for 95 per cent of our funding. We employ 46 staff and rely on over 1000 dedicated volunteers. We deliver services to over 1,500 asylum seekers at any one time.