



Refugee Council of Australia

UNITED NATIONS COMMITTEE AGAINST TORTURE

AUSTRALIA COMPLIANCE WITH THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, asylum seekers and the organisations and individuals who work with them, representing 200 organisations and 900 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, asylum seekers and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA endorses the comments made in relation to refugees and asylum seekers in the joint NGO submission authored by the Human Rights Law Centre. In addition to the issues outlined in this joint submission relating to offshore processing, immigration detention and refoulement, RCOA is also greatly concerned about the situation of asylum seekers and refugees who arrived in Australia by boat and are either waiting to have their cases processed in Australia or are settling in Australia on a long-term basis. While this group of refugees and asylum seekers is not subject to offshore processing in Nauru or Papua New Guinea¹ and most are living in the Australian community rather than in detention, they are nonetheless subject to a range of punitive measures based on their mode of arrival in Australia.

Individually, these measures may not be of a sufficiently serious nature to engage Australia's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Taken together, however, we believe that these measures create a level of suffering which constitutes cruel, inhuman and degrading treatment. Furthermore, as these measures are part of a deliberate policy strategy to deter other refugees and asylum seekers from travelling to Australia by boat in the future and target a specific group solely on the basis of their mode of arrival in Australia, we believe that these measures could collectively constitute a form of torture as defined in CAT.

1. Living conditions for asylum seekers in the Australian community

- 1.1 In October 2011, the Australian Government under then-Prime Minister Julia Gillard began to release large numbers of asylum seekers from closed immigration detention into alternative community-based arrangements. Most asylum seekers have been released on short-term Bridging Visas which allow them to live freely in the community pending resolution of their claims. As at 30 June 2014, 29,564 asylum seekers who arrived by boat had been released from detention on Bridging Visas. The vast majority of these asylum seekers people (24,500 people) are still living in the community waiting for their cases to be fully resolved.²
- 1.2 Bridging Visa holders who arrived by boat have access to Australia's universal health care scheme and receive a basic living allowance paid at 89% of comparable income support rates for Australian citizens and permanent residents (around AUD\$230 per week for a single adult). Those who arrived before 13 August 2012 are eligible to work but those who arrived by boat after this date (who make up the majority of asylum seekers currently living in the community) are not. Given that standard income support standard payment rates already place single adults below the poverty line³, most of these asylum seekers are subsisting on exceptionally low incomes.

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- 1.3 Some Bridging Visa holders who are vulnerable or have complex needs are eligible for more intensive casework support and those who are particularly vulnerable (such as unaccompanied minors, families and people with significant mental health issues) may be released into community detention, a form of community release which is more restrictive but also provides more intensive support than release onto a Bridging Visa. Most Bridging Visas holders, however, receive little government-funded assistance beyond health care and basic income support.
- 1.4 The combined impact of minimal income support, lack of work rights and limited access to support services has resulted in many of these asylum seekers facing serious destitution and marginalisation. RCOA and other organisations⁴ have documented numerous cases of asylum seekers struggling to meet their basic needs due to insufficient income: skipping meals, discontinuing medication, sleeping on the floor, sharing a single blanket or cooking pot between several people or living in overcrowded and/or substandard conditions. In addition, many of these asylum seekers experience significant social isolation due to their limited incomes, lack of English language skills and inability to work. Due to prolonged delays in processing of claims (see below), many asylum seekers have now been living under these conditions for many months or even years with serious negative consequences for the physical and mental health and general wellbeing.

2. Processing of claims

- 2.1 Beginning in August 2012, refugee status determination (RSD) for asylum seekers who arrived by boat has been effectively suspended by successive Australian Governments for long periods at a time. While RSD recommenced briefly for this group in mid-2013, there has been no processing of claims for people who arrived by boat since the Federal election and change of government in September 2013. Throughout this time, very little information has been provided to either the asylum seekers themselves or the organisations working with them regarding the likely timeframes for processing of claims.
- 2.2 As a result, the majority of asylum seekers who arrived in Australia by boat after mid-August 2012 (plus a smaller but significant number who arrived before this time) are still waiting for their cases to be fully resolved or, more commonly, have not yet had the opportunity to formally lodge a protection claim. Some have now been in Australia for two years or more with little or no progress having been made with processing of their claims. Once RSD does recommence, it is expected that it will take several years to clear the current backlog of claims.
- 2.3 Prolonged delays in processing and the resulting prolonged uncertainty have further contributed to the erosion of health (particularly mental health) and wellbeing amongst this group of asylum seekers. Indeed, some asylum seekers consulted by RCOA have described delays in processing as a form of “mental torture”.
- 2.4 In addition, as outlined in the joint NGO submission to this review, the Australian Government is seeking to make major changes to the RSD process for asylum seekers who arrived by boat which will significantly weaken existing protections for people fleeing persecution; and asylum seekers who arrive in Australia without valid visas (whether by boat or by plane) are no longer eligible for free government-funded legal advice and assistance in preparing applications for refugee status. Both measures heighten the risk of *refoulement* for asylum seekers who arrived by boat.

3. Restrictions on family reunion

- 3.1 Through RCOA's community consultation processes, family reunion has been consistently nominated as the primary issue of concern for asylum seekers and people from refugee backgrounds in Australia. Many have family members living in precarious or dangerous situations overseas and are often under great pressure to support them both financially and through facilitating resettlement in Australia. The majority of asylum seekers who have travelled to Australia by boat are young men who have undertaken the journey with a view to sponsoring

family members (often their partners and children) to join them and many have no other relatives in Australia. Family reunion is thus a key concern for this group.

- 3.2 As a result of a series of policy changes under successive governments, refugees who arrived in Australia by boat have virtually no opportunities for family reunion. Unlike humanitarian entrants who arrive with valid visas, they are not eligible to sponsor family members for resettlement under Australia's Refugee and Humanitarian Program and are considered the "lowest processing priority" under the family stream of Australia's general migration program, meaning that their applications have very little chance of success (although the changes to processing priorities do not apply to those who have become Australian citizens). In addition, temporary humanitarian visa holders are not permitted to sponsor family members under any program and will not have the opportunity to become citizens unless the Minister for Immigration chooses to grant them permanent residency.
- 3.3 RCOA's research and community consultations have identified a range of negative consequences associated with indefinite family separation amongst humanitarian entrants, including:
- Mental health issues, both those arising directly from family separation (e.g. concern about the welfare of family members can be a constant source of stress and anxiety; being powerless to assist relatives overseas can fuel depression), and in terms of the impacts of separation on a person's capacity to recover from pre-arrival trauma.
 - Greater challenges in rebuilding a life in Australia, in that family separation further compounds the stress of settling in a new country and undermines capacity to plan for the future.
 - Financial difficulties resulting from the need to support family members still living in refugee situations overseas who may have no other source of income.
 - Higher risk of relationship breakdown after prolonged separation due to changes in relationships and reconfiguration of family structures.
 - Ongoing risks faced by family members left behind, some of whom have been seriously harmed or killed overseas following delays in reunification or who are now at greater risk due to being separated from relatives (a particularly significant issue for women and children who are living in precarious circumstances without an adult male relative).
- 3.4 While family reunion remains a challenge for all refugees and humanitarian entrants in Australia, the specific restrictions targeting people who arrived by boat mean that this group experiences particularly significant difficulties in reuniting with their families and faces the prospect of indefinite, prolonged and perhaps even permanent separation from even their immediate family members.

4. Reintroduction of temporary protection

- 4.1 Prior to the Federal election in September 2013, the Australian Government had pledged to reintroduce Temporary Protection Visas (TPVs). This visa subclass was previously issued between 1999 and 2007 to asylum seekers who arrived in Australia by boat and were subsequently granted refugee status. The Government has been attempting to reintroduce TPVs since October 2013 and legislation to this effect was before the Australian Parliament at the time of writing. Since the Government was elected, it has not issued permanent Protection Visas to any refugee who arrived in Australia by boat.
- 4.2 TPVs will be granted for a maximum of three years, after which time the visa holder must apply for another TPV and have their claims reassessed in order to access ongoing protection in Australia. TPV holders will have fewer rights and entitlements than other humanitarian visa holders: they will not be permitted to sponsor family members for resettlement in Australia, will lose their visa if they travel outside Australia for any reason and have only limited access to settlement services and support (for example, they cannot access the free English language tuition program available to other migrants and humanitarian entrants). TPV holders are also

ineligible for permanent residency in Australia except at the discretion of the Minister for Immigration.

- 4.3 During the previous TPV regime, a wealth of evidence was gathered documenting the negative impacts of TPVs on health, wellbeing and settlement outcomes. The constant uncertainty associated with temporary status, threat of return at the end of the visa eligibility period, indefinite separation from loved ones and limited access to key settlement services caused serious distress, compounded the impacts of pre-arrival trauma and prevented TPV holders from fully participating in the Australian community.⁵
- 4.4 It is important to note that under the previous regime, TPV holders were eligible to apply for permanent residency after their visa expired, meaning that they were eventually able to access family reunion opportunities and a wider range of support services. This will no longer be the case under the new TPV regime, as TPV holders will be ineligible to apply for permanent visas and can only access permanent residency at the Minister's discretion. Given that the serious negative impacts outlined above were previously seen amongst people who did have the prospect of eventual permanent residency, RCOA is greatly concerned that the impacts of the new regime are likely to be even more serious than its predecessor.

5. Recommendations

- 5.1 In addition to the recommendations proposed in the joint NGO submission, RCOA recommends that the Australian Government:
- Immediately recommence the processing of protection claims for asylum seekers who arrived in Australia without visas;
 - Provide all asylum seekers with access to a fair and credible system of refugee status determination, regardless of their mode of arrival in Australia;
 - Ensure that asylum seekers living in the community are provided with a level of support sufficient to ensure an adequate standard of living, including access to livelihood opportunities;
 - Remove all restrictions on family reunion based on a person's mode of arrival in Australia; and
 - Abandon the reintroduction of Temporary Protection Visas.

¹ The Australian Government now applies its offshore processing policy only to asylum seekers who reached Australia by boat on or after 19 July 2013.

² <http://www.immi.gov.au/pub-res/Documents/statistics/ima-bve-30-june-14.pdf>

³ According to analyses undertaken by the Melbourne Institute of Applied Economics and Social Research at the University of Melbourne. See <https://melbourneinstitute.com/miaesr/publications/indicators/poverty-lines-australia.html>

⁴ See, for example, Section 5.2 of RCOA's submission on Australia's 2014-15 Refugee and Humanitarian Program http://www.refugeecouncil.org.au/r/isub/2014-15_Intake%20sub.pdf; the Australian Red Cross' 2013 Vulnerability Report http://www.redcross.org.au/files/ARC_VulnerabilityReport_LR.PDF; and the 2014 "Policy as Punishment" report produced by Lisa Hartley and Caroline Fleay of Curtin University http://apo.org.au/files/Resource/CHRE_PolicyAsPunishmentAsylumSeekersInTheCommunityWithoutTheRightToWork_Feb_2014.pdf

⁵ For further information about the negative impacts of TPVs, see RCOA's September 2013 policy brief on TPVs: http://www.refugeecouncil.org.au/r/pb/PB1324_TPVs.pdf