

Labor for Refugees



New South Wales
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THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Inquiry into the efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions

Submission by Labor for Refugees NSW

Labor for Refugees NSW is an organisation of Labor party members and trade unionists who campaign for Labor to have an unequivocally decent policy on refugees and people seeking asylum, one wholly based on the Labor values of compassion, fairness, and generosity.

Our submission to the Inquiry focuses mainly on two of the terms of reference:

- g. eligibility for and access to family reunion for people who have sought protection in Australia; and
- h. the suitability and consistency of government policy settings for relevant visas with Australia's international obligations;

(The following terms of reference are also relevant here: b. waiting times for processing and integrity checking of applications for relevant visas; c. waiting times for the granting of relevant visa.)

Eligibility for and access to family reunion for people who have sought protection in Australia

Many of those who have sought protection in Australia and been found to be refugees, in particular those who arrived by boat, are denied a permanent protection visa. Holders of temporary visas are **not eligible** to apply for family and partner reunion at all. In addition to being denied reunion with their partners and families, this group of people, numbering some 30,000 in our community, having been detained by Australia for several years, continue to live in a state of limbo with minimal government support and rights. During the

pandemic many were left completely unsupported. Further, if they want to undertake further study, they cannot access HECS-HELP, but are subject to full fees. This limbo-like, 'permanently temporary', situation has been outlined in recent media reports such as A Life in Limbo, and Australia's 'lowest priority': the men waiting a decade to reunite with their families.

An apparently possible pathway to permanency was offered to these refugees but turned out to be virtually impossible to access: 'Incredibly onerous': refugees lured by hope of a visa that's near-impossible to secure.

Holders of these temporary visas are required to reapply for their visa every three (TPV) or five (SHEV) years. It has been reported that delays in processing these applications have led to people being denied access to Medicare (The Saturday Paper, 27 March 2021).

Labor for Refugees believes that the denial of permanent visas to refugees is cruel and unjust. In fact, we argue that a clear and timely track to permanent residency and citizenship should be introduced for refugees enabling them to settle in the community and providing them with access to the full range of rights enjoyed by Australians including the right to live with their partners and families.

A major difficulty for those refugees who have been deemed eligible to apply for a permanent visa is the **timeliness** of the process itself compounded by the delays in the family reunion process. The Department of Home Affairs' website boldly states in relation to Refugee and Humanitarian visas:

The decision could take many months, even years. The number of applications we receive each year is far greater than available visas.

Waiting times of this order are completely unacceptable for a civilised country which is a signatory to the UN Declaration of Human Rights and the Refugee Convention.

Indeed, denying people the opportunity to reunite with their family in a timely way is one of the factors that has led people to risk their lives on boats to get to Australia.

Clearly, the number of such visas needs to be greatly increased and the processing resources increased accordingly as soon as possible. These new settlers would generally be permanent, not transitory, and have families and communities ready to support them.

In many situations, applicants hold well-grounded fears for the safety of the families they have left behind. Unreasonable delay adds anguish and hopelessness to the stresses of separation and the difficulties involved in settling in a foreign country. Furthermore, people who have fled persecution and are without the support of their partners and family are likely to have great difficulty becoming integrated into Australian society.

The suffering and privations of their vulnerable family members overseas should receive equal consideration.

The suitability and consistency of government policy settings for relevant visas with Australia's international obligations

Australia is a signatory to the UN Universal Declaration of Human Rights and the Refugee Convention and Protocol, as well as other related instruments. Fundamental to these instruments is respect for the family unit and an obligation on states to protect it. The Universal Declaration of Human Rights states:

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Further, the UN Conference which was completing the drafting of the Refugee Convention in July 1951 adopted unanimously the following recommendation:

B (Principle of unity of the family)

The Conference, considering that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened, and noting with satisfaction that, according to the official commentary of the *ad hoc* Committee on Statelessness and Related Problems the rights granted to a refugee are extended to members of his family, recommends **Governments to take the necessary measures for the protection of the refugee's family** especially with a view to:

1. (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country,
2. (2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

The Refugee Convention also spells out the responsibilities of states with respect to facilitating access to citizenship (as discussed above, involving the right to reunite with family):

Article 34

They shall in particular make every effort to expedite naturalization proceedings and reduce as far as possible the charges and costs of such proceeding.

Current government policy settings (reflected in related processes) respect neither the letter nor the spirit of these international undertakings and obligations. Indeed, Australia has been frequently criticised by UN bodies and human rights organisations for many aspects of its treatment of refugees and people seeking asylum.

Complexity and disorientation is a design feature of Australia's immigration system, most keenly felt by people seeking asylum.

When you add all these bits up there is no doubt that the whole system is designed to be as difficult for people as possible. To motivate them to desist, to give up, to go home, to stop persisting and pressing their claims.

It's the removal of access to any forms of support, no income support, no housing. Medicare is on-again off-again, even the legality of your status may or may not exist. You're living under constant threat of detention and the processes drag on for years and even decades due to government maladministration.

The picture doesn't add up to being one that is accidental. It adds up to be one which is intentional, malevolent and designed to deter people. (Carolyn Graydon, Asylum Seeker Resource Centre Human Rights Law Program principal solicitor, quoted in The Saturday Paper 27 March 2021).

Only recently, the Department of Home Affairs raised again the prospect of testing partners (the partner in Australia, and the partner overseas) for English before they could be reunited. The very proposal engenders anxiety, even despair, at the thought of even longer delays and gives added support to Carolyn Graydon's assessment of the situation.

Summary

1. Temporary visas should be abolished for refugees and people seeking asylum. A simple path to permanency (leading to family reunion as soon as possible) should be offered to those found to be refugees.
2. Timeliness, respect, and friendly efficiency are very important at every stage.
3. The number of humanitarian and family reunion places should be substantially increased as soon as possible, in line with Australia's capacity as a wealthy nation, in order to reduce unnecessary delays.
4. Home Affairs should be provided with the resources needed to provide a timely and effective service to refugees and asylum seekers.
5. Australia should be seriously mindful of its international obligations and undertakings when devising policy and processes relating to refugees and asylum seekers.

Thank you for the opportunity to provide this submission to the Inquiry.
