



SENATE STANDING COMMITTEES ON EDUCATION AND EMPLOYMENT

SUBMISSION ON THE FAIR WORK LEGISLATION AMENDMENT (PROTECTING WORKER ENTITLEMENTS) BILL 2023

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 180 organisations. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants.

RCOA welcomes the government's introduction of the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023*. Section 40B of the proposed legislation will provide much needed clarity to ensure that all people have access to protection under the *Fair Work Act 2009*, regardless of their visa status. For refugees and people seeking asylum, it will help address worker exploitation by ensuring that people can seek protection under the *Fair Work Act* for underpayment, withholding of wages, and lack of workplace entitlements. It is a welcome first step to address exploitation faced by migrants, refugees and people seeking asylum. However, much more is needed in order to fully address the ongoing crisis of exploitation of people on temporary visas, especially ensuring that all people seeking asylum have work rights and access to a safety net.

1 Workplace exploitation of refugees and people seeking asylum – Section 40B

- 1.1 Refugees and people seeking asylum are particularly vulnerable to exploitation in the workplace, due to their insecure visa status and unfamiliarity with Australian workplace laws and entitlements.
- 1.2 Insecure visas, especially for those who are seeking asylum, expose people to significant risk of exploitation. People seeking asylum are often on short term bridging visas while they wait an outcome of their asylum claim. Others may even be in the community without a visa, at various stages of the application process. While some have work rights, many people seeking asylum are not allowed to work due to a restriction on their visa (or a lack of a valid visa). As discussed below, most people seeking asylum do not have access to income support such as the Status Resolution Support Service (SRSS). Combined, these policies create dire circumstances for particularly vulnerable people and pushes them into exploitative work due to their destitution. Appendix A provides a breakdown of the approximately 110,218 people seeking asylum and their current visa status, access to work rights and SRSS income support.
- 1.3 In addition to visa insecurity, another factor which makes refugees and people seeking asylum vulnerable to exploitation is the lack of knowledge of Australian workplace rights and entitlements. Many are unaware of the availability of services and remedies to seek redress for exploitation, and are often fearful of making a complaint against their employer for fear of being penalised due to their migration status.
- 1.4 Section 40B of the proposed *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023* will go some way in addressing this issue, by clarifying that all people

are entitled to protection under the *Fair Work Act* regardless of their visa status under the *Migration Act 1958*. However, it does not prevent people from being penalised under the *Migration Act*, for example, for working unlawfully under section 235 of the *Migration Act*. As such, people may still be fearful of making a complaint to the Fair Work Commission for fear of being charged with an offence for working unlawfully. As such, it is vital that all people seeking asylum have access to work rights in order to address the issue of workplace exploitation.

2 Ensure all people seeking asylum have work rights

- 2.1 Finding ways to regularise visa status and remove employment barriers for the 110,000 people who have sought asylum and are currently in Australia is vital. This is important in the context of the lengthy delays in processing onshore protection applications (for example, it takes an average of two years to process an initial application and six years for a decision which is appealed to the Administrative Appeals Tribunal). This means that a person can be waiting in Australia for many years before they receive a decision about their refugee claim. In this time, they usually remain on a bridging visa with the same conditions as their original visa. It means their access to work rights can be limited or denied, despite the change in their personal circumstances. For example, people who entered Australia on a tourist visa often have no work rights.
- 2.2 Granting or reinstating work rights for people who have sought protection as they move through the review and processing stages, and exploring options for alternative skilled visa pathways for those who have received a final refusal on their protection claim, will reduce the risk of worker exploitation and ensure that people who have been working for many years, often in important skills shortage areas, can continue to sustain their contribution to the Australian labour force.

3 Ensure access to an income safety net

- 3.1 Another driver of exploitation is the lack of an income safety net for people awaiting an outcome of their asylum application. Without income support, people are often desperate to undertake any work in order to survive and provide for their family. This places people in an extremely precarious situation where they are fearful of speaking out because they do not have any income support to fall back on should they lose their jobs.
- 3.2 Unfortunately, the Federal Program to support people seeking asylum during their protection application process (the Status Resolution Support Service, SRSS) has been cut drastically over the past eight years. The narrow eligibility criteria mean very few people qualify for financial and other support. Thousands of people who sought Australia's protection are now living in our communities in deep poverty, facing homelessness and hunger.
- 3.3 Workplace exploitation will not be fully addressed until people are provided with a safety net. It is imperative that eligibility to the SRSS be expanded so that people are not forced into exploitative work out of desperation.

4 Recommendations

Recommendation 1 Ensure all people seeking asylum have work rights

The Australian Government should ensure that all people seeking asylum remain on a visa with work rights while they remain in the country, including while they are seeking review of their decision in the AAT or federal courts.

Recommendation 2 Expand the eligibility criteria for the SRSS Program

The Australian Government should extend SRSS eligibility criteria to focus on the needs and vulnerabilities of individuals and families so that it prevents destitution and exploitation.

Recommendation 3 Pass the Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023

The Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023 should be passed.



Appendix A: People Seeking Protection in Australia (March 2023)

Estimated total: 110,218

| Cohort/group | Number of people | Bridging visa rights & restrictions | Key information | Source |
|---|------------------|--|--|--|
| Legacy Caseload (people who arrived by sea from 2009 to 2013 and are assessed through the “fast track” process): 9,148 | | | | |
| Waiting for primary decision | 1,082 | Bridging Visa E (BVE): work rights with Medicare | All people in this group arrived between 2009 and 2013 and applied before October 2017 and still no decision. | January 2023: https://www.homeaffairs.gov.au/research-and-stats/files/uma-legacy-caseload-january-2023.pdf |
| Review (Immigration Assessment Authority) | 613 | | | The Fast track system is not fast or fair: The average time taken each year since 2012-13 to finalise an application for a TPV or SHEV made by a Fast-Track Applicant: in 2022-23 it is 2,688 days (7 years, TPV) and 2,221 days (6 years, SHEV). Answer to Senate Estimates Question on Notice: OBE22-177 |
| Judicial Review (JR) | 4,922 | Should have BVE with work rights and Medicare but very often not the case | First hearing dates set for 2025, so long delays; Very limited access to SRSS (only exceptional circumstances) | February 2023: Home Affairs RoS briefing; for previous citable JR, see the August 2022 Senate Estimates answers and available at: https://www.refugeecouncil.org.au/fast-tracking-statistics/10/ |
| Ministerial intervention (MI) or not currently engaged in a process (negative decisions) | 2,531 | Most often have an expired BVE and are refused renewal unless engaged in return processes even if country conditions have drastically changed (e.g. Afghanistan, Myanmar, Iran). Even with a BVE, they are barred from having work rights. | 2,352 BVEs had expired and not been renewed as at December 2021 | December 2021: https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld13-PortfolioId20-QuestionNumber265 |

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The Refugee Council of Australia
is the national umbrella body
for refugees, people seeking asylum
and the organisations and individuals
who support them • Founded 1981

| “Transitory” people (those who were detained on Nauru or PNG and transferred to Australia): 1,125 | | | | |
|--|-------------------|--|---|---|
| In the community | 655 | So called “Final Departure BVE”. Work rights and access to Medicare but no study or training rights. | Limited access to SRSS (exceptional circumstances only). Expected to depart to third country resettlement or return home. Vast majority found to be owed refugee protection. 50% currently engaged in third country resettlement process. | Numbers increasing on to the “Final Departure BVE” as people transition out of CD (expect approximately 100-150 more people to transition from CD to BVEs in coming months); Statistics from Department of Home Affairs through regular meetings (not published) Fluid movement of remaining (5-8) people in closed detention |
| In residence determination (also known as community detention, CD) | 465 | No visa so no work rights and no study rights, including training | Primarily families; 90% of group found to be owed refugee protection. 50% currently engaged in third country resettlement process. | |
| | | | | |
| Onshore arrivals (people who arrived by air with a prior visa and are assessed for a Permanent Protection Visa, PPV): 100,217 | | | | |
| Primary stage | 27,342 | Bridging visas often have the same rights/restrictions as the visa they originally arrived on in Australia | Average 2 year wait for initial decision | February 2023: https://www.homeaffairs.gov.au/research-and-stats/files/monthly-update-onshore-protection-866-visa-processing-february-2023.pdf |
| Merits Review at the AAT | 39,353 | | At the current rate, over 7 years for review decision | March 2023: https://www.aat.gov.au/AAT/media/AAT/Files/Statistics/MRD-Refugee-Caseload-Statistics-2022-23.pdf |
| Judicial Review (JR) | 5,125 | Should have a Bridging visa that does not expire until the conclusion of JR (but many have expired and cannot get renewed) | Almost impossible to get onto SRSS (must have demonstration of high risk to harm themselves or others) | August 2022: https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=0c12979d-5cb9-467d-90db-3d9f2080786a |
| Ministerial intervention or no ongoing process | 28,125 (estimate) | Likely not to have a valid Bridging visa. Some may be in closed detention, some may be living in the community without any visa. | Not able to access SRSS, Medicare, or other support. Likely subject to exploitative work to survive. | February 2023: Estimation based on number of people who have not yet departed Australia after an initial negative decision on their PPV application by the Department. Excludes people actively at the AAT and JR but also includes people who have not departed since decisions made since 1994 . See Explanatory Notes on Page 4: https://www.homeaffairs.gov.au/research-and-stats/files/monthly-update-onshore-protection-866-visa-processing-february-2023.pdf |