



Brotherhood
of St Laurence

Working for an Australia free of poverty

Submission to the Legal and Constitutional
Affairs Legislation Committee

regarding the

**Migration and Maritime Powers
Legislation Amendment
(Resolving the Asylum Legacy
Caseload) Bill 2014**

Brotherhood of St Laurence

October 2014

About the Brotherhood of St Laurence

The Brotherhood of St Laurence (the Brotherhood) is an independent non-government welfare organisation with strong community links that has been working to reduce poverty in Australia since the 1930s. Based in Melbourne, but with a national profile on matters of disadvantage, the Brotherhood continues to influence in achieving its vision of an Australia free of poverty.

The Brotherhood has developed a broad portfolio of work that falls across four life transitions: children and families in the early years, young people moving through school to work, adults in and out of work and older people facing the challenges of retirement and ageing. In this work, the Brotherhood aims to strengthen the capacity of new and emerging communities to become active participants in the social and economic life of Australia. Many of the Brotherhood's settlement services have been pioneered by the Ecumenical Migration Centre (EMC), which has been at the forefront of work with new arrivals as well as longer-settled disadvantaged groups since 1956.

Today, the EMC together with the African Australian Community Centre (AACC) lead the Brotherhood's work in the area of refugees, immigration and multiculturalism. Both centres continue to work with new and emerging communities to build their capacity in the transition to settlement in Australia and to achieve full access and participation in Australian society. We specialise in developing service models and demonstration projects that work for the genuine inclusion of refugee and migrant communities in the social, economic and cultural life of the wider Australian society.

Submitted to:
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
legcon.sen@aph.gov.au

Brotherhood of St Laurence
67 Brunswick Street
Fitzroy Vic. 3065
ABN 24 603 467 024
www.bsl.org.au

For further information or to discuss this submission, please contact:

Ms Hutch Hussein
Senior Manager, Refugees Immigration and Multiculturalism
Brotherhood of St Laurence
Email: hutchhussein@bsl.org.au
Ph: (03) 8412 8718

Recommendations

1. That the Bill in its current form be rejected so that refugees can continue to be afforded permanent protection in Australia.

If the Bill is passed, it should be enacted with the following amendments:

2. Reject the proposed fast track assessment and removal provisions because they carry an unacceptable risk of unfairness by forbidding access to legal aid and removing the possibility of merits review by the Refugee Review Tribunal.
3. Retain references to the Refugee Convention in the *Migration Act 1958 (Cth)* to ensure consistent application of the intent of the Convention under the Act.
4. Provide permanent protection for refugees if they are still found to be refugees following one 3-year period of temporary protection.
5. Establish family reunion rights for refugees holding a Temporary Protection Visa or Safe Haven Enterprise Visa.
6. Establish a program to support the effective operation of the Safe Haven Enterprise Visa scheme so that local communities and businesses are equipped to maximise the benefits of this initiative, and refugees are trained and supported to meet Australia's skills gaps.

Overview

The Brotherhood of St Laurence is concerned about the proposed Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. Our response is informed by our experience of working with new communities over successive generations, by research and by recent consultations with communities who will be directly affected by the measures proposed in the Bill.

Our primary recommendation is that this Bill be rejected, so that people seeking Australia's protection are treated fairly under the Migration Act, with permanent protection remaining available to those found to be refugees, regardless of their mode or date of arrival. The Brotherhood strongly believes that successful settlement must be a primary consideration for the Australian Government to ensure both broader social cohesion and the economic participation of our new arrivals.

However, in the event that the Bill is passed, we offer recommendations about how it could be amended to mitigate the known harms arising from temporary protection conditions. There is clear evidence that mental health, wellbeing and employment are key factors in successful settlement. We know that mental health and wellbeing are inextricably linked to a sense of security and the opportunity to reunite with immediate family. Providing a pathway to permanent status is also critical, so that people are not living in a continuous state of limbo. These need to be key considerations in designing any future temporary protection arrangements.

We want our new arrivals to be enabled to fully contribute their potential to Australia. This requires support to enable new communities to navigate our employment system and to integrate into our social life. If the Safe Haven Enterprise Visa scheme is introduced through this Bill, the Brotherhood would welcome the opportunity to discuss what arrangements can be put in place to optimise positive outcomes under this scheme for regional communities, employers and refugees.

Australia played a key role in establishing the Refugee Convention. The Brotherhood supports rigorous application of the Convention, to ensure it only applies to those who are truly in need of protection. It is critical, however, that proposed amendments do not undermine the intent of the Convention, or introduce assessment processes that carry an undue risk of failing to identify genuine refugees.

Comments on the Bill

The Brotherhood's position on permanent protection for people who are found to be refugees

The Brotherhood supports permanent protection being granted to people who are found to be refugees, regardless of their date or mode of arrival. Providing permanent protection fully upholds our obligations under the Refugee Convention and, in contrast to temporary protection, offers two things that are crucial to successful settlement—an enduring sense of security and the ability to reunite with immediate family members. The Bill prevents certain categories of refugees from ever obtaining permanent protection.

Recommendation 1

That the Bill in its current form be rejected so that refugees can continue to be afforded permanent protection in Australia.

In the event that temporary protection arrangements are introduced for refugees who arrive in Australia without a valid visa, the Brotherhood recommends that measures be taken to mitigate the known and documented negative consequences that will be experienced by new arrivals affected by this proposed change.

The Brotherhood's concerns about the particular elements of the Bill

The Brotherhood welcomes the access to work rights, Medicare, torture and trauma counselling and education for school-aged children proposed under the Temporary Protection Visa and Safe Haven Enterprise Visa.

However we are concerned about particular elements of the Bill, including the fast track assessment and removal process, the fulfilment of Australia's Refugee Convention obligations and the conditions of the proposed Temporary Protection Visa and Safe Haven Enterprise Visa.

The fast track assessment and removal process

The current delay in processing onshore protection claims, resulting in a backlog of approximately 30,000 cases, has been a product of a period of policy flux rather than any identified flaws in the existing assessment process. The Brotherhood is concerned about the fairness of the proposed fast track assessment and removal process which would replace current practice. The proposed process allows only departmental assessment, forbids legal aid access and restricts merits reviews of protection applications, which are currently conducted by the Refugee Review Tribunal. A comparable fast track process introduced in the United Kingdom was ruled to be illegal in July 2014 on the basis that it carried an 'unacceptable risk of unfairness'.

A number of asylum seekers we consulted who may be subject to this process say while they would appreciate a faster assessment process, given the lengthy delays they have already experienced, it must be a fair one. There is significant concern about navigating a complex system without the support of a lawyer or migration agent and an adequate grasp of the English language. It is unreasonable to expect that traumatised asylum seekers, who are often disoriented and fearful of authority figures when they arrive in Australia, should be able to properly present their case on arrival. There is a real risk that people with legitimate and compelling claims for protection will be unable to adequately demonstrate their case without legal assistance, and will have no recourse to an independent review.

Recommendation 2

The proposed fast track assessment and removal provisions should be rejected because they carry an unacceptable risk of unfairness by forbidding access to legal aid and removing the possibility of merits review by the Refugee Review Tribunal.

Implementing obligations under the Refugee Convention

It is concerning that most references to the Convention would be removed from the Migration Act and replaced with an alternative interpretation of Australia's obligations, potentially undermining the intent of the Convention. Relying on the subjective and non-reviewable opinions of departmental staff in the assessment of protection claims rather than the clearly defined Convention obligations could lead to erroneous and harmful decision making. The directive that departmental decision makers will be required to consider the extent to which a person could modify his or her behaviour to avoid persecution raises questions about how this would be applied. For example, could a departmental official expect that a Christian individual from a Muslim majority country would modify the practice of their faith to avoid persecution? Such an approach could result in unfair and unreasonable expectations that are incongruent with the Convention's intention to protect those who have suffered persecution.

Removal of references to the Refugee Convention could also result in inconsistent interpretation of international obligations, which could impede attempts to achieve regional cooperation on the issue of asylum seekers. Australia played a key role in developing the Refugee Convention. It is well placed to play a leadership role in its consistent implementation internationally.

Recommendation 3:

Retain references to the Refugee Convention in the Migration Act to ensure consistent application of the intent of the Convention under the Act.

Conditions of new temporary visas

The proposal to grant temporary protection as a substitute for permanent protection when a person has been found to be owed protection is not in the spirit of the Refugee Convention. There is compelling evidence of the real and enduring harm caused by Temporary Protection Visa conditions in the 1999–2008 period. The Bill seeks to impose some of the same conditions in its Temporary Protection Visa and Safe Haven Enterprise Visa, namely the denial of the right to family reunion and the right to travel and re-enter Australia. The Bill goes further still by removing the possibility of permanent protection on refugee grounds ever being granted. Those people on a Temporary Protection Visa are also precluded from applying for any other type of permanent visa to remain in Australia.

Research and experience clearly demonstrate the negative consequences of temporary protection, including:

a) Temporary status fuels anxiety and insecurity, causing long-term damage to mental health and wellbeing.

There is much evidence from the 1999–2008 period that points to the strong likelihood of harm arising from the conditions of temporary protection.¹ In their 2006 Inquiry into the Administration and Operation of the *Migration Act 1958* (Cth), the Senate Legal and Constitutional Affairs Committee found there was 'no doubt' that the operation of the Temporary Protection Visa regime had a 'considerable cost in terms of human suffering'.²

¹Mann, R 2001, *Temporary Protection Visa holders in Queensland*, Multicultural Affairs, Department of the Premier and Cabinet, Queensland Government, Brisbane.

² Senate Legal and Constitutional Affairs Committee 2006, *Inquiry into the Administration and Operation of the Migration Act 1958* (Cth), http://www.apf.gov.au/~media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2004_07/migration/report/report_pdf.ashx

It is known that temporary status has a detrimental impact on people who have suffered persecution and trauma. Research has identified that refugees with temporary protection are at greater risk of post-traumatic stress disorder than refugees and migrants from the same ethnic group, as their post-traumatic stress reactions are maintained by their temporary status and a state of chronic anticipatory stress.³ The ongoing risk of removal to the country where they fear persecution has detrimental effects on the mental health of refugees⁴: the particular impacts on children's mental health and participation in educational opportunities were documented by the Australian Human Rights Commission in 2004.⁵ The devastating impact of prolonged uncertainty and lack of control was recently reported by psychologist Dr Greg Turner, who observed that the inability to predict or anticipate events leads to a state of hopelessness:

By the time ... people get their visa their cognition has been impaired in a major way and so their capacity to contribute to Australia society – which is very much what they all want to do – is damaged.⁶

Similarly, clients we consulted describe the uncertainty of their situation as highly anxiety-provoking and detrimental to their mental health.

Under Australia's previous Temporary Protection Visa arrangements, permanent protection was eventually afforded to approximately 90 per cent of the 11,000 Temporary Protection Visa holders in recognition of their enduring need for protection.⁷

The Brotherhood believes that if the Parliament decides to grant refugees temporary protection in place of permanent protection, the temporary period needs to be limited to no more than three years. After this, if a person is still found to be owed protection, they should be granted permanent protection. Three years is a significant time for a refugee who has been dislocated from their home to remain in limbo about their future country of residence. People need to be given the opportunity to put down their roots, to form new relationships, to build their future and to embrace a new life in a safe country.

Recommendation 4:

Provide permanent protection for refugees if they are still found to be a refugee following one 3-year period of temporary protection.

³ Momartin, S et al. 2006, 'A comparison of the mental health of refugees with temporary versus permanent protection visas', *Medical Journal of Australia*, vol. 185, no. 7, pp. 357–61.

⁴ Marston, G 2003, *Temporary protection, permanent uncertainty: the experience of refugees living on Temporary Protection Visas*, Centre for Applied Social Research, RMIT University, Melbourne.

⁵ Human Rights and Equal Opportunity Commission 2004, *A last resort? National Inquiry into Children in Immigration Detention*, <https://www.humanrights.gov.au/publications/last-resort-national-inquiry-children-immigration-detention>

⁶ ABC 2014, *Advocates seek better mental health support for asylum seekers waiting for visa decisions*, ABC, Melbourne, <http://www.abc.net.au/news/2014-10-06/advocates-seek-mental-health-support-for-asylum-seekers/5793888>

⁷ Phillips, J & Spinks, H 2013, *Boat arrivals in Australia since 1976*, research paper, Parliamentary Library, Canberra.

b) Denial of family reunion causes negative psychological effects for refugees and increases the risk of more boat arrivals.

The denial of family reunion has been shown to cause negative psychological effects for refugees⁸ All clients we consulted say the most important issue to them is family reunion and many commented that they felt this was in line with the value that Australians place on families as the bedrock of our society. Our clients expressed their grave concern about the danger that their families may face retaliation in their country of origin because of their decision to seek asylum.

When Temporary Protection Visas were last in use in 1999–2008, there was an increase in the number of asylum seekers arriving by boat and in particular a significant increase in the number of women and children making this journey to join their male relatives.⁹ It is reasonable to expect that, as a consequence of prohibiting family reunion for those granted temporary protection, family members will again put themselves at risk by attempting hazardous journeys to be reunited.

**Recommendation 5:
Establish family reunion rights for refugees holding a Temporary Protection Visa or Safe Haven Enterprise Visa.**

Realising the potential benefits of the Safe Haven Enterprise Visa scheme for refugees and regional communities

Refugees who accept a proposed Safe Haven Enterprise Visa will be required to relocate to a designated regional area with labour shortages. They will be required to complete three and a half years of employment in a five-year period. After this, these refugees will be able to apply for a permanent visa to remain in Australia if they are able to satisfy:

- Skilled Migration visa requirements, which require English language proficiency and ability to work in an area of skills need

or

- Family Migration visa requirements (e.g. if they are sponsored as the spouse of an Australian).

They will remain ineligible for permanent protection on refugee grounds.

The Hugo Report found that refugees are not being fully utilised in the labour market, with a significant mismatch between skills and occupation. It highlighted that refugees would like to take up work opportunities in regional areas, use their entrepreneurial qualities and undertake volunteer work as part of a significant contribution to society.¹⁰ Furthermore, an audit of working-age asylum seekers in 2009 indicated that 40 per cent of respondents had skills on the Department's Skilled Occupation List for General Skilled Migration.¹¹

⁸ Centre for Peace and Conflict Studies (CPACS) 2003, *Go away: punished not protected – Temporary Protection Visa holders' powerlessness, federal politicians' indifference*, University of Sydney.

⁹ Kaldor Centre for International Law 2014, *Temporary protection visas*, factsheet, University of Sydney, citing Senate Legal and Constitutional Affairs Committee 2012, 'Questions taken on notice', *Budget estimates hearing 21–22 May 2012*, Immigration and Citizenship Portfolio, http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1213/report/report.ashx

¹⁰ Hugo, G 2011, *Economic, social and civic contributions of first and second generation humanitarian entrants*, Department of Immigration and Citizenship, Canberra.

¹¹ Black, A 2009, *Asylum seeker skills audit: an audit of skills amongst asylum seekers in Melbourne*, Hotham Mission Asylum Seeker Project, Melbourne.

Clients we consulted are eager to work and are generally open to the idea of working in a regional area under the Safe Haven Enterprise Visa scheme. However, they are concerned about:

- the need for assistance to understand Australian employment systems, as the current ban on work rights has left them ill-equipped to navigate it
- the need to build their skills and experience in skill shortage areas
- moving away from their local ethnic community in major cities, who provide a range of critical supports—social, material orientation and interpreting
- the receptiveness of regional communities and fears of discrimination, particularly in the current context of anti-Muslim sentiment.

The Safe Haven Enterprise scheme risks failure for regional communities and for refugees if there is no coordinated approach to providing orientation, housing and appropriate job search support.

There are a number of examples of successful integration of refugees in regional Australia. The Victorian town of Nhill has created a Karen refugee settlement program centred on employment at the local poultry company, Luv a Duck. Some 150 Karen refugees now constitute an invaluable part of the Nhill community, revitalising the local economy by saving the business from relocating elsewhere due to skill shortages. Based on this positive experience, a representative of the local AMES office which provides settlement, education, training and employment services for refugees, says that Safe Haven Enterprise visas would be welcome, but only if refugees are given access to English language tuition, job search support and a pathway to permanent residence to enable them to truly integrate and in doing so aid the stability of the local economy.¹²

A number of regional communities have also attracted asylum seekers on Bridging Visas due to their capacity to provide employment opportunities and local accommodation—for example Rockhampton in the banana-growing region of Queensland and dairy farming areas in Tasmania. Their feedback around what has worked and what has hindered the integration of new arrivals into their communities and economies would be valuable in informing the design of a future Safe Haven Enterprise Visa program.

With adequate investment in preparing local communities and businesses to maximise the benefits of this initiative, and an intentional focus on building the capacity of refugees to meet future Skilled Visa, the Safe Haven Enterprise Visa program could be a success story. Some measures that would advance these aims include:

- the appointment of Community Facilitators in regional areas to liaise with local employers, Chambers of Commerce, church groups, community organisations, accommodation providers and community members to facilitate the social and economic participation of refugees who relocate under this scheme
- classification of refugee jobseekers as highly disadvantaged so that they are able to receive intensive support to build their employability through the employment services system. It is critical that refugees are able to access the intensive and culturally appropriate support, including language, literacy and digital literacy training, which is needed to aid their transition into the Australian labour market.
- establishment of a customised program to support refugees into employment in skills shortage areas. The Brotherhood's experience of developing program for new arrivals demonstrates that with the right support, new arrivals can contribute to the productive capacity of our nation.

¹² ABC (2014), New refugee visas could provide boost for rural communities and farm businesses, ABC, <http://www.abc.net.au/news/2014-09-26/safe-haven-visas/5771662>

Asylum seekers meeting Australia's workforce needs

The Brotherhood's Asylum Seeker Employment Program commenced as a pilot in October 2013. In less than one year, this program has exceeded its targets and successfully placed more than 80 jobseekers into employment. Asylum seekers are assisted to write résumés and job applications, improve their English through workplace-focused conversation classes, and understand how their diverse skills fit into the Australian job environment. Participants access intensive, one-to-one, employment-focused mentoring and coaching both on and off the job to enable them to understand Australian work culture. Importantly, the program also works with employers to understand their workforce needs and tailor programs which properly match and prepare candidates. Labour hire services are brokered to offset risk for employers who want to utilise this service or who would like to suggest it to their subcontractors.

Drawing on our experience of designing and implementing supports within the Asylum Seeker Employment Program, the Brotherhood would be happy to elaborate further on our ideas in relation to maximising the success of the Safe Haven Enterprise Visa scheme.

Recommendation 6:

Establish a program to support the effective operation of the Safe Haven Enterprise Visa scheme so that local communities and businesses are equipped to maximise the benefits of this initiative, and refugees are trained and supported to meet Australia's skills gap.

Conclusion

The Brotherhood appreciates the opportunity to provide comment on this Bill. We believe we have made both evidence-based arguments for the Bill's rejection as well as constructive suggestions to mitigate negative consequences for those affected, in the event that the Bill is passed. This is done in the spirit of the Brotherhood working for an Australia free of poverty.