

# Submission to Joint Standing Committee on Migration Inquiry

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MIGRATION, PATHWAYS TO NATION BUILDING

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## Introduction

The Refugee Advice and Casework Service (**RACS**) provides critical free legal advice, assistance and representation to financially disadvantaged and vulnerable people seeking asylum in Australia. We advocate for systemic law reform and policy that treats refugees, the stateless and displaced with justice, dignity and respect, and we make complaints about serious human rights violations to Australian and United Nations complaints bodies.

RACS acts for and assists refugees and people seeking asylum in immigration detention centres, alternative places of detention and community detention. Our services include supporting people to apply for protection visas, re-apply for temporary visas, apply for work rights and permission to travel, apply for family reunion, lodge appeals and complaints, assist with access to citizenship and challenging government decisions to detain a person.

RACS welcomes this review into the role of permanent migration in nation building. Given our expertise and focus on supporting people seeking asylum, refugees, the stateless and displaced these submissions will outline the following points:

1. Significance of permanent migration to Australia by refugees
  - a. Importance to national building, cultural diversity and social cohesion
  - b. Issues concerning temporary protection and how those issues impede social cohesion
  - c. Contribution of permanent migration to Australia's urban and rural workforce
2. Current failures of the policy and factors that will assist refugees and attract migrants
  - a. Delays in processing of protection visas
  - b. Unfairness of the fast-track process regime
  - c. Lack of interpreting and legal assistance
  - d. Lack of accessible family reunification, particularly for those on or who held temporary protection visas
  - e. Work rights issues impacting those on bridging visas
  - f. Obstacles to tertiary education
  - g. Factors and recommendations that will assist refugees
3. Political discourse around people seeking asylum and refugees
  - a. Dehumanising political discourse around people seeking asylum and refugees
  - b. Impact of the discourse on communities and social cohesion, and the ability of refugees to integrate and settle into the community
  - c. Potential impact of the discourse on migrant decision-making

## 1. Significance of Permanent Migration to Australia by Refugees

### A. Importance of nation building, cultural diversity and social cohesion

The importance of permanent migration and protection lies in Australia's social responsibility to assist the most vulnerable members of our global community who have no choice but to seek asylum. There are compelling economic, cultural and social reasons as to why permanent migration and protection is important to Australia. Permanent migration by refugees not only enriches the country's cultural diversity and social cohesion, but also plays a crucial role in improving the growth and development of a strong and inclusive nation. RACS highlights that through the certainty of permanent protection, refugees can make valuable contributions to Australian society and community life through their unique experiences, skills, knowledge and individuality.

- **National building:** Permanent protection allows refugees to fully integrate into society and contribute to Australia's economic development by allowing them to buy their own homes, invest in business, participate and bring valuable skills to the workforce and pursue new ideas.<sup>1</sup> The permanent settlement of refugees is an untapped resource of valuable skills, education, perspectives, and experiences that can drive innovation, job creation and growth of the Australian economy.<sup>2</sup> Refugees also bring a wealth of cultural and social experiences that can enrich the fabric of Australian society, leading to greater cultural exchange which can help build a more diverse and inclusive society.
- **Cultural Diversity:** Cultural diversity is an important aspect of modern-day Australia with over 7 million or 28% of the population having been born overseas and over 270 different ancestries represented across the country.<sup>3</sup> The cultural diversity of Australia's population is enriched by permanent migration, allowing refugees from diverse backgrounds and cultures to live and work permanently in Australia. The interaction between different backgrounds and cultures through the permanent migration and protection of refugees leads to a more vibrant, inclusive and dynamic society in Australia.
- **Social Cohesion:** Permanent migration by refugees also contributes to social cohesion in Australia. Integrating refugees permanently into the community has the benefit of allowing them to contribute to society, and in turn, feel a sense of belonging and acceptance. This helps create an Australian society where everyone can feel valued and respected.

Permanent settlement and protection of refugees plays an importance role in enriching cultural diversity, promoting social cohesion, and driving economic growth in Australia. Through permanent protection and settlement, refugees can make valuable contributions to their communities, bring valuable skills and experiences, and feel a sense of belonging and acceptance, leading to a more diverse, inclusive, and dynamic Australian society. RACS submits that it is critical that the Australian government reforms Australia's migration and protection system to strengthen and ensure pathways to permanent residency for refugees and their families.

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<sup>1</sup> John Van Kooy, Policy options paper, September 2021, Supporting economic growth in uncertain times - Permanent pathways for Temporary Protection visa and Safe Haven Enterprise visa holders, <<https://apo.org.au/sites/default/files/resource-files/2021-09/apo-nid314128.pdf>>.

<sup>2</sup> Refugee Council of Australia, 2021, *Economic benefits of transitioning refugees from temporary to permanent visas*, <<https://www.refugeecouncil.org.au/economic-benefits-tpv-shev/>>.

<sup>3</sup> Australian Bureau of Statistics, 2022, *Cultural diversity of Australia*, <<https://www.abs.gov.au/articles/cultural-diversity-australia>>.

## B. Issues concerning temporary protection and how those issues impede social cohesion

RACS notes that the temporary migration and protection regime is plagued with issues which negatively impact social cohesion in the Australian community, including those briefly outlined below:

- **Two-tiered system:** Temporary protection creates a two-tiered system in Australian society, where some refugees have fewer rights and less access to services than those with permanent protection, such as education, social security, healthcare and housing. This creates a marginalised group and undermines social cohesion by creating a sense of inequality and division within the Australian community.
  - It is important to note however, there is a third tier of refugees forced to undergo Offshore processing, despite having also arrived in Australia seeking protection. Continuing to exclude this community from access to safe and permanent settlement in Australia only enforces this system of inequality and marginalisation.
- **Uncertainty:** Temporary protection creates uncertainty and insecurity for refugees who may not know whether they can return to their home country or permanently settle in Australia. This leads to a lack of social cohesion, as refugees are often reluctant to develop long-term relationships or participate in activities such as education, volunteering and employment.
- **Limbo:** Temporary protection can often lead to prolonged periods of legal limbo for refugees who live in an ongoing state of uncertainty in relation to their visa status. As a result, refugees cannot plan long-term for their future and can be separated from their families for many years, often holding well-founded fears for their safety.
- **Employment:** Temporary protection negatively impacts the employment of refugees, as some employers will not employ people with insecure legal/visa status.<sup>4</sup>
- **Separation of Families:** Temporary protection can lead to the separation of families for many years in circumstances where some family members receive permanent protection while others are granted temporary protection.<sup>5</sup> This issue is further explored in Section 2.
- **Mental health and well-being:** Temporary protection has significant detrimental effects on the mental health and well-being of refugees, including children, through the increased stress and anxiety caused by the uncertainty and insecurity during the temporary protection visa process.<sup>6</sup> This impact can have catastrophic outcomes, including self-harm and suicide. Australia's temporary protection visa regime also impacts people seeking protection due to their sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC) in different yet still detrimental ways. SOGIESC applicants have expressed to RACS the inability

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<sup>4</sup> Mary Anne Kenny, Nicholas Procter and Carol Grech, UNSW Kaldor Centre for International Refugee Law, June 2022, Policy Brief 13 - Temporary Protection Visas in Australia: A reform proposal <[https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy\\_Brief\\_13\\_Temporary\\_Protection\\_Visas\\_Australia\\_Reform\\_Proposal.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_13_Temporary_Protection_Visas_Australia_Reform_Proposal.pdf)>.

<sup>5</sup> Refugee Council of Australia, 26 December 2019, Addressing the pain of separation for refugee families, <<https://www.refugeecouncil.org.au/family-separation/>>.

<sup>6</sup> Australian Human Rights Commission, 2022, 4. *What are the Commission's concerns about TPVs?*, <[4](https://humanrights.gov.au/our-work/4-what-are-commissions-concerns-about-tpvs#:~:text=The%20uncertainty%20and%20anxiety%20of,memory%2C%20and%20sign%20of%20depression.></a>>.</p></div><div data-bbox=)

to feel safe and express themselves whilst on temporary protection visas as the face the prospect of being returned to the country they fear harm in, and therefore to danger.<sup>7</sup> This has a detrimental impact of the mental health and well-being of SOGIESC applicants.

We submit that the temporary migration and protection regime poses a significant obstacle to social cohesion in Australia, causing a range of issues that have a negative impact on refugees on temporary protection visas, such as inequality, uncertainty, insecurity, a lack of access to services and support, lack of employment, separation of families, all of which can negatively affect the mental and physical health of refugees.

RACS welcomes the introduction of the Resolution of Status Visa (**RoS Visa**), giving holders of temporary protection visas (**TPVs**) or Safe Haven Enterprise visas (**SHEVs**) who arrived before 14 February 2023 a pathway to permanent protection. The introduction of the RoS Visa will reduce the number of people who are impacted by the temporary protection regime and foster the social cohesion of refugees into the broader Australian community. However, RACS notes that many TPV and SHEV holders who have transitioned, or will be able to transition, onto RoS Visas will have been subject to the temporary protection regime for extended periods and will continue to be impacted by their experience of the aforementioned issues.

Additionally, while the introduction of the RoS Visa regime will increase the number of people afforded permanent protection, these changes do not abolish temporary migration protection system. Some refugees and people seeking asylum who arrived on or after 14 February 2023 are not eligible to apply for RoS Visas. Further those impacted by Offshore processing are not eligible. Bridging visa holders, undergoing such processing also continue to be subject to temporariness and limited rights (including work, study and healthcare), inhibiting social cohesion and their overall welfare.

In addition to the introduction of the RoS visas, an overhaul of Australia's migration system and policies is needed to ensure that the system achieves better outcomes in the successful settlement of refugees and positively fosters inclusion and social cohesion in the Australian community. This requires an abolition of the temporary protection regime as well as recognition and redress for its ongoing impacts.

### **C. Contribution of permanent migration to Australia's workforce (urban and rural)**

RACS notes that the Australian economy is suffering major labour and skills shortages across a range of industries. This labour shortage in both urban and rural areas has been exacerbated by the COVID-19 pandemic and the consequent lack of new migrants entering the national labour force due to recent international border closures.

We submit that a response to increased displacement of people globally that is centred around permanent protection should be part of Australia's approach to overcoming the labour and skills shortages our economy experiencing both in urban and rural areas. Refugees and people seeking asylum present a huge untapped resource, as many of them are highly skilled and experienced individuals who can fill the skills shortages in various industries and contribute significantly to the

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<sup>7</sup> Refugee Advice and Casework Service, April 2022 RACS Toolkit (Guide) for Legal Representatives/Community Workers, <<https://www.racs.org.au/lgbtqia-toolkit>>.

productive capacity of the economy, whilst also being afforded the protection Australia can offer. Despite the potential benefits of permanent migration, data suggests that refugees face significant barriers in securing employment within the Australian workforce. The Australian Institute of Family Studies found that only 6% of refugees successfully find work within six months of arrival, with only 25% of refugees in employment after two years.<sup>8</sup> Furthermore, 80% of refugees are of working age and motivated to undertake skills training to work in industries where their employment prospects are high.

RACS submits that this demonstrates the need for the Australian government to provide appropriate targeted support and integration programs to assist refugees in gaining successful employment and integrating into the Australian workforce, particularly in industries experiencing acute labour shortages in both urban and rural areas. This could include language and cultural training programs, as well as job-specific skills training and apprenticeships in industries experiencing labour shortages. Moreover, greater guidance should be provided to Australian businesses about successfully recruiting, training, and retaining refugee employees.

Permanent protection and settlement of refugees, offers a valuable solution to the issue of labour and skills shortages in Australia. An overhaul of Australia's permanent migration policies is needed to provide targeted support refugees to help address the issue of labour and skills shortages, drive economic growth, and support a bright future for the Australian workforce in both urban and rural areas.

## **2. Current failures of the policy and factors that will assist refugees and attract migrants**

### **A. Delays in processing of protection visa**

Although the temporary protection visa regime in Australia is formally referred to as the *Fast-Track Assessment Process*, it has been anything but a fast process for the people seeking asylum who were and continue to be subject to it.

Nearly 10 years after the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (the RALC Act)* to amend the *Migration Act 1958 (Cth) (the Act)*, the Act that re-introduced the temporary protection visa regime as at January 2023 there are currently still 1,737 applicants for protection yet to be finalised by the Department of Immigration,<sup>9</sup> and more than 9, 800 applicants for protection are undergoing ministerial intervention or judicial review.<sup>10</sup>

Many of those still awaiting outcome of their protection application, under the so called Fast-Track Assessment Process, arrived in Australia and applied for protection nearly 10 years ago. As discussed while awaiting for the outcome of their protection visa application they had access to limited government services, and no right to family reunion.

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<sup>8</sup> Australian Institute of Family Studies, 2022, *Building a New Life in Australia - The Longitudinal Study of Humanitarian Migrants*, <<https://aifs.gov.au/bnla/>>.

<sup>9</sup> Department of Home Affairs, Asylum Statistics, UMA Legacy Caseload, January 2023, <https://www.homeaffairs.gov.au/research-and-stats/files/uma-legacy-caseload-january-2023.pdf>

<sup>10</sup> Ibid.

Further, the processing time for people seeking asylum who are eligible to permanent protection is also not decreasing. Although the Department of Home Affairs does not publish data on the processing time permanent protection visa, publicly available data from the Migration and Refugee Division of the Administrative Appeals Tribunal (**MRD-AAT**), the body responsible for reviewing certain visa decisions made by the Department of Home Affairs, reveals a significant backlog of migration and refugee cases. The appeals process is a crucial process for migrants and refugees and ensures procedural fairness.

The MRD-AAT, in their 2021-2022 Annual Report conceded that the tribunal is not sufficiently resourced to reduce its backlog of cases or keep pace with the increase in lodgements over time.<sup>11</sup> As a result, applicants appealing negative decisions continue to face severe delays in having their cases heard.

This backlog of cases has significant consequences for refugees who are left in limbo, often on bridging visas, while their cases are unresolved. We have experienced some refugees being forced to wait between two to four years for their appeals to be heard. The MRD-AAT is simply not sufficiently resourced to process and hear the volume of cases they have before them.

The MRD-AAT, has fundamentally failed refugees as a result of under-resourcing, lack of transparent appointments, complexity, inaccessibility and inadequate pro bono legal assistance. According to the MRD-AAT, processing times for reviews finalised between July - December 2022, the average processing time for 95% of protection case applications was approximately 5 years.<sup>12</sup> This figure also does not include cases where the Tribunal found that it did not have jurisdiction to review the decision or cases that were withdrawn.

While the abolishment of the AAT and the establishment of a new federal administrative review body is a welcome change that promises to reduce the current backlog of cases before the AAT, the government should ensure that any new administrative review body provides an efficient, transparent, accessible and fair merits review process for migrants and refugees.

## **B. Unfairness of the fast-track process**

The fast-track process regime, introduced in 2014, unfairly affects people who arrived in Australia by boat on or after 13 August 2012. It also affects excluded fast track applicants who are applicants arriving from safe third countries or have effective protection in another country, have previously entered Australia, have made an unsuccessful protection visa application or in the opinion of the Minister holds a 'manifestly unfounded' claim.

Fast track process applicants do not have access to any form of merits review under the MRD-AAT, but instead are referred to a limited form of review by the Immigration Assessment Authority (**IAA**). This body, unlike the MRD-AAT, cannot overturn the original decision with its own decision.<sup>13</sup> Its only recourse is to either affirm the original decision or remit the matter back to the original decision-maker.<sup>14</sup> Between 1 July 2015 to 31 December 2022, the IAA affirmed approximately 89% of decisions, and remitted 10%

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<sup>11</sup> Administrative Appeals Tribunal, 23 September 2022, *Annual Report 2021-22*, <<https://www.aat.gov.au/AAT/media/AAT/Files/Reports/AR202122/AAT-Annual-Report-2021-22.pdf>> 35.

<sup>12</sup> Administrative Appeals Tribunal, 2022, *Migration and Refugee Division processing times* <<https://www.aat.gov.au/resources/migration-and-refugee-division-processing-times>>.

<sup>13</sup> *Migration Act 1958* (Cth) s 473CC ('Migration Act').

<sup>14</sup> *Ibid.*



of decisions back to the original decision-maker.<sup>15</sup> RACS submits that this system unfairly punishes maritime arrivals, without any justifiable reason to do so as it is not an effective deterrent.

Reviews are conducted on the papers with material provided by the Minister at or around the time of referral.<sup>16</sup> While the IAA can request new information at an interview, such information can only be used in exceptional circumstances and only if it was not available at the time of the initial decision.<sup>17</sup> These limitations, coupled with the quick timeframes, mean that errors are at risk of occurring and the default position it would seem given such limitation is to affirm. Errors in the context of protection visa applications have significant and detrimental consequences for applicants including the denial of protection visas and therefore return to a country where a person may indeed face significant harm.

### **C. Lack of interpreting and legal assistance available for people to navigate the refugee determination process**

People seeking asylum often lack the financial resources to pay for legal advice and representation, putting them at great disadvantage throughout the migration process. As UNHCR has noted, people seeking asylum are often unable to articulate the elements relevant to a claim without the assistance of qualified representation or interpreters, because they are often not familiar with the precise grounds for the recognition of refugee status and the legal system of a foreign country.

Immigration is a particularly complicated area of law and policy, and people seeking asylum are in a uniquely vulnerable position compared to other people who may need legal aid. They ordinarily lack family and social support structures in Australia, predominantly come from non-English speaking backgrounds, and have often suffered trauma and are fearful of authorities due to experiences in their countries of origin. As a result, people seeking asylum may find it difficult to share information with decision makers and navigate the Australian legal system. The lack of dedicated, on-going funding for key legal services working with this community and availability of funded interpreters to assist people seeking asylum through the migration process perpetuates this disadvantage.

### **D. Lack of accessible family reunification, particularly for those on or who held temporary protection visas**

RACS welcomes the Australian Government's revocation of Ministerial Direction 80 which placed individuals who entered Australia as unlawful maritime arrivals and hold a permanent visa in the lowest processing priority for family visas.<sup>18</sup> Additionally, as many temporary visa holders will now be able to transition onto RoS Visas, family reunification will now be a possibility for a large group of refugees already in the Australian community through the family stream program.<sup>19</sup> This is a welcome aspect of

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<sup>15</sup> Immigration Assessment Authority, 7 October 2022, Statistics IAA Caseload (2021-22), <<https://www.iaa.gov.au/about/statistics>>.

<sup>16</sup> *Migration Act* (n 11) s 473DB.

<sup>17</sup> *Ibid* s 473DD.

<sup>18</sup> Minister for Immigration, Citizenship and Multicultural Affairs (Cth), *Ministerial Direction No. 102: Order for considering and disposing of Family visa applications under sections 47 and 51 of the Migration Act 1958* (9 February 2023); Department of Home Affairs, 13 March 2023, *Family visa processing priorities*, <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities>>.

<sup>19</sup> *Ibid*.

the RoS Visa regime, as many TPV and SHEV holders have also been separated from their families for significant periods of time.

While these policy and legislative changes provides many with a stepping stone to reunification, it does not offer permanent reunification for TPV and SHEV holders awaiting RoS Visas approval or who are not eligible for the RoS Visa. Some families have been separated for more than a decade. RACS submits that serious consideration should be given and action taken to expanding the policy to open up permanent family reunification to people on TPV and SHEVs.

Further access to the family stream program comes at a considerable financial cost to the sponsor and their families. The base application charge for a partner visa alone \$8,085.<sup>20</sup> This does not include the costs associated with travel which may require international travel to other 3<sup>rd</sup> countries for interviews and other associated appointments as part of the application process, nor health checks and DNA tests as is often required when children are involved. This will prove a barrier for many who have been separated from their families for more than a decade and who have likely had to support themselves in Australia as well as their families overseas. Further exploration of compassionate remedies to this need to be considered for this particular community who have been found to be refugees, but are unable to access Australia's split-family provisions through the Offshore Humanitarian Program.

## **E. Work rights issues impacting those on bridging visas**

Temporary visas can indeed put people seeking asylum and refugees, at risk of exploitation.<sup>21</sup> Conditions attached to bridging visas, notably any prohibitions on working, can lead to exploitation of people seeking asylum as they are left with little option to earn an income other than enduring harsh working conditions outside the regulated labour market, as they are also not eligible for any financial support programs.<sup>22</sup>

In 2017, following his visit the year prior, the Special Rapporteur on the human rights of migrants, François Crépeau, reported that while Temporary Protection Visas and Safe Haven Enterprise Visas may provide some access to work rights, "*these visas do not offer a long-term solution for asylum seekers*" and may, through continued lodgement requirements and uncertain outcomes, cause mental distress. Mr Crépeau further noted that he had been informed of the exploitation of people seeking asylum on bridging visas in Australia, including long hours and wages below the legal minimum, and that "*[t]emporary work visas may therefore serve to increase the vulnerability of migrant workers.*"<sup>23</sup>

Indeed, a report by researchers from the University of Newcastle found that in the Hunter region of NSW, refugees who have been traumatised counted among the "most vulnerable migrant workers", in the

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<sup>20</sup> Department of Home Affairs, March 2022, *Fees and Charges for Visas*, <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/fees-and-charges/current-visa-pricing/live>>.

<sup>21</sup> Department of Home Affairs, November 2022, *A Migration System for Australia's Future*, <[https://www.homeaffairs.gov.au/reports-and-pubs/files/reviews-and-inquiries/discussion\\_paper.pdf](https://www.homeaffairs.gov.au/reports-and-pubs/files/reviews-and-inquiries/discussion_paper.pdf)>.

<sup>22</sup> Australian Human Rights Commission, April 2013, *Tell Me About: Bridging Visas for Asylum Seekers*, <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/tell-me-about-bridging-visas-asylum-seekers>>.

<sup>23</sup> UN Human Rights Council, 24 April 2017, *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru*, A/HRC/35/25/Add.3, pp. 17-18, [94]-[95].

region, where researchers found "episodic industry specific exploitation" as well as wage suppression and theft.<sup>24</sup>

RACS has particular concern for those who by law cannot be granted permission to work, despite engaging in legal processes of Ministerial Intervention, or due to their having been affected by offshore processing. We are also particularly concerned for people considered transitory persons, who whilst in Australia are receiving medical treatment or awaiting 3<sup>rd</sup> country resettlement, are only granted short-term bridging visas of no more than 6 months, and no rights to study, only further exacerbating their vulnerability and susceptibility to such practices.

An overhaul of the current system is required to ensure not only that it allows people seeking asylum and refugees protection, including those on bridging visas, as they seek to provide for themselves and their families, but that avenues for its use by those who would traffic and exploit workers are cut off.

## **F. Obstacles to tertiary education**

Refugee and people seeking asylum face significant barriers in accessing tertiary education. Refugees and people seeking asylum on bridging visas or temporary visas are not eligible for federal government assistance to access education. They are treated as international students and charged international student rates to attend university or TAFE, if such study rights are afforded.<sup>25</sup> While some universities offer scholarships to people seeking asylum, there are a finite number on offer, with some only covering a portion of the tuition. Given education a key indicator of future prospects, refugees and people seeking asylum should not be deprived such opportunity on the basis of financial constraints.

Aside from financial barriers to tertiary education, health, information and gendered barriers must also be overcome. The vast majority of humanitarian entrants have experienced some form of personal trauma. These experiences lend themselves to mental health issues which may impede a person's ability to fully engage in the process required to access and participate in higher education.<sup>26</sup> In addition, there is also a lack of services available to assist humanitarian entrants in navigating the process of applying to university and financial support.<sup>27</sup>

Refugees face obstacles in having their overseas qualifications transferred to or recognised in Australia. Their access to education and training in Australia is further impeded by having to pay full fees. This places refugees in a cycle of disadvantage where they cannot have their qualifications recognised, but also cannot afford to requalify in their field in Australia.

RACS welcomes the Australian government's commitment to prioritise TPV and SHEV holders for RoS Visas that are seeking tertiary education support. While the RoS Visa regime will enable many to access better and more affordable education, RACS submit that while the TPV, SHEV regime continue to exist for future applicants, they should be allowed to access federal government assistance to access

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<sup>24</sup> Dr Justin Ellis and Ben Mulholland, 2022, *Vulnerable Migrant Workers in the Hunter Region*, p. 4, <<https://acrath.org.au/wp-content/uploads/2022/10/Vulnerable-Workers-Hunter-Region-SEPTEMBER.pdf>>.

<sup>25</sup> Refugee Council of Australia, December 2015, *Barriers to Education For People Seeking Asylum and Refugees on Temporary Visas*, <<https://www.refugeecouncil.org.au/wp-content/uploads/2015/12/Barriers-to-Education.pdf>> 4.

<sup>26</sup> The University of Queensland Australia, 2021, *Understanding access to higher education amongst humanitarian migrants in Australia*, <[https://www.ncsehe.edu.au/wp-content/uploads/2021/03/Perales\\_UQ\\_HumanitarianMigrants\\_FINAL.pdf](https://www.ncsehe.edu.au/wp-content/uploads/2021/03/Perales_UQ_HumanitarianMigrants_FINAL.pdf)> 11.

<sup>27</sup> Ibid 12.

education. Noting the contribution that migrants make to Australia's culture and workforce, opportunities to learn, up-skill, requalify and integrate with other students, these barriers to education should not exist.

It is further RACS position that further consideration needs to be given to when and how a 'no study condition' is placed on a bridging visa, and the intention of that condition by Government. This significantly limits a person's ability to upskill prior to becoming a permanent resident of Australia, and indeed even if not afforded such permanency, the opportunity to best contribute to our society whilst undergoing the several year assessment process. Finally, it is RACS position that people deemed as transitory persons in Australia should have access to the right to study, which only further their abilities to settle in whichever country offers them a safe and permanent place.

## **G. Factors and recommendations that will assist refugees**

### ***i. Permanency***

RACS submits that Australia's response to increased displacement of people by conflict and climate change should be a humane, fair, efficient, and permanent settlement process. This lack of permanency, the delays in processing of protection visa applications, and the current use of Bridging Visas impedes people's ability to gain meaningful employment and access to proper health care whilst living in Australia.

### ***ii. Work Rights***

Only certain bridging visas grant work rights to people seeking asylum.<sup>28</sup> The availability of work rights to people seeking asylum is heavily dependent on the conditions of their visa, and the progress of their application for protection.<sup>29</sup> If a person seeking asylum holds a bridging visa with a 'no work' condition, they may be able to apply for a new bridging visa with work rights, if their application is being decided by the Department or is under merits review, and they meet certain other criteria.<sup>30</sup> In certain circumstances people seeking asylum on bridging visa with no work rights, cannot apply for work rights. RACS submits that people seeking asylum still face significant barriers to accessing employment, including language barriers, and lack of appropriate training and support.<sup>31</sup> Accordingly, RACS submits that many people seeking asylum with work rights may also face significant financial hardship.

It is RACS position that all people seeking asylum, if engaged in a legal process to seek Australia's protection, no matter what the stage of that process, should have access to work rights whilst awaiting any outcome or whilst making arrangements to depart Australia should that be their decision.

RACS notes that the Australian economy is suffering major labour and skills shortages across a range of industries. This labour shortage has been exacerbated by the COVID-19 pandemic and the consequent lack of new migrants entering the national labour force due to border closures. At the same time, Australia has an untapped talent pool of workers: refugees who have settled here and are urgently

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<sup>28</sup> Andrew and Renata Kaldor Institute for International Refugee Law, 23 November 2020, *Bridging Visas*, <<https://www.kaldorcentre.unsw.edu.au/publication/bridging-visas>>.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

searching for meaningful employment.<sup>32</sup> Survey data from the Australian Institute of Family Studies suggests only 6% of refugees successfully find work within six months of arrival.<sup>33</sup> Within two years of arrival, only 25% of refugees are in employment. 80% of refugees are of working age and motivated to undertake skills training to work in industries where their employment prospects are high.<sup>34</sup>

We submit that refugees and humanitarian entrants bring a unique skill set to the Australian labour market by providing invaluable cultural and linguistic links to the increasingly multicultural Australian community. Accordingly, the employment of refugees can directly increase the competitive advantage of organisations by enabling them to deliver better services, build customer loyalty, and penetrate new and emerging markets. Furthermore, Australia's population growth relies heavily upon overseas migrants and humanitarian migrants. Accordingly, encouraging a skilled and diverse workforce will help Australia ensure it has a more diversified economy that is less reliant on the next large wave of investment.<sup>35</sup>

RACS submits that the Australian government should place greater emphasis on assisting refugees and humanitarian migrants in gaining successful employment, particularly in industries experiencing acute labour shortages. This emphasis could come in the form of implementing training opportunities and specific pathways for refugees to help meet the skill needs of the Australian labour market. Moreover, greater guidance should be provided to Australian businesses about successfully recruiting, training and retaining refugee employees. We submit that such initiatives will undoubtedly result in increased employment for refugees, humanitarian and migrant entrants overall. The overarching objective of these measures should be to foster increased opportunities for refugees whilst maintaining the strength of the wider Australian economy.

### ***iii. Access to services in the short-term***

RACS submits that having access to a variety of necessary services is vital in assisting refugees and attracting migrants. In particular, access to health services is of great importance.

RACS notes that several studies of resettled refugee populations show that refugees settling in western countries, like Australia, face many difficulties in accessing effective health care.<sup>36</sup> Studies with refugee populations in Australia indicate that language is a significant barrier to refugees accessing health services.<sup>37</sup> RACS submits while many people seeking asylum on bridging visas are eligible for Medicare many may still face difficulties in accessing adequate healthcare because of very low incomes. Any delays in the renewal of bridging visas can inhibit a person seeking asylums' access to work and healthcare, because bridging visa holders' work rights and Medicare cards generally expire concurrently. As many refugees and migrants have low levels of English language proficiency, they are more likely to rely on bilingual health care providers and interpreters for vital communication during health care. These

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<sup>32</sup> Australian Institute of Family Studies, 2022, *Building a New Life in Australia - The Longitudinal Study of Humanitarian Migrants*, <<https://aifs.gov.au/bnla/>>.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid 31.

<sup>35</sup> Northern Territory Government, 2018, *2018-28 Northern Territory Population Growth Strategy*, <[https://population.nt.gov.au/\\_\\_data/assets/pdf\\_file/0007/559384/Population-Strategy.pdf](https://population.nt.gov.au/__data/assets/pdf_file/0007/559384/Population-Strategy.pdf)> 16.

<sup>36</sup> NSW Public Health Bulletin, Cathryn Finney Lamb and Mitchell Smith, 'Problems Refugees Face When Accessing Health Services' [2014] Public Health Bulletin 161.

<sup>37</sup> Ibid.

resources are often lacking within (or for) small and emerging refugee communities in Australia.<sup>38</sup> Moreover, these language barriers in health care can result in refugees experiencing disproportionately high rates of miscommunication and barrier in accessing health care.

### 3. Political discourse around people seeking asylum and refugees

#### A. The dehumanising political discourse around people seeking asylum and refugees

RACS submits that the current stratification of visas reflects the dehumanising characterisation in the Australian political discourse of people seeking asylum and refugees as either legitimate or illegitimate, legal or illegal, rule-following or queue-jumping. Various analyses of the Australian political and media landscapes have revealed these negative dominant constructions of people seeking asylum and refugees. For example, in the context of the exclusionary policies such as the "Malaysia Deal" in 2013, Elizabeth Rowe and Erin O'Brien of Queensland University of Technology analysed Hansard Parliamentary debates from this period, revealing:

*"a dichotomous characterisation of legitimacy pervades their construction with this group constructed either as legitimate humanitarian refugees or as illegitimate 'boat arrivals'. These constructions result in the misrepresentation of asylum seekers as illegitimate, undermining their right to protection under Australia's laws and international obligations..."*

Rowe and O'Brien outlined Australia's history of policies "designed to manage the arrival of 'irregular' migrants to Australia," beginning with the White Australia Policy, the arrival of people seeking asylum from South East Asia in the aftermath of the Vietnam War (and the coining of the term "boat people"), to the introduction of mandatory detention in 1992 and into today. The researchers noted increasingly negative attitudes towards people seeking asylum, spurred on by events such as the Tampa Crisis and introduction of policies such as the Pacific Solution.

The researchers' Hansard studies revealed trends of labelling people seeking asylum with "stereotypical and deceptive language" and classification of "genuine" or "illegal" by politicians, e.g., when then-leader of the Opposition Tony Abbot stated:

*"we have had 241 boats and 12,000 **illegal arrivals**... Since the Malaysia people swap was announced we have had more than 1,000 **illegal arrivals**. Since it was signed we have had 400 **illegal arrivals**" (House September 22, 2011).<sup>39</sup> (emphasis added)*

The same year, then-Prime Minister Julia Gillard stated:

*"As part of that transfer agreement, we would bring to Australia people who are **genuine refugees**, who are processed in Malaysia and who are already there now and are waiting a resettlement opportunity (House May 23, 2011)." (emphasis added)*

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<sup>38</sup> Ibid.

<sup>39</sup> Elizabeth Rowe and Erin O'Brien, 'Constructions of Asylum Seekers and Refugees in Australian Political Discourse', within J Taur & K Richards (Eds) *Crime, Justice and Social Democracy: Proceedings of the 2nd International Conference, 2013, Volume 1*. Crime and Justice Research Centre, Queensland University of Technology, 173.

The illegal/genuine dichotomy has also been seen in the use of the "front door" vs "back door" metaphor. E.g., in 2015, when publicly refusing to offer resettlement to thousands of migrants involved in south-east Asia's refugee crisis, then-Prime Minister Tony Abbott stated:

*"I'm sorry. If you want to start a new life, you come through the front door, not the back door."*

Mr Abbott seemed to link the actions of desperate people seeking asylum with criminality when he stressed the importance to his government of discouraging the people smuggling trade:

*"Australia will do absolutely nothing that gives any encouragement to anyone to think that they can get on a boat, that they can work with people smugglers to start a new life."<sup>40</sup>*

Illustrating how immigration continued to remain a controversial political issue inviting dehumanising language, in 2017, Liberal senator David Fawcett appeared to, in a senate estimates hearing, refer to people seeking asylum as "fleas." In response to a defence of the Turnbull government's handling of border protection, characterised as a "mess" left by Labor, Senator Fawcett stated:

*"I'll leave it there, I just question the ethics of nitpicking when your particular group brought the fleas in the first place."*

While Senator Fawcett later clarified that "fleas" was intended to link to his "nitpicking" metaphor, that was not before Senator Ian Macdonald, laughingly said *"Nicely put."*<sup>41</sup>

The Australian media has in turn consistently fed an "us" vs. "them" narrative of "illegal" arrivals, dehumanising people seeking asylum as "other" and incompatible with or harmful to Australian society. Research into the media landscape has found that people seeking asylum have been represented as threats to Australian society either physically, economically or symbolically. As Ashleigh Haw of the University of Melbourne explains:

*"Australia has routinely witnessed references to these perceived threats over the past three decades, with research highlighting the "threat" discourse as a pervasive feature of news representations of asylum seekers and migrants... For instance, Ellis, Fulton, and Scott (2016) examined newspaper depictions of riots that occurred in 2014 in the Manus Island detention centre, resulting in the death of 24-year-old Iranian asylum seeker Reza Barati, finding that The Australian presented asylum seekers as violent and to blame for the incident."<sup>42</sup>*

Responses by participants in Haw's research to the "threat" narrative include those such as:

- *"I think there are two kinds of asylum seekers: those who really need help and those who play the system. Based on what I've seen, they know how to play with emotions as well. That's their*

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<sup>40</sup> Lisa Cox, "Nope, nope, nope": Tony Abbott says Australia Will Not Resettle Refugees in Migrant Crisis" *Sydney Morning Herald* (online, 21 May 2015) <<https://www.smh.com.au/politics/federal/nope-nope-nope-tony-abbott-says-australia-will-not-resettle-refugees-in-migrant-crisis-20150521-gh6eew.html>>.

<sup>41</sup> Claire Bickers, 'Estimates Hearing Outrage After Asylum Seekers Referred to as "Fleas"' *News.com.au* (online, 27 February 2017) <<https://www.news.com.au/national/politics/estimates-hearing-outrage-after-asylum-seekers-referred-to-as-fleas/news-story/64dbeea66143bc4ad297148e073463d3>>.

<sup>42</sup> Ashleigh L. Haw, "Hapless Victims" or "Making Trouble": Audience Responses to Stereotypical Representations of Asylum Seekers in Australian News Discourse' (2023) 17(1) *Journalism Practice* 5-23:7, citing Ellis, K., J. Fulton, and P. Scott, 2016. "Detention Attention: Framing a Manus Island Riot." *Pacific Journalism Review* 22 (1): 74–92; Klocker, N., and K. M. Dunn, 2003, "Who's Driving the Asylum Debate? Newspaper and Government Representations of Asylum Seekers." *Media International Australia: Incorporating Culture and Policy* 109: 71–92; Parker, S. 2015. "Unwanted Invaders": The Representation of Refugees and Asylum Seekers in the UK and Australian Print Media." *e-Sharp* 23:1–21.

*way of gaining what they want. It's just like a child, when a child doesn't get a lollipop, it throws a tantrum.*" (from a participant with self-described "non-accepting" views towards people seeking asylum); and

- *"Look at how the media portrayed the 'children overboard' affair. It really did entrench this view of how asylum seekers are a threat to our borders. I think that was a really important point where the media, and specifically the Murdoch media, they're a prime example, this was the point where they completely abandoned all pretence of so-called objective reporting and, well, completely and utterly distorted the public view towards asylum seekers."* (from a participant with self-described "accepting" views).<sup>43</sup>

RACS submits that the dehumanising discourse around people seeking asylum and refugees must change, and to do so requires a reimagining of the current migration system to allow better integration of people seeking asylum and refugees into Australian society, and reinforce the legal truth that seeking asylum via any means is not illegal. This needs to be achieved not only through our language, but through our treatment of this community under the law.

## **B. Impact of the discourse on communities and social cohesion, and the ability of refugees to integrate and settle in the community**

Discrimination in Australian society, fed by the damaging political and media discourse, has serious consequences for refugees and people seeking asylum as they attempt to integrate into Australian society.

Rowe and O'Brien argued that the political labelling of people seeking asylum as "non-genuine" and "illegal" leads to a disconnect from the reasons for seeking asylum, criminalises their actions and positions them as a threat, and contributes to negative attitudes towards people seeking asylum and refugees in the Australian public and politics.<sup>44</sup> While some research reveals that negative attitudes towards immigration in general in Australia have fallen significantly and Australians increasingly believe immigrants are integrating well, this is likely due to the collapse of net overseas migration due to COVID-19 border closures.<sup>45</sup>

In 2020, three researchers in South Australia examined the health impact of discrimination of people of refugee and asylum-seeker backgrounds living in South Australia. They found that 22% of participants "reported experiences of discrimination since arriving in Australia", with 14% experiencing it in the year preceding the survey. 90% of the participants who had experienced discrimination felt that it had harmed their health and had "significantly worse mental health." Discrimination was argued to "compound pre-migration trauma and persecution", and affect "resettlement and integration, indirectly impacting on health", and was associated with:

- Less sense of belonging;
- Lower levels of trust;

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<sup>43</sup> Haw (n 49) 15.

<sup>44</sup> Rowe and O'Brien (n 44).

<sup>45</sup> Dr James O'Donnell, Scanlon Foundation, *Mapping Social Cohesion* (Report, 2022), <[https://scanloninstitute.org.au/sites/default/files/2022-11/MSc%202022\\_Report\\_V2.pdf](https://scanloninstitute.org.au/sites/default/files/2022-11/MSc%202022_Report_V2.pdf)> 58-60.



- Reduced sense of control; and
- Less hope.<sup>46</sup>

RACS submits it is imperative that the institutional discrimination present in the current migration system change in order to reduce societal discrimination and improve outcomes for refugees and people seeking asylum.

### C. Potential impact of the discourse on migrant decision-making

Australia's cruel asylum seeker policies have attracted international attention with the potential to damage our reputation in the eyes of skilled migrants. For example, when tennis star Novak Djokovic was held in hotel quarantine after a public visa stoush before the Australian Open in 2022, the world's attention was briefly turned to people seeking asylum detained at the same hotel. The BBC reported that the saga "*threw a spotlight on Australia's policies which rights group say are abusive and inhumane.*" Australia's policy to reject those fleeing persecution was noted to "*breach[es] the conditions of the international refugee treaties the country has pledged to uphold.*"<sup>47</sup>

More recently, other governments including the UK have infamously sought inspiration from Australia's harsh border policies.<sup>48</sup> Last year, as the British government introduced its Nationality and Borders Bill to prevent Channel crossings, a letter from detainees "*who witnessed Australia's offshore asylum policies and temporary visa regime play out*" was published, arguing that the UK would risk "*international embarrassment*" by implementing similar policies as planned.<sup>49</sup>

Human Rights Watch researcher has called out Australia as painting "*...a picture of itself for the global stage that doesn't match the reality at home*".<sup>50</sup> Increasing awareness of this hypocrisy could damage Australia's reputation in the eyes of skilled migrants, given that these policies were given a mandate by the Australian people at election, who have been in turn influenced by racially charged and dehumanising political and media discourse.

### Summary

It is RACS position that the way we treat and speak about people seeking asylum and refugees is far from a system which aligns with our international obligations, nor a sense of justice, dignity and respect.

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<sup>46</sup> Anna Ziersch, Clemence Due and Moira Walsk, 'Discrimination: a Health Hazard for People from Refugee and Asylum-Seeking Backgrounds Resettled in Australia' (2020) 20(108), *BMC Public Health*, <https://doi.org/10.1186/s12889-019-8068-3>.

<sup>47</sup> Frances Mao, 'Djokovic saga highlights Australia asylum seekers held for record 689 days', *BBC* (online, 16 February 2022) <<https://www.bbc.com/news/world-australia-60398029>>.

<sup>48</sup> Osman Faruqi, 'Australia's Descent into Cruelty Inspires Other Nations', *Sydney Morning Herald*, 16 June 2022, <<https://www.smh.com.au/politics/federal/australia-s-descent-into-cruelty-inspires-other-nations-20220615-p5atti.html>>.

<sup>49</sup> May Bulman, 'UK warned not to replicate Australia's 'dark and bloody chapter' on asylum', *Independent* (online, 4 July 2021) <<https://www.independent.co.uk/news/uk/home-news/uk-warned-not-to-replicate-australia-s-dark-and-bloody-chapter-on-asylum-b1872277.html>>; Diane Taylor, 'UK warned not to replicate Australia's immigration detention centres', *Guardian* (online, 6 December 2021) <<https://www.theguardian.com/uk-news/2021/dec/05/uk-warned-not-to-replicate-australias-immigration-detention-centres>>.

<sup>50</sup> Sophie McNeill, 'Djokovic Case Highlights Australia's Cruel Immigration Policies', *Human Rights Watch* (Web Page, 10 January 2022) <<https://www.hrw.org/news/2022/01/10/djokovic-case-highlights-australias-cruel-immigration-policies#:~:text=Since%20July%202013%20the%20Australian,cruel%20policies%20has%20been%20huge>>.

Whilst RACS has celebrated a number of significant changes implemented under the Albanese Government, we remain cognisant to the many populations within our refugee community that have not yet received any reprieve from the decades of cruel and crippling policies impacting the lives of people seeking asylum. This community remains very much alive in the forefront of RACS advocacy and call for change, despite the welcome developments of recent months.

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