

**AMNESTY
INTERNATIONAL**



DEFENDING HUMAN RIGHTS

Submission to the
**SELECT COMMITTEE ON TEMPORARY MIGRATION'S INQUIRY
INTO IMPACTS OF TEMPORARY MIGRATION**

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Submitted by

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation with over seven million supporters in more than 160 countries around the world.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

1. Summary

- 1.1 Amnesty International welcomes the opportunity to submit to the Senate Select Committee on Temporary Migration's inquiry into the impact temporary migration has on the Australian economy, wages and jobs, social cohesion and workplace rights and conditions.
- 1.2 The current temporary visa regime leaves holders with uncertainties around work, health, study, family situation, and life in general. The regime could be amended to ensure that these uncertainties are addressed.
- 1.3 The COVID-19 crisis has been particularly difficult for temporary visa holders. It has added another layer of uncertainty to their lives. This can be solved by offering additional financial and social assistance.

Recommendations

Amnesty International recommends that:

- (1) The Australian Government abolishes Temporary Protection Visas and Safe Haven Enterprise Visas and allows for all refugees to have permanent protection in Australia.

Should recommendation 1 not be implemented, Amnesty International recommends that:

- (2) The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to travel without restriction unless they are restricted in order to protect national security, public order, public health or morals or the rights and freedoms of others.
- (3) The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to sponsor their family members to join them in Australia.
- (4) The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to access Humanitarian Settlement Program employment opportunities.
- (5) The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to receive the same settlement support services as other humanitarian visa holders.
- (6) The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to undertake tertiary study by setting up a support payment, similar to the Higher Education Contribution Scheme, that covers fees, and is paid back in the future.
- (7) The Australian Government amends the eligibility for JobKeeper and JobSeeker to allow for temporary visa holders to receive support.
- (8) The Australian Government ensures that all COVID-19 related information, including guidelines and instructions, be translated as soon as possible.

2. Temporary Visas

- 2.1 Amnesty International has consistently denounced the policy of granting temporary protection to refugees seeking asylum in Australia¹.
- 2.2 It is Amnesty International's position that the Australian government's use of temporary visas is to deter those seeking asylum in Australia; this is a punitive approach to humanitarian protection, and needs to be reviewed.
- 2.3 Amnesty condemned temporary visas re-implementation in 2014 after Temporary Protection Visas had previously been in operation between 1999 and 2008.
- 2.4 There are now two types of temporary visas for refugees who arrived without valid visas: Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs).
- 2.5 A TPV allows refugees to stay in Australia for a maximum of three years, after that their protection claims need to be reassessed. The new temporary visa policy differs from the previous one as TPV holders are allowed to apply for another temporary visa only - they will never be eligible for permanent residency. The logic underlying this policy appears unnecessarily punitive since most refugees with temporary status are unlikely ever to be able to go home. They would then have to reapply for temporary protection for their whole life. The cost to taxpayers of re-processing an individual every three years is both wasteful and unnecessary.
- 2.6 The Safe Haven Enterprise Visa (SHEV) is another form of temporary visa, which is issued for a period of five years. Contrary to TPVs, it allows people to apply for a permanent migration visa. To get to apply for a permanent migration visa, SHEV holders have to commit to study or work in "a designated regional or rural area" without accessing income support for a minimum period of three-and-a-half-years. Even then, they must meet all the conditions for the permanent migration visa (for example a skilled or family visa), because they cannot apply for a permanent protection visa. SHEVs theoretically offer a pathway to permanent residency, most are unable to satisfy those very strict eligibility criteria.

Recommendation 1: The Australian Government abolishes Temporary Protection Visas and Safe Haven Enterprise Visas and allows for all refugees to have permanent protection in Australia.

- 2.7 For TPV and SHEV holders, any departure from Australia without permission from the government (only granted in compelling circumstances) will result in a cancellation of their visa. This restriction of the freedom of movement imposed through the government policy contravenes Australia's obligations under International Covenant on Civil and Political Rights.

¹ See for example, Amnesty International "Submission to Senate Legal and Constitutional Affairs Legislation Committee Inquiry into Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014", November 2014.

Restrictions on the freedom of movement are only allowable in circumstances required to 'protect national security, public order, public health or morals or the rights and freedoms of others'.²

Recommendation 2: The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to travel without restriction unless they are restricted in order to protect national security, public order, public health or morals or the rights and freedoms of others.

2.8 TPV and SHEV holders cannot sponsor their family members to join them. They will never be able to reunite with their loved ones. Yet, the principle of family unity is fundamental in international law and repeated UNHCR Executive Committee Conclusions have emphasized the importance of maintaining family unity. People are forced to live with the fear of what could happen to their family in their home country, increasing the difficulty for them to properly settle into their new life.

Recommendation 3: The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to sponsor their family members to join them in Australia.

2.9 Temporary protection condemns visa holders to being second class citizens for the rest of their lives. They will not have access to the same services and support as others, as Australian social security system largely discriminates between temporary and permanent residence.

2.10 TPV and SHEV holders are granted work rights in Australia. However, as their visa allows limited residency rights, it has been shown that employers are more reluctant to engage them in permanent, meaningful employment. For example, the three-years expiry period for TPV holders has often limited refugees to finding short-term and potentially unstable employment.

Recommendation 4: The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to access Humanitarian Settlement Program employment opportunities.

2.11 TPV and SHEV holders have access to Medicare and get some social support payments through Centrelink payments. They can also receive torture and trauma counselling. However, they are not eligible for the full range of settlement support services available to other humanitarian entrants. For example, the only income support they can receive is known as the "Special Benefit". It is a stopgap benefit for the most vulnerable and is not designed to support people in the long-term. They are not eligible for other benefits such as the Newstart Allowance, Youth Allowance or Austudy.

² ICCPR, Art.12.

Recommendation 5: The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to receive the same settlement support services as other humanitarian visa holders.

2.12 People on TPVs and SHEVs are not eligible for Federal programs designed to assist students with financing tertiary study. If they want to do further or university study, they will lose their Special Benefit allowances if they take a course of more than 12 months. Without government support, people are forced to pay international student rates to attend TAFE and university. The costs of these fees can be in the thousands of dollars effectively preventing them from furthering their education.

Recommendation 6: The Australian Government allows for Temporary Protection Visa and Safe Haven Enterprise Visa holders to undertake tertiary study by setting up a support payment, similar to the Higher Education Contribution Scheme, that covers fees, and paid back in the future.

3. Temporary Protection and COVID-19

- 3.1 Temporary visa holders have been excluded from crucial parts of the COVID-19 responses measures announced by the Federal government
- 3.2 Temporary visa holders are not eligible for Jobkeeper and Jobseeker payments. They are also excluded from the COVID-19 stimulus package. The Jobkeeper wage subsidy legislation follows the course of previous policies which discriminate between Australians and permanent residents on the one hand, who have access to safeguards, and temporary visa holders who are left behind. Some state and territory governments have tried to fill those gaps implementing state-specific support packages (for instance, Tasmania).
- 3.3 As many temporary visa holders face job losses and financial hardship due to COVID-19, they do not have access to any form of financial safety net. Often they are sole providers for their families, and not being able to fulfill this role puts them in a high level of stress and anxiety. They fear destitution and homelessness and have to rely on charities, who are currently being overwhelmed, struggling to remain as frontline services.
- 3.4 For students who have lost their casual jobs, they face the decision to withdraw from studies to allow them to access the Special Benefit support, or continuing to study without income and facing destitution.

Recommendation 7: The Australian Government amends the eligibility for JobKeeper and JobSeeker to allow for temporary visa holders to receive support.

3.5 The current visa system involves months-long delays of processing applications. People face the constant threat of being left without regular visa status, which means they would be without rights and entitlements. The government's response to COVID-19 did not include any

form of flexibility in deadline extensions or visa conditions. People are expected to comply with their administrative duties as usual whereas, even if legal centers continue to operate remotely, many charities or volunteer organisations, which usually provide legal assistance have been forced to suspend their services. People are threatened of becoming unlawful and have to face additional barriers in their access to the rights that are linked to their visa status.

- 3.6 The COVID-19 crisis also resulted in the removal of face to face service delivery to suit digital and online delivery methods. This has proven to be a barrier for some vulnerable people in the community who do not have the skills or the tools to remotely access those complex online platforms.
- 3.7 The issue of access to inclusive and translated information is even more crucial in a time of crisis. There has been a high level of confusion within the refugee community about the access and eligibility requirements for the different support packages announced by the government to face the crisis. The COVID-related information is often provided in English. An effort of translation has been made but key information is not always comprehensive for everyone, especially for those who are not literate in their own language.

<p>Recommendation 8: The Australian Government ensures that all COVID-19 related information, including guidelines and instructions, be translated as soon as possible.</p>
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- 3.8 Social restrictions have been put in place during the pandemic and they have brought additional challenges to the safety and wellbeing of individuals and families in the refugee communities. As they are now facing numerous social and economic hardships, the risk of deterioration of mental and physical health is even higher. This fast-changing environment, which often triggers a feeling of unsafety and uncertainty, is much more complex to cope with when being separated from their immediate family members and loved ones who remain in very dangerous situations. The physical restrictions, compulsory measures in staying home, job losses, etc. impact the psychological safety of many. It has also resulted in an increase of domestic and family violence.

4. Conclusion

- 4.1 Amnesty International has found that far from offering the protection refugees have been found to require, temporary protection rules create prolonged uncertainty, separation, frustration, fear and mental ill-health. On recognizing an individual's refugee status, Australia must provide a long-term durable solution for their protection and that of their family. The mere temporary nature of the visa prevents refugees from envisioning a complete integration in the country. The temporary visa policy ultimately deprives refugees from what they need the most, a sense of safety. They are prisoners of endless procedures in which every step contains the risk of being rejected and forced to leave the country after years of contributing to Australian society.