

Australian Churches Refugee Taskforce

Submission to the Senate Standing Committees on Legal and Constitutional Affairs

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

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1 | Background

The Australian Churches Refugee Taskforce (the Taskforce) is an initiative of the National Council of Churches in Australia (NCCA) which came together in early 2013. The Australian Churches Refugee Taskforce is an initiative supported by the National Council of Churches in Australia, and the Board is comprised of 22 leaders who represent nine Christian churches and three ecumenical bodies. The Taskforce has a further 513 Christian entities who are network members. The Taskforce was established to promote a shared Christian vision of compassion and hospitality for asylum seekers and refugees. The churches and their agencies work together to advocate for just and humane policies.

In 2013, the Taskforce released its position paper on the responsibility owed to refugees and asylum seekers by Churches.¹ In this paper, the Taskforce outlined its conviction that human beings are created in the image of God and that as bearers of God's image, we are inherently worthwhile and deserving of dignity and respect. This is vital to the Christian story and in understanding God's love for all people. We have a profound link as a human family – God calls us to be God's children through the Son, Jesus Christ. Jesus calls on us to recognise each other as brothers and sisters in his love: 'Just as I have loved you, you also should love one another' (John 13:34).

The call to stand with and care for those are marginalised, oppressed and persecuted is clearly elucidated in the Scriptures: 'Learn to do good; seek justice, rescue the oppressed, defend the orphan, plead for the widow.' (Isaiah 1:17) and 'Truly I tell you, just as you did it to one of the least of these [those who are hungry, thirsty, a stranger, naked, sick or imprisoned] who are members of my family, you did it to me.' (Matthew 25:40). Since its beginning, the Christian church has sought to extend the love of God to those in need through care and service.

In word and deed, Jesus challenged the systems and structures of society (including religious ones) that forced people to the margins of their communities. He spoke to and ate with people who had been rejected by more 'respectable' members of society. Inspired by Jesus and the prophets, as Church we must seek to fulfil our calling to challenge society's injustice. The Taskforce believes that as Christians called to love our neighbour, welcome the stranger, challenge unjust systems and offer refuge and care to those who are marginalised and in exile, we have a particular responsibility in our society when it comes to responding to issues related to asylum seekers and refugees.

The *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* seeks to, amongst other measures, reintroduce a system of Temporary Protection Visas for vulnerable men, women and children who have fled their homelands.

¹ Poulos, E. (2013). "Why Churches Care About Asylum Seekers," UnitingJustice Australia, <http://www.australianchurchesrefugeetaskforce.com.au/why-churches-care-about-asylum-seekers/>

The Taskforce notes that the proposed legislation is also an attempt to introduce a series of punitive reforms that would see Australia abrogate its fundamental human rights obligations owed to those seeking asylum. Specifically, the Taskforce is deeply troubled by potential breaches of:

- The Refugee Convention, in particular sections 3, 31 and 33;
- The International Covenant on Civil and Political Rights, in particular articles 7 and 9;
- The International Covenant on Economic, Social and Cultural Rights, in particular articles 6, 7 and 9;
- The International Convention for the Safety of Life at Sea, in particular Chapter 5, regulation 33;
- The Convention on the Law of the Sea, in particular articles 33 and 38; and
- The Convention on the Rights of the Child, in particular articles 3, 7 and 22.

As a coalition of churches, the Australian Churches Refugee Taskforce seeks to encourage truth and integrity in public discourse, especially that the truth of people's lives be upheld. We advocate for generous, hospitable and compassionate policies because we believe that God's will for society is that every person has the opportunity to flourish and that God's abundant and grace-filled love is offered to every person without distinction. It is in this spirit and in light of the afore-mentioned international human rights treaties that the Taskforce welcomes the opportunity to provide this submission on the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* (hereafter, the *Asylum Legacy Bill*).

2 | New visa classes

For I was hungry and you gave me food, I was thirsty and you gave me something to drink, I was a stranger and you welcomed me...

Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me. (Matthew 25: 35-40)

One of the core aspects of the proposed amendments contained in the *Asylum Legacy Bill* is the reintroduction of Temporary Protection Visas (TPVs) and the introduction of a new class of visa, the Safe Haven Enterprise Visa (SHEV). These two visa classes will be the only visas available to asylum seekers whose claim for protection has been successful. While the Taskforce welcomes the fact that both the TPV and the SHEV would provide access to work rights, Medicare, torture and trauma counselling and education for school-aged children, we are deeply troubled by the complex mutual obligation arrangements attached to the SHEV in particular.

Under the proposed amendments, those issued with a TPV will be offered the opportunity to take up a SHEV, which will be valid for a period of five years. By accepting a SHEV, refugees will be compelled to move to a designated regional area and undertake specified

employment. If refugees do not access government income assistance for a period of three-and-a-half years during their stay, then they may be eligible to apply for an onshore visa (excluding a permanent protection visa). While the Taskforce has no doubt that regional and remote communities have and continue to offer a warm and welcoming sense of hospitality to many refugees who settle in their communities, we remain concerned that restricted access to services may negatively impact those who take up the SHEV.

The Taskforce does not believe that sending refugees to regional areas is a just or humane way to engage the unique protection needs owed to those seeking asylum. Many regional areas are ill-equipped to handle the complex case needs of men, women and children who have experienced trauma, with the National Rural Health Alliance noting that “rates of suicide increase with increasing rurality,” with young men up to 2.6 times more likely to end their life by suicide.² For those already dealing with trauma from the refugee experience, the alienation of life in a remote location may lead to undue stress and exacerbate existing mental health conditions. Where mental health care organisations and services do exist in regional and rural areas, they are often under-funded, which contributes to “poor identification, treatment and support of at-risk individuals.”³ In addition to our concerns regarding the provision of adequate mental health services, it is well documented that rural and regional areas face distinct and significant shortages in equitable and accessible health care provisions for those from a non-English speaking background in the areas of “dialysis, maternity, dentistry, and male and female sexual and reproductive services.”⁴

Refugee children and young people entering school are likely to have had severe disruptions to their education, with some having never attended school on a regular basis. This inexperience with literacy in any language makes learning to be literate in English and mastering academic English a longer and slower process for these students. While it generally takes seven years of informed and consistent language instruction to reach native proficiency, for those students from a refugee background, it may take 10 years or longer to achieve this same goal.⁵ With education a key factor not only in future success, but also in fostering social inclusion for young people, the Taskforce is deeply concerned that no additional funding has been allocated for the provision of specialist teachers in rural or remote areas that refugee students will be resettled in.

For those refugee families who take up a SHEV and relocate to a regional or remote area, they may face distinct challenges accessing family support services that many take for granted around Australia.

² National Rural Health Alliance Inc (2009). “Suicide in Rural Australia,” Fact Sheet. http://www.ruralhealth.org.au/sites/default/files/fact-sheets/fact-sheet-14-suicide%20in%20rural%20australia_0.pdf

³ Ibid.

⁴ FECCA (2011). “The Quest for a Level Playing Field: FECCA Access and Equality Report 2010-2011,” FECCA, Canberra, http://www.fecca.org.au/images/stories/documents/Submissions/2011/submissions_2011060.pdf

⁵ Australian Council of TESOL Associations (2014). “The National Curriculum: A Platform Statement,” http://www.tesol.org.au/files/48_ACTAs_3_part_paper_on_NC.doc

Families who have endured the refugee journey are particularly susceptible to higher levels of stress and family pressure. Conflicts between culture, community and individual rights, ideas of family and the Australian legal system are all trigger points of distress for refugees. In regional or remote areas where “culturally competent support services and workers are few and far between, the experiences of such conflict and its consequences can be devastating”⁶ for refugee families.

When last used from 1999 – 2007, TPVs created a ‘second class’ of refugees who were left to try and build a life in limbo under restrictive and punitive visa arrangements. Many of those arrangements are resurrected in the proposed amendments, including a denial of the rights to leave and re-enter Australia, family reunion and permanent protection. The Taskforce is particularly concerned at the devastating impact the denial of family reunion has on the family unit. There is significant evidence to suggest that TPVs acted as a strong ‘pull’ factor for families when one member was already in Australia, with not only a rise in the number of asylum seekers arriving by boat when they were last introduced, but a significant rise in the number of women and children on them – from 19 per cent to 42 per cent in a three-year period.⁷

The Christian call to hospitality is clear and strong. We are compelled by the message of the Gospels to welcome the stranger to our lands and to stand in solidarity with those who are displaced. The Taskforce does not believe that the reintroduction of TPVs or the introduction of SHEVs is an appropriate response to our duty to provide care and comfort to those who come to this land as strangers, seeking safety.

3 | Fast-track assessment and processing

Let mutual love continue. Do not neglect to show hospitality to strangers, for by doing that some have entertained angels without knowing it. Remember those who are in prison, as though you were in prison with them; those who are being tortured, as though you yourselves as being tortured. (Hebrews 13: 1-3)

Under the proposed legislation, asylum seekers who arrived by sea on or after 13 August 2012 will be subject to a new ‘fast-track’ asylum process. This would involve asylum seekers providing all supporting evidence for their refugee determination status at the commencement of their claim. The fast-track process has proven to be demonstrably unfair to asylum seekers, with many being wrongly processed and facing significant challenges in accessing adequate and timely legal representation.⁸ In the UK, where the system was in place for just over a decade before a successful court challenge ruled the system unlawful in July this year, both asylum seekers and their legal representatives reported “major

⁶ FECCA (2012). “Rural and Regional Settlement Issues Paper,” FECCA, Canberra, <http://www.eccg.com.au/wp-content/uploads/2012/05/FECCA-Rural-and-Regional-Settlement-Issues-Paper.pdf>

⁷ Keane, B. (2011). “What happened as a result of TPVs and the Pacific Solution?” Crikey, September 6th, <http://www.crikey.com.au/2011/09/06/what-happened-as-a-result-of-TPVs-and-the-pacific-solution/>

⁸ <https://www.newmatilda.com/2013/09/10/morrison-plan-fast-track-torture>

difficulties in presenting their cases properly... [with] confusion, disorientation and stress rife, and asylum seekers held in prison-like conditions for weeks and months at a time.”⁹

The Australian immigration system is one of the most complicated in the world. The Taskforce believes that expecting traumatised asylum seekers, who are often disoriented and fearful of authority figures when they arrive in Australia, to properly present their case immediately upon arrival is an unreasonable expectation. Many asylum seekers struggle to understand why they have been detained after fleeing their homeland, and they have limited understanding of how the claims process operates, which adds significantly to the stress caused by their detention. The United Nations High Commission for Refugees (UNHCR) has expressed its concerns over the implementation of such a process in Australia, arguing that Australian officials would not be able to make accurate or fair assessments in such a short timeframe.¹⁰

Australia’s compliance with its human rights and non-refoulement obligations is fundamentally dependent on the existence of a robust and fair refugee determination system. The Taskforce is deeply concerned that the introduction of a fast-track assessment system, combined with limited independent merit reviews and the creation of the Immigration Assessment Authority (IAA) will significantly undermine the potential for a fair and just refugee determination system in Australia.

4 | International human rights obligations

Justice, and only justice, you shall pursue, so that you may live and occupy the land that the Lord your God is giving you. (Deuteronomy 16:20)

Under the proposed legislation, important definitions contained within the Refugee Convention would be replaced with the Government’s interpretation of our international human rights obligations. The Minister has stated that this change will ensure that the Australian Parliament defines our international obligations, rather than “someone sitting out of Australia and interpreting international conventions.”¹¹ The Taskforce is dismayed at this fundamentally short-sighted attitude that represents a gross misunderstanding of our obligations under key international treaties. Of particular concern to the Taskforce are the following proposed amendments that impact our human rights obligations to asylum seekers and refugees:

⁹ Detention Action (2013). “The Detained Fast Track: Briefing Note,” London.

<http://www.detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/DFT-briefing-final-February-2013.pdf>

¹⁰ <http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf>

¹¹ <http://www.minister.immi.gov.au/media/sm/2014/sm217747.htm>

- Options for internal relocation within an asylum seekers country of origin will now be considered, meaning if one region in a country is deemed 'safe' then an asylum seeker may be returned there despite having no familial or cultural ties to the area;
- Decision-makers will be required to consider the extent to which a person could modify his or her behaviour in order to avoid persecution, which may conceivably extend to renouncing one's faith;
- The definition of who can be excluded under the Refugee Convention of a "refugee" will be significantly expanded, allowing for a greater number of asylum seekers to be refouled;
- Render irrelevant considerations of non-refoulement obligations when deciding to remove an asylum seeker from Australian territory; and
- Ensuring that the rules of natural justice do not apply to a range of powers in the Maritime Powers Act, which would allow the Minister virtually unfettered power to direct the movement of vessels and asylum seekers at sea.

Suspending the rules of natural justice as they pertain to refugees and asylum seekers is a particularly offensive and audacious proposal in the eyes of the Taskforce. Natural justice is a legal requirement that applies to government decision-making and imposes a code of fair procedure. If there has been a breach of natural justice in reaching a decision, a court may then declare that decision invalid.

Further to the suspension of natural justice, the proposed legislation ensures that the exercise of a range of powers cannot be invalidated because a court considers that there has been a failure to consider, properly consider, or comply with Australia's international obligations, or the international obligations or domestic law of any other country. This is not only a blatant disregard of the High Court in Australia, but also an isolationist approach to the natural sovereignty of other nations – an approach that we can ill-afford given the importance of regional cooperation in preventing asylum seekers and refugees from making the perilous boat journey to Australia. The Taskforce believes that suspending the rules of natural justice in this legislation will remove vital oversights provided by the judiciary and independent authorities such as the Ombudsman.

5 | Treatment of children

The little children were being brought to him in order that he might lay his hands on them and pray. The disciples spoke sternly to those who brought them; but Jesus said, "Let the little children come to me, and do not stop them; for it is to such as these that the kingdom of heaven belongs." (Matthew 19: 13-14)

A key concern of the Taskforce is the welfare of refugee and asylum-seeking children. Care for all children stands at the heart of Jesus' message, teaching and example. We are deeply troubled then by the fact that under the proposed amendments, children who have been born in Australia to parents who arrived by boat seeking asylum will have any visa they have

already been awarded cancelled, and will instead be classified as an Unauthorised Maritime Arrival (UMA).

The amendments also state that children born to “transitory persons” either in Australia or in an offshore regional processing centre are also transitory persons for the purposes of the Migration Act. Any visa application made on behalf of these children will now be deemed to be invalid. A “transitory person” is an asylum seeker who has been intercepted during their refugee journey and taken to an offshore processing centre. Classifying babies as “transitory” and “Unauthorised Maritime Arrivals” is not only a fundamental breach of our obligations under the Convention of the Rights of the Child (CRoC), but is also a cruel and heartless perpetuation of the misery endured by those who are stateless.

6 | Conclusion

When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt: I am the Lord your God. (Leviticus 19: 33-35)

As a peak body of Christian churches that have involvement in the asylum and refugee sector in Australia, the Taskforce is mandated to seek humane and just policy approaches to the most vulnerable in our society. There is no doubt that those who have been forcibly displaced as a result of a fractured world are in need of our compassion, our care, our protection and our love. We have been consistently distressed at the policy proposals and legislative amendments put forward by the Government – viewing them as a wholly inappropriate response from a nation that has been blessed with abundance. Our duty as Christians – our duty as members of the human community – must be to offer the hand of welcome to our brothers and sisters who are seeking asylum. The Taskforce rejects this legislation in its entirety. If it is passed, we recommend that it be amended to contain provisions addressing the following:

1. Access to protection visas for those awarded a TPV or SHEV after a period of no more than three years;
2. Removal of the fast-track processing system;
3. Inclusion of family reunion and travel rights (including re-entry) for TPV holders;
4. Funding to ensure that the mutual obligations attached to the SHEV are adequately supported. This should include provision for liaisons in regional communities to work with local churches and community groups to ensure the full social and economic participation of relocated refugees.

The Taskforce encourages the Government to embrace a more consultative approach with churches, NGOs, not-for-profits, and refugee communities to ensure that our international obligations are honoured and that the welfare of asylum seekers and refugees is prioritised.