

Jesuit Refugee Service (JRS) Australia
Submission to the Select Committee on Temporary
Migration
July 2020



AUSTRALIA

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About Jesuit Refugee Service (JRS) Australia

An International Organisation: Jesuit Refugee Service (JRS) Australia is an international organisation, founded in 1980 as a social ministry of the Society of Jesus ('the Jesuits').

Seeking social justice for refugees and other forcibly displaced people worldwide: JRS' mission is to accompany, serve, and advocate for the rights of refugees and forcibly displaced peoples' world wide.

Programs offering support globally: JRS works in 58 countries assisting refugees, people seeking asylum, internally displaced people (IDPs) and other forcibly displaced people in camps, detention centres, war zones, and urban settings. JRS' programs focus on access to education, emergency assistance, healthcare, livelihood activities, and social services. In 2018 – 2019, more than 677,000 individuals were direct beneficiaries of JRS projects.

JRS in Australia: In 2018 – 2019, JRS Australia served more than 3,800 refugees on temporary visas, people seeking asylum, and migrants in vulnerable situations with emergency assistance, temporary shelter, a food bank service, specialist case work, specialist employment support, community development activities, legal support (in partnership with the Refugee Advice and Casework Service), a specialist support service and empowerment initiative with women on temporary visas experiencing sexual and gender-based violence (SGBV), and targeted advocacy.

Strong alliances: JRS Australia works closely with parishes, schools, community groups, religious orders, civil society organisations, local and state governments and other stakeholders. JRS Australia co-chairs the Catholic Alliance for People Seeking Asylum (CAPSA), and is a member of various core policy development initiatives focusing on migration in Australia.

A regional and international presence: JRS maintains an active presence on various policy development and advisory forums across the Asia Pacific Region. JRS staff members sit on the board of the Asia Pacific Refugee Rights Network (APRRN), and participate in a number of its working groups. JRS is also involved a number of international civil society, and UN coalitions to address forced migration challenges around the world.

A strong advocacy voice: JRS' advocacy is characterised by the following principles:

- It stems directly from close engagement with refugees and others forcibly displaced
- It flows from our accompaniment and service work, and is linked to JRS' projects
- It is based on Jesuit values, Ignatian Spirituality, Catholic Social Teaching, and secular human rights principles
- It is built on a solid evidence base



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Introduction

1. Jesuit Refugee Service (JRS) Australia welcomes the opportunity to make a submission to the Select Committee on Temporary Migration.
2. JRS Australia works with a variety of temporary migrant cohorts in Australia. These include:
 - a. People seeking asylum on Bridging Visas A, B, C, and E
 - b. Refugees on temporary visas, including Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs)
 - c. Women on student visas (subclass 500), temporary graduate visas (subclass 485), prospective marriage visas (subclass 300), partner visas (subclasses 820 and 800), refugee visas (200, 201, 203 and 204) and more, who are at risk of, or have experienced domestic and family violence (D/FV) in Australia.
3. Of the approximately 97,000 people seeking asylum on Bridging Visas in the Australian community (31 March 2020), and 11,893 SHEV Holders and 5,612 TPV-holders (May 2020)¹, JRS Australia worked with approximately 3,500 in the financial year 2018 – 2019. JRS Australia also worked with approximately 300 women across the visa categories outlined under 2c during this time period.
4. Our submission is based on experiences providing services and collaborating with individuals on these visas, and diaspora communities in which visa holders are present. It is also based on case studies we have gathered over time, and quantitative data gathered at the service.
5. Our submission addresses the following Terms of Reference, as they relate to our work at JRS:
 - Term D - Whether permanent migration offers better long-term benefits for Australia's economy, Australian workers, and social cohesion.
 - Term E - The impact of wage theft, breaches of workplace rights and conditions, modern slavery and human trafficking on temporary migrants.
6. We focus on two key issues. First in relation to Term D, we argue that the many thousands of **people on SHEVs (and TPVs) in Australia should be afforded a realistic pathway to permanent protection**. Leaving aside the obvious health and well-being benefits that come with affording a refugee permanence and certainty, there is a plethora of evidence to suggest that refugees who have permanent protection can rebuild their lives and contribute to the economy faster and in more productive ways.
7. We addressed these issues in our submission to the “Joint Standing Committee on Migration Inquiry into Migration in Regional Australia” dated 21 October 2019, and they remain relevant, perhaps even more pertinently in a post-COVID-19 economy. The recommendations from that

¹ Department of Home Affairs Statistics, IMA Legacy Caseload May 2020,
<https://www.homeaffairs.gov.au/research-and-stats/files/ima-legacy-caseload-may-2020.pdf>



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submission are outlined immediately below, and the entire submission is attached under Appendix 1.

Recommendations from JRS Australia Submission to Joint Standing Committee on Migration Inquiry into Migration in Regional Australia:

JRS Australia believes that there are a number of ways in which the Australian government can incentivize regional migration for refugees on SHEVs while simultaneously addressing concerns about the conditions attached to the visa and the demographic it affects most widely.

Recommendation 1: Allow refugees on SHEVs access to the HECS-HELP Loan Scheme, Commonwealth Supported Places (CSP) and social security support whilst studying in a metropolitan or regional area.

Recommendation 2: Reduce the threshold for SHEV-holders to apply for onshore non-humanitarian visas from 42 months to 18 months of paid employment in a regional area. This will enable a SHEV-holder to spend 42 months to study, train, up-skill, and attain a level of competitiveness within the field of skilled and partner visa applicants.

Recommendation 3: Relax and change key invitation and grant requirements attached to non-humanitarian onshore visas for refugees on SHEVs, including English language requirements and costs.

Recommendation 4: Allocate resources for significant investment in regional settlement services – including job matching, mental health and torture and trauma services – with a focus on strategic geographical areas identified to be future industry or job growth zones.

Recommendation 5: Provide refugees on SHEVs access to a modified version of the Humanitarian Settlement Program (HSP) to take effect upon arrival in designated regional areas.

Recommendation 6: Reintroduce permanent protection visas for all proven refugees on SHEVs with full rights and access to services as guaranteed to those offered permanent protection through the offshore program.

8. Second, in relation to the Term E, we outline the specific reasons for which participants in our services fall into situations in which they are vulnerable to wage theft, labour exploitation, breaches of workplace rights and modern slavery like practices and the impacts on their health and wellbeing.
9. Within this analysis, we outline some of the gendered dimensions of the issues, and also outline where some the problems may be exacerbated in the context of COVID-19.
10. A summary of recommendations is outlined immediately below.

Recommendations:

Recommendation 1: Much more must be done to alleviate the structural conditions which facilitate peoples' fall into situations of wage theft, exploitative labour, or even situations of modern slavery. This includes:

- a) Ensuring that all people seeking asylum, refugees on temporary visas and migrants in vulnerable situations residing in Australia have access to work rights, and Medicare.
- b) Ensuring that all people seeking asylum, refugees on temporary visas and migrants in vulnerable situations are afforded access to a Federal Government-funded financial safety net in the event that they demonstrably cannot work.

Recommendation 2: Ensure access to a reformed, tailored JobActive scheme for all those people on temporary visas with work rights.

Recommendation 3: Ensuring the provision of workplace rights in community languages at the point when visas are issued. Support Community Legal Centres (CLCs) and civil society organisations to provide free and accessible information on workplace rights to temporary visa holders.

Recommendation 4: Ensure Guarantee safe reporting and access to justice to all people on temporary visas, including women with insecure migration status, and survivors of SGBV who are unlikely to report crime as a result of their visa/immigration status, by introducing a clearer and stronger firewall between the Fair Work Ombudsman and the Department of Home Affairs.

Contextual factors increasing the likelihood of exposure to situations of wage theft, breaches of workplace rights and conditions and modern slavery

Limited work rights

11. A significant proportion of participants in JRS Australia's programs do not have work rights. These include people seeking asylum who are awaiting judicial review hearings at the Federal Circuit Court (FCC), Federal Court, or High Court; people seeking asylum who have outstanding, unanswered applications for Ministerial Intervention in their cases; undocumented migrants; and applicants for asylum on various forms of alternative substantive visa (eg. Partner visa) and who now have to wait until their substantive visa expires for a Bridging Visa with work rights to kick in.
12. A significant proportion of people currently without work rights are likely to be part of the so-called Irregular Maritime Arrival (IMA) Legacy Caseload. This group of people was not afforded work rights until the passage of the federal *Migration and Maritime Powers Legislation (Resolving the Asylum Legacy Caseload) Act 2014*. In practice, the then Department of Immigration and Border Protection (DIBP) only began to issue BVEs with work rights through the year 2015. In effect, many of the people in this cohort would have lived in the Australian community for years, without work rights, depending on when they arrived in the country.



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13. Other participants also have restricted work rights. This can take multiple forms. Those on student visas can only work for twenty hours per week. There are also people seeking asylum with work rights on short-term Bridging Visas, 'Final Departure' visas, and 'Return Pending' visas. In all of these cases, the visas and the attached conditions (including work rights) must be renewed frequently. Sometimes they are renewed with significant delay.

No financial safety net

14. The significant majority of the individuals and families in the above cohorts also have not had access to any form of financial support pre-COVID. In lieu of access to social security payments, people seeking asylum are entitled to the Status Resolution Support Service (SRSS), a discretionary government-funded program that provides a small fortnightly payment (89% of the Newstart allowance), limited case work, torture and trauma counselling to all eligible people seeking protection in Australia. Government or departmental decisions to provide or withdraw service provision under SRSS are non-reviewable at independent administrative tribunals.
15. Since August 2017, the Australian government has been restricting eligibility for access to SRSS. People who are no longer deemed eligible ('excluded') include those studying full time (16 hours per week or more), people on substantive visas (eg. partner or student visas) who have subsequently applied for protection, and people who have transferred more than \$1000 to or from a domestic or overseas bank account in a 12-month period.
16. Since April/May 2018, the government has been progressively reassessing all those on the program for 'job readiness' and expecting those deemed to be job ready to find employment within 28 days. There has been a significant reduction in the number of people on SRSS. In February 2018, there were 13,299 people on the program. In April 2019, there were 5,888 remaining on it. At least 1,000 of these people have been cut off SRSS for 'job readiness' reasons, with further cuts on this basis anticipated. A further 6,411 have lost support because their claims have been rejected twice (ie. they are 'rejected asylum seekers') or because they have obtained protection visas. In addition, it has been almost impossible for people arriving in Australia over the last two years and claiming asylum to obtain access to the SRSS program.
17. Between 31 March and 31 May 2020, approximately 43% of people assisted to find work in 2019 through 'Empowered to Work', a joint employment support program between JRS Australia and St. Francis Social Services, House of Welcome, lost employment. They have not been afforded access to SRSS, or to any other form of post-COVID-19 Federal Government financial support package.

No Access to Medicare

18. Department of Home Affairs (DHA) statistics from March 2020 indicate that there are at least 2,275 people eligible for a Bridging Visa E who are officially classified as "awaiting a grant of a further BE."² In other words, these individuals, and perhaps many more who may have arrived by plane, are living in the community without any form of valid visa. Access to Medicare is contingent on a valid bridging visa. Without access to Medicare, individuals and families have

²Department of Home Affairs, IMA BVE Statistics, March 2020, <https://www.homeaffairs.gov.au/research-and-stats/files/illegal-maritime-arrivals-bve-march-2020.pdf>



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to pay significant amounts of money to see a doctor and purchase prescription medications for themselves or family members.

19. In the context in which, pre-COVID, it can take anywhere from 7 to 13 months³ for a primary decision on a protection claim to be made, and much longer for an Administrative Appeals Tribunal (AAT) or Immigration Assessment Authority (IAA), court, or Ministerial Intervention decisions to be made, the combination of limited or no work rights and the absence of any Federal Government support places people in situations of destitution, housing insecurity, and homelessness for long periods of time. The absence of Medicare places a further financial strain on the individual or family and an increase risk in public health in the context of a global pandemic.

Case study 1: No work rights and no financial safety net

Rahmatullah came to Australia and sought protection in 2012. He spent three years and was released into the Australian community in 2015. Rahmatullah suffers from complex Post-Traumatic Stress Disorder (PTSD), bipolar disorder, kidney disease, and osteoarthritis. Rahmatullah's application for protection has been rejected at the primary stage, and at the Immigration Assessment Authority (IAA). Rahmatullah did not lodge an application for judicial review because he was hospitalized for three months at the time and unaware of his right to lodge. Rahmatullah lodged an application for Ministerial Intervention into his case in 2019, and is awaiting an answer. Rahmatullah is homeless. He does not have any form of bridging visa, nor does he have Medicare.

He has stopped seeing a GP because he cannot afford the fees, and does not take all of his pre-existing medication because he does not have prescriptions, nor access to the PBS in order to be able to afford all of his medicines. Rahmatullah avoids going to the hospital because he is afraid that Australian Border Force may be made aware of his presence at a health facility without a valid visa and re-detain him.

Despite being too physically and mentally unwell to work, Rahmatullah is desperate to find any work he can, and says he will do anything to be paid an hourly wage.

Disadvantages in the labour market

1. In situations where individuals have work rights, they are disadvantaged by a range of specific factors including: the challenges of dealing with years of trauma from persecution, dislocation from family and time in detention centres; serious physical health illnesses; discrimination based on race, religion, and sexuality; barriers to English language fluency; lack of local work experience; non-recognition of overseas qualifications and experience; and employers not understanding enough about various visa subclasses and being reluctant to employ someone because of uncertainty with legal status.
2. In addition, people seeking asylum and some cohorts of temporary migrants do not have access to publicly funded employment schemes such as JobActive.

³ Australian Human Rights Commission, Lives on Hold (2019), <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>



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3. The online job market has ways of excluding participants in JRS Australia services from certain jobs. Applications include visa category drop down menus that don't include Bridging Visas; individuals with fears for their security if identified are asked to upload videos of themselves; individuals are being asked unnecessary, complicated, and sometimes traumatizing questions about their backgrounds. Participants in Empowered to Work often apply for hundreds of jobs online and get no responses from any of them. The importance of online applications has grown during COVID-19.
4. The Australian job market is highly competitive, especially in larger metropolises such as Sydney and Melbourne, where the majority of people seeking protection reside. In this context, people seeking protection with work rights can find it much harder to find employment than the average skilled migrant or Australian citizen. There remain serious imbalances between labour supply and demand for entry-level jobs across industries in Australia. Anglicare's 2019 job availability snapshot shows that there are now 5.2 people for any entry level job advertised, up from 4 people last year. There is also an increase in underemployed people in Australia. It is worth reiterating that this is pre-COVID-19 data.⁴ The information that we have on the COVID period suggests that there are between 8 and 10 people applying for every job.
5. In these circumstances, people like Mazhar, Nadira and Khubra (Case study 2) find it very difficult to find jobs in the open labour market.

Case study 2: Loss of employment and ineligibility for financially safety net

Mazhar, Nadira, and Khubra came to Australia and then applied for protection. They contacted JRS Australia soon after in severe financial hardship. They were four weeks behind on rent and on the cusp of being homeless. After an assessment, JRS Australia began supporting the family to pay their rental arrears, but they were nonetheless evicted. Mazhar found casual work in a factory earlier this year and the family informed JRS Australia that they no longer needed any support. The family also managed to sign a short-term lease on a rental property. In mid-March, Mazhar lost his job and the family contacted JRS Australia again for support. All three family members were experiencing suicidal ideations and a number of mental health crisis calls were made, as well as referrals for longer-term community mental health support. The family still do not have any source of income and are getting by on food bank handouts from JRS, emergency relief payments, and odd bits of money from neighbours. The family has not been evicted because of the NSW Government's moratorium on evictions, however they are in significant rental arrears. Even though the family are in debt, and have significant mental health issues, they have been deemed ineligible for the Status Resolution Support Service (SRSS) because they have work rights.

6. Many participants in JRS Australia's programs are vulnerable to the idea that any money is better than none, at whatever cost. Participants are also introduced to networks who speak the same language and convince them that this is how they should work in Australia. Finally, these individuals and families also have relatively limited knowledge of work place laws and grievance procedures.

⁴ Anglicare Australia, Jobs Availability Snapshot 2019, [jobs-availability-snapshot-2019.pdf](https://www.anglicare.org.au/sites/default/files/2019-12/jobs-availability-snapshot-2019.pdf)



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7. The above confluence of legal, economic, and social exclusions creates a desperation and willingness to accept any income available to them. Ultimately these factors drive a higher proportion of people into situations in which they are likely to experience wage theft and labour exploitation in the form of long hours, non-payment of wages, unsafe work conditions and the like.

Case study 3: Accepting below minimum wage employment

A participant in JRS Australia's services recently explained that he recently lost his job cleaning dishes. He explained that he was only earning \$10. The caseworker spoke to the client about minimum wage requirements in Australia but he said he was desperate for a job, in order to pay rent and grocery costs. The participant now has no income, no savings and no community support. His son has moved to another state hoping to find work, but his attempts were unsuccessful and due to COVID-19 restrictions, his son is now stuck in that state.

8. A small number of participants in JRS Australia services have also experienced longer term modern slavery-like conditions. These conditions exist in domestic households, where people are often expected to act as 'domestic help' for an indeterminate period of time in return for a place on the owner or tenants floor or couch, or in professional settings via brokers. JRS Australia has worked with multiple people who have been 'employed' on farms or orchards under conditions of bonded labour.
9. In extreme cases, precarious visa status and cash-in-hand employment arrangements give employers more power over employees. Employers may demonstrate control by isolating the employee, confiscating their passport, limiting their contact to the outside world or evoking fear that any complaint will result in job loss and/or deportation.

Case study 4: Bonded labour on a farm

A young man from South East Asia contacted JRS Australia for support. He had worked on a fruit farm on the Central Coast. He explained to his caseworker that the "contractor" at the farm withheld his passport for anywhere between 12 and 24 months) and promised that he would apply for the man's permanent visa. This did not happen, and pay, which was below minimum wage, was also withheld for 'administrative costs of assisting with the visa application. A VEVO check was conducted by the JRS Australia case worker revealed that young man no longer had a valid visa to remain in Australia. He was told about ASA but did not want to engage. He preferred to go home as soon as possible.

Specific concerns for women on temporary visas

10. Wage theft most significantly affects low paid employees in part-time and casual work, in which women predominate. Wage theft is often seen more frequently in highly feminised industries, such as hospitality, domestic services and retail.



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11. Women on temporary visas often face *multiple hurdles* to finding safe and sustainable work with limited rights, if any, to social security benefits, with no access to child care subsidies and in some cases, abusive relationships. In these circumstances, women may have no other choice, but to work in the informal labour market, thus also increasing risks to experiencing workplace discrimination, harassment and exploitation. Indeed, women face unique risks in feminised industries i.e. domestic workers may be sexually abused by employers under threat of further violation, deportation and/or of losing their jobs.

Case study 5: Sex for pay

A participant in JRS Australia's programs started work as a cleaner and after not being paid was informed that she would need to have sex with her employer in order to be paid for her work. This client felt unable to report the offence due to a fear of her work rights status being disclosed to the Department of Home Affairs and a negative impact on her visa application. She was therefore unable to safely continue this employment and was further forced into financial destitution.

12. Women often use migration as a means to overcome poverty. Single head households (primary carer) who may also be caring for family members abroad may experience prolonged periods of isolation and stress. There is a fear of the loss of income as it would impact basic needs for a number of dependents, including ill family members, children and elderly.
13. Finding employment and achieving economic independence is often the only sustainable way of leaving a violent or abusive relationship. In the employment contexts outlined above, women on temporary visas find it harder to leave violent relationships.

Case study 5: Domestic violence and the inability to leave the violent relationship

JRS Australia has been working with a young family of five for a number of years. Nazia*, the mother has experienced serious domestic violence in the past. On the occasions she has attempted to leave, she hasn't been able to find a spot in a refuge or has reneged, worried about the consequences for her immigration status. Nazia's* protection visa application is tied to that of her husband, who is also the perpetrator. JRS Australia has been told on multiple occasions that the family is not eligible for SRSS support because of their 'finally determined' status (that is, their application for protection has been twice rejected by the Department and the AAT). Nazia's husband has lost his job due to COVID-19, and the family is under immense financial pressure to meet their rental obligations and to buy necessities such as nappies. JRS Australia is concerned that Nazia and her children are at greater risk of DV because her husband is now home all of the time, and is increasingly anxious. Nazia is desperate to be employed, but is finding it very difficult to find anything.



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Primary impacts of wage theft, breaches of workplace rights and conditions, and modern slavery on health and well-being

Workplace injuries

14. For people without contracts, entitlements, and Medicare, workplace injuries mean a number of things. Firstly, individuals are 'released' from employment. JRS Australia works with construction workers, tilers, carpet layers, and painters who have been injured at work, and have been told that they are no longer employed at their workplace.
15. Injuries sustained can also affect people's ability to drive, sleep, walk and sit. They can also require medication which comes with extra side effects. Without money to pay for specialist medical treatment, their conditions can become chronic and they are faced with long term unemployment. This makes it even harder to find another job in the longer run.
16. When combined with inherent fears of dealing with authorities amongst people seeking asylum in particular, and especially with regards to expressing grievances, it is relatively unlikely that a person in these circumstances will approach entities such as the Fair Work Ombudsman.

Favouring short term financial solutions over longer term upskilling

17. One of the main opportunity costs of needing to work for survival, and even more so for long hours in minimum wage labour, is that people forego opportunities to upskill. In NSW, where access to TAFE up to Diploma level is free for people seeking asylum, those working long and unpredictable hours cannot necessarily avail of the opportunity and, thereby improve their longer term employment prospects. This creates a longer-term unemployment trap and contributes to the creation of an underclass amongst people seeking asylum.
18. Another manifestation of the need to privilege short term financial gain over longer term upskilling is that people in cash-in-hand or exploitative work arrangements, in particular those without work rights or whose claims for protection are still being adjudicated on, are reluctant to seek references or recommendations from employers. Also, they are reluctant to add any of these experiences to their resumes. They worry that if someone sees on their resume they have been working illegally, it will have a negative impact on their visa outcome.
19. Generally speaking, the underlying implications of being forced into exploitative, and unsafe work where pay is withheld or too low, is that it throws people deeper into cycles of hopelessness, poor mental health and poor physical health. Moreover, wage theft, exploitation and unsafe work exacerbates loss of hope, loss of trust and loss of confidence. Many people still cannot meet their most basic needs for housing, health, food, and transport or meet the needs of their family in Australia or overseas.

Recommendations:

Recommendation 1: Much more must be done to alleviate the structural conditions which facilitate peoples' fall into situations of wage theft, exploitative labour, or even situations of modern slavery. This includes:



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- a) Ensuring that all people seeking asylum, refugees on temporary visas and migrants in vulnerable situations residing in Australia have access to work rights, and Medicare.
- b) Ensuring that all people seeking asylum, refugees on temporary visas and migrants in vulnerable situations are afforded access to a Federal Government-funded financial safety net in the event that they demonstrably cannot work.

Recommendation 2: Ensure access to a reformed, tailored JobActive scheme for all those people on temporary visas with work rights.

Recommendation 3: Ensuring the provision of workplace rights in community languages at the point when visas are issued. Support Community Legal Centres (CLCs) and civil society organisations to provide free and accessible information on workplace rights to temporary visa holders.

Recommendation 4: Guarantee safe reporting and access to justice to all people on temporary visas, including women with insecure migration status, and survivors of SGBV who are unlikely to report crime as a result of their visa/immigration status, by introducing a clearer and stronger firewall between the Fair Work Ombudsman and the Department of Home Affairs.

Appendix 1: JRS Australia Submission to Joint Standing Committee on Migration Inquiry into Regional Migration

Introduction

1. JRS Australia welcomes the opportunity to make a submission to the Joint Standing Committee on Migration Inquiry into Migration in Regional Australia.
2. The Committee's terms of reference include the consideration of strategies to develop regional humanitarian migration and relevant migration policy.
3. This submission considers the design and implementation of the *Safe Haven Enterprise Visa* (SHEV) Subclass 790. Our focus reflects the fact that migration to a regional area is often associated to the SHEV in one way or another, noting of course that SHEV holders are part of a much bigger challenge of fostering migration to regional areas in Australia.
4. The focus of this submission also reflects the fact that JRS Australia works with a number of refugees on SHEV visas or those who have applied for SHEVs and are waiting for the outcome of their application.
5. As of July 2019, there are 10,522 refugees on SHEV visas in Australia. There are a further 6,990 SHEV applicants awaiting the outcome of their applications to the Department of Home Affairs (DHA) and a further 800 awaiting the outcome of applications for review subsequent to a negative assessment by the DHA. In total there are 18,312 people either on a SHEV or currently applying for a SHEV in Australia. This number is significant. It sits just below the total number of places (18,750) set aside for resettlement within Australia's Offshore Humanitarian Program in 2018 – 2019.



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6. JRS Australia's submission contends that the SHEV scheme in its current form remains unfit for the purpose of facilitating safe and sustainable migration to regional areas.
 - a) The temporary nature of the SHEV visa creates barriers to successful secondary regional settlement, and also produces other unproductive economic and social outcomes.
 - b) Moreover, the specific way in which the SHEV scheme was implemented prevented a productive whole-of-society approach to ensuring safe and sustainable migration to regional areas.
7. The submission concludes by offering recommendations for reform to ensure that refugees on SHEVs can be adequately supported to contribute to regional Australia in the medium to long-term.

What is the SHEV?

8. The creation of the SHEV was announced on 25 September 2014 as part of a range of measures introduced into law under the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*.
9. Under the 'Legacy Caseload Bill', people seeking asylum arriving in Australia without valid visas or not customs-cleared upon last arrival in Australia were no longer eligible to be granted permanent protection visas. They would now be invited to nominate for one of two *temporary* protection visas, namely the Temporary Protection Visa (TPV) or the SHEV.
10. TPVs and SHEVs constitute the third pillar of Operation Sovereign Borders (OSB). Their primary purpose was to deter future boat arrivals by denying permanent protection and a pathway to citizenship for those who had already arrived by these means. In the Bill's second reading, Minister for Immigration, Scott Morrison made it clear that temporary protection would ensure that "people smugglers do not have a 'permanent protection visa product' to sell to those who are thinking of travelling illegally to Australia."
11. However, in the context of SHEVs, the government introduced a competing purpose into the mix. In the same speech, the Minister noted "consistent with this government's principles of rewarding enterprise and its belief in a strong regional Australia, a new visa, the Safe Haven Enterprise Visa, will also be created...it will be an alternative temporary protection visa to the TPV and encourages enterprise through earning and learning in regional areas."
12. In other words, the SHEV was framed as a mechanism for encouraging regional migration *and* as a means of deterring future asylum seekers within a policy framework of border control. The temporary nature of the visa appeared to be one means by which to signal a tough approach to people arriving by boat.
13. The SHEV is protection visa with a five-year duration. It enables holders to work, study, access some government services such as JobActive, Centrelink, Medicare, short-term counselling for torture and trauma, and attend 510 hours of English language classes in specific circumstances.
14. SHEV holders are excluded from accessing other services such as the National Disability Insurance Scheme (NDIS), domestic higher education fee structures, HECS-HELP loans, and



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Commonwealth Supported Places (CSPs) in tertiary education institutions. SHEV holders do not have the right to family reunion, and can only leave the country if determined by DHA to possess compassionate or compelling circumstances.

15. To remain in Australia after the five-year period, refugees on SHEVs must apply for another SHEV or TPV before their current visa expires. This subsequent application will be assessed on the basis of the applicant's *ongoing* need for protection.
16. SHEV holders who have engaged full-time, part-time, or casual work, or full-time study in designated regional areas for at least 42 months of the five years without accessing any social security benefit meet a pathway requirement, enabling them to become eligible to apply for a number of onshore non-protection visas. They must still meet the financial, English language, family sponsorship and skills requirements in order to be granted this visa.

Who are the people eligible for SHEVs?

17. The majority of SHEV holders or applicants arrived by boat in Australia between 13 August 2012 and 1 January 2014. They are sometimes referred to as the 'Legacy Caseload. (alongside with TPV holders arriving during the same period)'
18. There are approximately 30,000 women, children and men in the Legacy Caseload. The top five countries of citizenship for people in this cohort are Iran, Afghanistan, Sri Lanka, Stateless (often from Myanmar), and Pakistan. Under the current government's 'Fast-Track' refugee status determination (RSD) process, more than 70% of applicants from this cohort have been found to be owed protection.
19. People in the Legacy Caseload have been residing in Australia for five years or more. During this time, they have been specifically subjected to range of deterrence-centric immigration policies and have experienced unique challenges such as:
 - months or years in onshore immigration detention centres;
 - up to three years (2012 - 2014) in the Australian community without work or study rights under the 'No Advantage' policy;
 - the effects of ongoing separation from family members, some of whom remain in situations of danger;
 - inconsistencies in the length of bridging visas and the conditions attached to these visas (eg. no study rights conditions);
 - delays in renewal of bridging visas; and as a result, in the consistency of access to Medicare;
 - significant delays in invitations to apply for protection visas; and in assessment and adjudication of visa claims under the 'Fast-Track Process;' the Australian Human Rights Commission (AHRC) notes that during 2017 – 2018 the average length of visa processing at the primary stage for people in the Legacy Caseload was 384 days;
 - backlogs in the hearing of cases being appealed at federal courts of up to three years;
 - systemic barriers to employment including non-recognition of short term bridging visas; English language levels and general literacy; lack of recognition of overseas qualifications coupled with the absence of Australian qualifications; lack of Australian work experience; limited access to specialist employment support services; lack of access to subsidized early childhood education and care; mental health issues; torture and trauma and physical illnesses;



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- the gradual narrowing of access to government-funded support services such as the Status Resolution Support Service (SRSS), encompassing a fortnightly payment (approx. \$35 per day or 89% of the lowest Newstart payment), limited casework support and access to torture and trauma counselling;
 - ongoing material poverty, insecure housing, and homelessness;
20. The combination of these circumstances coupled with pre-arrival experiences of violence, cultural and social dislocation, torture and trauma, poverty, and exploitation has precipitated a mental health crisis within this cohort:
- There have been at least eighteen known or suspected deaths by suicide in the Legacy Caseload since June 2014.
 - Research by Proctor and Kenny describes the experience of the people seeking asylum in the Legacy Caseload as one of *lethal hopelessness* predicated on being unable to “continue with prolonged uncertainty, flooding of traumatic experiences, and an overwhelming sense of burdensomeness to oneself and others.”
 - The Australian Human Rights Commission (AHRC) notes that this group experiences suicide ideation in the absence of underlying mental health disorders, reinforcing the idea that the crisis is driven, in part at least, by situational factors beyond the individual’s control.
21. Although many people in the Legacy Caseload are skilled, entrepreneurial, and desperate to work and be able to contribute to Australia, a survey of 24 civil society organisation representing 19,100 people seeking asylum (including from the Legacy Caseload) found that only 8% are working full-time, and that 69% have either not been able to find employment or are not in the labour force due to care requirements, old age or illness. 80% of people are either not job ready (50%) or only partially job ready (30%). Almost four in five (79%) are at risk of homelessness and destitution if they lose access to the SRSS payment.
22. The combination of poverty, mental health issues, a pervasive lack of positive interactions with authorities, separation from family, and, in some cases, from cultural communities have also exacerbated social isolation amongst this group of people.
23. How a person copes depends on a range of factors including whether she or he is able to attend medical appointments and purchase medication; whether she or he is working or study and has necessary interactions with the wider community through these activities; and whether she or he has family members or friends, including those from the same linguistic community in close proximity.
24. On one end of the spectrum, people seek safety and support from small, place-based networks of fellow refugees, volunteer groups, and front-line support services. Others, particularly those without families, are more transient, and move more frequently in search of work and accommodation.
25. In these circumstances, effective trauma informed responses should be based on enabling a person to feel safe and establish control of their lives to the extent possible within the prevailing policy context. Familiarity with spaces and people, continuity of care, and established routines are crucial to this sense of safety and control, and often come with being grounded in one place.



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The temporary nature of SHEVs affects prospects of secondary migration to regional areas

26. Fundamentally, refugees and people seeking asylum want to rebuild their lives in safety and with certainty. The fundamentally temporary nature of the SHEV does the opposite, exacerbating uncertainty and limbo and prolonging many of the challenges outlined above (see Paras. 16 – 26).
27. One participant in the AHRC's *Lives on Hold* report articulates the impact of this ongoing uncertainty and limbo saying: "whether you're on a Bridging Visa or you're on a TPV visa [sic], your status, yes it is regularized, but the outcome and the ability to actually start a new life and integrate, and settle, and feel like your journey has begun to come to an end – it's not there."
28. Temporary status is experienced in different ways. Often it is in the nagging fear of the prospect of being returned, and in the trauma of having to reapply for protection, attend an interview, potentially submit an appeal, and await a final decision. In other circumstances, it is in the prospect of being separated from new friends or family in Australia. Still other people experience temporariness in moments in which they feel the effects of exclusion because of their status, for example in a job interview.
29. Put differently, the temporary nature of SHEVs does not allow people in the Legacy Caseload to establish full control over their lives.
30. Research conducted during Australia's previous temporary protection regime shows that refugees on TPVs suffer higher levels of PTSD, complex depression, anxiety, and psychological distress than refugees on permanent visas despite similar pre-arrival experiences. Research also shows that temporary status has negative impacts on the settlement experiences of refugees, precipitating lengthier periods of unemployment, social isolation, and generally lower standards of living. It is worth reiterating that SHEV-holders or applicants who are part of the Legacy Caseload have already experienced significant periods of limbo, uncertainty, unemployment, trauma and social isolation.
31. In JRS Australia's experience, as refugees on SHEVs realise that they do not have realistic prospects of settling permanently in Australia, they have very few incentives to uproot themselves from their existing lives, however challenging, and relocate to regional Australia. Others who have money or other resources to invest in Australia, for example by starting a new business, do not believe it is the wise or safe thing to do. The following example is instructive:

Case study 1: A middle age man from Pakistan is granted a SHEV after four and a half years living on a bridging visa in Australia. He is relieved to be offered protection after a long protracted refugee status determination (RSD) process, however he is frustrated that he will not be able to sponsor his wife and six children to join him in Australia. The man feels like he cannot truly settle in Australia without knowing where his future lies and without being able to bring his family to Australia. The man is working full-time and has considered starting a small construction business, in part with money from family land sold in Pakistan. However he decides not to invest this money in Australia or start a new business knowing that his children cannot live here and reap the benefits of his investments.



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32. Incidentally, not only does the creation of a temporary refugee underclass have budgetary impacts on frontline social services such as paramedics, emergency wards, homelessness shelters, and local councils, it creates a never ending and expensive cycle of visa processing that will no doubt worsen existing backlogs in visa processing within all three streams of the migration program. Indeed if current processing timelines continue, the first SHEV-holders will be due for re-application in 2020 whilst hundreds, if not more than a thousand applicants will still be awaiting the outcome of their first SHEV application.

SHEVs do not offer a realistic pathway to permanent settlement

33. The only ostensible incentive for refugees on SHEV to migrate to regional areas within the design of the SHEV is the aforementioned pathway (see paragraph 15) towards being eligible to apply for a range of non-humanitarian onshore visas, including skilled and partner visas.
34. The threshold for eligibility is unreasonably high and is likely to exclude a significant majority of refugees on SHEVs. A number of key dimensions are worth noting in full here.
35. The requirement to work for 3.5 years (42 months) out of 5 years in a regional area without access to government social security support is an onerous one. Only 17% of offshore humanitarian migrants find paid employment after eighteen months living in Australia. In this context, and noting the significant employment challenges that people in the Legacy Caseload face (see paragraphs 18 and 20), it is unlikely that the majority of SHEV holders are going to be able to meet the 42-month requirement without access to English or vocational education, to financial support while up-skilling, and to specialist job readiness and placement support beyond JobActive. Note again that unless they can obtain a scholarship, refugees on SHEVs are required to pay international student fees to enrol in vocational or tertiary education courses.
36. The onus is on the SHEV-holder provide evidence of employment (eg. via an employment contract or a pay slip) in order to prove that they meet the threshold. This can be challenging in a number of ways. First the nature of employment in some regional industries is casual and, sometimes, cash-in-hand. Second, there is ample evidence to suggest that attaching immigration outcomes to employment goals creates an unequal power dynamic between the employer and employee, which can lead to wage theft, exploitation, or slavery.
37. Even if refugees on SHEVs meet the threshold, it is unlikely that they will meet one or more of the requirements to be granted a non-humanitarian onshore visa.
- For example, in order to apply for the Skilled Independent Visa (subclass 189), an applicant must obtain '65 Points.' This would require the applicant to demonstrate at minimum a 'competent level' of English (assessed as achieving a 6 out of 9 on reading, writing, listening, and speaking components of the IELTS test), a higher education qualification in Australia, and at least a year of work experience in a recognised skill (eg. accounting or nursing) listed on the annual skilled occupation list.
 - JRS Australia is aware of SHEV-holders who meet the skilled occupation requirement (eg. tailor or electrician) but who do not meet the English language requirements; and of SHEV-holders who meet the 'competent' English language threshold but who do not have adequate work experience or a qualification in a skill listed on the skilled



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occupation list. In both of these cases, SHEV-holder would be unlikely to meet the 65-point minimum requirement to be invited to apply for this visa.

38. Even if a SHEV-holder were to overcome all of these hurdles, they would be competing with thousands of other skilled or partner visa applications with much greater flexibility to return home.
39. Finally the cost of applying for a non-humanitarian onshore visa is likely to be significant. An IELTS English language test alone costs \$340 each time it is attempted. A skilled visa application costs \$4,045. The costs of migration agents, gathering documents, and other miscellaneous expenses also add up. While these costs are unlikely to be prohibitive – people will borrow or save up to apply – they will place SHEV-holders under further financial stress.
40. This combination of settings ensures that SHEVs do not provide a realistic pathway to permanent settlement in Australia. Indeed, the government acknowledged this reality when the SHEV was first introduced, noting that “these benchmarks of working and studying in these regional areas are very high...[and] that this is a high bar to clear.”

Shortcomings in the implementation of the SHEV

41. There is ample research to suggest that successful refugee resettlement into regional areas depends on the availability of jobs and settlement services, on the presence of a welcoming community, on partnerships with key local stakeholders such as council officials, and business owners or employers, and on the extent of diaspora networks in that area.
42. These initiatives require a whole-of-society approach involving different stakeholders from metropolitan and regional areas working proactively over a period of time to facilitate movement and subsequent support. Such considered and well-resourced approaches are even more important in the context of unique challenges and circumstances faced by people in the Legacy Caseload.
43. The SHEV was implemented in a way that did take not into account either the lessons of past regional migration success stories, or the circumstances faced by people in the Legacy Caseload. Therefore, it was never likely to effectively enable large-scale migration into regional areas.
44. The SHEV was introduced into legislation without substantive consultation with state and local government stakeholders, businesses, settlement services, regional communities, NGOs, or refugees themselves in order to understand barriers, share resources, and consider strategies required to enable people in the Legacy Caseload to resettle in regional Australia.
45. As a result, when the SHEV was introduced into legislation, it was unclear as to which regional areas would be designated SHEV zones; what the availability of jobs, the level of settlement and medical services, and the social and demographic profile of those areas was; how this might be matched to available qualifications, skills, interests, and capacities of SHEV holders; and what the SHEV pathway requirements for non-humanitarian permanent visas were.
46. Many early SHEV applicants went into the process with very little knowledge of the visa other than the fact that the SHEV would likely provide five years of protection in Australia rather than



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three (with a TPV) and that they would be required to work or study in a regional area or show intent to do so.

47. Concurrently, the government removed 90% of funded legal aid for TPV and SHEV applicants and instituted a deadline (1 October 2017) by which all Legacy caseload protection applications needed to be submitted in order to be considered as valid. The legal community provided applicants with the pro bono support required to complete valid applications and submit them on time.
48. Given the lack of detailed information available about the visas, the time pressures at hand, and the mental and physical health issues people in the Legacy Caseload were already facing, some applicants did not fully understand the choices before them, or their future obligations as SHEV-holders. As a result, some SHEV-holders – for example people over the age of 45 or with no formal qualifications or literacy – applied for the visa despite the fact that they were highly unlikely to meet the pathway requirement. Many simply applied because they would have two extra years of protection under a SHEV.
49. In 2016, it became clear that the federal government would not allocate financial resources to support migration to regional areas under the SHEV. Although the majority of state governments joined on to the scheme and nominated large parts of non-metropolitan areas as designated SHEV zones by the end of 2016, it was still not clear how individuals and groups might explore the feasibility of migrating to a newly designated SHEV area without spending significant amounts of money and time to visit or forfeiting existing jobs or degrees in metropolitan areas. Others were simply not mentally or physically well enough to even consider moving from places where they had supports or connections from the local community (see Paragraphs 24 and 25).
50. JRS Australia is aware of a variety of situations in which refugees on SHEVs considered moving into regional areas but were not able to do so successfully.

Case study 2: An elderly Tamil man without family in Australia is granted a SHEV after six years in Australia. He understands that he is obligated to move to a regional area but does not understand what the consequences will be if he doesn't. He does not have a migration lawyer and cannot afford one. The man does not have any personal or community connections in any regional area. He has been diagnosed with complex post-traumatic stress disorder (PTSD) and is accessing torture and trauma counselling in Sydney. The man continues to apply for jobs in regional areas online but has not received a single call back.



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Case study 3: A middle-aged Faili Kurdish stateless man without family in Australia is granted a SHEV. He is frustrated because he came to Australia before SHEVs were introduced and applied for a permanent protection visa (PPV). He has spent two years in closed detention and has been diagnosed with major depressive disorder and a compulsive hoarding disorder. The man is an electrician by trade and works as a contractor around Sydney where he has lived for seven years. He understands that he needs to live and work in a regional area on a SHEV but is afraid to leave Sydney. He cannot explain his fear of moving, except to say that his friends and belongings are in Sydney.

Case study 4: A stateless Rohingya man is granted a SHEV. He is genuinely interested in moving to a small town which he believes will be more peaceful, but has no connections anywhere but Lakemba. He sometimes visits the mosque there and does casual work as a painter around Western Sydney. He travels to Wagga Wagga looking for farm work, but returns two weeks later after realising that the casual work in Sydney pays better.

51. In all of the above circumstances, specialist casework, clear referral pathways to service providers in regional areas, and support to connect with employers and apply for available jobs would have helped overcome some of the obstacles to regional migration. In other words, had SHEV-holders had access to mainstream settlement services with an additional focus on facilitating regional migration, the federal government would likely have had more positive outcomes.
52. Although some state and local governments have employers and civil society organisations to develop SHEV-zone profiles, build connections with regional stakeholders, and even take SHEV holders on visits to regional areas, these initiatives were ad hoc and unlikely to be sustainable over many years.

Recommendations

JRS Australia believes that there are a number of ways in which the Australian government can incentivize regional migration for refugees on SHEVs while simultaneously addressing concerns about the conditions attached to the visa and the demographic it affects most widely.

Recommendation 1: Allow refugees on SHEVs access to the HECS-HELP Loan Scheme, Commonwealth Supported Places (CSP) and social security support whilst studying in a metropolitan or regional area.

Recommendation 2: Reduce the threshold for SHEV-holders to apply for onshore non-humanitarian visas from 42 months to 18 months of paid employment in a regional area. This will enable a SHEV-holder to spend 42 months to study, train, up-skill, and attain a level of competitiveness within the field of skilled and partner visa applicants.

Recommendation 3: Relax and change key invitation and grant requirements attached to non-humanitarian onshore visas for refugees on SHEVs, including English language requirements and costs.



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Recommendation 4: Allocate resources for significant investment in regional settlement services – including job matching, mental health and torture and trauma services – with a focus on strategic geographical areas identified to be future industry or job growth zones.

Recommendation 5: Provide refugees on SHEVs access to a modified version of the Humanitarian Settlement Program (HSP) to take effect upon arrival in designated regional areas.

Recommendation 6: Reintroduce permanent protection visas for all proven refugees on SHEVs with full rights and access to services as guaranteed to those offered permanent protection through the offshore program.

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