

Briefing Notes: Fast Track Refugee Determination Process and the Need for Proper Reviews of Cases Rejected by it

The government has announced that approx. 19,000 people who hold Temporary Protection Visas (TPV) or Safe Haven Enterprise Visas (SHEV) will be transitioned to permanent visas.

Up to 12,000 additional people have had their TPV or SHEV applications rejected in what Labor agrees is a flawed and unfair system. The 2021 Labor Policy Platform states:

“The existing fast track assessment process under the auspices of the Immigration Assessment Authority and the limitation of appeal rights does not provide a fair, thorough and robust assessment process for persons seeking asylum.

Labor will abolish this fast track assessment process.”

The rate of acceptance for asylum applicants who arrived by boat was consistently around 90% prior to the “Fast Track” process and the removal of the Refugee Review Tribunal (Australian Human Rights Commission). Since the implementation of the Fast Track process, that figure has fallen to 66.7% (Refugee Council of Australia).

The Labor Policy Platform also states:

“Labor will create an independent Refugee Review Tribunal and abolish the Immigration Assessment Authority. The Tribunal will allow for procedurally fair, simple, affordable and accessible processes and procedures, including in relation to adverse credibility findings, for the review of refugee related decisions.”

However, no information about reinstating the Refugee Review Tribunal, or offering any kind of review mechanism, was announced when the transition to permanent visas was announced.

Instead, Andrew Giles stated that people who had received negative determinations should continue with court processes and Ministerial Intervention Requests. There are many problems with this:

- The court process is lengthy and expensive. People remain in uncertainty for years. It now costs around \$3,600 just to lodge a case in the Federal Circuit Court if people are not eligible for fee waivers.
- The courts are overloaded. Many people have been waiting for several years for Federal Circuit Court appeals but still have not been allocated a court date.
- Some people are winning their Federal Circuit Court cases, only to have their case referred back to the Immigration Assessment Authority (IAA) where it is rejected again.
- Appeal rights are very limited as courts can only consider procedural fairness. New information about the individual or their homeland cannot be presented.
- When the Abbott Government scrapped access to funded legal services, many asylum seekers chose Migration Agents who were inexpensive but not necessarily experienced (or thorough) in refugee applications. Others went to free refugee legal services which did not provide a lawyer to attend their interviews with them. This significantly reduced their chances of success. There is no opportunity for these people to present their cases again.
- The existing guidelines for Ministerial Intervention Requests (MIRs) make MIRs inaccessible for most people in the Fast Track system.

The guidelines state that people must continue to hold a valid visa throughout the course of their MIR process (which can take years). However, people who arrived to seek asylum by boat are subject to a bar preventing them from applying for further visas. People who are living in the community but do not hold any visa, due to Bridging Visas being cancelled after court appeal loss, therefore appear to be ineligible for MIRs.

The guidelines also state that people are ineligible if they have ongoing applications for merits reviews of visa decisions.

Section 417 of the Migration Act provides the Minister with the power to substitute a decision of the Administrative Appeals Tribunal (AAT) with a more favorable decision. However, this does not apply to people in the Fast Track process because they do not have access to the AAT. No similar provision has been made for Fast Track applicants who received unfavorable decisions from the IAA. The process continues to be discriminatory, based on mode of arrival.

- Due to the above point, MIRs are being blocked by Home Affairs staff and are not being passed on to the Minister. The Home Affairs website states the following:

“The Minister has indicated to us that cases that do not meet the guidelines for referral and which have the types of circumstances described below [a list which includes the points above] are inappropriate for the Minister to consider. If your case has one or more of these circumstances, we will finalise it without referral to the Minister and will advise you or your authorised representative in writing.”

- People who have been able to secure short term (usually three months at a time) “Departure Pending” visas, and who have submitted MIRs, are repeatedly contacted by Home Affairs staff and pressured to return to their homelands, even though they are waiting for the outcome of their MIR.
- It costs around \$3,500 for an individual to obtain legal assistance for an MIR. This is on top of the approximately \$30,000 people will have spent on initial applications, IAA submissions, court fees, court representation and the government’s court expenses.
- Julian Hill MP told an Afghan gathering in his electorate recently that people with rejected applications can request that the Minister “lifts the bar” so that they can be permitted to apply for protection all over again. If this is the case, they will have to go through the trauma, expense and lengthy process of submitting another application. This is on top of the 10+ years they have already been in the system and the costs they have already incurred. To this point, information about the option to request a “bar lift” is not readily available.

The group of up to 12,000 people with rejected cases includes many people from Iran (where the situation has deteriorated) and from persecuted minority groups in Afghanistan and Pakistan for whom persecution and violence has escalated since the return of the Taliban in Afghanistan. Many others in this group are Tamils from Sri Lanka, like the Nadesalingam family from Biloela, who were either politically active or who have direct or indirect links with the LTTE. Many were victims of torture when living in Sri Lanka. They continue to be at risk under the current Sri Lankan Government whose Cabinet and Parliament are dominated by allies of the previous Rajapaksa regime. The United Nations and other non-government agencies continue to report the ongoing persecution of the Tamil minority by the current government.

Without a robust review process for these cases, people with genuine claims for protection will not receive it and will be refouled if returned to their homelands.