

A 'legacy' of uncertainty

The need to abolish Temporary Protection Visas

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I Introduction

People seeking asylum, and refugees who have arrived in Australia by unauthorised boats have faced a sustained campaign of dehumanisation consisting of divisive, often hateful rhetoric and harsher policies, which has shaped a considerable amount of 21st century Australia's response to 'boat people'. The introduction of Temporary Protection Visas has played a significant role in entrenching uncertainty, socio-economic stagnation and isolation in the lives of refugees. They are one of many mechanisms which, by design and in practice, alienate boat arrivals and seek to delegitimise their claims for protection.

The erratic legislative and regulatory changes in the form of offering permanent protection to refugees arriving by boat or withholding permanent protection and, in its place, offering temporary protection, were enacted by consecutive governments in their attempts to address the influx of people arriving in Australia by unauthorised maritime vessels for the purpose of seeking asylum. The situation escalated in 2012 when the recorded

number of people who undertook this journey exceeded 20,000. In 2008, the Rudd Government abolished the Temporary Protection Visa system that was implemented by the Howard Government, and allowed people seeking asylum by boat to apply for Permanent Protection Visas. However, the extension of permanent protection to this category of applicants was once again removed under the Abbott Government, which reintroduced Temporary Protection Visas as one of many elements of an overarching policy to deter people seeking asylum from embarking on a journey to reach Australia.

This article will explore the experiences of those who are subject to the newest iteration of the temporary protection policy which was designed specifically for the approximately 30,000 people¹ who reached Australia's migration zone unauthorised by sea.² The *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) targeted people seeking asylum who arrived by an unauthorised maritime vessel between 13 August 2012 and 19 July 2013,³ who have subsequently been termed the Legacy Case-

load ('LC').⁴ The LC cohort was expanded to include asylum seekers who arrived until 1 January 2014; and now LC applicants fall within the definition of a fast track applicant under s 5 of the *Migration Act 1958* (Cth) ('*Migration Act*').⁵ In the first instance, fast track applicants are only eligible to apply for a Temporary Protection Visa (subclass 785) ('TPV'). The human cost of temporary protection warrants further examination of its operation and impact, as well as an exploration of a possible transition to permanent protection for fast track refugees.

Fast track applicants may include people arriving by air and claiming asylum at an airport prior to immigration clearance. However, in light of the hyper-politicisation of people arriving by boat, and the fact that this article is exploring factors driving governmental policies, boats and planes will be used as proxies to illustrate the stark contrast in their treatment and to critically examine the government's proposed *raison d'être* for the current Temporary Protection Visa regime.

II Papers, boats and planes

Available visas for boat arrivals

One's mode of arrival to Australia as a person seeking asylum is determinative of his or her fate. The options for fast track applicants are the three-year TPV and the five-year Safe Haven Enterprise Visa (subclass 790) ('SHEV').⁶ The concept of temporary protection was initially pushed by One Nation Party leader Pauline Hanson in 1998, who proposed that *all* refugees be given only temporary visas,⁷ and then implemented by the Howard Government in October 1999 to apply to those arriving in Australia unauthorised and by boat; which has partly been attributed to electoral anxiety stemming from the Queensland Coalition government facing major swings towards One Nation at a state level.⁸ The TPV was then abolished by the Rudd Government in 2008,⁹ but subsequently re-introduced alongside its 5-year variant by the Abbott Government in 2014.¹⁰

People seeking asylum who arrive in Australia with a valid visa, such as a student visa, and following immigration clearance, can apply for an onshore Permanent Protection Visa (subclass 866).¹¹ A common requirement for applicants, whether they apply for a

Permanent Protection Visa or a Temporary Protection Visa, is that they must satisfy s 5H of the *Migration Act* which defines a refugee as a person, if they have a nationality, who 'is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country'.¹²

The first limb of the definition of a well-founded fear of persecution requires a fear of persecution for at least one of five convention reasons: race, religion, nationality, political opinion or their membership of a particular social group.¹³ There must also be a real chance that, if the applicant were returned to the receiving country, that they would be persecuted, in all areas of the receiving country, for at least one of those reasons.¹⁴

Popular views: 'the right way' in

Political discourse and popular debates on the humanitarian intake have focused on boat arrivals taking the 'backdoor' route into Australia,¹⁵ which is also reflected in protection policies that differentiate between people seeking asylum based on their mode of reaching Australia. Those favouring plane arrivals often cite security considerations such as the fact that those arriving by plane must have a valid visa which they would have been granted only after fulfilling a series of tests including health and character checks,¹⁶ unlike people arriving by boat who are yet to be cleared. The self-selection method of boat arrivals amounting to a perceived infringement of Australia's sovereignty, as well as concerns about the riskier nature of the journey by boat also serve to juxtapose the two groups.¹⁷

On the other hand, discriminating between those seeking asylum on the basis of their method of arrival is contrary to art 31(1) of the 1951 *Convention Relating to the Status of Refugees* ('*Refugee Convention*'),¹⁸ and hence contrary to the views of the international community, at least nominally. The contrast between the categories of applicants is also firmly entrenched through the rhetoric espoused by politicians and political commentators, that is heavily characterised by negative terminology such as 'queue jumpers' and 'economic migrants'.¹⁹ The contrasting treatment of boat and plane arrivals, which creates a 'two-class system for refugees'²⁰ obscures the fact that both

Number of people attempting to reach Australia via boat

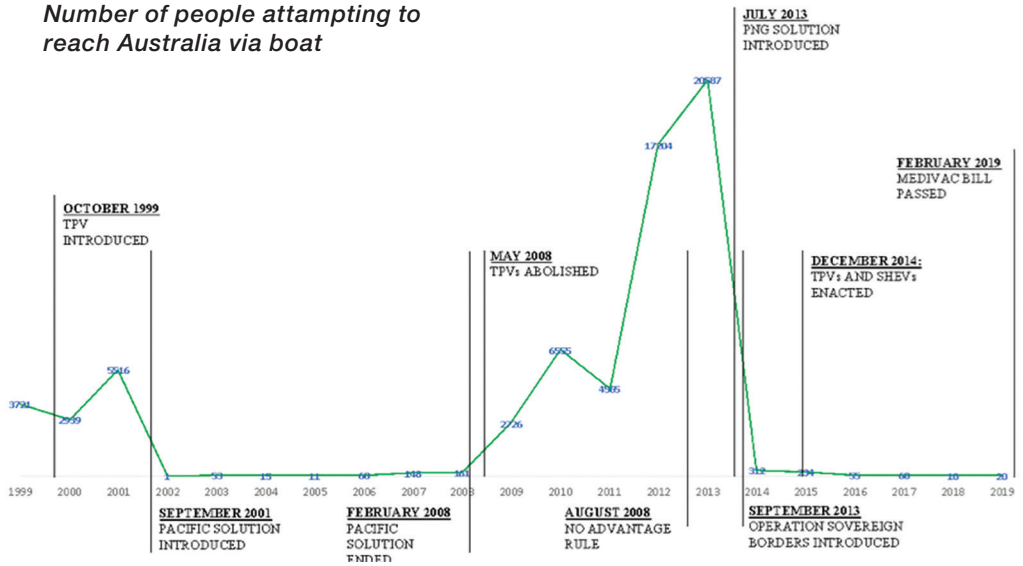


Figure 1: A timeline of the number of people who attempted to reach Australia via boat every year and major policies surrounding unauthorised maritime arrivals, in the years 1999–2019.²⁴

groups of people must meet the definition of a refugee.²¹ The added references, by political figures, to boat arrivals as ‘economic migrants’ implicitly misrepresents boat arrivals as raising unmeritorious asylum claims based on their mode of arrival, despite the fact that out of all finalised applications for ‘Illegal Maritime Arrivals’, almost 70% resulted in visa grants.²²

Rationale of deterrence

Deterring people from coming by boat to Australia has been and continues to be one of the main justifications provided by Australian governments for the implementation of harsher policies against boat arrivals.²³ This article is not exploring the validity of justifications to achieve deterrence but rather the causal link that appears to be drawn between the appropriateness of temporary protection for fast track refugees and the proposed purpose of achieving deterrence.

While decreases in the annual number of boat arrivals appear to correlate with the implementation of temporary protection, periods of change involving temporary protection policies have generally been accompanied by significant reform in migration laws and policies more broadly. The timing of the relevant reforms also indicates

that changes in TPVs was not the main causal factor in the number of people attempting to reach Australia by boat as seen through a general comparison of the two factors over the time period between 1999 to 2019. Specifically, the current version of temporary protection was enacted only after the sharp decline in the number of arrivals per year.

More importantly, the current iteration of temporary protection is only available for fast track refugees and hence, TPVs and SHEVs would not affect people arriving after 1 January 2014.²⁵ However, if misinformation is considered to be a main ‘pull factor’ for boat arrivals, then a change in any migration policy could theoretically be misrepresented by people smugglers to desperate people seeking asylum. Therefore, any causal link between temporary protection and deterrence²⁶ is tenuous at best. The Morrison government demonstrated a similar attitude towards the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2018* (Cth),²⁷ where panic was expressed out of concern that people smugglers would be able to sell a pathway to Australia through Medevac,²⁸ despite the fact that the legislation applies only to people seeking asylum who are already detained in the ‘regional processing’ centres in Nauru or Manus Island,²⁹ and

that people who arrive to Australia today would either be turned back or 'taken back'.³⁰ The legitimacy of the deterrence rationale is further eroded by the fact that the system is punitive in design against those arriving by boat which contradicts art 31(1) of the *Refugee Convention* which prohibits the use of penalties against refugees on the basis of their 'illegal entry or presence'.³¹

iii Need for change

Uncertainty as to future residency

In order to stay in Australia past the expiry of their visa, holders of TPVs must either apply and be granted a TPV again,³² or apply for and be granted a SHEV.³³ This would require an assessment of the applicant's protection claims which would involve them once again proving that they meet the definition of a refugee under s 5H,³⁴ in light of more recent information about their country of origin. Philip Ruddock, the architect of the first iteration of TPVs,³⁵ was initially opposed to Hanson's proposal for a blanket replacement of the humanitarian program with temporary visas for all refugees, stating that it was unconscionable, 'totally unacceptable' and would lead to uncertainty for refugees.³⁶

Reapplication for protection can place a refugee in limbo and act as an impediment to one's ability to start afresh and to attain a sense of stability as a result of the temporary protection system giving rise to an ever-present risk of being denied a subsequent visa.³⁷ Aside from existing psychological impairments stemming from experiences of persecution or of fleeing their homes, refugees granted temporary protection, when compared to those who have permanent protection status, have higher rates of PTSD and other mental health conditions.³⁸ The LC refugees' temporary status is a causal factor for greater rates and seriousness of their mental and functional impairment.³⁹

One may be able to transition from a SHEV to a non-Protection Visa such as a family or skilled visa,⁴⁰ provided that during the SHEV's five-year term, the holder worked or studied in a regional area for 3.5 years, meets relevant skill requirements and has not accessed social security payments for the entirety of their SHEV.⁴¹ There may also be English language standards, depending on the subsequent visa for which they apply.⁴²

In reality, this would be difficult for most refugees because of the onerous requirements, along with any mental or functional impairments, and the innate risk of isolation. The LC refugees' ability to subsist is adversely affected by the short-term nature of temporary protection, which limits opportunities to establish and grow their skills and/or businesses, fosters employers' potential negative biases due to the uncertain nature of their future residency status,⁴³ and limits their access to support services for labour market integration.⁴⁴ The shorter length of TPVs and SHEVs is also a barrier to one's ability to expand their social networks,⁴⁵ which is a key factor determining one's chances to pursue higher skilled and higher paying jobs.

The lack of certainty inhibits refugees' ability to 'plan for the future' and escalates socio-economic disadvantage and psychological issues which would actually add further pressure on the state and community groups.⁴⁶ Overall, temporary protection status, combined with the adverse mental health issues of refugees and asylum seekers can 'hinder their socio-economic integration',⁴⁷ and place them at risk of isolation and financial stagnation.

Family reunion

People classified as 'Illegal Maritime Arrivals' would need to hold a permanent visa in order to be able to sponsor one or more family members to arrive to Australia under Direction 80 cl 8(1)(g),⁴⁸ a Ministerial Direction signed by Minister for Immigration, Citizenship and Multicultural Affairs, David Coleman, which dealt with matters including but not limited to, the possibility of family reunification by way of visa holders being able to bring family members to Australia from another country. As a result, holders of TPVs and SHEVs are precluded from being eligible for family reunification. Given the state of perpetual limbo in which LC refugees are placed, they may face adverse social and psychological issues,⁴⁹ which could be exacerbated by limiting refugees' sense of belonging. Furthermore, s 91WB states that one cannot apply for a protection merely because they are a member of the same family as someone who has *already* been granted a Protection Visa.⁵⁰ This is also designed to be a part of the deterrence model; disincentivis-

ing family members 'travelling to Australia ... in the expectation of being granted a Protection Visa'.⁵¹

Subject to strict requirements, TPV and SHEV holders may travel to another country, except the one from which they seek protection, on compassionate or compelling circumstances, such as meeting their *close relatives*.⁵² However, given the lengthy assessment processes as well as the real likelihood that a refugee who is granted a visa here would have to obtain a *temporary* visa multiple times before having a chance to attain a permanent visa that could provide a pathway for family reunion, it could be many years before LC refugees are given the *chance* to live with their family again.

iv The way forward

TPVs were last abolished in 2008 under the Rudd Government which viewed them as causing suffering amongst refugees and ineffectual in stemming the influx of boats.⁵³ TPV holders were transitioned to a permanent counterpart.⁵⁴ The main method of alleviating some of the structural disadvantages and difficulties faced by LC refugees is to transition them to a form of permanent residency given that the difficulties they faced were magnified, when compared with the holders of the onshore Protection Visa (subclass 866) based on key indicators such as mental health and employment prospects.⁵⁵ Reform may involve expanding the eligible class of persons for the 866 visa to include LC applicants, in combination with exempting LC refugees and people seeking asylum from the caps set under s 39 of the Migration Act for the 866 visa in order to facilitate a transition from temporary to permanent protection. An alternative may involve the creation of a new visa for LC refugees upon further consultation with key stakeholders such as the Migration Institute of Australia and migration agents in general, relevant community legal centres, and support organisations. There also needs to be a reasonable process for permitting LC refugees to access family reunion,⁵⁶ as the current process, even for Permanent Protection Visa holders does not offer a realistic pathway for family reunion as it places applicants on an indefinite waiting list. Regardless of the ultimate approach taken, it is essential, as recommended by

the Kaldor Centre for International Refugee Law, that the solution enables 'families to rebuild their lives together, in a safe and stable environment'.⁵⁷ In Canada, people found to be eligible for protection can apply for permanent protection.⁵⁸ Once attaining permanent residence, one may, subject to limitations, sponsor family members who are overseas if they lodge an application within the one-year window that commences from the day that the resident refugee was granted protection.⁵⁹ Furthermore, an abolition of the Temporary Protection Visa, and the concurrent introduction of a realistic pathway to family reunification would be pivotal to the long term empowerment of refugees in their journey of 'realis[ing] their potential' and becoming 'contributing *members* of Australian society'.⁶⁰

v Conclusion

TPVs and SHEVs amount to a punitive measure against refugees by subjecting them to perpetual uncertainty, limiting upward social mobility, maintaining their long-term separation from their families, and cultivating a risk of ongoing isolation. These are factors which would have to be endured in conjunction with a given refugee's existing trauma and fear of being returned to the source of their persecution. Furthermore, the permanent and temporary protection dichotomy creates an artificial divide between plane arrivals and boat arrivals by requiring similar standards to be met for an assessment of eligibility, with punitive effects on the latter who simultaneously possess greater vulnerabilities and have relatively high rates of meritorious claims. It is imperative that the possible means of transitioning temporary protection recipients and applicants to permanent protection are explored, and that the implementation of such a change is expedited, lest we prolong the pain of those who sought our helping hand in an hour of need. ¶

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References

- 1 Commonwealth, *Parliamentary Debates*, House of Representatives, 25 September 2014, 10545 (Scott Morrison, Minister for Immigration and Border Protection) (*Parliamentary Debates*, 25 September 2014).
- 2 *Migration Act* 1958 (Cth) ss 5AA(1)–(2) (*Migration Act*) (setting out, inter alia, the meaning of ‘unauthorised maritime arrival’).
- 3 Explanatory Memorandum, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth) 8, Attachment A 12 (*Explanatory Memorandum Legacy Caseload*).
- 4 *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act* 2014 (Cth) (*Legacy Caseload Act*); *Parliamentary Debates* 25 September 2014 (n 1) 10545 (Scott Morrison, Minister for Immigration and Border Protection).
- 5 See *Migration Act* (n 2) s 5(1).
- 6 *Legacy Caseload Act* (n 4) sch 2 pts 785, 790.
- 7 Pauline Hanson’s One Nation, *Immigration, Population and Social Cohesion* (Policy Document, July 1998) para 11.
- 8 Janet Phillips, ‘Temporary Protection Visas’ (Research Note No 51, Parliamentary Library, Parliamentary of Australia, 11 May 2004) 1 <<https://www.aph.gov.au/binaries/library/pubs/rn/2003-04/04rn51.pdf>>; Linda Briskman, Susie Latham and Chris Goddard, *Human Rights Overboard: Seeking Asylum in Australia* (Scribe Publications, 2008) 61–2.
- 9 Chris Evans, Minister for Immigration and Citizenship, ‘Rudd Government Scraps Temporary Protection Visas’ (Press Release, 13 May 2008) 1 <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/4JGQ6%22>>; Janet Phillips, ‘A Comparison of Coalition and Labor Government Asylum Policies in Australia Since 2001’ (Research Paper Series 2016–17, Parliamentary Library, Parliament of Australia, 2 February 2017) 12 <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/AsylumPolicies> (*‘Comparison of Coalition and Labor Government Asylum Policies’*).
- 10 *Legacy Caseload Act* (n 4) sch 2 pt 785.
- 11 The subclass 866 visa falls under the broader category of Class XA visas as defined by the *Migration Regulations 1994* (Cth) cl 2.01 item 2. According to cl 1401(3) an application for a subclass 866 visa can only be made by a person who is not an unauthorised maritime arrival, was immigration cleared on their last entry into Australia, and held a visa that was in effect on their last entry into Australia, among other requirements.
- 12 *Migration Act* (n 2) s 5H(1)(a); Where the applicant is stateless, he or she falls under the definition of refugee if he or she ‘is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it’: *Migration Act* (n 2) s 5H(1)(b).
- 13 *Ibid* s 5J(1)(a).
- 14 *Ibid* ss 5J(1)(b)–(c).
- 15 See Katharine Murphy, ‘Scott Morrison Raises Prospect of Asylum Seeker Transfer to New Zealand’, *The Guardian* (online, 16 October 2018) <<https://www.theguardian.com/australia-news/2018/oct/16/scott-morrison-raises-prospect-of-asylum-seeker-transfer-to-new-zealand>>; Alex Reilly, ‘How the Next Australian Government Can Balance Security and Compassion for Asylum Seekers’, *The Conversation* (online, 5 March 2019) <<https://theconversation.com/how-the-next-australian-government-can-balance-security-and-compassion-for-asylum-seekers-110713>>.
- 16 Heba Kassoua, ‘“Clear Differences” Separate Asylum Seeker Arrivals by Boat and Plane, Expert Says’, *SBS Arabic24* (online, 26 February 2019) <<https://www.sbs.com.au/yourlanguage/arabic/en/article/2019/02/18/malaysian-and-chinese-nationals-who-arrive-air-are-most-nationalities-who-seek>>.
- 17 Adrienne Millbank, ‘Boat People, Illegal Migration and Asylum Seekers: In Perspective’ (Current Issues Brief No 13, Parliamentary Library, Parliament of Australia, 14 December 1999) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib9900/2000CIB13>; *ibid*.
- 18 *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) read together with the *Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) (*Refugee Convention*) art 31(1), cited in ‘Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEV)’, *Kaldor Centre for International Refugee Law* (Factsheet, April 2019) 3 <<https://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas>>.
- 19 See Fergus Hunter, ‘Scott Morrison Claims Asylum Seekers Brought to Mainland Australia are Economic Migrants’, *Sydney Morning Herald* (online, 28 July 2014) <<https://www.smh.com.au/politics/federal/scott-morrison-claims-asylum-seekers-brought-to-mainland-australia-are-economic-migrants-20140728-3copy.html>>; Shalailah Medhora, ‘“Nope, Nope, Nope”: Tony Abbott Says Australia Will Take No Rohingya Refugees’, *The Guardian* (online, 21 May 2015) <<https://www.theguardian.com/world/2015/may/21/nope-nope-nope-tony-abbott-says-australia-will-take-no-rohingya-refugees>>; Klaus Neumann, ‘Queue Jumpers’ and ‘Boat People’: the Way we Talk About Refugees Began in 1977’, *The Guardian* (online, 5 June 2015) <<https://www.theguardian.com/commentisfree/2015/jun/05/queue-jumpers-and-boat-people-the-way-we-talk-about-refugees-began-in-1977>>.
- 20 Don McMaster, *Temporary Protection Visas: The Bastard Child of the One Nation Party!* (Conference Paper, Australian Political Studies Association Conference, 29 September – 1 October 2004) 5 <https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/US1F6/upload_binary/us1f63.pdf;fileType=application%2Fpdf#search=%22media/pressrel/US1F6%22>.
- 21 *Migration Act* (n 2) s 5H.
- 22 Department of Home Affairs, Australian Government, *IMA Legacy Caseload: Report on Processing Status and Outcomes* (Report, May 2019) 5 <<https://www.homeaffairs.gov.au/research-and-stats/files/ima-legacy-caseload-may-2019.pdf>>.
- 23 The introduction of TPVs is a key element of the Government’s border protection strategy to combat people smuggling and to discourage people from making dangerous voyages (by boat) to Australia.’: Explanatory Memorandum Legacy Caseload (n 3) 6. See also ‘Our Plan to Protect Our Borders to Keep Australians Safe’, *Liberal Party of Australia* (Web Page) <<https://www.liberal.org.au/our-plan-protect-our-borders-keep-australians-safe>>; Rosie Lewis, ‘Morrison Turns Up Heat on ALP’s Border Policy’, *The Australian* (online, 14 January 2019) <<https://www.theaustralian.com.au/nation/politics/morrison-takes-the-attack-to-shorten-over-sovereign-borders/news-story/6c2ce8a7d3ea142de7b7f1f86b50ddd1>>.
- 24 Graph based on data from Janet Phillips and Harriet Spinks, ‘Boat Arrivals in Australia Since 1976’ (Research Paper, Parliamentary Library, Parliament of Australia, 23 July 2013) <https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1314/boatarrivals#_Toc347230716>; Phillips, ‘Comparison of Coalition and Labor Government Asylum Policies’ (n 9); Eilibrick Karlsen and Janet Phillips, ‘Developments in Australian Refugee Law and Policy: the Abbott and Turnbull Coalition Governments (2013–2016)’ (Research Paper Series 2017–18, Parliamentary Library, Parliament of Australia, 18 September

- 2017) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Australian_refugee_law_and_policy#_Toc489967337>; Chris Bowen, 'No Advantage Onshore for Boat Arrivals' (Media Release, Australian Government, 21 November 2012) <<https://parlinfo.aph.gov.au/parlInfo/search/display.w3p;query=Id:%22media/pressrel/2060961%22>>.
- 25 Mary Crock and Kate Bones, 'Australian Exceptionalism: Temporary Protection and the Rights of Refugees' (2015) 16(2) *Melbourne Journal of International Law* 522, 541; Migration Act (n 2) s 5.
- 26 Explanatory Memorandum Legacy Caseload (n 3) 6.
- 27 See *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (Cth).
- 28 Stephanie Borys, 'Peter Dutton Says Boat Arrivals Will Rise Following Court Decision on Medevac', *ABC News* (online, 20 June 2019) <<https://www.abc.net.au/news/2019-06-20/warnings-of-boat-arrivals/11226254>>.
- 29 *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (Cth) applies to 'relevant transitory person(s)', who are defined, under s 198E(2)(a) as a person who is either in a regional processing country on the day of the commencement of this Act or is born in a regional processing country. The strict definition of 'relevant transitory person' prevents those attempting to reach Australia by an unauthorised maritime vessel following the commencement of this Act, from being able to rely on this legislation as a pathway to being allowed into the country by way of a medical transfer.
- 30 See Harriet Spinks, 'Boat "Turnbacks" in Australia: A Quick Guide to the Statistics Since 2001' (Research Paper Series 2018–19, Parliamentary Library, Parliament of Australia, 20 July 2018) <https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5351070/upload_binary/5351070.pdf>.
- 31 *Refugees Convention* (n 18) art 31(1); Crock and Bones (n 25) 542 (emphasis added).
- 32 *Migration Regulations 1994* (Cth) sch 2 pt 785.511 ('Migration Regulations').
- 33 *Ibid* sch 1 pt 1404(3).
- 34 *Migration Act* (n 2) s 5H.
- 35 Barry York, 'Australia and Refugees, 1901-2002: An Annotated Chronology Based on Official Sources' (Chronologies Online, Parliamentary Library, Parliament of Australia, 16 June 2003) 6 <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/online/Refugeess6>.
- 36 See Michael Leach, "'Disturbing Practices": Dehumanising Asylum Seekers in the Refugee "Crisis" in Australia, 2001–2002' (2003) 21(3) *Refuge: Canada's Journal on Refugees* 25, 31.
- 37 UNHCR, *Fact Sheet on the Protection Australia's So-called 'Legacy Caseload' Asylum Seekers* (Factsheet, 1 February 2018) 4 <<https://www.unhcr.org/en-au/5ac5790a7.pdf>>.
- 38 Shakeh Momartin et al, 'A Comparison of the Mental Health of Refugees with Temporary Versus Permanent Protection Visas' (2006) 185(7) *Medical Journal of Australia* 357, 360; See also Jane McAdam and Fiona Chong, *Refugee Rights and Policy Wrongs: A Frank, Up-To-Date Guide by Experts* (NewSouth Publishing, 2019).
- 39 Momartin (n 38) 359.
- 40 Parliamentary Debates 25 September 2014 (n 1).
- 41 *Migration Act* (n 2) s 46(1A)(c); *Migration Regulations* (n 32) reg 2.06AAB(2) cited in Crock and Bones (n 25) 548.
- 42 See *Migration Act* (n 2) s 46(1A)(b); *Migration Regulations* (n 32) reg 2.06AAB(1).
- 43 Tadgh McMahon, *Working it Out: A Rapid Review of the Evidence Around Employment Among Refugees and Temporary Protection Visa Holders in the Australian Labour Market* (Occasional Paper 1, Settlement Services International, March 2016) 16.
- 44 *Ibid*.
- 45 *Ibid* 14.
- 46 William Maley, 'Refugee Policy: Towards a Liberal Framework' (2002) 18(3) *Policy: A Journal of Public Policy and Ideas* 37, 39.
- 47 Linda Bakker, Jaco Dagevos and Godfried Engbersen, 'The Importance of Resources and Security in the Socio-Economic Integration of Refugees. A Study on the Impact of Length of Stay in Asylum Accommodation and Residence Status on Socio-Economic Integration for the Four Largest Refugee Groups in the Netherlands' (2014) 15(3) *Journal of International Migration and Integration* 431, 436.
- 48 Minister for Immigration, Citizenship and Multicultural Affairs (Cth), *Direction No 80: Order for Considering and Disposing of Family Visa Applications Under s47 and 51 of the Migration Act 1958* (21 December 2018).
- 49 Crock and Bones (n 25) 547–8.
- 50 *Migration Act* (n 2) ss 36(2)(c), 91WB, cited in Savitri Taylor, 'Refugee Family Reunion: What Might Have Been' (2018) 43(3) *Alternative Law Journal* 209, 210.
- 51 Taylor (n 50).
- 52 *Migration Regulations* (n 32) sch 8 item 8570.
- 53 Chris Evans, 'Failed Politics and Cheap Politics Offer No Solutions' (Press Release, 27 May 2010) <https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/WGVW6/upload_binary/wgvw61.pdf;fileType=application%2Fpdf#search=%22media/pressrel/WGVW6%22> cited in Phillips, 'A Comparison of Coalition and Labor Government Asylum Policies in Australia Since 2001' (n 9) 12.
- 54 *Ibid*.
- 55 McMahon (n 43) 13.
- 56 UNHCR (n 37) 5.
- 57 Kaldor Centre for International Refugee Law, *Kaldor Centre Principles for Australian Refugee Policy* (Report, 14 June 2019) 13 <<https://www.kaldorcentre.unsw.edu.au/news/new-report-kaldor-centre-principles-bring-evidence-refugee-policy-making>> ('*Kaldor Centre Principles*').
- 58 Immigration, Refugees and Citizenship, 'Claiming Asylum in Canada – What Happens' *Government of Canada* (Web Page, 11 April 2019) <https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming_asylum_incanadawhathappens.html>.
- 59 *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 141(1)(b): see Immigration, Refugees and Citizenship Canada, 'Terms and Definitions Related to Refugee Protection' *Government of Canada* (Web Page, 19 June 2019) <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/terms-definitions-related-refugee-protection.html>>.
- 60 *Kaldor Centre Principles* (n 57) 23 (emphasis added).



Asylum seeker Raj from Sri Lanka.
Manus Island, 28 November 2017
(AAP Image/Supplied by World Vision/
Nick Ralph)