

**RACS** REFUGEE  
ADVICE &  
CASEWORK  
SERVICE

ADVANCING THE RIGHTS OF REFUGEES AND  
ASYLUM SEEKER PEOPLE  
**A PLACE TO CALL HOME**

NACLC Conference

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## **1. Australian refugee law and protection visas**

1. Sources of non-refoulement obligations
2. Criteria for the grant of a protection visa
3. Bars on visa applications
4. The classes of protection visas
5. The protection visa process
6. Subsequent protection visa applications

## **2. Fast-track process for unauthorised maritime arrivals**

1. Background and offshore processing
2. Bar lifting
3. Definition of fast track applicant
4. The Immigration Assessment Authority
5. Statistics

## **3. Activity**

## **4. Case studies**

## **5. Protecting the rights of vulnerable groups – statelessness, Medevac & non-lodgement**

## **6. Questions**

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# Sources of non-refoulement obligations

- **Convention relating to the Status of Refugees**, also known as the **1951 Refugee Convention**
    - 1967 Protocol Relating to the Status of Refugees
  - **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**
  - **International Covenant on Civil and Political Rights (ICCPR)**
  - **Convention on the Rights of the Child (CRC)**
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# 1951 Refugee Convention – key provisions

- **Article 1A(2):**
  - “A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”
- **Article 1F Exclusion: *war criminals, serious non-political crimes***
- **Article 33(1)**
  - “No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion.”
- **Article 31**
  - “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

# Protection visa criteria: key definitions – s 36 Migration Act

## Refugee

the person is outside the country of his or her nationality and, owing to a **well-founded fear of persecution**, for reasons of **race, religion, nationality, membership of a particular social group or political opinion**.

## Complementary protection

- substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a **real risk** that the non-citizen will **suffer significant harm**.

# Protection visa criteria - persecution

s 5J(5) Persecution must involve “serious harm”:

- (a) a threat to the person's life or liberty;
- (b) significant physical harassment of the person;
- (c) significant physical ill-treatment of the person;
- (d) significant economic hardship that threatens the person's capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

# Protection visa criteria - significant harm

s 36 (2A) A non-citizen will suffer *significant harm* if:

- (a) the non-citizen will be arbitrarily deprived of his or her life; or
- (b) the death penalty will be carried out on the non-citizen; or
- (c) the non-citizen will be subjected to torture; or
- (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
- (e) the non-citizen will be subjected to degrading treatment or punishment.

# Protection visa criteria: other criteria and refusal powers

- Relocation and ‘reasonableness’
  - Safe third country
  - State protection
  
  - Not assessed as “direct or indirect risk to security” by ASIO: s 36(1B)
  - Not a person Minister considers “danger to Australia’s security”: s 36(1C)
  - Refusal or cancellation on “character grounds”: s 501
- 

## Two bars commonly applicable to protection visa applications

Unauthorised  
maritime arrivals

Repeat  
applicants

But Minister may say bar does not apply

# Classes of protection visa

**Permanent protection visa**

- The only class of PV between 2007 and 2015
- Permanent residence

**Temporary Protection visa**

- 3 years
- Cannot apply for any other class of visa (except further TPV/SHEV)

**Safe Haven Enterprise visa**

- 5 years
- Cannot apply for other visas except if 42-month regional “pathway requirements” are satisfied

# Protection visa application process: primary stage

## Prepare application

- Application form (ePV or Form 866) generally supplemented by written statement.
- Information previously provided to the authorities (eg entry interview, previous visa applications) can be very important – importance of FOI

## Lodge

- Await interview invitation (note excluded countries of origin).
- Provide any further information or evidence up until time of decision.
- Interview with decision maker in relation to claims.
- DOHA may also request documents or answers to questions in writing.
- Consideration of any character issues.

## Decision

- Applicants are notified of either visa grant or negative decisions and review rights.

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# Offshore processing

Section 198AD Taking unauthorised maritime arrivals to a regional processing country

...

(2) An officer must, as soon as reasonably practicable, take an unauthorised maritime arrival to whom this section applies from Australia to a regional processing country.

...

Section 198AE Ministerial determination that section 198AD does not apply

(1) If the Minister thinks that it is in the public interest to do so, the Minister may, in writing, determine that section 198AD does not apply to an unauthorised maritime arrival.

# The Fast Track Process

## Who is a fast track applicant?

- Unauthorised maritime arrival
  - Arrived between 13 August 2012 and 1 January 2014
  - Bar lifted and valid PV application lodged
- 
- Immigration Assessment Authority (IAA) replaces RRT as review body for “fast track applicants”
  - As of 1 July 2015 the Refugee Review Tribunal (RRT) is part of the Administrative Appeal Tribunal (AAT). Its function is unchanged.

# Immigration Assessment Authority (IAA)

## IAA will:

- generally not hold hearings,
  - not consider information that was not before the primary decision maker (except in limited circumstances).
- 
- Excluded fast track review applicants” are not referred to the IAA (and have no merits review rights).

# Statistics - fast track process at June 2019

Everyone who falls into the fast track cohort has now been invited to apply for either a TPV or a SHEV.

By June 2019, approximately:

- 22,500 people - decisions already made by DOHA (72% of total caseload)
- Approximately 8,500 people - applications on hand (at either DOHA or IAA)
- Approximately 70% being granted TPV/SHEV

Remittal rate from IAA: In the 2018-2019 reports, the stats are that 11% were remitted

Common countries: Iran, Afghanistan, Sri Lanka, Iraq, Vietnam



# Subsequent protection visa applications

- Current process
  - Re-assessment of refugee claims
  - Visa becomes 'indefinite'
- Emerging issues
  - Centrelink and Medicare
  - Missed deadlines

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# **Activity – stepping out the rights of people seeking asylum in Australia**



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# Protecting the rights of vulnerable groups – statelessness, Medevac & non- lodgement

- ‘Stateless babies’ project
  - Medevac & MERG
  - Non-lodgers after 1 October 2017
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# Questions



**Thank you for your participation  
in our session.**

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