

13th December 2022

To: Review Panel,

c/- Department of Home Affairs (DHA)

**Re: A Migration System for Australia’s Future**

The Refugee Action Collective (Victoria) (RAC (Vic)) welcomes an opportunity to contribute to a review of Australia’s Migration System. We are a non-profit, volunteer entity – a democratic, grassroots collective that fights for the humane and dignified treatment of refugees and people seeking asylum in accordance with Australia’s international and humanitarian obligations.

Accordingly, we deplore the exclusion of most refugee and asylum seeker issues from the scope of the review. Three of the four Out of Scope items exclude:

(a) “all other [migration system] matters, specifically issues relevant to irregular migration and status resolution, regional processing and Operation Sovereign Borders”;

(b) “functions and activities of the Australian Border Force [ABF], including but not limited to immigration compliance, removals and detention”; and

(d) “Public Interest Criteria required for approval of visas, including character, national security and health checking requirements”.

The suffering caused by Australia’s refugee and asylum seeker policies is well documented and ongoing. Excluding such issues hinders the reviewers from recommending vital reforms.

Our submission provides a brief overview response to key issues in the Discussion Paper, then addresses the Terms of Reference (TORs), both overall and individually.

**EXECUTIVE SUMMARY**

**Discussion Paper issues**

The Discussion Paper seeks urgent reforms to tackle (1) “critical skill and worker shortages” arising from factors including “an ageing population and slowing population growth”. Reforms are needed to (2) “make Australia … a welcoming destination”, (3) “strengthen relationships with our regional neighbours”, and (4) “unlock the potential contribution of all migrants”.

Our overview response is that:

* increasing the current small humanitarian intake to 50,000 pa, including accepting refugees held in Indonesia (thus ending Australia’s 2014 veto), would substantially address (1) – (4);
* giving work & study rights to all visa holders currently denied them would help address (4).

**Response to Terms of Reference (TORs)**

Overall, we submit that, if the review ignores ‘Out of Scope’ items (a), (b) & (d), which are a significant proportion of the system’s ‘clients’, focus, and expenditure, it can’t fully address 6 of the 7 TORs. Reviewers must be enabled to consider *TOR-relevant aspects* of (a), (b) & (d).

Individually, we submit that

* TORs 1, 2 & 3 (enriching the economy/productivity, augmenting education/skills/training, unlocking migrant potential) can’t be fully achieved if many temporary visa holders remain prohibited from working and/or studying.
* TOR 5 (comprehensively “improving clients’ experience”) cannot occur while Australia continues to treat some people who tried to come here, and in many cases are here, with systemic, sometimes sociopathic cruelty: for example, via indefinite mandatory detention.
* TOR 6 (clear pathways to permanent residence and citizenship; ending migrant worker exploitation) can’t be fully achieved while Out of Scope items (a) & (d), and some Migration Act provisions, remain in force.
* TOR 7 (fostering enhanced integration with our international friends and partners) can’t be fully achieved while part of (d) – the section 501 “character test” – remains in force.

**SUBMISSION**

**Evidence and explanation supporting key elements of our submission**

The 5 points below explain two main issues: first, some of the review’s Out of Scope items are intrinsically relevant to some of the Task (Scope) Terms of Reference; second, some parts of the existing migration system are obstacles to the reforms that the review calls for.

1. The ‘cannot be ignored’ importance of the Out of Scope items (a), (b) and (d)
* We say that if the review totally ignores these items – which in combination constitute such a large proportion of the migration system's *‘clients’, focus* and *expenditure* that they skew and distort the whole regime – it cannot properly address six of the seven Task (Scope) items, i.e., TORs. If the review is to accurately inform National Strategy, it needs to consider relevant aspects of (a), (b) and (d).
* As to the proportion of *‘clients’*, the Discussion Paper’s Table 1 (at p 9) shows that, of the 2,210,038 Temporary visa holders in Australia, 381,224 (17.2%) are a cohort that includes many “irregular migration” people, who thus belong to Out of Scope item (a).
* As to *focus*, for five decades, media coverage of people coming or trying to come to Australia has concentrated mainly on vilification.
* As to *expenditure*, *The Saturday Paper* (10/9/22) detailed Australia’s squandering of $9.65 billion on offshore processing. *TSP* noted: “[Morrison’s] last budget … allocated $482.5 m for offshore processing in 2022 – 23, … [although] no-one has been sent for offshore processing since 2014”(!).
* RAC (Vic) notes that PNG’s Manus Island regional processing centre (RPC) closed in October 2017, and Nauru’s has been empty since 31/3/19 according to DHA/ABF’s monthly statistics bulletins. So why is DHA negotiating (as *TSP* reported) a multi-million dollar contract with “US-based Management and Training Corporation”, for “facilities, garrison, transferee arrivals and reception services” on Nauru – when Nauru’s empty “facilities” need no “garrison”, and will see no “arrivals” requiring “reception services”?
1. Reforms called for by **TORs 1, 2 & 3** (enriching the economy & productivity; augmenting education/training/skills; unlocking migrant potential) can’t succeed while many holders of non-permanent visas, including many in the “irregular migration and status resolution” cohort, are prohibited from working and/or studying. There also needs to be a much simpler process for recognising overseas-obtained qualifications.
2. Comprehensively “improving clients’ experience” (**TOR 5**) can’t occur while Australia keeps unfairly treating asylum seekers who arrive outside the humanitarian program much less humanely than those coming within it. People and their capacity to contribute are damaged.
* Mandatory detention can last for decades and, in a few cases, indefinitely (for life).
* Prolonged detention (which breaches the Refugee Convention) has severely damaged detainees’ mental health, impacting their ability to live a full life, and to work & study. Survivors of detention are recorded as being on high levels of psychotropic medication: they experience changed sleep patterns and impaired cognition.
* In 2019, the Migration Act’s ‘Medevac’ amendment, drafted to ensure that extremely ill offshore detainees airlifted to Australia receive specialist medical care, was sabotaged by DHA. How? It kept all the 192 transferees in immigration detention facilities (IDFs), where its ABF unit denied most of them access to external specialist care – thereby further damaging their health, and further reducing their ability to contribute to society.
* In 2017 – 19, 8,000 forced inter-IDF transfers of (often handcuffed) detainees occurred, by air (M Peterie, *The Conversation,* 2/3/20), averaging 6 transfers a year per detainee.
* The TOR document says that “The migration system … [can] shape our international reputation”. Given the above points (and others), our reputation is deeply shameful.
1. **TOR 6** seeks reforms that “provide clear pathways to permanent residence and citizenship” and “reduce the exploitation of migrant workers”, but within excluded area (a) “irregular migration and status resolution”, policy and practice continue to do the opposite. RAC (Vic) is adamant that those approaches must be brought to an end.
* As to “clear pathways to permanent residence and citizenship”, RAC (Vic) notes that, since 2014, Safe Haven Enterprise Visas (SHEVs) have been available to refugees who (a) came by ‘irregular’ means (boat) before Rudd’s July 2013 edict that ‘you won’t be resettled here’, and (b) agreed to live and work in a regional area. Yet the inaugural announcement that SHEVs would give holders “a pathway to permanent residence” was a cruel hoax. As the ABC’s *7:30* program reported on 22/3/22, “Just one in 13,000 refugees have been resettled … [via the SHEV] regional visa program”.
* Labor promised at the May 2022 election to make two non-permanent visas, temporary protection visas (TPVs) and SHEVs, permanent. But Labor in government has not yet done so. The review should call for that promise to be fulfilled forthwith.
* As to worker exploitation, RAC (Vic) notes that some current system elements *are* *causing it*. For example, non-citizens who receive miniscule financial support, but hold a bridging visa that prohibits them from working, are impelled (by the need to survive) to work unlawfully – whereupon they become extremely exploitable.
1. **TOR 7** suggests fostering “enhanced integration (including people) with our international friends and partners”, but Out of Scope item (d) – the character test – obstructs this aim.
* Non-citizens applying for a visa to enter Australia must satisfy the Migration Act’s section 501 “character test”. Likewise, those who are here with a visa must not ‘fail’ section 501: if they do, their visa may be cancelled, they can be immediately placed in immigration detention and, later, in some instances, deported.
* Some of “our international friends and partners” (Hong Kong for example) criminalise protests. None of their convicted protestors can come here because section 501 denies entry to anyone with a “criminal history”, no matter how highly skilled they are, and no matter how much their protesting proves that they share “our values”.
* Much of the character test treats visa applicants like ‘enemy aliens’ – a potential threat to our community – whereas the review calls for an inclusive approach that treats visa applicants as a welcome resource – as people who can enrich our community.
* Further, sections 116(3) and 501 respectively result in the indefinite detention of *some* non-citizens who are charged with a serious crime but are found not guilty, and *all* un-deportable non-citizens who, after being found guilty and sentenced to imprisonment, have served their time. Yet *all citizens* in such situations are just *released into society* – although there’s no evidence that they are less likely to re-offend than non-citizens.

**RAC (Vic) Recommendations**

* 1. RAC (Vic) recommends that:

(a) **review panel members write to the Minister for Home Affairs seeking approval for them to consider any matter outside the Task (Scope) if, in their opinion, it is relevant to one or more of the TORs**;

1. all refugees and asylum seekers remaining in PNG or Nauru be brought here ASAP;
2. migrants receive support and information in their own language regarding workers’ rights and employment law in Australia;
3. all amendments to the Migration Act that inserted or further ‘strengthened’ sections 501 and 116 (and closely related provisions) be repealed;
4. the Migration Act’s Refugee Convention-based definition of “refugee” be extended to cover people forced to leave their country due to the effects of climate change;
5. all refugees and asylum seekers who arrive in Australia receive the humanitarian program’s level of support and benefits, even if currently outside that program;
6. the Migration Act be amended to include a new Object, “to ensure the successful resettlement of migrants”, thereby making that aim a key focus; and
7. permanent visas be granted ASAP to the following non-citizens –
	* 1. refugees and asylum seekers denied justice by the unfair ‘Fast Track’ system;
		2. all those who were or are detained in Australia, Nauru, or PNG; and
		3. those on TPVs, SHEVs, and Bridging Visas

– so that they can fully contribute.

* 1. RAC (Vic) recommends the following substantial reforms.
		+ 1. Ending mandatory and indefinite detention, by repealing a long list of Migration Act amendments, e.g., the *Migration Amendment (Clarifying International Obligations for Removal) Act 2021* (Cth). It entrenched detention for life of all un-deportable offender detainees, including those who are un-deportable only because they are stateless.
			2. Ending other cruel policies, e.g., regional processing; Morrison’s 2014 ban on taking UNHCR-determined refugees held in Indonesia (now totalling 14,000); and boat turn-backs. The Nauru RPC must be closed, and the humanitarian intake increased to at least 50,000 pa. To regain its international reputation, Australia must comply with its human rights obligations, and end the ‘newcomers as threat’ approach that has long distorted migration policy – by restoring immigration’s traditional nation-building focus.

(c) Drastically simplifying the complex and cumbersome visa system, so that Australia can benefit from all categories of newcomers including asylum seekers and refugees. We urge the review to recommend removal of the Migration Act’s many visa-related restrictions and prohibitions that deny non-citizens access to a “clear pathway”.

1. A pro-active, constant Government campaign promoting the benefits and strengths of refugees and people seeking asylum. For far too long, governments have vilified asylum seekers, even refugees, creating an atmosphere of fear and suspicion. If, as the Discussion Paper suggests, we are to develop a truly “new strategic approach that reflects Australia’s values as a diverse, welcoming and fair society”, we must end the vilification, and embrace whole-heartedly those who seek protection here.

**In conclusion**

As the Discussion Paper says, “migration is essential to the modern Australian story”. There’s ample evidence of the economic benefits that refugees resettled in the Australian community bring. Importantly, we wish to highlight the richness of their contribution to Australia’s cultural and social life. Any review of the current migration system must acknowledge and address the pressing issues facing refugees and asylum seekers in Australia, PNG, Nauru, and Indonesia.