

Refugee Legal:
Defending
the rights of
refugees.

Submission to the Senate Select Committee on COVID-19

10 June 2020

Defending the rights
of refugees.

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Refugee Legal

Refugee Legal (formerly the Refugee and Immigration Legal Centre) is a specialist community legal centre and the largest provider of free legal assistance to asylum-seekers and disadvantaged migrants in Australia. Since its inception over 32 years ago, Refugee Legal and its predecessors have assisted many thousands of asylum seekers and migrants in the community and in detention.

Refugee Legal specialises in all aspects of refugee and immigration law, policy and practice. Our model involves direct client work, strategic work for change and education and training. In the last financial year, we assisted over 14,285 vulnerable asylum seekers, refugees and migrants. With key partners, we have succeeded for clients in 10 out of 10 High Court cases with the benefits flowing to many thousands of other people seeking asylum. We are also one of the leading providers in Australia of education and training in all aspects of Australia's refugee and immigration program. We play an active role in professional training, community education and policy development. We are a longstanding member of the peak Department of Home Affairs/Immigration and Border Protection-NGO Dialogue and other consultative fora. Refugee Legal has substantial casework experience and is a regular contributor to the public policy discourse on refugee and general migration matters.

1. Overview of submission

- 1.1. We welcome the opportunity to provide a submission to the Senate Select Committee on COVID-19 (the **Committee**) in relation to the Australian Government's response to the COVID-19 pandemic and any related matters. This submission draws to the Committee's attention the significant disadvantage experienced by applicants and visa holders, including those detained onshore and offshore, due to the impact of COVID-19. It is not intended to be an exhaustive discussion of the issues and instead outlines some of the key areas of concern for asylum seekers, refugees and temporary migrants through illustrative case studies.¹ Given the ongoing and fluid nature of this public health emergency, we anticipate that other issues may develop over time and we look forward to further engaging with the Committee.
- 1.2. The COVID-19 public health emergency has caused a paradigm shift in the way that we live and work. The Australian Government has largely responded accordingly with paradigm shifts in policy, underpinned by the principle of collective responsibility. However, there has been a categorical failure to meet the needs of asylum seekers, refugees and temporary migrants. These vulnerable groups have often been excluded from access to medical treatment and a financial safety net, with implications for the protection of their legal rights and ability to meaningfully engage with the immigration system. The result is an inequitable response that has excluded some of the most vulnerable in our community, placing at risk our collective health.
- 1.3. We consider that at the forefront of the Australian Government's response to COVID-19 must be the basic principle that the health of one affects the health of all. This requires inclusive measures that do not discriminate on the basis of visa status. We discuss below the following key issues of concern based on the direct experiences of our clients:
 - (a) Limited access to medical treatment and Medicare;
 - (b) Exclusionary financial safety net;
 - (c) Unsafe conditions in onshore immigration detention;
 - (d) Inadequate healthcare in regional processing countries; and
 - (e) Lack of flexibility and fairness in immigration processing.

2. Recommendations

We recommend that the Australian Government adopt the following measures as part of the response to COVID-19:

- (1) **Recommendation 1:** The Australian Government should provide universal access to medical treatment and Medicare during the COVID-19 pandemic.
- (2) **Recommendation 2:** The Australian Government should immediately expand eligibility for the JobKeeper and JobSeeker payments to include temporary visa holders, including those on bridging visas.
- (3) **Recommendation 3:** The Australian Government should amend the eligibility criteria for the Status Resolution Support Services Payment to include those who have suffered financial hardship due to the direct or indirect impact of COVID-19, such as those who are currently ineligible for the payment because their visas permit them to work.

¹ To protect the identities of our clients, the case studies in this submission have been modified to ensure de-identification of any personal particulars.

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- (4) **Recommendation 4:** The Australian Government should release the women and men in onshore immigration detention into safer accommodation.
- (5) **Recommendation 5:** The Australian Government should immediately transfer back to Australian territory those asylum seekers and refugees held in Nauru and Papua New Guinea under offshore processing arrangements.
- (6) **Recommendation 6:** The Australian Government should immediately regularise the status of all those without valid visas.
- (7) **Recommendation 7:** The Australian Government should develop specific COVID-19 policies that provide guidance to decision-makers on the exercise of their discretions under the *Migration Act 1958* (Cth). Both the content and implementation of such policies should ensure appropriate flexibility and fairness in immigration processing, and be developed in consultation with the legal sector, visa applicants and holders.
- (8) **Recommendation 8:** The Australian Government should amend the *Migration Act 1958* (Cth) to ensure no person is disadvantaged for being unable to comply with statutory timeframes and other requirements due to the impact of COVID-19.

3. Limited access to medical treatment and Medicare

- 3.1. Many temporary visa holders, including asylum seekers, have been unable to access affordable medical treatment and remain ineligible for Medicare during the COVID-19 pandemic. This includes some holders of bridging visas who are awaiting the outcome of their visa applications and those without a valid visa.
- 3.2. This has resulted in significant gaps in the accessibility of comprehensive and adequate medical treatment. Without a universally-accepted Medicare card, some of our most vulnerable clients report being denied medical treatment.

Case Study 1

Camila is on a bridging visa while she awaits the outcome of her protection visa application. Her son, Johane, was born in Australia after she lodged her visa application. Earlier this year, in the middle of the night, Johane became ill with a fever and cough. Camila took Johane to the local public hospital but was told that they could not treat Johane as he did not have a Medicare card. Camila was eventually able to get treatment for Johane at a private hospital. The doctor told Camila to purchase children's Panadol for Johane and watch him at home. Camila was charged \$150 for this consultation. She is worried about how she will pay this fee and concerned about how she will afford further medical treatment if Johane requires it.

- 3.3. While some State and Territory Governments have announced fee exemptions for the testing and treatment of COVID-19, there remains limited and inconsistent access to medical treatment for other health conditions, including those conditions that may increase susceptibility to the virus such as hypertension and diabetes.
- 3.4. There has also been substantial uncertainty and fear amongst temporary visa holders about the healthcare they are able to access due to a lack of effective communication from the Australian Government to those directly affected. This fear has impacted on the willingness of some temporary visa holders to seek medical treatment and exacerbated existing anxieties about access to healthcare. For some, it has operated as a disincentive to seeking any medical treatment, including general health checks or treatment for existing health conditions.
- 3.5. The exclusion of asylum seekers, refugees and temporary migrants from the health system during a public health emergency places those individuals and the broader community at increased risk of contracting COVID-19. Urgent action is required by the Australian Government to ensure access to medical treatment for all people.

Recommendation 1: The Australian Government should provide universal access to medical treatment and Medicare during the COVID-19 pandemic.

4. Exclusionary financial safety net

- 4.1. Temporary visa holders have been denied access to the Australian Government's COVID-19 financial safety net and many face the prospect of homelessness and destitution. The discriminatory criteria for JobKeeper and JobSeeker has resulted in thousands of workers being excluded from this critical income support due to their visa status, despite fulfilling the same roles as other employees who are eligible.²
- 4.2. While some bridging visa holders are able to access the modest Status Resolution Support Services Payment – calculated as a percentage of a Centrelink payment – stricter rules over the preceding years has meant that many more are ineligible for this basic lifeline.³ This includes those whose bridging visas permit them to work, irrespective of the reality that many lost their jobs due to the direct impact of COVID-19, have therefore been unable to work for months and now face uncertain employment prospects.

Case Study 2

Mohammed works in a local restaurant as a waiter. He has been waiting for a decision from the Department of Home Affairs on his protection visa application since 2017. He lost his job in March when the restaurant was forced to close due to the restrictions imposed as a result of COVID-19. He searches for jobs online every week, but without any success. While some of the other waiters have been able to access JobKeeper or JobSeeker because they are permanent residents or Australian citizens, Mohammed is not eligible for any government financial assistance. He has been forced to move in with friends and rely on the generosity of the restaurant's patrons and his local community to survive.

- 4.3. The financial impact of COVID-19 has also significantly constrained the choices available to asylum seekers and temporary migrants. While many have lost their only sources of income, others have had to make difficult choices in order to retain work due to the absence of an equitable and inclusive safety net. This has included exposing children and themselves to additional and unwanted health risks at school and work, respectively.

² Temporary visa holders are not eligible for the JobSeeker or JobKeeper payments: see Services Australia, "JobSeeker Payment: Who can get it" (updated 22 May 2020) available online: <<https://www.servicesaustralia.gov.au/individuals/services/centrelink/jobseeker-payment/who-can-get-it>> and Australian Taxation Office, "JobKeeper Payment: Eligible Employees" (updated 2 May 2020) available online: <<https://www.ato.gov.au/general/jobkeeper-payment/employees/eligible-employees/>>.

³ See Department of Home Affairs, "Status Resolution Service" (updated 17 March 2020) available online: <<https://immi.homeaffairs.gov.au/what-we-do/status-resolution-service/status-resolution-support-services>>. In relation to the impact of changes to the eligibility criteria for the Status Resolution Support Services Payment see eg Refugee Council of Australia, "An unnecessary penalty: Economic impacts of changes to the Status Resolution Support Services" (9 July 2019) available online: <<https://www.refugeecouncil.org.au/srss-economic-penalty/>>.

Case Study 3

Rebecca is a single parent on a bridging visa. She is not eligible for Centrelink benefits. Her 10-year-old daughter goes to the local primary school. When the schools closed due to COVID-19, Rebecca could not afford to take time off work to home school her daughter and did not have the money to send her to childcare. Rebecca had to make the difficult decision to continue sending her daughter to school for “supervised remote learning” throughout the pandemic, while other students were able to safely self-isolate with their families.

- 4.4. The discriminatory financial safety net has unfairly excluded some of the most vulnerable from basic income support during a period of unprecedented economic downturn. While the Australian Government has suggested that temporary visa holders should “return home” if they are unable to support themselves, this is not an option for asylum seekers seeking protection in Australia due to their fears of being persecuted in their home countries. Nor is it a realistic option for many other temporary migrants due to a range of factors, including travel restrictions, overseas border closures and the very limited availability of international flights. Many of these people are also likely to be critical in enabling Australian businesses to re-start operations and stimulate growth in the economy. In the context of the recently announced economic stimulus package,⁴ there is no principled basis upon which to exclude a large and willing workforce merely due to their visa status.

Recommendation 2: The Australian Government should immediately expand eligibility for the JobKeeper and JobSeeker payments to include temporary visa holders, including those on bridging visas.

Recommendation 3: The Australian Government should amend the eligibility criteria for the Status Resolution Support Services Payment to include those who have suffered financial hardship due to the direct or indirect impact of COVID-19, such as those who are currently ineligible for the payment because their visas permit them to work.

5. Unsafe conditions in onshore immigration detention

- 5.1. While Australians are told to physically distance and self-isolate in their homes to reduce the transmission of COVID-19, as at 31 March 2020 there were 1373 people held in immigration detention facilities across the country prevented from following this critical health advice.⁵ The conditions in these facilities make physical distancing impossible. Those held must sleep in dorm rooms with bunk beds and share toilets and showers, with limited supplies of soap and hand sanitiser.
- 5.2. Medical experts including the Australasian Society for Infectious Diseases and the Australian College of Infection Prevention and Control – along with over 1100 medical professionals – have consistently advised the government that the immigration detention environment places people at greater risk of infection and

⁴ See The Treasury, “Economic Response to Coronavirus” (undated) available online: <<https://treasury.gov.au/coronavirus>>. See also Prime Minister of Australia, “Economic Stimulus Package” (Media Release, 12 March 2020) available online <<https://www.pm.gov.au/media/economic-stimulus-package>>.

⁵ Statistics as at 31 March 2020, which are the most recent statistics published at the time of drafting this submission: Department of Home Affairs, Immigration Detention and Community Statistics Summary, 31 March 2020 <<https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf>>.

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possible death.⁶ The Australian Government's own policy guidelines advise that detention centres are "higher risk environments for outbreaks because of difficulties practicing social distancing in these facilities".⁷

- 5.3. Many of those who are trapped in detention also have health conditions such as diabetes and hypertension that place them at increased risk of severe complications from COVID-19. Following the Australian Government's health advice, people with these profiles should self-isolate to protect themselves against the risk of contracting the virus.⁸ However, the rules are different in immigration detention.
- 5.4. Those detained fear for their health and the health of those around them. They know that if the virus enters an immigration detention facility – which remains a very real possibility – it is likely to spread rapidly. We are assisting many people who are desperate to be moved somewhere safer due to the risks of contracting COVID-19.

Case Study 4

Ranjith has hypertension. He has never been found to be a risk to the Australian community, but has been held in an immigration detention centre for 16 months as he has no valid visa. Ranjith reports that the many staff and contractors who routinely come in and out of the centre do not wear masks or gloves. In most areas of the centre, it is impossible to remain 1.5m apart. He is scared that after fleeing persecution as a refugee, he will contract the virus in an Australian detention centre.

- 5.5. The measures adopted by the Australian Government to manage the risk of COVID-19 entering and spreading within a detention centre have been inadequate.⁹ Restrictions on visitation and excursions have limited the number of people frequenting detention centres, but do not address the cramped and crowded conditions that remain in these facilities. These restrictions have also, in practice, significantly limited access to legal representation (see further Section 7: Lack of flexibility and fairness in visa processing) and negatively impacted on the mental health of detainees who are already isolated from support networks.

⁶ Rebekah Holt and Saba Vasefi, "We are sitting ducks for Covid 19': asylum seekers write to PM after detainee tested in immigration detention" *The Guardian* (24 March 2020) available online: <https://www.theguardian.com/australia-news/2020/mar/24/we-are-sitting-ducks-for-covid-19-asylum-seekers-write-to-pm-after-detainee-tested-in-immigration-detention> and "Australian doctors call for refugees to be released amid coronavirus fears" *SBS News* (2 April 2020) available online: <https://www.sbs.com.au/news/australian-doctors-call-for-refugees-to-be-released-amid-coronavirus-fears>. See also OHCHR, IOM, UNHCR and WHO, "The rights and health of refugees, migrants and stateless must be protected in COVID-19 response" (Joint media release, 31 March 2020) available online: http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

⁷ Australian Government, Department of Health, *Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities*, 31 March 2020, available online: <https://www.health.gov.au/sites/default/files/documents/2020/03/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>.

⁸ Australian Government, Department of Health, "Coronavirus (COVID-19) advice for people with chronic health conditions" (updated 22 May 2020) available online: <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19/coronavirus-covid-19-advice-for-people-with-chronic-health-conditions>.

⁹ See Australian Government, Department of Home Affairs, *COVID-19 Management in Immigration Detention Facilities* (v 2.2) (undated).

Case Study 5

Abraham suffers from diabetes and has a compromised immune system due to a history of health issues. He was moved into "isolation" and separated from other detainees, as he is at increased risk of severe complications from COVID-19. His mental health has deteriorated and he keeps recalling the trauma he experienced before fleeing to Australia. He feels alone and disconnected. He describes this isolation as like being held in solitary confinement.

- 5.6. There are also practical difficulties in accessing immigration detention facilities and communicating with those who are detained such as restrictions on visitors and limited access to telecommunications facilities (see further paragraph 7.2(e)). These difficulties are exacerbated by a lack of clear, consistent communication lines with detention centre management, resulting in limited oversight and accountability in relation to conditions and treatment in detention.
- 5.7. There are similar risks to health for those held in some alternative places of detention (APODs), such as hotels or motels. While conditions may vary between APODs, people generally share a bedroom with at least one other person and we have received reports of up to four people in each apartment. Like immigration detention centres, it can be impossible to physically distance in these environments.¹⁰ Some of those held in APODs also have severe medical conditions and were transferred to Australia from Nauru or Papua New Guinea for medical treatment (see also Section 6: Inadequate healthcare in regional processing countries). They are particularly vulnerable to life-threatening complications from COVID-19.¹¹
- 5.8. The *Migration Act 1958* (Cth) (the **Migration Act**) creates clear alternatives to detaining vulnerable people in immigration detention centres or APODs, including the ability for the Minister for Home Affairs to grant bridging visas¹² or residence determinations enabling people to reside in the community.¹³ However, the Australian Government has consistently failed to utilise these existing mechanisms. We urge the Australian Government to urgently move people detained in immigration detention facilities, including APODs, into safer accommodation during the COVID-19 pandemic.

Recommendation 4: The Australian Government should release the women and men in onshore immigration detention into safer accommodation.

6. Inadequate healthcare in regional processing countries

- 6.1. The Australian Government's response to COVID-19 must also extend to the approximately 430 refugees and asylum seekers who remain trapped in Nauru and Papua New Guinea. The Australian Government has a moral and legal responsibility to safeguard the health of those who were transferred to offshore detention against their will pursuant to its own policy.¹⁴ Some of those who remain offshore are

¹⁰ See eg Bianca Hall, "Doctors warn of deadly coronavirus risks for refugees, guests at Melbourne hotel" *The Sydney Morning Herald* (1 April 2020) available online:

<<https://www.smh.com.au/national/doctors-warn-of-deadly-coronavirus-risks-for-refugees-guests-at-melbourne-hotel-20200401-p54g1t.html>>.

¹¹ See eg Ali MC, "Australia's detained medical-evacuation refugees fear coronavirus" *Al Jazeera* (17 April 2020) available online: <<https://www.aljazeera.com/news/2020/04/australia-detained-medical-evacuation-refugees-fear-coronavirus-200417010359139.html>>.

¹² See ss 37 and 195A of the Migration Act.

¹³ See Subdivision B of Division 7 of Part 2 of the Migration Act.

¹⁴ See Subdivision B of Division 8 of Part 2 of the Migration Act. In relation to the duty of care owed by the Australian Government to those transferred offshore see eg *Plaintiff S99/2016 v Minister for Immigration and Border Protection* [2016] FCA 483; United Nations High Commissioner for Refugees,

awaiting transfer to Australia for urgent medical treatment due to the lack of adequate health facilities in Nauru and Papua New Guinea.¹⁵

Case Study 6

Sara came to Australia by boat in 2013 after fleeing persecution in a Middle Eastern country. She was transferred to Nauru under the Australian Government's offshore processing arrangements. Sara has complex mental and physical health needs. She applied for transfer to Australia for urgent medical treatment late last year, but is now unsure if she will be able to come to Australia due to the repeal of the Medevac legislation. She is fearful of contracting COVID-19 and does not believe she will be able to access proper treatment in Nauru if she does contract the virus. Sara feels like she has no options. She believes she has been forgotten.

- 6.2. The health systems in Nauru and Papua New Guinea are not equipped to manage a large-scale outbreak of COVID-19. Nauru has only one state-run hospital¹⁶ and there are reports that the country has limited ventilators.¹⁷ Papua New Guinea is reported to have only 300 hospital beds and a severe shortage in personal protective equipment for healthcare workers on the frontline.¹⁸ Both lack the infrastructure to respond to large-scale transmission of the virus, with few qualified doctors and nurses.¹⁹ This puts those transferred from Australia under offshore processing arrangements at heightened risk of infection and possible death from COVID-19.
- 6.3. The Australian Government holds primary moral and legal responsibility for the asylum seekers and refugees transferred to Nauru and Papua New Guinea – and, in practice, retains effective control over their fate – and, in turn, must take swift action to safeguard their health during the COVID-19 pandemic.

Recommendation 5: The Australian Government should immediately transfer back to Australian territory those asylum seekers and refugees held in Nauru and Papua New Guinea under offshore processing arrangements.

7. Lack of flexibility and fairness in immigration processing

- 7.1. The COVID-19 pandemic has significantly impacted on the operation of the immigration system. While adjustments have been made in most other areas of

Protecting Refugees in Australia and globally (9 September 2019) available online:

<<https://www.unhcr.org/en-au/publications/legal/5d75d8317/protecting-refugees-in-australia-and-globally.html>> and United Nations High Commissioner for Refugees, "UNHCR urges Australia to evacuate off-shore facilities as health situation deteriorates" (Briefing Note, 12 October 2018) available online <<https://www.unhcr.org/en-au/news/briefing/2018/10/5bc059d24/unhcr-urges-australia-evacuate-off-shore-facilities-health-situation-deteriorates.html>>.

¹⁵ See ss 198B of the Migration Act and the now repealed ss 198C-198J, the latter of which is referred to as the "Medevac legislation" introduced by the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (Cth).

¹⁶ The Government of the Republic of Nauru, "Nauru RON Hospital" (undated) available online: <<http://www.naurugov.nr/government/departments/departments-of-health-and-medicinal-service.aspx>>.

¹⁷ Owen Amos, "Coronavirus: Where will be the last place to catch Covid-19?" *BBC News* (3 April 2020) available online: <<https://www.bbc.com/news/world-52120439>>.

¹⁸ "We were behind the eight ball": Papua New Guinea's health minister on Covid-19" *The Guardian* (30 April 2020) available online: <<https://www.theguardian.com/world/2020/apr/30/papua-new-guinea-png-health-minister-covid-19-coronavirus-ppe>>.

¹⁹ See footnotes 17 and 18. See also Melissa Clarke, "Coronavirus could see Papua New Guinea, Indonesia become failed states" available online (28 April 2020) <<https://www.abc.net.au/news/2020-04-28/coronavirus-risks-indonesia-png-becoming-failed-states/12191850>>. Nauru and Papua New Guinea are ranked among the least prepared nations in the area of health security: see Nuclear Threat Initiative, John Hopkins Center for Health Security and The Economist Intelligence Unit, "Global Health Security Index" (2019) available online: <<https://www.ghsindex.org/country/nauru/>> and <<https://www.ghsindex.org/country/papua-new-guinea/>>.

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government services, those seeking to access the immigration system have been disadvantaged by a lack of flexibility and fairness in decision-making.

- 7.2. We highlight below some of the key areas where the impact of COVID-19 has adversely impacted on the ability of asylum seekers, refugees and temporary migrants to exercise their legal rights:
- (a) There have been delays in processing applications for bridging visas, leaving many undocumented and without access to Medicare (see Section 3: Limited access to medical treatment and Medicare).
 - (b) Applicants have experienced difficulties in obtaining evidence and documents required by the Department of Home Affairs to process their visa applications. This issue is particularly acute for applicants seeking to rely on the family violence provisions in the Migration Act who are generally required to provide evidence of the violence they experienced within 28 days and have been unable to do so due to limited access to medical practitioners and support services.²⁰ While decision-makers have discretion to grant extensions for the provision of evidence, this has not been applied consistently.

Case Study 7

Amina fled from domestic violence at the height of the COVID-19 pandemic and is currently living in a women's refuge. She is a dependant on her husband's visa so has no independent right to remain in Australia. She fears that she will be forced to return to her home country, where she faces violence for leaving her husband. She has lodged an application for a protection visa but has not been able to provide certified copies of her passport as she left it behind when she escaped. She has been given 7 days to provide a copy of her passport or her application might be invalid. She does not know how she will safely retrieve her passport and other documents.

- (c) Some protection visa applicants have been requested to attend interviews by telephone, even where their claims are complex or they are particularly vulnerable. Given that issues of demeanour and credibility are often highly relevant to assessing a claim for protection, applicants who are required to attend interviews by telephone are often substantially disadvantaged. While some Departmental case officers have agreed to postpone interviews until video-conferencing facilities are available or face-to-face interviews resume, there has been an inconsistent approach. We remain concerned about the disadvantage to applicants who are required to proceed with a telephone interview, particularly applicants who are unrepresented.
- (d) The Department and the Minister for Home Affairs have continued to make visa cancellation decisions, engaging statutory timeframes that require applicants and review bodies to seek and determine appeals within very short timeframes.²¹ This

²⁰ The "family violence provisions" refers to the special arrangements for family violence contained in Division 1.5 of the *Migration Regulations 1994* (Cth) (the **Migration Regulations**). These provisions provide a pathway for holders of partner visas to remain in Australia if their relationship with the sponsor ends due to family violence. See further Australian Government, Department of Home Affairs "Family violence and your visa" (updated 17 March 2020) available online: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/family-violence-and-your-visa>.

²¹ For example, there are rules requiring comments to be provided within 5 working days to 28 days (s 121 of the Migration Act, read with reg 2.44 of the Migration Regulations; s 129 of the Act, read with reg 2.46 of the Migration Regulations). Most problematically, and as referenced in Case Study 8, applicants must comply with strict timeframes when seeking review of a decision made by the Minister (s 500(6B) of the Migration Act) and the Tribunal is taken to affirm the original decision to cancel a visa or not to revoke the cancellation on character grounds if it does not make a review decision within 84 days (s 500(6L) of the Migration Act).

has also increased pressure on the detention system (see Section 5: Unsafe conditions in onshore immigration detention).

Case Study 8

Farhad is in immigration detention. His refugee visa was cancelled in 2016 and he has been waiting for the Minister for Home Affairs to determine whether the visa cancellation should be revoked. During the COVID-19 pandemic, a delegate of the Minister made a decision not to revoke Farhad's visa cancellation. Due to timeframes in the Migration Act, Farhad had only 9 days to apply for review and the Administrative Appeals Tribunal has only 12 weeks to decide his case or the delegate's decision will automatically be affirmed. Farhad must now collect evidence from psychologists, government departments and friends and family to establish that he should be given back his visa. Due to restrictions imposed to reduce the spread of COVID-19, he will not be able to appear in-person to give evidence at the Tribunal hearing. With these additional barriers, Farhad is worried that he will lose the opportunity to properly make his case and may be deported.

- (e) There are significant barriers to accessing legal representation, interpreters and support services, particularly for those in immigration detention due to restrictions on visitors and the limited availability of telecommunications facilities. In this context, it is deeply concerning that the Parliament is currently debating the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020, which would enable the prohibition of mobile phones in immigration detention centres and further limit access to legal assistance for those detained.²² Without these supports, many applicants are unaware of their legal rights and unable to navigate the complex immigration system. For those from a refugee background, these are quite literally matters of life or death.

- 7.3. There is an urgent need for increased flexibility and fairness in the operation of the immigration system to ensure that no applicants or visa holders are disadvantaged by the direct or indirect impact of COVID-19. Where the legislative framework confers discretion on decision-makers to grant extensions or waive requirements, this discretion should be exercised to consider the impacts of the virus. To ensure consistency in decision-making, specific COVID-19 policies should be developed in consultation with the legal sector and those directly affected to provide guidance to decision-makers on the exercise of their discretions during this public health emergency. Both the policies, and implementation of these policies, should enable appropriate flexibility to take into account the various ways in which a visa applicant or holder may be impacted by COVID-19. Where there is no such discretion, amendments should be made to the Migration Act to preserve and protect legal rights.

Recommendation 6: The Australian Government should immediately regularise the status of all those without valid visas.

Recommendation 7: The Australian Government should develop specific COVID-19 policies that provide guidance to decision-makers on the exercise of their discretions under the *Migration Act 1958* (Cth). Both the content and implementation of such policies should ensure appropriate flexibility and fairness in immigration processing, and be developed in consultation with the legal sector, visa applicants and holders.

Recommendation 8: The Australian Government should amend the *Migration Act 1958* (Cth) to ensure no person is disadvantaged for being unable to comply with statutory timeframes and other requirements due to the impact of COVID-19.

²² The Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 is currently being considered by the Senate Legal and Constitutional Affairs Committee.

8. Conclusion

- 8.1. The COVID-19 pandemic has caused unprecedented disruptions to all aspects of life and work. While the Australian Government's response includes a range of positive measures, some of the most vulnerable have been excluded on the basis of their immigration status. This discriminatory response is most acutely demonstrated in the areas of medical treatment and Medicare, financial support, onshore and offshore immigration detention and visa processing. Without an equitable and inclusive response to COVID-19, we endanger the health of not only those who have been left behind, but the broader Australian community. We therefore urge the Australian Government to adopt our recommendations.