



## **SUBMISSION**

Prepared by South-East Monash Legal Service Inc. for the  
**Joint Standing Committee on Migration**  
**Migration, Pathway to Nation Building**

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**Head Office**

A: 5 Osborne Avenue, Springvale  
Vic 3171  
P: (03) 9545 7400  
PO Box 312, Springvale, VIC 3171  
W: [smls.com.au](http://smls.com.au)

**Branch Office**

A: Suite 1, Level 2, 64 Victor Crescent, Narre Warren  
Vic 3805  
P: (03) 9038 8002  
PO Box 2543, Fountain Gate VIC 3805  
ABN: 96 206 448 228 | Reg: A0013997D



## **Our organisation**

Established in 1973, South-East Monash Legal Service ('**SMLS**') is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, employment law, sexual assault and victims of crime, youth law, gambling and electronic gaming machines and other legal topics relevant to our service delivery and the needs of our community.

## **Acknowledgement of Country**

SMLS wishes to acknowledge the traditional custodians of this lands upon which our office are located, the Wurundjeri and the Boon Wurrung peoples. We pay our respects to the Elders past, present and emerging.

We acknowledge the people, traditions, culture and strength of Aboriginal and Torres Strait Islander peoples, and the fight for survival, justice and country that has taken place across Victoria and Australia.

We sincerely thank the Traditional Custodians for caring for Country for thousands of generations. SMLS recognises the ongoing impact of colonisation, dispossession and racism experienced by Aboriginal peoples. As a Community Legal Centre, we acknowledge the violence of Australian law and its ongoing role in processes of colonisation. We recognise that sovereignty was never ceded, and that this always was and always will be Aboriginal land.

## **Terms of Reference**

1. The role of permanent migration in nation building, cultural diversity and social cohesion
2. Immigration as a strategic enabler of vibrant economies and socially sustainable communities in our cities and regional hubs
3. Attraction and retention strategies for working migrants to Australia;
4. Policy settings to strengthen skilled migrant pathways to permanent residency;
5. Strengthening labour market participation and the economic and social contribution of migrants, including family and humanitarian migrants and the partners of working migrants;
6. The role of settlement services and vocational training in utilising migrant experiences, knowledge and opportunities; and
7. Other related matters that may assist the inquiry

## **Scope of submission**

Many of the questions are outside of the scope of SMLS services. We have only provided comments where we were confident that our expertise was a valuable contribution to the subjects raised.

## **Introduction**

We thank the Joint Standing Committee on Migration for the opportunity to provide a submission on Australia's migration system, with reference to the role of permanent migration in nation building. SMLS has a long history of providing legal support to temporary visa holders across employment, and more recently, family violence matters. SMLS's Safe Landing project is an integrated migration and family violence legal service available to clients on temporary visas who are experiencing family violence. Further, our employment law work includes Fair Work Ombudsman outreaches, general employment law clinics, and a dedicated Advocacy Against Sexual Harassment project.

## **Attraction and retention strategies for working migrants to Australia**

### **Fair Entitlements Guarantee**

The current Fair Entitlements Guarantee eligibility does not promote retention of working migrants to Australia. Fair Entitlements Guarantee provides a critical safety net for workers when their employer goes insolvent and cannot pay unpaid wages and entitlements. However, temporary migrant workers (excluding Special Category visa holders from New Zealand) are excluded. This means international students, working holiday workers and other temporary visa holders miss out. This means that these workers are missing out of their lawful entitlements because of their visa status. It is equally not fair nor appropriate that migrant workers bear the debt of their unpaid lawful entitlements if their employer does not or cannot pay.

In the Second Reading Speech for the *Fair Entitlement Guarantee Bill*, Mr Bill Shorten, then Minister for Financial Services and Superannuation and Minister for Employment and Workplace Relations, said that FEG would provide "certainty for Australian employees who find themselves without a job and left out of pocket...through no fault of their own".<sup>1</sup> He said, "We know that employees who lose their job through insolvency or bankruptcy of their employer have enough to worry about.... where their next mortgage repayment will come from... how to buy the children new clothes or pay school fees... they have to worry about what money will cover unexpected bills or an unexpected emergency... these individuals should not have to worry about being paid what they have already earned".<sup>2</sup>

This concern should extend to all workers in Australia including temporary migrant workers who support the Australian economy. The Fair Entitlements Guarantee must be extended to all employees, including those on temporary visas, and ensure it includes superannuation.

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<sup>1</sup> [https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/326c1d2a-eacb-4d75-8dfe-810eeaf66e7c/0024/hansard\\_frag.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/326c1d2a-eacb-4d75-8dfe-810eeaf66e7c/0024/hansard_frag.pdf;fileType=application%2Fpdf) 12032

<sup>2</sup> [https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/326c1d2a-eacb-4d75-8dfe-810eeaf66e7c/0024/hansard\\_frag.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/326c1d2a-eacb-4d75-8dfe-810eeaf66e7c/0024/hansard_frag.pdf;fileType=application%2Fpdf) 12032

The Second reading speech also says that a claimant must meet the residency requirements as at the date of termination, as it is the most “relevant date to assess what level of assistance an employee is entitled to receive”. This is an arbitrary requirement and needs to be reassessed.

### **Other related matters**

SMLS feels it is pertinent to raise the limitations temporary visa holders face and the subsequent impacts this may have on the role of permanent migration to Australia.

#### **Family Violence and Partner Visas**

For temporary partner visa holders experiencing family violence, we acknowledge family violence provisions exist, so these victim survivors have a pathway to permanent residency. However, this is only applicable to a small group of temporary visa holders, and there still exists a risk of visa cancellation if a person separates from the perpetrator. The family violence provisions also fail to recognise violence that is perpetrated by family members other than a sponsoring partner.<sup>3</sup>

As highlighted by the [National Advocacy Group on Women on Temporary Visas Experiencing Violence](#), there needs to be a greater expansion of the Family Violence Provisions to include more visa subclasses, such as the Prospective Marriage Visa. There should also be the introduction of a new temporary visa subclass for victim/survivors who have had their visa cancelled as a result of a perpetrator’s actions or cease to be a perpetrator’s family member, or in cases where a victim/survivor cannot comply with the conditions of their temporary visa due to domestic violence. A new visa subclass would also allow for people to stay in Australia while any Family Court matters are on foot. These changes would promote retention of migrants in Australia.

We also support Northern Community Legal Centre’s recommendations that amendments should be made to include all other temporary visa holders and applicants, and all visa applicants within Australia including skilled stream applicants who do not or may lose access to a permanent visa pathway in case of separation due to family violence. Further, as voiced by Northern Community Legal Centre, SMLS support their recommendation that there should be a more expansive definition of family violence per the *Migration Regulation* to include violence perpetrated by extended family members.

#### **Work Visas**

There needs to be a fairer system and greater protections for migrant workers on a temporary visa. These workers are dependent on their sponsors and the current system facilitates a power dynamic that provides opportunities for employers to harm and exploit migrant workers.

The vast majority of migrant workers who experience exploitation in the workplace do not report it or seek remedies, in fear of jeopardising their stay in Australia or their chance at a future visa.<sup>4</sup>

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<sup>3</sup> [Blueprint-for-Reform\\_web\\_version.pdf \(awava.org.au\)](#)

<sup>4</sup> [Whistleblower protections - Briefing Paper for sign on.docx \(sharepoint.com\)](#)

Instead, many in this situation will leave Australia at the end of their visa, which then makes it virtually impossible for them to pursue a claim overseas.

Migrant workers must be protected from deportation or visa cancellation when they act against exploitative employers or report unlawful conduct with legitimate claims. This includes protection when reporting wage theft or underpayments, and when seeking recovery of underpayment of wages and entitlements through a complaint made to the Fair Work Ombudsman or in the courts. A visa category with whistle-blower protections, or simply a visa subclass that allows for migrant workers to stay (and work) in Australia while their claim against their employer is ongoing should be established.

### **People Seeking Asylum**

The Australian government has granted permanent residency to 19,000 people who arrived before September 2013 on temporary protection visas (TPVs) or Safe Haven Enterprise Visas (SHEVs). However, there are still approximately 12,000 others whose application for protection has not been accepted under the previous government's "fast-track" scheme, and their future remains uncertain.

The "fast-track" process was introduced in 2014 by the previous Coalition government and aimed to expedite the processing of asylum claims for people on TPVs and SHEVs, but it has been criticized for its lack of fairness and due process. The situation highlights the ongoing challenges and complexities of Australia's immigration and refugee policies, and the need for a more compassionate and just approach to supporting people who are fleeing persecution and seeking safety in Australia.

The injustices built into the fast-track scheme are well documented. A key flaw is the lack of opportunity for a genuine merits review for those whose initial application for protection is not accepted. Many of these people are forced to lodge at the Federal Circuit Court for judicial review as their only option. Not only is a judicial review insufficient for the person, it is also a significant burden on the justice system, with court dates sometimes set three years in advance.

Judicial review of asylum seekers' cases is limited to whether Home Affairs made an error of law not an error of fact. The current process does not permit judicial review of a case on its facts. This means that a Court will not re-hear the evidence and arrive at its own decision about whether a person is a refugee or not.

If a genuine and efficient merits review system was implemented, such as the former Refugee Review Tribunal, this would enhance just outcomes for individuals who can become part of our community, but also reduce the unnecessary burden of judicial review matters at Federal Circuit Court and Federal Court.

SMLS advocates for the fast-track scheme to be abolished, and for these people seeking asylum, a merits review process is implemented.