



Australian Government

Department of Home Affairs

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Home Affairs Response to the Australian Human Rights Commission Report - Lives in limbo: Protecting the human rights of refugees and asylum seekers in the ‘Legacy Caseload’

April 2019

Recommendation 1

The Australian Government should introduce legislation to repeal the amendments to the Migration Act 1958 effected by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014.

The Migration and Maritime Powers Legislation Amendments (Resolving the Asylum Legacy Caseload) Act 2014 (the Act) provides the legislative framework for the Australian Government’s key strategies for combatting people smuggling and managing asylum seekers.

The measures introduced by the Act were a continuation of the Australian Government’s protection reform agenda to uphold the integrity of the humanitarian program and deter people smuggling. The measures focus on disrupting and deterring people smugglers, support regional processing, resettlement of refugees and enable timely removal from Australia of those found not to engage Australia’s protection obligations.

These measures are implemented by the Department of Home Affairs (the Department).

Recommendation 2

The Australian Government should provide asylum seekers who have been subject to the fast track process and whose visa applications are considered ‘finally determined’ with an opportunity to apply to the Migrant and Refugee Division of the Administrative Appeals Tribunal for merits review of their visa applications.

It is Government policy that the Immigration Assessment Authority, an independent authority within the Migration and Refugee Division of the Administrative Appeals Tribunal, conducts merits review of all fast track reviewable decisions.

In *Plaintiff M174/2016 v Minister for Immigration and Border Protection* [2018] HCA 16, the High Court held that, notwithstanding the limitations on the review under Part 7AA of the *Migration Act 1958* (the Migration Act), the Immigration Assessment Authority is engaged in a de novo merits review of the decision that has been referred to it.

Recommendation 3

The Australian Government should not involuntarily remove any asylum seeker who has been subject to the fast track process from Australia, until such time as Recommendations 1 and 2 have been implemented.

The Department will continue to administer current legislation and international treaty obligations which involve the removal unlawful non-citizens from Australia. This includes removing unlawful non-citizens who have been found not to be owed protection by Australia under the 'fast track' process.

While the Migration Act provides that unlawful non-citizens must be removed from Australia as soon as reasonably practicable, Australia is party to several treaties that contain both explicit and implicit *non-refoulement* obligations to not forcibly remove a person to a place in which they may be subjected to particular forms of harm. Under Australian Border Force operational policy, the personal circumstances and relevant country information of a person, including a person who has been subject to the 'fast track' process, is reviewed to identify whether there is any risk that a proposed removal would breach Australia's international *non-refoulement* obligations. The person would not be forcibly removed where it is identified that that the person's life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, political opinion, or the person will suffer particular kinds of harm. These kinds of harm are:

- arbitrarily deprivation of their life
- the application of the death penalty
- torture
- cruel or inhuman treatment or punishment
- degrading treatment or punishment.

Recommendation 4

The Australian Government should reinstate access to the Immigration Advice and Application Assistance Scheme to all asylum seekers who are experiencing financial hardship.

The Government removed access to IAAAS services for unlawful arrivals in March 2014. This policy remains in effect.

Since the establishment of Government funded immigration advice arrangements in 1997, extensive immigration information and application assistance tools have been made available on the Department's website and through other official information channels. Australia's visa application process does not require representation of lawyers or migration agents and the vast majority of visa applications are undertaken without assistance. In cases where an asylum seeker in the Legacy Caseload had a functional impairment that limited their capacity to engage with the protection process, funded assistance to lodge an application was made available through the Primary Application and Information Service (PAIS). PAIS is available to those who have lodged a visa application and PAIS services are provided until those services are completed.

Recommendation 5

The Department of Home Affairs should extend access to the Free Interpreting Service provided under the Translating and Interpreting Service to not-for-profit, non-government organisations providing assistance to asylum seekers.

The Translating and Interpreting Service (TIS National) is an interpreting service provided by the Department. TIS National delivers the Free Interpreting Service (FIS), on behalf of the Department of Social Services (DSS).

DSS funds the FIS, and is the policy owner of the FIS, therefore the Department recommends that any requests to expand this service should be directed to DSS for consideration.

Recommendation 6

The Department of Home Affairs should allocate additional resources to expedite the processing of visa applications lodged by asylum seekers in the Legacy Caseload.

Resolving the Illegal Maritime Arrival (IMA) Legacy Caseload remains a key priority for the Department and resources will continue to be allocated, prioritised and rebalanced to the extent possible within budget to finalise Temporary Protection Visa (TPV) and Safe Haven Enterprise Visa (SHEV) applications. The Department agrees with the AHRC's observation that processing is well underway, adding that the assessment of this caseload is complex and resource-intensive and will take the time necessary to be fully resolved.

Recommendation 7

The Department of Home Affairs should allocate additional resources to increase mental health services and support for asylum seekers in the Legacy Caseload, including suicide prevention training for Departmental staff and contracted service providers, and targeted services for children and young people.

The Department undertakes comprehensive mental health screening processes and provides mental health services and support for asylum seekers that is based on expert/specialist clinical advice. Mental health services provided within held detention are commensurate with community standards and are delivered by general practitioners, mental health nurses, psychologists, counsellors and psychiatrists, including those specialising in torture and trauma counselling services.

Individuals, including children and young people, who are in Community Detention, are supported by appropriately qualified and skilled case workers from contracted Service Providers. Individuals are able to access mental health services and other required professional support through their contracted Health Service Provider general practitioner clinic.

Bridging Visa holders in the community generally have access to Medicare and mental health services available through the public health system. Individuals who have specific needs that require a higher degree of support, including mental health services, may be eligible for the Status Resolution Support Services (SRSS) Program. SRSS provides targeted specialised support, such as specialised mental health or counselling, where indicated through appropriately qualified and trained Case Workers.

The Department is currently implementing the Suicide Prevention Framework (the Framework), which maintains a multi-level suicide prevention strategy and ensures robust support services for asylum seekers and staff. Key elements of the Framework include current mental health policies. For example, the Psychological Support Program (PSP) provides a clinically recommended approach for the identification and support of detainees who are at risk of self-harm or suicide. The PSP also outlines the education and training requirements for

staff, to assist in distinguishing the difference between self-harm and suicide, as well as identifying risk factors and warning signs of suicide. The PSP is a trauma enforced model of engagement to ensure an awareness and understanding of trauma unique to the refugee and asylum seeker experience.

The Department also undertakes Supportive Monitoring and Engagement (SME), which allows for targeted suicide prevention services specific to the circumstances of the individual detainee. SME involves engaging with the detainee at risk of self-harm or suicide through conversation, monitoring and providing opportunities to express distress and anger and ensuring safety and risk of harm is absent, by moving the detainee to a safe and secure place.

The Department's detention health policies are regularly reviewed to ensure they meet the needs of the immigration detention cohort and are aligned to best clinical practice.

Recommendation 8

The Department of Home Affairs should establish a dedicated support service for families and children in the Legacy Caseload.

Where an individual in the Legacy Caseload is assessed as engaging Australia's protection obligations, they may be granted a TPV or a SHEV and would have access to government support services such as Centrelink.

Individuals who have been found not to engage in Australia's protection obligations, and who have exhausted all avenues to remain lawfully in Australia, are expected to depart. They may be granted a Bridging Visa with work rights, Medicare access and education for school-age children while arrangements for their removal or departure from Australia are progressed.

It is Government policy that asylum seekers in the Legacy Caseload who did not lodge an application to have their asylum claims assessed by 1 October 2017 are subject to legislative bars preventing the lodging of a valid Protection visa application.

As such, these individuals are subject to removal from Australia and will not be eligible for support services. They may be granted a Bridging Visa with work rights, Medicare access and education for school-age children while arrangements for their removal or departure from Australia are progressed.

Recommendation 9

The Department of Home Affairs should commission independent research on options for establishing clear divisions between the Department and other government agencies and public services that provide assistance to asylum seekers.

Enforcement agencies and service providers require access to all relevant information so that they have a full understanding of an individual's circumstances and can effectively resolve their immigration matters. The absence of information sharing between government agencies and public services does not protect people or improve circumstances and may have the opposite effect.

Recommendation 10

The Australian Government should align payment rates for income support under the Status Resolution Support Services program with the standard Centrelink payment rates.

The SRSS program is needs-based and targeted at resolving an individual's immigration matters, whilst ensuring individuals do not disengage with the Department or remain in Australia when they have no ongoing immigration matters.

Where an individual is granted a substantive visa, they may have access to government funded social welfare support, including income support.

Individuals who have been assessed as not eligible for a substantive visa grant, and who have exhausted all avenues to remain lawfully in Australia, are expected to depart. They may be granted a Bridging Visa with work rights, Medicare access and education for school-age children while arrangements for their removal or departure from Australia are progressed.

Recommendation 11

The Department of Home Affairs should revise policies relating to eligibility for income support under the Status Resolution Support Services program, to ensure that asylum seekers facing financial hardship remain eligible for income support unless they have secured a verified alternative source of income that is sufficient to ensure an adequate standard of living.

Where an asylum seeker is assessed as engaging Australia's protection obligations, they may be granted a TPV or a SHEV and would have access to government social welfare support, including income support.

Individuals who have been found not to engage Australia's protection obligations, and who have exhausted all avenues to remain lawfully in Australia, are expected to depart. They may be granted a Bridging Visa with work rights, Medicare access and education for school-age children while arrangements for their removal or departure from Australia are progressed.

It is Government policy that asylum seekers in the Legacy Caseload who did not lodge an application to have their asylum claims assessed by 1 October 2017 are subject to legislative bars preventing the lodging of a valid Protection visa application. As such, these individuals are subject to removal from Australia and will not be eligible for support services. They may be granted a Bridging Visa with work rights, Medicare access and education for school-age children while arrangements for their removal or departure from Australia are progressed.

Recommendation 12

The Australian Government should ensure that an asylum seeker remains eligible for the Status Resolution Support Services program while they have a substantive visa application under active consideration, including by the courts.

The SRSS program is not a social welfare program. The program has been regularly reviewed and updated to ensure it aligns to community standards and continues to support status resolution outcomes – either grant of a substantive visa or departure from Australia.

Individuals on a Bridging Visa with work rights are expected to work to support themselves and their families. Recipients who receive support services are expected to continue to engage with the Department or participate in activities that support resolution of their immigration status. Eligibility for the program is reassessed on a regular basis, at a minimum every 12 months.

Support for the small number of people that do not have work rights, or are barred from applying for a Bridging Visa E, will continue to be delivered under the SRSS program to ensure the Department's legal and international obligations are met.

Recommendation 13

The Australian Government should ensure that asylum seekers whose visa applications are 'finally determined' and who are experiencing financial hardship are provided with sufficient support (including income support) to ensure an adequate standard of living, until such time as they are either granted a substantive visa or removed from Australia.

It is Government policy that individuals who are found not to engage Australia's protection obligations are expected to depart Australia. They may be granted a Bridging Visa with work rights, Medicare access and education for school-age children while arrangements for their removal or departure from Australia are progressed.

Recommendation 14

The Minister for Home Affairs should expedite the renewal of Bridging Visas for asylum seekers in the Legacy Caseload.

While departmental delegates can grant Bridging Visa to most asylum seekers in the Legacy Caseload, there is a relatively small cohort of individuals whose Bridging Visa grants can only be granted by the Minister personally.

If a non-citizen can be granted a Bridging Visa E by a departmental delegate, the onus is on the client to remain engaged with the Department to maintain a lawful status while they remain in Australia, or to make arrangements to depart Australia. The Department's Status Resolution officers maintain regular contact with clients who are engaging. Where an individual has disengaged and is located by the Australian Border Force or state/territory police, consideration will be given to detaining and removing the person or otherwise regularising their status. Information is available on the Department's website advising unlawful non-citizens how they can check the expiry of their visa, what to do to renew their visa and how the Department can assist them to depart Australia (please see <https://immi.homeaffairs.gov.au/visas/visa-about-to-expire>).

Where the Minister's intervention is required to renew a Bridging Visa, cases are only referred where they meet the Minister's guidelines. The Minister has personal intervention powers under the Migration Act, that allow the Minister to grant a visa to a person in detention or to lift some statutory bars to allow a visa application to be made, if it is in the public interest to do so. What is in the public interest is a matter for the Minister to determine.

The public interest powers are non-compellable, that is, the Minister is not required to exercise or consider exercising their power.

Recommendation 15

The Australian Government should introduce legislation to:

- a) repeal s 46A of the Migration Act 1958.**
- b) enable Bridging Visas to be automatically renewed in cases where a person is in the process of applying for a substantive visa, or awaiting the outcome of an application for a substantive visa.**

Section 46A of the Migration Act is part of the Government's border protection strategy to uphold the integrity of the humanitarian program and deter people smuggling. The Minister has the power under section 46A(2) of the Migration Act to lift the bar if it is in the public interest to do so.

The Bridging Visa validity period is determined by the *Migration Regulations 1994*. Where a Bridging Visa is granted in association with a substantive visa application, it expires when that substantive visa application is finally determined. An individual may then be granted a further Bridging Visa so that they can reside in the Australian community while arrangements for their removal from Australia are progressed.

The Government does not support amendments to enable Bridging Visa to be automatically granted in some cases.

Recommendation 16

The Australian Government should include the Status Resolution Support Services Payment as a qualifying payment for a Health Care Card.

The DSS is the policy owner of the Health Care Card, therefore the Department recommends that any requests to amend the qualifying period for a Health Care Card should be directed to DSS for consideration.

Recommendation 17

The Department of Home Affairs should review the casework model under the Status Resolution Support Services program to determine whether it adequately meets the support needs of asylum seekers living in the community on Bridging Visas.

As the name of the program indicates, the SRSS program provides short-term, tailored support to individuals who are unable to support themselves while they engage with the Department to resolve their immigration status. Eligibility for the program and services provided depends upon family composition, including the ages of any children and the vulnerabilities of family members. Applicants are assessed and services are provided according to needs. Assessments are highly individual and done on a case by-case basis. Eligibility for the program is reassessed on a regular basis, at a minimum every 12 months. Support services do not exceed support levels provided for low-income Australian citizens or permanent residents.

Recommendation 18

If Recommendation 1 is not implemented, the Department of Home Affairs should publish clear information about the reassessment process for subsequent Temporary Protection Visa and Safe Haven Enterprise Visa applications, including in relation to merits review of negative primary decisions and the provision of funded legal advice to disadvantaged applicants.

The Department of Home Affairs' website contains clear information about the reassessment process for subsequent TPV and SHEV applications: <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/onshore-protection/applying-for-a-subsequent-tpv-or-shev/information-for-tpv-and-shev-holders>.

This information addresses the topics raised in the report including the application and reassessment process; expected timeframes for reassessment; access to merits review and migration assistance; and how family units will be affected in cases where previously dependent children have turned 18 and may no longer be fully dependent on their parents.

In addition, the Department has undertaken a significant communication campaign to encourage TPV and SHEV holders to reapply for a subsequent TPV or SHEV before their existing TPV or SHEV ceases, including:

- direct written communication to all affected TPV holders to notify them of the section 46A bar lift and to provide important information on how to apply for a subsequent TPV or SHEV;
 - SHEV holders have not had the section 46A bar lifted at this stage as their visas will not start ceasing until October 2020. When SHEV holders have the section 46A bar lifted, the Department will also notify them in writing and provide information on applying for another SHEV or TPV, or pursuing other visa options under the SHEV pathways arrangements.
- engaging the services of a Culturally and Linguistically Diverse public relations agency to undertake multicultural community and media engagement to promote messages to TPV and SHEV holders;
- translating facts sheets and explanatory videos about the subsequent application process into eight community languages, which are also publicly available on the Department's website: <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/onshore-protection/applying-for-a-subsequent-tpv-or-shev/information-in-your-language>; and
- sending TPV holders who have provided the Department with a current email and/or mobile number reminders that their TPV will cease soon and that they must re-apply before their visa ceases to remain lawful in Australia.

Recommendation 19

If Recommendation 1 is not implemented, the Australian Government should grant permanent Protection Visas to all Temporary Protection Visa and Safe Haven Enterprise Visa holders who are determined to be in ongoing need of protection when their current visas expire.

Provision of temporary protection is consistent with Australia's protection obligations. Australia's protection obligations do not extend to the grant of permanent residency or any particular type of visa to a person who has been found to engage Australia's protection obligations. Nor do they extend to an obligation to require Australia to allow permanent migration solutions to those who no longer engage Australia's protection obligations. The position of the Australian Government is that granting of a permanent protection visa is not the only way of giving protection to persons who engage Australia's protection obligations, and that granting a temporary visa is a viable alternative. Claims for protection will be reassessed with each subsequent TPV or SHEV application.

The SHEV provides temporary protection holders a pathway to a permanent visa. If SHEV holders work and/or study in a specified regional area without accessing certain social security benefits for a period totalling 42 months, they become eligible to apply for certain visas including prescribed permanent visas, which allow for family reunification.

Recommendation 20

If Recommendation 1 is not implemented, the Australian Government should ensure that Temporary Protection Visa and Safe Haven Enterprise Visa holders have access to the same services and entitlements as permanent Protection Visa holders, including settlement services, tertiary education assistance schemes, and the full range of income support payments administered by the Department of Human Services.

The DSS have policy ownership of services and entitlements for permanent Protection Visa holders, therefore the Department recommends that any requests to amend these services and entitlements should be directed to DSS for consideration.

Recommendation 21

If Recommendation 1 is not implemented, the Department of Home Affairs should extend the timeframe for exiting people from the SRSS program after the grant of a Temporary Protection Visa or Safe Haven Enterprise Visa, to allow adequate time for the provision of transition support.

Transitional support assists individuals and families to integrate into the Australian community from held detention, and is provided on a case by case basis. Where an individual is granted a TPV or a SHEV, they have access to government services such as Centrelink and are no longer eligible for assistance through SRSS. Transitional support after the grant of a visa may be extended where indicated, according to individual circumstances.

Recommendation 22

The Department of Home Affairs should afford the same priority and apply the same eligibility criteria to all applications for family reunion lodged by humanitarian entrants, regardless of the type of humanitarian visa held by the applicant or their mode of arrival of Australia

It is Government policy that refugees granted TPVs or SHEVs will not be eligible to sponsor family members to migrate to Australia, including through the Humanitarian Program. This includes people who arrived in Australia without a visa as an IMA on or after 13 August 2012. This policy was part of a suite of measures intended to deter people smuggling and to encourage use of regular migration pathways, such as the visas available through the offshore Humanitarian Program. Families of people who have been resettled under Australia's Humanitarian Program are given highest priority in processing, as an incentive for regular migration. There is no right to family reunification under international law and it is the Government's position that this policy is consistent with Australia's international obligations.

The Government's Humanitarian Program has increased from 13,750 places in 2016-17 up to 16,250 in 2017-18 and 18,750 in 2018-19.

Recommendation 23

If Recommendation 1 is not implemented, the Australian Government should amend the Migration Regulations 1994 so that condition 8570 (which restricts overseas travel) does not apply to TPVs and SHEVs.

TPV or SHEV holders must not travel to any country without prior written permission from the Department. Permission to travel is only granted in compassionate or compelling circumstances and the proposed duration of stay is for a short period only. Specifically, TPV and SHEV holders must not travel to the country from which they are claiming protection under any circumstances. Failure to comply with this visa condition is considered a breach and could result in visa cancellation for the visa holder and their family, immigration detention and removal from Australia.

Recommendation 24

If Recommendation 1 is not implemented, the Australian Government should introduce legislation to permit holders of Temporary Protection Visas and Safe Haven Enterprise Visa holders to sponsor family members overseas for temporary residence in Australia.

Unlike permanent visa holders, temporary visa holders are not able to sponsor family members for residence in Australia. To the extent that the TPV and SHEV legislation results in differential treatment between permanent protection visa holders and temporary protection visa holders in being unable to sponsor family members for reunification purposes, this treatment is based on objective criteria. The criteria being applied are whether or not the individual entered Australia illegally, or applied to come to Australia via lawful means and is

aimed at a legitimate purpose, that is, the need to maintain the integrity of Australia's migration system and encouraging the use of regular migration pathways to enter Australia.

The SHEV provides temporary protection holders a pathway to a permanent visa. If SHEV holders work and/or study in a specified regional area without accessing certain social security benefits for a period totalling 42 months, they become eligible to apply for certain visas including prescribed permanent visas, which allow for family reunification.

Recommendation 25

If Recommendations 22 to 24 are not implemented, the Department of Home Affairs should introduce exemptions from restrictions on family reunion opportunities for humanitarian visa holders who arrived in Australia as unaccompanied children, or have a child living overseas who is not under the care of another parent.

There is no right to family reunification under international law and it is the Government's position that this policy is consistent with Australia's international obligations.

One of the Government's purposes for the reintroduction of TPVs was to prevent minors from taking potentially life-threatening avenues to achieve resettlement for their families in Australia. While the Government recognises the best interests of the child as a primary consideration, this must be balanced with the legitimate objectives of maintaining the integrity of Australia's migration system and protecting the national interest. The Government will not provide a separate pathway for family reunification that will allow people smugglers to exploit children and encourage them to risk their lives on dangerous boat journeys.

Recommendation 26

Where members of the same family unit are subject to different policy settings due to having arrived in Australia on different dates, the Department of Home Affairs should implement strategies to harmonise their status, including through:

- a) transferring family members subject to third country processing to Australia**
- b) granting all family members the same class of Australian visa, based on the visa of longest duration held by any member of the family unit.**

The implementation of regional processing arrangements has meant that, in some cases, family members arriving at different times may be subject to different policy settings and situated in different locations. The Government is committed to regional processing and the policy setting that no individual from the current regional processing cohort will be permitted to settle in Australia. The Government will not facilitate reunion of family members in Australia. Individuals under current Government regional processing settings will not be granted visas to remain in Australia and are expected to engage in actions to resolve their immigration status, including third country resettlement or voluntary return.

Recommendation 27

The Australian Government should amend the Migration Regulations 1994 in order to remove a criminal charge as a prescribed ground for cancellation of a Bridging Visa E under s 116(1)(g) of the Migration Act 1958.

The Government is committed to protecting the Australian community from harm and ensuring that non-citizens who live in the Australian community on a Bridging Visa E must behave in a manner that is in accordance with Australian laws and which respects the Australian community's values and standards. Where Bridging Visa E holders are charged with a criminal offence, a delegate of the Minister will consider cancellation. In the case of a non-citizen who, but for the Minister granting them a visa in the public interest, would be subject to detention, it is a privilege and not a right to be allowed to live in the community while their immigration status is being resolved.

Direction No. 63 provides principles and general guidance to delegates of the Minister, when considering whether to exercise the cancellation power under section 116(1)(g) of the Migration Act. The direction contains a range of considerations — including the seriousness of the (alleged) offence, the best interests of children in Australia, the possible impact and consequences of the cancellation (including whether cancellation will result in indefinite detention or removal in breach of *non-refoulement* obligations), and the degree of hardship that may be experienced by the visa holder. Prior to any decision to cancel a visa under section 116(1)(g) of the Migration Act, the non-citizen will have the opportunity to provide any relevant information or comments to the decision-maker for consideration in the exercise of their discretion. If the person's visa is cancelled, they may seek merits and/or judicial review of the decision.

Recommendation 28

Where a Bridging Visa has been cancelled under s 116 of the Migration Act 1958 on the basis of criminal charges, withdrawal of these charges or a non-adverse judicial outcome should automatically trigger a review of the decision to cancel the visa by the Department of Home Affairs.

A Bridging Visa cancellation made under section 116 of the Migration Act on the basis that the visa holder has been charged with criminal offences at the time of the decision, is a lawful decision. If criminal charges are subsequently withdrawn or there is a non-adverse judicial review outcome, this has no bearing on the visa cancellation decision. However there is some scope to remedy the effects of cancellation if the person is found not guilty, or charges are not pursued. For example, the person may be considered for the grant of a new Bridging Visa with or without application, if the person meets the criteria for grant.

The Administrative Appeals Tribunal can, in prescribed circumstances, review the merits of the Bridging Visa cancellation, and the Federal Courts can review the lawfulness of any cancellation decision. If their circumstances change, a person may be considered for the grant of a new Bridging Visa without application, if the person meets the criteria for grant.

Recommendation 29

The Australian Government should remove the requirement to sign the Code of Behaviour as a condition for the grant of a Bridging Visa.

The Code of Behaviour (the Code) ensures that all IMAs are formally notified of how to behave appropriately, at all times while in Australia.

It is Government policy that all IMAs must sign the Code in order to be granted a Bridging Visa. It is a condition of all Bridging Visas granted to IMAs, that they do not breach the Code.

Recommendation 30

The Department of Home Affairs should commission an independent review of the situation of people in long-term community detention, to assess the extent to which the program can continue to promote positive health and wellbeing outcomes over time.

The key responsibility of Case Workers working with long term community detainees is to help manage the wellbeing of recipients. Case Workers maintain regular contact with recipients, undertake needs assessments and provide support to recipients according to their individual circumstances and needs.

Departmental policies regarding the provision of health services to those in long term Community Detention are regularly reviewed, with input from both internal and external stakeholders, to ensure services are provided in line with best clinical practice. As such, a formal review is not required.

Recommendation 31

In cases where a young person receiving services under Band 2 of the Status Resolution Support Services program turns 18, the Department of Home Affairs should:

- a) automatically transition the young person onto Band 4 of the program, with an opportunity to transition onto Band 5 where ongoing intensive support is required**
- b) extend the timeframes for transition of young people between the various bands of the SRSS program, to allow adequate time for provision of transition support.**

Under the Migration Act, young people in Band 2 are subject to residence determination conditions after they turn 18 years of age, unless their status has been otherwise resolved or they have been granted a Bridging Visa. Grant of a visa for young people in Band 2 is subject to legislative requirements provided under the Migration Act, inclusive of the individual satisfying the specific criteria for grant of a visa.

After grant of a visa a young person may move to Band 4 and receive transitional support, or may move to another Band (5 or 6) if they have other barriers to resolving their status. SRSS additional services may be provided on a case-by-case basis, as identified through an individual assessment.

Transitional support assists individuals to integrate into the Australian community from held detention, including young people exiting Band 2 after grant of a visa. The Department and contracted service providers commence working with young people in Band 2, 6 months prior to their 18th birthday, to assist in transitioning from Band 2. Transitional support may be extended where indicated and according to individual circumstances.