

## **Factsheet on Work Rights, Abolition of the 45-day rule and the Migration Amendment Regulations 2009 (No. 6) Select Legislative Instrument 2009 No. 143**

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### **Current situation (25 August 2009): Opposition is seeking to overturn the abolition of the '45-day rule': Work rights under threat**

On 26 June 2009, the government announced that it would abolish the '45-day rule' by making the necessary changes to the *Migration Regulations 1994*. The 45-day rule denied access to work rights and health care to any community-based asylum seekers who applied for protection after 45 days of arriving in Australia, regardless of their circumstances. Now, community-based asylum seekers will have access to work rights and possibly health care if they either:

- Hold a substantive visa at the time of applying for a protection visa; or
- Did not hold a substantive visa at the time of applying for protection but can demonstrate a compelling need to work and an acceptable reason for delay.

The overall result of the new regulation change is a better system of community support for asylum seekers, based on a more rational and equitable approach for the granting of work rights and health care. A Just Australia and other advocacy groups have warmly welcomed these reforms, and are keen to see if the new arrangements will be implemented effectively.

However, on 19 August 2009 the Opposition announced that it would seek to disallow the regulation changes.

Unless the Opposition can be convinced to change their minds, or can be shown that they do not have enough support in the Senate to win a vote, they will move to disallow the regulation amendments when Parliament next sits, on 7 September 2009. The regulation amendments will then be debated and voted upon in the Senate. The Opposition needs a majority vote in order for the regulation to be disallowed.

### **Why was the 45-day rule unfair?**

The 45-day rule resulted in undeserved and inhumane hardship for many asylum seekers including the most vulnerable: children, survivors of torture and trauma, single parents, pregnant women, those with serious medical conditions and the elderly. Many were forced to live in conditions of extreme destitution and social isolation for extended periods. Being denied the chance to support themselves in any way contributed to health and welfare crises including homelessness, family breakdown, mental illness, cumulative debt and complete dependence on the charity of churches and community groups. In fact, 'no other group of people has been so prevented from earning an income and so dependent on charity to survive in Australia'<sup>[1]</sup>. The deplorable situation of some asylum seekers as a result of the 45-day rule was confirmed by the Joint Standing Committee on Migration in its second report into immigration detention in May 2009.

The 45-day rule was unfair because it was arbitrary and punished refugees for no valid reason. Statistics show that there is a higher visa grant rate (36%) among asylum seekers who have applied *after* 45 days of their arrival, than among those that applied *within* the 45 day time limit (20%). Clearly, there is no link between the time that a person lodges their protection visa application and the meritoriousness of their claim. Nor did the 45-day rule have any effect as a deterrent to either meritorious or non-meritorious asylum claims. In short, there has never been any policy justification for the 45-day rule.

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August 2009

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Asylum seekers with genuine claims may not have met the 45-day benchmark for several reasons, including:

- Holding a valid visa which extends beyond 45 days and not knowing that they must apply for asylum within 45 days
- Misinformation from well-meaning family or community members
- Insufficient information or inability to access representation
- Migration agents who fail to lodge the application on time
- Circumstances changing in their home country while in Australia
- Lack of English or understanding of legal or immigration procedures

## Myths and Facts about the 45-day rule and access to work rights

**Myth:** Letting people lodge asylum claims more than 45 days after arriving in Australia would 'open the floodgates' (Don Randall, MP<sup>[2]</sup>)

**Myth:** "[N]ow this 45-day rule is to be abolished. You can imagine the vexatious claims, the months and years of appeals and the cost to the community with the abolition of the 45-day rule. On the other hand, you can imagine the lovely new message going out to the people smugglers: 'They've even removed the 45-day rule.'" (Sharman Stone, Shadow Immigration Minister <sup>[3]</sup>)

**Fact:** The regulation amendments (abolishing the 45-day rule and reforming our system of work rights for asylum seekers) do not apply to boat arrivals. They do apply to the majority of asylum seekers, who arrive in Australia, by plane, with a valid visa.

**Fact:** None of the unfair and punitive policies for asylum seekers (e.g. the 45-day rule or Temporary Protection Visas) have ever been shown to have a deterrent effect on asylum seekers coming to Australia. They have, however, been shown time and time again to breach Australia's international human rights obligations, by organisations such as the UN Human Rights Committee, UNHCR and the Australian Human Rights Commission. Academic research suggests that asylum seekers heading to Australia have little knowledge of the country, let alone the intricacies of our immigration policy <sup>[4]</sup>.

The best way to deter people from abusing Australia's system of refugee protection will always be swift, efficient and fair processing of protection claims. There is little incentive for people to come to Australia to submit a spurious claim for protection when the processing time is less than two or three months and when our assessment system is robust, fair and transparent.

**Myth:** Abolishing the 45-day rule shows that the government has gone 'soft' on border control

**Fact:** Under the Howard Government about two thirds of asylum seekers in the community had access to work rights and Medicare.

**Fact:** Sharman Stone has herself acknowledged the detrimental impact of being denied access to work rights and health care. When sitting on the Joint Standing Committee for Migration in 2009, she said:

*"I also share Dana [Vale]'s concern about the employment situation, because a lot of the people on bridging visas who have health costs, in particular, are in a great deal of strife when it comes to being able to manage their own affairs. What are you doing about access to Medicare for health costs for people on bridging visas?"; and "Evidence has been from both the NGOs and from the people on bridging visas themselves, and of course we do not have any ability to work out what numbers we are talking about there quite often, but it has been a great financial distress, and the NGOs are saying, 'We can't continue.'"*<sup>[5]</sup>

**Fact:** Review of conditions under the Bridging Visa E (including the 45-day rule) actually began under the Liberal's Immigration Minister, Amanda Vanstone, in 2006 <sup>[6]</sup>, although unfortunately the recommendations of this review were not made public.

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## What can you do?

**Voice your support** for fair asylum policies. Tell our politicians that we support the Migration Amendment Regulations 2009, including the abolition of the 45-day rule. Speak up and speak soon before Parliament resumes on 7 September!

**Write** to independent Senator Nick Xenophon (SA) and Family First Senator Steve Fielding (VIC).

**Write** to those Liberal Senators who have spoken up for asylum seeker rights in the past (or may be more likely than others to do so in the future): Judith Troeth (VIC), Alan Eggleston (WA), Simon Birmingham (SA), Marise Payne (NSW) and Sue Boyce (QLD). Judith Troeth has already signalled her intention to cross the floor, if need be, to support the amendments. Let Judith, Alan, Simon, Marise and Sue know that we support them in doing the right thing. Senators' contact details can be found [here](#).

In your letters, ask the Senators to support the Migration Amendment Regulation 2009 (No. 6), Select Legislative Instrument 2009 No. 143. You may even wish to include some of the points from this factsheet.

**Pass this information** on to your friends, family and colleagues and encourage them to get involved.

## Further information

Migration Amendment Regulations 2009 (No. 6), Select Legislative Instrument 2009 No. 143  
[www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/F6E5112286FB7ADFCA2575DF002226EF/\\$file/0911701A090616EV.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/F6E5112286FB7ADFCA2575DF002226EF/$file/0911701A090616EV.pdf)

*Finding Shelter* explores asylum seekers' experiences of homelessness and malnutrition, the consequences of denial of health care for asylum seekers and the negative impacts of detention and other Australian immigration policies. This book was released on 12 June 2009 by the Hotham Mission Asylum Seeker Project. <http://asp.hothammission.org.au/index.cgi?tid=2>

## References

- [1] Bridging Visa E: A more compassionate approach. Uniting Church in Australia, Synod of Victoria and Tasmania (August 2007). <http://victas.uca.org.au/outreach-justice/justice-and-international-mission/resources/past-mailings/august-2007/letter-writing-action-bridging-visa.pdf>
- [2] *The Age*, 18 August 2009. 'Coalition split on asylum seekers'.  
[www.theage.com.au/national/coalition-split-on-asylum-seekers-20090818-ep4n.html](http://www.theage.com.au/national/coalition-split-on-asylum-seekers-20090818-ep4n.html)
- [3] Speech by Sharman Stone, 27 May 2009.
- [4] Research by Charles Sturt University academic Roslyn Richardson. Source: *The Age*, 30 June 2009. 'Huge wave of refugees predicted'.
- [5] Source: Speech by Laurie Ferguson, House of Representatives Hansard 25 June 2009.
- [6] Uniting Church in Australia, Synod of Victoria and Tasmania (August 2007), see [1]



A Just Australia is a national campaign organisation. We aim to achieve just and compassionate treatment of asylum seekers and refugees, consistent with the human rights standards that Australia has developed and endorsed.

We believe that Australia's policies toward refugees and asylum seekers should at all times reflect respect, decency and traditional Australian generosity to those in need, while advancing Australia's international standing and national interests.

See our website at [www.ajustaustralia.com](http://www.ajustaustralia.com) or email us at [mail@ajustaustralia.com](mailto:mail@ajustaustralia.com)