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The Committee Manager  
Legislative Assembly Legal and Social Issues Committee  
Parliament House, Spring St  
East Melbourne, VIC 3002

By email only: [oldervictoriansinquiry@parliament.vic.gov.au](mailto:oldervictoriansinquiry@parliament.vic.gov.au)

#### **Submission to the Inquiry on support for older Victorians from migrant and refugee backgrounds**

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Dear Committee Manager and Committee Members,

##### **1. About SSRV**

Social Security Rights Victoria (SSRV)<sup>1</sup> is a state-wide Victorian community legal centre specialising in social security law and policy. Our vision is for a fair and just society in which all people are able to receive a guaranteed, adequate income in order to enjoy a decent standard of living. SSRV contributes to this vision through the provision of legal and related services to vulnerable and disadvantaged Victorians and those who support them. We assist our clients, and the community, to secure and protect their rights to equitable social security entitlements.

SSRV has provided social security legal assistance to many older Victorians, from migrant or refugee backgrounds, seeking to navigate the social security system and understand/access their rights. We believe all residents in Australia, whether temporary or permanent, should have access to adequate income support when they need it.

SSRV has been operating for almost 35 years, with funding from Commonwealth and Victorian governments, philanthropic grants and other sources. SSRV's services are directed primarily to people who are experiencing financial disadvantage and other forms of vulnerability such as those related to

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<sup>1</sup> Find out more about our work at our website: [www.ssrv.org.au](http://www.ssrv.org.au).

disability, physical or mental illness, age, family violence, family breakdown, Aboriginal and Torres Strait Islander background, cultural and linguistic diversity, location, the COVID-19 pandemic and natural disasters.

SSRV provides legal information, advice, ongoing casework and representation services; designs and delivers community legal education and professional development resources and workshops; and contributes to policy, sector development and systemic advocacy. We also provide assistance to other professionals who are helping their clients with social security issues.

SSRV is a member of Economic Justice Australia (EJA)<sup>2</sup>, the peak organisation for community legal centres providing specialist legal assistance to people in relation to social security issues and rights.

## 2. Introduction

We welcome the opportunity to share our experience and expertise with the Victorian Legislative Assembly's Legal and Social Issues Committee (the **Committee**) in relation to the Inquiry on support for older Victorians from migrant and refugee backgrounds (the **Inquiry**).

Australia is bound to its international obligations relating to the right to social security. By Article 9 of the *International Covenant on Economic, Social and Cultural Rights*,<sup>3</sup> Australia recognises 'the right of **everyone** to social security'.<sup>4</sup> By Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*,<sup>5</sup> Australia has undertaken to 'prohibit and eliminate racial discrimination ... **without distinction as to ... national or ethnic origin** ... [t]he right to public health, medical care, social security and social services'.<sup>6</sup> The social security system in Australia does not honour this international obligation.

Elderly Victorian residents who are newly arrived in Australia, or who hold temporary visas, face significant barriers to accessing adequate income support. Temporary residents are generally excluded from all forms of Australian Government social security support available under the *Social*

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<sup>2</sup> Find out more about the work of Economic Justice Australia at their website: [www.ejaustralia.org.au](http://www.ejaustralia.org.au).

<sup>3</sup> Opened for signature 16 December 1966, 993 UNT 3 (entered into force 3 January 1976).

<sup>4</sup> Emphasis added.

<sup>5</sup> Opened for signature 21 December 1965, 660 UNTS 196 (entered into force 4 January 1969).

<sup>6</sup> Article 5(e)(iv). Emphasis added.

*Security Act 1991* and family assistance payments under the *A New Tax System (Family Assistance) Act 1999*, with some limited exemptions.

Permanent visa holders are also often prevented from accessing social security support due to wait periods and other eligibility barriers. New Zealand citizens who have the right to live in Australia indefinitely are also generally excluded from Australian government social security support, regardless of any financial hardship they may experience as a result. Residency periods or waiting period requirements apply to most Australian Government payments and exemptions can only be granted in limited circumstances.

This submission will address the restrictions, barriers and the flow-on impacts and vulnerabilities caused by the denial of adequate Federal Government income support to older migrants and refugees in Victoria.

### **3. Permanent visa holders**

Migrants and refugees who hold permanent visas, and are therefore permanent residents in Australia with the right to reside in Australia indefinitely, face a range of restrictions and barriers preventing them from accessing social security pensions and benefits in the same way as Australian citizens. These include:

- The Newly Arrived Resident's Waiting Period (**NARWP**), which, with some limited exemptions, prevents permanent residents from claiming social security benefits for a specified period after they become permanent residents. The period is up to 4 years, depending on the payment type — including for payments such as Jobseeker Payment (a payment to support people looking for work);<sup>7</sup>
- Residency requirements that require an extended period (beyond the length of the NARWP) of residency in Australia before being able to access particular social security benefits. This applies to payments such as the Age Pension and Disability Support Pension, which are particularly relevant to older Victorians and, unless an exemption applies, generally restricts migrants (other than refugees who hold permanent visas) for 10 years after arriving in Australia; and

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<sup>7</sup> The Federal Senate Standing Committee on Community Affairs recently recommended a Bill pass that will increase the NARWP to 4 years for all payments, including those that currently have no NARWP or short NARWPs.

- Being an assuree under Assurance of Support requirements, which financially binds an individual to their family members who have acted as their assurer, essentially signing a contract with the Australian Government agreeing to financially support the family member who has migrated to Australia for a set period of time by undertaking to pay back any Australian government payments paid to that person. Generally, this is seen in elderly parent migration.

Our experience working with Victorians from migrant and refugee backgrounds indicates that these restrictions to timely and adequate income support payments, compounded by language and cultural barriers, leave older migrants more vulnerable to:

- family and domestic violence and abuse, including economic abuse
- unsafe or exploitative employment, including modern slavery
- poverty and financial hardship
- social isolation due to financial instability and hardship
- inadequate access to healthcare due to financial hardship.

#### **Sarah and Mark's story**

Mark\* decided to sponsor his elderly mother, Sarah as he was concerned for her health and safety as she was living alone in Italy, with no one to provide her care. As part of being granted a visa to enter Australia, Mark had to sign an assurance of support confirming that he would provide his mother financial assistance whilst she remained in Australia on her visa. Shortly after Sarah arrived in Australia, Mark was unable to work due to the COVID-19 pandemic. Without any income Mark was struggling to support his mother financially.

Sarah contacted SSRV to seek our assistance as to whether she would be eligible for any social security benefits. Although Sarah met the requirements to obtain special benefit payments, doing so would then result in a debt against her son.

*\* Names and some unnecessary details have been changed to protect the privacy of our client*

#### **4. Temporary visa holders**

Temporary visa holders, including holders of Bridging visas (people living in Australia whilst waiting for the outcome of a substantive visa application), student visas, skilled visas and visitor visas are generally

excluded entirely from Australia's social security system, with a few exceptions, such as access to a payment called Special Benefit.

Special Benefit is a Centrelink payment available to certain groups of temporary visa holders who are unable to receive any other social security pension or benefit and are experiencing severe financial hardship. This includes some temporary partner visa holders, temporary protection visa holders and visa holders who are in Australia assisting in the administration of criminal justice, including victims of crime, witnesses of crime or victim-survivors of human trafficking and slavery. It is paid at the same rate as payments JobSeeker Payment and Youth Allowance, which is currently \$629.50 for a single person with no dependents and \$573.30 for those who are partnered. This rate of payment amounts to \$44 a day and is considered to be insufficient to live on, placing recipients who are unable to also obtain income through employment at risk of poverty and homelessness.<sup>8</sup>

Special Benefit is an incredibly restrictive form of income support in that it is drastically reduced when any income through work is earned during a payment period. As soon as a recipient earns over the income limit in one fortnightly period, their Special Benefit is cancelled and they have to apply again. Unlike the equivalent payment, JobSeeker, which is available for Australian citizens and some permanent residents, Special Benefit does not allow a recipient to earn income through periods of short-term casual employment without losing their Special Benefit payments entirely.

The Special Benefit is a particularly problematic and insufficient payment because it is the only form of social security offered to a class of particularly vulnerable visa holders<sup>9</sup>. Victorians from migrant and refugee backgrounds, living on temporary visas who only have access to the Special Benefit, are:

- vulnerable to exploitation in the workforce, through dangerous, unstable or wage-stealing sources of income, such as cash-in-hand-type jobs
- unable to save enough money to allow for emergency situations such as injury or illness in themselves or their dependents
- vulnerable to eviction and extreme poverty when waiting for Centrelink to reconsider a new application for Special Benefit

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<sup>8</sup> Australian Council of Social Services: 'Sole parents and unemployed face poverty as nation surges ahead', 17 October 2021, [www.acoss.org.au/media\\_release/sole-parents-and-unemployed-face-poverty-as-nation-surges-ahead](http://www.acoss.org.au/media_release/sole-parents-and-unemployed-face-poverty-as-nation-surges-ahead).

<sup>9</sup> See Liliana's story documented on page 7, below.

- unlikely to be able to meaningfully participate in social and recreational activities due to the extremely low rate of payment combined with the inability to supplement the payment with income from employment.

## **5. Refugees and people seeking asylum in Australia**

It is important to note that the Australian Government defines refugees and people seeking asylum differently. Therefore, the Government's social security services and supports therefore differ depending on the respective cohort a person falls into. Asylum seekers (people who have not yet been granted refugee status) have some of the most restricted access to any form of financial support from the Australian Government, despite potentially holding this status for years or even a decade.

### *5.1 Refugees who arrived in Australia by boat*

Elderly refugees who arrived in Australia by boat or who were not immigration cleared (i.e., had their visa or other travel documents cancelled or not accepted upon arriving in Australia) are only eligible to apply for, and receive, a form of temporary protection (either a Temporary Protection Visa (3-year visa) or a Safe Haven Enterprise Visa (5 year visa)).

The only current visa pathway towards permanent residency for people who arrive by boat to seek asylum in Australia is through the Safe Haven Enterprise Visa. A refugee who holds a Safe Haven Enterprise Visa may be able to then apply for a permanent visa after a set amount of time, but only if they meet the 'pathway requirements'. The pathway requirements require the visa holder to live and work/study in a designated regional area, and not to receive Special Benefit. If a Safe Haven Enterprise Visa holder receives Special Benefit for more than 18 months of their visa's currency, they are unable to apply for a permanent visa.

For elderly refugees, including those who might also have a disability or medical condition that prevents them from working or studying, there is no chance of moving onto a permanent visa under the current system. For this group of Victorians, the only form of income support available to them, in the foreseeable future, is the Special Benefit payment: an inadequate option, for the reasons discussed above.

If not for their temporary visa status, people in this position would likely be eligible for either the Age Pension or the Disability Support pension. Due to their status as refugees, they would be eligible for an exemption to most waiting periods and required residency periods other migrants are subject to. This group of Victorians who have come to Australia to escape persecution are essentially placed in a position where they are forced into poverty or to jeopardise their future visa prospects to survive.

#### **Liliana's story**

Liliana is a refugee living on a Safe Haven Enterprise Visa (SHEV) in the Victorian community. She sought asylum in Australia as she had experienced gender-based persecution in her country of origin. She arrived on our shores by boat in 2013 to pursue safety and a right to live freely and without harm. Because Lili arrived in Australia by boat, she was only eligible to apply for temporary protection in Australia, and elected to apply for the SHEV.

Lili has significant barriers to employment, including severe arthritis in her hands which is debilitating and severely impacts her day-to-day functioning as well as her overseas qualifications not being recognised in Australia. She is ineligible for Australian government funded study and training and most vocational training potentially available to her at a subsidised rate is unsuitable due to her disability.

These barriers, as well as the impacts of the COVID-19 pandemic such as a loss of face-to-face support from her employment caseworker and a lack of employment opportunities, have meant Lili has been able to find work for the past 2 years and has relied on the Special Benefit Payment. Receiving this payment has stripped her of her pathway to permanency, rendering her status as a SHEV holder, who is only eligible for Special Benefit, indefinite.

In early 2021, Lili took up a casual employment opportunity. The job was unsuitable, unsafe and very painful for Lili, but she was on the verge of eviction and unable to afford food and medication having been reliant on the Special Benefit through the difficult 2020 COVID-19 lockdowns. When Lili did this work, she reported her income to Centrelink and, even though it was only short term and casual, she earned over the income threshold in one fortnight and Centrelink cancelled her Special Benefit. It took 5 weeks for Lili to start receiving the payment again after this cancellation, during which time she was living on no income and going further and further into rent arrears and debt.

Unlike Australian citizens and some permanent residents with similar disabilities, Lili will not ever be eligible for the Disability Support Pension under the current migration and social security laws.

*\* Name and some unnecessary details have been changed to protect the privacy of our client*

## **5.2 People seeking asylum living in the community on a Bridging visa**

Many people seeking asylum in Australia wait for years to have their application determined and finalised by the Department of Home Affairs (DHA). Whilst waiting for the determination of their

protection visa claim, the only form of income support available to people seeking asylum is the financial assistance paid through the Status Resolution Support Scheme (SRSS). This is paid at a maximum rate of 89% (and often much lower) of JobSeeker Payment and is only available in very limited circumstances.

Recent estimates indicate that only 5% of people living in the Australian community and seeking asylum are receiving SRSS payments. This is due to the prohibitive eligibility criteria, which generally prevents eligibility for the payment for anybody not awaiting the initial determination of their claim (i.e., anybody accessing their legal rights to have the decision reviewed).

Given the extremely low percentage of this community currently receiving SRSS, as well as the excessively low rate of payment, older Victorians living on Bridging visas and waiting for their protection claims to be assessed will likely be receiving no form of income at all unless they have the right to work and are able to find employment.

#### **6. COVID-19 measures and access for temporary visa holders**

During the COVID-19 pandemic, Victoria has been hit particularly hard by lockdowns and other restrictions which has led to a huge impact on the availability of work, particularly in sectors subject to high rates of casual, minimum-wage or unstable employment. We understand the Department of Premier and Cabinet could be approached for the exact data on the percentage of migrants, including temporary and visa holders, employed in these industries.

Approaching the end of 2021, Victorians have continued to experience lockdowns and are still subject to isolation restrictions when exposed to the coronavirus or when unwell. Despite the lack of alternative income support (such as access to Centrelink benefits), the pandemic-related social security measures were generally unavailable to people on temporary visas, including asylum seekers on Bridging visas. This included the Coronavirus Supplement offered between April 2020 and March 2021, which was only available to people receiving certain Centrelink payments (such as JobSeeker). Similarly, JobKeeper was unavailable for people on temporary visas in Australia.

Some measures introduced by the Federal Government in response to the pandemic were welcomed and arguably had a positive impact on migrants and refugees in Victoria. This included the lifting of

the NARWP between 25 March 2020 and 31 March 2021. The lifting of the NAWRP during this period was an indication that the Australian Government can support those whose circumstances leave them in a position where they need to rely on their right to social security, regardless of the length of time they have lived in Australia.

On 31 March 2021, the NARWP resumed for those social security recipients whose NARWP had not fully elapsed, and they lost access to the payments they had been receiving. The NARWP has not been lifted as a requirement since 31 March 2021 despite the continued impacts of the pandemic.

SSRV has assisted a number of older Victorians who needed, and were able to access, social security payments such as Carer Payment and JobSeeker Payment, during the period that the NARWP was removed, who, since 31 March 2021 with the reintroduction of the NAWRP, are again experiencing financial hardship.

There are some exemptions to the NARWP, including where circumstances have arisen that are outside the person's control since coming to Australia which have impacted their ability to financially support themselves or their family. However, these exemptions are limited and not always applied. This leaves older Victorians from migrant and refugee backgrounds particularly vulnerable to financial hardship, homelessness and poverty, or forces people to rely on family and/or charity for financial support.

#### **Josh and Danielle's story**

Josh\* migrated to Australia in early 2020 with his older parents, as a dependant on his father's visa, Josh has disabilities that require he either lives in supported accommodation or receives full time care from his mother, Danielle\*. When the NARWP was waived in 2020 and early 2021 Josh was able to live in supported accommodation paid for through his JobSeeker Payment. As a result of the NARWP being reinstated in March 2021, Josh no longer receives JobSeeker and had to move back in with his parents. This means Danielle had to stop working and care for Josh full time, but she cannot receive the Carer Payment because of the NARWP. The family lives on the sole income of Josh's father/Danielle's husband, not because they are over the income limit to receive social security support, but purely because of the NARWP preventing either Josh or Danielle from receiving the income support they would be entitled to if they were not migrants.

*\* Names and some unnecessary details have been changed to protect the privacy of our clients*

## 7. Accessible systems and information

Centrelink's systems have largely moved to online or digital access and, especially during the pandemic, access to timely, helpful and accurate information over the phone or in person at Centrelink Service Centres has been particularly restricted. Centrelink do provide services and information in languages other than English, but it can often be difficult to find out how to access this information or how to access interpreters.

Language, cultural and technology barriers experienced by older migrants and refugees can all add up to a complete inability to successfully access support payments that might be available, and leave people more vulnerable to claiming/receiving benefits they might not be eligible for, resulting in an overpayment and debt. Confusion about visa status is also an issue that can lead to overpayment.

### Ali's story

Ali\* is a refugee from Iran currently living in Melbourne. He came to Australia in 2012 on a boat after experiencing persecution in his home country. He spent two years in an immigration detention centre in Australia before being released into the Australian community in 2014 onto a type of visa that gave him eligibility for Special Benefit.<sup>1</sup> Ali applied for Special Benefit and was living on this payment for a number of years before it was cancelled in 2019 and he was issued with a Centrelink debt of over \$50,000. This was because his visa status changed in 2015, but he had not been aware of this change nor known he needed to update Centrelink.

Ali thought the Department of Home Affairs and the Department of Social Services would have been sharing information about his visa status as they are both Australian Government departments. He was, and still is, living with the debilitating mental health impacts of Post-Traumatic Stress Disorder, as well as trying to navigate Australian systems in his second language, and never clearly understood either his visa status, nor the fact that he was ineligible for the Special Benefit payment. The Centrelink debt of over \$50,000 owed to the Australian Government is crippling for Ali who is now receiving the Special Benefit payment again - the only form of income support available to him as a Temporary Protection Visa holder. He is trying to pay it back on the lowest payment plan Centrelink will make available to him, \$15.00 per fortnight. Living on such a low income already means this additional \$15.00 is the difference between eating and not eating, sometimes for more than a few days as he waits for his next payment.

Ali's story is not an uncommon scenario; visa status confusion, Centrelink eligibility confusion, difficulties in finding information in the right language and navigating Australia's complex social security system are common among our clients.

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## **8. Recommendations**

### **Victorian Government funding**

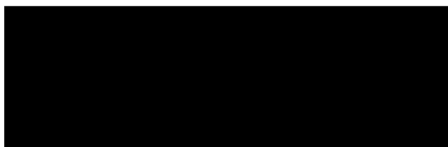
- The Victorian Government prioritise being able to provide income support to all Victorians prevented from accessing adequate social security support due to their visa status who are unable to work due to their age, disability or lack of available and suitable employment.
- The Victorian Government increase funding for social security legal services.
- The Victorian Government increase funding for social security related advocacy and support services.

### **National advocacy**

- The Victorian Government advocate for the further lifting of income support restrictions to newly arrived resident, migrants and refugees in Victoria whilst Victoria is still dealing with the economic impacts of the COVID-19 pandemic.
- The Victorian Government advocate on a national level for the removal of social security laws and policies that prevent migrants and refugees from accessing Federal Government income support due to visa status.

We welcome questions, clarifications and the opportunity to speak to the Committee.

Sincerely,



Emily Singh  
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Social Security Rights Victoria

### **Contact for the submission:**

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