



AUSTRALIAN CHURCHES
REFUGEE TASKFORCE



Return To Homeland: The Hardest Decision For You And The Person You Are Supporting.

NOTE

1. Any person seeking asylum or who is faced with return should get legal advice on their options. This guide is NOT designed to replace or provide legal advice.
2. This guide does not expect community members to become counsellors for their supporters. Rather, it provides information to help community understand what the process may look like and in what ways a person may assist.
3. This guide assumes that **every legal avenue** has been exhausted (verified by lawyers) and a person has been informed they must return to their homeland.

Summary

Many members of the community are supporting asylum seekers who have been in the application process for many years. They have arrived by sea or by air and, inevitably, strong relationships form with people in a state of vulnerability.

However, unlike previous years when sea arrivals were more frequent, the success rate for refugee protection is nowhere near as high. Through the early 2000s it was around 97%, depending which countries people had come from.

Currently, the success rate is somewhere between 50-70%* (*Such statistics are not released by Home Affairs) but there are likely to be far more people who will be in a position of having to return to their homeland than we have experienced in a number of years.

There are a number of reasons for this.

- There has been a significant increase in the number and frequency of air arrivals, which traditionally have only had a 50% success rate in the past.
- The legal process has changed. Some would argue that it is not a robust enough process to accurately determine refugee status, so there have been more refusals.
- Countries of origin gain or lose UN conflict or persecution status over time. Whilst it may not have been safe to return when asylum seekers first arrive in Australia, the stability of a range of countries has perceived to have improved.

For all of these reasons, quite a number of the 30,000 to have arrived in recent years will be required to return to their homeland. That is, they will not be eligible to stay in Australia as they do not meet the government's working or legislated definition of a "refugee". Supporters of refugees and the Refugee Sector may be surprised by this high rate of returns.

There are some important things to consider when a person is being told they must return to their homeland.

What will be the overall legal situation when a person has been informed they must return to their homeland?

At this stage of the application process, a person will have been refused a Protection Visa by Home Affairs decision-makers and an independent reviewer or the Immigration Assessment Authority.

The person may have applied for Judicial review on an error in law and be awaiting an outcome of this, or, waiting for the decision of an appeal to the Minister for Immigration on humanitarian grounds. What this means is that there may STILL be options for review or intervention. Legal advice should always be sought at this stage. Whilst, technically, a person can be returned at this stage, various options are still available to avoid removal before all legal options are exhausted.

The Federal court will consider whether a mistake was made in the application of the LAW (not of the facts) and statistically positive outcomes of this is very low. According to 2017-12018 AAT annual report, AAT set aside rate by the federal circuit court was 16% Good legal support is required to investigate this avenue.

If Judicial Review is not successful, a person may appeal to the Minister for Immigration on humanitarian grounds. The Minister has powers under the Migration Act 1958 to intervene in a case; when the Minister thinks it is in the public interest to do so. What is and what is not in the public interest, is for the Minister to decide. The Minister is not legally bound to intervene or to consider intervening. Unfortunately, success in these cases is also extremely low.

When a person has been through all the processes mentioned above, they have been considered not to be a refugee, nor eligible to stay on humanitarian grounds.

At this stage, unless there is a significant independent legal case that may involve a person in this position, they have exhausted all legal options for remaining in Australia.

Important Considerations:

Ultimately, it is important to realise that it is possible for a person to have exhausted all the available avenues for obtaining a Protection Visa and that there is very little any lawyer, agency, or individual can do to change this status. The assistance that Home Affairs offers is by way of referral or self-referral can be made to the **International Organisation for Migration (or IOM)**. These conversations are confidential and no information will be shared with Home Affairs until such time that a person has definitely decided to return.

IOM can assist with the purchasing of plane tickets and (some) funds to assist a person to re-establish in their homeland. In this way, people are encouraged to leave the country voluntarily. If a person is seen to be “non-compliant” with this process, then they can be detained and/or forcibly removed from Australia accompanied by security guards.

It is likely to be an extremely uncertain and distressing time, and there is NO Government funded support that is available to people in this situation. This is therefore an important time to look after yourself as well as the person you are supporting.

It is also important to remember that, although some extraordinary and very difficult things can happen to a person in their home country, those circumstances do not necessarily meet the criteria for refugee status. Many people do not understand the legal process of refugee protection when they leave their country, and so it can be very distressing to be told they do not meet the refugee criteria and must return to their homeland.

It is also important to remember that the International Convention relating to refugees and the relevant Protocol is designed to protect **the most vulnerable in the world**. The scale and extent of such global misery is not ours to decide. If countries are not able to return people who do not fit the criteria, it can be argued that the Convention cannot protect those it was designed to. This is a difficult message to hear when you can still see the vulnerability of a person who must return, but without this assessment process, the Convention may as well not exist.

What if anything can we do to offer support?

Given the amount of time many people seeking asylum have spent in Australia, many community supporters will have formed strong connections with them. These relationships are based on trust and rapport that is built up over weeks, months or even years. As with most relationships, the longer the support period, the more intense the emotions can be.

Many agencies who work with people in this situation will, and should, ensure independent legal advice has been sought for any further options. If possible, it would be recommended to have at least two independent sets of legal advice so you as a supporter, and the person you are supporting, truly understand there are no more options to appeal a case.

These conversations about return can be very difficult, especially if the person has been in Australia for many years. You, yourself, may not want to believe the situation and the person you are supporting is highly likely to be greatly distressed. However, those with long experience of these scenarios would like to you remember a very important fact.

There are two major events in a person's life seeking asylum (aside from the reasons they are seeking asylum) that are pivotal to their wellbeing and understanding of life:

The first is when they make the decision to flee their homeland (and all the pain and fear that comes with this).

The second is when they have to return to their homeland (with all the grief of failure, potential denial or anger of the refusal and most importantly the shame of having to return to their beloveds whom they had hoped to support by becoming an Australian resident). **We do want to support them in this stage and not give false hope to remain in Australia if there is none.**

What are likely reactions?

It is a constant challenge for many professionals and supporters to know how to support a person through the process of return. As stated, a person might have waited even up to 15 years for a final, clear outcome. However, once that outcome is determined and received, the person might be placed on a return pathway and given three months or less to finalise their departure to their homeland. People can go through many emotions during this time:

Denial: Many people are very proactive about trying to find any legal representatives who will lodge another appeal. It is advisable to only use reputable legal assistance as there are many legal agents who take advantage of people in this vulnerable situation.

Shock: Many people are in a state of shock that a decision has been made after so long and that the decision was negative. In this state of shock people may state that they will complete suicide as a solution. It is important to note that many people absolutely believe that they will be killed in their country of origin (regardless of the fact that their protection claims were not successful). In any situation of threat of harm to self or others always do as you would with any other person and call emergency services.

Anger: As stated, many asylum seekers have waited years only to get a negative decision and are very angry at having to be returned to their country of origin. Many people have lost contact with friends and family and face being returned to a country where they have to “*start again*”. Many asylum seekers are angry at having “*wasted the best years*” of their lives “*in limbo*” in Australia and face going back to a country of origin where they will struggle to support themselves.

Shame: Many people will have spent years in Australia on very little income, or no income, in the hope they can become a resident or work to send money home, or even have the chance to bring their family to Australia. Shame is a debilitating emotion that can impair a person’s decision-making process, even to engage in a positive option to return (such as not being detained and forcibly removed). Many people dread having to face their families or community again after being refused protection in Australia.

Having a Conversation

There are a number of people who will refuse to engage in any conversation about return, even to understand the options they may have, such as returning voluntarily or involuntarily. These people believe that they want no part in a decision that has been made against their will. Even if this may not help their situation when they are returned forcibly, it is still their right to not engage in this process.

However, the consequences can be distressing. In many of these cases people will be re-detained and forcibly removed with no option for return finances or return services. Whilst it is always the best situation for people to know what their options are, no-one can be forced against their values to plan a safe and dignified return if they do not wish to.

The main aim of a conversation about return is that any return be safe as possible, dignified and utilising any positive option available. This might include finances to take with them, not being identified openly at the airport by escorted personnel and avoiding re-detention where possible. The International Organisation for Migration (IOM) is designed to provide this advice. But many times, people are scared to attend an interview as they believe IOM is connected to the government. Whilst IOM is a Government contracted agency, so are other benign and semi-independent agencies working with people seeking asylum such as the Torture and Trauma services, settlement services and other service agencies.

It may be that the best advice is to encourage a person to talk to IOM at least to find out their options, making no promises of acceptance at that time. This way, as a supporter, you too will understand what their options are. When a person has no choice over the bigger question of whether they stay in Australia or not, there are still choices they can make to control a small part of how they are returned to their homeland safely.

Desperate measures – public campaigning and the media

Turning to the media can seem like a good option when a person has lived in the community for so long and is loved by many. Be careful about this temptation. Getting media attention for people in a vulnerable position can affect not only them, but family members back in their homeland.

Exposure of a person's identity and their story can have ramifications if they are eventually returned to their country of origin, in terms of that Government noting the public protest and what is seen as a criticism of their country. It can also affect family members still in the country from where a person fled, in that a Government or other parties recognising the family connection could place pressure on the family or perhaps even give threats in regard to the public exposure of the reputation of their country through the family.

Any person doing media interviews, or giving consent to have their details made public, upon being refused in Australia must be fully informed of the potential consequences. Legal advice should always be sought in relation to this option.

It is also important to note that traditionally, over many years, many Ministers for Immigration have not been swayed by public exposure on a decision they have made to reject an application for Ministerial Intervention. It is not a formal pathway for appeal, and therefore they are not likely to change their mind based on media exposure. Any person considering media exposure needs to be very sure about why they are doing it. Our need to expose issues for advocacy needs to be balanced with the reality for the people we are supporting.

Avoid promises

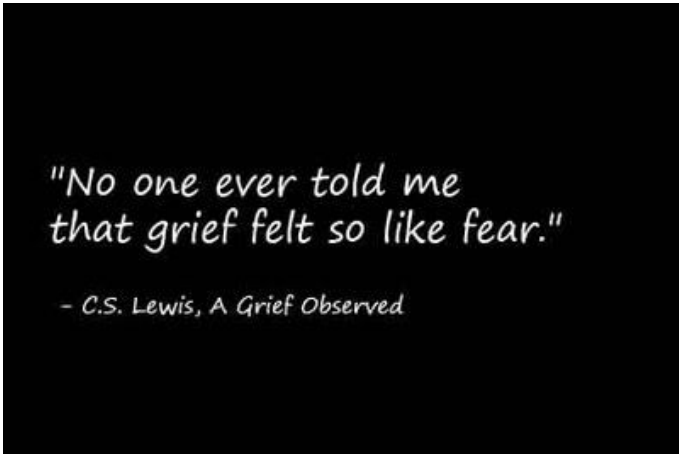
It will be tempting to make promises of assistance when a person has returned to their home country. However, be mindful of what you offer. It is likely they will be facing a difficult situation if they are returned to their country of origin and may seek financial assistance to help them upon return. The International Organization for Migration (IOM) is set up to provide assistance for people returning to their home country, it is not your responsibility to take on this role. Think carefully about what you say about ongoing assistance and only commit to what you can actually do, if anything. Setting up expectations can only make things worse down the track if you cannot sustain the support you have offered, and the person has built a situation to rely on it.

Finally...

Try to remember that this is THE hardest time for you and the person you are supporting. So, look after yourself, too. You can't 'fix' this situation, so reflective listening may well be the best form of support to provide. However, find others who can listen to you.

Supporting a person in the stages of returning to their homeland, means you can be at risk of vicarious trauma which may affect your own life and the lives of those close to you.

Seek out support if you feel this is happening and look after yourself, too.



*"No one ever told me
that grief felt so like fear."*

- C.S. Lewis, A Grief Observed