

Episode 41: Summary

Episode name: Migration conversation: the impact of COVID-19 on Australia's migration laws

Guest(s): Tamsin Johnston and Shamili Kugathas

What area(s) of law does this episode consider?

Migration Law

In this episode, Tamsin Johnston and Shamili Kugathas from Australian Presence Legal discuss the many ways in which the COVID-19 pandemic and emergency amendments have impacted Australian migration law.

Why is this topic relevant?

Australia has been called the 'most successful multicultural society in the world' - 30% of our population was born overseas, and our economy relies heavily on immigration for both population growth and productivity. But since the closing of international borders in March 2020, Australian citizens, permanent residents, temporary visa holders, international students and other groups both within and outside Australian borders, have had to grapple with travel restrictions, COVID-19 visa concessions and changes, and other changes necessitated by the public health emergency.

What legislation is considered in this episode?

- *Migration Act 1958 (Cth)*
- *Administrative Appeals Tribunal Act 1975 (Cth)*
- *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)*
- *Biosecurity Act 2015 (Cth)*

What are the main points?

- Although the COVID-19 pandemic has resulted in an overall decrease in the number of visas that are being granted, there has been a relative increase in the volume of employer sponsored visas for workers with skills that are in demand. This is because the Australian government has made several visa concessions in order to assist the Australian economy's recovery from the pandemic.
- The existing difficulties experienced by visa applicants communicating their stories to immigration officers through the filter of interpreters, migration agents and solicitors are exacerbated by remote appearances for visa interviews and in tribunals and courts.
- In response to the pandemic, the Australian government has prioritised visa applications in relation to Australian citizens and immigrants already onshore. In particular, onshore foreign nationals with an Australian partner can benefit from COVID-19 visa concessions allowing their application for a partner visa to be processed whilst the applicant is onshore. Also, the Department of Home Affairs has introduced a new stream of temporary activity visas which allows individuals who cannot leave Australia due to COVID to extend their stay for a further three months.

What are the practical takeaways?

- Having mechanisms to hold decision makers in organisations accountable for their decisions is important in maintaining the efficiency of the system and consistency in delivering judgments. Migration lawyers have identified that direct lines of communication to decision makers and general accessibility to them should be prioritised in the future.
- When representing a client before an administrative decision-maker, explain in detail the legislation that you use and how your application satisfies the points of law in order to minimise room for interpretation and avoid the decision-maker making an error of law.
- Legacy caseload refugees have a different visa application and review process than other refugees applying for temporary humanitarian visas, such as a temporary protection visa (TPV) or safe haven enterprise visa (SHEV). The government's fast track program, enacted in 2014, has still resulted in over 4,000 refugees in this stream waiting for an outcome on their application.

Show notes

[Australian Government COVID-19 visa concessions](#)

[Australian Government critical skills and sectors](#)

[Refugee Council of Australia – Fast tracking and 'Legacy Caseload' statistics](#)