

A FAIRER AUSTRALIA 2022 ELECTION STATEMENT

POLICY PAPER PEOPLE SEEKING ASYLUM



Frederic Ozanam (1813-53), founder of St Vincent de Paul Society



St Vincent de Paul Society
NATIONAL COUNCIL of AUSTRALIA Inc. *good works*



St Vincent de Paul Society National Council of Australia acknowledges the traditional custodians of country throughout Australia; recognises their continuing connection to land, waters and culture and community; and pays its respect to elders past and present and emerging.

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Foreword

Australian values include respect for the freedom and dignity of the individual, yet governments are failing to help people seeking asylum in times of their greatest need.

The formal teachings of the Catholic Church have emphasised the importance of welcoming the outsider, especially those who are marginalised.

We must end the cruel practices of detention and isolation, increase the total intake of people seeking safety, including those from warzones, and support family reunion.

Such policies are the right thing to do, and the clever thing – migration is fuel for the economy.

As our Founder Frederic Ozanam said, “Justice is a fixed star which human societies try to follow from their uncertain orbits. It can be seen from different points of view, but justice itself remains unchanged.”

Our policies for this election provide focus for the future actions of the Australian Government.

- *Claire Victory, National President, St Vincent de Paul Society.*

1. Executive Summary

The St Vincent de Paul Society (Society) has a long history of helping migrants, refugees and people seeking asylum to establish their new lives in Australia. In doing this work we heed the words of Pope Francis, who calls us to **welcome** and **protect** refugees, to **promote** their development and to **integrate** them into our communities by jointly recognising the other's cultural richness.¹

Australia has done a reasonable job of integrating many refugees and providing them with opportunities for development. But in the last two decades, the Australian Government has failed to properly **protect** those who have arrived by boat.

People seeking asylum who arrived in Australia by boat in from 2012 to 2014 are treated very differently from those who arrive in Australia by air or through a seaport. The majority, approximately 30,000, (the so-called 'Legacy Caseload') have had, or are still having, their claims for protection assessed in Australia. Just over 4,000 other people were sent offshore for processing in Papua New Guinea (PNG) and Nauru. The Society has six concerns about the treatment of these people seeking our **protection**.

1. An Unfair Assessment Process. In 2014 the Government introduced a 'fast track' refugee assessment process for the Legacy Caseload which is unfair because it removes the right to effective review of decisions and increases the risk of unsafe removal. The Government has also withdrawn funded legal advice and assistance with applications, including interpreting services, from most people seeking asylum. In 2019 the Australian Human Rights Commission (AHRC) found the process to be unfair recommending: the 'Legacy Caseload Act' be repealed: people unsuccessful in this process be allowed a proper merits review of their case: and no-one subject to this process should be deported.²

2. No Permanent Protection. By September 2021, nearly 19,000 people had been found to be refugees under the 'fast track' process. Only six were granted permanent protection. The vast majority are on temporary visas for three or five years. When these visas expire, a complete re-assessment of their claims is conducted and may result in their claim being rejected. Under international law, temporary protection should only be used for mass movements of people, where individual refugee status determination is impracticable. Long term temporary visa holders exist in indefinite limbo and do not have the same rights and access to services as those on permanent visas. Mental health studies show refugees on temporary visas are experiencing higher rates of mental illness than those on permanent visas. AHRC's 2019 report recommends abolishing these temporary protection arrangements.³

3. An Inadequate Safety Net. Some people seeking asylum who are suffering financial hardship may be eligible for Status Resolution Support Services (SRSS). SRSS offers minimal financial support (only 89 per cent of JobSeeker), case work assistance, subsidised medication, and mental health services. In 2018 there were 13,299 people receiving SRSS. But by 2021, changes to eligibility criteria reduced the number of recipients to 1,909, leaving thousands of asylum seekers who cannot work or find a job, unable to access SRSS. Charities, such as the Society, are helping these people, who are destitute and homeless. AHRC's 2019 report recommends SRSS be increased, to align with other income support payments, and its eligibility be expanded.⁴

4. No Family Reunion. Family support plays an important role in helping any human being to recover and rebuild their lives, particularly after escaping trauma, conflict, persecution and personal loss. Catholic Social Teaching principles recognise the family as a central social institution that must be supported and strengthened, not undermined.⁵ While families continue to be separated by forced displacement, the Australian Government denies refugees and people seeking asylum, who are subject to the 'Legacy Caseload Act', the option to reunite with their families or to meet their families in a third country. Even refugees on permanent visas who arrived by boat before August 2012 (and therefore not subject to the 'Legacy Caseload Act') are given the lowest priority for processing of their family visa applications.⁶ AHRC's 2019 report calls for these restrictions to be lifted to give all refugees the same priority to family reunion, irrespective of their mode of arrival into Australia.

5. Immigration Detention. Many people seeking asylum in Australia continue to suffer arbitrary and often indefinite detention. The psychological harm experienced by people in detention is significant. They are up to 200 times more likely to harm themselves in this situation.⁷ Sadly, four people died while in immigration detention in 2020-2021.⁸ The financial cost of immigration detention is also significant. The annual cost to hold someone in an immigration detention facility in Australia is over

\$360,000, and \$46,500 to hold someone in community detention. But it only costs \$19,800 for someone to live in the community on a bridging visa while waiting for their claim to be processed.⁹

6. Offshore Processing. Over 4,000 people who sought Australia's protection, arriving by boat after 19 July 2013, were forcibly sent to PNG and Nauru, and have had their claims for protection processed offshore. After more than eight years, over 200 people are still held against their will in these countries. More than 1,200 people have been transferred to Australia, principally for medical reasons, but remain in the community or in detention as 'transitory persons', prohibited from lodging a substantive visa application in Australia.¹⁰ The mistreatment of those held offshore has been widely documented and condemned, including through visits to PNG by Australian Catholics, such as Bishop Vincent Long and several Vincentians.

The Australian Government has recently entered into two agreements that continue this regime. The first agreement, with Nauru, allows for current arrangements to continue there for another decade. The second, with PNG, ends current arrangements but leaves the remaining 100 people there with three unacceptable options: permanent settlement in PNG, transfer to Nauru or return to their country of origin. Given large numbers of people processed in these countries have been sent to Australia or settled in other safe countries, the remaining people should be similarly resettled without delay.

7. Less People are Welcome. In addition to these six **protection** issues, cracks are also emerging in Australia's readiness to **welcome** refugees through its Humanitarian Program, with the annual cap having been reduced by 5,000 to only 13,750 places.¹¹

Since the Indo-Chinese refugee crisis in the late 1970s Australia has responded to major refugee crises by accepting a special humanitarian intake above already planned annual intakes. Right up until the 2022 Federal Budget, Australia's response to the Afghanistan crisis was much more limited, with initial offers to help Afghan nationals made within the overall humanitarian cap. An additional 16,500 humanitarian places for Afghan nationals are now available over the next four years. This increase is welcomed, although concerns remain about the four-year period. Instability, conflict and crises will continue to occur throughout the world and the Australian Government must act quickly and be open to accepting additional humanitarian places when crises arise. Further, the final number of places available to Afghans should continue to be reviewed and amended as need arises.

The Australian Government's new refugee sponsorship pilot, Community Refugee Integration and Settlement Program (CRISP), allows individuals, businesses or community organisations to help refugees to settle in our country. CRISP is a significant improvement on the old community sponsorship model, and while the numbers for CRISP have increased, the quota continues to operate **within the existing humanitarian cap**. Again, there is no net increase in the number of refugees we are welcoming.

Section Four addresses these seven issues in detail and proposes the recommendations outlined below.

2. Recommendations

A Fair Process

1. The Australian Government scrap the 'fast-track' processing of people seeking asylum under the 'Legacy Caseload Act'. Claims rejected under the 'fast-track' process should be reassessed under the standard, fairer process where people are able to access full merits review. No-one should be removed unless the reassessment determines they are not entitled to Australia's protection.
2. The Government increase funding to the Immigration Advice and Application Assistance Scheme, Primary Application and Information Service and the Translating and Interpreting Service.

Permanent Protection

3. The Australian Government extend permanent protection to all refugees, including those on Temporary Protection Visas and Safe Haven Enterprise Visas.

A Safety Net

4. The Australian Government review the Status Resolution Support Services for accessibility, adequacy and skills development. In the interim, 2014 eligibility criteria and funding levels should be reinstated. All people seeking asylum should have access to adequate levels of support, basic health care and work rights, if appropriately deemed work ready.

Family Reunion

5. The Australian Government provide access to family reunion for all refugees.

Immigration Detention

6. The Australian Government amend policies to permit people seeking asylum to live in the community while their immigration status is resolved.
7. Detention should only occur under extenuating circumstances, for a fixed period and for clearly specified reasons. Children must not be detained.

Offshore Processing

8. The Australian Government end offshore processing and permanently resettle in Australia or other safe countries those remaining in PNG and Nauru.

Welcoming refugees and people seeking asylum

9. The Australian Government
 - a. increase the annual cap for the Humanitarian Program to at least 20,000
 - b. recognise the ongoing need to offer additional places above the humanitarian intake in response to crises as they arise
 - c. ensure that the additional refugees sponsored through the Community Refugee Integration and Settlement Pilot are **additional** to the annual quota of refugees accepted under the Humanitarian Program.

3. Introduction

Our values and principles

The St Vincent de Paul Society (the Society) is a lay Catholic organisation that aspires to offer a 'hand up' to people in need, by respecting their dignity, sharing our hope, and encouraging those we assist to take control of their own destiny.

The Society is guided by "The Rule", a St Vincent de Paul Society publication that guides our work and how we operate through Vincentian values. Our key values are:

- **Commitment:** Loyalty in service to our mission, vision and values
- **Compassion:** Welcoming and serving all with understanding and without judgement
- **Respect:** Service to all regardless of creed, ethnic or social background, health, gender, or political opinion
- **Integrity:** Promoting, maintaining and adhering to our mission, vision and values
- **Empathy:** Establishing relationships based on respect, trust, friendship and perception
- **Advocacy:** Working to transform the causes of poverty and challenging the causes of human injustice
- **Courage:** Encouraging spiritual growth, welcoming innovation and giving hope for the future

The Society has a long history of supporting all people seeking safety and assistance. We are proud of the contributions we have made to foster more welcoming and inclusive communities for refugees and people seeking asylum.

The Society also aligns itself with the Migrants & Refugees Section of the Catholic Church's [Twenty Action Points for the Global Compact](#). These action points call Catholics **To Welcome:** Enhancing Safe and Legal Channels for Migrants and Refugees; **To Protect:** Ensuring Migrants' and Refugees' Rights and Dignity; **To Promote:** Advancing Migrants' and Refugees' Integral Human Development; and **To Integrate:** Enriching Communities through Wider Participation of Migrants and Refugees.¹²

The Current Issues

Australia is a culturally rich and diverse nation that benefits greatly from the many migrants, refugees and people seeking asylum that have chosen to call our country home. However, in welcoming people to our country and ensuring they can rebuild their lives, prosper, and thrive we must ensure their rights are upheld, and basic necessities are met. Unfortunately, many people seeking asylum continue to be deprived of a fair process and basic human rights.

The Society acknowledges that broader socio-political complexities have affected attitudes towards refugees and people seeking asylum in our communities. These attitudes have further marginalised refugees and people seeking asylum.

We consider that current government policies disproportionately punish people seeking asylum depending on their visa status and means of arrival to Australia. Many people seeking asylum are denied basic freedom of movement, held in immigration detention facilities, alternative places of detention (APODs), or in offshore processing facilities. Policies that deny permanent protection to those in need and limit access to financial support and family reunion are known to further exacerbate physical, mental health and settlement issues.

Our Objectives

This Position Statement provides an overview of seven key policy concerns impacting people seeking asylum with recommendations. These include what constitutes a fair process for seeking asylum; permanent protection; what safety net is needed for people while seeking asylum; why family reunion is important; issues related to offshore processing and immigration detention; and welcoming refugees and people seeking asylum.

This Position Statement informs the Society's ongoing policy and advocacy work and guides our work directly with refugees and people seeking asylum. It outlines what aspects of policy should be changed to improve the outcomes for people seeking asylum, particularly with respect to creating a more fair, just and compassionate society for all.

Our Vision

The Society is committed to helping create communities that are welcoming, fair, and safe for people seeking asylum. Our belief is that all people living in Australia, regardless of visa status, deserve 'a fair go' and to be treated with dignity. This includes ensuring that each person seeking asylum has access to a fair and efficient process, is offered the opportunity to apply for permanent protection on Australian mainland and has access to a sufficient safety net that supports them as they rebuild their lives.

We are committed to upholding the dignity of all people we assist, including individuals and families seeking asylum. We align ourselves with Catholic principles and teachings that promote love, respect, justice, hope and joy, and endeavour to incorporate these into our work.

We acknowledge that our responsibility extends beyond practical support and requires us to proactively advocate to decision makers about the systemic barriers that impact people's rights, especially the most vulnerable.

Our Contribution

The Society is a federated organisation and its work to support refugees and people seeking asylum varies across Australia.

In all jurisdictions, assistance is provided through the Vinnies centres and the home visitation program. The Society's Conference Members spend time with people, providing companionship and support, assessing their needs and providing one-off emergency relief or ongoing assistance. This includes help with accommodation, medical, educational, food, utility and transport bills. Information about other services and referral is also provided.

In some jurisdictions, the Society provides direct, specialist assistance to people seeking asylum who have been refused access to any form of income support and have no work, or insufficient work, and are unable to make ends meet. This assistance may include a small monthly living allowance, rental payments and help with utility bills and food. Regular contact is maintained to inquire on people's wellbeing, build social connection and provide information on visa processes and access to income and any urgent material support.

Where an unexpected or urgent need for support arises, some state and territory Councils establish specific funds to which local conferences can apply for assistance.

The Vincentian Refugee Network (VRN) is a national advisory group on refugees and people seeking asylum and comprises membership from across Australia, except the Northern Territory. The VRN provides advice to the Society's National Council, either directly or through National Council's Social Justice Advisory Committee. The VRN is also a forum for the sharing of resources and information.

Some states and territories have social justice and advocacy committees, to which issues concerning people seeking asylum that arise at the local level can be elevated. These committees also contribute to advocacy efforts and are a conduit for information sharing at the local and state levels.

Across Australia, the Society works in partnership with other asylum seeker support organisations and networks. We recognise the expertise of these organisations, the importance of working collaboratively and the fact that there is currently no single organisation that has the expertise or resources to meet all the needs of people seeking asylum. The reality is that many of these people have been left to fend for themselves, forced to rely on the goodwill of friends, their limited social and familial networks and charities to keep going.

The Society works with other organisations to highlight the plight of people seeking asylum and the need for policy change. These organisations include the Refugee Council of Australia (RCOA), the Catholic Alliance for People Seeking Asylum, Catholics for Refugees, the Australian Catholic Bishops Conference and the Jesuit Refugee Service.

The Society thanks the Refugee Council of Australia for reviewing this Statement.

4. Key Issues

A fair process for seeking asylum

4.1.1. Background

People seeking asylum who arrived in Australia by boat are deprived of a fair and equitable process when seeking safety which impacts their ability to rebuild their lives, thrive and contribute to our communities. Fairer government policies and processes for people seeking asylum are needed to build cohesive, diverse, and inclusive communities.

Following the 2012 release of the “Report of the Expert Panel on Asylum Seekers”, the Australian Government made significant legislative changes to the processing of claims for asylum. This included the establishment of a ‘no advantage’ principle to ensure that people seeking asylum who arrived by boat did not gain an ‘advantage’ over others arriving by other means. Third-country processing of people seeking asylum was re-established in Nauru and Manus Island. Operation Sovereign Borders commenced in late 2013 and by December 2014, the **Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014** was passed.¹³

The Resolving the Asylum Legacy Caseload Act further eroded the right to a fair process for people in the ‘Legacy Caseload’, as they were no longer eligible to apply for protection visas and could only do so at the Minister’s personal, non-compellable discretion.

Passing the Resolving the Asylum Legacy Caseload Act also enabled:

- The creation of the Immigration Assessment Authority (IAA), a body that assesses claims for asylum made by people who arrived without a valid visa, but with a process significantly more limited than the full merits review through the Administrative Appeals Tribunal (AAT) granted to people eligible for PPVs.¹⁴
- The reintroduction of three-year Temporary Protection Visas (TPVs) or five-year Safe Haven Enterprise Visas (SHEVs) as the only protection visas available to people in the Legacy Caseload. This meant that people within the Legacy Caseload would never be entitled to permanent protection in Australia, and instead must reapply upon the expiry of these temporary visas. People granted TPVs and SHEVs do not have the same entitlements as people on Permanent Protection Visas (PPVs),¹⁵ for example, they cannot access most forms of income support payments or other social security benefits and concessions.

Further, the Government enacted an amendment to the Migration Act which deemed that for the purposes of removing an unlawful non-citizen from Australia, “it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen”.¹⁶

4.1.2. Key Statistics

As at September 2021, of the approximately 30,000 people who were part of the Legacy Caseload:

- 27,900 people had had their applications finalised.
- Of these, 18,700 people were found to be refugees.
- While the remaining 9,200 people had received negative decisions on their protection visa applications at the primary and IAA stages, and were either seeking judicial review, Ministerial intervention, or making arrangements to depart Australia. 3, 200 people were still waiting for their applications or reviews to be processed.¹⁷

4.1.3. Key Issues

‘Fast Track’ Merits Review

Following enactment of the Legacy Caseload Act 2014, many ‘unauthorised’ people seeking asylum who arrived in Australia between 13 August 2012 and 1 January 2014 cannot apply to the Refugee Division of the AAT for a review of a negative decision. Instead, they undergo a ‘fast track’ review through the IAA.¹⁸ These IAA ‘fast track’ reviews differ from the ordinary merits review processes of the AAT.

Under the AAT, the decision-maker reconsiders the facts, law and policy aspects of the original decision, and determines what is the correct and preferable decision based on all of the relevant facts. The AAT may consider new information that was not before the original decision-maker; and typically conducts hearings during which evidence can be tested and additional evidence can be presented orally.

The IAA must generally review decisions by considering the material used by the primary decision-maker to reach their findings, without accepting or requesting new information, and without interviewing the visa applicant. The IAA can only consider new information relevant to the visa application in exceptional circumstances.¹⁹

These changes mean that applicants have only one opportunity to provide all information relevant to their claims during the first stage of visa processing.²⁰ Many people seeking asylum in Australia have experienced trauma, which can make it difficult to recall details under the pressure of a single interview. Australian migration law can be difficult to understand for new arrivals, and a lack of adequate interpreting services makes it hard for people without English language or literacy skills to successfully fulfil the complex obligations of the Refugee Status Determination process.

Furthermore, the United Nations High Commissioner for Refugees (UNHCR) has noted that people seeking asylum may still feel afraid or apprehensive to speak freely to authorities and fully disclose the details of their case.²¹ This can be due to their past experiences of persecution, traumatic experiences in their home country or uncertainty regarding the risk of discrimination or persecution in Australia.

These factors can further disadvantage people making claims of persecution based on gender, members of the LGBTQIA+ community, or survivors of sexual violence, as it can be difficult to disclose sensitive information in a single interview. This risk is specifically noted by the UNHCR, who state that “particularly for victims of sexual violence or other forms of trauma, second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information”.²²

Exclusion from Merits Review

An excluded fast track review applicant does not have access to any form of merits review of the Minister’s decision. Excluded fast track applicants include persons:

- considered to have the right to enter or reside in a third country
- considered to have made a manifestly unfounded claim for protection
- who were previously refused protection in Australia or elsewhere by UNHCR or another country
- considered to have arrived on a 'bogus' document 'without reasonable explanation'²³

When scrutinising the ‘Resolving the Asylum Legacy Caseload’ Bill, the Parliamentary Joint Committee on Human Rights considered this process lacked the necessary degree of independent, impartial and effective merits review of non-refoulement decisions required under international human rights law to provide a sufficient safeguard. As Australia could be forcing legitimate refugees back to their country of origin where their life or freedom is threatened, the Committee concluded the denial of a merits review process was “incompatible with Australia’s obligations of non-refoulement”.²⁴

Judicial Review

All people seeking asylum, including those within the ‘fast track’ process who have received a negative decision on their substantive visa application at both the primary and merits review stage of the status determination process, can apply for judicial review.²⁵ In some circumstances the Minister may issue a ‘conclusive certificate’ for people in the ‘fast track’ process, which has the power to block a decision from being overturned or reviewed.²⁶

A judicial review primarily considers factors such as whether the decision-maker made a legal error, failed to adequately consider relevant information, or was biased. It differs from a merits review in that it cannot determine whether the decision itself is correct or incorrect.²⁷

The Society holds concerns that in 2014, the Migration Act 1958 diminished the courts’ ability to review and correct errors made by decision-makers exercising powers under the Act.²⁸ Changes to the merits and judicial review processes have increased the volume of applications from people seeking asylum and contributed to the Federal Circuit and Family Courts falling short of their targets

for the second year in a row. The Federal Circuit and Family Courts have stated that “delays [are] leaving families and children in limbo and often at risk while waiting for their matter to be heard.”²⁹

Government Funded Application Assistance

Even though the Refugee Convention and its 1967 Protocol do not establish procedures for refugee status determination, the UN High Commissioner for Refugees recommends that countries who have signed the Refugee Convention should provide free legal advice and representation at all stages of the asylum procedure, including at first instance and in appeal proceedings.³⁰

Lodging a protection claim in Australia requires knowledge of Australian migration law, as well as high literacy and English language skills. People seeking asylum often need assistance to prepare their applications. Legal aid, application assistance services and interpreting services are vital to ensuring access to a fair process. The UNHCR explicitly states that legal advice and representation is an essential safeguard, especially for people seeking asylum in the ‘fast track’.³¹

Due to budget cuts and restrictions on eligibility for the government funded Immigration Advice and Application Assistance Scheme (IAAAS) and the Primary Application and Information Service (PAIS), most people in the Legacy Caseload have not been able to access legal aid or application assistance.³² This has increased the demand for services offering pro-bono legal assistance.

Funding cuts have also affected the Translating and Interpreting Service (TIS), limiting the accessibility and quality of interpreting assistance for people lodging protection claims. Many organisations providing legal advice to people seeking asylum must rely on volunteer or non-professional interpreters, which increases the risk of inaccuracies in applications.³³

4.1.4. Recommendations

- **That the Australian Government scrap the ‘fast track’ processing of people seeking asylum under the ‘Legacy Caseload Act’.**

The process curtails appeals rights and, in some instances, removes the opportunity of an independent review altogether. Those who have had their claims rejected under the ‘fast track’ process should be reassessed under the standard, fairer refugee status determination process with access to full merits review at the AAT. This reduces the potential re-traumatisation and uncertainty caused by reapplying indefinitely for TPVs or SHEVs.

No-one should be removed unless the reassessment determines they are not entitled to Australia’s protection. The principle of non-refoulement must underpin practice, with no individual forced to return to a country where they are at risk of persecution or other ill treatment.

- **That the Australian Government increase funding to the Immigration Advice and Application Assistance Scheme, Primary Application and Information Service and the Translating and Interpreting Service to ensure that people seeking asylum have equal access to quality interpretation, application assistance and legal aid.**

Permanent protection

4.1.5. Background

Currently, permanent protection is only available for asylum seekers who arrive in Australia with a valid visa. Permanent protection visas enable refugees to live, work and study in the country permanently, as well as sponsor eligible family members for permanent residence. However, many refugees are unable to access these benefits due to strict eligibility criteria. The Society recognises the significant negative impacts experienced by those holding temporary visas. The Australian Government Values of freedom, respect, fairness and equality of opportunity³⁴ can only be fully achieved when policies provide pathways to long-term protection for all refugees.

Australian migration policies exclude the ‘legacy caseload’ from permanent protection as they are limited to temporary protection visas (TPVs) and Safe Haven Enterprise Visas (SHEVs). People seeking asylum in the legacy caseload have spent almost a decade on temporary visas that severely curtail opportunities to freedom. They do not have the same access to services, rights and residency or citizenship pathways as refugees with permanent protection.

Temporary Protection Visas apply for three years, during which work, study and access to limited income support assistance are allowed if the applicant meets the required health, security, character

and identity checks. Once the visa period is over, the holder must either reapply for a subsequent Temporary Protection Visa or a Safe Haven Enterprise Visa, which provides protection for a five-year period. For Safe Haven Enterprise Visas, eligibility requires that the holder has an intention to either work or study in regional Australia. They may also be permitted to apply for a skilled visa within the migration program once they have worked or studied full time for at least 42 out of 60 months.³⁵

While fulfilling these requirements can act as a platform to securing another visa and eventually Australian citizenship, the skilled visa pathway consists of long waiting periods, and documentary requirements that are difficult to fulfil. As of 31 January 2021, of the 12,504 people on SHEVs, only 72 people had applied for a permanent visa, and only six of these had been granted.³⁶

Under international law, temporary protection should only be applied in situations of mass movements of asylum seekers where individual refugee status determination is impracticable. For example, the European Union only considers temporary protection for people fleeing situations of armed conflict and generalised violence, and otherwise typically grants permanent protection to refugees upfront or on renewal of their visa.³⁷

COVID-19 has also had a significant negative impact on people on temporary visas, exacerbated by their lack of access to safety nets of Medicare and other income supports in light of high unemployment rates. Some examples are the increase in unemployment rates among bridging visa, TPVs and SHEVs holders from 19.3 per cent to 41.8 per cent, with approximately 19,000 refugees expected to lose their jobs.³⁸ Homelessness rates among temporary visa holders are projected to rise to 12 per cent, which will cost state and territory governments an additional \$181 million per year in health, justice, social and other services. Increased hospital admissions for mental health conditions, heart attack or stroke, injury and drug overdose, self-harm and other socioeconomic factors could cost State and Territory governments an additional \$23.4 million per year.³⁹

4.1.6. Key Statistics

As of September 2021, the DHA reported:

- For the 27,900 people with applications finalised, 19,400 sought SHEV and 8500 sought TPV.
- Of the 18,700 people found to be refugees, 13,200 were granted SHEV and 5,550 were granted TPV.⁴⁰
- 68 per cent of SHEV applicants and 65 per cent of TPV applicants were recognised as refugees.⁴¹
- Of the 3,200 waiting for finalisation, 2,700 SHEV applications were made, as well as 500 TPV applications.⁴²

4.1.7. Key Issues

Temporary protection can cause considerable human suffering, placing refugees in a state of ongoing legal limbo in which they face the prospect that they might be sent back to a country where they fear persecution.⁴³ These detrimental effects are intensified by the restrictions placed on temporary protection visa holders, including the lack of access to most forms of income support (except Special Benefit payment), accommodation, language training, health care and other essential services. Unlike permanent protection holders, TPV and SHEV holders must also pay international student fees to enrol in higher education courses and face restrictions (Condition 8570) on overseas travel.

The uncertainty created by TPVs is also proven to detrimentally affect the mental health of children and has been linked to physiological and psychological symptoms such as depression, constant headaches, insomnia and problems with concentration and memory.⁴⁴

Studies by mental health experts have found that because of these issues, refugees on temporary protection visas experience higher levels of anxiety, depression and post-traumatic stress disorder compared to those with permanent protection, despite similar backgrounds and experiences.⁴⁵ This is further exacerbated by the inability for refugees on temporary visas to be reunited with their families, from whom they are often separated for long and indefinite periods of time.⁴⁶

SHEV holders who live with physical or mental disability are further disadvantaged due to being unable to meet associated work or study requirements. For instance, unaccompanied minors and those with caring responsibilities are often unable to meet the 42-month work requirements.

Australia's current policies applying to TPVs and SHEVs may result in breaches of Australia's human rights obligations.⁴⁷ Under the *International Covenant on Civil and Political Rights*, Australia is obligated to protect families but the prohibition on family reunion, combined with restrictions on travel outside of Australia whilst on a TPV, penalises rather than supports families.⁴⁸ Under the same Covenant, asylum seekers who arrive without a valid visa have a right to non-discrimination.⁴⁹ Penalising and treating asylum seekers differently because they arrived unauthorised in a country when coming directly from a territory where their life or freedom was threatened, is also contrary to article 31 of the Convention on the Status of Refugees.⁵⁰

4.1.8. Recommendations

- **That the Australian Government extend permanent protection to all refugees, including those on TPVs and SHEVs.**

The right to apply for permanent protection, through a single statutory refugee status determination process, should be reinstated with access to full and independent merits review available to all recognised refugees, regardless of their method of arrival to Australia.

A safety net when seeking asylum

4.1.9. Background

The Society believes every person in our community should be able access what they need not just to survive, but to thrive. Yet many people seeking asylum do not have access to a safety net that would prevent them from slipping into poverty and homelessness as they try to rebuild their lives in Australia.

Status Resolution Support Services (SRSS) are available to those transitioning into the community from immigration detention, those living in the community under Residence Determination, or those on bridging visas (A, B, C and E) but without work rights. The SRSS program was created to offer "temporary needs-based support",⁵¹ as people seeking asylum are considered ineligible for most forms of Government-funded income support such as JobSeeker. The SRSS includes a fortnightly payment (at 89 per cent of the Jobseeker payment),⁵² as well as some case work support (including orientation support and referral), accommodation, school packages and access to trauma counselling and health services, depending on age, family status ('band') and immigration status.⁵³

The DHA has overall responsibility for the SRSS program, including policy settings and operational procedures, with payments administered by Services Australia. Once made, the DHA decision to refuse access to the SRSS program cannot be challenged at the AAT or by the courts.

Since 2017, the Government's changes to the eligibility criteria have significantly impacted on the number of approved SRSS recipients. Most people lodging new claims for asylum in Australia are excluded from the SRSS program as they are granted bridging visas but deemed work ready work. Many are also left in limbo as they wait for their substantive visas to expire and their bridging visa to take effect. These changes have left many people at risk of poverty and homelessness as experiences of trauma, limited English and the uncertainty of their visa status can make accessing stable and non-exploitative employment difficult.

4.1.10. Key Statistics

As at September 2021, there were about 105,000 people seeking asylum living in the community, all of whom could be eligible for SRSS, if their circumstances justified it. These included:

- About 12,000 people from the Legacy Caseload either waiting for their protection claims to be processed, or still in Australia after a negative determination (and either seeking judicial review, Ministerial intervention, or making arrangements to depart Australia).⁵⁴
- 92,600 people seeking asylum in the community, who arrived in Australia with a visa.⁵⁵

In addition, many of 18,800 people on TPVs and SHEVs, may also need access to SRSS during their reapplication process but can only access Special Benefit Payment or Emergency Relief.

The number of people seeking asylum being supported by the SRSS program fell from 13,299 in February 2018 to only 1,909 in November 2020.⁵⁶

As well, the Federal Budget annual allocation for assistance to people seeking asylum in the community fell from \$139.8 million in 2017-2018 to \$33.3 million 2021-2022.⁵⁷

4.1.11. Key Issues

Insufficient financial support

Australia has made commitments under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to uphold the right to an adequate standard of living⁵⁸ and the right to social security.⁵⁹

This commitment includes access to adequate food, clothing, and housing as well as a commitment to the continuous improvement of living conditions. As a signatory of the Refugee Convention, Australia is also bound by the standards of refugee protection to treat refugees in the same manner as citizens with regard to public relief and social security.⁶⁰

The purpose of the SRSS program and its predecessors was to fulfil this obligation to support people seeking asylum to meet their healthcare and living needs. However, the current SRSS payment rate is well below the poverty line. Research conducted in 2017 estimates that the minimum amount required to meet a single adult's basic needs is \$518.16 per week.⁶¹ Valued at 89 per cent of the JobSeeker allowance, a single person with no children is eligible for an SRSS payment of \$243 per week, or \$35 a day.⁶² As noted by the Refugee Council of Australia, this extremely low rate of payment has led to "widespread reliance on relief services including emergency accommodation".⁶³

The low rate of the SRSS payment has been the subject of international concern. The UN Committee on Economic, Social and Cultural Rights observed that there are "insufficient amounts of benefits under the SRSS program for asylum seekers on bridging visas".⁶⁴ The Committee's recommendation to increase the rate "to ensure that [asylum seekers] enjoy an adequate standard of living"⁶⁵ has not yet been fulfilled by the Federal Government.

The Society has repeatedly called for an increase to the SRSS in its last four pre-Budget submissions to The Treasury.⁶⁶

Reduced Eligibility

Since 2017, the DHA has made successive changes to the eligibility criteria for the SRSS. These changes have significantly reduced the number of people seeking asylum who can access the program, such as only those on Bridging Visas, and left many without any safety net. Less than five per cent of the total number of people seeking asylum in the Australian community are receiving assistance through the SRSS program.⁶⁷

Those seeking asylum whose visa conditions give them the right to work are ineligible for the SRSS program unless they meet the increasingly high threshold for vulnerability required by the DHA. The 'job readiness' threshold means that many have been exited from the program, even if they are unable to obtain work and therefore left without any form of income.⁶⁸

Although DHA initially indicated it would assess 'job readiness' before exiting people from the program,⁶⁹ this has not come to fruition. Instead, SRSS providers and the DHA assess recipients on their perceived vulnerability. On this basis, a person is only considered unfit to work if any of the following applies:

- Physical health barriers that are ongoing; permanent disability; or cognitive impairment
- Mental health barriers, with a current diagnosis and treatment plan in place
- Single parents with pre-school aged children (children under six); pregnant women; a primary carer for someone with a significant vulnerability; and people aged 70 and over
- A major crisis for the client (family violence, house fire, food, etc.)⁷⁰

Additionally, in 2018 the Federal Government introduced further changes to the eligibility criteria, which meant that:

- People who send or receive the cumulative amount of \$1,000 or more internationally within a 12-month period cease to qualify for income support and may be issued with a debt for the payments they received.⁷¹
- Adults who have the capacity to work but choose to undertake tertiary study will not be eligible for income support.⁷²

As a result of these changes to the eligibility criteria, there is rising concern that people who have been exited from the SRSS program or are not considered eligible for support are falling into poverty. Research conducted by the Refugee Council of Australia has shown that almost four in five (79 per cent) of people seeking asylum who are receiving support from the Refugee Council of Australia are at risk of homelessness or destitution if they lose SRSS support.⁷³

Advocates have also expressed concerns about DHA's lack of transparency in relation to the capture and release of SRSS data, citing that it restricts the public's capacity to understand the characteristics of SRSS recipients, as well as the number of people who are refused access or re-entry into the program.⁷⁴

The Society is aware of people seeking asylum who have had their access to the SRSS cancelled because they have had their applications for refugee status refused, are still waiting for a decision to be made or are in the process of appealing the decision to refuse refugee status, a process that can take years. These people have no safety net and unless they can find work, which at best is usually casual, seasonal or part-time, they are at increased risk of experiencing poverty, homelessness and health issues, or working under exploitative conditions.

4.1.12. Recommendations

- **That the Australian Government review the SRSS for accessibility, adequacy and skills development. In the interim, the 2014 eligibility criteria and funding levels should be reinstated.**

All people seeking asylum should have access to adequate levels of income support, basic health care and work rights, if appropriately deemed work ready. Bridging Visa holders who are deemed 'job ready' but are unemployed or who are studying full time must be able to access the SRSS. DHA must release more comprehensive SRSS program data.

The importance of family reunion

4.1.13. Background

Family and social supports play an important role in helping people to recover and rebuild their lives, particularly after escaping trauma, conflict and persecution and losing homes and livelihoods. While family separation is a common consequence of forced displacement – with family members becoming separated from one another either accidentally or intentionally while fleeing persecution or other dangerous situations - current Australian Government policies deny many refugees and people seeking asylum the right to family reunion.

People who arrived by boat without a visa after 13 August 2012 are not eligible to propose or sponsor any family members for resettlement and are only eligible to apply for a TPV (subclass 785) or a SHEV (subclass 790).⁷⁵ Refugees on TPVs and SHEVs are subject to Condition 8570, which limits travel outside of Australia to certain "compassionate or compelling circumstances".⁷⁶ Coupled with the financial and logistical difficulties of travelling overseas as a refugee, many temporary visa holders are unable to visit family members living overseas. Holders of TPVs and SHEVs are also barred from sponsoring family members and from becoming citizens, unlike those holding permanent protection visas.

While refugees granted permanent protection may sponsor family members for resettlement in Australia through the offshore Humanitarian Program and the Family Program, the process still effectively excludes access to family reunion. Barriers include high costs, long wait times due to discriminatory processing priorities, restrictive eligibility, income and health requirements and onerous documentation.⁷⁷

Under the Australian Government's 'Direction 80', refugees holding permanent protection visas who arrived by boat, including those who arrived before 13 August 2012, are given the lowest priority for processing their family visa applications under the Family Stream. By removing the requirement that an application is disposed of within a reasonable time, applications deemed lowest priority may never be processed.^{78 79}

While the primary avenue for family reunion is the Special Humanitarian Program, there are numerous practical barriers. This includes prolonged waiting periods, a restrictive definition of 'family', unrealistic requirements for evidence and documents and significant financial costs. The lack of access to affordable legal advice has effectively denied many asylum seekers this avenue for family

reunion.^{80,81} The above, coupled with significant demand for family reunion means that some applications may not ever be processed.

Refugees with permanent residency are also eligible to sponsor family members through the family stream of the Migration Program. In reality this is not a viable option due to the extended waiting period associated with some visas and the increasingly high cost of visa application fees.⁸²

Australia's approach to offshore processing has also resulted in situations where immediate family members are separated indefinitely in different countries. Immediate family members of refugees arriving after 19 July 2013 are sent to Nauru or PNG, while those who arrived before this date are now subject to the onshore 'Fast-Track' refugee status determination processes. These determination processes have experienced growing delays and backlogs over the previous years, preventing family reunion for long periods of time as asylum seekers have no access while they wait for their claim for protection to be assessed.⁸³ Many refugees in the offshore program may also be transferred to the United States as part of the bilateral agreement between the countries, further separating families across the world.⁸⁴

The COVID-19 pandemic has further limited family reunion pathways for refugees on permanent visas due to border closures, limits on the number of flights, and the increased cost of overseas travel.⁸⁵ As a result of this pandemic, Australia's migration system was forced into negative levels for the first time since 1946. Consequently, the Australian Government increased the number of family stream visa places to 77,300 in the 2020–21 financial year, during which it accounted for almost half of the migration program.⁸⁶ While this temporarily allowed more families to be reunited than usual, this increase will most likely be reduced once the pandemic settles.

4.1.14. Key Statistics

- As of September 2021, there were 18,600 refugees on forms of temporary visas who did not have access to family reunion pathways in Australia.⁸⁷
- Of the 4,200 people sent to offshore processing facilities in Nauru and PNG, 2,300 people were either in Australia or remained on Nauru and PNG without access to family reunion pathways.⁸⁸

4.1.15. Key issues

Family separation can have devastating psychological, economic, and social impacts on seeking asylum and refugee families in Australia.

Prolonged family separation contributes towards stress, insomnia, nightmares, poor concentration, feelings of guilt, depression, headaches, pain, anxiety, and post-traumatic stress disorder.⁸⁹ Many refugees and people seeking asylum worry about the safety of family members who remain in situations where they may be at risk of harm.

Relationship dynamics within families can also be negatively affected because of prolonged family separation. Jesuit Refugee Service Australia has worked with many people whose relationships with immediate family members such as their spouses, parents, children, and siblings overseas have broken down. Having to provide financially for family overseas is one of the key reasons for family breakdown due to stress and the feeling of burden, followed by the trust that is lost because of prolonged family separation. Children who are left behind in their country of origin by parents fleeing to Australia are also forced to grow up without parent(s), subsequently contributing to further breakdown of their relationship with their family.⁹⁰

Constructive refolement may also be a consequence of prolonged separation with family. This occurs when an individual returns to the unsafe conditions from which they originally fled, largely due to the inability to cope with the isolation from being estranged from their loved ones.⁹¹

4.1.16. Recommendations

- **That the Australian Government provide access to family reunion for all refugees.**

This could be achieved by introducing a new family reunion stream within the Special Humanitarian Program that is available to all refugees.

The Humanitarian Program should be amended to allow refugees on SHEVs and TPVs to sponsor their family members and to abolish restrictions on overseas travel for temporary family reunions.

Immigration detention

4.1.17. Background

Current policies, processes, and costs

Despite Australia's international obligation to protect people seeking asylum, the introduction of mandatory detention has subjected many of these people to prolonged, and at times indefinite confinement. Prolonged and indefinite immigration detention inhibits an individual's freedom and is a human rights violation. To work towards being a nation that is fair and respectful of human dignity and freedom, government policies must be amended to abolish the use of arbitrary detention and introduce alternatives such as community placement.

Australia's legislative response to irregular migration has been the subject of frequent amendments, impacting the rights of those seeking asylum, particularly 'unlawful non-citizens'. 'Unlawful non-citizens' are defined as anyone, regardless of age, who arrives in Australia without a valid visa, has had their visa cancelled, or has overstayed their visa.⁹² Under section 189 of *the Migration Act 1958*, mandatory detention applies to all 'unlawful non-citizens', resulting in their being detained until they are either granted a visa or removed from the country.

Those subjected to arbitrary detention have been placed in onshore immigration detention centres, offshore regional processing facilities at PNG, or offshore detention at Nauru. Community detention is granted if the Minister for Immigration makes a 'residence determination', allowing some people seeking asylum to reside at a specified community-based accommodation while legally remaining in immigration detention.⁹³ While people in community detention are still obligated to fulfil certain conditions, such as regular reporting to authorities and no work rights, they have more freedom than those contained to closed detention facilities.

In Australia, the average annual cost, per person, of detaining and/or processing refugees and asylum seekers is:

- \$3.4 million to hold someone offshore in PNG or Nauru⁹⁴
- \$362,000 to hold someone in an immigration detention facility in Australia⁹⁵
- \$46,500 to hold someone in community detention⁹⁶
- \$16,801 for someone seeking asylum to live in the Australian community on a bridging visa while their claim is processed⁹⁷

Australia's mandatory detention policies contrast with countries such as Argentina, where the Argentine Immigration Law 2004 guarantees that all people have the right to non-discrimination, and access to education, medical and social services.⁹⁸ Immigration detention is a last and limited resort used only after all other remedies are exhausted, and generally only permissible after a final order of deportation has been issued. Detention orders can only be issued to a maximum of 45 days, with regular detailed justification required if an extension is required after 15 days.⁹⁹

4.1.18. Key Statistics

At 30 September 2021, DHA reported:

- 1,459 people were in immigration detention facilities; 1,408 are men and 51 are women
- 562 people were living in the community after being approved for 'residence determination'
- 11,542 people were living in the community after being granted a Bridging Visa E
- on average, people are held in detention for 689 days
- 176 children were in the community under a 'residence determination'¹⁰⁰

4.1.19. Key Issues

Australia's international obligations

Australia has ratified seven of the nine core international human rights instruments that contain obligations relevant to the conditions and treatment of people in immigration detention:

- International Covenant on Civil and Political Rights (ICCPR)

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention relating to the Status of Refugees (the Refugee Convention).¹⁰¹

These obligations require that detention be reasonable, necessary and proportionate and not arbitrary. People have the right to be informed of the reasons for their arrest and the charges against them and to challenge the legality of their detention in court and should not be returned to a country where their life or freedom would be threatened. They should be treated with humanity and respect and have access to legal advice and assistance.

Detention in closed immigration detention facilities should only occur when an individual assessment has been made, the person poses an unacceptable health or security risk, and the risk cannot be addressed in a less restrictive way. Even then, detention must be time-limited and proportionate.¹⁰²

Australia is obligated to uphold the right to security of the person and to ensure that people held in detention are treated with humanity and respect. People detained should not be subject to torture or to cruel, inhuman or degrading treatment or punishment. They should be treated fairly and reasonably, and in a manner that upholds their dignity. Their environment should be safe and free from bullying, harassment, abuse and violence.

Security measures taken should align with identified risks and should be the least restrictive possible in the circumstances. Excessive use of force, punishment or degradation is prohibited.

People in immigration detention have the right to privacy, freedom of religion and the right to communicate freely with each other, as well as with family members, friends, representatives and communities outside closed detention. Australia is obligated to afford protection and assistance to the family as the natural and fundamental group unit of society.

Australia's obligations with respect to material conditions include the right to education, the right to an adequate standard of living, including adequate food, clothing and housing, the right to the highest attainable standard of health, and the right to take part in cultural life.

People in detention should have their basic needs met, should be able to access essential services, engage in meaningful activities, be free to practise their religion and engage in cultural activities and be able to communicate and associate with others. Finally, they should be able to raise concerns regarding treatment and conditions in detention, and make complaints both internally and to independent monitors, without fear of repercussions. The length of immigration detention should be limited to the minimum period necessary to achieve a legitimate aim, and community-based alternatives to detention should be used wherever feasible.¹⁰³

Human impact of indefinite detention

The mental health issues of people seeking asylum being detained indefinitely are well-documented. Prolonged delays in the processing of visa applications exacerbate mental health issues resulting from pre-arrival trauma and post-arrival stressors, including those resulting from the asylum process itself. Experts have commented on the severity of mental health symptoms generally, and the prevalence of suicidality.¹⁰⁴

People seeking asylum in detention are 200 times more likely to commit self-harm, with rates being the highest in offshore and onshore detention facilities, and lowest in community-based settings.¹⁰⁵

In 2020-21, there were four deaths in immigration detention, with risk factors identified as exposure to previous traumatic experiences, social isolation, and persistent insecurity.¹⁰⁶

Children in detention for long periods of time are at high risk of serious mental harm.¹⁰⁷ Stressors for children are more significant than for adults, as they face similar challenges concerning uncertainty, but at significant times of emotional and cognitive development.¹⁰⁸ Further, the mental health issues experienced by parents as a result of the prolonged refugee status determination process have implications for the wellbeing of their children.¹⁰⁹

For adults, longer periods of detention have also been shown to elevate the risk of developing new psychiatric illnesses, with those in detention for longer than 24 months being over three and a half times more likely to develop an illness than those held less than three months.¹¹⁰ Other key issues include: the unnecessary use of restraints; a lack of access to mobile phones; insufficient health services; a lack of physical safety and privacy; and the unnecessary use of force by guards.¹¹¹

The COVID-19 pandemic has highlighted the health and safety risks for those being held in overcrowded conditions. Consequently, many detainees have been redistributed across the detention network to minimise overcrowding and risk of transmission. This included controversial decisions such as deporting some New Zealand detainees to free up space and sending people seeking asylum to Christmas Island detention facilities.¹¹²

The Australian Government's reluctance to waive its mandatory detention policy, despite the precedent for alternatives, has had damaging consequences. In October 2021, a COVID-19 outbreak at the Melbourne detention hotel resulted in over half of its 45 asylum seekers contracting the virus due to shared facilities and sealed windows.¹¹³

In 2018 Pope Francis said that "for the sake of the fundamental dignity of every human person, we must strive to find alternative solutions to detention for those who enter a country without authorisation." The Society encourages our Government to heed his call.¹¹⁴

4.1.20. Recommendations

- **That the Australian Government amend policies to permit people seeking asylum to live in the community while their immigration status is resolved.**

This includes people who seek refuge by sea and people who arrive on a valid visa who are not immigration cleared.

- **That detention only occur under extenuating circumstances, for a fixed period and for clearly defined reasons. Children must not be detained.**

Offshore processing

4.1.21. Background

From 2012 to 2014, people seeking asylum who arrived in Australia by boat and without a valid visa were forcibly transferred to either Nauru or PNG. While offshore processing remains official policy, Australia stopped transferring new arrivals offshore in 2014. Instead, under 'Operation Sovereign Borders' boats of people seeking asylum are turned back before they reach Australian shores.

However, people seeking asylum who were detained in Nauru and Manus Island (PNG) were held in highly securitised, closed detention centres, in conditions consistently described as cruel, inhuman and degrading. Although transferred to have their asylum claims processed by Nauru and PNG, neither country had a legislative framework for, or experience in, refugee status determination. Processing was limited in the early stages of the policy, leading to lengthy delays, uncertainty and arbitrary detention. A significant issue with this policy has been the lack of timely and appropriate humanitarian solutions for all those subject to offshore processing.¹¹⁵

Since offshore processing was introduced, over 4,000 people have been subject to indefinite offshore detention¹¹⁶ and 13 people have died while incarcerated.¹¹⁷ During this time, people have been brought back to the Australian mainland for various reasons, including:

- Approximately 600 adult men, and over 350 men, women and children who, as the result of changes to the regional settlement agreement between Australia, Nauru and PNG, were brought back to Australia and granted permission to lodge protection claims onshore.¹¹⁸
- 1,223 'transitory persons', who were transferred back to Australia for medical treatment or other reasons. These 'transitory persons' are prohibited from lodging substantive visa applications in Australia under Section 46B of the Migration Act.¹¹⁹

Approximately 1,000 people have also been resettled in another country. 940 people within this group were moved to the United States of America. A smaller number have been settled in Cambodia and other countries.¹²⁰ New Zealand has offered to take in 150 refugees annually, an offer the Australian Government has not accepted.¹²¹

Since 2014 the Australian Government has spent a significant amount of time and money unsuccessfully trying to extract itself from its bilateral agreements with PNG and Nauru.¹²² Significantly, in 2016 the detention of people seeking asylum on Manus Island was found to be unlawful by the Supreme Court of PNG, and as a result the PNG Government has since been trying to close the centre. As at 21 August 2021, 122 men still remain in PNG and 106 on Nauru.¹²³

The Australian Government announced its decision to stop processing people in PNG at the end of 2021. After ceasing regional processing contracts, these men will be given the option of permanently settling in PNG or being transferred to Nauru, which has entered into a Memorandum of Understanding with Australia to remain open in an “enduring” capacity.¹²⁴ However, this does not change Australia’s policy of mandatory detention and offshore processing.¹²⁵

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4.1.22. Key Issues

The Australian Government’s offshore processing policy has been the subject of widespread concern both nationally and internationally. In addition to the public outcry against offshore processing and reports by the United Nations, academics and civil society have highlighted that neglect, physical and sexual abuse, poor access to healthcare, and remote conditions have all contributed to worsening mental and physical health of those detained.¹²⁶

In 2015, the United Nation’s Human Rights Council released a report on torture and other cruel, inhumane or degrading treatment or punishment. This report highlighted how Australia’s offshore processing policy was at risk of violating international laws prohibiting torture. The report found that “the arbitrary detention and refugee determination at sea, without access to lawyers” was of particular concern, as well as the Government’s detention of children.¹²⁷

Survivors of Manus Island have also testified to their experiences in a class action made against the Australian Government. Majid Kamasae, who was the lead plaintiff observed: “I came to Australia seeking peace, but I was sent to Manus, which was hell. I was in pain every minute of every day and I cried every night until I had nothing left.”¹²⁸ Reflecting a similar sentiment, Imran Mohammad commented: “It feels like it is Australia’s ultimate goal to put every vulnerable refugee and asylum seeker into an inescapable corner... We have now lost seven lives from the hell of Manus and five from Nauru. All were full of life. I don’t know how many more lives they want in the name of this policy.”¹²⁹

The Australian Government has since settled the class action and agreed to pay \$70m in damages to 1,905 refugees and people seeking asylum who were incarcerated.¹³⁰

Healthcare Crisis

The Australian Government’s provision of healthcare in PNG and Nauru has been widely observed as inadequate. The health services which are available to people seeking asylum in offshore detention are often unaffordable, with after-hours health care, medication or medical reports incurring a fee.¹³¹ Living conditions on Manus and Nauru have also resulted in high levels of mental distress among the detainees. In 2018, 65 per cent of the detainees on Manus and Nauru were found to have suicidal ideation,¹³² with 88 per cent of detainees on Manus Island found to be experiencing depressive or anxiety disorders and/or post-traumatic stress disorders in 2016.¹³³

The ‘Medevac law’ was introduced in Parliament as a result of a series of court-ordered medical transfers, a documented mental health crisis in Nauru and the successful ‘Kids off Nauru’ campaign. The legislation required the Minister to consider the medical advice of independent doctors in deciding whether people seeking asylum should be transferred back to mainland Australia for medical treatment. The legislation was passed when the Government did not have a majority in Parliament,

¹ Asylum Seeker Resource Centre, (24 September 2021). *After 8 Years of Failed and Inhumane Policy Australia Signs MOU to Establish ‘Enduring’ Offshore Processing on Nauru*. <https://asrc.org.au/2021/09/27/after-8-years-of-failed-and-inhumane-policy-australia-signs-mou-to-establish-enduring-offshore-processing-on-nauru/>

² Faa, M, 6 October 2021, Australia to stop processing asylum seekers in PNG but government’s refugee policy unchanged, ABC News, Accessed at: <https://www.abc.net.au/news/2021-10-06/australia-stop-processing-asylum-seekers-in-png-manus/100517926>

with the support of Labor and most of the crossbench. After the Morrison government was re-elected in May 2019, the Medevac law was repealed in December 2019.¹³⁴

Medecins Sans Frontieres' 2018 report on the mental health consequences of offshore processing on Nauru found that of the 208 refugees and asylum seekers treated in Nauru, 124 patients (60%) had suicidal thoughts and 63 patients (30%) attempted suicide. Children as young as nine were found to have suicidal thoughts, committed acts of self-harm or attempted suicide.¹³⁵

Independent evidence presented by medical experts before the Senate's Legal and Constitutional Affairs Legislation Committee on the Migration Amendment (Repairing Medical Transfers) Bill 2019 [Provisions] was extensive and highlighted the dire mental health outcomes of those detained indefinitely.¹³⁶

4.1.23. Recommendations

- **That the Australian Government end offshore processing and permanently resettle those remaining in PNG and Nauru to Australia or ensure their timely resettlement in a safe third country.**

This could be achieved by providing permanent visas to all recognised refugees and people seeking asylum from the 'offshore processing' cohort, who are in Australia without access to safe and durable solutions elsewhere.

Welcoming those in need

4.1.24. Background

In addition to these six **protection** issues, cracks are also emerging in Australia's readiness to **welcome** refugees through its Humanitarian Program, with the annual cap having been reduced by 5,000 to only 13,750 places.¹³⁷

Furthermore, while the Australian Government's new refugee sponsorship pilot, the Community Refugee Integration and Settlement Program (CRISP), is an improvement on its previous community sponsorship model, it still has the same fundamental flaw that the numbers allowed remain with the Humanitarian Program cap.¹³⁸

4.1.25. Key Issues

Reduced Humanitarian Program

In 2016-17 Australia granted 21,986 people visas under its Humanitarian Program. For 2018-19 the Government set a lower target of 18,750 places for 2019-20. And since 2020-21 the annual ceiling for the program has been only 13,750 places.¹³⁹ These reductions significantly decrease Australia's contribution to helping the growing world-wide problem of refugee displacement.¹⁴⁰

The Refugee Council of Australia (RCOA) noted in 2021 that such reductions did not communicate the Government's own intentions for its Humanitarian Program to "meet Australia's international protection obligations" nor to "use resettlement strategically to help stabilise refugee populations, reduce the prospect of irregular movement from source countries and countries of first asylum, and support broader international protection".¹⁴¹

From the Society's perspective these reductions are also inconsistent with Pope Francis' 2018 call for "broader options for migrants and refugees to enter destination countries safely and legally".¹⁴²

RCOA recommends the restoration of Australia's Humanitarian Program to at least 20,000 places by 2022-23.¹⁴³ The Society supports that recommendation.

Afghan Response

Since the Indo-Chinese refugee crisis in the late 1970s Australia has responded to major refugee crises by accepting a special humanitarian intake above already planned annual intakes. Initially, Australia's response to the Afghanistan crisis was much more limited, with offers to help Afghan nationals within the existing annual humanitarian quota.

In late August 2021, the Society joined an unprecedented coalition of Christian churches and organisations (including Anglicans, Baptists, Catholics, Pentecostals and the Uniting Church) which came together under the banner of *Christians United for Afghanistan*. One of this coalition's key calls was for Australia to welcome more Afghan refugees by declaring "an intake of an additional 20,000

refugees, focused on those most at risk from the Taliban".¹⁴⁴ Bishop Vincent Long was the leading Catholic cleric who joined this coalition, making a supporting statement on its website¹⁴⁵ and publishing a separate article supporting its calls.¹⁴⁶

In the 2022 Federal Budget, the Australian Government announced an additional 16,500 humanitarian places (above the cap) for Afghan nationals over the next four years. This announcement is welcomed, although concerns remain about the four-year time period. Instability, conflict and crises will continue to occur throughout the world and the Australian Government must act quickly and be open to accepting additional humanitarian places when these crises arise.

Community Sponsorship

In 1979, in response to the Indo-Chinese refugee crisis, Canada commenced its Private Sponsorship of Refugees (PSR) program to allow community sponsorship to supplement the government funded program, with individuals and organisations providing the funding and support for the refugees they sponsor.¹⁴⁷

Since then, Canada's PSR has successfully sponsored over 325,000 refugees. Recently the program has been sponsoring refugees who have been held in Australia's offshore processing centres in PNG and Nauru.¹⁴⁸

Australia has had a program for the community sponsorship of refugees since 2013, with the current iteration, the Community Support Program (CSP), commencing in 2017. The Government announced a review of CSP in 2019, which was delivered in May 2021.¹⁴⁹ The Review found that "stakeholders were most concerned about the high costs of the program" and that there was "criticism from many stakeholders that places for the Program are drawn from within the base Humanitarian Program".

On this second point the Review further found that:

"Community organisations generally report being unwilling to engage in (and bear high financial costs for) sponsorship without it generating places in addition to the current humanitarian intake. It was suggested that Australians more generally would be more motivated to donate time and money if they saw their efforts contributing to an increase in the overall number of refugees settled. There was also a strong sense that a lack of 'additionality' contributed to slow uptake by businesses."¹⁵⁰

On 17 December 2021 the Government announced its "new settlement measures" following the CSP Review. The new measures included:

- **"A lower cost Community Support Program (CSP):** From 1 July 2022, the Government will reduce the Visa Application Charge for the Community Support Program to 40 per cent of the current rate for primary applicants and remove it entirely for secondary applicants.
- **Introduction of a pilot program to trial community-based sponsorship of refugee and humanitarian entrants with no link to Australia:** The Government will invest \$9.2 million to introduce a new Community Refugee Integration and Settlement Pilot (CRISP), to commence in 2022.

The four-year pilot will facilitate community sponsorship of up to 1,500 refugee and humanitarian entrants across Australia, to help refugees resettle with the support of interested community groups, trained volunteers and faith-based groups, who have expressed interest in directly supporting refugees.

The program will draw on elements of the Canadian community sponsorship program and provide an alternative approach to the settlement of refugees, within the Humanitarian program."¹⁵¹

Refugee support organisations have welcomed the new CRISP program and the cost reductions to CSP.^{152 153 154} That said, RCOA and Amnesty International have expressed disappointment that, while there was an increase in the number of people for this new program, this number was still within the existing Humanitarian cap. Again, there is no net increase in the number of refugees we are welcoming so the Society joins with these organisations in calling for CRISP numbers to be **additional** to the current Humanitarian quota.

4.1.26. Recommendations

- **That the Australian Government welcome more refugees by:**
 - increasing the annual cap for the Humanitarian Program to at least 20,000
 - recognising the ongoing need to offer additional places above the humanitarian intake in response to crises as they arise
 - ensuring that the additional refugees sponsored through the Community Refugee Integration and Settlement Pilot, are additional to the annual quota of refugees accepted under the Humanitarian Program.

¹ The Vatican, 21 February 2017, Address of His Holiness Pope Francis to Participants in The International Forum on Migration and Peace, Accessed at: https://www.vatican.va/content/francesco/en/speeches/2017/february/documents/papa-francesco_20170221_forum-migrazioni-pace.html

² Australian Human Rights Commission, 2019, Lives on Hold: Refugees and Asylum Seekers in the 'Legal Caseload', Accessed at: <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>, Recommendations 1-4.

³ *ibid.*, Recommendations 10-13

⁴ *ibid.*, Recommendations 10-13

⁵ Catholic Community Services, n.d., Catholic Social Teaching, Accessed at: <https://ccsww.org/about-us/catholic-social-teaching/>

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