



DISCUSSION PAPER AND CONSULTATION QUESTIONS

RCOA Submission on Australia's 2013-14 Refugee and Humanitarian Program

5 October 2012

Throughout October and November, the Refugee Council of Australia (RCOA) is holding its annual national consultations on the future of Australia's refugee and humanitarian program. Feedback generated from these consultations will inform RCOA's submission to the Minister and Department of Immigration on Australia's 2013-14 Refugee and Humanitarian Program (see www.refugeecouncil.org.au/r/isub.php for more information).

This year, community consultations will explore issues in the areas of: (1) Australia's response to international refugee needs; (2) Recommendations of the Expert Panel on Asylum Seekers and implications for Australia's Refugee and Humanitarian Program; and (3) Community views on how the different pathways to protection for refugee and humanitarian entrants impact on settlement experiences. The following discussion paper provides background information on each of these theme areas.

To find out how to participate in the face-to-face consultations in your state or territory, go to the RCOA website at www.refugeecouncil.org.au/r/isub.php or contact RCOA on (02) 9211 9333 or email admin@refugeecouncil.org.au.

RCOA welcomes written input in response to the consultation questions below. Responses can be sent to admin@refugeecouncil.org.au by **1 November 2012**.

1. AUSTRALIA'S RESPONSE TO INTERNATIONAL REFUGEE NEEDS

1.1 GLOBAL REFUGEE TRENDS

The latest statistics from the United Nations High Commissioner for Refugees (UNHCR) reveal that during 2011, the number of people displaced by persecution and conflict decreased slightly from 43.7 million to 42.5 million. Of these 15.2 million are refugees, 895,000 are asylum seekers and 26.2 million are internally displaced persons. UNHCR also estimates that up to 12 million people were affected by statelessness in 2011.

Table 1: Forced displacement, 2011

Forcibly displaced persons	Number displaced
Refugees	15.2 million
<i>Refugees under UNHCR's mandate</i>	<i>10.4 million</i>
<i>Palestinian refugees under UNRWA's mandate</i>	<i>4.8 million</i>
Asylum seekers	895,000
Internally displaced persons	26.4 million
TOTAL	42.5 million

While the overall number of forcibly displaced people dropped in 2011, the development or escalation of several major crises created an upsurge in new displacement. UNHCR estimates that 4.3 million people were newly displaced due to conflict or persecution in 2011, of whom 800,000 were displaced as refugees – the highest number in more than a decade. Asylum applications increased by over 60% and the number of asylum seekers recognised as refugees more than doubled.

Other trends, however, remained relatively consistent. Most refugees continue to flee to neighbouring countries and remain within their region of origin, with the major source regions for refugees hosting between 75 and 93 per cent of refugees from within the same region. As in 2010, securing durable solutions for refugees remains challenging: of the 10.4 million refugees under UNHCR’s mandate, 7.1 million remain in protracted situations with no prospect of a solution in the near future. All of the countries which were among the top ten countries of refugee origin and asylum in 2010 were again in the top ten in 2011, the only exception being the replacement of the United Kingdom by Ethiopia as one of the top countries of asylum. In 2011, an estimated 532,000 refugees returned home voluntarily – a significant increase on repatriation in 2010 (when 197,600 returned home voluntarily), but the third lowest number over the past decade. Just 79,784 refugees were resettled in 2011, almost 20,000 fewer than in 2010.

Table 2: Top ten countries of origin and asylum, 2011

Rank	Country of origin	Total	Rank	Country of asylum	Total
1	Afghanistan	2,664,436	1	Pakistan	1,702,700
2	Iraq	1,428,308	2	Iran	886,468
3	Somalia	1,075,148	3	Syria	755,445
4	Sudan	491,013	4	Germany	571,685
5	Dem. Rep. of Congo	491,481	5	Kenya	566,487
6	Burma (Myanmar)	214,594	6	Jordan	451,009
7	Colombia	113,605	7	Chad	366,494
8	Vietnam	337,829	8	China	301,018
9	Eritrea	220,745	9	Ethiopia	288,844
10	China	190,369	10	United States	264,763

1.2 DEBATES ABOUT REFUGEE PROTECTION NEEDS

A number of key themes emerged from international discussions on refugee protection needs in 2012:

New crises emerge while existing crises remain

2011 and 2012 saw the emergence of several new crises of displacement, including the post-election crisis in Cote d’Ivoire, the uprisings in Libya and Syria, the violence following the declaration of South Sudan as an independent country and the armed conflict in Mali. At the same time, the world’s existing major refugee crises remain unresolved or, in the case of Somalia, have actually escalated. Most of the refugees under UNHCR’s mandate live in protracted situations, with durable solutions remaining elusive due to conditions in countries of origin not being conducive to safe and sustainable return, lack of capacity or unwillingness of countries of asylum to provide local integration opportunities and the continuing gap between resettlement needs and available places.

Protection environment deteriorating

Refugees in many countries are facing increasingly difficult living conditions. Security conditions have declined in some major countries of asylum (such as Kenya and Syria) and several countries have adopted or are seeking to adopt increasingly restrictive policies designed to limit or block access to asylum processes and protection. The growth of xenophobia and anti-refugee sentiment in some countries, particularly in Europe, has also had an impact on the protection environment. Lack of resources to address protection needs remains a perennial problem, with many major refugee situations facing significant gaps in funding and resources. Over the past year, many programs for refugees in Africa have been scaled back or stopped due to lack of funds.

Resettlement in decline

As in previous years, resettlement needs continue to far outstrip available places. UNHCR estimates that 859,305 people will be in need of resettlement in the coming years, a ten per cent increase on the estimates reported last year. Of these, 180,676 will be in need of resettlement in

2013. With the total number of resettlement places available for referral through UNHCR currently standing at around 81,000,¹ it is expected that fewer than half of the refugees in need of resettlement next year will actually be resettled. Resettlement declined significantly in 2011 with several countries failing to fill their annual resettlement quotas, partly due to the impact of national security screening processes. Concerns have also been raised about UNHCR's limited capacity to refer refugees for resettlement despite needs being high, either due to resource constraints or difficulties in accessing refugee populations (for example, due to security issues).

International priorities in resettlement

UNHCR and resettlement states continue to focus on several priority situations for resettlement – refugees from the Democratic Republic of the Congo, refugees from Somalia, Afghan refugees in Iran and Pakistan, Iraqi refugees in the Middle East, and refugees from Colombia. The emergence of several unexpected crises over the past two years has highlighted the need for a larger pool of emergency resettlement places. The strategic use of resettlement in priority situations remains a major focus area in international discussions on resettlement, particularly in light of the decline in resettlement places over the past year and the deterioration in protection conditions in several major countries of departure for resettled refugees, both of which have highlighted the need to make the best use of the few resettlement places available.

1.3 AUSTRALIA'S REFUGEE AND HUMANITARIAN PROGRAM

In response to international refugee needs, in 2011-12 Australia provided 13,759 places through the Refugee and Humanitarian Program. The following is an overview of the composition of the 2011-12 program.

Table 3: Refugee and Humanitarian visa grants by sub-class, 2007-08 to 2011-12²

Visa sub-class	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Offshore Refugee visas						
Refugee (visa sub-class 200)	5,132	5,653	5,173	5,211	5,140	26,309
In-country Special Humanitarian (201)	42	54	24	26	43	189
Emergency Rescue (203)	5	4	-	2	0	11
Woman at Risk (204)	819	788	806	759	821	3,993
Secondary Movement Relocation - Temp (451)	6	-	-	-	-	6
Offshore Special Humanitarian visas						
Global Special Humanitarian (202)	4,795	4,511	3,233	2,973	714	16,226
202 visas granted by ministerial intervention	231	75	11	8	2	327
Onshore Protection visas						
Onshore Temporary Protection (785)	196	9	-	-	-	205
Resolution of Status (851)	-	39	8	2	1	50
Onshore Permanent Protection (866)	1,704	2,369	4,515	4,818	7,038	20,444
Temporary Humanitarian Concern (786)	84	5	-	-	-	89
TOTAL	13,014	13,507	13,770	13,799	13,759	67,849

For the first time ever, the onshore protection component was larger than the offshore resettlement component of the Refugee and Humanitarian Program, with 7,039 onshore protection visas issued (51.2% of the overall program) and 6,720 offshore visas granted in 2011-12. Offshore resettlement visas were issued under three Refugee sub-classes – Refugee sub-class (5,140 visas), In-country Special Humanitarian (43 visas) and Woman at Risk (821 visas) – and through the Global Special Humanitarian Program (716 visas³). The majority of those issued visas under the Refugee category had their cases put forward by UNHCR, while those entering under the Global Special Humanitarian visa sub-class are proposed by permanent residents of Australia and Australian-

¹ This figure does not take into account the recent increase of Australia's Refugee and Humanitarian Program from 13,750 to 20,000 places annually. As the resettlement program will remain numerically linked to the onshore protection program, it is uncertain at this stage precisely how many of these additional places will be dedicated to resettlement.

² Figures from Department of Immigration and Citizenship (DIAC) annual reports, 2007-08 to 2009-10; 2010-11 and 2011-12 figures are from DIAC.

³ This includes 2 SHP visas granted onshore through Ministerial discretion.

based community organisations. Of the 7,039 onshore protection visas, 4,766 (67.7%) were granted to people who had arrived by boat.

Countries of birth and regional composition

Table 4 shows the top countries of birth of those granted offshore stream visas in 2011-12. Of those coming on Refugee visas, the greatest number originated from Burma (1,854, or 30.9%), Iraq (1,322, 22%) and Bhutan (695, 11.6%). Those proposed through the Special Humanitarian Program (SHP) predominantly came from Afghanistan (177, 24.8%), Iraq (150, 21%) and Ethiopia (42, 5.9%). When combining both SHP and Refugee visa streams, the top countries of birth for all offshore entrants in 2011-12 were Burma (1,860, 27.7%), Iraq (1,472, 21.9%) and Afghanistan (712, 10.6%).

Table 4: Top countries of birth of offshore entrants, 2011-12⁴

	Refugee	SHP	Total	% of total
Burma	1,854	6	1,860	27.7%
Iraq	1,322	150	1,472	21.9%
Afghanistan	535	177	712	10.6%
Bhutan	695	0	695	10.3%
Ethiopia	288	42	330	4.9%
Congo (DRC)	294	6	300	4.5%
Eritrea	213	8	221	3.3%
Iran	201	15	216	3.2%
Somalia	156	14	170	2.5%
Congo (ROC)	100	0	100	1.5%
Others	346	296	642	9.6%
Total	6,004	714	6,718	100.0%

Figure 5: Offshore Refugee and Humanitarian visas granted by region, 2002-03 to 2011-12⁵

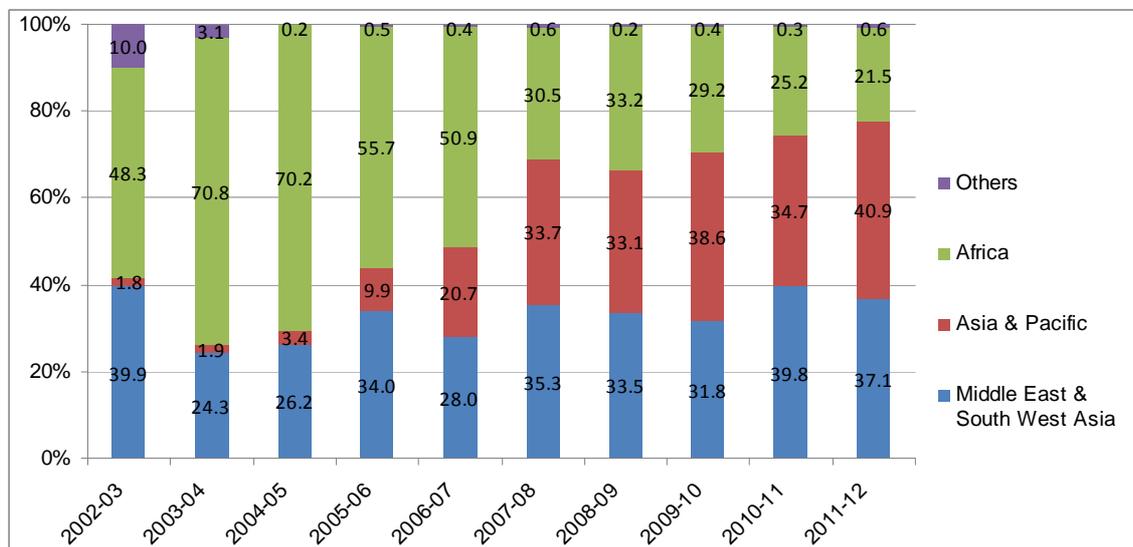


Figure 5 shows the change in regional composition of the offshore Refugee and Humanitarian Program over the past 10 years, with a shift in focus in 2011-12 to resettling more people from Asia, with 40.9% of visas granted to persons originating from this region (37.1% were from the Middle East and South West Asia and 21.5% were from Africa).

⁴ Figures from DIAC

⁵ 2008-09 and 2009-10 figures from DIAC annual reports. Figures prior to 2008-09 taken from DIAC (2009). *Refugee and Humanitarian Issues: Australia's Response*. Commonwealth of Australia, <http://www.immi.gov.au/media/publications/refugee/ref-hum-issues/ref-hum-issues-june09.htm>. 2010-11 and 2011-12 figures from DIAC.

Onshore protection visa holders continue to be predominantly from the Middle East and South Asia regions, with no change in the top five countries of birth of onshore entrants in the past two years. Those listed as stateless are predominantly Rohingya and Faili Kurds.

Table 6: Top five countries of origin for onshore protection visa holders, 2006-07 to 2011-12

2006-07	2007-08	2008-09	2009-10	2010-11	2011-12 ⁶
China	Sri Lanka	China	Afghanistan	Afghanistan	Afghanistan
Sri Lanka	China	Sri Lanka	Sri Lanka	Iran	Iran
Iraq	Iraq	Afghanistan	China	Stateless	Stateless
Iran	Pakistan	Zimbabwe	Iraq	Iraq	Iraq
Pakistan	Iran	Iraq	Iran	Sri Lanka	Sri Lanka

Age on arrival

In 2011-12, children and young people continued to represent the largest demographic of all Refugee and Humanitarian Program entrants, with 2,638 (or 39.3%) offshore visas granted to children aged under 18 years and 1,696 (25.2%) visas granted to 18-29 year olds. This means that about two thirds of all offshore entrants were under the age of 30 on arrival.

Asylum seekers⁷

There has been a significant increase in the number of protection visa applications lodged in recent years. As Table 7 shows, 9,846 applications were lodged by both asylum seekers arriving by boat and by plane in the first three quarters of 2011-12. Statistics on the full financial year have yet to be released by DIAC, but indications would suggest that the total number of protection visas lodged in 2011-12 will far exceed the 11,491 lodged in 2010-11.

Table 7: Protection visa applications lodged, 1 July 2008 to 30 March 2012

Year	Non-IMA protection visa applications lodged	IMA refugee status determination requests received	Total
2008-09	5,072	690	5,760
2009-10	5,987	4,591	10,578
2010-11	6,316	5,175	11,491
07/11-03/12	5,343	4,503	9,846

1.4 CONSULTATION QUESTIONS ON INTERNATIONAL REFUGEE NEEDS

1.4.1 What strategies could the Australian Government adopt to respond to key refugee protection issues and new and existing humanitarian crises? What role could the Refugee and Humanitarian Program play in this response?

1.4.2 Which groups would you nominate as being in priority need of resettlement under Australia's Refugee and Humanitarian Program during 2013-14?

2. RECOMMENDATIONS OF THE EXPERT PANEL

2.1 BACKGROUND TO THE EXPERT PANEL ON ASYLUM SEEKERS

On 28 June 2012, the Prime Minister and the Minister for Immigration and Citizenship announced that the Government had invited Air Chief Marshal Angus Houston AC AFC, the former chief of Australia's defence force, to lead an expert panel to provide a report on the best way forward for Australia to prevent asylum seekers risking their lives on dangerous boat journeys to Australia. The

⁶ Note: statistics for 2011-12 are for the period between 1 July 2011 and 30 March 2012. Statistics from the last quarter have not yet been released by DIAC.

⁷ Asylum figures from DIAC. 2011-12 statistics are for the period to 30 March 2012 only.

expert panel also included Mr Paris Aristotle AM, the Director of the Victorian Foundation for Survivors of Torture and Professor Michael L'Estrange AO, the Director of the National Security College at the Australian National University.

On 13 August 2012, the Expert Panel on Asylum Seekers (the Panel) released its report after six weeks of consultation and research.⁸ The 22 recommendations in the report cover a complex series of issues: from regional capacity building and an increase in the offshore resettlement program, through to the establishment of offshore processing and a range of measures intended to deter asylum seekers from getting on boats. Given that the Prime Minister has committed the Government to implementing all 22 recommendations, RCOA is seeking community feedback on these recommendations and their ramifications.

The following provides an overview of some of the key recommendations of the Panel report and their implications for the future of Australia's Refugee and Humanitarian Program. It does not cover all 22 recommendations, but some of the key recommendations concerning the future composition of the program, regional protection, asylum policy and family reunion.⁹

2.2 RECOMMENDED CHANGES TO THE HUMANITARIAN PROGRAM

Size of the Humanitarian Program

A significant recommendation of the expert panel was an immediate increase in the size of the Humanitarian Program from 13,750 to 20,000 places per annum. Furthermore, the Panel recommended that, "subject to prevailing economic circumstances, the impact of the Program increase and progress in achieving more effective regional cooperation arrangements, consideration be given to increasing the number of places in the Humanitarian Program to around 27,000 within five years". The Panel affirmed that any increase in places under the Humanitarian Program should be complemented by the normal provision for settlement services and that the increasing costs of the program would likely be offset by the reduction in costs associated with processing of asylum seekers in Australia. On 23 August, the Prime Minister and Minister for Immigration announced the Government's intention to increase the Humanitarian Program to 20,000 places in the 2012-13 financial year, the most significant boost in the size of the program in 30 years.¹⁰

Composition by visa sub-class

In relation to the increased Humanitarian Program intake of 20,000 places, the Panel recommended that a minimum of 12,000 places be allocated for the Refugee component (visa sub-classes 200, 201, 203, 204). Presumably, the remaining 8,000 places would be made up of Onshore Protection (sub-class 866) and Special Humanitarian Program (sub-class 202) visa grants, with the two numerically linked as is the current policy. A question remains about how a private/community refugee sponsorship program would fit within this 20,000 and under what visa sub-class those sponsored under this program would arrive (see below).

Regional composition

The Panel asserted that the increased resettlement program should maintain the current allocation targeting need (as identified by UNHCR) for resettlement places from the Africa region, with additional places from the Middle East and Asia regions. The Panel suggested that, while providing a program of up to 3,800 resettlement places from regional countries in South-East Asia, there should also be a deliberate strategy to target the majority of additional places as close to countries of origin as possible, which would involve a significant increase in places for the Middle East region. Additionally, the Panel recommended that some places should be made available for other caseloads such as Sri Lankans, Iranians and Iraqis.

⁸ To read the full report, go to: <http://expertpanelonasylumseekers.dpmc.gov.au/report>

⁹ To read RCOA's full analysis of the expert panel report and recommendations, go to: www.refugeecouncil.org.au/r/rpt/2012-Expert-Panel.pdf

¹⁰ www.pm.gov.au/press-office/refugee-program-increased-20000-places

Questions raised by this proposition are how and whether Australia will maintain a global approach to resettlement and encourage major resettlement states to do the same. That is, while greater resettlement from Asia as part of a strategy to increase regional protection options has many benefits, UNHCR's "Projected Global Resettlement Needs 2013" emphasises the importance of continued resettlement from all three regions – Africa, Asia and the Middle East. If Australia focuses almost exclusively on resettlement from our region, will it be more difficult to encourage the major resettlement states (located outside the Asia-Pacific region) to participate in the resettlement of the region's refugees both now or in the future through a "regional processing system"?

Link between SHP and onshore

Australia is the only country in the world that has created a numerical link between its offshore resettlement of refugees and humanitarian entrants and its recognition of asylum seekers within its border. Not only has this policy had the effect of reducing opportunities for family reunion, it also hinders planning of the resettlement program, risks creating antagonism between refugee communities and confuses Australia's legal obligations under the Refugee Convention with its voluntary commitment to resettlement. RCOA has recommended an end to the linking policy since its introduction of this policy in 1996. The Panel recommended that, in the context of a review of the efficacy of the recommendations put forward in its report, the linkage between the onshore and offshore components of the humanitarian program be reviewed within two years.

A private/community refugee sponsorship pilot

On 8 May 2012, the Minister for Immigration and Citizenship, the Hon Chris Bowen MP, announced the Government would be seeking the community's views on a private sponsorship pilot program as a way to improve Australia's Humanitarian Program. Submissions asking for community input on questions such as the feasibility of a private/community refugee sponsorship program, who should be eligible to sponsor, who should be sponsored, and what the requirements of a sponsorship arrangement would be, closed on 27 July.¹¹

One of the stated aims of such a program was the potential to "provide an opportunity to increase the size of the Humanitarian Program".¹² However, since the May budget announcement and submissions closed, the Australian Government announced an increase in the Humanitarian Program intake to 20,000 in accordance with the Expert Panel's recommendations. Questions remain about how a private/community refugee sponsorship pilot would therefore fit within the Refugee and Humanitarian Program, what visa category sponsored refugees will be granted, and what support they will be entitled to as a result. The Panel suggests that the development of a sponsorship model could reduce the costs of a place under the Humanitarian Program "by up to one-third" and considers that "any savings achieved through such an initiative should be used to offset other costs under the expanded program".

An announcement on this pilot private/community refugee sponsorship program is expected before the end of the year and RCOA is interested in hearing feedback on community perceptions of the role that such a program should or could play within the future of Australia's Refugee and Humanitarian Program.

2.3 ASYLUM POLICY

The majority of the Panel report and recommendations concern the way in which Australia fulfils its duty to provide protection to those seeking asylum onshore and, more particularly, to those seeking Australia's protection who arrive by boat. Precipitated by an increase in the number of people arriving by boat in recent years (see section 1.3.1) and the tragedy of an increasing number of lives lost en route to Australia in recent years, the Panel recommended a suite of new deterrence measures aimed at shifting "the balance of risk and incentive in favour of regular

¹¹ RCOA's submission can be viewed at: www.refugeecouncil.org.au/r/sub/1207-Sponsorship.pdf

¹² See DIAC discussion paper, p.4. www.immi.gov.au/about/contracts-tenders-submissions/humanitarian-program.htm

migration pathways and established international protections and against high-risk maritime migration". The most significant measures include the reintroduction of offshore processing, reinvigorating the Malaysia transfer agreement, extending excision policy to all of Australia, reviewing refugee status determination processes, changing eligibility to family reunion for those who have been granted permanent protection onshore (refer to section 2.5), and considerations for turning back boats in the future.

Offshore processing

One of the most significant recommendations proposed by the Panel was for legislation to be introduced into the Australian Parliament as "a matter of urgency" to support the transfer of people to "regional processing arrangements". As a result of this recommendation, on 17 August the Australian Parliament made legislative changes to allow the transfer of asylum seekers to regional processing countries,¹³ paving the way for offshore processing in Nauru and PNG. Changes included: the removal of provisions stipulating minimum conditions which must be met if a country is to be designated for offshore processing; the addition of provisions outlining processes for and issues to be considered when making a designation; and the introduction of a requirement that designations be made through a disallowable legislative instrument. A legislative change was also made to the *Immigration (Guardianship of Children) (IGOC) Act 1946* to remove the Minister for Immigration's guardian responsibilities for any unaccompanied minor transferred to a regional processing country.

While the transfer of asylum seekers from Australia to Nauru is currently underway, there are still outstanding questions related to the care and legal arrangements for people held on Nauru and PNG, as well as implications for Australia meeting its various international treaty obligations. Concerns include:

- *Adequacy of safeguards:* Under the legislation, the only conditions which must be met if the Minister is to make a designation is that he or she believes it is in the national interest to do so, and has considered whether the designated country has provided assurances (which need not be legally binding) that it will adhere to the principle of *non-refoulement* and allow access to refugee status determination procedures. The legislation also requires the Minister to provide documents to Parliament detailing, among other things, assurances provided by the designated regional processing country and arrangements for the treatment of people subject to transfer, but specifically states the content of these documents, or the failure to provide them, does not affect the validity of the designation. The legislation contains very little detail on and sets no legally binding standards for the treatment of asylum seekers in designated countries.
- *Absence of sunset clause:* The absence of a sunset clause or regular review mechanism for designations of regional processing countries would allow a designation to remain in place indefinitely, regardless of whether conditions in designated countries change or whether the initial assurances provided by those countries are fulfilled. As such, the transfer of asylum seekers to regional processing countries would remain lawful even if evidence emerged that the people transferred would be at risk of, or had experienced, ill-treatment.
- *Obstruction of natural justice:* The provision stipulating that the rules of natural justice do not apply to the Minister's decision to designate a country as an offshore processing country removes such decisions from independent review.

Further to the legislative change that would allow Australia to transfer asylum seekers offshore, the Panel recommended that a capacity be established in Nauru and PNG "as soon as practical" to process the claims of "IMAs"¹⁴ transferred from Australia in ways consistent with Australian and Nauruan/PNG responsibilities under international law. While the first asylum seekers were transferred to Nauru on 14 September, there is still no information regarding processes for safeguarding their rights and wellbeing, including mechanisms for addressing breaches of rights, or the Australian Government's contingency plans should conditions on Nauru or any other regional

¹³ To read the Bill, go to: www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4683

¹⁴ IMAs, or Irregular Maritime Arrivals, is the Australian Government's term for asylum seekers who arrive by boat without prior authorisation.

processing country become untenable.

Furthermore, the Panel recommended that the timeframe for resettlement out of Nauru or PNG be in line with other regional processing arrangements. However, as the improvements required for a comprehensive regional cooperation and protection framework are currently not in place (refer to Section 2.4), it is difficult to determine an appropriate and fair “waiting time” for resettlement. Based on current trends in some countries in the region, for example, people transferred to Nauru will never be resettled.

Malaysia Agreement

The Panel recommended that the 2011 *Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement* (Malaysia Agreement) be built on further, rather than being discarded or neglected, and that this could be achieved through high-level bilateral engagement focused on strengthening safeguards and accountability as a positive basis for the Australian Parliament’s reconsideration of the designation of Malaysia as an offshore processing country.

The original Malaysia Agreement, signed on 25 July 2011, proposed the transfer of 800 asylum seekers to Malaysia for processing in exchange for Australia accepting an additional resettlement of 4,000 recognised refugees from Malaysia.¹⁵ This agreement was effectively quashed on 31 August 2011 by a High Court ruling on the basis that certain legal safeguards required under the Migration Act to permit the designation of an offshore processing country were not in place in Malaysia. This requirement has subsequently been removed from the Act to facilitate offshore processing in Nauru and PNG. It should also be noted that while the Expert Panel recommended the bolstering of protection safeguards within the Malaysia arrangement, it did not recommend similar safeguards for transfers to Nauru and PNG.

Extending excision policy to all of Australia

The Panel recommended that the *Migration Act 1958* be amended so that a person arriving anywhere on Australia soil by irregular maritime means will have the same lawful status as those who arrive in an excised offshore place, and would therefore be liable to have any claims for asylum assessed in a location outside Australia (regional or offshore processing). The Panel made this recommendation because it was concerned that Australia’s excision legislation could create an incentive for asylum seekers to take greater risks by seeking to reach the Australian mainland instead of an excised territory, as those arriving on the mainland would not under current provisions be subject to offshore processing.

Review of refugee status determination process

The Panel recommended that a thorough review of the Australian refugee status determination (RSD) process be undertaken. The Panel suggested that the review examine: identity issues and the use of biometrics; the consequences of a refusal by applicants to cooperate in confirming their identity; a more expeditious assessment process to finalise RSDs; the quality of application advice; the primary decision and review processes; improved capacity to use intelligence material in RSDs; the consistency and quality of country information available to primary decision makers and at review; and the need for greater codification in domestic legislation of the RSD assessment and the tests and standards applied, consistent with Australia’s Refugee Convention obligations.¹⁶

Turning back boats

The Panel noted that the conditions necessary for effective, lawful and safe turnback of irregular vessels carrying asylum seekers to Australia are not currently met, but that this situation could change in the future, in particular “if appropriate regional and bilateral arrangements are in place”. Questions remain about whether turning back boats can be a feasible, effective, constructive or

¹⁵ <http://www.minister.immi.gov.au/media/cb/2011/cb168739.htm>

¹⁶ It should be noted that current reviews are already underway in Australia, with no results yet published. The finalisation and publication of these reviews may fulfil this recommendation’s objective.

safe option in any situation.

Other recommendations relating to asylum policy included: a strategy for removal and returns, disruption strategies, anti-smuggling operations and conducting further research on the drivers and impacts of forced migration.¹⁷

2.4 REGIONAL PROTECTION

At the core of the Expert Panel's strategy for addressing dangerous boat journeys to Australia is the development of a comprehensive and sustainable regional framework for improving protection and asylum systems. The framework proposed by the Panel would include elements such as the significant expansion of registration, processing, delivery of durable outcomes for refugees and the return of failed asylum seekers, as well as enhanced regional cooperation to combat people smuggling.

While the Panel outlined some suggested focus areas for this "managed regional system" for processing and protection – such as consolidating the Regional Cooperation Framework developed through the Bali Process, enhancing cooperation on capacity-building initiatives and increasing funding for UNHCR – it did not present a detailed outline of the form and scope of the framework, nor a comprehensive plan for implementation. It therefore remains unclear at this stage how the Australian Government will pursue the implementation of this recommendation.

Other recommendations put forward by the Panel in relation to regional cooperation include:

- Increased funding for capacity-building initiatives, with a focus on programs which will support the development of a regional framework for improved protections, registration, processing, integration, resettlement, returns and other priorities. The Australian Government has announced an initial allocation of \$10 million in additional funding for such initiatives.
- Enhanced bilateral cooperation and engagement with Indonesia, Malaysia and other key source countries for asylum seekers arriving in Australia, such as through the allocation of additional resettlement places and the promotion of international aid efforts to support displaced populations.
- Better coordination with other resettlement countries to enhance the strategic use of resettlement.
- Development of joint operational guidelines for managing search and rescue activities in the region.

2.5 FAMILY REUNION

The need for enhanced access to family reunion has been one of the most consistently-raised concerns in RCOA's community consultations.¹⁸ For some years, the Special Humanitarian Program (SHP) has been the main pathway by which refugee and humanitarian entrants have been able to reunite with both immediate and extended family members separated by displacement and resettlement. As outlined in the Expert Panel's report, there is currently a large backlog of applications in the SHP component of the Humanitarian Program which would not be cleared for many years under existing arrangements. In 2011-12, the SHP provided for only 714 family reunion places to accommodate the more than 20,000 applications for such places. The provision for SHP places in 2012-13 is likely to be significantly less than this figure due to an increase in onshore protection visa applications and grants.

The Panel's recommendations for addressing this backlog and the lack of family reunion options for humanitarian entrants are to:

- Remove policy concessions for immediate family applicants in order to reduce size of the SHP

¹⁷ See RCOA full analysis of Expert Panel recommendations here: www.refugeecouncil.org.au/r/rpt/2012-Expert-Panel.pdf

¹⁸ See: RCOA (2012). *Humanitarian Family Reunion: The building block of good settlement*. www.refugeecouncil.org.au/r/rpt/2012-Family.pdf

backlog;

- Reduce future eligibility to SHP for refugees who arrive by boat; and
- Allocate an additional 4,000 places in the family stream of the Migration Program specifically for humanitarian entrants.

It is also assumed that a reduction in the number of people seeking Australia's protection and being granted onshore protection visas achieved through the entire package of recommendations would result in an increase in the number of SHP places – and hence humanitarian family reunion options – in the longer term.

Changes in eligibility to SHP

The Panel recommendations include some that significantly impact eligibility to the SHP. The first of these recommendations is to remove the current family reunion concessions that presume that immediate family applicants meet the 'compelling reasons' criteria for resettlement under the SHP. This means that all proposers who arrived by boat, including those whose applications have already been submitted and are in the backlog (i.e. this is a retrospective policy change), will have to meet the 'compelling reasons' criteria under the SHP unless the proposer was under the age of 18 at the time the SHP application was lodged. The Panel suggests that applicants who would be unsuccessful under the SHP without the concession can seek family reunion under the existing provisions of the family stream of the Migration Program.

Questions remain as to whether this measure will have the desired effect of reducing the SHP backlog, considering most family members of refugees who arrived in Australia by boat will likely fulfil the "compelling reasons" criteria for family reunion. In addition, there is no indication in the report as to the anticipated timeframe to clear the existing backlog of humanitarian visa applications.

The second significant recommendation with regard to the SHP is that any future "irregular maritime arrival" who is granted an onshore protection visa will be ineligible to propose family members through the SHP. Again, the Panel considers that these humanitarian entrants would be able to instead propose family members through the family stream of the Migration Program.

Increase in places under the family stream of the Migration Program

In recognition of the reduced eligibility to the SHP for some humanitarian entrants, the Panel recommends that 4,000 additional places per annum be provided to the family stream of the Migration Program to reduce the resulting pressure on this stream through the increasing number of humanitarian entrant applicants. The Panel recommends that these 4,000 additional places be specifically allocated to humanitarian visa holders, minimising any impact on non-humanitarian visa holder sponsors in the family stream. No concessions in terms of eligibility requirements for family stream visas (i.e. partner, child, parent or other visa sub-classes) have been proposed for humanitarian entrants by the Panel.

RCOA is particularly keen to hear community feedback on whether an increase in the number of family stream visas earmarked for humanitarian entrant applicants will provide a viable alternative for those refugees no longer eligible to propose family members under the SHP. For example, we are interested in hearing any issues, concerns or experiences regarding the accessibility of family stream visas and processes for humanitarian entrants.

Implementation of changes to humanitarian family reunion

On 22 September, Minister Bowen announced the Government's implementation of the Expert Panel recommendations with regards to family reunion, stating that applications made by family of adult boat arrivals who arrived prior to 13 August 2012 will "be given lowest processing priority" and that "these changes will ensure highest priority is given to the applications of family of people who were granted refugee and humanitarian visas overseas and migrated to Australia in a safer

and orderly manner.”¹⁹ It is unclear how onshore protection visa holders who meet all of the SHP criteria will be de-prioritised in the current SHP backlog. The Minister confirmed that those who arrived by boat and are granted onshore protection visas after 13 August will no longer be eligible to apply for family reunion under the SHP.

In accordance with the Panel's recommendation, applicants proposed by unaccompanied minor refugees who arrived before 13 August 2012 will still be eligible for SHP visas on the strength of their family relationship alone, however it is unclear how (or if) SHP applications sponsored by unaccompanied minors who have arrived after 13 August 2012 will be considered.

2.6 CONSULTATION QUESTIONS ON EXPERT PANEL RECOMMENDATIONS

- 2.6.1 What comments, questions or concerns do you have about the recommended changes to the composition of Australia's Refugee and Humanitarian Program (i.e. the immediate increase in numbers to 20,000, increase in refugee quota to 12,000, increased regional focus on South-East Asia, and continuation of the link between the onshore protection and SHP components)?
- 2.6.2 What role do you think a private/community sponsorship program should or could play within Australia's Refugee and Humanitarian Program?
- 2.6.3 What comments, questions or concerns do you have about the changes to asylum policy recommended by the Expert Panel (including reinstating offshore processing, the Malaysia Agreement, extending excision to all of Australia, reviewing refugee status determination (RSD) processes and considerations for turning back boats in the future) and the implementation of these?
- 2.6.4 What issues and strategies should be considered by the Australian Government in pursuing a sustainable regional protection framework? What would an effective and humane model include?
- 2.6.5 What comments, questions or concerns do you have about the changes in eligibility to the Special Humanitarian Program (SHP) for humanitarian entrants who arrived by boat? What do you think are the main implications of these changes?
- 2.6.6 What do you see are the main barriers to humanitarian entrants proposing to reunite with family members through the family stream of the Migration Program (i.e. through partner, child, parent or other family stream visas)? What could be done to make the family stream of the Migration Program more accessible to humanitarian entrants?
- 2.6.7 What other issues or observations would you like to highlight concerning the experiences of family separation and the opportunities for family reunion for refugee and humanitarian entrants? What do you think needs to happen to ensure the timely reunification of refugee families?
- 2.6.8 What other comments, concerns or suggestions do you have with regards to the Expert Panel recommendations and what this may mean for Australia's Refugee and Humanitarian Program?

3. PATHWAYS TO PROTECTION AND SETTLEMENT

3.1 OVERVIEW

The past 24 months has seen numerous legislative, policy and program changes to the processing system and pathways to protection for asylum seekers who arrive by boat to Australia. Some of the major changes, including the expansion of community detention, the shift to one refugee status

¹⁹ <http://www.minister.immi.gov.au/media/cb/2012/cb190059.htm>

determination process, and the release of asylum seekers from closed immigration detention into the community on bridging visas, have provided a welcome opportunity for Australia to see how alternatives to closed immigration detention can impact on settlement pathways.

While the implications of the Expert Panel on Asylum Seekers recommendations have meant a return to offshore processing and an uncertain future for onshore processing of asylum claims, it is likely that the community release of asylum seekers will continue for some time as the approximately 7,000 people currently in held detention who arrived prior to 13 August 2012 will continue to be eligible for community release for the duration of the resolution of their protection claims. As such, RCOA is seeking feedback from communities and service providers about how the community release of asylum seekers has been going and your observations and experiences on what this has meant (or will mean) for those who are granted protection and are rebuilding their lives in Australia.

The following is an overview of the recent changes with regard to onshore processing of asylum seekers who arrived by boat.

Community Detention

While Australia has a legal and policy framework based on mandatory and indefinite immigration detention for people who arrive without prior authorisation, in October 2010, the Australian Government announced the rapid expansion of the Community Detention (CD) program. CD permits a person to remain administratively in detention but with the ability to reside in the community. Community-based detention arrangements do not give a person any lawful status in Australia (e.g. no visa is granted) so, consequently, a person in CD does not have any of the rights or entitlements of someone in the community on a visa (i.e. no right to work).

Community detention is reserved for the most vulnerable in the immigration detention network, primarily children (unaccompanied minors), families with children, people with severe mental or physical health issues or those who have survived torture and trauma. People in CD are placed in furnished accommodation and are required to reside at a specified address until their status is resolved. People in CD are still detained under the Migration Act, so they have no access to work rights, Medicare or Centrelink benefits. People in CD do receive DIAC-funded income support (capped at 70% of the Centrelink Special Benefit rate), support from a DIAC case manager and health services. As with all people who are seeking protection and arrived by boat, people in CD have access to advice preparing their protection application through the Immigration Advice and Application Assistance Scheme (IAAAS).

Table 8: Overview of community detention statistics²⁰

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| <ul style="list-style-type: none">• Expansion of community detention for children, families and vulnerable asylum seekers from 25 places in October 2010 to around 1,650 in September 2012.• More than 5,100 clients have been approved for the CD program since its expansion in October 2010.• More than 2,950 of these clients have been granted a permanent Protection visa, and about 440 have been granted a temporary bridging visa (BVE).• As of 19 September 2012, there were approximately 1,650 people residing in CD. |
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There are several directly contracted agencies providing CD services, including the Red Cross, Hotham Mission Asylum Seeker Project, Mercy Community Services, the Salvation Army, Multicultural Development Association, MacKillop Family Services and Marist Youth Care.

Bridging visa expansion and the refugee status determination (RSD) system

In October 2011, the Government announced its intention to transfer large numbers of asylum seekers, refugees and stateless persons out of closed detention into the community onto bridging visas, pending the resolution of their claims. This decision coincided with the shift to one statutory

²⁰ DIAC Community Update #4

process for determining asylum seekers' protection application.²¹ Previously, asylum seekers who arrived without a prior visa onto excised Australian territory were subject to the non-statutory Refugee Status Assessment process and the Independent Merits Review system. This then changed to the Protection Obligations Determination system (in response to the High Court case ruling that procedural fairness had not been achieved through the previous process).²²

From 24 March 2012, all asylum seekers, no matter their mode of arrival, have access to the statutory RSD, review through the Refugee Review Tribunal and access to judicial review of decisions to determine if legal errors were made. The establishment of this single system for all asylum claims assessed in Australia coincided with the introduction of complementary protection. All claims for protection are now assessed at the primary and review stages against both the Refugee Convention and other human rights treaties such as the International Convention on Civil and Political Rights and the Convention Against Torture. There are still, however, a group of people who were subject to the non-statutory process, and a number of agencies and individuals are pursuing options for a re-evaluation of their cases.

As part of the decision to process all "irregular maritime arrivals" onshore through one process, the Minister announced the expansion of the use of bridging visas.²³ The Government still detains people who arrived by boat for initial health, security and identity checks, but once those checks are cleared, people can be issued with a Bridging visa E (BVE) to reside in the community. DIAC seeks to undertake these initial checks – and if cleared – release people onto bridging visas within 90 days of their arrival. If this policy is maintained, the period of time that people spend in closed detention will be reduced significantly, as the average stay in closed detention was 343 days in June 2011 and has already been reduced to 86 days in July 2012.

The Government's issuance of bridging visas began in December 2011 and included people who had been detained in closed and often remote detention for prolonged periods of time. While a welcome move from the Government, the impact of this long-term detention on people's ability to both live in the community on bridging visas and, if granted a Protection visa, to then settle well needs further analysis. The uncertainty of the status of their Protection visa application coupled with the resulting institutionalisation of prolonged and remote detention has meant that this group of asylum seekers may have a very different settlement experience and, consequently, require different services than those subject to the new policies focusing on release into the community.

The Government expects that asylum seekers on BVEs support themselves in the community (i.e. they have work rights), with some transitional support provided. BVE clients with specific vulnerabilities are streamed into either Community Assistance Support (CAS) for more intensive support or the Asylum Seeker Assistance Scheme (ASAS) for moderate support needs. They also have access to the IAAAS for the primary application and assistance with review (but IAAAS is not available post-merits review).

Streaming of asylum seekers into DIAC-funded support services is based on their immigration status, their capacity to live independently, assistance available to them from the links they have in the Australian community and their specific needs and vulnerabilities. All services are provided to individuals on a needs basis following a needs assessment and not all asylum seekers will receive every service. The DIAC-funded community support options currently available include:

- *Community Assistance Support (CAS) Transitional*: Provides short-term support to asylum seekers in their transition from immigration detention to the community, generally for up to six weeks. It helps people settle in the community by ensuring they are financially independent and able to access necessary community services. Initial short-term accommodation is provided

²¹ For more information on the current Refugee Status Determination process, see DIAC's interactive map at www.immi.gov.au/ima/english or the Asylum Seeker Resource Centre (ASRC's) Asylum Explained website at www.asylumexplained.asrc.org.au/.

²² See www.immi.gov.au/visas/humanitarian/pdf/client-information-impact-high-court-decision-rsa-clients.pdf

²³ See www.minister.immi.gov.au/media/cb/2011/cb180599.htm

during this time, usually in boarding houses, motels, converted hostels or through homestay.²⁴ Income support is capped at 89% of the Special Benefit rate.

- **CAS:** CAS administers a range of services which focus on the wellbeing of people who hold bridging visas and have complex needs. CAS provides help to asylum seekers by arranging access to health and welfare services, providing financial assistance, assisting people to secure short-term accommodation and providing additional case management to resolve their immigration status. CAS clients may also be eligible for emergency funding as a once-off payment as a timely and practical option to address an urgent need such as healthcare.
- **Asylum Seeker Assistance Scheme (ASAS):** Provides limited financial assistance to Protection visa applicants who satisfy specific eligibility criteria. Recipients of ASAS may receive additional financial assistance to access necessary health care and to cover some of the costs associated with the processing of their application for a Protection visa. ASAS also facilitates some limited casework assistance. Income support is capped at 89% of the Special Benefit rate.
- **Humanitarian Settlement Services (HSS):** Some BVE holders are now being provided with support under the HSS program prior to their Protection visa grant as a form of intensive community support. These bridging visa holders may be "1A-met", a DIAC designation signifying that they have been found to be owed protection and are awaiting the finalisation of their security assessment. As they are not eligible for Centrelink benefits (although they can receive income support at normal Centrelink rates) or torture and trauma support until their Protection visa grant, they receive these supports under the ASAS program.

CAS Transitional, CAS (general) and ASAS services are DIAC-funded and provided nationally by the Australian Red Cross, with additional contracts now delivered by AMES in Victoria, Settlement Services International in NSW, Access Community Services and Multicultural Development Association in Queensland and the Migrant Resource Centre of South Australia. HSS support is by contracted HSS providers in each state and territory.

Table 9: Overview of BVE statistics²⁵

<ul style="list-style-type: none">• From November 2011 to September 2012, around 4,900 asylum seekers who arrived by boat were moved from detention onto Bridging Visas.• Of those, around 2,000 people on bridging visas have now been granted a Protection visa, leaving approximately 2,800 BVE-holders in the community.• The average stay in closed detention cut from 343 days in June 2011 to 86 days in July 2012• As of 31 July 2012, there were still 6,809 people in closed detention.
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Support for asylum seekers not eligible for funded services

With the onus on bridging visa holders to be self-sufficient and live independently, the support provided after the transitional period is minimal. There is recognition from the agencies supporting asylum seekers in the community that there are a number of gaps in service provision for bridging visa holders. These include a lack of access to English language training (although there is a small pilot for work-ready English tuition underway); lack of support to prepare for and find employment; ongoing orientation into the community; limited access to timely and appropriate mental health services; limited educational and training opportunities; and lack of access to household goods and material aid provisions.

Agencies that assist asylum seekers who have no other means of support have seen an increase in the number of people seeking assistance since the shift to release more asylum seekers from detention into the community. Basic provisions and material aid like a food bank, clothing or transport tickets, as well as some counselling services, casework, accommodation and employment support, are offered by charities and NGOs not funded by the federal government. In

²⁴ The Community Placement Network, part of the Australian Homestay Network is an initiative whereby an Australian host family provides short-term (up to six weeks) homestay for an asylum seeker. The CAS Transitional service funds a weekly stipend for the host family.

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the past, many of these services have been made available to asylum seekers in the community who arrived by air. The expansion of community release of asylum seekers from detention has, however, resulted in increasing demand and has meant that these unfunded agencies are struggling to find the resources and capacity to support their clients.

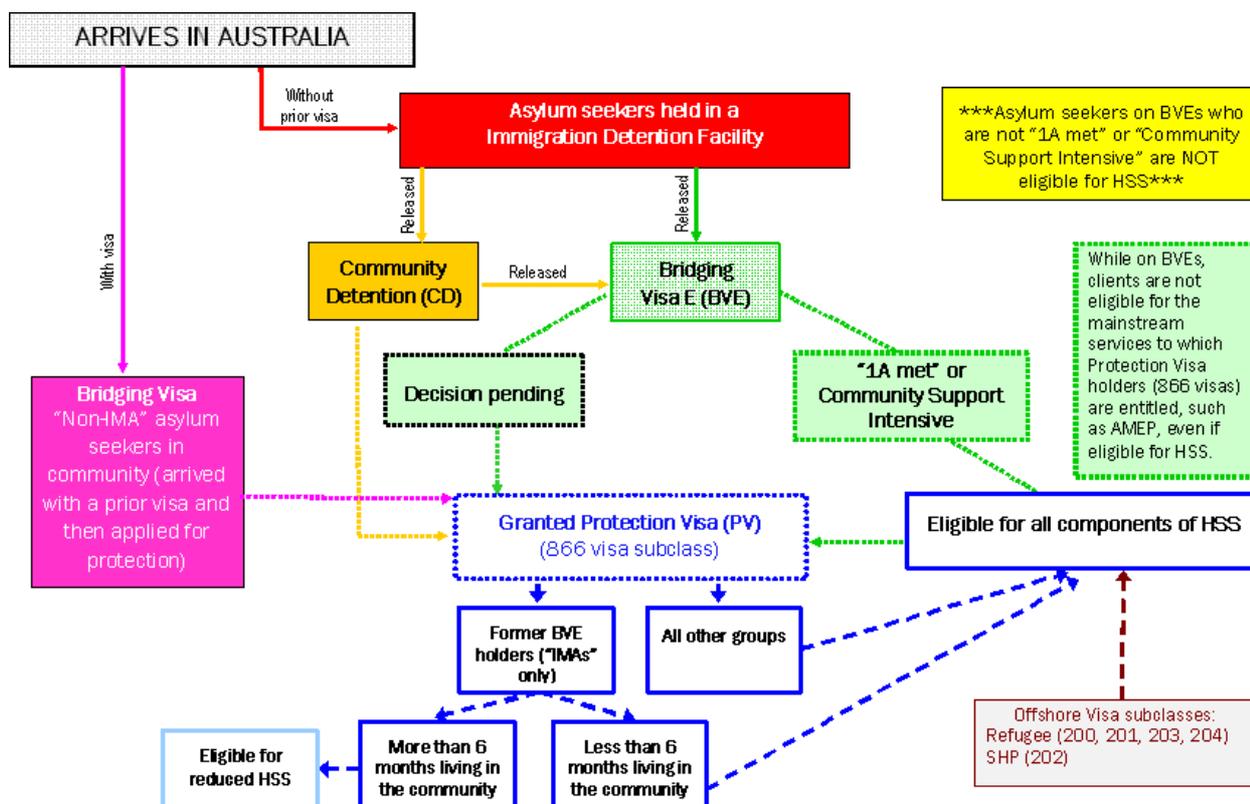
Protection visa grants and settlement services

Following grant of a Protection visa (PV), refugees become eligible for the HSS, a program which provides intensive support for their initial settlement. It also aims to equip people with the skills and knowledge they need to participate in the Australian community. The services offered to people on HSS are based on assessed need and may include: case management, essential registrations, assistance with accommodation (short and long term), a basic household goods package, onshore orientation and specialised youth services for young people. PV holders are provided with English language courses through the Adult Migrant English Program and may be referred to organisations funded under the Settlement Grants Program. All PV holders are eligible for Medicare, Centrelink and the other mainstream services available to the broader Australian community.

From 1 July 2012, former BVE holders who have been in the Australian community for more than six months prior to their PV grant will have their access to services under the HSS program reduced. They will receive a reduced household goods package and more limited reception support.

Figure 10 provides an overview of the various pathways into settlement services for people who seek and are granted protection in Australia.

Figure 10: Onshore Client Groups' Eligibility for HSS



Held detention

It should be noted that, as of 31 July 2012, there were still over 1,100 people detained in immigration detention for over 365 days (including 467 who have been detained for over two

years).²⁶ A number of people are in closed detention and will not be eligible for community release through CD or bridging visas because of adverse security screenings, ongoing investigations or delays in other assessments. To date, there has been no indication from the Government as to what will happen to those people facing closed detention for the remainder of their natural life.

For the people who arrived in Australia by boat after 13 August 2012, there are also still a number of questions to be answered. It is unclear what their future will be or what pathway to protection they face. Until that time, however, the legality and conditions of their detention requires attention, and RCOA welcomes any thoughts or considerations on this matter.

3.2 CONSULTATION QUESTIONS ON ONSHORE PROCESSING AND SETTLEMENT OUTCOMES

- 3.2.1 What are your observations of people's ability to settle once granted a Protection visa (visa sub-class 866)? Have you observed differences between the settlement experiences of people who settled after extended time spent in closed detention and those released into the community on a bridging visa or in community detention prior to the grant of a Protection visa?
- 3.2.2 What local programs or initiatives are working well to support people in the community awaiting the resolution of their Protection application? What supports do you think should be made available to people on bridging visas or in community detention to enhance their settlement prospects if a Protection visa is granted?
- 3.2.3 What changes do you think could be made to settlement services (i.e. HSS, SGP, AMEP or CCS) to best adapt services to the needs of people granted protection onshore (visa sub-class 866)?
- 3.2.4 What local programs do you think are working well to support people who have received Protection visas? Please give specific examples of new or innovative projects or programs.
- 3.2.5 What do you think are the main challenges in housing and employment for people both on bridging visas and those who are granted onshore Protection visas? What is working well?

4. ADDITIONAL QUESTION

- 4.1 Are there any other new and emerging issues or concerns that you think the Refugee Council of Australia (RCOA) should be advocating on?

²⁶ DIAC Immigration Detention Statistics from 31 July 2012. This number does not delineate between held and community detention.