RCOA’S ANALYSIS OF THE RECOMMENDATIONS OF THE EXPERT PANEL ON ASYLUM SEEKERS

August 2012

On 13 August 2012, the Prime Minister’s Expert Panel on Asylum Seekers released its report after six weeks of consultation and research. The 22 recommendations in the report cover a complex series of issues. From the perspective of the Refugee Council of Australia (RCOA), some recommendations are welcome while others are not. Given that the Prime Minister has committed the Government to implement all 22 recommendations, it is important to understand each recommendation and its ramifications.

The recommendations cover the following the matters:

1. Policy principles
2. An increase in Australia’s Humanitarian Program
3. Regional capacity building
4. Bilateral cooperation with Indonesia
5. Cooperation with Malaysia on asylum issues
6. Engagement with source countries
7. Legislation to allow transfers of asylum seekers to other countries
8. Establishment of processing arrangements in Nauru
9. Establishment of processing arrangements in Papua New Guinea (PNG)
10. Australia’s agreement with Malaysia
11. Restricting access to the Special Humanitarian Program (SHP)
12. Restricting future access to SHP
13. Coordination with other resettlement states
14. Extending the excision policy to all of Australia
15. Review of Australia’s refugee status determination (RSD) process
16. Strategy for removals and returns
17. Disruption strategies
18. Anti-smuggling operations
19. Turning back boats
20. Search and rescue activities
21. The link between Australia’s onshore and offshore programs
22. Conducting further research

Structure of this response:

In attempt to understand each recommendation, we brought together:

• the text of the recommendation;
• some further information on the recommendation, drawn from the Expert Panel report;
• RCOA’s view of the positive features of the recommendation;
• our concerns about the recommendation;
• questions we believe need further clarification as the implications of the recommendation are considered.
RECOMMENDATION 1 – POLICY PRINCIPLES

The Panel recommends that the following principles should shape Australian policy-making on asylum seeker issues:

- The implementation of a strategic, comprehensive and integrated approach that establishes short, medium and long-term priorities for managing asylum and mixed migration flows across the region.
- The provision of incentives for asylum seekers to seek protection through a managed regional system.
- The facilitation of a regional cooperation and protection framework that is consistent in the processing of asylum claims, the provision of assistance while those claims are being assessed and the achievement of durable outcomes.
- The application of a ‘no advantage’ principle to ensure that no benefit is gained through circumventing regular migration arrangements.
- Promotion of a credible, fair and managed Australian Humanitarian Program.
- Adherence by Australia to its international obligations.

Details:

- The Panel considered that a more comprehensive and sustainable regional framework for improving protection and asylum systems is a key prerequisite for creating safer alternatives to people smuggling. The framework envisaged by the Panel would include elements such as 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.
- The Regional Cooperation Framework agreed at the Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was highlighted by the Panel as providing "a very productive way forward".
- Areas of focus proposed by the Panel include: consolidation of the Regional Cooperation Framework agreed to through the Bali Process, including engagement with the recently-established Regional Support Office in Bangkok; engagement with governments, NGOs and civil society groups on capacity-building priorities; increased funding for UNHCR for the management and processing of asylum seekers across the region (including the Middle East); enhanced collection and sharing of biometric data to strengthen the integrity of the regional asylum system; increased support for capacity-building and service-delivery programs among NGOs and civil society groups to enhance assistance for people seeking protection under regional processes; improved communication about the dangers of boat voyages and the safer alternatives available through regional processes; support for local integration programs in cooperation with governments, UNHCR, IOM and civil society groups; more effective mechanisms of regional cooperation on voluntary and involuntary returns; and effective mechanisms for oversight and monitoring of regional processes.

Positive features:

- Development of a comprehensive and sustainable regional framework: RCOA believes that this framework will be essential to resolving the complex protection challenges in the region and enhancing access to durable solutions for refugees and asylum seekers in Asia-Pacific. We welcome the recognition by the Panel of the importance of addressing the root causes of onward movement to Australia and of the incremental, long-term nature of this process.
- Emphasis on engaging NGOs and civil society groups: RCOA believes that the involvement of civil society in capacity-building initiatives and service delivery as well as oversight and monitoring will not only be crucial to ensuring accountability and facilitating effective implementation of the framework, but also (in the case of local organisations and community groups) to encouraging local "buy-in" for refugee protection in Asia-Pacific nations.
- Acknowledgement of the critical role of oversight and monitoring: RCOA believes that careful and regular monitoring will be essential to ensuring accountability, effective implementation and adequate assistance for vulnerable groups. Monitoring could also help to ensure that cooperative initiatives maintain a central focus on the protection of refugees and asylum seekers.
**RCOA’s concerns:**

- **Lack of progress on implementation of the Regional Cooperation Framework:** While RCOA agrees that the Regional Cooperation Framework provides a useful foundation from which further cooperation can begin, we are concerned about the lack of progress achieved through the Bali Process to date. We remain optimistic that positive outcomes could emerge through the Bali Process but only as a result of significant commitment from Australia and other governments. We also note that the Regional Cooperation Framework as it stands has a number of limitations, including: insufficient emphasis on addressing the most pressing protection challenges faced by refugees and asylum seekers in the region; the need for further consideration of several critical protection issues, such as detention, access to livelihoods, support for vulnerable and at-risk groups, statelessness, support for local NGOs and addressing conditions in countries of origin; and comparative lack of emphasis on local integration and other in-country solutions.

- **Absence of established mechanisms for regular migration:** The "no advantage" principle is premised on the assumption that asylum seekers who seek to enter Australia irregularly by boat should instead have applied through "regular migration arrangements" (also referred to in the report as a "managed regional system", "regional processing" or "established mechanisms"). Currently, such arrangements do not exist in the Asia-Pacific region and the Panel itself acknowledges that any changes to protection standards in the region are likely to be incremental. RCOA finds it very troubling that asylum seekers attempting to enter Australia by boat will face indefinite exile in offshore processing facilities on the basis that they have "circumvented" a "managed regional system" which as yet is non-existent.

- **Lack of detail on regional processing arrangements:** While the Panel's report proposes some general focus areas for cooperative initiatives, it provides very little detail on the form that regional arrangements for processing and protection could take, or how these could be made accessible to all people seeking protection in the region. Equally unclear is the envisaged scope of these arrangements, that is, whether they will apply to all people seeking protection in the region or whether they will target particular countries or groups. Given that this "managed regional system" for processing and protection lies at the very heart of the Panel's model for addressing irregular movement to Australia, RCOA finds it difficult to understand why so little attention has been paid to defining the form and scope of this system.

- **Inadequate consideration of international obligations:** RCOA is concerned that the Panel's consideration of Australia's international obligations towards refugees and asylum seekers has been far too narrow. In relation to the Refugee Convention, for example, the explanatory attachment outlining Australia's obligations is limited to discussion of only a few articles, such as non-discrimination and non-refoulement. Articles relating to other rights, such as education, social security, employment, housing and freedom of movement, are not discussed in the report. This is significant given that the Panel's other recommendations promote the transfer of asylum seekers to territories where these protections may not be in place. RCOA believes it is unacceptable for Australia to expel asylum seekers to any country if it is known that the standards of treatment they will receive are below those required by international law.

**Questions for clarification:**

- What strategies will the Australian Government adopt to expedite the implementation of the Regional Cooperation Framework proposed through the Bali Process?
- What will be the form and scope of the proposed "managed regional system"? What specific strategies will the Australian Government use to establish and monitor this system?
- How will the Australian Government ensure that all of its international responsibilities towards refugees and asylum seekers are adequately met?
- How does the Australian Government plan to identify NGOs and civil society groups to be involved in cooperative arrangements?
RECOMMENDATION 2 – INCREASE IN HUMANITARIAN PROGRAM

The Panel recommends that Australia’s Humanitarian Program be increased and refocused:

- The Humanitarian Program be immediately increased to 20,000 places per annum.
- Of the 20,000 places recommended for the Humanitarian Program, a minimum of 12,000 places should be allocated for the refugee component.
- 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 Humanitarian Program be more focused on asylum seeker flows moving from source countries into South-East Asia.

Details:

- In the Panel’s view, an immediate increase to Australia’s resettlement intake would have a number of important benefits both for Australia and the region: enhancing the scope of Australia’s engagement with regional partners and strengthening regional cooperation on asylum issues; giving greater hope and confidence to asylum seekers in the region that regular migration pathways and international protection arrangements provide a practical, realistic and better alternative to dangerous boat voyages; enabling Australia to meet growing humanitarian needs in the region in a fair and timely way; and supporting Australian strategies to encourage other resettlement countries to assist in addressing protection needs in Asia.
- 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.
- The Panel affirmed that any increase in places under the Humanitarian Program should be complemented by the normal provision for settlement services.
- While acknowledging the costs involved with increasing Australia’s resettlement intake, the Panel noted that these would likely be offset by the reduction in costs associated with processing of asylum seekers in Australia.
- Additional ideas and recommendations put forward by the Panel to increase opportunities for resettlement in Australia include: exploring opportunities for private and community sponsorship arrangements for people in need of resettlement, including people seeking to reunite with family members; and exploring opportunities for humanitarian migration through other channels of the broader migration program.

Positive features:

- Increase in Australia’s resettlement intake: RCOA strongly welcomes the recommendation calling for an increase in Australia’s resettlement program to 20,000 places per annum. We have been calling for an increased intake for many years and are pleased that the Panel has acknowledged the crucial role of resettlement in providing durable solutions for refugees and demonstrating Australia’s commitment to and leadership in resolving regional protection challenges. We also welcome the Panel’s acknowledgement that sufficient resources will need to be allocated for provision of resettlement services.

RCOA’s concerns:

- Need to maintain a regional balance in resettlement: While we support greater resettlement from Asia as part of a strategy to increase regional protection options, we are concerned that Australia should not ignore resettlement needs in other regions, particularly Africa and the Middle East. UNHCR’s “Projected Global Resettlement Needs 2013” emphasises the importance of continued resettlement from these three regions. Australia should maintain a
global approach to resettlement and encourage major resettlement states to do the same. If Australia focuses almost exclusively on resettlement from our region, it will 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”.

Questions for clarification:
- When will the Government implement the increase in the Refugee and Humanitarian Program, and how will refugee community members, service providers and other interested parties be involved in the planning of the Program?

RECOMMENDATION 3 – REGIONAL CAPACITY BUILDING

The Panel recommends that in support of the further development of a regional cooperation framework on protection and asylum systems, the Australian Government expand its relevant capacity-building initiatives in the region and significantly increase the allocation of resources for this purpose.

Details:
- The capacity-building agenda envisaged by the Panel aims to enhance protections, encourage the use of established regular protection and migration processes, broaden local engagement in those processes and diversify effective sources of accurate information to those contemplating dangerous boat voyages. Its intention is to underpin the practical development of regional registration, processing and resettlement arrangements.
- The Panel acknowledges that the agenda will need to be implemented in a phased and incremental way, with some measures being implemented immediately or over the short term and others requiring development over the long term.
- The Panel recommends that the Australian Government double its expenditure on capacity-building initiatives from $70 million to $140 million per year, with a focus on programs in support of building the regional framework for improved protections, registration, processing, integration, resettlement, returns and other priorities.

Positive features:
- Increased funding to expand capacity building initiatives: RCOA believes these initiatives could play a key role in ensuring that people seeking protection in the Asia-Pacific region are able to access credible refugee status determination procedures and have the support necessary to ensure a decent standard of living while the are awaiting processing of their claims or a durable solution.

RCOA’s concerns:
- Lack of detail: RCOA is concerned about the lack of clarity and detail as to what form the envisaged "regional registration, processing and resettlement arrangements for those seeking protection" will take.

Questions for clarification:
- What specific activities will the Australian Government be seeking to support as part of its capacity-building agenda, e.g. training on human rights, legal and refugee status determination (RSD); health and education capacity building and resourcing; advocacy and representation initiatives; etc?
- To whom will funding for capacity-building initiatives be directed?
RECOMMENDATION 4 – BILATERAL COOPERATION WITH INDONESIA

The Panel recommends that bilateral cooperation on asylum seeker issues with Indonesia be advanced as a matter of urgency, particularly in relation to:

- The allocation of an increased number of Humanitarian Program resettlement places for Indonesia.
- Enhanced cooperation on joint surveillance and response patrols, law enforcement and search and rescue coordination.
- Changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia.

Details:

- The 2010 Australia-Indonesia Implementation Framework for Cooperation on People Smuggling and Trafficking in Persons was highlighted by the Panel as providing a useful focal point for pursuing a broader partnership on issues relating to people trafficking, protection claims, people smuggling and asylum seekers with Indonesia. However, it noted that “a more intensive and dynamic approach is needed in current circumstances”.
- In relation to the treatment of Indonesian minors and others crewing boats carrying asylum seekers to Australia, the Panel suggested that Australian people-smuggling legislation should be altered to, for example, allow those convicted of people-smuggling to serve their sentences in Indonesia; restore discretion in sentencing to the courts; or permit crews to be returned to Indonesia’s jurisdiction.
- Additional measures put forward by the Panel in relation to cooperation with Indonesia included:
  - Developing a practical agenda of initiatives between Australia and Indonesia to be pursued under the auspices of the Regional Cooperation Framework established under the Bali Process and in liaison with the newly established Regional Support Office.
  - Pursuing strategies to assist Indonesia with the impact of people trafficking across its borders.
  - Investigating ways in which the Association of Southeast Asian Nations (ASEAN) could enhance such a regional framework on asylum issues.

Positive features:

- Increased resettlement out of Indonesia: Targeted and increased resettlement from Indonesia of recognised refugees is welcome and urgently required. RCOA recommends that the Government implement this aspect of the recommendation with the same urgency that it has implemented Recommendation 7 (and subsequently, Recommendations 8 and 9).
- Treatment of Indonesian crew members: There have been extensive and detailed recommendations made to both the Expert Panel and the Senate Legal and Constitutional Affairs References Committee regarding the detention of Indonesian minors in Australia and the necessary and urgent changes required. The Australian Human Rights Commission and the Law Council of Australia have published thorough reports on this issue, and their recommendations require the Government's attention in developing its response to this recommendation.

RCOA’s concerns:

- Lack of detail: While RCOA welcomes the inclusion of activities related to the Regional Cooperation Framework and the Regional Support Office, there are few details set out in relation to the “practical agenda of initiatives” aspect of the recommendation.

Questions for clarification:

- What additional resources and funding will be allocated to bilateral law enforcement and intelligence gathering in relation to people smuggling? Which initiatives will be prioritised for resourcing (e.g. addressing protection needs, disruption activities, etc)?
- What “practical agenda of initiatives” through the Regional Cooperation Framework does the Government intend to pursue? What form will this take?
RECOMMENDATION 5 – COOPERATION WITH MALAYSIA ON ASYLUM ISSUES

The Panel recommends that Australia continue to develop its vitally important cooperation with Malaysia on asylum issues, including the management of a substantial number of refugees to be taken annually from Malaysia.

Details:
- The Panel noted that strong and expanding cooperation between Australia and Malaysia advances shared interests in both countries, and can provide another important building block in terms of a deeper and broader framework of regional cooperation.
- In the context of the proposed increase to Australia’s resettlement program, the Panel proposed that resettlement should be actively managed to ensure a substantial number of refugees are taken from Malaysia each year.

Positive features:
- Engagement with Malaysia: RCOA agrees that engagement with Malaysia will be vital to addressing the key protection challenges in the region. As a country which hosts a large number of refugees and asylum seekers but which has a poor track record in providing adequate protection to these groups – a factor which drives many to seek protection elsewhere, including through dangerous sea voyages to Australia – Malaysia will be a vital partner in efforts to improve standards of protection across the region.
- Increased resettlement out of Malaysia: resettlement needs in Malaysia remain very high due to the lack of alternative solutions for the refugees and asylum seekers currently residing there.

Questions for clarification:
- How will Australia’s future engagement with Malaysia on refugee protection issues be pursued? How will Malaysia’s current treatment of asylum seekers and refugees be addressed?

RECOMMENDATION 6 – ENGAGEMENT WITH SOURCE COUNTRIES

The Panel recommends a more effective whole-of-government strategy be developed for engaging with source countries for asylum seekers to Australia, with a focus on a significant increase in resettlement places provided by Australia to the Middle East and Asia regions.

Details:
- Noting that onward movement is frequently motivated by low levels of security and opportunity in countries of asylum, and that once asylum seekers have made a significant financial investment and emotional commitment in pursuing an irregular migration path to Australia it becomes very difficult to counteract their goal of completing their journey, the Panel suggested that the best opportunity to influence the decision making of those asylum seekers is as close to their home countries as possible.
- Strategies put forward by the Panel to improve protections for refugees and asylum seekers in countries of first asylum, and dissuade onward movement, included: the allocation of a significant number of places under Australia’s expanded resettlement program to countries of first asylum that are sources of asylum seeker flows to Australia; working with the international community to promote a sustained and strategic international aid effort to support displaced populations; providing greater access to “orderly pathways” through consistent refugee status determination and provision of durable solutions close to countries of origin; providing increased resettlement opportunities with a focus on the highest priority groups; enhancing cooperation on the return of failed asylum seekers; and the disruption of people smuggling through law enforcement and intelligence cooperation.
**Positive features:**

- **Focus on enhancing protection space:** Resolving the lack of adequate protection faced by refugees and asylum seekers in many countries throughout the region will be crucial not only to addressing onward movement, but also to ensuring that refugees are able to access the protection to which they are entitled and have the opportunity to rebuild their lives in safety.

- **Constructive strategies for enhancing protection space:** The Panel puts forward a number of practical and constructive strategies for enhancing protection space, several of which have also been promoted by RCOA, such as the strategic use of aid to support displaced people, improving access to credible refugee status determination procedures and enhancing opportunities for durable solutions through increased resettlement.

**RCOA’s concerns:**

- **“Self-interested” focus:** RCOA cautions against an approach which focuses on enhancing protection space only in those countries from which asylum seekers engage in onward movement to Australia. There are a number of countries in the region which are not direct source countries for asylum seekers to Australia but in which protection standards remain abysmally low while protection needs remain high. A truly cooperative approach to addressing protection needs across the region must involve all countries, regardless of whether the refugees and asylum seekers residing there are likely to engage in onward movement to Australia at some point, and a genuine commitment by Australia to sharing responsibility for refugee protection equitably. If Australia is seen by other countries to be acting in a purely self-interested manner, it will undermine efforts to enhance regional cooperation.

- **Need for increased focus on security:** The enhancement of protection space in many countries of asylum, particularly those in which the protection environment is complicated by serious insecurity and resultant internal displacement, is likely to be a long-term and complex process. As such, it is vital that the proposed whole-of-government strategy has a strong focus on enhancing security for refugee populations and providing genuine alternatives to onward movement. With many refugees and asylum seekers facing deteriorating security conditions in countries of asylum, even those who are cognisant of the dangers involved with irregular movement may be driven to pursue this option if no other viable alternatives are made available.

- **Impact of domestic policies:** The Australian Government must take into account the impact of its domestic asylum policies on opportunities to promote enhanced protection space throughout the region. It will be difficult for Australia to successfully negotiate with other countries to improve protections and broker solutions for refugees and asylum seekers, while simultaneously eroding its own protections for people who seek asylum in Australia.

**Questions for clarification:**

- What specific strategies will be pursued by the Australian Government to enhance protection space for refugees and asylum seekers across the region?

**RECOMMENDATION 7 – LEGISLATION TO ALLOW TRANSFER OF ASYLUM SEEKERS**

The Panel recommends that legislation to support the transfer of people to regional processing arrangements be introduced into the Australian Parliament as a matter of urgency. This legislation should require that any future designation of a country as an appropriate place for processing be achieved through a further legislative instrument that would provide the opportunity for the Australian Parliament to allow or disallow the instrument.

**Details:**

- The legislative changes recommended by the Panel have subsequently been passed by the Australian Parliament. 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.
RCOA’s concerns:
While noting that the abovementioned legislation has now been passed by the Australian Parliament, RCOA remains gravely concerned about the lack of legal safeguards for asylum seekers subject to transfer.

- **Lack of adequate 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. RCOA believes that these provisions allow the Minister an unreasonable level of discretion in making designations and are completely insufficient to safeguard the rights and wellbeing of asylum seekers subject to transfer. The legislation contains very little detail on and sets no legally binding standards for the treatment of asylum seekers in designated countries. This could result in the transfer of asylum seekers to countries where their safety, security and wellbeing cannot be assured.

- **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 to an unacceptable level. The absence of adequate safeguards in the legislation and the high degree of discretion granted to the Minister makes independent review of these decisions all the more important; yet the legislation purposefully attempts to reduce opportunities for independent review. RCOA believes that independent review, including by the Australian courts, is essential to ensuring the robustness of decisions regarding the designation of regional processing countries.

- **Parliamentary scrutiny an insufficient safeguard:** RCOA believes that the requirement for the Minister to designate countries for regional processing through a disallowable legislative instrument is an insufficient safeguard. While we welcome Parliamentary scrutiny of these decisions, we feel that it is essential for these decisions to also be subject to judicial review and other independent scrutiny. Should a situation arise in the future where a government holds a majority in both houses of Parliament, the mechanism of Parliamentary scrutiny would be rendered largely ineffectual.

Questions for clarification:
- Given the lack of adequate safeguards in the abovementioned legislation, what measures will the Australian Government adopt to ensure that asylum seekers transferred to offshore processing countries will not be subject to violations of human rights and will receive adequate support and assistance?

**RECOMMENDATION 8 – ESTABLISHMENT OF PROCESSING ARRANGEMENTS IN NAURU**
The Panel recommends that a capacity be established in Nauru as soon as practical to process the claims of IMAs\(^1\) transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law.

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\(^1\)IMAs, or Irregular Maritime Arrivals, is the Australian Government’s term for asylum seekers who arrive by boat without prior authorisation.
Details:

- The establishment of processing facilities in Nauru was viewed by the Panel as a “circuit breaker” to the stem the current flow of boat arrivals to Australia and diminish the prospect of further loss of life at sea. The Panel noted that over time, further development of the facilities in Nauru would need to take account of the ongoing flow of boat arrivals to Australia and progress towards the goal of an integrated regional framework for the processing of asylum claims.

- The Panel recommended that asylum seekers who have their claims processed in Nauru should be provided with protection and welfare arrangements consistent with Australian and Nauruan responsibilities under international law, including the Refugee Convention, and that protection and welfare arrangements should include:
  - treatment consistent with human rights standards;
  - appropriate accommodation;
  - appropriate physical and mental health services;
  - access to educational and vocational training programs;
  - application assistance during the preparation of asylum claims;
  - an appeal mechanism against negative decisions on asylum applications that would enable merits review by more senior officials and NGO representatives with specific expertise;
  - monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru; and
  - providing case management assistance to individual applicants being processed in Nauru.

- The Panel noted that asylum seekers transferred to Nauru may choose to return voluntarily to their home country should receive appropriate assistance from Australia, including reintegration assistance.

- The Panel recommended that asylum seekers transferred in Nauru who have special needs or are highly vulnerable should be able to be transferred to Australia on a temporary visa, with conditions and entitlements similar to those that apply to asylum seekers living in the community on bridging visas. It was noted by the Panel that transfer to Australia should not provide any “advantage” in processing.

- The Panel recommended the application of the “no advantage” principle in both the processing and resettlement of asylum seekers transferred to Nauru. For example, if a person is found to be a refugee and requires resettlement in Australia, resettlement will be provided at a time comparable to what would have been available had their claims been assessed through the “regional processing arrangement”.

- The Panel noted that the involvement of UNHCR and IOM in registrations, processing and resettlement and/or returns in Nauru and other regional processing centres would be highly desirable and should be actively pursued as a matter of urgency. It also suggested that NGOs and civil society groups should also be productively engaged in specific aspects of welfare and service delivery.

RCOA’s concerns:

- Impact of offshore processing on prospects for enhanced regional cooperation: While acknowledging that the Panel envisaged offshore processing in Nauru as a short-term circuit-breaker, RCOA is concerned that the reinstatement of offshore processing could have a very damaging impact on prospects for enhanced regional cooperation on refugee protection. As noted in relation to Recommendation 6, it will be difficult for Australia to successfully negotiate with other countries to improve protections and broker solutions for refugees and asylum seekers, while simultaneously eroding its own protections for people who seek asylum in Australia. Additionally, by singling out a particular group of asylum seekers, offshore processing sets a damaging precedent of differential treatment and lower standards of protection for asylum seekers who arrive without prior authorisation or valid travel documents, or who undertake risky journeys to seek asylum. Given that the inability to secure travel documents and the imperative to undertake risky journeys to seek protection are realities for hundreds of thousands of refugees in Asia-Pacific (and worldwide), this precedent could have a particularly damaging impact on protection standards across the region.
• **Lack of safeguards:** Given the lack of safeguards for asylum seekers subject to transfer to Nauru (see Recommendation 7), RCOA is very concerned that the standards and conditions necessary to protect the rights and wellbeing of asylum seekers may not be met in Nauru. We call on the Government, as a matter of urgency, to provide information regarding processes for safeguarding the rights and wellbeing of asylum seekers, including mechanisms for addressing breaches of rights, and its contingency plans should conditions on Nauru become untenable (for asylum seekers, refugees and service providers) or if Australia’s relationship with Nauru breaks down (as the legislative instrument does not leave flexibility for the removal of designated country).

• **Timeframe for resettlement:** The Panel’s recommendation that the timeframe for resettlement out of Nauru should be in line with other regional processing arrangements is troubling, as the improvements required for a comprehensive regional cooperation and protection framework (which the Panel recommends as necessary to provide practical alternatives to dangerous boat journey to Australia) are not in place and have not received priority attention in the initial implementation of the report’s recommendations. RCOA is concerned that, in the absence of the Panel’s envisaged “regional processing arrangements”, it will be difficult to determine an appropriate and fair “waiting time” for resettlement. If based on current trends in some countries in the region, for example, people transferred to Nauru will never be resettled. The resettlement of people found to be refugees should be determined on an individual case-by-case basis, in accordance with the needs of the person and the availability of alternative solutions (as is the practice of the UNHCR).

**Questions for clarification:**

• How will the Australian Government ensure the treatment and standards set out by the Panel’s recommendation, including that:
  - **treatment is consistent with human rights standards**
    - By which standards will this be measured (e.g. Australia’s? International standards?)
    - What monitoring mechanisms will be in place?
    - What arrangements will be in place to raise complaints about breaches or violations of human rights? What remedies will be available should a breach occur?
    - How will Australia’s ratification of the Optional Protocol of the Convention Against Torture impact on the treatment and monitoring of people held on Nauru?
  - **accommodation is appropriate**
    - What is considered “appropriate”?
    - As the Prime Minister has advised that tents may be used in the first instance, does the Government consider this “appropriate” accommodation?
  - **physical and mental health services are appropriate**
    - Who will deliver these services?
    - Will these services have independent oversight (comparable to that of an Ombudsman or the Australian Human Rights Commission)?
    - Will Nauruan citizens have access to equal health services if these are not already available to them?
  - **educational and vocational training programs are available and accessible**
    - Who will provide these services?
    - What kinds of programs will be made available?
    - Will Australian Cultural Orientation (AUSCO) training be provided?
  - **application assistance by qualified practitioners is available during the preparation of asylum claims;**
    - Who will provide these services and under what contract (e.g. Immigration Advice and Application Assistance Scheme)?
    - What oversight mechanisms will be in place to ensure the quality of advice provided, as well as the conditions and requirements of those providing services?
- an appeal mechanism against negative decisions on asylum applications is available that would enable merits review by more senior officials and NGO representatives with specific expertise
  - By whom will negative decisions be reviewed?
  - Will review processes be set out in a statutory framework, comparable to that of the Refugee Review Tribunal?
  - How will the independence of review processes be assured?
  - Will judicial review be available to applicants?
- monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru is effective
  - How will the Government form this group?
  - What civil society members from Nauru does the Government envision would participate?
  - By whom will associated travel costs be paid?
  - How often will this group monitor conditions?
  - What steps will be taken to ensure that oversight is effective and remedies sought in a timely manner for breaches of any conditions?
- case management assistance to individual applicants being processed in Nauru is provided
  - Who will provide this case management?
  - How will this be resourced?

**RECOMMENDATION 9 – ESTABLISHMENT OF PROCESSING ARRANGEMENTS IN PNG**

The Panel recommends that a capacity be established in PNG as soon as possible to process the claims of IMAs transferred from Australia in ways consistent with the responsibilities of Australia and PNG under international law.

**Details:**
- Noting that additional offshore processing arrangements will be necessary to address the flow of boat arrivals to Australia, and noting that the Government of Papua New Guinea entered into a Memorandum of Understanding with Australia in 2011 for the processing of asylum claims on Manus Island, the Panel recommended that offshore processing facilities also be established in Papua New Guinea.

**RCOA’s concerns:**
- See concerns and questions listed under Recommendation 8.

**RECOMMENDATION 10 – MALAYSIA AGREEMENT**

The Panel recommends 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 be achieved through high-level bilateral engagement focused on strengthening safeguards and accountability as a positive basis for the Australian Parliament’s reconsideration of new legislation that would be necessary.

**Details:**
- While the Panel recognised Australia’s arrangement in Malaysia as an important initiative in bilateral cooperation on an issue of great significance for both countries and for the broader region, and a potential building block for a stronger framework of regional cooperation on protection and asylum claims, it noted that some aspects of the arrangement were in need of revision and development. These revisions included strengthening protections and safeguards for asylum seekers subject to transfer (particularly unaccompanied minors and other vulnerable groups), enhancing accountability through establishing a more effective monitoring mechanism and ensuring adequate resourcing for UNHCR.
Positive features:

- **Acknowledgement of concerns relating to the Malaysia arrangement:** While we regret that the Panel did not reject the transfer of asylum seekers to Malaysia, RCOA is pleased that some of the key weaknesses of the arrangement have been recognised and reforms recommended.

RCOA’s concerns:

- **Impact of the Malaysia arrangement on prospects for enhanced regional cooperation:** RCOA’s concerns relating to Australia’s arrangement with Malaysia stemmed not only from the inadequacy of protection safeguards and mechanisms for oversight, but also from the overall premise of the policy. As we noted in our September 2011 submission to the Legal and Constitutional Affairs Committee inquiry into the arrangement:

  *Policies which focus on shifting Australia’s protection obligations elsewhere hardly set a constructive example for other countries in the region which have far less capacity to provide protection and assistance to refugees than Australia. Instead, they send a clear message to the region that the complex challenges of refugee protection in Asia are less important than domestic political considerations. It is particularly troubling when this message comes from one of the few countries in the region which is party to the Refugee Convention. The arrangement therefore not only undermines protection principles but will also hamper the development of regional cooperation and the implementation of urgently-needed reforms.*

  Given the centrality of enhanced cooperation to addressing the key protection concerns across the region, including onward movement to Australia, we fear that the pursuit of Australia’s arrangement with Malaysia is likely to undermine vital efforts in this area, regardless of whether safeguards and oversight are strengthened.

- **Failure to recommend similar safeguards in Nauru and PNG:** While RCOA welcomes the Panel’s recognition of the need to ensure adequate protection safeguards within the Malaysia arrangement, we find it difficult to understand why the Panel has not recommended the enshrinement of similar safeguards for asylum seekers subject to transfer to Nauru and Papua New Guinea, particularly as regards unaccompanied minors. We find this omission to be particularly glaring given Australia’s past experiences with offshore processing under the Pacific Solution and the highly destructive impact of this policy on the wellbeing of asylum seekers.

Questions for clarification:

- How does the Australian Government intend to strengthen the protection safeguards and mechanisms for oversight in its arrangement with Malaysia?

**RECOMMENDATION 11 – RESTRICTING ACCESS TO SPECIAL HUMANITARIAN PROGRAM**

The Panel recommends that the current backlog in the Special Humanitarian Program (SHP) be addressed as a means of reducing the demand for family reunion through irregular and dangerous maritime voyages to Australia, and that this be achieved through removing family reunion concessions for proposers who arrive through irregular maritime voyages – with these proposers to instead seek reunion through the family stream of the Migration Program.

**Details:**

- The Panel noted that the large backlog of applications for the SHP, which will not be cleared for many years under existing arrangements, increases the incentive for onward movement of family members to Australia and has created considerable distress for resettled refugees who no longer have practical prospects of family reunion.

- As a measure to reduce the backlog in SHP applications, the Panel recommended that the policy concession which presumers that immediate family applicants already meet the ‘compelling reasons’ criteria for resettlement under the SHP be removed for proposers who arrived in Australia by boat, unless the proposer was under the age of 18 at the time the SHP application was lodged.
Positive features:
• Recognition of need to restructure the SHP: The recognition by the Panel of the unsustainability of the current structure of SHP is welcomed by RCOA. The need for enhanced access to family reunion is one of the most consistently-raised concerns in RCOA’s community consultations.

RCOA’s concerns:
• Discrimination against refugees who arrived by boat: RCOA is troubled that the Panel’s recommendation specifically targets refugees who arrived in Australia by boat. Given that these refugees have already travelled to Australia – that is, the removal of concessions is not designed to deter this group from undertaking dangerous sea voyages in the future – it is difficult to view this measure as anything other than punitive. RCOA cannot see how the removal of family reunion concessions will make any contribution to improving protections for refugees and asylum seekers in the region or saving lives at sea.
• Creating red tape and unnecessary work: Most family members of refugees who arrived in Australia by boat will likely fulfil the “compelling reasons” criteria for family reunion. As such, the removal of the concession which automatically assumes these criteria are met only succeeds in creating additional “red tape” for applicants and further and unnecessary work for DIAC assessors.
• Absence of timeframes: There is no indication in the report as to the anticipated timeframe to clear the existing backlog of humanitarian visa applications. There is also no available figure for the number of existing applicants who have been proposed by unaccompanied minors nor is there a timeframe for clearing the backlog for this specific group.

RECOMMENDATION 12 – RESTRICTING FUTURE SHP APPLICATIONS
The Panel recommends that in the future those who arrive in Australia through irregular maritime means should not be eligible to sponsor family under the SHP but should seek to do so within the family stream of the Migration Program.

Details:
• The barring of refugees who arrive in Australia by boat in the future from sponsoring family members for resettlement through the SHP was envisaged by the Panel as being consistent with its “no advantage” principle, whereby people who travel to Australia by boat will not receive any advantage in family reunion compared to those who apply through regional processes. It was also noted by the Panel that restrictions on family reunion for refugees who arrive by boat would create an additional incentive for people considering dangerous boat journeys to seek protection earlier and closer to their country of origin under the enhanced regional arrangements.
• To provide increased opportunities for refugees who arrived in Australia by boat to reunite with family members in the absence of eligibility for the SHP, the Panel recommended that an additional 4,000 places per annum be allocated to the family migration stream and that these should be specifically allocated to humanitarian visa holders.

Positive features:
• Allocation of places within the family stream: The allocation of additional and specifically-earmarked places within the family stream for humanitarian entrants is welcomed by RCOA as a strategy to provide increased opportunities for family reunion.

RCOA’s concerns:
• Disadvantage, not “no advantage”: RCOA disputes the Panel’s assertion that this recommendation represents an application of the “no advantage” principle. Presumably, asylum seekers and refugees who apply for resettlement in Australia under the “enhanced regional arrangements” envisaged by the Panel will be eligible to sponsor family members
under the SHP. Barring refugees who arrive in Australia by boat from doing the same, therefore, is not a means of putting this group of refugees on an equal footing with those who apply through “regional arrangements”; in fact, it places them at a distinct disadvantage. RCOA believes that this recommendation is punitive and in no way contributes to enhancing protection space or saving lives at sea.

• **Barriers to sponsoring family members through the general migration program:** While the allocation of places for humanitarian family reunion within the family stream is useful, there remain significant barriers to accessing the family stream for humanitarian entrants. These include the high cost of application fees and other payments required, such as the cost of DNA testing and flights to Australia once a visa is granted; the documentation requirements which are often difficult to fulfil for people coming from refugee-producing and conflict-ridden countries; the very long waiting times for some family stream visa subclasses; the cost of migration advice; and the lack of access to settlement and social supports for family members who come to Australia through the family stream.

**Questions for clarification:**

• How does this recommendation fit within the Panel’s principle of a fair and credible Humanitarian Program, given that this change would be discriminatory and disadvantage people found to be owed Australia’s protection?
• Will the Government introduce any concessions for refugees seeking to reunite with family members through the family stream of the general migration program, such as fee waivers or less stringent documentation requirements?

**RECOMMENDATION 13 – COORDINATION WITH OTHER RESETTLEMENT STATES**

The Panel recommends that Australia promote more actively coordinated strategies among traditional and emerging resettlement countries to create more opportunities for resettlement as a part of new regional cooperation arrangements.

**Details:**

• The Panel noted that the scale of current and prospective asylum seeker flows from the Middle East, South and South East Asia means that protection needs in the region cannot be addressed through Australia’s domestic policies or enhanced regional cooperation alone; but necessitate active and better coordinated strategies among traditional resettlement and emerging resettlement countries to create more opportunities for resettlement from the region.
• While acknowledging the complexity of this process, the Panel recommended that Australia can, and should, take a lead.

**Positive features:**

• **Potential for enhanced resettlement out of Asia, including strategic use of resettlement:** Australia’s reputation among resettlement states has been enhanced considerably by the positive leadership it has demonstrated among resettlement states, particularly for the way in which it has advanced dialogue on post-arrival support of resettled refugees during its year as chair of the global dialogue on resettlement in 2011-12. Given that there is some unfilled capacity for resettlement (nearly 19,000 available resettlement places were not filled in 2011), Australia could build a case for resettlement states to view resettlement as a strategic tool to increase protection opportunities for refugees in South East Asia and South Asia.

**RCOA’s concerns:**

• **Impact of offshore processing on cooperation with resettlement states:** Australia’s positive efforts in promoting international cooperation on resettlement will be undermined if Australia attempts to convince other resettlement states to take asylum seekers or recognised refugees who have previously entered Australian territory and have been shifted to offshore processing centres in Nauru and Papua New Guinea. There is little chance that other resettlement countries will be willing to engage with Australia in this way, as they would rightly regard asylum seekers who have entered Australia’s territory as Australia’s responsibility. There is
significant risk that these efforts will result in resettlement states taking a more negative view of Australia’s attempts to promote resettlement from the region.

RECOMMENDATION 14 – EXTENDING EXCISION POLICY TO ALL OF AUSTRALIA

The Panel recommends that the Migration Act 1958 be amended so that arrival anywhere on Australia by irregular maritime means will not provide individuals with a different lawful status than those who arrive in an excised offshore place.

Details:
- The Panel asserted that Australia’s excision legislation could creating an incentive for asylum seekers take greater risks by seeking to reach the Australian mainland instead of an excised territory, as those arriving on the mainland would not be subject to offshore processing. It therefore recommended that legislation be amended so that any person arriving in any part of Australia by boat will have the same lawful status and will be liable to have any claims for asylum assessed in a location outside Australia.

RCOA’s concerns:
- **Further eroding access to effective protection:** RCOA has previously advocated for the Government to repeal the excision laws so as to ensure that all people who enter Australian territory (mainland or excised territories) receive fair treatment and are able to access the statutory refugee status determination process, with all of its legally binding implications. Disappointingly, the Panel’s recommendation seeks to ensure that all people arriving on all Australian territory without prior authorisation are not able to access Australia’s process and instead will be subject to offshore processing, with currently no legislated guarantees for effective protection in the offshore processing country.

Questions for clarification:
- How will this legislative change impact people who arrive by plane without prior authorisation? Will they be sent to an offshore processing centre?

RECOMMENDATION 15 – REVIEW OF REFUGEE STATUS DETERMINATION PROCESS

The Panel recommends that a thorough review of refugee status determination (RSD) would be timely and useful.

Details:
- Noting the substantial fluctuations in Australia’s approval rates for asylum applications across caseloads at different times, and the potential lessons to be derived from reviews of RSD procedures in the United Kingdom and Canada, the Panel proposed that a review of Australian RSD procedures 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 Refugees Convention obligations.

Positive features:
- **Review of RSD:** The integrity and quality assurance of Australia’s RSD system is essential to Australia’s adherence to its international obligations. RCOA supports a timely, quality-assured, reviewable RSD process, with quality application advice available for all applicants, and believes a review could assist in ensuring that these conditions are reflected in Australian practice.
RCOA’s concerns:

- **Reviews already underway**: There are currently reviews of Australia’s RSD system underway, with no results yet published. The finalisation and publication of these reviews need to occur (as this may fulfil this recommendation’s objective).

- **Use of intelligence material**: Within the proposed scope of a review of Australia’s RSD system, the Panel recommends that consideration be given to “improved capacity to use intelligence material in RSDs”. The scope of this recommendation is unclear and RCOA is concerned that it could be implemented in a way which results in adverse material being used against applicants without it having been disclosed to the person seeking protection. RCOA urges the Government to provide clarification as to how it intends to implement this recommendation.

- **Codification of RSD**: Also within the proposed scope of a review of Australia’s RSD system is an examination of the need for greater codification in domestic legislation of RSD assessment procedures and standards applied. Further codification of the already statutory process for RSD would be problematic, as the tests and standards applied to the determination system are based on often-changing jurisprudence. RCOA believes that the Australian Government should consider instead codifying a statelessness determination procedure.

Questions for clarification:

- What is the timeframe for the publication of the most recent review of decision-making led by Sue Tongue?

**RECOMMENDATION 16 – STRATEGY FOR REMOVALS AND RETURNS**

The Panel recommends that a more effective whole-of-government strategy be developed to negotiate better outcomes on removals and returns on failed asylum seekers.

**Details:**

- Measures put forward by the Panel to facilitate better outcomes on removal of failed asylum seekers included taking a more holistic view of Australia’s relationship with countries which refuse to readmit their nationals, and securing return arrangements which provide incentives for cooperation and assistance with involuntary removals and disincentives for non-compliance.

**Positive features:**

- **Integrity of RSD procedures**: RCOA recognises that the Panel’s recommendation is built upon the general acceptance among states and international organisations that effective return policies and practices are essential to the credibility and integrity of refugee determination systems. Provided that asylum seekers are able to access a fair, efficient, timely process of refugee determination, those who are not successful in establishing an entitlement to protection must expect to be removed.

**RCOA’s concerns:**

- **Lack of clarity on safe returns**: There is a lack of clarity in the Panel’s report regarding how the recommendation will ensure that removal practices safeguard the human rights and dignity of the person to be removed. Consideration of whether conditions are conducive to safe and sustainable return is critical.

- **Involuntary removals**: RCOA is troubled by the Panel’s assertion that involuntary removals are “often necessary as an encouragement for voluntary removal with reintegration packages”. Given that this approach essentially uses intimidation to pressure failed asylum seekers into returning home, it is questionable whether returns categorised as “voluntary” will in fact be voluntary in practice.

- **Need to ensure procedural fairness**: The Panel’s consideration of High Court deliberations and the impact of previous High Court challenges as impediments to involuntary removals are troubling, as the impact of these challenges has been to ensure procedural fairness and natural justice. These matters are core principles of common law and human rights and should not be
eroded to facilitate returns, as this could result in the return of asylum seekers to situations of danger or insecurity.

Questions for clarification:
- The Expert Panel identifies in its report that, of the 179 “IMAs” who have “no ongoing matters with DIAC or the courts”, there are 25 people who are stateless. How can the Government involuntarily remove people who have no state or may not be recognised by their former state of residence?

RECOMMENDATION 17 – DISRUPTION STRATEGIES
The Panel recommends that disruption strategies be continued as part of any comprehensive approach to the challenges posed by people smuggling and that relevant Australian agencies be resourced with appropriate funding on a continuing basis for this purpose.

Details:
- The Regional Immigration Liaison Officer Network (RILON) concept was established under the Bali Process as a way to facilitate information sharing on irregular movements in the region. Each local RILON regularly brings together host country immigration and relevant agencies and foreign missions to share information on issues related to irregular movements of people through all borders, including travel documentation, visa issuance and vulnerabilities at airports. So far, RILONs have been established in Bangkok, Canberra, Colombo, Kuala Lumpur and New Delhi.
- The Panel noted that funding for disruption efforts by Australian agencies has been for country-specific activities for limited periods. This has hindered the ability of agencies to maintain local relationships, respond quickly and flexibly, and act comprehensively and in a coordinated way. Accordingly, the Panel recommended that relevant agencies should be resourced with sufficient funding to cover their activities on a continuing basis.

RCOA’s concerns:
- Closing avenues for seeking protection: Disruption activities such as those undertaken through the RILON network prevent people from refugee-producing countries from applying for temporary visas to travel to Australia (by plane), thus creating greater demand for irregular means of movement. These disruptions do not help to address issues of protection; in fact, they can actively prevent people from fleeing dangerous situations (as some disruption activities are based in “source” countries).

RECOMMENDATION 18 – ANTI-SMUGGLING OPERATIONS
The Panel recommends that law enforcement agencies in Australia continue their activities in countering involvement of Australian residents who are engaged in funding or facilitating people smuggling operations.

RCOA’s concerns:
- RCOA does not wish to support or defend those individuals in Australia who seek to make financial gains through the facilitation of dangerous boat journeys. However, RCOA is concerned that law enforcement agencies have the scope to pursue criminal investigations of people who send financial or in-kind assistance to their family members (asylum seekers or refugees) who are in dangerous situations either their home country or a state of first asylum. The act of supporting relatives in need is not equal to seeking material gain through people smuggling; rather, the people in Australia supporting their families in these perilous situations are motivated by humanitarian concerns. This law enforcement action has the capacity to punish humanitarian actions while simultaneously placing vulnerable groups and their families at an increased risk of harm.
RECOMMENDATION 19 – TURNING BACK BOATS

The Panel notes 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.

Details:
- The Panel asserted that turning back boats carrying asylum seekers to Australia can be operationally achieved and can constitute an effective disincentive to such ventures, but only in circumstances where a range of operational, safety of life, diplomatic and legal conditions are met:
  - The state to which the vessel is to be returned would need to consent to such a return.
  - A decision to turn around a vessel would need to be made in accordance with Australian domestic law and international law, including non-refoulement obligations, and consider any legal responsibility Australia or operational personnel would have for the consequences to the individuals on board any vessel that was to be turned around.
  - Turning around a vessel would need to be conducted consistently with Australia’s obligations under the SOLAS convention, particularly in relation to those on board the vessel and the safety of ADF personnel.
- The Panel noted that circumstances have changed since the limited number of turnbacks of irregular vessels carrying asylum seekers in Australia over a decade ago, including changes in the legal context; changes in the willingness of other governments in the region to acquiesce; and the pre-emptive tactics that people smugglers have adapted to disable vessels.
- In the Panel’s view, the conditions noted above and required for effective, lawful and safe turnbacks of vessels headed for Australia with asylum seekers on board are not currently met in regard to turnbacks to Indonesia.

RCOA’s concerns:
- Turnbacks not an option: RCOA maintains its position that turning back boats is not a feasible, effective, constructive or safe option in any situation. The safety and protection needs of asylum seekers on boats could not be comprehensively understood and taken into consideration in turnback procedures. Should boats be sabotaged to avoid turnbacks, the lives of asylum seekers and personnel involved in turnback operations could be placed at risk. Turnbacks also seriously undermine the institution of asylum by effectively blocking access to national asylum procedures. Furthermore, as the Panel acknowledges, the current environment is not conducive for the safe and lawful turnback of boats. For example, one of the criteria put forward by the Panel as being essential for “safe” turnbacks is the agreement or acquiescence of the country to which the boats would be returned; the government of Indonesia has publicly stated that it does not find the turnback of boats acceptable. RCOA believes that the use of turnbacks cannot make a positive or constructive contribution to a sustainable regional framework for cooperation on refugee protection.

RECOMMENDATION 20 – SEARCH AND RESCUE ACTIVITIES

The Panel recommends that Australia continue to work with regional countries in a focused way to develop joint operational guidelines for managing search and rescue (SAR) activities in the region and to address the need for any further regional and national codification of arrangements across SAR jurisdictions.

Positive features:
- RCOA welcomes further cooperation between countries in the region on search and rescue operations, as these measures could save lives in cases where a boat carrying asylum seekers founders or is otherwise in distress. RCOA recommends that the proposed joint operational guidelines should be developed in a transparent and accountable manner and that any coordination efforts, including codification of joint guidelines, must adhere to the various international conventions and instruments that govern maritime movements.
**RECOMMENDATION 21 – LINK BETWEEN ONSHORE AND OFFSHORE PROGRAMS**

The Panel recommends that, in the context of a review of the efficacy of the recommendations put forward in this report, the linkage between the onshore and offshore components of the humanitarian program be reviewed within two years.

**Details:**
- Since 1996, it has been the policy of successive governments to link the onshore and offshore components of the program. The basis for this approach is that it provides a limit on the overall number of visa grants, which meets budgetary requirements and allows proper planning for the provision of settlement services. For each protection visa granted to an asylum seeker onshore, the offshore SHP component of the program is reduced by one place.

**Positive features:**
- RCOA believes that the review of the linking policy is welcome and necessary. 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.

**RCOA’s concerns:**
- RCOA believes that the review of this linking policy must be a priority and should be conducted in the next 12 months. We understand that the linking policy was not considered a priority by the Panel due to the assumption that a decrease in boat arrivals would reduce the pressure on the SHP. However, RCOA believes that there are other negative aspects of the linking policy (as outlined above) which necessitate its abolition regardless of whether Australia experiences a reduction in asylum applications.

**RECOMMENDATION 22 – CONDUCTING FURTHER RESEARCH**

The Panel recommends that the incompleteness of the current evidence base on asylum issues be addressed through a well-managed and adequately funded research program engaging government and non-government expertise.

**Details:**
- The Panel noted that evidence on the drivers and impacts of forced migration is incomplete and more intuitive than factual, with the result that the policymaking process is forced to rely on partial and largely qualitative information, rather than a solid base of measurement and analysis. As such, it recommended that at least $3 million each year (to be reviewed after two years) of new policy funding should be allocated to establish a significant, ongoing research program that will develop a more robust evidence base on irregular migration and asylum, managed by a Board made up of academics with expertise in migration matters, NGOs and senior government officials.

- The Panel recommended that the research program focus on the drivers and determinants of irregular migration, including why people decide to leave their home countries, how they travel between source, transit and destination countries, and the irregular and regular migration pathways used by asylum seekers.

**Positive features:**
- RCOA welcomes the recommendation to institute a well-funded and resourced ongoing research program as a necessary measure to ensure that policies adopted to enhance regional cooperation are based on sound evidence and rigorous research.
Questions for clarification:
• Will the Government commit to funding this research in the next Budget so that future policies and legislation can be based in evidence?
• How will the Government ensure that the process for developing this research program engages the necessary stakeholders and is a transparent and accountable process?

GENERAL ISSUES AND CONCERNS
• An overarching concern regarding the Expert Panel’s recommendations is the lack of adequate consultation with communities likely to be most directly affected by these recommendations – that is, refugee communities and asylum seekers residing in Asia. RCOA acknowledges the very short timeframe within which the Expert Panel was required to report would have made extensive consultation with refugee communities overseas impossible. However, we are concerned that the recommendations designed to prevent asylum seekers from risking their lives at sea have not been sufficiently informed by first-hand evidence from the people who live these recommendations are aiming to save. As such, we feel that many of Panel’s recommendations do not have a sufficient evidence base and may therefore be limited in their effectiveness.

• The Panel acknowledged that “evidence on the drivers and impacts of forced migration is incomplete and more intuitive than factual”. However, given this acknowledgement, we find it surprising that the Panel has been so unequivocal in its recommendations for addressing the drivers of irregular movement to Australia. We welcome the Panel’s recommendation for the establishment of a well-funded research program to address this research gap and urge the Government, as a priority, to provide funding to support consultation with refugee communities in Asia, so as to ensure that policies implemented to address the drivers of forced migration in the region are evidence-based and effective.

• RCOA notes that the Australian Government has not yet responded to the Expert Panel’s report beyond an in-principle acceptance of its recommendations. We urge the Government to issue a full response to the report, including details on how it plans to implement each recommendation.

• RCOA notes that the Australian Government will need to develop strategies to engage with refugee communities in Australia who will be impacted by the report’s recommendations, particularly those who have family members trapped in dangerous places overseas. It should also engage with agencies and individuals that work with refugee communities so that they are able to respond to communities’ questions and provide appropriate support.