



Refugee Council
of Australia

SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT CONSULTATION ON THE DRAFT BASELINE STUDY ON HUMAN RIGHTS IN AUSTRALIA

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees and the organisations and individuals who support them. It has more than 150 organisational and 550 individual members. RCOA promotes the adoption of flexible, humane and practical policies towards refugees and asylum seekers both within Australia and internationally through conducting research, advocacy, policy analysis and community education. RCOA consults regularly with its members and refugee community leaders, and this submission is informed by their views.

RCOA welcomes the opportunity to comment on the draft Baseline Study on human rights in Australia, which will inform the development of Australia's National Human Rights Action Plan. RCOA has been involved in numerous consultations leading to the development of this Action Plan, having made submissions to the National Human Rights Consultation; the Universal Periodic Review (UPR) of Australia; the Legal and Constitutional Affairs Committee inquiry into the *Human Rights (Parliamentary Scrutiny) Bill* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill*; and the Attorney-General's Department consultation on recommendations made under the UPR.¹

RCOA believes that the development and implementation of the National Human Rights Action Plan could be a key step towards improving human rights protections for refugees, asylum seekers, stateless persons and other humanitarian entrants. We particularly welcome the specific consideration in the Baseline Study of the human rights issues affecting refugees and asylum seekers. We also wish to acknowledge the positive initiatives outlined in the Baseline Study aimed at improving the enjoyment of human rights amongst these groups, in particular the introduction of legislation on Complementary Protection.

However, while acknowledging the many positive aspects of the Study, there are a number of key issues requiring further consideration. RCOA believes it is essential that these additional issues be given adequate consideration to ensure that they can be effectively addressed through the National Human Rights Action Plan.

1. Australia's international human rights commitments

1.1. RCOA acknowledges the Australia Government's stated commitment to upholding the seven core United Nations (UN) human rights treaties. In the development of the National Human Rights Action Plan, however, we encourage the Government to consider the human rights implications stemming from other international treaties to which Australia is party. Such treaties would include, for example, the 1951

¹ Available at www.refugeecouncil.org.au/resources/submissions.php

Convention Relating to the Status of Refugees (the Refugee Convention), the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

- 1.2. While these are not considered to be core human rights treaties, they nonetheless facilitate the realisation of many key human rights, including rights which are not otherwise recognised in the core treaties. For example, the provisions of the 1951 Refugee Convention and the 1954 Statelessness Convention respectively provide numerous protections for persons who have been forced to flee due to persecution or who do not have a nationality; and the 1961 Statelessness Convention contains provisions aimed at preventing the deprivation of nationality. As such, these Conventions play a key role in safeguarding the right to seek asylum and enjoy from persecution, the right to a nationality and the prevention of arbitrary deprivation of nationality – rights which, while recognised in the Universal Declaration of Human Rights, are not enshrined in the core human rights treaties.
- 1.3. RCOA also believes that the Action Plan should take into account the importance of Australia's engagement with international bodies which fall outside the human rights system, but which have a mandate for safeguarding human rights. The Australian Government has for many years been an active participant on the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR). As the international body mandated to protect refugees and seek solutions to refugee situations worldwide, UNHCR plays a central role in safeguarding the human rights of refugees. RCOA therefore encourages the Government, in developing the Action Plan, to consider how it can contribute to the protection of human rights through its engagement with other international bodies.

Recommendation 1:

RCOA recommends that, in the development of the National Human Rights Action Plan, consideration be given to:

- a) *The human rights implications stemming from all international treaties to which Australia is party, over and above the seven core human rights treaties.*
- b) *The contributions the Government can make to the protection of human rights through engagement with international bodies outside the UN human rights system.*

2. Australia's Human Rights Framework

2.1. Enhanced scrutiny of human rights

- 2.1.1. RCOA believes that increased consideration of human rights principles when developing and scrutinising legislation is central to preventing violations of human rights. We therefore welcomed the introduction of the *Human Rights (Parliamentary Scrutiny) Bill* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill*. However, RCOA remains concerned about the absence of oversight, accountability or quality assurance mechanisms in the proposed legislation.
- 2.1.2. The legislation clearly states that failure to submit a Statement of Compatibility will have no impact on the validity, operation or enforcement of the Act in question. Additionally, the legislation provides no guidance for cases where legislation is found to be incompatible with human rights. As such, the statements have the potential to become little more than a tokenistic gesture rather than a well-considered practice contributing to the protection and promotion of human rights. At worst, the requirement to submit a Statement of Compatibility may simply be ignored.

Recommendation 2:

RCOA recommends that oversight, accountability and quality assurance mechanisms be incorporated into the abovementioned Bills to ensure that the Statements of Compatibility have a meaningful place in the development of legislation and thereby contribute to the protection of human rights.

2.2. Human rights education

- 2.2.1. RCOA warmly welcomes the Australian Government's commitment to enhancing human rights education. Research conducted by Amnesty International Australia² has indicated that misinformation and a lack of understanding about the issues affecting refugees and asylum seekers are key factors leading to negative perceptions of these groups amongst the community. Education, through addressing these misconceptions, could play a vital role in resolving negative community attitudes.
- 2.2.2. RCOA also encourages the Government to highlight in its human rights education and engagement programs the numerous positive contributions that refugees and humanitarian entrants make to Australian society. Research commissioned by the Department of Immigration and Citizenship (DIAC) has found that humanitarian entrants and their descendents make substantial economic, civic and social contributions to Australia.³ Highlighting these positive impacts of refugee and humanitarian settlement could again play a major role in addressing negative community attitudes.
- 2.2.3. Given that, as acknowledged in the Baseline Study, community attitudes play a key role in facilitating the protection and promotion of human rights, education could have a significant impact on the enjoyment of human rights by refugees and asylum seekers in Australia.

Recommendation 3:

RCOA recommends that the human rights education and engagement programs introduced as part of Australia's Human Rights Framework should highlight the issues affecting refugees and asylum seekers and the positive contributions made by refugees and humanitarian entrants to Australian society, with a view to addressing negative community attitudes towards these groups.

2.3. The need for human rights legislation

- 2.3.1. RCOA wishes to reiterate its concern that refugees and asylum seekers who experience human rights violations in Australia continue to face barriers when seeking formal recognition of and recompense for their experiences. These barriers stem in part from the absence of overarching human rights legislation in Australia.
- 2.3.2. While the Human Rights Framework includes some positive legislative changes, such as the consolidation of anti-discrimination legislation, RCOA again notes with regret that the Framework does not include a commitment to legislate a Human Rights Act or any other form of overarching human rights protection. We believe the effectiveness of

² Pagliaro, A . (2010). "Let's Stop the Spin on the Boats." *Human Rights Defender*, December.

³ Hugo, G. (2011). *Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants*. Published by the Department of Immigration and Citizenship, available at www.immi.gov.au/media/publications/research/_pdf/economic-social-civic-contributions-about-the-research2011.pdf

any National Human Rights Action Plan will be inherently limited without a legislative basis to inform its content and give force to its provisions. We therefore encourage the Government to reconsider the introduction of a legal framework for the protection of human rights.

Recommendation 4:

RCOA recommends that the Australian Government adopt a comprehensive legal framework for the protection of human rights in Australia, including the provision of remedies for their breach.

3. Human rights experiences of refugees and asylum seekers

3.1. Social inclusion

- 3.1.1. RCOA welcomes the observations made in Section 3.10.1 of the Baseline Study regarding the barriers faced by refugees and humanitarian entrants in accessing housing and employment. However, while acknowledgement of these barriers is a promising starting point, there is a need to implement specific strategies to assist refugees and humanitarian entrants in overcoming the identified barriers. No such strategies are outlined in the Baseline Study.
- 3.1.2. Several of the observations made in this section of the Baseline Study are drawn from research conducted by RCOA, specifically our 2010-11 submission on the Refugee and Humanitarian Program.⁴ Unlike the Baseline Study, however, this submission not only identified barriers relating to housing and employment but also proposed a range of strategies for addressing them. We encourage the Government to consider incorporating these strategies into the National Human Rights Action Plan.

Recommendation 5:

RCOA recommends that the National Human Rights Action Plan incorporate the recommendations relating to employment and housing made in RCOA's 2010-11 submission on the Refugee and Humanitarian Program.

- 3.1.3. RCOA notes that the Baseline Study also acknowledges the challenges faced by community-based asylum seekers in accessing housing and healthcare. However, we believe that there is a need for more comprehensive consideration on the human rights implications of these challenges.
- 3.1.4. Asylum seekers do not have access to the same range of welfare and support services as refugees or permanent residents. Depending on the type of visa they hold, they may not be entitled to Medicare or work rights. Those who do not have work rights or are ineligible for financial support from Government often have no stable source of income. Many have difficulty accessing sustainable accommodation due to lack of income and the limited availability of government-subsidised housing. Asylum seekers in this situation are at serious risk of destitution and homelessness and often become heavily dependent on non-government organisations for basic living assistance.
- 3.1.5. The Baseline Study observes that some State and Territory Government services and non-government organisations provide various forms of support to community-based asylum seekers. The Study notes, for example, that ACT Health has introduced a policy giving Medicare-ineligible asylum seekers access to public hospital care. However, the

⁴ Available at www.refugeecouncil.org.au/resources/intakesub/2010_11_Intake_Sub.pdf

fact that State and Territory Government and non-government agencies have identified a need for these forms of support indicates that there are significant gaps in Federally-funded services. Clearly, there is a need to reconsider how these services are delivered to ensure that the rights of asylum seekers are upheld. The National Human Rights Action Plan could incorporate measures to address this issue.

Recommendation 6:

RCOA recommends that the National Human Rights Action Plan incorporate measures to address gaps in service provision and support for community-based asylum seekers.

3.2. Community attitudes

- 3.2.1. The Baseline Study recognises the role of community attitudes towards refugees and asylum seekers in promoting (or hampering) the enjoyment of human rights by these groups. RCOA welcomes the initiatives outlined in the Study aimed at addressing negative attitudes and promoting positive community engagement. However, we note that these initiatives are primarily aimed at addressing racism and promoting multiculturalism. While such measures are crucial, there is also a need to address the additional factors which lead to negative community attitudes towards refugees and asylum seekers.
- 3.2.2. As discussed in Section 2.2 of this submission, lack of understanding about the issues affecting refugees and asylum seekers is a key driver of negative community perceptions of these groups. There are many factors which contribute to this lack of understanding: the conflation of issues such border security, anti-people smuggling measures and overpopulation with asylum and protection issues in broader policy discussions; the perpetuation of myths and misinformation about refugees and asylum seekers, particularly in the media; the lack of political leadership in correcting this misinformation; and a lack of awareness about the positive contributions made by refugees and humanitarian entrants to Australian society.
- 3.2.3. In the development of the National Human Rights Action Plan, RCOA encourages the Government to consider specific strategies for addressing these and other factors which contribute to negative community perceptions of refugees and asylum seekers. Several such strategies are outlined in RCOA's 2011-12 submission on the Refugee and Humanitarian Program.⁵

Recommendation 7:

RCOA recommends the National Human Rights Action Plan incorporate the recommendations relating to public discourse on Australia's refugee policies made in RCOA's 2011-12 submission on the Refugee and Humanitarian Program.

3.3. Immigration detention

- 3.3.1. RCOA welcomes the recent expansion of community detention arrangements for children, families and other vulnerable groups. However, while community detention is certainly preferable to detention within closed facilities, there is an urgent need to reassess current approaches to detention. As noted in the Baseline Study, the Australian Government's position is that mandatory detention of unauthorised arrivals for the purpose of health, identity and security checks is necessary to manage the

⁵ Available at www.refugeecouncil.org.au/resources/intakesub/2011-12_IntakeSub.pdf; see Section 6.

risks to the Australian community. The study also notes that “the Government recognises that detention that is indefinite or otherwise arbitrary is not acceptable”.

- 3.3.2. These stated principles, however, are not reflected in practice. Detention of unauthorised arrivals is not used solely for the purposes of managing risk, as asylum seekers arriving without authorisation are detained for the entire duration of the refugee status assessment process – a length of time well beyond what is necessary to ensure public safety and security. In the absence of legislated time limits, immigration detention remains indefinite, often with serious consequences for the health and wellbeing of detainees. The result of these practices is that thousands of men, women and children who present no identifiable risk to the community continue to be detained unnecessarily at an enormous financial and human cost.
- 3.3.3. RCOA considers the analysis in the Baseline Study of the human rights implications of immigration detention to be inadequate. The Study considers detention conditions in one facility only (Christmas Island) and does not examine in detail the aspects of immigration detention which have the greatest impact on human rights, namely its indefinite and often prolonged nature.
- 3.3.4. The detrimental impacts of prolonged indefinite detention on the health and wellbeing of detainees has been well documented, with impacts worsening as the length of detention increases. Past and current experience has unequivocally demonstrated a strong link between long-term indefinite detention and increased incidences of serious mental health issues, self-harm, suicide and unrest. The ongoing mental health issues experienced by many former detainees hamper their successful settlement and increase their need for post-arrival support and rehabilitation. The seriousness of the human rights violations stemming from current immigration detention practices is well evidenced by the numerous recommendations made under the UPR focusing specifically on this issue.
- 3.3.5. The Baseline Study suggests that one possibility for addressing the human rights issues arising from immigration detention would be for the Government to “further develop mechanisms to support people while in immigration detention”. While RCOA agrees that there is a need to improve conditions of detention, this approach fails to address the root cause of the problem. Until the Government’s stated policy on immigration detention is reflected in practice, human rights violations will continue to occur.
- 3.3.6. RCOA therefore strongly advocates the adoption of a risk-based approach to detention. Under this approach, asylum seekers who enter Australia without visas would be subject to the same risk management processes applied to people who seek to enter the country on a temporary basis. In cases where an asylum seeker is found to present no identifiable health, security or public order risk, they should be released into the community while awaiting the determination of their protection claim. This approach would prevent the needless detention of persons who present no risk to the community and greatly reduce the risk of the serious human rights violations resulting from prolonged indefinite detention.
- 3.3.7. In addition to the adoption of a risk-based approach, RCOA also advocates the implementation of a variety of other measures to mitigate the risk of prolonged indefinite detention and its negative consequences. These include:

- The introduction of a legislative time limit on detention, restricting immigration detention to a period of no longer than 30 days before review and six months in total.
 - The establishment of a system of judicial review in cases where detention exceeds the 30 day limit and, if continued detention is considered appropriate, at regular intervals thereafter.
 - The enshrinement in legislation of minimum conditions of detention
 - The development of guidelines and mechanisms for resolving in a timely fashion the status of persons who can be neither removed from Australia nor granted a permanent visa.
- 3.3.8. RCOA recently submitted a paper to the Joint Select Committee inquiry on Australia's immigration detention network, which contains further detail and recommendations about these and a range of other issues. Subject to its acceptance as a submission, RCOA would be happy to make this paper available to the Attorney-General's department.

Recommendation 8:

RCOA recommends that the National Human Rights Action Plan incorporate the recommendations outlined in the paper submitted by RCOA to the Joint Select Committee inquiry on Australia's immigration detention network, subject to its acceptance as a submission.

4. Cross-cutting issues affecting refugees and asylum seekers

- 4.1. Specific consideration of the negative human rights experiences of refugees and asylum seekers is essential to ensuring that these issues can be addressed. However, RCOA also notes that many of the other groups identified in the Baseline Study as being at risk of negative human rights experiences – for example, children and young people, women, people at risk of or experiencing homelessness and people with a disability – include asylum seekers and people from refugee backgrounds. As a result, refugees and asylum seekers often experience multiple forms of disadvantage. Some examples of this are provided below.
- 4.2. ***Children and young people from refugee backgrounds and education:*** many young people from refugee and humanitarian backgrounds come from situations in which schooling has been highly disrupted. In some cases, they have not had the opportunity to attend school at all. Feedback from RCOA's consultations has indicated that there are a significant number of young people whose learning needs remain unmet within the education and training system in Australia. The failure to meet the learning needs of students from refugee backgrounds can have a devastating impact on young people and lead to their disengagement not only from education but also from employment and other services and the community in general, thereby hampering their enjoyment of a wide range of human rights
- 4.3. ***Guardianship of unaccompanied humanitarian minors:*** the role of the Minister for Immigration and Citizenship as legal guardian of unaccompanied minors has long been a matter of concern for RCOA and its members. There is an inherent conflict of interest between the Minister's guardianship obligations under the *Immigration (Guardianship of Children) Act 1946* and his or her powers under the *Migration Act 1958*. In many cases, the Minister is simultaneously responsible for the guardianship, detention and status determination of the same young person. These contradictory

responsibilities obstruct the Minister from focusing exclusively on protecting the best interests of the child, with the result that many unaccompanied minors are left without the independent advocacy, protection and care that they need and to which they are entitled.

- 4.4. **Women from refugee backgrounds experiencing domestic violence:** there are many unique ways in which the refugee experience compounds the risk of domestic and family violence, for example: pre-arrival experiences of war-related violence, particularly sexual violence; the prevalence of violence against women in situations of protracted displacement, such as in refugee camps and settlements; underreporting of incidents of violence due to fear or mistrust of government authorities resulting from negative experiences in countries of origin; and the often dramatic changes in power dynamics and gender roles within families post-arrival in Australia, which can place enormous pressure on relationships. The Baseline Study notes that immigration and resettlement experiences can “increase the complexities typically involved in domestic and family violence cases”; however, if these complexities are to be successfully addressed, further consideration beyond this brief acknowledgment is surely required.
- 4.5. **Refugees and asylum seekers at risk of or experiencing homelessness:** the added risk factors associated with the refugee and asylum-seeking experience render these groups particularly vulnerable to homelessness. For example, while young people in general are at a greater risk of homelessness, the level of homelessness amongst young people from refugee backgrounds is alarmingly high – at least six to ten times greater than for other young people of school age.⁶ Research conducted by the Hotham Mission Asylum Seeker Project⁷ indicates that community-based asylum seekers are also at serious risk of homelessness. The combination of ineligibility for financial support from Government, lack of family and community support networks and limited availability of government-subsidised housing forces many community-based asylum seekers into abject poverty and recurrent homelessness.
- 4.6. **People with a disability or serious medical condition seeking humanitarian settlement in Australia:** migrants to Australia must meet health requirements in order to be considered eligible for a visa. Some groups, including applicants for onshore protection visas, are exempt from these health requirements. However, all offshore refugee and humanitarian applicants remain subject to the health requirements and, while consideration of a waiver is available, RCOA believes that this discretionary procedure is not a fair or effective mechanism for safeguarding human rights. Additionally, given that demand for family reunion under the Special Humanitarian Program greatly exceeds available places, many refugee and humanitarian entrants feel compelled to apply for family reunion under the family stream of the general migration program, which may in turn result in their exclusion from the health requirement waiver. As a result, persons facing substantial human rights violations overseas, whose vulnerability to such violations may be further magnified by their disability or medical condition, may be unable to access resettlement.
- 4.7. **Refugees and asylum seekers with physical and mental health issues:** pre-arrival experiences of torture and trauma often lead to serious physical and mental health problems amongst refugees which require ongoing specialist treatment in Australia.

⁶ Coventry, L., Guerra, C., Mackenzie, D. & Pinkey, S. (2002). *Wealth of All Nations: Identification of strategies to assist refugee young people in transition to independence*. Report to the National Youth Affairs Research Scheme, available at www.deewr.gov.au/Youth/Programs/NYARS/Documents/WealthofAllNationsReport.pdf

⁷ Liddy, N., Sanders, S. & Coleman, C. (2010). *Australia's Hidden Homeless: Community-based approaches to asylum seeker homelessness*. Published by Hotham Mission Asylum Seeker Project.

Asylum seekers who have been detained for prolonged periods also frequently experience significant mental health issues which lead to a need for more intensive post-arrival support. In both cases, providing effective and appropriate treatment necessitates an understanding of the specific issues and challenges faced by refugees and asylum seekers and how these may impact on their physical and mental health.

- 4.8. It is therefore essential, in developing strategies to address the negative human rights experiences of the groups identified in the Baseline Study, that adequate consideration be given to the role of the refugee and asylum-seeking experience in compounding the disadvantages faced by these groups.

Recommendation 9:

RCOA recommends that, in the development of the National Human Rights Action Plan, consideration be given to the cross-cutting issues affecting the enjoyment of human rights by the identified at-risk groups.

5. Issues not covered in the Baseline Study

5.1. Excised offshore places

- 5.1.1. RCOA is disappointed that no consideration has been given in the Baseline Study to the impact of the excision policy on human rights. Under this policy, asylum seekers who first enter Australia at an excised offshore place (such as Christmas Island) without legal authorisation cannot submit a Protection Visa application except at the discretion of the Minister for Immigration and Citizenship. They are barred from the refugee status determination system that applies on the Australian mainland, instead undergoing a non-statutory, non-transparent determination process.
- 5.1.2. In our numerous submissions on the protection and promotion of human rights in Australia, RCOA has repeatedly highlighted the inequity of maintaining a separate system of processing for asylum seekers arriving without authorisation. The November 2010 High Court decision and the subsequent extension of access to judicial review for asylum seekers subject to the excision policy has certainly improved access to justice. However, the policy itself continues to result in breaches of Australia's international obligations through depriving asylum seekers of the full protection of Australian law.
- 5.1.3. The excision policy arbitrarily denies access to a reviewable, legally-bound system of refugee status determination for some asylum seekers, which in turn impedes access to protection and undermines the integrity of Australia's asylum processes. The questionable credibility of the offshore determination process was clearly highlighted in statistics recently published by the Department of Immigration and Citizenship.⁸ The statistics revealed that, during the first six months of 2010-11, on average 78.6 per cent of decisions made under the offshore process were overturned on review, compared to just 23 per cent over the same period for the mainland process. These figures raise serious questions about the quality of decisions made under the offshore process.
- 5.1.4. To ensure Australia upholds its international human rights obligations, it is essential for all asylum seekers to have equal access to and protection under Australian law for

⁸ Department of Immigration and Citizenship (2011). *Asylum Statistics - Australia 2010-11*. Available at www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-stats-2010-11-full.pdf

fair and reviewable determinations of their applications for refugee status. As part of the National Human Rights Action Plan, RCOA urges the Government to abolish the excision policy as a key step towards improving human rights protection for asylum seekers.

Recommendation 10:

RCOA recommends that, as part of the National Human Rights Action Plan, the provisions of the Migration Act 1958 relating to excised offshore places be repealed.

5.2. Statelessness

- 5.2.1. Stateless persons are at serious risk of a wide range of human rights violations, as they are unable to exercise the basic rights associated with citizenship or face serious difficulties in doing so. Stateless persons are typically excluded from political processes, cannot travel freely and lack access to publicly funded services such as education, health care and welfare support. They often face difficulty in obtaining identity documents and securing employment. Stateless persons are also vulnerable to exploitation, abuse and detention due to their lack of status. In Australia, stateless persons are at serious risk of prolonged detention if their status cannot be resolved, as their lack of citizenship often precludes their removal to their country of origin.
- 5.2.2. In light of the vulnerability of stateless persons to negative human rights experiences, RCOA believes there is a need to consider the needs of this group in the National Human Rights Action Plan. RCOA strongly welcomes the commitment of the Australian Government to developing a system of status determination for stateless persons. However, in developing the Action Plan, we also encourage the Government to consider mechanisms for providing durable solutions and appropriate support for stateless persons.

Recommendation 11:

RCOA recommends that the National Human Rights Action Plan incorporate mechanisms to address the negative human rights experiences of stateless persons.

5.3. Recent policy initiatives aimed at addressing irregular movement

- 5.3.1. The recently-signed transfer between Australia and Malaysia, which will see 800 asylum seekers who arrive in Australia by boat returned to Malaysia in exchange for Australia resettling 4,000 registered refugees in Malaysia over the next four years, has serious implications for the human rights of asylum seekers. RCOA remains very concerned about the safety and welfare of the 800 asylum seekers who will be subject to the transfer deal.
- 5.3.2. Many questions remain as to how the Australian Government will ensure that the rights of returnees are adequately protected. Little detail has been provided on the mechanisms for:
 - Ensuring that the provisions of the arrangement will be upheld, including through training of police and immigration officials who may have contact with returnees;
 - Ensuring that planned reception arrangements will provide an adequate standard of living for returnees, including access to stable accommodation, livelihoods, education and healthcare;
 - Providing long-term support and assistance to returnees who are not resettled within a reasonable timeframe; and

- Providing appropriate remedies if a returnee is subject to human rights violations in Malaysia.
- 5.3.3. Given Malaysia's appalling human rights record and routine mistreatment of refugees and asylum seekers, RCOA finds it difficult to understand why such limited consideration has been given to these vital questions.
- 5.3.4. The reopening of the offshore processing facility on Papua New Guinea's Manus Island also raises serious human rights concerns. RCOA believes that the reintroduction of offshore processing represents a return to the Pacific Solution, a policy which resulted in grievous human rights violations. The Government has not yet provided any information to suggest that its planned arrangements on Manus Island would differ markedly from those previously in place under the Pacific Solution. Insufficient detail has been provided as to the nature of refugee status determination procedures, reception arrangements for asylum seekers transported to Manus Island and mechanisms for the timely provision of durable solutions for those found to be refugees.
- 5.3.5. Asylum seekers affected by the Pacific Solution were detained in remote facilities for often lengthy periods (up to six years in some cases), to the serious detriment of their health, particularly mental health, and general wellbeing. Throughout the life of the Pacific Solution, there were multiple incidents of self-harm, 45 detainees engaged in a serious and debilitating hunger strike and dozens suffered from depression or experienced psychotic episodes.⁹ It is difficult to see how the Government will be able to mitigate these human rights impacts.
- 5.3.6. RCOA agrees that there is an urgent need to address the factors which drive irregular movement in the region. However, we urge the Government to reconsider its current approach to this issue. The pursuit of policies which seriously undermine the protection of human rights is at odds with the Government's commitment to developing a National Human Rights Action Plan. It is also likely to diminish the potential for regional cooperation in refugee protection, as discussed in further detail below.

5.4. Regional protection

- 5.4.1. In many countries across the Asia-Pacific region, the average standard of protection available to asylum seekers and refugees falls well below international benchmarks and is characterised by limited recognition of refugee status; inadequate standards of reception, status determination and protection; widespread use of detention; extremely difficult living conditions, including lack of access to livelihoods, education and healthcare; and lack of access to timely durable solutions. These conditions frequently drive refugees and asylum seekers to engage in secondary movement in the hope of finding genuine safety and protection.
- 5.4.2. Addressing irregular movement therefore requires engagement with other countries in the region to improve standards of protection for refugees and asylum seekers. The Malaysia and Manus Island arrangements, however, focus on addressing irregular movement only insofar as it relates to Australia's domestic concerns. In doing so,

⁹ Bem, K., Field, N., Maclellan, N., Meyer, S. & Morris, T. (2007). *A Price Too High: The cost of Australia's approach to asylum seekers*. Published by A Just Australia, Oxfam Australia and Oxfam Novib, available at pandora.nla.gov.au/pan/76526/20070910-1523/www.oxfam.org.au/media/files/APriceTooHigh.pdf

these strategies set a problematic precedent for future regional cooperation on refugee protection. 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. Additionally, given that many countries in the region deny refugees and asylum seekers access to even the most basic of rights, the introduction by Australia of policies which seriously undermine the protection of human rights is highly counterproductive.

- 5.4.3. RCOA therefore urges the Government to abandon its current approach to addressing irregular movement and instead focus on developing a sustainable regional protection framework in the Asia-Pacific. We believe the development of this framework should constitute a core component of the National Human Rights Action Plan.
- 5.4.4. RCOA finds it surprising that no acknowledgement of the need for regional cooperation on refugee protection features in the Baseline Study. This omission is particularly surprising given that the Study includes a very comprehensive overview of Government measures to address human trafficking. This overview includes an outline of measures for engaging with regional partners to address the factors which make people vulnerable to trafficking. In developing the National Human Rights Action Plan, RCOA strongly encourages the Government to give a similar level of consideration to the development of a regional framework on refugee protection.
- 5.4.5. RCOA's 2011-12 submission on the Refugee and Humanitarian Program¹⁰ contains further information and recommendations on developing a sustainable regional protection framework in the Asia-Pacific. We encourage the Government to incorporate these recommendations into the National Human Rights Action Plan.

Recommendation 12:

RCOA recommends that:

- a) *In light of its commitment to improving the protection of human rights through a National Human Rights Action Plan, the Australian Government abandon the Malaysia transfer deal and the reopening of the offshore processing facility on Papua New Guinea's Manus Island.*
- b) *The National Human Rights Action Plan incorporate the recommendations relating to the development of a sustainable regional protection framework made in RCOA's 2011-12 submission on the Refugee and Humanitarian Program.*

¹⁰ Available at www.refugeecouncil.org.au/resources/intakesub/2011-12_IntakeSub.pdf; see Section 4.