



Refugee Council
of Australia

DEPARTMENT OF HOME AFFAIRS

SUBMISSION ON THE 'MANAGING AUSTRALIA'S MIGRANT INTAKE' DISCUSSION PAPER

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 190 organisations and 1,000 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views. RCOA represents organisational members who provide programs under Settlement Grants program, covering every State and Territory, as well as refugee communities receiving support through this program.

RCOA welcomes the opportunity to provide our feedback on the Department of Home Affairs Migration Intake discussion paper. We believe that the Migration Program provides a unique and innovative opportunity for Australia to develop complementary pathways for refugees around the world to receive protection. The terms 'complementary pathways' refers to ways that Australia can increase its contribution to refugee protection through opening up other migration pathways for eligible refugees. There are millions of refugees around the world who can fulfil Australia's requirement for skilled migrants, while simultaneously providing them an opportunity to be safe from harm and persecution. This can occur by opening up Australia's Skilled Migration Stream to refugees and providing concessions and supports to access Australia's migration program.

Likewise, we believe that the Family Stream of the Migration Program must be re-evaluated to consider how it supports reunification for refugee families. Australia's migration program is about more than just economic benefits. The social, cultural and health implications of family reunion must not be overlooked. Yet family reunion also brings a notable economic contribution to Australia as well. Based on ongoing and significant feedback from refugee communities and our members, RCOA has developed a proposal for a Humanitarian Family Reunion program that should sit outside the Refugee and Humanitarian Program and offer a solution for the thousands of people in Australia separated from their families. If this is not implemented, a number of changes to the Family Stream of the Migration Program must be made to make it more equitable and accessible for refugee communities.

1. Complementary pathways for refugees through the Migration Program

- 1.1. There are millions of refugees around the world who are highly skilled and able to bring significant expertise to the Australian labour force. Refugees are often highly qualified, and many led highly successful professional lives before being forced to flee their homes. Yet many find themselves in countries of first asylum without the right to work or study, and often unable to access regular skilled migration channels to other countries.
- 1.2. As RCOA has highlighted for a number of years in our submission on the Refugee and Humanitarian Program, there has been a significant interest in using skilled and other pathways to support a greater number of refugees to access protection. This interest in

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developing alternative migration pathways was reflected in the New York Declaration, in which Australia and other countries committed to consider the “expansion of opportunities for labour mobility for refugees, including through private sector partnerships, and for education, such as scholarships and student visas.”¹

- 1.3. RCOA believes that the Refugee and Humanitarian Program (RHP) should remain the primary way which Australia resettles refugees. The RHP should remain focused on resettling the most vulnerable people, recognising their immediate need for resettlement. This should be primarily done in collaboration with UNHCR, who is best placed to assess refugees’ vulnerability. However, in addition to resettling vulnerable refugees through the RHP, Australia can look to *complement* this commitment by opening up other pathways for refugees to migrate to Australia, recognising that many refugees will also meet the skill requirements for other visa streams.
- 1.4. In our view, the Migration Program provides a real opportunity for Australia to contribute to international refugee protection while simultaneously meeting its need for skilled migrants. This presents an untapped talent pool from which Australia can use to meet its need for skilled migrants.
- 1.5. However, to achieve this, a number of current requirements need to be relaxed to address situation that displaced people often find themselves in. Potential areas to explore include: opening up places for refugees within the skilled stream of the migration program, establishing a skills linkage program to connect refugees overseas with employers in Australia, and relaxing some of the restrictions that may prevent refugees from accessing the skilled stream. Other options include developing opportunities for refugees to enter Australia as students to undertake further study.
- 1.6. A report by the Australian Human Rights Commission recommended that the Australian Government consider developing ‘protection-sensitive’ migration pathways for refugees to enter Australia:

*Protection-sensitive migration aims to facilitate refugees’ access to non-humanitarian migration pathways as a means of enhancing protection or providing durable solutions. It involves addressing barriers which may inadvertently exclude people fleeing persecution from migration opportunities (such as documentation requirements, visa fees and carrier sanctions); implementing proactive strategies to extend a wider range of migration options to forcibly displaced people; and providing additional safeguards (such as protection against refoulement) for refugees migrating through non-humanitarian pathways. Enhancing access to these options could both expand pathways for safe entry and create more space within the Refugee and Humanitarian Program for people who cannot access non-humanitarian forms of admission.*²

- 1.7. While the Community Support Program (CSP) is looking to introduce pathways for employers to sponsor and support refugee to come to Australia, this is not a complementary pathway, as its 1000 places are counted as part of the RHP. Likewise, it does not necessarily open up existing places within the Migration Program for skilled refugees to utilise. Further, as RCOA has raised a number of times, the high cost of the CSP make it inaccessible for many refugee communities, and discourage employers from using the program.

Identity documents

- 1.8. Refugees may often be without identity and other documentation from their country of origin. This may be because they were denied access to these documents or because of

¹ New York Declaration for Refugees and Migrants, http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1.

² Australian Human Rights Commission, ‘Pathways to Protection: A human rights-based response to the flight of asylum seekers by sea’, September 2016, https://www.humanrights.gov.au/sites/default/files/20160913_Pathways_to_Protection.pdf, 34.

the speed in which people had to flee and the inability to bring identity documents with them. Further, documents such as passports may be expired and people may not be able to renew them, as it often requires returning to the countries which they have fled, presenting risks of harm and persecution. Fees to renew passports are also often out of reach for people. For this reason, the Australian Government should look at assessing people's identity based on other evidence, such as a UNHCR identity card.

Evidence of qualification and work experience

- 1.9. Refugees displaced in countries of asylum may also face difficulty in obtaining documents demonstrating their qualifications and employment history. Businesses in their country of origin may have closed down, been destroyed or inaccessible. Documents may have been lost or left behind, and universities may also be closed or unable to provide documentation. The Australian Government should look at finding flexible ways to assess a person's skills, qualification and work experience. Organisations such as Talent Beyond Borders may be best placed to assist with this.

Support to apply for skilled visas

- 1.10. Those who may meet the requirements for Australia's Skilled Migration stream may not have information or support to apply for Australia's migration program. They may be unaware of the requirements and the ability to apply for the Migration Program, and lack access to a migration agent or lawyer to support them with the application. To better support access for refugees to the Migration Program, organisations such as Talent Beyond Borders should give support to refugees during this process.

Concession rates for refugees through the Skilled Migration Stream

- 1.11. Finally, the high visa charges for many skilled visas may also be too high for both refugee communities and employers wishing to sponsor them. While many businesses may be keen to sponsor skilled refugees to join their business, they are unlikely to be prepared to pay extremely high visa charges. The Australian Government should reduce the costs associated with skilled visas for refugee communities and the employers wishing to sponsor them.

2. Family reunion

- 2.1. In 2016, following consultations with refugee community members and service providers, RCOA published an important report on family separation for refugee communities.³ Far too often, people from a refugee background who have participated in RCOA's consultations have reported that the physical security offered by Australia is offset by ongoing mental anguish of family separation. This year's consultation continued to highlight family separation as one of the most significant issues affecting refugee communities in Australia.
- 2.2. RCOA welcomes the Australian Government's commitment, through the New York Declaration, to "consider the expansion of ... flexible arrangements to assist family reunification".⁴ As such, we look forward to working with the Government in improving family reunion for refugee communities.
- 2.3. Family separation is costly, both to refugees and to the wider Australian community. There is enormous pressure on people in Australia to support relatives in refugee situations overseas, which was seen to both compound the stress of family separation and impose a significant financial burden on people attempting to settle in Australia. Family separation deprives people of social and emotional support critical to positive settlement outcomes.

³ Refugee Council of Australia, 'Addressing the pain of separation for refugee families', December 2016 <http://www.refugeecouncil.org.au/publications/reports/family-separation/>.

⁴ New York Declaration for Refugees and Migrants, http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1.

- 2.4. Family reunion is more than just reuniting with loved ones. Many former refugees in Australia still have family members in countries of origin and asylum, where persecution, war, poverty and violence is ongoing. Being able to reunite with their family is one way, and often the only way, people are able to ensure their family is safe.
- 2.5. Family separation is also one of the most significant contributors to mental health problems for refugee communities. Barriers to family reunion significantly contribute to the need for increased mental health services and the costs associated with these services. The danger that families may face overseas, and the trauma this causes to family members in Australia, was highlighted by a Hazara man from Afghanistan:
- I don't care about myself, I'm losing my mental health. Mostly what hurts me is my family are in a very insecure place, I just recently helped them move out of those places and find a new place. I am facing insecurity with my family. My friend says I would not be able to do anything for the community because I have lost my mental health. I want my family to be better than me. I wish the Australian government would do something for these people, first those who are here, then they can help and do for other people.*
- 2.6. As RCOA has highlighted regularly, family reunion significantly impacts people's ability to settle in Australia. The lack of family reunion creates many problems for people to obtain an education, find and hold stable employment, and develop new social networks. This has a significant long-term impact on the Australia economy, preventing people from rebuilding their lives and contributing to Australia.
- 2.7. In contrast, if people can bring their family to Australia more easily, they are able to move on with their lives, have social and cultural connections and have additional family members to provide care and support. Likewise, by reuniting family members, community members are not forced to send money overseas, keeping additional money in Australia to contribute to our economy.

Waiting times

- 2.8. RCOA continues to hear from former refugees about the hardships they face in applying for family reunion. Many have spoken about waiting years only to be rejected for an administrative reason. Others have expressed distress about the extensive delays they have faced in bringing their family members to Australia. The requirements for family members to undergo interviews and health checks is often impossible for family members who are still in conflict areas or are unable to travel.
- 2.9. Currently, the temporary partner (subclass 820) visa takes over 20 months for an application to be processed. A dependent child (subclass 445) takes over eight months. An orphan relative visa takes over three and half years. For refugee communities, family members are often still in conflict areas and facing substantial persecution and discrimination.
- 2.10. Requiring a family to wait this long often places people at severe risk of harm or death, or forces people to flee again to other countries of asylum. To wait over three and half years to bring an orphaned family member to Australia is unjustified, especially as that child may have no other means of support or care.
- 2.11. Refugee communities who apply for family reunion through the Family Stream of the Migration Program should be given priority, recognising the often dangerous situation many family members are in.

Definition of family

- 2.12. Likewise, many refugee communities and service providers have expressed concerns regarding the narrow definition of family and policies which prevent family members proposing their adult children because they are over 18 and no longer considered 'dependent'. The definition of 'immediate family' has a restrictive definition based on the Western concept of the nuclear family. These narrow definitions do not reflect the family

compositions of many refugee communities, leaving people unable to sponsor their family members as they are not considered immediate family.

Visa charges

- 2.13. A significant barrier to family reunion is the excessively high visa charge. For those seeking to sponsor family members through the Family Stream of the Migration Program, the fees are often beyond their means. Many noted that fees for family reunion also continue to increase. As one former refugee from South Sudan noted:

Even spouse visa we can't afford that fees. Now it is \$10,000 and you are not working. How can you afford \$10,000 to bring your wife over? So we really need the Government to look into that issue too. Because most of refugees are on Centrelink support, so how can they afford \$10,000 to bring their wife here?

- 2.14. Sponsoring a partner to come to Australia costs at least \$6,865, not including other associated costs such as those of health assessments and police certificates.⁵ Parents can only be sponsored if half of their children live permanently in Australia or more of their children live permanently in Australia than in any other country. Sponsoring parents through the non-contributory Parent visa⁶ is extremely unlikely as the current waiting time for Parent visa and Aged Parent visa (for parents aged 65 years or over) stands at 30 years.⁷
- 2.15. While parents being sponsored under contributory visas will wait for a considerably shorter time; the costs of these visas put them out of reach for many refugee communities and their families. The total cost of bringing both parents to Australia could amount to nearly \$100,000.⁸
- 2.16. The proposer also needs to provide an Assurance of Support of \$10,000 for the main applicant and \$4,000 for any additional adult applicant. This bond will be held for 10 years. According to the Department of Immigration, in the 2015–16 Migration Program year, 1,500 places have been allocated to non-contributory parent visas and 7,175 places to contributory parent visas.⁹
- 2.17. The restrictive visa charges for the family stream effectively make family reunion possible only for the well-off. Concession rates for the Family Stream should be introduced to alleviate the inequity of the current system.

Denial of family reunion for people who arrived by boat

- 2.18. One of the most pressing issues raised consistently during RCOA's annual consultations was the policy of preventing family reunion application for people who arrived in Australia by boat. Directive 62, introduced in 2013, placed family reunion applications from those who arrived by boat as the lowest priority, effectively meaning that their application will never be processed.

⁵ Fees and charges for visas, <https://www.border.gov.au/Trav/Visa/Fees>

⁶ Even for non-contributory parent visas there are associated Visa Application Charges. The first instalment which is payable upon lodgement of the application and is non-refundable, can amount to \$5,805 for both parents. The second instalment payable before the visa grant is \$2065 for each person included on the application. For permanent Parent (including Aged Parent) visa applicants, an Assurance of Support bond of \$5000 is required for the main applicant and \$2000 for any adult secondary applicants. The bond is refunded 2 years after visa applicants enter Australia on this visa.

⁷ Parent category visas, <https://www.border.gov.au/Trav/Brin/Pare>

⁸ For parents who did not hold a temporary contributory parent visa, the first instalment of Visa Application Charge will be \$4,940 for both parents. The second instalment payable before the grant of the visa is \$43,600 for each applicant or a total of \$87,200 for both parents, bringing the total cost of the visa to \$92,140. If parents held a temporary contributory parent visa, the first instalment of Visa Application Charge will be \$490 for both parents and the second instalment will be \$19,420 for each applicant or a total of \$38,840 for both parents. However, to be granted the temporary contributory parent visa, Visa Application Charges of \$3,735 for both parents as the first instalment and \$29,130 for each parent as second instalment need to have already been paid. Therefore, total base cost of applying for temporary and then permanent contributory parent visa in this case is \$101,325 (Fees and charges for visas, <https://www.border.gov.au/Trav/Visa/Fees>)

⁹ Parent visa queue, <https://www.border.gov.au/Trav/Brin/Fami/Capping-and-queuing/Parent-visa-queue>

- 2.19. The Australian Human Rights Commission, in the complaint of *CM v Commonwealth of Australia*, found that Directive 62 is arbitrary and breaches Australia's human rights obligations under the International Covenant on Civil and Political Rights.¹⁰
- 2.20. In 2016, the Minister replaced it with Directive 72, which added a clause which allowed a decision maker to depart from the policy if there are 'compelling reasons' involving 'special circumstances of a compassionate nature'. It is unclear how this provision will be interpreted or implemented, given that most applicants have compelling reasons for reuniting with family members. RCOA reiterates our call to remove Directive 72, and allow people who arrived in Australia by boat equal access to family reunion.

Migration advice

- 2.21. One final concern raised by participants was the lack of funded migration advice for refugee communities seeking to sponsor their family members. Participants noted that migration advice had previously been reduced or removed in grants, leaving many without free or subsidised advice. This has resulted in applicants making invalid applications or being rejected because they have no knowledge of the legal requirements and can't afford private migration advice. Migration advice through programs such as the Settlement Grants program should be restored.

Recommendation 1: Develop a humanitarian family reunion program

The Australian Government should develop a separate Humanitarian Family Reunion Program, outside of the Refugee and Humanitarian Program and Migration Program. This should be developed in consultation with former refugee community members and organisations, peak bodies and relevant service providers.

Recommendation 2: Enhance access to family reunion

In the absence of a separate Humanitarian Family Reunion Program, the Australian Government should enhance refugee and humanitarian entrants' access to family reunion by:

- a) waiving application fees or at least introducing application fee concessions for refugee and humanitarian entrants sponsoring family members under the family stream of the Migration Program*
- b) expanding the availability of no-interest loans to assist proposers in meeting the costs of airfares and/or application fees*
- c) introducing greater flexibility in documentation and evidence requirements under both the Refugee and Humanitarian Program and the family stream of the Migration Program*
- d) reviewing eligibility requirements under the family stream of the Migration Program which effectively exclude applicants from refugee backgrounds*
- e) prioritising processing of family members at immediate risk, and*
- f) ensuring access to settlement services on arrival and exempting family from the Newly Arrived Resident's Waiting Period.*

The Australian Government should consult with stakeholders to develop a process for assessing eligibility for concessions. There should be consultation with refugee communities, practitioners involved in providing support with family reunion applications and other relevant stakeholders to develop a process for assessing eligibility for the concessions referred to above.

¹⁰ *CM v Commonwealth of Australia* (DIBP), <https://www.humanrights.gov.au/our-work/legal/publications/cm-v-commonwealth-australia-dibp>.

Recommendation 3: Remove restrictions on family reunion for those who come by boat

Current restrictions on access to family reunion opportunities for Protection Visa holders who arrived by boat (including changes to processing priorities) be immediately removed.

If the above recommendation is not implemented, people whose applications have been affected by the introduction of retrospective changes to processing priorities be given the opportunity to withdraw their applications and receive a full refund of application fees.

Recommendation 4: Restore funding for migration advice

The Australian Government should restore funding for professional migration advice services under the Settlement Grants program to support refugee and humanitarian entrants in lodging family reunion applications.

Recommendation 5: Complementary migration pathways

RCOA recommends that, in conjunction with refugee community members, industry advisors, and service delivery organisations, the Australian Government develop a suite of complementary migration pathways for people to receive protection via the skilled migration program. These complementary pathways must be in addition to and not in place of the Refugee and Humanitarian Program. This should include:

- *Introducing flexible arrangements for people without required documentation of their identity, qualification, skills and employment history*
- *Providing additional support for refugees to apply through the Skilled Migration Stream*
- *Providing concessions to employers and refugees wishing to apply through the Skilled Migration Stream.*
- *Providing settlement support to refugees and their family arriving through the Migration Program, on a needs basis.*