



Refugee Council  
of Australia

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

## **SUBMISSION TO THE INQUIRY INTO THE EFFICACY, FAIRNESS, TIMELINESS AND COSTS OF THE PROCESSING AND GRANTING OF VISA CLASSES WHICH PROVIDE FOR OR ALLOW FOR FAMILY AND PARTNER REUNIONS**

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 180 organisations. 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.

For many years, RCOA has raised concerns about the dismal number and the extraordinary costs of family reunion visas for refugee communities. In 2016, we released a report *Address the Pain of Family Separation*, highlighting the many barriers to family reunion under the Migration Program and the Humanitarian Program.<sup>1</sup> Unfortunately, not only has the Government not done anything to address this, access to family reunion has become harder and harder for refugee communities separated. Border closures and the freezing of Australia's refugee resettlement program has also exacerbated these problems, but many of the policy barriers existed well before the pandemic.

For refugee communities, family reunion is not only about being reunited with loved ones, but it is often a vital lifeline for people fleeing persecution and war zones, or stranded in countries of asylum where they have no rights and no future. With Australia's humanitarian program recently cut back down to approximately 12,000 offshore places per year, the family reunion pathway in the Migration Program is often the only way refugees can get their family to safety.

Access to family reunion is costly, complex, bureaucratic and applicants face significant backlog causing years of delays. For some refugee communities, especially those who came by boat, we can only conclude that the prolonged and indefinite separation of family members is not only intentional, but a specific policy designed to inflict further harm on an already marginalised group in the name (but no evidence) of deterrence.

Over the last six years, we have made numerous recommendations on how to improve access to family reunion for refugee communities. Unfortunately, we have not seen serious consideration of these issues nor the recommendations by the Australian Government. This submission highlights and builds on these recommendations. We ask the Committee to seriously consider these recommendations and ensure the Government addresses this vital issue.

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<sup>1</sup> See The Refugee Council's report: RCOA (2016). *Addressing the pain of separation for refugee families*.  
<https://www.refugeecouncil.org.au/family-separation>

## **1 The cost of family separation**

- 1.1 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.
- 1.2 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.
- 1.3 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.*

- 1.4 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.
- 1.5 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.

## **2 The Special Humanitarian Program**

- 2.1 The primary avenue through which people from a refugee background seek to reunite with family members under the Refugee and Humanitarian Program is the Special Humanitarian Program (SHP). However, demand for the SHP far outweighs available places, even before the impact of COVID-19 border closures. In 2019-20, there were 40,232 applications for visas under the SHP, and only 5,099 grants, representing a 789% over subscribed demand for visas in the SHP. Figure 1 shows the demand for the SHP (via the number of visa lodgements) and the number of grants.

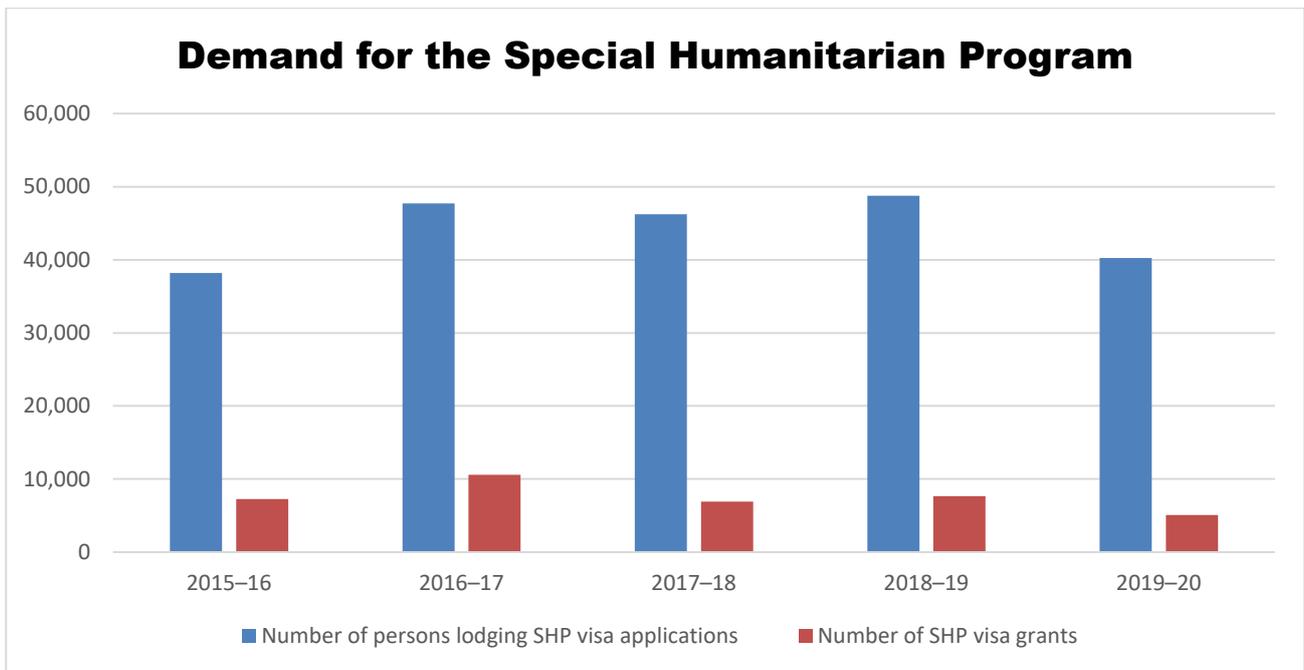


Figure 1 Number of lodgements and grants in the SHP, 2015-16 to 2019-20.<sup>2</sup>

2.2 It should be noted that refusals of SHP visa applications do not necessarily mean that the applicant was not in need of resettlement or did not have a genuine refugee claim. A significant portion of SHP applications is refused simply because there are not enough visas in the annual quota available to meet the demand. The Department of Home Affairs often gives the same standardised refusal notice to many applicants, noting that while applicants “have strong links to Australia and that there is no other suitable country available for resettlement”, the Department does not “have the capacity to resettle all applicants who apply for a humanitarian visa at this time”, and refused the grant of a visa because the application was not of the “highest priority”.<sup>3</sup>

### Waiting times

2.3 Lengthy waiting periods are also a major problem with the current system. While the COVID-19 pandemic has halted the arrival of temporary visa holders to Australia and created significant hurdles for Australian citizens and permanent residents to reach Australia, refugees were facing years-long wait to be reunited with their family long before the pandemic.

2.4 Many members of Australia’s refugee communities have expressed confusion and frustration about the prolonged waiting periods for family reunion and the length of time taken to process SHP applications. Many also commented on the limited or lack of information communicated to them about the reasons for these delays or the progress of their applications. Some respondents reported waiting for many years to be reunited, even with their closest relatives. A service provider from Melbourne shared the story of a former refugee from the Karen community who had sponsored her husband for resettlement:

<sup>2</sup> Source: Department of Home Affairs, *Australia’s Offshore Humanitarian Program: 2019–20*, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

<sup>3</sup> See, for example, *Plaintiff M64/2015 v Minister for Immigration and Border Protection* [2015] HCA 50 (17 December 2015).

*“Probably seven or eight years later he came. I mean, that is a very long time to wait if you’re establishing a family in the country.”*

- 2.5 A former refugee from Pakistan had a similar experience, reporting that his wife and children (including his severely disabled daughter) were finally able to join him in Australia seven years after he had originally applied. Consistent reports outline applicants waiting several years only to have their applications rejected for an administrative error, forcing them to reapply again and start the process from the beginning.
- 2.6 Figure 3 shows the average processing time in weeks for Refugee and SHP visa applications. From 2015-16 to 2019-20, the average waiting time to be granted a SHP was 78 weeks.

Visa category and decision type	Program year of finalisation				
	2015–16	2016–17	2017–18	2018–19	2019–20
<b>Refugee</b>					
Granted	52.3	47.6	60.3	57.1	51.4
Refused/Withdrawn/Other	44.8	24.3	49.8	38.8	26.6
<i>Total</i>	47.9	28.4	52.6	43.5	30.7
<b>SHP</b>					
Granted	71.9	71.1	95.8	79.7	69.6
Refused/Withdrawn/Other	68.4	51.1	34.3	24.0	25.8
<i>Total</i>	69.3	53.9	40.8	32.4	29.7

Figure 2 Average processing time (in weeks) of finalised cases, by visa category, decision type and year of finalisation, 2015–16 to 2019–20.<sup>4</sup>

### Prohibitive costs

- 2.7 There is a very large price tag attached to family reunion, even though the SHP is a cheaper available option. People proposing relatives under the SHP need to pay for airfares, migration agents, legal fees and costs of providing settlement support. The cost of reunification, even with immediate family members such as partners and children, can amount to tens of thousands of dollars. This cost was seen as being very difficult (if not impossible) for many people from a refugee background to meet, particularly for those who have arrived in Australia relatively recently.

### Definition of family

- 2.8 People continued to express concern about the restrictive definition of “family” used to assess and prioritise family reunion applications. Under current policy for the SHP, applications for split family reunion require that the main applicant be a member of the immediate family of the proposer (a proposer is an Australian citizen, permanent resident or an eligible New Zealand citizen who recommends an applicant for the SHP visa. People who arrived in Australia by boat after 13 August 2012 cannot become a proposer).

- 2.9 ‘Member of the immediate family’ is defined in regulation 1.12AA, and includes:

- A spouse or de facto partner
- A dependent child

<sup>4</sup> Source: Department of Home Affairs, *Australia’s Offshore Humanitarian Program: 2019–20*, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

- A parent (but only if their child who is the proposer or main applicant is under 18).<sup>5</sup>

2.10 Several people shared stories of unsuccessful attempts to sponsor other family members for resettlement, such as adult children, siblings, parents (where the proposer is an adult), other extended family members and people with whom the proposer has a close family-like bond but no blood relationship. Several participants raised concerns about the definition of dependent children, which excludes children over the age of 18 who are not engaged in full-time study. This definition can force families to consider leaving their adult children behind (often in a precarious situation) while the rest of the family resettles in Australia. A former refugee in Sydney spoke of their fears for the safety of their adult children living in dangerous situations overseas and emphasised that the family relationship was more important than the age of their children:

*“Are they are no longer our children and are we no longer their mums and dads?”*

### **Formal documents**

2.11 Difficulties in sourcing documentation or evidence to substantiate family relationships and denial of family reunion opportunities to people who had not been formally registered as refugees have also been raised as barriers. In some cases, documents required to provide evidence of family relationships never existed or had been lost or destroyed while fleeing conflicts. Some people also highlighted the challenges of obtaining identity documents for children who were born in exile. Evidence of ongoing relationships (such as phone or email records) may be very difficult to provide due to lack of access to communication technologies in displacement situations. The most common issue raised in relation to documentation, however, was the difficulty of formally registering as refugees. Several former refugees reported that they had been unable to sponsor relatives for resettlement who had not registered their status with UNHCR – even if it was impossible for them to do so. A former refugee from Afghanistan provided the example of his sister who is living in Iran:

*“She can’t register at the UN office because she has a student passport and the UN office doesn’t register with student passports.”*

2.12 Likewise, the Karen community from Burma who have fled to Thailand have often not been permitted to register their refugee status with UNHCR.

### **3 Family stream of the Migration Program**

3.1 RCOA continues to hear from former refugees about the hardships they face in applying for family reunion through the Migration Program (rather than the SHP). Sponsoring family members under the family stream of the Migration Program is an option unavailable to many people from a refugee background due to the extended waiting period associated with some visas and the increasingly high cost of visa application fees; a cost that is in addition to other expenses associated with sponsoring family members listed above. However, for many others, they are desperate to use this avenue due to the associated issues with the SHP (above).

3.2 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

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<sup>5</sup> Department of Immigration and Border Protection, *PAM3: Refugee and Humanitarian Offshore humanitarian program Visa application and related procedures*.

checks is often impossible for family members who are still in conflict areas or are unable to travel.

- 3.3 Currently, it takes around 23 months for the Department of Home Affairs to process 75% of the applications made for the temporary partner (subclass 820) visa<sup>6</sup> and 14 months to process 75% of the applications for a dependent child (subclass 445) visa.<sup>7</sup> While processing time for these visas has increased substantially since the start of the pandemic, it was never manageable. For example, in 2018 it would take over 20 months for a temporary partner application and over eight months for a dependent child application to be processed. In that time, an orphan relative visa would have waited over three and half years.<sup>8</sup> The Department no longer provides an estimated processing time for this visa.<sup>9</sup>
- 3.4 Another example is the wait time, fees, and high thresholds for eligibility involved in the Carer Visa. RCOA has heard that the waiting times for this visa have been at least 3½ to 5 years, even though the goal of this visa is to ensure permanent residents and citizens in Australia have someone to care for their ongoing needs as a result of medical needs or disability. Even Australian citizens assessed as being eligible for the Disability Support Pension – and therefore the Government has recognized that they have intense and ongoing needs – have had difficulty going through the process of applying and being granted this visa.
- 3.5 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.
- 3.6 Refugee communities who apply for family reunion through the Family Stream of the Migration Program should be given priority, recognising the often dangerous situations many family members are in.

#### **4 Visa charges**

- 4.1 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?*

- 4.2 Sponsoring a partner to come to Australia currently costs at least \$7,715.<sup>10</sup> This does not include other associated costs such as those of health assessments and police certificates. 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 visa is extremely unlikely as the Department advises the current waiting time for Parent visa and Aged Parent visa (for parents aged 65 years or over)

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<sup>6</sup> Partner visa (temporary): <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/temporary-820>

<sup>7</sup> Dependent child visa: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/dependent-child-445>

<sup>8</sup> As reported in our 2018 Migration intake submission available here.

<sup>9</sup> Orphan relative visa: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/orphan-relative-117>

<sup>10</sup> Partner visa (temporary): <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/temporary-820>

is likely to be about 30 years.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> According to the Department of Home Affairs, in the 2017–18 Migration Program year, 1,500 places have been allocated to non-contributory parent visas and 7,175 places to contributory parent visas.<sup>14</sup>

- 4.3 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.

## **5 Denial of family reunion for people who arrived by boat**

### **Direction 80**

- 5.1 One of the most pressing issues raised consistently during RCOA's annual consultations has been 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. 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.<sup>15</sup>
- 5.2 In 2016, the Minister issued Direction 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'. Effectively, this meant that applicants could write to the Department to explain why their circumstances justified the waiver of the processing order and to request that the Department start processing their applications.
- 5.3 Direction 72 was replaced with Direction 80 in 2018 by then Immigration Minister David Coleman. Direction 80 continues to put applications for family visas made by people who came by boat at the end of the queue. While it also allows for compassionate and compelling circumstances, it makes these concessions even harder to achieve. The most significant amendment is that Direction 80 has removed the requirement that an application is 'disposed of within a reasonable time'. A possible effect is that an application deemed lowest priority might never being processed.
- 5.4 Direction 80 means that refugees who arrived by boat are placed at the lowest processing priority, and have very little chance to be given special consideration for compelling or compassionate circumstances. Because of the significant backlog for family reunion, placing refugees at the end of the queue essentially denies them the chance of ever being reunited with their families.
- 5.5 The only exception to this policy is if people get Australian citizenship. However, the Department of Home Affairs has been found to have been intentionally stalling citizenship

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<sup>11</sup> Parent visas- queue release dates and processing times: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/parent-visas-queue-release-dates>

<sup>12</sup> Contributory parent visa: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/contributory-parent-143#Overview>

<sup>13</sup> Assurance of support: <https://www.dss.gov.au/about-the-department/international/policy/assurance-of-support>

<sup>14</sup> Department of Home Affairs (2019). *Parent Visa Queue*. <https://archive.homeaffairs.gov.au/trav/brin/famil/capping-and-queuing/parent-visa-queue>

<sup>15</sup> *CM v Commonwealth of Australia* (DIBP), <https://www.humanrights.gov.au/our-work/legal/publications/cm-v-commonwealth-australia-dibp>.

applications from refugees who arrived by boat, as highlighted in an Australian National Audit Office Report,<sup>16</sup> and by a Federal Court decision.<sup>17</sup>

### **Lowest priority for SHP applications**

5.6 In addition to being placed as the lowest priority for family reunion applications through the Migration Program, Department policy also puts applications from proposers who came by boat as the lowest priority for a Special Humanitarian Program visa. SHP applications are prioritised in the following order which is based on the visa the proposer holds, whether the proposer is an Australian citizen, and the closeness of the relationship between the applicant and the proposer:

1. 'split family' of a person who holds an offshore Humanitarian visa (including SHP)
2. other family proposed by a close family member who does not hold a Protection or Resolution of Status visa (partners, children, parents and siblings who do not otherwise meet the 'split family' definition)
3. other family proposed by an extended family member who does not hold a Protection or Resolution of Status visa (grandparents, grandchildren, cousins, aunts, uncles, nieces and nephews)
4. applicants proposed by a friend or distant relative who does not hold a Protection or Resolution of Status visa or by a community organization
5. any person proposed by or on behalf of a person granted a Protection or Resolution of Status visa.<sup>18</sup>

5.7 Given the demand for the SHP Program, those further down the priority list can expect extensive delays, or may in fact never receive a visa, as any new application that is a higher priority will be placed before them.

5.8 There is no clear rationale for placing people in this situation at the end of the queue. As the Australian Human Rights Commission noted, it does not act as a deterrent to other boat arrivals. It simply punishes people who are already in Australia and is an unnecessary barrier to successfully settling in Australia. We cannot expect people to make an effective home for themselves in Australia until they are reunited with their family.

## **6 Temporary protection**

6.1 In 2014 the Government reintroduced a three-year Temporary Protection Visa (TPV) and a new five-year Safe Haven Enterprise Visa (SHEV). These visas have no ability to sponsor family members. Only one small possibility for refugees on a SHEV to be able to sponsor their family is to jump through numerous visa requirements, and ultimately, gain citizenship. This includes the following steps:

- Work or study in a regional area of Australia for 3.5 years in order to meet the SHEV Pathway requirements
- Meet the criteria for a subsequent skilled, student or partner visa, and apply and wait for that visa
- Remain on that subsequent visa for as long as is required to obtain a permanent visa
- Meet the criteria and apply for a permanent visa
- Apply for and wait to obtain Australian Citizenship

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<sup>16</sup> <https://www.anao.gov.au/work/performance-audit/efficiency-processing-applications-citizenship-conferral>

<sup>17</sup> <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2016/1530.html>

<sup>18</sup> Department of Immigration and Border Protection, 'Procedures Advice Manual 3: Refugee and Humanitarian Offshore Humanitarian Program Visa Application and Related Procedures' (2015) 16.

- Finally, apply for and wait for a family reunion visa

- 6.2 At the very least, these steps will take 10 years, and more likely at least 15 years. This assumes that someone is able to apply for these subsequent visas, which have very difficult skills, education and English criteria. It also requires significant funds to afford the application fees for these visas. As such, for refugees on TPVs and SHEVs, it is practically impossible for them to be reunited with their loved ones.
- 6.3 Refugees on a TPV or SHEV have already been in Australia for 8 years while they waited for their refugee claims to be assessed. Many have been detained for years. The denial of family reunion for these people is a further punishment, simply because they sought protection in Australia by boat. They have been found to be refugees, meet all visa requirements and cannot return to their home countries. Refugees on a SHEV or TPV are not allowed to travel outside Australia, except with permission from the Department for extraordinary circumstances.
- 6.4 The policy is cruel, harmful and counterproductive, as it further marginalizes and harms this group rather than supporting them to become full members of our community and to settle successfully with their families.

## **7 Migration advice**

- 7.1 One final concern often raised by refugee communities and service providers is 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 cannot afford private migration advice. Migration advice through programs such as the Settlement Engagement and Transition Support (SETS) program should be restored.

## **8 Summary of recommendations**

### **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 excludes 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 Residents' 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.*

**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: Abolish Temporary Protection Visas and Safe Haven Enterprise Visas**

*The Government should end TPVs and SHEVs and grant all refugees on these visas a permanent protection visa. Should this recommendation not be adopted, the Government should introduce reforms to the SHEV pathway to encourage refugees to work in regional areas of Australia by offering a permanent visa with access to family reunion after a set amount of time.*

**Recommendation 5: Restore funding for migration advice**

*The Australian Government should restore funding for professional migration advice services to support refugee and humanitarian entrants in lodging family reunion applications.*