



Refugee Council
of Australia

Senate Standing Committees on Foreign Affairs, Defence and Trade

AUSTRALIA'S ENGAGEMENT IN AFGHANISTAN

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. 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.

The Refugee Council is grateful for the opportunity to make a submission to the Committee on Australia's engagement in Afghanistan. We also note that several groups, networks and organisations comprised of the diaspora from Afghanistan have also made submissions, and we hope that the Committee can give due regard to their expertise, lived experience and informed recommendations.

1 Australia's twenty-year engagement in Afghanistan

1.1 Costs of Australia's Engagement in Afghanistan

Australia has invested considerable resources in Afghanistan since 2001, including through the provision of overseas development assistance (ODA) and military engagement. More than \$1.5 billion in ODA has been provided to Afghanistan over this twenty-year period, aimed at promoting the empowerment of women and girls, human rights, economic development, education, health and effective governance.¹ The Australian Defence Force's Operation Slipper (2001-2014) and Operation Highroad (2015-2021) involved the deployment of more than 39,000 ADF personnel, the loss of 41 Australian lives and the injury and impairment of many more.²

In 2019, Australian Defence spending in Afghanistan through these two operations was estimated to be close to \$10 billion.³ In announcing Australia's withdrawal of personnel in April 2021, the Prime Minister confirmed Australia's commitment 'to helping Afghanistan preserve the gains of the last 20 years, particularly for women and girls'.⁴

Given the Prime Minister's commitment, we hold grave concern that actions like the curtailing of education and work rights for women and girls, land confiscation and extrajudicial killing directed at minority groups have closely followed the Taliban regaining executive power in Afghanistan.⁵ On 13 September 2021, UN Secretary General António Guterres' remarks to the High-Level Ministerial meeting on the humanitarian situation in Afghanistan described the country in terms of 'one of the worst humanitarian crises in the world', with the people in Afghanistan facing food insecurity, drought,

¹ Department of Foreign Affairs and Trade. (2021). Afghanistan Development Cooperation Factsheet: May 2021.

² Prime Minister of Australia. (2021). Australian troops drawdown in Afghanistan. Media Release. 15 April 2021.

³ Williams, C. (2019). Do we still need Australian troops in Afghanistan? Sydney Morning Herald (29/01/2019); Milne, S. (2020). Bang for our buck? Afghanistan and ANZUS. Defence Connect (20/03/2020).

⁴ Prime Minister of Australia. (2021). Australian troops drawdown in Afghanistan. Media Release. 15 April 2021.

⁵ New York Times (20 September 2021). A Harsh New Reality for Afghan Women and Girls in Taliban-Run Schools. Amnesty International. 5 October 2021. 13 Hazara killed by Taliban fighters in Daykundi Province.

the collapse of basic public services and hundreds of thousands of people being forced to flee their homes.⁶

Table 1. Costs and personnel strength of Australian Defence Force operations in Afghanistan, 2001-2021⁷

Year	Budget (actual, \$ million)	Personnel (authorised strength)
2021–22 (estimate)	40.6	0
2020–21 (revised estimate)	85.3	80
2019–20	76.7	200
2018–19	86.7	300
2017–18	82.4	300
2016–17	223.0	270–300
2015–16	228.5	270
2014–15	293.0	400
2013–14	735.3	1,030
2012–13	1,006.5	1,550
2011–12	1,006.7	1,550

Year	Budget (actual, \$ million)	Personnel (authorised strength)
2010–11	1,088.9	1,550
2009–10	1,125.3	1,550
2008–09	701.9	1,200
2007–08	394.9	1,080
2006–07	223.3	840
2005–06	91.0	550
2004–05	-	1
2003–04	-	2
2002–03	176.0	2
2001–02	320.0	1,100

1.2 Australia’s stated goals or areas of promotion

Although it is not possible to create an accurate counterfactual for what the situation in Afghanistan would currently be had Australia and its allies not spent 20 years engaged there, it is clear that significant challenges remain in all of the key domains Australia has sought to promote:

- the empowerment of women and girls,
- human rights,
- economic development,
- education,
- health and
- effective governance.

While \$11.5 billion may not have prevented the rapid collapse of the Afghan Army and Government after coalition forces withdrew, some legacy lives on in the education attained by the women and girls of Afghanistan whose learning can be paused but not undone. Finding ways to strengthen and support Afghanistan’s civil society to attain its own goals for its society – many of which align with those of Australia’s – will be vital for addressing the significant challenges faced.

In the short-term, and in the context of the widespread humanitarian crisis facing the country, it is important that all effort is concentrated to ensure that the people of Afghanistan are able to access basic needs through a coordinated international relief effort. Furthermore, it is imperative that an independent international monitoring mechanism be established as quickly as possible to ensure accountability of the new Executive to upholding human rights. The Australian Government can play an important role in both regards: by contributing additional funding to international humanitarian relief efforts and by using diplomatic channels to support the call by human rights experts for an independent fact-finding and accountability mechanism for Afghanistan.⁸

⁶ UNAMA. United Nations Secretary-General António Guterres remarks to High-Level Ministerial meeting on the humanitarian situation in Afghanistan, 13 September 2021.

⁷ Defence annual reports, cited in: Australian Parliamentary Library (2021). Background to Afghanistan Withdrawal. Note: 2003–04 and 2004–05 figures were combined with Operation Catalyst (Iraq) and cannot be distinguished for those years. Figures in this table reflect funding allocated against Operations Slipper and Highroad and do not take into account peripheral but contributory expenditure (for example, Operation Manitu—Middle East Region Maritime—sustainment, personnel costs, training costs).

⁸ OHCHR. Afghanistan: UN experts urge swift global action to protect human rights and prevent ‘civilian slaughter’. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27384&LangID=E>

Recommendation 1 *Funding for international humanitarian relief*

The Australian Government should increase funding to humanitarian organisations that are on the ground in Afghanistan to ensure adequate response to vulnerable communities in the context of heightened humanitarian needs.

Recommendation 2 *Independent monitoring mechanism*

The Australian Government should support the call for an independent mechanism to monitor and report on violations and abuses, to collect evidence, advance accountability and deter further crimes in Afghanistan.

2 The adequacy of Australia's preparation for withdrawal from Afghanistan

2.1 Evacuation of Australian citizens, permanent residents and visa holders

We welcome the Australian Government's evacuation of approximately 4,100 people from Afghanistan in August 2021. The dangerous and challenging security situation at Kabul Airport was clear from international media coverage. The Government's focus on the needs of people connected to Australia presenting to the airport for evacuation was well-placed and ensured that many lives were saved.

It is also commendable that the Australian Government has offered Humanitarian Settlement Program (HSP) support to all people evacuated, including Australian citizens and permanent residents. This commitment to support has meant that people can better transition after their traumatic experiences prior to evacuation.

2.2 Australia needs an emergency response to the crisis

The Government's commitment to 3,000 places within the already reduced Refugee and Humanitarian Program needs reconsideration towards a genuine humanitarian response. Hundreds of thousands of Australians have supported calls for the Australian Government to respond generously, calling for a special intake of 20,000 places for refugees from Afghanistan on top of the recently reduced Refugee and Humanitarian Program.

We argue that the request for a special intake of 20,000 refugees from Afghanistan is not unrealistic: in fact, it is reasonable, necessary and worthwhile. Detailed below and in Section 4.3 are the clear reasons for this special intake

The humanitarian need is great

As 2021 began, 5.7 million Afghans were forcibly displaced – 2.6 million as refugees and 239,000 as asylum seekers in other countries and 2.9 million displaced within Afghanistan. In the 9½ months since then, 667,800 more Afghans have been forcibly displaced within the country and 48,180 have sought refuge in Iran, Pakistan and Tajikistan. The UN refugee agency UNHCR fears that as many as 500,000 Afghans could flee the country as refugees in the next six months.

Australia has deep links with Afghanistan

The 20-year involvement of Australian armed forces in Afghanistan from 2001 was the longest international military engagement in Australian history. More than 39,000 Australian Defence Force personnel were deployed and 41 Australians lost their lives. This \$10 billion military engagement has been supported by \$1.5 billion in Australian overseas development assistance to Afghanistan since 2001, aimed at promoting the empowerment of women and girls, human rights, economic development, education, health and effective governance. Citizens of Afghanistan who have shared this vision for their nation's future and participated in its implementation are now among those at great risk.

The Federal Government can restore visas recently cut from the refugee program

When the Australian Government handed down its 2019 Budget, it planned an annual Refugee and Humanitarian Program of 18,750 places, budgeting for 75,000 places over the four years of the forward estimates (July 2019 to June 2023). Since then, more than 28,000 places have been cut out of the program. The 2019-20 program fell 5,579 places short when the COVID-19 pandemic called a halt to the issuing of new visas in March 2020. In its 2020-21 Budget, the Government cut the annual Refugee and Humanitarian Program by 5,000 places per year, with then Acting Immigration Minister Alan Tudge suggesting this cut could be reviewed in future years. Since then, the reduced 2020-21 program has fallen short by 7,803 places due to the COVID-19 pandemic. Under current policy, the number of refugee and humanitarian visas issued in the four years to June 2023 will be at least 28,382 fewer than announced in the 2019 Budget.

Our resettlement response will save lives

During the previous rule of the Taliban from 1996 to 2001, citizens of Afghanistan were killed because of their opposition to Taliban rule, their religious beliefs, ethnicity, sexual orientation and their advocacy for women's rights. Despite the Taliban's attempt to claim that it has changed, summary executions, murders and kidnappings are already being reported. The size of our resettlement response matters because it will help to save the lives of people at risk. If we plan collaboratively with other resettlement states (including the United States, Canada, New Zealand, United Kingdom and the European Union), we can use our collective offers of resettlement to encourage Pakistan, Iran and Tajikistan to keep their borders open to people whose lives are at risk. Support can also be offered through humanitarian aid and practical assistance. If border states feel unsupported, they are more likely to shut their borders, leaving those at risk with nowhere to seek safety.

We can match the generosity of the United States and Canada

After years of cuts to its refugee program under former president Donald Trump, the United States has set a target of 125,000 refugee places for the fiscal year starting on 1 October 2021. Many of these places will be dedicated to Afghans in need. The 73,500 people without US citizenship who were evacuated out of Kabul in the final two weeks of August will be separate and additional to this number. Evacuees who need protection are being given humanitarian parole for two years while they apply for refugee status under processes separate to the US resettlement quota. In August, Canada committed to resettling 20,000 people from Afghanistan but, in response to public pressure from within Canada, doubled its resettlement target to 40,000 on 27 September 2021.

Australia has done it before – and done it well

While Australia's resettlement of refugees peaked at 89,199 arrivals in 1949-50 under the Chifley and Menzies governments, the Fraser and Abbott governments led significant resettlement responses to refugee crises in Indochina (from 1976) and Syria and Iraq (from 2015). Australia accepted 50,158 refugees from Vietnam, Cambodia and Laos in the five years to June 1981 and more than 130,000 over the 15 years to 1991. The Abbott Government's announcement in September 2015 of 12,000 additional visas for Syrian and Iraqi refugees (a two-year allocation on top of the existing annual program) enabled Australia to resettle 46,085 Syrian and Iraqi refugees over the five years to June 2020.

We can also support refugees in other parts of the world

As we saw in the 2015 response to people displaced from Syria and Iraq, an additional intake on top of the annual program enabled Australia to continue to support refugees from other parts of the world (including Afghanistan, Myanmar, Democratic Republic of Congo, Ethiopia, Eritrea and Bhutan). In June, UNHCR identified 1.45 million refugees in urgent need of resettlement in the coming year, including refugees from Syria, Afghanistan, Congo, South Sudan, Sudan, Eritrea, Somalia, Burundi, Central African Republic, Iraq and Myanmar. Through an additional intake for refugees from Afghanistan, we can continue to respond to the urgent need to resettle refugees from other parts of the world, remembering both those who need a safe and secure future and the host communities currently under strain.

The Australian community is ready to help

In the weeks since the fall of Kabul to the Taliban, refugee and multicultural services around Australia have been swamped with calls from Australians who want to help refugees from Afghanistan to make a new life in Australia. These calls are coming from all corners of the country and people of all backgrounds, offering employment, housing and donations of goods and cash, and wanting to be involved in sponsoring, welcoming and befriending refugees. All that is missing is the Australian Government offering a generous response through its Refugee and Humanitarian Program.

3 How Australia should respond to recent developments in Afghanistan

3.1 Impacts and implications for diaspora communities

Afghanistan's diaspora⁹ is large and significant in terms of its contributions to both Australia and the world. Globally, there are estimated to be 5.85 million Afghans living outside of their home country.¹⁰ The 2016 Census recorded 46,799 Afghanistan-born people in Australia; a small but rapidly growing population that increased in size by 63.6 per cent over five years (2011-2016).¹¹ The number of people in Australia with Afghan heritage is significantly greater than those who are Afghanistan-born. For example, the Afghan diaspora includes the Australian-born children and grandchildren of the nearly 40,000 Afghanistan-born people who have come under Australia's Refugee and Humanitarian Program since 1991.¹²

The contribution of Afghanistan's diaspora to Australia is significant. Recent research undertaken in South Australia's City of Port Adelaide Enfield, for example, found that an area that was in decline 15 years ago has been transformed into a thriving, multicultural, dynamic hub by Hazara migrants.¹³ The same can be said of many other local government areas where the Afghanistan-born have settled — from the cities of Casey and Greater Dandenong in Melbourne's outer southeast, to Cumberland and Parramatta in Sydney's west, and the regional towns of Shepparton and Geelong. The impact of recent events in Afghanistan is therefore likely to be felt in communities across Australia, with the diaspora significantly spread across all states and territories.

Table 2. Top LGAs of residence for Afghanistan-born, 2016 Census¹⁴

Local Government Area	State	Persons	Local Government Area	State	Persons
Casey (C)	Vic	8,528	Wanneroo (C)	WA	737
Cumberland (A)	NSW	6,132	Stirling (C)	WA	573
Greater Dandenong (C)	Vic	4,804	Swan (C)	WA	541
Parramatta (C)	NSW	2,344	Greater Geelong (C)	Vic	515
Salisbury (C)	SA	2,252	Brimbank (C)	Vic	476
Port Adelaide Enfield (C)	SA	1,885	Unincorporated ACT	ACT	472
Logan (C)	Qld	1,411	Canterbury-Bankstown (A)	NSW	467
Gosnells (C)	WA	1,394	The Hills Shire (A)	NSW	366
Brisbane (C)	Qld	1,265	Belmont (C)	WA	354
Playford (C)	SA	764	<i>All other LGAs</i>		<i>10,758</i>
Greater Shepparton (C)	Vic	761	<i>Total</i>		<i>46,799</i>

⁹ Diaspora meaning people who identify with a homeland but live outside of it.

¹⁰ IOM and Samuel Hall (2021) Remittances to Afghanistan are lifelines: They are needed more than ever in a time of crisis

¹¹ 2016 Population Census. Afghanistan-born Community Information Summary

¹² 39,877 people granted Refugee or Humanitarian visas between 1991-2020 were born in Afghanistan. Data from 1991-2015 taken from Australian Government Settlement Reporting database, (accessed 1/4/16). Data from 2015-2020 taken from the Australian Government annual report on the humanitarian program for 2019-20.

¹³ University of South Australia. (2021). Afghan refugees 'transform and rejuvenate' Port Adelaide LGA.

¹⁴ 2016 Population Census, TableBuilder

Facilitating diaspora contributions

The significance of the diaspora's contribution to Afghanistan's people, economy and future should not be underestimated. Over the past five years (2015-20), International Organization for Migration (IOM) data found that the global Afghan diaspora remitted USD \$3.8 billion (AUD \$4.9 billion). Research by Samuel Hall and IOM found that: 'In 2020, formal remittances into Afghanistan totalled upwards of USD 788 million — approximately 4 per cent of Afghanistan's total GDP. According to the 2016-2017 Afghanistan Living Conditions Survey (ALCS), remittances represent an income source for almost one in every 10 Afghan households.'¹⁵

Although there is no easily accessible data on remittance flows between Australia and Afghanistan, anecdotally it is well understood that diaspora communities here have and continue to support family and friends in Afghanistan and those displaced to neighbouring countries through both individual and collective remittances. A rudimentary search of charities registered through the Australian Charities and Not-for-profits Commission (ACNC), for example, shows at least 11 charitable organisations established by diaspora members in Australia that are operational in Afghanistan. They undertake a range of projects including supporting orphans and widows¹⁶, funding education and training and health projects¹⁷ and providing emergency relief.¹⁸

The experiences and prospects of the diaspora in Australia are interconnected with the experiences and prospects of people in Afghanistan, and a humanitarian crisis such as is unfolding in Afghanistan is likely to have significant implications for diaspora engagement within Australia. In ensuring continuity of support for the people of Afghanistan in the context of the unfolding humanitarian crisis in the country, the Australian Government would do well to see diaspora communities as valuable interlocutors and partners. While many diaspora-led development projects have been thrown into turmoil by the rapid deterioration of security in Afghanistan, there is a depth of knowledge and connections within diaspora communities in Australia that could and should inform Australia's future engagement with the country.

Recommendation 3 Diaspora Advisory Group on Afghanistan

The Australian Government should establish a diaspora advisory group on Afghanistan (in addition to the Advisory Panel on the settlement of Afghan nationals) to consult on issues relating to Australia's future engagement with Afghanistan, including in relation to diaspora remittance channels, overseas development assistance, humanitarian relief efforts and diplomatic engagement.

Mitigating negative impacts on diaspora communities in Australia

The events of the past few months have had, and continue to have, a devastating toll on the tens of thousands of Australians with connections to Afghanistan. For the Afghanistan diaspora in Australia, which includes those with roots deep in Australian soil as well as those more recently arrived, the deterioration of the situation in Afghanistan is part of a much longer story of occupation, conflict, displacement and loss. The impacts of the Australian and coalition troop withdrawal and subsequent Taliban takeover are being felt individually, within families and in communities, as well as in different ways: socially, financially, and in terms of physical and mental health and wellbeing.

For Australian citizens and residents with family and friends who are more at risk in a Taliban-controlled Afghanistan – due to their minority status, gender, sexual orientation, faith, political views or employment experience, or simply their family links to a Western country – there is an imperative that the Australian Government act quickly to facilitate timely family reunion and to provide pathways to permanency for people from Afghanistan on temporary visas.

¹⁵ IOM and Samuel Hall (2021) Remittances to Afghanistan are lifelines: They are needed more than ever in a time of crisis

¹⁶ Mahoba's Promise: <https://www.acnc.gov.au/charity/2176898c67aaf5498a6036d56885fe5b>

¹⁷ Afghan Australian Development Organisation: <https://www.acnc.gov.au/charity/43f8c0cc95e430115bf28b1c80729d50>; AusGhan Aid: <https://www.acnc.gov.au/charity/3609be8d978d6578cee97cc9c3bcee3d>

¹⁸ Baba Mazari Foundation: <https://www.acnc.gov.au/charity/097166cda900210ffe91f66fc88af0ad>

Case study on the impact on Australians with links to Afghanistan

Ali has not been able to sleep properly since mid-August. Although he has a permanent protection visa, he has not been able to reunite with his wife and children since arriving in Australia 10 years ago (see below on Direction 80). His wife and children in Pakistan are calling him every day, afraid that they will be forced back to Afghanistan by local authorities who are sympathetic to the Taliban and say they now have to return. Ali has sent money so that his family can move away from the area where they were being harassed. Ali has not been able to work as he usually does in his painting business because his mental and physical health have been so severely affected and he says he cannot focus. He has been calling migration agents to see if there is anything he can do to get his family to safety.

3.2 Reuniting Afghan-Australians with their families

Unfortunately, family reunion is incredibly difficult for people from Afghanistan, as well as other refugee communities. The availability, cost and significant delays have decimated options for the Afghan community to bring their family members to safety in Australia. Successive government policies have deliberately restricted access to family reunion for many members of the Afghan community. This includes significant issues with the Special Humanitarian Program (SHP), costs and delays for family reunion in the Migration Program, and deliberate policies designed to deny family reunion for people who arrived by boat, including those from Afghanistan.

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.¹⁹ Unfortunately, not only has the Government not done anything to address this, access to family reunion has become harder for separated refugee communities. 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 COVID-19 pandemic.

The failure of the Government to address access to family reunion has been further highlighted by the Afghanistan crisis, with Afghan community members in Australia desperate to get their loved ones to safety. RCOA understands that there are 26,000 applications for a Special Humanitarian Visa, totalling over 100,000 individuals, currently on hand with the Department of Home Affairs (DHA). While it is positive that the Government has set aside 3,000 places within the existing Humanitarian Program for refugees from Afghanistan, this is only a drop in the ocean, and does not address the systemic policy barriers for people to reunite with their family.

Special Humanitarian Program

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 789% over subscribed demand for visas in the SHP.

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.

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

¹⁹ See The Refugee Council's report: RCOA (2016). *Addressing the pain of separation for refugee families*. <https://www.refugeecouncil.org.au/family-separation>

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.

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.

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.)

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

- A spouse or de facto partner
- A dependent child
- A parent (but only if their child who is the proposer or main applicant is under 18).²⁰

Several people have 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. Many people who RCOA has consulted with have 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 precarious situations) while the rest of the family resettles in Australia.

Difficulties in sourcing documentation or evidence to substantiate family relationships is a significant barrier. In some cases, the documents required to provide evidence of family relationships never existed or had been lost or destroyed while fleeing conflicts. Many refugees from Afghanistan have spent years in countries of asylum such as Pakistan and Iran, without access to any basic rights or legal entitlements such as visas. 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.

There have been many difficulties in obtain and providing a genuine Tazkera – Afghanistan’s identity document. Ali Reza Yunespour, an expert in Afghanistan, has noted that:

²⁰ Department of Immigration and Border Protection, *PAM3: Refugee and Humanitarian Offshore humanitarian program Visa application and related procedures*.

Establishing the identity of a person seeking asylum or a refugee is a crucial element of Australia's temporary and permanent residency visa and citizenship processes. To date, the Department of Home Affairs (DHA) has used three different methods to verify the identity of refugees and asylum seekers: biometric data, life narratives and documentation from countries of origin and transit countries. Amongst these methods, documentation plays a significant role in making a claim for protection, and in subsequent applications for family reunion and citizenship... some asylum seekers from Afghanistan may not have held identity documents, including Tazkeras, at the time of their arrivals because of ongoing conflicts, generational displacement, and weak institutional capacity in Afghanistan. Even if they have held Tazkera or other documents, it is possible that the personal information of the same person could vary on different documents including their date of birth, name, or surname... in some cases, nepotism and corruption in Afghanistan have undermined the official processes of obtaining an absentee Tazkera and resulted in significant financial cost to asylum seekers and refugees in Australia. More importantly, the process has also led to unnecessary delays in assessing their asylum and family reunion visa or citizenship applications by DHA.²¹

This problem is now likely to be exacerbated with the fall of Afghanistan to the Taliban, and the decimation of government bureaucracies. It is now very unlikely that a refugee would be able to obtain the required identity documentation for themselves and their family.

Recommendation 4 Identify and prioritise applications in the Special Humanitarian Program from Afghan nationals

The Australian Government should identify and prioritise applications from people from Afghanistan within the Special Humanitarian Program backlog.

Family stream of the migration program

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).

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) visa²² and 14 months to process 75% of the applications for a dependent child (subclass 445) visa.²³ 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 3½ years.²⁴ The Department no longer provides an estimated processing time for this visa.²⁵

Further, there appears to be discrimination against applications from people from Afghanistan. According to documents released under Freedom of Information, “the average time for a subclass 309 visa application by a citizen of Afghanistan to be processed was 43.6 months compared with

²¹ Ali Reza Yunespour, *Documentation Problems for Asylum Seekers and Refugees from Afghanistan*, June 2021.

²² Partner visa (temporary): <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/temporary-820>

²³ Dependent child visa: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/dependent-child-445>

²⁴ As reported in our 2018 Migration intake submission available here.

²⁵ Orphan relative visa: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/orphan-relative-117>

citizens of the US, which took an average of just 7.3 months”.²⁶ It is clear that more needs to be done to prioritise family reunion application from people from Afghanistan in order to urgently evacuate those at risk after the withdrawal of western forces from Afghanistan.

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. Sponsoring a partner to come to Australia currently costs at least \$7,715.²⁷ 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) is likely to be about 30 years.²⁸ 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 \$100,000.²⁹ 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.³⁰

Recommendation 5 Prioritise family reunion applications in the Migration Program for Afghan nationals

The Australian Government should prioritise applications for family reunion in the Migration Program from sponsors from refugee backgrounds, including those from Afghanistan.

3.3 Policies that discriminate against people who arrived by boat

One significant barrier that must be addressed in order to support Afghans in Australia reunite with their family members is the deliberate set of policies designed to prevent access to family reunion for refugees in Australia who arrived by boat. This includes Direction 80 for family reunion applications which places boat arrivals at the lowest priority for the SHP.

Directive 62, introduced in 2013, placed family reunion applications from those who arrived by boat as the lowest priority, effectively meaning that their application would never be processed. The Australian Human Rights Commission, in the complaint of CM v Commonwealth of Australia, found that Directive 62 was arbitrary and breached Australia’s human rights obligations under the International Covenant on Civil and Political Rights.³¹ Direction 62 was replaced by Direction 72, and then Direction 80. Direction 80 provides 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 (discussed above), placing refugees at the end of the queue essentially denies them the chance of ever being reunited with their families.

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 applications from refugees who arrived by boat, including those from Afghanistan, as highlighted in an Australian National Audit Office Report,³² and by a Federal Court decision.³³ A Freedom of Information request

²⁶ Paul Karp, *Home affairs accused of discriminating against non-English speakers with lengthy wait for partner visas*, The Guardian, 30 August 2021, <https://www.theguardian.com/australia-news/2021/aug/30/home-affairs-accused-of-discriminating-against-non-english-speakers-with-lengthy-wait-for-partner-visas>

²⁷ Partner visa (temporary): <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/temporary-820>

²⁸ 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>

²⁹ Contributory parent visa: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/contributory-parent-143#Overview>

³⁰ Assurance of support: <https://www.dss.gov.au/about-the-department/international/policy/assurance-of-support>

³¹ CM v Commonwealth of Australia (DIBP), <https://www.humanrights.gov.au/our-work/legal/publications/cm-v-commonwealth-australia-dibp>.

³² <https://www.anao.gov.au/work/performance-audit/efficiency-processing-applications-citizenship-conferral>

³³ <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2016/1530.html>

from January 2020 shows that average processing time of citizenship applications for Afghan nationals was 709 days.³⁴

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.³⁵

Given the demand for the SHP Program (discussed above), 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.

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, particularly when those family members are at high risk under current conditions in Afghanistan.

Recommendation 6 End policies that place refugees who arrived by boat at the lowest priority for family reunion

The Australian Government should abolish Direction 80 and the SHP prioritisation that places family reunion applications from refugees who arrived by boat at the lowest priority.

3.4 Providing the security to rebuild: a pathway to permanency

In 2014 the Government reintroduced a three-year Temporary Protection Visa (TPV) and a new five-year Safe Haven Enterprise Visa (SHEV). As of 30 August 2021, there are 4,291 Afghan refugees who are on TPVs or SHEVs, and a further 384 who are awaiting an outcome of their application for a TPV or SHEV.³⁶ In addition, there are 518 Afghan asylum seekers who have been refused a visa on appeal at the Immigration Assessment Authority (IAA). These rejected claims for asylum need urgent reassessment due to the dramatic change in conditions in Afghanistan since the takeover by the Taliban. This amounts to a total of 5,193 people from Afghanistan who are on a TPV or SHEV or whose application for a TPV or SHEV needs urgent determination or reassessment.

As we have noted in numerous submissions, reports and briefing papers, temporary protection is cruel, unnecessary and prevents refugees from fully engaging in the Australian community and

³⁴ Available at https://www.righttoknow.org.au/request/afghan_citizenship_wait?nocache=incoming-15171#incoming-15171

³⁵ Department of Immigration and Border Protection, 'Procedures Advice Manual 3: Refugee and Humanitarian Offshore Humanitarian Program Visa Application and Related Procedures' (2015) 16.

³⁶ Department of Home Affairs, Visa Statistics, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

economy.³⁷ New research from Curtin University shows that giving refugees on TPVs and SHEVs access to permanent protection, not only enables them to reunite with their families, it will also support people to settle into the community and contribute to the economy.

Around 90% of TPV and SHEV holders are at peak earning ages (under 45), have functional English skills, and many have years of sought-after work experience as chefs, personal carers, construction workers, carpenters, builders and plumbers. However, temporary visa status prevents TPV and SHEV holders from buying their own homes, investing in their businesses and settling in Australian communities. Temporary visa holders are also ineligible to reunite with their families by bringing them to Australia so they need to send significant remittances to their families living overseas, which constitutes a financial loss to the Australian economy.

Permanency would lead to better labour market outcomes for TPV and SHEV holders and incentivise domestic consumption and investment. Transitioning to permanent residency will deliver long-term economic returns on investment by enabling migrants to upgrade their skills, sustain and grow their own businesses, employ other workers, and integrate into their local communities.³⁸

People on 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 3½ 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
- Finally, apply for and wait for a family reunion visa

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 restrictive skills, education and English criteria. It also requires significant funds to afford the application fees for these visas. As such, for nearly all refugees on TPVs and SHEVs, it is practically impossible to be reunited with their loved ones.

Refugees on a TPV or SHEV, including many people from Afghanistan, have already been in Australia for at least nine years. Many were 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 Afghanistan, especially now with the fall of Afghanistan. Refugees on a SHEV or TPV are not allowed to travel outside Australia, except with permission from the Department for extraordinary circumstances.

With Afghanistan now under the control of the Taliban, Afghan refugees on TPVs and SHEVs are unlikely to ever be able to return to Afghanistan. It makes no sense to keep these people in indefinite limbo in Australia, given that they will remain in Australia indefinitely. The policy is cruel, harmful and counterproductive, as it further marginalises and harms this group rather than supporting them to become full members of our community and to settle successfully with their families.

³⁷ See RCOA's research on temporary protection here <https://www.refugeecouncil.org.au/?s=temporary+protection>

³⁸ John van Kooy, *Supporting economic growth in uncertain times: Permanent pathways for Temporary Protection visa and Safe Haven Enterprise visa holders*, <https://apo.org.au/node/314128>.

Recommendation 7 Grant refugees from Afghanistan on a TPV or SHEV a permanent visa

The Australian Government should provide all refugees from Afghanistan on a Temporary Protection Visa (TPV) or Safe Haven Enterprise Visa (SHEV) a permanent visa, in recognition that they will never be able to return to Afghanistan. By granting Afghan refugees a permanent visa, they will be able to fully contribute to the Australian community and economy.

4 Protecting people from Afghanistan at risk

At the beginning of 2021, 2.6 million citizens of Afghanistan were refugees, 239,000 were seeking asylum and 2.9 million were internally displaced.³⁹ The Taliban's takeover of the country is, however, resulting in increasing displacement. By 15 October 2021, UNHCR had reported 48,180 newly arrived refugees in neighbouring countries (Iran, Pakistan and Tajikistan) and 677,832 people internally displaced since January 2021.⁴⁰ Many more people in Afghanistan are yet to be displaced but fear for their lives because of their work as women's rights activists, human rights defenders, government officials or staff employed by embassies or western armed forces, or because of their religion, ethnicity or sexual orientation.

The Refugee Council considers there to be principled steps that the Australian Government can take in responding to displacement from Afghanistan, including facilitating humanitarian family reunion (see Recommendation 5), as well as in ensuring the protection of Afghans at high risk, such as those who worked alongside the Australian Defence Force or Australian organisations.

4.1 Provide avenues for the continued evacuation of people at high risk

As the ramifications of the Taliban seizing control and its subsequent actions become known, it is important that the Australian Government continues to provide avenues for the emergency rescue of those at greatest risk. This includes individuals and their families who were not evacuated before the end of August and who worked for or assisted the Australian Government or organisations (including the embassy, armed forces, NGOs and media). Some Afghans at risk may have managed to leave Afghanistan but still face heightened risks in neighbouring countries where Taliban influence or networks are substantial, warranting a rescue response.

Recommendation 8 Emergency rescue for Afghans at risk

The Australian Government should continue to work actively to identify and support individuals facing significant risks, including granting In-Country Humanitarian or Emergency Rescue Visas to those requiring immediate evacuation.

4.2 Collaborate to keep Afghanistan's borders with neighbouring states open

At the end of 2020, countries that share a border with Afghanistan were hosting the vast majority of those displaced, with Pakistan hosting 1,419,084 Afghan refugees, Iran hosting 951,142 refugees and an estimated two million undocumented Afghans and Tajikistan hosting 5,996 refugees and asylum seekers.⁴¹ In the 9½ months to 15 October 2021, UNHCR recorded 48,180 Afghans newly arriving in neighbouring countries and potentially in need of protection: 19,470 to Pakistan, 23,290 to Iran and 5,420 to Tajikistan.⁴² UNHCR has observed an increase in undocumented Afghans at irregular land border crossing points, particularly into Iran where authorities in mid October 2021 were reporting 4000 to 5000 arrivals each day.⁴³

To ease the pressure building on states neighbouring Afghanistan and promote safe border crossings and access to international protection to those fleeing Afghanistan, Australia should offer

³⁹ UNHCR. Global Trends: Forced Displacement in 2020 annex tables, Tables 1 and 3.

⁴⁰ UNHCR. Flash External Update: Afghanistan Situation #8 – 15 October 2021

⁴¹ UNHCR. Global Trends: Forced Displacement in 2020 annex tables, Tables 1 and 3. UNHCR. Refugees in Iran.

⁴² These numbers are seen as indicative of a much larger scale of movement, as UNHCR counted only people who approached their own offices for assistance.

⁴³ UNHCR. Flash External Update: Afghanistan Situation #8 – 15 October 2021

practical assistance as part of a coordinated international response. This includes contributing resources to strengthen the provision of assistance to those seeking protection in Pakistan, Iran and Tajikistan and their host communities. As of 19 October, for example, UNHCR reported receiving only 58% of its estimated budget to respond to the Afghanistan situation.⁴⁴

A substantial contribution of Australian humanitarian and development assistance should be strategically directed to states hosting the greatest numbers of displaced Afghan nationals. In addition, Australia should work cooperatively with UNHCR and other resettlement states to ensure a significant collective contribution is made to expanding resettlement from this region in order to ease pressure on countries such as Pakistan and Iran.

Recommendation 9 Support for neighbouring countries hosting displaced Afghans

The Australian Government should substantially increase its contribution of humanitarian and development assistance to states hosting the greatest numbers of displaced Afghan nationals in order to support access to protection.

4.3 Increase resettlement places for Afghans at risk

As part of its contribution to a coordinated international response, the Australian Government should offer 20,000 additional resettlement places over a two year period for refugees from Afghanistan. This is premised on the significant humanitarian needs, our country's deep links with Afghanistan, and the fact that Australia has the capacity and has made special intakes like this before.⁴⁵

As illustrated below, 20,000 additional places is also in line with the number of places that were originally planned through forward estimates in the 2019-20 Federal Budget but were not realised due to the cut to the program in 2020-21 and the disruption to resettlement visa processing caused by the COVID-19 pandemic.

Table 2: 2019-20 Budget planning for Refugee and Humanitarian Program and revised totals

	2019-20	2020-21	2021-22	2022-23	Total
Total places in 2019-20 Budget (forward estimates)	18,750	18,750	18,750	18,750	75,000
Places removed in 2020-21 Budget	-	- 5,000	- 5,000	- 5,000	- 15,000
Visas not issued due to COVID-19 pandemic	- 5,579	- 7,803	-	-	- 13,382
Revised total	13,171	5,947	13,750	13,750	46,618
Difference	- 5,579	- 12,803	- 5,000	- 5,000	- 28,382

Other countries have recently made significant additional contributions to resettling Afghans. After years of cuts to its refugee program under former president Donald Trump, the United States has set a target of 125,000 refugee places for the fiscal year from 1 October 2021, many of which will be dedicated to Afghans in need. The 73,500 people without US citizenship who were evacuated out of Kabul in the final two weeks of August will be separate and additional to this number, with those who need protection being given humanitarian parole for two years while they apply for refugee status under processes separate to the US resettlement quota.

In addition to evacuating 3,700 people, including 2,000 Afghan nationals, Canada has committed to resettling 40,000 people from Afghanistan, including over 5,000 people evacuated by the United States. This includes Afghans who assisted the Canadian Government, as well as people who are outside of Afghanistan and have no durable solution, such as: women leaders, human rights advocates, LGBTQI+ individuals, journalists and people who assisted Canadian journalists, and

⁴⁴ UNHCR. Afghanistan Situation: Funding Update, as of 19 October 2021

⁴⁵ See: RCOA. <https://www.refugeecouncil.org.au/afghanistan-resettlement-brief/>

extended family members of previously resettled interpreters who assisted the Government of Canada, including family members who are still in Afghanistan.

Recommendation 10 Special intake of 20,000 humanitarian visas for Afghan nationals

The Australian Government should allocate a special intake of 20,000 humanitarian visas over two years for Afghan nationals in addition to the regular Humanitarian Program intake.

5 Safety for people from Afghanistan in the Asia-Pacific Region

5.1 Impact on people in Indonesia

There are currently 13,416 refugees and people seeking asylum in Indonesia, a majority (7,490) of whom are from Afghanistan.⁴⁶ Many have been living in precarious situations in Indonesia for over 10 years. Despite their registration with UNHCR, refugees and people seeking asylum in Indonesia have no formal legal status, no right to work and have very limited rights to education, housing and healthcare. There are very limited solutions for refugees in Indonesia. Indonesia has not signed the Refugee Convention and does not provide a long term solution for people to remain in the country – expecting that they will instead choose to return to their home country or go elsewhere.

Resettlement from Indonesia to another country is also very limited. In 2021, only 179 people have been resettled from Indonesia to another country, while another 308 have been accepted for resettlement and are waiting departure. A further 1,462 people have resettlement applications submitted by UNHCR but are awaiting an outcome from a receiving state.⁴⁷ This has left over 11,000 people in Indonesia without a long term durable solution, more than half of which are from Afghanistan.

One reason for the limited number of resettlement places from Indonesia is a 2014 policy introduced by the Australian Government to deny resettlement to Australia for all refugees in Indonesia who registered with UNHCR after 30 June 2014. This has meant that a significant number of refugees in Indonesia are not able to access resettlement to Australia. This, combined with restrictive family reunion policies (discussed above) has meant that most refugees in Indonesia are not able to come to Australia.

Recommendation 11 End the ban on resettlement for refugees in Indonesia

The Australian Government should end the ban that prevents refugees in Indonesia who registered with UNHCR after 30 June 2014 from accessing resettlement.

5.2 Need for constructive action to improve refugee protection in Asia

The precarious situation for refugees in Indonesia is replicated elsewhere in Asia. Most other states in the region have not signed the Refugee Convention and offer no legal protection to the refugees within their borders. Like most of the region's refugees, refugees from Afghanistan generally live in urban areas (not in camps), surviving in very difficult circumstances without formal work rights and with limited access to formal education and affordable health care. Outside of Pakistan (1.44 million Afghan refugees), Iran (975,000), Tajikistan (11,420) and Indonesia (13,416), the largest populations of refugees from Afghanistan can be found in India (15,559 Afghan refugees as at 31 August 2021)⁴⁸ and Malaysia (2,640 Afghan refugees as at 30 September 2021)⁴⁹.

⁴⁶ UNHCR, *Indonesia Statistical Report*, June 2021, <https://reporting.unhcr.org/sites/default/files/Indonesia%20Statistical%20Report%20June%202021.pdf>

⁴⁷ UNHCR, *Indonesia Statistical Report*, June 2021, <https://reporting.unhcr.org/sites/default/files/Indonesia%20Statistical%20Report%20June%202021.pdf>

⁴⁸ UNHCR, *India fact sheet*, August 2021

⁴⁹ UNHCR, *Figures at a Glance in Malaysia*, <https://www.unhcr.org/en-au/figures-at-a-glance-in-malaysia.html> (accessed 24/10/21)

While focusing on policies aimed at deterring people from seeking protection in Australia, the Australian Government has largely failed to acknowledge the serious gaps in the protection of people at high risk of persecution in Asia. In 2021, the situation has worsened considerably in both Afghanistan and Myanmar, the two nations in Asia which have produced the largest numbers of refugees over the past 25 years. Both nations are now firmly in the control of the two forces previously responsible for mass movements of refugees from their nations: the Tatmadaw in Myanmar and the Taliban in Afghanistan. Without constructive action to better address the needs of refugees in the nations where they first seek assistance, it is almost inevitable that onward movement of refugees will increase as the number of people fleeing Afghanistan and Myanmar also increases. Australian Government policy must move beyond deterrence alone and begin paying much closer attention to the unmet needs of Asia's growing numbers of refugees.

A more constructive and proactive Australian Government policy would focus on how Australia can encourage and support Asian states to implement incremental improvements in the protection and support for refugees within their borders. Through its 75-year engagement in refugee resettlement, Australia knows that host states have much to gain if refugees are given legal protection and the opportunity to contribute more effectively to their host community. Some small steps have been taken which could be further encouraged or built on – such as Indonesia's interest in a legal framework for refugee registration, Thailand's exploration of a national screening mechanism for people seeking asylum, Pakistan's Proof of Registration card for refugees and discussions about alternatives to detention in a number of countries.

For many years, RCOA has been arguing for a whole-of-government approach to Australia's regional engagement on refugee protection, bringing together the Government's work in diplomacy, international development and refugee resettlement to offer constructive support to host states and communities. This could be done in partnership with other resettlement states, particularly the United States, Canada, New Zealand, the United Kingdom and the European Union.

Recommendation 12 Work towards an integrated response to displacement in Asia

The Australian Government should convene a forum with NGOs, refugee-led organisations, peak bodies, intergovernmental bodies and other relevant stakeholders to advance the development of an integrated and strategic response to displacement in Asia, including consideration of the roles of international development assistance, diplomacy, capacity-building and the strategic use of resettlement.

Recommendation 13 Work with resettlement states to maximise collective impact

The Australian Government should work with UNHCR to bring states involved in refugee resettlement together to explore how they can work to maximise their collective impact in Asia, using the support offered through resettlement to encourage host states to improve the protection of refugees within their borders.

5.3 Impact of Australia's offshore processing policy on people from Afghanistan

In the past 20 years, both major Australian parties have instituted, abolished and reinstated offshore processing and detention policies.

First 'Pacific Solution'

In response to the rising number of boat arrivals in 2001 and in the aftermath of Tampa incident, the Howard Government introduced the so-called 'Pacific Solution' whereby people seeking asylum who arrived in Australia by sea would be transferred to offshore processing facilities in Nauru and Manus Island in Papua New Guinea (PNG). The processing facility on Nauru was established on 19 September 2001. On 21 October 2001, the facility on Manus Island in PNG opened. The majority of people who were transferred to these locations were transferred in 2001 and 2002. By February 2008, when the Rudd Government dismantled the 'Pacific Solution', 1,637 people had been held in those countries (22 of them babies who were born there). Almost half of this group (786 people to be precise) were from Afghanistan. They included men, women and children (many of them

unaccompanied).⁵⁰ At the same time that Australia was engaged in ongoing military intervention in Afghanistan, we were detaining hundreds of refugees who were fleeing the conflict and persecution from the Taliban.

While for those who were found to be refugees, resettlement in Australia was not guaranteed, it was possible. In this period, of the 1,153 people who were resettled, 705 came to Australia.⁵¹

Current offshore processing policy

After abolishing the 'Pacific Solution' in early 2008, the Labor Government reinstated it in August 2012. People started to be transferred to Nauru on 14 September 2012 and to Manus Island on 21 November 2012.⁵² A year later and on 19 July 2013, the newly re-appointed Prime Minister Rudd changed the offshore policy dramatically, asserting that no one who arrived in Australia by boat and transferred offshore could ever resettle in Australia, even if they were found to be refugees. Around 1,000 people seeking asylum who were already on those islands at the time of the announcement were transferred back to Australia to create capacity for those who arrived after 19 July 2013.

In total, 3,127 people were transferred to Nauru and Manus Island since 19 July 2013. A total of 229 people from Afghanistan were part of this group; 91 of them were sent to Nauru and 138 to Manus Island.⁵³ They again included men, women, children and unaccompanied minors.⁵⁴

Over years, the population held on Nauru and Manus Island reduced. About a third (1,012 as of 31 July 2021) resettled in third countries, primarily in the United States of America,⁵⁵ 767 people returned to countries of origin either voluntarily or involuntarily,⁵⁶ 14 died, 231 people still remain offshore,⁵⁷ and the rest are in Australia for medical treatment. In a recent response to a Senate estimates question, the Department of Home Affairs revealed that as of 30 April 2021, 22 Afghan refugees remained in PNG and 6 on Nauru.⁵⁸ Given this number only includes those with positive Refugee Status Determination (RSD), it may not reflect the whole population of people from Afghanistan offshore as some may still be in the RSD process or have had their protection claims rejected.

Impact of offshore processing policy

Both iterations of offshore processing policy have inflicted immeasurable suffering on people, including hundreds of people from Afghanistan. They created significant physical and mental health issues, kept families apart and subjected people to years of uncertainty. Both iterations of Australia's offshore processing policy not only harmed those who were sent to Nauru and PNG, they have also

⁵⁰ Janet Phillips, *The 'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island* (Parliamentary Library, 4 September 2012) https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/pacificsolution.

⁵¹ Sara Davies and Alex Reilly, 'FactCheck: were 70% of people sent to Nauru under the Pacific Solution resettled in Australia?' *The Conversation* (13 August 2013) <https://theconversation.com/factcheck-were-70-of-people-sent-to-nauru-under-the-pacific-solution-resettled-in-australia-16947>.

⁵² Elibritt Karlsen, *Australia's offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources* (Parliamentary Library, 19 December 2016)

www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore.

⁵³ Senator Kim Carr, Answer to Question on Notice AE17-170 (28 April 2017),

https://www.aph.gov.au/~media/Committees/legcon_ctte/estimates/add_1617/DIBP/QoNs/AE17-170.pdf.

⁵⁴ Australian Human Rights Commission in its 2014 National Inquiry into children in immigration detention mentions that 27 unaccompanied minors were detained on Nauru, the majority of whom came from Afghanistan, Myanmar, Somalia and Iran and were aged between 15 to 17 years.

⁵⁵ Department of Home Affairs, *Statistics of transitory persons in Nauru and PNG* (31 July 2021), <https://www.homeaffairs.gov.au/about-us-subsite/files/population-and-number-of-people-resettled.pdf>

⁵⁶ Senator Stirling Griff, Answer to Question on Notice BE21-546 (16 July 2021),

<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId11-PortfolioId20-QuestionNumber546>

⁵⁷ Department of Home Affairs, *Statistics of transitory persons in Nauru and PNG* (31 July 2021), <https://www.homeaffairs.gov.au/about-us-subsite/files/population-and-number-of-people-resettled.pdf>

⁵⁸ Senator Nick McKim, Answer to Question on Notice BE21-430 (16 July 2021),

<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId11-PortfolioId20-QuestionNumber430>

hurt those family members who lived in precarious situations in countries of origin or transit as they took away any prospect of reunion, resettlement, and therefore safety.

Unlike the first 'Pacific Solution' when resettlement in Australia was at least possible, people subject to the current offshore processing can only resettle in a third country; therefore many are in their ninth year of waiting for a durable solution. The only option that has so far been brokered by the Australian Government, the resettlement in the United States of America, has faced a number of challenges that slowed it down significantly.

The change in the US administration shortly after the announcement of this resettlement deal meant significant shift in the political environment and priorities of the United States. The 2017 implementation of 'extreme vetting' of foreign nationals created extreme delays in the US resettlement process for people subject to offshore processing, including many Afghan refugees. The COVID-19 pandemic created further issues exacerbated by the fact that the impact of the pandemic was felt at different points in time in the United States, Australia and PNG, the three countries that usually needed to work together on this agreement.⁵⁹ Australia did not look beyond the United States for durable solutions and has so far ignored New Zealand Government's long-standing offer of annual resettlement of 150 refugees from offshore locations.

For many refugees and their families these delays were devastating. Many refugees subject to offshore processing took the treacherous sea journey to Australia alone, leaving their families behind in countries of origin or transit with the hope of reunion once they receive protection by Australia. Offshore processing policies meant such reunion could not happen until after refugees were able to resettle in a third country. Even then, they needed to wait a period of time to be able to apply for their family members, meaning that families were waiting at least seven or eight years to be given protection. Many children became ineligible for family reunion in this period as they 'aged out' and many relationships broke down.

We argue that had these refugees, many of them from Afghanistan, been able to find protection in Australia when they sought asylum, they would have been able to bring their families to safety much sooner and fewer children had to grow up in countries where their basic rights, like the right to education, were denied. Not everyone can wait for years for politicians to broker 'solutions' to policy-borne impasses. For those living in countries like Afghanistan where political situation can change in a matter of a few months, such unnecessary delays can mean loss of talent, opportunity, and life.

The story of an Afghan refugee who worked with coalition forces in Afghanistan, and was transferred to PNG when he sought protection from Australia, is an example of the impact of offshore processing on the lives of family members who remain in danger. The man who had already lost many family members to the Taliban, was evacuated to Australia for medical treatment in 2019 and has been held in closed detention ever since. As the Taliban intensified their offensive in Afghanistan and worried for his family's safety, he applied in vain for emergency visas for his wife and four children. The media reports show desperate attempts of a father to save his family. He repeatedly asked the Australian Government to return him to PNG where he is not confined in a detention and can approach the US embassy and seek assistance for the evacuation of his family. He then pleaded to be returned to Afghanistan so he could help his family there. Recently, he took the Government to court, seeking to be released from detention, so he can work towards the departure of his family without the significant complications that being detained in a detention centre entails.⁶⁰

Australia has shown incredible cruelty to the Afghan refugees subject to offshore processing – the very people the Australia went to Afghanistan to protect. In 2018, it took a sustained campaign from medical professionals, medical peak bodies, media and members of the public for the Government

⁵⁹ Nauru has so far managed to avoid a COVID-19 outbreak.

⁶⁰ Ben Doherty, 'Afghan refugee sues Australian government, saying detention prevents him saving his family from Taliban' *The Guardian* (21 August 2021) <https://www.theguardian.com/australia-news/2021/jul/22/afghan-refugee-sues-australian-government-saying-detention-prevents-him-saving-his-family-from-taliban>; Zoe Osborne, 'Afghan refugee in Australia pleads to return and rescue family' *Aljazeera* (31 August 2021) <https://www.aljazeera.com/news/2021/8/31/afghan-refugee-in-australia-pleads-to-return-and-rescue-family>

to bring a 63-old Hazara man with terminal cancer from Nauru to Australia for palliative care. The Australian Government for a long period told him that he could only be transferred to Taiwan to die, an option that he rejected as he did not know anyone there and was concerned about lack of translators and arrangement for an Islamic funeral.⁶¹

We have written extensively about the impacts of current offshore processing policy on people, including in our 2018 reports on Nauru⁶² and PNG.⁶³ We have raised concerns about the physical and mental health issues created by years of incarceration and uncertainty. We also highlighted the insufficient support provided to people offshore including inadequate medical care. These issues also affected people's capacity to make informed decisions about the future of themselves and their families. They became withdrawn, lost any motivation to think about future and lost trust in the authorities and the 'solutions' they were putting forward (which was mainly resettlement in the United States or remaining in PNG and Nauru).

In November 2019, RCOA undertook a trip to Port Moresby, PNG. While there, we spoke to a number of Afghan men who all had families back in Afghanistan or in Pakistan or Iran. One Hazara man told us about his ongoing concern for his family in Afghanistan, including his young children who at that time had just witnessed a suicide bombing in a mosque close to their home. Another man told us of his family's fears about resettling in the United States which they believed was experiencing a rise in anti-Muslim sentiment. Some of the Afghan men we encountered were withdrawn and did not wish to engage. The non-governmental organisations who were supporting the refugees in PNG told us that they have struggled most to engage with Hazara men as they are one of the most isolated groups who barely leave their living areas. One described them as being 'numb because of the worry for their families and the deteriorating situation in Afghanistan'.

The fact that the majority of people from Afghanistan on Nauru and Manus Island have been from the persecuted Hazara minority, is another point that supports the urgent need of this group for protection and resettlement instead of effectively being left behind by the Australian Government and at the mercy of other countries' bureaucracy.

Returns from offshore processing

When analysing the impact of offshore processing, it is vital to include those who returned to home countries and ask: How many returned? Was their return voluntary? Have they been returned to unsafe places?

We know that, of those who have been transferred offshore since 19 July 2013, 767 people returned to home countries, 20 of whom involuntarily.⁶⁴ A further 167 people who were transferred offshore between 13 August 2012 and 19 July 2013 also returned or were removed to countries of origin.⁶⁵ However, there is no comprehensive breakdown of nationalities available for this round of offshore processing that can show how many of these people were from Afghanistan.

We know, however, that in the first iteration of offshore processing, 420 people from Afghanistan (half of the Afghan population offshore) returned home – to a country still at war and under threat of persecution from the Taliban.⁶⁶ The figures from International Organization for Migration showed that

⁶¹ Ben Doherty, 'Dying refugee moved from Nauru to Australia after intense campaign' *The Guardian* (23 June 2018)

<https://www.theguardian.com/australia-news/2018/jun/23/dying-refugee-moved-from-nauru-to-australia-after-intense-campaign>

⁶² See https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Nauru_Manmade_Crisis.pdf

⁶³ See https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Until_When_AIA_RCOA_FINAL.pdf

⁶⁴ Senator Stirling Griff, Answer to Question on Notice BE21-546 (16 July 2021),

<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId11-PortfolioId20-QuestionNumber546>

⁶⁵ Senator Stirling Griff, Answer to Question on Notice BE21-545 (16 July 2021),

<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId11-PortfolioId20-QuestionNumber545>

⁶⁶ Edmund Rice Centre for Justice and Community Education (September 2006), *Deported to Danger II: The Continuing Study of Australia's Treatment of Rejected Asylum Seekers*, p.58.

the same trend applied to children, as half of the Afghan unaccompanied minors sent to Nauru under the first 'Pacific Solution' returned to Afghanistan. Nine were still under the age of 18 when they left.⁶⁷

We do not know what has happened to people who returned to countries of origin from Australia's offshore processing facilities since 13 August 2012. However, comprehensive research undertaken by Edmund Rice Centre for Justice and Community Education (ERC) sheds light on the fate of those who returned during the first 'Pacific Solution'. The outcome of that research is highly relevant to this inquiry as it covers a period that this inquiry examines and focuses heavily on what happened to people who returned to Afghanistan.

The ERC researchers interviewed 40 people (4 of them from Afghanistan who had returned from Nauru) between 2003 and 2004. In 2006, they travelled again to several countries, including Afghanistan and Iran, and interviewed 41 people, 36 for the first time and 5 for the second time. 90% of people interviewed in 2006 were Afghan and all but one had fled Afghanistan and were living illegally in Iran or Pakistan.

The ERC concluded that the Australian Government returned people to danger. People were living in dangerous conditions, some were arrested upon arrival, many were in hiding or were in other (unsafe) countries after subsequently fleeing the first point of deportation. The documents issued by Australian authorities further put people in danger. Some of the paperwork was confiscated on arrival or had short expiry rendering people without identification. Some were declared to be false and of no use.⁶⁸

More specifically in relation to Afghanistan, both ERC reports find it a country of high-risk for people being deported. One report noted that "in removals to Afghanistan, little account seems to have been taken of continuing Taliban presence, the power of the war-lords and the revival of the opium trade".⁶⁹ Many Afghans, particularly the minority Hazara group, reported that they had clearly warned the Australian authorities that they were fearful of being killed. And some indeed died after return. The ERC reports on two well-confirmed cases of Hazara men who were killed after their return from Nauru. Additionally, it was highly likely that seven other men were killed upon return to Afghanistan.

Further to that, there are family members who died in circumstances related to the deportation of their family head; for example, after they returned from third (unsafe) countries to join the head of the family who had been deported or to await his return believing (often according to the advice of the Australian Government) that Kabul is safe to return to and live in. Those deaths often happened as a result of bombings that at times have been targeted as the local militia reportedly targeted Afghans who returned to Afghanistan after trying to seek protection in other countries.⁷⁰

All these accounts confirm the central argument that almost none of the returns to Afghanistan were truly 'voluntary', despite what the Australian Government argued. The ERC report contains numerous testimonies of Afghan men who felt like they had been deceived as the authorities told them Kabul was safe and they would get help with work opportunities, accommodation and reintegration assistance (none of which materialised). People also reported that they were threatened with forced repatriation and harsher conditions and spoke about the unbearable situations on Nauru that left them no option but to return and flee again:

⁶⁷ 'Most 'Pacific Solution' kids sent back' *The Age* (7 June 2006) <https://www.theage.com.au/national/most-pacific-solution-kids-sent-back-20060607-gdnp6j.html>

⁶⁸ Edmund Rice Centre for Justice and Community Education (September 2004), *Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers*, p.2.

⁶⁹ *Ibid*, p.31

⁷⁰ Edmund Rice Centre for Justice and Community Education (September 2006), *Deported to Danger II: The Continuing Study of Australia's Treatment of Rejected Asylum Seekers*, pp.41-42.

Australia secured the return of more than half the Afghan asylum seekers on Nauru by a mixture of inducements and threats. The inducements were a financial payment and offers of help, which the respondents told us, were not honoured.... The threats placed people in a fearful dilemma. Typical of the accounts of threats is the following: "We were forced to leave. Threats were made about being sent to other camps, of not communicating with family if we did not leave"... "We were forced to leave. A man from DIMIA [the acronym for the Department of Immigration at that time] told us they would drop us in a camp where we would not be free for many years. He told us you will be in prison. He showed us photos of this other camp. He said we would never see our families again."⁷¹

The fact that all remaining Afghans offshore received protection of some kind (either as refugees or through complementary protection), often after the re-assessment of their claims, is another indicator that those who left earlier were equally in need of protection if they had access to fair and proper assessment.⁷² Similarly in relation to unaccompanied minors, the fact that half of them returned to Afghanistan, while none of the unaccompanied Afghan minors whose claims were assessed in Australia returned shows the flaws in the refugee status determination process that those offshore were subject to. At the time serious doubt were raised as to whether the children seeking asylum on Nauru had access to proper legal advice and support network.⁷³

We end this section with these two case studies presented in the ERC reports as they perfectly illustrate the points made in this section of the submission:

Case study: Rajab was promised support and was left destitute and alone, unable to find his family

Rajab is an Afghan man who was rescued at sea by the Norwegian ship *Tampa* and was taken to Nauru. He described Nauru as a place where there was rampant depression, isolation and uncertainty and there was no proper legal or translation support. He was being pressured to leave and finally the death of a young friend in the detention centre convinced him and others to leave Nauru because "one day we all will die here like him ... I had lost the hope of life. So I thought better to die in my own country than here". In Nauru, he was assured that upon return to Kabul he would receive support until he could move elsewhere. Once there, he and others were left with no support, little money and clothing appropriate for the heat of Nauru while it was snowing in Kabul. He then went into hiding and promptly left Afghanistan.

Rajab's family had already escaped Afghanistan. He spent a year searching for them in vain in Pakistan and Iran. He returned to Afghanistan once and learned that his family's assets had been seized. After an assassination attempt against him, he fled again to a neighbouring country. When he spoke to the ERC researchers in 2004, he had not been able to find his family and was still in hiding.

The ERC interviewed Rajab again in 2006. He was depressed, still in hiding in Pakistan, had no money to continue looking for his family, was fearful about his security as his illegal status had subjected him to police harassment, and felt extremely lonely as he had no news of any family members since 2001. He said "After deportation, life became the worst. I have lost money and family, each and everything. Nothing is left; I am as I was when rescued in Ship Tampa, having nothing in hand...After coming towards Australia in search of shelter I lost my family and my previous life".⁷⁴

⁷¹ Ibid, p.57.

⁷² Ibid, p.58.

⁷³ 'Most 'Pacific Solution' kids sent back' *The Age* (7 June 2006) <https://www.theage.com.au/national/most-pacific-solution-kids-sent-back-20060607-gdnp6j.html>

⁷⁴ Edmund Rice Centre for Justice and Community Education (September 2004), *Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers*, pp.4-5 and Edmund Rice Centre for Justice and Community Education (September 2006), *Deported to Danger II: The Continuing Study of Australia's Treatment of Rejected Asylum Seekers*, pp.14-17.

Case study: Australia told Gholam that he was safe and then his children died in a targeted bombing

Gholam made his way to Australia in 2001 and was detained on Christmas Island. He was accepted as a refugee. However, after the Tampa incident, he was transferred to Nauru where he had no access to a lawyer and his positive determination was withdrawn.

Gholam argued strongly against his deportation explaining that he and his family would be killed. He was told that Afghanistan was safe and was promised support by the Australian Government to get a job in a factory in Kabul. He eventually believed the Australian authorities and thought the situation may have changed. He called his family who had fled to Iran and asked them to meet him in Kabul.

Upon return to Kabul, none of the promises were fulfilled. Four months after his return, his house was intentionally bombed and he lost his nine-year old daughter. His mother, wife, and his six-year old daughter were seriously injured. His six-year old daughter died 1½ months later. Gholam wrote to the Australian High Commission in Islamabad, telling them of the death of his children as well as the death of other Afghans who were deported by Australia. He raised his strong fears for the safety of himself and the rest of his family. He was rejected again and was told he did not fit the criteria of a refugee.

When he spoke to the ERC researchers in 2006, he was in Pakistan but did not feel safe as the people who targeted them the first time knew their location. Gholam said “I told Australia what would happen if we returned to Afghanistan and it happened. House bombed. Children dead. Mother and wife badly hurt, mother to never recover. We asked for protection – it was given and then taken away. I thought Australia was a good humanitarian country. I thought if we could just get away from Afghanistan and to Australia we could be safe. My children could have a safe environment to grow up in. What has happened is the absolute opposite of what I had hoped would happen. Everything is lost now – I don’t have any children any more”.⁷⁵

Recommendation 14 Immediately prioritise resettlement for people on Nauru and PNG

The Australian Government should resettle all people subject to offshore processing, including those from Afghanistan, and their immediate families to safe countries.

6 People from Afghanistan seeking asylum in Australia

There are currently 384 people seeking asylum from Afghanistan who are awaiting an outcome of their refugee protection application.⁷⁶ In addition, there are 518 Afghan asylum seekers who have been refused a visa on appeal at the Immigration Assessment Authority. There are also people who are seeking legal review of their application in federal courts. Many of these refusals have been issued because, at the time, the Department of Home Affairs considered that certain places in Afghanistan (e.g. Kabul) were safe for people to return to, based on section 5J of the *Migration Act 1958*. These decisions were made before the fall of Afghanistan, and now are clearly incorrect. There is nowhere safe in Afghanistan, especially for minority groups, women, people who are LGBTIQ and human rights activists. As Professor William Maley notes:

⁷⁵ Edmund Rice Centre for Justice and Community Education (September 2006), *Deported to Danger II: The Continuing Study of Australia’s Treatment of Rejected Asylum Seekers*, pp.24-26.

⁷⁶ Department of Home Affairs, Visa Statistics, <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

It would be naïve to think that groups such as the Taliban and ISIS would look at all kindly on people from Afghanistan who have lived for any length of time in Western countries... Afghans who have lived for years in Western countries such as Australia would likely be regarded with deep suspicion on that basis alone, and this would be especially dangerous for Shiite Hazaras.⁷⁷

As such, those seeking asylum, including those who are currently appealing their case in the IAA or federal courts, now have a much stronger claim for protection. These claims should be prioritised and assessed in light of the circumstances in Afghanistan now.

People seeking asylum face significant barriers to employment, income support, and healthcare. Their lives are on hold while they wait for an outcome of their application, which for many has taken over eight years. The continued delay in processing their claim for refugee protection has caused significant mental health concerns, as highlighted by the Australian Human Rights Commission.⁷⁸

Recommendation 15 Prioritise and urgently assess asylum claims of people from Afghanistan

The Australian Government should urgently prioritise and assess the claims for asylum of people from Afghanistan. Those who have been refused a protection visa should have their claims automatically reviewed given the changed circumstances in Afghanistan.

7 People from Afghanistan in Australia's onshore immigration detention facilities

Australian law requires that anyone who is not an Australian citizen and does not have a valid visa is detained until they are granted a visa or removed from the country.⁷⁹ This includes people seeking asylum who enter Australia without a valid visa and those who have had their visas cancelled. The legal framework for immigration detention does not require consideration of necessity, reasonableness and proportionality, and there is no time limit for detaining a person under Australian law. There is no independent review or judicial review of the need to detain a person.

The latest available official detention statistics is from 31 August 2021.⁸⁰ As of that date, 1440 people (1393 men and 47 women) were detained across immigration detention network. 51 of them (all adult men) were from Afghanistan.

One of the issues of significant concern in relation to immigration detention in Australia is the increasing length of detention. In the past 14 months, the average length of detention has only risen and is now at a record high of 696 days.⁸¹ This is in stark contrast to countries like Canada, the United States and the United Kingdom. The average length of detention from April to September 2020 in Canada was 25 days⁸² and the average length of detention in the United States from October 2020 to July 2021 was 61 days.⁸³ In the United Kingdom, in March 2021, 85% of all people in immigration detention had been there for under six months and 38% for fewer than 28 days.⁸⁴

⁷⁷ Professor William Maley (October 2021), *On the Return of Hazaras to Afghanistan*, <https://www.refugeecouncil.org.au/hazaras-opinion/>

⁷⁸ Australian Human Rights Commission (July 2019), *Lives on Hold: Refugee and Asylum Seekers in the 'Legacy Caseload'*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>

⁷⁹ *Migration Act 1958* (Cth), ss 189, 196 & 198.

⁸⁰ Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (31 August 2021), <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

⁸¹ *Ibid.*

⁸² Canada Border Services Agency, *Quarterly detention statistics: First and second quarter (Q1-Q2), fiscal year 2020 to 2021*, <https://www.cbsa-asfc.gc.ca/security-secure/detent/qstat-2020-2021-eng.html>

⁸³ US Immigration and Customs Enforcement, ICE Detention Data, FY21 YTD, downloaded from: <https://www.ice.gov/detain/detention-management>

⁸⁴ UK Home Office, *Immigration statistics data tables, year ending March 2021*, <https://www.gov.uk/government/statistical-data-sets/immigration-statistics-data-tables-year-ending-march-2021#detention>

The record average length of detention means the percentage of people who have been detained for over two years has increased. As of August 2021, 35% of people had been detained more than two years and the length of detention for almost a quarter of that group was recorded as 'greater than 1825 days [5 years]'.⁸⁵ We know there are people in Australia's detention network that have been detained for over 10 years, with the longest detention being around 13 to 14 years.⁸⁶ While there is no breakdown of nationality for people who face very long detention, RCOA is aware that this group includes people from Afghanistan.

There are various reasons for experiencing long-term detention. Some people might have received a negative outcome to their protection visa application and are on 'removal pathway', some may have had their visas cancelled and some may have been refused a visa. It is of significant concern that there are people who have been refused a visa because of offences committed in detention centres such as participation in protests. In order for a person's visa to be cancelled, they need to have been sentenced to 12 months or more imprisonment. However, because of the character requirement under the *Migration Act 1958*, people can be barred from ever getting a visa for far less serious offences that might not even warrant any period of imprisonment. The consequence, however, can be a life sentence inside an immigration detention facility because they can never be granted a visa to leave.

There is an abundance of evidence that indefinite detention severely and negatively impacts the physical and mental health of adults and children in detention.⁸⁷ Those who have been detained for over five years have also seen significant changes in the operation of detention facilities since the establishment of Australian Border Force in 2015. The detention environment has become more securitised and the conditions of detention become more restrictive and prison-like. People are frequently handcuffed, the detention facilities are more crowded, and there is no privacy and respite for people who may need it.⁸⁸ The threat of COVID-19 outbreak and added restrictions to manage such risk have added to day-to-day challenges.⁸⁹ There are increasing concerns about the disproportionate use of force, healthcare provision is substandard and people are frequently moved within the detention network away from their support network.⁹⁰

In August 2021 and in response to the rapidly deteriorating situation in Afghanistan, the Minister for Immigration made a commitment that no Afghan visa holders would be asked to return to Afghanistan while 'the security situation remains dire'.⁹¹ While people from Afghanistan who are in detention are not visa holders, they would face the same dangerous situation as visa holders if they are sent back. It is reasonable to assume that the security situation in Afghanistan is not going to improve anytime soon. Therefore, the detention of those people from Afghanistan who are on the removal pathway is no longer justified. The situation in the country of origin has changed so much

⁸⁵ Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (31 August 2021), <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf>

⁸⁶ Senator Nick McKim, Answer to Question on Notice BE21-391 (16 July 2021), <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld11-Portfoliold20-QuestionNumber391>

⁸⁷ See for example: Zachary Steel, Derrick Silove, Robert Brooks, Shakeh Momartin, Bushra Alzuhairi, and Ina Susljik, 'impact of immigration detention and temporary protection on the mental health of refugees' (2006) 188(1) *The British Journal of Psychiatry* 58-64; Louise K. Newman, Michael Dudley, Zachary Steel, 'Asylum, Detention, Mental Health in Australia' (2008) 27(3) *Refugee Survey Quarterly* 110-127; Guy J. Coffey, Ida Kaplan, Robyn C. Sampson, Maria Montagna Tucci, 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum' (2010) 70(12) *Social Science & Medicine* 2070-2079.

⁸⁸ Australian Human Rights Commission (2020), *Inspection of Australia's immigration detention facilities 2019 report*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>

⁸⁹ Australian Human Rights Commission (2021), *Management of COVID-19 risks in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/management-covid-19-risks-immigration-detention>.

⁹⁰ See: Australian Human Rights Commission (2019), *Risk management in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention2019> and Australian Human Rights Commission (2019), *Use of force in immigration detention*, <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/use-force-immigration-detention>

⁹¹ The Hon Alex Hawke MP, Afghanistan statement (17 August 2021), <https://minister.homeaffairs.gov.au/AlexHawke/Pages/afghanistan-statement.aspx>

that their protection claims need an urgent review and they need to be released from an environment that only adds to their escalating distress.

RCOA believes that, to avoid subjecting people to significantly prolonged detention, we can safely place many of the Afghans whose visas have been cancelled or refused in the community while they are working to resolve their immigration status. While we acknowledge that we are not aware of the specifics of all cases and there may be individuals who pose unacceptable risk to the community, there are many more who do not. They will be facing a potential life-long detention if their detention is not reviewed. We urge this committee to recommend an urgent review of the need to detain everyone from Afghanistan to determine whether an alternative to locked detention, such as community detention or the issuing of a bridging visa, can be utilised. Those community alternatives to detention ensure people can benefit from the support of their community while they resolve their immigration status.

Recommendation 16 Urgently review the need to detain people from Afghanistan

The Australian Government should review the detention of each person from Afghanistan currently in onshore immigration detention facilities.

8 Summary of Recommendations

Recommendation 1 Funding for international humanitarian relief

The Australian Government should increase funding to humanitarian organisations that are on-the-ground in Afghanistan to ensure adequate response to vulnerable communities in the context of heightened humanitarian needs.

Recommendation 2 Independent monitoring mechanism

The Australian Government should support the call for an independent mechanism to monitor and report on violations and abuses, to collect evidence, advance accountability and deter further crimes in Afghanistan.

Recommendation 3 Diaspora Advisory Group on Afghanistan

The Australian Government should establish a diaspora advisory group on Afghanistan (in addition to the Advisory Panel on the settlement of Afghan nationals) to consult on issues relating to Australia's future engagement with Afghanistan, including in relation to diaspora remittance channels, overseas development assistance, humanitarian relief efforts and diplomatic engagement.

Recommendation 4 Identify and prioritise applications in the Special Humanitarian Program from Afghan nationals

The Australian Government should identify and prioritise applications from people from Afghanistan within the Special Humanitarian Program backlog.

Recommendation 5 Prioritise family reunion applications in the Migration Program for Afghan nationals

The Australian Government should prioritise applications for family reunion in the Migration Program from sponsors from refugee backgrounds, including those from Afghanistan.

Recommendation 6 End policies that place refugees who arrived by boat at the lowest priority for family reunion

The Australian Government should abolish Direction 80 and the SHP prioritisation that places family reunion applications from refugees who arrived by boat at the lowest priority.

Recommendation 7 Grant refugees from Afghanistan on a TPV or SHEV a permanent visa

The Australian Government should provide all refugees from Afghanistan on a Temporary Protection Visa (TPV) or Safe Haven Enterprise Visa (SHEV) a permanent visa, in recognition that they will never be able to return to Afghanistan. By granting Afghan refugees a permanent visa, they will be able to fully contribute to the Australian community and economy.

Recommendation 8 Emergency rescue for Afghans at risk

The Australian Government should continue to work actively to identify and support individuals facing significant risks, including granting In-Country Humanitarian or Emergency Rescue Visas to those requiring immediate evacuation.

Recommendation 9 Support for neighbouring countries hosting displaced Afghans

The Australian Government should substantially increase its contribution of humanitarian and development assistance to states hosting the greatest numbers of displaced Afghan nationals in order to support access to protection.

Recommendation 10 Special intake of 20,000 humanitarian visas for Afghan nationals

The Australian Government should allocate a special intake of 20,000 humanitarian visas over two years for Afghan nationals in addition to the regular Humanitarian Program intake.

Recommendation 11 End the ban on resettlement for refugees in Indonesia

The Australian Government should end the ban that prevents refugees in Indonesia who registered with UNHCR after 30 June 2014 from accessing resettlement.

Recommendation 12 Work towards an integrated response to displacement in Asia

The Australian Government should convene a forum with NGOs, refugee-led organisations, peak bodies, intergovernmental bodies and other relevant stakeholders to advance the development of an integrated and strategic response to displacement in Asia, including consideration of the roles of international development assistance, diplomacy, capacity-building and the strategic use of resettlement.

Recommendation 13 Work with resettlement states to maximise collective impact

The Australian Government should work with UNHCR to bring states involved in refugee resettlement together to explore how they can work to maximise their collective impact in Asia, using the support offered through resettlement to encourage host states to improve the protection of refugees within their borders.

Recommendation 14 Immediately prioritise resettlement for people on Nauru and PNG

The Australian Government should resettle all people subject to offshore processing, including those from Afghanistan, and their immediate families to safe countries.

Recommendation 15 Prioritise and urgently assess asylum claims of people from Afghanistan

The Australian Government should urgently prioritise and assess the claims for asylum of people from Afghanistan. Those who have been refused a protection visa should have their claims automatically reviewed given the changed circumstances in Afghanistan.

Recommendation 16 Urgently review the need to detain people from Afghanistan

The Australian Government should review the detention of each person from Afghanistan currently in onshore immigration detention facilities.