



Refugee Council
of Australia

DECEMBER 2022

SUBMISSION TO THE ‘MIGRATION SYSTEM FOR AUSTRALIA’S FUTURE’ DISCUSSION PAPER

The Refugee Council of Australia (RCOA), the national peak body for refugees and people seeking asylum and the organisations and individuals who work with and support them, welcomes the Government’s acknowledgement of the need for a comprehensive review of Australia’s migration system. The review and its impact on the development of an overarching, “future-focused and transformative strategy” is much needed.

RCOA has reviewed the discussion paper and terms of reference carefully to inform this submission. We recognise the limitations and exclusions of the review; however, some areas that are specifically excluded from the review directly impact areas that the review is focused on. This includes the impact that the delays in onshore protection processing have had on worker exploitation, trafficking, and system inefficiencies. We will outline these issues and make recommendations about how to improve these inter-related issues.

The Refugee Council has also included recently finalised analysis on employment obstacles for people from refugee backgrounds that is also applicable to skilled migrants (see Section 4). We are available to both the Panel and to Departmental officials to discuss in further detail the analysis and recommendations outlined in this submission.

1 Principles to underpin a reformed migration system

The current migration settings create barriers rather than supporting active settlement where people can contribute to their full potential. The Refugee Council of Australia enthusiastically endorses the Federation of Ethnic Communities’ Councils of Australia (FECCA’s) Migration Principles¹ that envision an overhauled and reimagined system that is **fair, timely, transparent and accountable, simple, informed, and safe and supportive**.

We also note that the discussion paper flags that the transformative strategy will take into account “social licence”. The Refugee Council has stated for years that **political leadership is the key missing ingredient** to the nation-building, transformative capability of Australia’s migration system, including the humanitarian and protection components. Malcolm Fraser’s Liberal-National Coalition government provides an enduring example of rising above partisan politics and building a brave vision for a generous system to welcome people to Australia. The Fraser Government’s introduction of an annual Refugee and Humanitarian Program in 1977 and its overhaul of refugee and migrant settlement services in 1978 fundamentally changed Australia’s approach to immigration. We encourage the Australian Government to reflect on this positive example of leadership in Australian history and embark on a strategy that is bold, courageous and generous.

¹ See FECCA’s Migration Principles, available at <http://fecca.org.au/migration-principles/>

2 Situating humanitarian migration within Australia's migration strategy

RCOA urges the Australian Government to clearly situate the Refugee and Humanitarian Program within its migration strategy, recognising the important and long-term commitment Australia has made to providing a permanent home to people fleeing persecution, war and violence. This relates to the question of “how the migration program supports Australia’s international interests”, with the **Humanitarian Program serving as an important contribution to international cooperation on solutions to refugee displacement**. It is very much in Australia’s interests to continue to contribute meaningfully to responsibility-sharing in this regard, with forced displacement an issue of global concern and magnitude that cannot be addressed without international cooperation.²

While the primary objective of the Humanitarian Program is and should be to provide safety and a durable solution to people in need of international protection, the Program should not be seen in isolation or disconnected from the broader Migration Program. Like other migrants, research has shown that **refugee and humanitarian entrants make long and lasting contributions to Australia’s economy and society**, including in the areas of jobs and skills.³ These contributions relate to:

- **The younger demographic profile** and long-term engagement in the Australian labour market of refugee and humanitarian entrants (i.e. a median age 15 years younger than the national average and the lowest settler loss rate of any migrant group).⁴
- Many refugees arriving with **significant skills, qualifications and overseas work experience** relevant to the Australian labour market, including as medical professionals, tradespeople, engineers, business owners, educators and carers.⁵
- Refugee-humanitarian **labour force participation rates** converge toward that of the Australia-born population over time. The second generation performs at a higher level.⁶
- Refugee and humanitarian entrants engage **disproportionately in the labour force in some regional areas**, and in **industries where there are significant labour shortages**, including those catering to an aging population.⁷
- Refugee-humanitarian settlers show a **greater propensity to form their own business** than other migrants, and risk-taking, entrepreneurialism and an ability to identify and take advantage of opportunities is a key characteristic of the group.⁸
- Refugee and humanitarian entrants can **facilitate the development of trade** between Australia and their countries of origin, diversifying the range of countries where Australia-based diaspora communities and businesses have knowledge and connections.⁹

3 Unlocking the potential of humanitarian migration

While the primary objective of Australia’s Refugee and Humanitarian Program should always remain humanitarian and protection-focused, it is important to recognise that **refugee and humanitarian entrants share many of the experiences and hopes of other migrants**, including a strong willingness and desire to make a long-term investment in rebuilding their lives in Australia. As highlighted above, the demographic profile and experiences of earlier humanitarian migration suggest the important and distinct contributions that refugees make to Australian society. **There are changes to migration settings that would enhance or amplify these contributions**. These include:

² At the end of 2021, 1 in 88 people in the world were forcibly displaced. See: UNHCR (2022). [Figures at a glance](#)

³ Hugo (2011). [A Significant Contribution: The Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants](#); Deloitte Access Economics (2019). [Economic and social impact of increasing Australia's humanitarian intake](#)

⁴ The median age of migrants can differ substantially across different visa categories. Permanent Humanitarian visa entrants tended to be the youngest arrivals with a median age of 22.7 years. In contrast the overall Australian population was considerably older with a median age of 37.3 years. See ABS (2018). [Spotlight on overseas net migration](#); See also Commonwealth of Australia (2021). [2021 Intergenerational Report: Australia over the next 60 years](#)

⁵ Shelton (2022). [Census reveals migrants tend to be more highly educated. So why do they find it harder to land jobs?](#)

⁶ Hugo (2011). [A Significant Contribution: The Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants](#)

⁷ AMES (2015). [Small Towns Big Returns: Economic and Social Impact of Karen Resettlement in Nhill](#)

⁸ Legrain & Burridge (2019). [Seven Steps to SUCCESS: Enabling refugee entrepreneurs to flourish](#); Radford et al. (2021). [Refugees Rejuvenating and Connecting Communities: An analysis of the social, cultural and economic contributions of Hazara humanitarian migrants in the Port Adelaide Enfield area of Adelaide, South Australia \(Summary Report\)](#).

⁹ Bahar, Parsons & Vézina (2022). [Refugees, trade and FDI](#)

- **Increasing the humanitarian intake** to 32,000 places, in line with the goal outlined in the 2021 ALP National Platform: 27,000 places per year in the Humanitarian Program, with 5,000 additional places set aside for community sponsorship.¹⁰
- **Expanding and extending the Skilled Refugee Labour Agreement Pilot (SRLAP)** in the context of considerable private sector interest in attracting overseas talent and meeting corporate social responsibility targets, and the SRLAP implementing organisation (Talent Beyond Boundaries) having over 48,000 refugees listed on their global skills register.¹¹
- **Finding ways to regularise visa status and remove employment barriers** for the 107,000 people who have sought asylum and are currently in Australia (see Sections 6 and 7 below).

4 Overcoming barriers to participation of migrants in the labour market

While there are long-term nation-building benefits to welcoming refugees to Australia, people who have been forcibly displaced face **a range of challenges that affect their ability to participate in the labour market**. These relate to:

- **Job-seeker characteristics:** English levels; the need to upskill or retrain, particularly for those who have had limited opportunities to work and access education prior to settlement; lack of Australian work experience and industry-related networks; health and trauma recovery; and understanding of and navigating the Australian labour market.
- **Labour market and other structural barriers:** Recognition of qualifications and prior experience; prohibitive industry accreditation or licensing processes; accessibility of recruitment processes; racism and discrimination; access to transport and childcare; and ineffective employment services.
- **Immigration and visa status:** There are many people whose visa status presents significant challenges for accessing or sustaining employment, with employers hesitant to take on workers whose visa status is unclear or requires regular renewal. This includes:
 - 19,614 refugees on **temporary protection visas (TPVs or SHEVs)** that need to be periodically renewed.¹²
 - 107,177 people who applied for protection and are either waiting for an initial decision, have applications under review, or have received a final refusal.¹³ A large number **do not have work rights** and all are on **bridging visas that require regular renewal**.

As a result of these challenges, **it can take time for refugee and humanitarian entrants to transition to work** as they learn English, strive to have their qualifications and skills recognised, train or retrain, build their social networks, and learn how to navigate the Australian labour market and services.

Importantly, there is now substantial evidence of **approaches that work** in facilitating refugee employment transitions and economic participation.¹⁴ These include:

- Individual case management and referral services, particularly specialist services that have expertise in delivering both settlement and employment support.
- Mentoring programs with an employment focus.
- Information and training on Australian work culture and systems.
- Work experience programs.
- Industry-related training targeting migrant and refugee communities.
- Services providing career advice, planning and job search support.
- Social enterprise and initiatives supporting small business development.
- Services advocating and liaising directly with employers.
- Services providing support with skills and qualification recognition, including bridging courses that lead to industry-recognised qualifications or licencing.
- English language classes with an employment focus; and

¹⁰ ALP National Platform (2021). <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>

¹¹ <https://www.talentbeyondboundaries.org/blog/introducing-the-australian-skilled-refugee-pilot>

¹² As of October 2022, see: Department of Home Affairs, [UMA Legacy Caseload Statistics](#), p.5.

¹³ Statistics are from 31 July 2022. 95,364 are people seeking protection who arrived on a valid visa and 11,813 arrived in Australia by boat and sought asylum before December 2014 ('Legacy caseload'). See: Department of Home Affairs. [Monthly Update: Onshore Protection \(Subclass 866\) Visa Processing - July 2022](#) and [UMA Legacy Caseload: Report on Processing Status and Outcomes – July 2022](#)

¹⁴ Refugee Council of Australia (2010). [What works: Employment strategies for refugee and humanitarian entrants](#)

- Post-employment follow-up and support.

5 Delays in current processing of onshore asylum claims

It is not possible to address the exploitation of migrant workers without understanding the links between visa processing delays and increased risks of labour exploitation, wage theft and modern slavery. Due to visa processing delays, onshore protection visa applicants can be waiting eight years for the outcome of their applications. Investing more resources into speeding up processing times is essential to maintaining the integrity of Australia's asylum system.

Australian Government statistics reveal that 70% of the 96,371 people in the onshore processing process are waiting for a decision from Home Affairs, Administrative Appeals Tribunal (AAT) or federal courts. Home Affairs onshore protection statistics for October 2022 show that 26,425 people are waiting for an initial decision on asylum claims.¹⁵ At the current rate, it would take the Department over **two years to process these claims**.

Those whose refugee claims are rejected by the Department can appeal to the Administrative Appeals Tribunal (AAT), which has seen its refugee caseload balloon over the past few years. There are currently 37,830 refugee cases before the AAT.¹⁶ Last financial year, the AAT made a decision on only 5,819 cases, while it received 10,743 new appeals. At the current rate, it would take the **AAT over six years to assess the current backlog** – while new claims continue to come in faster than the AAT can hear them. Responses to questions in Senate Estimates reveal that, in August 2021, 3,523 people were waiting for courts to review their cases.¹⁷ In total, 67,790 people are waiting for decisions on their status and only 28,700 are still in Australia not appealing a visa refusal.

The combined backlogs at the Department of Home Affairs and the AAT have created a circumstance where it is possible for people (or traffickers using people) to lodge asylum applications even when they may not have meritorious claims for protection, as they can stay in Australia for years while their application slowly passes through the system. If refugee applications are considered in a well-resourced, prompt and orderly system, there would be no incentive for those who are not refugees to lodge an asylum application.

For those people with meritorious claims for protection, these long delays create significant stress and anxiety. Many people seeking asylum are denied work rights, and only a handful of them have access to income support, which means that thousands of asylum seekers are living in destitution and relying on the goodwill of under-resourced charities.

In order to address this backlog, the Department of Home Affairs should **increase and train staff** and the Attorney General's Department should **increase funding to the AAT** to appoint additional members to hear asylum appeals.

It is also worth noting that increases in review refusals over the past few years mirrored the decline in Commonwealth funding to legal services to assist people to lodge asylum applications. Ensuring that every asylum seeker **has access to high-quality legal advice** while going through the system is another strategy shown to increase both the efficiency and fairness of the system. For example, Switzerland has significantly reduced asylum processing times by introducing strict timetables for each stage of decision-making, which have been facilitated by increased investment in decision-making capacity, and universal access to high-quality, government-funded legal advice.

If the Government is serious about ensuring integrity in our migration system, it should start by addressing the backlog of asylum applications in a fair, robust and efficient manner.

¹⁵ Department of Home Affairs, *Onshore processing statistics October 2022*, <https://www.homeaffairs.gov.au/research-and-stats/files/monthly-update-onshore-protection-866-visa-processing-october-2022.pdf>

¹⁶ Administrative Appeals Tribunal, *Caseload reports 2022-2023*, <https://www.aat.gov.au/AAT/media/AAT/Files/Statistics/MRD-Detailed-Caseload-Statistics-2022-23.pdf>

¹⁷ Available at <https://www.refugeecouncil.org.au/asylum-community/5/>

6 Backlog and ‘cap’ in onshore visa grants

A large reason for the delays in processing onshore asylum claims is the yearly cap on the number of Permanent Protection Visas granted as part of the Humanitarian Program. If a person who arrived in Australia on a valid visa (for example a student or tourist visa) makes a successful refugee claim, and the Department of Home Affairs grants them a Permanent Protection Visa (PPV), they are counted in the Humanitarian Program numbers for the year. However, the number of PPVs granted per year is unrelated to the number of meritorious claims received. Rather, a cap on PPV grants is set in relation to Department’s yearly targets for offshore Humanitarian visas. This means that if the same person makes a refugee claim after the yearly cap has been reached, they must wait until the next financial year for a place in the Humanitarian Program. Some people, who were ultimately found to be refugees and granted permanent visas, have waited over five years for their applications to be finalised. Therefore, the policy of setting a cap on onshore visa grants is also responsible for causing the processing delays detailed above.

To ensure the integrity of the Australian labour market, compliance with labour standards and to minimise the potential for migrant exploitation, the Government should de-link the processing of onshore protection visas from overseas humanitarian settlement. Resolving the processing delays will better protect migrant workers’ rights.

7 Workplace exploitation

A key cause of workplace exploitation for people seeking asylum is the lack of work rights and the temporary nature of bridging visas. People who are destitute (especially when they have no access to a safety net such as the Status Resolution Support Service) often are forced to seek cash-in-hand work out of desperation. The lack of legal work rights does not stop these people from working, but rather makes them vulnerable to employers who exploit their lack of work rights by underpaying them, withholding pay, or forcing them into precarious working conditions. In addition, those who do have work rights, but are on limited bridging visas, may also be exploited because the temporary nature of their visa makes them fearful for retribution should they speak out about workplace exploitation.

Finding ways to regularise visa status and remove employment barriers for the 107,000 people who have sought asylum and are currently in Australia is vital to addressing employment exploitation. This is important in the context of the lengthy delays in processing onshore protection applications noted above. While waiting for an outcome on their refugee claim, people usually remain on a bridging visa with the same conditions as their original visa. It means their access to work rights can be limited or denied, despite the change in their personal circumstances. For example, people who entered Australia on a tourist visa often have no work rights. The situation is especially acute for those who have been found not to be refugees but remain in the community without any rights. RCOA is especially concerned that this group of people are being targeted for exploitative work because of the lack of legal status in the community.

This exploitation of workers with precarious visa status has become a feature of the Australian economy, not an irregularity. In 2019, a report¹⁸ by labour experts found that the horticulture industry is structurally reliant on undocumented workers and recommended that the Department resolve their status. There are other cohorts of temporary migrants who are also on bridging visas, including people who arrived in Australia by boat and whose protection claims were refused. Once they have been determined to have exhausted all their review options, this cohort of people are generally granted the ‘final departure’ Bridging Visa E, usually valid for periods of 6 months or less. Some have been denied lawful status but continue to undertake cash-in-hand casual work in the horticulture, food processing or construction industries. The Government is well aware of this group of undocumented workers but has neither regularised their status nor have they been detained, removed or deported because they fill labour shortages, as discussed below. A recent report¹⁹ found that this cohort is similarly at increased risk of

¹⁸ See the full report at <https://www.sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>

¹⁹ See the report at <https://www.hrc.org.au/reports/2022/11/8/labour-in-limbo-bridging-visa-e-holders-and-modern-slavery-risk-in-australia>

labour exploitation and modern slavery such as wage theft, unpaid overtime, excessive hours and abusive working conditions. Among other things, the report recommended this cohort have their visa status regularised and that workers subjected to modern slavery be able to bring claims for exploitation without fear of reprisal. This is discussed further below.

These examples show how short-term bridging visas are being used as a mechanism for maintaining an economy which has become dependent on the exploitation of migrant workers. Visa processing delays and denying visa status to certain cohorts of migrants has produced undocumented migrant workers.

Issuing or reinstating visas with work rights for people who have sought protection as they move through the protection application stages, and exploring options for alternative skilled visa pathways for those who have received a final refusal on their protection claim will reduce the risk of worker exploitation. It will also ensure that people who have been working for many years, often in important skills shortage areas, can continue their important contribution to the Australian labour force.

8 Recognising the contribution of people who contributed during the COVID-19 pandemic

As discussed above, there are about 30,000 people in Australia who have been refused a protection visa but have not been removed from Australia for various reasons. While the integrity of Australia's asylum system must be upheld, and it is expected that those who are not refugees should be returned, the unique circumstances of the current group of people warrant special consideration for a one-off process to regularise their status.

Many people who have been refused protection visas have been working in industries experiencing significant labour shortages, especially during the COVID-19 pandemic. Many continue to fill such labour shortages at a time when Australia is in dire need of workers in particular industries. In the current circumstances, it is not in Australia's interests to conduct widespread deportations of people who are making important economic contributions. In recognition of the important role many people have played during COVID-19, and the difficulty they faced without access to any safety net, it is appropriate for the Australian Government to consider options to regularise the visa status of people in this situation. Options may include allowing people to apply for appropriate skilled visas or utilising other visa options.

9 Regional settlement

In recent years, there has been much interest in the prospects of settling refugees and migrants in rural and regional areas. While we believe there are opportunities for appropriate and mutually beneficial rural and regional settlement, we strongly believe that this should be encouraged through appropriate supports and funding, rather than through any crude and ineffective measures of tying people to regional areas through visa conditions.

The COVID-19 pandemic has created long-term consequences for regional settlement, especially around housing. As more people moved to regional areas during the pandemic, the cost of rental accommodation has skyrocketed, making many regional areas unaffordable for newly arrived communities.

Over several years, we have spoken to many refugees and those who are supporting them across Australia in rural and regional areas, with a particular focus on understanding what encourages them to move and to stay. This work has demonstrated that, for such settlement to work, a welcoming community and community preparedness and planning is essential. However, such work to build capacity within a community is not funded under current settlement services programs, and such programs do not appear to include any specific funding components for essential outreach work to rural and regional communities.

Further, place-based settlement approaches typically succeed through the initiative of key community leaders, but the infrastructure for national and State-level coordination still needs improvement. Local leaders need a way to share information and best practices, and to get critical information from government representatives. They also need to be supported better to understand the needs of refugee communities, through better funding of the work they do in engaging their communities. There are also

lost opportunities in promoting rural and regional settlement to refugees, with many of our members taking up this initiative themselves through information sessions.

For most refugees in rural and regional areas, a key driver of migration is employment. Refugees who are settled first in rural or regional areas often leave because of a lack of employment opportunities. Typically, those who move to such areas also do so because of employment opportunities. Much more could be done to support employers hiring refugees. More also needs to be done to prevent labour exploitation, which is a particular risk where there are few job opportunities and where people are already highly vulnerable.

Another key driver for successful rural and regional settlement is the welcoming nature of a local community. Overwhelmingly, local community support is cited as a critical factor in ensuring success. Yet this support is undermined by policies and political rhetoric that marginalise and demonise refugees.

While there are many opportunities to encourage further rural and regional settlement by refugees, we do not support any approaches that try to force people to move or to stay through restrictive visa conditions. Time and again, these approaches are both ineffective and create real risks of vulnerability and exploitation. We should not force anyone to stay in areas where they are not thriving, especially refugees who already face many disadvantages and barriers in settlement. Rural and regional settlement should be seen as an opportunity, not a punishment.

10 Pathways to permanent residency

RCOA also endorses other submissions made by the Human Rights Law Centre and the Migrant Workers Centre emphasising the need to ensure that people seeking asylum and refugees have access to permanent residency.

A major shift in Australia's migration, including to some extent in the Humanitarian Program, has been the explosive growth in temporary migration. In recent years, there has been discussion of making this the default position, with all migrants treated as provisional entrants. Such policies should be avoided.

This fundamental shift undermines one of the very significant successes of Australia's migration policy – that is, to ensure social inclusion by offering migrants permanent residency in Australia. This has been the model of successful multicultural settler countries, and a model that is far superior to countries that have tried, unsuccessfully, to insist that migrants remain guests rather than citizens. Migrants with insecure status are more likely to be at risk. For example, they are more at risk of labour exploitation and family violence, situations which they are more likely to tolerate for fear of losing their right to stay.

They are also more at risk because typically social protections, including access to social security, depend on a fundamental division between permanent and temporary residence. For example, women fleeing family violence are often not able to access refuges because of their lack of secure visa status. Typically, the social effects are being mitigated by funding and programs provided by State governments.

These effects are very apparent in the system of temporary protection visas for refugees and the ongoing reliance on bridging visas. People in this situation face many barriers, including to further education and to disability support. They are ineligible for most social security benefits, increasing their vulnerability further. Such barriers impede their settlement and are directly counterproductive to their ability to contribute to Australian society.

It is imperative that this review and Strategy consider the effects of temporary migration on the Australian community as a whole and consider ways to ensure all residents in Australia, including those from refugee backgrounds, have a realistic pathway to permanency.