



Australian
Human Rights
Commission

**Lives on hold:
Refugees and asylum seekers
in the 'Legacy Caseload'**

EXECUTIVE SUMMARY • 2019



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Edward Santow

*Human Rights Commissioner
Australian Human Rights Commission*



Commissioner's foreword

Between 2009 and 2013, over 50,000 people arrived in Australia by boat to seek asylum. While unexceptional in the context of record global displacement, this represented an unprecedented increase in movement by sea towards Australia. Hundreds of people lost their lives on these perilous voyages.

In response, successive Labor and Coalition Australian Governments implemented a series of measures aimed at deterring people smuggling operations by preventing the arrival of asylum seekers by boat. These measures included third country processing and boat turnbacks.

Ultimately, the majority of asylum seekers who arrived during this period were permitted to remain in Australia in order to have their refugee claims assessed. While some had the opportunity to apply for substantive visas soon after their arrival, thousands more faced prolonged delays in the processing of their claims.

This latter group numbers approximately 30,000 people, and has come to be known as the 'Legacy Caseload'. This report examines the human rights implications of policies affecting these refugees and asylum seekers.

In addition to processing delays, people in the Legacy Caseload have faced a range of challenges during their time in Australia. While most have been released from closed detention, they have limited access to support services while living in the Australian community. If found to be refugees, they are not eligible for permanent residency in Australia. Due to restrictions on family reunion opportunities, they face the prospect of indefinite separation from their family members.

These challenges have led to financial hardship, deteriorating mental health and poorer settlement outcomes. In the words of one of the people interviewed by the Commission during the development of this report, people in the Legacy Caseload 'are living in the shadows'.

They also face a heightened risk of *refoulement* due to changes in Australia's processes for assessing refugee claims, including the removal of access to comprehensive merits review.

This report identifies a range of ongoing concerns faced by people in the Legacy Caseload. In particular:

- the lack of access to a fair and thorough process for determining their refugee claims
- uncertainty about their visa status and ongoing entitlement to protection for a prolonged period of time
- whether there is sufficient support for asylum seekers to maintain an adequate standard of living in the community
- the impact of restrictions on access to family reunion opportunities
- the ongoing risk of arbitrary detention.

Each of these concerns raises issues regarding Australia's compliance with its international human rights obligations.

The recommendations in this report can help guide Australia towards a policy approach that reflects not only our international human rights obligations, but also our hard-earned reputation as a successful multicultural nation and safe haven for people fleeing persecution.



Edward Santow
Human Rights Commissioner

July 2019

1 The Legacy Caseload

This report examines the human rights implications of policies affecting asylum seekers in the 'Legacy Caseload'.

The Legacy Caseload is a group of approximately 30,000 asylum seekers who arrived in Australia by boat prior to 1 January 2014 and were permitted to remain in Australia in order to lodge applications for substantive visas, but had not had their status resolved by this date.

People in the Legacy Caseload come from many countries of origin, including Afghanistan, Bangladesh, Burma (Myanmar), Iran, Iraq, Lebanon, Pakistan, Somalia, Sri Lanka, Sudan and Vietnam. A significant number are stateless.¹

Due to a number of changes to legal and policy settings since 2012,² asylum seekers in the Legacy Caseload are treated differently from other groups of asylum seekers. They have also faced lengthy delays in the processing of their visa applications.

Because the Legacy Caseload comprises a distinct group of asylum seekers, the Commission has conducted research and consultations to gain a better understanding of the practical issues and challenges faced by people in this group.

The project set out to examine the human rights implications of policies adopted by successive Australian Governments affecting asylum seekers in the Legacy Caseload. The project report, which builds on previous research,³ aims to clarify Australia's human rights obligations in relation to people in the Legacy Caseload, and to identify policies and practices that may be inconsistent with these obligations.

2 Australia's human rights obligations

Australia has ratified seven of the core international human rights instruments.⁴ Several of these treaties contain obligations that are particularly relevant to refugees, people seeking asylum and people in immigration detention. These include:

- the *International Covenant on Civil and Political Rights* (ICCPR)
- the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)
- the *Convention on the Rights of the Child* (CRC)
- the *Convention on the Rights of Persons with Disabilities* (CRPD)
- the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

Australia also has a range of specific obligations towards refugees under the *Convention relating to the Status of Refugees* (the Refugee Convention).

This treaty applies to people who are refugees within the meaning of article 1 of the Convention—that is, people who are outside their country of origin and unable or unwilling to seek the protection of their country due to a well-founded fear of being persecuted on the basis of their race, religion, nationality, membership of a particular social group or political opinion.⁵

The term 'asylum seeker' is not used in the Refugee Convention. Consequently, the applicability of this treaty to people who are in the process of seeking asylum (and whose legal status is, by definition, undetermined) is not clear-cut.

As noted by the United Nations High Commissioner for Refugees (UNHCR), however, 'a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition'—that is, from the moment they flee their country due to a well-founded fear of persecution—which would 'necessarily occur prior to the time at which his refugee status is formally determined'.⁶

Australia's obligations under the Refugee Convention are therefore relevant to the situation of people in the Legacy Caseload, given that a significant number may be, or have already been, determined to be refugees.

3 Structure and scope of the report

The *Lives in limbo* report focuses on five key policy areas that affect the enjoyment of human rights by people in the Legacy Caseload:

1. the implications of the **refugee status determination** process for people in the Legacy Caseload
2. the situation of asylum seekers living in the community on **Bridging Visas**
3. the use of **temporary protection** arrangements for people in the Legacy Caseload who are found to be refugees
4. **family separation** resulting from restrictions on access to family reunion opportunities
5. the use of **immigration detention** for a small number of people in the Legacy Caseload.

Each section of the report focuses on a distinct policy area and includes detailed analysis of the human rights obligations relevant to that area. The report has been structured in this manner to reflect the current policy context and to allow each section of the report to stand alone.

Some human rights obligations are relevant to more than one policy area. For ease of reference, relevant obligations are briefly outlined in the introduction to each section and summarised in the graph at the end of this summary report.

The Commission notes that some of the issues addressed in the report are also relevant to other groups of asylum seekers living in Australia. This includes asylum seekers who arrived in Australia on valid visas and were subsequently granted Bridging Visas; and people subject to third country processing who have been transferred to Australia temporarily for medical treatment or other reasons.

The findings and recommendations outlined in the report may therefore have broader applicability to the situation of asylum seekers living in Australia generally, and are not necessarily confined to people in the Legacy Caseload.

4 Consultation process

The Commission conducted consultations on the Legacy Caseload between September and December 2017. The consultations consisted of one-to-one interviews and small group discussions, conducted both face-to-face and via telephone.

Focus questions for the consultations were guided by international human rights standards and the key themes identified in previous research on the Legacy Caseload group.

Participants in the consultation process included academics, community groups, health workers, legal practitioners, migration agents, non-government organisations involved in research and advocacy on refugee policy issues, refugee community leaders and support workers.

Participants were selected on the basis of their first-hand experience in working with people in the Legacy Caseload, either through directly providing services and support to this group of asylum seekers, or through conducting research involving people in the Legacy Caseload.

In total, approximately 130 people participated in the consultation process. To ensure that participants were able to provide frank and accurate feedback, the consultations were conducted on the understanding that the identities of participants would remain confidential.

The Commission did not consult directly with asylum seekers in the Legacy Caseload, due to concerns that the consultation process may adversely affect the mental health of people in this group.

However, the full report includes a number of case studies that provide examples of the impacts of particular policies on individuals in the Legacy Caseload. Most of the case studies were provided by consultation participants. Excepting cases that have already been reported publicly, names have been changed in order to protect privacy. Pseudonyms were either provided by consultation participants, or allocated by the Commission.

A draft of the report was shared with the Department of Home Affairs (the Department) in advance of its publication, to provide an opportunity for the Department to respond to the report's recommendations. The final report incorporates a small number of changes in response to the Department's comments. The Commission will make available the Department's full response on its website.

5 Key findings

5.1 Refugee status determination

Since 2014, a number of significant changes have been made to Australia's refugee status determination process, many of which have significant implications for people in the Legacy Caseload.

The Commission considers that the current refugee status determination process for people in the Legacy Caseload—in particular, the 'fast track' merits review process—does not provide adequate safeguards against *refoulement*.

The introduction of additional criteria for refugee status, which do not reflect the Refugee Convention; the use of a limited merits review process; the lack of access to merits review in some circumstances; and the withdrawal of access to government-funded legal advice from most asylum seekers, all undermine the capacity of asylum seekers to present their refugee claims, as well as the capacity of decision-makers to undertake fully informed and accurate assessments of visa applications.

There is a significant risk that some people in the Legacy Caseload who are in need of protection will be denied refugee status and removed from Australia, contrary to Australia's *non-refoulement* obligations. A robust legal framework for refugee status determination is essential for Australia to comply with its international obligations.

The Commission considers that the 'fast track' merits review process and restrictions on access to government-funded legal advice—measures that apply only to certain asylum seekers based on their mode of arrival—discriminate unjustifiably against certain asylum seekers, and may effectively operate as penalties for irregular entry.

The Commission also has serious concerns about the impact of prolonged delays in the processing of claims on the mental health of many asylum seekers in the Legacy Caseload; and the significant negative impacts of the refugee status determination process on the wellbeing of some families, women and children.

The Commission makes recommendations about changes to the legislative framework for refugee status determination; the handling of cases processed to date under the 'fast track' merits review process; providing access to government-funded application assistance; resource allocations for visa processing and mental health services; and measures to support children and families.

5.2 Bridging Visas

Most people in the Legacy Caseload who have not been granted a substantive visa are living in the Australian community on Bridging Visas. Bridging Visas are short-term visas that are granted to people who are in the process of resolving their immigration status.

The level of income support available to asylum seekers living in the community on Bridging Visas is currently insufficient to ensure an adequate standard of living.

Previous research and feedback gathered by the Commission consistently indicates that many asylum seekers living in the community on Bridging Visas are unable to meet their basic needs, and in some cases face severe financial hardship. The Commission is also concerned by policies that may result in asylum seekers, including families with children, being left without any source of income.

The Commission considers that the reintroduction of work rights for Bridging Visa holders in the Legacy Caseload has helped to strengthen Australia's compliance with its international obligations. Notwithstanding this positive development, additional measures may be necessary to ensure that the rights of asylum seekers relating to employment and health care are adequately protected.

The Commission further considers that the casework model for asylum seekers on Bridging Visas provides limited scope for addressing their support needs. A more comprehensive casework model could assist in addressing these needs through supporting asylum seekers to navigate Australian services and systems, and to overcome barriers to participation in community life.

The Commission makes recommendations about income support payment rates for asylum seekers on Bridging Visas; changes to the eligibility criteria for income support; streamlining the process for renewing Bridging Visas; and reviewing the adequacy of casework assistance.

5.3 Temporary protection

Refugees who arrive in Australia without valid visas are not eligible for permanent residency. They are instead granted temporary visas that are valid for between three and five years, after which time the visa holder must have their refugee claims reassessed. The vast majority of people affected by these temporary protection arrangements are asylum seekers in the Legacy Caseload.

The Commission considers that current temporary protection arrangements discriminate unjustifiably against certain asylum seekers based on their mode of arrival, and may effectively operate as penalties for irregular entry.

The Commission considers that temporary protection arrangements create a significant risk of serious and ongoing mental health issues among refugees in the Legacy Caseload. There is clear evidence that the ongoing uncertainty resulting from temporary protection arrangements contributes to negative mental health outcomes among refugees subject to these arrangements.

While refugees on temporary visas have access to a number of additional entitlements as compared to Bridging Visa holders, they have limited access to support services designed to assist refugees to settle in Australia, which may hamper the full enjoyment of rights relating to settlement outcomes.

The Commission makes recommendations about abolishing temporary protection arrangements; and amending current temporary protection arrangements to mitigate their negative impacts.

5.4 Family separation

Family separation is a common consequence of forced displacement. For people in the Legacy Caseload, however, the challenges associated with family separation are magnified due to restrictions on family reunion opportunities.

The Commission acknowledges that, in most cases, the initial cause of family separation for people in the Legacy Caseload was the experience of forced displacement, rather than Australian policy settings. However, restrictions on family reunion opportunities will prolong family separation for this group in a manner that would not occur for other humanitarian entrants to Australia.

Many people in the Legacy Caseload lack access to any viable opportunity for family reunion, and consequently face the prospect of remaining separated from their families—including minor children—on an indefinite basis.

The Commission therefore considers that the restrictions on access to family reunion opportunities affecting people in the Legacy Caseload may interfere with Australia's obligations to afford the 'widest possible' protection and assistance to the family.

The blanket application of family reunion restrictions to all asylum seekers who arrived by boat at a particular point in time does not allow for adequate consideration of the best interests of children, or of whether the impacts of these measures are reasonable in the circumstances.

Restrictions on family reunion opportunities that lead to prolonged and indefinite family separation may also hamper the full enjoyment of rights relating to settlement outcomes, and create a potential risk of constructive *refoulement*.

The Commission makes recommendations about harmonising access to family reunion opportunities among humanitarian entrants; removing travel restrictions; and providing exemptions from family reunion restrictions for vulnerable children.

5.5 Immigration detention

The vast majority of people in the Legacy Caseload are living in the Australian community, rather than in closed immigration detention facilities. The Commission welcomes the Australian Government's ongoing commitment to using alternatives to closed detention for people seeking asylum.

Where re-detention of people in the Legacy Caseload in closed detention facilities does occur, however, it may not be reasonable and necessary in all instances. This includes cases where closed detention results from a visa cancellation on the basis of a criminal charge, in circumstances where the person would not otherwise be subject to detention prior to conviction (such as where they have been granted bail); and where a risk of closed detention arises from breaches of the 'Code of Behaviour' for asylum seekers living in the community on Bridging Visas.

The Commission also notes concerns regarding the situation of people in long-term community detention; and the challenging transition process for unaccompanied children in community detention who reach the age of 18.

The Commission makes recommendations about amending the grounds for cancellation of a Bridging Visa; removing the requirement to sign a 'Code of Behaviour' as a condition of being granted a Bridging Visa; reviewing the implications of long-term community detention; and providing additional transition support to young people in community detention.

6 Conclusions

This project has identified some positive developments for people in the Legacy Caseload. These include the release of most asylum seekers and almost all children from closed immigration detention; the reintroduction of work rights for asylum seekers living in the community on Bridging Visas; and the recommencement of the refugee status determination process after long delays.

However, other policy measures significantly limit the human rights of people in the Legacy Caseload, including measures that have led to financial hardship, deteriorating mental health, a heightened risk of *refoulement* and poorer settlement outcomes. Some measures have also fallen short of Australia's obligations to protect families and the best interests of children.

The limitations on the enjoyment of human rights documented in the *Lives in limbo* report have not been shown to be necessary, reasonable and proportionate in the circumstances of people in the Legacy Caseload.

The Commission does not underestimate the challenges that flight by sea poses for the Australian Government, or the risks that dangerous boat journeys pose to asylum seekers. However, policies that cause serious hardship for refugees and asylum seekers are unlikely to be reasonable and proportionate mechanisms for addressing these risks.

In any event, many policies that currently apply to people in the Legacy Caseload have not been demonstrated to be effective in achieving the aim of preventing people smuggling and loss of life at sea.

The Commission encourages the Australian Government to consider the recommendations in the report closely, to ensure that Australia's treatment of asylum seekers in the Legacy Caseload reflects our international human rights obligations.

7 Recommendations

Recommendation 1

The Australian Government should introduce legislation to repeal the amendments to the *Migration Act 1958* effected by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

Recommendation 2

The Australian Government should provide asylum seekers who have been subject to the fast track process and whose visa applications are considered 'finally determined' with an opportunity to apply to the Migrant and Refugee Division of the Administrative Appeals Tribunal for merits review of their visa applications.

Recommendation 3

The Australian Government should not involuntarily remove any asylum seeker who has been subject to the fast track process from Australia, until such time as Recommendations 1 and 2 have been implemented.

Recommendation 4

The Australian Government should reinstate access to the Immigration Advice and Application Assistance Scheme to all asylum seekers who are experiencing financial hardship.

Recommendation 5

The Department of Home Affairs should ensure government-funded interpreting services under the Translating and Interpreting Service (or an equivalent program) are available without charge to not-for-profit, non-government organisations providing assistance to asylum seekers.

Recommendation 6

The Department of Home Affairs should allocate additional resources to expedite the processing of visa applications lodged by asylum seekers in the Legacy Caseload.

Recommendation 7

The Department of Home Affairs should allocate additional resources to increase mental health services and support for asylum seekers in the Legacy Caseload, including suicide prevention training for Departmental staff and contracted service providers, and targeted services for children and young people.

Recommendation 8

The Department of Home Affairs should establish a dedicated support service for families and children in the Legacy Caseload.

Recommendation 9

The Department of Home Affairs should commission independent research on options for establishing clear divisions between the Department and other government agencies and public services that provide assistance to asylum seekers.

Recommendation 10

The Australian Government should align payment rates for income support under the Status Resolution Support Services program with the standard Centrelink payment rates.

Recommendation 11

The Department of Home Affairs should revise policies relating to eligibility for income support under the Status Resolution Support Services program, to ensure that asylum seekers facing financial hardship remain eligible for income support unless they have secured a verified alternative source of income that is sufficient to ensure an adequate standard of living.

Recommendation 12

The Australian Government should ensure that an asylum seeker remains eligible for the Status Resolution Support Services program while they have a substantive visa application under active consideration, including by the courts.

Recommendation 13

The Australian Government should ensure that asylum seekers whose visa applications are 'finally determined' and who are experiencing financial hardship are provided with sufficient support (including income support) to ensure an adequate standard of living, until such time as they are either granted a substantive visa or removed from Australia.

Recommendation 14

The Minister for Home Affairs should expedite the renewal of Bridging Visas for asylum seekers in the Legacy Caseload.

Recommendation 15

The Australian Government should introduce legislation to:

a) repeal s 46A of the *Migration Act 1958*

b) require Bridging Visas to be automatically renewed in cases where a person has an application for a substantive visa, and any applications for merits or judicial review on foot.

Recommendation 16

The Australian Government should include the Status Resolution Support Services Payment as a qualifying payment for a Health Care Card.

Recommendation 17

The Department of Home Affairs should review the casework model under the Status Resolution Support Services program to determine whether it adequately meets the support needs of asylum seekers living in the community on Bridging Visas.

Recommendation 18 [superseded]⁷

Recommendation 19

If Recommendation 1 is not implemented, the Australian Government should grant permanent Protection Visas to all Temporary Protection Visa and Safe Haven Enterprise Visa holders who are determined to be in ongoing need of protection when their current visas expire.

Recommendation 20

If Recommendation 1 is not implemented, the Australian Government should ensure that Temporary Protection Visa and Safe Haven Enterprise Visa holders have access to the same services and entitlements as permanent Protection Visa holders, including settlement services, tertiary education assistance schemes, and the full range of income support payments administered by the Department of Human Services.

Recommendation 21

If Recommendation 1 is not implemented, the Department of Home Affairs should extend the timeframe for exiting people from the SRSS program after the grant of a Temporary Protection Visa or Safe Haven Enterprise Visa, to allow adequate time for the provision of transition support.

Recommendation 22

The Department of Home Affairs should afford the same priority and apply the same eligibility criteria to all applications for family reunion lodged by humanitarian entrants, regardless of the type of humanitarian visa held by the applicant or their mode of arrival of Australia.

Recommendation 23

If Recommendation 1 is not implemented, the Australian Government should amend the *Migration Regulations 1994* so that condition 8570 (which restricts overseas travel) does not apply to Temporary Protection Visas and Safe Haven Enterprise Visas.

Recommendation 24

If Recommendation 1 is not implemented, the Australian Government should introduce legislation to permit holders of Temporary Protection Visas and Safe Haven Enterprise Visas to sponsor family members overseas for temporary residence in Australia.

Recommendation 25

If Recommendations 22 to 24 are not implemented, the Department of Home Affairs should introduce exemptions from restrictions on family reunion opportunities for humanitarian visa holders who arrived in Australia as unaccompanied children, or have a child living overseas who is not under the care of another parent.

Recommendation 26

Where members of the same family unit are subject to different policy settings due to having arrived in Australia on different dates, the Department of Home Affairs should implement strategies to harmonise their status, including through:

- a) transferring family members subject to third country processing to Australia
- b) granting all family members the same class of Australian visa, based on the visa of longest duration held by any member of the family unit.

Recommendation 27

The Australian Government should amend the *Migration Regulations 1994* in order to remove a criminal charge as a prescribed ground for cancellation of a Bridging Visa E under s 116(1)(g) of the *Migration Act 1958*.

Recommendation 28

Where a Bridging Visa has been cancelled under s 116 of the *Migration Act 1958* on the basis of criminal charges, withdrawal of these charges or a non-adverse judicial outcome should automatically trigger a review of the decision to cancel the visa by the Department of Home Affairs.

Recommendation 29

The Australian Government should remove the requirement to sign the Code of Behaviour as a condition for the grant of a Bridging Visa.

Recommendation 30

The Department of Home Affairs should commission an independent review of the situation of people in long-term community detention, to assess the extent to which the program can continue to promote positive health and wellbeing outcomes over time.

Recommendation 31

In cases where a young person receiving services under Band 2 of the Status Resolution Support Services program turns 18, the Department of Home Affairs should:

- a) automatically transition the young person onto Band 4 of the program, with an opportunity to transition onto Band 5 where ongoing intensive support is required
- b) extend the timeframes for transition of young people between the various bands of the SRSS program, to allow adequate time for provision of transition support.

Human rights obligations relevant to people in the Legacy Caseload

	Refugee status determination	Bridging Visas	Temporary protection	Family separation	Immigration detention
<i>Non-refoulement</i>	✓			✓	
Non-discrimination and non-penalisation	✓		✓	✓	
Health	✓	✓	✓	✓	✓
Work		✓	✓	✓	
Education			✓	✓	
Social security		✓			
Adequate standard of living		✓	✓	✓	
Protection and assistance for families	✓			✓	
Freedom from arbitrary interference with family				✓	
Prevention of gender-based violence	✓			✓	
Freedom from arbitrary detention					✓
Best interests of the child	✓			✓	✓

	Refugee status determination	Bridging Visas	Temporary protection	Family separation	Immigration detention
Maximum possible development of the child	✓				✓
Protection and care of the child				✓	
Child can know and be cared for by parents				✓	
Facilitation of family reunification for separated children				✓	
Protection of the child from violence, abuse and neglect	✓				
Protection and assistance for refugee and asylum seeker children	✓		✓		
Promotion of recovery for child victims of torture			✓		
Protection of people with disabilities in situations of risk			✓		
Facilitation of assimilation and naturalisation of refugees			✓	✓	

Endnotes

- 1 Department of Home Affairs, *IMA Legacy Caseload: Report on the Processing Status and Outcomes* (December 2018) 3–5. At <https://www.homeaffairs.gov.au/research-and-stats/files/ima-legacy-caseload-dec-2018.pdf> (viewed 31 January 2019); Department of Home Affairs and Australian Border Force, *Illegal maritime arrivals on Bridging E visa* (31 December 2018). At <https://www.homeaffairs.gov.au/research-and-stats/files/illegal-maritime-arrivals-bve-dec-2018.pdf> (viewed 6 February 2019); Immigration Assessment Authority, *Caseload Report (2018-19)* (31 December 2018) 2. At <http://www.iaa.gov.au/IAA/media/IAA/Statistics/IAACaseloadReport2018-19.pdf> (viewed 6 February 2019).
- 2 A summary of legal and policy developments affecting people in the Legacy Caseload can be found in Appendix 1 of this report.
- 3 Refugee Council of Australia, *Australia's Refugee and Humanitarian Program 2013–14: Community views on current challenges and future directions* (February 2013) 71–84. At <https://www.refugeecouncil.org.au/r/isub/2013-14-IntakeSub.pdf> (viewed 23 March 2018); Australian Red Cross, *Vulnerability Report: Inside the process of seeking asylum in Australia* (June 2013). At http://www.redcross.org.au/files/ARC_VulnerabilityReport_LR.PDF (viewed 22 April 2016); United Nations High Commissioner for Refugees, *Asylum-seekers on bridging visas in Australia: Protection Gaps* (16 December 2013). At <http://www.refworld.org/pdfid/5915ee524.pdf> (viewed 23 March 2018); Lisa Hartley and Caroline Fleay, *Policy as punishment: Asylum seekers in the community without the right to work* (February 2014) Centre for Human Rights Education, Curtin University. At http://www.nwhn.net.au/admin/file/content101/c6/CHRE_PolicyAsPunishmentAsylumSeekersInTheCommunityWithoutTheRightToWork_Feb_2014.pdf (viewed 23 March 2018); Refugee Council of Australia, *Australia's Refugee and Humanitarian Program 2014–15: Community views on current challenges and future directions* (February 2014) 52–61, 63–76. At https://refugeecouncil.org.au/r/isub/2014-15_Intake%20sub.pdf (viewed 23 March 2018); Robert Gruhn, “Can you please help me? How can we live?” *UnitingCare's emergency relief and crisis support for asylum seekers living in the community* (March 2014) UnitingCare Victoria and Tasmania. At <http://apo.org.au/node/39450> (viewed 23 March 2018); McAdam et al, Submission No 167 to the Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, 31 October 2014; United Nations High Commissioner for Refugees, Submission No 138 to the Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, 31 October 2014; Refugee Council of Australia, *Australia's Refugee and Humanitarian Program 2015–16: Community views on current challenges and future directions* (March 2015) 65–70. At <https://www.refugeecouncil.org.au/wp-content/uploads/2016/01/2015-16-IntakeSub.pdf> (viewed 23 March 2018); Jesuit Social Services, *The living conditions of people seeking asylum in Australia* (December 2015). At http://jss.org.au/wp-content/uploads/2015/12/Asylum_Seeker_Position_Paper_-_December_2015.pdf (viewed 23 March 2018); Refugee Council of Australia, *Eroding our identity as a generous nation: Community views on Australia's treatment of people seeking asylum* (December 2015). At <https://www.refugeecouncil.org.au/publications/eroding-identity-generous-nation-community-views-australias-treatment-people-seeking-asylum/> (viewed 23 March 2018); Kenny et al, ‘Mental health and legal representation for asylum seekers in the Legacy Caseload’ (2016) 82 *Cosmopolitan Civil Societies Journal* 4976; Refugee Council of Australia, *Australia's response to a world in crisis: Community views on planning for the 2016–17 Refugee and Humanitarian Program* (March 2016) 55–70, 79. At https://www.refugeecouncil.org.au/wp-content/uploads/2017/06/RCOA_intake-sub_2017_2018.pdf (viewed 23 March 2018); Procter et al, ‘Lethal hopelessness: Understanding and responding to asylum seeker mental deterioration’ (September 2016) *Shared Learning in Clinical Practice* 1; Australian Human Rights Commission, *Asylum seekers, refugees and human rights: Snapshot Report (2nd edition)* (2017) 22–30, 41–46. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/asylum-seekers-refugees-and-human-rights-snapsho-0> (viewed 23 March 2018); Refugee Council of Australia, *State of the Nation: Refugees and people seeking asylum in Australia* (February 2017) 8–15. At https://www.refugeecouncil.org.au/wp-content/uploads/2017/02/State_Nation_2017_FINAL.pdf (viewed 23 March 2018); United Nations High Commissioner for Refugees, *Fact sheet on the protection of Australia's so called 'Legacy Caseload' asylum seekers* (1 February 2018). At <http://www.unhcr.org/en-au/publications/legal/5ac5790a7/the-protection-of-australias-so-called-legacy-caseload-asylum-seekers.html> (viewed 11 April 2018); Sahar Okhovat, *With Empty Hands: How the Australian Government is forcing people seeking asylum to destitution* (June 2018) Refugee Council of Australia. At https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands_FINAL.pdf (viewed 28 June 2018); Lisa Hartley et al, *People seeking asylum in Australia: Access and support in higher education* (November 2018). At https://www.ncsehe.edu.au/wp-content/uploads/2018/11/Hartley_PeopleSeekingAsylum.pdf (viewed 31 January 2019).
- 4 Australia has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the International Convention for the Protection of All Persons from Enforced Disappearance.
- 5 *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) art 1(A); *Protocol relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).
- 6 United Nations High Commissioner for Refugees, *Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (December 2011) [28]. At <http://www.refworld.org/docid/4f33c8d92.html> (viewed 26 March 2018).
- 7 The Department of Home Affairs recently released a website that provides information that addresses recommendation 18, and as such this recommendation has been superseded. The Department brought this website to our attention after a draft of this report, prepared for consultation with the Department, was provided to the Department for comment in response to the report's recommendations. See, Department of Home Affairs, *Applying for a subsequent TPV or SHEV*. At <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-protection-785/applying-for-a-subsequent-tpv-or-shev> (viewed 28 May 2019). See section 4.3 of the full report for further information in relation to the superseded recommendation 18.

Further Information

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