UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: *3rd Cycle, 37th Session*

AUSTRALIA

I. BACKGROUND INFORMATION

Australia acceded to the *1951 Convention relating to the Status of Refugees* in 1954 and to its 1967 Protocol in 1973 (together, the *Refugee Convention*). Australia also acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) and the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 1973.

Australia has a developed refugee status determination (RSD) system involving avenues of review and appeal. The *Migration Act 1958 (Cth)* (*Migration Act*) constitutes the statutory basis for refugee status determination (RSD) and assessment of complementary protection needs in domestic law. The Department of Home Affairs is responsible for managing immigration to Australia, including the provision of asylum and resettlement.

In 2018-19, Australia received 24,566 permanent protection visa applications from asylum-seekers and 1,650 protection visas were granted.[1] Australia also granted 2,911 temporary protection visas to refugees who arrived by sea after August 2012.[2] In the 2018-19 financial year 17,112 offshore visas were also granted to resettled refugees and persons with special humanitarian concerns.[3]

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 2nd cycle UPR recommendation no. 136.24: "Ratify the Optional Protocol to the Convention against Torture and implement a National Preventative Mechanism."

Australia ratified the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (*OPCAT*) on 21 December 2017. Upon ratification, Australia made a declaration under Article 24 of *OPCAT* to postpone National Preventive Mechanism (NPM) obligations for three years. UNHCR welcomes the implementation of a systematic inspection regime across all places of detention, especially facilities accommodating asylum-seekers and refugees and notes that as of 31 March 2020, there were 1,313 people detained in immigration detention facilities across Australia, with 340 people having spent more than two years in detention.[4]

Linked to 2nd cycle UPR recommendation no. 136.259: "Develop alternative solutions to mandatory detention of asylum seekers, particularly in the case of children."

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[1] Department of Home Affairs, Onshore Humanitarian Program 2018–19: Delivery and outcomes for Non–Irregular Maritime arrival as at 30 June 2019, available at: https://www.homeaffairs.gov.au/research-and-stats/files/ohp-june-19.pdf.
[2] Department of Home Affairs, Answer provided to Senate Standing Committee on Legal and Constitutional Affairs Supplementary Budget Estimates, SE19/322, 21 October 2019, available at: https://www.aph.gov.au/Parliamentary_Business/Senate_estimates/legcon/2019-20_Supplementary_Budget_Estimates.
[3] Department of Home Affairs, Annual Report 2018-19, p. 208.
[4] Department of Home Affairs, Immigration Detention and Community Statistics Summary 31 March 2020, p.11, available at: https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf.

UNHCR acknowledges and welcomes action taken by Australia to significantly reduce the number of asylum-seeker and refugee children in immigration detention facilities, including through the transfer of children from Nauru and Papua New Guinea to Australia for medical treatment or to accompany family members.[5] UNHCR also welcomes steps taken by Australia to make greater use of alternatives to detention for thousands of asylum-seekers awaiting refugee status determination through the grant of bridging visas, which enable holders to remain in Australia lawfully while their substantive visa application is being processed.[6]

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Offshore processing arrangements in third countries

Linked to 2nd cycle UPR recommendation no. 136.278: "In line with its tradition as a resettlement country, reverse its policies of mandatory detention and offshore processing".

UNHCR acknowledges the complex challenges of mixed maritime movements faced by States in the region. In particular, UNHCR has long advocated for stronger regional and international cooperation to address mixed maritime movements in a way that respects the legitimate concerns of States, but also the individual protection and humanitarian needs of those who resort to dangerous travel, including by sea.

In addressing these challenges, UNHCR's general position is that asylum-seekers and refugees should ordinarily be processed in the territory of the State where they arrive, or which otherwise has jurisdiction over them. Any cooperation arrangements between States should be based on responsibility sharing for refugee protection in accordance with international law, in order to enhance protection in all concerned States and in the region as a whole.

With these general observations in mind, UNHCR has maintained its position that Australia remains jointly responsible (with Nauru and Papua New Guinea, respectively) for ensuring that the treatment of all asylum-seekers and refugees forcibly transferred by Australia to those countries is compatible with each State's respective obligations under the *Refugee Convention* and other applicable international human rights instruments.

While international law does not prohibit bilateral transfer arrangements involving asylum-seekers where relevant standards under international law are met, the primary responsibility for providing protection rests with the State from which asylum is sought. The transferring State is consequently under an obligation to ensure that conditions in a State to which asylum-seekers are transferred under such bilateral transfer arrangements are in accordance with relevant standards. Protections against arbitrary detention and access to adequate healthcare and other services are factors that bear upon both the appropriateness and legality of such arrangements. Transferring States also remain subject to the obligation of *non-refoulement*, and retain responsibility for other obligations under, and violations of, international refugee law and human rights law in certain circumstances.

UNHCR has conducted regular monitoring visits to Papua New Guinea and Nauru since the inception of the offshore transfer policy in 2012. These have included inspections of accommodation, detention facilities and medical facilities in Nauru, Manus Island and Port Moresby. During UNHCR's April 2016 visit to Manus Island, medical experts surveyed 181 refugees and asylum-seekers and found that 88 per cent were suffering from a depressive or

[5] As at 31 March 2020, there were less than five children in an immigration detention facility in Australia and 0 in a "regional processing centre" in Papua New Guinea and Nauru. See Department of Home Affairs, Immigration Detention and Community Statistics Summary 31 March 2020, p.11.
[6] As at 31 March 2020, 12,742 asylum-seekers who arrived by sea were residing in the community on Bridging E visa (BVE): Department of Home Affairs, Immigration Detention and Community Statistics Summary 31 March 2020, p.4.

anxiety disorder and/or post-traumatic stress disorder. A survey conducted during a visit to Nauru in the same period similarly indicated a prevalence of greater than 80 per cent.[7] UNHCR has observed on subsequent visits that the physical and psychological health of the remaining asylum-seekers and refugees has deteriorated since that time.

The health situation for refugees and asylum-seekers in both countries has been caused by a complex range of factors. Although many refugees have health needs that pre-dated their arrival in Australia – including health needs associated with the experience of persecution in their countries of origin – the cumulative impacts of protracted detention, inadequate psychosocial and mental health support, family separation and a lack of foreseeable long-term solutions to their situation of forced displacement have generated a profound sense of hopelessness and insecurity, and have led to the deterioration of the health of the vast majority of refugees and asylum-seekers since their transfer to Nauru and Papua New Guinea.

As at 2 March 2020, 439 transferred persons remained in Nauru and Papua New Guinea.[8] While the welcome relocation of refugees to the United States of America continues to provide a critical and permanent solution for those accepted,[9] some are likely to remain in Papua New Guinea and Nauru and in need of a solution. This includes those who have been determined not to be refugees and may be at risk of re-detention in Papua New Guinea but who are nonetheless unable to return to their countries of origin because protection concerns remain. As Australia retains responsibility for those transferred under its offshore arrangements, UNHCR urges Australia to find appropriate solutions, including by taking up the offer made by New Zealand in 2013 to resettle 150 refugees annually.

While UNHCR acknowledges and welcomes action taken by Australia to address the critical medical needs of persons transferred to Nauru and Papua New Guinea by evacuating asylum-seekers and refugees to Australia for medical treatment (or as accompanying family members),[10] in the absence of the now repealed "Medevac" legislation,[11] UNHCR urges Australia to continue utilising pre-existing legislative processes in a good faith effort to evacuate individuals in need of urgent medical treatment. UNHCR also urges Australia to release those who have been re-detained upon arrival in Australia, including persons found to be refugees and victims of torture and trauma.[12]

Recommendations:

[7] UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees*, Senate Legal and Constitutional Affairs Committee, Inquiry into the Serious Allegations of Abuse, Self-harm and Neglect of Asylum-seekers in Relation to the Nauru Regional Processing Centre, and any like Allegations in Relation to the Manus Regional Processing Centre, 12 November 2016, available at: https://www.refworld.org/docid/591597934.html

[8] 211 in Nauru and 228 in PNG: See Department of Home Affairs, Response to Senate Standing Committee on Legal and Constitutional Affairs, Additional Estimates, 2 March 2020, p.124, available at: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F9cba4477-60ef-40db-a537-241108688a6c%2F0000%22

[9] As at 1 March 2020, 702 refugees had been resettled to the United States. A further 260 people had received provisional approval. See: Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-309, available at: https://www.aph.gov.au/Parliamentary_Business/Senate_estimates/legcon/2019-20_Additional_estimates.

[10] During the period November 2012 to 31 July 2019, 1,343 individuals were transferred to Australia for medical treatment. See: Department of Home Affairs, Submission to the Inquiry into the Migration Amendment (Repairing Medical Transfers) Bill 2019, Senate Legal and Constitutional Affairs Legislation Committee, Submission 55, p. 5.

[11] Migration Amendment (Repairing Medical Transfers) Bill 2019. Further information available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6343

[12] As at 31 August 2019, there were 195 re-transferred persons detained in immigration facilities across Australia, some of whom have been re-detained in Australia in excess of two years. See: Department of Home Affairs, Answer provided to Senate Standing Committee on Legal and Constitutional Affairs Supplementary Budget Estimates, SE19/453, 21 October 2019, available at: https://www.aph.gov.au/Parliamentary_Business/Senate_estimates/legcon/2019-20_Supplementary_Budget_Estimates

UNHCR recommends that the Government of Australia:

a) Find appropriate solutions for people transferred under its offshore processing arrangements, including taking up the longstanding offer by New Zealand to resettle refugees and to prevent further harm;
b) Release from immigration detention those persons re-transferred to Australia from Papua New Guinea and Nauru;
c) Utilize pre-existing legislative processes to evacuate individuals in need of urgent medical treatment from Nauru and Papua New Guinea;
d) Regularize the status of re-transferred persons in Australia without any further delay; and
e) Not return those persons re-transferred to Australia from Papua New Guinea and Nauru for reasons of Australia's international legal obligations in respect of these refugees and asylum-seekers, including *non-refoulement* obligations.

Issue 2: Detention

Linked to 2nd cycle UPR recommendation no. 136.263: "End the policy of mandatory detention for all unauthorized arrivals, ensure that detention is only applied as a last resort, establish statutory time limits for detention and ensure access to an effective judicial remedy to review the necessity of detention."

UNHCR has longstanding and well-known concerns about the mandatory detention of asylum-seekers and refugees who arrive in Australia in an 'unauthorized' manner. UNHCR considers that any decision to detain a refugee, asylum-seeker or stateless person should be limited to the purposes authorized by international law and standards, namely identity, health and security checks carried out expeditiously, and be subject to administrative or judicial review.

While UNHCR notes that the *Migration Act* provides "as a principle that a minor shall only be detained as a measure of last resort", Australia continues to place children in immigration detention facilities.[13] UNHCR remains deeply concerned that a considerable number of refugees, asylum-seekers and stateless persons in Australia are currently in situations of protracted detention.

At the commencement of 2020, it appears more than half of the detention population in Australia comprised persons of concern under UNHCR's mandate. According to statistics provided by the Australian Government, of the 1,432 persons in held detention in January 2020,[14] 475 persons had previously sought asylum by lodging protection visa applications.[15] The average period of detention for such persons was 871 days (approximately 2.5 years).[16] However, some asylum-seekers, refugees and stateless persons in Australia have been detained for significantly longer than this average, with some up to twelve years and nearly sixty persons in detention for between six and eight years.[17] The annual number of protection visas and refugee visas cancelled on character grounds has been steadily

[13] As at 30 September 2019, there were less than five children (aged less than 18 years) in immigration detention. See: Department of Home Affairs, Immigration Detention and Community Statistics Summary 30 September 2019, p.9, available at: https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-september-2019.pdf.
[14] Department of Home Affairs, *Immigration Detention and Community Statistics Summary*, 31 January 2020, p. 4, available at: https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf.
[15] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-222. There were 46 stateless persons in held detention facilities as at 31 March 2020: Department of Home Affairs, Immigration Detention and Community Statistics Summary 31 March 2020, p.8.
[16] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-222.
[17] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-210.

increasing since 2013-14 and as at 31 December 2019, there were 217 refugees and humanitarian entrants in detention following visa cancellation on character and related grounds.[18]

Moreover, as at January 2020 there were 254 asylum-seekers and refugees medically evacuated from Papua New Guinea and Nauru held in detention in Australia.[19] These persons are statutorily prevented from lodging a valid visa application to regularise their status unless the Minister personally exercises his discretion to enable them to do so.[20] While the Minister has exercised his personal discretion to enable an additional 819 to reside in the community under a Residence Determination[21] and a further 148 to reside in the community on Bridging E visas,[22] a significant proportion have been determined to be refugees in need of international protection and yet remain in held detention.

Of particular concern to UNHCR is that the detention of people in this group does not appear to be based on any individualised assessment of what is a known population for the Government and some have now been re-detained in Australia in excess of three years, despite residing in the community prior to their transfer to Australia.[23] This is in addition to the years already spent in detention in harsh conditions in Nauru and Papua New Guinea.

Detaining authorities should, in UNHCR's view, make every effort to resolve cases in a timely manner, including through practical steps to identify and confirm the necessity of continued detention in conformity with international human rights law, and to pursue alternatives to detention wherever possible.

Recommendations:

UNHCR recommends that the Government of Australia:

a) Amend the *Migration Act* to remove the requirement for mandatory detention of 'unlawful non-citizens' and ensure that detention of asylum-seekers, refugees and stateless persons is only used as a measure of last resort;
b) If resorted to, ensure that a legal assessment of the individual circumstances is conducted to determine that detention is necessary, reasonable and proportionate, and that is applied for the shortest possible period;
c) Amend the *Migration Act* to ensure safeguards are in place to prevent arbitrary and indefinite detention. Any initial detention order should be systematically followed by a judicial or an independent administrative authority decision to release or continue detention, and any detention decision must be subjected to periodic review of the necessity to detain; and
d) Amend the *Migration Act* to prohibit the detention of non-citizen children unless unavoidable, and then only for the shortest possible duration.

Issue 3: <u>Interception and return of asylum-seekers</u>

[18] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-232
[19] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-125.
[20] Subsection 46B(1) of the *Migration Act 1958* (Cth) prevents a transitory person from making a valid application for a visa, for as long as they are an 'unlawful non-citizen', bridging visa holder or temporary protection visa holder. Transitory persons in detention are thus unable to make a valid visa application unless the subsection 46B(1) bar is lifted by the Minister.
[21] Under s 197AB of the *Migration Act* 1958 (Cth), the Minister has the power to make a residence determination for a person in immigration detention, permitting them to reside in the community at a specified address under specified conditions.
[22] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-123.
[23] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-125.

Linked to 2nd cycle UPR recommendation no. 136.284: "Adopt the necessary measures to put an end to the practice of interception and return of asylum seekers, in conformity with international refugee law and international human rights law"

UNHCR has consistently expressed its profound concern at the interception at sea of individuals who may be seeking Australia's protection and return arrangements that appear to be taking place without adequate consideration of an individual's need for protection. In December 2016, Australia signed a Memorandum of Understanding with the Government of Vietnam which provides a formal framework for the return of Vietnamese nationals. In September 2017, the Governments of Sri Lanka and Australia signed a formal arrangement to enhance counter people smuggling cooperation. Neither agreement has been made public and very few details of screening modalities have been released "in order to preserve operational security."[24] Moreover, the Australian Government does not monitor the situation of people once they have been returned.[25]

Since the commencement of Australia's military-led "Operation Sovereign Borders" on 18 September 2013 to March 2020, Australia has intercepted and returned 873 people from 38 vessels to their country of departure or to their home country.[26] Persons returned to Sri Lanka, Vietnam or Indonesia include Iranian, Iraqi, Somali, Syrian, Albanian and Myanmar nationals.

UNHCR shares Australia's commitment to reduce the loss of life at sea, as well as the risks of exploitation, abuse and violence facing individuals in the context of mixed maritime movements. However, efforts to address mixed movements and limit loss of life at sea must not jeopardize access to international protection for refugees, asylum-seekers and stateless people.

When boats carrying asylum-seekers are intercepted, UNHCR's position is that requests for international protection should be considered within the territory of the intercepting state, consistent with fundamental refugee protection principles. UNHCR considers that individuals who seek asylum must be properly and individually screened for protection needs, in a process which they understand and in which they are able to explain their needs. If protection issues are raised, they should be properly determined through a substantive and fair refugee status determination procedure to establish whether any one of them may be at risk of persecution or other serious human rights violations. Anything short of such a screening, referral and assessment may place already vulnerable individuals in grave danger upon return.

Recommendations:

UNHCR recommends that the Government of Australia:

a) Cease its practice of interception and returns and implement reception measures that comply with international law and standards; and
b) Renew efforts to strengthen regional cooperation efforts, including through the Bali Process and other fora to provide viable alternatives to dangerous boat journeys.

Issue 4: Fair and efficient asylum procedures

[24] Department of Home Affairs, Answer provided to Senate Standing Committee on Legal and Constitutional Affairs Supplementary Budget Estimates, SE18/143, 22 October 2018, available at: https://www.aph.gov.au/Parliamentary_Business/Senate_estimates/legcon/2018-19_Supplementary_Budget_Estimates.

[25] Department of Immigration and Border Protection, Senate Standing Committee on Legal and Constitutional Affairs, Budget Estimates Committee Hansard, 25 May 2015, p.120, available at: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F0c5973fa-5b41-457f-af39-57df2971a205%2F0000%22.

[26] Senate Legal and Constitutional Affairs Committee, Additional Estimates, 2 March 2020, Department of Home Affairs Portfolio, Question AE20-203.

Linked to 2nd cycle UPR recommendation no. 136.283: "Respect fully the principle of non-refoulement enshrined in the Convention relating to the Status of Refugees."

UNHCR acknowledges the difficulties inherent in the assessment of claims for refugee status and welcomes efforts intended to streamline procedures and bring clarity to such processes. In this regard, UNHCR recognizes and supports the need for fair and efficient asylum procedures, which are in the interests of both applicants and States. However, the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (the 2014 Act) made fundamental changes to diminish the way in which Australia processes claims for international protection and affords protection to persons found to be refugees.

For example, UNHCR remains deeply concerned by the absence of key procedural safeguards in the fast track review process, established in April 2015 for deciding visa applications lodged by asylum-seekers who arrived in Australia by boat after 13 August 2012 but before 1 January 2014, and who were not transferred to Nauru or Papua New Guinea to have their asylum claims processed.[27] This accelerated review process denies asylum-seekers the opportunity to attend a review hearing and the review authority can only consider new information that was not before the first instance decision-maker in exceptional circumstances. Moreover, some asylum-seekers will be excluded from review altogether. For instance, where the asylum-seeker's claims are assessed to be manifestly unfounded or where the review applicant has previously had access to effective protection in another country.

The fast track review body (Immigration Assessment Authority) set up by the 2014 Act finalised 2,382 cases in the 2018-19 financial year. Of these, only 184 decisions or eight per cent were successfully appealed and the average time taken to finalize a case has reduced to 23 days.[28] UNHCR considers that this fast track review process, which as at March 2020 had finalized 7,850 cases since commencement,[29] lacks appropriate safeguards and flexibility to ensure a fair and efficient protection assessment process to identify persons in need of international protection to prevent the risk of *refoulement*.

The 2014 Act also amended the statutory framework to provide that these asylum-seekers were only eligible to apply for temporary protection visas if the Minister for Home Affairs made a determination that it is in the public interest to lift the legislative bar preventing them from making a valid visa application. Those permitted to apply and determined to be refugees, would not be eligible to receive permanent protection. Rather, they would receive a newly created temporary protection visa, valid for three or five years' duration. These refugees, the majority of whom were not permitted to apply for asylum for a period of up to five years, are now required to repeatedly re-establish their eligibility for refugee status at three or five-year intervals in order to remain in Australia. Few refugee situations are resolved within a short period of time and periodic re-assessment of protection needs hinders a refugee's ability to integrate and positively contribute to society. Although international law recognizes that a refugee's need for international protection may end if there are fundamental and enduring changes in the home country, it is in the interests of neither refugees nor States to delay the local integration of refugees living in a country of asylum.

[27] See definition of "fast track applicant" in subsection 5(1) *Migration Act 1958*.
[28] Administrative Appeals Tribunal, Annual Report 2018-19, p. 72, available at: https://www.aat.gov.au/about-the-aat/corporate-information/annual-reports/2018-19-annual-report; Immigration Assessment Authority, Caseload Report 2018-19, available at: https://www.iaa.gov.au/IAA/media/IAA/Statistics/IAACaseloadReport2018-19.pdf.
[29] Immigration Assessment Authority (IAA), Decisions (1 July 2015 to 31 March 2020), IAA website available at: https://www.iaa.gov.au/IAA/media/IAA/Statistics/IAACaseloadReport2019-20.pdf.

Another significant concern for UNHCR is the prospect of long-term family separation as a result of Australia's temporary protection visa arrangements. It is government policy that refugees granted temporary protection are also not eligible to sponsor family members to migrate to Australia, including through the Humanitarian Program.[30] As current policy settings severely limit the opportunities for permanent residency and thus the ability to seek family reunion through regular channels, most refugees on temporary protection visas will be left separated from their immediate family for significant periods of time.

Recommendations:

UNHCR recommends that the Government of Australia:

a) Amend the *Migration Act* to repeal the fast track assessment process, which lacks appropriate safeguards and flexibility to ensure a fair and efficient protection assessment process to identify persons in need of international protection to prevent the risk of *refoulement*;
b) Repeal temporary protection visas so that persons found to be refugees are provided permanent protection;
c) Implement measures to enhance the accessibility of pathways to permanent residency for existing temporary protection visa holders; and
d) Facilitate family reunion for refugees and humanitarian entrants, irrespective of the type of visa held or mode of arrival.

Additional protection challenges

Issue 6: Protection and prevention of statelessness

As a State party, Australia is obliged to respect the rights of stateless persons guaranteed under the *1954 Convention*, including stateless asylum-seekers and their children. In 2011, at the *Ministerial Intergovernmental Event on Refugees and Stateless Persons* held in Geneva to commemorate the anniversary of the adoption of the *Refugee Convention* and the *1961 Convention*, the Government of Australia pledged to "better identify stateless persons and assess their claims" and to "continue to work with UNHCR, civil society and interested parties to progress this pledge."[31] However Australia has not yet established in its national law a statelessness status determination procedure to identify non-refugee stateless persons.[32]

Legislation currently before the Australian Parliament, proposes to amend the *Australian Citizenship Act 2007 (Cth)* to provide that, at the discretion of the Minister, a person who is a national or citizen of a country other than Australia, ceases to be an Australian citizen if they engage in certain conduct or they are convicted of a specified offence.[33] In making a determination with respect to cessation, the Minister must be satisfied that to do so would not result in the person becoming stateless. UNHCR considers that this represents a lowering of

[30] Department of Home Affairs, Response to the Australian Human Rights Commission Report - Lives in limbo: Protecting the human rights of refugees and asylum seekers in the 'Legacy Caseload', April 2019, available at: https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy.
[31] UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, pages 49-50, available at: http://www.refworld.org/docid/50aca6112.html.
[32] "Whilst the *1954 Convention* establishes the international legal definition of "stateless person" and the standards of treatment to which such individuals are entitled, it does not prescribe any mechanism to identify stateless persons as such. Yet, it is implicit in the *1954 Convention* that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments…recognition of statelessness plays an important role in enhancing respect for the human rights of stateless persons, particularly through access to a secure legal status and enjoyment of rights afforded to stateless persons under the *1954 Convention*." See UNHCR *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: http://www.refworld.org/docid/53b676aa4.html.
[33] Australian Citizenship Amendment (Citizenship Cessation) Bill 2019, available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6409

the existing threshold to be applied and would create a heightened risk that an individual could be rendered stateless, contrary to Australia's international obligations.

In addition to undermining Australia's ability to fulfil its obligations with respect to the prevention and reduction of statelessness, the prospect of the cessation of Australian citizenship in turn gives rise to a range of additional concerns associated with international legal obligations to protect against arbitrary and indefinite detention as well as *refoulement*. In the context of Australia's support for UNHCR's Global Campaign to End Statelessness by 2024, it is important that Australia not weaken its commitment to obligations it has accepted under relevant international instruments. [34]

Recommendations:

UNHCR recommends that the Government of Australia:

a) Implement a statelessness status determination procedure to ensure compliance with Australia's obligations under the *1954 Convention relating to the Status of Stateless Persons*;
b) Ensure that proposed amendments to the *Australian Citizenship Act 2007* are consistent with Australia's international legal obligations; and
c) Undertake a mapping study to establish the number and profile of stateless people in Australia.

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[34] UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, available at: http://www.refworld.org/docid/545b47d64.html.