

**Inquiry into the efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions**

**Senate Legal and Constitutional Affairs References Committee**

**Submission by the Office of the  
United Nations High Commissioner for Refugees**

**12 May 2021**

**I. INTRODUCTION**

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs References Committee in respect of its inquiry into the efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions. UNHCR's submission focuses particularly on the following terms of reference: eligibility for and access to family reunion for people who have sought protection in Australia; and the suitability and consistency of government policy settings for relevant visas with Australia's international obligations.
2. Many people fleeing persecution and conflict become separated from their families. They may have had to leave family members behind or to leave without being able to ensure or know if they are safe. They may become separated or lose track of each other during flight. Finding and reuniting with family members can be one of the most pressing concerns of asylum-seekers, refugees, and others in need of international protection. Following separation caused by forced displacement, family reunification procedures in the country of asylum is often the only way to ensure respect for the right to family unity.
3. Restoring family unity is a fundamental aspect of bringing back greater normality to the lives of refugees and others in need of international protection. It can ease the sense of loss felt by many who, in addition to family, have lost their country, network and life as they knew it. Family support in this sense goes beyond any traditional and cultural understanding of a family to include those who rely and depend on each other. Being able to bring family members to join refugees and other beneficiaries of international protection may well also be a mechanism to ensure their safety and protect them from danger.
4. In addition, being able to reunite with family members can play an essential role in helping beneficiaries of international protection rebuild their lives and provide

critical support as they adapt to new and challenging circumstances. It can fundamentally affect their ability to integrate in their new country and is often a crucial step in their integration. Ultimately it can help support broader economic and social cohesion. Accessible and prompt family reunification procedures also help promote safe and legal avenues to safety for family members, thereby helping reduce their exposure to the dangers of irregular movement and reducing demand for smugglers and the risk of trafficking.<sup>1</sup>

5. Under international law States have a range of responsibilities and obligations they need to meet if they are to ensure that the rights of refugees and other beneficiaries of international protection to family life and family unity are respected, protected and fulfilled. However, in Australia, several obstacles, as outlined below often make it difficult, if not impossible for this fundamental and essential right to be realized.

## II. UNHCR'S AUTHORITY

6. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees, and for assisting governments in seeking permanent solutions to the problem of refugees.<sup>2</sup> As set forth in the *Statute of the Office of the United Nations High Commissioner for Refugees*, UNHCR fulfils its international protection mandate by, inter alia, '[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.'<sup>3</sup> UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the *1951 Convention relating to the Status of Refugees*,<sup>4</sup> according to which State Parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention." The same commitment is included in Article II of the *1967 Protocol relating to the Status of Refugees* (1967 Protocol).<sup>5</sup>
7. UNHCR has specific additional international responsibilities for refugees who are stateless, pursuant to paragraphs 6(A)(II) of the Statute and Article 1(A)(2) of the Refugee Convention, both of which specifically refer to stateless persons who meet the refugee criteria. Moreover, in accordance with UN General Assembly resolutions 3274 XXIX<sup>6</sup> and 31/36,<sup>7</sup> UNHCR has been designated, pursuant to

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<sup>1</sup> UNHCR, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition, available at: <https://www.refworld.org/docid/5a902a9b4.html>.

<sup>2</sup> See *Statute of the Office of the United Nations High Commissioner for Refugees*, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1 (Statute).

<sup>3</sup> Statute, para. 8(a).

<sup>4</sup> UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>5</sup> UN General Assembly, *Protocol relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

<sup>6</sup> UN General Assembly, *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply*, 10 December 1974, A/RES/3274 (XXIX).

Articles 11 and 20 of the *1961 Convention on the Reduction of Statelessness* (the 1961 Statelessness Convention),<sup>8</sup> as the body to which a person claiming the benefits of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the appropriate authorities. In resolutions adopted in 1994 and 1995, the UN General Assembly entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.<sup>9</sup> UNHCR's statelessness mandate has continued to evolve as the UN General Assembly has endorsed the Conclusions of UNHCR's Executive Committee.<sup>10</sup>

8. Australia is a Contracting State to the *1951 Convention relating to the Status of Refugees* and its 1967 Protocol (together, the Refugee Convention), as well as the *1954 Convention relating to the Status of Stateless Persons* (the 1954 Statelessness Convention), and the 1961 Statelessness Convention. Through accession to these instruments, Australia has assumed international legal obligations in relation to refugees, asylum-seekers and stateless persons in accordance with their provisions.

### III. THE RIGHT TO FAMILY LIFE AND FAMILY UNITY IN INTERNATIONAL LAW

9. The legal framework on which the right to family life and to family unity is based is contained in numerous provisions in international human rights law, international humanitarian law, and international refugee law. Under international human rights law, the family is recognized as the fundamental group unit of society and as entitled to protection and assistance in Article 16(3) of the 1948 Universal Declaration of Human Rights (UDHR);<sup>11</sup> in Article 23(1) of the 1966 International Covenant on Civil and Political Rights (ICCPR);<sup>12</sup> and in Article 10(1) of the 1966 International Covenant on Economic, Social and Cultural Rights

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<sup>7</sup> UN General Assembly, *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply*, 30 November 1976, A/RES/31/36.

<sup>8</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175.

<sup>9</sup> UN General Assembly resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI), *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, 20 October 1995.

<sup>10</sup> Executive Committee Conclusion No. 90 (LII), Conclusion on International Protection, 5 October 2001, para. (q); Executive Committee Conclusion No. 95 (LIV), General Conclusion on International Protection, 10 October 2003, para. (y); Executive Committee Conclusion No. 99 (LV), General Conclusion on International Protection, 8 October 2004, para. (aa); Executive Committee Conclusion No. 102 (LVI), General Conclusion on International Protection, 7 October 2005, para. (y); Executive Committee Conclusion No. 106 (LVII), Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, paras. (f), (h), (i), (j) and (t); all of which are available in: [Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 \(Conclusion No. 1 – 114\)](#), October 2017.

<sup>11</sup> 9 UN General Assembly (UNGA), Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>. See also UNHCR Executive Committee (ExCom), Protection of the Refugee's Family, 8 October 1999, Conclusion No. 88 (L) - 1999, available at: <http://www.refworld.org/docid/3ae68c4340.html> using the same language.

<sup>12</sup> 0 UNGA, International Covenant on Civil and Political Rights, 16 December 1966, UNTS, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

(ICESCR).<sup>13</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) contains similar language,<sup>14</sup> as do the preambles to the 1989 Convention on the Rights of the Child (CRC)<sup>15</sup> and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).<sup>16</sup>

10. The rights set out in international human rights law, including those relating to family life and family unity, are applicable to everyone, including refugees, asylum-seekers, and others in need of international protection.<sup>17</sup> An overarching principle of international human rights law is the principle of non-discrimination. The principle of non-discrimination requires that similarly situated individuals should enjoy the same rights and receive similar treatment. This includes measures impacting upon individuals' right to family life and family unity, regardless of their immigration or other status, except where such distinctions can be objectively justified.
11. International humanitarian law contains the most detailed family unification provisions in general international law. In addition to provisions aimed at maintaining family unity during internment or evacuation,<sup>18</sup> the Fourth Geneva Convention provides for mechanisms such as family messages, tracing of family members, and registration of children<sup>19</sup> to enable family communication and, "if possible", reunification.
12. By the time of the first Additional Protocol in 1977, States were willing to strengthen their responsibility towards separated families by accepting the obligation to facilitate family reunification "in every possible way",<sup>20</sup> while the second Additional Protocol states that "[a]ll appropriate steps shall be taken to facilitate the reunion of families temporarily separated".<sup>21</sup>
13. With respect to international refugee law, the 1951 Convention does not specifically refer to the family. The Final Act of the Conference of Plenipotentiaries

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<sup>13</sup> UNGA, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UNTS, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>.

<sup>14</sup> UNGA, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158, available at: <http://www.refworld.org/docid/3ae6b3980.html>, Article 44.

<sup>15</sup> UNGA, Convention on the Rights of the Child, 20 November 1989, UNTS, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>.

<sup>16</sup> UNGA, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Annex I, available at: <http://www.refworld.org/docid/4680cd212.html>.

<sup>17</sup> Only a few rights, such as the right to vote, are reserved for citizens under these instruments.

<sup>18</sup> International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, available at: <http://www.refworld.org/docid/3ae6b36d2.html>, Articles 82 and 49 respectively.

<sup>19</sup> Fourth Geneva Convention, 1949, Articles 25, 140, and 50 respectively.

<sup>20</sup> ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, available at: <http://www.refworld.org/docid/3ae6b36b4.html>, Article 74.

<sup>21</sup> ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of NonInternational Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, available at: <http://www.refworld.org/docid/3ae6b37f40.html>, Article 4(3)(b).

at which the Convention was adopted nevertheless agreed a specific and strongly worded recommendation:

“Considering that the unity of the family ... is an essential right of the refugee and that such unity is constantly threatened, [it] [r]ecommends Governments to take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the family is maintained ... [and for] the protection of refugees who are minors, in particular unaccompanied children and girls, with particular reference to guardianship and adoption”.<sup>22</sup>

14. More recently, on 19 September 2016 the UN General Assembly adopted the New York Declaration for Refugees and Migrants to address the question of large movements of refugees and migrants. The States which voted for the Declaration – including Australia – declared their ‘profound solidarity with, and support for, the millions of people in different parts of the world who, for reasons beyond their control, are forced to uproot themselves and their families from their homes’ and that they would consider the adoption of ‘flexible arrangements to assist family reunification.’<sup>23</sup>
15. Building on this, when the United Nations General Assembly affirmed the Global Compact on Refugees on 17 December 2018 to create a framework for more predictable and equitable responsibility-sharing, it relevantly noted that the three-year strategy on resettlement would include complementary pathways for admission to increasing significantly their availability and predictability. To this end, contributions would be sought from States to facilitate effective procedures and clear referral pathways for family reunification, amongst others.<sup>24</sup>
16. In line with the multi-stakeholder and whole-of-society approach required to achieve the goals of the three-year strategy, governments in receiving countries are being encouraged to open up existing or establish new protection sensitive family reunification, employment or education pathways for refugees, including through removing legal, administrative, and physical barriers limiting refugee access.<sup>25</sup>

#### **IV. OBSTACLES TO THE ENJOYMENT OF THE RIGHT TO FAMILY LIFE AND FAMILY UNITY IN THE CONTEXT OF THE FAMILY REUNIFICATION OF REFUGEES IN AUSTRALIA**

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<sup>22</sup> UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, available at: <http://www.refworld.org/docid/40a8a7394.html>.

<sup>23</sup> See UNGA, New York Declaration for Refugees and Migrants: Resolution adopted by the General Assembly, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html>, para. 79 and Annex 1, para 14(a).

<sup>24</sup> UN General Assembly, *Report of the United Nations High Commissioner for Refugees: Part II Global compact on refugees*, 2 August 2018, A/73/12 (Part II), available at: [https://www.unhcr.org/gcr/GCR\\_English.pdf](https://www.unhcr.org/gcr/GCR_English.pdf)

<sup>25</sup> UNHCR, *Three-Year Strategy on Resettlement and Complementary Pathways (2019-2021)*, available at: <https://www.unhcr.org/protection/resettlement/5d15db254/three-year-strategy-resettlement-complementary-pathways.html>



### *Restrictions on family reunification for those who arrived by sea*

17. Australian Government policy significantly restricts the right to family unity for refugees and other beneficiaries of international protection who arrived by sea without a valid visa. Refugees arriving in Australia *on or after 13 August 2012* are not eligible to propose any family under Australia's Humanitarian Program.<sup>26</sup> Refugees who arrived *before 13 August 2012* may do so, but their applications are given the lowest priority for processing unless special circumstances of a compassionate nature exist and there are compelling reasons to depart from the order of priority.<sup>27</sup>
18. Refugees and asylum-seekers who travelled to Australia by sea to seek protection *after 19 July 2013*, and who were transferred to offshore processing facilities in Papua New Guinea and Nauru, have been prevented by Government policy from permanently settling in Australia and thereby reuniting with family members in Australia. This has resulted in situations where immediate family members are separated indefinitely between Australia and Nauru or Papua New Guinea and other third countries such as the United States. Those who continue to remain in held detention in Australia – like so many other refugees and stateless persons in Australia, continue to be separated from immediate family, awaiting exercise of the Minister's personal non-compellable discretionary powers to be granted a visa or conditionally released into the community.<sup>28</sup>
19. Such policies bar refugees arriving by sea from being able to enjoy their right to family life, since they are unable to enjoy family life in their country of origin, despite States' obligations under international law to ensure respect for the right to family life and family unity. Such policies also raise questions as to whether the principle of non-discrimination, which requires that similarly situated individuals should enjoy the same rights and receive similar treatment, is being upheld. This principle applies in relation to measures impacting individuals' right to family life and family unity, regardless of their immigration or other status, except where such distinctions can be objectively justified.<sup>29</sup> Moreover, such policies raise concerns with respect to Article 31(1) of the 1951 Convention which prohibits the penalization of refugees for their illegal entry or stay.<sup>30</sup>
20. Similarly, refugees who travelled to Australia by sea or air without a valid visa and are granted temporary protection visas are precluded from sponsoring family

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<sup>26</sup> Department of Home Affairs, 'About the Program: Eligibility', available at:

<https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/about-the-program/resettle-in-australia>

<sup>27</sup> Ministerial Direction No. 80, Order for considering and disposing of Family visa applications under s47 and 51 of the Migration Act 1958, 12 December 2018.

<sup>28</sup> *Migration Act 1958 (Cth)*, sections 195A and 197AB.

<sup>29</sup> UNHCR, "The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied", F. Nicholson, Protection Policy and Legal Advice Series, December 2017, section 2.1.2, available at: <http://www.refworld.org/docid/5a3ce9604.html>.

<sup>30</sup> See also: Human Rights Law Centre, *Together in Safety*, April 2021, available at:

[https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6082667935d08840b1aabee8/1619158657519/HRLC Together in Safety REPORT.pdf](https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6082667935d08840b1aabee8/1619158657519/HRLC+Together+in+Safety+REPORT.pdf).

members.<sup>31</sup> As at March 2021, more than 18,000 applications for temporary protection had been granted to refugees who arrived by sea.<sup>32</sup> While such legal status provides temporary protection, beneficiaries are required to re-apply for another temporary visa every three or five years, thereby effectively denying visa holders permanency of legal status.

21. Moreover, family members of temporary protection visa holders, often living in extremely vulnerable situations in third countries, are thus also not eligible for consideration to be resettled to Australia. Sadly, UNHCR has first-hand knowledge of countless families denied reunification in the most compelling of circumstances, such as the case of a refugee father on a temporary visa who was unable to sponsor his vulnerable minor children living in a third country to join him in Australia when their mother died in tragic circumstances. Or the case of a vulnerable woman with her young child living in a third country who had to be resettled to the other side of the world to secure safety as she was not permitted to join her husband living in Australia on a temporary visa.
22. The Government's position has been that "temporary protection visa holders will be able to voluntarily depart and return to their family and country of origin or any other country they have permission to enter at any time, and may particularly wish to do so where circumstances in their country of origin have changed".<sup>33</sup> Unfortunately, over the last decade there has been a major negative shift in global displacement. As wars and conflicts have dragged on there are more people seeking refuge and fewer refugees being able to access solutions such as returning home to rebuild their lives.<sup>34</sup>
23. Australian Government policy also provides that asylum-seekers and refugees who registered with UNHCR in Indonesia *on or after 1 July 2014* are not eligible for resettlement to Australia.<sup>35</sup> With no exemptions for compelling cases, this policy has led to family members being permanently separated between Australia and Indonesia. While refugees who registered before 1 July 2014 are eligible for consideration for resettlement to Australia, the Australian Government has reduced the number of places allocated and applied additional eligibility

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<sup>31</sup> Scott Morrison (then Minister for Immigration and Border Protection), Second Reading Speech, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, 25 September 2014, available at:

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fa526371b-b2dd-4037-ba7a-649c0c3fb696%2F0021%22>.

<sup>32</sup> Department of Home Affairs, *IMA Legacy Caseload Report on Processing Status and Outcomes*, March 2021, p. 5, available at: <https://www.homeaffairs.gov.au/research-and-stats/files/ima-legacy-caseload-march-2021.pdf>.

<sup>33</sup> Statement of Compatibility with Human Rights, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, p. 12, available at:

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5346\\_ems\\_a065619e-f31e-4284-a33e-382152222022/upload\\_pdf/14209b01EM.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5346_ems_a065619e-f31e-4284-a33e-382152222022/upload_pdf/14209b01EM.pdf;fileType=application%2Fpdf)

<sup>34</sup> UNHCR, *Global Trends Forced Displacement in 2019*, pp. 50-51, available at: <https://www.unhcr.org/globaltrends2019/>.

<sup>35</sup> Scott Morrison (then Minister for Immigration and Border Protection), *Changes to resettlement another blow to people smugglers*, media release, 18 November 2014 available at:

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F3514311%22>.

considerations, thereby creating considerably longer waiting periods for those seeking to be reunited with family in Australia.

24. Tragically, this policy has resulted in significant hardship for numerous families split indefinitely between Indonesia and Australia. For example, UNHCR is aware of a young female refugee living in Indonesia with her child and parents-in-law. As a single woman, it remains an enormous challenge for her to take care of her elderly parents-in-law and her young son. While her husband, residing in regional Australia has made several efforts for family reunification, his efforts have not been successful due to Australia's cut-off date policy and his temporary protection status. Due to their vulnerability, they have been determined to be in need of resettlement from Indonesia, but sadly resettlement to a third country will only perpetuate the separation of this family.

#### *Family reunification under Australia's Humanitarian Program*

25. For those who travelled to Australia with a valid visa, the primary avenue through which refugees and other beneficiaries of international protection seek to reunite with family members under the Humanitarian Program is the Special Humanitarian Program (SHP) or 'split family' provisions. Currently, for an applicant to be eligible for a visa under what is known as the 'split family' provisions, a number of criteria must be satisfied: an individual proposer must be an Australian citizen or permanent resident; the main applicant must be a member of the proposer's immediate family;<sup>36</sup> the proposer must have declared this relationship before the grant of their visa; and the application must be made within five years of the grant of the proposer's visa. Also, eligibility is restricted to holders of permanent protection visas or permanent humanitarian visas (including through the SHP).<sup>37</sup>
26. The SHP was established in 1981 for the entry of members of minority groups fleeing substantial discrimination or avoiding significant violation of human rights in their homelands.<sup>38</sup> Those accepted would "generally be able to demonstrate a personal claim on Australia by virtue of having close relatives

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<sup>36</sup> A member of the proposer's 'immediate family' may include: their spouse or de facto partner; dependent children;<sup>36</sup> and parents (if the proposer is under 18 years of age). If other family members wish to apply for a humanitarian visa, they must be a "member of the family unit" of the proposer. A "member of the family unit" comprises a spouse or de facto partner, a dependent child (of the main applicant and/or their partner), a dependent child of a dependent child, and a relative of the main applicant (or their partner) who does not have a spouse or de facto partner, is usually resident in the household and is dependent on the main applicant. The cases of these so-called "non-split family" cases are first assessed to determine whether they are "financially, psychologically or physically dependent on the main applicant". If a claimed family member does not meet the definition of member of the family unit or member of the immediate family, that applicant is separated administratively from the original application, given their own file and considered against primary criteria in their own right: Department of Home Affairs, PAM3: Refugee and Humanitarian - Offshore humanitarian program - Visa application and related procedures, pp. 48-52.

<sup>37</sup> Under the 'split family' provisions, holders of permanent Protection visa (subclass 866); or permanent humanitarian visa (subclasses 200, 201, 202, 203 or 204); or Resolution of Status (Class CD) visa (subclass 851) may support the applications of family members to enter Australia under the Humanitarian Program.

<sup>38</sup> Ian MacPhee (then Minister for Immigration and Ethnic Affairs), House of Representatives, *Debates*, 18 November 1981, available at:

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F1981-11-18%2F0167%22>.



settled here, close former ties with us or, for a small number, a strong and well established community here which is well organised and able and willing to provide all necessary settlement support".<sup>39</sup> For the purposes of considering eligibility, the views of UNHCR were also originally intended to be taken into account. While the program has evolved over time, the SHP was arguably never designed to be a principle family reunification mechanism for beneficiaries of international protection residing in Australia.

27. Historically, demand under the SHP has far exceeded the number of visas available for grant each year.<sup>40</sup> For example, in the 2019-20 fiscal year, there were 40,000 visa applications lodged under the SHP and only 5,000 visa grants, including grants to non-family reunification applicants and grants to those with the financial means who applied through the Community Support Program (CSP).<sup>41</sup> While access to documentation and the costs associated with proposing family members under the CSP has created significant barriers for some, the Government's decision in 2020 to reduce the size of Australia's Humanitarian Program from 18,750 places to 13,750 will likely even further impede the availability of family reunification for refugees and other beneficiaries of international protection in Australia.<sup>42</sup> With only 33 SHP visa grants to applicants proposed by refugees holding permanent protection visas or resolution of status visas in 2018-19 and only 19 visas granted the year before,<sup>43</sup> some refugees have reportedly been waiting in excess of ten years to be reunited with their spouses and children.<sup>44</sup>
28. As previously mentioned, while refugees on permanent visas are eligible to sponsor family members through the family stream of the regular Migration Program, a combination of factors including high costs, restrictive eligibility criteria, and onerous documentation requirements will effectively preclude access for many.<sup>45</sup> Moreover, applicants will similarly experience significant delays in processing times, especially those whose applications are de-prioritized.<sup>46</sup>

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<sup>39</sup> Ibid.

<sup>40</sup> For 2019–20, Australia's annual Humanitarian Program was set at 18,750 places, with a minimum of 17,100 places for the offshore component of the program: Department of Home Affairs, Australia's Offshore Humanitarian Program: 2019–20, available at: <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf>. Note also changes to the *Migration Act 1958* made by *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* which enables the Minister to place a statutory cap on the number of protection visas granted in a program year which also delays eligibility for permanent protection visa applicants.

<sup>41</sup> Ibid. The Community Support Program enables communities and businesses, as well as families and individuals, to propose applicants with employment prospects (and their families) and to support their settlement in Australia. Only Approved Proposing Organisations (APOs) may propose people for entry to Australia in the Community Support Program.

<sup>42</sup> Commonwealth of Australia, Budget Measures, Budget Paper No. 2 2020–21, 6 October 2020, p. 108, available at: [https://budget.gov.au/2020-21/content/bp2/download/bp2\\_complete.pdf](https://budget.gov.au/2020-21/content/bp2/download/bp2_complete.pdf).

<sup>43</sup> The Department of Home Affairs, Response provided to Senate Standing Committee on Legal and Constitutional Affairs, Supplementary Budget Estimates, 21 October 2019, SE19/163 Global Special Humanitarian (Subclass 202) Visas.

<sup>44</sup> Rebekah Holt, *Australia's 'lowest priority': The men waiting a decade to reunite with their families*, SBS News, 14 April 2021, available at: <https://www.sbs.com.au/news/australia-s-lowest-priority-the-men-waiting-a-decade-to-reunite-with-their-families/be4ea612-488f-4725-b704-06e214d2b9ad>.

<sup>45</sup> Australian Human Rights Commission, *Pathways to Protection: A human rights-based response to the flight of asylum seekers by sea*, September 2016, pp. 38-44, available at: <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/pathways-protection-human-rights-based-response>; Refugee

## V. CONCLUDING REMARKS AND RECOMMENDATIONS

29. Many States, including Australia, generally situate the reunification of the families of beneficiaries of international protection within the framework of immigration and border control. Yet the situation of beneficiaries of international protection is fundamentally different from that of other migrants, since they are unable to enjoy family life in their country of origin. Family reunification in the country of asylum is for refugees the only means by which family life can be resumed. Ensuring their reunification in the country of asylum is therefore also a question of protection and humanitarian values, of respecting the right to family life and family unity, ensuring the best interest of the child are a primary consideration, and supporting families' integration into their new societies.
30. Accordingly, UNHCR strongly urges Australia to urgently remove all discriminatory restrictions imposed on refugees accessing family reunification mechanisms imposed on the basis of manner or date of arrival; place of processing (Australia/Nauru/Papua New Guinea); or legal status in Australia. UNHCR also strongly recommends that Australia lift the restriction imposed on applications received from persons registered in Indonesia after 1 July 2014. These policies are punitive, cruel and at variance with Australia's obligations under international law.
31. While acknowledging that Australia has processes in place to facilitate family reunification for some beneficiaries of international protection, UNHCR strongly urges Australia to expand eligibility to all refugees and other beneficiaries of international protection (as above) and strengthen such mechanisms to achieve an effective and efficient family reunification program so that forcibly displaced families can come together as soon as possible. To this end, UNHCR recommends consideration of the following:
- **Legal requirements should not present insurmountable obstacles** – this involves limitations imposed as a result of the manner of arrival, fees imposed, or status granted. Other restrictions include the time frame within which applications may be submitted, discriminatory processing priorities, documentation, income, and health requirements that may be imposed.
  - **The adoption of procedures that are expeditious, flexible, transparent, and efficient** – This involves tackling practical obstacles, including ensuring prompt communication with applicants about the processing of their application; facilitating the issuance of visas and admission;

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Council of Australia, *Addressing the pain of separation for refugee families*, 26 December 2019, available at: <https://www.refugeecouncil.org.au/family-separation/>.

<sup>46</sup> For example, currently the Partner Visa (subclass 309) takes over 20 months for an application to be finalized: Department of Home Affairs, Visa processing times, available at: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/global-visa-processing-times>; Ministerial Direction No. 80, Order for considering and disposing of Family visa applications under s47 and 51 of the Migration Act 1958, 12 December 2018.

instituting streamlined processing for vulnerable, hardship cases so that any eventual approval does not come too late; and considering ways to contain costs by ensuring fees are moderate, permitting their payment in stages, or supporting a travel fund to assist with the travel costs for the admission of relatives.

- **The adoption of a flexible family definition** – This involves acknowledging the many shapes and sizes in which families come, the different cultural practices and understandings of family, the impact of displacement on family composition and recognizing the concept of dependency that applies not only in the financial and economic context but also in emotional and psychological terms.<sup>47</sup>
- **Ensuring the best interests of the child** are a primary consideration and that child beneficiaries of international protection are not disadvantaged as regards family reunification but are rather able to reunite promptly with their parents and other family members, where this is in their best interests. Also noting that under Article 10 of the Convention on the Rights of the Child, States parties are to ensure that applications for family reunification are dealt with in a positive, humane and expeditious manner, including facilitating the reunification of children with their parents.<sup>48</sup>

United Nations High Commissioner for Refugees  
12 May 2021

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<sup>47</sup> See also: UNHCR, *UNHCR Resettlement Handbook*, 2011, July 2011, p. 178, available at: <https://www.refworld.org/docid/4ecb973c2.html> “Dependency infers that a relationship or a bond exists between family members, whether this is social, emotional or economic. For operational purposes, with regard to the active involvement of UNHCR offices in individual cases, the concept of dependant should be understood to be someone who depends for his or her existence substantially and directly on any other person, in particular for economic reasons, but also taking social or emotional dependency and cultural norms into consideration.”

<sup>48</sup> UNGA, Convention on the Rights of the Child, 20 November 1989, UNTS, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>. See also: UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, pp. 9-10, available at: <https://www.refworld.org/docid/5a2fa3e44.html>.