

**Submission by the United Nations High Commissioner for Refugees**  
**For the Office of the High Commissioner for Human Rights' Compilation Report**  
**Universal Periodic Review: Fourth Cycle, 51st Session**

## AUSTRALIA

### I. BACKGROUND INFORMATION

Australia is party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter collectively referred to as the Refugee Convention), 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).

While Australia is bound by Conventions to which it is a State party, it is important to note that they only form part of Australia's domestic law to the extent that they are incorporated through legislation. This dynamic can give rise to tension between international obligations entered into but not given effect in national law; it also means that international obligations can be reflected, withdrawn or amended through acts of Parliament. This, in turn, affects refugees' and asylum-seekers' effective enjoyment of their rights under international law

The *Migration Act 1958* (Cth) (Migration Act) constitutes the statutory basis for refugee status determination and assessment of complementary protection needs in domestic law. Refugee status is not independently recognized, and thus depends upon the grant of a visa under the legislation. As such, it can also be revoked. This can create significant risks to individuals and poses risks of non-compliance with international law, should a visa be cancelled on grounds unrelated to loss of refugee status under the Refugee Convention.

Contrary to the Refugee Convention, which makes no such distinction, access to seek asylum in Australia is contingent upon means of arrival. Since 2013, anyone arriving irregularly by sea is not only subject to removal and offshore processing (currently in Nauru, pursuant to a bilateral arrangement<sup>1</sup>), but also barred from seeking protection or solutions in Australia.<sup>2</sup> This remains the case even if a transferred individual is returned to Australia on medical evacuation or other grounds.

Recent data indicates that, in the 2023-24 financial year, Australia granted 3,250 permanent protection visas to refugees already present in Australia, and 16,750 visas to refugee and humanitarian entrants located overseas.<sup>3</sup> Ad hoc temporary protection regimes have been implemented in response to some emergency situations, including short-term visitor visas for people fleeing the conflict in Gaza and the Palestinian Territories. In addition, a small number of individuals were granted temporary protection valid for three to five years.<sup>4</sup>

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<sup>1</sup> The current arrangement underpinning transfers for offshore processing was confirmed in an "enduring" form by both States in 2021. See: Joint media release by Hon Karen Andrews MP and Hon Lionel Aingimea, 24 September 2021, available at: <https://minister.homeaffairs.gov.au/KarenAndrews/Pages/maritime-people-smuggling.aspx>. The earlier Memorandum of Understanding (MOU) between Australia and Nauru regarding the transfer and assessment of asylum seekers was signed on August 29, 2012: Archived version available at: <https://web.archive.org/web/20170320214234/http://www.kaldorcentre.unsw.edu.au/sites/default/files/MOU%202.pdf>.

<sup>2</sup> On 19 July 2013, the Australian Government implemented a policy barring permanent settlement in Australia for those arriving irregularly by sea. Those arriving from that date onwards remained subject to offshore processing and, if found to be a refugee, would be settled in Nauru, PNG or a third country. In December 2014, the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) formalized this arrangement by excluding "unauthorised maritime arrivals" from eligibility for permanent Protection Visas and providing for Temporary Protection Visas (valid for three years) and Safe Haven Enterprise Visas (valid for five years).

<sup>3</sup> Department of Home Affairs, *Australia's Offshore Humanitarian Program 2023-24*, p. 4, available at: <https://www.homeaffairs.gov.au/research-and-stats/files/aus-offshore-humanitarian-program-2023-24.pdf>

<sup>4</sup> Precise figures not available in data officially released by government.

## II. KEY RECOMMENDATIONS

### Issue 1: Externalization of international protection obligations

As mentioned above, asylum-seekers who arrive by sea without authorization are arbitrarily detained and liable under Australian law to transfer to a ‘regional processing country’ (formerly both Papua New Guinea and Nauru,<sup>5</sup> currently only Nauru) for the processing of their asylum claims and if found to be refugees or in need of international protection, settlement in a country other than Australia.<sup>6</sup> Those transferred may be detained, and Australian law precludes any asylum-seeker who arrived by sea on or after 19 July 2013 from being settled in Australia if found to be a refugee.<sup>7</sup>

UNHCR’s longstanding position<sup>8</sup> is that Australia’s bilateral transfer arrangements reflect an impermissible externalization<sup>9</sup> of its international protection obligations.

In October 2024, the UN Human Rights Committee found<sup>10</sup> that the authors of two complaints who had been transferred to Nauru by Australia, including 24 unaccompanied minors, had been arbitrarily detained and suffered other human rights violations.<sup>11</sup> The Committee also affirmed that Australia remained responsible for those transferred offshore, consistent with UNHCR’s long-held position.<sup>12</sup> UNHCR understands that Australia is yet to respond to those decisions, which require Australia to provide adequate compensation to the victims and to take steps to ensure that similar violations do not recur.<sup>13</sup>

Australia maintains its regional processing arrangements with Nauru after Australia ended its transfer arrangement with Papua New Guinea in 2021.<sup>14</sup> UNHCR understands that 93 individuals intercepted since 2023 are currently on Nauru for assessment of their asylum claims by the Government of Nauru. Of those previously transferred to Papua New Guinea, after UNHCR’s efforts to resettle more than 600, some 37 transferred individuals remain in Papua New Guinea in need of a solution.

UNHCR’s statute charges the High Commissioner with responsibility for supervising the application of international refugee law,<sup>15</sup> and States Parties to the Refugee Convention

<sup>5</sup> Australia’s processing arrangements with PNG ceased on 31 December 2021. K Andrews (Former Minister for Home Affairs), Joint media release with the Hon. Westly Nukundj MP, ‘Finalisation of the Regional Resettlement Arrangement’, 6 October 2021, available at: <https://minister.homeaffairs.gov.au/KarenAndrews/Pages/finalisation-of-the-regional-resettlement-arrangement.aspx>.

<sup>6</sup> Section 198AD (2) of the Migration Act requires that “an officer must, as soon as reasonably practicable, take an unauthorised maritime arrival to whom this section applies from Australia to a regional processing country.”

<sup>7</sup> See note 2 above.

<sup>8</sup> See a listing of UN and UNHCR positions and observations on Australia’s transfer arrangements with Nauru and PNG available here: <https://www.unhcr.org/au/publications/united-nations-observations-australias-transfer-arrangements-nauru-and-papua-new>.

<sup>9</sup> States may make arrangements with other States to ensure international protection, as long as these arrangements enhance responsibility sharing—as opposed to responsibility shifting—and guarantee access to all relevant rights. As such, efforts to ‘share responsibility’ for the international protection needs of persons seeking international protection may constitute illegal externalization where they: (1) involve inadequate safeguards to guarantee that protection; or (2) effectively shift, minimize or avoid responsibility for identifying or meeting international protection needs. See, UNHCR, *UNHCR Note on the “Externalization” of International Protection*, 28 May 2021, <https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534>.

<sup>10</sup> *M.I. et al. v Australia*, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F142%2FD%2F2749%2F2016&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F142%2FD%2F2749%2F2016&Lang=en); and *Nabhari v Australia*, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F142%2FD%2F3663%2F2019&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F142%2FD%2F3663%2F2019&Lang=en)

<sup>11</sup> Office of the High Commissioner for Human Rights, “Australia responsible for arbitrary detention of asylum seekers in offshore facilities UN Human Rights Committee finds”, 9 January 2025, available at: <https://www.ohchr.org/en/press-releases/2025/01/australia-responsible-arbitrary-detention-asylum-seekers-offshore-facilities>.

<sup>12</sup> UNHCR, Press release: UN ruling on Australia’s responsibility for people transferred to Nauru, 16 January 2025, available at: <https://www.unhcr.org/asia/news/press-releases/un-ruling-australia-s-responsibility-people-transferred-nauru>.

<sup>13</sup> See summary information available at: <https://www.ohchr.org/en/press-releases/2025/01/australia-responsible-arbitrary-detention-asylum-seekers-offshore-facilities>.

<sup>14</sup> Nauru was previously designated as a regional processing country for the purposes of the Migration Act from 1 September 2012 to 1 October 2022, at which time the relevant legislative instrument terminated. A new legislative instrument commenced on 7 February 2023. See note 1 above.

<sup>15</sup> *Statute of the Office of the United Nations High Commissioner for Refugees*, Annex to General Assembly Resolution 428 (V), 14 December 1950, para 8.

undertake per article 35 to cooperate with UNHCR in the performance of its functions. This includes the requirement that UNHCR be permitted unhindered access to refugees and asylum-seekers and locations where asylum processes are undertaken. Under its mandate, UNHCR has conducted monitoring visits to Papua New Guinea and Nauru since the resumption of offshore processing in 2012, including inspection of accommodation, detention facilities and medical facilities. Since transfers to Nauru recommenced in September 2023, however, UNHCR has not been granted a visa to visit Nauru.

Conditions on Nauru for transferees have raised a number of concerns, ranging from the previous mandatory use of detention, grave impacts on mental health and well-being, timely and meaningful access to medical care for serious conditions, to limited prospects for social or economic inclusion or durable solutions.<sup>16</sup> Past assessments by medical experts have found that over eighty per cent of transferees on Nauru experienced depression or anxiety.<sup>17</sup> While refugees transferred to Nauru before 2022 have been resettled to the United States of America or New Zealand, pursuant to Australia's bilateral arrangements with these governments, those newly transferred to Nauru since 2023 are in need of safe third country solutions.

Australia's regional transfer arrangements have created a critical humanitarian situation that remains unresolved. To prevent further externalization the enabling legislative framework for regional processing should be repealed as a priority.<sup>18</sup>

### Expansion of externalization through third-country reception arrangements

Distinct from its offshore processing arrangements, in late 2024 Australia passed laws that authorize it to enter into agreements to pay foreign countries to receive non-citizens (including refugees and stateless persons) removed from Australia involuntarily.<sup>19</sup> These laws, which remain subject to judicial review, were part of a suite of responses to the High Court of Australia decision in *NZYQ*,<sup>20</sup> which found immigration detention unlawful where there is no real prospect of removal from Australia in the reasonably foreseeable future.<sup>21</sup> Australia has entered into an initial bilateral arrangement with Nauru to facilitate transfers of these individuals, and Nauru has established a regulatory framework and new associated visa class.<sup>22</sup>

UNHCR considers these laws a further impermissible expansion of Australia's externalization of its international protection obligations. They attempt to shift to a foreign country Australia's responsibility for meeting the international protection needs of persons subject to the arrangement, and they provide inadequate safeguards in law to guarantee

<sup>16</sup> See UNHCR, Submission on Nauru to the 51<sup>st</sup> UPR session, July 2025, p. 3.

<sup>17</sup> UNHCR conducted a monitoring visit to Nauru from 25 April to 1 May 2016, accompanied by three expert medical consultants. Similar observations were made by Medecins Sans Frontieres in *Indefinite Despair*, December 2018, available at: [https://msf.org.au/sites/default/files/attachments/indefinite\\_despair\\_4.pdf](https://msf.org.au/sites/default/files/attachments/indefinite_despair_4.pdf)

<sup>18</sup> Consistent with the decisions of the Human Rights Committee, Australia retains joint responsibility for all forcibly displaced and stateless persons it has involuntarily transferred to Nauru. UNHCR urges Australia to ensure adequate conditions and support services are provided to all transferred individuals in regional processing countries until solutions are found, and to evacuate to Australia transferred individuals in regional processing countries in need of urgent medical treatment. More broadly, Australia's use of externalization is in contravention of the international refugee protection system, which is rooted in international cooperation and responsibility sharing.

<sup>19</sup> *Migration Amendment Act 2024 (Cth)*, available at: <https://www.legislation.gov.au/C2024A00105/asmade/text>. News comment: UNHCR statement on Australia's new detention and removal laws," *UNHCR*, 3 December 2024, <https://www.unhcr.org/news/press-releases/news-comment-unhcr-statement-australia-s-new-detention-and-removal-laws>.

<sup>20</sup> *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37

<sup>21</sup> *NZYQ* resulted in the release from indefinite immigration detention of more than 300 people, including refugees and asylum-seekers, whose visas had been cancelled due to criminal offending, identity concerns or other issues.

<sup>22</sup> *Immigration (Long Term Stay Visa) Regulations 2025* (Nauru), available at: [https://ironlaw.gov.nr/pdfviewer/docs%252F2025%252FImmigration%2520%28Long%2520Term%2520Stay%2520Visa%29%2520Regulations%25202025\\_serv4.pdf](https://ironlaw.gov.nr/pdfviewer/docs%252F2025%252FImmigration%2520%28Long%2520Term%2520Stay%2520Visa%29%2520Regulations%25202025_serv4.pdf).

international protection,<sup>23</sup> thereby making such proposed third country arrangements unlawful under international law.<sup>24</sup>

Recommendation:

- **End the externalization of its international protection obligations and cease involuntary transfers of forcibly displaced and stateless persons through third country reception arrangements.**

**Issue 2: Inadequate safeguards and restrictions upon the use of mandatory immigration detention**

According to official statistics, as of August 2024, 513 asylum-seekers, humanitarian entrants and refugees were held in administrative immigration detention,<sup>25</sup> with an average duration of 472 days.<sup>26</sup> UNHCR regularly engages with forcibly displaced and stateless persons who have been detained significantly longer, some close to or exceeding ten years in held detention.<sup>27</sup>

The legislative and policy framework for immigration detention raises several issues of significant concern. Detention is mandatory for those without a visa,<sup>28</sup> including refugees and asylum-seekers. The law does not provide for an individualized legal assessment of the necessity or proportionality of the use of detention. Rather, where a non-citizen does not have a visa, they must be detained until such time as they depart Australia or are granted a visa. There is no prescribed maximum period for immigration detention. Moreover, Australian law does not provide for periodic or systematic review, whether by the Minister, officials or a court or independent administrative authority, to assess whether continued detention is necessary, reasonable, and proportionate to a legitimate aim. Nor can a person in immigration detention bring legal action on these grounds.

The lack of a time limit on immigration detention leaves forcibly displaced persons at risk of indefinite and arbitrary detention, with the greatest risk for people who are stateless or unremovable. The legal framework for mandatory detention also makes no exception for children or persons with specific needs. As of 31 January 2025, it was reported that there were “fewer than five children” held in detention and 41 children residing in community-based alternative detention arrangements.<sup>29</sup> Individuals subject to “community detention” must reside at a specified address and are not permitted to work or to undertake higher education. Although alternatives to detention are often pursued for cases involving children, this is a non-compellable discretion, not prescribed by law.<sup>30</sup>

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<sup>23</sup> Despite verbal assurances that the Australian Government will exercise its removal powers in accordance with international non-refoulement obligations, UNHCR is concerned that the law does not contain safeguards requiring that removal powers are exercised in compliance with Australia’s international obligations. The scope and legality of these powers are presently being tested in the courts.

<sup>24</sup> UNHCR, *UNHCR Note on the “Externalization” of International Protection*, 28 May 2021, <https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534>.

<sup>25</sup> Department of Home Affairs, Senate Legal and Constitutional Affairs Committee, Supplementary Budget Estimates, 4 November 2024, Question number SE24-376 (data as of 30 August 2024).

<sup>26</sup> Department of Home Affairs, *Immigration Detention Statistics for 31 January 2025*, available at: [Immigration Detention and Community Statistics Summary 31 January 2025](#).

<sup>27</sup> Department of Home Affairs, Senate Legal and Constitutional Affairs Committee, Supplementary Budget Estimates, 4 November 2024, Question number SE24-637.

<sup>28</sup> Section 189 (1) of the Migration Act requires that an officer *must* detain an unlawful non-citizen in the migration zone (emphasis added).

<sup>29</sup> Department of Home Affairs, *Immigration Detention Statistics for 31 January 2025*, available at: [Immigration Detention and Community Statistics Summary 31 January 2025](#).

<sup>30</sup> *Migration Act 1958* (Cth) section 195A, 197AB. Section 4AA of the *Migration Act 1958* (Cth) states that ‘as a principle’ a minor shall only be detained as a measure of last resort.

Because Australia does not independently recognize refugee status, refugees depend upon protection visas that may be cancelled for various reasons.<sup>31</sup> This is particularly concerning for those owed international protection who, by definition, are unable to return to their countries of nationality or former habitual residence and thus face a likelihood of protracted detention. To keep such persons in detention on administrative grounds not only undermines rehabilitation efforts but further diminishes their well-being, making their eventual re-integration into the community far more challenging.

During its monitoring visits and interviews with asylum-seekers, refugees and stateless persons in detention, UNHCR has observed the severe detrimental impact long-term immigration detention can have on the health and psycho-social wellbeing of those affected. Family separation and inadequate transparency of processes and timeframes for release also affect mental health. Further, Australia has not yet established in its national law a statelessness status determination procedure to identify non-refugee stateless persons. For stateless persons, the absence of status determination procedures to verify identity or nationality can also lead to prolonged or indefinite detention because statelessness, by its nature, severely restricts access to basic identity and travel documents that nationals normally possess.<sup>32</sup>

Recommendation:

- **Ensure that immigration detention of forcibly displaced and stateless people is used only as a measure of last resort, after a consideration of all available alternatives, and respects the requirements of reasonableness, necessity and proportionality.**
- **Ensure due process rights for forcibly displaced and stateless people in immigration detention, including the opportunity to challenge detention decisions and periodic review of the justification for continuing detention by a court or independent administrative authority.**
- **Proscribe in law the immigration detention of children.**

**Issue 3: Limited and differentiated access to asylum processes**

Claims for international protection made by individuals intercepted at sea should be processed within the territory of the intercepting State, and access to fair and efficient refugee status determination procedures must be provided.<sup>33</sup>

Since September 2013, Australia has intercepted asylum-seekers pursuant to 'Operation Sovereign Borders', a military-led border security operation aimed at combating maritime people smuggling and protecting Australia's borders. In the 11 years until September 2024, approximately 47 boats were intercepted in or approaching Australian waters, resulting in 1,227 people returned to Indonesia, Sri Lanka or Vietnam.<sup>34</sup> UNHCR understands that, in addition, a substantially larger number of irregular movements were disrupted by Australia in cooperation with other States prior to departure. In the 20 months between May 2022 and December 2024, Australia intercepted 27 maritime vessels and transferred approximately

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<sup>31</sup> Section 501 of the Migration Act provides for cancellation or refusal of a visa on 'character' grounds including (inter alia) having been sentenced to a term of imprisonment of twelve months or more, or two or more such terms which cumulatively reach twelve months or more, association with certain criminal conduct or organisations, or presenting a risk to national security or the Australian community. Section 116 provides further grounds for cancellation, including (inter alia) changed circumstances and identity concerns. For those who have had their visas mandatorily cancelled on character grounds following a period of incarceration of twelve months or more, the avenues for release from administrative detention are extremely limited. UNHCR considers that, in accordance with the normal operation of the Australian criminal justice system which appropriately manages risks to the community, any person who has served their criminal sentence, refugee or not, should be afforded the opportunity to re-enter the community.

<sup>32</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, p.45, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>33</sup> UN High Commissioner for Refugees (UNHCR), Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing, November 2010, available at: <https://www.refworld.org/docid/4cd12d3a2.html>.

<sup>34</sup> Department of Home Affairs, Senate Legal and Constitutional Affairs Committee, Supplementary Budget Estimates, 4 November 2024, Question SE24-362.

100 individuals to Nauru for processing.<sup>35</sup>

The *Maritime Powers Act* 2013 (Cth) (Maritime Powers Act) governs Australia's enforcement of maritime law within and beyond Australian waters. It provides for the interception, detention and transfer of those detained at sea to a place outside Australia, whether or not Australia has an agreement or arrangements with any country concerning the reception of the vessel or the persons.<sup>36</sup> Persons intercepted through Operation Sovereign Borders may be subject to abbreviated screening at sea, push back or return (including to countries of origin), detention or transfer to offshore processing. The legislative framework explicitly provides that the exercise of a range of powers under the Maritime Powers Act cannot be invalidated because a court considers there has been a failure to properly consider or comply with Australia's international obligations, or the international obligations or domestic law of any other country.<sup>37</sup> The rules of natural justice (including the right to a hearing) do not apply.<sup>38</sup> Further, the Maritime Powers Act allows for the open-ended detention aboard Australian vessels of individuals who are intercepted at sea.<sup>39</sup>

Information regarding the implementation by Australia of these powers in the context of interceptions, screenings and returns is closely controlled, and little transparency is provided. In the absence of further information, and without independent external oversight, UNHCR is unable to assess whether Australia has ensured effective legal and procedural safeguards and complied with the prohibition on *refoulement*. This concern is pronounced in instances where interceptions result in the return of refugees or asylum-seekers to a country of origin.

Regarding removal of non-citizens from Australia more broadly, section 197C of the Migration Act provides that Australia's *non-refoulement* obligations are 'irrelevant' for the purposes of removal of an 'unlawful non-citizen' under section 198. The Act further provides that an officer's duty to do so as soon as reasonably practicable arises irrespective of whether there has been an assessment, according to law, of Australia's *non-refoulement* obligations.

A limited safeguard is provided by the Migration Act where a non-citizen has applied for an onshore protection visa and, in the context of that assessment, has been found to be a person to whom Australia has protection obligations.<sup>40</sup> In those instances, the person is shielded from removal to a country relevant to the 'protection finding'. This safeguard does not fully satisfy Australia's international obligations, however, as it is only triggered by application for a specific visa type which may not have been sought by some refugees or asylum-seekers (including refugees initially resettled to Australia on the basis of their protection needs), and may be inaccessible to others (including irregular maritime arrivals barred from making a protection visa application). This includes asylum-seekers and refugees re-transferred to Australia from Nauru or Papua New Guinea, along with others who are within Australia's jurisdiction but statutorily barred from making or re-making a protection visa application unless the Minister exercises a non-compellable personal discretion to permit it.

The safeguard of a 'protection finding' may also be subsequently removed on the basis of improved conditions in the country of origin in circumstances which do not meet the standards required for cessation of refugee status under article 1C of the Refugee

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<sup>35</sup> Department of Home Affairs, Senate Legal and Constitutional Affairs Committee, Additional Budget Estimates, 24 February 2025, Hansard available at: [Parliamentary Business Senate estimates legcon-25 Additional estimates - aph-gov](#); Department of Home Affairs, Senate Legal and Constitutional Affairs Committee, Supplementary Budget Estimates, 4 November 2024, Question SE24-103.

<sup>36</sup> Maritime Powers Act, sections 72 and 75C.

<sup>37</sup> Ibid, sections 22A and 75A.

<sup>38</sup> Ibid, section 22B.

<sup>39</sup> Ibid, sections 71 and 72.

<sup>40</sup> Migration Act sections 197C (3) and 36A.

Convention.<sup>41</sup> There remain insufficient clarity and legal and procedural safeguards regarding the circumstances in which the Minister would be satisfied that a refugee is no longer owed protection obligations under section 197D.

#### Recommendations:

- **Ensure access to fair and transparent asylum processes, regardless of mode of arrival, and permit appropriate oversight of processes conducted at sea to ensure compliance with international obligations.**
- **Amend national laws to prevent removal of forcibly displaced or stateless persons contrary to international law and ensure adherence to *non-refoulement* obligations.**

#### **Issue 4: Protracted and precarious status of certain forcibly displaced and stateless groups**

Several distinct groups of refugees, asylum-seekers and stateless people have resided in Australia for significant periods of time, often in excess of a decade, with precarious visa status that limits their access to certain rights durable legal status. This includes, among others: (1) individuals initially transferred to Nauru or Papua New Guinea for offshore processing and later returned to Australia on medical or other grounds; (2) asylum-seekers who arrived irregularly in the period 2012 - 2013 and whose protection needs were reviewed by a flawed 'fast track' process; and (3) approximately 500 individuals who have as yet been unable to transition from temporary protection visa classes to permanent Resolution of Status visas.

Individuals in the above groups are required routinely to re-apply for non-substantive 'bridging' visas, which may not provide work or study rights and do not accord the right to family reunion. Processing delays often cause gaps, preventing access to government funded medical care and aggravating risks of vulnerability and exploitation.

Among the first group above, approximately 800 refugees and asylum-seekers individuals now in Australia remain statutorily barred from regularization through any substantive visa which would enable access to the rights normally afforded by their status under international law. As such, they live without a durable solution, denied access to permanent residence or naturalization.<sup>42</sup>

The second group includes approximately 6,500 individuals (so-called 'legacy caseload') from among the approximately 30,000 asylum-seekers who arrived irregularly by sea between August 2012 and December 2013. These individuals' protection applications were decided onshore between 2015 and 2023 through a fast-track merits review process lacking in necessary procedural safeguards. This process was eventually discredited and abolished, and its area of jurisdiction incorporated into a newly created Administrative Review Tribunal.<sup>43</sup> Approximately 6,500 asylum-seekers whose applications were denied by the former fast track process remain pending resolution today, more than a decade since their arrival in Australia. While individual assessments of the individual circumstances of some 'refused fast track applicants' are ongoing, most continue to reside with precarious legal status.<sup>44</sup>

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<sup>41</sup> Ibid, section 197D.

<sup>42</sup> As of 31 December 2024, there were 927 so-called 'transitory' persons in Australia, of whom 810 were on a bridging visa E: Department of Home Affairs, Senate Legal and Constitutional Affairs Committee, Additional Budget Estimates, 24 February 2025, Hansard available at: [Parliamentary Business Senate estimates legcon-25 Additional estimates - aph.gov](#). Department of Home Affairs, Senate Legal and Constitutional Affairs Committee, Supplementary Budget Estimates, 4 November 2024; 2024-25 Budget Estimates, 28 May 2024.

<sup>43</sup> The Administrative Review Tribunal was established on late 2024 to address the deficiencies of the former Administrative Appeals Tribunal.

<sup>44</sup> ASRC, Briefing paper - People failed by Fast Track, 12 September 2024, available at: [Briefing paper - People failed by Fast Track.docx](#).

The third group relates to members of the 'legacy caseload' who were recognized as refugees and initially granted short term Temporary Protection Visas or Safe Haven Enterprise Visas, and then became eligible from February 2023 to obtain permanent status through application for a Resolution of Status (RoS) Visa. While UNHCR understands that more than 20,000 RoS visas have now been issued, approximately 500 eligible applications presenting complex issues (including where questions of identity or character are raised) remain under processing.

Recommendations:

- **Amend laws and policies to ensure those determined to be in need of international protection have access to a secure and permanent legal status with equal access to rights in accordance with international law.**
- **Incorporate provisions of the Refugee Convention in national law and provide for recognition of refugee or protected status independently of visa status.**
- **Resolve the status of persons with vulnerable and protracted visa status, ensuring their access to protection as solutions.**
- **Consider implementation of a national human rights act to resolve tensions regarding international obligations entered into but not fully given effect by national law.**

**UNHCR**  
**July 2025**