



Australian
Human Rights
Commission

**Pathways to Protection:
A human rights-based
response to the flight of
asylum seekers by sea**

REPORT • 2016



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PATHWAYS TO PROTECTION:

A human rights-based response to the
flight of asylum seekers by sea

Australian Human Rights Commission 2016



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Professor Gillian Triggs

President



President's introduction

Australia's policy of sending asylum seekers and refugees to Nauru and Papua New Guinea's Manus Island for processing of their claims has been one of the most contentious aspects of Australia's migration policies.

Introduced in 2012, third country processing has been a key plank of successive Australian governments to deter asylum seekers from travelling to Australia by sea. Those who reach our shores are not permitted to settle permanently in Australia and the boats carrying asylum seekers are turned back. These policies of deterrence have significantly slowed the numbers of asylum seekers arriving by boat. On the other side of the ledger is the fact that hundreds of asylum seekers and their children remain in Nauru and Manus Island without any certainty about their future, and with their mental and physical health continuing to deteriorate.

Australian asylum seeker policy has now reached an impasse.

Refugees and asylum seekers continue to be held on Manus Island and Nauru, in some cases for years. As at 31 July 2016, there were 833 men at the third country processing facility on Manus Island and 411 at the facility in Nauru, including 49 children.¹ Diplomatic efforts to find other countries willing to resettle refugees arriving in Australia have failed. The United Nations High Commissioner for Refugees (UNHCR) and members of the United Nations Human Rights Council, among others in the international community, have consistently raised their concerns that the current model of third country processing breaches human rights.

The decision of the High Court of Australia that third country processing is constitutionally valid stands in contrast to the finding of the Supreme Court of Papua New Guinea that detention on Manus Island contravenes that country's constitutionally-protected right to liberty.

As President of the Australian Human Rights Commission, I am often asked:

While we know what is happening on Manus Island and Nauru is wrong, what are the alternatives?

How can we defend our borders, manage immigration in the national interest and stop people smuggling, while also respecting the rights of asylum seekers?

The recent election of a new Federal Government provides an opportunity to consider alternatives to third country processing that will both secure Australia's sovereign borders and provide refugees with protection consistently with their human rights. Despite a largely bipartisan approach to third country processing, Australia remains legally bound to ensure that its policies comply with international human rights law.

I hope that this Report presents some positive proposals to break the current policy deadlock; that Australia's policy response shifts from a deterrence-based to a rights-based approach that prioritises safety of life at sea and pathways to durable solutions.

The purposes of this Report are to:

- Stimulate and inform public discussion about alternatives to Australia's current approach to third country processing
- Explore human rights-based responses to the flight of asylum seekers by sea to meet international standards of humanity and protection
- Propose pathways to durable solutions for asylum seekers

The research and consultations that inform this Report suggest there are many practical measures to strike a balance between protecting human rights and preventing dangerous sea journeys. The Commission recognises that strong border protection is a sovereign right that is supported by the Australian community. National security should however be maintained cooperatively with our regional partners and with a broader range of options for durable solutions.

Options identified by the Commission fall into two thematic groups:

1. **Expand opportunities for safe entry to Australia** by increasing the size of Australia's resettlement program and improving access to alternative migration pathways.
2. **Enhance Australia's foreign policy strategies on migration in the Asia-Pacific region** through coordinating development aid, diplomatic efforts and humanitarian response to address the needs of displaced people and work towards an effective regional cooperation framework on refugee protection.

In suggesting options for an alternative response to flight by sea, the Commission recognises that there are no easy or comprehensive solutions. We do not have all the answers. Nor are our proposals necessarily original. This Report is not prescriptive and aims only to inform more humane policy responses to claims for asylum.

The Commission has a statutory mandate to call the Government to account for compliance with Australia's international human rights obligations. Accordingly, in many reports to Parliament, including the *Forgotten Children* report in 2014, the Commission has drawn attention to the failure of current third country processing to comply with those obligations.

The Commission has reported upon specific concerns in relation to Nauru and Manus Island that include serious allegations of mistreatment, inappropriate conditions, a lack of physical safety for asylum seekers, delays in the processing of asylum claims, limited access to long term settlement options, and the cumulative impact of these factors on physical and mental health. The transfer of those who are lesbian, gay, bisexual, transgender or intersex to Nauru and Papua New Guinea also poses a risk of discrimination and *refoulement*, in violation of international law.

Limited transparency and accountability in the operation of the facilities on Manus Island and Nauru, along with secrecy laws that impose criminal penalties for any breach, are also of concern.

Under the Refugee Convention, Australia has legal obligations that prohibit:

- Returning an asylum seeker to a place of persecution (*non-refoulement*)
- Penalties based on a refugee's mode of arrival
- Expulsion of a refugee who is lawfully in Australia except on the grounds of national security or public order.

Australia has a range of obligations under the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child* and the *Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* which are relevant to the treatment of asylum seekers. People seeking asylum are entitled to procedural fairness, freedom from arbitrary detention and from cruel, inhuman or degrading treatment or torture, and adequate standards of health and education. Where a State violates these rights, the Government must justify any breach on the basis that it is necessary and proportionate to a legitimate aim.

Australia is to be commended for contributing to UNHCR's refugee resettlement program, resettling around 9,400 refugees in 2015.² However, United Nations bodies and human rights experts have raised concerns that third country processing, as applied in Manus Island and Nauru, continues to breach fundamental freedoms. During the Universal Periodic Review of Australia in 2015, over 50 countries made recommendations relating to Australia's asylum seeker policies, with 11 referring specifically to third country processing. The international response to Australia's policy of third country processing suggests that our reputation as a welcoming and rights-respecting nation is being eroded while we maintain this approach.

At the international level, efforts continue to find responses to the estimated 65 million forcibly displaced people globally. This month, members of the United Nations General Assembly will convene for a high-level summit to develop 'a blueprint for a better international response' to refugees and migrants.³

The Commission does not underestimate the challenges this mass movement of people poses for Australia and its neighbours in the Asia-Pacific region. However, the over-arching concern of the Commission is that the current policy of third country processing does not comply with our international human rights obligations. Above all, this policy undermines Australia's historical generosity to those who have sought its protection over many decades.

Let us not forget that Australia seeks election to a seat on the UN's Human Rights Council in 2018-20.

This Report is intended to contribute positively to public debate on alternatives to current third country processing of asylum seekers on Manus Island and Nauru. I am confident that, with informed and respectful discussion, Australia will rise to the challenge of a humane response to those who seek our protection from conflict and persecution.

Professor Gillian Triggs
President

September 2016

Executive summary

Background to the project

The aim of this paper is to start a conversation about how we can answer the question: ***What is a rights-based alternative to the current model of third country processing in Nauru and Papua New Guinea?***

The Commission has endeavoured to identify options for responding to flight by sea which are consistent with Australia's international human rights obligations.

In publishing this paper, the Commission is seeking to make a positive contribution to this difficult policy area. We have sought to provide the framework for an alternative policy response, rather than an exhaustive overview of all relevant measures or a detailed plan for implementation. The policy options set out in this paper are offered so that they can be debated, refined and, if they are deemed fit for purpose, implemented.

The Commission also acknowledges that the options put forward in this report could benefit from further policy development and economic analysis prior to implementation. Careful analysis will need to be undertaken of the likely flow-on effects of expanding the opportunities for safe entry in Australia and altering some of the Government's foreign policy strategies in the ways that are set out in this paper. Further research, consultation and planning would also be required to tailor these measures to conditions in different countries, and to the needs of particular groups.

This paper sets out some alternative policy approaches that aim to protect human rights while also achieving the overall policy objective of preventing dangerous journeys by sea. The Commission is confident that the options proposed in this paper are compliant with Australia's international human rights law obligations.

This paper does not specifically address the human rights issues arising from other policy measures aimed at deterring flight by sea, such as boat turnbacks and Temporary Protection Visas. However, the Commission considers that the rights-based options proposed in this paper could also be considered as alternatives to these policies.

This paper also does not address the situation of the approximately 30,000 people seeking asylum who are currently in Australia awaiting processing of their claims. The human rights implications of policies affecting these asylum seekers have been considered in other Commission publications.⁴

Methodology

In March 2016, the Commission conducted a series of consultations to discuss alternative policy responses to flight by sea.

Consultation participants were selected on the basis of their expertise in the areas of refugee policy, human rights, international law and protection issues in the Asia-Pacific region. The feedback gathered through the consultations was supplemented through desktop research undertaken between February and June 2016.

In conducting this research and analysis, the Commission adopted a ***human rights-based approach*** to policy development. A human rights-based approach sees strengthening the enjoyment of human rights as both a means and an end. Policies and programs which are based on this approach should further the realisation of human rights, and their planning and implementation should be guided by international human rights standards.⁵

Summary of findings

The key driver of flight by sea towards Australia is the ***lack of effective protection*** for refugees and people seeking asylum in the Asia-Pacific region. As such, ***improving access to effective protection*** represents the most effective and sustainable means of preventing flight by sea. This is something that can only be achieved through cooperation and partnership with our regional neighbours.

Two core principles emerged from the research and consultation process which have guided the Commission in identifying alternative options:

- The top priority of an alternative response should be enhancing **protection** for people fleeing persecution, in accordance with our international human rights obligations.
- The focus of Australia's policy response should shift **from deterrence to prevention**. Rather than seeking simply to discourage asylum seekers from embarking on dangerous journeys, an alternative response should aim to address the human rights violations which compel people to undertake these journeys in the first place.

While Australia is well-placed to support efforts to improve access to protection, there are two key obstacles which currently hamper these efforts:

- There are **few effective mechanisms for cooperation** on refugee protection issues amongst states in the Asia-Pacific region, which hampers the region's capacity to respond effectively to the needs of forcibly displaced people (including by ensuring appropriate settlement options across the region)
- There are limited opportunities for **safe entry** for people wishing to seek protection in Australia.

Based on the information and evidence gathered through the research and consultation process, the Commission has identified two thematic areas (each encompassing a number of specific options) which are designed to overcome these obstacles and which together comprise an alternative, human rights-based policy response to flight by sea:

- Expand opportunities for **safe entry** to Australia
- Enhance **foreign policy strategies** on migration in the Asia-Pacific region.

The options put forward in this paper aim directly to address the key driver of flight by sea through creating and enhancing **pathways to protection**. They seek to achieve this by facilitating access to safe migration options, improving protection for refugees and people seeking asylum who are living in the region, and building towards more effective regional responses to refugee protection issues.

They respond to the human rights violations experienced by refugees and people seeking asylum during flight and in the context of displacement. They are also consistent with the Refugee Convention in that they avoid imposing penalties on the basis of a person's mode of arrival or lack of documentation.

An overview of the various options identified by the Commission is contained in the table commencing on the next page.

An alternative policy response to flight by sea

Expand opportunities for safe entry to Australia		
Protection-sensitive migration	Increase opportunities for safe departure	<ul style="list-style-type: none"> Introduce temporary visas for the purpose of seeking asylum Identify persecution concerns during the visa application process
	Address barriers to skilled and family migration	<ul style="list-style-type: none"> Provide waivers, differentiated processing procedures, access to relevant services and safeguards against <i>refoulement</i> Engage with the private sector to support skilled migration
	Enhance access to study opportunities	<ul style="list-style-type: none"> Address barriers to student visas Offer scholarships and targeted study opportunities Develop partnerships with universities
Resettlement	<ul style="list-style-type: none"> Increase the size of the resettlement program Adjust the composition of the resettlement program Introduce a wider range of private and community sponsorship options 	

Enhance foreign policy strategies on migration in the Asia–Pacific region			
Build on existing initiatives	Increase funding for humanitarian agencies		
	Support NGOs and refugee community groups assisting displaced people		
	<table border="1"> <tr> <td>Restore and expand aid to countries affected by displacement</td> <td> <ul style="list-style-type: none"> Restore funding for country programs Provide multi-year funding to countries affected by displacement Develop an aid strategy on displacement Explore options for providing aid to refugee-hosting countries </td> </tr> </table>	Restore and expand aid to countries affected by displacement	<ul style="list-style-type: none"> Restore funding for country programs Provide multi-year funding to countries affected by displacement Develop an aid strategy on displacement Explore options for providing aid to refugee-hosting countries
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Continue bilateral and regional dialogues on human rights			
Build new capacity	Foster conditions conducive to voluntary return in Myanmar (Burma) and Sri Lanka		
	<table border="1"> <tr> <td>Support regional preparedness</td> <td> <ul style="list-style-type: none"> Support the development of regional protocols for responding to flight by sea Support the development of an early warning system for emerging crises </td> </tr> </table>	Support regional preparedness	<ul style="list-style-type: none"> Support the development of regional protocols for responding to flight by sea Support the development of an early warning system for emerging crises
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	Promote a greater role for civil society in regional processes		
Fund protection-focused research on migration in the region			

Enhance foreign policy strategies on migration in the Asia–Pacific region

Build bridges to cooperation	Enhance the strategic use of resettlement	<ul style="list-style-type: none"> Use resettlement as leverage to negotiate protection commitments Make multi-year resettlement commitments Coordinate with other resettlement countries Resume resettlement from Indonesia
	Provide support to expand solutions	<ul style="list-style-type: none"> Provide technical assistance to increase or enhance visa options Audit and provide advice to displaced people on alternative migration pathways Fund projects to facilitate access to migration pathways Support initiatives to prevent and resolve statelessness
	Look beyond refugee protection	<ul style="list-style-type: none"> Fund research to map migration Continue to support work on human trafficking Provide technical assistance on labour migration Ratify the Migrant Workers Convention
	Promote the rights of children	

1 Background

1.1 The global context: An unprecedented challenge

Recent years have seen forced displacement increase to unprecedented levels globally.

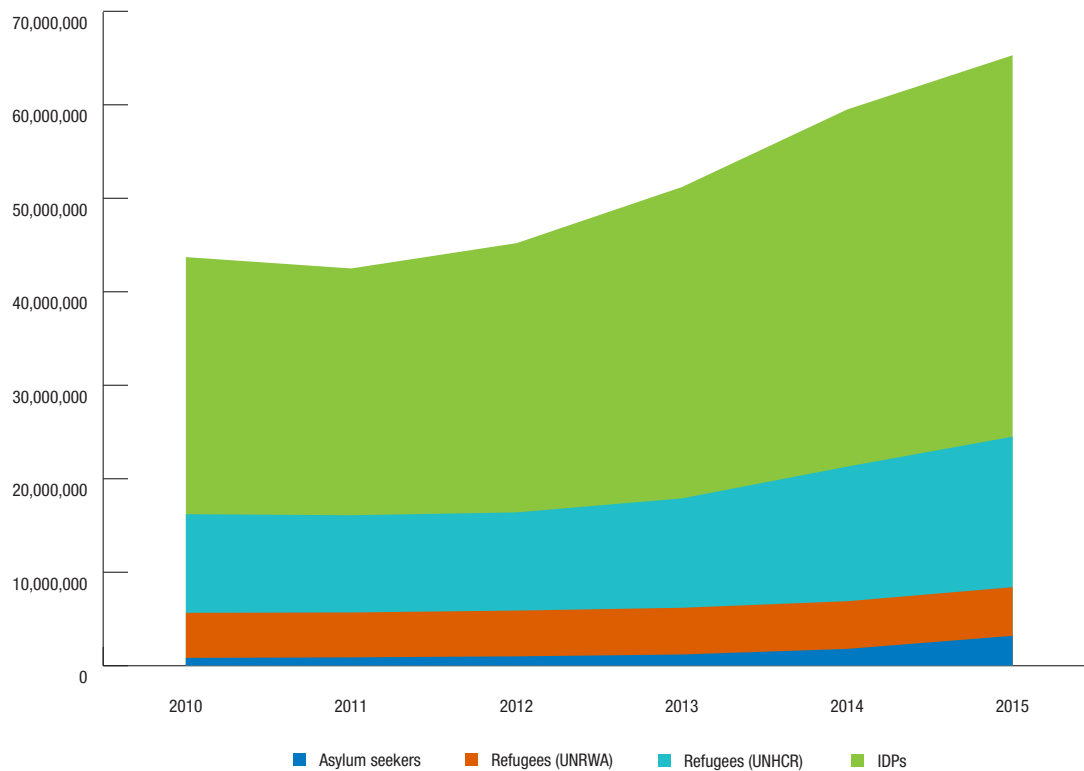
Between 2011 and 2015, the number of forcibly displaced people worldwide increased by over 50 per cent.⁶

At the end of 2015, 65.3 million people were forcibly displaced across the world, comprising:

- 40.8 million internally displaced people (IDPs);
- 16.1 million refugees under the mandate of the UNHCR;
- 5.2 million Palestinian refugees under the mandate of the United Nations Relief and Works Agency (UNRWA); and
- 3.2 million people seeking asylum.⁷

This is the highest level of displacement recorded since UNHCR began keeping records at the end of World War II.⁸

Chart 1: Forcibly displaced people, 2010 to 2015⁹



UNHCR has identified three reasons for the increased rate of displacement over the past five years:

- Situations which cause large-scale displacement are lasting longer, in some cases for decades
- Dramatic new or reignited situations are occurring frequently
- The rate at which durable solutions are being found for refugees and internally displaced people has been on a falling trend since the end of the Cold War.¹⁰

The three traditional durable solutions for refugees pursued by UNHCR are voluntary repatriation, local integration in a country of asylum (including eventual naturalisation in that country) and resettlement from a country of asylum to a third country. While reliable figures on the number of refugees who have found a solution through local integration are not available, **statistics on repatriation and resettlement indicate that solutions have not kept pace with the rise in global protection needs.**

In 2015, only 201,400 refugees returned home voluntarily. While a significant increase over the 126,000 people who returned home in 2014, the 2015 figure nonetheless represents the third-lowest level of refugee returns over the past 20 years.¹¹

The number of refugees finding a solution through resettlement has increased by around a third between 2011 and 2015.¹² However, UNHCR reports that 'resettlement needs of refugees around the world continue to vastly outnumber current capacity', with over 1.19 million refugees estimated to be in need of resettlement over the coming years.¹³ Furthermore, as shown in Table 1, the proportion of refugees under UNHCR's mandate who are finding a solution through resettlement has remained below one per cent since 2010, and has in fact declined in recent years.

Table 1: Global refugee population and resettlement, 2010 to 2015¹⁴

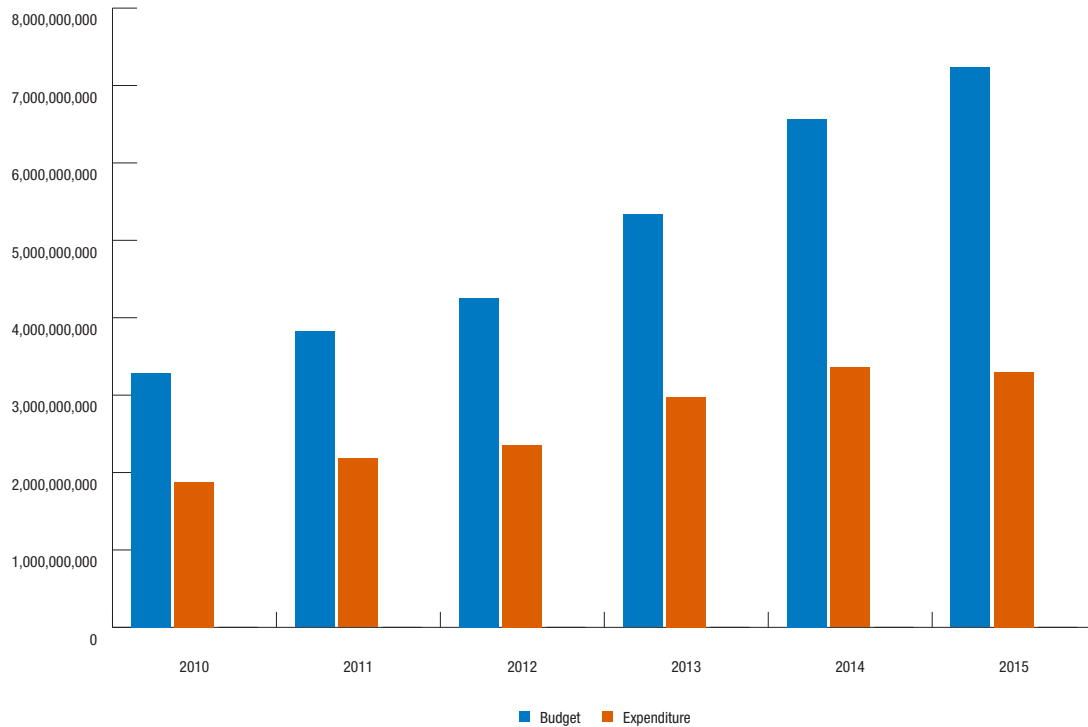
Year	Refugees under UNHCR's mandate	Refugees resettled	% of refugees resettled
2010	10,550,000	98,800	0.94%
2011	10,400,000	79,800	0.77%
2012	10,500,000	88,600	0.84%
2013	11,700,000	98,400	0.84%
2014	14,400,000	105,200	0.73%
2015	16,100,000	107,100	0.67%

The limited availability of durable solutions has resulted in millions of refugees remaining in protracted situations, defined by UNHCR as 'one in which 25,000 or more refugees from the same nationality have been in exile for five or more years in a given asylum country'.¹⁵ UNHCR estimates that 6.7 million refugees were living in protracted situations at the end of 2015,¹⁶ many of them under very difficult conditions in countries of asylum.

Indeed, conditions for refugees have if anything become more difficult in recent years as humanitarian agencies have struggled to keep pace with an explosion in needs.

Chart 2 illustrates that since UNHCR introduced its first needs-based budget in 2010, it has consistently received less than 60% of the funds it requires to meet the needs of the people under its mandate. At the 2015 meeting of UNHCR's Executive Committee, then UN High Commissioner for Refugees António Guterres reported that his agency is 'no longer able to meet even the absolute minimum requirements of core protection and lifesaving assistance to preserve the human dignity of the people we care for'.¹⁷

Chart 2: UNHCR budget versus expenditure (in USD), 2010 to 2015¹⁸



In the face of these challenges, refugees have increasingly turned to desperate measures in an effort to find effective protection and durable solutions — including through dangerous sea journeys.

1.2 Trends in flight by sea

Australia is by no means the only country in the world currently grappling with responses to flight by sea. In fact, **flight by sea is becoming an increasingly common response to inadequate protection and protracted displacement.**

Charts 3 to 6 illustrate trends across several of the major routes for flight by sea across the world: the Mediterranean Sea (en route to Europe); the Gulf of Aden (en route to Yemen); the Bay of Bengal and Andaman Sea (en route to southeast Asia); and the Indian Ocean (en route to Australia).

The figures in these graphs include both people fleeing persecution and people seeking to migrate for reasons other than persecution. Despite this, humanitarian entrants comprise a significant proportion, if not the majority, of arrivals across all four regions. For example, well over half of the people arriving by sea in Europe are from the world’s top ten refugee-producing countries.¹⁹ The Gulf of Aden provides an escape route for many refugees from Somalia and Eritrea,²⁰ while thousands of Rohingya refugees from Myanmar (Burma) have fled across the Bay of Bengal and Andaman Sea.²¹ In Australia, the majority of people who have arrived by boat have subsequently been found to be refugees, a trend which has remained consistent from 1976 to the present day.²²

It is important to note that these charts only include arrivals and deaths which have been officially documented or estimated. It is likely that there have been many more unsuccessful ventures — and many more deaths at sea — than are reflected in these figures.

Chart 3: Flight by sea across the Mediterranean Sea, 2010 to 2015²³

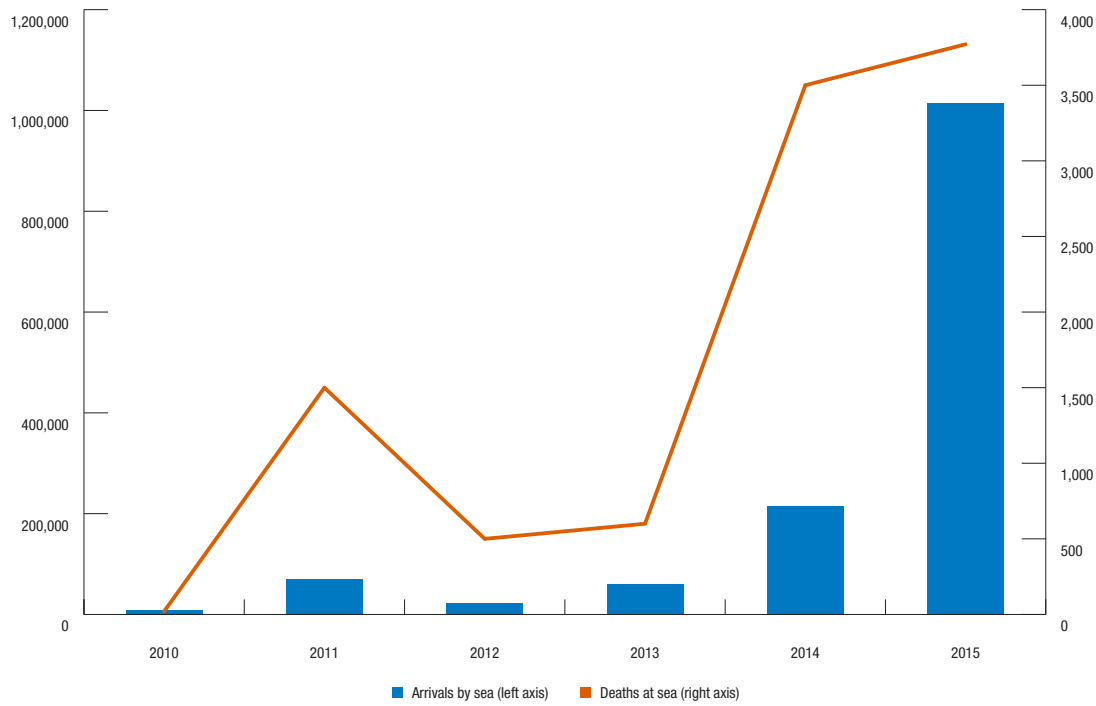


Chart 4: Flight by sea across the Gulf of Aden, 2011 to 2014²⁴

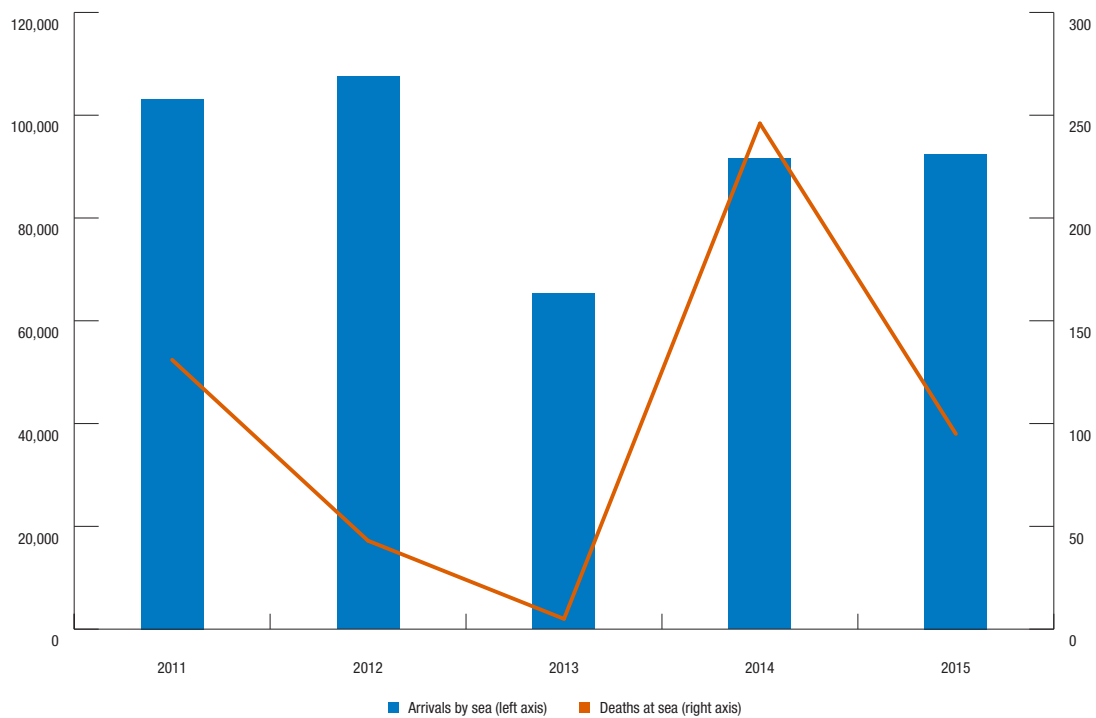


Chart 5: Flight by sea across the Bay of Bengal and Andaman Sea, 2012 to 2015²⁵

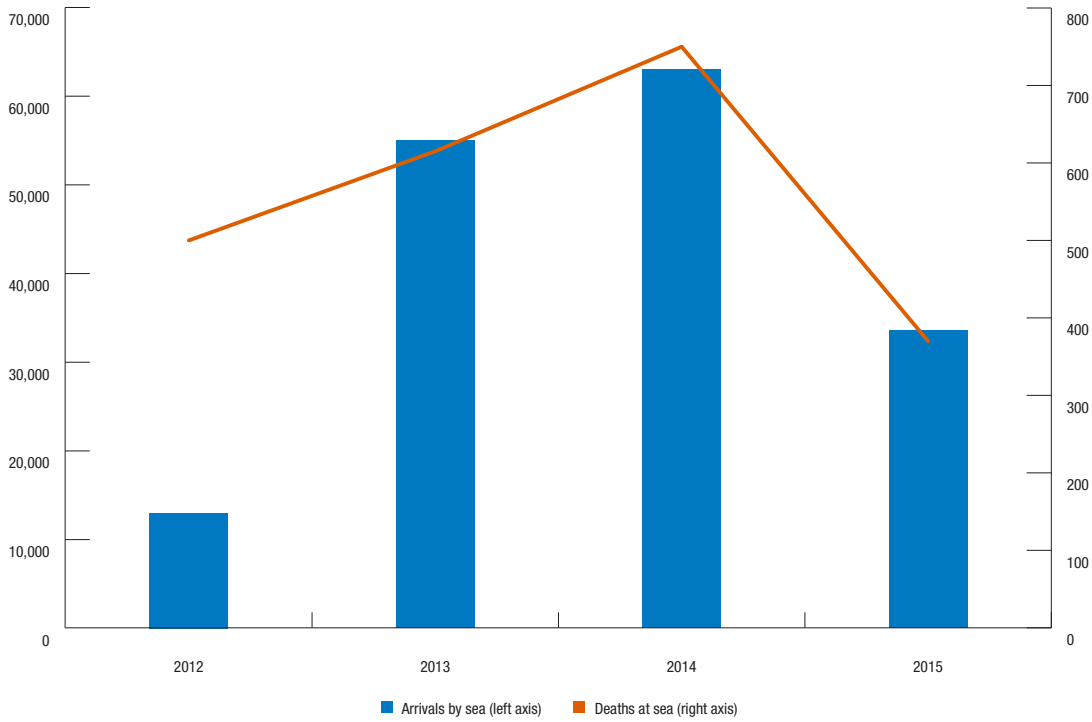
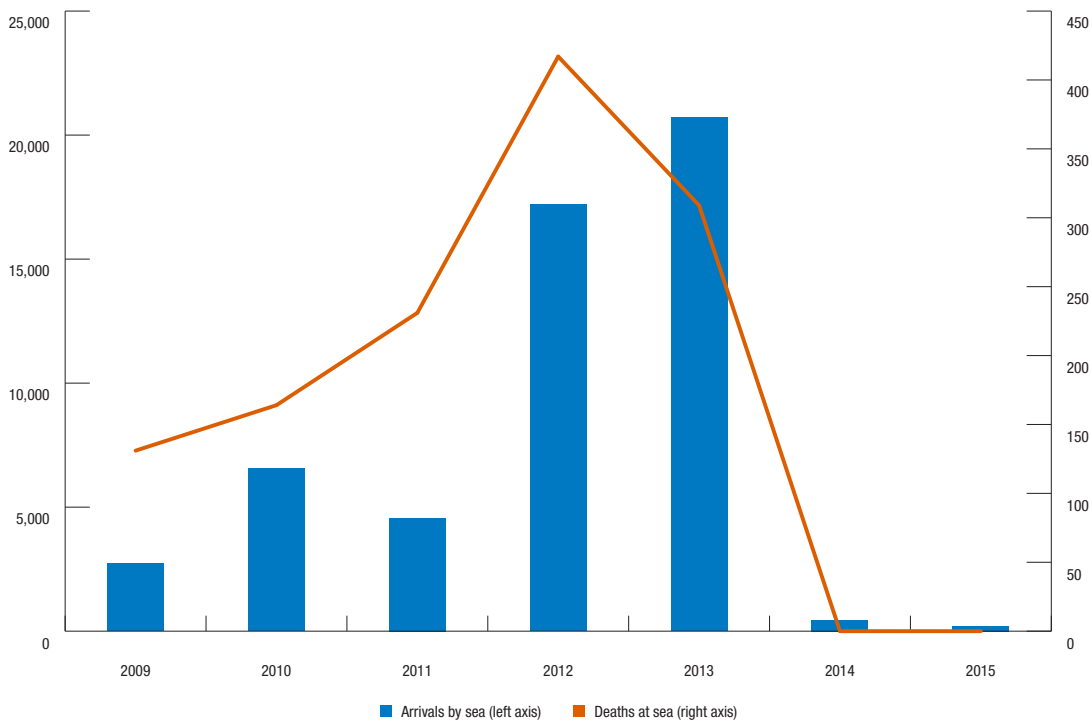


Chart 6: Flight by sea in the Indian Ocean, 2009 to 2015²⁶



These charts indicate that the number of deaths at sea does not always increase proportionally with the overall number of arrivals by sea. For example, deaths at sea were significantly higher across the Gulf of Aden in 2014 than in 2012, despite a larger number of arrivals in 2012. Similarly, deaths at sea en route to Australia decreased between 2012 and 2013, despite the fact that boat arrivals were higher. In the Mediterranean, arrivals by sea more than quadrupled from 216,000 in 2014 to more than one million in 2015, but deaths at sea were only marginally higher in 2015.

This trend suggests that deaths at sea are not an inevitable consequence of flight by sea, but rather stem from the appalling conditions under which people seeking asylum are often compelled to flee. The involvement of criminal smuggling and trafficking networks combined with the vulnerability of their passengers heightens the risk of abuse and exploitation, while factors such as unseaworthy vessels, crew inexperience, poorly planned voyages, adverse sailing conditions and piracy compound the perils of these journeys.

These risk factors also appear to vary across regions. For example, UNHCR notes that many of the deaths which occurred across the Bay of Bengal and Andaman Sea were caused by starvation, dehydration, disease and abuse by people smugglers;²⁷ whereas in the Australian context, deaths have primarily resulted from vessels foundering en route.²⁸

Another clear trend emerging from this data is that the implementation of deterrence-based policies by Australia from 2013 onwards has led to a steep decline in arrivals by sea. In contrast to the preceding five years, there were no reported deaths at sea by Australian authorities in 2014 or 2015. These figures alone, however, do not provide a full picture of the impacts of Australia's deterrence-based approach.

Experience in other regions of the world demonstrates that the implementation of deterrence-based policies can have unintended consequences, and in some cases can heighten or create new risks and vulnerabilities for people seeking protection.

For example, in 2010 Europe experienced a sharp decrease in arrivals by sea, which UNHCR contends was 'almost certainly a result of tighter border controls, joint patrols and push-backs at sea'.²⁹ Arrivals decreased from over 56,000 in 2009 to fewer than 10,000 in 2010. Over the same period, however, overland arrivals to Europe increased dramatically. Close to 39,000 people arrived overland through the Evros region of Greece in the first ten months of 2010, representing a 415 per cent increase compared to the same period in 2009. UNHCR concluded that 'the stemming of sea arrivals is not solving the problem but shifting it elsewhere'.³⁰

Furthermore, those arriving in Greece were confronted with extremely difficult conditions, including inadequate refugee status determination procedures, lack of access to legal advice and interpreters, poor conditions of detention, poverty and mistreatment by officials (which in some cases has been alleged to constitute torture).³¹ So dire was the situation for people seeking asylum in Greece that it was deemed in 2011 to represent a violation of article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment.³²

Aside from the human rights concerns outlined in Section 1.4 of this report, it is difficult to assess the potential unintended consequences of Australia's deterrence-based policies due to the limited specific research on this topic.

Available evidence suggests that some people seeking asylum have faced further risks as a result of being denied entry to Australia. For example, some of the people returned to their countries of origin after having their asylum claims screened at sea under Operation Sovereign Borders have reportedly fled to other countries or faced prosecution.³³

It has also been reported that some refugees and people seeking asylum in Indonesia who had intended to travel to Australia by boat have become effectively trapped in Indonesia. With no means of supporting themselves in Indonesia, they are increasingly surrendering themselves to authorities so as to be allowed *into* detention, as this is their only means of obtaining food and shelter.³⁴

Without question, flight by sea poses unacceptable risks to people fleeing persecution and better responses must be found to safeguard the rights of those attempting these perilous journeys. However, the evidence outlined above suggests that deterrence-based policies cannot alone present a sustainable solution.

As noted by former UN High Commissioner for Refugees António Guterres at his 2014 Dialogue on Protection Challenges, which focused specifically on protection at sea:

[F]ocusing only on border control and deterrence will not solve the problem. ... [A]n exclusive focus on security and targeting criminal activity only risks making these journeys even more dangerous, and those travelling more vulnerable. One cannot stop a person who is fleeing for life by deterrence, without escalating the dangers even more. Any effective response must also address the root causes of this phenomenon.³⁵

Some of these root causes have already been discussed, such as the escalation in global protection needs, shortfalls in humanitarian funding and limited access to durable solutions. An additional factor is inadequate protection of people fleeing persecution in many countries of asylum, resulting not only from lack of capacity but also from government policies which fail to uphold basic protection and human rights principles.

This issue is particularly relevant in the Asia–Pacific region, where standards of protection for refugees and people seeking asylum generally do not comply with international refugee and human rights law.

1.3 Refugee protection in the Asia–Pacific region

As at December 2015, UNHCR’s total population of concern in the Asia–Pacific region stood at 9.8 million, including approximately 3.8 million refugees, 135,000 asylum seekers and 2.9 million internally displaced people.³⁶ The region includes two of the world’s top ten refugee-producing countries (Afghanistan and Myanmar (Burma)) and two of the top ten refugee-hosting countries (Pakistan and Iran).³⁷ It also plays host to the largest population of stateless people under UNHCR’s mandate (1.6 million people).³⁸

Box 1: Forced displacement and statelessness in the Asia–Pacific region³⁹

Afghanistan

Hosts 258,000 refugees and 1.2 million internally displaced people
Country of origin for 2.7 million refugees and 259,000 asylum seekers

Bangladesh

Hosts 232,000 refugees
Country of origin for 12,000 refugees and 31,000 asylum seekers

Bhutan

Country of origin for 18,000 refugees

Myanmar (Burma)

Hosts 451,000 internally displaced people and 938,000 stateless people
Country of origin for 452,000 refugees and 61,000 asylum seekers

China

Hosts 301,000 refugees⁴⁰
Country of origin for 213,000 refugees and 58,000 asylum seekers

India

Hosts 201,000 refugees and 6,500 asylum seekers
Country of origin for 9,900 refugees and 25,000 asylum seekers

Indonesia

Hosts 6,000 refugees and 7,600 asylum seekers
Country of origin for 14,000 refugees and 2,700 asylum seekers

Iran

Hosts 979,000 refugees
Country of origin for 85,000 refugees and 57,000 asylum seekers

Japan

Hosts 2,500 refugees and 14,000 asylum seekers

Malaysia

Hosts 94,000 refugees, 60,000 asylum seekers and 12,000 stateless people

Country of origin for 2,800 asylum seekers

Nepal

Hosts 33,000 refugees

Country of origin for 8,900 refugees and 9,000 asylum seekers

Pakistan

Hosts 1.6 million refugees, 6,400 asylum seekers and 1.1 million internally displaced people

Country of origin for 298,000 refugees and 64,000 asylum seekers

Papua New Guinea

Hosts 9,500 refugees

Philippines

Hosts 63,000 internally displaced people and 7,100 stateless people

Country of origin for 1,900 asylum seekers

South Korea

Hosts 1,500 refugees and 5,400 asylum seekers

Sri Lanka

Hosts 45,000 internally displaced people

Country of origin for 121,000 refugees and 15,000 asylum seekers

Thailand

Hosts 108,000 refugees, 8,300 asylum seekers and 444,000 stateless people

Vietnam

Hosts 11,000 stateless people

Country of origin for 313,000 refugees⁴¹ and 4,400 asylum seekers

The protection environment in the Asia–Pacific region is complex and challenging. In contrast to Africa, the Americas and Europe, the Asia–Pacific region does not have an enforceable, region-wide human rights instrument or mechanism. Fewer than half of the countries in the region are signatories to the Refugee Convention and many lack legal or administrative frameworks for addressing the protection needs of forcibly displaced people.

Table 2: Signatories to the Refugee Convention and/or its Protocol, by UNHCR region⁴²

UNCHR region	No. countries	No. signatories	% signatories
Africa	48	44	92%
Americas	35	30	86%
Asia and the Pacific	46	20	43%
Europe	49	47	96%
Middle East and North Africa	19	7	37%

As a result, **refugees and people seeking asylum — even if they have been formally registered or recognised as refugees by UNHCR — do not have formal legal status in a number of countries across the Asia–Pacific region.**

The lack of formal status has a number of serious implications for the enjoyment of human rights by people seeking protection. In these circumstances, they are typically unable to work legally, are not entitled to access basic services such as education, health care or social security and face barriers to securing adequate housing. Lack of status also places them at risk of harassment, exploitation and violence (with women and girls at particular risk of gender-based violence, including sexual exploitation), as well as arrest, detention and deportation.⁴³

Box 2: Malaysia: Living in the ‘dark zone’

Refugees and people seeking asylum do not have formal status in Malaysia. According to Richard Towle, UNHCR’s representative in Malaysia, they are ‘treated as illegal migrants, and illegal migrants are at risk of all forms of vulnerability in society. They are liable to be arrested and detained and live in a grey or dark zone of society where there is a high degree of exploitation or abuse.’⁴⁴

Unable to work legally, many refugees and people seeking asylum are compelled to work in the informal sector, which places them at high risk of exploitation by their employers. This may include non-payment of wages, verbal and physical abuse by employers, unfair dismissal, long working hours and hazardous working conditions. The risk of arrest and detention due to their lack of status constrains the ability of refugees and people seeking asylum to report and seek redress for exploitation.⁴⁵

Box 2: Malaysia: Living in the 'dark zone' (continued)

Children who are refugees or seeking asylum in Malaysia are not permitted to attend public school. Many receive education informally through projects run by UNHCR and non-government organisations or community-based programs organised by refugee communities. However, these programs are limited in their reach — UNHCR estimates that less than a third of school-aged refugee children in Malaysia have access to education — and generally cannot issue diplomas or certificates to advance further education. Community-based programs face additional challenges including limited resources, lack of qualified teachers and inadequate teaching facilities.⁴⁶

Box 3: Indonesia: Ill-treatment in immigration detention

Under Indonesia's immigration legislation, undocumented migrants can be detained for up to ten years. Those who hold UNHCR documents are exempt from arrest and people are normally released from detention once they are granted refugee status. However, the waiting period for processing of refugee claims can range from eight to 20 months, and staff in detention facilities may demand bribes from recognised refugees before allowing their release.⁴⁷

Living conditions in detention facilities are generally poor, with key concerns including overcrowding, inadequate sanitation facilities and medical care, and extortion and violence from staff. Of particular concern are the impacts of these conditions on children, including unaccompanied children who may be detained alongside unrelated adults.⁴⁸ Unaccompanied children can be released from detention if a suitable alternative to detention is identified. These alternatives are provided through shelters run by Church World Service and the International Organization for Migration. If no space is available in the shelters, however, these children cannot be released and may remain in detention indefinitely.⁴⁹

The absence of legal frameworks for refugee protection also limits access to registration and timely refugee status determination. While registration or recognition of refugee status does not necessarily confer formal protection, it does offer limited protection in some countries (for example, through providing a pathway for release from detention) and can facilitate access to solutions such as resettlement.

However, many refugees in the region are unable to seek formal recognition of their status or face prolonged waiting periods for recognition. It is estimated that there are hundreds of thousands of unregistered refugees living in the region, particularly in Bangladesh, Iran and Pakistan.⁵⁰

There is considerable variation in protection standards across the region. The Philippines, Japan and South Korea, for example, have all ratified the Refugee Convention and developed national frameworks for refugee status determination and protection (although the quality of these frameworks varies).⁵¹ Other countries (notably Iran and Pakistan) have also shown considerable hospitality towards forcibly displaced people over long periods of time and provide refugees with access to some basic entitlements, such as education.⁵²

Overall, however — and particularly in southeast Asia — the treatment of refugees and people seeking protection in the region generally does not meet the standards required by international refugee and human rights law.

Box 4: Thailand: Lack of protection against *refoulement*

On two occasions during 2015, Thailand forcibly repatriated refugees and people seeking asylum from China in violation of the principle of *non-refoulement*. In June, a group of around 100 Uighur Muslims were returned to China despite the Thai Government having provided assurances to UNHCR that the group would receive protection. UNHCR's Assistant High Commissioner for Protection, Volker Türk, described the returns as 'a flagrant violation of international law'.⁵³ In November, Thailand deported two Chinese dissidents who had been recognised as refugees by UNHCR and were due to be resettled within days. UNHCR stated that the incident 'underscores the longstanding gap in Thai domestic law concerning ensuring appropriate treatment of persons with international protection needs'.⁵⁴

Box 5: Bangladesh: 'No future' for refugees

Bangladesh has hosted thousands of Rohingya refugees from Myanmar (Burma) for over 20 years. Around 30,000 registered refugees are residing in government-run camps near Cox's Bazar, where they receive basic assistance including food rations, shelter and clothing and basic water, sanitation and health services. Education is available only up until Grade 5 and refugees are not permitted to work legally. Hundreds of thousands of unregistered refugees living outside the camps do not have access to this assistance and must find ways to survive without support from the Government of Bangladesh or UNHCR.⁵⁵

The Government of Bangladesh produced a National Strategy Paper in 2014 which proposed a number of measures for responding to the Rohingya refugee situation in a coordinated manner. These included conducting a survey to identify unregistered refugees and providing basic assistance to those identified through this exercise.⁵⁶ However, the Strategy Paper makes no mention of improving access to education or livelihoods, or exploring options for providing durable solutions for Rohingya refugees through local integration or resettlement (the latter having been suspended since late 2010).⁵⁷

In the words of Dick Hebecker, who formerly headed UNHCR's office in Cox's Bazar, 'the registered refugees have everything they need to survive. But there is no future and no way to participate in the development of society'.⁵⁸

The trends examined in this section clearly demonstrate that the pressing protection needs of many refugees and people seeking asylum are not being adequately addressed by governments in the Asia-Pacific region.

Before, during and after flight, refugees and people seeking asylum in the region experience multiple violations of their human rights and face serious challenges in accessing the protection to which they are entitled.

Human rights standards relevant to the experiences of refugees and people seeking asylum in the Asia-Pacific region are summarised in Table 3.

Table 3: Human rights standards relevant to refugee protection in the Asia–Pacific region

Issue of concern	Relevant obligations
Physical safety, including risk of loss of life at sea	<p>Everyone has the right to life (ICCPR article 6(1), CRC article 6(1), CRPD article 10)</p> <p>Everyone has the right to security of person (ICCPR article 9(1))</p> <p>Children should be protected from all forms of physical and mental violence, including sexual abuse (CRC articles 19(1) and 34)</p> <p>People with disabilities should be protected from all forms of exploitation, violence and abuse (CRPD article 16(1))</p>
Lack of formal status and limited access to durable solutions	<p>Everyone has the right to recognition as a person before the law (ICCPR article 16, CRPD article 12(1))</p> <p>A child who is seeking or has refugee status should receive appropriate protection and humanitarian assistance (CRC article 22(1))</p> <p>All necessary measures should be taken to ensure the protection and safety of people with disabilities in situations of risk, including humanitarian emergencies (CRPD article 11)</p> <p>The assimilation and naturalisation of refugees should be facilitated as far as possible (Refugee Convention article 34)</p> <p><i>Lack of formal status and limited access to durable solutions can also hamper the enjoyment of a range of other human rights. For example, people who are not formally recognised as long term residents of a country may be unable to access education, health care or social security; and people who lack formal status are at higher risk of arbitrary detention, refoulement and exploitation.</i></p>
Difficulties securing adequate food, clothing, housing and other necessities	<p>Everyone has the right to an adequate standard of living (ICESCR article 11(1), CRC article 27(1), CRPD article 28(1))</p>
Limitations on work rights	<p>Everyone has the right to work (ICESCR article 6(1), CRPD article 27(1))</p> <p>Refugees should be treated at least as favourably as non-citizens in the same circumstances⁵⁹ with regards to employment (Refugee Convention article 17(1))</p>
Limitations on access to social security, health care and education	<p>Everyone has the right to social security (ICESCR article 9, CRC article 26(1), CRPD article 28(2))</p> <p>Refugees should be treated in the same manner as citizens with regards to social security (Refugee Convention article 24(1)(b))</p> <p>Everyone has the right to an adequate standard of living (ICESCR article 11(1), CRC article 27(1), CRPD article 28(1)) and to the continuous improvement of living conditions (ICESCR article 11(1), CRPD article 28(1))</p> <p>Everyone has the right to enjoy the highest attainable standard of health (ICESCR article 12(1), CRC article 24(1), CRPD article 25)</p> <p>Everyone has the right to education (ICESCR article 13(1), CRC article 28(1), CRPD article 24(1))</p> <p>Primary education should be compulsory and available free to all (ICESCR article 13(2)(a), CRC article 28(1)(a))</p> <p>Refugees should be treated in the same manner as citizens with regards to primary education and at least as favourably as non-citizens in the same circumstances with regards to secondary and tertiary education (Refugee Convention article 22)</p>

Issue of concern	Relevant obligations
Risk of harassment and exploitation (including sexual exploitation)	<p>Everyone has the right to security of person (ICCPR article 9(1))</p> <p>Everyone has the right to just and favourable conditions of work (ICESCR article 7, CRPD article 27(1)(b))</p> <p>Children should be protected from economic exploitation (ICESCR article 10(3), CRC article 32(1))</p> <p>Children should be protected from all forms of physical and mental violence, including sexual abuse (CRC articles 19(1) and 34)</p> <p>People with disabilities should be protected from all forms of exploitation, violence and abuse (CRPD article 16(1))</p>
Risk of arbitrary immigration detention	<p>No one should be subjected to arbitrary detention (ICCPR article 9(1), CRC article 37(b), CRPD article 14(b))</p> <p>Children should only be detained as a last resort and for the shortest appropriate period of time (CRC article 37(b))</p> <p>Anyone who is detained has the right to challenge the legality of their detention in court (ICCPR article 9(4), CRC article 37(d))</p>
Risk of being detained under harsh conditions	<p>People in detention should be treated with humanity and respect for the inherent dignity of the human person, and children in detention should be treated in a manner which takes into account the needs of people their age (ICCPR article 10(1), CRC article 37(c))</p> <p>Everyone has the right to an adequate standard of living (ICESCR article 11(1), CRC article 27(1), CRPD article 28(1))</p> <p>Everyone has the right to privacy (ICCPR article 17(1), CRC article 16(1), CRPD article 22(1))</p> <p>No one should be subject to torture or cruel, inhuman or degrading treatment or punishment (ICCPR article 7, CRC article 37(a), CRPD article 15(1))</p> <p>Acts of cruel, inhuman and degrading treatment or punishment should be prevented (CAT article 16(1), CRPD article 15(2))</p>
Limited access to robust refugee status determination and inadequate safeguards against <i>refoulement</i>	<p>A refugee should not be expelled or returned to a territory in which their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion (Refugee Convention Article 33(1))</p> <p>A child who is seeking or has refugee status should receive appropriate protection and humanitarian assistance (CRC article 22(1))</p> <p>All necessary measures should be taken to ensure the protection and safety of people with disabilities in situations of risk, including humanitarian emergencies (CRPD article 11)</p> <p>No one should be subjected to torture or cruel, inhuman or degrading treatment or punishment (ICCPR article 7, CRC article 37(a), CRPD article 15(1))</p> <p>A person should not be expelled, returned or extradited to another state where there are substantial grounds for believing that they would be in danger of being subjected to torture (CAT article 3(1))</p>

1.4 Human rights implications of current third country processing arrangements

International law does not specifically prohibit third country processing of asylum claims although the UNHCR maintains that that people seeking asylum should ordinarily have their claims processed in the territory of the country where they arrive. UNHCR also holds that ‘the primary responsibility to provide protection rests with the State where asylum is sought’.⁶⁰

Transferring people seeking asylum to third countries does not release Australia from its obligations under international human rights law.⁶¹ Australia may remain liable for the consequences of transferring people to third countries for processing of their asylum claims, and must ensure that adequate safeguards are in place in those countries to ensure that the human rights of the people transferred are upheld.

Since the processing of asylum claims in Nauru and Papua New Guinea’s Manus Island recommenced in 2012, numerous reports and inquiries as well as the Commission’s own research have documented a range of serious shortcomings in third country processing arrangements.⁶² Key issues of concern have included:

- the discriminatory nature of third country processing (it applies only to people who arrived by boat to seek asylum within a specific time period)
- inadequate pre-transfer assessment processes, which fail to adequately consider the best interests of the child and lack sufficient safeguards against *refoulement* (with particular concern having been raised about same-sex attracted people being sent to countries which criminalise same-sex sexual activity)
- prolonged, indefinite and potentially arbitrary immigration detention (including of children)
- harsh living conditions, including inadequate accommodation and sanitation facilities, limited privacy, extreme heat and overcrowding
- access to adequate health care services, including maternal, paediatric and mental health care services
- physical safety, particularly in relation to reports of physical and sexual assault of people in detention and the Nauruan community (with women and children at particular risk) and a violent incident at the Manus Island detention facility in 2014 which left one person dead and dozens injured
- delays in the processing and finalisation of asylum claims
- limited access to sustainable durable solutions, with the vast majority of people who have been found to be refugees still waiting for a solution and several of the refugees resettled in Cambodia having subsequently returned to their countries of origin
- the cumulative negative impacts of these conditions on the development of children and on the physical and mental health of all people subject to third country processing (which may also impact on their ability to present their asylum claims)
- lack of independent and transparent monitoring of third country processing facilities and arrangements.

These issues engage numerous human rights obligations under international treaties to which Australia is a party as well as under the *Convention Relating to the Status of Refugees* (Refugee Convention).

Concerns about the human rights implications of the current model of third country processing have been echoed by a number of UN authorities, including the Committee against Torture, the Special Rapporteur on Torture and the High Commissioners for Refugees and Human Rights. Some have contended that Australia has failed to meet its obligations under human rights law as a result of its participation in third country processing arrangements.

Box 6: Human rights concerns relating to third country processing

‘The transfer of asylum-seekers to what are currently harsh and unsatisfactory temporary facilities, within a closed detention setting, and in the absence of a fully functional legal framework and adequately capacitated system to assess refugee claims, do not currently meet the required protection standards.’

— *United Nations High Commissioner for Refugees, monitoring visit to Nauru, December 2012*⁶³

‘On the basis of the evidence before it, the committee considers that the measures as currently implemented carry a significant risk of being incompatible with a range of human rights.’

— *Parliamentary Joint Committee on Human Rights, Examination of the Migration (Regional Processing) package of legislation, June 2013*⁶⁴

‘Cumulatively, the harsh conditions for asylum-seekers at the RPC [Regional Processing Centre], the slowness of RSD [Refugee Status Determination] processing and the lack of clarity regarding RSD processes and approximate timeframes for durable solutions for refugees, create a deterrent effect that is punitive in nature for those affected, rather than promoting fair and efficient humanitarian outcomes for transferred asylum seekers and recognised refugees.’

— *United Nations High Commissioner for Refugees, monitoring visit to Manus Island, Papua New Guinea, October 2013*⁶⁵

‘Current measures and any further initiatives which will expedite the finalisation of PNG refugee status determinations and resettlement and removal processes [should] be implemented as quickly as possible with appropriate assistance.’

— *Robert Cornall AO, Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre, May 2014*⁶⁶

‘Australia’s policy of offshore processing for asylum seekers arriving by sea, and its interception and turning back of vessels, is leading to a chain of human rights violations, including arbitrary detention and possible torture following return to home countries.’

— *Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights, September 2014*⁶⁷

‘Children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress. The Commission is concerned that detention on Nauru is mandatory for children and that there is no time limit on how long they will be detained.’

— *Australian Human Rights Commission, The Forgotten Children: National Inquiry into Children in Immigration Detention, November 2014*⁶⁸

‘The combination of the harsh conditions, the protracted periods of closed detention and the uncertainty about the future reportedly creates serious physical and mental pain and suffering.’

— *United Nations Committee against Torture, December 2014*⁶⁹

‘[M]any transferees are apprehensive about their personal safety and have concerns about their privacy at the Centre ... The apprehension about personal safety and the concern about privacy arises from high density accommodation in mostly non-air-conditioned, soft walled marquees in a tropical climate.’

— *Philip Moss, Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, February 2015*⁷⁰

‘The Government of Australia, by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment.’

— *Juan E. Méndez, Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, March 2015*⁷¹

‘The children interviewed at Wickham Point, most of whom had spent several months in Nauru, are amongst the most traumatised children the paediatricians have ever seen. ... [Some] had palpable anticipatory trauma at mention of return to Nauru.’

— *Professor Elizabeth Elliott AM and Dr Hasantha Gunasekera, Report to the Australian Human Rights Commission: Monitoring visit to Wickham Point detention centre, October 2015*⁷²

‘UNHCR has observed and reported a progressive deterioration of the situation of refugees and asylum seekers on Nauru through its regular visits since 2012. Solutions are now urgently needed. Delays in immediate action to rectify the current situation are exacerbating human suffering and causing ongoing deterioration.’

— *United Nations High Commissioner for Refugees, August 2016*⁷³

During the 2015 Universal Periodic Review of Australia, 11 members of the Human Rights Council — Brazil, Germany, Ghana, Kenya, Luxembourg, the Maldives, Slovenia, Spain, Turkey, the United States of America and Uruguay — made specific recommendations about third country processing, ranging from improving conditions and oversight to abolishing the policy altogether. A further five countries — Fiji, Ireland, Japan, Sierra Leone and Sweden — raised concerns about third country processing during the interactive dialogue without making specific recommendations.⁷⁴

Box 7: UPR recommendations on third country processing⁷⁵

In line with its tradition as a resettlement country, reverse its policies of mandatory detention and offshore processing — *Brazil*

Review the policy of offshore processing of asylum seekers on Nauru and Manus Island — *Germany*

Ensure full compliance with its international obligations regarding the right of asylum seekers and refugees by expediting the processing of applications by asylum seekers at the various processing centres — *Ghana*

Review the current regional offshore processing arrangement, and policy of mandatory detention of refugees, stateless persons and migrants — *Kenya*

Stop the offshore processing of asylum requests — *Luxembourg*

Immediately close the Nauru and Manus Island detention centres — *Maldives*

Ensure that all asylum seekers and refugees who arrive in Australia are processed there regardless of their mode of arrival and ensure that the conditions at the offshore processing centers comply with international law and standards — *Slovenia*

Allow access to independent observers to centres of detention of migrants which are outside of the Australian territory — *Spain*

Instil a transparent, human rights-based approach related to the treatment of asylum seekers following their arrival, including the cessation of transfers to third countries — *Turkey*

Closely monitor the processing of refugees and asylum seekers in offshore centres to ensure that their human rights are respected — *United States of America*

Ensure that asylum seekers have access to legal assistance during the process and adopt measures, together with third countries, so that conditions in the processing centres in countries with which Australia has agreements, are in conformity with international laws and standards — *Uruguay*

There has been improvement in relation to some of the human rights concerns raised by the Commission and others, such as the expanded use of alternatives to detention and the progressive processing of asylum claims. However, available evidence suggests that many of these concerns have not been fully addressed. The Commission therefore considers that there is a need to reconsider Australia's current policy of third country processing. This in turn necessitates the consideration of alternative policy options for responding to flight by sea which are consistent with Australia's international human rights obligations.

1.5 Developing a rights-based response

The challenge of identifying alternative options to the current system of third country processing is situated within a broader regional and global context.

Limited access to effective protection is the key driver of flight by sea towards Australia (and elsewhere in the region). As noted by UNHCR, in Asia 'inadequate protection, unequal access to education and livelihoods, and the lack of solutions all contribute to onward movement by sea or other means'.⁷⁶

Accordingly, the movement of people seeking asylum towards Australia is not simply a product of our domestic legal and policy context. This in turn indicates that **a sustainable response to flight by sea must look beyond measures which simply limit or deny access to protection in Australia, and instead confront the serious protection issues in countries of origin and asylum which compel people to seek safety elsewhere.**

Given that the lack of effective protection for refugees and people seeking asylum in the Asia–Pacific region is the key driver of flight by sea towards Australia, **improving access to effective protection represents the most effective and sustainable means of preventing flight by sea (and other dangerous journeys).**

While Australia is well-placed to support efforts to improve access to protection, there are two key obstacles which currently hamper these efforts:

- There are limited opportunities for safe entry for people wishing to seek protection in Australia
- There are few effective mechanisms for cooperation on refugee protection issues amongst states in the Asia–Pacific region, which hampers the region’s capacity to respond effectively to the needs of forcibly displaced people.

Based on the research and consultation process, the Commission has identified two thematic areas (each encompassing a number of specific options) which are designed to overcome these obstacles. Together, they comprise an alternative, human rights-based policy response to flight by sea:

- Expand opportunities for safe entry to Australia
- Enhance foreign policy strategies on migration in the Asia–Pacific region.

The options put forward in this paper aim directly to address the key driver of flight by sea through creating and enhancing **pathways to protection**. They seek to achieve this by facilitating access to safe migration options, improving protection for refugees and people seeking asylum who are living in the region, and building towards more effective regional responses to refugee protection issues.

They respond to the human rights violations experienced by refugees and people seeking asylum during flight and in the context of displacement. They are also consistent with the Refugee Convention in that they avoid imposing penalties on the basis of a person’s mode of arrival or lack of documentation.

In summary, the rights-based alternatives to third country processing proposed by the Commission seek to prevent dangerous journeys through strengthening the enjoyment of human rights by refugees and people seeking asylum in the Asia–Pacific region.

While it is expected that this approach will contribute to reducing dangerous journeys through directly addressing their main driver, it is important to acknowledge that implementation will necessarily take time.

As such, flight by sea may remain an ongoing challenge in the region in the short term. The alternative approaches proposed by the Commission therefore incorporate measures to address the more pressing needs of displaced people in the region (so as to alleviate conditions more likely to compel flight in the short term) and to enhance regional capacity to conduct rescue at sea operations if or when flight by sea occurs in the future.

The following two sections of this paper outline the Commission’s proposed strategies in greater detail. They identify a large number of specific proposals which could be pursued.

These sections seek to provide the framework for an alternative policy response, rather than an exhaustive overview of all relevant measures or a detailed plan for implementation. The proposed measures could therefore benefit from further policy development and economic analysis prior to implementation.

Further research, consultation and planning would also be required to tailor these measures to conditions in different countries, and to the needs of particular groups (such as women and girls, people with disability, older people, children and people who are same-sex attracted, gender diverse or intersex).⁷⁷

The recommendations of treaty bodies (such as the general recommendations of the Committee on the Elimination of Discrimination against Women on women in conflict prevention and on the gender-related dimensions of refugee status, asylum, nationality and statelessness) may be of assistance in developing these tailored responses.⁷⁸

The measures proposed in this report focus primarily on conditions in countries of asylum. Ultimately, however, the most effective and sustainable way to prevent flight by sea is to address the root causes of displacement in countries of refugee origin. A thorough examination of the strategies necessary to resolve these root causes is beyond the scope of this paper. The Commission acknowledges that strategies to support conflict resolution and prevention efforts will substantially complement the measures outlined in this report.

Expand opportunities for safe entry to Australia

Resettlement	<p>Increase the size of the resettlement program</p> <p>Adjust the composition of the resettlement program</p> <p>Introduce a wider range of private and community sponsorship options</p>	
Protection-sensitive migration	<p>Increase opportunities for safe departure</p>	<p>Introduce temporary visas for the purpose of seeking asylum</p> <p>Identify persecution concerns during the visa application process</p>
	<p>Address barriers to skilled and family migration</p>	<p>Provide waivers, differentiated processing procedures, access to relevant services and safeguards against <i>refoulement</i></p> <p>Engage with the private sector to support skilled migration</p>
	<p>Enhance access to study opportunities</p>	<p>Address barriers to student visas</p> <p>Offer scholarships and targeted study opportunities</p> <p>Develop partnerships with universities</p>

2 Expand opportunities for safe entry to Australia

Australia remains one of the few countries in the Asia–Pacific region which has the capacity to offer effective protection to refugees and people seeking asylum. There are, however, very few avenues by which many people fleeing persecution (particularly those from the world’s major refugee-producing countries) can travel to Australia lawfully.

There are a range of barriers which operate to limit access to lawful migration options for refugees and people seeking asylum. These include:

- the limited number of places available under Australia’s Refugee and Humanitarian Program
- resettlement priorities under the Refugee and Humanitarian Program, which can result in some groups of refugees having less access to resettlement than others
- the limited visa options under the Refugee and Humanitarian Program for people seeking to flee directly from their country of origin
- the prohibitive costs associated with many Migration Program visas
- documentation and other eligibility requirements for Migration Program visas which may be difficult for refugees and people seeking asylum to meet
- the limited range of visa options under the Migration Program, for which many refugees and people seeking asylum would not be eligible
- the way in which ‘immigration risk’ is assessed in some visa applications, which can disadvantage people from ‘high risk’ countries (including major refugee-producing countries).

As a result of these barriers, many people fleeing persecution who wish to seek protection in Australia have no lawful migration pathway available to them.

Expanding opportunities for safe entry to Australia would therefore represent an important means of facilitating access to effective protection, as well as providing a more viable alternative to dangerous journeys. The Commission has identified two main pathways through which opportunities for safe entry could be expanded: **resettlement** and **protection-sensitive migration**.

The Commission acknowledges that the options canvassed in this section may have significant budget implications. In considering the suitability of these options, it will be necessary to model their budgetary and broader economy-wide implications.⁷⁹ Further investigation is also needed to assess the extent to which these changes may alter the level of demand for migration to Australia.

2.1 Resettlement

(a) Increase the size of the resettlement program

The current size of Australia’s Refugee and Humanitarian Program is 13,750 places annually, with approximately 11,000 places allocated to resettlement and 2,750 places allocated for permanent Protection Visas.⁸⁰ The Government has committed to increasing the size of the annual quota to 18,750 places in 2018–19.⁸¹ In addition to the annual program, a further 12,000 resettlement places will be made available to refugees from Syria and Iraq over the coming years.⁸²

As noted in Section 1.1, over 1.19 million refugees are estimated to be in need of resettlement over the coming years and there remains a large gap between global resettlement needs and available places.⁸³ Much of the increase in resettlement needs in recent years can be attributed to the Syrian refugee crisis, with Syrians accounting for 40% of global resettlement needs. UNHCR estimates that at least ten per cent of Syrian refugees will need resettling or other humanitarian help to safely move elsewhere before the end of 2018.⁸⁴

The Commission considers that there is significant scope to expand the program beyond the proposed 18,750 places, in response to global resettlement needs.

Australia has a well-established legal and policy framework for managing migration, as well as the infrastructure, resources and expertise necessary to support the successful settlement of migrants and refugees. In addition, despite the recent escalation in global protection needs, Australia has not experienced a significant increase in asylum applications.⁸⁵ These factors place Australia in a strong position to increase the size of its Refugee and Humanitarian Program.

While only a relatively small number of the world’s refugees will ever benefit from resettlement in Australia, increasing the size of the resettlement program would be an important component of a broader suite of measures for enhancing access to safe migration pathways. Increasing the size of the program is also a key element of enhanced foreign policy strategies on migration (see Section 3).

While the Commission considers that Australia has the capacity to resettle a larger number of people, any increase in the size of the resettlement intake will have a significant impact on organisations and community groups providing settlement services and other forms of support to newly-arrived refugees. The Commission therefore suggests that the proposed increase be planned and implemented in close consultation with these organisations and groups.

(b) Adjust the composition of the resettlement program

In addition to increasing the number of resettlement places available, the composition of the Refugee and Humanitarian Program could be reviewed to maximise opportunities for resettlement and to ensure that these opportunities are available to people in a range of situations.

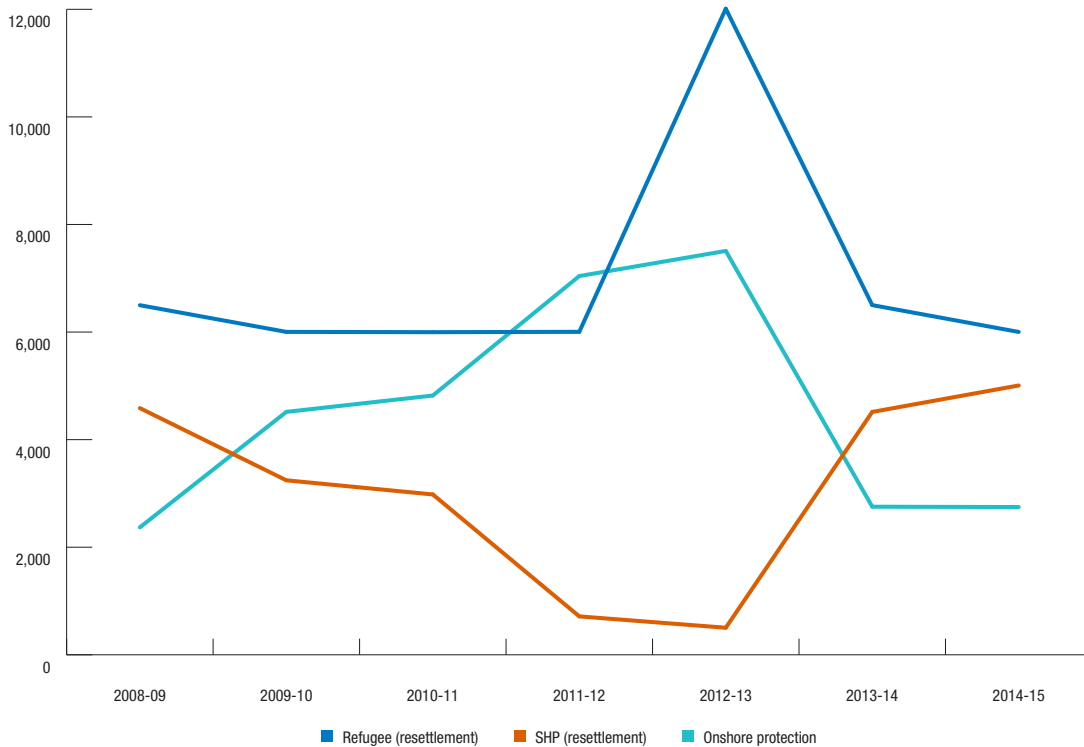
Based on the research and consultation process conducted for this project, the Commission proposes that the Refugee and Humanitarian Program include several components for responding to different needs:

- A *core resettlement component* for refugees identified as being in need of resettlement by UNHCR. The primary purpose of this component would be to provide protection and durable solutions to vulnerable individuals and families (including Women at Risk) in line with UNHCR's global resettlement priorities. The core component should remain consistent in size to enable forward planning and multi-year resettlement commitments. It would also play an important role in enhancing Australia's capacity to use resettlement strategically (as discussed in further detail in Section 3.4(a)).
- A *private and community sponsorship component* for people who receive some form of assistance from individuals, communities or organisations in Australia. This component has several aims: to provide an alternative resettlement pathway for people who may not have access to resettlement through UNHCR processes; to allow for greater community participation in the resettlement process, including the identification of people in need; and to enhance Australia's capacity to resettle a larger number of people through tapping into the skills and resources of people and groups in Australia. Further detail about possible options for private and community sponsorship is provided below in Section 2.1(c).
- An *'emergency' component* to provide capacity for responding to emerging crises and urgent resettlement needs without detracting from the core resettlement component. The size of this component could be scaled up or down according to need.

In contrast to the current Refugee and Humanitarian Program, the Commission's proposed composition does not include a component for permanent Protection Visas. During the consultation process, some concern was expressed about the inclusion of both resettlement and onshore protection within the same capped program (an approach which the Commission understands is unique to Australia).

Whereas resettlement represents a voluntary contribution towards sharing responsibility for refugee protection, onshore protection is designed to meet Australia's legal obligations under the Refugee Convention and other international human rights treaties. Consequently, while the resettlement component can operate effectively as a planned program, it is more appropriate for the size of the onshore component to be determined by demand (rather than being a capped quota as is currently the case). However, including a demand-driven component within a program of fixed size would have the effect of reducing the number of resettlement places available, as occurred previously when the onshore component was uncapped (see Chart 7).

Chart 7: Visas granted under the Refugee and Humanitarian Program, 2008-09 to 2014-15⁸⁶



The Commission therefore suggests that the onshore protection component be removed from the Refugee and Humanitarian Program and instead form a stand-alone, demand-driven program.

(c) Expand options for private and community sponsorship

There are currently two main avenues through which individuals and organisations can seek to sponsor or propose refugees and other humanitarian entrants for resettlement in Australia:

- The Special Humanitarian Program (SHP), a component of the Refugee and Humanitarian Program which allows Australian citizens and permanent residents, eligible New Zealand citizens and organisations operating in Australia to propose people for resettlement who are outside their home country and subject to substantial discrimination amounting to gross violation of their human rights in their home country. Proposers must pay for airfares and provide on-arrival support to the people they propose.⁸⁷
- The Community Proposal Pilot (CPP), which allows approved proposing organisations to propose someone in a humanitarian situation outside of Australia for a Refugee and Humanitarian Program visa. Approved proposing organisations work with individuals and community groups to identify people in need of resettlement and support them to apply for a visa. Proposers must meet a range of costs, including a substantial Visa Application Charge (comprising a base application charge of \$2,680 plus \$16,444 for the primary applicant and \$2,680 for each secondary applicant), airfares, medical tests and any administrative fees charged by proposing organisations, plus provide on-arrival support to the people they propose.⁸⁸ Their applications receive the highest processing priority, meaning they are processed ahead of applications lodged under the SHP.⁸⁹

During the consultation process, it was noted that many groups in the community have both the interest in and capacity to become more closely involved in sponsoring refugees for resettlement in Australia and supporting them after arrival. However, the two avenues currently available to these groups often are not sufficiently accessible.

In relation to the SHP, there is enormous demand for the relatively small number of visas available under this program (approximately 5,000 visas per year). A significant proportion of these visas have been allocated to people from Syria and Iraq,⁹⁰ with the result that people from all other parts of the world are now competing for a relatively small number of visas. In addition, SHP applications are prioritised on the basis of the closeness of the relationship between the proposer and the person being proposed,⁹¹ with the result that applications lodged by organisations and community groups are considered a low priority and are unlikely to be successful.

The high costs associated with the CPP program and the high level of competition for a small number of places (500 per year) render this option inaccessible to many individuals and community groups. Additionally, the 500 places allocated to the CPP are deducted from the Refugee and Humanitarian Program intake. This undermines the potential of private and community sponsorship to contribute to expanding Australia's resettlement capacity.

The Commission therefore suggests that the Government explore options for introducing a wider range of private and community sponsorship options, to provide more accessible options for a variety of groups and capitalise on their different strengths. Some individuals and larger or more established organisations may well be able to meet the high costs associated with a program like the CPP. Other organisations and groups may be unable to meet these high costs but could nonetheless play a significant role in supporting the settlement of new arrivals.

Box 8: Community Refugee Settlement Scheme

The Community Refugee Settlement Scheme (CRSS) was introduced in 1979. At the time, assistance for newly-arrived refugees was delivered through Government-run migrant centres and hostels. Under the CRSS, newly-arrived refugees moved directly into the community without first residing in a hostel, and received assistance from volunteer groups (primarily churches and service clubs) with orientation, accommodation, employment and social support. Hundreds of sponsor groups formed around Australia, and thousands of refugees were supported through the CRSS.⁹²

Reviews of the CRSS conducted in the 1980s found that it generally achieved positive outcomes. However, a 1994 review raised concerns about the variable levels of support provided by the volunteer groups involved in the CRSS. Support tended to vary according to the capacity and skills of the group, rather than the needs of the people they supported. The CRSS was eventually phased out and replaced with the Integrated Humanitarian Settlement Strategy (now Humanitarian Settlement Services), which provides a suite of on-arrival settlement services through a network of contracted providers.⁹³

Notwithstanding the concerns noted in the 1994 review, the CRSS remains a significant example of the potential for members of the Australian community to play a more direct role in supporting new arrivals to settle.

A refugee community organisation may have limited fundraising capacity but could nonetheless be highly effective in supporting members of their community to settle in Australia and secure employment, due to unique skills such as cultural knowledge, lived experience of settling in Australia, language skills and community connections. Similarly, a community group in a regional area may be able to raise funds to cover smaller costs such as airfares and mobilise volunteers to provide effective settlement support.

Box 9: Sanctuary Australia Foundation⁹⁴

The Sanctuary Australia Foundation was founded in 1988 in Coffs Harbour by Sue and Peter Hallam, based on their previous experience in refugee settlement in Canada. Originally known as the Sanctuary Refugee Support Group, it provided support to new arrivals under the Community Refugee Settlement Scheme.

Over time, Sanctuary became a registered not-for-profit organisation and its focus shifted to proposing refugees for resettlement in Australia under the Special Humanitarian Program (SHP), working closely with Australian overseas posts. Sanctuary community settlement groups welcomed new arrivals into their communities and provided intensive settlement support, including information, advice, referrals and targeted assistance with employment, education and housing. The Foundation also established a Travel Loan Fund to assist SHP proposers to meet the cost of airfares. The work of the Foundation is funded entirely through donations from the community and businesses.

The Sanctuary model became very successful, assisting more than 3,000 refugees to resettle in Australia over the past three decades. Sanctuary community settlement groups were established in both metropolitan and regional areas across Australia, including Brisbane, Melbourne, Perth, Sydney, Albury, Armidale, Bega, Bellingen, Inverell, Lismore and Rockhampton. The Foundation has won multiple awards and several of its leaders (including its founders Sue and Peter Hallam) have received honours for their work.⁹⁵

As a result of increasing demand for SHP visas in recent years, Sanctuary groups have had fewer opportunities to propose people for resettlement in Australia, with some groups closing as a result. However, the Foundation reports that the remaining Sanctuary groups are keen to continue resettlement programs should proposal opportunities become available.

Options for private and community sponsorship could include:

- a CPP-style component under which proposers meet a significant proportion of the costs associated with resettlement as well as providing on-arrival settlement support. In light of its lower cost to Government, this component should sit outside the Refugee and Humanitarian Program rather than being deducted from the annual intake
- an SHP-style component designed primarily for individuals seeking to sponsor relatives to join them in Australia
- a component for organisations and community groups (including refugee community organisations) which can demonstrate capacity to meet some of the costs associated with resettlement and/or provide effective on-arrival settlement support.

Box 10: Association of Hazaras in Victoria⁹⁶

The Hazaras are an ethnic group who primarily reside in Afghanistan, with smaller populations in Pakistan and Iran. They are believed to be of Turkic and Mongol descent and are primarily Shi'a Muslims. Long persecuted on the basis of their ethnicity and religion, thousands of Hazara people have sought refuge in other countries, including Australia.

The Association of Hazaras in Victoria (AHV) was founded in 2002 to support Hazara refugees living on Temporary Protection Visas in the south-eastern suburbs of Melbourne. Today, the organisation continues to assist refugees and migrants settling in Australia, promote their participation in Australian society and advocate for the rights of ethnic minorities in Afghanistan. AHV has a small operating budget (largely composed of local and state government grants) and most of its services are delivered by volunteers.

Services and programs provided by AHV include: publication of a monthly magazine containing news and information relevant to the Afghan-Australian community; a range of education programs, including a community language school for primary school-aged children, a driver education program for Afghan women and English classes for people seeking asylum who are living in the community on Bridging Visas; casework, referrals and translation services, including assistance with visa applications; sport and recreation programs for young people; and cultural events and festivals. AHV also engages in advocacy with local, state and federal governments to highlight the needs of the Hazara community in Australia.

Although AHV has not been involved in sponsoring refugees for resettlement in Australia, its work provides a clear example of the important role played by refugee communities in supporting the settlement of new arrivals. The fact that many of AHV's volunteers arrived in Australia as refugees, and share a common language, culture and religion with the people they assist, places the organisation in a unique position to understand and address the needs of the Hazara community. Introducing a wider range of community sponsorship options could provide an opportunity to tap into the skills and capacity of community organisations like AHV.

The Commission wishes to emphasise that Australia's comprehensive network of professional settlement services plays an instrumental role in ensuring that refugees are able to settle successfully in Australia. The Commission is not proposing that these services be entirely replaced by a community model of settlement support. Indeed, such a model is unlikely to be suitable for individuals who are particularly vulnerable or have complex needs. Professional services will continue to be required for many of the people resettled in Australia. However, enhancing opportunities for community groups and organisations with relevant expertise to become more directly involved in the resettlement process could help to facilitate the rollout of a larger resettlement program and support its long term sustainability.

2.2 Protection-sensitive migration

Protection-sensitive migration aims to facilitate refugees' access to non-humanitarian migration pathways as a means of enhancing protection or providing durable solutions. It involves addressing barriers which may inadvertently exclude people fleeing persecution from migration opportunities (such as documentation requirements, visa fees and carrier sanctions); implementing proactive strategies to extend a wider range of migration options to forcibly displaced people; and providing additional safeguards (such as protection against *refoulement*) for refugees migrating through non-humanitarian pathways.

Some commentators have suggested that protection-sensitive migration (also described as mobility or 'transnationalism') could be considered the 'fourth durable solution' alongside the three traditional solutions of voluntary repatriation, local integration and resettlement.⁹⁷ In preparation for a high-level meeting on pathways for admission of Syrian refugees in March 2016, UNHCR prepared a background note highlighting several non-humanitarian pathways for admission which could be used for the purpose of 'creating or expanding opportunities for Syrian refugees to access safety and protection'. These included admission of relatives, labour mobility schemes, academic scholarships and apprenticeship programs.⁹⁸

Information gathered through the Commission's research and consultation process indicates that there is significant potential in Australia to explore protection-sensitive migration options for refugees and people seeking asylum. Enhancing access to these options could both expand pathways for safe entry and create more space within the Refugee and Humanitarian Program for people who cannot access non-humanitarian forms of admission.

This section outlines a range of potential protection-sensitive migration options under various streams of Australia's permanent and temporary migration programs. The Commission considers that it would be beneficial to offer a range of migration options across different streams so as to avoid creating disparities in access to migration opportunities.

It is important to note that protection-sensitive migration is not intended to act as a substitute for resettlement: UNHCR has described protection-sensitive migration as a 'complement' to resettlement which should operate alongside existing resettlement quotas.⁹⁹ Participants in the Commission's consultation process also emphasised that any system for expanding access to migration or resettlement pathways should maintain a primary focus on protection needs, and should not result in some applications being prioritised over others on the basis of non-humanitarian considerations (such as skills or qualifications). If viewed as a complementary measure, however, protection-sensitive migration could play a constructive role in Australia's broader response to global protection needs.

(a) Increase opportunities for safe departure

There are currently very limited avenues through which a person who is at risk of persecution, but has not yet left their country of origin, can travel lawfully to Australia for the purpose of seeking asylum. In line with article 1(A) of the Refugee Convention, which defines a refugee as a person who is outside their country of nationality or habitual residence,¹⁰⁰ eligibility for most visa subclasses under the Refugee and Humanitarian Program require the person applying to be outside their country of origin.

The one exception is the In-country Special Humanitarian visa, which is designed for people who are subject to persecution in their home country and have not been able to leave that country to seek refuge elsewhere.¹⁰¹ During the 2013-14 financial year, hundreds of 'locally engaged employees' who had worked with the Australian Defence Force and other Australian Government agencies in Afghanistan were resettled on In-Country visas.¹⁰² As seen in Table 4, however, 2013-14 was clearly an outlier: In-Country visas typically comprise less than one per cent of the visas granted under the Refugee and Humanitarian Program.

Table 4: Visas granted under the In-Country Special Humanitarian Program, 2010-11 to 2014-15¹⁰³

Year	In-Country visas granted	Total permanent humanitarian visas granted	In-Country as a % of total
2010-11	26	13,799	0.19%
2011-12	43	13,759	0.31%
2012-13	71	20,019	0.35%
2013-14	717	13,768	5.21%
2014-15	133	13,756	0.97%

With regards to non-humanitarian pathways, mechanisms for assessing 'immigration risk' can operate to effectively exclude people from major refugee-producing countries. Immigration risk is defined as:

the risk that a visa applicant would seek to use a visa for purposes for which it is not intended, would make false claims in support of the visa application or would not comply with the conditions of the visa.¹⁰⁴

Under the student visa program, for example, different countries are assigned different assessment levels which correspond with the determined level of immigration risk for each country. The higher the assessment level, the more evidence a person must provide to support their visa application. Major-refugee producing countries tend to be assigned higher assessment levels (see Table 5). However, the additional evidence required to support a visa application under these assessment levels may be very difficult or even impossible for a person facing persecution in their country of origin to provide.

Table 5: Student visa assessment levels for major refugee-producing countries in the Asia-Pacific region¹⁰⁵

Country	ELICOS (570)	Schools (571)	VET (572)	Higher education (573)	Postgrad research (574)	Non award (575)
Afghanistan	3	2	3	3	2	3
China	3	3	3	3	3	1
Iran	3	3	3	3	2	2
Pakistan	3	3	3	3	2	3
Sri Lanka	3	3	3	3	2	3

In relation to financial capacity, for instance, people subject to assessment level one need only provide a declaration that they have access to sufficient funds to meet their expenses for the duration of their stay in Australia, whereas people subject to assessment levels two and three must provide a declaration and evidence that they have sufficient funds to meet their expenses for the first 12 months of their stay.¹⁰⁶ These expenses — which include return airfares, course fees and general living expenses — can run into tens of thousands of dollars, and are substantially higher for people seeking to migrate with their family members.¹⁰⁷

As a result of these barriers, many people seeking to escape persecution in their country of origin have few means of entering Australia to seek asylum, other than through some form of irregular movement. The Commission therefore suggests that the Australian Government explore options for enhancing access to in-country processing and other ‘protected entry’ procedures for people facing persecution who are still within their country of origin. ‘Protected entry’ procedures are arrangements which allow people seeking protection to approach a country of asylum while they are outside that country’s territory.¹⁰⁸ These arrangements can have the dual benefit of providing safe and lawful pathways of escape for people at risk, and providing greater capacity to facilitate the entry of people seeking asylum through a managed process.

One possible measure could involve introducing a form of temporary visa which would permit travel to Australia for the purpose of seeking asylum. Table 6 provides an overview of several programs designed to facilitate entry of people fleeing directly from their country of origin, or permit entry for the purposes of seeking asylum.

Table 6: Programs for facilitating entry from countries of origin for the purpose of seeking asylum

Country	Program	Description
Australia	Special Assistance Category (1992-2001)	For people who were in vulnerable situations overseas, who had close links to Australia but did not fit into traditional humanitarian categories. A specific subclass was created in 1995 for Sri Lankan citizens whose lives had been 'seriously disrupted' by fighting during Sri Lanka's civil war. ¹⁰⁹
Brazil	Humanitarian visas for Syrian refugees (2013-present)	For people belonging to a 'nationality affected by the Syrian conflict'. Applications are accepted through Brazilian embassies (primarily Lebanon, Jordan and Turkey, as Brazil closed its diplomatic mission in Damascus in 2012) and claims for asylum are presented on arrival. ¹¹⁰
Canada	Source Country Class (1997-2011)	For people inside their country of origin who were affected by civil war or armed conflict, had been detained for a legitimate exercise of civil rights pertaining to political or feared persecution on Refugee Convention grounds. Eligible countries were designated through regulations and changed over time. ¹¹¹
South Africa	Asylum transit permit (2004-present)	For people entering South Africa through a port of entry who claim to be asylum seekers. The permit is valid for 14 days and authorises the person to report to the nearest Refugee Reception Office in order to apply for asylum. ¹¹²
Switzerland	Protected entry procedure (1979-2012)	For people in countries of origin and asylum who met or were likely to meet Refugee Convention criteria. Applications were accepted through Swiss embassies, with a full assessment of protection claims conducted after arrival. ¹¹³

It is important to note that some of these programs had significant shortcomings. The process for designating countries under Canada's Source Country Class program, for example, was found to be 'impractical for responding in a timely way to humanitarian crises';¹¹⁴ and concerns have been raised on several occasions about inconsistencies in granting asylum transit permits in South Africa.¹¹⁵ However, there are a number of common elements across these programs which could form the basis of a similar program in Australia. These include:

- accepting applications through diplomatic posts or embassies
- conducting a brief initial assessment of protection needs at the time of application, with a more thorough refugee status determination process conducted after arrival
- designating specific countries of origin in the eligibility criteria for the visa (provided that new designations can occur in a timely and flexible manner to respond to changing circumstances).

Another measure could involve providing an option on visa application forms for applicants to confidentially indicate if they fear persecution in their country of origin, with a view to providing concessions for some visa requirements (e.g. waiving or reducing financial capacity requirements) and/or affording a higher processing priority for visa applications where the person is in immediate danger. As with the provision of temporary visas for the purpose of seeking asylum, the visa application process could include a brief evaluation of the person's protection needs, with a more thorough assessment conducted after arrival.

(b) Address barriers to skilled and family migration

There are significant opportunities within the skilled and family streams of Australia's Migration Program to expand the range of migration pathways available to refugees. Exploring these opportunities would not only create additional pathways to protection but could also 'free up' space within the Refugee and Humanitarian Program. For example, enhancing access to Partner and Child visas under the family stream of the Migration Program could shift a significant number of 'split family' applications out of the SHP, with the result that SHP visas would be more readily available to extended family members who are not eligible for family stream visas.

At present, however, there are a range of barriers which hamper access to these visas by people in situations of displacement. These barriers include:

- The *high costs* associated with visa applications, including direct costs such as Visa Application Charges (see Table 7 for examples of some of these charges), airfares, medical tests and Assurance of Support requirements, and indirect costs such as migration agent fees and support provided to relatives after arrival. Depending on the visa applied for, the costs can total thousands or even tens of thousands of dollars.
- *Documentation requirements* which are very difficult, if not impossible, for people in situations of displacement to meet. For example, refugees may be unable to obtain certain documents (such as birth or marriage certificates) unless they return to their country of origin, potentially placing themselves at great risk. Documents such as police clearances may be simply unobtainable from countries in which refugees have been living without formal status.
- *Eligibility requirements* which may limit access to certain visas. Under the skilled stream, relevant requirements include age limitations, skills assessments and English language requirements. Under the family stream, relevant requirements include the 'balance of family' test¹¹⁶ and limited visa options for relatives other than partners, children and parents. Under both streams, the health requirement may present a barrier for people with certain health conditions and disabilities.¹¹⁷
- *Processing priorities for the family stream*, under which the lowest priority is accorded to permanent visa holders who formerly arrived in Australia by boat.¹¹⁸ In practice, these visa applications have little chance of success.¹¹⁹

Table 7: Visa Application Charges for selected skilled and family visas¹²⁰

Visa subclass	Base application charge	Additional applicant charge (18+)	Additional applicant charge (<18)	Example of full costs
<i>Skilled migration</i>				
Employer Nomination Scheme (186) and Regional Sponsored Migration Scheme (187)	\$3,600 (+\$9,800 for those assessed as not having functional English)	\$1,800 (+\$4,890 for those assessed as not having functional English)	\$900	\$7,200 to \$16,490 for two adults and two children <18, depending on level of English attainment
Skilled Independent (189) and Skilled Nominated (190)	\$3,600	\$1,800 (+\$4,885 for those assessed as not having functional English)	\$900	\$7,200 to \$10,285 for two adults and two children <18, depending on level of English attainment

Visa subclass	Base application charge	Additional applicant charge (18+)	Additional applicant charge (<18)	Example of full costs
Temporary Work (Skilled) (457)	\$1,060	\$1,060	\$265	\$2,650
<i>Family migration</i>				
Partner (309/100)	\$6,865	\$3,435	\$1,720	\$10,305 for partner and two children <18
Child (101)	\$2,370	\$1,185	\$595	\$4,740 for two children
Parent (Migrant) 103)	\$3,870 (+second instalment of \$2,065)	\$1,935 (+second instalment of \$2,065)	\$970 (+second instalment of \$2,065)	\$9,935 for two parents
Contributory Parent (Migrant) (143)	\$3,695 (+second instalment of \$43,600)	\$1,245 (+second instalment of \$43,600)	\$625 (+second instalment of \$2,095 if a dependent child, or \$43,600 if not a dependent child)	\$92,140 for two parents

Some visas also have features which render them unsuitable for people who are fleeing persecution or facing imminent risks to their freedom or safety. These include:

- Significant *processing times* for certain visas. Some visas have significantly longer processing times if the person applying is from a 'high risk' country. For example, the processing time for a Child (101) visa application lodged outside Australia is three months for a low risk country but 14 months for a high risk country. In addition, certain visas have very long processing times due to high demand and limited places. For example, people applying for non-contributory Parent visas can expect to wait 30 years for a visa decision.¹²¹
- *Limited access to certain entitlements* after arrival. Temporary residents are typically ineligible for social security and Medicare. Most newly-arrived permanent residents face a waiting period (usually two years) before they will be permitted to access a range of social security payments, including the Newstart Allowance, Youth Allowance and Carer Payment.¹²² People arriving under the Migration Program may also be ineligible for some settlement services.
- For temporary visas, potential *challenges in securing ongoing residence*. This could result in some refugees retaining temporary status for prolonged periods and therefore being unable to access key entitlements such as social security, Medicare and citizenship. It may also create a risk of *refoulement* if there are no avenues for ongoing or permanent residence after the original visa expires.

A range of measures were identified through the research and consultation process which could enhance the accessibility of skilled and family visas to refugees, and ensure that these visas respond to the needs of people who have fled (and remain at risk of) persecution. Potential measures are summarised in Table 8.

Table 8: Summary of potential measures to address barriers to family and skilled migration

Issue	Potential measures
High costs	<ul style="list-style-type: none"> • Provide waivers or concession rates for Visa Application Charges on a needs basis • Provide small no-interest loans or HECS-style loans to assist in meeting application costs • Increase the availability of affordable migration advice
Documentation requirements	<ul style="list-style-type: none"> • Provide waivers for certain documentation requirements on a needs basis • Introduce differentiated documentation requirements for people in situations of displacement (similar to the requirements under the Special Humanitarian Program)
Eligibility requirements	<ul style="list-style-type: none"> • Provide waivers for certain eligibility requirements (such as the health requirement) • Introduce mechanisms to assist people to meet eligibility requirements after arrival (for example, through undertaking English classes, bridging courses or skills recognition)
Processing priorities	<ul style="list-style-type: none"> • Accord the same processing priority to all applications under the family stream without discrimination as to the applicant's mode of arrival in Australia
Processing times	<ul style="list-style-type: none"> • Provide options for prioritised or accelerated processing if the person applying is facing immediate risks to their safety or freedom
Limited access to entitlements	<ul style="list-style-type: none"> • Provide access to certain entitlements (particularly Medicare and social security) on a needs basis • Extend eligibility for humanitarian settlement services to people arriving on Migration Program visas who are from refugee backgrounds
Challenges in securing ongoing residence	<ul style="list-style-type: none"> • Introduce safeguards to prevent the <i>refoulement</i> of people from refugee backgrounds who hold temporary Migration Program visas • Introduce mechanisms to facilitate access to permanent residence for people from refugee backgrounds who hold temporary Migration Program visas (such as transitioning to a permanent skilled migration visa or permanent Protection Visa)

A further suggestion put forward during the consultation process, and which the Commission believes warrants further consideration, is engaging with the private sector to identify options for supporting the migration of refugees under the skilled stream. Both in Australia and overseas, there are many positive examples of the business community playing a proactive role in supporting the resettlement of refugees, particularly in relation to employment.

Box 11: The Friendly Nation Initiative

Syria is currently the world's largest refugee-producing country. Over 4.8 million Syrian refugees have been registered worldwide, most of whom are living under very difficult conditions in neighbouring countries.¹²³ UNHCR estimates that one in ten Syrian refugees are in need of resettlement.¹²⁴

In September 2015, the Australian Government announced an additional one-off allocation of 12,000 resettlement places for Syrian and Iraqi refugees.¹²⁵ This announcement inspired the Friendly Nation Initiative, a business-led project which seeks to improve employment pathways for refugees resettled from overseas. The Initiative was developed by Tony Shepherd, former President of the Business Council of Australia, and Carla Wilshire, CEO of the Migration Council Australia.¹²⁶

The Friendly Nation Initiative aims to help Syrian refugees find employment as quickly as possible after arrival. Businesses can support the Initiative in a range of ways: as 'Corporate Mates', through raising funds, hosting cultural awareness seminars and participating in corporate volunteering and mentoring programs; as 'Corporate Mentors', through offering industry mentoring, retraining or assistance with skills recognition, and donating services such as banking support and business planning; or as 'Corporate Champions', through providing employment training programs, sponsoring projects and programs to assist refugees to settle and develop skills, and recruiting other businesses to participate in the Initiative.¹²⁷

The Friendly Nation Initiative has been met with an enthusiastic response from Australian businesses and industry groups. It has been supported by the Business Council of Australia, the Australian Industry Group and the Australian Chamber of Commerce and Industry, as well as major companies such as Wesfarmers, Woolworths and Harvey Norman.¹²⁸

Box 12: NAB's African-Australian Inclusion Program

The National Australia Bank's African-Australian Inclusion Program provides six months of paid, supported work experience to skilled African Australians (many of whom are from refugee backgrounds). The program was developed in response to feedback from the African-Australian community indicating that 'lack of local experience in the Australian business sector was a significant barrier to employment'.¹²⁹

Participants in the program receive an entry-level salary, receive cultural training and mentoring, are assigned a coach to assist them with career goals and obtain a professional reference at the end of their placement. More than 180 people have participated in the program since 2009, 86% of whom have subsequently found work in their chosen field in NAB or elsewhere.¹³⁰

Box 13: German businesses step up

In response to record numbers of people arriving in Germany to seek asylum, several German businesses have implemented initiatives to assist new arrivals to find employment.

Automotive corporation **Daimler** is offering 'bridge internships' for refugees and people seeking asylum. The 14-week program consists of a practical component in production operations and German language classes, where participants also practice job interviews and prepare job applications. Daimler reports that 'nearly all 40 participants of the first program will receive offers from temporary employment agencies for continued employment in [the] industry or in a particular trade or craft or will get a vocational training opportunity at Daimler'.¹³¹

Telecommunications company **Deutsche Telekom** offers three-month paid internships to refugees and people seeking asylum, in areas such as IT, project management, customer service, marketing and human resources. Participants are assigned a 'buddy' to support them throughout the internship.¹³²

Steel manufacturer **ThyssenKrupp** is offering 150 apprenticeships, 230 internships and additional positions for skilled workers and graduates to refugees throughout Germany. The company has also called on the German Government to provide language courses for refugees to support their transition to the workplace.¹³³

Engineering conglomerate **Siemens** has committed to a long term program for supporting refugees to find employment in Germany, offering a paid internship program for people who are still in the process of seeking asylum and establishing special classes designed to 'lay the foundation for a successful career start', with a particular focus on German language skills and vocational preparation.¹³⁴

Other businesses offering internships and other forms of employment support to refugees in Germany include the chemical giant **BASF**, auto parts and tyre supplier **Continental**, software company **SAP SE** and railway operator **Deutsche Bahn**.¹³⁵

These examples suggest that the private sector may have both the interest in and capacity to play a more active role in facilitating access to migration pathways, particularly through employer-sponsored schemes under the skilled stream. The Commission therefore suggests that further consultations be conducted with the private sector to identify possible partnership opportunities. Similar partnerships could also be explored with state, territory and local governments.

(c) Enhance access to study opportunities

Lack of access to education is one of the major concerns for refugees living in situations of displacement, particularly for families with school-aged children and young adults. With refugees barred from accessing public education in many countries of asylum (either formally, or effectively due to prohibitively expensive tuition fees), children and young people may miss critical years of their education, which can in turn have significant negative implications for their future employment opportunities.

Enhancing access to options for study migration could simultaneously respond to a key protection concern for refugees while also providing durable solutions. As with skilled and family migration, this would necessitate addressing barriers which may hamper access to study options by people in situations of displacement.

Some of these barriers have already been discussed, such as mechanisms for assessing 'immigration risk' (and the associated financial capacity requirements), the costs associated with visa applications, documentation requirements, limited access to certain entitlements and challenges in securing ongoing residence. Other barriers which are more specific to student visas include the high cost of tuition fees and the fact that only partners and dependent children may accompany the applicant to Australia. This latter restriction also applies to other visas but may be a more significant barrier for students, who in many cases are themselves dependents.

Many of the measures put forward in Table 8 could also be applied to enhance access to student visas. Additional measures for addressing the more specific barriers to migration for study could include:

- providing HECS-style loans for tuition fees, whereby the person applying could repay some or all of their tuition costs after they have completed their study and secured employment in Australia
- offering domestic tuition fee rates to refugee students, rather than the more expensive international rates
- allowing young refugees who are migrating on student visas to bring members of their family unit with them (such as their parents and siblings), rather than limiting eligibility to partners and children
- reviewing mechanisms for assessing immigration risk, with a view to providing concessions or waivers for eligibility requirements which may be unduly onerous for people in refugee situations.

Other potential options for expanding access to study opportunities for refugees more generally include:

- offering scholarships to people in refugee situations, similar to those currently offered under scholarship programs administered by the Department of Foreign Affairs and Trade (see Box 14 for an example)
- providing targeted study opportunities for people in refugee situations which are linked to Australia's skilled migration needs, so as to provide a pathway to ongoing residence
- exploring opportunities for partnering with universities to facilitate access to study migration opportunities for refugee students (see, for instance, Box 15).

As with facilitation of skilled migration, the private sector may also have an interest in supporting access to opportunities for study migration.

Box 14: Australia Awards Scholarships

The Australia Awards Scholarships program, administered by the Department of Foreign Affairs and Trade, provides opportunities for people from developing countries to undertake study at participating universities and TAFEs. It aims to assist these students to 'develop skills and knowledge...to drive change and contribute to the development outcomes of their own country.' The Award covers a range of costs, including tuition fees, return airfares, a contribution to living expenses, health cover and pre-course English training.¹³⁶

Participating countries include several of the major refugee-producing countries in the Asia-Pacific region (namely Myanmar (Burma), Pakistan and Sri Lanka),¹³⁷ suggesting that there may already be potential to extend similar opportunities to people in humanitarian need. However, to offer an effective solution for refugees, some aspects of the program may need to be adjusted. For example, the requirement that scholarship recipients leave Australia for a minimum of two years after completing their scholarship would need to be waived in order to prevent *refoulement*.

Box 15: Global Platform for Syrian Students

The Global Platform for Syrian Students was founded in 2013 by former President of Portugal, Jorge Sampaio, with the support of institutional partners including the Council of Europe, the League of Arab States, the International Organization for Migration, the Institute of International Education and a consortium of universities. It provides an emergency scholarship program for Syrian students affected by the civil war.¹³⁸

Participating universities commit to granting full or partial fee waivers to Syrian students for at least one academic year.¹³⁹ The Platform also administers an Emergency Fund which seeks donations and grants to support the scholarship program and provide additional assistance to students, such as language courses.¹⁴⁰

Over 100 Syrian students have benefitted from the scholarship program to date. Most are studying in Portugal, but scholarships have also been offered in a range of other countries including Lebanon, the United States, France, Germany, Canada, Iraq, Argentina, Egypt and the United Arab Emirates.¹⁴¹ The Platform is aiming to provide 700 new scholarships for Syrian students during the 2015-16 academic year.¹⁴²

2.3 Limitations

While resettlement and protection-sensitive migration can play a key role in Australia's response to flight by sea, these strategies also have significant limitations.

One of the most consistent messages to emerge from the consultation process was that resettlement and protection-sensitive migration should not be seen as alternatives to a robust onshore asylum process. Each of the three pathways is designed to address different needs and obligations, and should be viewed as complementary rather than interchangeable. While resettlement and protection-sensitive migration may provide alternative pathways to protection for some refugees and people seeking asylum, an onshore asylum process will remain an essential pathway for some people fleeing persecution.

It is also important to recognise that, even if Australia substantially increased both resettlement and protection-sensitive migration opportunities, only a tiny minority of the world's refugees would benefit from these pathways. For example, even if all 190,000 permanent places available under the Migration Program were dedicated to refugees, this would still represent only 1.2% of the refugees under UNHCR's mandate.

Resettlement and protection-sensitive migration can both play an important role in addressing flight by sea in the Asia-Pacific region, through providing safe pathways to protection and creating greater scope for the strategic use of resettlement (see Section 3.4(a)). However, a more comprehensive approach is required to respond to the needs of refugees who will never have the opportunity to resettle in or migrate to Australia. This more comprehensive approach is reflected in the second thematic area canvassed in this paper — enhancing foreign policy strategies on migration in the region.

Enhance foreign policy strategies on migration in the Asia–Pacific region

Build on existing initiatives	Increase funding for humanitarian agencies	
	Support NGOs and refugee community groups assisting displaced people	
	Restore and expand aid to countries affected by displacement	Restore funding for country programs Provide multi-year funding to countries affected by displacement Develop an aid strategy on displacement Explore options for providing aid to refugee-hosting countries
	Continue bilateral and regional dialogues on human rights	
Build new capacity	Foster conditions conducive to voluntary return in Myanmar (Burma) and Sri Lanka	
	Support regional preparedness	Support the development of regional protocols for responding to flight by sea Support the development of an early warning system for emerging crises
	Promote a greater role for civil society in regional processes	
	Fund protection-focused research on migration in the region	

Enhance foreign policy strategies on migration in the Asia–Pacific region

Build bridges to cooperation

Enhance the strategic use of resettlement

Use resettlement as leverage to negotiate protection commitments
 Make multi-year resettlement commitments
 Coordinate with other resettlement countries
 Resume resettlement from Indonesia

Provide support to expand solutions

Provide technical assistance to increase or enhance visa options
 Audit and provide advice to displaced people on alternative migration pathways
 Fund projects to facilitate access to migration pathways
 Support initiatives to prevent and resolve statelessness

Look beyond refugee protection

Fund research to map migration
 Continue to support work on human trafficking
 Provide technical assistance on labour migration
 Ratify the Migrant Workers Convention

Promote the rights of children

3 Enhance foreign policy strategies on migration in the Asia–Pacific region

Limited access to effective protection is the key factor driving flight by sea (and other dangerous journeys) in the Asia–Pacific region. The protection needs of many refugees in the region are not being adequately addressed, and the lack of effective regional mechanisms for cooperation seriously constrains the region’s capacity to improve standards of protection.

Addressing gaps in protection and building better mechanisms for regional cooperation are therefore essential to preventing dangerous journeys. However, given the complexity of the protection environment in the Asia–Pacific region, there is no single measure which would on its own be sufficient to achieve these goals.

The Commission notes that Australia’s foreign policy settings contain a significant focus on responding to crisis directly in the Asia–Pacific region or the flow on impacts to the region from crises globally.

The Commission’s proposed options are enhancements to the existing foreign policy strategies adopted by the Australian Government in relation to migration in the Asia–Pacific region.

The Commission sees benefit in ensuring that existing and additional complementary measures — across the areas of aid, diplomatic efforts, law enforcement, border protection and humanitarian assistance — are coordinated to enable a strategic, comprehensive and holistic response to migration-related concerns across the region.

3.1 Principles for enhancing strategies across the Asia–Pacific region

(a) An integrated response

Many countries in the region are grappling not only with refugee protection challenges but with a range of other migration-related concerns, including internal displacement, irregular labour migration, people smuggling, human trafficking, climate change-related displacement and statelessness. While it is vital to recognise the specific needs and rights of forcibly displaced people as distinct from other groups of migrants (in particular their right to protection against *refoulement*), there is nonetheless significant correlation in the needs of these different groups, and many people on the move in the region would fall into more than one migration category.

For example, a Rohingya person living in Bangladesh who is seeking to enter Malaysia to pursue livelihood opportunities may be trafficked for extortion. In this scenario, the person could simultaneously be a refugee, a stateless person, an irregular migrant and a trafficked person. They may also be migrating alongside people who are similarly in need of livelihood opportunities and at risk of trafficking, but who are not stateless and do not require protection from persecution.

Due to this complexity, ‘singling out’ refugees and people seeking asylum as the sole focus of a foreign policy response, or attempting to address their needs in isolation, may not be an effective means of building protection capacity in the region.

By contrast, a more comprehensive, integrated response to the various migration-related concerns across the region would allow greater scope for addressing the complex needs of forcibly displaced people, while also achieving protection dividends for other groups of vulnerable migrants.

The Commission’s proposals for enhancing foreign policy strategies therefore include both measures which focus specifically on the needs of refugees and people seeking asylum, and broader measures which focus on other migration-related concerns.

(b) Progressive implementation

The ultimate purpose of enhancing foreign policy strategies should be to support the establishment of a comprehensive regional protection framework, encompassing:

- wider ratification of the Refugee Convention, as well as other human rights treaties such as the International Covenant on Civil and Political Rights, International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol
- development of national asylum legislation in each country
- the introduction harmonised regional systems for processing of asylum claims and provision of durable solutions
- mechanisms for channelling assistance to states hosting large numbers of refugees and people seeking asylum.

Processes for assessing protection claims should be more robust and meet minimum requirements across the Asia–Pacific region. They should comply with international law; be provided in a timely manner; and ensure that assistance can be efficiently delivered to states at the frontlines of displacement situations.

Some initial steps towards the establishment of this framework have already been taken through the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process). This forum, which is co-chaired by Australia and Indonesia, includes 45 member states from across Asia and the Pacific as well as UNHCR, the International Organization for Migration and the United Nations Office on Drugs and Crime.¹⁴³

At the Fourth Regional Ministerial Conference of the Bali Process in March 2011, participating Ministers agreed that ‘an inclusive but non-binding regional cooperation framework would provide a more effective way for interested parties to cooperate to reduce irregular movement through the region’.¹⁴⁴ This agreement led to the establishment of a Regional Support Office to facilitate the operationalisation of the regional cooperation framework.¹⁴⁵

Box 16: Recommendations on the Regional Cooperation Framework from the Fourth Regional Ministerial Conference of the Bali Process¹⁴⁶

Core principles underpinning the Regional Cooperation Framework

Irregular movement facilitated by people smuggling syndicates should be eliminated and States should promote and support opportunities for orderly migration.

Where appropriate and possible, asylum seekers should have access to consistent assessment processes, whether through a set of harmonised arrangements or through the possible establishment of regional assessment arrangements, which might include a centre or centres, taking into account any existing sub-regional arrangements.

Persons found to be refugees under those assessment processes should be provided with a durable solution, including voluntary repatriation, resettlement within and outside the region and, where appropriate, possible ‘in country’ solutions.

Persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable and States should look to maximise opportunities for greater cooperation.

People smuggling enterprises should be targeted through border security arrangements, law enforcement activities and disincentives for human trafficking and smuggling.

Considerations for developing and implementing practical arrangements as part of the Regional Cooperation Framework

Arrangements should promote human life and dignity.

Arrangements should seek to build capacity in the region to process mixed flows and where appropriate utilise available resources, such as those provided by international organisations.

Arrangements should reflect the principles of burden-sharing and collective responsibility, while respecting sovereignty and the national security of concerned States.

Arrangements should seek to address root causes of irregular movement and promote population stabilisation wherever possible.

Arrangements should promote orderly, legal migration and provide appropriate opportunities for regular migration.

Any arrangements should avoid creating pull factors to, or within, the region.

Arrangements should seek to undermine the people smuggling model and create disincentives for irregular movement and may include, in appropriate circumstances, transfer and readmission.

Arrangements should support and promote increased information exchange, while respecting confidentiality and upholding the privacy of affected persons.

The establishment of this regional cooperation framework — while a highly desirable goal — is unlikely to be achieved in the short term. Refugee protection is also just one of several focus issues for the framework. As such, enhanced foreign policy strategies on migration may be more effective if they seek to supplement the longer term work of the Bali Process with shorter term measures to address the immediate protection needs of refugees and people seeking asylum in the region.

The options identified in this paper represent the initial steps in a long term process of building better regional cooperation on displacement and other migration issues, rather than an exhaustive overview of all measures necessary to achieve this goal. It is hoped that these short term measures will lay the foundations on which a cooperative regional system can be built in the future.

Chart 8: Possible model for a regional protection framework¹⁴⁷



(c) Country-specific measures

In addition to the complexity of migration-related concerns across the region, there is significant diversity in the capacity of countries in the region to contribute to cooperative arrangements. For example, Thailand — an Upper Middle Income Country which hosts millions of migrant workers and has one of the lowest unemployment rates in the world — is likely to have greater capacity to contribute to cooperative regional measures than Bangladesh, a Least Developed Country in which 40% of the population is underemployed.¹⁴⁸

In light of this diversity, it may be more productive to initially focus foreign policy efforts on a series of measures which respond to specific needs in each country, rather than a single, one-size-fits-all strategy for the entire region.

At the same time, there is significant concern amongst countries in the region about the creation of ‘pull factors’, which could present a barrier to engagement. To overcome this concern, country-specific measures could be implemented in a coordinated fashion, with a view to these measures being implemented concurrently in several countries. Commitments from Australia to support implementation (including through providing access to pathways for safe entry) would also assist in allaying this concern.

When developing country-specific measures, engagement with governments, civil society and displaced communities in each country will be critical to determining what the greatest needs are, how they can be addressed and how Australia can play a constructive role. Further consultation would be necessary to ensure that these measures can be suitably adapted to needs and conditions in different countries.

(d) Three ‘building blocks’

Based on these strategic principles, the Commission has identified three ‘building blocks’ which should shape enhanced foreign policy strategies on migration in the Asia-Pacific region:

- **provide support to expand the scope and impact of current initiatives to address refugee protection needs in the region (*build on existing initiatives*)**
- **increase the capacity of countries in the region to respond to migration-related concerns, including refugee protection (*build new capacity*)**
- **pursue measures to lay the foundations of a cooperative regional framework on migration and refugee protection (*build bridges to further cooperation*).**

3.2 Build on existing initiatives

(a) Increase funding for humanitarian agencies

As noted in Section 1.1, the enormous shortfall in funding for humanitarian agencies has curtailed their capacity to respond to even the most basic needs of displaced people. This trend can certainly be observed in the Asia-Pacific region. For example, UNHCR’s programs in Asia and the Pacific are all significantly underfunded, and the two regions with the highest funding needs — South-West Asia and South-East Asia — face the largest shortfalls.

Table 9: UNHCR funding needs vs expenditure in Asia and the Pacific, 2015¹⁴⁹

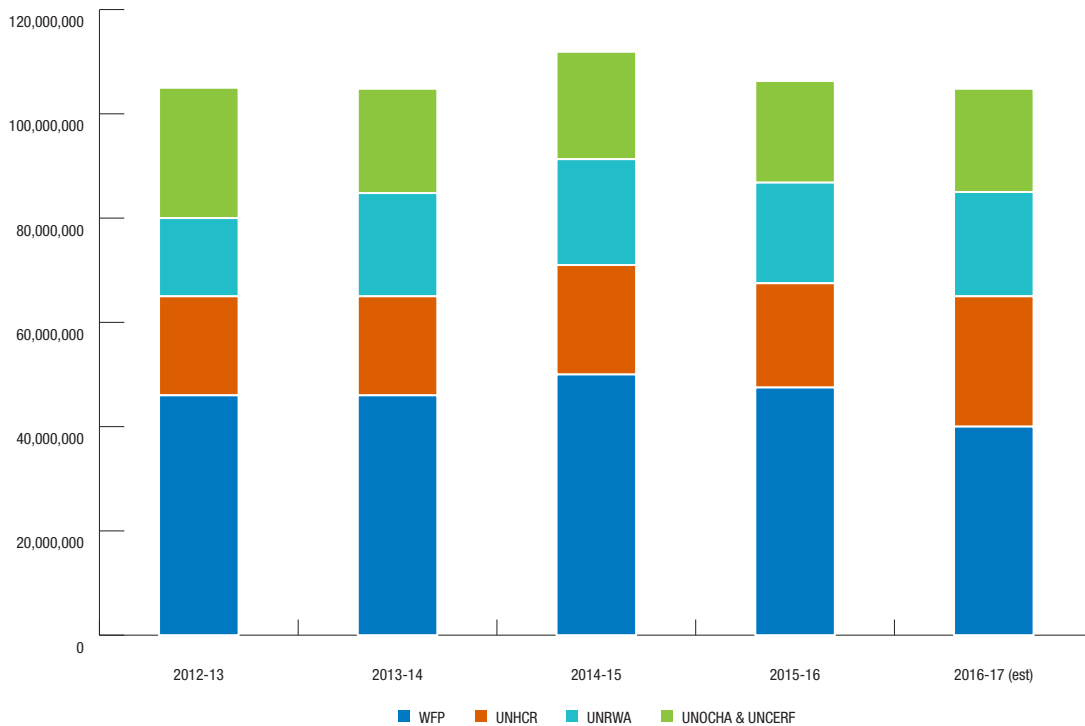
Sub-region	Funding needs	Expenditure	% needs funded
South-West Asia	\$360,170,298	\$156,550,476	43%
Central Asia	\$14,669,605	\$9,665,129	66%
South Asia	\$40,155,756	\$21,524,812	54%
South-East Asia	\$169,348,267	\$59,542,464	35%
East Asia and the Pacific	\$12,377,742	\$9,146,302	74%
Total	\$596,721,669	\$256,429,182	43%

UNHCR reports that, as a result of shortfalls in funding for its operations in Asia and the Pacific:

UNHCR scaled back operations and made difficult decisions to decrease the level of activity in some operations and close some field offices, particularly affecting Central Asia. More importantly, protection-related activities — including registration, monitoring and refugee status determination — were scaled down, causing some delays and backlogs.¹⁵⁰

As global needs have increased, funding for United Nations humanitarian agencies through the Australian aid program has remained relatively static, and in some cases has fallen. The exception is funding for UNHCR, which has increased by around a third to \$25 million since 2012-13.¹⁵¹ While significant, this increase has not kept pace with the rapid rise in UNHCR's funding needs, which more than doubled between 2010 and 2015.¹⁵²

Chart 9: Australian funding for United Nations humanitarian agencies, 2012-13 to 2016-17¹⁵³



It is neither realistic nor reasonable to expect that increased funding alone will suffice to meet all of the needs of displaced people, nor should humanitarian agencies be relied upon to fulfil state responsibilities on an ongoing basis. However, providing increased funding for humanitarian agencies would be an important interim measure to fill urgent protection gaps.

Funding for humanitarian agencies could include support for UNHCR to improve procedural standards for refugee status determination. As recognition of refugee status can provide a gateway to protection and durable solutions, ensuring that people seeking asylum can receive timely and robust assessment of their claims is a critical component of responses to humanitarian emergencies. Again, it is important to note that refugee status determination should be the responsibility of the State, and funding for these measures should not promote an over-reliance on UNHCR to conduct status determination. However, as an interim measure where domestic processes are inadequate or absent, supporting improvements in procedural standards could assist in facilitating access to protection.

(b) Support NGOs and refugee community groups

There are many non-government organisations (NGOs) and refugee community groups operating in the Asia-Pacific region which provide a range of support services to refugees, people seeking asylum and other vulnerable migrants. These services include education, health care, material assistance, individual advocacy and legal advice. NGOs are also closely involved in advocating for improvements to domestic protection systems, including through encouraging greater government ownership of refugee protection. These organisations play a critical role in addressing protection needs in the region but often face significant challenges in securing funding and other resources.

Box 17: Building networks to enhance protection

There are a range of civil society networks operating across the Asia–Pacific region which play an important role in promoting better protection for refugees and people seeking asylum. Examples include the Bangkok Asylum Seeker and Refugee Assistance Network (BASRAN) in Thailand, the Indonesian Civil Society Network for Refugee Rights Protection (known as Suaka, the word for ‘asylum’ in Bahasa Indonesia) and the Refugee Rights Network (RRN) in Pakistan.¹⁵⁴

Through bringing together the various groups involved in supporting refugees and people seeking asylum in a particular country or city, these networks assist NGOs to respond more effectively to the needs of displaced people. For example, BASRAN operates an online database to map the services and support provided to refugees and people seeking asylum, while Suaka coordinates a legal aid program which aims to build the capacity of its members to provide robust legal services to people seeking asylum.¹⁵⁵

Civil society networks can also play a critical role in advocating with governments to improve protection of refugees and people seeking asylum. Suaka provides training to government agencies to foster ownership of refugee protection and encourage greater consideration of rights-based approaches in policy development. It also meets regularly with government officials to ensure that refugee issues remain ‘on the radar’. RRN has fostered collegiate relationships with government agencies since its inception, with the aim of building government capacity to uphold the rights of refugees and develop greater ‘traction’ when engaging in advocacy.¹⁵⁶

These three networks provide concrete examples of the positive contributions of NGOs to refugee protection in the region, through both direct assistance and advocacy for improvements in state protection. However, their experiences also exemplify the difficulties faced by NGOs working with displaced people in the region — all three networks report that limited funding remains one of their primary challenges.¹⁵⁷

Providing additional funding and material assistance to NGOs and community groups would help to ensure the continuation of this vital support, as well as enabling NGOs to expand the quality and reach of their services. While in some cases this can occur through Australia’s aid program, more innovative ways of providing support may also need to be explored. For example, Malaysia and Thailand — both of which host large numbers of refugees — are classified as Upper Middle Income Countries, which may preclude the provision of funding through the aid program to NGOs operating in these countries.

Box 18: Promoting alternatives to immigration detention

The Asia Pacific Refugee Rights Network (APRRN) is a network of more than 250 civil society organisations and individuals from 26 countries, which aims to advance the rights of refugees in the Asia-Pacific region. The International Detention Coalition (IDC) is a global network of over 300 civil society organisations and individuals. Its members advocate for, research and provide direct services to people affected by immigration detention in more than 70 countries.¹⁵⁸ For the past six years, the two networks have been working together to advocate for the implementation of alternatives to immigration detention in key countries of asylum in the region.¹⁵⁹

Between 2013 and 2015, a series of national roundtables were held in Indonesia, Malaysia and Thailand focusing on ending the immigration detention of children. The roundtables were hosted by the National Human Rights Institution (NHRI) in each country and attended by representatives from government, academia, civil society and UN agencies. The roundtables secured in-principle agreements that children should not be subject to immigration detention, as well as agreements to form national-level working groups (comprising representatives from governments, NHRIs and civil society) to explore potential pilot projects on alternatives to detention for children.¹⁶⁰

In late 2015, a two-day Regional Expert Roundtable on Alternatives to Detention for Children was held in Bangkok, co-organised by APRRN and IDC and hosted by Dr Seree Nonthasoot, Thailand's representative to the Association of South East Asian Nations (ASEAN) Intergovernmental Commission on Human Rights. A key objective of the Roundtable was to bring together policy makers, practitioners and researchers to discuss the most recent developments in alternatives to detention, as well as to present the latest good practices from the ASEAN region and beyond. The Roundtable was attended by 50 participants from Indonesia, Malaysia and Thailand, including representatives from a range of government ministries.¹⁶¹

Similarly, many refugee community groups — which, being run by refugees themselves, are often best-placed to understand and address the needs of their community — operate on an informal basis and may not have the necessary structures in place to apply for and receive funding. Flexible funding arrangements and innovative strategies for facilitating access to resources may be required to ensure that these groups can receive support for their work.

Box 19: By refugees, for refugees¹⁶²

The Refugee Community Development Project was a community-led project based in New Delhi, India. Established in 2012, the Project was developed and managed by the Afghan and Somali refugee communities in New Delhi. The Project aimed to be ‘by refugees, for refugees’, utilising their skills and first-hand knowledge to identify needs and service delivery gaps, and develop responsive solutions that were tailored to community needs.

A key focus area for the Project was the empowerment of refugee women at risk, their families and other vulnerable groups. Seven women’s groups were established across four areas of New Delhi, providing a space for women to develop social and community connections and take part in exercise, recreational activities and skill development (such as cooking and tailoring classes). The groups provided important psychosocial support to women, with participants reporting that they felt less isolated, did not visit the doctor as often and felt more confident to voice their opinions due to greater awareness of their rights.

Education was another key focus of the Project, with 28 classes provided each week for hundreds of refugee women, youth and children. Classes were developed based on education priorities identified by the community, including adult literacy classes for women and language, culture and history classes for children. Literacy classes supported women to negotiate daily life in New Delhi (such as filling out forms at their children’s schools and speaking with doctors), while classes for young people aimed to foster a sense of belonging and community connectedness.

Additional support was provided through a volunteer program, including outreach services (such as interpreting at hospitals in a medical emergency), information for newly-arrived refugees and referrals to other services. The program also provided volunteers with an opportunity to develop skills and gain work experience, enhancing future employment opportunities.

The Project received funding from the Australian Government through the Displaced Persons Program, and was managed with the support of the Centre for Refugee Research at the University of New South Wales and Bosco New Delhi (an implementing partner of UNHCR). The program has now been discontinued due to lack of funding.

These strategies could include providing technical support and capacity-building assistance to NGOs and community groups in the region. Partnerships and cooperation with the Australian NGO sector could also be explored, for example through exchange or deployment schemes and joint funding arrangements. Such partnerships would have the added benefit of allowing Australian NGOs to develop a deeper understanding of protection needs in the region and the pre-arrival experiences of refugees settling in Australia.

(c) Restore and expand aid to countries affected by displacement

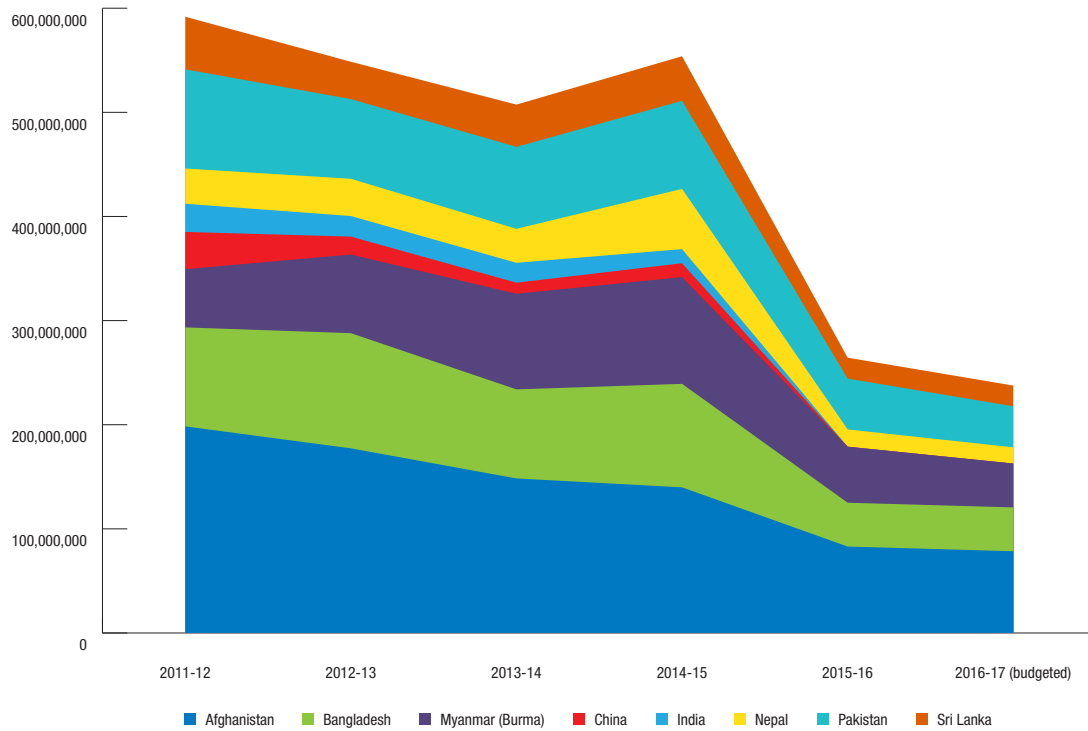
The strategic use of official development assistance can play a significant role in enhancing Australia’s response to protection needs in the region. In light of recent reductions in the size of the aid program, however, Australia’s capacity to contribute in this manner may be limited. From a peak of \$5.1 billion in 2012-13, official development assistance has fallen by around 20% to \$4.1 billion in 2015-16, and is set to decline further in 2016-17. Spending on aid as a proportion of Gross National Income (GNI) has also declined, with the ratio of aid to GNI set to reach its lowest ever level in 2016-17.¹⁶³

Table 10: Australian official development assistance, 2011-12 to 2016-17¹⁶⁴

Year	Total official development assistance	% of GNI
2011-12	\$4.82 billion	0.34%
2012-13	\$5.05 billion	0.35%
2013-14	\$5.05 billion	0.33%
2014-15	\$5.03 billion	0.32%
2015-16	\$4.05 billion	0.25%
2016-17 (budgeted)	\$3.83 billion	0.23%

In the Asia–Pacific region, aid allocations to major countries of refugee origin and asylum¹⁶⁵ have decreased dramatically over the past five years. As shown in Chart 10, most of these countries have seen aid spending halve between 2011-12 and 2015-16. In the cases of China and India, aid has been largely phased out in line with the recommendations of the 2011 Independent Review of Aid Effectiveness.¹⁶⁶ Reductions in other countries, however, appear to run contrary to the findings of the Review, which recommended medium expansion of aid in Afghanistan and Pakistan and high expansion of aid in East Asia and South Asia.¹⁶⁷

Chart 10: Aid to major countries of refugee origin and asylum in the Asia–Pacific region, 2011-12 to 2015-16 (plus 2016-17 budget estimates)¹⁶⁸



In addition, priorities for aid allocations to these countries in the coming financial year suggest that there is a limited focus on initiatives to prevent and resolve displacement. Some of the priority areas in these countries (such as economic growth, empowerment of women and good governance) may benefit displaced people and contribute to preventing future displacement. Priorities for Sri Lanka include an overarching focus on reconciliation.

However, only in Myanmar (Burma) is there a specific, targeted focus on initiatives to resolve the root causes of displacement and provide assistance to people who are currently displaced. Overall, Australian aid programs for the Asia–Pacific region appear to lack a specific strategy for responding to the needs of forcibly displaced people, addressing the root causes of displacement and preventing future displacement.

Table 11: Aid priorities in major countries of origin and asylum in the Asia–Pacific region, 2016-17¹⁶⁹

Country	Priorities
Afghanistan	<ul style="list-style-type: none"> • Economic growth and effective and accountable governance • Empowerment of women and girls (economic participation, literacy, violence against women) • Resilience to survive natural and human-made shocks
Bangladesh	<ul style="list-style-type: none"> • Access to education opportunities • Building resilience through assistance to extremely poor people to find pathways out of poverty
Myanmar (Burma)	<ul style="list-style-type: none"> • Human development (access to quality education) • Peace and stability (support for the peace process, elections and humanitarian assistance) • Inclusive economic growth and government management (regulatory reform, public financial management, fiscal transparency)
Nepal	<ul style="list-style-type: none"> • Access to and quality of basic education • Economic opportunities for the poor through enterprise and job creation
Pakistan	<ul style="list-style-type: none"> • Sustainable growth and employment (trade, agricultural and economic productivity, private sector linkages, expanding revenue streams, food security and nutrition, water resource management) • Health, education and skills development (livelihoods, access to employment and markets, women’s economic empowerment, supporting provincial governments to deliver better services) • Violence against women and empowerment of women
Sri Lanka	<ul style="list-style-type: none"> • Economic opportunities for the poor (export-led private sector growth) • Responsive government and local government reform • Empowerment of women (changing attitudes, economic participation)

In addition, several key countries of asylum in the region — notably Iran, Malaysia and Thailand — receive limited or no official development assistance from Australia, and specific funding allocations and priorities for these countries are not included in the 2016-17 aid budget summary. These countries collectively host around 1.4 million refugees and 75,000 people seeking asylum,¹⁷⁰ yet may not generally be considered priorities for official development assistance due to their status as middle income countries.¹⁷¹ Former United Nations High Commissioner for Refugees António Guterres has previously called for policy changes to ensure that middle income countries hosting large numbers of refugees are not excluded from development assistance:

Many of these States are crucial pillars of peace and stability in their regions, and with conflicts and terrorism threatening to spill across borders, they de facto form the first line of defense for our collective security. But a significant number are middle income countries and therefore forgotten or even excluded from several development cooperation mechanisms ... However, their role is one on which we all depend, as the present crisis has illustrated. I therefore appeal to all relevant partners ... to bring about the necessary policy changes to better support those countries.¹⁷²

The Commission wishes to acknowledge that Australia’s aid program already plays a critical role in strengthening the enjoyment of human rights, and notes the vital importance of current priority areas for the program, such as poverty reduction and gender equality. It is not the Commission’s intention to suggest that displacement should predominate over these other worthy priorities. Nonetheless, the Commission considers that there is significant potential for Australia to use official development assistance more strategically to address displacement in the Asia–Pacific region, without detracting from other priorities. Specific measures could include:

- restoring funding for country programs that have recently been cut, especially to countries which have recently been or continue to be affected by conflict (notably Afghanistan, Myanmar (Burma) and Sri Lanka)
- providing multi-year funding to countries affected by major displacement crises, to ensure that humanitarian assistance can be sustained and to provide greater capacity for long term planning to resolve these crises
- developing a holistic strategy for utilising aid to respond to, prevent and resolve displacement across the region
- exploring options for providing aid to countries which host large numbers of refugees and asylum seekers but which are not traditional recipients of Australian official development assistance.

Official development assistance could also play a role in several of the other initiatives discussed in the following sections.

(d) Continue bilateral and regional dialogues on human rights

The Australian Government currently engages in bilateral human rights dialogues with China, Vietnam and Laos. A 2012 review conducted by the Joint Standing Committee on Foreign Affairs, Defence and Trade affirmed that the dialogue process is worthwhile and increases Australia’s opportunities to engage with other countries on human rights issues.¹⁷³

The Commission considers that these dialogues could provide a useful platform for discussing human rights issues relevant to people fleeing persecution. They also offer an opportunity to promote wider ratification of and adherence to international human rights treaties and the Refugee Convention. Continuing existing dialogues and seeking additional dialogues with other countries in the region (particularly major countries of refugee origin and asylum) could thus form an important component of enhanced foreign policy strategies on migration.

Regional forums such as the Bali Process also provide an important opportunity to engage in dialogue with other countries in the region on human rights issues. The Commission encourages the Australian Government to continue its efforts to discuss human rights issues (including those relevant to displaced people and other vulnerable migrants) through these forums.

3.3 Build new capacity

(a) Foster conditions conducive to voluntary return

Of the three traditional durable solutions for refugees (voluntary repatriation, local integration and resettlement), voluntary repatriation has historically benefitted the largest number of refugees. In recent years, however, there has been a significant decline in the number of refugees returning voluntarily to their country of origin. In 2015, 201,400 refugees returned voluntarily to their countries of origin. While this represents a significant increase compared to 2014, when just 126,800 people returned voluntarily, it is nonetheless the third-lowest level of refugee returns over the past 20 years.¹⁷⁴

Despite this decline, there may be significant potential for increased voluntary repatriation to two of the major countries of origin for refugees in the Asia–Pacific region: Myanmar (Burma) and Sri Lanka. The end of armed conflict in Sri Lanka, the signing of ceasefire agreements with several armed groups in Myanmar (Burma) and the election in both countries of new governments which have a stated commitment to addressing human rights concerns,¹⁷⁵ may create greater potential for voluntary repatriation than had been the case in the recent past.

At the same time, returns to these countries are unlikely to occur in significant numbers, nor be sustainable, unless a number of key protection concerns are addressed. These concerns include:

- physical security, including:
 - » the danger posed by uncleared landmines
 - » ongoing military presence in some areas
 - » continued reports of human rights violations committed with impunity by security forces and law enforcement personnel
 - » ongoing conflicts in some areas of Myanmar (Burma)
- discrimination against ethnic minority groups
- access to land and livelihoods
- access to essential services including healthcare and education.¹⁷⁶

Targeting aid and diplomatic efforts towards resolving these concerns would assist in fostering conditions more conducive to safe and sustainable voluntary repatriation. While this is likely to be a long term process, it could ultimately facilitate the resolution of two of the longest-standing refugee situations in the region. This would in turn reduce pressure on countries of asylum, potentially creating opportunities for further discussions with these countries on other protection issues.

It should be noted that while voluntary repatriation may become a viable solution for some ethnic groups from Myanmar (Burma) in the near future, it is unlikely to present a solution for Rohingya refugees. This group continues to face particularly acute protection concerns (including statelessness, severe discrimination and exclusion from political processes),¹⁷⁷ and there appears to be limited scope for positive engagement with the Government of Myanmar (Burma) on issues affecting the Rohingya community.¹⁷⁸ Nonetheless, facilitating access to solutions for other refugees from Myanmar (Burma) could create opportunities for more concerted efforts to find alternative solutions for Rohingya refugees who are unable to return.

(b) Support regional preparedness

While the development of a coordinated regional approach to refugee protection may be a long term goal, other capacity-building initiatives are more achievable in the short term. Two specific initiatives, both related to responses in emergency situations, stand out as short term priorities: regional protocols for responding to flight by sea, and an early warning system for emerging crises.

The regional crisis which left thousands of Rohingya refugees from Myanmar (Burma) and migrants from Bangladesh stranded at sea in May 2015 highlighted the serious deficiencies of regional mechanisms for addressing flight by sea. In response to a crackdown on smuggling and trafficking networks in Thailand, over 5,000 people were abandoned by smugglers and left adrift in the Bay of Bengal and Andaman Sea. Countries in the region initially refused to conduct search-and-rescue missions or allow the refugees and migrants to disembark, instead escorting their boats back to international waters after providing food, water and engine repairs. Although the boats were eventually allowed to land, at least 70 people died during the crisis.¹⁷⁹

In response to the crisis, UNHCR released a document (supported by the International Organization for Migration and the United Nations Office on Drugs and Crime) outlining a series of 'proposals for action' for governments in the region. The document noted that 'the main impediment to coordinated SAR [search and rescue] is the current lack of consensus over responsibility for disembarkation'.¹⁸⁰ It went on to suggest that 'a range of responsibility-sharing options must be available to ensure that States disembarking refugees and migrants do not bear the burden alone'.¹⁸¹

This document echoes the findings of an expert meeting on international cooperation convened by UNHCR in Jordan in 2011. A working group discussion on rescue at sea emergencies involving refugees and asylum seekers found that 'clarifying and sharing responsibilities between states may encourage cooperative approaches'.¹⁸² It further suggested that 'a state may be prepared to provide a place of disembarkation and processing if another state is able to offer durable solutions to some refugees through resettlement'.¹⁸³

The outcomes of a Special Meeting on Irregular Migration in the Indian Ocean, convened in May 2015 to discuss the situation in the Bay of Bengal and Andaman Sea, suggest that there may be significant interest amongst countries in the region in developing a more formal regional approach to search-and-rescue and disembarkation. The concluding statement of the meeting included recommendations to intensify search-and-rescue operations and explore further means for 'identifying predictable disembarkation options and proper and harmonized reception arrangements for those rescued'.¹⁸⁴

The Commission believes that Australia is well-positioned to support the development of regional protocols on rescue at sea, particularly through providing guarantees of assistance to countries offering disembarkation. This could include, for example, financial support to improve reception arrangements, assistance with refugee status determination and resettlement of people found to be in need of protection. Providing these guarantees would help to reassure countries in the region that responsibility for protection in rescue at sea situations will be equitably shared, thereby removing a potential disincentive to conduct search-and-rescue operations.

A second priority for regional preparedness is the development of an early warning system to monitor trends which may lead to significant displacement crises in the future. The purpose of this system would be to monitor and identify trends which may signal the emergence of a displacement crisis, so as to provide greater capacity for the region to take preventative action or develop more coordinated responses to displacement when it occurs.¹⁸⁵

Box 20: Displacement from Pakistan on the rise

For the past three decades, Pakistan has been among the leading countries of asylum in the world. It currently hosts around 1.6 million refugees from Afghanistan, more than any other country in the Asia–Pacific region and second only to Turkey worldwide.¹⁸⁶

In recent years, however, Pakistan has also become an increasingly significant country of refugee origin. At the end of 2009, fewer than 5,000 asylum seekers from Pakistan had claims pending across the world. Six years later, this number had increased by more than 12 times to over 64,000. In 2014, the number of refugees originating from Pakistan grew from fewer than 50,000 the previous year to almost 336,000, and currently stands at just under 298,000.¹⁸⁷

An increase in forced displacement from Pakistan could present a significant challenge for other countries in the Asia–Pacific region, particularly if it also leads to secondary displacement of the many Afghan refugees currently residing in Pakistan. An early warning system could assist in monitoring trends in displacement from Pakistan, investigating the causes of displacement and identifying measures which could prevent further escalation of this emerging refugee situation.

There may be significant potential to advance both of these initiatives through the Bali Process. At the sixth Regional Ministerial Conference of the Bali Process in March 2016, participating Ministers agreed to an emergency mechanism which would allow the Bali Process Co-Chairs to consult and convene meetings to discuss ‘urgent irregular migration issues’, including in response to ‘future emergency situations’.¹⁸⁸ While participation in this mechanism is voluntary and non-binding, its introduction could provide a springboard for the development of more coordinated and formalised responses to flight by sea, including search-and-rescue protocols.

The Regional Support Office of the Bali Process could also support the development of regional search-and-rescue protocols. The Office is already developing a ‘policy guide on search and rescue at sea, disembarkation, and post-disembarkation assistance (including reception, screening and referrals) as a practical tool for decision and policy makers’,¹⁸⁹ which could form the basis of more specific regional protocols on search-and-rescue. In addition, there may be potential for the Office to play a central role in the implementation of an early warning system.

(c) Promote a greater role for civil society in regional processes

Civil society can play an important role in building regional capacity to respond to the needs of displaced people. Contributions of civil society can include:

- *Fostering local interest:* There is limited local interest in refugee issues in many countries in the Asia–Pacific region, and refugee protection tends not to be seen as a high priority. Through advocacy and awareness-raising efforts, civil society can assist in raising the profile of refugee issues, to ensure that they remain on the political agenda and to encourage the local buy-in essential to the development of longer term cooperative measures.
- *Increasing awareness:* Civil society organisations are involved in conducting research on displacement in the region, and providing training to government officials on legal and policy issues relevant to refugee protection. These initiatives help to increase understanding and awareness of the needs of people seeking protection in the region and encourage a rights-based response to displacement.
- *Informing policy development:* Civil society organisations which work directly with refugees and people seeking asylum in the region can bring a valuable on-the-ground perspective to policy discussions on displacement, helping policy-makers to better understand and respond to the needs of displaced people.

At present, however, regional discussions relating to the protection of forcibly displaced people primarily take place through the Bali Process and ASEAN. There are few avenues through which civil society can meaningfully engage with either of these forums. Facilitating greater NGO engagement with these forums could contribute to better-informed policy discussions on forced displacement and encourage greater local ownership of refugee protection.

Box 21: Asia Dialogue on Forced Migration

In July 2014, a high-level expert roundtable on refugees and asylum seekers was convened in Canberra by Australia21, the Centre for Policy Development and the Andrew and Renata Kaldor Centre for International Refugee Law (part of the University of New South Wales). A core focus of the roundtable was to explore ways for Australia to advance 'an integrated and coherent approach with respect to future arrivals of asylum seekers, bearing in mind Australia's relative prosperity, our international legal obligations, our relationships with countries in the region, and the needs of those in search of protection'.¹⁹⁰

One of the recommendations emerging from the roundtable was the development of a regional Track II dialogue on refugee protection. Track II dialogues are non-governmental discussions, sometimes including former or current government officials acting in their personal capacities, which aim to build relationships and explore new ideas. They act as a complement to Track I dialogues, which are official diplomatic activities between governments.¹⁹¹

The development of this dialogue — officially known as the Asia Dialogue on Forced Migration — has been led by the Centre for Policy Development in partnership with three regional policy institutes. The Dialogue aims to provide an independent forum for credible policy ideas and advice, in pursuit of more effective, durable and dignified approaches to forced migration in the Asia-Pacific region.¹⁹²

Two meetings of the Dialogue have been held in Melbourne and Bangkok, and a further four meetings are planned in different locations across the Asia-Pacific region over the next three years. Meetings have involved individuals and policy leaders from Australia, Malaysia, Indonesia and Thailand and other countries within and outside the region, as well as UNHCR and the International Organization for Migration.¹⁹³

The second Dialogue meeting was timed to precede the Bali Process Ad Hoc Group Senior Officials meeting, and recommendations from the Dialogue were presented in a letter to the Co-Chairs of the Ad Hoc Group.¹⁹⁴ The statement released by the Co-Chairs following the meeting of the Ad Hoc Group made specific reference to the Dialogue's recommendations, and affirmed 'the importance of engagement with the Track II Dialogue and other civil society'.¹⁹⁵ The Dialogue recommendations were subsequently adopted at the sixth Regional Ministerial Conference of the Bali Process.¹⁹⁶

The Dialogue provides a concrete example of the important role of civil society in encouraging more coordinated and effective responses to displacement in the region. Fostering further opportunities for civil society engagement in the Bali Process and ASEAN would provide greater scope for civil society to make positive contributions to regional discussions on forced migration issues.

(d) Fund protection-focused research on migration in the region

Research is essential to understanding the needs of refugee populations in different countries and situations, and to ensuring that policy measures are effective and responsive. However, existing government-funded research programs focusing on migration in the Asia-Pacific region (such as those conducted by the Regional Support Office of the Bali Process¹⁹⁷ and through the Department of Immigration and Border Protection's Irregular Migration and Border Research Programme¹⁹⁸) have a significant emphasis on prevention of irregular migration, rather than protection issues. There is a need for further research focusing more specifically on the protection needs of refugees, people seeking asylum and other vulnerable migrants in the region, to better inform rights-based responses to these needs.

3.4 Build bridges to cooperation

(a) Enhance the strategic use of resettlement

The strategic use of resettlement, as defined by UNHCR, is ‘the planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, other than those received by the refugee being resettled’.¹⁹⁹ In addition to increasing the overall size of its resettlement program, Australia could also begin to use resettlement more strategically to foster regional cooperation on refugee issues and achieve protection outcomes for refugees who will not have the opportunity to resettle.

Indeed, UNHCR has previously noted that the strategic use of resettlement can assist in ‘creating conditions conducive for dialogue with a host country on building a more favourable protection environment and forging comprehensive solutions strategies’.²⁰⁰ UNHCR further notes that the strategic use of resettlement can have particular benefits in a regional context, including through:

- reducing some of the ‘push-pull’ dynamics of refugee movements, including through mitigating the potential for secondary movement
- reducing the influence of human traffickers and smugglers and, in turn, the risks and loss of life associated with secondary movement
- helping to achieve more equitable sharing of responsibility for refugee protection, which can in turn strengthen regional cooperation and may prompt countries to assist with comprehensive durable solutions strategies
- generating interest in strengthening refugee protection and developing resettlement programs.²⁰¹

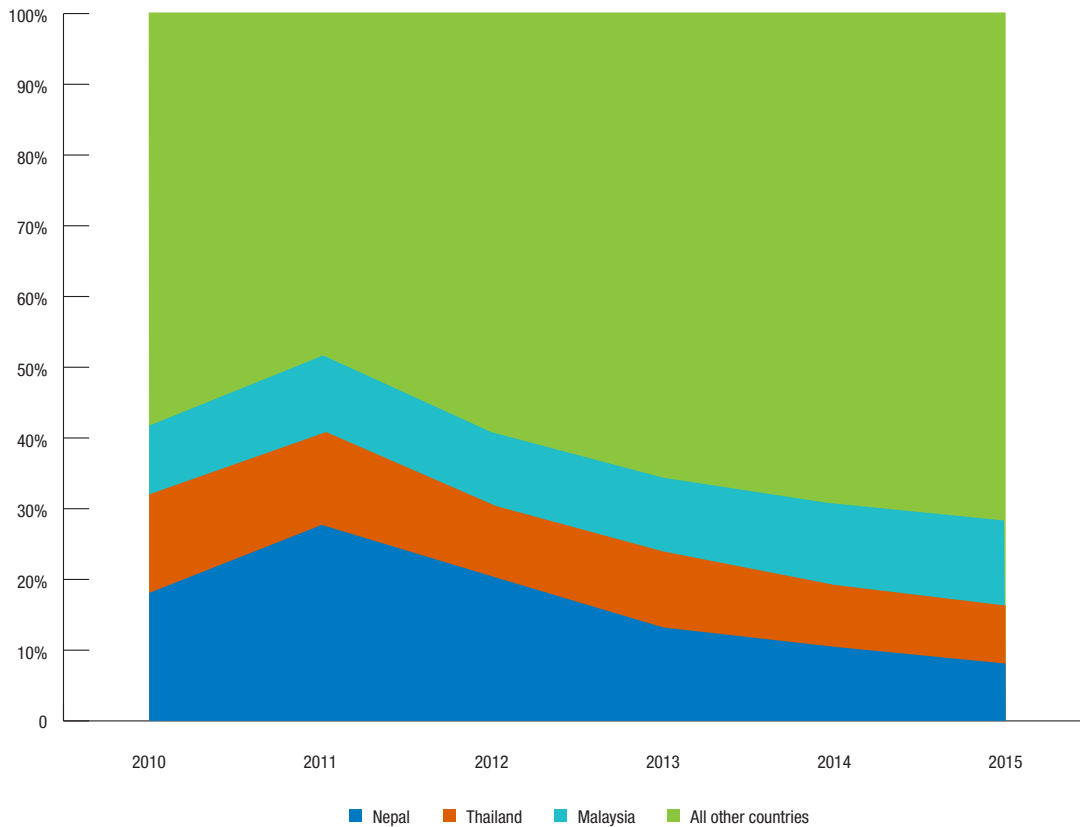
Clearly, there is a strong correlation between the potential benefits of the strategic use of resettlement and the aims of the enhanced foreign policy strategies on migration proposed by the Commission. In the short term, developing a more strategic approach to resettlement could enhance Australia’s capacity to negotiate for immediate improvements in protection conditions, thereby reducing the drivers of dangerous journeys. In the long term, strategic resettlement could assist in building a bridge to further cooperation (essential to developing more sustainable policy responses) by providing a tangible demonstration of Australia’s solidarity with countries hosting large numbers of refugees.

Implementing a strategic approach may present a significant challenge, as there is currently limited guidance available on the practical application of this concept. A 2013 review of the strategic use of resettlement found that while the concept has merit, it ‘has not been as well implemented as devised’. In particular, there is a lack of evidence demonstrating the success of strategic approaches to resettlement, partly because ‘there has simply been no effort to gather evidence that will demonstrate [their] success or failure’.²⁰²

Despite this lack of evidence, the Commission has identified a range of potential options which could provide useful guidance to Australia in developing a strategic approach to resettlement:

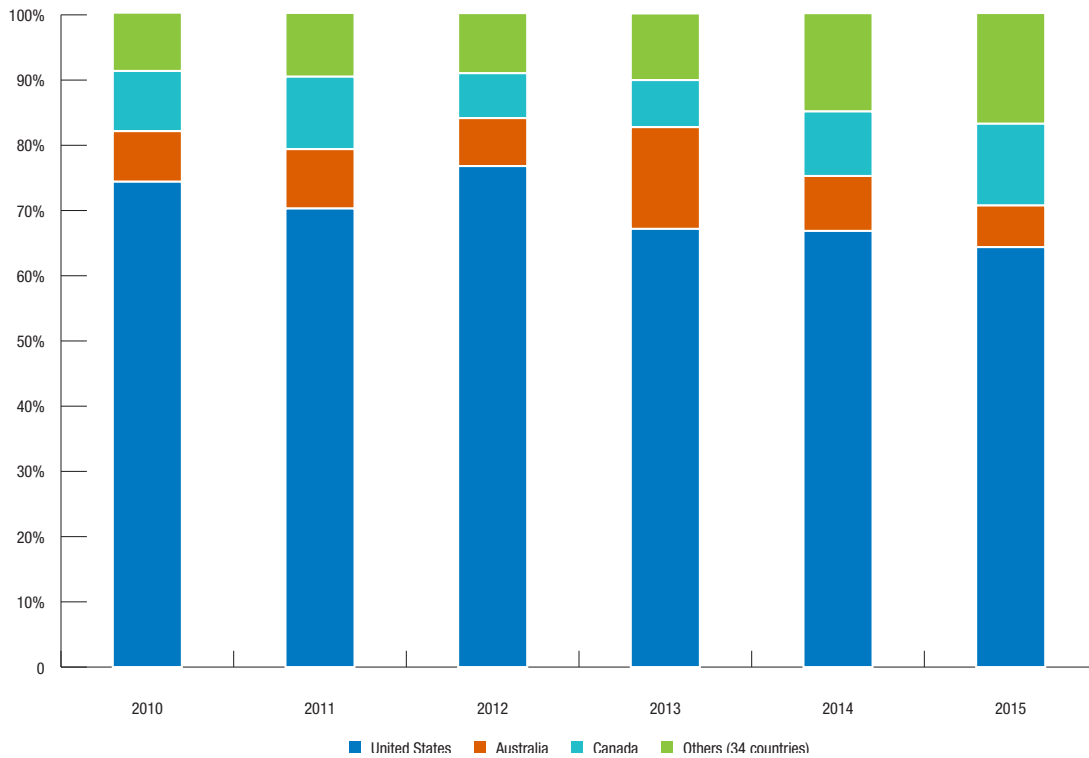
- *Resettlement as leverage*: It may be possible for Australia to leverage its resettlement program more effectively when engaging with other countries on refugee protection issues. For example, Malaysia, Nepal and Thailand have consistently been three of the largest beneficiaries of global resettlement since 2010 yet there do not appear to have been any significant improvements in protection conditions in these countries over this period. While UNHCR emphasises that the use of resettlement ‘should not be conditional upon other protection benefits that may arise from its use’,²⁰³ there may nonetheless be scope for Australia to use resettlement commitments as a means of encouraging protection commitments from the countries which benefit from resettlement.

Chart 11: Resettlement departures by country of departure, 2010 to 2015²⁰⁴



- *Multi-year resettlement commitments:* UNHCR encourages resettlement countries to consider multi-year planning of resettlement programs as they ‘provide predictability which will allow for the sustained and phased implementation of comprehensive strategies’.²⁰⁵ Multi-year commitments can also act as a tangible demonstration of commitment to sharing responsibility, providing greater reassurance to refugee-hosting countries that they will not be left to bear the full responsibility for refugee protection alone. While Australia’s resettlement program should retain some level of flexibility to respond to changing needs, consideration should also be given to multi-year commitments as part of a strategic approach (as also suggested in Section 2.1(a) of this paper).
- *Coordination with other resettlement countries:* Only around 30 countries maintain regular resettlement programs for refugees. Just three of these (the United States, Canada and Australia) collectively offer over 80% of the world’s resettlement places. While the limited number of resettlement countries remains an ongoing challenge, it also presents a unique opportunity: with only a small number of countries involved and an even smaller number of key players, there is significant potential to coordinate strategic resettlement efforts. Australia could engage with the United States, Canada and New Zealand (the only other country in the region with a substantial resettlement program) to plan and implement strategic resettlement initiatives in the Asia-Pacific region, thereby maximising the potential positive impacts of strategic resettlement.

Chart 12: Resettlement departures by country of arrival, 2010 to 2015²⁰⁶



- *Resume resettlement from Indonesia:* The suspension of resettlement from Indonesia is likely to present a major barrier to more positive engagement with a country that should be one of Australia’s most significant regional partners on refugee protection issues. Resuming resettlement would signal Australia’s commitment to sharing responsibility for refugee protection with its neighbours, creating greater potential for negotiation with Indonesia on other protection concerns.

It is important to recognise that the primary purpose of resettlement, even within a strategic approach, should be to provide individual protection to refugees whose needs cannot be met in the country where they have sought asylum. As noted above, a strategic approach should not result in resettlement being delayed or denied so as to leverage protection outcomes from a country of asylum. As a complementary measure which forms part of a broader foreign policy strategy, however, the strategic use of resettlement could provide a useful tool for enhancing cooperation on protection issues.

(b) Provide support to expand solutions

With the three traditional durable solutions unavailable to many refugees and people seeking asylum in the Asia–Pacific region, there is a need to explore alternative options for securing protection and solutions. There are a range of strategies which Australia could adopt to assist countries in the region to expand access to solutions:

- *Providing technical assistance to increase or enhance visa options:* As noted in Section 1.3, many countries in the region lack legal or administrative frameworks for addressing the protection needs of forcibly displaced people. Providing support to build visa regimes which would allow for refugees and people seeking asylum to be granted some form of secure legal status could assist in resolving many of the risks faced by these groups. Options could include protection-sensitive labour migration opportunities, or granting temporary residence with basic entitlements as an interim measure while longer term solutions are explored.

- *Auditing and providing advice on alternative migration pathways:* In addition to more traditional humanitarian pathways, there may be a range of other (protection-sensitive) migration opportunities for which refugees and people seeking asylum in the region could be eligible. The Regional Support Office of the Bali Process is currently exploring avenues for legal migration and work opportunities for people arriving by sea.²⁰⁷ Similar opportunities could be identified through conducting a broader audit of migration pathways in a range of countries (both within the region and beyond). Once this audit has occurred, funding could be provided for projects to offer tailored migration advice to forcibly displaced people (and, potentially, other vulnerable migrants) to identify viable migration options and to provide assistance with lodging applications.
- *Funding projects to facilitate access to migration pathways:* As discussed in Section 2.2, many refugees and people seeking asylum face challenges in meeting the eligibility requirements for non-humanitarian migration opportunities. Providing funding for targeted projects designed to facilitate access to such opportunities could assist in overcoming these barriers. For example, language tuition programs could assist in meeting language prerequisites, while education, training and skills recognition programs may unlock labour and skilled migration opportunities.
- *Supporting initiatives to prevent and resolve statelessness:* As statelessness is a significant risk factor for both forced displacement and human trafficking, addressing statelessness represents an important preventative strategy. Where statelessness occurs as a result of intentional discrimination (as in the case of the Rohingya, for example), it can be more challenging to resolve. In other circumstances, however — such as when statelessness occurs due to gaps in nationality laws and difficulties obtaining documentation — there may be more potential to work with governments in the region to address the problem. Australia could, for example, support initiatives to enhance access to birth registration or provide technical assistance to amend nationality laws.

Box 22: Resolving statelessness in Malaysia

Many Indian Tamils were brought from India to Malaysia as indentured labourers during the late 19th and early 20th centuries, when both countries were under British rule. Generations later, thousands of their descendants remain in Malaysia but are not considered citizens and lack identity documents, and are therefore barred from accessing a range of services and opportunities.²⁰⁸

In July 2014, Malaysian NGO Development of Human Resources for Rural Areas (DHRRA), with technical support from UNHCR, embarked on a mapping and registration project to identify the extent and underlying causes of statelessness amongst Indian Tamil communities in west Malaysia. To reach communities living in remote areas, mobile registration teams travelled from town to town to locate and register people who did not have identity documents. Data on stateless applicants was captured using a mobile app and uploaded to a secure central database.²⁰⁹

Those registered by DHRRA then received counselling and assistance from community-based paralegals to apply to Malaysia's National Registration Department (NRD) for national identity documents. Some applicants who could not resolve their case at the NRD level received pro bono legal support to acquire or confirm their nationality through the courts.²¹⁰

As a result of these efforts, as well as community awareness-raising and government interventions pursued since July 2014, the number of stateless people identified within this community reduced from an estimated 40,000 people at the commencement of the project to 11,534 people by June 2016.²¹¹

As of July 2016, 12,234 people had been registered by DHRRA, 70% of whom had submitted applications for documentation to the NRD.²¹² The Office of the Prime Minister of Malaysia has invited relevant government agencies and DHRRA to establish a working group on statelessness to accelerate the processing of these applications.²¹³ To date, a total of 700 people have acquired Malaysian citizenship through DHRRA's legal aid and counselling services in west Malaysia.²¹⁴

While enhancing access to solutions would obviously benefit refugees and people seeking asylum themselves, it may also act as an important bridge to further cooperation. Creating opportunities for countries in the region to sustainably resolve displacement in a mutually-beneficial way could provide a gateway to further engagement on protection issues and an entry point for discussions on enhancing access to the traditional durable solutions, particularly local integration.

(c) Look beyond refugee protection

Information gathered through the research and consultation process for this project indicates that refugee protection tends not to be viewed as a high priority by many countries in the Asia–Pacific region, particularly in comparison to other migration-related concerns such as internal displacement, trafficking, irregular labour migration and climate change-related migration. As such, engagement on a broader range of migration issues may provide a useful entry point for future discussions on refugee protection. Specific ideas include:

- *Funding research to map migration:* It was suggested that quality research which maps the scale of migration-related issues in the Asia–Pacific region and identifies needs and challenges would provide a useful tool for countries in the region that are grappling with these issues. For example, research to gather reliable evidence on the predicted scale of climate change-related migration in the region would likely be welcomed by countries which expect to be significantly affected by this emerging form of displacement.
- *Continuing to support work to counter human trafficking:* The Asia–Pacific region remains one of the primary regions of origin for victims of trafficking, the majority of whom are being trafficked domestically or within the region.²¹⁵ However, implementing effective responses to trafficking remains a challenge for many countries in the region.²¹⁶ Trafficking is a key concern for many countries in the region, particularly following the development of an anti-trafficking convention by ASEAN in November 2015.²¹⁷ Continuing support for initiatives to combat human trafficking would represent an important contribution by Australia to regional cooperation on migration-related issues.
- *Providing technical assistance on labour migration:* A number of countries in the region lack well-established visa regimes or policy frameworks for managing labour migration, despite the fact that several host large numbers of migrant workers. Australia, as a country with a long history of supporting successful labour migration, would be well-positioned to provide technical assistance to other countries in this area. This assistance could not only help to resolve concerns relating to irregular migration and exploitation of vulnerable migrants but may also expand access to alternative migration options for refugees and people seeking asylum.
- *Ratifying the Migrant Workers Convention:* The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is one of only two core international human rights treaties which has been neither signed nor ratified by Australia.²¹⁸ Ratification of this treaty could assist in demonstrating Australia's commitment to regional cooperation on migration-related issues. It is also worth noting that, during the most recent Universal Periodic Review of Australia, Indonesia and Sri Lanka (two countries of central importance in regional discussions on refugee protection) both recommended that Australia ratify this treaty.²¹⁹

As noted in Section 3.1(a), it is important to recognise that refugees and people seeking asylum have needs which are distinct from other migrant groups, just as each of these groups has their own distinct needs and challenges. Efforts to address other migration-related issues should not lead to the conflation of these issues, as each will require tailored policy responses. Instead, engagement on migration should be viewed as a means of establishing a platform for cooperation and creating opportunities for constructive discussions on forced displacement. In addition, supporting countries in the region to resolve issues which they see as a high priority would act as an important signal of Australia's commitment to a cooperative regional approach.

(d) Promote the rights of children

While few countries in the region are party to the Refugee Convention, all are party to the Convention on the Rights of the Child. Child protection could therefore provide a useful platform for engagement with countries in the region on migration issues.

For example, Australia could support initiatives to provide assistance to or establish better protection frameworks for refugee and asylum seeker children, as well as other children on the move who are vulnerable or at risk (particularly separated or unaccompanied children). If successful, these initiatives could provide both an entry point for discussions about extending protection-focused policies and programs to adults, and a good practice model which could be adapted for other at-risk groups.

Box 23: Protecting vulnerable children in Bangkok²²⁰

The Bangkok Child Protection program is implemented through a partnership between UNHCR and the Jesuit Refugee Service (JRS) in Thailand. Initially established as a three-month pilot project in 2014, the program aims to respond to the needs of unaccompanied, separated and other vulnerable children residing in Bangkok through providing best interests assessments, referrals to service providers and emergency assistance. There are currently 162 children receiving support through the program.

Once a child is registered with the program, a caseworker conducts best interests assessments (based on an interview and home visit) to determine the child's basic needs and identify protection gaps. Relevant support is then provided through referrals for financial, medical, educational or legal support. The program also organises recreational, educational, and psychosocial activities, as well as opportunities to participate in training courses and workshops.

The Bangkok Child Protection program operates in a challenging legal, social and cultural context. Thailand is not party to the Refugee Convention and lacks a legal and administrative framework for refugee protection. The unstable political environment, the complexity of case management for vulnerable and often traumatised children, and the lack of ongoing support options for young people who have turned 18 pose further challenges. Nonetheless, the support provided through the program plays an important role in assisting asylum seeker and refugee children to survive and meet their basic needs in this difficult context.

Examples of measures which could be supported by Australia include: development of best interests determination systems; appointment of guardians for unaccompanied or separated children; prioritised processing of refugee claims for children who are seeking asylum; mechanisms for facilitating family reunion; and ensuring access to birth registration.

4 Conclusion

This project set out to canvass possible alternatives to third country processing in Nauru and Manus Island, which would both prevent flight by sea and uphold international human rights standards.

The Commission is of the view that there is a better way to the current approach. There are a range of measures that could be implemented in tandem as an alternative.

The options presented are premised on the understanding that we need to shift our focus from an approach that is unilateral in nature to an approach that is multi-lateral and cooperative in nature. It is consistent with Australia seeing itself as a part of Asia, with all of the economic and other benefits that flow from that.

Our current approach to third country processing is part of a broader problem of being too myopic in our focus on the challenge of migration facing the region. It is also an approach that comes at a high cost to Australia — both financial and reputational — and an even higher personal cost to those on Manus Island and in Nauru.

The Commission acknowledges that implementation of these alternatives will by no means be an easy task. It will require leadership, long term commitments and considerable investment of time and resources. However, the maintenance of third country processing also presents highly complex challenges for Australia and carries significant human, financial and reputational costs.

The Commission encourages the Australian Government to closely consider the options identified in this paper.

Substituting a human rights-based approach for the current model of third country processing would represent a major step forward in ensuring compliance with our international human rights obligations, and provide a much-needed exemplar for other countries seeking more effective, rights-based ways to respond to displacement.

List of acronyms

AHV	Association of Hazaras in Victoria
APRRN	Asia Pacific Refugee Rights Network
ASEAN	Association of South East Asian Nations
BASRAN	Bangkok Asylum Seeker and Refugee Assistance Network
CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CPP	Community Proposal Pilot
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRSS	Community Refugee Settlement Scheme
DHRRA	Development of Human Resources for Rural Areas [Malaysia]
ELICOS	English Language Intensive Courses for Overseas Students
GNI	Gross National Income
HECS	Higher Education Contribution Scheme
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDC	International Detention Coalition
IDP	Internally Displaced Person
JRS	Jesuit Refugee Service
NGO	Non-Government Organisation
NHRI	National Human Rights Institution
NRD	National Registration Department [Malaysia]
RRN	Refugee Rights Network [Pakistan]
SAR	Search And Rescue
SHP	Special Humanitarian Program
TAFE	Technical And Further Education
UN	United Nations
UNCERF	United Nations Central Emergency Response Fund
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNRWA	United Nations Relief and Works Program
VET	Vocational Education and Training
WFP	World Food Program

Glossary

Refugee	A person who, owing to well-founded fear of being persecuted due to their race, religion, nationality, membership of a particular social group or political opinion, is outside their country and is unable or unwilling to seek protection from their own country.
Asylum seeker/ Person seeking asylum	A person who claims to be a refugee and is waiting to have that claim assessed.
Humanitarian entrant	A collective term for people who have fled their country due to a fear of persecution or other forms of serious harm. It includes refugees, asylum seekers and people entitled to complementary forms of protection under the CAT, CRC or ICCPR.
Migrant	A person who voluntarily leaves their country to seek a better life or opportunities elsewhere.
<i>Refoulement</i>	Forcible return of a person to a situation in which they would be at risk of persecution or other forms of serious harm.
Migration Program	An annual, planned Australian visa program which provides permanent visas under three streams – skilled, family and special eligibility.
Refugee and Humanitarian Program	An annual, planned Australian visa program which provides permanent visas to refugees and other people at risk of serious harm. The Program includes onshore protection and resettlement components.
Onshore protection	The provision of protection to people seeking asylum who are determined to be refugees or in need of protection on complementary grounds.
Resettlement	The process of relocating refugees from a country in which they sought asylum to another country which has agreed to grant them permanent settlement.
Woman at Risk	A component of Australia's resettlement program which provides protection to women (and their children) who are in danger of victimisation, harassment or serious abuse because of their gender.

Endnotes

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