



Law Council
OF AUSTRALIA

Australia's 2022-23 Humanitarian Program

Department of Home Affairs

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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 90,000¹ lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2022 Executive as at 1 January 2022 are:

- Mr Tass Liveris, President
- Mr Luke Murphy, President-elect
- Mr Greg McIntyre SC, Treasurer
- Ms Juliana Warner, Executive Member
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member

The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

¹ Law Council of Australia, *The Lawyer Project Report*, (pg. 9,10, September 2021).

Acknowledgement

The Law Council is grateful to the Law Institute of Victoria (**LIV**), the Law Society of New South Wales, the Law Society of Western Australia and the Law Society of Queensland, as well as the Migration Law Committee of its Federal Litigation and Dispute Resolution Section for their input into this submission.

Executive Summary

1. The Law Council of Australia (**Law Council**) appreciates the opportunity to provide a submission to the Department of Home Affairs (**Department**) regarding its 2022-23 Humanitarian Program.
2. The Law Council notes in particular the request in the Department's 2022-23 Humanitarian Program Discussion Paper for submissions 'to inform the development and composition of the Program in 2022-23, to help ensure it delivers effective and strong outcomes for people in humanitarian needs'.²
3. To that end, the Law Council:
 - supports the Australian Government's aspiration to move towards a Humanitarian Program of 27,000 places per annum, particularly in light of the low recent intake and the unprecedented global demand for refugee resettlement places;
 - supports Australia's ongoing engagement with the United Nations High Commissioner for Refugees (**UNHCR**) to provide for resettlement based on need, with a flexible response to displacement crises consistent with Australia's commitments under the Global Compact on Refugees (**Global Compact**), and a continuing commitment to the resettlement of Afghan refugees;
 - supports the Australian Government's much-needed commitment to properly resourcing the Department to expeditiously address the backlog of applications from Humanitarian visa applicants particularly Afghan nationals;
 - supports the Australian Government's aspiration to move towards a Community Support Program with 5,000 dedicated places per annum, but recommends the current priority given to employment prospects be reconsidered in light of its adverse impact on several groups, particularly women;
 - considers that placements in the Special Humanitarian Program should be based on the individual circumstances of the applicant and their need for humanitarian support, as opposed to whether they have a regional proposer;
 - proposes that following any changes that allow holders of a Temporary Protection visa (**TPV**) or Safe Haven Enterprise visa (**SHEV**) to convert to a permanent visa, such persons be eligible to propose family members and that persons proposed by boat arrivals are not treated as lowest priority; and
 - suggests consideration be given to an expansion in the kinds of family members given priority for a Refugee or Special Humanitarian Program visa if proposed by a visa holder in Australia – either from 'immediate family' to the definition of 'member of family unit', or to otherwise include a broader group of family members – to ensure that vulnerable family members are not left behind.

² Department of Home Affairs, 'Australia's Humanitarian Program 2022-23 Discussion Paper' <https://www.homeaffairs.gov.au/reports-and-pubs/files/2022-23-discussion-paper.pdf> 8.

The Law Council’s submissions

Size of the Humanitarian Program

4. The Law Council reiterates its recommendation to the Department in its submission on the 2021-22 Humanitarian Program that the size of the Program should progressively increase to least 20,000 per annum consistent with the Report of the Expert Panel on Asylum Seekers published in 2012.³

A lower ‘ceiling’ in recent years

5. The Law Council notes the current ceiling of 13,750 places, which has persisted over the last three years, is a significant reduction from 2019-2020, when 18,750 places were allocated.⁴ Further, that ceiling has not been met over each of those years.

Year	Humanitarian Program ceiling	Humanitarian visas granted
2019-2020	18,750	13,171
2020-2021	13,750 ⁵	5,947 ⁶
2021-2022	13,750 ⁷	4,666 (as of 31 January 2022) ⁸
2022-2023	13,750 ⁹ + 4,125 places for Afghan nationals ¹⁰	Not available

6. The Discussion Paper suggests that the COVID-19 pandemic was the reason for setting the lower ceiling of places in 2020-21 and 2021-22.¹¹ The Law Council is well aware of challenges presented by the pandemic, both in relation to the restrictions on incoming travel and the related constraints in capacity and resourcing to perform health and identity checks in host countries in certain parts of the world.
7. The Law Council is conscious that the constraints offshore may have been outside the control of the Department and Australian Government. These constraints are evidenced by an international evaluation by the UNHCR and others, which assessed the extent to which refugee rights — from access to asylum, health care and vaccines, to child

³ Law Council of Australia ‘Discussion Paper: Australia’s Humanitarian Program 2021-22’ (Submission, 28 May 2021) <https://www.lawcouncil.asn.au/publicassets/2d801d92-e7c4-eb11-943c-005056be13b5/4010%20-%20Australias%20Humanitarian%20Program%202021-22.pdf>.

⁴ Department of Home Affairs, ‘2019-20 Humanitarian Program Outcomes’ (Report), <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20-glance.pdf>.

⁵ Department of Home Affairs, ‘2020-21 Humanitarian Program Outcomes’ (Report) <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2020-21.pdf>.

⁶ Department of Home Affairs, ‘Annual Report 2020-21’, <https://www.homeaffairs.gov.au/reports-and-pubs/Annualreports/home-affairs-annual-report-2020-21.pdf>.

⁷ <https://www.homeaffairs.gov.au/reports-and-pubs/files/2022-23-discussion-paper.pdf>.

⁸ Legal and Constitutional Affairs Committee, Question on notice 122 <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId13-PortfolioId20-QuestionNumber122>.

⁹ https://budget.gov.au/2022-23/content/bp2/download/bp2_2022-23.pdf.

¹⁰ Department of Home Affairs, ‘Australia’s Humanitarian Program 2022-23 Discussion Paper’ <https://www.homeaffairs.gov.au/reports-and-pubs/files/2022-23-discussion-paper.pdf> 3.

¹¹ Ibid.

protection and protection from gender-based violence — were safeguarded during the pandemic.¹² The evaluation found that:¹³

Critically, in the initial COVID-19 response, protection activities and staff were deprioritized and seen as non-essential, with dire impacts on GBV [gender-based violence] and child protection, as well as other vulnerable groups such as the elderly and people with disabilities.

...

What is clear is that protection services as well as regular non-COVID health service provisions, were badly affected by the focus on and pivoting of funds towards COVID-19 related health services in refugee camps.

8. It is unclear the extent to which these offshore challenges still pose an issue. However, the domestic restrictions have been lifted.¹⁴

The case for an increase to the size of the Program

9. The Law Council's general view is that Australia's contribution to the resettlement of refugees should be proportionate to the scale of the displacement and Australia's ability to contribute.
10. The UNHCR reports that the need for resettlement solutions is now greater than ever. It now estimates that there are, for the first time, over 100 million displaced persons around the world.¹⁵ The UNHCR estimates that more than two million refugees will be in need of resettlement next year, which represents a 36 per cent increase compared to resettlement needs for this year (1.47 million).¹⁶ According to the UNHCR:¹⁷

This rise is attributed to the humanitarian impacts of the pandemic, the multitude of various protracted refugee situations, and the emergence of new displacement situations over the past year.

11. In terms of resettlement commitments, the UNHCR:¹⁸

... is appealing for predictable, multi-year resettlement commitments from states. It also asks that resettlement quotas maintain flexibility, so that places are allocated based on urgent and emergency needs across the world

[and]

... calls on states to speed up resettlement processing and departure arrangements and to strengthen their processing capacities and reception structures in a sustainable manner.

¹² UNHCR, 'Refugee Rights & Protection During COVID-19: What Have We Learned?', <https://www.unhcr.org/en-au/news/press/2022/7/62c7de464/global-evaluation-international-covid-19-response-fell-short-upholding.html> (webpage, accessed on 16 August 2022).

¹³ Ibid.

¹⁴ The Hon Clare O'Neil MP, 'All COVID-19 border restrictions to be lifted' (media release, 3 July 2020), <https://minister.homeaffairs.gov.au/ClareONeil/Pages/covid-border-restrictions-to-be-lifted.aspx>.

¹⁵ UNHCR, 'Ukraine, other conflicts push forcibly displaced total over 100 million for first time' (Media Release, 23 May 2022), <https://www.unhcr.org/en-au/news/press/2022/5/628a389e4/unhcr-ukraine-other-conflicts-push-forcibly-displaced-total-100-million.html>.

¹⁶ UNHCR, 'UNHCR: Global refugee resettlement needs will rise steeply next year' (21 June 2022), <https://www.unhcr.org/en-au/news/briefing/2022/6/62b18a714/unhcr-global-refugee-resettlement-needs-rise-steeply-next-year.html>.

¹⁷ Ibid.

¹⁸ Ibid.

12. The Law Council suggests the Australian Government and Department's plans for the Humanitarian Program take heed of that call, including by giving multi-year 'commitments', as opposed to the static 'ceiling' numbers of recent years.
13. In 2012, the Expert Panel went on to recommend that if its proposed policy directions were effective in reducing the number of unauthorised maritime arrivals, the Humanitarian Program should be progressively further increased to 27,000 places within five years. The Expert Panel noted that '*consideration of such an increase would need to take account of Australia's prevailing economic circumstances, the impact of the earlier Program increase and progress in achieving more effective regional cooperation arrangements*'.¹⁹
14. The Australian Labor Party's 2021 National Platform indicates an aspiration to progressively increase the intake to 27,000 per year.²⁰
15. The Law Council supports the Australian Government working towards that figure, in light of the drop in numbers in the intake in recent years and the increased international demand for resettlement. It notes that a precondition for this increase identified by the Expert Panel – that the numbers of boat arrivals decrease – has been achieved.

Composition of the Program

General comments

16. In Australia, refugee visas²¹ are generally referred by the UNHCR, but may also be self-referred.²² Refugee applications assessed and referred by UNHCR are then lodged directly with Australian missions overseas.²³
17. The UNHCR's processing unit within the Resettlement and Complementary Pathways Service is 'responsible for global distribution and monitoring of quotas for urgent and emergency cases on a dossier basis and for processing submissions of such cases'.²⁴ The UNHCR's Report on Projected Global Resettlement Needs 2023 identifies the particular priorities based on resettlement need and highlights that for 2023 it is anticipated that refugees from Syria will have the highest global resettlement needs, followed by those from Afghanistan, the Democratic Republic of the Congo, South Sudan and Myanmar.²⁵
18. The Law Council supports Australia's engagement with the UNHCR to provide for resettlement based on need. It further considers that Australia's resettlement program

¹⁹ Air Chief Marshal Angus Houston AC, AFC (Ret'd), Paris Aristotle AM, Professor Michael L'Estrange AO , Report of the Expert Panel on Asylum Seekers, August 2012 [3.8].

²⁰ Australian Labor Party, ALP National Platform as adopted at the 2021 Special Platform Conference, <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf> 123.

²¹ This includes the following visas: Refugee (Subclass 200), In-country Special Humanitarian (Subclass 201), Emergency Rescue Visa (Subclass 203), Woman at Risk (Subclass 204)

²² Department of Home Affairs, 'Australia's Offshore Humanitarian Program 2020-21'

<https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2020-21.pdf> 3.

²³ Ibid.

²⁴ UNHCR, '2023 Projected Global Resettlement Needs', <https://www.unhcr.org/62b18e714> 25.

²⁵ Ibid 13.

must retain some degree of flexibility to respond to crises as they emerge, consistent with the objectives of the Refugee Compact,²⁶ which Australia voted to adopt.²⁷

19. The objectives of the Refugee Compact are to: (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity.²⁸ Among other things, the Refugee Compact establishes a programme of action to address a large refugee movement, or a protracted refugee situation, through arrangements for burden- and responsibility-sharing. It provides tools for effecting burden- and responsibility-sharing, which include the provision of 'timely, adequate and needs-driven humanitarian assistance, both for the emergency response and protracted situations'.²⁹
20. As noted by the UNSW Kaldor Centre for Refugee Law, special humanitarian intakes in response to large-scale crises help to 'promote international solidarity and responsibility-sharing, as well as protection and durable solutions for those with the greatest protection needs' while also relieving the pressures experienced by frontline states hosting an influx of refugees.³⁰

Position in relation to Afghans

21. The Law Council supports the commitment announced by the previous Australian Government to set aside places for Afghans in the Humanitarian Program – including 10,000 places within the Humanitarian Program and 16,500 places in addition to the annual Program intake over the next four years. It notes that the Senate Foreign Affairs, Defence and Trade Committee also welcomed this latter commitment.³¹ The Law Council also acknowledges the significant efforts of Departmental officials in processing such applications since then.
22. The Discussion Paper notes that as at May 2022, the Department had over 190,000 offshore humanitarian visa applications on-hand, mostly from Afghan nationals. The Hon Andrew Giles MP, Minister for Immigration, Citizenship and Multicultural Affairs more recently indicated that more than 200,000 applications from Afghan nationals had been received.³² This would suggest that there are over 7.5 times more applications than available places.

²⁶ United Nations, *Report of the United Nations High Commissioner for Refugees - Part II Global compact on refugees*, A/73/12 (Part II), <https://www.unhcr.org/en-au/excom/unhcrannual/5ba3a5d44/report-united-nations-high-commissioner-refugees-part-ii-global-compact.html>.

²⁷ United Nations, 'General Assembly Endorses Landmark Global Compact on Refugees, Adopting 53 Third Committee Resolutions, 6 Decisions Covering Range of Human Rights', <https://press.un.org/en/2018/ga12107.doc.htm>, 17 December 2018.

²⁸ *Ibid*, [7].

²⁹ *Ibid*, [32].

³⁰ UNSW Kaldor Centre for International Refugee Law, Kaldor Centre Principles for Australian Refugee Policy, March 2022, https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Kaldor_Centre_Principles_for_Australian_Refugee_Policy_Mar22.pdf 19.

³¹ Senate Foreign Affairs, Defence and Trade Committee, Australia's engagement in Afghanistan' (April 2022) [7.59].

³² Hon Andrew Giles MP, Minister for Immigration, Citizenship and Multicultural Affairs, interview with Anna Henderson, SBS (15 August 2022), <https://www.sbs.com.au/news/podcast-episode/people-who-worked-for-australia-are-our-highest-priority-interview-with-immigration-minister-andrew-giles/wlvmehxg>.

23. As the Law Council has previously stated,³³ the number of places set aside for Afghans may need to be increased if the number of applications continues to increase. This would ensure that Australia responds proportionately to the resettlement demand.

Position in relation to Rohingya

24. Interest has been expressed from within the Law Council's constituent bodies in Australia's humanitarian response to displaced Rohingya.

25. The Rohingya crises in Myanmar has led to mass displacement and a migrant crisis in neighbouring Bangladesh.³⁴ In 2018 it was reported that Rohingya camps in Bangladesh have faced disease, malnutrition, killings, human trafficking and gender-based violence.³⁵ These issues are ongoing and currently it is reported that Bangladesh is currently sheltering over one million Rohingya refugees.³⁶

26. In 2020-2021, Australian granted 656 Humanitarian visas to applicants whose country of origin was Myanmar, making up 14.4 per cent of the total visas granted. This was the second highest country for humanitarian visas granted after Iraq.³⁷

27. The Law Council recommends that ongoing consideration be given to the needs of this group.

Resourcing

28. The Law Council recommends that the Australian Government prioritise the resourcing in support of the Humanitarian Program to ensure all allocated visas are granted. In parallel to the Program's general size, Australia's ability to provide humanitarian support is tethered to the processing capacity of the Program.

29. In the Budget delivered on 29 March 2022, there was a budgeted cut in funding for 'Program 2.3 – Refugee, Humanitarian Settlement and Migrant Services', which includes the delivery of the Humanitarian Program,³⁸ in 2022-23 and over the forward estimates.³⁹ The Law Council considers that funding should be increased to accommodate a greater allocation to the Program.

30. The Law Council welcomes Minister Giles's recent comments indicating that the Department has established a taskforce to work through the registration stage of visa applications.⁴⁰

³³ Law Council of Australia, 'Australian Government's increased commitment to Afghan nationals a good start' (Media Release, 24 January 2022), <https://www.lawcouncil.asn.au/media/media-releases/australian-governments-increased-commitment-to-afghan-nationals-a-good-start>.

³⁴ Dr Cameron Hill, Foreign Affairs, Defence and Security Section, Parliamentary Library, 'Australia's response to the Rohingya human rights and migrant crisis—a quick guide – Parliament of Australia' (14 June 2018), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/Rohingya.

³⁵ Ibid.

³⁶ UNHCR, '2022 Joint Response Plan Rohingya Humanitarian Crisis', <https://reporting.unhcr.org/2022-jrp-rohingya>.

³⁷ Department of Home Affairs, 'Australia's Offshore Humanitarian Program 2020-21' <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2020-21.pdf> 19.

³⁸ Commonwealth of Australia, 'Portfolio Budget Statements 2022–23 Budget Related Paper No. 1.8 Home Affairs Portfolio' 45.

³⁹ Ibid 40.

⁴⁰ Hon Andrew Giles MP, Minister for Immigration, Citizenship and Multicultural Affairs, interview with Anna Henderson, SBS (15 August 2022), <https://www.sbs.com.au/news/podcast-episode/people-who-worked-for-australia-are-our-highest-priority-interview-with-immigration-minister-andrew-giles/wlvmehxg>.

Community Support Program

31. The Law Council supports the Australian Government's goal to increase places in the Community Support Program to 5,000 annually,⁴¹ separated from the number of places in the Humanitarian Program.⁴²
32. The Law Council considers it is necessary to ensure the CSP allocation remains separate to the Humanitarian Program allocation, to avoid a reduction in the places available for individuals under the Refugee and Special Humanitarian Program categories, who do not meet the criteria for the Community Support Program allocation.
33. The Law Council also suggests consideration be given to adjusting the Community Support Program criteria.
34. The Community Support Program currently gives priority to refugees between 18 and 50 years of age with good settlement prospects and an offer of employment or attributes supporting their ability to become financially self-sufficient within 12 months of arrival.⁴³
35. These criteria may indirectly discriminate against women and girls, many of whom, in conservative rural areas of countries such as Afghanistan, may be unlikely to have significant access to education and employment.⁴⁴ Similarly, individuals with caring responsibilities for young children which prevent them from undertaking employment may also be excluded from the Community Support Program. In many refugee-producing countries, men are casualties of civil war, leaving women with the responsibility of caring for their children. As such, individuals with child-rearing responsibilities may not be in a position to find employment, study English or demonstrate the ability to become 'financially self-sufficient' in order to meet the Community Support Program's criteria.
36. The Community Support Program should also not impose an unreasonable financial burden on the proposer.

Special Humanitarian Program and Regional Areas

37. In its submission regarding the 2021-22 Humanitarian Program, the Law Council expressed the following views regarding the then Australian Government's target of 50 per cent of humanitarian entrants to be settled in a regional location by 2022:
 - the target should not be brought into effect by prioritising applications lodged by persons who are willing to settle in regional areas – applications should be focussed on humanitarian need; and
 - the Law Council supported the recommendations in the Review into Integration, Employment and Settlement Outcomes for Refugees and Humanitarian Entrants⁴⁵

⁴¹ Australian Labor Party, ALP National Platform as adopted at the 2021 Special Platform Conference, <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf> para 8 of 123.

⁴² Ibid para 6 of 123.

⁴³ Department of Home Affairs, 'Discussion Paper – Australia's Humanitarian Program 2022–23' 5.

⁴⁴ Department of Foreign Affairs and Trade, 'DFAT Thematic Report on Political and Security Developments in Afghanistan (August 2021 to January 2022)' (14 January 2022) [3.12] and [3.19].

⁴⁵ Peter Shergold, Kerrin Benson and Margaret Piper, Investing in Refugees, Investing in Australia: the findings of a Review into Integration, Employment and Settlement Outcomes for Refugees and Humanitarian Entrants in Australia, February 2019.

for national leadership to build sustainable capacity to enable the settlement of migrants in regional communities.

38. The Department's 2022-23 Humanitarian Program Discussion Paper does not refer to the preference to be given to applicants with proposers residing in regional area, except to say that priority has 'historically ... be given to applicants with proposers residing in a regional areas'.⁴⁶
39. The Department's website suggests that priority in the Special Humanitarian Program is still being given to applicants with a relative who resides in a regional area.⁴⁷ As the Discussion Paper notes, the Special Humanitarian Program is for 'people outside their home country, subject to substantial discrimination amounting to a gross violation of human rights and with family or community ties to Australia'.⁴⁸
40. The LIV expressly calls for the priority given to applicants in regional areas to be removed. The Law Council agrees that consideration should be given to this. It acknowledges that regional settlement may benefit some individuals; however, its position remains that the individual circumstances of the applicant and their need for humanitarian support, consistent with advice from the UNHCR,⁴⁹ should be primary factors when processing applications.
41. As the majority of service providers (for health, mental health welfare, migrant services, and counselling) are located in metropolitan areas, removing priority for those willing to live regionally would support the most vulnerable proposers who generally reside in metropolitan areas and stand to benefit the most from family reunion. Furthermore, practitioners have raised concerns that prioritising the sending of newly arrived refugees to regional areas may cause settlement issues due to lack of regionally available services in those areas.

Measures to better facilitate family reunion

42. The Law Council is supportive of measures⁵⁰ that are consistent with what the Discussion Paper notes is a key objective of the Humanitarian Program: the reunification of refugees and people who are in refugee-like situations overseas with their family in Australia.⁵¹

⁴⁶ Department of Home Affairs, 'Australia's Humanitarian Program 2022-23 Discussion Paper' <https://www.homeaffairs.gov.au/reports-and-pubs/files/2022-23-discussion-paper.pdf> 8.

⁴⁷ Department of Home Affairs, 'Global Special Humanitarian visa – About this visa', <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/global-special-humanitarian-202#About> (webpage, accessed on 16 August 2022).

⁴⁸ Department of Home Affairs, 'Australia's Humanitarian Program 2022-23 Discussion Paper' <https://www.homeaffairs.gov.au/reports-and-pubs/files/2022-23-discussion-paper.pdf> 5.

⁴⁹ UNHCR, '2023 Projected Global Resettlement Needs', https://www.unhcr.org/62b18e714_25. It is noted that the Department takes the UNHCR's advice on global resettlement need – see Department of Home Affairs, 'Australia's Offshore Humanitarian Program 2020-21' <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2020-21.pdf> 2.

⁵⁰ Law Council of Australia, 'Call to Parties 2022', <https://www.lawcouncil.asn.au/publicassets/919cc01e-23b9-ec11-944c-005056be13b5/Call%20To%20Parties%20Final-Web.pdf> 30 and 32.

⁵¹ Department of Home Affairs, 'Australia's Humanitarian Program 2022-23 Discussion Paper' <https://www.homeaffairs.gov.au/reports-and-pubs/files/2022-23-discussion-paper.pdf> 2.

Narrowness of 'immediate family' priority in the Refugee and SHP

43. Presently, priority for offshore Refugee⁵² and the Special Humanitarian Program⁵³ visa is given to applicants proposed by an immediate family member (**split family visa**).⁵⁴
44. Under these provisions, the split family visa option is limited to those who come within the 'immediate family' definition reg 1.12AA of the Regulations, being: spouse, de facto partner, dependent child or a parent (if the proposer is under 18 years).
45. Practitioners have reported that this can exclude some vulnerable cohorts. For example, under the current legislative framework, a 19-year-old visa holder could not obtain priority to bring out their parents because they are not defined as an immediate family unit member. Further, the narrow scope of 'immediate family' means that permanent Humanitarian visa holders in Australia are faced with the prospect of leaving a dependent family member behind, including a widowed mother or a single and dependent sibling, in potentially unsafe circumstances.
46. The Law Council suggests consideration be given to addressing this issue. For example, eligibility could be expanded to include those who fall within members of the family unit definition⁵⁵ rather than using the immediate family definition⁵⁶ or to consider expanding the definition to include a broader group of family members to ensure that vulnerable family members are not left behind.
47. The Law Council is cognisant that this reform may significantly increase the number of people who may qualify for the Program, potentially at the expense of others, and would expect that factor would be part of the Department's consideration of this measure.

Availability of family reunion for boat arrivals

48. The Law Council also notes that currently SHEV and TPV holders are prevented from proposing relatives for split family visas. Many Afghan SHEV and TPV holders, were and remain, impacted by this.
49. They will also be prevented from proposing relatives for split family visas if and when their temporary visas are converted to permanent visas, consistent with Australian Government policy,⁵⁷ due to the operation of sub-regulation 2.07AM(5) of the Migration Regulations. When changes are made to allow SHEV and TPV holders to transition to permanent residence visas, this regulation will need to be changed in order to enable such visa holders to propose relatives including immediate family members for humanitarian visas. Further, SHP priorities should be amended to ensure that family members proposed by former SHEV and TPV holders are not treated as priority 5 (being the least priority) when able to do so.

⁵² Department of Home Affairs, 'Refugee visas (offshore)' (webpage, accessed 16 August 2022), <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/refugee-visas>.

⁵³ Other than those in regional areas, where the more expansive 'relative' definition is used: Department of Home Affairs, 'Global Special Humanitarian visa – About this visa', <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/global-special-humanitarian-202#About> (webpage, accessed on 16 August 2022).

⁵⁴ Subclauses 200.211(2), 201.211(2), 202.211(2), 203.211(2) and 204.211(2) of Schedule 2 to the *Migration Regulations 1994* (Cth).

⁵⁵ Ibid reg 1.12.

⁵⁶ Ibid 1.12AA.

⁵⁷ Australian Labor Party, 'ALP National Platform – As adopted at the 2021 Special Platform Conference', March 2021, <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>, paragraph 2 on page 126.

50. Amendments to make split family visas more available to family members of boat arrivals are consistent the Law Council's policy of not penalising people for arriving by boat.⁵⁸ Historically, many people who would be eligible for the split family visas, but for the prohibition on making an application that applies to boat arrivals, have instead been forced to apply for Partner visas at great cost. Given the comparative cheaper cost and more generous availability of settlement services on arrival, it is preferable for family members of boat arrivals to be able to arrive in Australia on a humanitarian visa, rather than a Partner visa.
51. The Discussion Paper refers to the 5,000 places being available to Afghan nationals over four years in the Family Stream of the Migration Program.⁵⁹ It has been estimated that the average number of Family visas granted to Afghans over each of the seven years to 2020-21 is 1,840 places per year,⁶⁰ so an allocation of 1,250 places would represent a reduction. The Law Council submits that the 5,000 places should reflect a floor rather than a ceiling.

⁵⁸ Law Council of Australia, 'Asylum Seeker Policy' <https://www.lawcouncil.asn.au/publicassets/406c7bd7-e1d6-e611-80d2-005056be66b1/Policy-Statement-Asylum-Seeker-Policy.pdf> [7] and Law Council, 'Call to Parties 2022', <https://www.lawcouncil.asn.au/publicassets/919cc01e-23b9-ec11-944c-005056be13b5/Call%20to%20Parties%20Final-Web.pdf> 30.

⁵⁹ Department of Home Affairs, 'Australia's Humanitarian Program 2022-23 Discussion Paper' <https://www.homeaffairs.gov.au/reports-and-pubs/files/2022-23-discussion-paper.pdf> 6.

⁶⁰ Refugee Council of Australia, '15,000 Places for Afghan Nationals over four years; Why Australians are disappointed' <https://www.refugeecouncil.org.au/wp-content/uploads/2022/02/15000-Afghan-visas-220214-002.pdf>.