



**Australian  
Human Rights  
Commission**

# Inquiry into the efficacy, fairness, timeliness and costs of visas for family reunion

Submission to the Senate Legal and Constitutional Affairs  
References Committee

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ABN 47 996 232 602  
Level 3, 175 Pitt Street, Sydney NSW 2000  
GPO Box 5218, Sydney NSW 2001  
General enquiries 1300 369 711  
National Information Service 1300 656 419  
TTY 1800 620 241

Australian Human Rights Commission  
[www.humanrights.gov.au](http://www.humanrights.gov.au)

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# 1 Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs References Committee (the Committee) in relation to its inquiry into the efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions (the Inquiry).
2. As Australia's national human rights institution, the Commission works to promote and protect human rights and fundamental freedoms and recognises the importance of social cohesion, inclusion and non-discrimination in Australia's democracy.
3. In this submission, the Commission focuses on human rights issues that arise in the context of Australia's family reunion visa framework, and makes recommendations that better respect, protect and fulfil human rights.

# 2 Summary

4. This submission responds in particular to paragraph (g) of the Committee's terms of reference, which requires the Committee to report on the 'eligibility for and access to family reunion for people who have sought protection in Australia'.
5. Family separation is a common consequence of forced displacement. Family members may become separated from each other either accidentally or intentionally while fleeing persecution or another dangerous situation, and they may face barriers to reunification even after protection has been secured. For refugees settling in Australia, including both people resettled from overseas and people who arrived as asylum seekers, family separation remains a consistent and pressing concern.
6. The Commission is concerned that for some refugees and people seeking asylum, family reunion is effectively unattainable under the current system, resulting in the prolonged and arbitrary interference with their right to family life.

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7. The Commission is particularly concerned about people who arrived in Australia by boat between 13 August 2012 and 1 January 2014. These people are referred to by the Government as the 'Legacy Caseload'. As a result of Government policy, this group faces a range of particular barriers to family reunion not faced by others. The Commission first urges the implementation of six recommendations from the Commission's 2019 report, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'*. These recommendations would:
- harmonise access to family reunion opportunities among humanitarian entrants
  - remove travel restrictions that apply to holders of Temporary Protection Visas and Safe Haven Enterprise Visas
  - grant permanent Protection Visas to Temporary Protection Visa and Safe Haven Enterprise Visa holders or, if this is not implemented, permit holders of Temporary Protection Visas and Safe Haven Enterprise Visas to sponsor family members to come to Australia as dependants on the sponsor's Temporary Protection Visa or Safe Haven Enterprise Visa
  - provide exemptions to allow children to reunite with their parents, including children who arrived in Australia unaccompanied and children of humanitarian visa holders who are living overseas and who are not under the care of another parent
  - facilitate family reunion for the small number of families who arrived in Australia on different dates and consequently face separation due to changes in Australian Government policy settings.
8. The second recommendation in this submission focuses on applications for visas through the general Family stream, which accounts for the largest pool of family reunion visas. Current Government policy requires that refugees with permanent Protection Visas who arrived by boat be given the lowest processing priority for Family stream visas (whether or not they were part of the Legacy Caseload). The Commission's view is that the reunification of families granted permanent protection by Australia as refugees is no less important than the reunification of other families permanently residing in Australia. Indeed, in cases where family members

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overseas are also at risk, it may be necessary for these applications to be given greater priority.

9. The Commission's third recommendation is for the introduction of a fee waiver or reduction for Family stream visas where applicants cannot reasonably afford the visa application fee, and where this may result in prolonged or indefinite family separation. The burden of application fees falls disproportionately on refugee families who are generally less able to afford them and who may have fewer options for family reunion outside Australia because of recognised risks of persecution.
10. The Commission notes that in the 2020–21 financial year, the Government has increased the number of Family stream visa places to 77,300 as a temporary measure, which would account for almost half of the migration program.<sup>1</sup> The Commission commends the Government for this but urges the Government to implement the recommendations in this submission so that holders of permanent protection and humanitarian visas are able to share equally in the benefit of this increased provision.
11. International human rights law recognises that the family is a fundamental unit of society and deserves respect and protection.<sup>2</sup> Australia has a range of human rights obligations aimed at protecting the family. These include an obligation not to arbitrarily or unlawfully interfere with the family,<sup>3</sup> and to give the family the 'widest possible' protection and assistance.<sup>4</sup> Australia is also required to ensure that the best interests of the child are a primary consideration in all actions concerning children, including with respect to immigration law.<sup>5</sup> The right to family life and family unity applies to all people, regardless of status, including refugees and people seeking asylum.
12. Cases that engage the right to family unity can be separated into those where a person may face removal from a country and the subsequent separation from their family, or where a person seeks admission to a country in order to reunite with family. The present inquiry focuses largely on situations where the admission of a person to Australia (by way of a family visa grant) may be required in order to uphold the right to family.
13. The United Nations High Commissioner for Refugees (UNHCR) held an expert roundtable on family unity in 2001. In its Summary Findings, the UNHCR reported:

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Respect for the right to family unity requires not only that States refrain from action which would result in family separations, but also that they take measures to maintain the unity of the family and reunite family members who have been separated. Refusal to allow family reunification may be considered as an interference with the right to family life or to family unity, especially where the family has no realistic possibilities for enjoying that right elsewhere.<sup>6</sup>

14. Human rights law does not specifically define 'family', but international jurisprudence encourages States to adopt a broad and flexible approach which considers the facts of a particular case, including cultural norms and economic and emotional dependency.<sup>7</sup> For the purposes of family reunion, family includes, at a minimum, spouses and minor children.<sup>8</sup> This submission focuses on family reunion of partners and children. The Commission notes, however, that in some circumstances, other relatives, such as parents, siblings, other care givers and dependants, should be recognised as 'family', therefore attracting the protections provided for in international law.<sup>9</sup>
15. This submission focuses on visas that afford family reunification and permanent residency, particularly offshore partner visas (including visa subclasses 309 and 300) and offshore child visas (including subclasses 101, 102 and 445), where the applicant and sponsor are experiencing family separation and cannot practically reunite in another country.
16. There are many benefits to Australia having a strong family reunion program. Resettlement outcomes are vastly improved for people who have the support of their family, whereas family separation has devastating impacts on a person's mental health, economic situation and social integration.<sup>10</sup> Modelling conducted by Deloitte Access Economics in partnership with Oxfam and Monash University demonstrates that there is also a strong economic benefit that flows from refugees accessing family reunion opportunities in Australia.<sup>11</sup>
17. There are significant barriers to family reunion posed by Australia's current family visa system. These arise due to the cost of visa application charges, application complexities, processing priorities, delays and eligibility requirements. These barriers may constitute a breach of human rights where they result in an arbitrary interference with the right to family life or they fail to adequately take into account the rights of children.

18. The Commission considers that the restrictions on access to family reunion opportunities affecting refugees are inconsistent with Australia's obligations to afford the 'widest possible' protection and assistance to the family and to ensure that the best interests of the child are a primary consideration.
19. Limitations on family reunion opportunities that lead to prolonged and indefinite family separation may also hamper the full enjoyment of rights relating to settlement outcomes. Family separation can significantly impact on the wellbeing and ability of migrants and refugees to successfully build their lives in Australia.
20. Given the benefits that a strong family reunion visa program brings to Australian society, the Commission makes recommendations in this submission which would enable Australia to better comply with its international obligations and provide fairer access to family reunion visas.

### **3 Eligibility restrictions on family reunion: refugees and people seeking asylum in the 'Legacy Caseload'**

21. The Commission's 2019 report, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (*Lives on hold*), examined the human rights implications of policies affecting people seeking asylum and refugees in the 'Legacy Caseload'.<sup>12</sup>
22. The Legacy Caseload is a group of approximately 30,000 refugees and people seeking asylum who arrived in Australia by boat between 13 August 2012 and 1 January 2014 and lodged protection visa applications in Australia. Due to changes to Australian law and policy since 2012,<sup>13</sup> people in the Legacy Caseload are treated differently from other groups of refugees and people seeking asylum.
23. For refugees resettling in Australia, family separation remains a consistent and pressing concern. However, the challenges associated with family separation are magnified for people in the Legacy Caseload due to specific restrictions on family reunion opportunities. This issue is considered in section five of the Commission's *Lives on hold* report.<sup>14</sup>

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24. Refugees and asylum seekers in the Legacy Caseload have significant restrictions on their eligibility to sponsor family members from overseas under available family sponsorship programs.<sup>15</sup> These restrictions apply equally to adults, with no exceptions for unaccompanied, separated or other vulnerable children.<sup>16</sup>
25. As a result of these eligibility restrictions, the majority of people in the Legacy Caseload lack access to any viable avenues through which to reunite with relatives (including immediate family members) who did not accompany them to Australia. They consequently face the prospect of prolonged and indefinite separation from their families.
26. All people in the Legacy Caseload have been residing in Australia for at least seven years, and some for substantially longer. Many have not had face-to-face contact with their relatives over this period.
27. As they are generally not able to propose their family members for resettlement in Australia, overseas travel may provide the only means through which they can see their family members in person. However, travel restrictions on their visas and other practical barriers may prevent refugees and people seeking asylum in the Legacy Caseload from being able to visit relatives overseas.<sup>17</sup>
28. In addition to specific restrictions on family reunion, other changes in policy settings affecting asylum seekers who arrived in Australia by boat may also result in cases of family separation. This may occur where members of the same family unit arrived in Australia on different dates, and Australian policy settings changed in the interim. For example, some members of the family may hold permanent Protection Visas while others are eligible for temporary protection only; or some family members may be permitted to remain in Australia for processing of their asylum claims while others are subject to third country processing.<sup>18</sup>
29. In *Lives on hold*, the Commission found that restrictions on family reunion may interfere with Australia's obligations to afford the 'widest possible' protection and assistance to the family, and these restrictions do not allow adequate consideration of the best interests of the child, and may hamper the full enjoyment of rights relating to settlement outcomes and create a potential risk of constructive *refoulement*.<sup>19</sup>
30. The Commission made recommendations to:



- harmonise access to family reunion opportunities among humanitarian entrants
- remove travel restrictions that apply to holders of Temporary Protection Visas and Safe Haven Enterprise Visas
- grant permanent Protection Visas to Temporary Protection Visa and Safe Haven Enterprise Visa holders or, if this change is not made, Temporary Protection Visa holders and Safe Haven Enterprise Visa holders should be able to sponsor family members to come to Australia as dependants on the sponsor's Temporary Protection Visa or Safe Haven Enterprise Visa
- provide exemptions to allow children to reunite with their parents, including children who arrived in Australia unaccompanied and children of humanitarian visa holders who are living overseas and who are not under the care of another parent
- facilitate family reunion for the small number of families who arrived in Australia on different dates and consequently face separation due to changes in Australian Government policy settings.<sup>20</sup>

31. The Commission reiterates these recommendations and urges the Committee to consider the detail of section five of the *Lives on hold* report.

### **Recommendation 1**

The Commission urges that the Government implement Recommendations 1, 22, 23, 24, 25 and 26 of the *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* report to address family separation.

## **4 Lowest processing priority: permanent residents who arrived by boat**

32. The Commission is concerned that current policy settings make it more difficult for permanent residents who arrived by boat to achieve family reunion, in a manner that does not occur for other permanent residents in Australia.

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33. People on temporary visas, including Temporary Protection Visas and Safe Haven Enterprise Visas, are unable to sponsor family members to come to Australia. If and when people in the Legacy Caseload are subsequently granted a permanent visa, they may only sponsor a family member under the general Family stream (and not under the Refugee and Humanitarian Program). The general Family stream usually comprises about a third of Australia's overall migration program and, as noted above, will be almost half of the program during the 2020–21 financial year.<sup>21</sup>
34. Unlike Temporary Protection Visa holders, Safe Haven Enterprise Visa holders may be eligible to apply for a range of other visas (including some permanent visas) if they meet certain pathway requirements, and then also the eligibility requirements for the subsequent visa. However, the Commission is not aware of any Safe Haven Enterprise Visa holders who have applied for and been granted a permanent visa after meeting the pathway requirements.<sup>22</sup>
35. There are significant barriers for Safe Haven Enterprise Visa holders to meet the dual criteria—the pathway requirements and the eligibility criteria and fees for another visa—to access a permanent pathway. In practice, this may not offer a viable pathway to permanent residency for many, if not most, people in the Legacy Caseload.<sup>23</sup>
36. Two groups of refugees granted permanent protection in Australia can apply to access limited family reunion provisions under the Refugee and Humanitarian Program, as an alternative to making an application under the general Family stream.<sup>24</sup> These are refugees who arrived in Australia by air, and refugees who arrived by boat before the Legacy Caseload (ie before 13 August 2012), provided the application for the split family visa was made within 5 years of them being granted permanent residency.<sup>25</sup> Recommendation 1 above includes a recommendation that the members of the Legacy Caseload have equal access to the family reunion provisions in the Refugee and Humanitarian Program.
37. This section of the Commission's submission focuses on applications under the Family stream which is the largest available program for family reunion and the only one that members of the Legacy Caseload may be able to access as a sponsor (provided they are granted a permanent visa).
38. The processing of Family stream visas is guided by Ministerial Directions, made under s 499 of the *Migration Act 1958* (Cth) (Migration Act). The

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current direction is Ministerial Direction 80 which commenced on 21 December 2018. It sets out a processing priority for family visa applications. Subsection 8(g) of the Direction requires delegates of the Minister to consider family visa applications where the sponsor arrived in Australia by boat as the lowest priority.

39. As described in more detail below, there is an exception to this processing priority which was included by the Minister following complaints made to the Commission about an earlier form of the Direction. The exception allows delegates to give a higher priority to family visa applications by refugees who arrived in Australia by boat if the application involves 'special circumstances of a compassionate nature' and, having regard to those circumstances, there are compelling reasons to depart from the usual order of priority that requires these applications to be dealt with last.<sup>26</sup> However, despite this exception, the Commission is concerned that, in practice, many Family stream visa applications from this cohort continue to face extensive delays.
40. Direction 80 is the latest of three Ministerial orders that direct decision makers as to family visa processing priorities.
41. Direction 62 was introduced in 2014 and directed delegates of the Minister to afford the lowest processing priority to family visa applications where the sponsor arrived in Australia by boat. In deciding the order for processing applications generally, delegates were allowed to take into account special circumstances of a compelling or compassionate nature. However, they were not permitted to do this if the person making the application was a refugee who arrived in Australia by boat. Due to caps on places, in practice this meant that many refugees could not practically reunite with their family, as their application would constantly remain at the 'bottom of the pile'.
42. The Commission conducted an inquiry into the arbitrary interference with family in *CM v Commonwealth (Department of Immigration and Border Protection)* [2015] AusHRC 99. In considering Direction 62, the Commission found that, in its application to refugees who arrived in Australia by boat, it amounted to an arbitrary interference with family contrary to international law.<sup>27</sup> The Commission's report also noted that there were real questions about the legality of the direction under Australian law.<sup>28</sup> This was because, without some provision to allow applications to be considered in

exceptional circumstances, some applications may never be considered, contrary to the Minister's obligation under the Migration Act to consider and make a decision on each valid application for a visa.<sup>29</sup>

43. The legality of Direction 62 was later challenged in the High Court by an Afghan interpreter who helped the Coalition forces in Afghanistan and was granted refugee status in Australia after arriving by boat.<sup>30</sup> He had his application to sponsor his family placed at the lowest processing priority. Before the High Court heard the case, Direction 62 was replaced by Direction 72, and the matter was settled out of court.

44. Direction 72, made in September 2016, provided that visa applications sponsored by unauthorised maritime arrivals would continue to be given the lowest priority; however, decision makers could depart from this order if:

- there were special circumstances of a compassionate nature and compelling reasons to depart from the processing priority, or
- the application would otherwise not be processed within a reasonable time.

45. However, Direction 72 did not define circumstances that were to be considered 'compassionate' or 'compelling'. Decision makers retained considerable discretion as to whether to depart from the processing priority. In practice, they did not depart from the process priority in many cases.<sup>31</sup>

46. Direction 80 is less beneficial to refugees than Direction 72. It continues to allow delegates to give higher priority to refugees who arrived by boat if there are compelling or compassionate circumstances. However, it no longer explicitly allows prioritisation based on unreasonable delay.

## **Recommendation 2**

The Commission recommends that Direction 80 be amended to:

- (a) remove subsection 8(g), so that applications for a Family stream visa where the sponsor is a refugee who arrived by boat and has been granted a permanent visa are treated in the same way as any other Family stream visa application; and

- (b) insert a subsection directing decision makers to expedite visa processing for family members of refugees and humanitarian entrants, irrespective of mode of arrival, where compassionate or compelling circumstances exist. This should include where family members face substantial discrimination or human rights abuses in their country of residence or where family separation has been prolonged.

## **5 Family stream visa costs**

47. The current costs to apply for family visas are significant. The application fee for most partner visa applications, whether lodged onshore or offshore, is currently \$7,715.<sup>32</sup> Additional fees are also charged for any dependants included in the application: \$3,860 for each dependant over 18 years old, and \$1,935 for each dependent child.<sup>33</sup> The application fee for most child visas is \$2,665. There is no discretion in the current scheme to waive or reduce visa processing fees in special circumstances. These costs do not include other required expenditures such as compulsory health checks, immigration legal assistance, police checks or airfares, which can be costly.
48. The Commission has previously raised concerns about prolonged family separation as a result of the fee arrangements for partner visas with the then Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs in a letter dated 29 July 2020. This was in response to a request from a member of the public who asked the Commission to inquire into the consistency of partner visa fees with human rights.
49. The Commission is concerned that the significant costs of family visas may pose a practical barrier for a family to reunite in Australia. Where a family is unable to afford the application fee, this may prolong the separation of a family. Where a family is unable to reunite in a country outside Australia, separation may become indefinite.
50. There are a number of circumstances in which reunion outside Australia will not be a viable alternative. For example, this may occur where a person is owed protection obligations by Australia and cannot return to their home country as they face serious or significant harm there.

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51. Another example might be if an Australian sponsor has a disability or serious health condition and must remain in Australia for health reasons. If the family are offshore and cannot afford the family visa application fees, they might be effectively permanently separated.
52. There are also situations in which it would not be in the best interests of children for the family to leave Australia, but doing so presents the only means of achieving family reunification if the family cannot afford to pay the fee to lodge an offshore family visa application. If, for example, parents are reliant on a Partner visa to reunify the family, and a child is involved, the child's best interests must be a primary consideration. There is jurisprudence and commentary to support the view that younger children are more easily able to adapt to changing circumstances and integrate in a new location. However, if the child is older and has an established life in Australia, being required to move overseas to achieve family reunification may be contrary to the child's rights under the Convention on the Rights of the Child.<sup>34</sup>

### **Recommendation 3**

The Commission recommends the introduction of a fee waiver or reduction for Family stream visas where applicants cannot reasonably afford the visa application fee, and where this may result in prolonged or indefinite family separation.

## Endnotes

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- <sup>1</sup> Department of Home Affairs, *The administration of the Immigration and Citizenship Programs*, Sixth edition, March 2021, at [132], <https://immi.homeaffairs.gov.au/programs-subsite/files/administration-immigration-program.pdf>.
- <sup>2</sup> See *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 12; and K. Jastram and K. Newland, 'Family Unity and Refugee Protection', *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, (Feller et al eds), Cambridge University Press (CUP), 2003, <http://www.refworld.org/docid/470a33be0.html>, 555-603.
- <sup>3</sup> *International Covenant on Civil and Political Rights*, articles 17 and 23.
- <sup>4</sup> *International Covenant on Economic, Social and Cultural Rights*, article 10(1).
- <sup>5</sup> *Convention on the Rights of the Child*, article 3.
- <sup>6</sup> UNHCR, 'Summary Conclusions: Family Unity, Expert roundtable organized by UNHCR and the Graduate Institute of International Studies, Geneva, Switzerland, 8–9 November 2001', *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, (Feller et al. eds), CUP, 2003, <http://www.unhcr.org/419dbfaf4.pdf>, pp. 604-608.
- <sup>7</sup> Frances Nicholson, 'The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied', *UNHCR Legal and Protection Policy Research Series*, 2018, <https://www.unhcr.org/5a8c40ba1.pdf>, 16.
- <sup>8</sup> UNHCR, 'Summary Conclusions: Family Unity, Expert roundtable organized by UNHCR and the Graduate Institute of International Studies, Geneva, Switzerland, 8–9 November 2001', *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, (Feller et al. eds), CUP, 2003, <http://www.unhcr.org/419dbfaf4.pdf>, pp. 604-608, [8]. See also UN Human Rights Committee, *Views: Communication No. 35/1978*, 12th sess, UN Doc CCPR/C/12/D/35/1978 (9 April 1981) [9.2] ('Aumeeruddy-Cziffra et al v Mauritius').
- <sup>9</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV.3, <http://www.refworld.org/docid/4f33c8d92.html>, 185.
- <sup>10</sup> Oxfam, *Stronger together: the impact of family separation on refugees and humanitarian migrants in Australia*, 2019, <https://www.oxfam.org.au/wp-content/uploads/2019/08/2019-AC-012-Families-Together-report-FA2-WEB.pdf>.
- <sup>11</sup> Oxfam, *Accepting more refugees good for Australian economy and society – report*, August 2019, <https://media.oxfam.org.au/2019/08/accepting-more-refugees-good-for-australian-economy-and-society-report/#:~:text=Oxfam's%20report%2C%20Stronger%20Together%3A%20The.GDP%2C%20dem and%20in%20Australia%20for.>
- <sup>12</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>13</sup> A summary of legal and policy developments affecting people in the Legacy Caseload can be found in Appendix 1 of the Commission's *Lives on hold* report.

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- <sup>14</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) section 5 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>15</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 82-83 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>16</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 85 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>17</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 84-85 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>18</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 85 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>19</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 86-89 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>20</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 88-89 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>21</sup> Department of Home Affairs, *The administration of the Immigration and Citizenship Programs*, Sixth edition, March 2021, at [132], <https://immi.homeaffairs.gov.au/programs-subsite/files/administration-immigration-program.pdf>.
- <sup>22</sup> For example, between January 2019 and November 2020 no SHEV holders have applied for or been granted permanent visas after meeting the SHEV pathway requirements. See Department of Home Affairs, Freedom of Information Request FA 20/11/00606, 21 January 2021 <<https://www.homeaffairs.gov.au/foi/files/2021/fa-201100606-document-released.PDF>>.
- <sup>23</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, 2019) 68 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>24</sup> Australian Human Rights Commission, *Lives on hold: Refugees and asylum seekers in the 'Legacy Caseload'* (Report, July 2019) 82 <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-hold-refugees-and-asylum-seekers-legacy>>.
- <sup>25</sup> Department of Home Affairs, *Australia's Offshore Humanitarian Program: 2019-20*, at 32, <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf>.
- <sup>26</sup> Minister for Immigration, Citizenship and Multicultural Affairs, *Direction 80 – Order for considering and disposing of Family visa applications under s 47 and 51 of the Migration Act 1958*, 21 December 2018, at [9].
- <sup>27</sup> *CM v Commonwealth (Department of Immigration and Border Protection)* [2015] AusHRC 99. The Commission found that the direction was contrary to articles 17 and 23 of the ICCPR.
- <sup>28</sup> *CM v Commonwealth (Department of Immigration and Border Protection)* [2015] AusHRC 99 at [80].



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<sup>29</sup> *Migration Act 1958* (Cth), s 47(1).

<sup>30</sup> *Plaintiff S61/2016 v Minister for Immigration and Border Protection*.

<sup>31</sup> Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs Committee on Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (July 2017), 9.

<sup>32</sup> Department of Home Affairs, *Fees and charges for visas*,  
<https://immi.homeaffairs.gov.au/visas/getting-a-visa/fees-and-charges/current-visa-pricing/live>.

<sup>33</sup> Department of Home Affairs, *Fees and charges for visas*,  
<https://immi.homeaffairs.gov.au/visas/getting-a-visa/fees-and-charges/current-visa-pricing/live>.

<sup>34</sup> UN Human Rights Committee, Views: Communication No. 930/2000, 72nd sess, UN Doc CCPR/C/72/D/930/2000 (26 July 2001) ('Winata v Australia').