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Ensuring protection in humanitarian emergencies: A framework for Australia

Jane McAdam AO & Regina Jefferies
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About the authors

Professor Jane McAdam AO is Scientia Professor of Law and the Founding Director of the Kaldor Centre for International Refugee Law at UNSW Sydney, where she leads the Evacuations Research Hub. She holds a prestigious Australian Research Council Laureate Fellowship and is also a Fellow of the Academy of the Social Sciences in Australia, a Fellow of the Australian Academy of Law and an Honorary Associate of the Refugee Studies Centre at the University of Oxford. Professor McAdam publishes widely in international refugee law and forced migration, with a particular focus on mobility in the context of climate change and disasters. She serves on multiple international committees and is joint Editor-in-Chief of the *International Journal of Refugee Law*, the leading journal in the field. In 2021, she was appointed an Officer of the Order of Australia (AO) 'for distinguished service to international refugee law, particularly to climate change and the displacement of people'.

Dr Regina Jefferies is a lawyer and Laureate Postdoctoral Fellow at the Evacuations Research Hub at the Kaldor Centre for International Refugee Law, UNSW Sydney. She specialises in international human rights law and international refugee law, with a focus on transnational legal theory, the law of State responsibility, and the application of international legal norms in transboundary and multi-jurisdictional settings. She has published articles in leading academic journals, including *Globalizations*, the *Melbourne University Law Review* and the *Brooklyn Journal of International Law*.

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The Kaldor Centre for International Refugee Law

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What it means to evacuate or bring someone here isn't just saving their life; it's creating the potential that can transform this society and their society back home when they're in a position to contribute again.[1]

Executive summary

The purpose of this Policy Brief is to recommend a framework for humanitarian emergencies that would enable the Australian government to provide a streamlined, equitable, predictable and effective response to assist people facing a real risk of persecution, extreme danger or other serious harm to find safety and protection in Australia. It is informed by Australia's practices over time, as well as comparative practices internationally. The framework is designed with the Australian context in mind, but it could also be used as a model for other countries.[2] It encompasses both legal protection (visas and access to support) and physical protection (evacuation and reception).

In a crisis, moving away from danger is a natural and rational human response. Whereas some people will have the financial resources, immigration documentation and networks to facilitate their rapid departure, others may be unable to move or find themselves 'trapped' by their circumstances. They may have acute protection needs that cannot be addressed unless they can reach a place of safety. In some cases, evacuations will be a necessary first step; in others, people will be able to move on their own. In all cases, non-citizens will require visas and identity documents to move lawfully. As such, this Policy Brief has a particular focus on visa pathways, since they are the gateway to everything else.

Four recent conflicts in Afghanistan (2021–), Ukraine (2022–), Sudan (2023–) and Gaza (2023–) have seen large numbers of people unable to leave dangerous situations. In each case, Australia's humanitarian response has been different. For some groups, acquiring a visa to escape and travel to Australia has been relatively easy; for others, it has been impossible. Varying visa entitlements also mean that, even among those who do manage to escape, some people have work rights, health entitlements and access to a wide range of services, while others are barely surviving. Concerns have been expressed by the refugee sector, affected communities, experts and Parliamentary inquiries about these divergent and, at times, inadequate approaches. As the Refugee Council of Australia has observed, 'the measures have been uneven, unpredictable and in some cases, created significant gaps in critical support including access to health, education and employment'.[3]

This Policy Brief proposes a framework for humanitarian emergencies which could be activated in whole or in part, depending on the circumstances. The framework would be additional and complementary to Australia's existing Refugee and Humanitarian Program, and it would provide an equitable and robust foundation to enable agile responses that could be quickly tailored to specific conditions. It envisages both physical and legal mechanisms to facilitate people's safe and swift departure; clear lines of authority; processes for consultation across different levels of government and with relevant stakeholders; identified reception facilities for evacuees (if physical evacuation is necessary); and a visa with appropriate supports and pathways to durable solutions,[4] including for affected individuals who are already in Australia when a humanitarian emergency is declared.[5]

To be effective, the framework would require multi-sectoral engagement, planning and coordination, particularly in terms of facilitating arrivals and ensuring that people in Australia are properly supported. Its implementation must be human-centred and supported by trauma-informed approaches that recognise and promote people's dignity, agency and human rights, with special attention given to those with particular needs or in vulnerable circumstances.[6] While existing frameworks, such as the federal Australian Government Crisis Management Framework (AGCMF)[7] and state-based DISPLANS may be instructive, none provides an adequate template for present purposes (see Recommendations 2 and 3).

The recommendations in this Policy Brief align with and complement proposals by other key actors in the refugee sector, most notably the Refugee Council of Australia and Settlement Services International, and we thank them for their positive engagement and insights.

Australia has an opportunity to envision a bold, dynamic and forward-looking framework to protect people in humanitarian emergencies. It is a chance to build upon good practices from historical and comparative responses, signalling Australia's clear commitment to international solidarity and responsibility-sharing.[8] Furthermore, as a leading resettlement state, Australia has the capacity to demonstrate how States can respond to humanitarian emergencies in a timely, well considered and compassionate manner.

Recommendations

1. **Emergency protection framework:** The Australian government should create an overarching decision-making framework to enable it to deliver a swift, considered, equitable, well-coordinated and effective emergency response to a conflict, disaster or other declared humanitarian crisis overseas. The framework should encompass both physical protection (evacuation and reception) and legal protection (visas and access to support). The framework would provide a ready-made plan to be activated if the government declared the existence of a 'humanitarian emergency' necessitating a protection response, rather than defaulting to ad hoc and hastily devised policies.

2. **Consultation and planning:** The framework should be developed and implemented collaboratively with relevant stakeholders from all levels of government; relevant UN agencies (especially the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM)); refugee protection and settlement services; other relevant agencies and experts (including the Australian Refugee Advisory Panel); and representatives from affected communities. The framework should include a mechanism to bring these stakeholders together if the activation of the framework is being considered so that responses are tailored to the situation at hand. The mechanism should be triggered as early as possible, and certainly once a humanitarian emergency has been declared.

3. **Resources and funding:** The framework should include a DISPLAN-like mechanism for the initial response within Australia in order to cut across bureaucratic red tape and swiftly mobilise resources. This would expedite access to funds without having to go through procurement processes, and it would encourage a collaborative, cross-sectoral approach. More broadly, resourcing must ensure that the financial, physical, social and health (including mental health) needs of evacuees and other displaced people are met, and that organisations supporting them are adequately resourced.

4. **Visas:** As part of the framework, the Australian government should ensure that people are granted an emergency visa to facilitate entry to, and protection in, Australia if a humanitarian emergency is declared. The visa should automatically permit an initial stay of at least 12 months (to provide immediate relief and time to assess conditions in the country of origin), with a pathway to permanent stay if it is not safe, possible or otherwise desirable for individuals to return home. Visas should provide immediate access to services, including Medicare and Centrelink, as well as work and study rights. As a procedural mechanism, a special humanitarian intake should be created for humanitarian emergencies to enable additional visas to be granted above the committed annual number in the Refugee and Humanitarian Program. Anyone who is in Australia at the time when their country of origin is affected by a humanitarian emergency, and whose visa is due to expire, should automatically be granted a visa extension or a bridging visa with the same conditions. This would streamline processing and prevent visas from lapsing.

5. **Evacuation:** The framework should include plans for physical evacuation from affected countries, as well as from countries where people may have sought temporary safety. Each type of evacuation requires a different set of considerations, negotiations (with host governments, UNHCR etc) and contingencies. Immigration requirements should be kept to a bare minimum (eg identity and security checks) in order to facilitate swift movement out of dangerous and often traumatising situations.

6. **Reception facilities and support:** In order to move people to safety quickly, evacuees could be housed (if necessary) for a short, initial period in temporary accommodation facilities in Australia (such as quarantine facilities or army barracks) while health, biometric and security checks are carried out. They should be connected with support services to assist with housing, health care (for both physical and mental health), education, employment, language and cultural support, and assisted to move into communities within Australia as soon as possible. Host communities may also require additional support, and this needs to be part of the framework's planning.

7. **Durable solutions:** If the initial period of protection granted is for a defined temporary period and it is unsafe for individuals to return home when it ends, then individuals must have a pathway to permanent residence in Australia. Returns should not be considered unless there has been a fundamental change in the circumstances that resulted in the declaration of the humanitarian emergency. In all cases, returns must be voluntary, and individuals who fear persecution or other serious harm must be able to apply for refugee status or complementary protection in Australia.

8. **Review:** The framework should be reviewed annually to ensure that it remains current and appropriate. After any activation of the framework, a systematic review and independent evaluation should take place, and processes should be adjusted in line with any recommendations made.

Rationale

1 Emergency protection framework

The Australian government should create an overarching decision-making framework to enable it to deliver a swift, considered, equitable, well-coordinated and effective emergency response to a conflict, disaster or other declared humanitarian crisis overseas. The framework should encompass both physical protection (evacuation and reception) and legal protection (visas and access to support). The framework would provide a ready-made plan to be activated if the government declared the existence of a 'humanitarian emergency' necessitating a protection response, rather than defaulting to ad hoc and hastily devised policies.

The creation of a more predictable and equitable response framework for humanitarian emergencies would assist the Australian government to better plan for crises, anticipate resource needs and 'stand up' a surge workforce to support the various elements of the response. Such a framework would also address the range of humanitarian situations which fall beyond the reach of refugee law. The Canadian government, through Immigration, Refugees and Citizenship Canada (IRCC), is currently developing a humanitarian Crisis Response Framework to support 'more proactive and predictable responses to crises and other pressures, based on consistently applied criteria including equity considerations',[9] and has noted that 'a framework is needed in order to help promote greater consistency, equity and efficiency across future responses'.[10]

As part of an Australian framework, the government should create a new emergency visa to facilitate entry to, and protection in, Australia (see Recommendation 4). This would complement Australia's existing Refugee and Humanitarian Program which is insufficient on its own to respond to sudden or large-scale crises. That is because the emergency response visas within that programme (eg subclass 203) are tied to the 'refugee' definition and resettlement criteria, which are much more limited than the 'humanitarian emergency' criteria outlined below. Further, the procedural steps required to acquire such visas may well be too slow to truly serve as an emergency response, as described in Recommendation 4. As noted there, a special humanitarian intake may be needed to enable an effective, efficient and equitable response that is not hampered by existing numerical, visa and procedural limitations. This would not necessarily result in permanent resettlement; rather, the focus would be on durable solutions, of which resettlement would be among a range of options.

The framework would not be self-executing but would require the Australian government to declare the existence of a 'humanitarian emergency'. What constitutes such an emergency should not be too prescriptive, but rather guided by international best practice and sufficiently flexible to respond to a range of different circumstances. Where physical protection measures (evacuation and reception) are necessary, the framework could draw upon the existing Australian Government Plan for the Reception of Australian Citizens and Approved Foreign Nationals Evacuated from Overseas (AUSRECEPLAN),[11] with some modifications (see Recommendation 3).

There is no uniform definition of a 'humanitarian crisis' or 'emergency'[12] and the terms are often used interchangeably. Essentially, they describe a situation where people's lives are at risk unless immediate action is taken. For instance, UNHCR defines an 'emergency' as:

> any humanitarian crisis or disaster which either (i) has caused or threatens to cause new forced displacement, loss of life and/or other serious harm; or (ii) significantly affects the rights or well-being of refugees, internally displaced persons (IDPs), stateless persons, returnees and other persons of concern, unless immediate and appropriate action is taken;

and (iii) which demands exceptional measures because current government and UNHCR capacities at country and/or regional levels are inadequate for a predictable and effective response.[13]

In the United States, the Secretary of Homeland Security has the discretion to provide Temporary Protected Status (TPS) to non-citizens already in the US who come from a country where at least one of the following conditions exists:

- **ongoing armed conflict** – due to the conflict, returning people to that State poses a serious threat to their personal safety;
- **disaster** – there has been an earthquake, flood, drought, epidemic or other environmental disaster resulting in a substantial but temporary disruption of living conditions, and as a result, the foreign State is temporarily unable to adequately handle the return of its nationals, and the foreign State has officially requested the TPS designation; or
- **extraordinary and temporary conditions** exist in the foreign State that prevent its nationals from safely returning, unless allowing those nationals to remain temporarily in the US is contrary to US national interests.[14]

In the European Union, the Temporary Protection Directive provides a discretionary and pragmatic response to a mass arrival or evacuation of:

- persons who have fled areas of **armed conflict or endemic violence**;
- persons at serious risk of, or who have been the victims of, systematic or generalised **violations of their human rights**.[15]

This is not an exhaustive definition and could also apply to people fleeing the adverse effects of disasters, for instance.

While other aspects of the US and EU mechanisms are critiqued in sections below, these 'triggers' could be useful for determining an appropriate threshold for the Australian context, especially since the AUSRECEPLAN[16] and AGCMF[17] do not provide sufficient detail to be useful in the context of an overseas humanitarian emergency. In our view, the framework should set out a non-exhaustive set of circumstances to give the government sufficient flexibility to respond to a range of different contexts. Key elements should include: (a) the existence of urgent humanitarian need in a (b) conflict, disaster or other humanitarian crisis where (c) lives, safety or core human rights are at risk and (d) existing responses by States and UNHCR are inadequate, unpredictable or ineffective.

The details of Canada's Crisis Response Framework are not yet known, but broadly it will aim to 'improve decision-making by establishing a transparent and evidence-based assessment mechanism to inform when a migration response may be warranted for particular situations, based on the needs of affected populations and informed by equity considerations'.[18] In preparing the framework, the IRCC is closely examining its existing legal, regulatory, operational and funding approaches, including by reviewing lessons learned from responses to Afghanistan and Ukraine.[19]

2 Consultation and planning

The framework should be developed and implemented collaboratively with relevant stakeholders from all levels of government; relevant UN agencies (especially UNHCR and IOM); refugee protection and settlement services; other relevant agencies and experts (including the Australian Refugee Advisory Panel); and representatives from affected communities. The framework should include a mechanism to bring these

stakeholders together if the activation of the framework is being considered so that responses are tailored to the situation at hand. The mechanism should be triggered as early as possible, and certainly once a humanitarian emergency has been declared.

To be appropriately focused, resourced and implemented, the creation of the framework – and, importantly, its utilisation in a humanitarian emergency – must be a collective endeavour involving all relevant stakeholders.[20] This approach was endorsed by the Senate inquiry into Afghanistan, which recommended that formalised protocols be developed 'for incorporating relevant stakeholder groups into government planning and evacuation processes (for example, legal and advocacy groups working with affected groups and individuals in country)'.[21] This is essential if assistance is to be provided in a targeted and culturally sensitive way, aiding coordination between relevant governmental departments (eg the Department of Foreign Affairs and Trade (DFAT) and the Department of Home Affairs) as well as non-governmental organisations and community groups supporting new arrivals.

Stakeholders must be offered a meaningful opportunity to engage and bring critical insights to bear on the structure and operation of the framework. This is particularly important given the need to coordinate between agencies focused on facilitating humanitarian arrivals and the issuance of visas, as well as the domestic entities providing various supports to new arrivals and their families. Australia would also be uniquely positioned as an exemplar among other resettlement countries in collaboratively developing a framework with relevant stakeholders.

There are already examples of this type of coordination in the Australian context. For instance, in late August 2021, a special advisory panel of 'Australian-Afghan community leaders and refugee and settlement experts, chosen for their commitment and expertise in refugee and integration issues' was created, initially for 12 months, to support the government, including by 'ensuring appropriate settlement and integration supports for Afghan new arrivals and the communities into which they [would] settle'.[22] Separately, in early September 2021, a Ministerial forum on Multicultural Affairs, chaired by the Immigration Minister and attended by state and territory ministers, considered resettlement supports and committed to 'work in partnership with Afghan community leaders in Australia, and leading refugee advocates and service providers, to welcome people from Afghanistan to Australia and maximise their sense of belonging, mental health and wellbeing and broader settlement outcomes'.[23]

Other examples include the 'core' and 'contact' group model for refugee resettlement;[24] intergovernmental, multilateral and inter-agency processes under the DFAT Crisis Hub (including for evacuations);[25] and DFAT's various disaster response mechanisms. In Canada, the Canadian Council for Refugees has stressed the importance of consultation, communication and coordination with relevant stakeholders in planning and delivering emergency responses.[26]

The framework should include clear criteria and activities under each phase of response so that the appropriate stakeholders can be brought in to assist. While existing Australian government plans, such as AUSRECEPLAN and AUSASSISTPLAN,[27] provide a good starting point by clearly setting out plan phases and activities, the specific criteria for moving from one phase to the next – in terms of defining conditions that might lead to an evacuation – are opaque. The plans simply note that moving between phases will be based on advice from DFAT.

Once affected communities are in Australia, there should be efforts to ensure that their own representatives can become part of ongoing decision-making processes. This requires a 'culturally appropriate model of representation' – something that was lacking, for instance, when refugees from Kosovo were evacuated to Australia in 1999.[28]

As the Refugee Council of Australia has observed, a diverse and representative advisory group would not only provide guidance in an immediate crisis but would 'also assist in developing long-term strategies to improve the resilience and efficiency of Australia's humanitarian programs'.[29] This would help to ensure that the ongoing approach is 'informed, inclusive, and grounded in the real-world experiences of those most affected by and involved in humanitarian crises.'[30]

3 Resources and funding

The framework should include a DISPLAN-like mechanism for the initial response within Australia in order to cut across bureaucratic red tape and swiftly mobilise resources. This would expedite access to funds without having to go through procurement processes, and it would encourage a collaborative, cross-sectoral approach. More broadly, resourcing must ensure that the financial, physical, social and health (including mental health) needs of evacuees and other displaced people are met, and that organisations supporting them are adequately resourced.

The evacuation of refugees from Kosovo to Australia in 1999 demanded rapid action within a short space of time. The mechanism used to facilitate this in NSW was the DISPLAN. This is a plan which records 'the agreed management arrangements for coordination of emergency preparedness, response and recovery operations' in order 'to ensure the coordinated response to emergencies by all agencies having responsibilities and functions in emergencies'.[31] The Refugee Council of Australia commended that fact that it

> enabled red-tape to be cut through, favours to be called in and corners to be cut so that things could move much more quickly than under normal circumstances. … Further, the Displan instilled in all those involved a sense of urgency that meant that people cast aside territorialism and egos, shelved current work and generally rolled up their sleeves and worked incredibly hard to meet seemingly impossible deadlines. The fact that, from a standing start, NSW was ready to welcome the first Kosovars in just over a month of the decision being made that they were coming, was a credit to all involved and whether it could have been done without the Displan is questionable.[32]

State-based DISPLANS are normally used for disasters and other emergencies *within* Australia, and as such, are not a perfect fit.[33] However, a comparable model could be developed for the emergency protection context which centres human rights considerations, including non-discrimination, and 'draws on salient features of the Displan in the primary phase'.[34] The AUSRECEPLAN may also be useful in this context, as section 5 covers financial arrangements relating to evacuation costs.[35]

At the federal level, the AGCMF outlines the government's approach to 'preparing for, responding to, and recovering from crises', including by providing 'ministers and senior officials with guidance on their respective roles and responsibilities' and setting out 'the arrangements that link ministerial responsibility to the work of key officials, committees, and facilities'.[36] Again, in its current form, it is not adequate to address humanitarian emergencies. While the AGCMF could be triggered by a crisis with an international dimension,[37] it is geared towards domestic crises and does not address questions regarding visas or humanitarian arrivals.[38] Indeed, its only express reference to visas is in relation to New Zealand visa holders affected by a crisis; it also refers to 'approved foreign nationals' who may be approved for evacuation, and in that context references the AUSRECEPLAN.[39] The AGCMF does not mention human rights considerations, which ought to be a central pillar of emergency responses. Furthermore, the operation of the AGCMF during the COVID-19 crisis calls into question its effectiveness in coordinating international arrivals and the domestic machinery to support them.[40]

When it comes to supporting new arrivals, an emergency protection framework must ensure 'equity in access to support',[41] including health care, employment, accommodation, education, income support and settlement services (see Recommendations 4 and 6). For example, while people from Afghanistan and Ukraine received significant levels of support on arrival, Sudanese people on visitor visas received nothing more than what community and civil society organisations were able to offer them. Unequal and discretionary access to entitlements may be discriminatory and undermine social cohesion.

There should also be assistance available to agencies and community organisations supporting new arrivals. For instance, the Afghan Settlement Support Package ($27.1 million over two years) included $8 million to assist Afghan–Australian community organisations; $6.4 million to support legal assistance to help those on subclass 449 temporary visas transition to permanent visas; $4.8 million to assist people to navigate skills recognition and education pathways for labour participation; and $7.9 million to the Program of Assistance for Survivors of Torture and Trauma (PASTT) to support people to access targeted mental health support.[42] The Senate Committee stated that it is 'critical that this funding is delivered promptly and in line with the real needs and priorities of the Afghan community in Australia'.[43] Culturally appropriate mental health support is particularly important, including for the diaspora community.[44]

4 Visas

As part of the framework, the Australian government should ensure that people are granted an emergency visa to facilitate entry to, and protection in, Australia if a humanitarian emergency is declared. The visa should automatically permit an initial stay of at least 12 months (to provide immediate relief and time to assess conditions in the country of origin), with a pathway to permanent stay if it is not safe, possible or otherwise desirable for individuals to return home. Visas should provide immediate access to services, including Medicare and Centrelink, as well as work and study rights. As a procedural mechanism, a special humanitarian intake should be created for humanitarian emergencies to enable additional visas to be granted above the committed annual number in the Refugee and Humanitarian Program. Anyone who is in Australia at the time when their country of origin is affected by a humanitarian emergency, and whose visa is due to expire, should automatically be granted a visa extension or a bridging visa with the same conditions. This would streamline processing and prevent visas from lapsing.

People may leave a humanitarian emergency spontaneously or with assistance, including through an organised evacuation programme. To enter or remain in Australia lawfully, non-citizens require a valid visa.[45] This means that possessing a visa – or not – may be a matter of life and death. Similarly, people already in Australia may require a visa extension in order to remain lawfully for the duration of the humanitarian emergency. As discussed below, Australia's existing Refugee and Humanitarian Program is not sufficient to respond to humanitarian emergencies, which is why a new approach is needed.

4.1 The limitations of existing visas

Australia has utilised a wide range of visas in humanitarian emergencies, including visitor visas which were never designed for this purpose. This has resulted in diverse outcomes for those affected, as well as significant distress within diaspora communities in Australia concerned for the safety and welfare of family and friends stuck abroad.

Much of the complexity stems from the multiple visa categories Australia has within the Refugee and Humanitarian Program, divided into offshore and onshore categories – that is, visas available to people outside the country, and a different set available to people within it. In addition, these visa categories have widely varying criteria and benefits, leaving people in similar circumstances very differently situated in terms of access to protection and support.

While the use of different visas has provided the Australian government with flexibility, it has led to ad hoc and inconsistent approaches. It has also added to challenges and inefficiencies within the visa processing system.[46]

The table below shows how divergent Australia's responses have been over time. The Annex at the end of the document provides details of comparative international practices.

Visa	Affected Population(s)	Part of existing Refugee and Humanitarian Programme	Entitlements[47]	Provides durable solution
Refugee (subclass 200)	**Various nationalities outside Australia**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
In-country Special Humanitarian (subclass 201)	**Yazidis, Afghan Locally Engaged Employees**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Global Special Humanitarian (subclass 202)	**Various nationalities**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Emergency Rescue (subclass 203)	**Various nationalities outside Australia**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Women at Risk (subclass 204)	**Various nationalities outside Australia**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
East Timorese in Portugal, Macau or Mozambique (subclass 208) (repealed 1997)[48]	**East Timor**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Citizens of Former Yugoslavia (Displaced Persons) (subclass 209) (repealed 2000)	**Yugoslavia**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Minorities of Former USSR (subclass 210) (repealed 1999)	**Former USSR**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Burmese in Burma (subclass 211) (repealed 2000)	**Burma**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Sudanese (subclass 212) (repealed 2000)	**Sudan**	**Yes**	**Medicare Centrelink Work rights**	**Yes**

Burmese in Thailand (subclass 213) (repealed 2000)	**Burma**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Cambodian (subclass 214) (repealed 1997)	**Cambodia**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Sri Lankan (Special Assistance) (subclass 215) (repealed 2000)	**Sri Lanka**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Ahmadi (subclass 216) (repealed 2000)	**Ahmadis, citizens of Pakistan**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Vietnamese (subclass 217) (repealed in 1999)	**Vietnam**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Kosovar Safe Haven (subclass 448) (repealed 2014)	**Kosovo, East Timor**	**No**	**Work rights[49]**	**No**
Humanitarian Stay (Temporary) (subclass 449)	**Kosovo, East Timor, Afghanistan, Ukraine**	**No**	**Medicare[50] Centrelink**	**No[51]**
Special Schemes (Locally Engaged Employees)	**Afghanistan**	**Yes**	**None**	**No**
Protection Visa (onshore) (subclass 866)	**Refugees within Australia**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Visitor Visa (subclass 600)	**Sudan, Ukraine, Gaza, Afghanistan, various other nationalities**	**No**	**None**	**No**
Special Humanitarian Intakes	**Syria, Iraq, Afghanistan, China, Vietnam**	**Yes**	**Medicare Centrelink Work rights**	**Yes**
Temporary Protection Visa (subclass 785)	**Various nationalities arriving without a visa**	**No**	**Medicare Centrelink Work rights**	**No[52]**
Safe Haven Enterprise Visa (subclass 790)	**Various nationalities arriving without a visa**	**No**	**Medicare Centrelink Work rights**	**No[53]**
Temporary (Humanitarian Concern) (subclass 786)	**Ukraine**	**No**	**Medicare[54] Centrelink Work rights**	**No**
Bridging Visa E (subclass 050)	**Various nationalities**	**No**	**Medicare Work rights**	**No**

While this Policy Brief does not go into the details of each visa listed above, key shortcomings relevant to recent humanitarian emergencies are discussed below.

4.1.1 Permanent visas

For people overseas, Australia currently has four types of permanent humanitarian visas that can be granted to those in need of international protection.[55] The **Emergency Rescue Visa (subclass 203)** is the only one of these that envisages emergency protection for people who are still within the country of risk, or who have left it but require urgent protection. Although the visa envisages 'urgent and accelerated processing of people who are subject to persecution in their home country and who face an immediate threat to their life or freedom',[56] processing can be slow.[57] People must generally be referred by UNHCR, and the pre-set number of visas is taken from the existing annual resettlement quota. In addition to considering the 'degree of persecution' faced, consideration is also given to the 'extent of the applicant's connection with Australia', whether there is any other suitable country that could protect them, the capacity of the Australian community to provide for permanent settlement,[58] and whether it is 'consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds'.[59] The subclass 203 visa is also not well-suited to emergency responses for groups of people beyond a small number of individuals in immediate danger.

Australia has a long history of creating special resettlement schemes for **locally engaged employees** (LEEs) who have assisted Australia abroad, including in Vietnam,[60] Iraq and Afghanistan, reflecting 'Australia's view of its moral obligation to current and former employees who have provided valuable support to Australia's efforts.'[61] In some cases, this has included an evacuation component. While an admirable idea in theory, many concerns have been raised about the practical operation of LEE schemes,[62] including 'inefficiencies, a lack of situational awareness, inordinate delays, and a lack of understanding of the processes involved on the part of respective departments'.[63] Furthermore, registration in the Afghan LEE programme did not automatically give rise to a visa; rather, people had to apply for a humanitarian visa separately but were among a number of priority categories;[64] many did not get out. This bifurcated approach could significantly undermine Australia's operational capacity in future conflicts, as locals may be unwilling to assist if they are not assured of protection in the event of a humanitarian emergency.

4.1.2 Temporary visas

Australia has used the **Humanitarian Stay (Temporary) Visa (subclass 449)** to respond to humanitarian emergencies where people have been displaced, or face a 'strong likelihood' of being displaced, and are 'in grave fear of [their] personal safety' because of the circumstances surrounding such displacement.[65] These visas were first introduced in 1999 for the evacuation of nearly 4,000 Kosovars from the Former Yugoslav Republic of Macedonia and 2,000 East Timorese from East Timor, and were subsequently used to evacuate people from Afghanistan in 2021.[66] In the case of Afghanistan, they allowed people to leave on a temporary basis, and – if so invited once in Australia, through the Minister 'lifting the bar' – to apply for a permanent humanitarian visa.[67] Importantly, visa holders were 'eligible for certain payments and concession cards, including Special Benefit, Family Tax Benefit, Dad and Partner Pay, and Parental Leave Pay, and the Health Care Card'.[68] However, shortcomings include the fact that the visa is wholly discretionary[69] and people must be invited to apply for it; it is only issued for a temporary period, set by the visa decision-maker in each case; and visa holders are barred from applying for any visa other than another 449, unless the Minister 'lifts the bar'.

In the case of Ukraine, people were explicitly enabled to apply for visitor visas to reach Australia and were subsequently provided with the opportunity to apply for a **Temporary (Humanitarian Concern)**

Visa (subclass 786), valid for three years and permitting work, study, access to Medicare and Special Benefit.[70] However, this visa prevents holders from lodging another visa application while in Australia and does not provide a pathway to permanency.

No special humanitarian visa regime was created for people seeking to flee conflicts in Gaza or Sudan, leaving people to seek to utilise options such as **visitor visas**. Although some people from Gaza and Sudan were granted visitor visas, there were high numbers of visitor visa refusals for Gazans,[71] linked in part to security concerns and, arguably, the politicisation of humanitarian assistance.[72] In August 2024, the government moved some Gazans on to bridging visas and extended work rights and Medicare access.[73]

It should also be noted that sometimes people cannot obtain visitor visas because there are no functioning consular facilities in the affected country and/or because they are considered ineligible, as they cannot demonstrate their ability or willingness to return home once the visa expires.

The visa situation does not need to be this complicated. While can be reassuring for people to know that there is more than one way to find safety in Australia, a preferable option would be to have an emergency visa that enables people to reach Australia lawfully and quickly, with clear pathways to durable solutions if protection is required beyond an initial period. A dedicated emergency visa would be far more predictable, streamlined and efficient – for all concerned.[74]

4.2 What should an Australian emergency visa look like?

An emergency visa should enable affected individuals to travel to Australia quickly and safely. It should not be tied to caps within the Refugee and Humanitarian Program (see 'special humanitarian intakes' below). Furthermore, individuals already in Australia when their country of origin is affected by a humanitarian emergency should automatically be granted a visa extension, or a bridging visa with the same conditions, if their visa is due to expire.[75] This should not adversely affect their ability to apply for a different type of visa, including a protection visa.

4.2.1 Eligibility

Emergency visa eligibility should be determined on the basis of sound and defensible principles, using past Australian and comparative practices as a guide. Classes of people could be identified as potentially eligible for humanitarian emergency visas, similar to the framework for identifying civilians in non-combatant evacuation operations, which would also facilitate emergency departures (including in an organised evacuation).[76] Identifying classes of people in advance where possible would also avoid setting up individual expectations of assistance that may not be met. Once the classes have been identified and made public, relatives and diaspora communities in Australia could assist in identifying affected people in the country with a connection to Australia (eg family members, past residents, people with links to Australian companies or organisations),[77] and the Australian government should identify LEEs.

This recommendation aligns with past Australian practices of clearly designating a particular cohort for protection. For instance, Australia's former Special Assistance Category (1991–2000) provided resettlement opportunities to categories of people in vulnerable circumstances overseas with connections to Australia,[78] including from the former Yugoslavia, the former USSR, East Timor, Lebanon, Sudan, Myanmar, Vietnam, Sri Lanka and Cambodia, as well as Ahmadi Muslims.[79] The objective was to assist 'exceptional cases presenting features of threat to personal security and intense personal hardship' who did not meet the refugee definition but still faced significant risk.[80]

Canada uses a broad legislative provision permit the Minister to grant 'a foreign national who is inadmissible or who does not meet the requirements of this Act … permanent resident status or an

exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations'.[81] In this way, it is very targeted in the populations it aims to assist.

In relation to Canada's proposed Crisis Response Framework, the Canadian Council for Refugees has recommended that the government 'develop and rely on clear indicators tied to reporting from credible agencies such as the UN and international human rights organizations', noting that 'UNHCR in particular should be looked to for guidance in identifying populations needing a crisis response, as well as individuals within those populations in particular need of evacuation or resettlement'.[82] It has also stressed that an 'equitable' response means 'providing adaptations for particular vulnerabilities, such as for people with disabilities, trans and gender diverse persons, women, applicants travelling with children, and elders'.[83] Targeting the cohort in this way can be both responsive and responsible, provided it is done in a principled and non-discriminatory manner.

People already in Australia and those with existing visa applications on foot should be prioritised,[84] and consideration should be given to expediting new applications (eg for family reunion, study, employment), potentially with fees reduced or waived to increase accessibility. As the Refugee Council of Australia has stated:

> It is especially appropriate for Australia to issue visas to individuals with family or community connections here. This action not only provides a critical lifeline for those escaping conflict but also underscores our commitment to a multicultural society. It enables Australian community members to actively participate in offering protection and support.[85]

Furthermore, anyone who is in Australia at the time when their country of origin is affected by a humanitarian emergency, and whose visa is due to expire, should be granted an automatic visa extension or a bridging visa with the same conditions. This should not adversely affect their ability to apply for a different visa. All such persons should be permitted to apply for refugee or complementary protection.

Where people have worked with the Australian government as LEEs, such service should automatically entitle them to an emergency visa (subject to security assessments, as outlined in Recommendation 5 below). This is not only a measure of solidarity and justice, but it also aligns with Australia's strategic foreign policy interests. For example, Australia's response to LEEs in Afghanistan failed to get many people out, in part because LEEs had to apply for a humanitarian visa.[86] This could undermine Australia's operational capacity in other theatres of conflict: locals may be reluctant to provide support if they are not assured of protection in the event of a humanitarian emergency.

4.2.2   Length of stay

An emergency visa should provide for an initial stay of 12 months.[87] While this is shorter than some comparative visas, it would provide a measure of certainty for people and allow for a reassessment of circumstances in the country of origin after a year.[88] At this point, people could either be assisted to return voluntarily if it is safe for them to do so, or otherwise be provided with a pathway to permanent residence in Australia.[89] Importantly, this would enable them to rebuild their lives relatively quickly, and it would also provide a security blanket should they later wish to return home (see Recommendation 7).

An emergency visa should not bar people from applying for any other type of visa for which they may qualify, which is currently a systematic problem. On rare occasions, the Immigration Minister has permitted temporary visa holders to apply for offshore visas while onshore, thus increasing the range of options available to them and providing 'access to a broader range of Government support and

settlement services that [sic] normally available to onshore applicants'.[90] In the case of those who fled Afghanistan, it 'aligned to a practicable extent, visa outcomes for this group with what they would likely have received through the Humanitarian Program, if they did not need urgent evacuation from Afghanistan'.[91] While this was welcome, the fact that it is wholly discretionary makes it uncertain, inefficient and unsustainable as a model.

Leaving visa options open facilitates other potential long-term solutions, particularly where a person has family ties to Australia or skills needed by Australian employers. Australia's Ukraine visa support programme enabled exactly this: Ukrainians and their families in Australia could access standard visa pathways.[92] The US TPS programme similarly does not restrict people from applying for any other type of visa for which they may qualify, nor does Canada's Temporary Resident Visa scheme or the EU Temporary Protection Directive. Allowing people to apply for other visa types facilitates a variety of solutions that do not depend solely on the humanitarian programme. However, neither the Ukraine visa support programme, nor TPS, directly provide for durable solutions, leaving many people in limbo.

4.2.3 Entitlements

Emergency visas should provide immediate access to services, including Medicare and Centrelink, as well as work and study rights, language and cultural support, and assistance with accommodation. Providing access to work and study rights would enable visa holders to engage in a measure of self-support and alleviate demands on relatives, community organisations, social service agencies and government. It is well documented that temporary protection measures that do not meet the physical and social needs of protected persons, and the uncertainty of prolonged temporary status, are detrimental to people's mental health.[93]

The US TPS programme allows people to work and study during the period of stay.[94] Similarly, the US humanitarian parole programme allows for the possibility of work authorisation, though the Secretary of Homeland Security can designate parolees for automatic authorisation in certain circumstances, as in the case of Ukraine and Afghanistan.[95] Canada's response to Ukraine allows people to apply for open work and study permits, and arrivals are also eligible for settlement services. The Canadian response to Gaza provides access to three months of coverage under the Interim Federal Health Program (IFHP), as well as settlement services and a fee-exempt work or study permit.[96] The EU Temporary Protection Directive allows Ukrainians to access open work and study permits, suitable accommodation or housing, social welfare, family reunification, banking services and free movement throughout the EU.[97]

4.2.4 Special humanitarian intakes

A 'special humanitarian intake' is essentially a procedural mechanism that enables an additional allocation of visas in response to a humanitarian emergency. Australia has utilised special humanitarian intakes on a number of occasions, including 12,000 places for people from Syria and Iraq in 2015–16,[98] 42,000 places in response to the 1989 Tiananmen Square Massacre, and 70,000 emergency humanitarian visa places between 1975–83 after the Vietnam War.[99] A special humanitarian intake should be additional to the existing annual humanitarian visa allocation[100] and 'provide a pathway to permanent, durable solutions for the refugees concerned'.[101]

In September 2021, Canada announced a special humanitarian intake of 40,000 Afghan refugees, while the US announced an expanded Refugee Admissions Program ceiling of 125,000 for the 2022 fiscal year.[102] The United Kingdom announced a programme with 5,000 initial places and up to 20,000 places over the longer term.[103] By contrast, Australia pledged to allocate 3,000 places to Afghan nationals within its existing resettlement quota, although later announced that it would allocate an additional 16,500 humanitarian places over four years.[104]

The Senate Committee criticised Australia's initial response, stating that:

> Australia should match its coalition partners in committing to a substantial intake of Afghan refugees. In the committee's view, this would be a commensurate response to the crisis and Australia's international standing as a country with a significant permanent humanitarian resettlement program. ... The committee also believes that Australia should play a global leadership role in the resettlement of Afghan nationals given Australia's role in the conflict and the scale of the humanitarian need.'[105]

One of the biggest challenges (and inefficiencies) of the Australian response to Afghanistan was the cap on the number of humanitarian visas available. The limited number of visas was also a reason why channelling people into family or skilled migration schemes has become an important part of securing durable solutions,[106] because these visas do not count towards the annual humanitarian cap. Of course, it should be noted that the government is free to increase the cap: the quota is its own creation and not a requirement of international refugee law.

A final argument in favour of additionality is that if emergency visas are offered within the existing quota, other people at risk of serious harm lose the opportunity for resettlement. As noted above, emergency visas will not necessarily result in people remaining permanently, although that may be one possible durable solution. Privileging emergency visas within the quota, and thereby denying others the opportunity of permanent resettlement, could negatively impact communities and social cohesion in Australia and detract from Australia's reputation as a leading resettlement country.

5 Evacuation

The framework should include plans for physical evacuation from affected countries, as well as from countries where people may have sought temporary safety. Each type of evacuation requires a different set of considerations, negotiations (with host governments, UNHCR etc) and contingencies. Immigration requirements should be kept to a bare minimum (eg identity and security checks) in order to facilitate swift movement out of dangerous and often traumatising situations.

5.1   Evacuation

In some cases, Australia may need to facilitate the physical movement of people to a place of safety. This may be to a third country (with the prospect of onward travel to Australia) or directly to Australia. Occasionally, it may be part of a coordinated global response by UNHCR,[107] such as Australia's evacuation of Kosovar refugees in 1999.[108]

The AUSRECEPLAN is a standing arrangement which sets out a process to enable 'the safe repatriation of Australians, their immediate dependants, permanent residents and approved foreign nationals (evacuees) following an Australian Government led evacuation in response to an overseas disaster or adverse security situation'.[109] As noted in Recommendation 4, non-citizens will require a visa to depart on an evacuation flight, which is why the Australian government issued people from Afghanistan with subclass 449 visas 'to expedite the evacuation process'.[110]

The Australian Defence Force (ADF) also has a non-combat evacuation operation (NEO) contingency plan 'that can be rapidly applied to any country'.[111] However, Australia's NEO plan was created in 2011 and does not factor in a range of contemporary considerations,[112] and suggested improvements based on lessons learned from Afghanistan in August 2021 include 'caring for

evacuees, creating a planning framework, defining agreements, building relationships, preparing evacuation centres, and setting and maintaining theatre capabilities'.[113]

Even though evacuations are generally considered to be a temporary mechanism – moving people to safety until they can safely return – they may provide a pathway to permanent protection. Ultimately, the visas people are granted will determine this; the evacuation is the physical process for moving them to safety. Even if an evacuation is considered as a means of providing only temporary protection (as was the case for Kosovars), conditions in the country of origin may make return impossible and thus require more durable solutions.

There are numerous examples of States evacuating people to a 'safe haven' staging location for humanitarian assistance and processing prior to assisting them to resettle. The US evacuated thousands of Afghans to temporary safe havens in Europe and the Middle East before moving people onward to the US on commercial and military flights.[114] As a coalition partner, Australia also successfully undertook a non-combatant evacuation operation which involved transporting people to temporary safe havens in the Middle East.[115]

It is also essential that where people arrive in a third country with an expectation of onward movement to Australia, this is facilitated. Following evacuations from Afghanistan, the Department of Home Affairs reported that: 'We have people with 449s popping up in all manner of countries, who have either been evacuated by other nations as part of that process or made their own way there'.[116] Similarly, the Canadian experience showed that '[m]any Afghans were evacuated to third countries under the assumption of eventual resettlement in Canada. However, they have since remained stranded in these countries without a resolution to their situation and without the means of supporting themselves'.[117]

5.2   Immigration requirements

In a crisis, getting people out as quickly as possible may be a matter of life and death. Practical obstacles may mean that some people cannot obtain passports, birth certificates or other relevant documentation.[118] Embassy closures – such as Australia's closure of its Kabul embassy in May 2021 – may also prevent people from applying for visas.[119] As the Australian government itself acknowledged, without a physical presence in Afghanistan, 'visa processing present[ed] significant challenges and security concerns'.[120]

For these reasons, less stringent documentary requirements should be imposed for those seeking to be evacuated in a humanitarian emergency.[121] In some cases, it may be necessary to facilitate urgent 'surge capacity staffing in relevant departments to assist in communications and visa processing'.[122] As the large number of visa applications from Afghanistan showed, without a rapid deployment of additional staff, delays inevitably arise which hinder the provision of protection and assistance.

As outlined in Recommendation 4, Australian visa requirements usually include health, biometric and security checks. These processes are slow and demand resources that may not be available, underscoring why flexible procedures are needed in humanitarian emergencies.[123] While preliminary checks could be undertaken prior to departure, full processing should be completed either in a third country or once a person arrives in Australia.[124]

This would not be unusual. State practice shows that evacuation programmes often take place without full screening, such as the Italian programme for humanitarian evacuation from Libya (2017) and the EU Bethlehem evacuation scheme (2002).[125] Romania waived visa requirements altogether for evacuees to reach its Emergency Transit Centre.[126]

To accelerate the processing of Syrian refugees in 2015, Canada established 'stand-alone' centres in Amman, Beirut and Ankara in which refugees were interviewed, screened for communicable diseases and subjected to security checks against national security databases – all in a single day.[127] This enabled the Canadian government to process and assist large numbers of people (25,000) in a short timeframe.[128] Security assessments could also be facilitated through Migration 5's data-sharing arrangements (namely, between Australia, Canada, New Zealand, the UK and the US).[129]

The US humanitarian parole process allows people who are unable to obtain or access a passport (whether or not stateless) to provide other evidence of identity, such as a government-issued identity document establishing their citizenship with an explanation as to why no passport is available, or if no government-issued document is available, some secondary form of identity with an explanation why a government-issued document is not available.[130]

During evacuations from Kabul, Australia's Immigration Minister

> delegated authority to the senior officer on the ground, the Head of the CRT [Crisis Response Team] to authorise uplifts from Kabul in extremis. This was on the basis that all required checks and reviews would occur in the UAE or a third location before a visa was issued and onward travel to Australia occurred.[131]

The Department of Home Affairs also implemented 'emergency verbal visa grant processes' to facilitate evacuations', which 'increased the capacity and speed in which eligible Afghans could be evacuated'.[132] Furthermore, the health check condition of the subclass 449 visa was waived until people arrived in Australia.[133]

Significantly, the Department of Home Affairs reported that '[o]n balance, it was agreed that the risks to individuals being left in Kabul outweighed the potential hazards associated with visa grants of this nature. No person of known national security or serious criminality concern was brought to Australia on evacuation flights.'[134]

It may also be appropriate to relax immigration requirements for affected individuals already in Australia when a humanitarian emergency is declared.[135] For instance, following the outbreak of conflict in Sudan, Canada introduced special measures for Sudanese nationals, including exempting 'eligible foreign national family members who have left Sudan since the violence erupted from the requirement to pay the applicable Temporary Resident Visa and Temporary Resident Permit processing fee, as well as biometrics collections fees, to facilitate their travel to Canada'.[136]

6 Reception facilities and support

In order to move people to safety quickly, evacuees could be housed (if necessary) for a short, initial period in temporary accommodation facilities in Australia (such as quarantine facilities or army barracks) while health, biometric and security checks are carried out. They should be connected with support services to assist with housing, health care (for both physical and mental health), education, employment, language and cultural support, and assisted to move into communities within Australia as soon as possible. Host communities may also require additional support, and this needs to be part of the framework's planning.

As noted above, moving people to safety quickly may mean bypassing health and security checks prior to departure. In extreme cases, people could be evacuated directly to Australia and screened in secure quarantine facilities (such as those established for the COVID-19 response), before being

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moved into the community as swiftly as possible. The AUSRECEPLAN provides a potential starting point for these types of arrangements, as the identification of appropriate reception centres depends upon a variety of factors, including the nature and location of the crisis, as well as the number of evacuees. Reception centres are also operated as secure areas capable of facilitating health, security and other necessary services.[137]

For example, the Canadian Armed Forces prepared temporary accommodation for Syrian refugees in military bases across Ontario and Quebec, but ultimately it was not required.[138] Such accommodation was used for more than 5,000 Kosovar refugees in 1999.[139] The US Department of Defense was tasked with providing up to 50,000 Afghan evacuees with 'culturally appropriate food, water, bedding, religious services, recreational activities and other services such as transportation from the port of entry to the location of accommodations, and some medical services as well'.[140] People were housed in military bases across a number of states.[141]

People should not be kept in quarantine or barrack-style facilities for any longer than is strictly necessary for health and security checks. Once checks have been carried out, people should move to suitable accommodation that caters for both individuals and family units. Wherever possible, people should have ready access to support and community services rather than located in remote areas.

As observed in safe haven sites for Kosovars, institutionalisation had an impact on families. Barrack accommodation and communal facilities 'placed a strain on residents who craved privacy and the ability to do things "as a family"', including simple things like being able to choose 'when and what to eat'.[142] This also had a gendered dimension: women could not fulfil cultural roles as 'homemaker and food provider': 'Cooking for one[']s family is more than providing nourishment, it is about being a proper wife and mother and being able to entertain (also very important culturally)'.[143] There were also risks of sexual exploitation of women, with concerns that 'young Kosovar women at both the NSW Havens were being coerced into providing sexual favours for men at the camp'.[144]

Similarly, a common sentiment expressed by refugees evacuated to the Emergency Transit Centre in Romania was that they felt their lives were on hold: 'many expressed a desire to have a "normal" life and to move on quickly from the ETC'.[145]

Ensuring adequate support for new arrivals is critical. The Refugee Council of Australia has stressed the importance of a needs-based approach, developed in cooperation with the settlement sector. Holistic support 'includes providing a safety net for emergency entrants, including access to social security, health services, accommodation support, education and employment support to ensure successful integration'.[146]

All new arrivals should be given access to the Humanitarian Settlement Program (HSP),[147] which is 'designed to integrate new arrivals into Australian life by providing practical on-arrival support and helping entrants to build the skills and knowledge needed to become self-reliant and active members of the community'.[148] HSP was offered to all those evacuated from Afghanistan (including Australian citizens and permanent residents),[149] as well as to Ukrainians, but not to those from Gaza or Sudan. An initial investment like this would ensure that people have a degree of socio-economic support and security (particularly if they are suffering from trauma), and it may accelerate their ability to become self-sufficient.[150]

In the case of those evacuated from Afghanistan, following their release from COVID-19 quarantine, they were met and 'transported to suitable short-term accommodation, where they receive[d] an initial range of services including a food package, orientation to services in the local area, and advice on local COVID-19 measures. For evacuees who are settling in a different location to where they

quarantine, onward travel arrangements are facilitated and support provided on arrival in their final destination'.[151] If needed, HSP could continue to help them build self-reliance over time:

> This may include assistance to source long-term accommodation, make social connections, and access mainstream and specialised services related to health, employment, education and English language learning. An orientation program is also provided, through which clients learn about the Australian way of life, values and laws and acquire essential life skills. Most clients will generally receive support from the HSP for up to 18 months after their arrival, but this can be extended based on need.[152]

As well, new arrivals should receive cultural briefings in order to better understand Australian society,[153] as well as to enable them 'to participate in decision making' and 'restore their sense of self worth'.[154] The Refugee Council of Australia noted that 'the failure to provide cultural briefing for the Kosovars hampered their ability to understand the new environment in which they found themselves', and there was an 'unrealistic expectation that the Kosovars would instantly adapt to Australian behaviour patterns'.[155]

7 Durable solutions

If the initial period of protection granted is for a defined temporary period and it is unsafe for individuals to return home when it ends, then individuals must have a pathway to permanent residence in Australia. Returns should not be considered unless there has been a fundamental change in the circumstances that resulted in the declaration of the humanitarian emergency. In all cases, returns must be voluntary, and individuals who fear persecution or other serious harm must be able to apply for refugee status or complementary protection in Australia.

While many people will want to return home as soon as possible, the ongoing situation in the country of origin may often make it unsafe or impracticable.[156] In such cases, people must have the possibility to transition on to a permanent visa. This should be inherent in the design of any new emergency visa (see Recommendation 4).

Without a pathway to permanence, people may suffer significant psychological distress and be unable to move forward with their lives. Australia's temporary protection regime was widely criticised for being 'an inhumane, unsustainable, and inefficient system that inflict[ed] mental harm and create[d] costly, bureaucratic burdens'.[157]

Giving people the opportunity to remain in Australia on a permanent basis would provide both legal and psychological security, and would also facilitate social and economic integration. It may encourage them to take steps to get their qualifications recognised and seek jobs commensurate with their skills – benefitting both themselves and the Australian community. That said, the grant of a permanent visa does not necessarily mean that a person will remain in Australia forever. However, if a person returns home and finds that they cannot remain there, then they have the option of returning to Australia.

As the Kaldor Centre Principles for Australian Refugee Policy explain:

> Investing in refugees as members of our community, and enabling them to strengthen their education, skills and resilience, allows them to contribute to their own well-being as well as that of their families and their communities. Australia's history shows that welcoming refugees is not only possible, but also a source of great rewards for our nation. Providing the conditions for refugees to rebuild their lives in safety and dignity benefits everyone. A

welcoming, secure and respectful environment for refugees results in greater economic and cultural richness for the community and a stronger, more socially cohesive Australia.[158]

Where return is contemplated, people must be given accurate, independent information about conditions in the country of origin;[159] detailed information about how returns will be carried out and what assistance will be provided; and access to lawyers and counsellors to assist them to make an informed decision, and to help them prepare psychologically.

8 Review

The framework should be reviewed annually to ensure that it remains current and appropriate. After any activation of the framework, a systematic review and independent evaluation should take place, and processes should be adjusted in line with any recommendations made.

In order to ensure that the framework remains fit for purpose and incorporates improvements based on lessons learned, it should be subject to annual review. The diverse stakeholder advisory group brought together to initiate the framework (Recommendation 1) would be well placed to develop longer-term strategies 'to improve the resilience and efficiency of Australia's humanitarian programs',[160] ensuring that real-life experiences from those implementing and subject to the framework are captured, analysed and improved upon where necessary.[161] Whenever the framework is activated, it should be kept under active review so that any problems can be identified and addressed quickly. Each activation should also be subject to an independent evaluation.

Annex

Visas in humanitarian emergencies: comparative practices

In emergency situations, some States grant temporary humanitarian visas on either an individual or a prima facie basis. These visas allow people to leave the country but do not provide permanent protection.[162] People are 'screened out' for security risks[163] but are not subject to full refugee status determination; they can apply for asylum on arrival. For instance, Italy, France, Belgium and Andorra permitted faith-based organisations to create 'humanitarian corridors' for Syrians, Iraqis, Eritreans and other displaced groups, allowing people to fly to Europe before undergoing full status determination.[164] The US has established special 'humanitarian parole' processes for up to 30,000 Cubans, Haitians, Nicaraguans and Venezuelans (and their immediate family members of any nationality) to travel to the US on a case-by-case basis for urgent humanitarian reasons or significant public benefit.[165]

By contrast, some other States provide people with visas that include a pathway to permanent protection. Emergency resettlement programmes – such as Australia's subclass 200 and 203 visas, mentioned above – are inadequate on their own because they are often too slow to provide immediate relief (even with expedited processing); are generally contingent on people already having left their country of origin; are numerically capped; and require people to fit within the 'refugee' definition.[166] In reality, people may be unable to leave a crisis situation, and even if they can, they may find themselves in an extremely precarious situation.[167] Even though UNHCR can make referrals on an emergency basis, which are supposed to take 'several days' to process,[168] in reality they may take months.[169] This is because emergency resettlement still 'requires compliance with all resettlement formalities and works on the premise that beneficiaries have undergone full RSD before travel'.[170]

For example, Canada reserves a limited number of resettlement places under its Urgent Protection Programme (UPP), which provides expedited refugee resettlement processing for emergency cases referred by UNHCR.[171] However, full processing may take from one to four months, or longer, which may be too slow to respond to a humanitarian emergency. Thus, Canada may issue a Temporary Resident Permit which allows a person to travel to Canada before all remaining required checks are concluded.[172] Any remaining checks are conducted upon arrival and the person may subsequently apply for permanent residency.[173]

As one scholar has observed,

> **only schemes that do not entail full processing** prior to departure have proven **effective** in responding to the concrete necessity of a rapid transfer. The focus on 'urgent', 'imminent' and 'extreme' protection needs, assessed on a **prima facie basis** rather than on complete RSD, is what allows for the possibility of accelerated arrangements. It is also very positive that some initiatives permit the transfer of beneficiaries directly out of the country of peril, without having to undergo intermediary transit through an ETC or ETM first. The Italian evacuation programme for Libya stands out as an example of particularly good practice in this respect, allowing for the speedy evacuation of relatively large numbers of persons within short timeframes under flexible, streamlined processing modalities and in partnership with key stakeholders. The **relaxation of visa** requirements, and of exit and travel documentation formalities alongside **speedy transportation** to safety, are key operational components worth noting as well.[174]

Finally, another interesting comparative example is Argentina's humanitarian visa programme for people displaced in the context of disasters and climate change. It has 'an active, preemptive, and

permanent nature offering continued cooperation to 23 countries of Central America, the Caribbean and México before a disaster occurs'.[175] The programme provides an initial stay of three years and beneficiaries can subsequently apply for permanent residence. The visa is open to internally displaced persons as well as persons displaced across an international border and is not contingent on a person having a regular migration status in the country where they reside. The visa programme is coordinated through a Working Group of the Environmental Humanitarian Visa Program, involving the National Directorate of Migrations, General Directorate of Consular Affairs of the Ministry of Foreign Affairs, IOM, UNHCR, the International Committee of the Red Cross, the Argentine support network for community refugee sponsorship and the Episcopal Commission for the Pastoral Care of Migrants and Itinerants.[176]

Endnotes

[1] Senate Foreign Affairs, Defence and Trade References Committee, *Australia's Engagement in Afghanistan: Final Report* (April 2022) para 3.13, citing Nawid Cina, Acting General Manager, Mahboba's Promise.

[2] Canada is creating a Crisis Response Framework 'that supports more proactive and predictable responses to crises and other pressures, based on consistently applied criteria including equity considerations': https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-mar-20-2024/equity-ircc-programs.html. See also the Canadian Council for Refugees, 'IRCC's Crisis Response Framework CCR Submission in response to IRCC Questions' (31 May 2024) https://ccrweb.ca/sites/ccrweb.ca/files/2024-06/Crisis_response_CCR_submission_IRCC_May_2024.pdf.

[3] Refugee Council of Australia, 'Australia's Response to Emergency Humanitarian Crises: The Case for a Coherent and Predictable Approach' (2024) (on file with authors).

[4] See eg '2023 Session of the UNHCR Executive Committee – A Statement by Argentina', https://disasterdisplacement.org/perspectives/2023-session-of-the-unhcr-executive-committee-a-statement-by-argentina/.

[5] See Senate Committee Final Report (n 1) paras 4.68–72.

[6] As the Refugee Council of Australia noted in the aftermath of the Kosovar evacuation: '"efficiency and expediency" [must] at all time[s be] tempered by careful consideration of the evacuees. This requires a high level of cultural sensitivity, deference to the impact of trauma, grief and dislocation and a willingness to be flexible'. See Refugee Council of Australia, *Kosovo Safe Havens: Views from the Community Sector* (January 2000) 20. It therefore recommended that: 'as much prior consultation as time allows be undertaken with members of the relevant community, people with cross-cultural social work experience, refugee experts and torture/trauma counsellors to structure a program that places at its core the psychological as well as the physical needs of the evacuees. Further, that checks be made at regular intervals to determine which programs, if any, could be modified to make them more responsive and more culturally appropriate' (emphasis removed).

[7] Australian Government Crisis Management Framework (v 3, September 2023) (AGCMF).

[8] The 2018 Global Compact on Refugees, UN doc A/73/12 (Part II) was prompted largely by the 'urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees' (para 1).

[9] Immigration, Refugees and Citizenship Canada (IRCC), 'CIMM – Equity in IRCC Programs' (20 March 2024) https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-mar-20-2024/equity-ircc-programs.html.

[10] IRCC, 'IRCC, Deputy Minister, Transition Binder, 2024 – Crisis Response and Recent Humanitarian Initiatives' (2024) https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/transition-binders/deputy-minister-2024/crisis-response-recent-humanitarian-initiatives.html.

[11] Australian Government Plan for the Reception of Australian Citizens and Approved Foreign Nationals Evacuated from Overseas (2017) (AUSRECEPLAN).

[12] Other terms include 'emergency', 'disaster' and 'humanitarian crisis'. International agencies may define the term differently depending on their particular mandate.

[13] UNHCR, 'Overview of Key Simplifications and New Elements in the Policy on Emergency Preparedness and Response' (UNHCR/HCP/2023/01, 10 February 2023) https://emergency.unhcr.org/sites/default/files/2023-05/Overview%20of%20Key%20Simplifications%20and%20New%20Elements%20in%20the%20Policy%20on%20Emergency%20Preparedness%20and%20Response.pdf.

[14] For the exact legislative wording, see 8 USC § 1254a(b)(1) (2024).

[15] Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences thereof, [2001] OJ L 212, 12 (Temporary Protection Directive), art 2(c) (emphasis added).

[16] AUSRECEPLAN (n 11).

[17] AGCMF (n 7).

[18] 'CIMM – Equity in IRCC Programs' (n 9).

[19] 'IRCC, Deputy Minister, Transition Binder, 2024' (n 10).

[20] This aligns with a recommendation by the Refugee Council of Australia to establish 'Humanitarian Response Advisory Consortia': Refugee Council of Australia 2024 (n 3) 6. The Canadian Council for Refugees has also included such a recommendation in its input on Canada's Crisis Response Framework: Canadian Council for Refugees (n 2) 6.

[21] Senate Foreign Affairs, Defence and Trade References Committee, *Australia's Engagement in Afghanistan: Interim Report* (January 2022) vii.

[22] Ibid, para 7.121, citing Home Affairs, *Submission 19*, 18.

[23] Ibid, para 7.122, referring also to The Hon Alex Hawke MP, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, 'Ministerial Forum on Multicultural Affairs – Communique' (8 September 2021) https://minister.homeaffairs.gov.au/AlexHawke/Pages/ministerial-forum-on-multicultural-affairs-communique.aspx.

[24] See eg UNHCR, *UNHCR–NGO Toolkit for Practical Cooperation on Resettlement: 2. Information Sharing, Planning and Advocacy: Field Examples* (June 2015) https://www.unhcr.org/au/publications/unhcr-ngo-toolkit-practical-cooperation-resettlement-2-information-sharing-planning; Carol Batchelor and Edwina O'Shea, 'The Internationalisation of Resettlement: Lessons from Syria and Bhutan' (2017) 54 *Forced Migration Review* 9.

25 Department of Foreign Affairs and Trade (DFAT), 'Australia's Humanitarian Assistance' (last accessed 14 August 2024) https://www.dfat.gov.au/development/topics/development-issues/building-resilience/australias-humanitarian-assistance.

26 See Canadian Council for Refugees (n 2) 10.

27 AUSRECEPLAN (n 11); Australian Government Overseas Assistance Plan (2018) (AUSASSISTPLAN).

28 Refugee Council of Australia 2000 (n 6) 18.

29 Refugee Council of Australia 2024 (n 3) 6.

30 Ibid.

31 *New South Wales State Disaster Plan (DISPLAN)* (2010) paras 102 and 103, respectively.

32 Refugee Council of Australia 2000 (n 6) 3 (fns omitted).

33 The Refugee Council of Australia noted that the operational culture 'did not always fit the needs of the Kosovars', especially the degree of regimentation: Refugee Council of Australia 2000 (n 6) 4.

34 Ibid, 4 (emphasis removed). See the rest of that report for insightful recommendations about the required leadership skills to coordinate the requisite agencies and supports, and on-the-ground management of the safe haven sites.

35 AUSRECEPLAN (n 11) 14.

36 AGCMF (n 7) 5.

37 See ibid, 10, 49ff.

38 The AUSRECEPLAN (n 11) outlines the arrangements for the reception into Australia of Australian citizens and permanent residents, their immediate dependents and approved foreign nationals evacuated from overseas.

39 See AGCMF (n 7) 49, 51.

40 Some of these issues were addressed in the Parliamentary Joint Committee of Public Accounts and Audit *Inquiry into the Department of Foreign Affairs and Trade's Crisis Management Arrangements* (March 2023) and will likely further be discussed in the Australian National Audit Office (ANAO) report on the AGCMF (which was due to be tabled in August 2024).

41 Canadian Council for Refugees (n 2) 5.

42 Senate Interim Report (n 21) para 7.123, referring to The Hon Alex Hawke MP, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, 'New Settlement Support Package for Recent Arrivals from Afghanistan' (14 October 2021) https://minister.homeaffairs.gov.au/AlexHawke/Pages/new-settlement-support-package-for-recent-arrivals-from-afghanistan.aspx.

43 Ibid, para 9.108.

44 Ibid, para 7.128, citing Afghanistan–Australia Advocacy Network, *Submission 37*, 9; see also RACS, *Submission 54*, 11; Canadian Council for Refugees (n 2) 9.

45 This is why, during the Taliban takeover in August 2021, some had apparently advocated to provide locally engaged employees (LEEs) and their family members with visitor visas so that they would at least have documentation enabling them to leave.

46 This includes some double handling, such as separate processes for LEE certification and LEE visa applications, re-application requirements, etc: see Senate Interim Report (n 21) paras 7.28ff.

47 While some visa subclasses may be entitled to assistance beyond Medicare, Centrelink and work rights, this table only addresses those three main entitlements. See also Australian Government, 'Visa Subclasses 200–299 Payment Eligibility', *Guide to Social Security Law* (v 1.319, 12 August 2024) https://guides.dss.gov.au/social-security-guide/9/2/4.

48 It should be noted that visa subclasses 208–217 were collectively grouped as the Special Assistance Category (SAC), introduced in 1991 'to respond to crises in particular countries, permitting settlement of people in vulnerable circumstances and with connections in Australia': Refugee Council of Australia, 'How Do Refugees Come to Australia under Its Refugee and Humanitarian Program?' (3 December 2023) https://www.refugeecouncil.org.au/coming-to-australia/7/. SAC entrants were included in the annual Refugee and Humanitarian Program and received the same entitlements as other offshore entrants. See also discussion at nn 78–80 below.

49 Although visa holders did not initially have any work rights, on 1 July 1999, visa conditions changed to allow people to work up to 20 hours per week. See Robert Carr, 'The Safe Haven Visa Policy: A Compassionate Intervention with Cruel Intentions', *Australian Policy and History* (13 November 2017) https://aph.org.au/2017/11/the-safe-haven-visa-policy-a-compassionate-intervention-with-cruel-intentions/.

50 Only Medicare-eligible if covered under a Ministerial order.

51 The Minister must 'lift the bar' to enable someone to apply for a permanent visa.

52 Although no durable solution was originally envisaged for this visa class, on 13 February 2023, the government announced that a pathway for permanent protection (through a permanent Resolution of Status visa (subclass 851)) would be available to refugees on a Temporary Protection Visa (subclass 785) or a Safe Haven Enterprise Visa (subclass 790). See Department of Home Affairs, 'Subclass 851: Resolution of Status' (last updated 10 May 2024) https://immi.homeaffairs.gov.au/Visa-subsite/Pages/other-visas/851-RoS.aspx.

53 The Minister must 'lift the bar' to enable someone to apply for a permanent visa.

54 Only Medicare-eligible if covered under a Ministerial order.

55 Refugee (subclass 200); In-country Special Humanitarian (subclass 201); Emergency Rescue (subclass 203); Woman at Risk (subclass 204); also Global Special Humanitarian (subclass 202): subject to substantial discrimination, amounting to gross violation of human rights, in the applicant's home country and is living in a country other than the applicant's home country. This requires a proposer from within Australia.

[56] Immigration Advice and Rights Centre, 'Offshore Refugee and Humanitarian Visas' (May 2019) 2 https://iarc.org.au/wp-content/uploads/2022/10/Offshore-Refugee-and-Humanitarian-visas.pdf.

[57] As the Department's own website notes: 'The decision process could take many months, or even years. The number of applications we receive for resettlement each year is far greater than available visas': Department of Home Affairs, 'Subclass 200, 201, 203 and 204: Refugee Category Visas' (last updated 8 July 2024) https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/refugee-200. Australia's In-country Humanitarian Visa (subclass 201) raises similar issues in terms of slow processing times, limited eligibility criteria and the fact it is included in the annual resettlement quota.

[58] Migration Regulations 1994 (Cth), item 203.222. For family members of the proposer, the relevant consideration is the extent of the applicant's connection with Australia at the time of the application.

[59] Ibid, item 203.223.

[60] 'On 22 April 1975, the then Prime Minister Gough Whitlam announced that Vietnamese with long and close associations with the Australian presence in Vietnam whose life was considered to be in danger would be eligible for temporary entry into Australia. The number of applications was expected to be small, and each was to be considered by officials in Canberra on a case-by-case basis': Vivienne Thom, *Independent Review into the Afghan Locally Engaged Employee Program* (20 March 2023) 16, citing Commonwealth Hansard, House of Representative (22 April 1975) 1497 (Gough Whitlam, Prime Minister). A 1976 Senate Committee report stated that 'by being in Vietnam, Australia incurred a residual responsibility, not to mention a moral responsibility, to assist in the evacuation from Vietnam of those who had assisted our forces there and whose lives were believed to be in danger because of this assistance': Senate Standing Committee on Foreign Affairs and Defence, *Australia and the Refugee Problem* (1976).

[61] Announcement of scheme in 2012, cited in Thom (n 60) 16.

[62] See Senate Interim Report (n 21) paras 6.38ff, citing evidence from GAP Veteran and Legal Services (para 6.110) that they were 'a manifest failure'.

[63] Ibid, para 6.136, citing GAP Veteran and Legal Services, *Submission 18*, 22; see also para 6.137, citing Forsaken Fighters Australia, *Submission 58*, 5.

[64] For a detailed analysis of visa programmes and processing with respect to Afghanistan more generally, including the very slow processing times compared to need, see Senate Committee Final Report (n 1) ch 4; paras 7.39–70. For criticism of the slowness of the process, see esp paras 4.50ff, 4.73ff.

[65] Migration Regulations 1994 (Cth), item 449.221.

[66] Senate Interim Report (n 21) para 5.114, citing Home Affairs, *Submission 19*, 14.

[67] Ibid, para 5.119, citing DFAT, *Submission 22*, 5.

[68] Ibid, para 5.102, citing Home Affairs, *Submission 19*, 5.

[69] This can also work as an advantage at times, including because the authorities already have a sense of whom they are assisting. This should mean that if health and security checks cannot be carried out in full prior to departure, they could be done on arrival in Australia.

[70] 'The first step in receiving a Temporary Humanitarian Concern visa is to be granted a Subclass 449 visa. While the 449 visa will be granted for a six-month period, the Department intends to transition Ukrainian nationals to a subclass 786 visa as soon as possible, pending health checks, where required': Refugee Council of Australia, 'Information for People Fleeing Ukraine' (23 May 2023) https://www.refugeecouncil.org.au/information-for-people-fleeing-ukraine/.

[71] Refugee Council of Australia, 'Letter to Immigration Minister regarding Palestinian Visa Refusals' (14 June 2024) https://www.refugeecouncil.org.au/letter-to-immigration-minister-regarding-palestinian-visa-refusals/.

[72] Ibid; see also Tom Crowley, 'Dutton Says People Fleeing Gaza Should Not Be Granted a Visa, as Figures Reveal Most Being Refused' (*ABC News*, 14 August 2024) https://www.abc.net.au/news/2024-08-14/dutton-says-people-fleeing-gaza-should-not-a-granted-a-visa/104222320. Arguably, the government did create a 'special regime' by granting visitor visas to people who would normally be ineligible; the problem is that they are not protection-focused and do not give people access to support and services.

[73] Karen Middleton, 'Labor Extends Work and Medicare Rights to Some Visa-Holders from Gaza and Israel' (*The Guardian*, 23 August 2024) https://www.theguardian.com/australia-news/article/2024/aug/23/labor-quietly-extends-work-and-medicare-rights-to-some-visa-holders-from-gaza-and-israel.

[74] In all cases, an application for such a visa should be without prejudice to any other visa, including a protection visa.

[75] For instance, when conflict broke out in Sudan, Sudanese nationals already in Canada were permitted to extend their temporary status without paying a fee, and to apply for fee-exempt study permits and open work permits: 'IRCC, Deputy Minister, Transition Binder, 2024' (n 10).

[76] See also Chris Field, 'Non-Combatant Evacuation Operations: Six Ideas from August 2021' (*The Cove*, 10 February 2022) https://cove.army.gov.au/article/non-combatant-evacuation-operations-six-ideas-august-2021. The list includes defining evacuation policies, priorities and requirements, which involves identifying '[e]vacuees who are "at risk" but who are not Australian or approved foreign national citizen or visa holders'. See also AUSRECEPLAN (n 11).

[77] 'A previous **humanitarian visa programme**, administered directly by the [French] government, running from 2012 until 2016, allowed for the self-referral, mostly via relatives, of 8,900 Syrians and Iraqis': Violeta Moreno-Lax, *A Model Instrument for an Emergency Evacuation Visa* (International Bar Association, 2019) 60, referring to ICMC, *Private Sponsorship in Europe – Expanding Complementary Pathways for Refugee Resettlement* (September 2017) 21.

[78] Janet Phillips, *Australia's Humanitarian Program: A Quick Guide to the Statistics since 1947* (Parliamentary Library of Australia, updated 17 January 2017) 3.

[79] Refugee Council of Australia 2023 (n 48).

[80] Barry York, *Australia and Refugees, 1901–2002: An Annotated Chronology Based on Official Sources* (Commonwealth of Australia, 2003) 45. As York explains at 16–17, in 1975, Australia assisted around 2,000 spouses and children of Vietnamese students already in Australia; spouses and children (under 21 years) of Australian citizens; and Vietnamese people with a long and close association with Australia's presence in Vietnam whose lives were considered to be in danger. In 1976, Australia granted visas to displaced Lebanese and Palestinian relatives of Australian residents who had suffered extreme hardship as a result of the war in Lebanon.

[81] *Immigration and Refugee Protection Act* (SC 2001, c 27) s 25.2(1). The Minister may also grant a 'foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected': s 25.1(1).

[82] Canadian Council for Refugees (n 2) 4.

[83] Ibid, 5.

[84] Senate Interim Report (n 21) para 7.57, referring to Medical Association for the Prevention of War (Australia), *Submission 40*, 2; Australian Muslim Women's Centre for Human Rights, *Submission 44*, 8; Women's International League for Peace and Freedom Australia, *Submission 47*, 3. See also paras 7.75–7.77, 7.100ff.

[85] Refugee Council of Australia 'Letter' (n 71).

[86] Senate Committee Final Report (n 1) ch 4, paras 7.39–70.

[87] For example, the US TPS programme provides an initial three-year stay, although it does not independently provide a pathway to permanency. However, Canada's Temporary Resident Visa for Ukrainians generally allows for an initial three-year stay and provides a pathway to permanent residency for Ukrainians with family in Canada (https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures.html). In the EU, the Temporary Protection Directive generally allows for a residence permit of one to three years, as well as access to asylum procedures (https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en).

[88] Canada is also 'considering a set of monitoring and assessment criteria to inform ongoing analysis of emerging crises': IRCC, 'IRCC Minister Transition Binder 2023: Crisis Response' (last modified 23 November 2023) https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/transition-binders/minister-2023/crisis.html.

[89] 'If temporary status is offered, it is important that there be a pathway – known from the outset – to permanent status, for those who will want to remain in Canada. Otherwise people live with high degrees of uncertainty, which adds to the trauma of the displacement in the context of crisis': Canadian Council for Refugees (n 2) 3.

[90] Senate Interim Report (n 21) para 7.37, citing Department of Home Affairs, 'Afghanistan Update: Information for Afghan Evacuees in Australia on Subclass 449 Visas', Afghanistan update (homeaffairs.gov.au) (accessed 12 November 2021).

[91] Ibid.

92 'Ukrainians and their families who are in Australia and wish to extend their stay can also access standard visa pathways, including the skilled, family, student and visitor visa programs': Department of Home Affairs, 'Ukraine Visa Support' (last accessed 14 August 2024) https://www.homeaffairs.gov.au/help-and-support/ukraine-visa-support.

93 See eg Zachary Steel et al, 'Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees' (2006) 188 *The British Journal of Psychiatry* 58; Mary Anne Kenny, Nicholas Proctor and Carol Grech, 'Mental Deterioration of Refugees and Asylum Seekers with Uncertain Legal Status in Australia: Perceptions and Responses of Legal Representatives' (2023) 69 *International Journal of Social Psychiatry* 1277; Nicholas Proctor et al, 'Lethal Hopelessness: Understanding and Responding to Asylum Seeker Distress and Mental Deterioration' (2018) 27 *International Journal of Mental Health Nursing* 448; Sarah Mares et al, 'Impact of COVID-19 on the Mental Health Needs of Asylum Seekers in Australia' (2021) 29 *Australasian Psychiatry* 1.

94 8 CFR § 274a.12(a)(12).

95 US Citizenship and Immigration Services, 'Certain Afghan Parolees Are Employment Authorized Incident to Parole' https://www.uscis.gov/newsroom/alerts/certain-afghan-parolees-are-employment-authorized-incident-to-parole (last accessed 28 August 2024). See also 8 USC 1157.

96 Government of Canada, 'Crisis in Gaza: Extended Family Arriving in Canada' https://www.canada.ca/en/immigration-refugees-citizenship/services/israel-west-bank-gaza-2023/gaza-tr-measures/in-canada.html (last accessed 28 August 2024); Government of Canada, 'Crisis in Israel, the West Bank and the Gaza Strip' https://www.canada.ca/en/immigration-refugees-citizenship/services/israel-west-bank-gaza-2023.html (last accessed 28 August 2024).

97 European Commission, 'Temporary Protection' https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en (last accessed 28 August 2024).

98 See Tamara Wood and Claire Higgins, *Special Humanitarian Intakes: Enhancing Protection through Targeted Refugee Resettlement* (Kaldor Centre Policy Brief 7, December 2018) 1.

99 Senate Interim Report (n 21) para 7.69, citing Asylum Seeker Resource Centre, *Submission 60*, 12.

100 See ibid, paras 7.59ff.

101 Wood and Higgins (n 98) 2.

102 Claire Higgins and Guy S Goodwin-Gill, *Submission 41* to the Senate Committee Inquiry into Australia's Engagement in Afghanistan (8 October 2021) para 1, referring to Address by the Honourable Marc Garneau, PC, MP, Minister of Foreign Affairs of Canada at the General Debate of the 76th United Nations General Assembly (27 September 2021); US Department of State, *Report to Congress on Proposed Refugee Admissions for Fiscal Year 2022* (20 September 2021) https://www.aph.gov.au/DocumentStore.ashx?id=6b85806f-2609-4c4c-9e4e-00a3d6af1293&subId=715443.

103 Senate Interim Report (n 21) para 9.99.

104 Higgins and Goodwin-Gill (n 102) para 2; Refugee Council of Australia, *2022–23 Federal Budget: What It Means for Refugees and People Seeking Humanitarian Protection* (no date)

https://www.refugeecouncil.org.au/wp-content/uploads/2022/03/2022-23-Budget-summary-1.pdf.
See also Senate Interim Report (n 21) paras 7.59ff. For a detailed analysis of how this operated
with respect to applicants from Afghanistan, and a breakdown of numbers and visa classes, see
Senate Interim Report (n 21) ch 7.

[105] Senate Interim Report (n 21) para 9.101.

[106] See ibid, para 7.39.

[107] According to UNHCR, whereas evacuations are commonplace in disasters, in armed conflicts
they are 'strictly a measure of last resort' when other live-saving protection and assistance
measures are unattainable: UNHCR, 'Guidance Note 9: Humanitarian Evacuations' in *Handbook
for the Protection of Internally Displaced Persons* (UNHCR 2007) 137. At times, International
Humanitarian Transfer or Evacuation Programmes have been used for 'individuals or groups of
persons at particular risk of imminent attack or serious human rights violations into another
country': ibid, 138.

[108] At that time, 'Operation Safe Haven' constituted Australia's largest single humanitarian
evacuation (around 4,000 people) and marked the first time that Australia had evacuated refugees
to the country for temporary respite rather than resettlement. See further Margaret Piper,
'Operation Safe Haven: A New Era in Temporary Protection' (1999) 75 *Australian Law Reform
Commission Reform Journal* 33, 33.

[109] Senate Interim Report (n 21) para 5.69, referring to Home Affairs, *Submission 19*, 16.

[110] Ibid, para 5.58.

[111] Ibid, para 5.41, citing Defence, Answers to Questions on Notice from Public Hearing held 11
October 2021, Canberra (received 26 October 2021), Question No 12. It was noted that the ADF
'engage[s] closely, particularly in defence circles, with the United States and the UK on what we
would call non-combatant evacuation operations on a regular basis': para 5.52, citing Committee
Hansard (15 November 2021) 36. See also Field (n 76).

[112] Field (n 76).

[113] Ibid.

[114] US Transportation Command, 'Afghanistan Evacuation Support' (no date)
https://www.ustranscom.mil/cmd/neo.cfm. During the Vietnam War, the US similarly evacuated
thousands of Cambodian and South Vietnamese refugees to US military facilities in the western
Pacific and within the US where they were afforded temporary care and were processed for
resettlement either in the US or a country of their choice: Comptroller General of the US,
Evacuation and Temporary Care Afforded Indochinese Refugees – Operation New Life (Report to
Congress, 1 June 1976) 2.

[115] Field (n 76).

[116] Senate Interim Report (n 21) para 6.17, citing Mr David Wilden, First Assistant Secretary,
Refugee, Humanitarian and Settlement Division, Department of Home Affairs, Senate Legal and
Constitutional Affairs Legislation Committee, Estimates Hansard (25 October 2021) 95.

[117] Canadian Council for Refugees (n 2) 3.

[118] Senate Interim Report (n 21) para 7.49.

[119] Senate Final Report (n 1) para 5.25ff. 'The closure of the Australian Embassy in May 2021 contributed to the chaos, fear and anguish experienced by the Afghan people immediately following the Taliban takeover in August. Desperate for their lives and safety, people had little or no recourse to diplomatic assistance or advice as to how to apply for humanitarian assistance or visas to seek refuge in Australia': para 5.30, citing Support Association for the Women of Afghanistan (SAWA) Australia, *Submission 14*, 2.

[120] Ibid, para 4.39.

[121] See eg US Department of Defense, 'Noncombatant Evacuation Operations: Necessary and Recommended Items for Evacuation' (August 2011) 2 https://www.ramstein.af.mil/Portals/6/documents/Spouces/AFD-120709-003.pdf?ver=2016-04-15-135410-923.

[122] Senate Interim Report (n 21) vii, Recommendation 3, para 9.56. See also para 5.64, referring to Home Affairs, Answers to Questions on Notice from Public Hearing held 11 October 2021, Canberra (received 25 October 2021), Question No 23.

[123] The Canadian Council for Refugees (n 2) 7 has made similar recommendations about the need for flexible measures.

[124] The Senate inquiry into Afghanistan acknowledged that '[l]eniency must also be granted in relation to visa application processes, given it is nigh on impossible for visa applicants in Afghanistan to meet normal requirements for health checks, biometric checks, and so on under the current circumstances in the country. If there is insufficient flexibility in the current system to accommodate this, the Government should consider introducing a separate visa category for Afghan applicants to reduce these administrative barriers': Senate Committee Final Report (n 1) para 7.69.

[125] Moreno-Lax (n 77) 11, 76ff.

[126] Ibid, 74, referring to Elca Stigter and Helen Morris, *Evaluation of Emergency Transit Centres in Romania and the Slovak Republic* (UNHCR, PDES/2016/02, 2016) 2 para 7.

[127] Wood and Higgins (n 98) 18–19, referring to IRCC, Research and Evaluation Branch, 'Operation Syrian Refugees: An Overview of Canada's Resettlement Initiative and Early Outcomes' (Draft, March 2018) 4, 7.

[128] Government of Canada, 'Operation PROVISION' (13 December 2018) https://www.canada.ca/en/department-national-defence/services/operations/military-operations/recently-completed/operation-provision.html.

[129] Australian Security Intelligence Organisation, 'ASIO's Security Assessment Function' (no date) https://ngm.com.au/wp-content/uploads/2021/11/ASIOs-Security-Assessment-Function.pdf; Agreement between the Government of Australia and the Government of the United States of America for the Sharing of Visa and Immigration Information (12 December 2014); Memorandum of Understanding between the Department of Citizenship and Immigration of Canada and the Canada Border Services Agency and the Department of Immigration and Border Protection of the

Commonwealth of Australia regarding the Exchange of Information (6 September 2016); Memorandum of Arrangement between the Government of New Zealand as represented by the Ministry of Business, Innovation and Employment (Immigration New Zealand) and the Commonwealth of Australia as represented by the Department of Immigration and Border Protection Regarding the Exchange of Information (6 September 2016); Memorandum of Understanding between the Commonwealth of Australia represented by the Department of Immigration and Border Protection and the United Kingdom of Great Britain and Northern Ireland represented by the Home Office regarding the Sharing of Information (6 September 2016).

[130] US Citizenship and Immigration Services, 'Information for Afghan Nationals on Requests to USCIS for Parole' (1 April 2024) https://www.uscis.gov/humanitarian/humanitarian-parole/information-for-afghan-nationals-on-requests-to-uscis-for-parole (although this refers to Afghanistan, this practice is used more widely).

[131] Senate Interim Report (n 21) para 5.84, citing DFAT, Answers to Questions on Notice from Public Hearing held 11 October 2021, Canberra (received 28 October 2021), Question No 39. 'Evacuees flown out of Kabul were flown to a staging area that had been established at Al Minhad Air Base (AMAB) in the UAE, which is the ADF's main logistics support base in the Middle East. Defence submitted that the use of Australia's main logistics hub at AMAB involved the "short-notice establishment of temporary facilities to accommodate, feed, and provide medical care for several thousand evacuees, before moving to Australia"': para 5.60.

[132] Ibid, para 5.110, citing Home Affairs, *Submission 19*, 15. For further detail, see Senate Final Report (n 1) ch 5.

[133] Senate Interim Report (n 21) para 5.115, citing Home Affairs, *Submission 19*, 13.

[134] Ibid, para 5.112, citing Home Affairs, *Submission 19*, 15.

[135] See eg Senate Committee Final Report (n 1) para 7.65.

[136] 'IRCC, Deputy Minister, Transition Binder, 2024' (n 10).

[137] AUSRECEPLAN (n 11) para 4.2.4.

[138] Government of Canada, 'Operation PROVISION' (last modified 29 July 2024) https://www.canada.ca/en/department-national-defence/services/military-history/history-heritage/past-operations/middle-east/operation-provision-2015.html; Government of Canada, 'Operation PROVISION' (archived; last modified 13 December 2018) https://www.canada.ca/en/department-national-defence/services/operations/military-operations/recently-completed/operation-provision.html.

[139] Government of Canada 2018 (n 138).

[140] C Todd Lopez, 'DOD Building Capacity to Support up to 50,000 Afghan Evacuees' (*US Department of Defense News*, 27 August 2021) https://www.defense.gov/News/News-Stories/Article/Article/2754008/dod-building-capacity-to-support-up-to-50000-afghan-evacuees/, citing Air Force General Glen D VanHerck, commander of US Northern Command.

141 Camilo Montoya Galvez et al, 'US Housing 20,000 Afghan Evacuees in 5 States, with Another 40,000 Overseas' (*CBS News*, 1 September 2021) https://www.cbsnews.com/news/afghanistan-evacuees-us-housing-17000-in-5-states-40000-overseas/.

142 Refugee Council of Australia 2000 (n 6) 19 (fns omitted).

143 Ibid, 21.

144 Ibid, 19.

145 Stigter and Morris (n 126) para 19.

146 Refugee Council of Australia 2024 (n 3) 5. For recommendations in the US context, based on the experiences of Afghan evacuees, see Alexandria J Nylen et al, *'Then, We Lost Everything:' Afghan Evacuee Experiences of Operation Allies Refuge and Operation Allies Welcome* (Center for Human Rights and Humanitarian Studies and the Refugee Dream Center, April 2023).

147 Senate Interim Report (n 21) para 7.114: this was offered to all who were evacuated from Afghanistan.

148 Ibid, para 7.115, citing Home Affairs, *Submission 19*, 17.

149 Ibid, para 7.114; see also para 7.120, citing Refugee Council of Australia, *Submission 59*, 3.

150 Note that the government did extend work rights and Medicare access to some visa holders from Gaza in August 2024, suggesting its acknowledgment of the challenges faced by people without such entitlements: Middleton (n 73).

151 Senate Interim Report (n 21) para 7.116, citing Home Affairs, *Submission 19*, 17.

152 Ibid, para 7.117, citing Home Affairs, *Submission 19*, 17.

153 Refugee Council of Australia 2000 (n 6) 18 (fn omitted): 'There is a irony in the fact that much store was placed on cultural briefing for those working with the Kosovars but efforts to reciprocate came very late and never reached fruition'.

154 Ibid, 20.

155 Ibid, 18.

156 Note the cessation clauses in the Convention relating to the Status of Refugees, 189 UNTS 137 (adopted 28 July 1951, entered into force 22 April 1954) art 1C(5)–(6).

157 Mary Anne Kenny, Nicholas Procter and Carol Grech, *Temporary Protection Visas in Australia: A Reform Proposal* (Kaldor Centre Policy Brief 13, June 2022) 1. See also citations there in endnote 1: Elizabeth Newnham et al, 'The Mental Health Effects of Visa Insecurity for Refugees and People Seeking Asylum: A Latent Class Analysis' (2019) 64 *International Journal of Public Health* 763; Procter et al (n 93); Mary Anne Kenny, Carol Grech and Nicholas Procter, 'A Trauma Informed Response to COVID-19 and the Deteriorating Mental Health of Refugees and Asylum Seekers with Insecure Status in Australia' (2022) 31 *International Journal of Mental Health Nursing* 62; Anna Ziersch et al, 'Temporary Refugee and Migration Visas in Australia: An Occupational Health and Safety Hazard' (2021) 51 *International Journal of Health Services* 531.

158 See Kaldor Centre for International Refugee Law, *Kaldor Centre Principles for Australian Refugee Policy: Summary and Key Priorities* (revised March 2022) 11.

159 Refugee Council of Australia 2000 (n 6) Recommendation 20.

160 Refugee Council of Australia 2024 (n 3) 6.

161 Ibid.

162 See further Claire Higgins, *Safe Journeys and Sound Policy: Expanding Protected Entry for Refugees* (Kaldor Centre Policy Brief 8, November 2019) 10: 'Applicants' claims for protection may be fully assessed before departure or, alternatively, applicants may undergo pre-screening and then receive permission to move to a transit country where they complete the assessment process, or to travel directly to the destination country as an asylum seeker who must lodge their claim for protection on arrival'. See also European Parliament, *Report with Recommendations to the Commission on Humanitarian Visas* (2018/2271(INL)), A8-0423/2018, 4 December 2018); *Humanitarian Visas: European Added Value Assessment Accompanying the European Parliament's Legislative Own-Initiative Report (Rapporteur: Juan Fernando López Aguilar)* (European Parliamentary Research Service, October 2018).

163 Moreno-Lax (n 77) 57. See further Recommendation 5.

164 Higgins (n 162) 6.

165 US Citizenship and Immigration Services, 'Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans' (last updated 11 October 2023) https://www.uscis.gov/humanitarian/frequently-asked-questions-about-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans.

166 Wood and Higgins (n 98) 10ff. For details of emergency resettlement in practice, including to Australia, see Moreno-Lax (n 77) 69ff.

167 The Australian government expressly states that it will not accept people still in Afghanistan for resettlement: Department of Home Affairs, 'Afghanistan Update' (last accessed 14 August 2024) https://www.homeaffairs.gov.au/help-and-support/afghanistan-update.

168 UNHCR, 'Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities' (Information Note and Recommendations from UNHCR, 19 May 2010) 6 (fn omitted).

169 In 2009, for instance, the average time taken between UNHCR submission and departure was five months: ibid.

170 Moreno-Lax (n 77) 68.

171 Ibid, 70.

172 Ibid. This is similar to 'humanitarian corridors'.

173 Ibid.

174 Ibid, 79.

175 'A Statement by Argentina' (n 4).

176 Ibid.

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