

Submission to the Department of Home Affairs (DHA) Discussion Paper on Australia's Humanitarian Program 2019-2020,

**Jesuit Refugee Service (JRS) Australia
March 2019**

About Jesuit Refugee Service (JRS)

An international organisation

Jesuit Refugee Service (JRS) is an international Catholic organisation, founded in 1980 as a social ministry of the Society of Jesus ("the Jesuits").

Seeking social justice for refugees worldwide: JRS' mission is to accompany, serve, and advocate for the rights of refugees and other forcibly displaced people worldwide.

Programs offering global support: JRS works in 52 countries, assisting refugees, people seeking asylum and other displaced people in camps, detention centres, war zones and urban settings. JRS' programs focus on access to education, emergency assistance, healthcare, livelihood activities and social services.

At the end of 2016, more than 733,400 individuals worldwide were direct beneficiaries of JRS projects.

JRS in Australia In 2017 – 2018, JRS Australia served more than 3,000 refugees and people seeking asylum with emergency assistance, temporary shelter, a foodbank, professional casework, community activities, employment support, school engagement, legal advice, targeted advocacy, and a project to support the empowerment of women seeking asylum.

Strong local alliances: JRS Australia has strong links with parishes, communities and schools across Australia, religious orders, local and state governments, refugee organisations, campaigns and coalitions, and other organisations in the community in the not for profit and education sectors.

A global presence: JRS Australia maintains an active presence on policy development and advisory forums in the Asia-Pacific region, and at the global level, participating in international campaigns and coalitions and contributing to UN forums.

A stronger voice for refugees: Advocacy is a central pillar of JRS' work. JRS' advocacy is characterised by the following principles:

- It stems directly from our close engagement with refugees and others forcibly displaced
- It flows from **accompaniment** and **service** and is linked to JRS projects
- It is based on **Jesuit values, inspired by Ignatian spirituality**
- It is built on solid research.

JRS Australia's advocacy takes a number of forms including research and commentary, policy development, lobbying, and grassroots engagement with community members.

Introduction

Jesuit Refugee Service (JRS) Australia welcomes the opportunity to provide feedback on the Department of Home Affairs (DHA) Discussion Paper on Australia's Humanitarian Program 2019 - 2020.

Our feedback is focused on the following areas:

- Onshore protection
 - Processing delays and access to services
 - Visa grant rates and surge in applications
 - Improving responses to sexual and gender based violence (SGBV)
 - Family reunion
- Offshore protection
 - The composition of Australia's humanitarian program and complementary pathways
 - Protecting refugees in the ASEAN region
- Adopting and implementing the Global Compact for Safe, Orderly, and Regular Migration (GCM) and the Global Compact on Refugees (GCR)

JRS Australia would be happy to provide further comment or clarification on any of the points below.

1. Onshore Protection

Processing delays and access to services

1.1 JRS Australia is currently working with 701 onshore protection applicants in NSW. This cohort is encountering average wait times of over 1.5 - 2 years for primary Departmental interviews.

1.2 The majority of these applicants hold a Bridging Visa A (BVA) or a Bridging Visa C (BVC) with work rights. In JRS Australia's experience, whereas many BVA or BVC-holders find some form of employment in Sydney or in regional NSW, others find it very difficult to access employment and some are unable to secure a job.

1.3 There are many well-known reasons why people seeking protection onshore may not be able to find safe and sustainable employment. These include the lack of recognition of legal status or previous qualifications by employers; the lack of English language or literacy skills; the lack of local work experience in Australia; serious mental illnesses and ongoing trauma or physical disabilities, that have in some cases worsened in Australia; single parenthood and the lack of affordable childcare services; and lack of ongoing safety due to risk of domestic and/or family violence (DV/FV) and other forms of SGBV.

- 1.4 Others are unwilling to work in non-contract, cash-in-hand arrangements, both for fear of reprisal by Home Affairs, and because of unsafe work conditions in kitchens, on construction sites, and on farms.
- 1.5 The very real challenges of unemployment are now compounded by changes to the Status Resolution Support Service (SRSS), which make it harder for onshore protection applicants in vulnerable circumstances to access basic support services.
 - 1.5.1 JRS Australia is aware of multiple cases in which people arriving by plane have been refused an initial assessment for SRSS by either a contracted provider or DHA.
 - 1.5.2 Applicants have been found to be work-ready where they are clearly unable to sustain ongoing work.
 - 1.5.3 JRS Australia is also aware of cases in which persons have been refused initial SRSS assessments because they still hold a long term substantive visa. These individuals have been told that they will not be eligible for SRSS until their substantive visa expires, sometimes years later.
 - 1.5.4 The assumption that a person is likely to be financially and materially self-sufficient simply because they have previously had to provide evidence of financial capacity in order to obtain a substantive visa to enter Australia (eg. a tourist visa) is problematic. Financial circumstances can change, when for example, a family splits up, a person loses employment, or they are no longer able to access funds from their country of origin.
 - 1.5.5 By definition, if a person submits a protection application, it must be assumed that their life circumstances have changed, and that in most cases they no longer necessarily meet the financial requirements on the basis of which they were granted a previous substantive visa (eg. tourist, skilled regional etc.).
- 1.6 The risk of housing insecurity, homelessness and destitution for onshore protection applicants who are unable to work *and* deemed ineligible to obtain SRSS is growing and this has been clearly reflected in increased demand for our services including JRS' foodbank and in higher rates of hunger and destitution.

CASE STUDY 1: Bismah and Nadir came to Australia with their two children in 2014. Nadir was granted a skilled regional visa and Bismah travelled as a dependent. In 2016, Nadir developed a serious illness, which saw him hospitalised and rendered him unable to work for a number of months. When he was discharged from hospital, he was advised against doing any strenuous activity and could not continue working. Nadir and Bismah suddenly no longer had a stable source of income. They considered returning to the Middle East. In 2012, authorities in his home country had

tortured Nadir. In 2016, the security situation had deteriorated to the point where the family felt that they would not be safe upon return. Nadir and Bismah applied for protection in Australia. They applied for SRSS but their application was rejected on the basis that Bismah was well enough to work and that childcare was not a barrier to employment. Today Bismah relies on financial support and food bank services to supplement the meagre income she receives working casually in a kitchen. She also cares for her sick husband and two primary-school age children, and therefore can only work a few hours per week early in the morning or late at night. Bismah is unable to sleep for long periods of time, has developed a persistent lower back pain, and has now been referred to a psychiatrist.

- 1.6.1 The majority of people residing at JRS Australia’s homeless shelter at King’s Cross, Sydney are onshore protection applicants who have been unable to find employment.
- 1.6.2 JRS frontline staff members note that clients affected by the changes to SRSS eligibility are “just getting by; couch surfing or sleeping rough; and heavily indebted to community members.” JRS Australia food bank staff also report demand for essential food items is 60% higher in the 1st quarter of 2019 than during the same period in 2018.¹
- 1.6.3 A recent research report commissioned by Refugee Council of Australia (RCOA) and partners including JRS Australia entitled “An Unnecessary Penalty: Economic Impacts of the changes to Status Resolution Support Services (SRSS),” points to similar trends at national scale.
 - 1.6.3.1 As part of the research, a survey of 24 major NGOs serving approximately 19,100 people seeking asylum nationally found that 79% of people on their case loads are not ‘work ready’, and that more than 66% have either not been able to find work or are not in the job market due to care requirements, old age, or health issues.²

¹ Although these statistics are not disaggregated by mode of arrival, stricter SRSS eligibility requirements and many of the challenges of finding safe and sustainable employment apply to plane and boat arrivals. It is important to note that people who are referred to our frontline services are generally in the most vulnerable and challenging situations, and that these figures are likely skewed towards a cohort of people with the highest needs.

²As at February 2018, the government declared its intention to reduce the number of people on SRSS nationally from 13,000 to 5,000, a cut of more than 50%. Such a drastic reduction would have ensured that people deemed not to be work ready by civil society would have lost SRSS. Although nowhere near as many people have been cut off the program so far, any reduction in the future without significant investment in the volume and type of employment support offered will achieve the same result: a higher number of people at risk of homelessness and destitution.

https://www.refugeecouncil.org.au/wpcontent/uploads/2018/06/SRSS_economic_study_FINAL.pdf

1.6.3.2 At the same time, the organisations surveyed collectively spend 42% of their total budgets on emergency relief services to this same cohort of people seeking asylum.

1.6.3.3 The research reaffirms that individuals who are not ‘work-ready’ are at greater risk of housing insecurity, homelessness and destitution if excluded from the SRSS program.

- 1.6.4 For the significant proportion of onshore protection applicants who go on to attain permanent residence and ultimately become Australian citizens, periods of housing insecurity, homelessness, and destitution necessitate higher levels of settlement support for longer periods of time at greater costs to the taxpayer.
- 1.6.5 The shorter term, more immediate costs of emergency service call-outs, hospital admissions, beds at homeless shelters, and emergency relief lie with state governments, LGAs, and frontline service providers, all of who depend on taxpayer money or donations.³

1.7 In this context the timely processing of onshore protection applications is crucial. Applicants who are unable to find employment must be provided ongoing access to the SRSS and additional support, including crisis housing and subsidized pharmaceutical payments where required.

Recommendation 1: That the Australian government and DHA devote additional financial resources in the DHA’s annual budget to process onshore protection visa applicants so that the time people seeking asylum spend on bridging visas and the accompanying material and emotional limbo is minimized.

Recommendation 2: That the Australian government and DHA consider de-linking the number of onshore protection grants from the overall humanitarian program quota of 18,750 or that DHA identifies a higher annual target for granting of onshore protection visas.

Recommendation 3: That the Australian government and DHA remove restrictions on long term substantive visa holders (eg. forms of partner or dependent visas) accessing SRSS after they have applied for protection.

³ ‘An Unnecessary Penalty’ denotes that cuts to SRSS shift significant costs from the Commonwealth to states and community-based organisations. State governments, in particular, face significant additional costs in health, corrections, and homelessness services to the tune of between \$80 million and \$120 million per annum.

https://www.refugeecouncil.org.au/wpcontent/uploads/2018/06/SRSS_economic_study_FINAL.pdf

Recommendation 4: That the DHA meets expert civil society representatives and leaders with lived experience to develop transparent and human-rights compliant guidelines for assessing ‘work readiness’ and a blueprint for specialist and more effective employment services for people seeking asylum.

Visa grants and surge in applications

1.8 There has been a decline in the number of onshore protection visa application grants between 2016-2017 and 2017-2018 despite a significant increase in applications within the same timeframe.

1.8.1 JRS Australia notes that the most significant increases in applications came from China and Malaysia, from whom grant rates are 10% and 2% respectively.

1.8.2 Based on JRS Australia’s experience with Chinese and Malaysian people seeking asylum on the ground, it is important to reiterate that many have complex, multi-dimensional claims pertaining to religious persecution, membership of discriminated social groups such as LGBTIQ communities, and forms of gendered violence perpetrated or condoned by family, ethnic community, and authorities alike.

1.8.3 JRS Australia reiterates the need for a common Refugee Status Determination (RSD) process with departmental interviews, full rights to independent merits review via the Administrative Appeals Tribunal (AAT), and access to judicial review in line with the established standards of procedural fairness and individualised merits assessments.

1.9 JRS Australia also urges caution in the characterization of the recent surge of applications from Malaysia and China *exclusively* as a ‘border protection’ or ‘people smuggling’ challenge. According to our experience on the ground, the situation is not as simple.

1.9.1 JRS Australia notes significant labour supply challenges in some Australian industries and geographical regions that generate both the trafficking and exploitation of migrant workers from East and South East Asian countries via a range of visa pathways. Recognising the structural, economic dimensions of the problem, and that migrants involved may both have protection claims, but may also require support to address the health and safety consequences of trafficking, slavery, or exploitation is part of addressing this policy challenge.

Recommendation 5: That the Australian government and DHA consider the formation of an expert working group comprised of industry bodies, unions, NGOs working on trafficking, slavery, and forced migration and diaspora organisations to better understand and address the complex overlaps between asylum policy, trafficking and undocumented labour migration in Australia.

Responses to sexual and gender based violence (SGBV) onshore

1.10 JRS Australia acknowledges and welcomes the grant of 2,126 visas to women in vulnerable situations and their families under the ‘Women-At-Risk (subclass 204)’ segment of the 2017-2018 humanitarian program.

1.11 JRS Australia reiterates that such a commitment to the protection of women at risk of violence or who are survivors of SGBV should extend to temporary visa holders, including women seeking asylum who are already in Australia.

CASE STUDY 2: Many people JRS works with report that their visa status is a significant barrier to accessing support and services when experiencing SGBV in Australia:

“Most places I remember, you cannot just walk in and say this is me...they will ask you which visa you are under. And if you tell them I’m on a Bridging Visa E for example...they’ll say you can’t get service from here, you’ll have to try somewhere else...or they’d say “oh I spoke to this place and the only problem was your visa, because you are on a Bridging Visa...I am a human being. I need to get out of this relationship. I mean I understand that I’m from a foreign country, but you know, domestic violence is domestic violence.”

1.11.1 A recent pilot study by JRS Australia, entitled ‘Free from Violence Against Women and Girls’ (VAWG), highlights the many challenges women seeking asylum and on other forms of temporary visa in Australia face in reporting, navigating, and ultimately protecting themselves from sexual and gender based violence.⁴ These include:

1.11.1.1 The ways in which SGBV in countries of origin impact on a woman’s ability to trust authorities and seek help in Australia.

1.11.1.2 Fears that reporting domestic or family violence will be logged with DHA and impact upon the person’s grant of a protection visa, their detention, or their deportation, especially in circumstances when the perpetrator is the primary protection visa applicant.

⁴ “Free from Violence against Women and Girls (VAWG).” Sydney: Jesuit Refugee Service (JRS) Australia, Stephanie Beckwith <<https://www.jrs.org.au/wp-content/uploads/2018/11/Free-from-Violence-Against-Women-and-Girls-VAWG-Report-8.pdf>>

- 1.11.1.3 The reality that while interim or apprehended violence orders (IVOs/AVOs) - which can trigger visa refusals or cancellations and prolonged periods of detention for the perpetrator – could bring physical safety for the woman and her child, but it can create new material challenges for a single mother and conflict amongst family and community in countries of origin.
 - 1.11.1.4 Fears that reporting domestic or family violence in Australia will render them unsafe in their country of origin upon their return.
 - 1.11.1.5 The constant decision-making challenge of balancing the possibility of death or torture from deportation versus the ongoing lived reality of domestic violence.
 - 1.11.1.6 Ineligibility for essential support services such as Centrelink, Medicare, childcare subsidies, access to public/social housing and subsidized NAATI-accredited translating and interpreting services for supporting services.
 - 1.11.1.7 The lack of crisis accommodation for survivors of SGBV and prioritizing of citizens over women on temporary visas or seeking asylum; the lack of knowledge of services, and the lack of specialist training among professionals in the SGBV sector.
 - 1.11.1.8 The lack of social or community support and accompanying isolation for women seek asylum victims or survivors of SGBV that could provide forms of informal wrap-around support in crisis situations.
- 1.11.2 Recent research by Dr. Marie Segrave of Monash University,⁵ by Dr Cathy Vaughan of University of Melbourne⁶ and by National Advocacy Group on Women on Temporary Visas Experiencing Violence,⁷ reaffirms many of these same challenges.
- 1.11.3 In this context, and given the bipartisan support for addressing the high rates of domestic and family violence in Australia, JRS Australia would like to see stronger commitments to support all women at risk of or who are

⁵ Marie Segrave (2017), *Temporary Migration and Family Violence: An Analysis of Victimization, Vulnerability, and Support*. Melbourne: School of Social Sciences, Monash University.

⁶ Cathy Vaughan et al (2016), *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia*. Melbourne: ASPIRE Project, University of Melbourne.

⁷ National Advocacy Group on Women on Temporary Visas Experiencing Violence (2018), *Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children*. Sydney: Domestic Violence NSW.

survivors of these forms of violence regardless of their visa and immigration status.

Recommendation 6: That the Australian government and DHA consult with civil society stakeholders to develop mechanisms for women and girls to be given the option to make separate protection visa applications to their spouses in situations of SGBV

Recommendation 7: That the Australian government follow the UK's example in introducing firewalls between public authorities such as police, hospital administrations, and Centrelink staff and Australian Border Force (ABF) to ensure that survivors or those at risk of SGBV are encouraged to report these crimes without facing immigration consequences.

Recommendation 8: That the Australian government provide additional funding for crisis accommodation in domestic violence refuges, additional funding to specialist CALD SGBV prevention and response services, and additional funding for NAATI-accredited translating and interpreting services for use by women at risk/survivors of SGBV.

Recommendation 9: That the Australian government and DHA consult with civil society stakeholders to consider a.) provision of a new temporary visa subclass for survivors of SGBV in Australia and b.) pathways to permanent residency for survivors of SGBV in the event of demonstrable risks to the woman's or child's safety upon return to the country of origin.

Family Reunion

1.12 There is ample evidence on the importance of family reunification for refugee settlement outcomes. Refugees and other forcibly displaced people require urgent and prioritized access to family reunion because family members often remain in situations of acute danger.

1.13 JRS Australia endorses recommendations put forward in a joint 2017 paper by the Refugee Council of Australia and Australian Lawyers for Human Rights (ALHR).⁸

2. Offshore Protection

Complementary pathways and the composition of Australia's humanitarian program

2.1 JRS Australia welcomes the Australian government's increase in the number of humanitarian program places from 16,250 to 18,750.

⁸ See Sahar Okhovat, Asher Hirsch, Khanh Hoang and Rebecca Dowd, *Rethinking resettlement and family reunion in Australia*, available at <<http://www.refugeecouncil.org.au/wp-content/uploads/2017/12/Rethinking-resettlement-and-family-reunion-in-Australia.pdf>>

2.2 JRS Australia calls for the government to consider a higher proportion of skilled migration places for refugees within Australia's overall migration program. Such a proposal is based on the recognition that many refugees are skilled, and could contribute equally to those classified as skilled migrants, particularly if appropriately selected to fill skill shortages or live in regional areas. Key evidence supporting these ideas is outlined below:

2.3 A number of recent publications highlight the positive links between migration levels and long term economic performance, coupled with concerns about population distribution and the socio-economic costs of increasing urban density in specific LGAs.

2.3.1 For example, *Shaping A Nation: Population Growth and Immigration Over Time* (2018) tells us that migrants of working age who have skills to contribute to the economy create higher rates of workforce participation, productivity benefits, and improvements in the Commonwealth's fiscal position, given migrants are likely to contribute more tax revenue than they claim in social services or government support.⁹ The report also notes that high rates of population growth can heighten existing pressures on infrastructure, housing and the environment.

2.4 A number of recent publications highlight the positive links between migration levels and long term economic performance, coupled with concerns about population distribution and the socio-economic costs of increasing urban density in specific LGAs.

2.4.1 There is growing consensus amongst academic, policy, and INGO communities that refugees are skilled contributors to economies in a variety of settings. 2.4.1 Based on research in Uganda, *Refugee Economies: Rethinking Popular Assumptions* (2014) concludes that refugees are "networked within settlements nationally and transnationally; that refugees often make a positive contribution to the host state economy; that they are economically diverse and have significant levels of internal inequality; and that they are significant users and in some cases creators of technology."¹⁰

2.4.2 In the Australian context, *A Significant Contribution: The Economic, Social, and Civic Contributions of First and Second Generation Humanitarian Entrants* (2011) shows that humanitarian entrants set up their own businesses to a greater extent than other migrant groups; and that they also

⁹ See The Australian Government the Treasury and the Department of Home Affairs, *Shaping a Nation: Population growth and immigration over time*, Canberra: The Treasury, 2018), 1.

¹⁰ See Alexander Betts, Louise Bloom, Josiah Kaplan, and Naohiko Omata, *Refugee Economies: Rethinking Popular Assumptions*, available at <<https://www.rsc.ox.ac.uk/files/files-1/refugee-economies-2014.pdf>>

facilitate the development of trade between Australia and their countries of origin.¹¹

- 2.4.3 Similarly, *Small Towns, Big Returns: Economic and Social Impact of Karen Resettlement in Nhill* (2015) finds that the community's settlement in the small, regional town has generated a total of 70.5 FTE jobs and \$41.5 million in net positive economic impact.
- 2.5 Finally, there is also ample evidence that, if carefully coordinated in advance, refugees are willing and able to settle in regional areas, thereby helping alleviate population and socio-economic decline in particular communities, whilst also easing inequalities in population distribution over the long run.¹²
- 2.6 Such a scheme could be implemented by selecting skilled refugees either through consultations with UNHCR or private organisations such as Talent Beyond Boundaries or Refugee Talent. The scheme would need to sit outside the annual Humanitarian Program quota which is appropriately focused on refugees with significant vulnerabilities.
- 2.7 The cumulative costs and benefits of such a scheme would need to be carefully analysed over the medium and long term, and JRS Australia would welcome further research on these topics.
- 2.8 Another potential pathway to be explored in more detail is for Australia's higher education providers – both universities and vocational education colleges – to increase the number of students from refugee backgrounds who can enrol in courses as international students, either on scholarships or with access to private/government funding.
 - 2.8.1 The Australian Opening Universities for Refugees (OUR) Forum report February 2019 highlights a number of modalities by which such a scheme could be deliberated on and piloted.¹³

¹¹ See Graeme Hugo, *A Significant Contribution: The Economic, Social, and Civic Contributions of First and Second Generation Humanitarian Migrants – Summary of Findings*, available at <https://www.dss.gov.au/sites/default/files/documents/01_2014/economic-social-civic-contributions-booklet2011.pdf>

¹² See Margaret Piper, *Refugee Settlement in Regional Areas: Evidence-based good practice*, available at http://multicultural.nsw.gov.au/about_us/publications/other/; See Jay Song and Daniel Thambar, *Employment as protection: complementary pathways for refugees*, available at <https://www.lowyinstitute.org/the-interpreter/employment-protection-complementary-pathways-refugees>

¹³ Dr Sally Baker and Dr. Caroline Lenette (2019), *Australian OUR Forum, Project Eucalyptus: Post-Forum Report*, Sydney: UNSW, <https://apo.org.au/node/22211/revisions/1270981/view>

- 2.8.2 The report references an existing pilot initiative in Japan, which could form part of the basis for an Australian model. The pilot is a partnership between the Japan International Cooperation Agency (JICA), the Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT) and a number of Japanese universities to provide two different kinds of scholarships to displaced Syrian students residing in Jordan, Lebanon, and Syria. Under the scheme, up to 30 students per year obtain international student visas and full scholarships to study in Japan.
- 2.9 JRS Australia endorses proposals put forward by partner civil society organisations in the Australian Community Refugee Sponsorship Initiative (CRSI), which encourage up to 10,000 community sponsorship places per annum over the next five years, additional to Australia's humanitarian quota.¹⁴
- 2.10 In addition to the necessary focus on climate change mitigation, JRS Australia calls on the Australian government to expand permanent complementary pathways and consider separate visa categories for people displaced by natural disasters and other climate change-induced events in our region.
- Recommendation 10: That the Australian government and DHA hold consultations with industry, union, university and civil society stakeholders about the possible pathways, modalities, funding mechanisms, and challenges of facilitating opportunities for workers and students of refugee background and people affected by climate induced displacement to live, work, and study in Australia.**
- Protecting forcibly displaced peoples in the Asia Pacific region***
- 2.11 According to the UNHCR, the Asia Pacific region is home to more than 7.7 million people of concern to UNHCR, including 3.5 million refugees, 1.9 million IDPs, and 1.4 million stateless people, largely originating from Myanmar and Afghanistan.
- 2.12 JRS Australia calls on the Australian government to take a leading role in responding to forced displacement emergencies in our region whilst working towards longer term regional protection solutions based on the principle of responsibility-sharing, fostering durable solutions, expanding complementary pathways, exerting diplomatic pressure, restructuring aid in line with regional priorities, and facilitating private and INGO investments in refugee communities.
- 2.13 These approaches can be implemented via multilateral forums such as the Bali Process, bilateral discussions, closer cooperation with UNHCR and civil society coalitions such as the Asia Pacific Refugee Rights Network (APRRN). Potential mechanisms could include:

¹⁴ See Community Refugee Sponsorship Initiative, available at <<http://www.ausrefugesponsorship.com.au/the-solution/>>

- 2.13.1 Restarting resettlement of refugees from the region, particularly Rohingyas in Bangladesh (considering the situation of women at risk), and refugees in Indonesia, both as a way of offering durable solutions to people owed protection, and demonstrating political leadership in this public policy arena.
 - 2.13.2 Exploring material, technical, and financial assistance to refugees in countries such as Indonesia to start social enterprises, NGOs, businesses, schools; to enrol in local and online education courses; and to provide essential services amongst the community in host and transit countries.
 - 2.13.2.1 Avenues could include setting aside places within the Australian Volunteers International (AVI) program for placements to support refugee-led organisations in the ASEAN region, or to include refugee-led organisations in national/local grant or funding rounds.
 - 2.13.3 Increasing funding to UNHCR to help them implement longer term protection agendas in line with the guiding principles of the global Compacts.
 - 2.13.4 Cooperating closely with the governments of Indonesia, Malaysia, and Thailand – all of whom have recently demonstrated willingness to recognise and grant rights to specific forced migrant groups in the region (and to develop refugee status determination processes) - to develop key principles for regularising vulnerable migrants' legal status, and offering access to basic services.¹⁵
- 2.14 JRS Australia calls on the government to consider increasing Australia's contribution to international aid efforts in key source and transit countries, including through identifying and supporting key diaspora organisations in peacebuilding, context-specific capacity and skill development initiatives, and growing remittances.
- 2.14.1 Re-evaluating Australia's current priorities is important because, as the Development Policy Centre's Aid Tracker highlights,¹⁶ the vast majority of Australia's aid goes to countries in East Asia and the Pacific, not to major

¹⁵ See Relief Web, *Malaysia in pilot scheme to allow Rohingya refugees to work*, available at <https://reliefweb.int/report/malaysia/malaysia-pilot-scheme-allow-rohingya-refugees-work>; See Relief Web, *UNHCR welcomes Royal Thai Government's commitment to release of detained children in Thailand*, available at <https://reliefweb.int/report/thailand/unhcr-welcomes-royal-thai-government-s-commitment-release-detained-children-thailand>

¹⁶ See Australian Aid Tracker, *How our aid is shared around the world*, available at <http://devpolicy.org/aidtracker/destinations/>

refugee source countries in South and West Asia. Aid allocations to the latter have fallen substantially in the last two years.¹⁷

- 2.14.2 More problematically, aid allocations have also been tied to key offshore processing deals with Papua New Guinea, Nauru, and Cambodia, rather than focusing on reducing risks to displacement and alleviating humanitarian needs.
- 2.14.3 There is growing evidence that established diasporas can play important roles in creating stability and fostering development within countries of origin, and that more can be done to support these communities in Australia.¹⁸

2.15 JRS Australia believes that such emergency humanitarian visa quotas for identified groups with specific vulnerabilities could be regularized and aligned with national interest prerogatives such as helping alleviate crises within host countries in ASEAN, and increasing settlement in rural/regional areas, whilst also catering for small numbers of people in particularly vulnerable situations – women-at-risk, children, or people with severe disability.

3. The implementation of the Global Compacts (GCs)

3.1 JRS Australia welcomes the Australian government's comprehensive engagement with civil society during the Compacts negotiations, and urges future Australian governments to adopt the Global Compact for Safe, Orderly and Regular Migration (GCM). We recognise the importance of the Compacts as key instruments in the future global governance and protection of refugees, other forcibly displaced peoples, and migrants in situations of vulnerability.¹⁹

Mixed Migration

3.2 The New York Declaration for Refugees and Migrants 2016 ('the declaration') clearly recognises the reality of mixed migration. Paragraph 11 "acknowledges a shared responsibility to manage large movements of refugees and migrants in a humane,

¹⁷ [Ibid.](#)

¹⁸See Melissa Phillips, *Are refugee and migrant diasporas the missing piece of the development puzzle?*, available at <https://acfid.asn.au/blog-post/are-refugee-and-migrant-diasporas-missing-piece-development-puzzle>

¹⁹ For a more detailed exposition of the reasons why Australia should adopt the GCM, see Carolina Gottardo, *Migration compact will benefit Australia*, available at <<https://www.eurekastreet.com.au/article/migration-compact-will-benefit-australia>>

sensitive, compassionate and people-centred manner.”²⁰ It also recalls the international community’s “obligations to fully respect human rights, fundamental freedoms, safety and dignity of refugees and migrants.²¹

3.3 Mixed migration is a significant phenomenon in the Asia Pacific region. In addition, most countries in our region are not signatories to the Refugees Convention or its 1967 Protocol and approach forced migration as a matter of immigration control and national security. In practice, this means that undocumented migrants in a large number of states across the region, regardless of country of origin, motivation for leaving, or ability to return home, have limited rights and access to services. The ongoing situations of Afghan Hazaras in Indonesia, and Chin in Malaysia and India are strong cases in point.²²

Complementarity

3.4 In this context, it is vital to ensure complementarity in the implementation of the Global Compacts. What this means is that Compact’s implementation should include strong baseline human rights protections for all migrants, including those who do not fit neatly into established legal and socio-political categories of involuntary and voluntary migration but that reflect the realities of mixed movement. These include people seeking asylum, victims of trafficking, stateless people, internally displaced people (IDPs), people affected by climate induced displacement, migrant workers, international students, and spousal/family reunion visa-holders that find themselves in exploitative or violent situations, or suddenly cannot return home (including migrants in vulnerable situations).

3.5 Complementarity can be reflected in the Compacts and operationalised on the ground in a number of ways:

3.5.1 Regularization and complementary pathways are defined slightly differently across both Compacts, but are relevant to all migrants, including refugees and people seeking asylum. Such pathways include enhanced labour mobility schemes, broadening options for family reunification, expanding access to student and women-at-risk visas, investing in private/community sponsorship programs and solutions to people affected by climate induced displacement and natural disasters.

²⁰ General Assembly resolution A/71/L1 New York Declaration for Refugees and Migrants, A/RES/71/L1 (19 September 2016), see <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1>

²¹ Ibid.

²²See Amy Pitonak, *Pressure to return? Afghan refugees protest at Indonesian detention centre*, available at <<https://reliefweb.int/report/indonesia/pressure-return-afghan-refugees-protest-indonesian-detention-centre>> ; See Amy Alexander, *Without Refuge: Chin refugees in India and Malaysia*, available at <<http://www.fmreview.org/burma/aalexander.html>>

- 3.5.2 Regularization pathways are especially important to specific identity groups, such as women survivors of sexual and gender-based violence (SGBV), or LGBTI persons, who may need support to escape persecution in countries of origin, and support to break free of individualised violence from family or community members in host or destination countries. They are also relevant for women survivors of SGBV in countries of destination that are unable to access justice and need to be granted visas and other mechanisms of protection.
- 3.5.3 Identity documents, reception arrangements, and admission protocols must be standardized for all migrants regardless of background, motivation for leaving home, mode of arrival, or visa status upon arrival. There should be particular provisions for women whose access to identity documents should be autonomous and not dependent on partners.
- 3.5.4 Access to justice and basic services pertain to refugees, other forcibly displaced persons, and all other migrant groups. In the Australian context, migrants who are at risk of or survivors of SGBV, or other forms of crime, particularly women survivors of SGBV, will only feel safe to engage the criminal justice system if they feel confident that reporting violence and abuse to the police will not have adverse consequences for their visa status, will not end up in detention and deportation, and that they will be supported to leave an abusive relationship via access to accommodation, temporary income support, and work rights.

Non-refoulement

- 3.6 The right to non-refoulement is established as the most fundamental form of international protection, and should apply to all migrants in danger of suffering serious harm, torture, or persecution upon return to his/her country of origin or habitual residence. Non-refoulement (indirectly reflected in both Compacts) can be operationalised in key ways:
 - 3.6.1 Governments ensuring that people seeking asylum and other migrants in vulnerable situations have adequate opportunities to articulate their claims to protection, including with qualified legal support/interpreters, and with access to full rights of merits review by independent tribunals.
 - 3.6.2 Governments conducting human rights compliant and gender sensitive individualised assessments of risks of harm, torture, or persecution before returning a person.

- 3.6.3 Governments refraining from group expulsions based on blanket assumptions about safety in a particular geography.

Child detention

3.7 JRS Australia endorses the Inter-Agency Working Group (IAWG) to End Child Immigration Detention's statement from May 2018:

- 3.7.1 "The IAWG strongly encourages States to ensure that the Global Compacts do not allow for the possibility of detaining children, not even as a last resort nor for the shortest period of time. Instead the Compacts should lay the groundwork to provide better child reception and protection systems by implementing effective child-sensitive, non-custodial, community-based alternatives that prioritize human rights and the best interests of the child as the essential key to operationalise States' obligations under international human rights law. We encourage States to take the opportunity of the Global Compacts to develop regional or national action plans with time-bound milestones outlining how they intend to end the practice of child immigration detention in law, policy, and practice."²³
- 3.7.2 JRS Australia also acknowledges the significant progress that has been made in Australia to end onshore and offshore child detention and encourages the government to continue progressing on this area to end child detention.

Implementation and a whole of society approach

3.8 Although the details of implementation are still being developed, a number of key principles should underline these efforts:

- 3.8.1 JRS Australia proposes that issues of complementarity are included within the scope of monitoring, evaluation, and learning frameworks of the global compacts and that they be explicitly considered by mechanisms and groups being established within the scope of the GCR and of the GCM.
- 3.8.2 In accordance with a whole-of-society approach outlined on the GCM (and a multi-stakeholder approach on the GCR), it is important for implementation to be coordinated across the UN system globally, regionally, and in each country. Relevant UN organisations in each context include IOM, UNHCR, OHCHR, UN Women, UNICEF, and ILO among others. The evolving role of the recently created UN Network on Migration is particularly relevant.

²³ See Inter-Agency Working Group (IAWG), *Child Rights Experts Call on Member States to End Child Immigration Detention: There Are Alternatives*. May 2018.

- 3.8.3 State should create clear mechanisms within existing domestic governance systems to implement provisions in the Compact. JRS encourages the Australian government to develop a national implementation plan on the Global Compacts with the participation of key stakeholders including refugees and migrants.
- 3.8.4 It is also important for the Australian Human Rights Commission (AHRC) and other statutory bodies to be able to monitor implementation of the Compacts, and report findings in public to domestic and global audiences.
- 3.8.5 Refugees, people seeking asylum, migrants and others with relevant experience, in particular refugee and migrant women, must be given genuine platforms – through established forums such as the DHA-NGO Dialogue or through specific Compact-focused meetings – to share their views and concerns about the implementation of the Compacts and how it can be strengthened on the ground. They should also be key actors on the development of National Action Plans.

Recommendation 11: That a future Australian government adopts the GCM without further delay.

Recommendation 12: That a future Australian government and DHA develop consultative mechanisms to put in place a National Action Plan to implement both Compacts with the involvement of refugees, migrants (particularly women) and of civil society actors.

4. Summary of Recommendations:

Recommendation 1: That the Australian government and DHA devote additional resources in the DHA annual budget to process onshore protection visa applicants so that the time people seeking asylum spent on bridging visas and the accompanying material/emotional limbo is minimized.

Recommendation 2: That the Australian government and DHA consider de-linking the number of onshore protection grants from the overall humanitarian program quota of 18,750 or identifying a higher annual target for grant of onshore protection visas.

Recommendation 3: That the Australian government and DHA remove restrictions on long term substantive visa holders (eg. forms of partner or dependent visas) accessing SRSS after they have applied for protection.

Recommendation 4: That the DHA meet expert civil society representatives and leaders with lived experience to develop transparent and human-rights compliant guidelines for

assessing ‘work readiness’ and a blueprint for specialist and more effective employment services for people seeking asylum.

Recommendation 5: That the Australian government and DHA consider the formation of an expert working group comprised of industry bodies, unions, NGOs working on trafficking, slavery, and forced migration and diaspora organisations to better understand and address the complex overlaps between asylum policy and undocumented labour migration in Australia.

Recommendation 6: That the Australian government and DHA consult with civil society stakeholders to develop mechanisms for women and girls be given the option to make separate protection visa applications to their spouses in situations of SGBV

Recommendation 7: That the Australian government follow the UK’s example in introducing firewalls between public authorities such as police, hospital administrations, and Centrelink staff and Australian Border Force (ABF) to ensure that survivors or those at risk of SGBV are encouraged to report these crimes without facing immigration consequences.

Recommendation 8: That the Australian government provide additional funding for crisis accommodation in domestic violence refuges, additional funding to specialist CALD SGBV prevention and response services, and additional funding for NAATI-accredited translating and interpreting services for use by women at risk/survivors of SGBV.

Recommendation 9: That the Australian government and DHA consult with civil society stakeholders to consider a.) provision of a new temporary visa subclass for survivors of SGBV in Australia and b.) pathways to permanent residency for survivors of SGBV in the event of demonstrable risks to the woman’s or child’s safety upon return to the country of origin.

Recommendation 10: That the Australian government and DHA hold consultations with industry, union, and civil society stakeholders about the possible pathways, modalities, funding mechanisms, and challenges of facilitating opportunities for workers and students of refugee background to live, work, and study in Australia.

Recommendation 11: That a future Australian government adopts the GCM without further delay.

Recommendation 12: That a future Australian government and DHA develop consultative mechanisms to put in place a National Action Plan to implement both Compacts with the involvement of refugees, migrants (particularly women) and of civil society actors

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