



AUSTRALIA

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Jesuit Refugee Service (JRS) Australia

**Submission to the Senate Standing Committee on Legal and Constitutional Affairs
Inquiry into the efficacy, fairness, timeliness, and costs of the processing and
granting of visa classes which provide for or allow for family or partner reunions**

April 2021

About Jesuit Refugee Service (JRS) Australia

An International Organisation: Jesuit Refugee Service (JRS) is an international organisation founded in 1980 as a social ministry of the Society of Jesus ('the Jesuits'). JRS has offices in many countries, including Australia.

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

Programs offering support globally: In 2019 – 2020, JRS worked in 58 countries assisting more than 677,000 refugees, people seeking asylum, internally displaced people (IDPs) and other forcibly 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.

JRS in Australia: JRS Australia accompanies, serves, and advocates for the rights of people seeking asylum, refugees, and migrants in vulnerable situations. In 2020, JRS Australia provided emergency food and financial assistance, mental health crisis response, specialist case work, employment assistance, access to legal assistance (through the Refugee Advice and Casework Service), and a specialist prevention and response service and empowerment initiative with women on temporary visas experiencing sexual and gender-based violence (SGBV). In 2020, JRS served 3,882 people, through 21,834 engagements, including 6,547 case work engagements, 12,072 food deliveries, and 544 employment assistance engagements.

Strong alliances: JRS Australia works closely with parishes, schools, community groups, religious orders, civil society organisations, local and state governments and other stakeholders in order to fulfil its mission. JRS Australia has co-chaired the Catholic Alliance for People Seeking Asylum (CAPSA) and is a member of key faith-based and secular civil society networks in Australia.

A regional and international presence: JRS maintains an active presence on various policy development and advisory forums across the Asia Pacific Region. JRS is represented on the Steering Committee of the Asia Pacific Refugee Rights Network (APRRN), and participates in a number of its working groups, and is also active in a number of international civil society and UN dialogues, working groups and coalitions to address refugee protection and forced migration challenges around the world.

A strong advocacy voice: JRS' advocacy is characterised by the following principles:

- It stems directly from close engagement with refugees and others forcibly displaced
- It flows from our accompaniment and service work, and is linked to JRS' projects
- It is based on Jesuit values, Ignatian Spirituality, Catholic Social Teaching, and secular human rights principles
- It is built on a solid evidence base.

JRS Australia's advocacy takes a number of forms, including research and public commentary, engaging policy-makers and parliamentarians to deliver reform, campaigning, and grassroots community engagement.

Introduction

1. JRS Australia welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the *'Efficacy, fairness, timeliness, and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions.'*
2. JRS Australia's submission pertains to section 'g' of the Terms of Reference (ToR), namely "eligibility for and access to family reunion for people who have sought protection in Australia."
3. JRS Australia recognises that family separation can occur at any stage of displacement, including at the initial point of departure, and can be forced, accidental, or intentional. Family separation can be a conscious, collective and extensively deliberated decision, as part of a survival strategy, which nonetheless is deeply distressing.
4. JRS Australia's submission focuses on how the Australian Government's family reunion policies *prolong* family separation and *exacerbate* its negative impacts. Specifically, the submission canvasses five policies and practices which prolong the separation of families in which one or more members is a refugee or person seeking asylum in Australia. These policies are:
 - a. Refugees on Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) are not eligible for family reunion.
 - b. People seeking asylum face significant delays through refugee status determination (RSD) in Australia extending the period of time during which they are ineligible for family reunion.
 - c. Refugees on permanent visas arriving by boat are accorded lowest priority for family reunion within the Special Humanitarian Program (SHP) and the Family stream of the overall Migration program.
 - d. Offshore processing policies contribute to family separation in a range of ways.
 - e. Refugees arriving in Indonesia after 1 July 2014 are ineligible for resettlement in Australia despite the presence of family members who are citizens or permanent residents onshore.
5. These policies effectively deny refugees on Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs), and refugees on Permanent Protection Visas (PPVs) who have arrived by boat, as well as people seeking asylum who are enduring protracted delays in the processing of their claims, access to family reunion, bringing to the fore issues of fairness and timeliness, more so than efficacy or cost in Australia's existing family reunion system.
6. The issues highlighted in this submission are based on JRS Australia's experiences working with thousands of people in Australia who are ineligible for existing family reunion pathways.

7. Some of their experiences are reflected in the stories included in this submission. These stories illustrate the multi-dimensional impacts of prolonged family separation on peoples' mental and physical well-being, their relationships with family, and their goals and aspirations.¹
8. Importantly, this submission includes stories from family members who remain in host countries within South East Asia, and who have been separated from family members in Australia for years. JRS is in a position to provide these perspectives because the organisation works with more than 36,000 refugees and people seeking asylum across Cambodia, Indonesia, Malaysia, Myanmar, Thailand, and the Philippines.
9. JRS Australia's submission makes eight recommendations with regards to the issues canvassed, which are listed below.

¹ All stories have been appropriately de-identified. Some identifying details, including dates, may have been changed, but not in ways which affect the substance of the narrative and issues raised.

Recommendations

Recommendation 1: The Australian Government introduce legislation to abolish the ‘Resolving the Legacy Caseload’ Bill and grant all refugees on temporary visas permanent protection.

Recommendation 2: If Recommendation 1 is not implemented, the Australian Government introduce legislation to allow refugees on temporary visas to sponsor their family members to reside in Australia under the same visa conditions.

Recommendation 3: If Recommendation 2 is not implemented, the Australian Government amend the relevant legislation so that Condition 8570 does not apply to refugees on temporary visas in Australia.

Recommendation 4: The Australian Government direct sufficient budgetary resources to the Department of Home Affairs (DHA), the merits review tribunals/authorities, and the courts so that primary, merits review, and judicial review claims are processed more efficiently, without compromising on effectiveness and fairness.

Recommendation 5: The Australian Government afford the same priority to all applications for family reunion lodged by refugees, regardless of their mode of arrival.

Recommendation 6: The Australian Government abolish offshore processing, grant all recognised refugees who have been subject to offshore processing permanent protection, and afford them access to family reunion.

Recommendation 7: The Australian Government introduce a new family reunion stream within the Refugee and Humanitarian program, available in a timely, and fair manner to all refugees in Australia, and provide places over and above the current intake.

Recommendation 8: The Australian Government reverse the ban on resettlement for recognised refugees arriving in Indonesia after 1 July 2014, so that they are eligible for family reunion pathways under the SHP of the Humanitarian Program.

Section 1: Refugees on temporary visas cannot propose relatives for family reunion in Australia

10. On 5 December 2014, the Federal Parliament passed the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014.² Amongst other changes, the Act re-introduced three-year Temporary Protection Visas (TPVs) and created five-year Safe Haven Enterprise Visas (SHEVs).
11. A key condition of both the TPV (subclass 785) and the SHEV (subclass 790) is that, unlike holders of Permanent Protection Visas (PPVs), holders of these visas, and any people who have arrived by boat after 13 August 2012 are ineligible to propose relatives for resettlement under the Refugee and Humanitarian program.³ By virtue of not holding citizenship or a class of permanent residence visa, they are also ineligible to act as sponsors under the Family stream of Australia's overall Migration program.⁴
12. These restrictions apply equally to adults and children, without exemption.
13. TPV and SHEV-holders are required to apply for a subsequent TPV or SHEV before the expiry date of their current visa.⁵ The Department of Home Affairs (DHA) notes that if the person makes a valid application for a subsequent TPV or SHEV, their existing visa will “continue to be in effect until a final decision is made on their new application.”⁶ If accepted, they will be granted another TPV or SHEV visa.
14. Restricting recognised refugees to grants of three-year TPVs and five-year SHEVs without eligibility for or access to family reunion pathways ensures that they will likely face indefinite separation from their family members.

² [Migration and Maritime Powers Legislation Amendment \(Resolving the Asylum Legacy Caseload\) Act 2014 \(Cth\), Schedule 2, \(Federal Register of Legislation website, 2013-2014\), https://www.legislation.gov.au/Details/C2014B00198](https://www.legislation.gov.au/Details/C2014B00198)

³ Department of Home Affairs (DHA), “Temporary Protection Visa,” (DHA website, 29 April 2021), <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-protection-785>>; See also DHA, “Safe Haven Enterprise Visa (SHEV), (DHA website, 29 April 2021), <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/safe-haven-enterprise-790>>

⁴ Australian Human Rights Commission (AHRC), “Lives on hold: Refugees and asylum seekers in the ‘Legacy Caseload’ (AHRC website, 28 April 2021), < <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/lives-on-hold-refugees-and-asylum-seekers-legacy>>, Pg. 83.

⁵ DHA, “Applying for a subsequent TPV or SHEV – Frequently Asked Questions,” (DHA website, 30 April 2021), < <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/onshore-protection/applying-for-a-subsequent-tpv-or-shev/information-for-tpv-and-shev-holders>>

⁶ [Ibid.](#)

Zadran's story:

Zadran is from Afghanistan. He came to Australia by boat in early 2013 and sought asylum onshore. He spent a short period in detention and was then released into the community on a Bridging Visa E. Zadran was recognised as a refugee in 2018 and granted a five-year Safe Haven Enterprise Visa (SHEV). He was relieved to be offered protection after a long refugee status determination (RSD) process, however he is deeply saddened and frustrated by the fact that he will not be able to sponsor his wife and six children to join him in Australia.

Zadran has a wife and young children are living in Pakistan. At the time JRS Australia spoke with him, Zadran's wife was unwell, and the family were reliant on him to send home savings to pay for rent, food, and other essential needs. They were also not safe, and confined to a relative's house. Zadran feels guilty that he is safe in Australia, but that his family are in an uncertain situation. He says that he would trade places with them in a heartbeat.

15. Zadran's story demonstrates how much guilt a refugee can feel for being in a safer position than their family members, who are often in war zones or situations where they can be subject to persecution or significant harm. Zadran's story also highlights how challenging it can be for a person separated from their family to seriously consider their professional or entrepreneurial future in a country when the policies prevent family reunion.
16. Neither the 1951 Refugee Convention nor its 1967 Additional Protocol contain a right to family reunification, however Australia has obligations under the International Covenant on Civil and Political Rights (Article 23(1), ICCPR) and the Convention on the Rights of the Child (Article 791) and Article 10(1), CRC) which engage family reunification.
17. In the Statement of Compatibility with Human Rights accompanying the Resolving the Legacy Caseload Bill, the Australian Government argued that any limits on a family's "entitlement to protection by state and society...as the natural and fundamental group unit of society (Article 23, ICCPR) are necessary, reasonable, and proportionate to the "legitimate aim of preventing Unauthorised Maritime Arrivals (UMAs) from making the dangerous journey to Australia by boat."⁷
18. Specifically, the Government intended that the denial of access to family reunion pathways to refugees on temporary visas would serve as a "disincentive for people who wish to remain united with their families by indicating that travelling to Australia via unauthorised means will not result in the reunification of their family should they choose to travel separately."⁸

⁷[Migration and Maritime Powers Legislation Amendment \(Resolving the Asylum Legacy Caseload\) Act 2014 \(Cth\), Explanatory Memorandum, \(Federal Register of Legislation, 2013-2014\), <https://www.legislation.gov.au/Details/C2014B00198/Explanatory%20Memorandum/Text>](https://www.legislation.gov.au/Details/C2014B00198/Explanatory%20Memorandum/Text)

⁸ [Ibid.](#)

19. In the context of COVID-19, Australia’s sea and land borders remained almost hermetically sealed, and even those in Australia who may have chosen to return home cannot, for the most part, do so.
20. JRS Australia contends that restricting access to permanent protection and with it, access to family reunification for recognised refugees who have resided in Australia for years is unnecessary and disproportionate to the harm inflicted on individuals and families as a result.

Salma’s story:

Salma and her teenage son live in Thailand and receive support from JRS Thailand. Her husband travelled by boat to Australia eight years ago. He is a recognised refugee on a temporary visa, and lives in Queensland. Being separated from her husband has had serious impacts on Salma’s health and wellbeing and that of her son. Both she and her son see a psychologist regularly to deal with pain and grief of separation.

Salma also has more responsibilities as a single parent. Not only does she have to provide financially for herself and her son, she also has to be “dad and mom” to him. Growing up without a father has affected her son emotionally and physically. It is extremely hard for him to understand why he continues to be separated from his father. Salma and her son have spoken to a lawyer in Thailand about the prospects of being reunited with her husband. They have been told that nothing can be done because Salma’s husband cannot legally sponsor her or her son, given his status as a refugee on a temporary visa.

21. SHEV holders who have, for 3.5 years (or 42 months) of the visa’s 5-year duration, been employed without accessing social security benefits, engaged in full-time study, or achieved both, in designated regional areas, become eligible to apply for other non-protection (eg. skilled migration) visas in Australia, some of which provide permanent residence and a pathway to citizenship.⁹ Meeting the permanent residence pathway would enable the individual to act as a sponsor for a family member under the Family stream of Australia overall Migration program, but would still subject them to other restrictions on family reunion (discussed in Section C).
22. As JRS Australia has previously noted, the current SHEV-pathway requirements, and the subsequent requirements attached to non-protection visas accessible to those who meet the pathway requirement, ensure that only very small number of individuals can attain permanent residence and ultimately citizenship.¹⁰
23. Despite having supported hundreds of people granted SHEVs and who have worked in regional areas for more than 42 months, JRS Australia not yet worked with someone who has obtained permanent residence, and therefore access to family reunion, via the SHEV pathway.

⁹ Andrew and Renata Kaldor Centre for International Refugee Law, “Temporary Protection Visas and Safe Haven Enterprise Visas,” (Kaldor Centre website, 2 November 2020),

<<https://www.kaldorcentre.unsw.edu.au/publication/temporary-protection-visas>>

¹⁰ Jesuit Refugee Service (JRS) Australia (2019), “Submission to the Joint Standing Committee Inquiry into Migration in Regional Australia,” (JRS Australia website, 29 April 2020), <aus.jrs.net/en/submissions>

24. People granted TPVs or SHEVs on or after 16 December 2014 are subject to condition 8570, which permits travel outside Australia for limited reasons “that may be considered compassionate or compelling,”¹¹ such as to “care for a close relative who is ill or dying, or to attend the funeral of a close relative.”¹² Applicants must “not travel to the country or countries of reference to which you, or the primary TPV or SHEV, were found to engage Australia’s protection obligations (country of reference).”¹³
25. Acknowledging the importance of access to overseas travel for the purposes of being temporarily reunited with family, there are a number of practical constraints, which make it a challenging feat.
26. For example, obtaining a valid travel document (a Convention Travel Document (CTD) or a Certificate of Identity (COI)), satisfying condition 8570 is onerous, and time consuming. More importantly, organising and arranging safe reunion in a third country is both logistically challenging, and very costly. A proportion of SHEV holders with whom JRS Australia has worked have availed themselves of this option to see family but have exhausted savings to do so. It will be years before they can avail of the option again.

Reza’s story:

Reza arrived in Australia in 2013. He is a recognised refugee and holds a five-year SHEV visa. Reza’s wife and children remain in Indonesia. In 2017, Reza made arrangements to see his family in Indonesia. After a time-consuming process acquiring a Convention Travel Document (CTD) and seeking permission to travel, Reza was finally at the point where he could apply for his Indonesian tourist visa.

Reza says that at the time, the Indonesian consulate informed him that they not would permit entry to an individual on a CTD. The Indonesian embassy website appeared to confirm that “non-passport documents...will not be accepted.” JRS Australia attempted to contact authorities in Australia about the matter but did not receive any response at the time.

Questions that Reza was grappling with at the time were a.) whether he would be allowed to travel on a CTD b.) whether his family would compromise their legal status and ability to re-enter Indonesia if they travelled to a separate country to be temporarily reunited with Reza and c.) whether there was a safe third country where father, mother, and son could reunite temporarily without jeopardising their prospects for resettlement.

¹¹DHA, “Request for approval to travel under visa condition 8570 (Restricted Travel), <
<https://immi.homeaffairs.gov.au/form-listing/forms/1454.pdf>>

¹² Ibid.

¹³ Ibid.

27. As of 1 April 2021, there are 5,566 TPV and 12,597 SHEV holders in Australia, comprising a total of 18,163 refugees on temporary visas without any access to family reunion pathways in Australia.¹⁴

Section 2: Significant delays and backlogs in refugee status determination (RSD) prolong family separation

28. People seeking asylum in Australia do not have access to family reunion pathways whilst their claims for protection are being assessed. This is not a new or controversial practice by international standards. In general, resettlement countries such as France, Canada, and the United Kingdom equal access to family reunion for all people *after* they are recognised as refugees.¹⁵
29. In recent years, there have been significant delays in RSD in Australia, both in the so-called ‘Fast-Track’ process for people in the Legacy Caseload, and in the ‘Regular’ process for people arriving by plane and seeking asylum onshore.¹⁶
30. The ‘Fast-Track’ RSD process was introduced in 2014 and applies to people who arrived in Australia by boat between 13 August 2012 and 1 January 2014. The ‘Fast-Track’ RSD process differs from the ‘Regular’ RSD process in a number of ways, including that people subject to the former must wait for the relevant Minister to exercise personal, non-compellable discretion to allow them to apply for protection.¹⁷ ‘Fast-Track’ decisions are also reviewed by Immigration Assessment Authority (IAA), rather than the Migration Refugee Division (MRD) – Administrative Appeals Tribunal (AAT).¹⁸ Reviews also take a more limited form, generally ‘on the papers’ without a second hearing or any new information from the applicant.¹⁹
31. Successive governments have argued that the ‘Fast-Track’ process is necessary to improve efficiency in RSD. The reality is that majority of people subject to this system have not had their claims resolved for years.
32. In May 2017, the Government announced a hard application deadline (October 2017) for all people seeking asylum subject to the ‘Fast-Track’ process. Those who did not apply by the

¹⁴ DHA, “Visa Statistics: Humanitarian Program,” (DHA website, 20 April 2021),

<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

¹⁵ Human Rights Law Centre, “Together in Safety: A report on the Australian Government’s separation of familie seeking safety,” (HRLC website, April 2021),

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6082667935d08840b1aaba8/1619158657519/HRLC_Together_in_Safety_REPORT.pdf> Pg. 36.

¹⁶ Andrew and Renata Kaldor Centre for International Refugee Law, “Refugee Status Determination in Australia,” (Kaldor Centre website, 2 November 2020), <<https://www.kaldorcentre.unsw.edu.au/publication/refugee-status-determination-australia>>

¹⁷ Ibid.

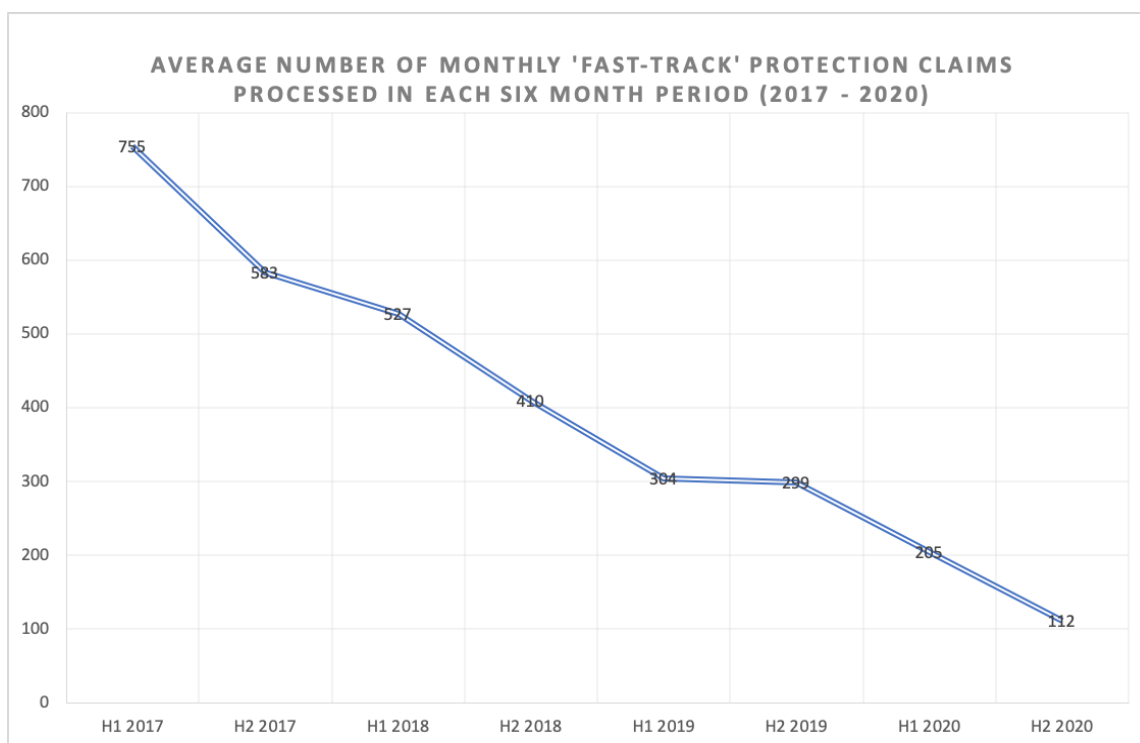
¹⁸ Ibid.

¹⁹ Maria O’Sullivan, “Fairness and efficiency in the migration ‘Fast-Track’ process,” (Australian Public Law website, 14 May 2018), <<https://auspublaw.org/2018/05/fairness-and-efficiency-in-the-migration-fast-track-process/>>

deadline risked deportation. A significant effort from community legal centres (CLCs) and private law firms saw the vast majority of applicants meet this deadline.

33. Between August 2016 and March 2021, the Australian Government and DHA have finalised an average of 409 ‘Fast-Track’ applications per month. As illustrated in Table 1, the monthly average of applications finalised (calculated biannually) has dropped steadily since that time. As of March 2021, there are 4,395 valid applications which DHA has received and is currently processing, including new applications from applicants whose TPVs have expired, but also some people who have been waiting since they lodged in October 2017 or before.²⁰

Table 1: (source: DHA visa statistics)



34. Taking into account that people in the Legacy Caseload were not allowed to apply for protection or any other form of substantive visa between their date of arrival and the introduction of the Resolving the Legacy Caseload Bill in 2014, thousands of people have been waiting years for their claims to be processed.

²⁰ DHA, “Visa Statistics: Humanitarian Program,” (DHA website, 20 April 2021), <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

Nadira's story:

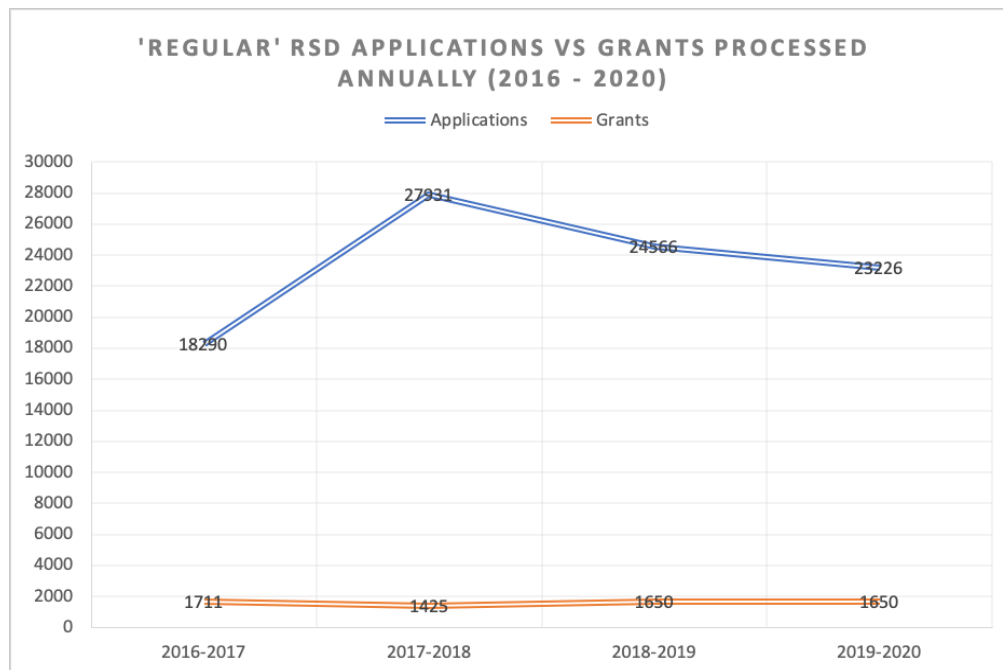
Nadira escaped Iran in mid 2012, and travelled Australia by boat in early 2013. When she arrived at Christmas Island, Nadira was told that she might be transferred to Nauru. Instead she spent two months in detention on Christmas Island, and was then transferred to a detention facility in Melbourne. There she spent a further month, before being released into the community on a Bridging Visa E in late 2013. Nadira obtained work rights two years later in 2015.

Nadira had very little understanding of the RSD process and what she was expected to do in order to apply for protection. She recalls being interviewed on Christmas Island but not having any further conversations about RSD since. In mid 2017, Nadira received a letter stating that she had 30 days to apply for a TPV or a SHEV. She engaged a legal provider and managed to put in an application for a SHEV, thinking that five years would be give her peace of mind for longer than three years.

Nadira had an interview with DHA in early 2018. In late 2018, she was still waiting for a primary decision on her application. By that point it had been more than five years since she had first arrived in Australia, and sought protection. Nadira has not seen her parents and sibliings during this period. She worries for them and misses them greatly.

35. For people arriving by plane and applying for protection onshore, and who are subject to 'Regular' RSD, the reasons for delays in RSD and granting of visas are different.
36. One key factor is that successive Government have long maintained a low 'cap' or 'ceiling' on the number of onshore protection visa grants per annum, as a proportion of Australia's overall Refugee and Humanitarian Program. In the last five years, this annual grant number has always been below 2,000, even as the number of applications has increased. Table 2 illustrates the gap between the number of annual protection visa applications and grants in the last four years.

Table 2: (source: DHA visa statistics)



37. Although the protection visa grant rates vary significantly by country of origin, the ‘cap’ or ‘ceiling’ ensures that people must wait a significant period of time to have their claims reviewed, to be given an RSD interview appointment, and for a visa to finally be granted to them.

Lema’s story:

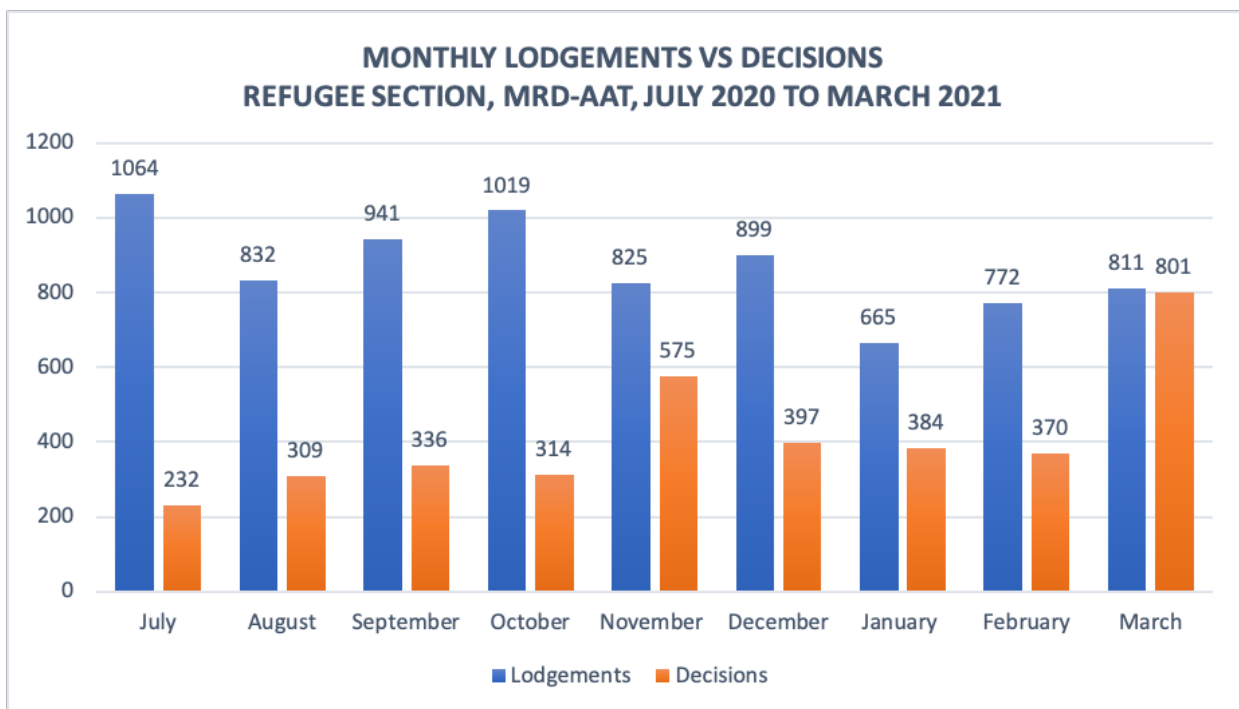
Lema is from East Africa. He was a political activist in his home country. Lema fled his home country in 2015, arriving by plane, and applying for asylum onshore. After more than two years waiting for an interview, Lema’s application was rejected at primary stage. He is waiting for an interview at the Administrative Appeals Tribunal (AAT). Lema is on a Bridging Visa A with work rights, and works full time, as a casual in construction.

Lema has not seen his mother and sisters for six years. Lema worries about his family’s safety, health, and self-sufficiency. He believes that if the government finds out that he is in Australia, they will target his family. He refuses to tell them anything about his situation and is afraid that if he sends money home for his sisters’ education, the transfer will be traced and they will be found out.

Lema tries to manage worries by working long hours, keeping his mind busy, and tiring himself out, so that he can sleep. “You know, you can relieve the stress when you work hard. Sometimes it’s just a relief to be honest. Making you busy, that is the only option you have. Because...I cannot do anything. I tried all my best. It’s beyond my control. When you are tired, at least you sleep and it is good for you and your stress. It is very difficult to stay without your family and you feel like you don’t have nothing. You are not sure whether something will happen, or whether you are going to go back and face problems...The only thing I do is just work long hours and make myself busy.”

38. Processing a person’s claims for protection is a complex and time-consuming endeavour when done effectively and thoroughly, and there is no questioning that RSD requires significant resources. However, there is no justification for mandating that people wait years for their claims to be processed at primary stage.
39. The delays at primary stage are complemented by significant backlogs at merits review stages and at the federal courts. The ‘Refugee’ section of Migration and Refugee Division (MRD) of the AAT has had a monthly average of 29,868 active applications between July 2020 and March 2021.²¹ As Table 3 illustrates, during this period the number of new lodgements (7,778) more than doubled the number of decisions (3,718) demonstrating the growing backlog at hand.

Table 3 (source: AAT)



²¹ Administrative Appeals Tribunal (AAT), “Migration and Refugee Division (MRD) Caseload Report,” (AAT website, 31 March 2021) <<https://www.aat.gov.au/AAT/media/AAT/Files/Statistics/MRD-detailed-caseload-statistics-2020-21.pdf>>

Guo's story:

Guo is from China. He came to Australia by plane in 2017 and sought asylum onshore. Guo applied for protection in his first week in Australia. It was almost twenty months later that he was interviewed at the primary stage. His claim was rejected approximately six months later, and he applied for merits review at the AAT. Guo's claim for protection has not yet been adjudicated at the AAT. It has now been almost five years since Guo was in Australia.

Guo has not seen his parents since he left China. Early in his time in Australia, he learned that authorities in China were visiting his parents asking about Guo. Guo felt sense of helplessness and shame about not being able to protect his parents. Learning about this incident triggered significant anxiety and suicidal ideations in Guo. "Learning about the police frightening my parents...I feel useless and stressed...I lost control and wanted to commit suicide...my room mate sent me to the hospital."

In recent times, Guo has ceased contacting his parents because the families that the authorities are monitoring their conversations.

40. Guo's story illustrates that family members left behind can be or feel unsafe. In these situations, there is a strong imperative for swift family reunification as a pathway to protection. Guo's story also highlights a particular dynamic by which communication and connection between separated family members can break down over time.

41. The story is similar at the Federal Circuit Court (FCC). A Law Council of Australia article citing statistics from the FCC's Annual Report 2019 – 2020 notes the extent of the back log:

"The FCC's pending migration law caseload spiked by 58 percent, up from 7,674 applications in 2017–18 to 12,158 applications in 2019-20. If current filing rates continue, the Report concludes that without further resources the pending migration caseload will overtake the pending family law caseload in less than two years. The FCC disposed of just 62 percent of final order applications within 12 months, falling significantly short of its target of 90 percent for the second year in a row. This is contributing to ongoing delays, leaving families and children in limbo and often at risk while waiting for their matter to be heard."

42. Some academics and policymakers argue that delays and backlogs allow for abuse of Australia's asylum system. In light of these delays and backlogs, migrants who have submitted valid applications can reside in Australia with work rights for years, while also remaining vulnerable to wage exploitation, and theft.²² Inherent in this argument is the implication these 'migrants' can return home to their families at any time. Leaving aside the practical realities of border closures during COVID-19, determining whether it is safe for a person to return to their country of origin is the core purpose of Australia RSD system. Therefore, the onus is really on the Governments to allocate greater resources to the various components of the system to ensure that it can meet the demand in an efficient, effective, and fair manner.

²² Abul Rizvi, "Peter Dutton's legacy – Australia's biggest labour trafficking scam," (Independent Australia, 4 April 2021), <<https://independentaustralia.net/politics/politics-display/peter-duttons-legacy--australias-biggest-labour-trafficking-scam,14954>>

Section 3: De-prioritising family reunion for certain cohorts of refugees on permanent protection visas (PPV)

43. People who hold PPVs, including those who have arrived by boat before 13 August 2012, are accorded lowest priority for family reunion applications under the Refugee and Humanitarian Program (RHP).²³ As Oxfam notes in a 2019 report, given the backlog of family reunion applications within the system, these changes effectively mean that applications for family reunion under the Refugee and Humanitarian program are unlikely to ever actually be granted.²⁴
44. Similarly, Ministerial Direction 80, introduced in December 2018 as an update to previous Ministerial Directions (72 and 62) of a similar nature, ensures that refugees who hold PPVs and have arrived by boat are accorded lowest priority in assessment and processing of family sponsorship applications under the Family stream of the overall Migration program.²⁵
45. Although Ministerial Direction 80 allows for exceptions to de-prioritising family reunion for refugees on PPVs who have arrived by boat in compassionate and compelling circumstances, the Refugee Council of Australia (RCOA) notes that “there is no definition in the Migration Act or relevant Regulations for compelling or compassionate circumstances...and that the Department is requiring applicants to show extreme circumstances in order to be granted the exception.”²⁶
46. Again, the primary consequence of the enforcement of this Direction is that refugees on PPVs who have arrived by boat effectively have no access to family reunion.

²³ AHRC, “Lives on Hold,” Pg. 83.

²⁴ Oxfam Australia, “Stronger Together: The impact of family separation on refugees and humanitarian migrants in Australia,” (Oxfam Australia, 2019) <https://www.oxfam.org.au/wp-content/uploads/2019/08/2019-AC-012-Families-Together_report_FA2- WEB.pdf>, Pg. 22.

²⁵ See Refugee Council of Australia (RCOA), “Denying Family Reunion for Refugees: Impact of Direction 80,” <https://www.refugeecouncil.org.au/direction-80/>; See also Department of Home Affairs (DHA), “Family visa processing times,” <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities>.

²⁶ RCOA, “Denying Family Reunion,”

Paula's story:

Paula, her sibling, and her mother live in a large South East Asian city. She has a brother who travelled by boat more than a decade ago at the age of 16 and is a recognised refugee in Australia.

Paula's brother is likely to be on a permanent protection visa (PPV), but is subject to Direction 80, which accords lowest priority for family reunion applications to those who have arrived in Australia by boat and sought asylum. Prolonged family separation has had serious physical, mental, financial, and psycho-social impacts on the whole family.

Paula's mother has been seriously affected by prolonged separation from her son. She feels she has lost her son. Paula and her siblings watch her mother cry and struggle to sleep for a long time after her son left for Australia. Paula's mother is constantly worried about her son to this day.

Paula's brother in Australia has been profoundly affected by his own journey, his experience of separation, and the burden of providing financially for the family. Paula's brother has told her in the past that he tries to hurt himself physically (beat himself), crying and screaming. He also sees a doctor for depression. Due to the challenges of needing to provide for them financially, he has cut contact with Paula, her mother, and her siblings in Thailand. They have not spoken to him in over three years.

Paula has also struggled with being separated from her brother for so long. Paula grew up without a father, and therefore looked up to her brother as a father figure. When they were little they used to play together.

She describes the separation as "losing one part of her body" Not being able to see and talk to him physically has caused so much pain for the family. Not being able to be there for him growing up has also affected them. Since he has to grow up alone Paula feels that her brother does not realise the importance and value of family bonds.

In the interim, Paula and her siblings in Bangkok work hard to make ends meet, in the absence of support from her brother in Australia.

Paula and her family are not in a financial position to meet any requirements for family reunion. They would need financial support to even consider the prospects, which given the imposition of Ministerial Direction 80, are slim. Paula's mother is getting old, and Paula worries that she will never see her son again.

Section 4: Offshore processing and family separation

47. In August 2012 Australia reintroduced offshore processing arrangements on Nauru and Manus Island in Papua New Guinea (PNG). These arrangements were formalised in Memoranda of Understanding (MOU) with both sovereign states. Since 13 August 2012, 4,183 people have been sent to offshore detention centres on Manus Island and Nauru. As JRS Australia has argued in a previous submission to the Senate Standing Committee on Legal and Constitutional Affairs in 2019, citing research from numerous international law academics, Australia retains effective control over refugees and people seeking asylum subject to offshore processing, implying clear responsibilities for ensuring their safety, health, and wellbeing under international law.²⁷
48. People seeking protection who are subject to offshore processing arrangements effectively have no access to family reunion. A significant majority have languished in detention centres, or other facilities for up to eight years without durable solutions or prospects for rebuilding in their lives in safety.
49. Through this period, access to contact with family members has also varied. The challenges of maintaining contact from inside the detention centres ('Regional Processing Centres') were significant.

Solomon's story:

Solomon spent five years in Nauru. During this time he had no access to family reunion. He recalls the limits that detention centre staff placed on the frequency of phone calls to family members back home. He says:

"It was really hard getting a mobile phone...there were those landline phones there, but you could only talk to your once every month or two because they only allowed 20 people to use the phones once a week, on a Tuesday. There were nearly four hundred people who wanted to communicate with their families. Even if you woke up at 4 AM to get your name on the list, you might miss out because people would not sleep and be waiting all night to be their names on the list...Forget seeing or speaking to them, you couldn't do anything...you couldn't support them financially...you could not even go and see their body if they died."

50. The Australian government has the power to transfer refugees in Nauru and PNG to Australia for temporary reasons, generally medical in nature.²⁸ People transferred to Australia are classified as 'transitory persons' and have access to RSD or access other non-humanitarian visas in Australia. Successive Governments have held the view that they will never be settled in Australia.

²⁷ JRS Australia, Submission to the Senate Inquiry into Migration Amendment (Repairing Medical Transfers) Bill 2019, Pg. 3 – 6.

²⁸ Andrew & Renata Kaldor Centre for International Refugee Law, "The medevac law: Medical transfers from offshore processing to Australia," (Kaldor Centre website, 5 March 2019), <
<https://www.kaldorcentre.unsw.edu.au/publication/medevac-law-medical-transfers-offshoredetention-australia>>

51. As of 14 March 2021, 1,223 ‘transitory persons’ are in Australia, many of whom do not have access to the US resettlement deal or other durable solutions.²⁹ They in are closed detention facilities, residential environments classified as community detention, or in the community on Final Departure Bridging Visas (FDBVs). For a significant proportion who fear risk of persecution or harm if they choose to go back to countries of origin, it is unclear how long they will remain in Australia, or how they will find international protection. Here too, access to family reunion is prolonged and potentially indefinite.
52. Australia’s offshore processing policies have created situations of family separation, both by design and in implementation. Since 2017, JRS Australia is aware of situations in which individuals and families subject to offshore processing have experienced the following forms of family separation:
- a. Upon arrival, members of the same family are placed in different compounds or facilities on Christmas Island, and kept apart.
 - b. An individual arrives in Australia before August 2012 and is now an Australian citizen. A member of the same family arrives after 19 July 2013 and remains on Manus Island or Nauru for years.
 - c. An individual is transferred or evacuated to Australia for medical treatment or complex, high-risk medical procedures without his/her family members.
 - d. An individual is told that they are eligible for the US resettlement deal but that their family member is not.
53. As of 31 March 2021, 130 people are still in PNG, and 109 are still on Nauru.³⁰ A proportion of individuals who cannot return home do not have access third country options. As it stands, they remain indefinitely separated from family members.

David’s story:

David travelled to Australia by boat in June 2013 and sought asylum onshore. David was detained on Christmas Island for a short period of time, and soon flown to Manus Island, where he spent the next four and a half years of his life in a detention centre.

David had not seen his family for over six years, and could not return to his country of origin. He was both angry and despondent about this reality. “Most of us have not contacted our families in more than six months. Many of our families do not believe us any more. They do not understand why we continued to be detained. They think we have perhaps done something wrong. How can we explain to them that the system is broken?,” he told JRS Australia in 2019.

²⁹ RCOA, “Offshore processing statistics,” (RCOA website, 23 April 2021) <<https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/>>

³⁰ Senate estimates transcripts, DHA, March 2021.

54. David's story reveals a common dynamic between families experiencing prolonged separation. After a period of time, families left behind stop believing or trusting their relatives in Australia. It becomes hard to rationalise or justify the ongoing and seemingly endless status quo of separation. Policy settings that go to such extreme lengths to punish people who have crossed borders 'irregularly' and deter future arrivals are not counter-intuitive or easy to explain. Eventually the absence of change can create rifts or even break downs in relationships.
55. As part of the high-level Catholic delegation visiting Port Moresby in November 2019 at the invitation of the General Secretary of the Catholic Bishops Conference of PNG and the Solomon Islands, JRS Australia learned that, at the time, five men had married local women with Papuan citizenship and also had children.
56. Mixed families in which the male is the foreigner are often locked out of land-sharing arrangements, eliminating a key source of economic sustenance. Foreigners also find it more challenging to find employment. Not only do these families face material poverty and social exclusion in PNG, they have nowhere else to go, given the father's status as a refugee, asylum seeker, or migrant with international protection concerns. In situations where the foreign adult is approved for a medical transfer to Australia or for resettlement, the family faces an agonising choice between international protection and family separation.

Section 5: Exclusions within exclusions: Prolonged separation for refugees with family members in Indonesia

57. Refugees on permanent and temporary visas residing Australia, with family members in Indonesia are subject to the same restrictions on family reunion, as other refugees in these circumstances. However, they are also subject to additional policies of exclusion.
58. In 2014, the Australian Government announced that it would no longer consider for resettlement anyone who had registered with UNHCR in Indonesia after 1 July 2014. The policy was designed to "reduce the movement of asylum seekers to Indonesia and encourage them to seek resettlement in countries of first asylum."³¹ The announcement also noted that Australia would continue to resettle refugees who registered with UNHCR before 1 July 2014, but at a reduced rate. In 2015-2016, Australia resettled 450 refugees residing in Indonesia (ranked 10th in the list of countries of residence), but since then the numbers have fallen to a point where Indonesia no longer appears on the published list of top ten countries of residence.³²
59. Australia's resettlement 'ban' on refugees residing in Indonesia means that they are not eligible to be sponsored under the Special Humanitarian Program (SHP), or the Community Support Program (CSP). Additionally, JRS Australia is aware that the CSP pilot prioritised refugees in

³¹ DHA, "Resettlement cut-off date for refugees in Indonesia,"

<https://www.homeaffairs.gov.au/foi/files/2015/20151203_FA150200596-documents-released.pdf>

³² DHA, "Visa Statistics: Humanitarian Program," (DHA website, 20 April 2021),

<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>

“priority resettlement” countries, which for Afghans, did not include those residing in Indonesia.

60. In effect, even if the Australian Government were to introduce family reunion pathways for those currently on TPVs and SHEVs, or prioritise family members of refugees on PPVs, refugees in Indonesia would still be excluded from resettlement under the SHP, thus prolonging family separation further.

Chitra's story:

Chitra lives with her mother in Indonesia. She and her mother fled Pakistan and arrived in Indonesia after 1 July 2014. Chitra's siblings fled Pakistan in 2010. After arriving in Indonesia, Chitra's sister travelled to Australia in 2011 by boat and is now an Australian citizen. The other three siblings travelled to Australia in 2013 and now hold Safe Haven Enterprise Visas (SHEVs). Both have Australian partners and may be eligible to apply for Partner visas. Chitra and her mother have not seen their family members since 2010.

Prolonged family separation has impacted Chitra and her mother in a number of ways. Chitra's mother has long suffered from hypertension, heart disease, arthritis, high cholesterol, and diabetes. Separation from her children has also impacted Chitra's mother's psychological wellbeing. Chitra's mother gets angry easily, starts crying suddenly and without obvious context, and cannot sleep at night. She also has muscle pain. Chitra's mother is now seeing both a psychologist and a psychiatrist to deal with her symptoms, her grief and loss.

Chitra has been caring for her sick mother in Pakistan and Indonesia since she was a teenager, around the time her siblings left. It has taken a toll on their relationship. According to Chitra, she and her mother argue a lot, often about Chitra leaving the house on her own. Chitra says that her mother is still traumatised by her experiences in Pakistan, and worries that Chitra will be kidnapped.

Chitra feels overwhelmed sometimes, especially because she has been dealing with these challenges from a young age. However, Chitra tries to empathise with her mother because they only have each other in Indonesia.

Chitra and her mother also face financial hardship. Chitra's siblings were sending her and her mother money for a significant period of time. Now, all three have their own families, and cannot afford to provide financial assistance regularly. Chitra has struggled to find work, as she left Pakistan before having the opportunity to finish school. She volunteers as a teacher, but must rely on charities to support her and her mother financially, especially with her mother's medication.

In 2019, Chitra's eldest sibling contacted three different refugee lawyers to ask about whether Chitra and her mother could be reunited with them via the Community Sponsorship Program (CSP) or by any other means. According to Chitra, all three lawyers told her this would not be possible due to the ban on resettlement to Australia for all refugees in Indonesia arriving after 1 July 2014.

Conclusion:

61. This submission canvass five key policies which prolong family separation and exacerbate its impacts amongst people seeking asylum, refugees on TPVs and SHEVs, and refugees on PPVs arriving by boat to Australia. These policies are:
 - a. Refugees on Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) are not eligible for family reunion.
 - b. People seeking asylum face significant delays through refugee status determination (RSD) in Australia extending the period of time during which they are ineligible for family reunion.
 - c. Refugees on permanent visas arriving by boat are accorded lowest priority for family reunion within the Special Humanitarian Program (SHP) and the Family stream of the overall Migration program.
 - d. Offshore processing policies contribute to family separation in a range of ways.
 - e. Refugees arriving in Indonesia after 1 July 2014 are ineligible for resettlement in Australia despite the presence of family members who are citizens or permanent residents onshore.
62. Each of these policies operates in ways which effectively deny eligibility and access to family reunion to these people in these cohorts. As the ten stories in this submission demonstrate, these policies have devastating impacts on the mental and physical well-being, the relationships, the motivations and the aspirations of those who are impacted.
63. In response, JRS Australia makes eight recommendations to the Committee, asking the Government to reverse these policies and allow those affected eligibility and access to family reunion in Australia.