

22 May 2017

Department of Immigration & Border Protection
PO Box 25
Belconnen ACT 2617

By email: humanitarian.policy@border.gov.au

Dear Sir/Madam

**SUBMISSION ON DISCUSSION PAPER: AUSTRALIA'S HUMANITARIAN PROGRAMME
2017-2018**

1. This submission has been prepared by the Migration Law Committee of the Law Council's Federal Litigation & Disputes Resolution Section (**the Committee**).¹ The Committee is grateful to have the opportunity to provide feedback on the Discussion Paper: Australia's Humanitarian Programme 2017-2018 (**Discussion Paper**).
2. The Committee is limiting its submissions to areas of both the Discussion Paper and the Programme about which it considers that it has the expertise to comment.
3. The Committee is supportive of Australia's continued commitment to refugee resettlement, and is of the view that the selection of refugees for resettlement should be undertaken on a non-discriminatory basis, which is a view supported through the Law Council's Asylum Seeker Policy. It notes in the United Nations Report of the Special Rapporteur on the Human Rights of Migrants following his mission to Australia that while Australia "*has exemplary resettlement policies, the strong focus on securitization and punishment blemishes the country's good human rights record.*"
4. The Committee supports the announcement in the May 2017 Budget that the number of refugee resettlement places will increase by 2,500 to a total of 16,250 places in the 2017-18 programme. The Migration Law Committee notes however that the number of people it takes through the United Nations High Commissioner of Refugees (UNHCR) assisted resettlement program as part of this component is substantially lower than other countries, at a time of increased need.² In 2016, the UNHCR submitted the files

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

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http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/RefugeeResettlement#_Toc461022112

of over 162,500 refugees for consideration by resettlement countries.³ Australia's component of these numbers was around 6000 at a time where there is a significantly higher number of displaced refugees throughout the world.

5. The Committee also notes that responses for the Discussion Paper are due after the announcement of numbers set for the 2017-2018, and as such assumes that the Discussion Paper is only for the purposes of determining the composition of those numbers rather than the size of the programme. For future years, it may be beneficial to release the discussion paper and feedback on the discussion paper prior to numbers being set for the following financial year.
6. Included in the composition of the Humanitarian Programme is the reunification program for refugees to enable them to propose their family to join them in Australia, namely the Special Humanitarian Programme Subclass 202 Visa. Very few visas are available under this category, and unfortunately this category also discriminates between the mode of arrival of a refugee to Australia due to Ministerial Direction 72. This Direction gives the least priority to family members of unauthorised maritime arrivals, unless they are Australian Citizens. In the Migration Law Committee's view, family reunification is essential both from a human rights perspective but also for providing beneficial settlement outcomes for refugees irrespective of the mode of arrival. This is supported by the recent report by the United Nations, Human Rights Special Rapporteur which states "*the right to live with one's family is a fundamental right for all - Australians and Foreigners*"⁴ The Committee does not support unauthorised maritime arrivals being treated differently in relation to family reunification, and given that the Direction above was introduced to "Stop the Boats" (which has been explained many times by government has now occurred) consideration ought be given to removing the direction. Consideration should also be given to increasing numbers under the offshore humanitarian reunification program.
7. The Committee, when considering the composition of the Humanitarian Program, supports a non-discriminatory program, applied equally and without reference to religious beliefs or method of arrival to Australia. It also does not support discriminating in relation to the selection of refugees for offshore placements according to arbitrary factors, such as the location in which they have registered with the UNHCR. For example, the former Minister for Immigration and Border Protection introduced policy which means asylum seekers who register with the United Nations in Indonesia after June 2014 are no longer eligible for resettlement in Australia.⁵ The Committee does not support such policies recommends that such policies not be used when considering resettlement for the next program year.
8. The Committee does not support an increase in Department of Immigration & Border Protection (DIBP) fees for Protection Visas as this would go against Australia's position in continuing to assist refugees/displaced people and working with the UNHCR to provide for resettlement of refugees/displaced people.

³ <http://www.unhcr.org/en-au/resettlement.html>

⁴ United Nations - Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centre of Nauru dated 24 April 2017 at paragraph 47

⁵ <http://www.abc.net.au/news/2014-11-18/resettlement-path-for-asylum-seekers-in-indonesia-cut-off/5900962>

9. The Migration Law Committee welcomes the news that the Community Support Program will have an additional 1000 sponsored refugee resettlement places. Based on the 2017 Budget announcement, these will be in addition to the 16,250 places. The Committee seeks clarification that this is correct and further information as to who will be responsible for monitoring and sourcing the persons for resettlement to ensure this is a transparent program, given that it requires significant funds to be invested and is likely to also have strong demand for uptake.

Contact

The Committee would welcome the opportunity to discuss the submission further. Please contact Mr David Prince, Chair, Migration Law Committee at david@kplaw.com.au in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Smithers', with a long horizontal line extending to the right from the end of the signature.

Jonathan Smithers
Chief Executive Officer