



Submission to the Department of Immigration and Citizenship on Australia's Humanitarian Program 2012-13 and beyond

1. About the Refugee & Immigration Legal Centre Inc.

- 1.1 The Refugee and Immigration Legal Centre ("RILC") is a specialist community legal centre providing free legal assistance to asylum seekers and disadvantaged migrants in Australia.¹ Since its inception over 23 years ago, RILC and its predecessors have assisted many thousands of asylum seekers and migrants in the community and in detention.
- 1.2 RILC specialises in all aspects of refugee and immigration law, policy and practice, including split family applications for existing clients. We also play an active role in professional training, community education and policy development. We are a contractor under the Department of Immigration's Immigration Advice and Application Assistance Scheme ("IAAAS"). RILC has been assisting clients in detention for over 17 years and has substantial casework experience. We are also a regular contributor to the public policy debate on refugee and general migration matters.
- 1.3 RILC is the largest provider of refugee and immigration law services in Australia. Each year we assist around 4,000 people. Our clientele largely consists of people from a wide variety of nationalities and backgrounds who cannot afford to pay for legal assistance and are often disadvantaged in other ways. Much of this work involves advice and/or full legal representation to review applicants at the Migration and Refugee Review Tribunals. Due to funding and resource constraints, in recent years we have generally provided advice and assistance at the administrative level only.
- 1.4 The focus of our submissions and recommendations reflect our experience and expertise as outlined above.

2. Introduction

- 2.1 RILC welcomes the opportunity to provide a submission on Australia's Humanitarian Program. RILC views refugee resettlement as a critical element of the resolution of refugee situations, particularly given the high numbers of refugees, asylum seekers and stateless persons worldwide,² and particularly in the Asia-Pacific region.³

¹ RILC is the amalgam of the Victorian office of the Refugee Advice and Casework Service ("RACS") and the Victorian Immigration Advice and Rights Centre ("VIARC") which merged on 1 July 1998. RILC brings with it the combined experience of both organisations. RACS was established in 1988 and VIARC commenced operations in 1989.

² 10.55 million refugees; 837,500 asylum seekers; 3.5 million stateless people: UNHCR, *Statistical Yearbook 2010*.

³ There are 4,014,100 refugees in the region: UNHCR, *Global Trends 2010* (20 June 2011), page 7.

- 2.2 We note that Recommendation D of the Final Act of the Conference of Plenipotentiaries and the Preamble of the Refugee Convention both emphasise international cooperation and responsibility sharing between States, and in this regard, we commend Australia's ongoing commitment to resettlement and its continuing rank in the top three resettlement countries globally.
- 2.3 In particular, in terms of the onshore component of the Humanitarian Program, we welcome the development of the onshore processing model to allow for a single refugee status determination (RSD) process regardless of the method of arrival for asylum-seekers.
- 2.4 In addition, RILC notes Australia's initiatives within the Offshore Program, namely the In-country subclass, the Emergency Rescue subclass and the Women-at-Risk program, which were developed to meet the needs of particular groups and commends DIAC's willingness to continue to evolve the program to meet current needs, such as the consideration of a private sponsorship model and reconsideration of the Special Humanitarian Program (SHP) allocation.

3. Focus points

- 3.1 Our submission will address the following issues in response to the Information Paper on Australia's Humanitarian Program, published by the Department of Immigration and Citizenship (DIAC):
- Australia's contribution to the Regional Cooperation Framework;
 - the Special Humanitarian Program; and
 - a humanitarian private sponsorship model.

4. Australia's contribution to the Regional Cooperation Framework

What practical bilateral and multilateral activities could Australia pursue to implement the Regional Cooperation Framework?

- 4.1 RILC acknowledges the integral role that a regional cooperative approach may play in managing forced displacement and regional migration flows, but in our opinion, this is appropriately considered as a long-view approach, rather than a 'quick-fix' interim solution. Any proposal must recognise that refugee movements are necessarily and inherently disorderly and unpredictable, such that strict border control measures alone will not be effective.⁴
- 4.2 RILC played a key role in the proposal and formulation of guiding principles for regional cooperation at the High Commissioner's Dialogue on Protection Challenges in December 2010. The High Commissioner noted in his concluding

⁴ See UNHCR, "Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement: UNHCR Discussion Paper" (10 November 2011).

remarks that these principles included: “expanding and improving protection space, not undermining national responsibilities, putting in place protection-sensitive migration policies and border management systems, ensuring fair asylum procedures, a commitment to solutions, fair and equal partnerships between relevant actors, including the media and civil society in advocacy efforts.”⁵

- 4.3 The Fourth Bali Regional Ministerial Conference (held in 2011 and co-chaired by Australia and Indonesia), contemplated a regional strategy which would combat smuggling and trafficking in persons, but, crucially, for the first time accepted it was equally important to address the protection needs of asylum-seekers. The Co-Chairs’ Statement relevantly stated:⁶

Ministers agreed that while border control and law enforcement initiatives are important and effective measures to combat people smuggling and trafficking in persons, **these measures alone are not sufficient and that practical cooperative solutions that also address humanitarian and protection needs are required.**

Ministers acknowledged that the root causes of movements within the region were numerous and multi-dimensional, involving economic, social and political aspects. Ministers also acknowledged that poverty, economic disparities, labour market opportunities, conflict, and insecurity were major causes contributing to the continuing prevalence of people smuggling and human trafficking both globally and regionally. **In addition, Ministers noted that differences in treatment and access to permanent outcomes for asylum seekers contributed to onwards movement (emphasis added).**

- 4.4 In recognition of the complex problems outlined in the Co-Chairs’ Statement above, Australia’s regional strategy should aim to address the root causes of regional displacement; encourage accession to the Refugee Convention; build capacity and improve reception and RSD practices in host countries; and take a lead role in the resettlement of vulnerable persons. In RILC’s view, offshore processing is not an essential or necessary element to a regional cooperative approach to resettlement.
- 4.5 RILC recognises that the Australian government already contributes to aid and development within the region, and wishes only to provide comment on practical measures to build capacity within the region and organise harmonised responses to migration movement. We refer to the relative success of the Comprehensive Plan of Action (CPA), adopted in 1989 in response to mass refugee exodus from Vietnam, which facilitated organised refugee status determination with the cooperation of countries within the Asia-Pacific region and the resettlement of refugees as a durable solution.

⁵ UN High Commissioner for Refugees, *Closing Remarks by the High Commissioner - 2010 Dialogue on Protection Gaps and Responses*, 9 December 2010, available at: <http://www.unhcr.org/refworld/docid/4e3fad182.html>.

⁶ *Final Co-Chairs Statement*, Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali, Indonesia, 29-30 March 2011).

- 4.6 The CPA required partnership between countries of origin, of first asylum, resettlement countries, and UNHCR. It attempted to “implicate all concerned parties...as well as the donor community in a coordinated, solutions-oriented set of arrangements for the *sharing of responsibilities* for the refugee population.”⁷
- 4.7 It was the first time that an international screening mechanism was introduced on a region-wide basis. It necessitated the involvement of governments of countries of first asylum, such as Thailand, Malaysia, Indonesia, the Philippines and Hong Kong. RSD systems had to be developed and implemented in these countries which had no previous experience, and which, apart from the Philippines, were not parties to the Refugee Convention. One of the principal criticisms of the CPA was that it did not lead to the long-term development of RSD procedures in the countries involved. However, this history suggests that regional cooperation is possible, including with an RSD component.
- 4.8 At the Bali Conference, the UNHCR proposed a Regional Cooperative Framework at the Conference which would allow for international support for responsibility sharing by UNHCR, IOM and other stakeholders, for situation specific cooperative arrangements, and for three regional support functions. These support functions are:
- 1) Regional support for processing and case management – support to participating states for development of *in-country processing*
 - 2) Regional support for resettlement and burden sharing – technical support for management of cases and operational support for resettlement of targeted groups of refugees, possibly through a processing centre for a limited period
 - 3) Regional support for return to countries of origin for persons found not to be in need of international protection.⁸
- 4.9 These support functions would be developed by the participating states. RILC is of the view that Australia, as a prosperous country with long-standing RSD experience, Refugee Convention obligations and resettlement responsibilities, should genuinely engage and take a leading role in the development of these support functions as part of the Regional Cooperative Framework. Australia, as the current Chair of UNHCR’s Working Group on Resettlement for 2011-12, is also in a strong position to represent the region’s interests globally.
- 4.10 RILC suggests that Australia take a leading role in the proposed Regional Asylum Support Office in order to develop the support functions listed above, to foster the sharing of information and resources, provide technical RSD and resettlement assistance, and provide protection training and capacity-building. Rather than relying on the establishment of multiple processing centres to immediately shift responsibility from Australia, RILC suggests that as a first step Australia must

⁷ Erika Feller, “The UN and the Protection of Human Rights: The Evolution of the International Refugee Protection Regime” (2001) Washington Univ. J. of Law and Policy 129, 133. Emphasis added.

⁸ UNHCR, “Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement: UNHCR Discussion Paper” (10 November 2011).

demonstrate leadership through its actions, by taking responsibility for its onshore arrivals and by accepting increased numbers of refugees through its resettlement program. To lead by example in this manner would allow for more productive regional dialogue in the future. Once capacity building has taken place, processing centres may function as a temporary measure for persons in transit, *if necessary*, rather than as a form of long-term detention while third country resettlement options are sought.

- 4.11 We highlight the need for Australia to process refugee claims onshore as a positive example in the region, because the agreement on the regional cooperative framework during the Bali Ministerial Conference itself emphasised in-country solutions where possible. The Co-Chairs' Statement indicated:

Persons found to be refugees under those assessment processes should be provided with a durable solution, including voluntary repatriation, resettlement within and outside the region and, where appropriate, possible "in country" solutions.

This is preferable from a protection standpoint because of the vast gap between resettlement places and resettlement need.⁹

- 4.12 Further, RILC proposes the expansion of the Offshore Humanitarian Program to 20,000 places, to be allocated as a separate program, detached from onshore arrival numbers (see further in paragraphs 5.2 and 5.3 below). We note the past submissions of, *inter alia*, the Refugee Council of Australia (RCOA) and Amnesty International Australia (AIA) which have also advocated for increased numbers.¹⁰ The 20,000 places could be allocated between refugee and humanitarian numbers, for example, it could include 12,000 refugee places and 8000 humanitarian places. Such an expansion would accord with past patterns of regular increases of the size of the Humanitarian Program to respond to resettlement need. As outlined in the DIAC information paper, the Program has increased from 12,000 places in 1998-99, to 13,500 places in 2008-09 and to 13,750 places in 2009-10.
- 4.13 RILC additionally suggests that a percentage of places be set aside for persons displaced within the Asia-Pacific region. Though RILC welcomes the inclusion this year of 1000 regional places pursuant to the Malaysian agreement, we suggest that this number should be taken in addition to the 6000 allotted refugee places rather than being included in that amount. In the future, with an increased quota,

⁹ As outlined in the DIAC information paper, there is likely to be a shortfall of 90,000 places in 2012. UNHCR, *Projected Global Resettlement Needs 2012*, as cited in DIAC, "Australia's Humanitarian Program 2012-13 and Beyond (December 2011).

¹⁰ See RCOA, "Australia's Refugee and Humanitarian Program 2010-2011: Community Views on Current Challenges and Future Directions" (February 2010) and AIA, "Submission to the Department of Immigration and Citizenship: Comments on 2010-2011 Refugee and Special Humanitarian Program (January 2010).

the number of regional places could be increased given Australia's capacity and given acute regional need.¹¹

Recommendation 1: The Australian government take a leading role in the Regional Asylum Support Office to encourage cooperation in regional refugee status determination and resettlement.

Recommendation 2: The Australian government fulfil its Refugee Convention obligations towards onshore arrivals through fair and efficient reception and refugee status determination policy and practice.

Recommendation 3: The Government assume increased regional responsibility for resettlement, including targeted resettlement of displaced persons within the region, through an allocation of 12,000 places for refugee resettlement and humanitarian entrants, with a regional resettlement target within this figure.

5. The Special Humanitarian Program

What should the priorities of the offshore SHP places be? Should a balance be struck between the competing priorities of split family and greatest need, and if so, how could this balance be achieved?

- 5.1 RILC has first-hand experience of the flaws of the current SHP allocation identified in the DIAC information paper, and wishes to respond with practical suggestions to ameliorate these concerns. RILC is particularly concerned by the indications in the information paper that there will be less places available in 2012-13 for both split family and humanitarian need applications because of predictions of increased onshore arrivals.
- 5.2 In combination with an increased quota, RILC recommends the termination of the link between spontaneous arrivals and offshore refugee and humanitarian entrants. This link has been consistently opposed by the refugee sector as it affects the numbers of people who can be resettled from offshore each year. Given that asylum seeker numbers are rising globally, the limited spots available for resettlement could be further reduced by the legitimate irregular movement of asylum seekers. The link has also been criticised for the damaging effect it has on the perception of refugees who arrive spontaneously (and particularly of those who arrive by boat). Because of the numerical link, onshore arrivals are seen to take the place of "genuine" refugees awaiting resettlement.
- 5.3 There is no rationale for the link; Australia is the only country in the world who connects the two types of programs. The Government objective in maintaining the link (budgetary planning certainty) does not hold in the face of the international obligations that Australia is conflating. The onshore program should allow

¹¹ UNHCR's 2010 Global Trends Report puts refugee numbers in Asia and the Pacific at 3,793,900. Those in refugee-like situations number at 220,200 – which means a total of 4,014,100: UNHCR, *Global Trends 2010* (20 June 2011), page 7.

Australia to meet its binding obligations under the Refugee Convention to provide protection to those who arrive at the border and who meet the Refugee Convention criteria. The offshore program on the other hand should allow for voluntary participation in international responsibility sharing. Maintaining a separate, fixed number of places for offshore refugee resettlement would benefit the achievement of both of these goals. It would reduce ill-perception of vulnerable asylum-seekers and ease political pressure. It would also allow for better planning of the resettlement program, which would in turn enhance Australia's cooperation with UNHCR, a key government priority, as stated in the DIAC information paper: "one of the Government's key priorities is to enhance Australia's engagement with the United Nations and strengthening our partnership with UNHCR is an important part of the commitment".¹²

- 5.4 RILC is further concerned by the statements in the information paper that there will be less places available in 2012-13 for persons with humanitarian need because of the focus on split family applications and the number of onshore arrivals expected.¹³ While we acknowledge the importance of family reunion, a balance should be struck to allow for other humanitarian entrants to be resettled in Australia.
- 5.5 RILC suggests that DIAC begin to provide substantive reasons for decisions on applications rather than pro forma decision records in order to provide a meaningful indication of the reasons for refusal. This would lead to greater transparency and more certainty around the application process. If guidelines were clearer, more targeted applications could be made. This may even reduce the number of applications received if applicants had some idea of their prospects for success. DIAC could also work with other agencies abroad to better identify persons at risk.
- 5.6 In addition, RILC proposes that the Government establish a separate Family Reunion program, in order to free up places for humanitarian need and in order to allow for focused and transparent processing of split family applications as well. This would accord with the priority DIAC has given to family places.¹⁴ Finding an alternative solution is imperative, particularly given that other visas which have traditionally taken up some of the family reunion slack, such as the remaining relative subclass, currently have waiting periods of 10 years or more. Reform would also allow for the alleviation of other frustrations experienced by RILC's clients and others, namely the lengthy delays for family reunion and the lack of transparency around decision-making.
- 5.7 This would bring Australia into line with other common law jurisdictions. Canada,¹⁵ New Zealand,¹⁶ the United Kingdom,¹⁷ and the United States of

¹² See DIAC, "Australia's Humanitarian Program 2012-13 and Beyond (December 2011).

¹³ Ibid.

¹⁴ See DIAC, "Australia's Humanitarian Program 2012-13 and Beyond (December 2011).

¹⁵ Family Reunification visa: see <http://www.cic.gc.ca/english/immigrate/sponsor/index.asp>.

¹⁶ Refugee Family Support Category: see <http://www.immigration.govt.nz/migrant/stream/live/refugeefamilysupport/>.

America¹⁸ all have categories for family reunification separate to their resettlement and their onshore refugee allocations. In New Zealand, 300 places are set aside each year under the Refugee Family Support Category in addition to the 750 resettlement quota places. Australia would also need to ensure that the allocation of places in the Family Reunion Program was commensurate to the numbers resettled within the Special Humanitarian Program to ensure that those who arrive as a resettled refugee have the opportunity to reunite with family members.

- 5.8 RILC is of the view that the definition of ‘immediate family’ is too restrictive. The definition needs to be expanded to respond to the reality of the situations for those people seeking Australia’s protection. In particular, the definition should be structured around the concept of dependency, which would correspond with that reality and is consistent with UNHCR’s definition of family. We note that expanded definitions which meet, to some extent, these concerns do exist. For example, New Zealand has a wider definition of family which allows for adult children, regardless of dependency, and other relatives, such as aunts and uncles, to be sponsored. A “tier one sponsor” in New Zealand can sponsor a parent, grandparent, grandchild, uncle, aunt, nephew, niece, adult sibling, or adult child. The partner and/or dependent child of anyone on the list can also be sponsored.¹⁹ A tier one sponsor is anyone who is in New Zealand; is a New Zealand citizen, or the holder of a current residence permit or a residence class visa; has been granted residence in New Zealand on the basis of status as a refugee; is aged 18 years or over; and either has no ‘immediate family’ living lawfully and permanently in New Zealand, or is the ‘sole carer’ of a ‘dependent relative’ in New Zealand; and has no other ‘family member’ eligible to be sponsored for residence under any other residence policy; and has not successfully sponsored under the Refugee Family Support Category (or Refugee Family Quota) policy before.²⁰
- 5.8 Establishing a separate category with its own criteria could allow for greater transparency of decision making. Further, the United States of America also provides a useful example of processing transparency. The U.S. Government publishes a ‘visa bulletin’, which contains tables of information about the expected wait for different categories of visas as well as the visa cap figures. It is published monthly.²¹ With a separation between humanitarian need and family

¹⁷ Family Reunion Programme: see <http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/family-reunion/>.

¹⁸ V92 category (family reunion for refugees granted status in the US) or V93 category (family reunion for resettled refugees from offshore): see <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=3ea83e4d77d73210VgnVCM10000082ca60aRCRD&vgnnextchannel=3ea83e4d77d73210VgnVCM10000082ca60aRCRD>.

¹⁹ <http://www.immigration.govt.nz/migrant/stream/live/refugeefamilysupport/sponsorshiprequirements/default.htm>.

²⁰ <http://www.immigration.govt.nz/migrant/stream/live/refugeefamilysupport/sponsorshiprequirements/default.htm>

²¹ See http://travel.state.gov/visa/bulletin/bulletin_1360.html.

reunion cases, and therefore fixed targets for each, it may be possible for DIAC to give similar information.

Recommendation 4: The Australian Government de-link the Offshore Refugee and Humanitarian Program from the Onshore Program.

Recommendation 5: That there be a renewed focus on humanitarian need places within the SHP, with input from local and international stakeholders for identification of at-risk persons.

Recommendation 6: That a Family Reunion category be established with publicly accessible criteria and statistics and an expanded definition of ‘immediate family’.

6. A Humanitarian Program Private Sponsorship Model

Is a private sponsorship program required? How could it operate?

- 6.1 RILC shares DIAC’s view that a private sponsorship model should be investigated, provided that there were a corresponding increase in the size of the Special Humanitarian Program. The model must ensure that people in need are identified consistently with the rest of the Special Humanitarian Program, and that it does not detract from or compromise the guiding principles of the rest of the program.
- 6.2 The Canadian system could provide a workable model, with adjustments to avoid its shortcomings. Canadians can sponsor refugees in three ways:²²
- Working through a *Sponsorship Agreement Holder*. Sponsorship Agreement Holders are established organizations that have signed a Sponsorship Agreement with the Minister of Citizenship and Immigration (or with the Quebec government). A range of organisations are involved, ranging from religious organizations to ethnocultural groups and other humanitarian organizations. Over two-thirds of privately sponsored refugees are sponsored in this way.
 - Joining with others to form a *Group of Five*. Any group of five or more Canadian citizens or permanent residents, who are at least 18 years of age and who live in the community where the refugees are expected to settle, can join together to sponsor one or more refugees.
 - *Community Sponsors*. Any organization, association or corporation with adequate financial capacity and ability to provide settlement support can sponsor refugees to settle in the community where they are based.

²² Canadian Council for Refugees, *Private Sponsorship of Refugees: Challenges and Opportunities* (April 2006).

6.3 Sponsors provide financial and other support for 12 months, or until the refugee becomes self-sufficient if this occurs first. Support may last for longer in special circumstances.²³ This program allows almost 5000 refugees to settle in Canada each year. The Canadian Council for Refugees has identified advantages of the program, for both the government and the refugee. RILC wishes to highlight certain points which would be relevant to the Australian context, some of which are mentioned in the DIAC information paper. The advantages include:²⁴

- “More refugees are able to find a permanent new home.
- The lives of Canadians are enriched by their direct involvement in the resettlement process, through getting to know the refugees they sponsor and accompanying them as they integrate into Canadian society.
- The network of support provided by the sponsoring groups helps refugees settle more quickly. Statistics show that privately sponsored refugees integrate well, undoubtedly because sponsors offer personalized local support that the government is not able to provide.
- Private sponsorship does not rely on public resources, but rather taps the energy and funds of faith communities, ethnic groups, families and other community associations. The support offered through the program is the equivalent of approximately \$79 million annually, as well as an estimated volunteer contribution of over 1,600 hours per refugee family.
- Private sponsorship allows communities right across Canada, large and small, to welcome refugees. Privately sponsored refugees have provided countless Canadians with their first opportunity to meet a refugee, thus building empathy, understanding and a concern for the wider problems of the world.
- Private sponsorship is one of the key channels through which immigrants settle outside the major centres, allowing more communities to benefit from the diversity and economic and demographic advantages that immigration brings.”

6.4 However, the program has been criticised, principally in relation to delays in processing of applications.²⁵ The Canadian Council of Refugees cites a large backlog of cases, caused by the fact that the government processes fewer than half of the number of applications submitted each year. This meant delay of over 2 and a half years at the date of their publication (2006). Because of the delays, refugees

²³ There is also a Joint Assistance model for persons with special needs, such as torture and trauma sufferers, where costs and care are split between private sponsors and the Citizenship and Immigration Canada: <http://www.cic.gc.ca/english/refugees/sponsor/jas.asp>.

²⁴ Ibid.

²⁵ See <http://www.cic.gc.ca/english/department/laws-policy/responses.asp#part3> and Canadian Council for Refugees, *Private Sponsorship of Refugees: Challenges and Opportunities* (April 2006).

are forced to await resettlement in difficult and dangerous circumstances, or have ceased to be refugees by the time the application has been processed. This latter point contributed to a high rate of refusal (50% of applications), as did applications submitted on the basis of a lack of information or training on the criteria for potential sponsors.²⁶

- 6.5 If the Australian Government were to implement a private model, adequate resources would need to be dedicated to the processing and management of the system in order to ensure that the program met its annual target and to avoid unnecessary exposure of refugees to a risk of harm in their countries of origin or transit countries. Moreover, like Canada, there would need to be a training program for potential sponsors funded by DIAC, but this would need to be managed in a manner that allowed for all sponsors to be trained by the time they submitted their application. Lowering the rejection rate below 50% could help raise or maintain community interest in the program.

Recommendation 7: The Australian Government establish a private sponsorship program, in conjunction with an increase in size of the Special Humanitarian Program.

Recommendation 8: The program include clear selection criteria for applications, and sufficient resources and training for staff and private sponsors.

**Refugee & Immigration Legal Centre Inc
(January 2012)**

²⁶ Ibid.