THE LAW SOCIETY
OF NEW SOUTH WALES

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12 August 2025

Dr. James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
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By email: [redacted]

Dear Dr Popple,

AUSTRALIA'S HUMANITARIAN PROGRAM 2025-26

Thank you for the opportunity to contribute to the Law Council's submission to the Department of Home Affairs regarding the composition of Australia's Humanitarian Program 2025-26. The Law Society's Human Rights Committee contributed to this submission.

The comments below broadly address the focus questions in the Discussion Paper regarding composition of the Humanitarian Program (Question 1) and Government responses to emergency humanitarian crises (Question 4). We also encourage investment in legal services providers to ensure due process for applicants in making humanitarian and protection visa applications.

Increasing the size of the Humanitarian Program

The Discussion Paper recognises that 'refugee situations around the world (are increasing) in scope, scale and complexity', but nevertheless proposes that the Government should maintain the Humanitarian Program size at 20,000 places, which reflects the level set in financial years 2023-24 and 2024-25.[1]

Given increasing demand for resettlement, we suggest that the Government should set out a roadmap to increase the refugee and humanitarian intake over time in a way that responds to the scale of displacement globally and Australia's ability to contribute. This would reflect the Government's commitment to demonstrate leadership in refugee resettlement through a 'generous, non-discriminatory Australian Humanitarian Program'.[2] In this context, we note the Government's 2023 Global Refugee Forum pledge to gradually grow the Humanitarian Program, and provide 10,000 additional community sponsored and other complementary pathway places, additional to the core humanitarian intake.[3] At present, however, the Government has not articulated a roadmap for achieving this pledge.

[1] Australian Government, Department of Home Affairs, 'Australia's Humanitarian Program 2025-26' (Discussion Paper, 2025): https://www.homeaffairs.gov.au/reports-and-pubs/PDFs/2025-26-humanitarian-program-discussion-paper.pdf.
[2] Australian Labor Party, 'National Platform 2023 as determined by the 49th National Conference' (Policy Document, August 2024), 133: https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf.
[3] UNHRC, 'The Global Refugee Forum 2023-Government of Australia' (Webpage, December 2023): https://www.unhcr.org/au/global-refugee-forum-2023.

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Community consultations on the Humanitarian Program in previous years have shown strong stakeholder support for allocating all places counted as part of the Humanitarian Program to the core, refugee category.[4] The Law Society supports this advocacy, noting that additional humanitarian programs including the Special Humanitarian Program Category and the Community Support Program should be in addition to the core component. This would increase the overall humanitarian intake and ensure the Government is able to provide further places to assist with UNHCR resettlement referrals.

The need to distinguish between onshore and offshore components of the Humanitarian Program

The Law Society considers that the onshore and offshore components of the Humanitarian Program should be distinguished. We agree with previous submissions of the Law Council that onshore protection offered to persons who are found to engage Australia's protection obligations should not be determined by reference to the number of offshore humanitarian places granted by the Government. A more principled approach would be to remove any ceiling for the onshore component, which would better reflect international law principles on the rights of persons to seek asylum.[5]

Implementation of a practical, coordinated and consistent response to crisis situations

Commentators have noted that the Australian Government's humanitarian response to recent crises in Afghanistan, Ukraine, Sudan and Gaza, has been different, including in relation to the process for acquiring a visa, as well as the work, health and other Government services' entitlements available to different visa holders upon their arrival in Australia.[6]

We suggest that the Government establish clear and transparent processes to address future resettlement crises. While emergency resettlement efforts, by their very nature, require flexibility and agility, it would be helpful for the Government to implement a humanitarian, emergency decision-making framework in line with that proposed by Jane McAdam AO and Regina Jefferies.[7] This would provide a principled way to address crisis situations, and may assist in ensuring consistent, non-discriminatory treatment of different groups experiencing critical humanitarian need.

We also support a focus on durable solutions for persons fleeing conflict. We suggest that the Government should not rely on temporary protection visas in the context of the Humanitarian Program, but should rather provide pathways for permanent resettlement. McAdam and Jefferies, for example, have proposed a model whereby the Government could issue an emergency visa, which would 'permit an initial stay of at least 12 months…with a pathway to permanent stay if it is not safe, possible or otherwise desirable for individuals to

[4] Australian Government, Department of Home Affairs, '2024-25 Humanitarian Program: Community Consultations' (Online publication): https://www.homeaffairs.gov.au/reports-and-pubs/files/2024-25-hum-program-consultation-summary.pdf.
[5] Law Council, 'Australia's Humanitarian Program 2024–25' (Submission to the Department of Home Affairs, 21 June 2024), 11: https://lawcouncil.au/publicassets/a80937cc-cc3c-ef11-94a4-005056be13b5/4552%20-%20S%20-%20Australias%20Humanitarian%20Program.pdf.
[6] Jane McAdam AO & Regina Jefferies, UNSW Kaldor Centre for International Refugee Law, 'Ensuring protection in humanitarian emergencies: A framework for Australia' (Policy Brief 15, September 2024), 1: https://www.unsw.edu.au/content/dam/pdfs/law/kaldor/2024-09-policy-brief-15-emergency-protection.pdf.
[7] Ibid.

return home'.[8] This approach would ensure greater legal and psychological certainty for affected persons, and better facilitate their social and economic integration.

Increased funding for legal service providers assisting applicants under the Humanitarian Program

The Law Society notes the importance of funding legal service providers who provide assistance to applicants under the Humanitarian Program. As pointed out by the Kaldor Centre for International Refugee Law, legal assistance options for people seeking asylum are limited compared with standards in comparable countries and international best practice.[9] This is disadvantageous for both offshore applicants, who require legal assistance to navigate complex visa application processes, as well as onshore applicants, who require support to present a protection claim and, where appropriate, challenge an administrative decision in court. Our members working on protection cases in rural and regional areas have also emphasised the challenges for applicants residing outside metropolitan areas, who experience difficulties in securing legal representation due to travel costs and compounded administrative difficulties.

We suggest that the fairness and overall efficiency of the migration system, in particular the processes around the granting of protection visas, would be enhanced if applicants were provided with legal assistance at the earliest opportunity.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

Jennifer Ball
President

[8] Ibid., 3.
[9] Kaldor Centre for International Refugee Law, 'Do people seeking asylum receive legal assistance' (Factsheet, Updated May 2020): https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet_Legal%20Assistance_final.pdf.