

# Multicultural Youth Advocacy Network (MYAN Australia)

## Submission to the National Children's Commissioner on Australia's progress on children's rights under the Convention on the Rights of the Child

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## About MYAN

Multicultural Youth Advocacy Network (MYAN Australia) is Australia's national peak body representing the rights and interests of young people from refugee and migrant backgrounds.

MYAN works in partnership with young people, government and non-government agencies at the state, territory and national levels to ensure that the particular rights and needs of young people from refugee and migrant backgrounds are recognised, and to support a coherent and consistent approach to addressing these in policy and service delivery. MYAN undertakes a range of policy and sector development activities and supports young people to develop leadership skills to influence the national and international agenda. MYAN believes that children and young people from refugee and migrant backgrounds have enormous potential to be active participants in and contributors to Australian society but need targeted support to realise this.

MYAN has developed the *National Youth Settlement Framework* to support a targeted and consistent approach to addressing the rights and needs of newly arrived young people settling in Australia in policy and service delivery.

## About this submission

MYAN (Australia) welcomes the opportunity to contribute to the National Children's Commissioner's submission process on Australia's progress on children's rights under the Convention on the Rights of the Child (CRC). This submission highlights the particular developments and issues concerning young people from refugee and migrant backgrounds in Australia that MYAN would like to bring to the Commissioner's attention. It has a focus on the rights and interests of children and young people aged between 12 and 24 years old.

This submission provides a national perspective, drawing on MYAN's breadth of experience working with young people from refugee and migrant backgrounds, their communities and the youth and settlement sectors across Australia. Settlement or integration trajectories and supports for children and young people from refugee and migrant backgrounds are one of MYAN's key policy priorities – as identified by both young people and service providers.

This submission provides an overview of the profile of children and young people from refugee and migrant backgrounds in Australia, followed by a focus on issues of concern/areas for improvement in Australia for children and young people from refugee and migrant backgrounds. These include:

- Education pathways and transitions;
- Racism and discrimination;
- Immigration detention, visa cancellations and citizenship; and
- Other areas of concern that hinder the exercise of children's and young people's rights in Australia under the CRC.

This submission has been informed by MYAN's expertise in this field as well as by the views of young people from refugee and migrant backgrounds and others working with them. MYAN conducted consultations with young people via a survey to hear from them about the status of rights in Australia as they relate to the CRC. Views of young people are highlighted throughout the submission. Thanks to the young people who contributed their views. Also thanks to the End Child Detention Coalition (ECDC) for their contribution to this submission on sections related to the immigration detention of children.

## Recommendations

These recommendations are directed to the Australian Government, designed to address issues of concern/areas for improvement. While some relate to specific government departments, others relate to broader issues which need to be addressed through a whole of government approach.

- **Education pathways and transitions**

1. Adopt a national framework to guide and direct funding allocations for English language learning in English as a Second Language (ESL)/ Additional Language (EAL).
2. Develop nationally consistent definitions, measurements and cost structures that reflect the education needs of students to guide English language provision in schools with newly arrived students,
3. Ensure that all schools with an ESL/EAL cohort allocate adequate funding to meet the learning needs of young from refugee and migrant backgrounds.
4. Support young people to acquire sufficient levels of English to enable them to engage successfully in mainstream education and transition out of compulsory education successfully, including via providing professional development to teachers and other school staff to help them best support young people.
5. Develop and share programs to eliminate racism and discrimination in schools and other education institutions to increase engagement in schools, and develop a whole of school approach against discrimination and bullying.
6. Ensure adequate supports in schools to identify and respond early to the needs of newly arrived young people, especially with a view to prevent early disengagement from education.
7. Ensure avenues for young people over the age of 18 to finish high school within and/or outside of the school system without requiring them to pay higher fees – especially recognising disrupted education for young people from refugee backgrounds.
8. Provide support to children and young people (as well as their parents/carers) to understand and navigate the Australian education system, as well as the links between education and employment pathways and possible transitions to work from school.
9. Continue to support people seeking asylum and their children through Status Resolution Support Services (SRSS), ensuring young asylum seekers are able to receive the support they need to continue their education, including education beyond compulsory education, to reach meaningful employment pathways.

- **Racism, discrimination and social cohesion**

10. Ensure that national conversations take place in different domains (including in schools, work places, local councils, etc.) in respectful and constructive ways, are evidence-based and include the voices of young people.
11. Promote the documented benefits of diversity to all of Australia and reiterate that successful settlement is a two-way process - equally dependent on the host communities 'reception' or welcome as it is on new arrivals' skills and attributes.
12. End continual referral to broad characteristics and particular cultural groups as 'problematic', avoiding inaccurate stereotypes, harming young people, their families and communities.
13. Ensure involvement of youth and peer facilitation for young people from refugee and migrant backgrounds to have their voices heard and a role in representing themselves in local communities.
14. Continue to celebrate different cultures and create regular opportunities to bring different communities living in Australia together.

- **Detention, visa cancellations and citizenship**

- **Immigration detention of asylum seeking children**

15. Prohibit immigration detention of children in any type of facility in legislation and policy, regardless of their or their parent's legal status in Australia, consistent with the recognition that detention is never in the best interests of the child.
16. Ensure detention of children is prevented in all facilities where liberty of movement is restricted on behalf of Australian Government (i.e. both onshore and offshore facilities).
17. Lift reservation on the Article 37(c) of the Convention of the Rights of the Child, recognising the negative impacts of being detained with adults in immigration detention, as demonstrated by the by the Royal Commission into Institutional Responses to Child Sexual Abuse.
18. Ensure children and their families living in community (as alternatives to detention) are provided with adequate supports – able to access services to sustain their life in a meaningful way while waiting for a decision on their asylum application.

- **Visa cancellations and its impact on young people**

19. Ensure legislation regarding visa cancellations explicitly exclude children/young people under the age of 18 from any such process.
20. Consider the *best interest of the child* and *non-refoulement* principles as primary considerations in any visa cancellation process, ensuring that government personnel engaged to make determinations in relation to visa cancellations has relevant and adequate training on and understanding of the meaning and interpretation of these concepts consistent with international human rights law, specifically the Convention on the Rights of Child.

21. Adopt a youth justice approach to respond to anti-social behaviour amongst a small number of young people from migrant and refugee backgrounds engaged in criminal behaviour, and avoid using the visa cancellations regime to respond to youth offending.
  - **Introduction of new requirements for access to citizenship, including character requirements**
22. Ensure any changes in citizenship legislation do not disproportionately impact young people from refugee and migrant backgrounds and their parents leading to decreased access to citizenship linked with longer waiting periods, higher English proficiency requirements, character testing and fulfilment of vague criteria such as 'integration potential'.
23. Increase the age of criminal responsibility from the current level of 10 years of age to 12 years of age in line with the General Comment 10 of the Committee on the Rights of the Child, at a minimum.
24. Avoid applicability of character testing for access to citizenship for young people under the age of 18. This recognises increased risk taking behaviour throughout adolescence and the transitional nature of youth offending, consistent with research and well working diversion approaches in the field of youth justice in Australia.
- **Lack of nationally consistent data specific to children and young people from refugee and migrant backgrounds**
  25. Report on young people from refugee and migrant backgrounds as a distinct group (12 to 24 year olds) in all data collection and dissemination-related exercises undertaken and/or funded by the Australian Government(while also recognising the need to continue to capture data specific to children, adolescents and young people under the age of 18 as a distinct group).
  26. Department of Home Affairs to report on the 'date of arrival to country' alongside visa lodgements and visa grants, to strengthen the Australian Government's settlement services and ensure planning for adequate delivery of language courses, education and training and other services. This would ensure complementarity with settlement-related data reporting by the Department of Social Services.
  27. Ensure data disaggregated by age (reporting specifically on 12-24 year olds), country of birth and visa subclass/stream is all collected and released in reports prepared by the Australian Government in relation to youth justice and criminal justice system, including by the Australian Bureau of Statistics and Australian Institute of Health and Welfare.
  28. Department of Home Affairs to release data on visa cancellation decisions disaggregated by age (reporting specifically on 12-24 year olds) and visa subclass/stream as well as country of birth.
  29. Department of Home Affairs to release data on young people (12-24 year olds) in immigration detention as a distinct group, as well as dedicated reporting on children (under 18 year olds) - disaggregated by age, visa subclass/stream and country of birth,

and reasons for detention (especially related to immigration detention due to visa cancellations).

30. Department of Home Affairs to report on disaggregated data specific to children and young people for the length of time held in immigration detention.

31. Department of Social Services to collect data (disaggregated by age, visa subclass and type of service provided) through the Data Exchange database and report this data through the Settlement Reporting Facility on access by young people to settlement services - including Humanitarian Settlement Program (HSP) and Settlement Engagement and Transitions (SETS).

- **Lack of a dedicated Minister for Youth and national peak body for youth/youth affairs**

32. Appoint a federal Minister for Youth and provide federal funding for a national youth peak body, consistent with all other members of the Commonwealth.

- **Guardianship for unaccompanied non-national children**

33. Establish an independent statutory office of the Guardian for Unaccompanied Non-citizen Children.

- **Family support and family reunion**

34. Ensure access to simplified pathways for young humanitarian settlers in Australia to reunify with their families abroad (including through utilising the family stream under the Australia's Migration Program), while ensuring support to the family members arriving in Australia under family reunification procedures equivalent to those arriving under the Humanitarian Program (i.e. through accessing Humanitarian Settlement Program).

35. Adopt a broader definition of 'family' in the context of family reunification with a view to include young people who are over 18 years old as well as parents of young people over 18 years old, ensuring children and young people from refugee and migrants backgrounds in Australia are unified with their parents and siblings.

36. Ensure access to family reunification for all children and young people in Australia from refugee backgrounds, regardless of their visa status, i.e. being an asylum seeker or having a temporary protection visa.

37. *Ensure Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018* is not passed in its current form and any similar legislation in the future provides exceptions to children and young people from refugee-like backgrounds arriving in Australia through Programs other than the Humanitarian Program. This would eliminate any waiting periods on their access to benefits and supports provided by the Australian Government.



- **Australia's Implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

38. Ensure targeted, appropriate and specific rehabilitation for refugee and asylum seeker children and young people who have been involved in armed conflict in their countries of origin upon arrival in Australia.
39. Collect specific data and statistics on refugee and asylum seeker children and young people who have been involved in armed conflict to ensure adequate planning and programming by settlement services (including specialist torture and trauma services) aiming for successful rehabilitation and integration of children into Australian society.

## 1. General Statements

Young Australians from refugee and migrant backgrounds are a diverse population group who commonly display immense resilience. They come to Australia with an array of strengths and capabilities and are often highly motivated to succeed in education and embrace the opportunities available to them.<sup>1</sup> However, they also face particular challenges in accessing the support and opportunities they need to navigate the demands of building a new life in a new country.

Their settlement needs are distinct from adults (due to their age, developmental stage, position within the family and role they often play in supporting the settlement of family members) and they commonly face additional and more complex transitions than their Australian-born counterparts. The challenges young people face navigating the settlement journey are compounded by the developmental tasks of adolescence and include:

- Learning a new language and negotiating unfamiliar education and employment pathways (sometimes with a history of disrupted or no formal education)
- Understanding and negotiating a new culture/cultures and cultural values
- Establishing new peer networks; navigating unfamiliar and relatively complex social systems and laws, including new rights and responsibilities
- Negotiating new or changed family structures, roles, responsibilities and relationships in the context of new concepts of independence, autonomy, freedom and child and youth rights
- Negotiating (multicultural) identity
- Juggling family and community expectations;
- Managing grief and loss associated with separation from peers or family, and
- Building social capital as a young person in their new context.<sup>2</sup>

### 1.1 Importance of predictability for young people

Predictability is an important aspect of the migration process for young people from refugee and migrant backgrounds, who at the same time as navigating the migration journey (including forced

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<sup>1</sup> See Gifford, Correa-Velez & Sampson (2009). *Good Starts for recently arrived youth with refugee backgrounds: Promoting wellbeing in the first three years of settlement in Melbourne, Australia*. Melbourne: La Trobe Refugee Research Centre, p. 15

<sup>2</sup> MYAN (2017), *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 12.

migration) are experiencing significant physical, psychological and intellectual growth as they navigate the critical developmental stage of adolescence. Adolescence is a distinct transitional stage in a young person's life and is characterised by separation and individuation from parents and caregivers, major physical changes such as growth spurts and sexual maturation, identity formation, emotional and cognitive development and determining career and other life goals. This is a critical life stage, where these changes inform the development of a sense of identity, and where the brain undertakes significant growth. The refugee and migration experience, and the challenges of settling in a new country already can compound and/or complicate the developmental tasks of adolescence<sup>3</sup>. The Government's approach of focusing on short-term and temporary migration, rather than adopting a long view of settlement only adds further unpredictability and uncertainty for young people from refugee and migrant backgrounds to this mix. This has been supported by research with refugee families, where the importance of understanding and having confidence in the stability and predictability of one's environment has been highlighted<sup>4</sup>.

Despite this evidence, there are persistent issues in Australia that hinder such predictability.

MYAN believes it is important to take a long-term view of settlement, recognising that the needs of young people from refugee and migrant backgrounds continue beyond the first five years of settlement. This requires an investment in structures, policy and programs that ensure all young people, regardless of cultural background or migration history, can access the support and opportunities they need to feel they belong, and be active participants in and contributors to all aspects of Australian society.<sup>5</sup> Their engagement as active citizens in Australian society, including their meaningful economic participation, has significant and long-term benefits for them, their families and communities, and for a diverse, socially cohesive Australia.<sup>6</sup>

## 1.2 Belonging and identity

Belonging and identity are particularly important for young people from refugee and migrant backgrounds. They are navigating the significant developmental tasks of adolescence alongside the refugee and migration experience and the demands of settlement and integration. Negotiating identity and belonging – one's place in the world with peers, family, community, a new culture and broader society - are fundamental tasks of adolescence that are compounded by the migration and settlement experience.<sup>7</sup>

This process is supported by young people accessing opportunities that facilitate active citizenship: positive connections with peers, family, community and the broader Australian society and develop agency and social capital<sup>8</sup> in the Australian context – made up of both bridging and bonding

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<sup>3</sup> MYAN (2016) *National Youth Settlement Framework*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 2.

<sup>4</sup> Centre for Multicultural Youth (2014) *Facilitating the Transition to Employment for Refugee Young People*. Carlton: Centre for Multicultural Youth, p. 29.

<sup>5</sup> MYAN (2017) *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 2.

<sup>6</sup> MYAN (2016) *National Youth Settlement Framework*. Melbourne: Multicultural Youth Advocacy Network (MYAN).

<sup>7</sup> MYAN Australia (2016) *National Youth Settlement Framework*. Available at:

[http://www.myan.org.au/file/file/Youth%20Settlement%20Framework%2031%20March%202016\(1\).pdf](http://www.myan.org.au/file/file/Youth%20Settlement%20Framework%2031%20March%202016(1).pdf), p. 11.

<sup>8</sup> Acquisition and/or increasing a young person's social capital is a multifaceted process involving strengthening bonding capital (via relations amongst people of similar backgrounds), bridging capital (via interactions and relations amongst people of different backgrounds that are useful in linking young people with information, resources and networks available outside of their own social cycles) as well as linking capital

networks.<sup>9</sup> This includes opportunities to be actively involved in and shape their local community – to make new friends, develop new skills, and contribute positively to their new homeland.<sup>10</sup> This is critical both for overall well-being and a positive sense of inclusion and belonging in Australian society. It is also undermined by young people's experiences of exclusion, including racism and discrimination.

According to young people Australian Government need to;

*"Work with youth to come up with solutions they think will work with their peers"*

*"Have ongoing conversations on identity and what these mean for children. Not an issue that can necessarily be fixed, however ideas could be generated regarding supporting children and young people through their identity formation"*

*"Explore possibility of child committees- of course with the support of child focused practitioners/parents"*

### 1.3 Positive developments

MYAN commends the Australian Government's engagement with the periodic reporting on the implementation of the CRC. Since the last reporting period in 2012, there have been some positive developments for young people from refugee and migrant backgrounds:

1. MYAN commends the Government's increased focus on and investment in responding to forced marriage.<sup>11</sup>
2. MYAN welcomes ongoing investment for youth-specific settlement support from Government, as well as flexibility for English language education (through Adult Migrant English Program - AMEP) for young people under 18 years old.<sup>12</sup>
3. Australia has a well-established resettlement Program that includes large numbers of children and young people, including unaccompanied minors, and recognises the importance of a targeted approach to facilitating youth settlement outcomes. Australia is one of very few resettlement countries that resettles unaccompanied minors, and has a long history of providing support to this cohort to settle well. From as early as the 1970s, the Australian

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(via meaningful connections and interactions between young people and government institutions and services). See Putnam, 2000; Ager & Strang, 2008 in Kellock, W (2016) *The Missing Link? Young people from migrant and refugee backgrounds, social capital and transitions to employment*. Carlton: Centre for Multicultural Youth (CMY), p. 7-8. Bonding relationships as well as bridging relationship are important for creating strong, supportive networks and a sense of identity for young people from migrant and refugee backgrounds in their new home country. Putnam (2000) in Kellock (2016). *The Missing Link? Young people from migrant and refugee backgrounds, social capital and the transitions to employment*. Carlton: CMY

<sup>9</sup> MYAN Australia (2016) *National Youth Settlement Framework*. Available at:

[http://www.myan.org.au/file/file/Youth%20Settlement%20Framework%2031%20March%202016\(1\).pdf](http://www.myan.org.au/file/file/Youth%20Settlement%20Framework%2031%20March%202016(1).pdf), p. 15.

<sup>10</sup>CMY (2014). *Fair and Accurate: Migrant and Refugee Young People, Crime and the Media*. Carlton: CMY.

<sup>11</sup> For general information on Australia's response see, Department of Home Affairs (2018) *Forced Marriage*. Available at:

<https://www.homeaffairs.gov.au/about/crime/human-trafficking/forced-marriage>. For information on new investment and support to

forced marriage victims see, Department of Social Services (2018) *Increased Support for Forced Marriage Victims*. Available at:

[https://www.dss.gov.au/sites/default/files/documents/05\\_2018/d18\\_479015-forced-marriage-stream-trial.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2018/d18_479015-forced-marriage-stream-trial.pdf).

<sup>12</sup> Department of Education and Training (2018) *Adult Migrant English Program*. Available at: <https://www.education.gov.au/adult-migrant-english-program-0>.

Government has supported unaccompanied children and young people seeking safety in Australia to receive appropriate support and care through relevant state welfare and child protection authorities.<sup>13</sup>

4. Australia has also invested in a range of capacity building and sector development initiatives that continue to strengthen youth-focused service provision in integration, including to unaccompanied children. This investment includes: providing funding for a national multicultural youth peak body, MYAN Australia, the development of multicultural youth specialist organisations in each of Australia's states and territories, the development of the and MYAN's *National Youth Settlement Framework*<sup>14</sup> (a guide to supporting and measuring the integration of young people from refugee and migrant backgrounds) and accompanying national training, as well as support for the development of skills and competencies within the broader youth and settlement (integration) workforces to support them in their work with young people from refugee backgrounds settling in Australia.

While this submission focuses on the federal government (given its specific obligations under the CRC) MYAN notes that there have also been a number of important Initiatives at the state/territory levels. These include: investment in projects on racism and discrimination prevention and strengthening social cohesion (e.g. in Victoria, funding for projects against racism in schools and in NSW, funding for refugee peer mentoring projects).

#### 1.4 Profile of young people from refugee and migrant backgrounds in Australia

Young people aged between 12 and 24 comprise a sizable portion of Australia's Migration and Humanitarian Programs.<sup>15</sup> In the 2016/17 financial year, 17,446 young people aged 12 to 24 years settled permanently in Australia.<sup>16</sup> Young people, aged 12 to 24 years, represented 15% of all permanent arrivals to Australia in 2016/17.<sup>17</sup> 41% of all youth arrivals to Australia in 2016/17 were of school age (aged between 12 and 17 years).<sup>18</sup> In the 2016/17 financial year, young people continued to make up an important portion of arrivals under the Humanitarian Program (23%), and Family stream (21%) and Skill stream (16%) of the Migration Program.<sup>19</sup> Young people from refugee-like backgrounds also arrived in Australia under the Migration Program, which is utilised widely for young

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<sup>13</sup> Department of Human Services (DHS), State Government of Victoria (2014) *Refugee Minor Program*. Available at <http://www.dhs.vic.gov.au/for-service-providers/children,-youth-and-families/youth-services/refugee-minor-program>.

<sup>14</sup> MYAN Australia (2016) *National Youth Settlement Framework*. Available at: [http://www.myan.org.au/file/file/Youth%20Settlement%20Framework%2031%20March%202016\(1\).pdf](http://www.myan.org.au/file/file/Youth%20Settlement%20Framework%2031%20March%202016(1).pdf),

<sup>15</sup> Humanitarian Programme and Migration Programmes are managed separately by the Department of Home Affairs. While the Humanitarian Programme is made up of an offshore and onshore component; the Migration Programme is made up of two predominant streams, i.e. Family and Skill streams and a small Special Eligibility stream. For more on the Migration Programme see, Department of Home Affairs (2018) *Managing Australia's Migrant Intake*. Available at <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/discussion-papers/managing-australias-migrant-intake.pdf>, p.2; and for more on the Humanitarian Programme see, Department of Home Affairs (2018) *Discussion Paper: Australia's Humanitarian Programme 2018-19*. Available at <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/discussion-papers/2018-19-discussion-paper.pdf>, pp. 3-5.

<sup>16</sup> MYAN (2018) *Youth Settlement Trends in Australia: A Report on the Data 2016-2017*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 9. Available at: [http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends\\_2016-2017%20Final\(2\).pdf](http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends_2016-2017%20Final(2).pdf).

<sup>17</sup> MYAN (2018) *Youth Settlement Trends in Australia: A Report on the Data 2016-2017*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 6. Available at: [http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends\\_2016-2017%20Final\(2\).pdf](http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends_2016-2017%20Final(2).pdf).

<sup>18</sup> MYAN (2018) *Youth Settlement Trends in Australia: A Report on the Data 2016-2017*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 10. Available at: [http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends\\_2016-2017%20Final\(2\).pdf](http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends_2016-2017%20Final(2).pdf).

<sup>19</sup> MYAN (2018) *Youth Settlement Trends in Australia: A Report on the Data 2016-2017*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 6. Available at: [http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends\\_2016-2017%20Final\(2\).pdf](http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends_2016-2017%20Final(2).pdf).

people to unify with their family members in Australia.<sup>20</sup> In addition to new arrivals, in 2016, 45% of young people in Australia were either first or second-generation migrants.<sup>21</sup>

Australia also continues to host an important number of asylum seeker children. According to the Department of Home Affairs, as of 31 December 2017, 19,590 Bridging Visa class E (BVE) – visa subclass being granted to asylum seekers who had arrived irregularly to Australia - holders were living in the community, (17,775 with a current BVE and 1815 awaiting grant of a further BVE).<sup>22</sup> Approximately 17% of all BVE holders at this date were under the age 18 and 18% were aged between 12 and 25 years.<sup>23</sup>

## 2. Areas of Concern

### 2.1 Education pathways and transitions

#### 2.1.1 English as an Additional Language (EAL)

Education is largely the responsibility of state and territory governments in Australia. Most young people and their families arrive in Australia with high aspirations and education success as a key goal. However, succeeding in mainstream education and training can be challenging. Younger people typically spend their first twelve months in Australia in an English Language School (ELS) or Intensive English Language Centre (IELC), designed to help prepare them for mainstream schools or further study, training or work. The rationale behind this model is to provide necessary English skills to be able to make a successful transition into mainstream education and employment.<sup>24</sup> This is particularly significant given government's increasing emphasis on the 3Es (English language, Education and Employment) in the settlement and migration context.<sup>25</sup>

MYAN believes that the absence of a national framework to guide and direct funding allocations for English language learning potentially limits access to this important support program. Adequate and targeted support in English as a Second Language (ESL)/ Additional Language (EAL) learning in the mainstream school setting are critical to young people settling well in Australia. MYAN believes that English language provision in schools with newly arrived students should operate within nationally consistent definitions, measurements and cost structures that reflect the education needs of

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<sup>20</sup> MYAN (2018) Submission to the Department of Home Affairs on 'Managing Australia's Migrant Intake'. Available at: [http://www.myan.org.au/file/file/MYAN%20Australia%20Submission%20for%20Discussion%20Paper%20on%20Managing%20Australia's%20Migrant%20Intake\(1\).pdf](http://www.myan.org.au/file/file/MYAN%20Australia%20Submission%20for%20Discussion%20Paper%20on%20Managing%20Australia's%20Migrant%20Intake(1).pdf), p. 5.

<sup>21</sup> VicHealth, Data61, CSIRO & MYAN (2017) *Bright Futures: Spotlight on the wellbeing of young people from refugee and migrant backgrounds*. Melbourne: Victorian Health Promotion Foundation, p. 6.

<sup>22</sup> These are the most up-to-date publicly available figures at the time of publishing. See Australian Border Force (2018) *Illegal Maritime Arrivals on Bridging Visa E*. Available at <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/ima-bve-dec-2017.pdf>, p. 4. It is important to note that temporary visas, i.e. Temporary Protection Visa (TPV) and Safe Haven Enterprise Visa (SHEV) have been introduced and are being issued to asylum seekers living in the community on bridging visas for whom it has been determined that Australia has protection obligations. While official figures are not available, MYAN understand anecdotally that some young people have been granted these visas. For more information on these temporary visas and asylum seekers living in the community in Australia please visit <https://www.homeaffairs.gov.au/>.

<sup>23</sup> These figures are the average across all states and territories. Where the figure was not available (e.g. <10) the sum was calculated using only the available figures. As a result, these are likely underestimates.

<sup>24</sup> Beadle (2014). *Facilitating the Transition to Employment for Refugee Young People*. Carlton: CMY.

<sup>25</sup> Department of Social Services (2015) *Pathways to participation for migrants Productivity Commission Inquiry Migrant Intake into Australia*. Available at: [https://www.pc.gov.au/\\_data/assets/pdf\\_file/0006/190815/sub062-migrant-intake.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0006/190815/sub062-migrant-intake.pdf), Appendix C: Importance of the 3-Es, pp. 21-22.

students. While there are many examples of good practice across Australia, there is also a need to ensure that all schools with an ESL/EAL cohort allocate adequate funding to meet the learning needs of young from refugee and migrant backgrounds.

Many young people from refugee backgrounds have experienced disrupted education prior to Australia, commonly resulting in a particularly difficult transition into an education system where age is the marker for skill level. Additionally, many young people report that they have not yet acquired a sufficient level of English to enable them to engage successfully when they transition out of compulsory education. Experiences of racism and discrimination have also been found to decrease enjoyment and engagement in school.<sup>26</sup>

Recommendation from a young person;

*“Work with the school to have a whole school approach for bullying.”*

Research also shows that some young people can struggle to understand and navigate the Australian education system, resulting in challenges in meeting educational requirements, while those transitioning into mainstream schools from English language programs can feel less supported by their teachers and often experience a drop in their levels of perceived achievement at school.<sup>27</sup>

Recommendation from a young person;

*“Mandatory traineeship/apprenticeship in government funded infrastructure projects, legal requirement for educational providers to establish support programs to support those with special needs, adequate (i.e needs based hours instead of cap at 500 hrs) and multi-dimensional English classes that also provides support to address underlying causes/issues that prevent from English learning.”*

Inflexibility within schooling systems and a lack of support to schools to identify and respond early to the needs of newly arrived young people, can result in young people leaving without completing secondary school and making it more difficult to seek further technical training or employment.<sup>28</sup> Early disengagement from school is a key factor impacting youth participation and marginalisation.<sup>29</sup>

Views and recommendations of young people;

*“As a refugee I grew up with a different system of education and being thrown into the Australian*

<sup>26</sup> Gifford, Correa-Velez & Sampson (2009). *Good Starts for recently arrived youth with refugee backgrounds: Promoting wellbeing in the first three years of settlement in Melbourne, Australia*. Melbourne: La Trobe Refugee Research Centre.

<sup>27</sup> Gifford, Correa-Velez & Sampson (2009). *Good Starts for recently arrived youth with refugee backgrounds: Promoting wellbeing in the first three years of settlement in Melbourne, Australia*. Melbourne: La Trobe Refugee Research Centre.

<sup>28</sup> Gifford, Correa-Velez & Sampson (2009). *Good Starts for recently arrived youth with refugee backgrounds: Promoting wellbeing in the first three years of settlement in Melbourne, Australia*. Melbourne: La Trobe Refugee Research Centre; Beadle (2014). *Facilitating the Transition to Employment for Refugee Young People*. Carlton: CMY.

<sup>29</sup> CMY (2014). *Fair and Accurate: Migrant and Refugee Young People, Crime and the Media*. Carlton: CMY.

*education system without understanding how it works was very difficult. I spent my first 3 years of primary education trying to grasp the new system and that made it difficult to focus on learning.”*

*“Making a good school orientation program base on child's vision and talent.”*

*“Maintaining a good mentorship school program for children’s success and achievement.”*

*“Training teachers to deliver curriculum to students who have diverse learning methods rather than imposing structural/bureaucratic methods on them and expect everyone to turn out the same.”*

*“I think they should focus on every young people long term goal rather than school process. Providing additional English lesson support for young people with migrant and refugee background to catch up with the education system.”*

MYAN is aware of significant concerns about the continuity of education for young people turning 18 while in high school. There are currently few alternative options for finishing high school outside of the school system for young people over the age of 18, as current school education policy gives schools the discretion over the enrolment, re-enrolment and payment of higher fees after this age. While MYAN understands that most of schools continue to enrol and waive fees for students up to the age of 21, this is not guaranteed.<sup>30</sup>

*Recommendation from a young person;*

*“Provide free learning for those with financial barriers”*

Families are also commonly not adequately supported and informed about vocational pathways (available from Year 11 covering young people aged 16+) as a good alternative to university. This may lead to intergenerational conflict between young people and their parents due to family’s unmet expectations. Education success can be significantly impacted by how well a family understands the systems and is connected into networks important to support their young people to do well.<sup>31</sup> Supporting parent/carer engagement in young people’s educational journey can promote their engagement and participation and improve educational success.<sup>32</sup>

*Recommendation from a young person;*

*“Create programs that focus on defining cultural principles, increasing awareness and harmonising differences of the emerging culture between young migrants and refugees and their parents or guardians.”*

<sup>30</sup> MYAN (2017), *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 23.

<sup>31</sup> MYAN (2017), *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 24.

<sup>32</sup> This is true for all children and young people. Department of Education and Training (2016). *State of Victoria's Children Report – 2015*. Melbourne: DET.

Young people too are commonly not supported sufficiently in understanding different education pathways available to them, such as vocational pathways. Instead, they are either not encouraged to pursue further education by their schools in vocational pathways or only provided with the option of university education, which may not necessarily meet their needs for future employment. In 2016, the Centre for Multicultural Youth found that young people from refugee and migrant backgrounds (and their families and communities) lack critical but unseen knowledge and understanding of the links between education and employment in the Australian context.<sup>33</sup>

*Recommendation from a young person;*

*“Support community organisations to provide assistance to children with special education needs and allow access to existing education opportunities to those children and young people.”*

Transition from education has also been an ongoing issue of concern which requires targeted support for young people from refugee and migrant backgrounds, with tailored programs or strategies to identify and address their specific needs. .

### 2.1.2 Employment

Young people from migrant and refugee backgrounds face multiple disadvantages in the employment market. From early on while in education system, they need support to understand the cultural expectations regarding job seeking and employment in Australia, as well as access to opportunities for various forms of work experience. They also need access to formal education and training and employment programs that offer appropriate skills development in job seeking.<sup>34</sup>

In Australia, contrary to many other countries, second generation migrants<sup>35</sup> have skills comparable to skills of those who were born in Australia and whose both parents were born in Australia<sup>36</sup>. In international research, the first strength of Australia has been identified as having “a large population of relatively skilled and well-educated migrants that bring highly desirable and much-needed skills to the workforce.”<sup>37</sup> This large population is mainly young, and they perform very well in terms of the level of basic skills they possess. The only exception to this is migrants from disadvantaged socio-economic backgrounds, including from refugee and refugee-like backgrounds, and this may be improved through targeted policy interventions<sup>38</sup>. Considering the integration of immigrants and their children into Australian society, this data provides evidence that migration policies that have a long-

<sup>33</sup> Kellock, W (2016) *The Missing Link? Young people from migrant and refugee backgrounds, social capital and the transitions to employment*. Carlton: CMY.

<sup>34</sup> MYAN (2017) *Response to the Standing Committee on Employment, Education and Training Inquiry on School to Work Transition*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 5.

<sup>35</sup> That is native-born children of migrants and refugees.

<sup>36</sup> This finding is based on Australia's overall performance in the PIAAC Survey of Adult Skills, which is a product of the OECD Programme for the International Assessment of Adult Competencies (PIAAC), across literacy, numeracy and problem solving in technology-rich environments. PIAAC Survey of Adult Skills was conducted in Australia from October 2011 to March 2012, and Australia specific findings were released in a 2017 OECD report. For more see, OECD (2017) *Building Skills for All in Australia: Policy Insights from the Survey of Adult Skills*. Paris: OECD Publishing.

<sup>37</sup> OECD (2017) *Building Skills for All in Australia: Policy Insights from the Survey of Adult Skills*. Paris: OECD Publishing, p. 31.

<sup>38</sup> OECD (2017) *Building Skills for All in Australia: Policy Insights from the Survey of Adult Skills*. Paris: OECD Publishing, p. 35.



term view of settlement, with proper funding and investment in settlement services support has worked for Australia in the past.<sup>39</sup>

### 2.1.3 Education for asylum seeker children and young people

Asylum seeker children and young people have limited opportunities to access and continue education. People seeking asylum in Australia are provided with support through the Status Resolution Support Services (SRSS) depending on the circumstances and needs of the person. SRSS provides a basic living allowance (currently \$243 per week for a single person with no children), casework support (to navigate complex systems such as the rental market and services such as health and education), access to torture and trauma counselling and subsidised medication.<sup>40</sup>

While young people under the age of 18 have been able to access education while receiving support through SRSS, through the recent changes introduced to the program in August 2017, the Federal Government changed the SRSS eligibility criteria for people who are fulltime students. They are now ineligible for support as they are expected to support themselves financially.<sup>41</sup> These limitations impact children and young asylum seekers as it presents a barrier to achieving future aspirations in relation to further education and future employment prospects. .

There are significant concerns about the continuity of education for this group of young people turning 18 while in high school - especially for young asylum seekers who were brought to Australia from offshore processing centres (particularly Nauru) for their or their families' medical treatment and who continue their schooling in Australia. These young people may be prevented from continuing their secondary education if they turn 18 while still in school, due to changes to their visa conditions preventing completion of their degree.<sup>42</sup>

People seeking asylum have been given no government support to learn English, unlike refugees who are being resettled to Australia.<sup>43</sup> Research from the Refugee Council of Australia has revealed that these restrictions on study and English language education can affect relationships within families, especially relations between parents and children and can in turn cause undue stress for children.<sup>44</sup> Besides restrictions on study, there has been increasing limitations on access to SRSS as an increasing number of people have started to be transitioned out from the program - regardless of whether they have been studying. As the RCOA reports, "*The Government has indicated that people who have work*

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<sup>39</sup> This comparison is considered as an indicator for integration as children of immigrants born in Australia have been raised and educated in the host country and they should not be facing the same obstacles as their immigrant parents and outcomes similar to those of their peers of native-born parentage may be expected. For more see OECD/European Union (2015), Indicators of Immigrant Integration 2015: Settling In, OECD Publishing, Paris, p.16.

<sup>40</sup> Refugee Council of Australia (RCOA) (2018) *With Empty Hands: How the Australian Government is forcing people seeking asylum to destitution*. Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands\\_FINAL.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands_FINAL.pdf) , p. 10-11.

<sup>41</sup> RCOA (2018) *With Empty Hands: How the Australian Government is forcing people seeking asylum to destitution*. Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands\\_FINAL.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands_FINAL.pdf) , p. 15.

<sup>42</sup> Information provided to MYAN by one of its state/territory partners.

<sup>43</sup> RCOA (2018) *With Empty Hands: How the Australian Government is forcing people seeking asylum to destitution*. Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands\\_FINAL.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands_FINAL.pdf) , p. 14.

<sup>44</sup> RCOA (2018) *With Empty Hands: How the Australian Government is forcing people seeking asylum to destitution*. Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands\\_FINAL.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands_FINAL.pdf) , p. 15.

*rights and do not meet an extremely high threshold of vulnerability are expected to get work and will lose SRSS support, whether they have a job or not.”<sup>45</sup>*

Increasing limitations on access to support for asylum seeker families and children could prevent children's effective participation in education. Children commonly mirror the stress that their parents are facing with ongoing uncertainty for their future. This can include increased demotivation to participate in education as they know they cannot continue further vocational or higher education following compulsory education.<sup>46</sup>

### Recommendations:

1. Adopt a national framework to guide and direct funding allocations for English language learning in English as a Second Language (ESL)/ Additional Language (EAL).
2. Develop nationally consistent definitions, measurements and cost structures that reflect the education needs of students to guide English language provision in schools with newly arrived students,
3. Ensure that all schools with an ESL/EAL cohort allocate adequate funding to meet the learning needs of young from refugee and migrant backgrounds.
4. Support young people to acquire sufficient levels of English to enable them to engage successfully in mainstream education and transition out of compulsory education successfully, including via providing professional development to teachers and other school staff to help them best support young people.
5. Develop and share programs to eliminate racism and discrimination in schools and other education institutions to increase engagement in schools, and develop a whole of school approach against discrimination and bullying.
6. Ensure adequate supports in schools to identify and respond early to the needs of newly arrived young people, especially with a view to prevent early disengagement from education.
7. Ensure avenues for young people over the age of 18 to finish high school within and/or outside of the school system without requiring them to pay higher fees – especially recognising disrupted education for young people from refugee backgrounds.
8. Provide support to children and young people (as well as their parents/carers) to understand and navigate the Australian education system, as well as the links between education and employment pathways and possible transitions to work from school.
9. Continue to support people seeking asylum and their children through Status Resolution Support Services (SRSS), ensuring young asylum seekers are able to receive the support they need to continue their education, including education beyond compulsory education, to reach meaningful employment pathways.

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<sup>45</sup> RCOA (2018) *With Empty Hands: How the Australian Government is forcing people seeking asylum to destitution*. Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands\\_FINAL.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands_FINAL.pdf) , p. 17.

<sup>46</sup> RCOA (2018) *With Empty Hands: How the Australian Government is forcing people seeking asylum to destitution*. Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands\\_FINAL.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2018/06/With-Empty-Hands_FINAL.pdf) , p. 21.

## 2.2 Racism, discrimination and social cohesion

MYAN is concerned about reports of increased incidents of racism and discrimination in recent years.<sup>47</sup> While, overwhelmingly, the Australian community is welcoming of new arrivals and generally supportive of the migration system, increasingly vocal negative (and often unfounded) attitudes towards migration and particular communities threatens to challenge this long-standing social compact.<sup>48</sup> According to young people, statements (or silence) and actions in relation to policy and legislation, especially those that label specific groups as the 'problem', can contribute to feelings of isolation and marginalisation.<sup>49</sup> Negative public sentiment and media can significantly influence young people's views of themselves, their inclusion or exclusion within Australian society, and their self-worth.<sup>50</sup>

While there has been an increased focus on the 'likelihood of successful settlement'<sup>51</sup> and 'integration potential' in migration policies in Australia, settlement outcomes cannot be considered independent from the experiences faced upon arrival to Australia. As noted by the Productivity Commission, "... social cohesion also depends on the extent to which immigrants themselves and the Australian-born population accept diverse ethnic identities as consistent with a common 'national' identity, which itself evolves over time. A high level of acceptance is conducive to better integration."<sup>52</sup> Research also suggests that integration is closely related to experiences after arriving in a country and is not solely dependent on the prospective immigrant's own skills or capabilities. Experiences of racism and discrimination can lead to mental health and wellbeing problems, including anxiety, stress, depression and poor quality of life.<sup>53</sup>

In recent years, there has been an increase in the reported experience of discrimination based on skin colour, ethnic origin and religion (20% in 2017), from the previous years (15% in 2015). 22% of young people between 18-24 years of age reported such discrimination and, young people from non-English speaking backgrounds reported highest experience of discrimination (34%). This is an indicator that more should be done for better settlement outcomes for young people upon arrival to Australia to ensure social cohesion.<sup>54</sup> Furthermore in the Multicultural Youth Australia Census 2017<sup>55</sup>, 66% of the participants mentioned they experienced discrimination based on race and 25% stated they were discriminated because of their religion. As a multicultural society, Australia can provide more spaces

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<sup>47</sup> AHRC (2015). *Freedom from discrimination: Report on the 40th anniversary of the Racial Discrimination Act – National Consultation Report*. Sydney: AHRC.

<sup>48</sup> MYAN (2017) *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 40-41.

<sup>49</sup> MYAN & RCOA (2016) *Speaking Out: The Global Refugee Youth Consultations in Australia Report*. Available at: [http://www.myan.org.au/file/file/GRYC%20Report\\_NOV2016.pdf](http://www.myan.org.au/file/file/GRYC%20Report_NOV2016.pdf).

<sup>50</sup> CMY (2014). *Fair and Accurate: Migrant and Refugee Young People, Crime and the Media*. Carlton: CMY.

<sup>51</sup> Department of Home Affairs (2018) *Managing Australia's Migrant Intake*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/discussion-papers/managing-australias-migrant-intake.pdf>, p.1.

<sup>52</sup> Productivity Commission (2016) *Inquiry Report: Migrant Intake Into Australia, No. 77*. Canberra: Productivity Commission, p.11.

<sup>53</sup> VicHealth, Data61, CSIRO & MYAN (2017) *Bright Futures: Spotlight on the wellbeing of young people from refugee and migrant backgrounds*. Melbourne: Victorian Health Promotion Foundation, p. 13

<sup>54</sup> Markus, A (2017), *Mapping Social Cohesion: The Scanlon Foundation surveys 2017*. Caulfield East: Monash University, pp. 59-60.

<sup>55</sup> The census is the first nation wide study of Australia's multicultural youth with 69% of participants aged 15 to 19 and 37% aged 20 to 25. For more see, Wyn, J., Khan, R., & Dadvand, B. (2018). *Multicultural Youth Australia Census 2017 Infographic Report*. Melbourne, Australia: Youth Research Centre, Melbourne Graduate School of Education, the University of Melbourne. Available at: [https://education.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0004/2781535/Multicultural-Youth-Australia-Census-2017-Infographic.pdf](https://education.unimelb.edu.au/__data/assets/pdf_file/0004/2781535/Multicultural-Youth-Australia-Census-2017-Infographic.pdf).

for young people from refugee and migrant backgrounds to find a sense of belonging in their new country and community.<sup>56</sup>

MYAN believes there is a critical need for leadership to ensure that national conversations take place in respectful and constructive ways, are evidence-based and include the voices of young people. There is also a need for initiatives that actively promote the documented benefits of diversity to all of Australia and reiterate that successful settlement is a two-way process - equally dependent on the host communities 'reception' or welcome as it is on new arrivals' skills and attributes. Government focus and continual referral to broad characteristics and particular cultural groups as 'problematic' reinforces inaccurate stereotypes, harming young people, their families and communities.

What children and young people think Australian Government should do about racism and discrimination:

*"Ongoing conversations in every domain i.e schools, workplaces, councils etc to highlight importance."*

*"Raising awareness on the multicultural community as one of the school unit to fight both racism and discrimination issues."*

*"Diversity in Parliament and positions of power, anti-racism programs in schools and not just acknowledgment of racially motivated crimes e.g public nuisance but using it as a factor to maximize the penalty."*

*"Australia should ban racism and higher the value of migrants."*

*"Presentation and workshops in the schools, communities and online about the risks of poverty, non-education and homelessness for the Australian multicultural society."*

*"Theatre and Storytelling is always a wonderful way to combat tough issues, as it creates a safe environment for people to share, discuss and empathise. I believe the Australian government should invest more money in theatre for education for the development and facilitation of applied theatre and forum theatre workshops about racism and discrimination in primary and high schools."*

*"community education, through schools, religious institutions, religious and community welfare organisations, and support to peer facilitation approach where refugee youth can have a say and a role in representing themselves to the local communities."*

*"More events that celebrate culture and brings the community together despite what background."*

<sup>56</sup> VicHealth, Data61, CSIRO & MYAN (2017) *Bright Futures: Spotlight on the wellbeing of young people from refugee and migrant backgrounds*. Melbourne: Victorian Health Promotion Foundation, p. 13. Also see, Mansouri, F & Kirpitchenko, L 2016, 'Practices of active citizenship among migrant youth: Beyond conventionalities', *Social Identities*, vol. 22, no. 3, pp. 307–23.

### Recommendations:

10. Ensure that national conversations take place in different domains (including in schools, work places, local councils, etc.) in respectful and constructive ways, are evidence-based and include the voices of young people.
11. Promote the documented benefits of diversity to all of Australia and reiterate that successful settlement is a two-way process - equally dependent on the host communities 'reception' or welcome as it is on new arrivals' skills and attributes.
12. End continual referral to broad characteristics and particular cultural groups as 'problematic', avoiding inaccurate stereotypes, harming young people, their families and communities.
13. Ensure involvement of youth and peer facilitation for young people from refugee and migrant backgrounds to have their voices heard and a role in representing themselves in local communities.
14. Continue to celebrate different cultures and create regular opportunities to bring different communities living in Australia together.

### 2.3 Detention, visa cancellations and citizenship

In recent years, increasing racism and discrimination experienced by children and young people has been accompanied by, and in some cases been a result of, increased criminalization of young people from refugee and migrant backgrounds.

#### 2.3.1 Immigration detention of asylum seeking children

There are ongoing public misperceptions and negative stereotypes regarding asylum seekers and refugees in the Australian media. This is reinforced by securitization of the issue of asylum seekers arriving in Australia irregularly and often associated negative narratives used by Government. There continues to be public support for Government policies regarding the immigration detention of asylum seekers. There is perceived effectiveness and approval of the Government response to asylum seekers arriving by boat. This perceived success has conveyed the message that Government has re-established border control and can be trusted to manage immigration.<sup>57</sup> According to national Scanlon survey on social cohesion, there is a decline of concern over the issue of asylum seekers and in 2017, this concern was specified only by just 2% of the participants - only half of them indicating concern over the poor treatment of asylum seekers.<sup>58</sup> According to a recent poll, four in ten (40%) Australians see 'large numbers of immigrants and refugees coming into Australia' as a critical threat.<sup>59</sup>

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<sup>57</sup> Markus, A (2017), *Mapping Social Cohesion: The Scanlon Foundation surveys 2017*. Caulfield East: Monash University, p. 51.

<sup>58</sup> Markus, A (2017), *Mapping Social Cohesion: The Scanlon Foundation surveys 2017*. Caulfield East: Monash University, p. 33.

<sup>59</sup> Oliver, A (2018), *The Lowy Institute Poll 2018*. Available at: [https://www.lowyinstitute.org/sites/default/files/LOWY\\_2018-PollReport\\_LR\\_0.pdf](https://www.lowyinstitute.org/sites/default/files/LOWY_2018-PollReport_LR_0.pdf), p. 8.

### 2.3.1.1 Impact of immigration detention on children and young people

In this political climate, children continue to be kept in immigration detention in Australia, at times mixed with adults that they are not related to. Australia has a system of mandatory immigration detention since 1992 for asylum seekers arriving in Australia irregularly<sup>60</sup> and does not prohibit detention of children in law. Australia has ratified the UN Convention on the Rights of the Child, and the Committee on the Rights of the Child has numerous times provided authoritative guidance on the issue of immigration detention of children. The most recent examples of this is the Joint General Comments 3 and 4 by the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families affirming that;

*“... children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.”<sup>61</sup>*

According to statistics released by the Government, as at 31 May 2018, there are no children in closed immigration detention facilities on the mainland in Australia,<sup>62</sup> however there are 22 children in immigration detention in Nauru<sup>63</sup> as part of Australia’s offshore processing arrangements, while higher numbers (as high as 142) are mentioned in the media.<sup>64</sup>

According to statistics, less than five children are held in alternative places of detention.<sup>65</sup> Alternatives Places of Detention (APOD) is defined as a place of immigration detention other than an Immigration Detention Centre or places identified as part of a residence determination.<sup>66</sup> According to the Department of Home Affairs, APODs include immigration transit accommodation (ITA) which provides

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<sup>60</sup> Australian Human Rights Commission (2014), *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*. Available at: [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf), p.24.

<sup>61</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) (2017), *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23*. Available at: <http://www.refworld.org/docid/5a12942a2b.html>.

<sup>62</sup> These are the most up-to-date publicly available figures at the time of publishing. Department of Home Affairs and Australian Border Force (2018) *Immigration Detention and Community Statistics Summary, 31 May 2018*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2018.pdf>, p. 4. Alternatives Places of Detention (APOD) is defined as a place of immigration detention other than an Immigration Detention Centre or places identified as part of a residence determination. See Department of Home Affairs (2018) *Detention Facilities*. Available at: <https://www.homeaffairs.gov.au/about/immigration-detention-in-australia/detention-facilities>.

<sup>63</sup> These are the most up-to-date publicly available figures at the time of publishing. Department of Home Affairs and Australian Border Force (2018) *Immigration Detention and Community Statistics Summary, 31 May 2018*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2018.pdf>, p. 4. Alternatives Places of Detention (APOD) is defined as a place of immigration detention other than an Immigration Detention Centre or places identified as part of a residence determination. See Department of Home Affairs (2018) *Detention Facilities*. Available at: <https://www.homeaffairs.gov.au/about/immigration-detention-in-australia/detention-facilities>.

<sup>64</sup> Dohery, B & Vasefi, S (2018) *Suicidal refugee child should not be sent back to Nauru, psychiatrist says*. Available at: <https://www.theguardian.com/world/2018/may/05/suicidal-refugee-child-should-not-be-sent-back-to-nauru-psychiatrist-says>.

<sup>65</sup> These are the most up-to-date publicly available figures at the time of publishing. Department of Home Affairs and Australian Border Force (2018) *Immigration Detention and Community Statistics Summary, 31 May 2018*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2018.pdf>, p. 4. Alternatives Places of Detention (APOD) is defined as a place of immigration detention other than an Immigration Detention Centre or places identified as part of a residence determination. See Department of Home Affairs (2018) *Detention Facilities*. Available at: <https://www.homeaffairs.gov.au/about/immigration-detention-in-australia/detention-facilities>.

<sup>66</sup> See Department of Home Affairs (2018) *Detention Facilities*. Available at: <https://www.homeaffairs.gov.au/about/immigration-detention-in-australia/detention-facilities>.

semi-independent living in hostel-style accommodation. Individuals are able to attend appointments in the community under supervision; and places in the broader community that can be designated as places of immigration detention, such as leased private housing, hotels and motels, and hospitals including mental health facilities.<sup>67</sup> Children kept in APODs face deprivation of liberty and restriction of their movement.

While there are various studies published and inquiries undertaken in Australia on impact of detention on children, a 2016 study by the Australian Human Rights Commission lays out the negative impacts of immigration detention on children's wellbeing and mental health demonstrating high numbers of young children who expressed intent to self-harm and talked openly about suicide and who had already self-harmed. This study demonstrated the increased harm on children due to prolonged detention in closed facilities, with ongoing mental health problems, including post traumatic stress disorder and developmental risks, accompanied with an absence of accessible and appropriate specialist paediatric and adolescent psychiatric services for children.<sup>68</sup>

As demonstrated in the report of the Australian Human Rights Commission's 2014 national inquiry, children are exposed to increased danger due to being detained with adults in immigration detention, as the adults in immigration detention also suffer high levels of mental illness. According to the 2014 inquiry, 30% of adults detained with children had moderate to severe mental illnesses. There were also significant rates of incidents of violence (including assaults and sexual assaults) in detention centres in which children were detained - many of them directly involving children.<sup>69</sup> These concerns have also been raised by the Royal Commission into Institutional Responses to Child Sexual Abuse. In its final report, the Royal Commission found that some of the reported cases of child sexual abuse in immigration detention involved adult detainees.<sup>70</sup> The Royal Commission also found that;

*"We have also been told about the risk of sexual abuse of children in immigration detention by perpetrators who have been involved in similar abuse in the past. A written submission from the Australian Federal Police to us notes instances in which known offenders convicted of child sexual abuse were released from corrective service facilities in Australia and placed into immigration detention centres pending the assessment of their immigration status or awaiting deportation. At times, this detention was alongside children."*<sup>71</sup>

These concerns and reported incidents clearly demonstrate the need for Australian Government to lift its reservation on the Article 37(c) of the CRC, due to clear risks for children in detention

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<sup>67</sup> See Department of Home Affairs (2018) *Detention Facilities*. Available at: <https://www.homeaffairs.gov.au/about/immigration-detention-in-australia/detention-facilities>.

<sup>68</sup> Australian Human Rights Commission (2016) *The health and well-being of children in immigration detention Report to the Australian Human Rights Commission Monitoring Visit to Wickham Point Detention Centre, Darwin, NT*. Available at: <https://www.humanrights.gov.au/sites/default/files/document/publication/Health%20and%20well-being%20of%20children%20in%20immigration%20detention%20report.pdf>, p. 3.

<sup>69</sup> Australian Human Rights Commission (2014), *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*. Available at: [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf), p. 76.

<sup>70</sup> Commonwealth of Australia (2017) Royal Commission into Institutional Responses to Child Sexual Abuse Final Report: Volume 15, Contemporary detention environments. Available at: [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_15\\_contemporary\\_detention\\_environments.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_15_contemporary_detention_environments.pdf), p. 186.

<sup>71</sup> Commonwealth of Australia (2017) Royal Commission into Institutional Responses to Child Sexual Abuse Final Report: Volume 15, Contemporary detention environments. Available at: [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_15\\_contemporary\\_detention\\_environments.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_15_contemporary_detention_environments.pdf), p. 188.

environments mixed with adults, and undertake legal and policy reforms to ensure no children are detained in immigration facilities on behalf of the Australian government in the future.

According to statistics alternatives to detention is broadly used for children - there are 168 children in community detention pending residence determination and 2956 children in community on bridging visas.<sup>72</sup> While use of alternatives to detention by the Australian Government is a welcome development, the conditions for children in community as alternative to detention is concerning due to increasing restrictions of children and their families to supports provided through the Status Resolution Support Services (SRSS), as mentioned in the section on education.

### Recommendations:

15. Prohibit immigration detention of children in any type of facility in legislation and policy, regardless of their or their parent's legal status in Australia, consistent with the recognition that detention is never in the best interests of the child.
16. Ensure detention of children is prevented in all facilities where liberty of movement is restricted on behalf of Australian Government (i.e. both onshore and offshore facilities).
17. Lift reservation on the Article 37(c) of the Convention of the Rights of the Child, recognising the negative impacts of being detained with adults in immigration detention, as demonstrated by the by the Royal Commission into Institutional Responses to Child Sexual Abuse.
18. Ensure children and their families living in community (as alternatives to detention) are provided with adequate supports – able to access services to sustain their life in a meaningful way while waiting for a decision on their asylum application.

### 2.3.2 Visa cancellations

In recent years, the criminal activity of a small number of young people, including some from refugee and migrant backgrounds, has attracted a great deal of media attention<sup>73</sup> and community concern in Australia. In particular, concerns for community safety in Victoria have risen amid an increase in the violent nature and frequency of certain offences among a small group of young repeat offenders.<sup>74</sup>

MYAN recognises the need to address community safety concerns with appropriate, targeted responses and welcomes public consultations as part of the process for determining both the problem and the solutions required. MYAN does not support the use of the character test as a tool for addressing issues arising from refugee and migrant young people's engagement in criminal offending.

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<sup>72</sup> These are the most up-to-date publicly available figures at the time of publishing. Department of Home Affairs and Australian Border Force (2018) *Immigration Detention and Community Statistics Summary, 31 May 2018*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2018.pdf>, p. 4. Alternatives Places of Detention (APOD) is defined as a place of immigration detention other than an Immigration Detention Centre or places identified as part of a residence determination. See Department of Home Affairs (2018) *Detention Facilities*. Available at: <https://www.homeaffairs.gov.au/about/immigration-detention-in-australia/detention-facilities>.

<sup>73</sup> For a recent example on this see, Henriques-Gomes, L (2018) *Channel Seven accused of fear-mongering over 'African gangs' story*, *The Guardian*. Available at: <https://www.theguardian.com/media/2018/jul/09/channel-sevens-african-gangs-beat-up-prompts-fear-among-african-australians>.

<sup>74</sup> MYAN Australia (2017) *MYAN Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: MYAN. p. 42.



MYAN was concerned that the focus of the 2017 Parliamentary Inquiry into Migrant Settlement Outcomes by the Joint Standing Committee on Migration was focused exclusively on the character of young migrants. MYAN's concerns increased with the release of the Final Report from this Inquiry as the sole focus of the "Migrant Youth" section of the report had focused on crime and gangs; visa cancellations; and violent extremism.<sup>75</sup>

### 2.3.2.1 Background to visa cancellations legislation in Australia

Section 501 of the Migration Act 1958 was changed in December 2014 by the passage of the Migration Amendment (Character and General Visa Cancellation) Bill 2014. Changes included the insertion of s 501(3A) that requires mandatory cancellation of visas in certain circumstances for certain non-citizens who do not pass the character test. Section 501(3A) requires that the Minister (of Home Affairs) must cancel, without notice, a visa if the Minister is satisfied that the person does not pass the character test because of a death sentence, life sentence, a substantial criminal record, a sexually based offence involving a child or if the person is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a state or a territory. Unlike the discretionary visa cancellation provisions, mandatory visa cancellation does not provide an opportunity for a person to present their case prior to cancellation, or allow consideration of a person's particular circumstances, because natural justice provisions do not apply.<sup>76</sup>

The amendments also inserted additional grounds on which a person will not pass the character test. The character test was strengthened to provide that a person will not pass the character test if there is a risk (as opposed to a significant risk previously) that the person would engage in serious criminal conduct and where they have been sentenced to two or more terms of imprisonment where the total of those terms is 12 months or more (rather than 24 months or more in the previous legislation).

Changes introduced in 2014, and most recently in February 2017 - following passing of the Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016, have sought to further broaden the character grounds upon which visas may be revoked and cancelled. These changes, particularly lowering of the threshold, had swift consequences with the number of visas cancelled rising sharply from 2013/14 to 2015/16. After Section 501 of the Migration Act 1958 was amended in December 2014, the number of visas cancelled under Section 501 has increased from 76 in 2013-14 to 983 in 2015-16<sup>77</sup> and to 1284 in 2016-17.<sup>78</sup>

While it is reasonable for a sovereign state to have powers concerning which non-citizen it will allow to remain on its territory, the current visa cancellation arrangements risks refoulement or indefinite detention for refugees. This is in contravention of various international human rights instruments, including Articles 6 (right to life) and 37 (right to be free from torture or other cruel, inhuman or

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<sup>75</sup> MYAN Australia (2017) *Response to the Report of the Joint Standing Committee on Migration Inquiry into Migrant Settlement Outcomes*. Melbourne: MYAN. p. 5.

<sup>76</sup> Dr V. Thom, June 2017, Independent Review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens.

<sup>77</sup> Commonwealth Ombudsman (2016) *The Department of Immigration and Border Protection the Administration of Section 501 of the Migration Act 1958*. Available at [http://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0027/42597/Own-motion-report-into-the-Administration-of-Section-of-the-Migration-Act-1958-final.pdf](http://www.ombudsman.gov.au/__data/assets/pdf_file/0027/42597/Own-motion-report-into-the-Administration-of-Section-of-the-Migration-Act-1958-final.pdf), p. 3.

<sup>78</sup> Department of Home Affairs (2018) *Key visa cancellation statistics*. Available at <https://www.homeaffairs.gov.au/about/reports-publications/research-statistics/statistics/key-cancellation-statistics>.

degrading treatment or punishment and right not to be arbitrarily deprived of liberty) of the Convention on the Rights of the Child.<sup>79</sup> According to the Ministerial Direction No. 65 issued following the latest change in legislation in 2017, Australia's non-refoulement obligations are not among the primary considerations that decision-makers must take into account when determining whether to cancel a visa, meaning they would be given less weight in decision-making — despite Australia's non-refoulement obligations. Furthermore, Ministerial Direction No. 65 explicitly states that the fact that Australia may owe a non-refoulement obligation to a person does not preclude a decision-maker refusing or cancelling their visa under Section 501. This means people owed non-refoulement obligations whose visas are cancelled face either the risk of refoulement or the risk of indefinite detention, as such people become unlawful non-citizens following their visa cancellation under Australian legislation.<sup>80</sup> While the Ministerial Direction No. 65 states that Australia would not, in practice, remove a person to a country where they would face a real risk of persecution, the Direction also acknowledges that people to whom Australia owes non-refoulement obligations may face the prospect of indefinite immigration detention.<sup>81</sup>

This acknowledgement raises serious concerns given the increased number of visa cancellations of people from refugee backgrounds. According to recent information provided by the Department of Home Affairs, while fewer than five people on such visas had their visas cancelled annually under Section 501 before 2014-2015, those numbers increased dramatically following the change in legislation, leading to visa cancellations of close to 50 people under Section 501 and almost 300 people under all visa cancellation grounds just between July 2017 and February 2018.<sup>82</sup>

### 2.3.2.2 Impact of visa cancellations on children and young people

The changes in broadening grounds for visa cancellations under Section 501 raised concerns that children and young people, who may pose no threat to the community, are being implicated in this system with scant regard for their particular circumstances as young people. Of particular concern is the introduction of mandatory cancellations, the removal of aspects of judicial oversight and increased Ministerial powers. These developments meant consideration of the merits of individual cases is less likely in the first instance and, where cancellation may be later revoked, a young person will have already spent time unnecessarily detained. MYAN is concerned that there is little space in the existing legislation and guidance that calls on the Minister to consider the circumstances of an individual young person.<sup>83</sup>

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<sup>79</sup> General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, U.N. Doc. CRC/GC/2005/6, 1 September 2005, the Committee on the Rights of the Child stated that States party to the Convention on the Rights of the Child "[...] shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 [right to life] and 37 [right to be free from torture or other cruel, inhuman or degrading treatment or punishment and right not to be arbitrarily deprived of liberty] of the Convention." (para. 27). Available at: <http://www.refworld.org/docid/42dd174b4.html>.

<sup>80</sup> Parliament of Australia (2018) Review processes associated with visa cancellations made on criminal grounds: Australian Human Rights Commission Submission To The Joint Standing Committee On Migration. Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=92c3250b-7f7f-44a7-be0e-148869775611&subId=565322>, pp. 22-24.

<sup>81</sup> Department of Home Affairs (2014) *Minister for Immigration and Border Protection, Direction No. 65 under section 499 of the Migration Act 1958 – Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA (22 December 2014)*. Available at: <https://www.homeaffairs.gov.au/visas/Documents/ministerial-direction-65.pdf>, p. 9.

<sup>82</sup> Question on Notice, Senate Estimates (Additional), AE18/084,

<https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=04727c4b-9dc8-4535-8f4f-0a76fb2437a3>.

<sup>83</sup> MYAN Australia (2017) *MYAN Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: MYAN. p. 42.

While there is no reference to age limits in the Migration Act 1958 on the applicability of mandatory visa cancellations, the Explanatory Memorandum of the 2016 Bill which introduced wider powers to the Minister for visa cancellations openly states that (with reference to the best interests of the child and Article 3(1) of the Convention on the Rights of the Child);

*"... the best interests of any child or children affected by the decision is a primary consideration, which is weighed against factors such as the risk the person presents to the Australian community. ... while section 501 of the Migration Act is applicable to minors, it is generally not used to cancel the visas of minors who have a criminal record, nor does it allow the cancellation of the visas of dependant family members."*<sup>84</sup>

MYAN has become increasingly concerned about this issue and considers it of particular significance in this CRC reporting process – particularly given the recommendation from the recent Inquiry into Migrant Settlement Outcomes to introduce a mandatory visa cancellation provision under the Migration Act 1958 for offenders aged between 16 and 18 years who have been convicted of a serious violent offence.<sup>85</sup>

MYAN is particularly concerned about the language used in Explanatory Memorandum of the 2016 Bill (above) in relation to applicability to minors under Section 501 of the Migration Act. This poses dramatic risks for children and young people from refugee backgrounds, as stated above, as: (i) their removal following visa cancellation may constitute refoulement (a contravention of Australia's obligations under the 1951 Refugee Convention as well as other international obligations under International Covenant on Civil and Political Rights and Convention against Torture) or (ii) if they are not removed, they may face indefinite detention in an (adult) immigration detention facility.

MYAN strongly believes that at a minimum any reference to visa cancellations in legislation should explicitly exclude children/young people under the age of 18 from such processes. MYAN is concerned that international human rights instruments, specifically the Convention on the Rights of Child, are being used as a reference point in these processes to legitimize legislation change (also see the section on citizenship in this submission) and that this is a misinterpretation by the Australian Government of human rights instruments.

These concerns are supported by recent news reports on young people under the age of 18 who are in immigration detention due to visa cancellation<sup>86</sup> (also see the section on data on immigration detention).

Propositions regarding visa cancellations for young people under 18 are further concerning given the evidence on the transitional nature of youth offending. The broad literature on youth offending

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<sup>84</sup> Parliament of Australia (2016) *Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016 Explanatory Memorandum*. Available at: [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5691\\_ems\\_0c935c8f-adb2-4e37-ac8a-843fc66f3854/upload\\_pdf/489818.pdf;fileType=application%2Fpdf,,](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5691_ems_0c935c8f-adb2-4e37-ac8a-843fc66f3854/upload_pdf/489818.pdf;fileType=application%2Fpdf,,) p.20.

<sup>85</sup> Joint Standing Committee on Migration (2017), *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Commonwealth of Australia, p. 175.

<sup>86</sup> O'Regan, S (2018) *Why New Zealand Is Furious About Australia's Deportation Policy*, *The New York Times*. Available at: <https://www.nytimes.com/2018/07/03/world/asia/new-zealand-australia-deportations.html>.

recognise that factors deriving from socio economic disadvantage and exclusion may leave youth at increased risk of offending behaviour.<sup>87</sup> It is well documented that adolescents are more susceptible to peer influence and risk-taking behaviour than are adults, as a result of their stage of physical, mental and emotional development.<sup>88</sup> For most young people, offending is episodic, transitory and unlikely to continue into adulthood.<sup>89</sup> As a result, approaches to addressing offending among young people focus on diversion and rehabilitation – recognising that young people are likely, with appropriate intervention, to be successfully diverted from this behaviour, especially if underlying factors placing them at risk are addressed.

### 2.3.2.3 Importance of a youth justice response

Youth justice issues require a youth justice response. The broad youth justice literature has driven the development of a very specific and targeted approach to responding to youth offending in Australia that focuses on early intervention, diversion, rehabilitation and age-appropriateness. These approaches are built on evidence that shows punitive measures are likely to worsen the likelihood of reoffending among young people by further isolating them from the community, rather than addressing the underlying factors impacting offending behaviour.<sup>90</sup> Such approaches are also consistent with the principles of the Convention on the Rights of the Child and other associated human rights covenants to which Australia is a party, and thus apply equally to young people from refugee and migrant backgrounds.

Consistent with the Convention on the Rights of the Child (to which Australia is a signatory), all young people should be treated as young people first under the law, which in Australia includes consideration of diversion and rehabilitation options. A young person's visa or residency status should not negate or minimise consideration of these options first.<sup>91</sup>

MYAN, in its advocacy with the Australian Government, has echoed the Australian Human Rights Commission's recommendation that Section 501 should "not be used as a means to address 'anti-social behaviour' amongst young people from migrant and refugee backgrounds"<sup>92</sup> as cancelling visas under s501 is not a valid criminal justice response. Increasing focus on such punitive policies and legislation changes, as a means to punish the small minority who 'do the wrong thing', has the potential to negatively impact settlement for many children and young people, their families and communities. A lack of security about the future and sense of belonging are key factors contributing to social isolation and disengagement.

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<sup>87</sup> MYAN (2017), *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 44-45.

<sup>88</sup> Hemphill, S. A. & Smith, R. (2010). *Preventing youth violence: What does and doesn't work and why? An overview of the evidence on approaches and programs*. Report prepared for the Australian Research Alliance for Children and Youth, Canberra.

<sup>89</sup> JSS (2015). *An escalating problem: Responding to the increased remand of children in Victoria*. Melbourne: JSS.

<sup>90</sup> Sentencing Council of Victoria (2016); Williams et al. (2009).

<sup>91</sup> Additionally, the *Racial Discrimination Act 1975 (Cth.)* Part II, Section 5, adds to the broad prohibition of racial discrimination the term 'immigrant status'. This provision makes it possible for persons who experience unfair treatment due to their immigrant status, a relatives or an associates, to obtain protections under the Act.

<sup>92</sup> Australian Human Rights Commission (2017) *Inquiry into Migrant Settlement Outcomes, Australian Human Rights Commission Submission to the Joint Standing Committee on Migration*. Available at [https://www.humanrights.gov.au/sites/default/files/AHRC%2020170131%20Final\\_AHRC%20Submission\\_Migrant%20Settlement%20Outcomes.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC%2020170131%20Final_AHRC%20Submission_Migrant%20Settlement%20Outcomes.pdf), p. 5.

Early intervention and prevention strategies should work to provide stronger and earlier access to youth programs that address the causes of disadvantage. To address the underlying challenges and vulnerabilities placing some refugee and migrant young people at greater risk will require targeted responses, including programs that keep young people in school; supporting successful education to work transitions; initiatives that mend relationships between young people and their communities; opportunities to get involved in sport and recreation and investment in youth-centred and family-aware approaches in policy and service delivery.

Young people need opportunities to have their voices heard by decision-makers in their communities, as well as at the state and national levels. An over-reliance on stereotypes and misinformation, and negative media reports<sup>93</sup>, has added considerably to the perception that young people from refugee and migrant backgrounds are a 'problem'. Opportunities need to be created purposefully to include and to hear from young people, recognising that the voices of young people generally, and minority youth particularly, are rarely heard in public debate.<sup>94</sup>

Shifts in youth offending over time, including downward trends in overall youth crime across Australia, demonstrate that while youth justice systems may experience challenges and crises, these are not new and in the main current approaches have demonstrated that they are flexible and capable of responding.<sup>95</sup>

### Recommendations:

19. Ensure legislation regarding visa cancellations explicitly exclude children/young people under the age of 18 from any such process.
20. Consider the *best interest of the child* and *non-refoulement* principles as primary considerations in any visa cancellation process, ensuring that government personnel engaged to make determinations in relation to visa cancellations has relevant and adequate training on and understanding of the meaning and interpretation of these concepts consistent with international human rights law, specifically the Convention on the Rights of Child.
21. Adopt a youth justice approach to respond to anti-social behaviour amongst a small number of young people from migrant and refugee backgrounds engaged in criminal behaviour, and avoid using the visa cancellations regime to respond to youth offending.

### 2.3.3 Introduction of new requirements for access to citizenship, including character requirements

Australia has seen an increasing focus on access to citizenship in recent years. The first Bill to change the citizenship requirements, proposing stricter requirements for access, was introduced in 2017, i.e. The Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian

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<sup>93</sup> Chingaipe (2016). Race, stereotyping and Melbourne's Apex gang. *The Saturday Paper*. (25 February 2016)

<sup>94</sup> MYAN Australia (2017) *MYAN Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: MYAN. p. 47.

<sup>95</sup> Victorian youth offending rates have fallen significantly among some groups previously singled out as 'problematic', such as those born in Somalia. See MYAN (2017) *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 69-70. For overview, see Sutherland & Millstead (2016).

Citizenship and Other Measures) Bill 2017, which failed to pass. The Select Committee on Strengthening Multiculturalism had specifically recommended in its final report, "Ways of protecting and strengthening Australia's multiculturalism and social inclusion" that the Australian Government do not proceed with their proposed changes to the Australian Citizenship Act 2007, in reference to the 2017 Bill, and associated changes to the Australian citizenship test.<sup>96</sup>

However a new Bill was introduced in 2018, i.e. Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018 with the exact same provisions of the 2017 Bill, and furthermore restricting access to citizenship with increasing waiting periods to eight years as a permanent resident in Australia.<sup>97</sup> Senate Legal and Constitutional Affairs Committee has been undertaking an inquiry since April 2018 for making a recommendation to the Parliament concerning the 2018 Bill to be reported in December 2018.<sup>98</sup>

The elements in these two bills and the proposed changes over the last two years have the potential to undermine a sense of belonging and connection to Australia for some members of the community and their families. Exclusion from citizenship could also result in greater disadvantage for some members by limiting their full and equal participation in the economic, social and cultural life of the nation.

MYAN has been particularly concerned in this process about young people from refugee backgrounds who have been granted temporary protection visas in Australia and the possible impact such changes would have on them. The proposed changes in the 2018 Bill do not recognise any time spent as a recognised refugee on a temporary protection visa towards that residency requirement. Such recognition is particularly important as temporary protection visas perpetuate a state of uncertainty for refugees, especially for young refugees who have fled persecution and often experience prolonged family separation, impeding their ability to restart their lives.<sup>99</sup>

Extensive waiting periods for citizenship would also have significant implications for migrant families, with some members unable to apply for citizenship for long periods after their arrival, creating long term uncertainty and unpredictability for migrant children.

### 2.3.3.1 English language requirements

A serious aspect of the proposed changes has been the proposition to introduce English language testing for access to citizenship for all applicants aged 16 and over.

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<sup>96</sup> Select Committee on Strengthening Multiculturalism (2017) *Ways of protecting and strengthening Australia's multiculturalism and social inclusion*. Canberra: Commonwealth of Australia, p. 31.

<sup>97</sup> Under the current legislation a valid visa holder who has been residing in Australia consecutively for four years, one year of which should be as a permanent resident can apply for citizenship. The 2017 Bill aimed to increase the waiting period as a permanent resident to four years, as compared to current one year as a permanent resident.

<sup>98</sup> Parliament of Australia (2018) *Senate Legal and Constitutional Affairs Committee, Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Citizenshipbill2018](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Citizenshipbill2018).

<sup>99</sup> UNHCR (2017) *Submission by the Office of the United Nations High Commissioner for Refugees for Inquiry into the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*. Available at <http://www.unhcr.org/en-au/5979719a7.pdf>, p. 7.

While developing and possessing English language skills are important steps on the path to integration into Australian society, for decades, many migrants have arrived with limited English skills, but have gone on to make significant contributions as citizens.<sup>100</sup> While there is no reference to which test would be used for measuring the English level for citizenship applications, the IELTS test has been referred mostly as the test to make this measurement. The linguist and one of the inventors of the IELTS test, Dr. David Ingram had stated that IELTS test was never meant to be used as an immigration tool, and it was not developed for that purpose.<sup>101</sup> Children and young people typically acquire English language skills more quickly than older migrants; however young people who have experienced disrupted education, especially those from refugee backgrounds are likely to be particularly disadvantaged in any type of standard language testing. MYAN is concerned about the introduction of such language requirements for young people aged 16 and above.

Of further concern in this process has been the reference to the Convention on the Rights of the Child and a particular interpretation of the concept of the best interest of the child to legitimize such requirements. Below section has been taken from the Explanatory Memorandum of the 2018 Bill, as it relates to language testing;

*“The requirement for 16 and 17 year olds to demonstrate competent English is not inconsistent with Article 3(1) of the CRC as speaking English to a competent standard in an English speaking country supports the best interests of the child by placing the child in the best possible situation to obtain employment and thrive socially.”<sup>102</sup>*

The General Comment of the CRC on the Article 3(1) clearly states that;

*“43. Assessment of a child’s best interests must include respect for the child’s right to express his or her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee’s general comment No. 12 which also highlights the inextricable links between articles 3, paragraph 1, and 12. The two articles have complementary roles: the first aims to realize the child’s best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives.”<sup>103</sup>*

Explanatory Memorandum of the 2018 Bill does not refer to any consultations undertaken with children and young people from refugee and migrant backgrounds while reaching the above mentioned conclusion on the level of English required for citizenship. MYAN cannot therefore confirm whether the term ‘the best interest of the child’ is being used purposefully or is mentioned loosely to justify proposed changes in legislation without carrying it real meaning and purpose – that is to give voice to children and young people. MYAN believes such use of the term risks undermining the very

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<sup>100</sup> FECCA media statement, English Language Requirements for Australian Citizenship, 7 March 2018.

<sup>101</sup> ABC News (2015) *Irish Paralympian fighting to become Australian citizen held back by English language test*. Available at <http://www.abc.net.au/news/2015-09-24/irishmans-paralympic-aspirations-held-back-by-language-test/6802434>.

<sup>102</sup> Parliament of Australia (2018) *Australian Citizenship Legislation Amendment (Strengthening the Commitment for Australian Citizenship and Other Measures) Bill 2018, Explanatory Memorandum*. p. 78.

<sup>103</sup> UN Committee on the Rights of the Child (CRC) (2013). *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14. Available at: <http://www.refworld.org/docid/51a84b5e4.html>.

concept of the best interest of the child which has been defined and established under the Convention on the Rights of the Child, as well as various general comments of the United Nations Committee on the Rights of the Child, and has been reinforced under various international human rights instruments.

#### a) Impact on humanitarian young people's access to citizenship

Some refugees will quickly acquire English language skills, but others will find it more difficult due to trauma, lack of education in their own countries, or other psychological conditions relating to past experiences of persecution and forced migration.<sup>104</sup> While MYAN does not recommend any type of standard English testing as a criteria for applying to Australian citizenship community, MYAN also believes that if any type of English level is required from prospective citizens, refugees and humanitarian entrants should be exempt from any such requirements due to their migration process to Australia- i.e. the very nature of a humanitarian visa indicates that they are here because of protection concerns (that may hinder the development of English language skills) – as distinct from those arriving in Australia on skilled or other visas. It would be unjust to deny citizenship to humanitarian entrants who have not developed competence in English. The citizenship take up rates of humanitarian entrants are much higher than other migrants<sup>105</sup>, as this group of arrivals, particularly children and young people, are commonly highly motivated to develop English language skills as a fundamental requirement of building successful lives in Australia.

#### b) Impact on young people's family members' access to citizenship

Furthermore, a higher English language test has the potential to impact unequally on different individuals within a family unit. The proposed English language requirements would likely result in family members of some young people not being able to access citizenship, creating a situation where families are unable to move forward together building a life in Australia. Making citizenship available to some family members while potentially excluding others is of particular concern. In any society the family is the basic building block of community, social stability and cohesion. The importance placed on the family is particularly heightened for those who have experienced violence, conflict and the breakdown of social order, as is the case for refugees.

*The precariousness of the refugee experience makes family relationships particularly vital. The family can be an important anchor in a social world turned upside down, sometimes remaining the only stable social structure in an otherwise disintegrated society.*<sup>106</sup>

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<sup>104</sup> Legal Aid NSW 2017 Submission on Australian Citizenship Amendment Bill

<sup>105</sup> ABS (2018) 3417.0 - Understanding Migrant Outcomes - Insights from the Australian Census and Migrants Integrated Dataset, Australia, 2016. Available at:

[http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/3417.0Main%20Features22016?opendocument&tabname=Summary&prodno=3417.0&issue=2016&num=&view=.](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/3417.0Main%20Features22016?opendocument&tabname=Summary&prodno=3417.0&issue=2016&num=&view=)

<sup>106</sup> Staver, A (2008) *Family Reunification: A Right for Forced Migrants? Working Paper Series No. 51*, Refugee Studies Centre, University of Oxford, p. 6.



### c) Current system of English language support

As mentioned in the above section on education and in the *Report of the Inquiry into Migrant Settlement Outcomes* by the Joint Standing Committee on Migration, the current system of English language teaching is problematic in relation to language education through AMEP as well as English language schools. This is why the Joint Standing Committee had recommended in its report to extend the window of registration for AMEP programs from one to two years, while recommending flexibility in AMEP programs to enable all newly arrived migrants to access AMEP.<sup>107</sup> It was also recommended by the Joint Standing Committee to a shift in focus from limiting the AMEP program with certain hours of English tuition to measuring English competency for better social and labour market integration prospects in Australia.<sup>108</sup> The Joint Standing Committee also recognised in its report that there is lack of accountability of schools in relation to language learning, and therefore had recommended production of annual reports on outcomes of the National Settlement Framework (NSF) to deliver better coordinated education services, especially regarding English language learning at schools<sup>109</sup>, and the Council of Australian Governments (COAG) to have an oversight over the NSF.<sup>110</sup> The Statutory Memorandum of the 2018 Bill does not refer to any of these recommendations of the Joint Standing Committee.

MYAN believes that introduction of English language proficiency minimum standards as a requirement must go hand-in-hand with the provision of adequate support for prospective citizens, especially those from refugee backgrounds. Before introducing an English language test, the Government must first address existing issues with access to and quality of English language education across Australia. This includes the development of nationally consistent definitions, measurements and cost structures for English language provision to newly arrived people that are tied closely to the education needs and outcomes of students.

#### 2.3.3.2 Integration as a criteria for citizenship

Recent discussions on citizenship and the Bills had a focus on 'integration' as criteria for citizenship. While no objective criteria has been set on how to measure 'integration' for the purpose of determining on a citizenship application, MYAN has also been concerned that young people are much less likely than adults to have had the chance to demonstrate their capacity to participate and contribute to Australian society in areas that support their citizenship application under the proposed new integration requirements. Given young people's developmental stage, it is difficult to gain a clear picture of what a transparent assessment approach would look like. Any attempt to measure the participation and integration of prospective citizens would need to take into account the complex range of challenges faced by young people from migrant and refugee backgrounds. As well as the usual challenges of adolescence, they may have experiences of trauma, limited and /or disrupted education, limited social networks, and have to learn English as an additional language.

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<sup>107</sup> Joint Standing Committee on Migration (2017), *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Commonwealth of Australia, p. 56.

<sup>108</sup> Joint Standing Committee on Migration (2017), *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Commonwealth of Australia, p. 57.

<sup>109</sup> Joint Standing Committee on Migration (2017), *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Commonwealth of Australia, p. 62.

<sup>110</sup> Joint Standing Committee on Migration (2017), *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Commonwealth of Australia, p. 63.

Any attempt to measure the participation and integration of prospective citizens needs to take into account a young person's circumstances, life stage, pre and post settlement experiences, and also consider the attitudes from the host community.

### 2.3.3.3 Character requirements

In contrast to the current citizenship legislation, the 2018 Bill proposed to extend the requirement for all citizenship applicants to be of 'good character' to include applicants under the age of 18 and would seek criminal records for all children over the age of 10 (which is the age of criminal responsibility in Australia).<sup>111</sup> The Bill would amend the requirements for citizenship by descent such that all applicants, irrespective of their age, must satisfy the good character requirement.

**MYAN considers that extending the good character requirements to applicants under the age of 18, and to children as young as 10, is deeply problematic. It fails to take into account the complex developmental stage of adolescence.**

As mentioned in the above section on visa cancellations, adolescence involves the negotiation of significant physical, emotional and mental developmental milestones. The transitional nature of youth offending has been evidence through the broad literature on youth offending, which recognises that factors deriving from socio economic disadvantage and exclusion may leave youth at increased risk of offending behaviour<sup>112</sup> which may leave them excluded from accessing Australian citizenship.

The consequences of youth offending could have far reaching consequences for the young person. The proposed amendment to the character provisions under citizenship legislation has the potential to prevent a young person being granted citizenship when it is conferred on other family members. We note that it is a principle of the United Nations Convention on the Rights of the Child that *"laws and actions affecting children should put their best interests first and benefit them in the best possible way."*<sup>113</sup>

### Recommendations:

22. Ensure any changes in citizenship legislation do not disproportionately impact young people from refugee and migrant backgrounds and their parents leading to decreased access to citizenship linked with longer waiting periods, higher English proficiency requirements, character testing and fulfilment of vague criteria such as 'integration potential'.
23. Increase the age of criminal responsibility from the current level of 10 years of age to 12 years of age in line with the General Comment 10 of the Committee on the Rights of the Child, at a minimum.

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<sup>111</sup> Parliament of Australia (2018) *Australian Citizenship Legislation Amendment (Strengthening the Commitment for Australian Citizenship and Other Measures) Bill 2018, Explanatory Memorandum*. p.73

<sup>112</sup> MYAN (2017), *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 44-45.

<sup>113</sup> <http://www.unicef.org.au/Discover/What-we-do/Convention-on-the-Rights-of-the-Child.aspx>

24. Avoid applicability of character testing for access to citizenship for young people under the age of 18. This recognises increased risk taking behaviour throughout adolescence and the transitional nature of youth offending, consistent with research and well working diversion approaches in the field of youth justice in Australia.

## 2.4 Lack of nationally consistent data specific to children and young people from refugee and migrant backgrounds

Australia has been a global leader in the area of data collection and dissemination in relation to its multicultural communities. Some of Australia's practices have been recognised as good practice in the International Recommendations on Refugee Statistics of March 2018.<sup>114</sup> This has been made possible through inclusion of refugees in data collection exercises such as census and various surveys undertaken by the Australian Bureau of Statistics. However, it has been increasingly challenging to access nationally consistent data about young people from refugee and migrant backgrounds in Australia.

### 2.4.1 Data on young people as a distinct cohort

MYAN would like to reiterate the importance of data collection on youth<sup>115</sup> with specific data gathered to capture the experiences of young people as a distinct population group (15 to 24 year olds).<sup>116</sup> The absence of such data results in a lack of targeted age and developmental stage appropriate protection and assistance programs, and capacity to measure impact and outcomes. This includes initiatives to ensure their engagement in secondary and tertiary education, and vocational training opportunities, on the pathway to employment.<sup>117</sup>

While there are various surveys of Australian Bureau of Statistics collecting data in areas concerning young people, it is not possible to find publically available data specific to refugee and migrant youth in those surveys disaggregated by age and visa status for the youth cohort. Department of Home Affairs (DHA), while reporting on migration categories of arrivals, does not report on different age cohorts, including the specific youth cohort (aged 12 to 24) which hampers efforts to ensure better planning and programming for the needs of young refugees and migrants arriving in Australia.

While various filters exist to capture multicultural communities in Australia such as 'overseas born' and 'speaking language other than English at home' categories, such filters remain vague to capture specific information on current immigration status in Australia, including visa status, which could be broadly categorised as temporary migrant, permanent migrant and humanitarian arrival (i.e. arriving with refugee and other humanitarian visas).

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<sup>114</sup> Expert Group on Refugee and Internally Displaced Persons Statistics (2018) *International Recommendations on Refugee Statistics: Final post Global Consultation February 2018*. Available at <https://unstats.un.org/unsd/statcom/49th-session/documents/BG-Item3m-RefugeeStat-E.pdf>.

<sup>115</sup> Multicultural Youth Advocacy Network (MYAN) Australia (2018) *Advocacy Brief Youth Rights in the Global Compact on Refugees*. Available at: <http://www.unhcr.org/events/conferences/5a562f9a7/myan-australia-advocacy-brief-youth-rights-global-compact-refugees.html>, pp. 14-15, 18-20.

<sup>116</sup> For statistical purposes UN defines youth as persons aged between 15-24 years. UNHCR (2016) *Executive Committee of the High Commissioner's Programme conclusion on Youth, 31 May 2016, EC/67/SC/CRP.17*. Available at: <http://www.refworld.org/docid/5800cdea4.html>, p.3.

<sup>117</sup> UNHCR (2016) *Executive Committee of the High Commissioner's Programme conclusion on Youth, 31 May 2016, EC/67/SC/CRP.17*. Available at: <http://www.refworld.org/docid/5800cdea4.html>, p.3.

There is publically available data provided under the Settlement Reporting Facility (SRF) by the Department of Social Services (DSS). However, it is impossible to compare the data provided by DSS with the data of the DHA as different criteria are being used in data collection. DSS collects and reports under SRF on data compiled from a number of sources including DHA, other Commonwealth agencies and service providers, as stated in its caveats.<sup>118</sup> Hence this data is collected and updated over a period of time through inputs to SRF by the mentioned agencies and providers and therefore does not instantly give a definite number of arrivals in a given period.<sup>119</sup> For example, for the 2016-17 financial year, DSS reported 24,490 arrivals through Australia's Humanitarian Program according to the data provided to MYAN on 25 October 2017<sup>120</sup>, and 24,530 arrivals in the data provided on 1 February 2018.<sup>121</sup> Similarly while the number of humanitarian arrivals was reported as 11,208 for 2015-16 financial year by DSS on 10 March 2017<sup>122</sup>, for the same financial year the number of humanitarian arrivals was reported as 11,416 on 25 October 2017.<sup>123</sup> This change in number means that the exact number of arrivals to Australia may still not be known after the end of a financial year, as demonstrated in the above example, and therefore may make it difficult to rely on the available numbers, as most probably the real numbers would be higher.

DHA on the other hand, collects and reports on data on visa grants and not on arrivals in a given period. For example, DHA reported 20,257 visa grants in 2016-17 financial year and nothing on arrivals to Australia.

This lack of data on the exact number of arrivals to Australia in a given period makes it difficult for the settlement sector to adjust its planning and programs for the new arrivals to Australia to assist them to settle well. Such reporting of arrivals by the DHA, alongside the data provided under the SRF, would complement each other and strengthen the Australian Government's response to the humanitarian arrivals to Australia. International Recommendations on Refugee Statistics also recommend collection of data on 'date of arrival in country'.<sup>124</sup>

Access and reporting on data to reflect the arrival date would be vital for the whole settlement sector and beyond for preparing and/or adjusting policies and programs for young people arriving under the humanitarian program - including but not limited to education, vocational training and language training.

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<sup>118</sup> For full list of stated caveats for this data, see <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/settlement-services/settlement-reporting-facility/help-for-settlement-reports/caveats>

<sup>119</sup> Settlement Reporting Facility reports on the settlement date and this date refers to "the date in which a settler is deemed to have settled in Australia. Settlement Date is derived from either a settlers recorded arrival date or visa grant date. For settlers who were granted their current SDB visa offshore, the Settlement Date is their first recorded arrival date into Australia after the grant of that visa. For settlers who were granted their current SDB visa onshore, The Settlement Date is their current visa grant date." Therefore for Humanitarian Arrivals from offshore, it reports only arrivals and only after this data has been entered into the system by an agency and service provider which may not happen instantly. See DSS (2018) Settlement Database Data Dictionary. Available at [https://www.dss.gov.au/sites/default/files/documents/03\\_2018/settlement\\_data\\_dictionary\\_23\\_jan\\_2018.pdf](https://www.dss.gov.au/sites/default/files/documents/03_2018/settlement_data_dictionary_23_jan_2018.pdf), p. 40.

<sup>120</sup> MYAN (2018) *Youth Settlement Trends in Australia: A Report on the Data 2016-2017*. Available at: [http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends\\_2016-2017%20Final\(2\).pdf](http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends_2016-2017%20Final(2).pdf), p. 9.

<sup>121</sup> According data provided to MYAN from the period 1 July 2016 to 30 June 2017 provided by the Department of Social Services, as at 1 February 2018.

<sup>122</sup> MYAN (2017) *Information Sheet: Humanitarian and Migrant Youth Arrivals to Australia July 2015 – June 2016*. Available at: [http://www.myan.org.au/file/file/2015-16%20HumanitarianYouthArrivalstoAustralia\(1\).pdf](http://www.myan.org.au/file/file/2015-16%20HumanitarianYouthArrivalstoAustralia(1).pdf), p. 4.

<sup>123</sup> MYAN (2018) *Youth Settlement Trends in Australia: A Report on the Data 2016-2017*. Available at: [http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends\\_2016-2017%20Final\(2\).pdf](http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends_2016-2017%20Final(2).pdf), p. 9.

<sup>124</sup> Expert Group on Refugee and Internally Displaced Persons Statistics (2018) *International Recommendations on Refugee Statistics: Final post Global Consultation February 2018*. Available at <https://unstats.un.org/unsd/statcom/49th-session/documents/BG-Item3m-RefugeeStat-E.pdf>, p. 40.

## 2.4.2 Data on youth justice and visa cancellations

As mentioned above, there has been increasing discourse referring to violent migrant and refugee youth by politicians as well as the media in recent years in Australia. However, there is persistent lack of national data to understand whether such discourse reflects reality. The Australian Bureau of Statistics releases data on prisoners in Australia regularly<sup>125</sup> and as part of this exercise provides information on the country of birth. However such data is not disaggregated by age and therefore prevents understanding the numbers of young people from refugee and migrant backgrounds currently engaging the criminal justice system in Australia.

Similarly, while the Australian Government releases reports on youth justice<sup>126</sup>, such reports do not provide information on cultural diversity, thus lacking information related to young people from migrant and refugee backgrounds in youth justice.

Despite Government's reference<sup>127</sup> to 'migrant youth crime', lack of national data specifically on these young people is a huge gap in data, especially considering that such discourse is driving legislation change in Australia for more restrictive and punitive approaches.

MYAN is also concerned about the increase in visa cancellations and lack of publicly available national data concerning the age breakdown and visa status of people who are facing this process and whether/or to what extent young people under the age of 18 are facing such consequences. While the Department of Home Affairs releases data on cancellation statistics<sup>128</sup>, such data is not disaggregated by age or visa status.

## 2.4.3 Data on immigration detention

The Department of Home Affairs reports regularly on immigration detention statistics and as part of this reporting provide information on under-18 and over-18-year-old age groups in immigration detention.

According to currently available limited data, as at 31 May 2018, there were less than five children (aged less than 18 years) in Alternative Places of Detention and in Immigration Transit

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<sup>125</sup> Australian Bureau of Statistics (2017) *4517.0 - Prisoners in Australia, 2017*. Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02017?OpenDocument>.

<sup>126</sup> Most recent report on youth justice in Australia has been released in May 2018 by the Australian Government. See Australian Institute of Health and Welfare (2018) *Youth justice in Australia 2016–17*. Available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2016-17/data>.

<sup>127</sup> For examples of such discourse see SBS (2017) *Dutton suggests deportation as a solution for youth crime, Shorten in support*. Available at: <https://www.sbs.com.au/news/dutton-suggests-deportation-as-a-solution-for-youth-crime-shorten-in-support>; Karp, P (2017) *Peter Dutton and Bill Shorten open door to deportation of child criminals*, *The Guardian*. Available at: <https://www.theguardian.com/australia-news/2017/jan/19/peter-dutton-and-bill-shorten-open-door-to-deportation-of-child-criminals>; Richardson, J (2018) *Gang crime: we need a more sophisticated understanding of African migrants*, *The Sydney Morning Herald*. Available at: <https://www.smh.com.au/opinion/gang-crime-we-need-a-more-sophisticated-understanding-of-african-migrants-20180119-h0kulk.html>.

<sup>128</sup> Department of Home Affairs (2018) *Key visa cancellation statistics*. Available at: <https://www.homeaffairs.gov.au/about/reports-publications/research-statistics/statistics/key-cancellation-statistics>.

Accommodation.<sup>129</sup> While none of these seven children were in immigration detention due to visa cancellation according to statistics, they were under detention due to being an 'illegal maritime arrival' and 'other' reasons.<sup>130</sup> 142 children currently live in Nauru<sup>131</sup>, although the Australian Department of Home Affairs only reports 22 as being held in an immigration detention facility. Conflicting reports are available about the validity of these numbers and the conditions in which children are held as access to Nauru is strictly controlled.<sup>132</sup> Australia ratified the UN Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in late 2017, and providing accountability and oversight into places of detention should be strengthened via this process. MYAN welcomes this development and urges that it is applied on both mainland Australia and in places where offshore detention takes place.

The current statistics provided by the Department of Home Affairs do not disaggregate data specific to children and young people for the length of time held in immigration detention, and MYAN strongly encourages this data to be released.

MYAN is concerned about the lack of youth specific (covering aged 12 to 24) information on people in immigration detention, especially following the increase in visa cancellations processes which may impact young people from refugee and migrant backgrounds disproportionately. While the Department of Home Affairs report on persons under immigration detention due to cancellation of their visa pursuant to the Section 501 of the Migration Act, again this data is not disaggregated to reflect the youth cohort. While according to the Department of Home Affairs, there were no one under the age 18 in immigration detention due to visa cancellations at May 2018<sup>133</sup>, there has been recent news reports, referring to a young person from New Zealand under the age of 18 being held in immigration detention since March 2018 due to visa cancellation.<sup>134</sup> Following this, the New Zealand Government has raised concerns with the Australian Government about visa cancellation provisions being applied to young people in contravention of the Convention on the Rights of the Child.<sup>135</sup>

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<sup>129</sup> These are the most up-to-date publicly available figures at the time of publishing. Department of Home Affairs and Australian Border Force (2018) *Immigration Detention and Community Statistics Summary, 31 May 2018*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2018.pdf>, p. 4.

<sup>130</sup> These are the most up-to-date publicly available figures at the time of publishing. Department of Home Affairs and Australian Border Force (2018) *Immigration Detention and Community Statistics Summary, 31 May 2018*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2018.pdf>, p. 4.

<sup>131</sup> Doherty, B & Vasefi, S (2018) *Suicidal refugee child should not be sent back to Nauru, psychiatrist says*. Available at: <https://www.theguardian.com/world/2018/may/05/suicidal-refugee-child-should-not-be-sent-back-to-nauru-psychiatrist-says>.

<sup>132</sup> Ward, M (2018) *Nauru government refuses to grant visas to journalists from the ABC to cover political forum*. Available at: <https://finance.nine.com.au/2018/07/02/18/45/abc-banned-nauru-pacific-islands-forum>.

<sup>133</sup> These are the most up-to-date publicly available figures at the time of publishing. Department of Home Affairs and Australian Border Force (2018) *Immigration Detention and Community Statistics Summary, 31 May 2018*. Available at: <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-may-2018.pdf>, p. 4. Alternatives Places of Detention (APOD) is defined as a place of immigration detention other than an Immigration Detention Centre or places identified as part of a residence determination. See Department of Home Affairs (2018) *Detention Facilities*. Available at: <https://www.homeaffairs.gov.au/about/immigration-detention-in-australia/detention-facilities>.

<sup>134</sup> O'Regan, S (2018) *Why New Zealand Is Furious About Australia's Deportation Policy*, *The New York Times*. Available at: <https://www.nytimes.com/2018/07/03/world/asia/new-zealand-australia-deportations.html>.

<sup>135</sup> Roy, E & Doherty, B (2018) *Release teenager from Australian immigration detention, urges acting New Zealand PM*, *The Guardian*. Available at: <https://www.theguardian.com/australia-news/2018/jul/04/release-teenager-from-australian-immigration-detention-urges-acting-new-zealand-pm>. Also see, Stuff (2018) *New Zealander under 18 held in Australian immigration detention facility*. Available at: <https://www.stuff.co.nz/national/104352176/new-zealander-under-18-held-in-australian-immigration-detention-facility>.

MYAN believes the lack of transparency and disaggregated data in relation visa cancellations procedures makes it impossible to understand whether/how many young people are being affected due to this situation.

#### 2.4.4 Data on access to settlement services by young people

The Australian Government funds a national settlement service system for refugee and humanitarian entrants delivered through non-government service providers - the Humanitarian Settlement Program (HSP) and the *Settlement Engagement and Transitions Services (SETS)* This service system includes a range of youth-specific services that support young people's economic and social participation in Australian society, including youth-specific settlement services in the *Settlement Grants Program (SGP)* (soon to be *Settlement Engagement and Transitions (SETS)*<sup>136</sup>) and the youth-focussed *Youth Transitions Support services*.<sup>137</sup> These services exist within broader federal government policy and programming in relation to the settlement and integration of new arrivals,<sup>138</sup> including social cohesion grants and the *National Settlement Framework*.<sup>139</sup> Services and programs are also funded through government at the state/territory level.

High numbers of humanitarian settlers arrive in Australia under diverse visa subclasses, including increasing number of arrivals under the Special Humanitarian Program (SHP)(visa subclass 202). In the last five financial years increasing number of young people (aged 12 to 24) have arrived in Australia with a 202 visa as demonstrated below;

Visa subclass	2012/13	2013/14	2014/15	2015/16	2016/17
200 Refugee visa	1,727	2,147	1,252	1,578	1,984
201 In-country Special Humanitarian	23	194	35	25	38
202 Global Special Humanitarian	95	871	1,587	985	3,189
203 Emergency rescue visa	12	0	<5	0	<5
204 Women at Risk visa	418	608	301	407	425
866 Protection visa	1,553	267	136	38	6
<b>Grand Total</b>	<b>3,828</b>	<b>4,087</b>	<b>3,313</b>	<b>3,033</b>	<b>5,646</b>

202 visa holders are expected to be supported by their proposers for their initial settlement, while also being eligible for the Humanitarian Settlement Program (HSP)<sup>140</sup>, however there is no publically available data for the settlement sector to understand the utilization of HSP by humanitarian arrivals. Young people arriving on a 202 visa have similar needs to other humanitarian arrivals arriving with a refugee visa (subclass 200) and these needs may not always be met by their sponsors or are placing

<sup>136</sup> Department of Social Services (2018) *About settlement grants*. Available at: <https://www.dss.gov.au/our-responsibilities/settlement-services/programs-policy/settlement-services/settlement-grants/what-is-settlement-grants/about-settlement-grants>.

<sup>137</sup> Department of Social Services (2018) *Youth Transition Support services*. Available at: <https://www.dss.gov.au/settlement-services/programs-policy/settlement-services/youth-transition-support-services>.

<sup>138</sup> Department of Social Services (2018) *Settlement services*. Available at: <https://www.dss.gov.au/settlement-services>.

<sup>139</sup> Department of Social Services (2016) *National Settlement Framework*. Available at: <https://www.dss.gov.au/settlement-services/publications/national-settlement-framework>.

<sup>140</sup> Department of Social Services (2017) *Fact Sheet: Humanitarian Settlement Program*. Available at [https://www.dss.gov.au/sites/default/files/documents/11\\_2017/hsp\\_factsheet\\_-\\_august\\_2017-3nov.pdf](https://www.dss.gov.au/sites/default/files/documents/11_2017/hsp_factsheet_-_august_2017-3nov.pdf), p. 3.

significant pressure on families.<sup>141</sup> Sponsors are, in the majority of cases, close family members who had arrived in Australia under the Humanitarian Program in the last five years - themselves commonly still in the process of settling into Australia. While 202 visa holders are entitled to settlement services, MYAN is concerned that given the increased arrivals on 202 visas, many may not be accessing the support they need or would (substantially) benefit from and there is no publically available data to assess this.

MYAN understands that information on access to settlement services, both HSP and SGP, is collected by service providers and shared through the Data Exchange<sup>142</sup> database of the DSS (DEX). However, this database does not collect information at the visa subclass level. The information collected through DEX is also not available through DSS' Settlement Reporting Facility (SRF). In the absence of data on access and utilisation of services across the settlement services continuum by visa subclass in DEX and the SRF, it is difficult to understand whether the increased number of SHP visa arrivals, are accessing the settlement support they need and are entitled to – particularly in the critical early stages of settlement through HSP.

MYAN believes that collection and access to more accurate data on access by young people to the services they need across the continuum of settlement services (in both HSP and in future, SETS), is critical to understanding both service system gaps and good practices in service delivery. This is an essential evidence-base to inform policy and programming.

#### Recommendations:

25. Report on young people from refugee and migrant backgrounds as a distinct group (12 to 24 year olds) in all data collection and dissemination-related exercises undertaken and/or funded by the Australian Government(while also recognising the need to continue to capture data specific to children, adolescents and young people under the age of 18 as a distinct group).
26. Department of Home Affairs to report on the 'date of arrival to country' alongside visa lodgements and visa grants, to strengthen the Australian Government's settlement services and ensure planning for adequate delivery of language courses, education and training and other services. This would ensure complementarity with settlement-related data reporting by the Department of Social Services.
27. Ensure data disaggregated by age (reporting specifically on 12-24 year olds), country of birth and visa subclass/stream is all collected and released in reports prepared by the Australian Government in relation to youth justice and criminal justice system, including by the Australian Bureau of Statistics and Australian Institute of Health and Welfare.
28. Department of Home Affairs to release data on visa cancellation decisions disaggregated by age (reporting specifically on 12-24 year olds) and visa subclass/stream as well as country of birth.

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<sup>141</sup> Refugee Council of Australia (2017) Australia's Refugee and Humanitarian Program 2017-18 Community views on current challenges and future directions. Available at: [https://www.refugeecouncil.org.au/wp-content/uploads/2017/06/RCOA\\_intake-sub\\_2017\\_2018.pdf](https://www.refugeecouncil.org.au/wp-content/uploads/2017/06/RCOA_intake-sub_2017_2018.pdf), p. 34.

<sup>142</sup> According to its website, the Data Exchange represents the Department of Social Services' new approach to grants program reporting reflecting a two-way focus on a smarter and more efficient way of collecting data from service providers, and a more useful reporting back of data about the outcomes achieved for individuals, families, and their communities. See <https://dex.dss.gov.au/>.



29. Department of Home Affairs to release data on young people (12-24 year olds) in immigration detention as a distinct group, as well as dedicated reporting on children (under 18 year olds) - disaggregated by age, visa subclass/stream and country of birth, and reasons for detention (especially related to immigration detention due to visa cancellations).
30. Department of Home Affairs to report on disaggregated data specific to children and young people for the length of time held in immigration detention.
31. Department of Social Services to collect data (disaggregated by age, visa subclass and type of service provided) through the Data Exchange database and report this data through the Settlement Reporting Facility on access by young people to settlement services - including Humanitarian Settlement Program (HSP) and Settlement Engagement and Transitions (SETS).

## 2.5 Lack of a dedicated Minister for Youth and national peak body for youth/youth affairs

Since 2013, Australia does not have a federal Minister for Youth, and still lacks a federally-funded peak youth body (which was funded until 2014). Australia is the only country in the Commonwealth without a Minister for Youth.

### *Recommendation from a young person;*

*“Establish government agencies that work on youth representation and affairs (department/ministry, and national and state youth councils).”*

### Recommendation:

32. Appoint a federal Minister for Youth and provide federal funding for a national youth peak body, consistent with all other members of the Commonwealth.

## 2.6 Guardianship for unaccompanied non-national children

### 2.6.1 Australia's UHM Program

Australia has a well-established resettlement program that includes large numbers of children and young people, including unaccompanied minors. Australia is one of very few resettlement countries that resettles unaccompanied minors, and has a long history of providing support to this cohort to settle well. From as early as the 1970s, the Australian Government has supported unaccompanied children and young people seeking safety in Australia to receive appropriate support and care through relevant state welfare and child protection authorities.<sup>143</sup>

The Australian Government has developed a national approach to supporting unaccompanied minors to settle in Australia in the last decade. This approach has provided care and support to

<sup>143</sup> Department of Human Services (DHS), State Government of Victoria (2014) *Refugee Minor Program*. Available at <http://www.dhs.vic.gov.au/for-service-providers/children,-youth-and-families/youth-services/refugee-minor-program>.

unaccompanied minors seeking asylum (UAMs) through the 'onshore' component of Australia's Humanitarian Program, as well as supporting the resettlement of unaccompanied humanitarian minors (UHMs) either on their own or in sibling groups directly from overseas.<sup>144</sup>

The UHM Program provides relevant care, supervision and support services to minors on certain visas in Australia without a parent or legal guardian, including housing, casework services, and access to and participation in employment, education, health, recreation and broader community life.<sup>145</sup> The minors under the UHM Program fall under the auspices of the *Immigration (Guardianship of Children) Act 1946 (IGOC Act)*, and for whom the Minister of Home Affairs is the legal guardian. In certain circumstances, the Program also assists minors who do not fall under the IGOC Act. The Program was initially established to provide care and support for asylum seeker minors entering Australia irregularly and eligibility has since expanded to include minors holding various visas. It now assists eligible minors that have either permanent resident, temporary humanitarian/temporary protection/equivalent substantive temporary visas.<sup>146</sup> Services for UHMs are provided via the UHM Program in each of Australia's states and territories through the non-government sector and state government welfare and child protection agencies.<sup>147</sup>

Australia's well-established experience and expertise in settling humanitarian children and young people, including the provision of outstanding services to unaccompanied minors is a demonstration of Australia's ongoing support to forcibly displaced children and young people.

## 2.6.2 Guardianship

MYAN believes, as does the Australian Human Rights Commission, that an important element of the care of unaccompanied children is effective guardianship. In the absence of a child's parents, the legal guardian of an unaccompanied child has the 'primary responsibility for the upbringing and development of the child', and is under an obligation under the *Convention on the Rights of the Child* to act in the best interests of the child.<sup>148</sup>

While commending the Australian Government for its efforts to resettle unaccompanied children, MYAN believes a dedicated Independent Guardian for unaccompanied non-national children would be an essential arrangement in terms of the care and welfare arrangements of children, given the multiple portfolio areas of the Minister of Home Affairs.

MYAN supports the Bill introduced into the legislative process in 2014, to establish an independent statutory office of the Guardian for Unaccompanied Non-citizen Children to advocate for the best

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<sup>144</sup> MYAN Australia (2018) *Submission to Department of Home Affairs on 'Australia's Humanitarian Program 2018-19'*. Available at: <http://www.myan.org.au/file/file/MYAN%20Australia%20Submission%20on%20DHA%20Discussion%20Paper%20Australia's%20Humanitarian%20Programme%202018-2019.pdf>, p. 9

<sup>145</sup> MYAN Australia (2018) *Submission to Department of Home Affairs on 'Australia's Humanitarian Program 2018-19'*. Available at: <http://www.myan.org.au/file/file/MYAN%20Australia%20Submission%20on%20DHA%20Discussion%20Paper%20Australia's%20Humanitarian%20Programme%202018-2019.pdf>, p. 10.

<sup>146</sup> MYAN Australia (2017) *MYAN Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=b368e61d-0c0d-4010-a181-cfd52397a1e2&subId=464602>, p. 13.

<sup>147</sup> Department of Home Affairs (2018) *Unaccompanied Humanitarian Minors programme – Fact Sheet*. Available at <https://www.homeaffairs.gov.au/about/corporate/information/fact-sheets/uhm-programme>.

<sup>148</sup> Australian Human Rights Commission (2014) *The Forgotten Children: National Inquiry into Children in Immigration Detention*. Available at: <https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014/10#a10-5>.

interests of non-citizen children, and believes that the Bill<sup>149</sup>, should progress as a positive step towards the realization of the rights of the child in line with the Convention.

### Recommendation:

33. Establish an independent statutory office of the Guardian for Unaccompanied Non-citizen Children.

## 2.7 Family support and family reunion

Families who have refugee experiences often have high levels of resilience and coping skills, and can be a great source of strength and support to each other in recovering from the impact of forced migration and navigating the settlement journey in a new country. However migration, and particularly forced migration and the refugee experience, can have a profound impact on family units and lead to families being separated. The lack of family support networks for young people further contributes to settlement challenges, in addition to navigating developmental tasks of adolescence. Family supports are critical in negotiating a range of settlement pressures and in the absence of such support, participating in employment or other community activities become difficult. Concern about family members left behind in conflict regions or refugee camps place additional stress, and sometimes feelings of guilt, for young people and their families. This can be compounded by financial pressures, particularly if families are sending money overseas to support those left behind<sup>150</sup>.

There are barriers which hamper access to family visas (such as high costs, robust documentations needs, eligibility requirements, long processing times, limited access to entitlements compared to humanitarian arrivals). However, as put forward by the Australian Human Rights Commissioner, there are significant opportunities within the Family stream of the Migration Program to expand the range of migration pathways available to refugees through a protection-sensitive migration lens.<sup>151</sup>

MYAN recognises the direct link between family reunification, mental health and successful integration, and the need to overcome legal and practical obstacles to family reunification<sup>152</sup> to ensure better settlement outcomes for young people from migrant and refugee backgrounds. MYAN recommends consideration of simplified pathways for utilising Family stream, while ensuring support to the family members arriving in Australia under family reunification procedures. Therefore, in conjunction with the recommendation on utilising the Family stream for family reunification of refugees, MYAN also recommends that such refugees arriving in Australia through the Family stream should have the access to Humanitarian Settlement Program. A similar recommendation has also been made by the Joint Standing Committee on Migration in relation to access of migrants to

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<sup>149</sup> Australian Human Rights Commission (2017) *Children's Rights Report 2017 National Children's Commissioner*. Available at: [https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_CRR\\_2017.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2017.pdf), p. 69.

<sup>150</sup> Centre for Multicultural Youth (2014) *Migrant & Refugee Young People Negotiating Adolescence in Australia*. Carlton: Centre for Multicultural Youth, p. 9.

<sup>151</sup> Australian Human Rights Commission (2016) *Pathways to Protection: A human rights-based response to the flight of asylum seekers by sea*. Canberra: Australian Human Rights Commission, p. 38-39.

<sup>152</sup> UNHCR (2016) *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*. Available at <http://www.refworld.org/docid/58385d4e4.html>, p.6

settlement support similar to HSP.<sup>153</sup> MYAN agrees with the Committee that such support is critical and is especially important for young people from refugee backgrounds who reunify with their families in Australia.

MYAN recommends adoption of a broader definition of 'family' in making arrangements for family reunification to include young people who are over 18 years old as well as parents of young people over 18 years old. At the international level, the UN Human Rights Committee has found that relations between parents and their adult children can constitute family relations.<sup>154</sup> Furthermore, at the European level, it has been accepted that "where young adults have not yet founded a family of their own, their relationship with their parents and other close family members can constitute "family life"<sup>155</sup>, including with adult siblings.<sup>156</sup>

A recent study by the European Resettlement Network focuses on this issue and refers to possible issues with increasing use of humanitarian Programs for family reunification.<sup>157</sup> It highlights the use of family ties as one eligibility criterion needs to be balanced through avoidance of the possible negative impacts of altered relationships as a result of changing patterns of dependency resulting from the arrival of new family members.<sup>158</sup> In the absence of settlement support, family members arriving in resettlement countries through such sponsorships need to create new internal financial and relationship dependencies with their families sponsoring them. This has also been demonstrated in the case of young people from refugee backgrounds arriving in Australia with 115 and 117 subclass visas under the Family stream.<sup>159</sup>

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<sup>153</sup> Joint Standing Committee on Migration (2017) *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Parliament of the Commonwealth of Australia, p. 35.

<sup>154</sup> UN Human Rights Committee (2011) *Jama Warsame v. Canada*, CCPR/C/102/D/1959/2010, UN HRC, 1 September 2011. Available at <http://www.refworld.org/docid/4ee0f0302.html>, paras. 8.8 and 8.10

<sup>155</sup> Council of Europe: European Court of Human Rights (2007) *Maslov v. Austria*, Application no. 1638/03, ECtHR, 22 March 2007. Available at <http://www.refworld.org/docid/464423e22.html> and Council of Europe: European Court of Human Rights (2008) *Maslov v. Austria*, Application no. 1638/03, ECtHR, Grand Chamber. Available at <http://www.refworld.org/docid/5852a8b97.html>, para. 62. This position was confirmed by the court in *A.A. v. United Kingdom* when it ruled: "An examination of the Court's case-law would tend to suggest that the applicant, a young adult of 24 years old, who resides with his mother and has not yet founded a family of his own, can be regarded as having 'family life'". See, Council of Europe: European Court of Human Rights (2011) *A.A. v. United Kingdom*, Application no. 8000/08, ECtHR, 20 September 2011. Available at <http://www.refworld.org/docid/583edcf1124.html>, para. 49.

<sup>156</sup> The ECtHR has also recognised that family life can exist between adult siblings, although again it requires "further elements of dependency involving more than the normal emotional ties" for family life to be recognised." See Council of Europe: European Court of Human Rights (1991) *Moustaquim v. Belgium*, Application no. 12313/86, ECtHR, 18 February 1991. Available at: <http://www.refworld.org/docid/3ae6b7018.html>, para. 36 and Council of Europe: European Court of Human Rights (1996) *Boughanemi v. France*, Application no. 16/1995/522/608, ECtHR, 27 March 1996. Available at: <http://www.refworld.org/docid/3ae6b6f24.html>, para. 35.

<sup>157</sup> European Resettlement Network (2018) *Humanitarian Admission Programmes April 2018: Expanding and Increasing Pathways to Protection*. Available at: <https://www.resettlement.eu/sites/icmc/files/ERN%2B%20Humanitarian%20Admission%20Programmes%20-%20Expanding%20and%20Increasing%20Pathways%20to%20Protection.pdf>, p. 24.

<sup>158</sup> European Resettlement Network (2018) *Humanitarian Admission Programmes April 2018: Expanding and Increasing Pathways to Protection*. Available at: <https://www.resettlement.eu/sites/icmc/files/ERN%2B%20Humanitarian%20Admission%20Programmes%20-%20Expanding%20and%20Increasing%20Pathways%20to%20Protection.pdf>, p. 25.

<sup>159</sup> See MYAN Australia (2018) *Submission to Senate Community Affairs Legislation Committee for the Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018*. Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=5941808e-b931-4243-81f3-21a92115bf8d&subId=564999> and MYAN Australia (2018) *Submission to Senate Community Affairs Legislation Committee for the Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018-Additional Information*. Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=a41d72c3-ec78-428e-9be0-3fc1b7d435bc&subId=564999>.

### 2.7.1 Support for children and young people from refugee-like backgrounds arriving in Australia under the Migration Program

Young people arriving on 115 (Remaining Relative) and 117 (Orphan Relative) visas are typically living in Australia in kinship care arrangements. These young people may experience vulnerabilities related to their pre-migration experiences<sup>160</sup>, and their transition to a new country and culture, as well as due to breakdown of their family relations after their arrival in Australia. Relationship breakdown between a young person and the carer family member(s) in Australia could be due to various reasons, including increased pressure on housing (such as overcrowding), lack of financial capabilities, different expectations of the carer or the young person in relation to settlement needs, etc.<sup>161</sup>, and may leave the young person at risk of destitution and homelessness. It has been demonstrated that some of these young people already face such problems when their family relations breakdown within the two-year waiting period, even though in the past their carers/families had access to limited additional supports.<sup>162</sup> As these young people arrive through the Family stream of the Migration Program, they are not eligible for the same services provided to humanitarian arrivals (those arriving through Australia's Humanitarian Program) and are not exempt from waiting periods established for newly arriving migrants to access different benefits. This therefore places additional pressure on carer family and community supports and may mean that the needs of this group of young people remain unaddressed.<sup>163</sup>

According to a study of International Social Services Australia in 2016, several service providers working with 117 visa holder orphan children suggested a model that resembles the settlement services model (i.e. Humanitarian Settlement Program) which involves case work support as well as financial and housing/accommodation support, which would be available for the family until the young person is at least 18 years old, on the basis of need.<sup>164</sup> Case work support has been suggested unanimously by all service providers that this support should be for the family as a whole, and should be available for the family before the young person arrives in Australia to assist them prepare and then continue with at a minimum regular check-ins with the young person and the family.<sup>165</sup>

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<sup>160</sup> Serr & Rose (2016) *New Beginnings: Issues and Needs in International Kinship Care*. North Melbourne, VIC: Australian Scholarly Publishing, p. 1.

<sup>161</sup> Serr & Rose (2016) *New Beginnings: Issues and Needs in International Kinship Care*. North Melbourne, VIC: Australian Scholarly Publishing, p. 45.

<sup>162</sup> CMY (2014) *Young People on Remaining Relative visas (115) and Orphan Relative visas (117)*. Available at <http://www.cmy.net.au/publications/young-people-remaining-relative-visas-115-and-orphan-relative-visas-117>, p. 4.

<sup>163</sup> Service providers may be unclear about what supports they can provide and what referral options exist, resulting in young people not accessing the support they need to navigate the settlement journey. In a 2013 report exploring the unique migration experience of young people on 117 visas, International Social Service (ISS) Australia recommended collaboration between kinship care services and the refugee and migrant settlement sector to specifically support the needs of this newly arrived group of young people. See Kavanagh (2013) *Home safe home: A report on children who migrate to Australia*. Available at <http://iss-ssi.org/2009/assets/files/news/ISSAustralia-HomeSafeHomeReport-May2013-web.pdf> p. 5. Building on this study, in their 2016 study on the 117 visa holders, ISS also recommended greater recognition for the issues and needs of Orphan Relative visa holders and their carers in government policy, given multiple challenges faced related to lack of financial and other resources, accommodation, emotional and psychological issues and cultural differences. See Serr & Rose (2016) *New Beginnings: Issues and Needs in International Kinship Care*. North Melbourne, VIC: Australian Scholarly Publishing, pp. 60- 69. The Centre for Multicultural Youth (CMY) in Victoria have also developed a resource providing information about young people on a 117 or a 115 visa, their entitlements and referral options available to them. See, CMY (2014) *Young People on Remaining Relative visas (115) and Orphan Relative visas (117)*. Available at <http://www.cmy.net.au/publications/young-people-remaining-relative-visas-115-and-orphan-relative-visas-117>.

<sup>164</sup> Serr & Rose (2016) *New Beginnings: Issues and Needs in International Kinship Care*. North Melbourne, VIC: Australian Scholarly Publishing, p. 46.

<sup>165</sup> Serr & Rose (2016) *New Beginnings: Issues and Needs in International Kinship Care*. North Melbourne, VIC: Australian Scholarly Publishing, p. 57.

While there is already evidence demonstrating that children and young people arriving in Australia through these visas need additional supports, there has been concerning developments that would further decrease the limited support these young people and their carers receive. A recent Bill proposing to increase the waiting periods for newly arrived residents to Australia from two years to three years was introduced in February 2018.<sup>166</sup> While the Bill is still before a Senate Committee going through an inquiry<sup>167</sup>, the Australian Government released its budget for 2018-19 increasing this period to four years from two years.<sup>168</sup>

The changes as suggested in the Bill and the Budget, risks leaving the children arriving with 115 and 117 visas, as well as their carers, without any support that was previously provided. In the case of family breakdown, the young person would be left destitute as they would not be able to access benefits for a period of four years.

### 2.7.2 Lack of family reunification prospects and support for asylum seeker and refugee children and young people arriving Australia irregularly

Refugees who arrived in Australia irregularly, including unaccompanied refugee children, and who have not yet access citizenship, do not have any opportunities for family reunification.

Refugees who arrived in Australia irregularly and who were granted a Temporary Protection Visa (TPV) or a Safe Haven Enterprise Visa (SHEV) are prevented from applying for family reunification under any Programs due to restrictions on their visas.<sup>169</sup>

MYAN is concerned that this effectively prevents family reunification for certain young people from refugee backgrounds.

#### Recommendations:

34. Ensure access to simplified pathways for young humanitarian settlers in Australia to reunify with their families abroad (including through utilising the family stream under the Australia's Migration Program), while ensuring support to the family members arriving in Australia under family reunification procedures equivalent to those arriving under the Humanitarian Program (i.e. through accessing Humanitarian Settlement Program).
35. Adopt a broader definition of 'family' in the context of family reunification with a view to include young people who are over 18 years old as well as parents of young people over 18 years old, ensuring children and young people from refugee and migrants backgrounds in Australia are unified with their parents and siblings.

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<sup>166</sup> Parliament of Australia (2018) *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_LEGislation/Bills\\_Search\\_Results/Result?bld=r6048](https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r6048).

<sup>167</sup> Parliament of Australia (2018) *Senate Standing Committees on Community Affairs Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/self-sufficiencyimmigrants](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/self-sufficiencyimmigrants).

<sup>168</sup> Department of Social Services (2018) *Encouraging Self-Sufficiency for Newly Arrived Migrants - Extension (2018-19 Budget)*. Available at: <https://www.dss.gov.au/living-in-australia-and-overseas/updates>.

<sup>169</sup> Refugee Council of Australia (2017) *Recent changes in Australian refugee policy*. Available at: <https://www.refugeecouncil.org.au/publications/recent-changes-australian-refugee-policy/>.

36. Ensure access to family reunification for all children and young people in Australia from refugee backgrounds, regardless of their visa status, i.e. being an asylum seeker or having a temporary protection visa.
37. *Ensure Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018* is not passed in its current form and any similar legislation in the future provides exceptions to children and young people from refugee-like backgrounds arriving in Australia through Programs other than the Humanitarian Program. This would eliminate any waiting periods on their access to benefits and supports provided by the Australian Government.

### 3. Australia's Implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

MYAN commends the Australian Government for its commitment to the resettlement of children, especially as part of the increased refugee intake from Syria and Iraq to respond to the ongoing humanitarian crises these countries are facing. In 2016/17 financial year, Australia resettled closed to 4000 young people (aged 12 -24) from Syria and Iraq, making up 65% of the overall humanitarian youth arrivals to Australia.<sup>170</sup>

Country of Birth	Aged 12-15	Aged 16-17	Aged 18-24	Total	%
Iraq	636	310	1,021	1,967	35%
Syrian Arab Republic	630	286	763	1,679	30%

As also demonstrated in a recent report of the UN Secretary General on Children and armed conflict, child recruitment continues to be an ongoing practice for children and young people in Syria and Iraq, with increases in verified cases of the recruitment and use of children in armed conflict, including children as young as 4-year-olds.<sup>171</sup> Among the children and young people Australia has resettled, there are also those who had been recruited as child soldiers in these countries.<sup>172</sup>

MYAN believes there is a need for appropriate and specific rehabilitation for children and young people in such circumstances following their resettlement to Australia (especially in light of the increased intake from Syria and Iraq), as well as the need for specific data collection and statistics on refugee and asylum seeker children with such previous experiences - as noted in the Concluding Observations on the Optional Protocol<sup>173</sup>. This would ensure adequate planning and programming by settlement services (including specialist torture and trauma services) to ensure the successful

<sup>170</sup> MYAN (2018) *Youth Settlement Trends in Australia: A Report on the Data 2016-2017*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 10. Available at: [http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends\\_2016-2017%20Final\(2\).pdf](http://www.myan.org.au/file/file/MYAN%20Youth%20Settlement%20Trends_2016-2017%20Final(2).pdf), pp. 15-16.

<sup>171</sup> UN General Assembly (2018) *Children and armed conflict, Report of the Secretary-General, A/72/865-S/2018/465*. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=S%2F2018%2F465&Submit=Search&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=S%2F2018%2F465&Submit=Search&Lang=E), pp. 12-13 and pp. 25- 27.

<sup>172</sup> McKenny, L & Khalil, Mayada (2018) *My life as an IS slave: 'They were monsters'*. Available at: <https://www.sbs.com.au/news/my-life-as-an-is-slave-they-were-monsters>.

<sup>173</sup> UN Committee on the Rights of the Child (2012) Consideration of reports submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, CRC/C/OPAC/AUS/CO/1, 11 July 2012. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPAC%2fAUS%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPAC%2fAUS%2fCO%2f1&Lang=en), p. 2.

rehabilitation and integration of children with these particular histories and needs, into Australian society.

Recommendations:

38. Ensure targeted, appropriate and specific rehabilitation for refugee and asylum seeker children and young people who have been involved in armed conflict in their countries of origin upon arrival in Australia.
39. Collect specific data and statistics on refugee and asylum seeker children and young people who have been involved in armed conflict to ensure adequate planning and programming by settlement services (including specialist torture and trauma services) aiming for successful rehabilitation and integration of children into Australian society.