Title: Settling Refugees in Australia: achievements and challenges

Abstract:
This article examines the extent to which Australia fulfils its legal obligations for resettled refugees. This necessitates noting both the international frameworks that inform the rights accorded to refugees as well as applicable Australian law and policies. But while laws provide us with a point of departure, a thorough analysis of how these laws are upheld in the refugee context requires a focus on the lived experience of settlement, and identification of where law, policy and practice are disjoint and where they conjoin. The paper concludes by noting the opportunities provided by, and limitations of, law and policy, as means to facilitate integration of resettled refugees, and offers some thoughts on how refugee resettlement in Australia might be improved.

Keywords:
Settlement; resettlement; refugees; integration; acculturation; Australian refugee policy; Australian settlement policy, asylum seeker.
Introduction

The laws and policies governing the treatment and entitlements of refugees vary across the five countries discussed in this special issue, but they also vary within countries depending on visa category and mode of entry. Australia is a case in point, where those arriving without valid visas, generally by boat, are entitled to very few rights and services; those arriving by plane and subsequently claiming asylum onshore can access some rights and services; and those who enter through the resettlement program of the Office of the United Nations High Commissioner for Refugees (UNHCR) can access a broad range of legislated rights and dedicated settlement programs of very high quality. Thus as Mahoney et al (this volume) note in relation to New Zealand, the refugee’s pathway to protection significantly determines their access to rights and services.

In this paper we examine the extent to which Australia fulfils its legal obligations for the third category described above – resettled refugees who have been offered durable protection from overseas through managed programs. This necessitates noting both the international frameworks that inform the rights accorded to refugees as well as applicable Australian law and policies. It will become clear that there is very little refugee-specific legislation in Australia, but rather resettled refugees have the same rights as permanent residents and citizens. Thus while laws provide us with a point of departure, a thorough analysis of how these laws are upheld in the refugee context requires a focus on the lived experience of settlement, and identification of where law, policy and practice are disjoint and where they conjoin. We therefore frame our discussion in terms of the extent to which law, policy and practice assist the integration of refugees into Australian society.

We begin with a short discussion of definitions and obligations, and then offer an overview of current Australian service provision. Employment, education, health, housing and family unification are then examined in more depth to determine compliance with relevant legislation. We note recent literature outlining the actual experience of resettled refugees in each of these areas, although space does not permit a full examination (but see Fozdar and Hartley, 2013; Hugo, 2011; Neumann et al., 2014). The paper concludes by noting the opportunities provided by, and limitations of, law and policy, as means to facilitate integration of resettled refugees, and offers some thoughts on how refugee resettlement might be improved.

As noted in the introduction to this issue, ‘resettlement’ involves “the selection and transfer of refugees from one state in which they have sought protection to another” [UNHCR, (2011) p.3]. ‘Settlement’, the term most widely used in the Australian context, and the one which describes the outcomes we are studying here, refers to the process of beginning a new life and incorporation into the economic and social fabric of Australia (DSS, 2014a).

The question, of course, is how refugees (or migrants of any kind) incorporate, and are incorporated, into that fabric. Berry (1992) outlined processes of acculturation and adaption that involve migrants’ own resources and social structural barriers and facilitators in the pathway to establishment and independence. Processes of integration include not only material and economic elements, but, of paramount importance, the legal structures of rights and citizenship, as well as social relations and the provision of services (Ager and Strang, 2008). Unlike assimilation, integration implies mutual adaptation (Delanty, 2000), and
requires public institutions to attempt to meet the needs of a diverse population (Fozdar and Hartley, 2013).

In the Australian context the term ‘integration’ is problematic for two reasons. First, Spinks (2009) argues it is linked to assimilation policies associated with directives that sought to eliminate indigeneity from the population, both physically and socially. Second, research focusing on integration can be seen as policy driven (Neumann et al., 2014), viewing refugees simply as clients moving toward a ‘good’ settlement outcome, invisibility.

To the first point, we are mindful of these concerns, but recognise that international usage of the term does not carry such baggage. To the second, we argue it is not possible to understand the processes that explain migration without understanding what happens to migrants and refugees along the way. Thus, research that examines migrant and refugee outcomes is not only policy-driven but also shaped by questions of law, norms and social relations. This paper, in examining the nexus between law, policy, and practice, necessarily examines outcomes as a way to demonstrate the insufficiency of discussing legislation and policy in a vacuum.

**The Australian Context**

Australia’s early migration policy and its national identity were built on the White Australia Policy that excluded non-whites and valorised Anglo-Celtic culture (Hage, 1998; Jupp, 2007). More open immigration policies were in place from the late 1960s, and multiculturalism became an important basis for policy and identity from that time until the late 1990s. These policies produced a diverse population, making Australia today one of the countries with the highest proportion of overseas-born in its population. Nevertheless, the country remains relatively Eurocentric in outlook and identity (Hage, 1998).

Specific to refugee policy, Australia has a distinguished history of resettling refugees on its shores, settling more than 750,000 refugees since 1947. And relative to other countries, its current policies are generous (when it comes to UNHCR refugees resettled from offshore), with an annual refugee intake of around 13,750 per year, more than any other country per capita.¹

In 2013-2014, the most recent years for which data are available, the majority arriving under the Refugee and Humanitarian Program were from the Middle East, with smaller populations from Asia, and even smaller numbers from Africa. Refugees from Afghanistan (2754), Iraq (2364) and Syria (1007) comprised more than 50% of the intake, followed by refugees from Burma/Myanmar (1819) and Bhutan (507). Refugees from Sub-Saharan Africa (1385) came from a variety of countries, primarily the Democratic Republic of Congo and Ethiopia (DIBP, 2014). This resettled population is entitled to relatively extensive settlement services.

Those seeking asylum onshore (25,000 in 2012-2013, but far fewer since a suite of policies designed to discourage boat arrivals was introduced)², do not receive that same generosity. Since August 2012 they have been subject to ‘third country processing’, meaning they are held in detention in Nauru or Papua New Guinea while their claims are processed. For them, and those who arrive on the mainland by airplane, access to services is subject to shifting legislation, “dizzying in complexity” (Crock and Bones, 2015). Appendix B provides an
overview of the current state of differential access to settlement services depending on visa category and date of arrival.

While these groups are not the subject of this review, some attention to their rights and provisions is necessary for four reasons: first, in some cases asylum seekers cannot be separated from resettled refugees (Neumann et al, 2014, p.13). Second, our discussion of which services benefit whom would be incomplete without reference to those unable to access the services. Third, this disparity highlights inequities in the current system, and finally, it offers a corrective to Neumann et al’s (2014, p.9) concern about “diverging” trends in Australian scholarship on refugees: by examining both settlement issues and asylum seeker policy, we aim to bring these together.

Australia’s Legal Framework

Australia is a signatory to several international instruments relevant to honouring legal obligations for resettled refugees, the specifics of which are noted in subsequent sections detailing the obligations of Australia in regards to employment, education, health, housing, and family reunification.

Australian legislation has two characteristics of note: first, the most important legislation affecting settlement is not refugee specific, but relevant for all citizens and permanent residents. Second, Australia does not have a Bill of Rights, which, it has been argued, would ensure that the range of human rights guaranteed by the various United Nations instruments are met (Williams, 2000).

Basic rights available to all3 as part of the Australian social democracy include the right to:
- live and work in Australia on a permanent basis
- study in Australia at school, in the Vocational Education and Training (VET) sector or university (with the usual subsidies)
- receive subsidised healthcare through Medicare and the Pharmaceutical Benefits Scheme (PBS)
- access certain social security payments (subject to waiting periods)
- be eligible for Australian citizenship (subject to the residency eligibility criteria) and4
- sponsor people for permanent residence.

Social security benefits include age and disability pensions, unemployment benefits, carer and parenting payments, youth allowance, and payments for tertiary study, among others. 5 Many of these are means or assets tested.

Access to these rights is to occur in a non-discriminatory environment. Legislation enacted in the 1970s was designed to guard against racial discrimination in immigration policies, employment and a range of other areas. The Australian Racial Discrimination Act (Commonwealth) 1975, for example, entitles Australian residents to equality of access to facilities, housing, and provision of goods and services, as well as employment6,7.

Tracking relevant legal instruments, policies and access to services is difficult for a range of reasons. Australia’s federal system sees some services offered at a national level and others at a state level, and services differ between states, making provision and eligibility complex. Additionally, some service providers extend their services to those ineligible. Those who live remotely may not be able to access services to which they are entitled. And changes in government result in frequent alteration of service provision and eligibility, and these
changes are subject to ongoing legal challenges. Crock and Bones (2015) note that the “legislative battle of wits” that has seen the courts and key political parties manoeuvring to grant and stymie rights, leave asylum seekers without certainty.

As noted, one of the key changes over the last five years is that onshore refugees – those granted asylum once in Australia, having arrived without a valid visa, generally by boat – have had increasing difficulty accessing any rights in Australia whatsoever. Australian policies of mandatory detention breach a range of international rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), as well as the right to freedom of residence and movement and the right to engage in self-employment found in the Convention Relating to the Status of Refugees (CRSR). The United Nations has censured Australia for its treatment of people in detention many times, most recently in a report suggesting mandatory detention and other practices are akin to torture, breaching Australia’s obligations under the UN Convention Against Torture (The Sydney Morning Herald, 2015). For those seeking asylum onshore, Temporary Protection Visas, a contentious instrument offering only time-limited protection and some rights and services, having been abolished in 2008, were re-introduced, after several failed attempts, in December 2014 (DIBP, 2015b). As of January 2016, even this limited protection is no longer available to new boat arrivals. For resettled refugees, recent changes have included changes to service providers and types of services funded, as well as access to family reunion provisions. This fluidity makes identifying legislation, policy and practice at any given point in time difficult, if not impossible.

**Overview of Dedicated Services**

Dedicated settlement services were set up partly as a result of a review of services for refugees and migrants in the 1970s. The government adopted four guiding principles, which emphasised: equal opportunity and access for all members of society; the need for some special programs to ensure equal opportunity; the right to maintenance of heritage and culture; and consultation with clients with a view toward self-reliance [Canberra Multicultural Task Force, (1978), p.4]. These principles continue to inform Australia’s settlement services, which are provided by government and non-government organisations (NGOs), as well as for-profit companies (eg. Navitas) and quasi government agencies (eg AMES Vic). NGOs include migrant resource centres, and other, often religiously (generally Christian) affiliated, organisations (eg Red Cross, Edmund Rice Centre). Formal and informal groups of volunteers also assist.

In 1997, service provision for refugees moved from a grants-based model to a competitive tender process. Commercial and NGOs now compete to secure service contracts, with an emphasis on efficiency (cost-savings) and quantitative evaluation measures. The contracting out of services has created gaps, particularly around employment and housing. It also means providers cannot plan long term (contracts are usually from 1 to 3 years), and resources are expended on the competitive tendering process. Further, the purchaser-provider model has made coordination and long-term development of institutional capacity difficult [RCOA, (2008), p. 24].

The following outline of services relates to those who have received 200 and 202 (‘Refugee’ and ‘Special Humanitarian’) and 866 (‘permanent protection, onshore’) visa grants, although there are some differences between these categories. While these services were formerly delivered under the auspices of the Department of Immigration and Citizenship, in 2014 they were moved to the generic Department of Social Services (DSS, 2014a),
something a senior Australian migration scholar has warned is likely to lead to a reduction in quality and focus (Jupp, pers comm). The focus of services is to develop readiness for, and encourage clients’ use of, mainstream services.

Initial settlement assistance is extensive. Refugees can access dedicated settlement services for six to twelve months after arrival (currently referred to as the Humanitarian Settlement Strategy (HSS)).¹¹ This program provides reception and assistance on arrival (meeting at the airport, taking to accommodation, assisting with accommodation costs, orientation, and emergency medical and clothing assistance); information and referrals (to government agencies that provide income support, health care, English language classes and employment services); housing services (help finding suitable housing, assistance with leasing and connection to services like electricity, gas, and the telephone, provision of household goods such as a refrigerator, washing machine, TV and beds, information about household care and cleanliness); and a package of food and hygiene products for the first few days. Short-term torture and trauma counselling is also provided. Those who come as sponsored humanitarian entrants are expected to receive similar assistance from their proposers, a mandate that often proves difficult since proposers are also often refugees themselves.

In terms of cultural orientation, a five day pre-arrival course delivered offshore (known as AUSCO) is provided, but after arrival, further cultural orientation provision has been patchy. The most recent revision of Australia’s settlement services in 2011 included a voluntary onshore cultural orientation program which begins within six weeks of arrival, focussing on topics such as personal safety, child protection laws, household budgeting, maintaining a home, the role of the tenant, the private rental market and Australian workplace culture (DIAC 2011).

The other major services available on arrival are language related.¹² The Adult Migrant English Program (AMEP), a comprehensive program that provides 510 hours of English language tuition, is discussed below under education (DIS, 2014). Additionally, on-site and telephone interpreting and translating services (TIS) are available to humanitarian entrants. TIS provides an immediate telephone interpreting service 24 hours a day, year round, and free interpreting services to non-English speakers and eligible agencies. TIS also offers a free document translation service for qualifications or other important documents.

To assist the transition to employment, Overseas Qualifications Units help determine recognition of overseas qualifications, including providing:

- statements of educational comparison for qualifications obtained overseas
- information on where and how to obtain specific occupational assessments and which occupations have licensing and regulatory requirements
- information about further training, including English language training, bridging training and orientation programs.

Six to twelve months after arrival, humanitarian entrants move to needs-based government funded services (known as the Settlement Grants Program (SGP)). These are designed "to deliver services which assist eligible clients to become self-reliant and participate equitably in Australian society as soon as possible after arrival" (DSS, 2014b). SGP funds casework, coordination and delivery of services, community coordination and development, youth settlement services and support for ethno-specific communities. A range of programs designed to assist in practical ways, such as driver's license training, are very popular with refugee communities, as are programs such as women's and men's groups that teach basic
skills such as nutrition, sewing or using tools while offering opportunities for socialising. A number of recent changes to SGP funding include: extending the length of grants to enable consistency of service delivery; moving primarily from project-based to service-based funding in recognition of the ongoing nature of settlement work; supporting emerging ethno-specific communities; focussing on creating welcoming communities; connecting individuals with mainstream services; and promoting access and equity.

The government also funds the Complex Case Support (CCS) Program which delivers specialised, intensive case management services to individuals with ‘exceptional’ needs.

The Australian government uses a particular framework to measure the effectiveness of these programs, using both systemic or process indicators and life outcome indicators. This includes a variety of measures of economic participation (labour force outcomes, occupational status, sources of income, level of income and housing); social participation and wellbeing (English proficiency, satisfaction with life and Australian citizenship); and physical and mental wellbeing. Information collection is not systematic however. Scholarly research into refugee settlement beyond these government measures is extensive, with a comprehensive bibliography available (see Neumann, 2013).

An examination of how these services link to international and national legal instruments, and how they have been received in practice, forms the basis of the next section assessing the settlement experience.

A focus on five settlement obligations
Five elements of settlement emerge as key contributors to positive settlement outcomes: employment, education, health, housing, and family unification. We offer an overview of relevant laws and policies, and then shift to outcomes, based on a literature review conducted by Fozdar and Hartley (2013)\textsuperscript{13}, supplemented by more recent studies.

Employment
The Universal Declaration on Human Rights (UDHR, art. 23), the International Covenant on Economic, Social and Cultural Rights (ICESCR, art. 6-8) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, art. 11) all provide for the right to work. The CRSR (art. 17, 18) specifically notes the right to work for those residing ‘lawfully in their territory’, criteria applicable to resettled refugees, although not to asylum seekers. Most recent and relevant for the challenges that resettled refugees may face, is the Michigan Guidelines on the Right to Work, which interpret the ‘right to work’ obligation as requiring states to take positive measures to facilitate refugees’ ability to work. It directs states to combat direct and indirect discrimination on the basis of race, nationality or refugee status, to take measures to prevent exploitation in the workplace and recognize the informal sector as an arena where much refugee employment is undertaken.\textsuperscript{14}

In Australia, there are no specific stipulations about rights to employment unique to refugees. That is, refugees have the same right to employment as all other Australian permanent residents according to the law.\textsuperscript{15} Legislation deals with the right to work in a safe and non-discriminatory environment, to be paid adequately and not to be exploited. General government funded services include ‘Centrelink’ which assists with job searching and training, as well as providing a range of welfare provisions for unemployment, family support and sickness. In terms of generalised assistance in finding employment, ‘Job Services Australia’ (JSA) provides assistance mainly for unskilled workers. While JSA is supposed to
service all migrant groups on permanent visas, as well as non-migrant, there are occasional additional programs for those with special needs. There are also state-based programs such as the Western Australian ‘Workforce Development Centres’, which provide assistance to job seekers and have dedicated centres assisting all migrants with: one-on-one career guidance; information on training courses; referrals to training providers and other services; access to online career development resources and tools; workshops to improve skills and assist in looking for work; and free computer access for job search activities. Services are offered face to face, online or over the phone (see Fozdar et al., 2012). In Western Australia a new ‘one stop shop’ has been designed to offer a more holistic service to job seekers.

In practice there are many obstacles to refugees gaining employment. First, refugees who come with poor/no documentation of work and training gained prior to arrival, or whose training and experience are in countries not recognised due to restrictive government and industry standards, are disadvantaged, and as a result may work in jobs not commensurate with their education or qualifications (Abdelkerim and Grace, 2012; Colic-Peisker and Tilbury, 2007; Correa-Velez et al., 2015). A third of employed humanitarian settlers work as labourers, three times the rate of other recent migrants. Many experience “occupational skidding”, working in manual occupations despite relatively high levels of education – only 10 per cent are managers or professionals, compared with almost 40 per cent of all migrants (Hugo, 2011, p. 145). This occurs despite government recognition of the challenges of work qualification recognition and related issues (see Joint Standing Committee on Migration, 2006). One result is lower level 'niche' employment in a segmented labour market, such as security, aged care, meat processing, and the taxi industry (Colic-Peisker and Tilbury, 2006; Hugo, 2011).

Second, some studies have noted the difficulty of securing work when English-language proficiency has not yet been achieved (Colic-Peisker, 2011; Hugo, 2011). Relatedly, visibly different communities such as the newly emerging African refugee communities (NEAC) face challenges not only because of language difficulties, but also failure to provide specialised employment assistance services that would overcome cultural barriers and anti-NEAC sentiments (Abdelkerim and Grace, 2012). This gap is present notwithstanding calls for service providers to focus on these groups (Olliff, 2010; Torezani et al., 2008).

Finally, failure to coordinate programs for refugee youth to facilitate future employment often leads to underemployment (Olliff and Mohamed, 2007). Given the higher proportion of young people relative to other populations, this can disadvantage refugees (Hugo, 2011). While career development programs for these young people exist (see for example Gallegos and Tilbury, 2006), their uptake has been limited.

These factors explain why refugees have difficulty integrating into the labour market, despite the apparent legislative framework to support access. However it must be recognised that second generation refugees have higher employment rates than the general Australian population (Hugo, 2011, p.110).

**Education and Training**

The right to education is enshrined in several international treaties, foremost among them the UDHR, which asserts the right to a free and compulsory elementary education (UDHR, art. 26). The ICESCR further stipulates that secondary and higher education should be available, the former to be made progressively free over time, the latter on the basis of capacity.
Relevant to resettled refugees, education is particularly encouraged for “those persons who have not received or completed the whole period of their primary education.” (ICESCR art. 13.2.d). The CRC, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), CEDAW and the Convention on the Rights of Persons with Disabilities (CRPD) all assert the right to education, specifically as it relates to, respectively: children; racial and ethnic groups; women; and people with disabilities. Finally the CRSR specifically addresses the need for states to facilitate the education of refugees through the “recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships” (art. 22.2). It has been noted that there is a legal obligation to provide education to all children who are physically present in the state, regardless of their legal status (Crock and Bones, 2015).

Legal obligations concerning the right to education in Australia make few distinctions between refugees and other permanent residents – all children to the age of 17 have a right to education in Australia’s nominally free public education system. One key service that is underpinned by the Immigration (Education) Act 1971 (the Act) and the Immigration (Education) Regulations 1992 is the aforementioned AMEP, whose 510 hours of English language classes in the first five years of settlement aim to provide a reasonable level of English proficiency (DIS, 2014). Additional Commonwealth or State programs offer another 800 hours over two years to those having difficulties finding employment due to low literacy or English language competency. Classroom, home tutor, distance learning, and self-paced e-modules are available. Counsellors are employed to provide clients with guidance and support throughout their time in the AMEP, and free childcare is provided. The service is also available on-line and through a distance learning and home tutor scheme. For younger refugees, the English as a Second Language New Arrivals program funds state and territory non-government education authorities to deliver intensive English language classes in Catholic and independent primary and secondary schools.

While AMEP is an implicit acknowledgement of the importance of English proficiency to integration, and despite its widespread availability, one-quarter of refugees do not take up this opportunity (Hugo, 2011). This may partly be due to the proportion of highly educated refugees who do not require English training, but the low uptake is mostly attributable to opportunity cost. Sacrificing wages for English classes is a difficult choice for newly arrived families; and for parents of young children, child care provision may be inadequate. It has also been noted that 510 hours is inadequate for those whose literacy in their first language is poor (Olliff and Couch, 2005).

There are also work-based language programs available for non-English speakers. For instance, the Settlement Language Pathways to Employment and Training (SLPET) program provides AMEP clients with up to 200 hours of vocation-specific tuition (including up to 80 hours of work experience placements) (DIBP, 2013) and the Workplace English Language and Literacy (WELL) program offers funding to employers to train groups of workers in English language, literacy and numeracy skills (DIICCSRTE, 2013).

Post-secondary education is available to refugees and migrants as it is to permanent residents and citizens, at a subsidised rate (students can pay fees ‘up front’ or defer payment through the tax system). Some universities have dedicated ‘access and equity’ programs to assist entry for those from disadvantaged backgrounds. However refugees face challenges in obtaining and completing post-secondary education (as they do secondary education, Naidoo, 2013), including cultural, environmental and financial factors (Conley, 2008; Turner and
Fozdar, 2010; Harris and Marlowe, 2011). Research also suggests that barriers to the uptake of further training include: a lack of knowledge of apprenticeship/training/tertiary opportunities; language difficulties; financial issues; employer reticence; and a desire to ‘aim high’ in terms of tertiary education options. (OMI, 2009; Walker et al., 2005). Thus although the legislative framework to facilitate inclusion exists, some barriers remain.

**Health**

The UN Committee on Economic, Social and Cultural Rights, in its General Comment 14, outlines essential and interrelated elements that State parties must take into account while fulfilling their obligations to the highest attainable standards of health. These elements are availability, accessibility, acceptability and quality (General Comment No. 14 (2000)). In the Australian context, the *National Health Act 1953* (Cth) is the main piece of legislation outlining rights to subsidised health and pharmaceutical products, although there are many other relevant pieces of legislation. Australia has very high quality public health care, with free public hospitals, and free access to general practitioners for those on low incomes. Thus it meets the ESCR requirement of availability and quality, but the degree to which it is accessible and acceptable is less clear.

Refugees receive a medical screening before resettlement through the International Organisation for Migration (IOM, 2015). On top of access to free healthcare services available to all permanent residence under a certain income level, after arrival refugees can access a range of services through the HSS scheme, including emergency medical assistance, and short-term torture and trauma counselling (DSS, 2014a). Specific health care programs vary from state to state. For example, in NSW, the comprehensive package includes a refugee health nurse program, bi-cultural health educators, a dental program and a program for refugee children.

These offerings (as well as other resettlement provisions) are acknowledged to be among the world’s best (UNHCR, 2009). Nevertheless, health issues remain salient. Accessibility for women is a key obstacle, due to both cultural issues (e.g., shame or fear surrounding discussing health issues with unknown practitioners) and logistical ones, such as the inability to take time off from work or caring for children to travel to appointments (Drummond et al., 2011; Bartolomei et al, 2014). Women often require greater attention both for physical and mental health issues due to gender inequalities, sexual assault, domestic violence and female genital mutilation.

Culturally sensitive health care is often key to adequate care (Allotey, 2003; Feldman, 2006). While resources exist to assist medical professionals in treating refugees in culturally appropriate ways (e.g., Foundation House, 2007; NDGP, 2008; Seah et al., 2001; Vanstone, et al, 2012), it is not known how widely these are used.

Despite dedicated and extensive services for torture and trauma survivors, attending to mental health issues for refugee populations remains a challenge. Refugees are at risk for mental disorders, stemming from past trauma associated with flight (Silove and Ekblad, 2002), and post-migration stress, which include the interlinked elements of loneliness, housing issues, un(der)employment, and language barriers (Fozdar, 2009; Marlowe, 2010). Family separation, discussed below, also has an impact on the mental health of refugees (Savic et al., 2013).
Once again, the operationalisation of legislated rights to good health care is somewhat patchy, particularly for certain sections of the refugee community, affecting the integration process.

**Housing**

As with employment, education, and health, the right to adequate housing is mentioned in many international instruments including the UDHR, ICESCR, CEDAW, and CRC. Relating to refugees specifically, the CRSR (article 21) suggests refugees should receive the same treatment in regards to housing as other ‘aliens’, a stipulation that may apply less to resettled refugees than those still in transit. Very little is suggested in terms of positive rights, although the Committee on the Elimination of Racial Discrimination’s General Recommendation 30 on Discrimination against Non-Citizens (2004) does suggest that states avoid segregation and ensure that “housing agencies refrain from engaging in discriminatory practices.”

There is no explicit right to housing in Australian legislation. Refugees have access to the same housing assistance as the general population, including needs-based public housing. After the initial four weeks of free accommodation and basic essentials, no further dedicated assistance is provided. The sector is reliant on private rental accommodation. Research suggests that housing is vitally important for refugees’ sense of belonging (Fozdar and Hartley, 2014), providing refugees with a place to begin to re-make ‘home’ (Dawson and Rapport, 1998; Flatau, 2015). Refugees as a group are vulnerable to housing crises and/or homelessness (ASeTTS, 2008; Beer and Foley, 2003; Burgermeister et al., 2008; Forrest et al., 2013; Flatau et al., 2015). Although humanitarian entrants face the same problems as many other low-income households, they often are doubly disadvantaged by lack of knowledge of the language, customs, and strategies to access housing.

Three quarters of Australian refugees rent privately or use community housing and move, on average, three times in their first year (Beer and Foley, 2003). It is unclear whether this level of housing instability is seen as a problem by refugees, or whether it is their choice. The 2006 Census shows that humanitarian entrants are far less likely to be purchasing their own homes 5 years after arrival than other visa holders (Hugo, 2011). This may indicate the level of difficulty they face in the early years in establishing language competency, education and employment, resulting in a delay in their access to secure and stable housing. In a study based on data from the Longitudinal Survey of Immigrants to Australia, Forrest et al (2013) found that most humanitarian entrants initially live with family or friends, before moving into longer term private rental accommodation, although the experience differs by community.

Research exploring the housing experiences of refugees in Australia suggests a number of barriers (Australian Survey Research Group, 2011; Beer and Foley, 2003; Coventry et al., 2002; Flanagan, 2007; Forrest et al., 2013; Fozdar and Hartley, 2014; Flatau et al, 2015; Ransley and Drummond, 2000). These include: a lack of affordable housing in the private rental market; long waiting lists and tightening of eligibility for public housing; a decrease in public housing stock; a lack of knowledge regarding tenancy issues; the need to be employed in order get a rental or mortgage contract; lack of capital; difficult application processes including problems relating to lack of rental history/Referes and identification, and discrimination from landlords and real estate agents; difficulty housing large families; and the inflated Australian real estate market. The massive rises in rental and purchase prices in the last decade or so, and the growing length of public housing waiting lists, mean that refugees may be at risk of housing insecurity.
No data are collected on the number of refugees and humanitarian entrants on public housing waiting lists. However, evidence suggests that when faced with primary homelessness (i.e., not having a roof over one’s head) humanitarian entrants will often stay with friends or family, resulting in overcrowding, family conflict and high levels of stress (Flanagan, 2007; Flatau et al. 2015) found almost one in ten of their sample of refugees had faced this situation in the last 12 months.

National legislation enforcing international rights to housing could begin to redress this situation.

**Family Unification**

In its assertion that the family is “the natural and fundamental group unit of society”, the UDHR and ICESCR implicitly suggest the importance of keeping the family together. The CRC (article 10) specifically notes the obligations of states to permit movement of people for the purposes of family reunification. And in the refugee context, while the CRSR itself contains no reference to family reunification, UNHCR promotes reunification as a component of restoring and preserving refugees’ lives, with the Executive Committee adopting a number of recommendations to promote positive measures. These include assistance in tracing the relatives of asylum seekers (ExCom conclusion 22 at 2) and defining the term ‘family’ as liberally as possible to allow comprehensive reunification of all members. (Excom conclusion 24 at 5).

Australia recognises the right to family reunifications in the Migration Act (1958) and HREOC Act 1986, and does place immediate family members as a priority for family reunification for resettled refugees. Family members have access under the SHP or under the normal family migration stream (allowing partner, child, parent or other dependent family member) (DIBP, 2015f). However, refugees frequently note problems in terms of definitions of ‘family’ and proof requirements, including the need to provide DNA evidence of biological relationships (Kenny and Mojtahedi, 2015; Tilbury, 2007; Tilbury et al., 2005). Entire families are not necessarily resettled together, which can be difficult for those from cultures where communal living has been the norm (reinforced by refugee camp living).

Unaccompanied minors who arrive through the UNHCR program or by boat face a range of difficulties in trying to bring their families over. A series of harsh measures have been instituted in recent years to deter families from sending children as ‘anchors’ to facilitate the sponsored migration of family members (see Crock and Bones, 2015; Kenny and Mojtahedi, 2015). These include restrictive age and proof requirements, the ‘balance of family’ test (which requires that half the children must live in Australia in order to sponsor the parents), and delays in processing.

The impact of family separation has been widely researched. A recent study found that family separation not only impacts individuals in the short term, but also their ability to plan for their futures (Wilmsen, 2013). The restrictions on family reunion are suffered in particular by women, leading to anxiety, sadness, loneliness and depression (Hutchinson, 2010; McMichael and Ahmed, 2003; Schweitzer et al., 2006; Tilbury and Rapley, 2004).

Family reunification has been significantly impacted in the last fifteen years by the fact that Australia’s quota for successful onshore asylum applications includes the spaces available through the SHP (the main route for UNHCR refugees to bring out their families. This
linking of refugees arriving in Australia through different pathways sets up internal competition among refugee populations because a place given to one automatically decreases the total available to others in this quota system. For example, of the 5000 people permitted to migrate in 2012-2013, only 503 places were allocated for SHP family reunion. (RCOA, 2014). This linking of onshore applications and SHP places is unique among countries that resettle refugees, and has generated criticism from advocates who note that it “blurs the distinction between Australia’s obligations as a signatory to the Refugee Convention…and our voluntary contribution to the sharing of international responsibility for refugees for whom no other durable solution exists” (RCOA, 2010).

**Conclusion**

In the areas of employment, education, health, housing and family reunification, international law confers rights to refugees regardless of location, while Australian law generally confers rights to permanent residents and citizens, regardless of migration status. This legislation generally upholds obligations under the international instruments to which Australia is a signatory, apart from the lack of ‘right to housing’ legislation. Neither international nor Australian law, however, guarantees that the provisions are realised.

Indeed, this review suggests a mixed picture of refugee settlement, indicating that while legal, policy and program level structures theoretically support the initial settlement of refugees, practical constraints such as access, and the wider social and cultural environment, may limit positive outcomes in the short to medium term. While international obligations have been heeded to some extent, there remain significant gaps in refugee assistance, with evidence suggesting these negatively impact the integration process. Yet there are some solutions.

One issue is the assumption that entitlement under general provisions will serve the needs of all Australian residents, including refugees. Legislation that calls for positive measures would be a useful corrective to the assumption that refugees will find their way in the system themselves. For example, obliging employers and education and training institutions to take steps to engage with refugee communities would assist integration through raising providers’ awareness and increasing refugees’ employment and training opportunities.

Then there is the temporal aspect. As noted, some of the problems in operationalizing the legislation into workable policy and programs are the result of short term electoral cycles, and short term contract funding for service providers. A better system for service provision is needed. While it is unpopular in the current neoliberal environment to suggest that either longer term contracts or direct provision by public servants would solve this problem, it is worthy of modelling to ensure Australia’s obligations under international conventions are met.

While some of the issues identified resolve themselves by the second generation (Hugo, 2011), their resolution would be expedited through further national and local structural support, particularly in the areas of housing and health. Additionally, community engagement and interventions to encourage more positive attitudes among the general population would assist with positive settlement experiences and integration.

Finally, this review has noted the lack of rights of asylum seekers who arrive in Australian via a different pathway. The very same laws that cover resettled refugees as part of generalized Australian law inherently exclude asylum seekers because they lack residency status. Thus, because asylum seekers are not permanent residents or citizens, and refugee-
specific law is sparse, asylum seekers find themselves in legal limbo in Australia, complicating the already difficult process of trying to secure protection.

Despite this we acknowledge that Australia secures the rights of its UNHCR refugees relatively effectively, through the provision of generally comprehensive services. It has been argued that a Bill of Rights would ensure that the human rights guaranteed by the various United Nations instruments are met (Williams, 2000). Evidence from this special issue does not confirm that those nation-states with such Bills are more likely to meet these obligations, but such a Bill would provide advocates with a starting point from which to argue for greater legislative protections and programs to enhance the settlement and integration of refugees.
REFERENCES


NDGP. (2008) GP Kit of Refugee Resources, Northern Division of General Practitioners, Melbourne.


**Legislative Citations**


APPENDIX A:

OVERVIEW OF AUSTRALIA’S HUMANITARIAN PROGRAM

There are various visa subclasses within Australia’s Refugee and Special Humanitarian program, each granted for particular reasons to particular groups of people. The visa subclass indicates a person’s background and circumstances, and access to government funded services.

<table>
<thead>
<tr>
<th>Visa Subclass #</th>
<th>Visa Name</th>
<th>People to Whom it is Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>200</td>
<td>Refugee</td>
<td>Most have been identified by UNHCR and referred to Australia for resettlement. Must be a refugee and have a protection need that can only be met through resettlement. Some are self-identified or have been referred to Australia through another channel.</td>
</tr>
<tr>
<td>201</td>
<td>In Country Special Humanitarian</td>
<td>Granted to people still in their home country (i.e. not refugees but subject to persecution).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Most are self-identified. Very few granted.</td>
</tr>
<tr>
<td>202</td>
<td>Special Humanitarian Program</td>
<td>Holders must be outside their home country and face substantial discrimination amounting to gross violation of their human rights in their home country. They are not required to be refugees but in many cases are.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>There must also be a link to Australia in the form of a proposer (an individual or organisation) who will be the holder’s main supporter after arrival.</td>
</tr>
<tr>
<td>203</td>
<td>Emergency Rescue</td>
<td>Cases identified by UNHCR and moved because the person is in imminent danger.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>High levels of recent trauma; will not have had time to prepare for relocation.</td>
</tr>
<tr>
<td>204</td>
<td>Women at Risk</td>
<td>Cases usually identified by UNHCR and typically either single women or female-headed households and their dependants.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Selected because of their vulnerability; many have experienced significant torture/trauma.</td>
</tr>
<tr>
<td>866</td>
<td>Permanent</td>
<td>Visa granted to those recognised as refugees or found to be</td>
</tr>
<tr>
<td>785</td>
<td>Temporary Protection (onshore)</td>
<td>Visa granted for three years to those recognised as refugees or found to be persons in respect of whom Australia has complementary protection obligations after they applied for Protection visa in Australia. Some have been in detention; others are in the community during the determination process. No longer available to those who arrive in Australia without a valid visa (usually by sea).</td>
</tr>
<tr>
<td>790</td>
<td>Safe Haven Enterprise</td>
<td>Visa granted for up to five years to those recognised as refugees or found to be persons in respect of whom Australia has complementary protection obligations after they applied for Protection visa in Australia. Some have been in detention; others are in the community during the determination process. At least one member of family must intend to work or study in a regional area and not apply for Centrelink payments.</td>
</tr>
</tbody>
</table>
**APPENDIX B**

Rights of Refugees and Humanitarian Entrants in Australia (according to visa class and date of arrival)²⁷

<table>
<thead>
<tr>
<th>RIGHTS</th>
<th>Resettled Refugees (visa subclasses 200, 201, 202, 203 and 204) (i)</th>
<th>Permanent Protection Visa Holders (visa subclass 866) (ii)</th>
<th>13/8/12 to 19/7/13 arrivals Temporary Protection Visa Holders and Safe Haven Enterprise (visa subclass 785 and 790) (iii)</th>
<th>Post 19/7/13 arrivals (iv)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing</td>
<td>As per Australian permanent residents PLUS bond assistance, support finding accommodation and household formation package (furniture, white goods etc.)</td>
<td>As per Australian permanent residents PLUS bond assistance (v)</td>
<td>As per Australian permanent residents</td>
<td>No</td>
</tr>
<tr>
<td>Health</td>
<td>As per Australian permanent residents PLUS specialist physical, mental and dental health care and counselling support</td>
<td>As per Australian permanent residents PLUS specialist physical, mental and dental health care and counselling support</td>
<td>As per Australian permanent residents</td>
<td>No</td>
</tr>
<tr>
<td>Work and employment</td>
<td>As per Australian permanent residents</td>
<td>As per Australian permanent residents</td>
<td>As per Australian permanent residents</td>
<td>No</td>
</tr>
<tr>
<td>Social security and welfare</td>
<td>As per Australian permanent residents PLUS exemption from 2 year waiting period imposed on migrants</td>
<td>As per Australian permanent residents PLUS exemption from 2 year waiting period imposed on migrants</td>
<td>Mutual obligation (‘work for the dole’) Possible residency requirements</td>
<td>No</td>
</tr>
<tr>
<td>Education</td>
<td>As per Australian permanent residents PLUS access to language programs (children, youth and adults)</td>
<td>As per Australian permanent residents PLUS access to language programs (children, youth and adults)</td>
<td>Access to schools. Tertiary education at foreign student rate. No free language tuition for adults</td>
<td>No</td>
</tr>
<tr>
<td>Family reunification</td>
<td>As per Australian permanent residents PLUS priority in cases of immediate family PLUS access to Special Humanitarian Visa option</td>
<td>As per Australian permanent residents PLUS priority in cases of immediate family PLUS access to Special Humanitarian Visa option</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
As per Australian permanent residents

Freedom from discrimination

<table>
<thead>
<tr>
<th>Nationality and documentation</th>
<th>As per Australian permanent residents</th>
<th>As per Australian permanent residents</th>
<th>Only eligible for another TPV or SHEV</th>
<th>No</th>
</tr>
</thead>
</table>

i) Resettled refugees are those who are granted a permanent visa outside Australia, either as part of the formal UNHCR resettlement program (visa subclass 200, 201, 203 and 204 holders) or have a link to and are proposed by an Australian permanent resident or citizen under the Special Humanitarian Program (visa subclass 202).

ii) Those holding a Permanent Protection Visa include:

- those who arrived with valid entry documents and subsequently sought and obtained protection (through determination of refugee status or eligibility for complementary protection);
- those who arrived without valid documents (mainly by boat but also by air) and were granted protection prior to 13/8/12.

iii) The Abbott Government introduced Temporary Protection Visas after its election in 2013 but these were disallowed by Parliament in December 2013. They were finally passed in December 2014.

iv) Boat arrivals after 19/7/13 are taken to offshore processing centres and will never be resettled in Australia.

v) Prior to 30/8/13, Permanent Protection Visa holders were eligible for the orientation package, including the household formation package and support finding accommodation.

---

1 An overview of Australia’s Humanitarian Program, including the various subcategories and current statistics, can be found in Appendix A. The tables in this paper were produced by researcher Margaret Piper, whose assistance is greatly appreciated. Not all who enter under the Humanitarian program are strictly refugees according to the UNHCR definition. The Special Humanitarian Program was introduced in 1981, recognising those subject to human rights abuses and with family or community ties in Australia (Karlsen et al., 2011). The Woman at Risk and Emergency Rescue visa subclasses were also introduced at this time, and onshore protection visa grants included under the Humanitarian Program (DIAC, 2011).

2 The current conservative government proudly displays the statistics of asylum applications on its website, detailing the decrease in applications since 2012 resulting from its increasingly stringent policies. See (DIBP, 2015a).

3 Relevant legislation is noted shortly when we consider specific areas of settlement

4 See - Australian Citizenship Act 2007 (Cth)

5 Relevant legislation includes Human Services (Centrelink) Act 1997 (Cth); Social Security Act 1991 (Cth); Social Security (Administration) Act 1999 (Cth)

6 See - Section 15, Racial Discrimination Act 1975 (Cth)

7 Australian anti-discrimination legislation refers to the International Labour Office’s, Discrimination (Employment and Occupation) Convention, 1958, which states that member states will promote “equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof”, ensuring that “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” is met with legal sanctions (see – Human Rights And Equal Opportunity Commission Act 1986 - Schedule 1 (Cth)).

8 See Appendix B for a summary of rights/services by visa type.

9 The offshore resettlement component comprises two categories of permanent visas. These are:

- **Refugee**—for people who are subject to persecution in their home country, who are typically outside their home country, and are in need of resettlement. Generally referred by the UNHCR to Australia for resettlement. The Refugee category includes the Refugee, In-country Special Humanitarian, Emergency Rescue and Woman at Risk visa subclasses.

- **Special Humanitarian Programme (SHP)**—for people outside their home country who are subject to substantial discrimination amounting to gross violation of human rights in their home country, and
immediate family of persons who have been granted protection in Australia. Applications for entry under the SHP must be supported by a proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia (DIBP, 2015d).

10 This visa allows the holder to live and work in Australia as a permanent resident. Holders must be in Australia when they engage Australia’s protection obligations, and must not have arrived in Australia as an illegal maritime arrival or unauthorised air arrival (DIBP, 2015e).

11 See (DSS, 2014a). For relevant legislation see Financial Framework (Supplementary Powers) Regulations 1997 (Cth) (p.104) and Social and Community Services Pay Equity Special Account Act 2012 (Cth) (p.11). Those who seek asylum onshore have variously had access to some of these services over the last decade. Of those who arrived after 30 August 2013 only unaccompanied minors have access to these services, though others continue to be able to access other services including the Settlement Grants Program; AMEP; TIS; Complex Case Support; and Torture and Trauma counselling. Currently, ‘irregular maritime arrivals’ seeking asylum are not allowed to settle in Australia, and therefore have no access to any of these services, even if found to be refugees. People who are granted protection while in an Immigration Detention Facility generally remain eligible for the HSS program (DSS, 2014a).

12 These programs are underpinned by the Immigration (Education) Act 1971 (Cth) and the Immigration (Education) Regulations 1992 (Cth).

13 This review also includes socio-cultural dimensions of settlement including issues around racism and discrimination.


15 A range of legislative instruments seek to ensure a fair, safe and non-discriminatory work environment, including Fair Work Act 2009 (Cth); Fair Work Amendment Act 2013 (Cth); Workplace Relations and Other Legislation Amendment Act 1996 (Cth); Work Health and Safety Act 2011 (Cth).

16 Australian Education Act 2013 (Cth); Higher Education Support Act 2003 (Cth).

17 Higher Education Support Act 2003 (Cth).


19 Health legislation is manifold. See (DoH, 2014) for a listing of Legislation administered by the Minister for Health.


21 Following this time period, highly vulnerable refugees can be referred to the Complex Case Support Program which offers continuing physical and mental health care (DSS, 2015a).

22 http://www1.umn.edu/humanrts/gencomm/genrec30.html

23 A ‘Homelessness Bill’ was introduced into parliament in 2013, after an enquiry into homelessness, but it failed to proceed. Housing now falls within the remit of the Department of Social Services (DSS, 2015b) but the related legislation does not mention housing - Social Services and Other Legislation Amendment Act 2014 (Cth). The Abbott government repealed a raft of housing legislation under the Omnibus Repeal Day (Autumn 2014) Act 2014 (Cth) and the Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006 (Cth).

24 Australia previously had a hostel system which accommodated humanitarian entrants and offered support services for some time after arrival, similar to the system currently operating in New Zealand. The last of these hostels closed in the 1990s.

25 The ‘split family’ provision allows people to propose to bring family members over. These are restricted to members of one’s ‘immediate family’, defined as “their spouse or de facto partner; dependent children; parents if the proposer is under 18 years of age. A dependent child is the proposer’s biological, adopted or step child who is: not married, in a de facto relationship or engaged to be married; and under 18 years of age, or aged 18 years or over and wholly or substantially reliant on the main applicant for financial, psychological or physical support” (DIAC, 2013).

26 For legislation pertaining to this see - Migration Act 1958 (Cth); Human Rights and Equal Opportunity Commission Act 1986 (Cth).

27 The Department of Social Services website (DSS, 2014) now states that “From 30 August 2013, two groups of asylum seeker who are granted Protection visas will no longer be eligible for the Humanitarian Settlement Services (HSS) program. These groups are:

- Illegal Maritime Arrivals who lived in the community on a Bridging visa E or who resided in Community Detention, aside from unaccompanied minors, and
- other asylum seekers who lived in the community, including in Community Detention.

All Unaccompanied Humanitarian Minors are exempt from this change. Most people granted protection in an Immigration Detention Facility or Centre also remain eligible for the HSS program.