



Still left behind

Stranded refugees and residents on temporary visas must be part of Australia's re-opening plan

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Throughout the COVID-19 pandemic, everyone in big and small ways has felt the pain of being separated from people close to them. We missed out on holding newborn relatives, caring for loved ones who fell ill, and celebrating special days together. With more and more people vaccinated, the possibility of travel to and from Australia now offers hope to millions of people. But not yet everybody.

The rapid introduction of unprecedented travel restrictions at the start of pandemic limited the spread of COVID-19 in the Australian community. But these restrictions came at a cost. People with citizenship and permanent residency were left stranded overseas, people living in Australia on work or student visas have been forced to decide between being separated from family overseas or leaving Australia forever, and people seeking safety have been abandoned altogether.

As with other pandemic-related restrictions, this cost was disproportionately felt by people who are less wealthy and powerful. Too often during the pandemic, political leaders have sought to reduce the purpose of travel to simply holiday opportunities or a tool for meeting labour shortages. This ignores the importance of travel to people and communities whose lives have been suspended and who have spent more than 18 months unable to be with their loved ones. It ignores the reality that Australia's population is made up of people with diverse experiences and deep connections with other parts of the world.

On 1 November 2021, the federal government removed both the passenger caps restricting international arrivals to the states of Victoria and New South Wales and the outward travel ban preventing people with citizenship and permanent residency from leaving Australia. These changes will bring together millions of people separated from their homes and loved ones. But they leave many others behind, with no clarity about when they will have the same opportunities.

Right now, there is no pathway to reuniting with loved ones for almost 1 million people living in Australia on temporary visas. There is no plan to help the thousands of refugees stranded in precarious situations around the world, often more than two years after the federal government committed to bringing them to Australia. As others see loved ones for the first time since the beginning of the pandemic, people in these groups still face the same uncertainty about their future.

The national reopening plan foreshadowed changes to the inward travel restrictions for people on temporary visas and humanitarian visa holders at the 80% vaccination mark.¹ That milestone has come and gone with no announcements from the federal government leaving hundreds of thousands of people in limbo.

Now is the time for the federal government to put forward a complete and inclusive plan that recognises and prioritises travel to and from Australia for all those who have suffered due to the restrictions.

As Australia begins to reconnect with the world, this paper highlights the restrictions that continue to prevent travel for many members of the Australian community and for refugees whose resettlement has been delayed, and proposes a pathway for the federal government to ensure no one is left behind.

Inward travel ban and exemptions system

The situation now

- For more than 18 months people without citizenship or permanent residency have been banned from entering Australia unless they were granted an exemption by Australian Border Force. This has been the case even if they have lived in Australia for years or have other strong links to the country.
- For long-term residents of Australia on temporary visas, the ban on travelling to Australia has functioned as a ban on leaving, given that they have no right to return.
- This inward travel ban and its unfair and inconsistent exemptions system continue to impact almost one million people living in Australia.

The restrictions

At the beginning of the pandemic, the federal government implemented a complete ban on entry to Australia for everyone who was not an Australian citizen or permanent resident. People without citizenship or permanent residency have only been able to enter Australia with an exemption granted by Australian Border Force, in addition to ordinary visa requirements.

Millions of people have been impacted by this ban. At the start of the pandemic, more than two million people in Australia held temporary visas.² They are people who work in Australian businesses, students in Australian universities and children in Australian schools. Many have lived in Australia for years and intend to stay permanently.

Although temporary visa holders living in Australia have been permitted to depart Australia throughout the pandemic, they have generally not been permitted

to return.³ This means the inward travel ban has functioned as a de facto ban on leaving Australia for residents on temporary visas who wish to return.

The ban also shut out their family members overseas and many family members of citizens and permanent residents.⁴ This meant that people could not travel out of Australia to be with their family, and their family could not travel here.

The federal government implemented the inward travel ban and exemptions process without any underpinning legislation passed through Parliament. The Prime Minister authorised the Commissioner of Australian Border Force through the National Security Committee of Cabinet to consider individual requests for exemptions to the ban.⁵

Ashish and Justin have been separated since March 2020

Ashish built a life in Melbourne with his partner, Justin. In 2020, the couple flew to India, where Justin met Ashish's family for the first time. When the pandemic hit, Ashish was blocked from returning home.

My life is in Australia and when I left Melbourne it was meant to be a short trip. We went to Thailand together and then to India for Justin to meet my family. Justin flew home before me and when we last hugged each other we thought we were going to see each other the next week.

Now it's been more than 20 months. Being stranded in India meant I lost my job and two years of our life together. I have a visa and was even offered a new job in Melbourne, but even now I'm not allowed back.

We've now applied for an exemption 12 or 13 times. Being rejected again and again has made us feel that this is futile. I just want us to be able to resume our life together.

In Melbourne, Justin has struggled to maintain hope:

Because Ashish doesn't have citizenship or permanent residency he's still unable to return. If the government accepted we were partners he would be eligible for an exemption, but it's been impossible to navigate this system. We've gone through so much trying to get him home.

We have a joint bank account and our relationship is registered under Victorian law. We've provided hundreds of pieces of evidence: photos together, the messages between us. We've provided statements from family and friends, even doctors letters showing how badly the separation is affecting us. We have gone through hell trying to prove our relationship to Border Force.

We've opened up our lives to these officials we don't even know and in response they just send a vague, generic email that says "I'm not satisfied you meet the requirements".

We are traumatised by this process and it's hard to get up the courage to keep trying. We're starting to lose all hope.

Ashish and Justin in Melbourne before the pandemic



The problems with these restrictions

The Australian Government's system of a blanket ban on inward travel and individual exemptions given by the Australian Border Force is flawed:

- 1 No parliamentary oversight**
The government's choice to implement the exemptions system through a direction to the Commissioner of the ABF left key criteria and procedural requirements to the Commissioner's discretion. This meant the system bypassed our usual democratic safeguards, and parliamentarians were unable to review, debate or suggest improvements to the system.
- 2 Inadequate transparency on criteria for exemptions**
The criteria and principles for exemptions as decided by the Commissioner of the ABF were not made public until late-2020. This guidance has been repeatedly revised without explanation.⁶
- 3 No right of review**
People who are rejected for an exemption have no way to challenge the decision by seeking independent merits review, which is normally available for visa decisions in Australia. This has forced people to apply repeatedly after rejections.
- 4 Broad discretion to ABF officers**
The lack of transparency and inability to challenge decisions has left broad discretion to the individual officers considering requests. Objections have been raised about the inconsistency of decisions, potential biases based on the countries people are travelling from⁷ and difficulties in providing evidence to satisfy decision makers.⁸

The exemptions system has favoured financial interests over compassionate needs of individuals. For example, particular categories of agricultural workers and people granted certain business and investment-related visas have been automatically exempt.⁹ The Commissioner's Guidelines also created exemptions for people in the media or entertainment industry and other skilled workers in employer-sponsored visa programs.¹⁰

In comparison, the thresholds established for exemptions in compassionate circumstances have been extremely onerous. For example, to satisfy the requirements for an exemption, people seeking to visit a seriously ill family member in Australia have been required

to demonstrate that the family member had 'little support in Australia'; or that the circumstances would result in 'serious, ongoing and irreversible harm and continuing hardship to an Australian citizen or an Australian family unit' – disregarding the hardship to Australian families in similar situations who hold temporary visas.¹¹

More broadly, the Australian Government's blanket ban on inward travel for people who do not have citizenship or permanent residency has ignored the reality of people living in Australia on temporary visas. Over the past two decades, Australian governments have increased the number of people on temporary visas while limiting their pathways to becoming permanent

residents.¹² In the decade since 2010, the number of people who have lived in Australia for more than five years but remain on temporary visas has increased dramatically. In the same period, the number of people on temporary visas who are granted the right to live here permanently has fallen.¹³ This trend has led to hundreds of thousands of long-term residents whose visa status – 'temporary' – fails to reflect

their connection and contribution to the society in which they live.

Australian residents in these circumstances are not transitory visitors or tourists. Yet the federal government's complete ban on re-entering the country continues to treat them as though they should be prepared to uproot their lives at short notice and leave Australia forever.

What the Australian Government should do

The federal government should abandon the current approach to travel restrictions and the flawed exemptions process, and instead implement travel requirements relating to COVID-19 through processes that ensure transparency, consistency in decision making and parliamentary oversight.

The changes to travel restrictions on 1 November 2021 – which were limited to people with citizenship or permanent residency – overlook the fact that many

people falling outside these categories have deep and ongoing occupational, social, family and community connections to Australia. While the inward exemptions system remains in place, the federal government should establish an automatic exemption from the inward travel ban for people on temporary visas who are usually resident in Australia, and their family members.



Abandoning our humanitarian commitments

The situation now

- Prior to the pandemic, almost 1500 refugees each month were supported to enter Australia and begin rebuilding their lives under the humanitarian program. During the pandemic, the Government slowed this intake to a trickle.
- In 2020-21 the federal government delivered Australia's smallest humanitarian program in 45 years. For every month the travel restrictions have continued, approximately 1,000 refugees have been missing out.
- The federal government has prevented refugees who had already been granted a visa from travelling to Australia as part of the inward travel ban. More than 10,000 permanent humanitarian visa holders are languishing overseas and still blocked from entering the country.
- The federal government has not given any indication about when the refugee intake will restart or permanent humanitarian visa holders will be able to enter the country without an exemption.

The restrictions

After the pandemic hit in 2020, the government suspended the granting of new visas under Australia's offshore humanitarian program. Every year under this program, thousands of refugees are normally resettled in Australia to begin rebuilding their lives in safety. This program has been one of Australia's most significant contributions to refugee protection and has changed the lives of hundreds of thousands of families for the better. The initial suspension and ongoing disruption to visa processing has led to major shortfalls in the humanitarian program in both 2019-20 and 2020-21.¹⁴ The federal government has still given no indication of when resettlement will restart and has not committed to making up this shortfall.

The federal government also actively blocked refugees who had already been granted humanitarian visas from travelling to Australia during the pandemic. These visas are intended to allow refugees and other people threatened by conflict or persecution to travel to and live in Australia as permanent residents. Despite this, the federal government did not make humanitarian visa holders exempt from the inward travel ban, leaving vulnerable people stranded. In contrast to the automatic exemptions given to certain business or investment-related visas, humanitarian visa holders have been left to apply for individual exemptions that have been rarely approved.

Diana's sister is stranded in Iraq

Diana Haddad lives in Sydney with her husband and children. After fleeing Syria, Diana's sister Mirna and her family were getting ready to rebuild their lives in Australia. More than 18 months later they are still waiting.

My sister Mirna and her husband fled Syria with their two children, and are now in northern Iraq. In March 2020 they were told they had been granted humanitarian visas. Two weeks later, their lives were put on hold again, when they were told they could not travel to Australia. The longer the travel ban continues, the more worried I get about them.

They were so excited when they got the visa, they had even chosen the clothes they were going to wear on the plane. Now for two years they have had no school, no work, no money.

In Iraq, Mirna laments the lost years:

It was a very happy day when we got the visa. We felt we would finally end all this suffering and the feeling that we had no future. We sold our car to pay for our flights. Then everything changed. Instead of flying to Australia and finally settling down we have been in Iraq, just trying to find get basic necessities for our children.

Diana and her family at their home in Sydney (Jack Fisher ABC)



The problems with these restrictions

In responding to the pandemic, the federal government all but abandoned Australia’s international humanitarian commitments. This inaction has left people who have already fled conflict and persecution to endure the worst periods of the pandemic in untenable situations.

The Australian Border Force’s exemptions process has failed to account for the precarious situations many of these people face. For example, the criteria applied by the Australian Border Force for compassionate circumstances focuses on whether there would be ‘serious, ongoing and irreversible harm and continuing hardship’ to an Australian citizen or permanent resident – not to the person applying for the exemption. A separate ground for exemptions relates to the visa holder, but its restrictive health-related criteria have proven extremely difficult for humanitarian visa holders to satisfy¹⁵

As a result of these measures, there are now more than 10,000 people stranded overseas who have been granted humanitarian visas but been unable to travel to safety in Australia.¹⁶ Barely 700 individual travel exemptions were approved for humanitarian visa holders between April 2020 and June 2021.¹⁷ In the same period federal and state governments facilitated travel for more than 164,000 other people holding Australian visas.¹⁸

Given that the majority of people granted humanitarian visas have family links in Australia, the policy has also compounded pressure on Australian families who have struggled to support their loved ones overseas.

The freeze on the humanitarian resettlement program has meant that there are many more people who would have otherwise been granted visas and

brought to Australia. For every month that the existing settings have been in place, 1,000 refugees have been missing out.

This deficit adds to a period of significant cuts to the humanitarian program. Australia’s 2019 Budget planned for 75,000 visas over the following four years. Since then, the Morrison Government has cut more than 28,000 visas out of the program:

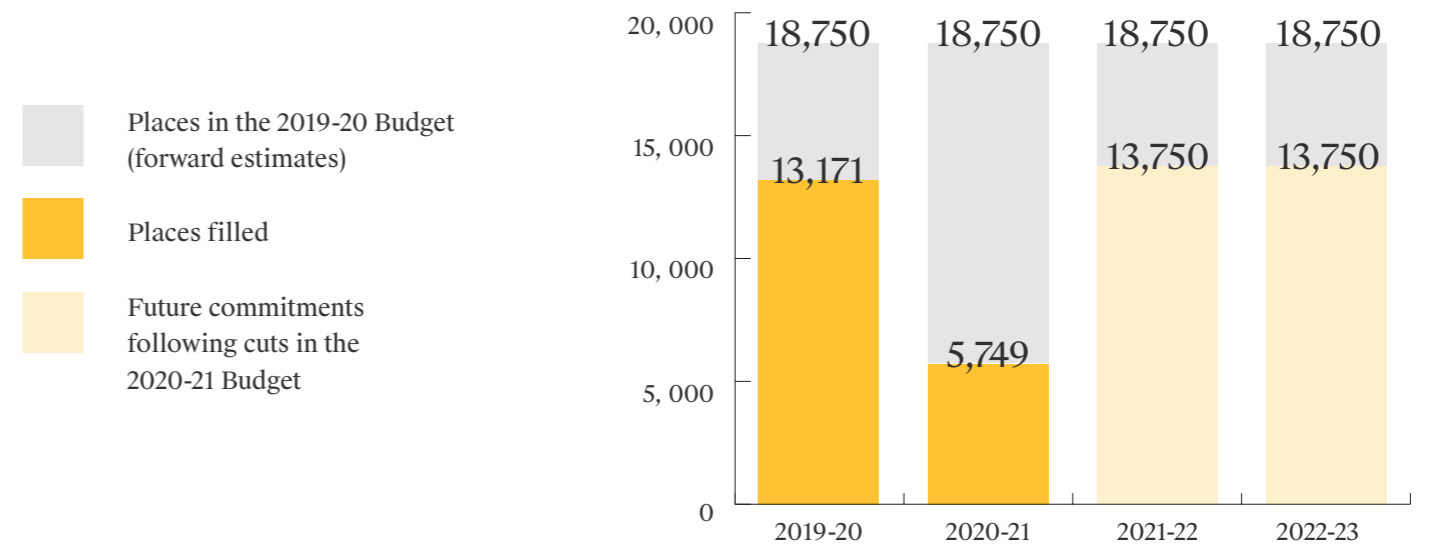
- 13,382 visas were never granted; and
- the annual intake was reduced from 18,750 places to 13,750 in 2020.¹⁹

That is more than 28,000 lives that the Australian Government could have permanently changed for the better.

The opportunity to now resume and increase Australia’s refugee resettlement program comes at a time of acute need. After Afghanistan was taken by the Taliban in August 2021, the federal government announced it will provide at least 3,000 humanitarian visas to people from Afghanistan. The Government’s evacuation and resettlement of Afghan refugees demonstrated what was possible and how much more could have been done throughout the pandemic if there was the political will.

Australia’s military involvement in Afghanistan, the urgency of the situation and the scale of displacement all justify a much greater effort. Australia is home to many thousands of people from Afghanistan. Afghan Australians have called for an emergency commitment of at least 20,000 additional places. Such a program would not be unprecedented, given Australia’s significant targeted responses to other crises. An additional 20,000 places would also begin to restore the shortfall that has emerged during the pandemic.

Falling behind: Refugee and Humanitarian Program places 2019-2023



What the Australian Government should do

By granting a permanent humanitarian visa to someone overseas, the Australian Government has recognised that the person is at risk and in need of resettlement. In that context, there is no reasonable justification for blocking that person’s travel to Australia. The Australian Government should now actively facilitate humanitarian visa holders’ travel as a matter of priority.

The Australian Government’s national reopening plan indicates a potential increase to the capped entry of humanitarian visa holders once 80% of the over ¹⁶ population is fully vaccinated nationally. There is an urgent need for the government to provide a plan for resuming the humanitarian intake, including plans for vaccination and quarantine requirements that may limit

humanitarian arrivals, particularly where people have not had access to vaccinations or may not have sufficient documentation of their vaccination status.

If some level of interruption in refugee resettlement due to COVID-19 was unavoidable, a permanent deficit in Australia’s refugee intake is not. As opportunities for international travel become more widely available, the Australian Government’s policies should recognise that the deprioritisation of refugee resettlement has robbed thousands of families of safe pathways out of dangerous situations. Australia must make up for lost time. Committing to at least 20,000 additional places provides a starting point for doing so.

A pathway forward

The federal government must put forward a fair and inclusive plan for everyone who has suffered under the international travel restrictions.

As of 1 November 2021, the outward travel ban is no longer in place for vaccinated people with citizenship and permanent residency and passenger caps have been lifted for international arrivals to Victoria and New South Wales. It is vital that the Australian Government adequately facilitate citizens and permanent residents to return home.

But these changes are not enough. The federal government must also, as a matter of priority, put forward a plan that ensures that no one is left behind.

This plan must include the following.

Reconnecting families separated due to their visa status

- 1 The Australian Government should immediately establish an automatic exemption from the inward travel ban for people on temporary visas who are ordinarily residents in Australia, and their family members.
- 2 The Australian Government should abandon the current approach to inward travel restrictions and the flawed exemptions process. If additional restrictions on inward travel are needed due to COVID-19 requirements, the Australian Government should implement them through processes that ensure transparency, consistency in decision making and parliamentary oversight.

Making up for lost time on refugee resettlement

- 3 The Australian Government should immediately allow humanitarian visa holders to enter Australia without requiring an exemption, in line with the settings for other permanent visa holders.
- 4 The Australian Government should restore the humanitarian program to full operation as a matter of priority, and actively assist humanitarian visa holders to meet vaccination and quarantine requirements where necessary.
- 5 The Australian Government should make up for the humanitarian places that have not been filled during the pandemic, starting with at least 20,000 humanitarian visas for people from Afghanistan.

Endnotes

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- 11 Department of Home Affairs and Australian Border Force, Commissioner's Guidelines (Version 7), p 3.
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