

11 August 2022

Nathan MacDonald
Acting Deputy Director, Policy Division
DX 5719 Canberra
19 Torrens St
Braddon, ACT 2612

Dear Mr MacDonald

**DISCUSSION PAPER – AUSTRALIA’S HUMANITARIAN PROGRAM 2022-23
COMMENTS**

Thank you for your letter dated 26 July 2022 inviting comments on the Discussion Paper on Australia’s Humanitarian Program 2022-23.

This correspondence has been reviewed by the Law Society’s Human Rights and Equal Opportunity Committee and I provide the following comments in response.

There needs to be a strong position by the Law Council of Australia indicating it is no longer acceptable for there to be any further decrease, temporary or otherwise, of the number of places in the Humanitarian Program and that the ceiling should now revert to the target, with an increase year by year. COVID-19 can no longer be argued as the reason to curtail the number of places.

Further, I believe the Law Council of Australia should express in stronger and clearer terms the need for the Government to now commit to a more humane and sustainable alternative to offshore detention and processing of asylum seekers. This should include a clear strategy to address the lengthy and uncertain onshore detention of people seeking asylum who may not arrive with a valid visa or whose visa may be cancelled when they indicate they are seeking asylum, and that the Law Council of Australia welcomes the opportunity to advise and consult on this.

If you have any queries, please contact Mary Woodford, General Manager Advocacy and Professional Development on 9324 8646 or mwoodford@lawsocietywa.asn.au

Yours sincerely



Rebecca Lee
President, Law Society of Western Australia

Memorandum



Law Council
OF AUSTRALIA

To: Policy Managers, Constituent Bodies
Migration Law Committee, Federal Litigation and Dispute Resolution Section

From: Mr Nathan MacDonald, Acting Deputy Director, Policy Division

Date: 26 July 2022

Discussion Paper – Australia’s Humanitarian Program 2022-2023

Action Request

Input is requested by **COB Thursday 4 August 2022** for a Law Council submission to the Department of Home Affairs (the **Department**) regarding its [Discussion Paper](#) on Australia’s Humanitarian Program 2022-23 (the **Program**).

Key Issues

The Law Council would be grateful for input on any of the issues presented in the Discussion Paper or any other issues relevant to the Program.

The Discussion Paper addresses the following key aspects of the Program:

- **the size of the Program**
 - the 2020-21 and 2021-22 Programs had a ceiling of 13,750 places;
 - a total of 5,947 visas were granted under the 2020-21 Program;
 - 13,750 places have also been maintained as a ceiling for 2022-23; and
 - 16,500 places have been allocated the next four years for Afghan nationals;¹
- **the international context**
 - the Program ‘has been under considerable pressure due to the cumulative impact of the COVID pandemic and significant global events’; and
 - there have been ‘unprecedented high demand for places since the events in Afghanistan will continue in the context of record forced global displacement’;²
- **the offshore component**³
 - the Australian Government ‘aspires to progressively increase the Community Support Program to 5,000 places per year’;
 - at May 2022, there are ‘over 42,000 offshore humanitarian visa applications (over 190,000 applicants) on-hand mostly from Afghan nationals’;
 - in the Afghan cohort, the Department will prioritise:
 - former certified Locally Engaged Employees and their immediate family members; and women and girls, ethnic minorities, and LGBTQI+ and other identified minority groups; and
 - processing permanent visas for Afghan evacuees on subclass 449 (Temporary Humanitarian Stay) visas in Australia;
- **the onshore component**
- **regional settlement**
 - the locations humanitarian entrants settle depend on factors such as location of onshore links and the capacity of regional communities; and

¹ Department of Home Affairs, ‘[Discussion Paper - Australia’s Humanitarian Program 2022–23](#)’ 3.

² Ibid.

³ Ibid 5-6.

Memorandum



Law Council
OF AUSTRALIA

- the proportion of humanitarian entrants settled in a regional location has increased from 42 per cent in 2018–19 to 64 per cent in 2020-21;⁴
- **settlement assistance**
 - the Department will deliver new settlement measures targeted at refugee and humanitarian entrants, comprising: a Community Refugee Integration and Settlement Pilot; a new Economic Pathways to Refugee Integration program; and improvements to national data on settlement and integration outcomes.⁵

Background

The Discussion Paper invites submissions, ‘to inform the development and composition of the Program in 2022-23, to help ensure it delivers effective and strong outcomes for people in humanitarian needs’.⁶

The Humanitarian Program aims to meet Australia’s obligations under international law and provide permanent resettlement to those eligible. It has two key components:

- the *offshore component* provides for the resettlement of people who were subject to persecution or discrimination that amounts to a gross violation of their human rights, and is split into three parts: the Refugee category, the Special Humanitarian Program category and the Community Support Program; and
- the *onshore component* provides protection for people who have arrived in Australia lawfully, are found to be a refugee and meet criteria for permanent stay in Australia.⁷

The Law Council has called for:

- a sustained increase to the Humanitarian Program above the ceiling of 13,750 places,⁸ including for the allocation of places for Afghans to increase to enable it to deal with the crisis in Afghanistan adequately and proportionately;⁹ and
- the Australian Government to commit to establishing long-term, durable solutions for all refugees and asylum seekers who have sought protection from Australia, including those in offshore processing and in transitory arrangements onshore.¹⁰

The Law Council’s submission in response to the Department’s 2021-22 Humanitarian Program Discussion Paper can be found [here](#).

Contact

Please contact Matthew Wood, Acting Principal Policy Lawyer, on 02 6246 3755, or at matthew.wood@lawcouncil.asn.au, for information or to provide comment.

A handwritten signature in blue ink, appearing to read 'N MacDonald'.

Mr Nathan MacDonald
Acting Deputy Director, Policy Division

⁴ Ibid 7.

⁵ Ibid.

⁶ Ibid 8.

⁷ Department of Home Affairs, [Australia’s offshore Humanitarian Program: 2020–21](#), (2021) 2.

⁸ Law Council of Australia, [Call to Parties](#), (April, 2022) 31.

⁹ Law Council of Australia, [‘Australian Government’s increased commitment to Afghan nationals a good start’](#) (24 January 2022) and Law Council of Australia, [‘Australia’s engagement in Afghanistan’](#) (13 October 2021) [45].

¹⁰ Law Council of Australia, [Call to Parties](#), (April, 2022) 32.



Australian Government

Department of Home Affairs

Discussion Paper

Australia's

Humanitarian

Program 2022–23

Introduction

The Australian Government recognises the importance of engaging with the community to ensure continued support for the Humanitarian Program (the Program). The Department of Home Affairs publishes a Discussion Paper each year to inform the public and seek their views on the management and composition of the Program, including options for diversifying the offshore resettlement component and strengthening Program outcomes.

As part of the annual consultation process, the Government also consults with:

- state and territory governments and Commonwealth agencies;
- peak refugee and humanitarian organisations; and
- the United Nations High Commissioner for Refugees (UNHCR).

Planning for the management and composition of the Program considers Australia's capacity to facilitate the successful entry and settlement of humanitarian entrants into our society, and expert advice to manage any risks to the Australian community.

This paper provides background information to inform written submissions. It includes an overview of the international context in which the Program operates and information on its key features.


If you would like to make a written submission on Australia's 2022–23 Program, please email humanitarian.policy@homeaffairs.gov.au.

Submissions close at 5pm on **12 August 2022**. Submissions received after the deadline may not be considered.

The Humanitarian Program

Australia is one of the world's most generous contributors to international refugee resettlement efforts, successfully settling more than 930,000 refugees and others in humanitarian need since the end of the Second World War. The Program aims to:

- meet Australia's international protection obligations, so that Australia is an exemplar in our region and beyond;
- provide permanent resettlement to those most in need, who are in desperate situations, including in refugee camps and protracted refugee situations;
- use resettlement strategically to help stabilise refugee populations, reduce the prospect of irregular movement from source countries and countries of first asylum, and support broader international protection;
- be flexible and responsive to changing global resettlement needs and emerging humanitarian situations to ensure Australia's approach remains comprehensive and high-quality; and
- reunite refugees and people who are in refugee-like situations overseas with their family in Australia.



All Program applications are assessed on an individual basis with applicants required to demonstrate their humanitarian need. Visa grants are subject to rigorous assessment, including health, character and security checks, which are conducted before individuals are granted a visa.

Size of the Humanitarian Program

Each year the Government sets the number of visas that may be granted under the Program.

In response to the COVID-19 pandemic, the size of the Program was set at a ceiling of 13,750 places for 2020–21 and 2021–22. In the March 2022 budget, the 2022-23 Program was maintained at a ceiling of 13,750 places. As further detailed below, an additional 16,500 places have been allocated over the forward estimates (4,125 places per year over four years) for Afghan nationals under the Program.

A total of 5,947 visas were granted under the 2020-21 Program. A summary of outcomes of the past years Program is at **Attachment A**, and the full report of the 2020-21 Program is available on the Department's website, at: <https://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2020-21.pdf>.

The 2021-22 Program was set as a ceiling of 13,750 places. Program statistics and reporting are being finalised and will be published on the Department's website when available.

At 30 June 2022, there were approximately 9,000 offshore humanitarian visa holders who were yet to travel to Australia. The Department is working on moving these visa holders to Australia as efficiently as possible, taking account of the capacity of settlement service providers.

The Australian Government remains committed to a Program that can respond to international humanitarian crises as they arise, and to provide appropriate support for the travel and resettlement of refugees and others requiring Australia's protection. The Government aspires to progressively increase Australia's humanitarian intake. Consultation with the community on future Program numbers and settings is part of this process.

International context

In recent years, the Program has been under considerable pressure due to the cumulative impact of the COVID pandemic and significant global events. High demand for places under the Program, which has been at unprecedented levels since the events in Afghanistan, will continue in the context of record levels of forced global displacement. The United Nations estimates that at the end of 2021, there were 89.3 million¹ forcibly displaced people worldwide, including over 1.47 million refugees in need of resettlement².

Globally, resettlement remains one of three enduring solutions used to help refugees:

- voluntary return to the country of origin in conditions of safety and dignity;
- local integration in countries of first asylum and settlement; and
- resettlement, where voluntary return or local integration is not feasible.

As an important protection tool, resettlement provides protection and solutions for refugees who face specific or urgent protection risks. The Australian Government recognises the complexity of refugee issues

¹ [UNHCR - UNHCR: Global displacement hits another record, capping decade-long rising trend](#)

² [UNHCR - Projected Global Resettlement Needs 2022 \(PDF\)](#)

and the need to work with the Australian community and, critically, in cooperation with international partners to find solutions to the plight of refugees and displaced people.

While this paper outlines impacts for the Program, and does not include non-humanitarian programs, the impacts have been experienced across the broader Migration and Citizenship Programs. These programs have also been leveraged to respond to various crises, with applications from certain cohorts receiving priority.

Australia's role as a resettlement country

Australia is one of a relatively small number of countries that operate an annual permanent resettlement program, and consistently ranks among the top three permanent resettlement countries, in both absolute and per capita terms.

The Program intake has been drawn from a range of nationalities, ethnic and religious groups, reflecting global displacement arising from conflict and persecution. The Australian Government is committed to a non-discriminatory approach to this intake.

Snapshot of major humanitarian resettlement groups over time

Post World War II	<ul style="list-style-type: none">• Eastern Europe and Central Europe• The Balkans and Baltic states
1960s and 1970s	<ul style="list-style-type: none">• Europe• Central and South America• Lebanon
1980s and 1990s	<ul style="list-style-type: none">• Eastern Europe• Latin America• Middle East, Asia and Africa
Recent Arrivals	<ul style="list-style-type: none">• Middle East and Afghanistan• Central Africa• Horn of Africa (Sudan, Eritrea, Somalia)• Asia (Burma/Myanmar, Bhutan)

The Program has two main components: offshore resettlement (for people outside Australia) and onshore protection (for people in Australia). For statistical information on the Program, see:

<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program>.

As we proceed into the post-pandemic recovery phase, the 2022-23 Program will maintain our long-term commitment to a generous and flexible program while also taking account of the challenges associated with COVID-19 and effectively responding to the global humanitarian crises.

Offshore component of the Humanitarian Program

The offshore component of the Program has three parts:

- Refugee category;
- Special Humanitarian Program (SHP) category; and
- Community Support Program (CSP).

Refugee Category

The Refugee category assists people who are subject to persecution in their home country and for whom resettlement in Australia is the best durable solution. Australia works closely with UNHCR, which refers many of the successful applicants for resettlement in Australia under this category.

The Refugee category has four subclasses:

- Refugee visa (subclass 200) – generally for people who have fled persecution and are living outside their home country.
- In-country Special Humanitarian visa (subclass 201) – generally only a small number of visas are granted under this subclass for people living in their home country who are subject to persecution. This visa is used, for example, for former Afghan Locally Engaged Employees (and their dependents) at risk of harm due to their connection to the Australian Government mission in Afghanistan.
- Emergency Rescue visa (subclass 203) – only a small number of visas are granted under this subclass for people outside their home country who are in urgent need of protection because there is an imminent threat to their life and security.
- Woman at Risk visa (subclass 204) – for women and their dependents subject to persecution in their home country or registered as being ‘of concern’ to UNHCR and without the protection of a male relative.

SHP Category

The SHP category (subclass 202) is for people outside their home country, subject to substantial discrimination amounting to a gross violation of human rights and with family or community ties to Australia.


Applications for SHP visas must be accompanied by a proposal from an eligible Australian citizen or permanent resident, an eligible New Zealand citizen, or an organisation operating in Australia. If the SHP application is successful, proposers help the applicant pay for their travel to Australia and are expected to assist with their accommodation and initial orientation in Australia.

The limited number of SHP places available and the high demand for places mean that not everyone is able to be accepted. Priority has historically been given to applicants who have close family members in Australia and to applicants with proposers residing in a regional area.

Community Support Program

The CSP is designed to provide a sustainable model of private sponsorship for refugees that complements the existing Refugee and SHP categories. It enables communities and businesses, as well as families and individuals, to propose humanitarian visa applicants with employment prospects and to support new humanitarian arrivals. The CSP is intended to harness community support for refugees, including the willingness of the Australian business community to support refugees in practical ways through employment and financial assistance.

Priority is given to refugees with good settlement prospects who are between 18 and 50 years of age, who have an offer of employment, or who have personal attributes that would enable them to become financially



self-sufficient within 12 months of arrival. Historically priority has been given to applicants willing to live and work in regional Australia.

The Commonwealth Coordinator-General for Migrant Services led a review into the CSP in 2020-21, which included a series of consultations with a range of stakeholders, including CSP participants, refugee-led groups, non-government organisations (NGOs), faith groups and industry peak bodies.

Findings from the CSP Review demonstrate that the Australian public, together with State, Territory and local governments are seeking to do more to support refugees to settle in Australia. The Government aspires to progressively increase the CSP intake to 5,000 places per year.

Afghanistan crisis response

As a reflection of Australia's sustained commitment following two decades of operations in Afghanistan, on 29 March 2022, the then Australian Government announced that 16,500 places will be provided for Afghan nationals under the Program over the next four years in addition to the annual Program intake. These places are in addition to the 10,000 places for Afghan nationals within Australia's existing offshore Program, announced on 21 January 2022. This brings the total number of places available to Afghan nationals to 31,500, comprising 26,500 places under the Program and 5,000 places under the Family stream of the Migration Program.

Within the 26,500 places under the Program, priority will be given to:

- former certified Locally Engaged Employees (LEE) and their immediate family members; and
- women and girls, ethnic minorities, and LGBTQI+ and other identified minority groups.

The Department continues to prioritise permanent visas for Afghan evacuees on subclass 449 visas in Australia. With 1,528 of the over 5,000 subclass 449 visa holders in Australia granted humanitarian visas as at 13 May 2022, this focus will continue into the first half of 2022–23 program year. Further, as at May 2022, the Department has over 42,000 offshore humanitarian visa applications (over 190,000 applicants) on-hand mostly from Afghan nationals.

The Department is working to ensure that visa options continue to be available to Afghan nationals, both within Afghanistan and those who have been displaced from their home country. All visa applications will be processed in accordance with Government announcements and within program priorities, and assessed on an individual basis.


Onshore component of the Humanitarian Program

Since September 2013, the onshore component of the Program has been reserved for people who arrive lawfully in Australia and engage Australia's protection obligations because they are either found to be a refugee or meet the complementary protection criteria under the *Migration Act 1958* (the Act). People found to engage Australia's protection obligations must also satisfy health, character and security requirements for the grant of a permanent Protection visa.

Permanent Protection visa applications are individually assessed in accordance with the Act. The relevant provisions in the Act are based upon Australia's interpretation of its *non-refoulement* obligations (obligation not to return) in the *1951 Convention relating to the status of Refugees* and its *1967 Protocol* (the Refugee Convention), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *1966 International Covenant on Civil and Political Rights*.

Regional Settlement

Many humanitarian entrants go on to make valuable contributions to their new communities in Australia through small business development, helping to fill labour shortages, stimulating the local economy and helping to sustain local schools and services.



For migration purposes, Sydney, Melbourne and Brisbane (including Logan) are categorised as metropolitan locations and all other locations are categorised as regional. The Government is aware that for increased regional settlement of humanitarian entrants to be successful, a sustainable and coordinated approach is required, which prioritises the needs of both humanitarian entrants moving to regional locations and the regional communities that support them. However, the locations where humanitarian entrants settle are dependent on a range of factors such as location of onshore links and the capacity of regional communities to accommodate humanitarian arrivals.

The proportion of humanitarian entrants settled in a regional location has increased from 42 per cent in 2018–19 to 44 per cent in 2019–20 and 64 per cent in 2020–21.

Settlement assistance to Humanitarian Program entrants

The Australian Government works to improve the lifetime wellbeing of migrants and refugees settling in Australia by responding to their specific needs, and encouraging their independence and participation in the Australian community. Settlement services are delivered through the Department of Home Affairs and provide early, tailored and intensive support to refugees and humanitarian entrants in the first five years after their arrival in Australia.

For more information on settlement services, see: <https://immi.homeaffairs.gov.au/settling-in-australia>.

In addition, work has commenced to implement the \$37.3 million package of settlement measures targeted at refugee and humanitarian entrants comprising \$9.2 million to establish the Community Refugee Integration and Settlement Pilot (CRISP), \$24.6 million in the new Economic Pathways to Refugee Integration program, and \$3.5 million to improve national data on settlement and integration outcomes.

The Government is investing \$8.6 million in the CRISP, which will support 1,500 individuals to participate in the CRISP over four years.

Refugees arriving through the CRISP will have access to the same income support and Medicare as other refugees arriving in Australia, however CRISP participants will be helped to settle by a group of trained community volunteers, rather than government-funded settlement service providers. Supporters will provide a range of practical and in-kind settlement and integration support, including help with finding housing, work and learning English.

The CRISP will provide a dedicated settlement pathway for un-linked refugees: those without existing connections (such as family) to Australia, referred to Australia by the UNHCR.

The Department of Home Affairs has commenced a limited-tender process to engage Community Refugee Sponsorship Australia (CRSA) to administer the CRISP given CRSA's deep community networks and experience with its successful Group Mentorship Program.

A co-design phase to design core components of the CRISP commenced in March 2022, with roll out of the CRISP expected soon after. The CRISP will conclude in 2024-25. For more information, see: <https://refugeesponsorship.org.au/what-we-do/crisp/>.

The Australian Government is committed to reviewing and consulting with the community on future settings for the CSP, drawing on experiences and lessons from the CRISP. As stated above, the Government will progressively increase the CSP intake to 5,000 places per year, facilitating opportunities for business, community groups, individuals, and State, Territory and local governments to participate in and support the resettlement of refugees.



Submissions

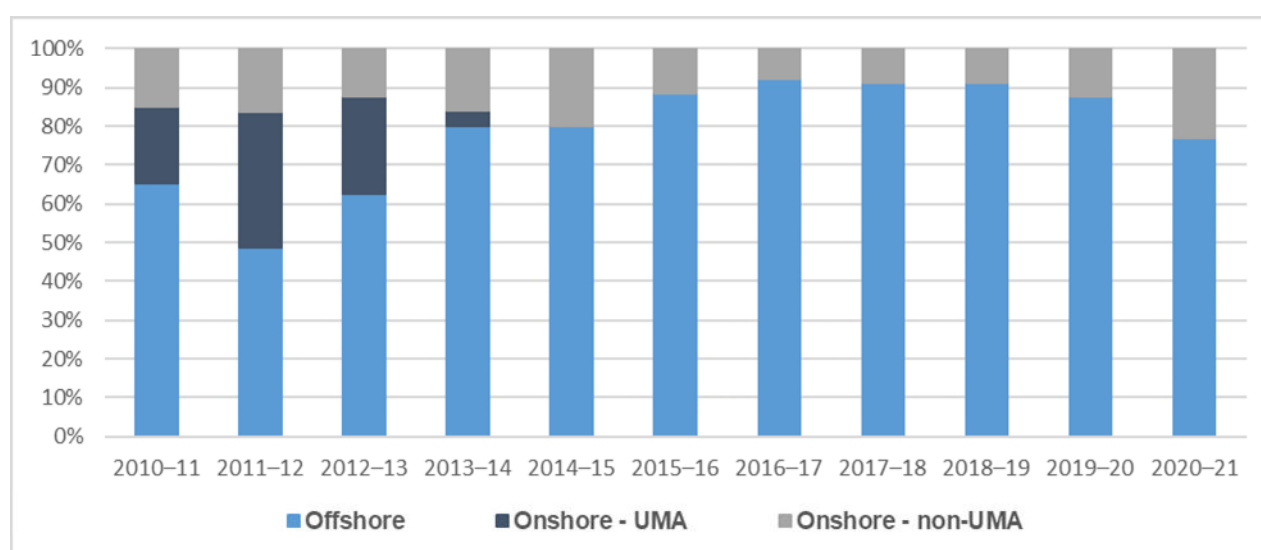
This discussion paper has been developed to gather your views and feedback on the Program. The Department of Home Affairs invites submissions to inform the development and composition of the Program in 2022-23, to help ensure it delivers effective and strong outcomes for people in humanitarian needs. Submissions should be sent to humanitarian.policy@homeaffairs.gov.au by 5pm on **12 August 2022**.

ATTACHMENT A

Onshore/offshore balance within the Humanitarian Program

The Program has two main components: offshore resettlement (for people outside Australia) and onshore protection (for people in Australia). The Program operates to balance the needs of onshore asylum seekers, with providing permanent resettlement options to those most in need outside Australia. Prior to September 2013, the onshore component of the Program also included permanent visa grants to those who arrived unlawfully in Australia. Since that time, the onshore component has been reserved for people who arrive lawfully and Unauthorised Maritime Arrivals (UMAs) or Unauthorised Air Arrivals in Australia are not included within the Program.

Figure 1 – Onshore/offshore (permanent) balance within the program 2010–11 to 2020–21



A Flexible Program

The Program operates flexibly to respond effectively to evolving humanitarian situations and global resettlement needs. The table and figures below illustrate the composition of the Program over past years, which has remained relatively stable, reflecting the protracted nature of many conflicts and displacement situations. The Middle East, Asia and Africa have been priority regions throughout this period. The Americas were included as a priority region from 2018–19.

Table 3 – Top nationalities within the offshore component 2015–16 to 2020–21

Rank	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21
1	Iraq	Iraq	Iraq	Iraq	Iraq	Iraq
2	Syria	Syria	Syria	Congo (DRC)	Congo (DRC)	Myanmar
3	Myanmar	Afghanistan	Myanmar	Myanmar	Syria	Afghanistan
4	Afghanistan	Myanmar	Congo (DRC)	Syria	Myanmar	Syria
5	Congo (DRC)	Bhutan	Afghanistan	Afghanistan	Afghanistan	Eritrea
6	Bhutan	Congo (DRC)	Eritrea	Ethiopia	Eritrea	Pakistan
7	Somalia	Eritrea	Ethiopia	Eritrea	Ethiopia	Iran
8	Iran	Ethiopia	Bhutan	Iran	Central African Republic	Congo (DRC)
9	Ethiopia	South Sudan	Iran	Bhutan	Iran	Stateless
10	Eritrea	Somalia	Tibet	Tibet	Stateless	Venezuela


Notes:

1. Visas counted include subclasses 200 (Refugee), 201 (In-Country Special Humanitarian Program), 202 (Global Special Humanitarian Program), 203 (Emergency Rescue) and 204 (Woman at Risk).
2. Statistics up to 2018–19 are based on country of birth. From 2019–20, they are based on citizenship. The country of birth or citizenship of the principal visa applicants is applied to secondary visa applicants.
3. The 2015–16 and 2016–17 statistics in these tables includes visas granted towards the annual offshore resettlement component of the Program, and the additional 12,000 places for people displaced by conflict in Syria and Iraq.
4. Congo (DRC) refers to the Democratic Republic of Congo.