

## 9 Building a Fair Future

### Transforming Immigration Policy for Refugees and Families

*Matthew Lister*

#### Introduction

Immigration systems around the world are under significant pressure. Some of this is due to large, if not necessarily unprecedented, surges in refugees and unauthorised migration.<sup>1</sup> However, a substantial amount of the stress faced by immigration systems is self-created,<sup>2</sup> or at least made significantly worse by government policies that make orderly migration flows difficult, starve migration services of funds and resources, and ignore the basic rights of both migrants and citizens. In this way, the desire of states to assert, without qualification, that ‘we will decide who comes to this country and the circumstances in which they come’ (Howard 2001) not only violates basic rights but may also be self-defeating. Ebbs and flows in refugees and other migrants are common patterns in history, and while addressing the root causes of these flows is important, doing so requires cooperation between states at a level that is unlikely to occur in the near future. Nevertheless, this does not preclude states from addressing the important deficiencies of justice and efficiency in their own immigration systems at any time.

In this chapter I focus on two problems facing immigration systems around the world, and Australia in particular. The topics addressed are chosen because each one involves important fundamental rights and because significant improvement in these areas is possible even if each state acts alone, without significant coordination with others. First, I examine refugee programmes, focussing specifically on the ‘two-tier’ refugee programmes pioneered by Australia with the introduction of Temporary Protection Visas by the Howard Government in 1999. Two-tiered programmes that give greater rights and protection to refugees who enter via a resettlement programme or who hold a valid visa at the time they enter the state seeking protection than to those who do not have a valid visa are in direct conflict with obligations under the UN Refugee Convention, and are also poor policies in their own right. Next, I look at recent declines in refugee resettlement schemes from already stingy levels and, in relation to Australia in particular, I show how the tying of resettlement numbers to the number of affirmative asylum claims granted is both wrong-headed and counterproductive. A programme that both increased resettlement and uncoupled resettlement from the number of affirmative asylum grants in a given year is both plausible and desirable. Improving Australian refugee

DOI: 10.4324/9781003394686-13

policy in these ways will not suffice to make it fully just but will move it in the right direction, and should be reasonably feasible.

The second area of immigration policy explored is family migration, another area where immigration systems around the world have been moving in the wrong direction, often via less than transparent administrative processes. Australia is no exception. While Australia's family migration system is reasonably good on its face, in practice there are several factors which make the programme significantly less than satisfactory from the perspective of protecting the basic rights of migrants and, arguably more importantly, citizens. These problems can and should be fixed in straightforward ways, and since doing so would be more 'just', would have few—if any—significant negative consequences, and in fact would have a number of clear benefits, those changes should be made.

### **Reforming Refugee Policy**

For many years Australia had a two-tiered refugee system, in which refugees arriving with a valid visa, or coming via an official resettlement scheme, were granted more rights and benefits than those arriving without a valid visa. Aspects of this approach were dismantled by the Anthony Albanese Labor federal government in 2023, bringing Australia closer to being in compliance with the demands of the Refugee Convention and of the requirements for a just state system (Refugee Council of Australia 2023). However, the changes to the Australian programme do not extend to people who attempt to reach Australia by boat (Karp 2023) despite there being no basis in the Refugee Convention, other international law instruments, or the political morality of refugee protection, to justify such a distinction. Moreover, the two-tier approach pioneered by Australia has spread to other countries, notably the UK and the US (Matera et al. 2023).

Prior to the Albanese government's reforms to the temporary protection regime, people who entered Australia without a valid visa and attempted to claim asylum were granted only limited protection rights, had to reapply for protection repeatedly, and were denied the opportunity to sponsor their family members. These burdens were placed on refugees who arrived without authorisation, despite their otherwise meeting all the requirements to be considered refugees under the Refugee Convention and Australian domestic law.<sup>3</sup> The Albanese government has eliminated the restrictions on rights for those who are already in Australia on temporary protection visas. However, the detriments faced by those who attempt to enter Australia by boat, so-called 'unauthorized maritime arrivals', remain, and such persons will still face harsh and unjustified treatment, and, at least officially, complete exclusion from Australia. The Albanese government has declared that those who arrive by boat will "[n]ever" be entitled to settle in Australia, a claim that previous governments have struggled to fulfil (Karp 2023).

Two-tiered refugee programmes seem to be growing in popularity, though with variation and different levels of severity in different countries. The UK government, for example, introduced legislation in 2023 which would provide for an extreme form of a two-tiered system. Under the proposed legislation, someone

who arrived in the UK without a valid visa would be ineligible even to have their application for refugee protection considered, and would also be ineligible for any other form of protection in the UK. Such a person would be detained until he or she could be removed to a 'safe' country (Yeo 2023). In reality, such a system portends the creation of an indefinite detention system, essentially bringing something like the off-shore programme in Australia to the domestic UK context, given that many people will not be removable, and will not be eligible to be considered for asylum (Owen 2023).

In the US, the Biden administration has also proposed a version of a two-tiered refugee system. Their proposed policy operates on the assumption that an alien who has crossed the Southern border of the US without authorisation, and who crossed through another country on the way to the US without applying for and then being denied asylum in that second country before arriving in the US, is ineligible to apply for asylum. There are several exceptions to the ineligibility grounds, and as of yet it is unclear how strictly they would be read, assuming the regulation comes into effect. Additionally, an applicant for asylum would be able to apply at a port of entry to the US, even if he or she would otherwise not be eligible for a visa. If granted asylum, the applicant would be treated in the same way as others who are granted asylum or refugee status in the US, with access to permanent residence after one year, and to citizenship four years after permanent residence. In these ways, the proposed US policy is less severe than either the Australian 'unauthorised maritime arrival' or the UK approach, but still threatens to treat many refugees differently based on their legal status and means of entry (Aleaziz 2023). The Biden plan does allow for increased opportunities for 'in country' processing and sponsorship for endangered people from select countries, a policy argued for by many advocates (Beaton 2020). However, extremely long backlogs have developed for this programme, giving rise to doubts about its ability, as established, to provide a full solution to the problem (Montoya-Galvez 2023).

Why are two-tiered refugee programmes problematic? After all, it might seem intuitive that people who enter, or try to enter, a country without authorisation should be treated differently from those who enter with authorisation. Why should this perspective be different for refugees? There are two main problems with two-tiered immigration systems for refugees, one more straightforwardly legal in nature, and the second both practical and moral. I will start with the legal issues.

Two-tiered refugee policies are in very serious tension with the obligations that Australia (and other countries) has under the Refugee Convention. Article 31 of the Refugee Convention requires that states that are party to the convention (such as Australia) must not penalise would-be refugees for unlawful entry, so long as they present themselves to authorities and lodge their claims 'promptly' (UN 1951). In the vast majority of cases where an alien without a valid visa applies for asylum in Australia, they present themselves to a Border Force officer 'promptly' and apply for asylum in short order. Nothing in the Refugee Convention, then, justifies the different treatment for those who arrive without a valid visa that has long persisted in Australia. The only factor that prevents exactly the same argument applying to

‘unauthorised maritime arrivals’ is that they are prevented from reaching Australia by force, and so prevented from making their claim in Australia.

One possible reply to this claim would be to insist that the level of protection provided by two-tiered refugee approaches is all that is owed to prospective asylum applicants, even if they would be successful if their claim was heard. According to this argument, those who are processed off-shore, or detained pending (often theoretical) removal to third countries, or otherwise treated less well than applicants who enter with a valid visa, are not ‘penalized’, because the applicant is given all that they are owed, so long as they are not returned to the country which they fled. This reply cannot work, however, once we consider the refugee convention as a whole. The convention aims at providing not just immediate safety from return (‘non-refoulement’) but also ‘durable solutions’ to refugees, where these include local integration, relocation to a safe country (resettlement), or safe voluntary return. The aspect that is relevant here is ‘local integration’. This is understood as the right to remain in the host country in perpetuity, if desired, and to forge a new life there. While there is some debate as to whether this requires full access to citizenship, it at least requires stable permanent residence. This was explicitly not possible under the former Australian programme, given that these visas provide no or only very limited opportunities to gain permanent residence, and given that they require repeated applications for protection, no matter how long the applicant has been in Australia.<sup>4</sup> And, because there are no realistic possibilities for resettlement in acceptably safe third countries within a reasonable amount of time, the treatment of ‘unauthorised maritime arrivals’, or those who arrive by boat in the proposed British system, also does not meet the requirements of the Refugee Convention.

Australia’s former two-tiered refugee programme also violated the obligations found under the Refugee Convention by denying family reunification. Moreover, the position adopted by the successive governments on family reunification could be regarded as immoral. There is a strong moral argument for granting reunification rights to refugees. Given that refugees are people who are not able to live safely in their country of citizenship for indefinitely long periods of time, and given the deep importance of family ties, there is a strong moral case to be made for the right to family reunification (Beaton, 2023; Lister 2018). Holders of protection visas are currently able to apply for family reunification in Australia and former holders of temporary protection visas will also be able to do so. However, anyone classified as an ‘unauthorized maritime arrival’ will still be ineligible to claim this right, and similar problems arise with the proposed two-tiered programmes in the UK and the US. This inability to sponsor family members gives rise to another ground to reject these programmes. When the Convention right to seek asylum even without a valid visa is recognised, it is common for only one family member—usually the one most directly facing harm in the home country—to make the dangerous and difficult trip to a safe country, with the expectation of sending for remaining family members when it is possible to do this. However, if reunification is cut off, it becomes more common for whole families to flee together, so as to be able to remain intact (Crock and Berg 2014: 342). Two-tiered programmes, then, expose

children to greater risk than would a programme that met the obligations to provide for family unification.

I have argued that two-tiered refugee programmes, such as Australia's, are both in conflict with legal obligations under the refugee convention and bad in relation to considerations of justice or morality. It is arguable that Australia has been a negative role model in the development of two-tiered programmes, helping to encourage the bad developments in the US and UK. If this is so, then perhaps Australia's partial move towards a more just system can be a source of encouragement. If the public accepts that eliminating the old Temporary Protection Visa scheme does not lead to significant problems, we may hope that the Albanese Labor Government will have the courage to move even further towards justice by eliminating the 'unauthorised maritime arrival' category. And, if this is done, we may hope that Australia can be a model for the US and UK in a more positive way, lending encouragement for the rollback of two-tiered programmes more generally.

Even if Australia and other countries move towards more just refugee schemes by eliminating two-tier approaches, it is important to keep in mind that the large majority of refugees are located in poor or less wealthy countries, close to crisis zones (UNHCR 2023). Our next point starts from this fact and notes that there are currently two related but distinct refugee crises taking place around the world. The first, mostly in the public eye, focuses on refugees who, on their own, are attempting to get to safe (and often wealthy) countries. The second crisis is less visible to the public, but no less—in fact, arguably more—important: the fate of the millions of refugees who linger for years, sometimes for an entire life, in refugee camps in poor countries, unable to live decent lives. The primary way in which these refugees can be helped is via resettlement. Australia has long favoured resettlement as a way to contribute to the global refugee problem, but while the numbers of people resettled—typically around 11,000 per year—have been comparatively generous when considered on a per capita basis, they are relatively small when considered against both the total need and Australia's wealth and experience in absorbing new immigrants. The resettlement programme was largely stopped during the COVID-19 pandemic but is now being restarted, with the Albanese Labor Government pledging to increase resettlement numbers. Given that a significant percentage of the proposed total of refugees is set aside for a special programme for Afghani refugees, there is reason to be concerned that the number of people resettled each year will remain fairly low (Australian Department of Home Affairs 2023).

Expanding the programme is the most important way to make it more 'just'. However, an additional way to improve it would be by decoupling the number of places available for resettlement from the number of people who apply affirmatively. Currently, the total number of visas for refugees includes both groups, so the more people who are granted asylum in-country, the fewer who are resettled. As Crock and Berg point out, this is part of a desire to control even the most uncontrollable aspects of immigration, the influx of non-voluntary migrants (2014: 14). It is better to see these as two distinct problems—one (resettlement) relating to an

obligation of solidarity with the often poor countries who house the vast majority of refugees in the world, and who therefore face an unfair burden, and the other as a distinct obligation, made concrete in the Refugee Convention, owed directly to those who are fleeing. Because these are distinct obligations, they cannot be traded off against each other, making it illegitimate to tie them together. Recognising these as distinct obligations helps us to see that we cannot, and should not, expect to be able to completely control the refugees we help.

### **Improving Family Migration**

The right to form a family and to family life is widely recognised and protected in both international and domestic law in most countries around the world.<sup>5</sup> In an increasing number of countries, including Australia, this right has been extended to same-sex couples as well. In a world where people regularly travel internationally for a wide variety of purposes—that is, any world acceptable to liberal democracies—it is inevitable that people will form cross-border relationships. The great importance of family life is shown in the context of immigration by the fact that nearly all countries provide for some degree of family-based migration. As I have argued elsewhere, one central fact about family-based migration that distinguishes it from other forms of migration is that it essentially involves not only the rights of would-be migrants who wish to move to a new state but also those of current citizens (Lister 2010). Because of this fact, limits on family immigration directly impact the fundamental rights of citizens in ways that most other immigration regulations do not. Limits or restrictions on family immigration are limits not only on outsiders but also on the rights of current citizens to form and maintain family life. There is some debate about what extent of family migration is required by liberal principles of justice. For example, some (Ferracioli 2021: 94–113; Yong 2016) argue for broad interpretations extending beyond spouses and minor children whereas others (Lister 2018) contend that considerations of justice only require extending such rights to partners and minor children. In spite of these disagreements, it is generally accepted that the right to sponsor family members for migration rights with only limited restrictions should extend to at least spouses or partners and minor children.

Most self-professedly ‘liberal’ countries do fairly well from this perspective. There are, of course, some differences in the extent and kinds of benefits offered by different countries to citizens and their families (for example, the US includes parents of citizens who are over 21 years old in the most favoured ‘immediate relative’ category, while Australia extends parents only a less favoured status and has several other categories such as ‘orphaned relatives’, ‘remaining relatives’, and other similar ones that have no clear equivalent in the US system). However, at least officially, the core rights of spouses/partners and minor children of citizens are well protected.

In practice, though, there are increasingly worrying problems in many countries, including Australia. The majority of these are not facial challenges to family immigration rights but rather come from administrative decisions on how to deal



with applications, increased fees, and decisions on staffing and funding for migration bureaucracies that significantly restrict the rights of both citizens and would-be migrants to family life. At best, these decisions show an unacceptable disregard for the rights and well-being of citizens and their foreign-born family members. At worst, they indicate a desire to restrict these rights in a covert way. Whatever the cause, these changes have resulted in very long delays in processing visa applications, leading to families being involuntarily separated for long periods and, in the case of high fees and monetary qualifications being imposed, to certain families being 'priced out' of the ability to live together, despite there being no legitimate purpose for this burden. An unfortunate, and assumedly unintended, side effect of these developments is a growing need for people to seek ways to get around these barriers, including taking steps that are at best semi-legal. Making this a practical necessity for people who wish to have a normal family life is both unreasonable per se and undermines the legitimacy of the immigration system in general.

The first cause of current problems in this area is, in principle, the easiest to deal with—understaffed and overburdened immigration bureaucracies. While bureaucratic backlogs and understaffing have been a problem in immigration for a long time, the difficulties grew during the COVID-19 pandemic, and have not yet been resolved. Around the world this has resulted in increased waiting times for different kinds of visas (Boundless 2023; Ortega 2021). While these issues are frustrating, disruptive, and inefficient in the case of any visas, they are especially important in the case of family migration visas, i.e. more so than, say, employment or student visas, given that the fundamental right to live with one's family is being significantly delayed for bureaucratic reasons, whereas employment and student visas do not implicate fundamental rights.

Bureaucratic problems with the regime threaten to be self-perpetuating and will likely continue for a long time. Backlogs are difficult to clear, and lead to worse working conditions for consulate staff (due to increasing workloads), thus also making those positions less appealing for potential applicants. People assigned to do extra work clearing up backlogs cannot do other important work for the foreign services of the relevant countries, and countries are often hesitant to hire temporary staff to do what is considered sensitive work. Despite these challenges, steps can be taken to improve this situation. Hiring additional staff is one obvious step but others may be even more effective. For example, waiving interviews and making decisions about a larger number of applications based 'on the papers' would free up resources and speed up application processes. Putting in place policies that would require interviews or requests for more information in fewer cases would speed up the process and take fewer resources. Limiting onerous background checks to fewer countries and lowering the time to be considered by background checks can also help speed up the process. While one might worry that these policies will allow entry to some people that most Australians may reasonably want to keep out, we should not overweight this fear. For one, it is unclear that the increase in 'undesirable' aliens will be large. There is no significant reason to think that interviews are better at weeding out such people than would be documentary evidence, for example.<sup>6</sup> Second, any increase in 'undesirable' aliens would have to be balanced

against fewer false negatives—people who are rejected or subjected to significant additional burdens who ought not be—and also against better protection of fundamental rights of current citizens. If the trade-off involved less important rights (such as the right to take a vacation where one wants, or to study at a particular university), it might be acceptable to prioritise the avoidance of false positives over that of false negatives. However, when the fundamental right of citizens to live with their spouses or partners and minor children is at stake, preventing false negatives and undue delays becomes imperative. States have an obligation, then, to reduce backlogs by increasing staffing and by reducing evidentiary burdens in as many cases as is reasonably possible, giving more weight to the rights of current citizens who wish to sponsor family members and less to the desire to minimise every possible mistaken admission decision.

A second issue relating to unreasonable delays and difficulties with family immigration is more specific to Australia. Officially, visas for spouses/partners and minor children are ‘uncapped’ in Australia, meaning that there is no official limit on the number of such visas that can be granted per year. This differs from many other permanent resident (and some temporary) visas, including some types of family visas, which are ‘capped’ at a certain number. With a capped visa category, when the number of applicants exceeds the cap, a queue is formed, creating a backlog. For some family visas in Australia, the queue is very long indeed, resulting in extremely long waiting times.<sup>7</sup> Because visas for spouses/partners and minor children are uncapped, we would expect that as many of them would be granted as are validly applied for. However, this has not always been the case. In 2017, the Morrison Coalition Government put in place a policy capping the total number of permanent visas—including skills visas, family visas, and protection visas—for Australia at 160,000 per year.<sup>8</sup> This overall cap put an effective limit on the number of visas for partners and minor children. Officially there was no queue, as there is for capped visas, but when the total yearly number of visas was reached, unprocessed family visas were simply not processed until the following year.<sup>9</sup>

At the time of the writing of this chapter (June 2023), the waiting time for a partner visa—the visa that allows an Australian citizen to bring his or her spouse or partner to Australia—was between 18 and 24 months.<sup>10</sup> Importantly, this is the average waiting time from the time the Department of Home Affairs has received a visa application and started working on it. It does not include the amount of time that it takes to gather the information needed by the applicant to apply. These times are improvements from the recent past but are significantly longer than the times that existed before the Morrison government introduced the cap. This means that an Australian who is married to a non-Australian will have to wait at least between a year and a half and two years before they are able to live with their spouse in Australia. This is a non-trivial infringement on their right to family life.

In addition to the injustice of long wait times for family migration visas, the backlog encourages a mild form of immigration fraud. Because the waiting times for partner visas are so long, it is common for would-be partners of Australian citizens to enter Australia on a tourist visa or an Electronic Travel Authority (ETA)—a type of short-term tourist visa primarily available to applicants from wealthy



countries. Those who enter Australia on these visas are not supposed to enter with the intention of remaining. However, if someone enters on such a visa, and then marries an Australian citizen, they are able to remain in Australia on a 'bridging visa' while the partner visa is being processed. This approach is not in accordance with the requirements of the visa. While the risk of being caught is low, there is the chance that the person seeking entry to Australia could be denied entry and have their visa cancelled at the border for providing false information.<sup>11</sup> Beyond this risk, by placing undue burdens on parties, the current regime encourages flouting the law in a way which undermines its legitimacy.

Under the Albanese Labor Government, the situation is improving. The target for immigrant visas has been increased to 195,000, and there will be no de facto cap on partner and minor children visas (Visaenvoy 2023). This is a welcome change which will help reduce the backlog of partner visa applications and will, with effort, bring the waiting time down to an acceptable level.

Implementing the other reforms suggested earlier would help reduce waiting times even more. However, as welcome as these changes are, it is important that provisions are not held hostage to the whims of whomever is in power and can, in practice, be changed administratively, without the need to pass new legislation. For example, if and when a conservative government were to return to power, it could easily re-impose a restrictive overall cap, again seriously infringing upon the right to family life of many Australians. A better approach would therefore be to establish via legislation that visas for, at least, spouses/partners and minor children are not subject to numerical limits of any sort, and that sustained effort must be made to process all such applications within a reasonable time. While legislation can, of course, also be changed, doing so is more difficult and more open to public scrutiny than the sorts of administrative changes that have been used recently in this area.

The last common unreasonable burden placed on family migration rights comes in the form of high fees and, in some countries, the need to show a high level of income before the right may be exercised. While there are important differences between these two factors (and only the first is currently a major issue in Australia), both serve to make it difficult for less advantaged citizens to exercise their fundamental rights.

By law, fees for visa applications in Australia are required to cover the expense of processing the application. While it is possible to argue against this requirement, it is at least plausible to claim that it helps ensure reciprocity among current citizens and newcomers, by ensuring that the admission of newcomers does not impose undue expense on citizens. However, many visa fees are priced at a level that is significantly higher than the amount that is reasonably required for them to be processed. These high fees serve only to raise revenue or else to depress the number of applicants. While this may be reasonable in certain circumstances, it is much less so when the visa in question is necessary for a citizen to exercise their fundamental rights, as is the case with visas for spouses/partners and minor children.

Currently, it costs AU\$8,085.00 to apply for a partner visa. If someone not currently married hopes to come to Australia for the purpose of marrying an Australian,

the total cost will increase by \$AU1,350.00. There are additional costs if minor children are included.<sup>12</sup> These costs do not include the costs associated with background checks and health assessments, or with obtaining legal representation, if necessary. By way of comparison, a K-1 ‘fiancé visa’ for the US costs US\$800.00 and an application for adjustment of status/permanent residence via marriage costs US\$1,760.00. As in Australia, US visa fees are required to cover the cost of processing. Based on this comparison, it is plausible to argue that the significantly higher Australian fees<sup>13</sup> are serving to raise revenue and/or discourage applications. But this cannot be justified any more than imposing fees on the exercise of other fundamental rights, such as voting or engaging in political speech. Again, it is essential to keep in mind that in the case of family migration, the rights of current citizens, and not just would-be immigrants, are essentially involved (Lister 2010). If we do not wish to unreasonably burden the exercise of fundamental rights in this area, visa application fees must be lowered until they, at most, cover the reasonable cost of processing.<sup>14</sup>

High application fees are not the only financial barrier to family migration. Many countries require that applicants meet certain income or financial resources requirements before a visa will be granted. For example, in the US, applicants must earn (or otherwise have access to) 125 percent of the Federal poverty level.<sup>15</sup> Similarly, in the UK, a couple must show resources equal to £18,600/year, with additional amounts for children.<sup>16</sup> Australia does not have such provisions for spouses and immediate relatives, but does have support requirements for several other immigrant visas, and also explicitly prohibits providing family visas if any member of the family is found to be likely to cause ‘undue significant cost or prejudice to the Australian community’ in relation to health care, under the notorious ‘one fail, all fail’ rule.<sup>17</sup> These rules have proven especially difficult when families have a disabled child. I have elsewhere defended similar requirements insofar as they are necessary to help maintain reciprocity among current citizens and newcomers (Lister 2010). While I think this argument is still sound, it is worth pondering whether considerations of reciprocity can be met in flexible ways. For example, reduced access to public funds for a limited amount of time, or consideration of future earnings, might be taken to establish these requirements. In any case, any such requirements should be set as low as possible with the aim of preserving reciprocity between current and would-be members, should allow for pragmatic and flexible ways to meet such standards, and should not be used as ‘back-door’ means to raise revenue or reduce immigration flows to desired levels.

## **Conclusion**

All states seek to control immigration to some significant degree, and it is at least arguable that collective self-governance justifies a significant amount of control over borders (Ferracioli 2021: 47–69; Song 2018: 30–76). I have argued in previous work that this control over immigration must be limited by respect for fundamental rights and the need to help maintain a just international system. In this chapter I have explored how some of the most serious problems facing

immigration systems around the world, and in Australia in particular, can be addressed in ways that accept that states have significant discretion in setting their immigration policies, but that also require abandoning dreams of absolute control over borders. Given Australia's long history of asserting a near-absolute right to control who enters the country, these arguments face an uphill climb (Crock and Berg 2014: 11–12). However, if the Australian state wishes to fulfil its legal and moral duties, it must be willing to relax its dreams of control over its borders. If full control is possible only by ignoring those duties, it is doubtful that it is desirable at all.<sup>18</sup>

## Notes

- 1 Examples include large flows of migrants from Central America and elsewhere on the Southern US Border, the small boats crisis in the UK, and the more general refugee crisis in the Mediterranean facing the EU. It is worth noting that, while this pattern exists in many places around the globe, it is not a major issue in Australia in 2023.
- 2 It is undeniable that disruptions caused by the COVID-19 pandemic, both to migration and to the operation of consulates, have contributed to these problems. However, even when this is a major direct contributor, decisions on how to respond to these problems are open to governments, with some doing better and others worse.
- 3 See Migration Act of 1958 s35A and associated regulations.
- 4 <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/onshore-protection/applying-for-a-subsequent-tpv-or-shev/information-for-tpv-and-shev-holders>
- 5 The Universal Declaration on Human Rights, the Convention on Civil and Political Rights, and the Convention on the Rights of the Child, among others, are all relevant here.
- 6 See Hill, Memon, and McGeorge (2008) for just one example in the vast literature on bias in interviews.
- 7 For example, the wait time for an aged dependent relative (subclass 838) visa that could in principle be used to sponsor the parents of a citizen is currently approximately 24 years. See: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/other-family-visas-queue-release-dates>
- 8 See, [www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook46p/Migration](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/Migration)
- 9 This overall cap on visas also has an impact on refugees, both those applying directly for a protection visa and those who would come via the resettlement programme. This is one more reason to de-couple refugee protection, and different aspects of refugee protection, from each other and from other aspects of immigration policy.
- 10 These waiting times can be accessed at the respective visa pages from the Department of Home Affairs. The wait times change with some regularity. The wait times noted in this chapter reflect the waiting time in March 2023.
- 11 See Immigration Act s 234 and provisions relating to false information. This may lead to significant penalties and, more often, visa cancellation under s 109. If one's visa is cancelled, it is very difficult to return to Australia.
- 12 Costs for visas change fairly regularly, but rarely, if ever, decrease. They are available on the website of the Australian Department of Home Affairs.
- 13 At current exchange rates, the US visa process costs AU\$3,809.00, less than half of the total charge of AU\$9,435.00 for the comparable Australian visas.

- 14 It is worth noting that the application fees for many family visas other than spouse/partner visas and visas for minor children are even higher, often reaching into the several tens of thousands of dollars. It is debatable whether this can be justified or not, but as I do not hold that there is a fundamental right to live with these other relatives, I do not address these issues here. Those who would argue that the fundamental right to live close to family members extends beyond the ‘immediate’ family will want to push this line of argument further.
- 15 For 2023, this comes to US\$24,650 for a two-person household. The amount goes up for larger households.
- 16 In both the US and the UK these amounts can be achieved through the combination of wages and other assets. In the US, recourse can also be made to external sponsors who take on a burden to provide for applicants.
- 17 See Migration Regulations cl 4005 and 4007, and Migration Act of 1958 s 140.
- 18 For a similar argument, discussing immigration and Brexit, see Hosein (2022).

## References

- Aleaziz H (2023) ‘New Biden Policy Limiting Asylum Access at the Southern Border’, *Los Angeles Times*, 21 February. [www.latimes.com/world-nation/story/2023-02-21/new-biden-policy-limiting-asylum-access-at-the-southern-border](http://www.latimes.com/world-nation/story/2023-02-21/new-biden-policy-limiting-asylum-access-at-the-southern-border)
- Australian Department of Home Affairs (2023) *About the [Humanitarian and Refugee] Program*. <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/about-the-program/about-the-program>
- Beaton E (2020) ‘Against the Alienage Condition for Refugeehood’, *Law and Philosophy*, 32(9): 147–76.
- Beaton E (2023) ‘The Right to Family Unification for Refugees’, *Social Theory and Practice*, 49(1): 1–28.
- Boundless (2023) ‘Green Card Backlog Increased by 21,000 Cases in February’, 17 July. [www.boundless.com/blog/nvc-monthly-backlog-report/](http://www.boundless.com/blog/nvc-monthly-backlog-report/)
- Crock M. and Berg L (2014). *Immigration, Refugees, and Forced Migration: Law, Policy, and Practice in Australia*. Alexandria: The Federation Press.
- Ferracioli L (2021) *Liberal Self-Determination in a World of Migration*. Oxford: Oxford University Press.
- Hill C, Memon A, and McGeorge P (2008) ‘The Role of Confirmation Bias in Suspect Interviews: A Systematic Evaluation’, *Legal and Criminological Psychology*, 12(2): 357–71.
- Hosein A (2022) ‘Illusions of Control’, *The Journal of Practical Ethics*, 10(1): 16–37.
- Howard J (2001) ‘Address at the Launch of “A Stronger Tasmania Policy”’, Department of Prime Minister and Cabinet, 2 November. <https://pmtranscripts.pmc.gov.au/release/transcript-12332>
- Karp P (2023) ‘Defence Force “Surge” to Detect Asylum Boats in Australia’s Northern Waters Following Visa Change’, *The Guardian*, 16 February. [www.theguardian.com/australia-news/2023/feb/16/defence-force-surge-to-detect-asylum-boats-in-australias-northern-waters-follows-visa-change](http://www.theguardian.com/australia-news/2023/feb/16/defence-force-surge-to-detect-asylum-boats-in-australias-northern-waters-follows-visa-change)
- Lister M (2010) ‘Immigration, Association, and the Family’, *Law and Philosophy*, 29(6): 717–45.
- Lister M (2018) ‘The Rights of Families and Children at the Border’, in Brake E and Ferguson L (eds), *Philosophical Foundations of Family and Children’s Law*. Oxford: Oxford University Press, pp. 153–70.

- Matera M, Tubakovic T, and Murray P (2023) 'Is Australia a Model for the UK? A Critical Assessment of Parallels of Cruelty in Refugee Externalization Policies', *Journal of Refugee Studies*, 36(2): 271–93.
- Montoya-Galvez C (2023) '1.5 Million Apply for U.S. Migrant Sponsorship Program with 30,000 Monthly Cap', *CBS News*, 22 May. [www.cbsnews.com/news/us-migrant-sponsors-hip-program-cuba-haiti-nicaragua-venezuela-applications/](http://www.cbsnews.com/news/us-migrant-sponsors-hip-program-cuba-haiti-nicaragua-venezuela-applications/)
- Ortega B (2021) 'Huge Trump-era and Pandemic Immigrant Visa Backlog Poses Challenge for Biden', *CNN*, 12 April. <https://edition.cnn.com/2021/04/12/politics/biden-challenge-immigration-visa-backlog-invs/index.html>
- Owen D (2023) 'What Is the Point of the UK's Illegal Migration Bill?', *Verfassungsblog*, 10 March. <https://verfassungsblog.de/what-is-the-point-of-the-uks-illegal-migration-bill/?fbclid=IwAR2rU8NgAihF5owtI1cvHRYrLc36vVzP01gTb7NUMieAITG8OcM1BqHZvBg>
- Refugee Council of Australia (2023) 'Refugee Council Welcomes Plan to End Cruel Temporary Protection Policy', 13 February. [www.refugeecouncil.org.au/end-to-cruel-temporary-protection-policy/](http://www.refugeecouncil.org.au/end-to-cruel-temporary-protection-policy/)
- Song S (2018) *Immigration and Democracy*. Oxford: Oxford University Press.
- UNHCR (2023) 'Refugee Data Finder', 14 June. [www.unhcr.org/refugee-statistics/](http://www.unhcr.org/refugee-statistics/)
- United Nations (1951) Convention and Protocol Relating to the Status of Refugees, [www.unhcr.org/media/convention-and-protocol-relating-status-refugees](http://www.unhcr.org/media/convention-and-protocol-relating-status-refugees)
- Visaenvoy (2023) 'Upcoming Immigration Changes 2023'. <https://visaenvoy.com/upcoming-immigration-changes-2023/>
- Yeo C (2023) 'What Is in the Illegal Migration Bill?', *Free Movement*, 8 March. <https://freemovement.org.uk/what-is-in-the-illegal-migration-bill/>
- Yong C (2016) 'Caring Relationships and Family Migration Schemes', in Sager, A. (ed), *The Ethics and Politics of Immigration*. Lanham: Rowman & Littlefield, pp. 61–83.