

CHILDREN AND THE GLOBAL COMPACTS





**65.6
MILLION
PEOPLE**

are forcibly displaced worldwide as a result of persecution, conflict, violence, or human rights violations

**51%
OF
REFUGEES
ARE
CHILDREN**

(compared to overall world population, of which 31% are children)

Developing nations host

84%

of all refugees under UNHCR's mandate

There are

300,000

unaccompanied and separated children on the move (compared to 66,000 in 2010-11)



ASIA PACIFIC

The Asia and Pacific
region is home to

7.7
MILLION
PEOPLE

of concern to UNHCR

They include

3.5
MILLION
REFUGEES

1.9
MILLION
INTERNALLY
DISPLACED
PEOPLE

AND

1.4
MILLION
STATELESS
PEOPLE

THE MAJORITY

of refugees originate
from Afghanistan and
Myanmar

At least

410,000

people have fled from
Myanmar to Bangladesh
in a month following a
spike of violence on 25
August 2017

**MORE THAN
HALF
OF THOSE
FLEEING
MYANMAR
ARE CHILDREN**

THE OPPORTUNITY OF THIS MOMENT

We are at a critical juncture. The Global Compacts on Refugees and Migration, which follow from the September 2016 [New York Declaration](#) made by the United Nations' General Assembly, present a rare and unique opportunity to build a sustainable framework for international collaboration on the global governance of migration and refugees and the protection of vulnerable individuals, including children on the move. Either we seize this moment as a time to make tangible changes in the face of the world's largest displacement crisis since World War II, or we fail to do so, and continue to respond to one of the defining humanitarian challenges of our time with ad hoc, inadequate and piecemeal responses. If Australia is willing to stand up to ensure the protection of vulnerable child refugees and migrants, this interagency policy briefing provides concrete recommendations on how it can do so.

The events of 2015 in the Andaman Sea, when around 8,000 people were stranded at sea with hundreds dying, are a tragic reminder of the potential for a large-scale migration-related

crisis in the Asia Pacific region. The current crisis in Myanmar, where 410,000 people have fled to Bangladesh in the last month, reminds us that displacement crises are not something that happens "over there", far from Australia's sphere of influence. The ongoing loss of migrant lives in the Mediterranean remind us of the human tragedies that flow from a lack of effective international coordination and inadequate safe migration pathways for those compelled to migrate.

A coordinated approach to refugee protection, underpinned by shared principles and objectives, is in the interest of all states, including Australia. Australia has a special role to play, particularly in the Asia-Pacific region. As well as being a high-income nation, it is one of the few countries in the region that is signatory to the Refugee Convention and has experience and capabilities in relation to large-scale resettlement. Australia's constructive engagement with the project envisaged in the New York Declaration is needed to encourage the engagement of other countries in the region.

Australia's Human Rights Commitments

Constructive engagement in the Global Compacts process would align with a number of other international initiatives in which Australia is involved, including:

- Australia's candidacy for a seat on the UN Human Rights Council.
- Australia's commitment to ratify the Optional Protocol on the Convention Against Torture.
- Australia's reporting obligations pursuant to the Convention on the Rights of the Child, which require a state report to the Committee in early 2018.
- Finally, constructive engagement with the Global Compacts will also assist Australia and states in the region to achieve the Sustainable Development Agenda 2030. The Sustainable Development Goals (SDGs) are applicable to all children, including migrant and refugee children.

Importantly, a number of the SDGs and targets can be used as an entry point in discussions with governments about the protection of children on the move.

Children on the Move and the Sustainable Development Goals



Facilitate orderly, safe, regular and responsible migration and mobility of people, including through planned and well managed migration programs (SDG10.7)



Ending abuse, exploitation, trafficking and all forms of violence against children (SDG16.2)



By 2030 provide legal identity to all, including birth registration (SDG16.9)



By 2030 ensure all boys and girls have access to primary and secondary education (SDG4.1)



Implement nationally appropriate social protection systems with a focus on the poor and vulnerable (SDG1.3)

AUSTRALIA'S ROLE IN BRINGING THE GLOBAL COMPACTS TO LIFE

Our agencies wish to congratulate the Australian government on its support for the adoption of the New York Declaration and, in particular, the commitments made with respect to children. It is important for Australia to continue to constructively engage with the process of developing and implementing the Global Compacts envisaged by the New York Declaration in a way that ensures that the rights of children on the move are ensured, protected and respected. This policy briefing outlines key recommendations on how the Australian government can build on existing practices, and explore new directions, to support and respond to the needs of children on the move.

Australia should indicate its intention, in international forums, to develop its an Australian Program of Action to implement the commitments of the New York Declaration and the Global Compacts. Such a Program of Action will ensure alignment between Australia's own domestic agenda and the international community's commitments, and signal to other

states that Australia is committed to upholding these commitments and, by doing so, encourage other states to do the same.

A critical element of Australia's Program of Action, and a prerequisite for Australia having international credibility in the development of the Global Compacts, is the implementation of a safe, dignified and sustainable solution for every individual who has been affected by Australia's offshore processing system, consistent with their human rights, including children.

The rest of this policy briefing is concentrated on what Australia should stand for in the Global Compacts, starting from high level principles and moving to concrete recommendations based on current positive practices and new initiatives Australia could embark upon to ensure respect and protection for the rights of children on the move.

WHAT AUSTRALIA SHOULD STAND FOR IN THE GLOBAL COMPACTS

1. Child-sensitive language and commitments

The Australian government should promote language for inclusion in the Global Compacts that specifically addresses the rights and needs of children and adolescents in both Compacts, including concrete goals, targets and indicators to:

- ensure that the best interests of children are a primary consideration in all decisions affecting them
- end the practice of child immigration detention
- ensure access to education for all refugee and migrant children and adolescents within the first few months of arrival in a state
- ensure that the primary state responsibility for children on the move resides with child protection authorities
- ensure that families are kept together, or have safe, accessible and effective pathways towards reunification, in recognition that families typically provide the best primary protection for children and adolescents.

2. Greater responsibility sharing for children on the move

Australia should accept greater responsibility for the specific needs of children on the move through:

- increasing the availability of durable solutions in developed countries for children including through resettlement and complementary pathways
- increased investment in services for children in host countries, including education, healthcare and services for sexual and gender-based violence
- increased financial support for UNHCR
- regional and global cooperation to ensure a continuum of protection for children on the move
- offering technical support to other states in relation to resettlement processes and services
- promoting the use of alternatives to detention for children (and the preservation of family unity in the implementation of alternatives to detention)

3. Meaningful engagement of children and adolescents

In addition to championing child rights and promoting greater responsibility sharing, the Australian government can play a leadership role by:

- promoting mechanisms that meaningfully engage children and adolescents in all stages of the development of the Global Compacts ¹
- promoting gender sensitive approaches to the development of the Global Compacts and related programs of action that take into consideration the specific needs and vulnerabilities of girls and boys

RECOMMENDATIONS FOR BUILDING ON POSITIVE PRACTICES

Current Positive Practices

Recommendations to strengthen these practices

1. Resettlement program, including complementary pathways

Increase humanitarian intake

Australia has for many decades maintained a generous commitment to resettlement through UNHCR referral. Sophisticated and well-developed settlement processes and programs exist for people offered protection in Australia under this scheme.

Recognising that Australia has put in place measures to prevent the unauthorised arrival of asylum seekers, Australia's capped humanitarian visa program is the only pathway through which Australia directly provides physical safety and protection to the world's refugees. At the same time, more than 80 percent of the world's refugees are currently living in the developing world. Accordingly, it is incumbent on Australia to significantly increase its annual humanitarian intake in order to carry a greater share of the responsibility for responding to the needs of refugees around the world. This increase should be government sponsored, and not rely upon community/private refugee sponsorship programs (discussed below).

RECOMMENDATIONS FOR BUILDING ON POSITIVE PRACTICES

Current Positive Practices

Increased resettlement of children at risk

Australia has well-developed systems and expertise in the settlement of UASC refugees.

Australia's Unaccompanied Humanitarian Minors (UHM) Program provides targeted support at a critical time, positioning young people well for navigating integration in Australia. Overwhelmingly, young people who have exited the program have successfully navigated the tasks of settlement without the support of family by acquiring English language, engaging in education, training or employment and making important, often voluntary contributions, to their community.²

The Australian government has responded to the large numbers of children and young people arriving through Australia's humanitarian program by recognising the particular needs of young people and investing in a range of initiatives to support a more targeted approach to addressing these needs. This includes youth-specific programming within settlement services, delivered by a range of NGOs across Australia.

Increased use of alternative pathways to protection

Australia has piloted a small community sponsorship program (the 'Community Proposal Pilot') and has recently launched a new 'Community Support Program'. These private refugee sponsorship programs have some significant structural flaws but, if reformed, have the potential to engage the Australian community and private sector in responding to the needs of refugees and expand Australia's annual intake of refugees.

Recommendations to strengthen these practices

In concert with an overall increase in our humanitarian intake, Australia should adopt specific measures to increase the number of UASC and other 'children at risk' who are resettled in Australia each year.

Australia's current private sponsorship program relies on places from within Australia's humanitarian intake quota, with the result that it may deprioritize the protection of the most vulnerable refugees. It has other features (including very substantial costs) that inhibit its innovative potential.

Accordingly, we recommend that measures should be put in place to facilitate and encourage appropriate programs in relation to:

- community/private sponsorship of refugees (which should be additional to Australia's government-sponsored humanitarian intake)³
- the use of other migration streams (including skilled migration and migration for the purposes of education and family reunification)⁴

These should be developed in consultation with members of the Australian community, businesses and civil society.

RECOMMENDATIONS FOR BUILDING ON POSITIVE PRACTICES

Current Positive Practices

Recommendations to strengthen these practices

2. Alternatives to detention for children

Alternatives to detention for children are already being widely used in Australia, with significant cost savings to the government.⁵ 99.9% of children are currently being managed in a community setting (pursuant to the use of ‘residence determinations’ by the Immigration Minister) rather than waiting in immigration detention.⁶ One strength of Australia’s onshore policy settings is the successful use of alternatives to detention which preserve the unity of migrant families.

Australia should amend current legislation to ensure that no child is held in immigration detention by the Australian government in the future and to mandate the use of child-friendly alternatives to detention. Specifically, we recommend that an amendment is made to Section 197AB of the Migration Act, and other relevant regulations, which requires the Minister to immediately make a ‘residence determination’ for all minors, avoiding the need for time spent in immigration detention facilities.

3. Child protection as the primary government response

We understand that the DIBP is taking steps to clarify protocols to ensure that state/territory child protection authorities are engaged in relation to children in Australia with irregular migration status. However, at present Australian child protection authorities do not have clear jurisdiction in relation to all migrant children.

The Federal government should consider introducing a federal child protection framework and/or legislation that clearly establishes the jurisdiction of state child protection authorities in relation to children in Australia with irregular migration status (including any in immigration detention).

Related to this, the Migration Act should be amended to provide for independent legal guardians for unaccompanied and separated children in Australia.

RECOMMENDATIONS FOR BUILDING ON POSITIVE PRACTICES

Current Positive Practices

Recommendations to strengthen these practices

4. Increased funding for education, protection and other programs for children in source/host countries

Australia has in recent years provided funding for the education and protection of refugee and internally displaced children including:

- aid for education programs in Myanmar and on the Thai/Myanmar border.
- multi-year, targeted support to improve education for Syrian refugee children in Jordan and Lebanon as part of its AUD220 million 'Syria Crisis Humanitarian and Resilience Package'.
- AUD10 million multi-year commitment to the Education Cannot Wait fund.
- AUD2 million contribution to the MIKTA⁷ Education in Emergencies Challenge to identify innovative approaches to tackle the challenges of education in emergency situations.

In order to help developing countries which host refugees meet the New York Declaration commitment of providing children with access to education within the first few months after their arrival, we recommend Australia scale up its aid investments in refugee education and child protection over the next five years and encourage other countries to take a similar multi-pronged and multi-year approach.⁸ Australia should, more specifically:

- Work with other states to develop a global refugee education action plan.
- In line with its approach to the Syria regional crisis, develop, fund and implement more multi-year approaches for countries that are hosting large displaced populations (including in the Asia Pacific region), which includes targeted assistance for education.
- Continue to commit more funding to global education funding initiatives (such as Education Cannot Wait, the Global Partnership for Education) that connect governments, humanitarian actors and development efforts to deliver a more collaborative and rapid response.
- Continue to invest in identifying and developing innovative and evidence-based solutions for the education to children on the move.
- Endorse the Safe Schools Declaration on protecting schools from military use and attack to ensure more children displaced within conflict contexts can continue to access education.
- Where possible, aim for services for migrant children and adolescents to be delivered alongside services for local children and in a manner that benefits host communities as well as migrant children and builds social cohesion. This can act as a positive means of promoting the inclusion and integration of migrant children and adolescents, and help to combat xenophobia and mistrust amongst host communities.

RECOMMENDATIONS FOR BUILDING ON POSITIVE PRACTICES

Current Positive Practices

Recommendations to strengthen these practices

5. Funding for UNHCR

Australia provides core and unearmarked funding for UNHCR

Predictable and un-earmarked funding for UNHCR should be increased and made available to enable the UNHCR to lead and implement the Comprehensive Refugee Response Framework and the broader objectives of the New York Declaration and Global Compacts.

6. Targeted use of ODA

Australian aid is being used to support displaced children in various parts of the world including Jordan, Lebanon and Myanmar

The government should increase and target its ODA investments to increase access to quality education, strengthen health and child protection systems and social safety nets, and expand opportunities for family income and youth employment in the region.

RECOMMENDATIONS ON NEW APPROACHES FOR AUSTRALIA

In addition to the recommendations above in relation to strengthening existing positive practices, the following table sets out new directions that Australia should explore to increase protection for children on the move. We recommend that these form part of a national Program of Action as discussed above.

Issues of Concern

Recommendation

1. A regional protection framework addressing the needs of children

While we recognise that the Bali Process continues to encourage regional cooperation on migration issues,⁹ Australia and other states in the Asia Pacific region have yet to develop a coordinated response to forced migration which incentivises orderly migration and ensures the protection of children on the move, taking into account current migration trends.

Australia should take a proactive role in the development of a regional protection framework for asylum seekers and refugees in South East Asia through re-energised engagement with new or existing multilateral forums, such as the Bali Process and ASEAN.

Such a system should ensure that all children within each state (including asylum seekers and refugees) can access:

- safe and accessible migration pathways for those fleeing persecution (including safe disembarkation options for those travelling by boat)
- child protection services
- best interest assessments and determinations

RECOMMENDATIONS ON NEW APPROACHES FOR AUSTRALIA

| Issues of Concern | Recommendation |
|-------------------|--|
| | <ul style="list-style-type: none">• child-sensitive alternatives to detention, consistent with best interests principles and other child rights (including preservation of family unity)• adequate shelter, physical security, food, water and sanitation• suitable primary and secondary education with bureaucratic ‘firewalls’ between immigration enforcement and education services so that irregular migration status is not a barrier to education• adequate healthcare, including psychosocial support for children and adolescents• enforceable protection from refoulement and other serious human rights abuses, with child-specific risks taken into account• family tracing and reunification (viable pathways that can be accessed within a reasonable timeframe)• timely and fair processing of claims for asylum, refugee status determination, and assessment of resettlement need• a range of durable solutions including common benchmarks for the safe return of children and adolescents to countries of origin• programs designed specifically for UASC¹⁰ <p>Processes should be put in place to ensure continuity of care for vulnerable children on the move across states in the region to protect them from the dangers of smuggling, trafficking and exploitation.¹¹ States need to intensify cross-border and regional cooperation.¹²</p> |

2. Best Interests of the Child

In some cases, Australia’s domestic laws may not adequately ensure that the best interest of refugee and migrant children are a primary consideration in all decisions that affect them.

In developing its National Program of Action, the Australian government should (together with civil society) identify areas in which decisions affecting child migrants are not currently subject to a ‘best interests’ principle and take steps to remedy this.

RECOMMENDATIONS ON NEW APPROACHES FOR AUSTRALIA

Issues of Concern

Recommendation

3. Addressing Root Causes

Greater efforts are required to address the root causes of fragility, insecurity, persecution and poverty in the region.

Australia should engage more proactively in addressing root causes of displacement in our region and further afield through diplomacy and aid. This should include measures which:

- Encourage peace, good governance and social cohesion
- Ensure that children and adolescents can access or have access to basic needs including healthcare and education
- Protect children and families from violence

4. Addressing the situation of Internally Displaced People (IDPs)

The needs of internally displaced people, including children, are at risk of being overlooked in the development of the Global Compacts and related programs of action notwithstanding that the movement of people within national boundaries can pose many of the same challenges as that triggered by international migration.

Australia should ensure that its National Program of Action takes into account the circumstances and needs of vulnerable IDP children. Australia should also advocate for the Global Compacts to address the needs of IDP children.

5. Removing barriers to family reunification

Australian policy currently discriminates against individuals who arrived in Australia by boat with respect to family reunification, with adverse impacts on children and adolescents affected by migration

Australia should remove current restrictions on family reunion for refugees who arrived in Australia by boat and consider broader measures to facilitate the reunification of family groups where one or more member of a family resides in Australia.¹³

HOW OUR AGENCIES ARE CHAMPIONING THE RIGHTS OF CHILDREN ON THE MOVE

Our agencies are all active regionally and internationally in supporting displaced people, and particularly children on the move. In addition to our programmatic work, we are all members of [the Initiative for Child Rights in the Global Compacts](#). This global initiative is being driven by a steering committee of more than 27 organisations, led by civil society and co-convened by Save the Children and Terre des Hommes. The Initiative brings together experts, multilateral institutions, and non-governmental and philanthropic organisations who are committed to see child rights thoroughly embedded in both Global Compacts.

The Child Rights Initiative was formed in response to the perceived need amongst child-focused organisations to raise further awareness and encourage accountability for the rights of children on the move and other children affected by migration.

The Initiative builds on six key areas of child rights outlined in the New York Declaration, namely:

- non-discrimination and integration
- ensuring the priority of the best interests of the child
- ensuring children's access to services
- ending child immigration detention
- promoting durable solutions
- child protection

More information about what the members of the Initiative are seeking to realise for the protection of children on the move can be found in the detailed working document – [Child Rights in the Global Compacts](#)¹⁴ - which lays out goals, targets and indicators – in line with the 2030 Agenda for Sustainable Development – through which the five key commitments to child rights outlined in the New York Declaration for Refugees and Migrants can be operationalised in both Global Compacts.

¹ We Believe in Youth, Global Refugee Youth Consultation Final Report (September 2016) (<http://reliefweb.int/report/world/we-believe-youth-global-refugee-youth-consultation-final-report-september-2016>); Multicultural Youth Advocacy Network (Australia) and Refugee Council of Australia (2016). Speaking Up: The Global Refugee Youth Consultations in Australia Report (http://www.myan.org.au/file/file/GRYC%20Report_NOV2016.pdf)

² Communication between the Multicultural Youth Advocacy Network and DIBP, April 2017.

³ The term ‘community/private sponsorship’ is intended to refer to any sponsorship by members of the Australian community, including Australian businesses.

⁴ See recommendations made by the Refugee Council of Australia addressing Australia’s current policies concerning family reunification (see <http://www.refugeecouncil.org.au/wp-content/uploads/2016/11/RCOA-Report-Family-Reunion-11-16-WEB.pdf>)

⁵ Data provided to the audit by the Department of Finance show that onshore detention costs \$655 per person per day, while ‘community detention’ costs \$247 per person per day. National Commission of Audit Towards Responsible Government: Appendix Volume 2 (2014) p 113 (http://www.ncoa.gov.au/report/docs/appendix_volume%202.pdf)

⁶ As of 30 June 2017, 3,843 children were living in the Australian community with an unresolved migration matter while only 5 children were in detention facilities. This means 99.9% of children were being managed in a community setting rather than waiting in detention. This has been regular practice for many years now. See DIBP, Immigration Detention and Community Statistics (June 2017) (<https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-30-june-2017.pdf>)

⁷ Mexico, Indonesia, the Republic of Korea, Turkey and Australia

⁸ In 2017 a joint initiative titled Promising Practices in Refugee Education set out to identify, document and promote innovative ways to effectively reach refugee children and young people with quality education opportunities. This initiative is launching a report of its findings on 22 September 2017 during the meeting of the United Nations General Assembly.

⁹ This includes the adoption of the Regional Cooperation Framework in 2011.

¹⁰ See Regional Guidelines for Responding to the Rights and Needs of Unaccompanied and Separated Children (UASC) (2013) (<http://www.refworld.org/pdfid/53883ffd4.pdf>)

¹¹ See *ibid*; Recommended principles to guide actions concerning children on the move and other children affected by migration (June 2016) (http://www.ohchr.org/Documents/HRBodies/CMW/Recommended-principle_EN.pdf); ECPAT International, National Child Protection Systems in the East Asia and Pacific Region: A review and analysis of mappings and assessments, Bangkok, 2014, page 82 (https://www.unicef.org/eapro/Child_Protection_Systems_Mapping.pdf); ECOWAS Support Procedures and Standards for the Protection and Reintegration of Vulnerable Children on the Move and Young Migrants. (<http://www.resao.org/wp-content/uploads/2017/08/ECOWAS-standards-children-on-the-move-1.pdf>)

¹² A number of States and regional bodies have taken such measures and have agreed to common standards, principles and mechanisms to better protect children on the move across borders. Promising examples of cross-border cooperation include PROTECT Children on the Move, an initiative of the Council of the Baltic Sea States, and the set of common standards adopted by the Member States of the Economic Community of West African States (ECOWAS) to better protect and care for children on the move. The mechanism established under the Child Protection Conventions of the Hague Conference on International Private Law also provides for an instrument to bolster cross-border cooperation to protect children on the move. These existing initiatives and instruments could serve as an entry point for scaling up cross-border cooperation mechanisms to protect children on the move. The Compact offers a unique opportunity for this, in line with paragraph 52 of the New York Declaration.

¹³ See above n 5

¹⁴ Jacqueline Bhabha and Mike Dottridge, Child Rights in the Global Compacts: Recommendations for protecting, promoting and implementing the human rights of children on the move in the proposed Global Compacts, 24 June 2017 (<http://www.childrenonthemove.org/wp-content/uploads/2017/02/Working-document-29-June-2017.pdf>)