States of Refuge

Access to Health, Housing and Education for People Seeking Asylum and Refugees in Australia

Rights Advocacy Project
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About the Report

‘States of Refuge’ was written by Renata Blythe, James Clarke, Tyrone Connell, Julia Wallace and Chris Woods as members of Liberty Victoria’s Rights Advocacy Project (‘RAP’). RAP is a community of lawyers and activists working to advance human rights in Australia, and works across a range of issues including equality, government accountability, refugee and asylum seeker rights and criminal justice reform.

About Liberty Victoria

Liberty Victoria is one of Australia’s leading civil liberties organisations. It has been working to defend and extend human rights and freedoms in Victoria for over 70 years. The aims of Liberty Victoria are to:

↳ help foster a society based on the democratic participation of all its members and the principles of justice, openness, the right to dissent and respect for diversity;
↳ secure the equal rights of everyone and oppose any abuse or excessive power by the state against its people;
↳ influence public debate and government policy on a range of human rights issues. Liberty Victoria has policy statements on issues such as access to justice, a charter of rights and freedom of speech and privacy; and
↳ make submissions to government, support court cases defending infringements of civil liberties, issues media releases and hold events.

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Every person deserves, by virtue of their inherent dignity, the recognition of basic rights allowing them to live in safety and security. This is what people who come to Australia seeking asylum, or as refugees, are trying to obtain. Yet Australia’s current approach to such people frequently imposes uncertainty and even destitution on this already vulnerable section of our community.

At many points in our history Australia has provided pathways for people seeking asylum to build safe and secure lives in our communities. However, for the last two decades the legal frameworks and processes through which people seek asylum in Australia have been wound back to the point where they are as difficult to navigate as they are unfair. Basic mechanisms of support essential to making an effective protection claim, and to basic subsistence, have increasingly been constrained. Bipartisan punitive attitudes towards asylum seekers at the Commonwealth level of government can give anyone hoping to see changes for the better a sense of hopelessness.

The aim of this report is to cut through that seeming impasse at the federal level by showing the ways in which state and territory governments might safeguard some of the rights of people seeking asylum and refugees. Over what has been nearly a year’s worth of research, we have found that states and territories can have significant impact in certain key areas affecting people seeking asylum. Every state and territory possesses the power to legislate with regard to matters including housing, health and education – the areas focused on in this report. In the face of a Commonwealth government apparently intending to deny any level of dignity to a profoundly vulnerable community, states and territories are empowered to intervene to ensure at least basic needs are being met.

There is no rational basis for asylum seekers’ rights to health, housing and education to be respected differently across the different states and territories. It seems capricious that a person seeking asylum in one state may have access to housing rights, while they are denied to another person in similar circumstances who happens to live in another state.

A key concept to this report is federalism. Written into the design of our system of government is the constitutionally entrenched principle that power is distributed between state and Commonwealth levels, by way of protecting against it ever becoming too centralised in one or the other. At the Commonwealth level, the areas over which the government can pass legislation are explicitly set out in the Constitution. The validity of a Commonwealth law depends on it having been passed under one of those powers. A small number of powers fall solely under the control of the Commonwealth. There are additional powers listed in the Constitution which states oversee concurrently, subject to the primacy of the Commonwealth in instances of inconsistency. Everything outside of what is set out as a Commonwealth legislative power in the Constitution falls to the control of the states. It should be noted that whilst the Constitution explicitly treats territories differently to states in this sense, the reality is that the Northern Territory and the Australian Capital Territory have typically been able to legislate in much the same way as the states, at least in the areas this report focuses on.

Federalism bears on the contents of this report because there are key areas over which the states and territories have substantial control, and laws can be made in those areas which mitigate the plunge into destitution of refugees and people seeking asylum.

This report does not address the many areas of migration law in need of reform that are within Commonwealth government’s ambit. What it does seek to do is to sidestep what too often feels like a deadlock in this area, and to suggest some very real possibilities for positive change. Certain states and territories can, and already do, go to remarkable lengths to ensure
that, even as the Commonwealth government fails refugees and people seeking asylum, at least their most basic rights and dignities can still be protected. Those who do the best in this regard will be identified in this report, and an approach will be suggested for other jurisdictions to follow.
The Process of Seeking Asylum within Australia

“Many of the asylum seekers in NSW are at the very start of the process of applying for a protection visa. This means that they need access to a wide range of services in order to navigate this process and rebuild their lives.”

Andrew Constance, New South Wales Minister for Transport and Infrastructure

This section is intended to provide an outline of the steps which people seeking asylum within Australia may have to go through. Those steps can determine an individual’s access to certain basic services. If an applicant arrives in Australia without a valid visa (as opposed to already possessing a visa), this will vastly impact their experience during the time their claim for protection is being assessed.

Application process – bridging visas

The first major step for a person seeking asylum after arrival is to lodge a valid application for a protection visa. In many cases, notably including where a person has arrived by boat without a visa, a 'statutory bar' will be in place to preclude them from lodging a valid visa application until the Minister, in his or her discretion, lifts that bar and invites the individual to apply. At this stage in the process, the individual may be subject to significant wait times outside their control and be left to establish themselves in the community with limited entitlements.

An applicant who has arrived in Australia without a valid visa, or whose substantive visa has expired, will only be allowed to be in the community if granted a bridging visa: a temporary visa intended only to cover the period whilst their claim is being assessed. Those not granted such a visa will remain in immigration detention, often for substantial lengths of time. There are different classes of bridging visas, with different rights attached to them. An individual's bridging visa class will vary based on a number of things. How they arrived as well as what policies were in place when they did are salient factors and can affect whether work rights and Medicare eligibility will be granted or revoked. Further, the period of the bridging visa grant can be for a very short period, requiring frequent renewal. As this report will show, this can significantly impact a person's ability to demonstrate an intention to remain in Australia for a sufficient period to access certain housing benefits.

Protection visa types

The applicant may be eligible for different classes of protection visa, depending on their circumstances. Some people seeking asylum are entitled to apply for a Subclass 866 Permanent Protection Visa. However, since 2013 Australia has provided most boat arrivals with access only to temporary protection. As will become apparent below, the provision of temporary protection by the Commonwealth government can have significant implications in terms of rights to health, education and housing provided by state and territory governments. There are two temporary visa types available to applicants at this stage which are the focus of this report: Temporary Protection Visas (TPV – Subclass 785), which allows the holder to remain in Australia for three years; and Safe Haven Enterprise Visas (SHEV – Subclass 790), which last for five years and may provide a path to permanent residence. A number of other onshore and offshore visa categories exist for refugees and people seeking asylum, but these two stand out in a number of ways which will be demonstrated in this report. Importantly, holders of TPVs may seek to renew their visas repeatedly, living in Australia as de facto

permanent residents, but without permanent visas.

**Post-lodgement**
Once a valid application has been lodged, the applicant is then required to attend an interview with a delegate at the Department of Home Affairs. Again, there are often significant waiting periods in between these stages of the application process.

A positive outcome from the application and interview process will result in the individual being granted a protection visa of the relevant class. In the case of a negative outcome, the applicant will have a right to seek merits review of the decision.

**Review of the decision**
Some aspects of the merits review process vary, once again, based on how and when the applicant arrived. A successful outcome at the merits review stage will result in the review body either substituting the original decision or remitting it to the Department to be re-made.

In the case of a negative outcome at the merits review stage, the only avenue left open will be judicial review, and/or seeking the Minister's personal intervention in the case. Positive outcomes in the case of the latter, especially for people seeking asylum, are rare. Up until a negative decision at the merits review stage, even people on restrictive bridging visas are typically able to access a number of federally administered services. Past that point however, that safety net of services will often be removed.

In addition, even with free legal representation, the judicial review process is far more lengthy and expensive than any other stage in the process. As a result, a person who seeks review at this level may be left without access to basic services, for significant periods of time, whilst being subjected to the stress and cost of navigating the court system.

The experiences of a person seeking asylum will vary from case to case, and the aim here is to only briefly summarise the process many go through. At various points, services may become restricted or unavailable to protection visa applicants. It is these shifts and changes that create the gaps this report seeks to address.
Guarantees or rights of access to basic services for refugees and people seeking asylum are usually found in a confusing combination of interrelated primary legislation, subordinate legislation, and policy. This interrelationship can be hard to navigate, even for highly qualified native English speakers.

Primary legislation, passed by Parliament, is subject to a relatively high level of transparency and accountability, often attended by extensive public debate. It is also subject to requirements of publication. This makes it relatively easy, and free, to access. Further, the process for passage, repeal or amendment of Acts of Parliament means that an Act typically has a degree of stability. A corollary is that the practical realities of modern administration mean Acts of Parliament are necessarily broad and general. No Act of Parliament could realistically contain provisions relating to every minute detail which may arise in the administration of education, health, or housing services.

Typically, matters such as who can or cannot access a service, who pays for it, and how much they pay are answered by subordinate legislative instruments or non-legislative policy. Subordinate legislative instruments, such as Regulations, made and altered as they are outside the parliamentary process, may be changed more quickly and less transparently. They are not always subject to the same publication requirements as primary legislation. They are however required to accord with the legislation that authorises their making. This has two important, linked implications: Regulations or like instruments need to fit within the framework of authorising Acts of Parliament, and where those instruments prove inconsistent with the relevant statute, they are unlawful. This is why the ‘purposes’ or ‘objects’ clauses of a number of pieces of legislation have been included in this report. Such statements are one of the means by which it is sometimes argued that a regulation or guideline transgresses the limits of the authorizing primary legislation.

In reality, though, rights of access to health, housing and education are in large part only stated in policy. This has two major disadvantages. First, policy is far less constrained by legislation and more subject to politicised shifts. A number of examples are outlined in what follows, but the back and forth that has characterised health policy with respect to people seeking asylum in Queensland, based on who is currently in power, is a stark example. Secondly, the frequent shifts in policy make it difficult to know if a given policy is current. During our research, we have found policy statements publicly available on a department website, which have proven to have already been superseded or revoked.

With such an obstacle being encountered by a team of lawyers and law students, one can only imagine the difficulties faced by someone with the added barriers of limited English, and limited knowledge of the legal system here. The Federal Court of Australia has drawn attention to such barriers and noted that they should not be dismissed lightly: Mortimer J in MZZLD v Minister for Immigration and Border Protection (No 2),2 stated that “The sense of powerlessness and helplessness that can attend individual experiences of immigration detention, or of living with uncertainty and isolation on bridging visas, especially where a person has little English, should not be underestimated’.

For the reasons set out above then, we have usually identified the ‘gold standard’ as being the recognition of rights at least in subordinate legislation, rather than simply being stated in a policy. This key distinction frames the analysis in what follows.

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2 MZZLD v Minister for Immigration and Border Protection (No 2) [2017] FCA 31, [48] (Mortimer J).
What Does International Law Say?

“These are some of the most vulnerable people in our community – we have an obligation to do whatever we can to support them and their families.”

Robin Scott, Victorian Minister for Multicultural Affairs

International law in Australia

International law is a body of rules mostly created by international instruments, voluntarily entered into by states and nations that govern relationships between those parties. Many international instruments, particularly in the field of international human rights law, also establish norms of behaviour between governments regarding the people within their borders.

International instruments must be incorporated into domestic legislation to be legally binding under Australian law. However, those that are not incorporated into Australian law still bind Australia, and still have force in domestic Australian law. Courts use international law to interpret ambiguous legislation. Where legislation is unclear, it should be read as though Parliament intended to comply with its international obligations. Australia is also subject to the scrutiny of supervisory international bodies. Further, if the Australian Government want other parties to international agreements to accept international norms and comply with international agreements, it is unwise for the Australian Government to flout its obligations. It is for these reasons that international law matters when one is assessing legal protection of people seeking asylum who are owed human rights protections.

Federalism and Australia’s obligations under international law

Australia’s federal system creates a division of power between the Commonwealth government, on the one hand, and state and territory governments, on the other. The different levels have different powers under the Australian Constitution. The Commonwealth government has the power to enter into international agreements. Often, the Commonwealth will consult with state and territory governments before entering into international agreements. Commonwealth governments have adopted a consultative approach with states in recognition of the fact that the Commonwealth enters into international agreements that impact areas of law that states have power over.

4 Including agreements, treaties, conventions, protocols, charters and covenants.
7 Dietrich v The Queen (1992) 177 CLR 292, 305 (Mason CJ).
8 Jumbunna Coal Mine NL v Victorian Coal Miners’ Association (1908) 6 CLR 309, 363 (O’Conner J).
10 As well as some local governments.
11 Australian Constitution s51(xxix).
13 Ibid.
Cultural Rights (ICESCR)\textsuperscript{14} is a good example. While the federal government has the authority to enter into the agreement, ICESCR speaks about areas that primarily fall within state and territory powers: health, housing and education amongst them. The Commonwealth government also has the responsibility to ensure state and territory governments are fulfilling their obligations.\textsuperscript{15} States and territories have those obligations whether or not the federal government exercises its authority to enforce them.

What is international human rights law and why does it matter?
The acceptance of a basic human dignity is at the heart of international human rights law.\textsuperscript{16} Respect for human dignity recognises the inherent value of all people.\textsuperscript{17} These basic principles set a minimum standard that protects against powerful state actors carrying out acts that violate the dignity of those within their borders.\textsuperscript{18}

It is fundamental in all human rights instruments that equal recognition and protection is given to all people.\textsuperscript{19} The litmus test for how well states carry out their obligations is not how well the rights of the powerful and privileged are protected, but how well states protect and elevate the rights of the most vulnerable members of their communities.

In the last two decades successive Australian governments have significantly eroded the rights of people who have come to Australia seeking safety. Such people are some of the most vulnerable members of our communities.

State and territory governments have the power and responsibility to turn the tide and elevate the rights of people seeking asylum and refugees. The power comes from the jurisdiction of state and territory governments to legislate on certain rights, particularly social and economic rights such as health, housing and education. The responsibility exists because people who are seeking asylum and are refugees in Australia have an inherent value and dignity that demands respect for their rights. Further, the responsibility arises from the fact that asylum seekers and refugees form a part of the community (and some will remain so, for their lifetimes). There are serious social costs associated with leaving members of the community without health, housing or education.

What international human rights instruments are relevant to people seeking asylum and refugees?
As a signatory to the Refugees Convention and Protocol (the Convention),\textsuperscript{20} Australia is bound to afford people seeking asylum and refugees the rights outlined in the Convention.\textsuperscript{21} The High Court of Australia has confirmed this and has stated that Australia must afford these rights as ‘a matter of legal obligation.’\textsuperscript{22}

\begin{itemize}
\item \textsuperscript{14} \textit{International Covenant on Economic, Social and Cultural Rights}, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (‘ICESCR’).
\item \textsuperscript{15} Brian Opeskin and Donald Rothwell, above n 12, 1
\item \textsuperscript{17} Ibid, 469.
\item \textsuperscript{18} Ibid, 464.
\item \textsuperscript{22} Plaintiff M70/2011 v Minister for Immigration and Citizenship & Anor Plaintiff M106 (2011) 244 CLR 144, 195.
\end{itemize}
Under the Convention, people who are seeking asylum and refugees have a right to receive the same treatment as nationals in regard to primary education and should be afforded as favourable treatment as possible in regard to all other forms of education. Similarly, refugees should be given as favourable treatment as possible in regards to housing.

As well as those rights outlined under the Convention, people who are seeking asylum and refugees are afforded the rights and protections expressed in other international human rights instruments. Importantly, this includes instruments that relate to civil and political rights, as well as social and economic rights.

The Universal Declaration of Human Rights (UDHR) recognises the fundamental human rights of people seeking asylum and refugees to an adequate standard of health, housing and education. The right to health includes a right to healthcare. Under the right to education, primary education should be free and compulsory, and technical, professional and higher education should be accessible and access should be based on merit.

Australia is signatory to a number of international instruments that give force to the rights of people seeking asylum and refugees to health, education and housing.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is of paramount importance, as an instrument that speaks directly of every person’s rights to health, housing and an education.

Rights to health, housing and education are brought into force by other international instruments, such as Convention on the Rights of the Child (CRC), the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Person with Disabilities (CRPD), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). These rights and obligations exist regardless of how a person seeking asylum or refugee arrived in Australia.

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23 A refugee is a person outside their country of origin who has a well-founded fear of persecution in the country of origin because of their race, religion, nationality, political opinion or membership to a particular social group: Refugees Convention, 189 UNTS 150, art 1; Refugees Protocol, 606 UNTS 276, art 1.

24 Refugees Convention, 189 UNTS 150; Refugees Protocol, 606 UNTS 276, art 22.


27 Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) (‘UDHR’).

28 UDHR, UN Doc A/810, art 26.
What social and economic rights do people seeking asylum and refugees have?

Housing

All people seeking asylum and all refugees have a right to adequate housing,\(^34\) which includes a right to live with security, peace and dignity.\(^35\)

People seeking asylum and refugees with disabilities have a right to an adequate standard of housing.\(^36\) Australia has an obligation to assist the parents of children who are seeking asylum to find appropriate housing for their children.\(^37\) Certain instruments recognise the right of people seeking asylum and refugees also to not be discriminated against on the basis of their race, colour, or national or ethnic origin in regards to their right to housing,\(^38\) as well as recognising the right of women in rural areas to not be discriminated against in accessing housing.\(^39\)

Australian states and territories have an obligation to afford people who arrive here seeking asylum, or who are refugees, access to education, the highest attainable standard of healthcare and an adequate standard of housing.

Education

All people seeking asylum and all refugees have a right to education. Primary education should be compulsory and free, and secondary education should be available and accessible. Access to higher education should be equal and based on merit.\(^40\)

Certain instruments articulate the right to education for children\(^41\) and people with disabilities.\(^42\) Women seeking asylum and refugees and who are women have a right to not be discriminated against on the basis of gender when accessing education,\(^43\) and all people who are seeking asylum or who are refugees have a right to not be discriminated against on the basis of their race, colour, or national or ethnic origin when accessing education.\(^44\) Australia also has an obligation to address prejudice that exists in education systems.\(^45\)

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34 \(\text{ICESCR, 993 UNTS 3, art 11.} \) Australia is obliged to take steps to realise this right.
35 \(\text{Office of the High Commissioner for Human Rights, General Comment No 4: The Right to Adequate Housing (Art. 11(1) of the Covenant), 6th sess, UN Doc E/1992/23 (13 December 1991) para 7.} \)
36 \(\text{CPRD, 2515 UNTS 3, art 28.} \)
37 \(\text{CRC, 1577 UNTS 3, art 27.} \)
38 \(\text{CERD, 660 UNTS 195, art 5.} \)
39 \(\text{CEDAW, 1249 UNTS 13, art 14.} \)
40 \(\text{UDHR, UN Doc A/810, art 26(1).} \)
41 \(\text{CRC, 1577 UNTS 3, art 28.} \)
42 \(\text{CRPD, 2515 UNTS 3, art 24.} \)
43 \(\text{CEDAW, 1249 UNTS 13, art 10.} \)
44 \(\text{CERD, 660 UNTS 195, art 5.} \)
45 \(\text{Ibid art 7.} \)
Health

All people seeking asylum and all refugees have a right to the highest attainable standard of physical and mental health.

Australia has an obligation to provide access to medical services and attention. The rights of children and people with disabilities who are seeking asylum to healthcare are directly recognised under international instruments too. Women who are seeking asylum or are refugees have a right to not be discriminated against on the basis of their gender when accessing healthcare. Additionally, every person who is seeking asylum or who is a refugee has the right to not be discriminated against because of their race, colour, or national or ethnic origin when accessing healthcare.

46 ICESCR, 993 UNTS 3, art 12.
47 CRC, 1577 UNTS 3, art 24.
48 CPRD, 2515 UNTS 3, art 25.
49 CEDAW, 1249 UNTS 13, art 12.
50 CERD, 660 UNTS 195, art 5(iv).
The Verdict: Best and Worst Performers

Presently, Australian states and territories are failing to adequately, uniformly and comprehensively meet these obligations.

### Housing

**Access to social housing based on visa status**

- South Australia is the best performer when it comes to providing access to social housing, as people seeking asylum and refugees are eligible regardless of their visa status.
- Tasmania is the worst performer. Tasmania excludes people who are seeking asylum and many refugees from social housing by requiring that all applicants be an Australian citizen or permanent residents. There are no exceptions to this rule.
- To meet the standard set by South Australia, all jurisdictions should remove permanent residency and citizenship requirements for accessing social housing.

**Access to social housing based on income status**

- The ACT is the best performer when it comes to removing barriers to social housing on the basis of income, as people who are seeking asylum and refugees are eligible regardless of their independent income status.
- Tasmania is the worst performer when it comes to removing barriers to social housing on the basis of income. A person who is seeking asylum or is a refugee must not only have an independent income, but must also be eligible for a Commonwealth Healthcare card.
- All jurisdictions should create an exception to income requirements for people seeking asylum who do not have an independent income because they are denied access to Centrelink support, are given reduced Centrelink payments and do not have work rights.

### Private Rental Assistance and citizenship and residency

- South Australia and the ACT are the best performer when it comes to providing private rental assistance. People who are seeking asylum or are refugees are eligible regardless of their citizenship or permanent residency status. NSW should also be commended for its efforts to create pathways to private rental assistance for recently arrived refugees.
- Western Australia and Tasmania are the worst performers because they have strict citizenship and permanent residency requirements that exclude people seeking asylum and many refugees from accessing interest free bond loans.
- To meet the standard set by the ACT, all jurisdictions should remove citizenship and permanent residency requirements for access to government funded private rental assistance.

### Private Rental Assistance and income status

- South Australia is the best performer when it comes to providing interest free bond loans to people regardless of their income status. South Australia’s approach of creating an exception to income requirements for a person who has ‘special circumstances’ is the best existing model for removing barriers for people seeking asylum and refugees. However, even in South Australia people seeking asylum and refugees must prove they fall within one of the listed exceptions.
- Queensland, Western Australia and the Northern Territory are the worst performers because they have strict
income requirements that exclude many people seeking asylum and refugees from accessing interest free bond loans. Tasmania also performs poorly by having no publicly available information about eligibility for Bond Loans.

↳ All jurisdictions should create an exception to income requirements for people seeking asylum who do not have an independent income because they are denied access to Centrelink support and do not have work rights.

**Homelessness services**

↳ South Australia, Queensland, NSW and Victoria are the best performers when it comes to providing homelessness services to people seeking asylum regardless of visa status. In these jurisdictions, visa and income status are not barriers to accessing homelessness service.

↳ Tasmania is the worst performer. Tasmania is the only jurisdiction that actively excludes people from accessing homelessness services because of their visa status. To be eligible for homelessness services in Tasmania a person must be an Australian citizen or permanent resident.

↳ All jurisdictions should include a provision in their relevant housing legislation that states that ‘visa status is not a barrier to accessing homelessness services’.

### Primary and secondary education

**Clear and accessible information about eligibility**

↳ The ACT performed strongly in this category, as the position of the ACT Government is expressed on the Department of Education website in very clear terms. However, no substantiating policy documents or other material was identified, including in response to a Freedom of Information Request.

↳ Victoria is the best performer when it comes to providing clear information about policies used to assess eligibility for enrolment and fee exemptions or waivers for people on temporary visas.

↳ South Australia and the Northern Territory are the worst performers in this category. It was difficult to identify information freely available on the Internet regarding the eligibility of people seeking asylum for primary or secondary school enrolment in these jurisdictions. In particular, in the Northern Territory, even following direct contact made with the Department of Education, there remained a lack of clarity around the regime in place. In South Australia, while relevant information was gained following a Freedom of Information request, the authors of this report understand it is currently not publicly accessible through the website.

↳ To meet the standard set by Victoria, all jurisdictions must clearly outline on their departmental website policies on eligibility and the availability of fee exemptions and waivers as well as the other costs people should expect to cover.
Automatic fee exemptions for all bridging visa holders

› Victoria is the best performer when it comes to clearly exempting all bridging visa holders from fees, as set out in its Visa Fee Table.
› NSW and Queensland are the worst performers, as they do not clearly exempt BV 051 holders from fees in the available documentation. This may be due to the pace of changes by the Department of Home Affairs to the available visa types outstripping the pace of review of departmental policy documents.
› To meet the standard set by Victoria, all jurisdictions that use Visa Fee Tables to set out liability of fees for different visa type holders must update these documents to provide automatic fee exemptions for BV 051 holders, and must continue to ensure that these documents remain accurate.

Legislative discretion to exempt students from fees

› NSW is the best performer when it comes to providing through legislation that the government has the power to set or to exempt certain students from paying fees.
› Western Australia is the worst performer on this measure. While it has adapted creatively to the dilemma, by charging an enrolment fee of $1, legislative reform is necessary to resolve this situation.
› To meet the standard set by NSW, all jurisdictions that have not already done so should implement similar provisions.

Free instruction for students older than 18 to finish high school

› Tasmania is the best performer when it comes to ensuring that students older than 18 years are entitled to free instruction at public schools to finish high school, particularly for those from refugee backgrounds.
› No other Australian jurisdiction has this entitlement enshrined in law. In that respect, every other jurisdiction performs worse than Tasmania.
› To meet the standard set by Tasmania, all jurisdictions should implement similar provisions as legislation.

Higher education

Funding university attendance

› There is no outstanding Australian performer on funding university attendance.
› Canada is the best performer when it comes to providing financial assistance to people seeking asylum to attend university.
› To meet the standard set by Canada, states and territories should fill the funding gap left by the Commonwealth to enable TPV holders who are seeking asylum to attend university.

Universities providing direct assistance

› Universities should direct attention and funding towards removing barriers for people seeking asylum to access higher education.

Vocational training

› NSW is the best performer when it comes to providing financial assistance to people seeking asylum to access vocational training. It has offered fee-free places in certain courses.
› Queensland, Western Australia and Tasmania are the worst performers. These states and territories appear to have no programs that are designed to remove barriers to access for people seeking asylum.
› To meet the standard set by NSW, states and territories should implement programs fully subsidising Vocational Education and Training course fees for refugees and people seeking asylum.

Apprenticeships options

› All jurisdictions should offer apprenticeship options that can accommodate TPV and SHEV timelines.
Health

Hospital and primary healthcare

- The ACT is the best performer when it comes to providing hospital and primary health care services to people seeking asylum. The ACT’s approach is accountable, accessible and it entitles people seeking asylum to equality when accessing a broad range of healthcare services.

- Western Australia and the Northern Territory are the worst performers. The Northern Territory and Western Australia both lack a formal policy or legislative instrument entitling all people seeking asylum to Medicare.

- All jurisdictions should clearly exempt people seeking asylum from all fees associated with accessing a broad range of hospital and primary health services, as in the ACT. As in the ACT, all jurisdictions should ensure that this covers all refugees, and all of those at any stage of the asylum seeking process who are not covered by Medicare.

Ambulance services

- The ACT is the best performer when it comes to guaranteeing access to emergency transport services to people seeking asylum. The ACT’s clear and accountable approach offers people seeking asylum a consistent right to access free emergency transport services.

- NSW is the worst performer since people seeking asylum are not exempt from fees by regulation or entitled to apply for a waiver.

- To meet the standard set by the ACT, all jurisdictions should guarantee through regulation free access to ambulance services by people seeking asylum.

Mental health services

- A desirable level of nation-wide uniformity has been achieved in the approach to providing mental health services to refugees and people seeking asylum.

- States and territories should continue to work with the Australian Government to expand access to mental health services to people seeking asylum.
Housing

‘This isn’t about housing refugees in detention or camps such a Pontville, it’s a longer-term solution that will see people living and working in, and becoming part of, the Tasmanian community.’

Will Hodgman,
Premier of Tasmania

At the crucial early stages of settlement, people seeking asylum need stable housing in order to build a secure future in Australia. However, people seeking asylum and refugees encounter significant barriers when attempting to access safe, secure, appropriate and affordable housing.

People who are seeking asylum and refugees on temporary visas in particular face significant barriers. A person’s ability to access housing services is often dependent on that person being a citizen or permanent resident. Such requirements exclude people who are seeking asylum and refugees who are on temporary visas, some of whom may have been living in our communities for years. To access many services, a person must have an independent income or meet minimum income requirements. This excludes people who are seeking asylum and refugees who do not have work rights and have no or limited access to Centrelink support.

Additionally, state and territory housing services are largely regulated by non-legislated policies and guidelines. Such guidelines and policies are often difficult to find and are frequently changing. The relevant law and policy is complex. It is often extremely difficult for people accessing housing services – and at times people delivering them – to know what the rights and entitlements of people seeking asylum and refugees are.

This has led to housing being one of the top three concerns for refugees in Australia, with specific challenges including shortage of low-cost housing, competing in the private rental market, limited access to support services, financial hardship, discrimination in the housing market and family size.

All of this in turn contributes to the risk of homelessness for people seeking asylum and refugees. Accessing strained homelessness services is difficult for anyone. However, these challenges are amplified for people seeking asylum, due to uncertainty about their rights of access and a lack of appropriate and culturally sensitive support.

This section addresses three areas where people seeking asylum and refugees encounter significant barriers to accessing stable accommodation: social housing, government-funded loans that support access to the private market and government funded homelessness services.

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55 Refugee Council of Australia, above n 53, 3.
**Case study**

In a series of interviews with people seeking asylum, unreliable government housing services emerged as a source of significant distress.

For example, Desmond says that his intermittent housing support and current reliance on the Asylum Seeker Resource Centre (ASRC) for rental assistance (on top of payments for food and other essentials) is directly related to his mental illness – including depression and anxiety – and feelings of isolation within the Australian community.

After roughly a year of receiving housing support from the federal government, Desmond’s visa application was denied. With this his access to Medicare, housing support, Centrelink, employment and study rights were all revoked. He has since relied entirely on the ASRC for rental assistance, and is frustrated at the federal government’s apparent expectation that he pay his own way while being denied work rights. He expresses concern about what life would be like without the ASRC, which primarily operates in Melbourne, and fears a life spent eating from rubbish bins and begging.

Desmond speaks highly of the government support he initially received, but says after his application was denied he ‘lost everything, I even lost my identity,’ a feeling that was compounded by being denied education and work rights:

“And I could not do anything; so being immobile, not able to do anything,” he says through an interpreter. “So it was a big mental impact.”

Shahad has had similar difficulty with housing. After being provided with one month of rental assistance, Shahad was expected to find and pay for his new accommodation. Given his physical disability and poor English skills, this would have been nearly impossible if not for help from his case worker and a friend, who have since helped him with both casual English tuition and a free gym membership.

While Kim also received some initial rental assistance, his visa refusal meant ‘everything stopped’. This caused him great anguish, until the ASRC stepped in to provide rental assistance. Kim lists housing support as essential for people already facing uncertainty under the asylum seeker process:

“Because visa is stress, waiting for visa is stress. But when you lose your income support, your rent assistance, your medicare; it makes it worse.”

“Because you can’t survive then. You’re waiting, still you say ‘okay we stay away from, we go back home or something’ but how you going to survive like this? You’re not going to go on the road and begging. So this is very important.”

**The objectives of government support for housing**

It is common across housing legislation in Australian states and territories that the objects58 of the Acts are to assist people in accessing adequate,59 appropriate,60 affordable,61

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58 Homes Act 1935 (Tas) s 6B details that ‘purposes to be taken into account by the Director’. South Australia Housing Trust Act 1995 (SA) s 5 details the functions of the South Australian Housing Trust.

59 Housing Act 1983 (Vic) s 6; South Australia Housing Trust Act 1995 (SA) s 5(3).

60 Housing Act 1983 (Vic) s 6; South Australia Housing Trust Act 1995 (SA) s 5; Housing Assistance Act 2007 (ACT) s 6; Homes Act 1935 (Tas) s 6B; Housing Act 2003 (Qld) s 4.

61 Housing Assistance Act 2007 (ACT) s 6; Homes Act 1935 (Tas) s 6B; Housing Act 2003 (Qld) s 4.
safe and secure housing. These aspirations are often put in inclusive terms, with most states and territories stating that the relevant Act seeks to achieve these objects for every person, or every resident of that state.

Some states recognise the importance of directing services toward those with the greatest need. NSW, the ACT and Tasmania all include objects stating that services should be delivered to those most in need. Additionally, NSW and the ACT have objects directed at facilitating access to affordable housing for people on low or moderate incomes.

The Queensland legislation seeks to recognise cultural diversity in delivering housing services. Further, the Queensland legislation states that services should enhance the quality of life of people living in the community and contribute to the wellbeing of the community by engaging people to participate in its social and economic life.

Every state and territory expresses an aspiration to provide access to adequate, appropriate, affordable, safe and secure housing for all residents, regardless of their visa status or income. However, not every jurisdiction achieves this aim. Many states and territories exclude people seeking asylum and refugees from accessing these most basic services because of their visa status or income.

The challenge for each state and territory is to remove barriers based on visa status or income that exist in laws, guidelines and policies, and promote equal access by creating legal rights of access for people seeking asylum and refugees. Such reforms are essential to enabling people seeking asylum and refugees to build safe and secure lives in our communities.

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62 South Australia Housing Trust Act 1995 (SA) s 5, Homes Act 1935 (Tas) s 6B, Housing Act 2003 (Qld) s 4.
63 South Australia Housing Trust Act 1995 (SA) s 5(3); Housing Assistance Act 2007 (ACT) s 6; Homes Act 1935 (Tas) s 6B; Housing Act 2003 (Qld) s 4.
64 The Northern Territory is the exception to this with the s 15(a) Housing Act (NT) expressing in general terms that it is the functions of the Chief Executive Officer (Housing) to provide and assist in the provision of residential accommodation.
65 Housing Act 1983 (Vic) s 6(1)(a); Housing Act 2001 (NSW) s 5(1)(a); South Australia Housing Trust Act 1995 (SA) s 5(1)(a); Housing Assistance Act 2007 (ACT) s 6(1)(a); Homes Act 1935 (Tas) s 6B(a).
66 South Australia Housing Trust Act 1995 (SA) s 5(1)(b) and (c); Housing Act 2003 (Qld) s 4(a).
67 The NT Housing Act (NT) s 15 uses the general language ‘to provide and assist in the provision of residential accommodation’ and does make take reference to any persons/s’. The WA Housing Act 1980 (WA) s 4 uses similarly general language that does not refer to person/s.
68 Housing Act 2001 (NSW) ss 5(1)(f) and 5(1)(b); Housing Assistance Act 2007 (ACT) s 6(1)(b); Homes Act 1935 (Tas) s 6B(e)(i).
69 Housing Act 2001 (NSW) s 5(1)(k); Housing Assistance Act 2007 (ACT) s 6(1)(f).
70 Housing Act 2003 (Qld) s 6(g)(ii).
71 Ibid s 6(a)(i).
72 Ibid s 6(a)(ii).
Social housing

“This is about settling families successfully and sustainably, it can’t just be about emergency accommodation. I believe putting refugees into unsustainable rental accommodation and housing stress will only create further issues in the longer-term.”

Yvette Berry, Then ACT Minister for Multicultural Affairs, now Deputy Chief Minister

Social housing is long-term rental housing that is provided by nongovernment, not-for-profit and government organisations to assist people who have difficulty accessing the private rental market. Social housing includes public housing and community housing.

With demand far outstripping supply, accessing social housing can be a prolonged and difficult process. For those who do gain access, social housing provides long-term security.

All states and territories allow permanent residents and citizens access to social housing. The eligibility criteria for accessing social housing typically present two significant barriers for people seeking asylum and refugees on temporary visas: visa status and income.

Visa Status

In South Australia, to be eligible for social housing a person need only be a resident of that state or territory. There are no citizenship or visa requirements.

Queensland and the Northern Territory provide access to social housing for some people who are seeking asylum and refugees by extending eligibility to people on certain types of specified visas. In Queensland, TPV holders or people who previously held a TPV that has expired and who now hold a bridging visa are eligible for social housing. Additionally, where a person has applied for a permanent protection visa, but has not yet been given permanent residence, that person can be placed on the housing register. The applicant will not be offered social housing until that person becomes a permanent resident.

The Northern Territory Eligibility Criteria for Public Housing policy limits access to public housing to permanent residents or citizens. However, the policy defines ‘permanent residency’ to include TPV holders and victims of domestic violence holding temporary partner visas.

Western Australia does not permit people seeking asylum and refugees on temporary visas to access social housing. However, people seeking asylum and refugees on temporary visas can be placed on the housing register. To be granted access to social housing, a person must be an Australian citizen or permanent resident. People without citizenship or permanent residency may make an application for assistance and accrue time on the waiting list, but cannot be allocated housing until they have been granted permanent residency or citizenship.

Victoria and NSW do not provide people seeking asylum access to social housing and do not allow people seeking asylum to be placed on the housing register, except in


75 Refugee Council of Australia, above n 53, 13.

76 Government of South Australia, Community Housing Core Operating Policy: Eligibility, April 2016, 2.

77 Housing Regulation 2015 (Qld) r 14(2); Queensland Department of Housing and Public Works, Social Housing Eligibility Criteria (August 2016) 3.

78 Housing Regulation 2015 (Qld) r 14(2); Queensland Department of Housing and Public Works, Social Housing Eligibility Criteria (August 2016) 3.

79 Northern Territory Department of Housing and Community Development, Eligibility Criteria for Public Housing, 1 October 2017, 1.

80 The relevant partner visas include: subclass 820 or 309 visas. Northern Territory Department of Housing and Community Development, Eligibility Criteria for Public Housing, 1 October 2017, 1; Northern Territory Department of Housing and Community Development, Eligibility for Public Housing, 21 November 2016, 2.

81 Government of Western Australia Housing Authority, Western Australia Housing Authority Rental Policy Manual, October 2017, 18.

82 Ibid 18.
limited circumstances. In NSW and Victoria, applicants for social housing must be citizens or permanent residents. There are limited exceptions applying to people seeking asylum. Partners and dependent children who are temporary residents awaiting permanent residency may be included in the household of an eligible person who is an Australian citizen or permanent resident. In Victoria, where there are exceptional circumstances, temporary residents may be approved if they are escaping family violence and if no other accommodation options are available. The requirements for ‘exceptional’ circumstances and the fact that there are no other options available, sets a high bar. An application needs to be lodged by an approved support provider. In NSW a similar exception only enables a person escaping domestic or family violence to be considered for temporary accommodation.

In the ACT a person must be a permanent resident or a citizen to be eligible for social housing. According to the eligibility criteria ‘A sponsored migrant or refugee, may be eligible for public rental housing assistance.’ People who are seeking asylum are not eligible. It is unclear whether refugees on temporary visas are eligible.

Tasmania provides no access to social housing for people seeking asylum and refugees who are on temporary visas. Applicants for social housing must be Australian citizens or permanent residents. There are no exceptions.

**Conclusion**

The absence of citizenship and permanent residency requirements in South Australia means that South Australia has removed a significant access barrier for people seeking asylum. South Australia’s approach offers the best model for people seeking asylum and refugees.

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**The Verdict**

**South Australia is the best performer** when it comes to providing access to social housing for people regardless of their visa status.

**Tasmania is the worst performer**, since it provides no access and no exceptions for people seeking asylum.

To meet the standard set by South Australia, all jurisdictions should remove permanent residency and citizenship requirements for accessing social housing.

This means that they should, like in South Australia, assess eligibility for housing based on the following criteria.

A person must:

- Be a current resident of the state or territory; and
- Be in receipt of independent income; and
- With any member of their household named in the registration, not hold ownership in residential property.
- Meet the income test
- Meet the assets test

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83 Victoria, Special Gazette, No 165 (May 23 2017); New South Wales Department of Family and Community Services, *Eligibility*, 5 June 2017; Victorian Department of Health and Human Services, *Victorian Housing Register: Eligibility Criteria Operational Guidelines*, April 2017, 3; New South Wales Department of Family and Community Services, *Eligibility*, 5 June 2017.

84 *Housing Act 2001* (NSW) s 3; ‘Department’ means the Department of Family and Community Services.


87 Ibid.

Income requirements

Social housing tenants are required to pay for their rental properties. Many states and territories seek to ensure that tenants will be able to meet this obligation by requiring applicants to have an independent income to be eligible for social housing. Some states and territories do not explicitly list this as a requirement in their eligibility policy. Nevertheless, tenants must still be able to pay for their rental properties. Some people who seek asylum do not have work rights, are not in receipt of Centrelink payments or receive reduced Centrelink payments. Such people are largely excluded from accessing social housing. State and territory government should allocate funding to assist a person who is seeking asylum or refugees to sustain tenancies who fail to meet the eligibility requires because they do not have work rights, are excluded from Centrelink or receive reduced Centrelink payments.

The relevant policy in the ACT does not state that a person must have an independent income to apply for social housing. Confirmation was sought from the ACT Government as to whether such a requirement exists. The ACT Government confirmed that a person is not required to independent income to apply for social housing. Further, if an applicant does present to Housing ACT without any income, it is part of ACT Housing’s process to link them to support services.

In South Australia, a social housing applicant must have an independent income. An exception may be made where an applicant has undergone a needs test that shows they have a higher level of risk and vulnerability. Additionally, an income exception may be made where the applicant can show they are in the process of applying for an independent income. A notable example of this is provided in South Australia’s 2015 ‘Community Housing Core Operating Procedure’, which refers to recently arrived refugees.

In Queensland, at least one person who will sign a social housing lease must earn an independent income. An exception exists for people on TPVs, where a person who has a TPV but does not have an independent income may apply to be placed on the housing register but will not be granted access until they have an independent income.

In NSW, a person must be able to sustain a successful tenancy. As such, the social housing provider will consider whether that person is able to pay their rent and manage their finances. Where a person needs support to pay their rent they must show they have access to or are willing to engage in the appropriate services. Social housing providers may make referrals to other agencies where appropriate.

In Victoria, applicants must have an independent income to be eligible for social housing. A general exception applies whereby applicants who do not have an independent income may be approved to be placed on the housing register where they provide documentation from Centrelink stating why they are not entitled to, or not receiving an income, which may include where the person has temporary residency status.

The Northern Territory does not list a requirement to have an independent income as a criterion to be eligible for social housing. However, it is stated that a person ‘on a low income’ can apply. A person must also provide

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89 Email correspondence to Housing ACT, 1 March 2018.
90 Email correspondence from Housing ACT, 9 March 2018.
91 Government of South Australia, Community Housing Core Operating Policy: Eligibility, April 2016, 3.
92 Ibid 4.
93 Government of South Australia, Community Housing Core Operating Procedure: Eligibility, April 2015, 5.
94 Queensland Department of Housing and Public Works, Housing Eligibility Criteria, August 2016, 5.
96 Ibid.
97 Victoria, Special Gazette, No 165 (23 May 2017) 1; Victorian Department of Health and Human Services, Victorian Housing Register: Eligibility Criteria Operational Guidelines, April 2017, 3.
98 Ibid 3.
proof of their income. This suggests that a person must have an income to be eligible, but the position is unclear.

In Western Australia and Tasmania, an applicant must have an independent income. Additionally, in Tasmania a person must be eligible for the Commonwealth Healthcare Card. There are no exceptions.

**Conclusion**

Social housing is aimed at providing long term housing support. As such, there is a genuine policy imperative to ensuring that tenants will be able to meet their ongoing rental payments. Locking out people who are seeking asylum or are refugees – who are not receiving Centrelink, are receiving reduced payments or who do not have work rights – from social housing creates an unreasonable barrier to accessing long term safe and secure housing.

The ACT’s approach of not requiring applicants to have an independent income to apply for social housing goes the furthest towards enabling access to social housing. The approach adopted in South Australia of creating an exception for those with a high level of risk and vulnerability or who can show they are in the process of applying for an independent income also addresses the challenges faced by people seeking asylum in accessing social housing. Queensland’s approach of carving out an exception for TPV holders similarly removes barriers for people seeking asylum, though it may be necessary to extend this exception to other kinds of visas, such as Bridging Visas. Additionally, it may be useful to make explicit the ability to refer applicants to support organisations, as is the case in the ACT and South Australia.

However, all jurisdictions can do better to provide secure housing to those who lack an independent income. All jurisdictions should create a legislated exception to income requirements for people seeking asylum who do not have an independent income because they are denied access to Centrelink support and do not have work rights. All jurisdictions should provide financial support to such people assist them to sustain successful tenancies.

**The Verdict**

**The ACT is the best performer** when it comes to providing access to social housing for people regardless of their independent income status. The ACT does not require applicants to have an independent income to apply for social housing and links people who attend services without an independent income to support services.

**Tasmania is the worst performer** since it requires a person to have an independent income and to be eligible for a Healthcare Card.

However, all jurisdictions can do better to provide secure housing to those who lack an independent income.

All jurisdictions should create a legislated exception to income requirements for people seeking asylum who do not have an independent income because they are denied access to Centrelink support and do not have work rights. All jurisdictions should provide financial support to such people assist them to sustain successful tenancies.

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Funding
States and territories provide housing support through the provision of financial assistance. Funding may be delivered directly by government or government services or through community housing and homelessness services. Funding can be provided proactively, to assist people to enter the private rental market, and reactively, to assist people who are in crisis and are homeless or at risk of becoming homeless. The conventional wisdom is that it is better to support people to access housing proactively, rather than reactively. Supporting people to access housing at the earliest possible point helps to prevent the harms that come with homelessness and reduces public expenditure.

This wisdom is not widely reflected in state and territory approaches to people who are seeking asylum and refugees, who are often excluded from funding that would assist them to proactively access the private rental market. State and territory governments frequently provide assistance to people seeking asylum and refugees in an inconsistent manner or only once they are in crisis. Once in crisis, it is much harder for a person to access safe, secure and affordable housing. The current prevailing approach to housing funding for people seeking asylum and refugees benefits no one.

Private Rental Assistance
Interest free bond loans and other financial rental assistance, such as loans to assist with the payment of rent, can help people who are enduring hardship to access the private rental market. These forms of funding are regulated exclusively by policy. With the high level of demand on social housing and the limited number of houses available, the provision of financial assistance to enter the private market can take pressure off the public sector. However, there are citizenship and income eligibility barriers that prevent people seeking asylum and refugees from accessing such funding.

Case Study: New South Wales
‘FACS Housing Delivery – Private Assistance to Refugees’
In September 2015, the Commonwealth government committed to an additional intake of 12,000 refugees from Syria and Iraq. Approximately half of these people were settled in NSW.\textsuperscript{102} The ‘Family and Community Services (FACS) Housing Delivery– Private Assistance to Refugees–Evaluation’\textsuperscript{103} details FACS’ policy that was developed in response to this increased intake. One of the key aims of the policy was to ‘enhance existing private rental products to ensure refugees are supported to access stable affordable housing and prevented from becoming homeless’.\textsuperscript{104}

Key aspects of the policy include ‘Rentstart Bond Loan Pre-Approval’ and the provision of the ‘Start Safely Subsidy’ for people on a Women at Risk visa.\textsuperscript{105} While these measures only apply to permanent residents and citizens, and therefore excluded people seeking asylum and refugees who are on temporary visas, they are examples of the proactive measures that state and territory governments can take to ensure all people who are seeking asylum and refugees can access stable housing.

‘Rentstart Bond Loan pre-approval process’
The ‘Rentstart Bond Loan pre-approval process’ targets recently arrived refugees. FACS works with Humanitarian Settlement Service providers to secure private rental properties for refugees. This involves assisting refugees and service providers to estimate the affordability of rental properties. This information is then given to real estate agents, who are also informed of the kind of government assistance each client is eligible to receive.\textsuperscript{106} The aim of this policy is to

\textsuperscript{102} Materials received in response to Freedom of Information, from New South Wales Department of Family and Community Services Department to Julia Wallace, 26 October 2017, 3.

\textsuperscript{103} Materials received in response to Freedom of Information, from New South Wales Department of Family and Community Services Department to Julia Wallace, 26 October 2017.

\textsuperscript{104} Ibid 4.

\textsuperscript{105} Women at Risk Visa (subclass 204) is available to women who are seeking asylum who do not have protection of a male relative and are in danger of victimisation, harassment or serious abuse because of their gender. Australian Government Department of Home Affairs, Women at Risk Visa (Subclass 204) <https://www.homeaffairs.gov.au/trav/visa-1/204—>.

\textsuperscript{106} Materials received in response to Freedom of Information, from New South Wales Department of Family and Community Services Department to Julia Wallace, 26 October 2017, 9.
given real estate agents confidence in the ability of refugees to sustain their tenancies.

As a result of the ‘Rentstart Bond Loan pre approval process’, between 2016 and 2017, 346 Bond Loan Applications were submitted by refugees. Of those 346 applicants, 277 secured properties in the private rental market. During this time, there was a 240 per cent increase in Rentstart Bond Loans and an 85 per cent increase in Advance Rent accessed by refugees. Advanced Rent is a government grant that is available to people who are receiving a Rentstart Bond Loan.

The ‘Rentstart Bond Loan pre-approval policy’ is an example of the kind of creative, proactive and collaborative steps that state and territory governments can take to improve access to housing for people who are seeking asylum and refugees.

**Women at Risk Visa (visa subclass 204) eligibility to apply for Start Safely Subsidy**

In 2016, the FACS Start Safely private rental subsidy became available to women on a Women at Risk Visa. The Women at Risk Visa is a subclass visa that gives priority to refugee women who are particularly vulnerable. Eligible women are given a rental subsidy of 25 per cent of the total rental amount. This subsidy decreases over time, and reaches 0 per cent at the end of three years.

Feedback from FACS staff noted the great stabilising impact of the policy, with some recipients of the subsidy going on to undertake masters, nursing and counselling courses. This tapered subsidy recognises the particular vulnerability of people who have recently arrived in Australia and the capacity of such people to work towards stability. It is a shining example of the steps that can be taken by state and territory governments to ensure the most vulnerable members of our community are given the support they need build stable lives in our communities.

Other important aspects of the policy include:

- The state wide use by FACS of All Graduate Interpreter Services, where clients require an interpreter;
- The establishment of ‘Visa Entitle Verification Online System’, which allowed FACS staff to make on the immediate verifications of a client’s refugee status, thereby avoiding long delays; and
- Training in the policy for housing staff.

The ‘FACS Housing Delivery–Private Assistance to Refugees–Evaluation’ notes that training for housing staff could be strengthened to ensure that all staff are aware of the policy, and that it is being administered fully and consistently.

The NSW Government’s proactive and considered policy is an outstanding example of the kinds of support that state and territory governments can provide to people who are seeking asylum and refugees, to enable them access long term housing. It should be noted that information about this policy was obtained exclusively through a Freedom of Information request. This raises concern about the accessibility of information about the policy and the ability of eligible people and service providers to know about the policy. While the policy is only available to citizens or people who are on permanent visas, it is a model that can

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107 FACS does not record information about when a person arrived in Australia or the specific visa they are on. FACS used 16 countries known to have a significant number of refugees arriving in Australia as an indicator of assistance provided to refugees. Materials received in response to Freedom of Information, from New South Wales Department of Family and Community Services Department to Julia Wallace, 26 October 2017, 4.

108 Materials received in response to Freedom of Information, from New South Wales Department of Family and Community Services Department to Julia Wallace, 26 October 2017, 32.

109 Ibid.


111 Materials received in response to Freedom of Information, from New South Wales Department of Family and Community Services Department to Julia Wallace, 26 October 2017, 9.

112 Ibid 24.

113 Ibid 9.

114 Ibid 9.

115 Ibid 9.

116 Ibid 19.

117 Ibid 21-22.
be applied to all people who are seeking asylum and refugees. Further, the policy is an example of an approach that can be adopted in policies across health, housing and education.

**Visa status**

Neither the ACT nor South Australia have citizenship or permanent residency requirements to access private rental assistance, and therefore provide access to private rental assistance to people who are seeking asylum and refugees regardless of their visa status. South Australia provides a bond guarantee, whereby an undertaking is made to a property owner or agent that Housing SA will pay for verified, legitimate claims at the end of the tenancy. South Australia also provides rent in advance and arrears in the form of a grant. The ACT provides bond loans and loans for the payment of two weeks’ rent in advance.

Queensland and the Northern Territory provide some people seeking asylum access to funding by specifying particular visas that a person can hold to be eligible. In Queensland, Australian citizens, permanent residents, and TPV and Bridging Visa holders are all eligible for a bond loan. In the Northern Territory, TPV holders are eligible for a bond loan.

NSW and Victoria have citizenship and permanent residency requirements. To be eligible for a Victorian Government interest free bond loan a person must be a permanent resident or Australian citizen.

The NSW Government provides a range of private rental assistance services and products. While eligibility for each product differs, products and services are only available to people who are eligible for social housing.

People who are seeking asylum and refugees who are not permanent residents or citizens are therefore excluded. NSW Government offers 75 per cent and 100 per cent interest free bond loans, Statements of Satisfactory Tenancy, Private Rental Brokerage Services, Brokerage Funds, Tenancy Guarantees and Private Rental Assistance Policy Supplement.

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119 Ibid.

120 Housing ACT, *Rental Bond Loan Scheme*, May 2012, 1.


Western Australia and Tasmania have strict citizenship and permanent residency requirements excluding people seeking asylum from accessing interest free bond loans. In Western Australia, applicants must be citizens or permanent residents. The Housing Authority Bond Loan policy is explicit in stating that ‘applicants with visas allowing temporary residency will not be eligible for a Bond Assistance Loan’. In Tasmania, the Private Rental Assistance Scheme administers bond assistance and requires a person be an Australian citizen.

**Conclusion**

South Australia and the ACT’s approach of having no citizenship or permanent residency requirements is not only the best approach for promoting access for people seeking asylum and refugees to enter the private market, but it can also take the pressure off the public housing system. NSW should also be commended for its efforts to create pathways to private rental assistance for recently arrived refugees.

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<th>The Verdict</th>
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</thead>
<tbody>
<tr>
<td><strong>South Australia and the ACT are the best performers</strong> when it comes to providing private rental assistance to people regardless of their citizenship or permanent residency status. NSW should also be commended for its efforts to create pathways to private rental assistance for recently arrived refugees.</td>
</tr>
<tr>
<td><strong>Western Australia and Tasmania are the worst performers</strong> since they apply strict citizenship and residency requirements.</td>
</tr>
</tbody>
</table>

To meet the standard set by the ACT, all jurisdictions should remove citizenship and permanent residency requirements for access to government funded private rental assistance. This means that they should, like in the ACT, assess eligibility for interest free bond loans based on the following criteria.

A person must:
- meet an income test based on household size;
- have no available cash or convertible assets over $10,000;
- have no outstanding debts with Housing ACT; and
- be able to demonstrate that you are able to satisfactorily meet the obligations and payments required to sustain a tenancy in a private rental property.

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130 A Private Rental Subsidy is provided to assist a client accessing affordable private rental accommodation while waiting for a suitable housing property to become available. Department of Family & Community Services, Private Rental Assistance Policy (22 November 2018) <https://www.facs.nsw.gov.au/housing/factsheets/rentstart-bond-loan>.

131 Government of Western Australia Housing Australia, Housing Authority Bond Loan (Private Rental Housing Assistance), July 2017, 7.

132 Email correspondence from Housing Tasmania, 4 September 2017.
Income requirements

To access private rental assistance in the ACT a person must demonstrate that they are able to satisfactorily meet the obligations and payments required to sustain a tenancy in a private rental property.133

In all other states and territories the rental property must not exceed a certain percentage of the applicant's total weekly income. The percentage of total weekly income that the rental property must not exceed varies from state to state: 50 per cent in NSW134 and South Australia,135 53 per cent in the Northern Territory,136 55 per cent in Victoria137 and 60 per cent in Queensland138 and Western Australia.139 This makes accessing government loans difficult for people on low incomes. The challenge is even greater for those people seeking asylum and refugees who do not have work rights and who receive government support below the standard payment. The point of difference is in any applicable exceptions.

South Australia has the widest exception which might provide people seeking asylum and refugees who do not meet the income requirements the greatest chance of accessing funding. In South Australia, an exception applies where a person has 'special circumstances'. This includes where the person is moving due to domestic abuse, their safety is at risk, they can substantiate that they are homeless because they do not have access to accommodation, they are experiencing a housing crisis, they have a serious health or disability issue that hinders access to private rental accommodation or they are experiencing temporary financial hardship.140

However, this exception does not explicitly include people who are seeking asylum and refugees. The particular hardship experienced by people seeking asylum and refugees who do not have work rights, who have no access to Centrelink support or have only partial access to Centrelink support warrants their inclusion as people with 'special circumstances'. While South Australia's exception provides scope of their inclusion, this should be clearly articulated in South Australia's policy and those criteria should be legislated.

NSW and Victoria provide very limited exceptions. In NSW the limited exceptions that apply are the same as under the NSW social housing policy. The NSW social housing policy allows partners and dependent children who are temporary residents awaiting permanent residency to be included in the household of an eligible person who is an Australian citizen or permanent resident.141 It is not clear from the policy whether such people can also apply for a bond loan. Additionally, people who are escaping domestic or family violence may be considered for temporary accommodation.142 It appears that people who are seeking asylum who are escaping domestic or family violence may be considered for a bond loan in NSW.

In Victoria, a limited exception is created for people on a Permanent Protection Visa or a Resolution of Status Visa.143 These are very

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133 Housing ACT, Rental Bond Loan Scheme, May 2012, 1.
136 Northern Territory Government, Help with Set up Costs for Private Rental, 27 June 2017.
137 Housing Victoria, Bond Loan Scheme Policy and Procedure, February 2015, 41.
139 Government of Western Australia Housing Australia, Housing Authority Bond Loan (Private Rental Housing Assistance, 13.
140 South Australian Department of Social Inclusion and Communities, Private Rental Assistance Policy, 14 June.
141 Victorian Department of Health and Human Services, Victorian Housing Register: Eligibility Criteria Operational Guidelines, April 2017, 3; New South Wales Department of Family and Community Services, Eligibility, 5 June 2017.
143 Housing Victoria, Bond Loan Scheme Policy and Procedure, February 2015, 28.
limited exceptions and do not allow people seeking asylum and refugees of temporary visas access a bond loan.

Queensland, Western Australia and the Northern Territory provide no exceptions. People seeking asylum and refugees who do not meet the income requirements will not be granted a bond loan or similar assistance.

Information about eligibility for a Tasmanian Bond Loans is not publicly available.

**Conclusion**

South Australia’s approach of creating an exception to income requirements for a person who has ‘special circumstances’ is the best existing model for removing barriers for people seeking asylum and refugees. However, people seeking asylum and refugees must still prove they fall within one of the listed exceptions. As such, South Australia falls short of creating a right of access for people seeking asylum and refugees who are excluded because of income requirements.

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**The Verdict**

**South Australia is the best performer** when it comes to providing access private rental assistance to people regardless of their income status. South Australia’s approach of creating an exception to income requirements for a person who has ‘special circumstances’ is the best existing model for removing barriers for people seeking asylum and refugees. However, even in SA people seeking asylum and refugees must prove they fall within one of the listed exceptions.

**Queensland, Western Australia and the Northern Territory are the worst performers** since they provide no exemptions. Tasmania also performs poorly by having no publicly available information about eligibility for Bond Loans.

All jurisdictions should create a legislated exception to income requirements for people seeking asylum who do not have an independent income because they are denied access to Centrelink support and do not have work rights.

While there is no existing model, states and territories should adopt Queensland’s policy with respect to access to social housing to interest free bond loans. In Queensland at least one person who will sign must earn an independent income. Must receive independent income of $214.55 or more and have received four weeks leading up to the application for social housing. A person who holds a TPV and does not have an independent income may apply for housing assistance.

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145 Government of Western Australia Housing Australia, *Housing Authority Bond Loan (Private Rental Housing Assistance)*.

Providing equal access to people in crisis

Homelessness services
State and territory governments fund homelessness services that provide support, such as crisis and transitional accommodation, to people who are homeless or at risk of becoming homeless. Typically, homelessness services are at most a matter of policy, governed by executive spending discretion and almost never legislated.

The procedures around such services are complex, varied and difficult to navigate. Some state and territory governments set out eligibility requirements in guidelines or policies that apply to services. Often these guidelines will be used in tandem with the policies of the individual services. Other state and territory governments leave eligibility to be determined wholly by service providers.

Some jurisdictions have policies or guidelines that explicitly state that visa and income status are not a barrier to accessing services. However, there is confusion and inconsistency in the application of these policies and guidelines.

In Victoria, the homelessness system is organised under the Opening Doors Framework. Services are provided by non-government, local government and church-based organisations that receive government funding. Funding is provided through Homelessness Services and the ‘Housing Establishment Fund’ (HEF).

Homelessness Services provide a range of accommodation and support services to people who are, or are at risk of, experiencing homelessness. Under the Victorian Government’s policy, homelessness is the primary determinant for eligibility. Support should be provided regardless of visa status and income.147

HEF provides financial assistance to people who are homeless or in crisis. Assistance is assessed against the Department of Health and Human Services income and asset eligibility criteria for access to public housing and the Bond Loan Scheme. Most applicants for HEF will be receiving Centrelink. However, HEF may be provided on a discretionary basis to assist applicants who do not meet the income eligibility criteria but are in significant housing difficulty. Again, the primary determinant is homelessness or a risk of homelessness.

Notably, HEF funding can be provided as a grant where an applicant is ineligible for a Victorian Government Bond loan. This creates an unusual and complex framework, where applicants must first prove that they are ineligible for a Victorian Government Bond loan, and then apply for a HEF loan, which is funded by the Victorian Government.148

While visa and income status should not be a barrier for people seeking asylum and refugees in Victoria seeking access to homeless services, the ASRC report ‘Locked Out’149 identified that many Housing Services that distribute HEF funding reject people seeking asylum on the basis that they do not have access to income.150 The report found a high level of variability in the willingness of service providers to provide support for people seeking asylum.151

There appears to be a high level of inconsistency and confusion about the eligibility of people seeking asylum and refugees generally.

In NSW, homelessness services are delivered through the Specialist Homelessness Services program.152 The NSW Government funds non-government organisations to deliver services. As in Victoria, those who are homeless or at risk of homelessness are eligible.153

In Queensland, Specialist Housing Services provide housing services.154 Specialist Housing Services determine their own eligibility

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147 Victorian Department of Health and Human Services, Homelessness Service Guidelines and Conditions of Funding, 2.1, May 2014, 5.
148 Victorian Department of Health and Human Services, Homelessness Service Guidelines and Conditions of Funding, 2.1, May 2014, 4.
150 Ibid 3.
151 Ibid.
152 New South Wales Department of Family and Community Services, Specialist Homelessness Service: Program Guidelines, 2014, 5.
153 Ibid.
criteria, but are required to operate with low entry or no entry requirement for clients, and must not restrict access on the basis of a person’s ability to pay.\textsuperscript{155}

In South Australia, the Homelessness Support Housing Program provides accommodation and support to vulnerable homeless people.\textsuperscript{156} Housing SA, Community Housing Providers, Specialist Homelessness Services and other non-government organisations deliver the program. A person is eligible if they are eligible for social housing and are ‘at risk of becoming homeless’.\textsuperscript{157} As there is no citizenship eligibility requirement to access public housing in South Australia, people seeking asylum and refugees are eligible.

While all states and territories provide funding to homelessness services, some state and territories do not have policies and guidelines that outline eligibility. Western Australia, the ACT and the Northern Territory all oversee a range of homelessness services, though none of these jurisdictions have any publicly available policies or guidelines on how these services are to be delivered.

Tasmania is the only jurisdiction that actively excludes people from accessing homelessness services because of their visa status. To be eligible for homelessness services in Tasmania a person must be an Australian citizen or permanent resident. In response to a Freedom of Information request, the Tasmanian Department of Health and Human Services stated that ‘generally, services and support relating to the housing of refugees and people seeking asylum is administered at a national level. However, it is possible that local third parties providing services to refugees and people seeking asylum may utilise some community tenancy properties, but this is not managed through the Department’.\textsuperscript{158} The Tasmanian Government’s response suggests that it does not believe it has an obligation to provide safe and secure housing for people seeking asylum and refugees living in their communities. This directly contradicts the purposes to be taken into consideration under the \textit{Homes Act 1935} (Tas), including the need to ensure that people most in need\textsuperscript{159} are provided access to safe, secure and appropriate housing.\textsuperscript{160}

\textbf{Conclusion}

Explicit policies or guidelines that state visa and income status are not a barrier to accessing homelessness services, such as those that exist in South Australia, Queensland, NSW and Victoria provide the clearest right of access to homelessness services for people seeking asylum and refugees. However, significant work needs to be done to ensure that these policies and guidelines are widely understood and uniformly applied. State and territory governments should make it explicitly clear – ideally in legislation – that visa status is not a barrier to accessing homelessness services. The most effective way to do this would be to specify in relevant housing legislation that visa status is not a barrier to accessing homelessness services. Alternatively, governments should make widely publicised directives to homelessness services to comply with existing policies that state visa status is not a barrier to accessing homelessness services.

One option may be for state and territory governments to make it clear in relevant regulation or policy that visa status is not a barrier to accessing homelessness services, to make public statements highlighting this, and to issue directive to services to comply with the relevant regulation or policy.

However, the most effective way to clearly communicate that visa status is not a barrier to accessing homelessness services is to create legislation to that effect. In doing so, it is important to recognise that housing services

\begin{itemize}
\item \textsuperscript{155} Queensland Department of Housing and Public Works, \textit{Homelessness Program Guidelines, Specifications and Requirements}, 3.0, February 2017, 19.
\item \textsuperscript{156} South Australian Department of Communities and Social Inclusion, \textit{Homelessness Supportive Housing Program Policy} (16 February 2017) South Australian Department of Communities and Social Inclusion <http://www.dcsi.sa.gov.au/services/housing-sa/housing-trust-policies/specific-purpose-housing-programs-and-services/homelessness-supportive-housing-program-policy>.
\item \textsuperscript{157} Ibid.
\item \textsuperscript{158} Materials received in response to Freedom of Information, from Tasmanian Department of Health and Human Services to Julia Wallace, 16 October 2017, 1.
\item \textsuperscript{159} s 6B s(e)(i).
\item \textsuperscript{160} \textit{Homes Act 1935} (Tas) s 6B (a)(b).
\end{itemize}
should be able to specialise, and may turn away clients on the basis that do not fall within the area of specialisation of that particular services. For example, there are youth housing services that aim to meet the specific needs of young people. While it is entirely appropriate for services to specialise, visa status should not be an access barrier.

**The Verdict**

**South Australia, Queensland, NSW and Victoria are the best performers** when it comes to providing homelessness services to people seeking asylum regardless of visa status.

However, even these jurisdictions fail to make it sufficiently clear that visa status is not a barrier to accessing homelessness services.

**Tasmania is the worst performer** since it actively excludes people seeking asylum.

All jurisdictions must include a provision in their relevant housing legislation that states that ‘visa status is not a barrier to accessing homelessness services’.

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**International snapshots**

**United Kingdom**

The United Kingdom has legislated for the provision of housing support for people seeking asylum. Under the *Immigration Act 1999 (UK)*[^161] if a person seeking asylum or their dependant appears to be ‘destitute or to be likely to become destitute’[^162] they will be provided with initial accommodation[^163]. Initial accommodation will be provided while they are being assessed for longer-term support[^164]. A person is considered ‘destitute’ if they do not have adequate accommodation, do not have a way to obtain adequate accommodation or are unable to meet their essential living needs[^165].

Initial accommodation is short term housing support. The UK Home Office aims to make a determination as to whether a person is eligible for longer term support within 19 days[^166]. Initial accommodation is usually a large hostel with shared bedrooms and living spaces. Providers of the accommodation are obliged to provide three meals per day, bedding, toiletries and transportation to medical appointments[^167].

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[^161]: *Immigration Act 1999 (UK)* s 98.

[^162]: Ibid s 95(1).


[^164]: *Immigration Act 1999 (UK)* s 98(2).

[^165]: Ibid s 98(3).


If a person seeking asylum is deemed eligible for support they will usually be provided with a flat or a share house. Where possible, families should be housed in self-contained accommodation.\(^{168}\)

While both the initial accommodation and the accommodation provided after the initial accommodation have been subject to criticism for failing to meet the needs of people seeking asylum,\(^ {169}\) the United Kingdom does provide an example of legislatively enshrined access to housing that goes a significant way towards addressing the housing needs of people seeking asylum.

**Sweden**

The Swedish Migration Agency provides housing support to people seeking asylum. People seeking asylum can elect to live in housing provided by the Swedish Migration Agency or can elect to find and fund their own accommodation. Rent, electricity and water are government funded when accommodation is provided by the Swedish Migration Agency.\(^ {170}\)

People seeking asylum who are housed by the Swedish Migration Agency are predominantly provided with private houses or apartments.\(^ {171}\) In 2016, 51 per cent of people seeking asylum housed by the Swedish Migration Agency were provided with individual flats. The remainder were housed in temporary accommodation of variable quality and were at times required to share accommodation with other people seeking asylum.\(^ {172}\)

While there have been questions raised about the quality of some of the housing provided by the Swedish Migration Agency, particularly in 2016 when a large influx of people seeking asylum put some strain of the available accommodation,\(^ {173}\) Australia can learn from Sweden's approach of offering people seeking asylum a choice between government supported accommodation or meeting their own housing needs. Additionally, Australian jurisdictions can learn from Sweden's focus on actively providing housing support to people seeking asylum in need.

\(^{168}\) While the Home Office manages the eligibility process, the accommodation is managed by private companies who are contracted by the home office. The private companies are contractually obliged to provide families with self contained housing.


\(^{171}\) Ibid.

\(^{172}\) Ibid.

\(^{173}\) Ibid.
Housing
How they stack up
Primary and Secondary Education

‘Building the Education State is about giving every Victorian the opportunity to succeed in life, regardless of their background or circumstance.’

James Merlino,
Victoria Minister for Education

Generally, government education in Australia is free for local students, but not for ‘international’ or ‘overseas’ students, who are expected to pay significant fees. In some states, these terms include people on TPVs. By contrast, students on refugee visas with permanent residency are consistently treated as local students.

Recognising that children seeking asylum are ‘expected to attend school’ in line with relevant state laws, many states have implemented policies that waive fees for these children.

The purpose of this section is to highlight gaps in each state and territory between law, policy and the practical reality of enrolling refugee and children seeking asylum in government schools.

These policies should be elevated into legislation and should be consistent across states to ensure that practical barriers to accessing education for refugee and families seeking asylum are removed.

Commonwealth

To give a complete picture of states’ roles in providing primary and secondary education, it is useful to also note the federal government’s contribution. The Status Resolution Support Service (SRSS) is a transitional assistance service provided by the federal government to people it considers to be ‘illegal maritime arrivals’. At the time of writing, the SRSS provides funding assistance directly to state primary and secondary schools where students are enrolled, to the value of $450 per SRSS student, known as the ‘Schooling Requirements Package’.

Given this support and the power of the Commonwealth to direct funding to state schools at its discretion, the Commonwealth is a key player in the provision of education by states.

Additionally, the media has reported that there are memoranda of understanding (MoU) between the federal government and each state government (except Western Australia), in relation to the provision of Commonwealth and state funding for services to those seeking asylum living in the community. These were the subject of specific Freedom of Information requests in every state between September and December 2017 by the authors of this report. Only a single memorandum was provided.

by NSW. Internal communications between Victorian and federal education departments, released under Freedom of Information, reveal that the governments were working towards a MoU as early as 2011, until at least 2013. The decision letter received from the Victorian Government in response to a Freedom of Information request indicated that access to one document had been ‘denied in full’.178

New South Wales
Under the *Education Act 1990* (NSW), it is a parent’s duty to enrol their school-aged child in school.179 No residence requirements are mentioned.

The *Education Act* mandates free instruction in NSW Government schools, with the exception of overseas students.180 The Act gives the Secretary of the Department the power to fix fees for overseas students, or classes thereof,181 or exempt them from paying fees altogether.182

The NSW Department of Education has a specialised advice and support service, called the Temporary Residents Program (TRP), which assists in the process of enrolling children on certain temporary visas in government schools.183

Eligible visa subclasses for the TRP, and their associated fees and enrolment conditions are set out in a document produced by the TRP and published on their website.184 This document indicates that children holding refugee, asylum seeker, or bridging visas are eligible to apply for enrolment in a NSW government school. According to a departmental information sheet published on the TRP website, no temporary residents are eligible to enrol in selective high schools.185

This is reflected in the TRP’s schedule of visa subclasses and enrolment conditions document, as TPV holders are not required to pay the ‘Temporary Residents Program education fee’, which is fixed until 2019 at $5 200 for Kindergarten to Year 10, and $6 200 for Years 11 and 12.186

Bridging visa holders do not receive the same automatic exemption from the education fee, but may apply for a specific exemption based on their circumstances. Possible ‘specific circumstances’ giving rise to an exemption are set out in a document published in a NSW Department of Education policy document.187 This states that students holding an ImmiCard issued by the Department of Home Affairs are exempt from both the administration fee (which is $110 at the time of writing) and the education fee.

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179 *Education Act 1990 (NSW)* s 22.
180 Ibid s 31.
181 Ibid s 31A(1)
182 Ibid s 31A(3)
185 Ibid.
As many refugee, asylum seeker and bridging visa holders do hold ImmiCards, it is expected that this exemption would be relied upon regularly in respect of both fees.

In summary, the NSW legislation leaves it open for students who are refugees or seeking asylum to access government schools, and the Secretary has the power to determine their liability for fees. Currently, information about eligibility for fee waivers is published online by way of departmental policy and the information sheet mentioned above, but is not explicit in any legislation. While a fee exemption is available to all ImmiCard holders, this is not obvious in the Department’s documentation, nor is it directly referable to any legal instrument – rather, it is only implemented as a matter of policy. While NSW is currently providing free education to refugees and people seeking asylum, the lack of entrenchment in any formal written document results in a lack of certainty for those looking to enrol their child in a government school.

Victoria

The Education and Training Reform Act 2006 (Vic) mandates enrolment and attendance at school of school-aged children without imposing any residence requirements, and entitles each child to enrolment at ‘his or her designated neighbourhood government school’. The legislation indicates that instruction in government schools is to be free to students under 20 years old, with the exception of overseas students. The Minister has the power to make orders with respect to fees paid by overseas students. A Ministerial Order has been made pursuant to this section, which relevantly notes that students holding prescribed visa types are to be exempt from annual tuition fees. It also gives the Secretary discretion to exempt a student from fees if they are facing ‘extreme financial hardship’, and if the Secretary considers exemption consistent with prevailing Departmental policy. The Order refers to the ‘International Students – Visa Fee Table’ that can be found on the Department’s website ‘as amended from time to time’.

At the time of writing, this Visa Fee Table makes it clear that all students holding relevant refugee and temporary asylum seeker visas are exempt from paying fees, and students do not have to enrol in the International Student Program. It indicates that ‘An international student is not charged tuition fees to attend a government school in Victoria if they have applied for a Protection Visa. The student becomes fee exempt from the day the protection visa application is lodged’. Notably, in contrast to NSW and Queensland, the Victorian visa fee table provides an automatic fee exemption for holders of Subclass 051 bridging visas. Fees for all other bridging visa subclasses are dependent on the previous substantive visa.

The Victorian regime therefore provides a relatively clear basis on which children can enrol in government schools and access fee exemptions. However, the Ministerial Order states that the Visa Fee Table is subject to variation ‘from time to time’, and at the discretion of the Secretary. Victoria differs from other states that use visa fee tables, in that it grants an automatic fee exemption to holders of a Bridging Visa 051. While Victoria does go further than many other states towards entrenching the availability of education services to refugee or asylum seeking students, there remains a lack of certainty.


189 Education and Training Reform Act 2006 (Vic) s 2.1.1

189 Ibid s 2.2.13(1).

191 Ibid s 2.2.4 & s 2.2.8(1).

192 Ibid ss 2.2.8-2.2.9.


194 Ibid s 34(2).

195 Ibid.


197 Ibid 2.

Queensland

Under the Education (General Provisions) Act 2006 (Qld), it is the obligation of each parent to ensure their school-aged child is enrolled at school, with no residential requirement or limitation.\(^{199}\)

The Act also indicates that education is to be free,\(^{200}\) but with a carve-out for a person who is not an Australian citizen, permanent resident, or a child of either of these.\(^{201}\) The Act confers the power to determine,\(^{202}\) and to waive\(^{203}\) fees for non-citizens or permanent residents to the Chief Executive. The subsidiary legislation, the Education (General Provisions) Regulations 2017 (Qld) did not address fees at the time of writing.

A Queensland Department of Education and Training (DET) policy document entitled ‘Fee Exemptions for Eligible Dependent Students of Temporary Visa Holders’\(^{204}\) refers to the discretion of the Chief Executive to charge or exempt a person from paying a fee under the Act. One category of students to whom exemptions apply is people holding ‘visa subclasses identified as fee exempt on the DET International schedule of visa subclasses and enrolment conditions’.\(^{205}\)

The document provides a link to a schedule produced by the DET,\(^{206}\) which indicates that students on TPVs and SHEVs are fee exempt, and are ‘eligible to apply to enrol at any Queensland state school’.\(^{207}\)

This table bears close resemblance to the Victorian and NSW fee exemption schedules. Similar to those tables, the Queensland table indicates that all refugee and TPV holders enjoy fee exemptions; however bridging visa holders do not automatically receive fee exemptions in Queensland. The table states that fees depend on whether the immediate previous substantive visa was considered ‘fee paying’. Bridging visa holders are, however, eligible to apply for a fee waiver, which requires applicants to show they are ‘experiencing financial hardship due to exceptional circumstances (e.g. death or serious illness of the main income earner) or other circumstances at the absolute discretion of the Director-General or delegate’.\(^{208}\)

In contrast to the fee waiver regime relevant to refugees and people seeking asylum in NSW, the criteria for fee waiver are not as clearly defined,\(^{209}\) and there is no specified exemption for ImmiCard holders. The document sets out matters which are generally not considered ‘exceptional circumstances’, which includes ‘parent’s inability to find work’ as well as ‘application costs for further visas/permanent residency borne by parent’.\(^{210}\)

The Department of Education online policy library also includes a link to a comprehensive handbook produced by the Queensland Program of Assistance to Survivors of Torture and Trauma and aimed at all school staff.\(^{211}\) This provides a detailed overview of issues faced by refugees and people seeking asylum in Australia broadly, and Queensland more specifically.

Overall, the regime in Queensland is very similar to Victoria and NSW, in that the legislation provides discretion for the Chief Executive to charge fees for non-citizens and non-residents, and fee exemptions are set out in a schedule to a policy document, by way of visa fee table.

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199 Education (General Provisions) Act 2006 (QLD) s 176.
200 Ibid s 50.
201 Ibid ss 50(1)(c)-(d).
202 Ibid s 51(3).
203 Ibid s 51(6).
205 Ibid 2.
207 Ibid 4.
210 Ibid 3.
Compulsory education is required in Western Australia under the *School Education Act 1999* (WA) for every year of the ‘compulsory education period’ of each child. The Act also sets out a general residential qualification for a child to enrol. This is worded negatively, stating: ‘A child is not entitled to be enrolled at a government school unless (a) the usual place of residence of the child is in the State; and (b) the child is entitled to reside permanently in Australia’. Thus, the right to education depends on whether the child resides in the state and has a permanent visa or is a citizen. The Act goes on to indicate that children who do not meet those criteria are entitled to enrolment if they satisfy criteria prescribed by regulation.

The relevant regulations are the *School Education Regulations 2000* (WA). These regulations relevantly entitle children to enrolment at a government school if their ‘usual place of residence while in Australia is in Western Australia’ and they are the dependent child, or holder, of a visa type specified in Schedule 2 of the Regulations. Schedule 2 covers TPVs, although it does not expressly include SHEV or bridging visa subclasses.

According to departmental policy, students on refugee visas with permanent residence are considered ‘Category 1’ students, and are to be enrolled with the same entitlements as local students. Students on certain temporary residence visas, including TPVs and SHEVs, fall into Category 2, and are also entitled to the same enrolment conditions as local students. Bridging visa holders who have not previously held a substantive visa are considered fee paying students. According to information received in response to a Freedom of Information request, these students are directed to TAFE International Western Australia (TIWA) prior to enrolment (as will be expanded upon below, people directed to TIWA are assisted to find a local school and are charged a nominal fee only for education).

Under the Act, no fees may be charged for government education in Western Australia ‘unless the student is an overseas student or an adult student’. The Act states that fees for overseas students may be prescribed by regulation, and that regulations may also be made providing for reduction, waiver or refund of any fee imposed thereunder. The current regulations indicate that fees may be determined by the CEO ‘from time to time’, provided they do not exceed $25 000 for the school year. Factors the CEO may consider include: ‘the income and circumstances of students’ families’; or ‘the kind, or kinds, of visas held by students, or held by persons in respect of whom students are dependent children’.

In practice, the authors of this report are advised by the Western Australia Education Department that children seeking asylum do attend government schools, and that while they are considered ‘overseas full-fee paying students’, the annual tuition fee has been set

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212 *School Education Act 1999* (WA) s 9. ‘Compulsory education period’ is defined in s 6(c) as ages 5½ years – 17 ½ or 18 years.

213 *School Education Act 1999* (WA) s 76(1)

214 Ibid s 76(2).

215 *School Education Regulations 2000* (WA) r 14A.


218 Ibid para 1.1.

219 Ibid.

220 Letter from Pam Moss, Assistant Executive Director Statewide Planning and Delivery, WA Department of Education, to Renata Blythe, 15 October 2017.

221 *School Education Act 1999* (WA) s 98

222 Ibid s 103.

223 Ibid s 104(a).

224 *School Education Regulations 2000* (WA) r 63.

225 Ibid r 63(4)(b).

226 Ibid r 63(4)(c).
by the CEO at $1 per year. These students are funded by the Department on the same basis as local students. According to correspondence with the Western Australia Department of Education, this arrangement is in place ‘until amendments to the legislation allow students to enrol without paying a tuition fee’. In other words, a work-around has been created by the Department to enable students to enrol at public schools, because neither the Act nor the Regulations give the power to exempt these students from fees — only to determine the fees payable.

The regime in Western Australia is illustrative of the need for a simplified, unified system for enrolling bridging and protection visa holders in public schools. It is incongruent that Schedule 2 of the Regulations set out that TPV holders are fee exempt, but not SHEV or bridging visa holders. Furthermore, the fact that the Department of Education has had to fashion a work-around in order to provide (almost) free education for students on refugee or asylum seeker visas — but that this is not enshrined in any formal documentation — clearly shows that legislation, or at least publicly available policy documents, need to be updated to reflect the true situation. This is vital to not only provide certainty to people seeking to enrol their children in schools, but to provide clarity to the public as to what rights and entitlements actually exist.

South Australia
The Education Act 1972 (SA) mandates the enrolment of any child above six years of age, with no requirement as to residency.

In South Australia, the Director-General has the power to fix, waive or reduce school fees for ‘certain overseas and non-resident students’ by Gazette. This includes students who are dependants of people on a 457 Temporary Business Visa or ‘any other visa of a kind declared by the regulations to be included in the ambit of this paragraph’. However, the current Education Regulations 2012 (SA) do not prescribe any other kind of visa to be covered by state legislation.

The South Australian Department of Education has published an enrolment policy on its website, which states that non-citizens and non-permanent residents are eligible to enrol in state schools ‘subject to certain conditions’, and may be required to pay fees, depending on visa subclass. The policy does not go into further detail and a search of the website revealed no further relevant policies.

In response to a Freedom of Information request lodged in September 2017, the South Australian Department of Education and Child Development provided a copy of a document titled ‘Information for Schools re People Seeking Asylum’. This appears to be an internal document setting out information about the refugee visa process broadly, and enrolment procedures for state education providers.

This document notes that ‘students with a TPV or SHEV are treated as local students’ or as ‘citizen students’ in respect of enrolment procedures and fees — that is, they are funded by the South Australian Department of Education and are not liable for overseas student fees. People in community detention and bridging visa subclass 050 holders are funded to the same level as a local student by immigration and also do not pay overseas student fees. If granted a TPV, SHEV, Bridging Visa 051 or certain other temporary humanitarian visa, students will cease receiving funding from immigration and move to receiving state funding.

227 Letter from Pam Moss, Assistant Executive Director Statewide Planning and Delivery, WA Department of Education, to Renata Blythe, 15 October 2017.
228 Ibid.
229 Ibid.
230 Education Act 1972 (SA) s 75.
231 Ibid s 106B(c).
232 Ibid 11-12.
234 Ibid 7.
The comprehensive handbook document also recognises difficulties faced by people seeking asylum in accessing education, indicating that the South Australian Department of Education is alive to these issues. In particular, the internal document makes note of the challenges for students aged 18 or over: ‘Asylum seekers with community detention status and bridging visa holders are considered as overseas full fee-paying students to access tertiary education or secondary education if they are over 18 years of age’.240 In contrast, students with TPV or SHEV are ‘entitled to complete their secondary schooling regardless of age, in line with normal enrolment processes’. 241

In summary, the regime dictating the provision of public primary and secondary education to refugee, asylum seeker and bridging visa holders in South Australia is unclear based on material publicly available. Only through the response to the Freedom of Information request was an internal document identified, specifying that TPV and Bridging Visa 050 holders can access funded places at state schools.

Tasmania

The Tasmanian Education Act 2016 (Tas) provides for compulsory enrolment of children without any residence restriction.242 While no fees are generally payable for enrolment in government schools,243 the Minister ‘may require an overseas student to pay fees or charges to attend a state school at a rate the Minister determines’.244 Students or parents may apply to the Secretary for financial assistance in relation to such fees or charges, or certain other costs including any ‘essential materials’ required for the student’s education.245

Correspondence received in a relation to Right to Information request included a document entitled ‘Dependants in Schools’ dated 13 September 2017. This directs that dependants of any permanent visa or a ‘temporary & provisional humanitarian visa’, described as ‘Category 1’ visas, are treated ‘as local Tasmanian student[s]’ with the only applicable fees being a school levy of approximately $300-$850 per year.246 The document includes a schedule of visa types that fall under Category 1, including subclasses 200-204; 851, 866, 448, 449, and 786. The description of this category is that it includes ‘all permanent or humanitarian visas’ but does not set out the temporary protection visa types. It is unclear whether this is an inadvertent omission or whether Category 1 is intended not to extend to include TPVs and SHEVs.

There arises a further unanswered question in respect of school-aged children who are not dependants, and who seek asylum in Tasmania on their own.

Despite this, the Tasmanian regime aims to remove barriers to access generally, having positive consequences for Tasmanian residents who are refugees or asylum seekers. Correspondence received in a relation to the Right to Information request stated ‘Asylum seeker access [to education] is covered under needs-based funding, which is broadly applicable rather than specific to asylum seekers’.247 This approach is reflected in the Tasmanian education legislation.

Another section in the Tasmanian legislation is worthy of mention as a model provision in respect of granting access. An entitlement exists in the Act for a person who is ‘not a school aged child’ (i.e. not between 5-16) and ‘has not completed secondary education at the level provided by State schools’ to attend a State high school until they complete the final year; or for a period of two years full-time study, whichever occurs first.248 This could clearly have benefits for young people over 16 or over 18 who are finishing Year 12, who may otherwise be locked out of completing their secondary school education.

240 Ibid 11, para 2(c).
241 Ibid 14, para 2.
242 Education Act 2016 (Tas) s 11.
243 Ibid 138(1).
244 Ibid s 138(2).
245 Ibid s 246(1).
246 Materials received in response to Right to Information Request, from Tasmanian Department of Education to Renata Blythe, 19 October 2017, 6.
247 Letter from Rowena Taylor, Right to Information Delegate, Tasmania to Renata Blythe, 19 October 2017, 3.
248 Education Act 2016 (Tas) s 94.
**Australian Capital Territory**

The *Education Act 2004 (ACT)* makes it compulsory for school-age children who ‘live in the ACT’ to attend school.249

The Act sets out that ‘Education in government schools is to be free and no fees are chargeable for it’,250 however this does not apply to ‘people who hold a temporary visa under the *Migration Act 1958 (Cth)*’.251

Despite this, the ACT policy (as published on the Department of Education website) stipulates that ‘Asylum seekers applying for Refugee, Humanitarian or Protection Visas and who are currently on a bridging visa, are eligible for fee exemption for their dependants to enrol into an ACT public school’.252

To apply for this exemption, applicants need an ACT residential address, a copy of a protection visa acknowledgement letter, and a copy of their ACT Services Access Card.

A Freedom of Information request for formal policy documents underlying the information set out on the website was refused on the grounds that no documents exist.

While the current policy positively impacts refugee and asylum seeker visa holders, it is not entrenched. This creates transparency issues and means that the application of fee exemptions are subject to the whims of the policy makers of the day.

**Northern Territory**

Enrolment of school-age children ‘whose usual place of residence is in the Territory’ is compulsory under the *Education Act 2015 (NT)*.253 This ‘residence’ requirement, similar to the Western Australian legislation, refers to where the child resides rather than their status as a non-citizen or permanent resident. The Northern Territory provisions do not go as far as Western Australia in creating a limitation to education access based on residence, but it is of note because these are the only two jurisdictions which impose such requirement.

Confusingly, despite the requirement that school-aged children residing in the Northern Territory be enrolled, the legislation also states that international students may apply to the principal of a school for enrolment in government schooling, subject to eligibility criteria prescribed by regulation.254 These are found in the *Education Regulations 2015 (NT)*, and simply state that the applicant must be under 18 years old, and have ‘adequate arrangements in place for their accommodation, welfare and supervision for the duration of their proposed course of study’.255

It is unclear whether children who are seeking asylum or who are dependants of people who are seeking asylum and reside in the Northern Territory are classified as residents of the Northern Territory under the legislation and are required to attend school or whether they are classified as ‘international students’ and are not compelled to attend school, but may apply to the principal of a school, subject to the regulations.

Clarification was sought from the Northern Territory Department of Education on this point.256 The Department was unable to provide clarification and referred the request for clarification to its Legal and Legislation Team.257 The Department’s subsequent response stated that it does not normally provide legal interpretation to outside parties, however it did state that children of asylum seekers who are enrolled in a Northern Territory Government school are treated in the same manner as all students, in terms of their attendance and their parent’s obligation to notify the school of any changes in circumstances. The Department did not confirm whether children who are seeking asylum or who are dependants of people who are seeking asylum are required to enrol in

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249 *Education Act 2004 (ACT)* s 10.
250 Ibid s 26(1).
251 Ibid s 26(2)(b).
253 *Education Act 2015 (NT)* s 39.
254 Ibid s 66.
255 *Education Regulations 2015 (NT)* r 13.
256 Email from Julia Wallace to Debra Liddiard (Acting Executive Director Education Partnerships), February 1 2018; Email from Debra Liddiard (Acting Executive Director Education Partnerships) to Julia Wallace, February 1 2018.
257 Email from Debra Liddiard (Acting Executive Director Education Partnerships) to Julia Wallace, 21 February 2018.
school. It is concerning that the Northern Territory Department of Education does not itself know whether children who are seeking asylum or who are dependants of people who are seeking asylum are obliged to attend school.

With regards to fees, the *Education Act* states that government education is to be free for students who are enrolled in government schools, whose usual place of residence is in the Northern Territory and who are Australian citizens or permanent residents or who are the child of Australian citizens or permanent residents. Fees payable by international students however will be determined in the *Regulations*. The *Regulations* note this is to be done by Gazette, however a search of gazettes was conducted and did not identify material relating to refugee, asylum seeker or bridging visa holders.

The Northern Territory Department of Education has published a number of policy documents about school enrolment on its website, including an Enrolment Policy, Enrolment Eligibility Guidelines, Enrolment Procedures, and Enrolment Management and Priority Enrolment Guidelines. The Enrolment Eligibility Guidelines specify that free government school education is provided to children who have permanent residency in Australia. Permanent refugee visa holders would therefore be eligible, but perhaps not TPV or SHEV holders.

The Enrolment Management and Priority Enrolment Guidelines includes in its definition of ‘eligible’ children that they are a citizen, permanent resident or ‘hold a relevant visa’, but no further detail is given.

A Freedom of Information request for relevant documents made to the Northern Territory Department of Education in September 2017 was refused, partly on the basis that ‘information cannot be identified or does not exist’. The request for a copy of any memorandum of understanding between the territory and federal governments was also refused.

Like many states, the Northern Territory Government does not provide a clear statement through its legislation of whether refugee or asylum seeker visa holders are eligible to attend state schools, or to do so without being made liable for international student fees. There is further cause for concern based on the *Regulations* requiring scrutiny of students’ living arrangements. While this provision may have been implemented to promote students’ best interests, it could provide grounds for arbitrary reasoning. There are also issues raised by the *Regulations* for students aged 18 years or older, as the wording suggests these students would not be eligible to enrol in a state school.

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258 Email from Debra Liddiard (Acting Executive Director Education Partnerships) to Julia Wallace, 14 March 2018.
259 *Education Act 2015 (NT)* s75.
260 *Education Act 2015 (NT)*, s 67.
261 *Education Regulations 2015 (NT)* r 14(1).
268 Materials received in response to Freedom of Information Request, from the Northern Territory Department of Education to Renata Blythe, 22 December 2017.
269 Ibid.
Conclusion

Almost all of the states or territories provide a legislative basis for compulsory education of all school-aged children, free from residence requirements. The exceptions are Western Australia and the Northern Territory, which both mention residence requirements. The ACT mentions enrolment is compulsory for those who 'live in the ACT', but does not go further. The Northern Territory legislation provides for compulsory education for children ‘whose usual place of residence is in the Territory’. The Regulations are subject to further issues due to a provision requiring an assessment of students' living conditions.

The provision regarding access to state schools in the School Education Act 1999 (WA) is the only such provision that is worded negatively, stating that a child is not entitled to be enrolled at a government school unless they ‘usually’ live in Western Australia and they are entitled to Australian permanent residency. Students who do not fit in these categories may be enrolled subject to regulation, which relevantly includes TPV holders but not SHEV or applicants currently on a Bridging Visa E (BVE).

In regards to fees, which can constitute a practical barrier to children accessing education, many states remain silent on eligibility for fee-waivers or funding in the legislation and subsidiary legislation. It is most often the case that matters of enrolment procedure and fee waivers are captured in departmental (sometimes internal) policies and their schedules.

For example, Victoria, Queensland and NSW have produced similar, relatively comprehensive policy documents denoting visa types that are eligible for fee-waivers. These are well presented, publicly available documents, however there are problems with eligibility being dealt with in this less formal way, such as the lack of certainty due to susceptibility to change, lack of accessibility of information, and lack of consistency across states. The ACT’s policy on fees is presented on the website only, and in response to a Freedom of Information request, the Department of Education advised the authors of this report that no formal policy documents setting out their fee waiver arrangements exist. It seems that in South Australia, there is no clear statement of entitlement to enrol in material publicly available.

A particularly clear illustration of the problem of a lack of transparency is the current regime in Western Australia. The Western Australian Department of Education has fashioned a convenient ‘fix’ that allows refugee and asylum seeker students to access schools for a fee of $1. However, this has not been reduced to writing in any publicly available document.

The Tasmanian approach is to open up access as much as possible to groups in the community who need it, and this can have associated positive effects on refugees and people seeking asylum being able to enrol in schools.

The main issues in this area are the lack of clarity and consistency in expressing to the public what their entitlements are in terms of enrolling in public primary and secondary education. Eligibility for enrolment and fee exemptions or waivers ought to be codified in an accessible way. In many states and territories of Australia currently, this is not the case.

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270 Education Act 2004 (ACT), s 10
271 Education Act 2015 (NT), s 39
272 School Education Act 1999 (WA), s 76(1); School Education Regulations 2000 (WA), r 14A(b) and Schedule 2

273 Letter from Paula Murray, Acting Senior Advisor, Governance and Legal Liaison, ACT to Renata Blythe, 19 October 2017.
The Verdict

Clear and accessible information about eligibility

Victoria is the best performer when it comes to providing clear information about policies used to assess eligibility for enrolment and fee exemptions or waivers by people on temporary visas.

South Australia and the Northern Territory are the worst performers. Information about eligibility required a Freedom of Information request in South Australia while the Northern Territory lacked clear, publicly available information online.

To meet the standard set by Victoria, all jurisdictions must clearly outline on their departmental website, policies on eligibility and the availability of fee exemptions and waivers as well as the other costs people should expect to cover.

Exemption from fees

Tasmania is the best performer when it comes to making it clear that people seeking asylum are treated as local students and are not liable for fees.

To meet the standard set by Tasmania, all jurisdictions should clearly identify in policy or delegated legislation that temporary protection and bridging visa holders are treated as local students for the purposes of enrolment in government schools, and are not liable for fees.

In Tasmania:

Parents do not need to complete an application form or come through this office [the International Students office] if they are on a Permanent Visa, a Temporary & Humanitarian Visa... or permanent resident. Students in these situation [sic] are treated as a Tasmanian student. The only applicable fees, therefore, are the school levies.

Automatic fee exemptions for BV 051 holders

Victoria is the best performer when it comes to clearly exempting BV 051 holders from fees in Visa Fee Tables.

NSW and Queensland are the worst performers and do not clearly exempt BV 051 holders from fees.

To meet the standard set by Victoria, all jurisdictions that use Visa Fee Tables to set out liability of fees for different visa type holders (for example, NSW, Victoria, Queensland) should update these documents to provide automatic fee exemptions for BV 051 holders.

Legislative discretion to exempt students from fees

NSW is the best performer when it comes to providing, through legislation, that the government has the power to set or to exempt certain students from paying fees.

Western Australia is the worst performer on this measure. While it has adapted creatively to the dilemma, legislative reform is necessary.

To meet the standard set by NSW, all jurisdictions that have not already done so should implement similar provisions:

The Secretary may exempt an overseas student, or class of overseas students, from the requirement to pay a fee in accordance with this section, or refund all or any part of such a fee, in such circumstances as the Secretary considers appropriate.

Free instruction for students older than 18 to finish high school

Tasmania is the best performer when it comes to ensuring that students older than 18 years are entitled to free instruction at public schools to finish high school, particularly for those from refugee backgrounds.

To meet the standard set by Tasmania, all jurisdictions should implement similar provisions:

1) If a person is not a school-aged child and has not completed secondary education at the level provided by State schools, that person is entitled to attend a State school—

a) until the person completes the final year of secondary education provided by State schools; or

b) for a period not exceeding 8 consecutive terms of full-time study – whichever occurs first.
Tertiary education is mainly the remit of the Commonwealth government, although some states have made arrangements enabling refugee and asylum seeker visa holders to access certain higher educational services.

A report by the Refugee Council of Australia (RCOA), published in December 2015, provided a number of recommendations to Commonwealth, state and territory governments in response to barriers to education faced by people seeking asylum and refugees on temporary visas. More than two years on, many of these recommendations have not been taken up, and significant difficulties still exist for these prospective students.

**Tertiary education**

The main barrier facing people who wish to enrol in tertiary education, but who are on asylum seeker or bridging visas, is that they cannot access funding schemes such as FEE-HELP, HECS-HELP or CSP. As such, people who are seeking asylum are often prevented from accessing university or other higher education due to the prohibitive cost of international student fees. This has the effect of stopping people from improving their education and job prospects while in Australia.

It is noted that ‘permanent humanitarian visa holders’ (such as holders of refugee visa subclasses 200, 201, 202, 203, 204 or 866) are eligible for both FEE-HELP and HECS-HELP. A number of universities across Australia have introduced scholarships aimed at TPV holders. The report by RCOA describes a number of these in each state. State and territory governments have the power and responsibility to assist people who are seeking asylum to enhance their education and employment prospects and remove some of the barriers to accessing tertiary education.

**Case studies**

Our series of interviews with people seeking asylum demonstrated that education plays a vital role in both helping new arrivals prosper in their communities, and in maintaining individuals’ hope and independence at a time of great stress.

Shahad, a Tamil refugee on a six month bridging visa in Australia after roughly three years in Nauru detention, has had to rely on community organisations for English lessons. His experience demonstrates how Australia’s failure to provide even basic education services to people on certain visas has transferred this responsibility to community groups.

As a man living with a physical disability, mental trauma and poor English skills, Shahad’s most pressing concerns is finding meaningful work while living in Australia without the right to study. Whilst his bridging visa affords work rights, Shahad has to take free ASRC lessons to improve his English, which is vital for him to obtain work in Australia. He says that if he could undertake ‘some form of study to better myself — it could be a future work-related study, or English study — it would be helpful.’

Similarly, Desmond, a man without education or employment rights, has become dependent on food, accommodation, medication, and physical and mental health services provided by not-for-profits. He expresses concern about what life would be like without such support. Desmond expresses frustration that he is denied basic services in

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Australia and feels shame over being treated differently to Australian citizens. He says that, ‘I am not angry I do not have visa, but I am angry I cannot study, I don’t have income, I have [no] Medicare, [and] I can’t work.’

Even people who have come through the system in a relatively positive position voice criticism of Australia’s education services for people seeking asylum. Kim, a man who says he has gone from ‘from victim to victor’ during his time in Australia, lists his main concern as rescuing people seeking asylum lost through the cracks. He describes how education (or volunteer work, in his case) can be crucial in maintaining hope and security.

While Kim understands that there is lengthy, substantial bureaucracy required for the visa process, he urges for some kind of education program to be made accessible to people regardless of their visa status, as a means to both provide hope for people seeking asylum and reduce stigma within the community.

**International snapshots**

A look at other jurisdictions suggests that other governments also fail to provide adequate funding assistance for people seeking asylum to attend universities.

The United Kingdom’s policy seems similar to the Australian approach, in that eligibility for fee subsidies (that is, those which a local student enjoys) is dependent on status as a ‘home’ student, in contrast to an ‘overseas’ student. In Scotland, however, the situation is slightly different, as Regulations state ‘In Scotland, the child of an asylum seeker or a young asylum seeker (under 25) is treated as a home student if they meet a set of residence conditions including 3 years residence in Scotland.’

In Ireland, universities can decide whether to charge refugee students ‘third level non-EU fees or EU fees’, although both are considered ‘expensive’. Many Irish universities offer scholarships themselves, similarly to Australia.

In Canada, people seeking asylum must apply for ‘authorisation’ to attend university, and generally cannot access federal student aid until they are granted ‘convention refugee status’. However, some provincial governments may provide province-specific aid. The situation in the United States of America is much the same: federal aid is not available until the prospective student has secured ‘asylum status’, and there is variation among state governments in terms of funding provided.

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278 The Higher Education (Fees) Regulations (Scotland) 2011, reg 4 and Schedule 1.


281 Ibid.

282 Ibid.
The Verdict

Canada is the best performer when it comes to providing financial assistance to people seeking asylum to attend university.

To meet the standard set by Canada, states and territories should fill the funding gap left by the Commonwealth to enable temporary protection visa holders who are seeking asylum to attend university.

This could take many forms but may include a fund for high achieving people seeking asylum or those looking to pursue careers in certain areas. Australia should look to the Canadian approach where provinces provide aid to prospective students.

Universities providing direct assistance

Universities themselves should direct attention and funding towards removing barriers for people seeking asylum to access higher education.

A number of universities currently offer scholarships to both undergraduate and postgraduate level – many examples can be found using the useful tool on the RCOA website.
Vocational training

‘People come here looking for a fair go – and we’ll do everything in our power to give it to them.’283

Steve Herbert, Victoria Minister for Training and Skills

Vocational education and training (VET) courses include qualifications from Certificate I to IV, as well as Diplomas and Advanced Diplomas.

The ACT, NSW, South Australian, and Victorian governments have all implemented policies of subsidising course fees for people on refugee or asylum seeker visas to undertake VET. In Victoria, the Asylum Seeker VET Program284 is run in conjunction with the ASRC, and provides access to TAFE and private training organisations for people holding eligible visa types (Bridging Visa E, TPV or SHEV).285 According to documents received in response to a Freedom of Information request, training providers are given specialised advice about how to best support people seeking asylum, and the VET courses include community integration, and VET pathway advice.286 Students must cover course concession fees, material and student amenities fees, as well as their own transport.287

The relevant NSW program is ‘Smart and Skilled’,288 which commenced in January 2017. Under this program, fee-free training is provided to eligible refugees and people seeking asylum, in certain qualifications up to Certificate IV level.289 Subsidised training is available to higher level qualifications up to Advanced Diploma level.290

The South Australian Government provides subsidised places in training courses for all permanent residents, as well as eligible visa holders including TPV, SHEV and BVE holders.291 If the person has no formal training, they may be eligible for a bridging or a foundation course, one Certificate II course and two courses from Certificate III to Advanced Diploma level.292

As of 1 January 2017, the ACT extended the eligibility criteria for accessing its ‘Skilled Capital’ program to include refugees and people seeking asylum on both permanent and temporary visas.293 With regards to fees, students are eligible for concession rates if they hold a Healthcare Card or ‘can prove genuine hardship’.294 The ACT also offers loans to students participating in Skilled Capital programs.295

The Northern Territory provides funding through its Northern Territory Training Entitlement scheme. Certain vocational training courses are funded under the scheme, including

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286 Materials received in response to Freedom of Information Request, from Victorian Department of Education to Julia Wallace, 28 February 2018, Binder 2, 43.  
292 Ibid.  
294 Ibid 48.  
295 Ibid 49.
a number of Certificate III and IV courses.\textsuperscript{296} Eligibility criteria for a Registered Training Organisation (RTO) to receive the entitlement on behalf of a student relevantly state that students must live in the Northern Territory and hold a visa without work or study restrictions. The current \textit{Training and Skills Development Act 2016} (NT) is silent on any limitations on accessing vocational education due to visa status.\textsuperscript{297}

No information was found on programs to specifically remove barriers for people seeking asylum to access vocational education and training in Queensland, Tasmania or Western Australia. The Western Australian VET Fee policy sets out the types of temporary visas that attract fee waivers, but this does not include TPV holders.\textsuperscript{298} Among the categories of students attracting concession rates for VET are Healthcare Card holders and secondary school-aged persons not enrolled at school.\textsuperscript{299} Similarly, Tasmanian subsidies to attend TAFE are only available to Australian or New Zealand citizens, or people on a state sponsored visa on a pathway to permanent residency.\textsuperscript{300} This excludes people who are seeking asylum, although it is noted that Healthcare card holders are entitled to concession rates.\textsuperscript{301}

In conclusion, some state and territory governments have waived eligibility criteria that would otherwise prevent access for people on TPV and bridging visas. Fees are often subsidised, and NSW offers fee-free places in certain courses. NSW is the model state in this regard.

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\textbf{The Verdict}

\textbf{NSW is the best performer} when it comes to providing financial assistance to people seeking asylum to access vocational training. It has offered fee-free places in certain courses.

\textbf{Queensland, Western Australia and Tasmania are the worst performers} since they do not offer subsidised places.

To meet the standard set by NSW, states and territories should implement programs fully subsidising VET course fees for refugees and people seeking asylum.

Victoria provides an example of a successful program, although the government should remove fees in respect of the Victorian Asylum Seeker VET Program, delivered in conjunction with the ASRC.

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\textsuperscript{297} \textit{Training and Skills Development Act 2016} (NT).

\textsuperscript{298} Western Australia Department of Training and Workforce Development, \textit{VET Fees and Charges Policy 2018}, 1.0, January 2018, 8.

\textsuperscript{299} Ibid 16.


\textsuperscript{301} Ibid.
Apprenticeships

Across Australia, it is a requirement for non-residents undertaking apprenticeships to have a visa that comes with work rights. This does not exclude permanent refugee visa holders, temporary protection or most bridging visa holders, although exceptions may exist.

A barrier to accessing apprenticeships exists where states explicitly set out, in legislation or subsidiary legislation, that holders of asylum seeker visas of inadequate duration to allow completion of an entire apprenticeship course are not eligible.

For example, in Western Australia, the regulations indicate that apprenticeships are available to anyone holding ‘an Australian visa that will support employment and study arrangements specified in the training contract’[^302]. Furthermore, ‘the chief executive may refuse to register a training contract if... the party to be trained is not an Australian citizen, or does not hold an Australian visa that will support the employment and study arrangements specified in the training contract’[^303].

This means that people on certain protection visas may well be locked out of doing an apprenticeship if their desired course is longer than the duration of their visa: three years for a TPV or five years for a SHEV. One could also be barred from an apprenticeship if the application for the apprenticeship was delayed from the visa commencement date.

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**The Verdict**

All jurisdictions should offer apprenticeship options that can accommodate TPV and SHEV timelines.

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[^303]: *Vocational Education and Training (General) Regulations 2009 (WA) Reg 42(2)(cc).*
Education
How they stack up

Best

Worst
People seeking refuge from war torn nations show immense courage and resilience – it’s only right we give them the support they need to rebuild their lives in a new, safe home.304

Jill Hennessy, Victoria Minister for Health

Health services are generally available to people seeking asylum who are Medicare-eligible across Australian states and territories. Medicare eligibility, in all instances, is determined by whether or not the visa a person holds permits them to work.305 Work rights, as far as refugees and people seeking asylum are concerned, will depend not only on the particular type of visa they hold, but the individual conditions attached to each. Bridging Visa Es for instance will state whether the applicant has work rights in the visa grant letter.306

At the time of writing where an applicant is Medicare-ineligible and awaiting a resolution of their immigration status, they will be eligible for some level of assistance in accessing medical services under the Status Resolution Support Services (SRSS) Program.307 Alongside Health Affairs, the SRSS program is administered by a number of service providers nationwide, such as Life Without Barriers or, until the federal government announced in February 2018 it would not renew the contract,308 Red Cross. In addition to providing some assistance with respect to accommodation and financial support, the program ensures an applicant receives healthcare commensurate with what is available to the general Australian population through the mainstream public health system.309 It should be noted that at the time of writing, significant reductions in the ability of people seeking asylum to access SRSS have been announced,310 although the realities of these cuts remain unknown.

Even prior to the announced cuts, the Australian Government has often fallen short of providing sufficient support for people seeking asylum who are Medicare-ineligible and unable to access SRSS benefits. This has been the case where the individual is seeking or awaiting either a judicial or ministerial decision with respect to their refugee status, or when they are in Australia on a valid visa such as a student visa.311


As such, people seeking asylum are largely dependent on state and territory governments to ensure that they can access hospital and primary health services as well as ambulance services. However, people seeking asylum suffer from a range of legal and policy obstacles, including poor coordination between state and federal governments, and a lack of transparency around decisions to provide SRSS coverage. While some states and territories have committed to providing health services to all people seeking asylum as a matter of policy, others have fallen behind.

Even where state and territory governments have sought to provide equal access by means of delegated legislation and quasi-legislative instruments, these are often inaccessible and unclear. Problematically, they frequently empower healthcare providers with discretion to waive fees rather than guaranteeing healthcare access as a right. Moreover, the lack of transparency and entrenchment of these tentatively assured services means that they can change easily and without adequate notice.

Nonetheless, this report demonstrates that some Australian jurisdictions do better than others when it comes to ensuring the right to healthcare of people seeking asylum.

Case studies

While many people seeking asylum are denied Medicare due to their visa status, individuals we interviewed generally expressed gratitude for the level of alternative support in their communities. However, the lack of communication about accessible services and mental health support, along with a lack of understanding of the health impacts of the asylum seeking process, were named as issues that these people face on an ongoing basis.

Kim is currently denied Medicare and has largely been unable to receive government health care services, but still expresses immense gratitude to specialised health services such as Monash Health refugee clinic. His story demonstrates how even the bare minimum of healthcare can be life changing for those seeking asylum. Since coming to Australia, Kim has had to navigate intermittent federal healthcare services, including on-again-off-again Medicare eligibility, while recovering from mental trauma. He has also been caring for his wife, who has survived extensive health issues, including breast tumours. The pair received Medicare until their protection visa application was denied, and have since had to seek out community-based services:

‘It took a bit of a long time, the thing was awareness, we didn’t know if we were eligible or not. Unfortunately our lawyer he didn’t inform us, that’s why we’d been waiting-waiting-waiting and my wife got worse. But once ASRC told us ‘no you’re eligible’, so I don’t know if it was mistake or what but yeah it took time…’

However, Kim speaks highly of the services he has received, specifically in light of Monash Health’s otherwise ‘awesome’ care for him and his wife. In fact, he has volunteered at the clinic for the past three years, on top of a number of other volunteer roles, which he states have been crucial in maintaining his mental wellbeing.

Shahad’s journey for asylum has been long, difficult and mired in bureaucracy. He has been given proper medical assistance onshore, following accidents at offshore detention locations. He has been rushed between Nauru, Cocos Islands, Darwin, Brisbane and Melbourne as a consequence of multiple accidents relating to his prosthetic limb. He suffered three separate falls on Nauru, which he cites as a consequence of the harsh terrain and being kicked by a guard, and has undergone multiple surgeries on the Australian mainland.

Desmond, a man with limited English skills living with trauma and depression, highlights the negative health impacts Australia’s asylum seeker process can have. After five years of statelessness and a lack of federal support due to visa rejections, he expresses feelings of overt hopelessness, saying, ‘to be honest I don’t know anymore what I want to do and what I want from life’. Compounding this, Desmond’s stress has created a new requirement for blood pressure medication.

Hospital and primary health services

New South Wales

The objects of the *Health Services Act 1997* (NSW) include facilitating the ‘efficient and effective administration of the public health system’, as well as adopting the Medicare Principles as ‘guidelines for the delivery of public hospital services’. Further, the NSW Government’s Refugee Health Plan commits the State to prioritising access to inclusive services for people seeking asylum. The plan also claims that NSW Health is committed to ‘free and equitable access to hospital services for asylum seekers’. However, people seeking asylum face difficulties in practice when seeking to access healthcare services.

Under the Act, the Minister is entitled to attach conditions to the payment of any subsidies to health service providers. The *NSW Health Accounts and Audit Determination 2005* (NSW), compliance with which is a condition of subsidy, requires public health organisations to comply with the Minister’s policy directives.

By directive, people seeking asylum in NSW who are not eligible to be covered under SRSS are charged at the Medicare-ineligible rate (the rate that overseas visitors pay) unless they can demonstrate another basis for a fee waiver, such as being a victim of crime. Otherwise, they must request either a fee waiver or reduction based on satisfying a ‘financial hardship’ test or ‘other appropriate review’. Patients who are eligible for coverage under SRSS are charged under the ‘asylum seeker financial classification’ and must provide a letter identifying the particular service that they can receive.

As such, while the Act ensures that patients will not be deprived of care or treatment because of an inability to pay, Medicare-ineligible asylum seekers may be charged for hospital services at the rate of international tourists.

The 2016 Directive marks a shift from the earlier 2009 Directive, which granted fee waivers as a matter of course for people seeking asylum who were Medicare-ineligible in all NSW public hospitals for emergency care, some elective surgeries, ambulance services, as well as maternity and mental health services. It also ensured access to the NSW public dental system for urgent treatment on referral.

Victoria

The *Health Services Act 1988* (Vic) aims to provide care to all people in Victoria ‘irrespective of ... whatever their social or economic status’. While people seeking asylum are not entitled to free services as a matter of right, the Victorian Government ensures access as a matter of policy.

The Governor is entitled to make regulations with respect to fees for hospital services under the Act. No regulations have been made pursuant to s 158 of the Act relating specifically to asylum seeker access. Instead, the Victorian Government’s approach is summarised in its ‘Guide to Asylum Seeker Access to Health and Community Services in Victoria’.

According to the Guide, people seeking asylum are entitled to full medical care in Victorian public hospitals, including pathology, diagnostic, pharmaceutical and other...

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313 *Health Services Act 1997* (NSW) s 4(j).
314 Ibid s 4(d).
316 Ibid 31.
317 *Health Services Act 1997* (NSW) s 127(4).
318 NSW Health Accounts and Audit Determination 2005 (NSW) s 1.3.
320 Ibid.
321 Ibid 23.
322 *Health Services Act 1997* (NSW) s 71.
324 Ibid.
325 *Health Services Act 1988* (Vic) s 9(b).
326 Ibid s 158.
services. A three-step process has been put in place for determining eligibility for free services, which involves:

1. Determining Medicare ineligibility of any sort, including a no-work condition on their visa (Visa Condition 8101);
2. Determining the person’s status as an asylum seeker;
3. Determining whether or not they are eligible for SRSS, meaning that they should be referred to the Red Cross, which will either make a second referral to a support agency, or pay the bill.

Those who are Medicare-ineligible are not charged for services except in limited circumstances, such as non-admitted patients receiving pharmaceuticals or hearing aids. However, hospitals are given discretion to exceed this minimal standard. It is also ‘recommended’ that hospital social work staff refer those who are Medicare-eligible to other support services.

People seeking asylum are also entitled to some free community health services if they also meet a low-income test. An inability to pay cannot be the basis for refusing service, according to the Guide. People seeking asylum are ‘priority 1 clients’, meaning that they are prioritised in the provision of community health services. They may also access the Refugee Health Nurse Program. Finally, people seeking asylum are exempt from fees for public dental services and may access free immunisation, including for children’s catch-up vaccination.

**Queensland**

The Hospital and Health Board Act 2011 (Qld) adopts as guiding principles the objectives of the national healthcare system, including ‘social inclusion’ and ensuring ‘equitable access’. In July 2017, the Queensland Government recommitted to these principles with its announcement that it would automatically write off fees for people seeking asylum who are Medicare-ineligible.

Under the Act, the Department Chief Executive is empowered to issue binding policy directives with respect to fees for services. While the Act allows hospitals and health service providers to charge for services they provide, a 2017 Health Service Directive requires health service providers to ensure that there are ‘no costs directly charged to Medicare-ineligible asylum seekers for public health services’. The policy effectively reinstated a 2006 policy under which people seeking asylum have fees for treatment at public hospitals written off automatically on the basis of financial hardship and therefore have de facto free access.

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328 Ibid 2.
329 Ibid 5.
332 Ibid.
333 Victorian Department of Health, Community Health: Schedule of fees and income ranges (April 2016).
335 Ibid.

338 Hospital and Health Board Act 2011 (Qld) s 4(c)(vi).
339 Ibid s 4(a)(iii).
341 Hospital and Health Board Act 2011 (Qld) ss 47(1), 47(2) (g), 50.
The Queensland Government also provides for people seeking asylum through Refugee Health and Wellbeing: A Policy and Action Plan, which sets out its commitment to providing all people with healthcare as a matter of right.\textsuperscript{344}

Under the Oral Health Services Eligibility Guideline, refugees will be eligible for free public oral health services if they are a Queensland resident, eligible for Medicare, and receiving benefits from any number of concession cards, some of which are typically accessible to refugees.\textsuperscript{345} This will entitle them to a priority general course of care within the first 12 months of arrival, and continuing access to services the same as other eligible patients.\textsuperscript{346} People seeking asylum are not faced with the same requirements to prove eligibility, and will be given similar access provided they are properly referred by an authorised support agency.\textsuperscript{347}

**Western Australia**

The Health Services Act 2016 (WA) includes the object of ‘reduc[ing] inequities in health status’,\textsuperscript{348} as well as incorporating national Medicare principles.\textsuperscript{349} However, people seeking asylum are by law and in practice restricted from accessing free hospital services if they are not eligible for Medicare.

Under the Act, the Department CEO is empowered to issue binding policy frameworks for the provision of health services and the financial management of health service providers.\textsuperscript{350} The Department CEO is further entitled to issue directions requiring compliance with policy frameworks.\textsuperscript{351}

According to the Health Fees and Charges Manual 2016-17, people seeking asylum need to obtain a Medicare card to receive guaranteed free healthcare and are otherwise classified as ‘overseas’ patients.\textsuperscript{352} Thus, some people are given visas entitling them to work rights and full Medicare coverage for emergencies.\textsuperscript{353} Outside of this, there is no formal policy in Western Australia for affording healthcare to people seeking asylum who are Medicare-ineligible.\textsuperscript{354} The manual does provide that people seeking asylum should receive emergency and urgent treatment as a duty of care, regardless of their eligibility for Medicare.\textsuperscript{355}

The Department of Health funds the Humanitarian Entrant Health Service (HEHS), which provides free health assessment services for refugees, humanitarian entrants and asylum seekers who are granted a humanitarian visa settled in Western Australia (including those on Return Pending Visas).\textsuperscript{356} The eligibility lists visa classes 200, 201, 202, 203, 204 and 866, as well as Medicare-ineligible asylum seekers, provided that a referral is made as set out in the policies.\textsuperscript{357} Holders of a TPV and a SHEV are not expressly mentioned, although those visa classes entitle the holder to Medicare.

**South Australia**

The objects of the Health Care Act 2008 (SA) include providing ‘optimal health outcomes’ as well as facilitating ‘high-quality health services’.\textsuperscript{358}

Under the Act, the Minister is entitled to set fees in respect of hospital services by gazette.\textsuperscript{359} Further, the Minister has the power to ‘provide that no fee is payable in respect of...a service provided to a person of a specified class’

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346 Ibid 3.

347 Ibid.

348 *Health Services Act 2016* (WA) s 4(b).

349 Ibid s 5.

350 Ibid ss 26(2)(c), (e), 27.

351 Ibid s 28.


353 Ibid.


357 Ibid.

358 *Health Care Act 2008* (SA) s 4(a), (b).

359 Ibid s 44.
by notice in the gazette,\(^{360}\) yet it does not appear that this has been done with respect to people seeking asylum who are Medicare-ineligible.

According to a 2011 policy guideline, which is no longer publicly available, people seeking asylum may apply for fee waivers through equivalent processes for other chargeable patients.\(^{361}\) Hospitals are also provided limited discretion to negotiate payment plans with respect to co-payment for pharmaceutical services, but people seeking asylum will otherwise pay the rate of Medicare ineligible patients.\(^{362}\) The authors withdrew a Freedom of Information request after being advised that there were no documents recording ‘policies or directives that waive and/or offer concessional fees for asylum seekers accessing hospital services since 2008’.\(^{363}\)

However, the status of people seeking asylum who are Medicare-ineligible is unclear given that the Royal Adelaide Hospital states on its website that ‘asylum seekers and refugees are treated like public patients and do not need to pay for hospital services’.\(^{364}\) This could also be seen as indicative of the divide between ‘law’ and the real world.

Tasmania

The Health Act 1997 (Tas) also mandates the consideration of Medicare principles, which include social inclusion and equitable access.\(^{365}\) The Tasmanian Government has provided access to healthcare to people seeking asylum by regulation regardless of Medicare-eligibility.

The Governor is empowered to make regulations under the Act with respect to fees for hospital services.\(^{366}\) The Health (Fees) Regulations 2007 made under the Act specifically sets out an exemption for ‘Medicare-ineligible asylum seekers’, defined to include those who:

- have applied for a visa that has not been ‘finally determined’;\(^{367}\)
- are not entitled to Medicare benefits under the Migration Act 1958 (Cth);
- are not entitled to any benefits under the Social Security Act 1991 (Cth); or
- are not permitted to work under their visa.\(^{368}\)

Under the regulations, people seeking asylum who are Medicare-ineligible are ‘not required to pay a fee prescribed by [the] Regulations for any facility or service provided by or on behalf of the State’.\(^{369}\)

The regulations also prescribe fees for dental services,\(^{370}\) so people seeking asylum would be exempt from paying for dental services provided in a public hospital.

Australian Capital Territory

The Health Act 1993 (ACT) aims to guarantee ‘equitable access ... to health services’,\(^{371}\) to ensure that ‘cultural differences’ do not create a barrier to access,\(^{372}\) and that the ‘community is aware of the range of health services that is available’.\(^{373}\) Further, the ACT Government has pledged publicly to provide people seeking asylum with the same services as for refugees ‘wherever possible’.\(^{374}\) The government has implemented this commitment by ensuring equal access to health services by people seeking asylum who are not Medicare-eligible.\(^{375}\)

360 Ibid s 44(2).
363 Email correspondence to SA Health, 22 November 2017; 16 January 2018.
365 Health Act 1997 (Tas) s 5(a).
366 Ibid ss 7, 9(6).
367 Defined in s 5(9), Migration Act 1958 (Cth).
368 Health (Fees) Regulations 2007 (Tas), reg 8(1).
369 Ibid reg 8(2).
371 Health Act 1993 (ACT) s 10(b).
372 Ibid.
373 Health Act 1993 (ACT) s 10(e).
Under the Act, the Minister is entitled to set fees for hospital services by determination or regulation.376 The Health (Fees) Determination 2017 (No 2) (ACT) provides that people seeking asylum, including those with a pending request for refugee status and those seeking an appeal or making a humanitarian entrant claim,377 are eligible for ‘full medical care’ even though they are not Medicare-eligible.378 This entitles them to access ‘pathology, diagnostic, pharmaceutical and outpatient services’ in public hospitals without charge.379

Further, people seeking asylum who are Medicare-ineligible are also entitled to a Healthcare Card, affording them concessional access to public dental and community health services.380 The Schedule of Fees also exempts people seeking asylum from payment for tuberculosis testing.381

The ACT has also authorised the NGO Companion House to issue so-called Services Access Cards to people seeking asylum with a Protection Visa Acknowledgement letter from immigration confirming their eligibility. Recipients are entitled to a card for each of their family members for a six-month period.382 The program aims to ensure that people seeking asylum can actually access the services that they are entitled to and was developed in consultation with the ACT Refugee, Asylum Seeker and Humanitarian Coordination Committee.383

Finally, people seeking asylum may access targeted healthcare services through the Companion House Medical Service, which provides GP and primary health services. This is available to people seeking asylum in their first 12 months in Australia and then until they are referred to a community GP.

Northern Territory

The objects of the Health Services Act 2014 (NT) include the provision of ‘high quality health services to persons in the Northern Territory’ as well as the principles of the national health system.384 However, the Northern Territory lacks a formal policy to ensure that people seeking asylum who are Medicare-ineligible can access free hospital services.385

Fees for health services are determined by directive under the Act.386 The NT Hospital Fees and Charges Manual specifies that the Commonwealth government pays the fees of Medicare-ineligible immigration detainees, and this applies only in respect of the Royal Darwin Hospital.387

However, the manual does not otherwise provide for people seeking asylum who are Medicare-ineligible but not immigration detainees, except to say that Medicare-ineligible patients are liable to pay the costs of their medical care and that they are entitled to the ‘minimum medical care to stabilise their condition’ where they cannot provide assurance of their ability to pay.388

The Northern Territory Government provides some health services to people seeking asylum who are living in the community and in detention (including offshore detainees) under a MoU with the federal government.389 Otherwise, up until recently the Australian Red Cross was

376 Health Act 1993 (ACT) s 192(1).
377 Health (Fees) Determination 2017 (No 1) (ACT) reg 4(1).
379 Ibid.
380 Ibid.
381 Health (Fees) Determination 2017 (No 1) (ACT).
383 Joy Burch MLA, ‘Asylum seekers to be given better access to ACT services’ (Media Release, 5 September 2011).
384 Health Services Act 2014 (NT) s 4(1).
385 The NT Department of Health confirmed the absence of any ‘policies or directives that waive and/or offer concessional fees for asylum seekers accessing hospital services’: Materials received in response to Freedom of Information, from Northern Territory Department of Health, 25 October 2017; see also Erin Spike et al, ‘Access to primary health care services by community-based asylum seekers’ (2011) 195.4 Medical Journal of Australia 188, 189.
386 Health Services Act 2014 (NT) s 50.
388 Ibid 12.
Conclusion

Only Tasmania and the ACT have implemented determinations or regulations that are binding on health service providers which require the provision of free medical services to all people seeking asylum. In that respect, the two emerge as the jurisdictions most clearly guaranteeing rights of access in the legal, entrenched manner this report seeks to foreground as the preferable approach.

Other jurisdictions have only managed to provide access in a practical, rather than legal sense. For instance, while the approaches of Victoria and Queensland are currently comprehensive, these jurisdictions have largely left matters of healthcare access to policy directives and guidelines. While these may be binding on health service providers, they are also less transparent and more susceptible to change than regulations or statutory entitlements. The instability of this framework is particularly manifest in the context of Queensland, despite substantial recent progress.

Similarly, NSW relies on policy directives to ensure access. Whilst those directives have been implemented, the state falls even shorter than Victoria and Queensland in that it does not secure access to healthcare for all asylum seekers, relying instead on a discretionary model that is complex and denies the rights of people seeking asylum to free healthcare.

Finally, Western Australia, South Australia and the Northern Territory lack a clear legislative or policy scheme to effectively secure the rights of asylum seekers to access basic healthcare services. The possibility of a fee waiver on the basis of hardship, demonstrated by the Royal Adelaide Hospital, is no compensation for a system that fails to provide people a right to free healthcare.

The Verdict

The ACT is the best performer when it comes to providing hospital and primary health care services to people seeking asylum. The ACT’s approach is accountable, accessible and it entitles people seeking asylum to equality when accessing a broad range of healthcare services.

Western Australia and the Northern Territory are the worst performers. The Northern Territory and Western Australia both lack a formal policy or legislative instrument entitling all people seeking asylum to Medicare.

To meet the standard set by the ACT, all jurisdictions must create regulations which clearly establish the right of people seeking asylum to access a broad range of hospital and primary healthcare services.

States and territories should first define ‘asylum seeker’ broadly to encompass those who are not eligible for Medicare, as in the ACT:

Any person who:

a) has a current request for protection that is being assessed by the Commonwealth Government or:

b) having been deemed by the Commonwealth as not being owed protection, is seeking either a judicial review through the courts or is making a humanitarian entrant claim.

All jurisdictions should clearly exempt people seeking asylum from all fees associated with accessing a broad range of hospital and primary health services, as in the ACT:

→ Medicare non-eligible asylum seekers are to be provided full medical care including pathology, diagnostic, pharmaceutical and outpatient services in ACT public hospitals free of charge.

→ Medicare non-eligible asylum seekers are also to be given the same access as Healthcare Card holders, to public dental and community health services and are to be charged at the concessional rate.


Ambulance services

Free ambulance services
People seeking asylum who are on bands 4-6 of the Commonwealth SRSS program are entitled to Ambulance Victoria’s concession arrangements, entitling them to free ambulance transport. This will require the SRSS provider to demonstrate an applicant’s inability to pay, in which case the fee will be waived. In addition, the Victorian Government will provide for a fee waiver for a person seeking asylum who is not supported by SRSS, provided the same verification of circumstances is provided by any one of a number of nominated agencies. This does not appear to be set out under a binding directive which the Minister is empowered to issue, and as such appears to operate instead as policy.

In the ACT, the Minister may determine fees for emergency and ambulance services under the Emergencies Act 2004 (ACT). The Emergencies (Fees) Determination 2017 (ACT) entitles health card holders to free emergency and non-emergency ambulance services within the ACT. People seeking asylum who are Medicare-ineligible thus qualify since they are entitled to a health card.

In Queensland, permanent residents are entitled to access free ambulance services, with the Queensland Ambulance Service actually covering invoices issued by any other state or territory’s ambulance service, provided the patient can prove they reside in Queensland. Proof of residence includes a number of documents which a person seeking asylum or refugee could produce with relative ease, including a driver’s license, bank statement or concession card, and in instances where such documentation cannot be provided, a statutory declaration will suffice.

Limited access
In NSW, people seeking asylum who are Medicare-ineligible are not exempt from fees under the Health Services Regulation 2013 (NSW). Further, they cannot apply for an exemption since they will not have a Healthcare Card.

Western Australia at best offers a 50 per cent discount to recipients of certain Centrelink payments on their bill from St Johns Western Australia. It appears likely that those discounts do not apply to people seeking asylum however, nor does a Healthcare card provide any fee waiver rights.

Healthcare Card holders may be eligible for concessional fees with respect to ambulance services in South Australia, but people seeking asylum who are Medicare-ineligible would presumably not be covered. A Freedom of Information request revealed no policies or directives that waive or offer concessional fees for asylum seekers accessing ambulance services.

The Tasmanian Government generally waives ambulance fees for residents where...

393 Ibid
394 Ibid 2–3 (now n 81).
395 under s 40 of the Ambulance Services Act 1986 (Vic) 
396 Emergencies Act 2004 (ACT) s 201.
397 Emergencies (Fees) Determination 2017 (ACT) reg 293.
398 Health (Fees) Determination 2017 (No 1) (ACT) reg 4(7).
401 Health Services Regulation 2013 (NSW) reg 26A.
third-party payment is not available. People seeking asylum who are not Tasmanian residents will be liable to pay fees if they are not Medicare-eligible since they will not hold a Healthcare Card, although some discretion exists to waive those fees.

In the Northern Territory, fee exemptions are available to people with Concession or Healthcare Cards, which excludes those who are Medicare-ineligible. At best, those experiencing difficulty paying the fee can contact St Johns ‘so we can reach an amicable agreement regarding payment of your account’.

**Conclusion**

State and territory governments do not consistently provide access to free ambulance services to people seeking asylum. While the Northern Territory provides no clear exemption for people seeking asylum, Tasmania and Queensland demonstrate that exemptions based on residency create uncertainty for those requiring emergency transport services. Fee reductions based on generic categories of disadvantage, such as in Western Australia, provide only limited relief to people seeking asylum.

While Victoria functionally ensures free access to those who require it, the ACT best delivers access to ambulance services as a right given the entitlement of health card holders, which include Medicare-ineligible asylum seekers, to free access.

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406 Ibid.

407 Ibid.

408 NT Payment FAQ PDF

409 Ibid
Mental health services

‘All Victorians, no matter their background, have the right to access mental health services.’

Martin Foley, Victorian Minister for Mental Health

Under the Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS Initiative, a Medicare rebate is provided for up to 10 sessions in a year. This scheme would be accessible to refugees holding most protection and humanitarian visas, as each of them includes Medicare rights. Medicare eligibility for people seeking asylum will be based on their individual bridging visa conditions, and as such the scheme may not be able to be accessed as uniformly.

In addition to the same access rights as the general population through the health care plan, refugees and people seeking asylum can be referred to the Program of Assistance for Survivors of Torture and Trauma (PASTT), administered by the Commonwealth Department of Health and Ageing. Under this scheme, the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) network coordinates eight separate services across Australia, providing mental health care to refugees and people seeking asylum. One service operates in each jurisdiction.

The referral guidelines for each service are typically broad in both who can access the service, and what they can present for. Importantly, each one either explicitly states that it is available to people on a number of protection, humanitarian and bridging visas, or requires that the client is from a ‘refugee-like background’. It is clear from the application of the scheme in each jurisdiction that this term is intended to cover people seeking asylum.

The funding for each individual program comes from a number of Commonwealth departments, the state government, and individual donors. Whilst funding may vary slightly from state to state, access to PASTT services seems relatively comprehensive and uniform across Australia. As a result, there is little further analysis that can be made of state by state differences, and this seems to be one area where a desirable level of uniformity and certainty has been achieved.

The Verdict

Access to mental health services currently demonstrates the level of uniformity across jurisdictions this report seeks to encourage. States and territories should continue to work with the Australian Government to expand access to mental health services to people seeking asylum.
National Disability and Insurance Scheme (NDIS)

Whilst the NDIS is not a health scheme as such, it should be noted here that in continuation of this long standing trend of denying or reducing Commonwealth services, NDIS has expressly limited access to the scheme to citizens, or those who have permanent residence.411 Naturally, this would operate to the exclusion of holders of a TPV, SHEV or bridging visa.

411 National Disability and Insurance Scheme Act 2013 (Cth) s 23.
International snapshots

United Kingdom
In England, entitlements to access health services without charge are governed by regulation. Refugees and people seeking asylum, including those awaiting decisions and appealing negative reviews (who must be in receipt of support under the Immigration and Asylum Act 1999), are eligible to access free health services through the National Health Service. Coverage extends to primary and secondary healthcare, emergency transport, prescriptions and dental care.

In Scotland, the relevant Guideline provides that the limitation with respect to receipt of benefits under the Immigration and Asylum Act 1999 does not apply for those appealing negative reviews, and benefits extend to spouses and dependent children.

France
The French Social Security Code assures that people seeking asylum are eligible for free universal healthcare, although an income test applies. Further, people seeking asylum are expressly exempt from the three-year residency requirement which applies to other non-citizens. However, linkage of eligibility to the claim certification process may result in suspension of people’s access to health services and there is no legislative entitlement to healthcare.

New Zealand
In New Zealand, people seeking asylum awaiting a decision with respect to refugee status are eligible to access free comprehensive health services through a Community Services Card issued by the Publicly Funded Health and Disabilities Service. The services extend to primary and secondary care, pharmaceuticals and dental care, and include those appealing a negative decision.

Conclusions
The UK, France and New Zealand offer examples of comprehensive coverage for people seeking asylum, even though they each have gaps in coverage. Given that the Australian Government has failed to secure rights of access, Australian states and territories can look to each of these jurisdictions not only to demonstrate the feasibility of universal coverage, but also as models for entrenching access to healthcare.

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412 National Health Service (Charges to Overseas Visitors) Regulations 2015 (No. 238) (UK).
413 National Health Service (Charges to Overseas Visitors) Regulations 2015 (No. 238) (UK) reg 15.

Health

How they stack up
The Freedom of Information Maze

Refugees and people seeking asylum, like all people, should have clear and publicly available information about their rights to access health, housing and education. However, our experience of making Freedom of Information requests for the research that led to this report showed the complicated web of policies and infrastructure regulating access to these services. Instead of requiring the use of Freedom of Information requests to determine access to basic social and economic rights, governments should make policies readily available and should provide in legislation clear statements of guarantees to access to schools, hospitals and housing. Only by this means will those affected be able to readily identify the government policy or law that applies to them, without resort to delayed, bureaucratic and costly Freedom of Information processes.

The Freedom of Information process experienced for this report demonstrated the lack of public access to the policies that governments use to determine access to basic rights for this cohort of the Australian community. In late 2017, we made Freedom of Information requests expressed in uniform terms at about the same time to state and territory governments. Freedom of Information officers took varying amounts of time to comply with these requests while disclosing different amounts of information. Concerningly, agencies sometimes took longer than the statutory time limit to respond to our requests. For example, we made a request for documents to the South Australian Department of Health which resulted in a finding that no documents existed almost four months later. Making a Freedom of Information request is clearly not a reliable means of accessing information about schools and hospitals that refugees and people seeking asylum rely on.

Some states and territories were more forthcoming than others when it came to disclosing information. A Freedom of Information request to the Western Australian Department of Education revealed an unusual measure to afford people seeking asylum access to basic needs. In the absence of legislation waiving fees to access public schools, the Western Australian Department of Education has approved an annual tuition fee of one dollar. In response to an Freedom of Information request expressed in identical terms, the NSW Department of Education refused access to some relevant documents on the basis that disclosure would compromise the ‘business affairs of the DIPB’.

Otherwise, Freedom of Information requests simply showed the inconsistency with which states and territory governments provided access to basic needs. A Freedom of Information request to the ACT Department of Health revealed a framework of delegated legislation and policy that ensure that people seeking asylum can access hospital and ambulance services, as well as the frequency with which people seeking asylum access public hospital services. A request in identical terms to the Northern Territory Department of Health returned no relevant documents.

A particular shortfall of the Freedom of Information process is that it does not guarantee access to documents even where they exist. For example, the media has reported that

419 Emails from Benjamin Twigg, Accredited Freedom of Information Officer, South Australia to Tyrone Connell on 29 September 2017 and 16 January 2018.

420 Letter from Pam Moss, Assistant Executive Director Statewide Planning and Delivery, WA Department of Education, to Renata Blythe, 15 October 2017.

421 Letter from Jenny Donovan, R/ Executive Director Learning and Teaching, NSW Department of Education to Renata Blyth on 17 November 2017.

422 Letter from Chris Bone, ACT Department of Health to Tyrone Connell on 28 October 2017.

423 Letter from Tracy Richardson, Manager Information and Privacy, NT Department of Health to Tyrone Connell on 25 October 2017.
the federal government has MoUs with many if not all state and territory governments in relation to services provided to people seeking asylum living in the community. However, only NSW disclosed its MoU with the federal government in response to our Freedom of Information request, even though our request was in uniform terms to all state and territory governments. A clear advantage of ensuring refugees’ access to housing, healthcare and education through primary and delegated legislation is the guarantee that this information will be accessible to the people who rely on it.

Making Freedom of Information requests is not a sustainable method of guaranteeing access to consistently reliable information. The difficulty that we—a group of lawyers and law students—experienced seeking out this information is concerning given that state and territory governments frequently amend or even reverse policy with no public announcement. While Freedom of Information requests were a useful tool for determining the state of play across Australian jurisdictions in terms of access to health, housing and education, people seeking asylum and refugees are entitled to accessible and current information that reflects their entitlement to basic social and economic rights.


425 Letter from Jenny Donovan, R/ Executive Director Learning and Teaching, NSW Department of Education to Renata Blyth on 17 November 2017.
## Glossary of Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tr>
<td><strong>Bridging Visa</strong></td>
<td>A bridging visa is a temporary visa issued to a person for a number of different reasons; typically due to an applicant either awaiting a decision on, or being in between substantive visas. Particularly relevant to this report is the Bridging Visa E (BVE – subclasses 050 and 051), which a large number of people seeking asylum are currently on whilst the Department assesses their claims for protection. The visa has often been characterised by uncertainty around work rights and duration. This in turn proves detrimental to accessing healthcare, education and housing.</td>
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<tr>
<td><strong>Policy</strong></td>
<td>Policies are frameworks and rules produced by government to guide service delivery which are subject to frequent change and not required to be publicly accessible</td>
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<tr>
<td><strong>Primary Legislation</strong></td>
<td>Primary legislation is law that is passed by Parliament, widely publicised, and frequently more difficult to change</td>
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<td><strong>Safe Haven Enterprise Visa</strong></td>
<td>A temporary humanitarian visa that allows the holder to remain in Australia for five years</td>
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<tr>
<td><strong>Subordinate Legislation</strong></td>
<td>Subordinate legislation, also known as delegated legislation or legislative instruments, is law which is made under a power delegated by primary legislation and is subject to parliamentary review</td>
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<tr>
<td><strong>Status Resolution Support Services (SRSS)</strong></td>
<td>SRSS is a transitional assistance service provided by the Australian Government to people it considers to be “illegal maritime arrivals” (IMAs), which provides significantly limited healthcare, education and housing support</td>
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<tr>
<td><strong>Temporary Protection Visa</strong></td>
<td>A temporary humanitarian visa that allows the holder to remain in Australia for three years</td>
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<tr>
<td><strong>Women at Risk Visa</strong></td>
<td>A permanent humanitarian visa that is available to women who are seeking asylum who do not have protection of a male relative and are in danger of victimisation, harassment or serious abuse because of their gender.</td>
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States of Refuge