



Peter McMullin
Centre on Statelessness



NATIONALITY FOR ALL

Advancing the right to a nationality in the Asia-Pacific region

Joint Submission to the Human Rights Council Universal Periodic Review

Australia

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4th Cycle

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We acknowledge Aboriginal and Torres Strait Islander people as the Traditional Owners of the unceded lands on which we work, learn and live. We pay respect to Elders past, present and future, and acknowledge the importance of Indigenous knowledge at the Peter McMullin Centre on Statelessness and across the University of Melbourne more broadly.



Lead Author

Peter McMullin Centre on Statelessness

The Peter McMullin Centre on Statelessness (**PMCS**) is an expert centre at the University of Melbourne's Law School that undertakes research, teaching and engagement activities aimed at reducing statelessness and protecting the rights of stateless people in Australia, the Asia Pacific region, and as appropriate more broadly.¹

PMCS is home to the Australian Stateless Legal Clinic (**SLC**), a unique service that partners with the community legal sector and Australian legal industry to provide legal education and support to stateless children and adults in Australia, offering Melbourne Law School students the opportunity to gain legal work experience.² Through the SLC, The PMCS engages directly with stateless persons in Australia on a regular basis.

PMCS acknowledges the Australian stateless community's lived expertise on issues discussed throughout this submission which directly informs our recommendations. PMCS encourages the Human Rights Council to consult directly with stateless persons whenever considering issues of statelessness in the Australian context and more broadly.

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¹ For more information about the activities and impact of the Peter McMullin Centre on Statelessness, see Peter McMullin Centre on Statelessness, 'Impact Report: 2018 – 2024' available at: <https://law.unimelb.edu.au/news/MLS/impact-report-release-peter-mcmullin-centre-on-statelessness>.

² For more information about the Stateless Legal Clinic see <https://law.unimelb.edu.au/centres/statelessness/engage/stateless-legal-clinic> and K Robertson, 'The Stateless Legal Clinic: Innovative Models for Addressing Unmet Legal Need in Australia through Clinical Legal Education' (2024) 31(1) *International Journal of Clinical Legal Education*, 3.

³The Peter McMullin Centre on Statelessness wishes to thank and acknowledge Amelia Walters for her editing and drafting support with this submission.

Contributing Author

Nationality For All

Nationality for All (**NFA**) is a not-for-profit organization registered in Australia that aims to promote the right to nationality and addresses statelessness in the Asia Pacific region. NFA identifies as a feminist organization and works with a participatory, bottom-up, and intersectional approach.

As a regional organization, NFA works closely with our national partners, and members of the regional networks on statelessness such as the Statelessness and Dignified Citizenship Coalition Asia Pacific (**SDCC-AP**), to support their national advocacy and bring about systemic reform in how statelessness is advocated and by whom. To create this power shift, NFA undertakes the following approaches: Partnership Building, Knowledge Building, Solidarity and Coalition Building and Human Rights Advocacy.

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NATIONALITY FOR ALL
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Endorsing Organisations:

Refugee Advice & Casework Service

The Refugee Advice & Casework Service (**RACS**) is a community legal centre in New South Wales, Australia, dedicated to assisting people seeking asylum and refugees apply for protection in Australia. RACS has a dedicated program to assist stateless children born in Australia to apply for citizenship under the statelessness provisions, partnering with the Peter McMullin Centre on Statelessness' Stateless Legal Clinic.

<https://www.racs.org.au/>

RACS
REFUGEE ADVICE & CASEWORK SERVICE

Introduction

1. The Peter McMullin Centre on Statelessness (**PMCS**) and Nationality For All (**NFA**) make this submission to the Universal Periodic Review (**UPR**), on the right to a nationality and human rights challenges pertaining to statelessness in Australia.
2. In drafting this submission, the abovementioned organisations refer to the joint submission made in the 3rd cycle of the Universal Periodic Review in January/February 2021 (available [here](#)). We note that unfortunately the vast majority of issues raised in this previous submission remain relevant in 2025. We encourage the Australian government to work constructively with impacted communities, civil society and legal organisations to meaningfully address and reduce statelessness in Australia over the coming cycle.
3. Four key issues are raised in this submission:
 - a. **Australia lacks a statelessness determination procedure, or specific visa category for stateless persons**, leaving stateless persons in Australia in a ‘limbo characterised by vulnerability, insecurity and marginalisation’.⁴
 - b. **Stateless persons in Australia remain at risk of prolonged detention**
 - c. **Australia’s citizenship deprivation powers risk rendering persons stateless**. The recent general trend of expanding citizenship deprivation powers in Australia has the capacity to render persons stateless and increase the global stateless population.⁵
 - d. **In the context of climate change, Australia must ensure that issues of citizenship and potential risks of statelessness are addressed** in population relocation agreements that it enters into with other countries.
4. Despite a relatively high birth registration rate nationally (approximately 96%), Australia’s Aboriginal and Torres Strait Islander (**ATSI**) population continue to experience a vastly disproportionate rate of unregistered births.⁶ Access to birth registration for the ATSI community remains an issue of concern, noting that lack of birth registration can place a person at a heightened risk of statelessness.⁷
5. Although the scope of this submission does not cover issues pertaining to birth registration in ATSI communities, we wish to acknowledge the significance of this issue in Australia, and the importance of Government bodies working closely with ATSI communities and ATSI lead organisations in addressing this important issue.

⁴ Michelle Foster, Jane McAdam and Davina Wadley, ‘The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge’ (Pt 2) (2016) 40(2) *Melbourne University Law Review* 456, 459, 497.

⁵ Peter McMullin Centre on Statelessness, Submission No 96 to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Nationhood, National identity and Democracy* (30 September 2019) 4 <https://law.unimelb.edu.au/_data/assets/pdf_file/0009/3253446/Submission-96_Nationhood_nov19.pdf>.

⁶ Paula Gerber and Melissa Castan, Castan Centre for Human Rights Law, Submission to The Office of the United Nations High Commissioner for Human Rights, *Examples of best practices to ensure the registration of children, namely those in situation of risk and marginalized: Human Rights Council resolution 34/15* (31 October 2017) 2 – 5 <<https://www.ohchr.org/Documents/Issues/Children/BirthRegistrationMarginalized/CastanCentreSubmission.pdf>>.

⁷ UNHCR, ‘About Statelessness’ (Web Page) <<https://www.unhcr.org/ibelong/about-statelessness/>>

6. Australia is geographically situated in the Asia Pacific region which is home to the world's largest population of stateless persons.⁸ Although the scope of this submission is primarily focused on Australia's domestic stateless population and obligations under international and domestic law, we encourage the Australian government to recognise the importance of demonstrating leadership in the region on the issue of statelessness and engage in constructive partnerships with our regional neighbours to meaningfully reduce and address statelessness.

Australia's Universal Periodic Review under the First, Second and Third Cycle

The First Cycle – 2010 – 11

7. Australia's 1st cycle review took place in January 2011 under the 10th session of the UPR Working Group. 145 recommendations were made; 137 were accepted wholly or partly.⁹
8. Whilst there were no recommendations specifically relating to statelessness, concerns regarding Australia's treatment of stateless persons were raised as follows:
- a. In the compilation of United Nations (UN) Information Report, the Office of the High Commissioner for Human Rights (OHCHR) highlighted that the Committee on the Elimination of Racial Discrimination (CERD) 'regretted that the Australian High Court has found that it is lawful for a stateless person to be detained indefinitely'.¹⁰
 - b. Ghana referred to the concerns expressed regarding Australia's asylum-seeker and refugee policy, specifically drawing attention to the possibility of 'indefinite detention of stateless persons'.¹¹

The Second Cycle - 2015

9. Australia's 2nd cycle review took place in November 2015 under the 23rd session of the UPR Working Group. 290 recommendations were made; Australia accepted 150 and noted 140.¹²
10. Concerns regarding Australia's treatment of stateless persons were raised as follows:
- a. The Committee against Torture (CAT) noted concern that 'stateless persons whose asylum claims had not been accepted and refugees with an adverse security or character assessment could be detained indefinitely'.¹³
 - b. The United Nations High Commissioner for Refugees (UNHCR) raised concerns regarding the transfer of asylum seekers, including children who might be stateless

⁸ For more information on statelessness in the Asia Pacific see: Nationality for All, SEAP: *Statelessness Encyclopedia Asia Pacific* (May 2023) <<https://seap.nationalityforall.org/>>.

⁹ Human Rights Council, *Report of the Human Rights Council on its Seventeenth Session*, UN Doc A/HRC/17/2 (24 May 2012) paras 456-457 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/136/30/PDF/G1213630.pdf?OpenElement>>.

¹⁰ Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1: Australia*, UN Doc A/HRC/WG.6/10/AUS/2 (15 November 2010) para 49 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/175/67/PDF/G1017567.pdf?OpenElement>>.

¹¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/17/10 (24 March 2011) para 78 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/122/90/PDF/G1112290.pdf?OpenElement>>.

¹² *Report of the Human Rights Council on its thirty-first session*, UN Doc A/HRC/DEC/31/108 (6 April 2016).

¹³ UN Human Rights Council, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council Resolution 16/21: Australia*, UN Doc A/HRC/WG.6/23/AUS/2 (31 August 2015) para 69 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/195/70/PDF/G1519570.pdf?OpenElement>>.

to third countries, or back to their country of origin,¹⁴ and recommended that Australia immediately cease this practice.¹⁵

11. Australia accepted the following recommendations related to *Statelessness and the Right to Nationality*:¹⁶
 - a. **France:** 'Ensure that an Australian cannot be deprived of citizenship other than in exceptional circumstances and within the framework of a specific legal procedure';¹⁷
 - b. **Poland:** 'Eliminate the disparities in access to services by ATSI children and their families, especially by reviewing the Australian birth registration process in order to ensure that all children are registered at birth';¹⁸
 - c. **Timor-Leste:** 'Continue strengthening the efforts in promoting and protecting non-racial discriminatory policy and specifically also ensure that Aboriginal children have access to birth registration';¹⁹ and
 - d. **Turkey:** 'Further strengthen efforts towards birth registration for all, with a view to encouraging access to relevant procedures'.²⁰
12. One further recommendation by Kenya was only noted by Australia:²¹
 - a. **Kenya:** 'Review the current regional offshore processing arrangement, and policy of mandatory detention of refugees, stateless persons and migrants, and uphold all human rights obligations towards refugees, stateless persons and migrants, including the principle of non-refoulment'.²²

The Third Cycle – 2021

13. Australia's 3rd cycle review took place in January 2021 under the 37th session of the UPR Working Group. 344 recommendations were made; Australia accepted 177 and noted 167.²³
14. Disappointingly, there were no recommendations made to Australia specifically addressing statelessness, nor were stateless persons explicitly considered in the Reports prepared by the Australian government or UPR Working Group.
15. However, a number of relevant recommendations were made on adjacent issues.

¹⁴ UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: Australia* (March 2015) 6-7 <<https://www.refworld.org/docid/563863454.html>> .

¹⁵ UN Human Rights Council, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council Resolution 16/21: Australia*, UN Doc A/HRC/WG.6/23/AUS/2 (31 August 2015) para 69 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/195/70/PDF/G1519570.pdf?OpenElement>>.

¹⁶ UPR Info, 'UPR Recommendations Received by Australia' *Database of Recommendations* (Web Page) <https://www.upr-info.org/database/index.php?limit=0&f_SUR=9&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly>.

¹⁷ *Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/31/14 (13 January 2016) 25 [136.228] <<https://undocs.org/A/HRC/31/14>>.

¹⁸ *Ibid* 18 [136.101].

¹⁹ *Ibid* 18 [136.102].

²⁰ *Ibid* 22 [136.171].

²¹ *Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia - Addendum*, UN Doc A/HRC/31/14/Add.1 (29 February 2016) para 62 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/039/53/PDF/G1603953.pdf?OpenElement>>.

²² *Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia* (n 19) 28 [136.277].

²³ *United Nations Human Rights Office of the High Commissioner, 'Australia: The Universal Periodic Review'* <<https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session37/AU/AUSTRALIA.pdf>>

16. Australia accepted the recommendations related to equality and discrimination with refugees and asylum seekers listed as affected persons from:
 - a. El Salvador, Ghana, Nigeria, Serbia, Azerbaijan, Sudan, Burkina Faso, China, Democratic People's Republic of Korea, Malaysia, Angola, Nicaragua, Indonesia, Qatar, Tunisia, Bahrain, Pakistan, Bolivarian Republic of Venezuela, United States of America, Afghanistan, Holy See, and Albania.

Australia's International Obligations

17. The 1954 Convention relating to the Status of Stateless Persons (**1954 Convention**) and the 1961 Convention on the Reduction of Statelessness (**1961 Convention**) are the two key international instruments that address the issue of statelessness. The 1954 Convention defines statelessness and establishes a protection framework for stateless individuals. The 1961 Convention requires states to establish safeguards aimed at reducing and preventing statelessness.
18. Australia has ratified both the 1954 Convention and the 1961 Convention and has not made any reservations.²⁴
19. Australia is also party to several international agreements that ensure the right to nationality and protect the rights of stateless persons. These include:

a. The International Covenant on Civil and Political Rights (ICCPR) ²⁵ : <i>Article 24(3) provides that every child has the right to acquire a nationality.</i>
b. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ²⁶ : <i>Article 5(d)(iii) provides that States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee equality before the law in the enjoyment of the right to nationality</i>
c. The Elimination of All Forms of Discrimination against Women (CEDAW) ²⁷ : <i>Article 9 provides that parties shall grant women equal rights with men to acquire, change or retain their nationality and with respect to the nationality of their children.</i>
d. The Convention on the Rights of the Child (CRC) ²⁸ : <i>Articles 7 and 8 provide that a child will have the right, from birth, to acquire and preserve their nationality.</i>

²⁴ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960); *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).

²⁵ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). Australia ratified the ICCPR on 13 August 1980: UN Treaty Collection, Chapter IV, 4. *International Covenant on Civil and Political Rights*, 1 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>>.

²⁶ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 600 UNTS 195 (entered into force 4 January 1969). Australia ratified the ICERD on 30 September 1975: UN Treaty Collection, Chapter IV, 2. *Convention on the Elimination of All Forms of Racial Discrimination*, 1 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-2.en.pdf>>.

²⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981). Australia ratified the CEDAW on 28 July 1983: UN Treaty Collection, Chapter IV, 8. *Convention on the Elimination of All Forms of Discrimination against Women*, 1 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf>>.

²⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). Australia ratified the CRC on 17 December 1990: UN Treaty Collection, Chapter IV, 11. *Convention on the Rights of the Child*, 1 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>>.

- e. The Convention on the Rights of Persons with Disabilities (CRPD)²⁹: Article 18 provides that persons with disabilities have the right to acquire and change nationality and must not be deprived of their nationality arbitrarily or on the basis of disability.

Australia's International Pledges

Australia's 2011 Pledge

20. In 2011, UNHCR hosted a Ministerial Intergovernmental Event on Refugees and Stateless Persons. 62 States made pledges relating to statelessness. The Australian Government pledged:

'to better identify stateless persons and assess their claims. Australia is committed to minimising the incidence of statelessness and to ensuring that stateless persons are treated no less favourably than people with an identified nationality. Australia will continue to work with UNHCR, civil society and interested parties to progress this pledge'.³⁰

21. This pledge is to be commended, serving as a foundational mechanism for the necessary development and implementation of strong protections within Australia's legal framework for stateless persons.
22. However, little action has been taken to fulfil this commitment or make meaningful attempts to address statelessness. Instead, mere internal departmental procedures were established to determine statelessness and the Australian Government refused to consider the creation of a dedicated visa.³¹ These procedures are inadequate and still provide 'no legislative basis for determining statelessness'.³²

Australia's failure to Pledge in 2019:

23. It was regrettable that despite 252 States making 360 pledges at the UNHCR High-Level Segment on Statelessness in October 2019, Australia failed to make any pledge or commitment to reduce or address statelessness.³³

Australia's 2023 Pledges:

24. The Australian Government reaffirmed its commitment to addressing statelessness at the UNHCR Global Refugee Forum in December 2023, making numerous references to the issue within its 23 pledges. These included signing on to multi-stakeholder pledges to increase data and evidence on the living conditions of stateless people 'through their systematic inclusion in national data production systems',³⁴ ending immigration detention of stateless children and

²⁹ Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008). Australia ratified the CRPD on 17 July 2008: UN Treaty Collection, Chapter IV, 15. *Convention of the Rights of Persons with Disabilities*, 1 <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf>>.

³⁰ UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons* (Geneva, Palais de Nations, 7–8 December 2011) (2012) 51.

³¹ Michelle Foster, Jane McAdam and Davina Wadley, 'The Protection of Stateless Persons in Australian Law: The Rationale for the Statelessness Determination Procedure' (Pt 1) (2016) 40(2) *Melbourne University Law Review* 415.

³² Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 6) 497.

³³ 'Results of the High-Level Segment on Statelessness', UNHCR (Web Page) <<https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/#>>.

³⁴ 'Multistakeholder Pledge: Inclusion of Forcibly Displaced and Stateless Persons in National Statistical Systems and Surveys' *Global Compact on Refugees* (Web Page) <<https://globalcompactrefugees.org/multistakeholder-pledge-inclusion-forcibly-displaced-and-stateless->

their families,³⁵ ‘ending statelessness,’³⁶ and ‘advancing localization in displacement and statelessness responses.’³⁷

25. The 2023 pledges by the Australian Government are to be commended. We call on the Australian government to work constructively with impacted communities, civil society, legal organisations and the PMCS to meaningfully support the successful implementation of these multi-stakeholder pledges.

Overview of Australia’s Legal Framework for Nationality and Statelessness

Legal Framework for Nationality

26. Citizenship is not defined under the Australian Constitution nor does Australia have a National Bill of Rights. Furthermore, Australia does not have a procedure within its legislative framework for determining who is a ‘stateless person.’³⁸
27. The *Australian Citizenship Act 2007* (Cth) (the **Citizenship Act**) provides the legal framework for nationality in Australia. Accordingly, citizenship can be obtained by automatic acquisition,³⁹ or application.⁴⁰
28. Automatic acquisition of citizenship for persons born in Australia is limited to certain criteria stipulated in Section 12(1) of the Citizenship Act:⁴¹
 - a. a parent of the person is an Australian citizen, or a permanent resident, at the time the person was born; or
 - b. the person is ordinarily resident in Australia throughout the period of 10 years beginning on the day the person is born.⁴²

persons-national-

statistical?_gl=1*1mct54z*_rup_ga*MzcwMjE3MTMxLjE3MTk0NTE2ODI.*_rup_ga_EVDQTJ4LMY*MTcyMTI2ODI2Ny4zLjAuMTcyMTI2ODI2Ny42MC4wLjA>.

³⁵‘Multistakeholder Pledge: Developing Alternatives to Immigration Detention and Ending Immigration Detention of Asylum-Seeking, Refugee, Stateless and Migrant Children and their Families’ *Global Compact on Refugees* (Web Page)

<https://globalcompactrefugees.org/multistakeholder-pledge-developing-alternatives-immigration-detention-and-ending-immigration?_gl=1*1mct54z*_rup_ga*MzcwMjE3MTMxLjE3MTk0NTE2ODI.*_rup_ga_EVDQTJ4LMY*MTcyMTI2ODI2Ny4zLjAuMTcyMTI2ODI2Ny42MC4wLjA> (‘Multistakeholder Pledge: Developing Alternatives to Immigration Detention’).

³⁶‘Multistakeholder Pledge: Ending Statelessness’ *Global Compact on Refugees* (Web Page) <https://globalcompactrefugees.org/pledges-contributions/multistakeholder-pledges-2023/multistakeholder-pledge-ending-statelessness?_gl=1*1mamdhx*_rup_ga*MzcwMjE3MTMxLjE3MTk0NTE2ODI.*_rup_ga_EVDQTJ4LMY*MTcyMTI2ODI2Ny4zLjAuMTcyMTI2ODI2Ny42MC4wLjA>.

³⁷‘Multistakeholder Pledge: Advancing Localisation in Displacement and Statelessness Responses’ *Global Compact on Refugees* (Web Page) <https://globalcompactrefugees.org/pledges-contributions/multistakeholder-pledges-2023/multistakeholder-pledge-advancing-localisation?_gl=1*1mamdhx*_rup_ga*MzcwMjE3MTMxLjE3MTk0NTE2ODI.*_rup_ga_EVDQTJ4LMY*MTcyMTI2ODI2Ny4zLjAuMTcyMTI2ODI2Ny42MC4wLjA>.

³⁸ Michelle Foster, Jane McAdam and Davina Wadley, ‘The Protection of Stateless Persons in Australian Law: The Rationale for the Statelessness Determination Procedure’ (n 35) 421.

³⁹ *Australian Citizenship Act 2007* (Cth) s 12(1).

⁴⁰ Ibid s 16.

⁴¹ Ibid s 12(1).

⁴² Ibid.

Nationality & Statelessness

29. Section 21(8) of the Citizenship Act provides that a person born in Australia who is not, has never been, and is not entitled to acquire citizenship or nationality of a foreign country, is eligible for Australian citizenship.⁴³
30. The intention of the Australian Parliament in including s 21(8) was to ensure Australia's obligations under the Convention on the Reduction of Statelessness ('1961 Convention') were met by ensuring that no-one born in Australia remains stateless.⁴⁴
31. The legislative framework does not, however, account for stateless persons who were not born in Australia, or who previously possessed citizenship from any country which has been revoked or otherwise lost.
32. Furthermore, even when a person has a strong *prima facie* entitlement to Australian citizenship under s 21(8), they are likely to experience significant delays and administrative barriers throughout the application process. This is because there are no mandated timeframes for the acquisition of citizenship even when all criteria are met, and the final determination is based on the discretion of the Minister for Immigration, Citizenship and Multicultural Affairs.⁴⁵
33. Those who are stateless but do not meet the requirements for citizenship can only reside, study and work in Australia (and exercise other rights attaching to citizenship) if they are eligible for a temporary or substantive visa or successfully obtain ministerial intervention.⁴⁶
34. Generally, people who are unsuccessful in obtaining a visa are expected to return to their country of origin.⁴⁷ However, stateless individuals are not nationals of their countries of origin and are therefore unable to return.⁴⁸ This leaves stateless individuals who do not qualify for citizenship at risk of prolonged periods of immigration detention.

Statelessness in Australia – A Snapshot

35. There are many stateless persons in Australia, however exact figures are unknown due to a 'lack of coordinated or consistent approach' to recording such persons.⁴⁹ Statistics provided by the Department of Home Affairs (**DHA**) are based on a person's claim to be stateless in the absence of a Statelessness Determination Procedure (**SDP**).

⁴³ Ibid s 21(8).

⁴⁴ Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 6) 472-73, quoting Revised Explanatory Memorandum, Australian Citizenship Bill 2005 (Cth) 38.

⁴⁵ Katie Robertson and Sarah Dale, *A Place to Call Home: Shining a Light on Unmet Legal Need for Stateless Refugee Children in Australia* (March 2021) 2, 12 (*A Place to Call Home*).

⁴⁶ Refugee Council of Australia, *Statelessness in Australia* (August 2015) 14-15 <<https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/1508-Statelessness.pdf>>.

⁴⁷ Ibid 14.

⁴⁸ Ibid 14-15.

⁴⁹ Foster, McAdam and Wadley, 'The Protection of Stateless Persons in Australian Law: The Rationale for the Statelessness Determination Procedure' (n 35) 416.

36. In late 2025 PMCS will finalise and publish the first ever 'mapping' study of statelessness in Australia.⁵⁰ This report will include a comprehensive analysis of all available statistics concerning stateless persons in Australia. PMCS would welcome the opportunity to share and discuss the findings of this study with the Human Rights Council in support of the recommendations in this submission.
37. With no coordinated approach to collecting information about stateless persons in Australia, difficulties exist in identifying and researching the extent of Australia's stateless population.⁵¹
38. Australia has historically routinely not provided data to the UNHCR, or reported 'zero' stateless persons in Australia. In 2017, for the first time, Australia reported '52' stateless persons in Australia.⁵² In 2018 Australia reported '132' stateless persons to the UNHCR.⁵³
39. Curiously, in 2019, UNHCR's reporting of stateless persons in Australia was recorded as a '-', indicating that Australia either reported zero stateless persons, or the data was 'unavailable'.⁵⁴ This is despite the fact that publicly available Australian government statistics for the same period clearly indicated otherwise.⁵⁵
40. More comprehensive reporting has been undertaken in recent years, with the most recent UNHCR Global Trends Report identifying 6,922 stateless people in Australia in mid-2024.⁵⁶ This follows the recording of 8,073 stateless people in Australia in 2023, slightly down from the 2022 figure of 8,313.⁵⁷ UNHCR cautions however that given Australia lacks a process for identifying stateless persons (i.e. SDP) **these figures do not capture all stateless people in Australia and cannot be considered a true estimate.**⁵⁸

⁵⁰ The Peter McMullin Centre on Statelessness at the Melbourne Law School is currently undertaking the first 'mapping' study of statelessness in Australia under the auspices of an Australian Research Council Discovery Project Grant on 'Understanding Statelessness in Australian Law and Practice', DP210100929. The Report aims to better understand the numbers, needs and demographic of Australia's stateless population.

⁵¹ Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 6) 497, 505.

⁵² UNHCR, *Global Trends – Forced Displacement in 2017* (2018) 64.

⁵³ UNHCR, *Global Trends – Forced Displacement in 2018* (2019) 65.

⁵⁴ According to the UNHCR's Report regarding global trends in forced displacement for 2019, a dash in the data table ("-") indicates that the value is zero, not available or not applicable: UNHCR, *Global Trends – Forced Displacement in 2019* (2020) 78.

⁵⁵ See, for example: Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (31 December 2019) <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-december-2019.pdf>

⁵⁶ UN High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2024* (2025) annex 4 (people under UNHCR's statelessness mandate) <<https://www.unhcr.org/refugee-statistics/insights/annexes/trends-annexes.html?situation=4>>.

⁵⁷ UNHCR, *Global Trends: Forced Displacement in 2023* (Report, 13 June 2024) annex table 4 ('Forced Displacement in 2023'); *Forced Displacement in 2022* (n 4) annex table 5.

⁵⁸ *Forced Displacement in 2023* (n 60) annex table 4.

ISSUE 1: Australia Lacks a Statelessness Determination Procedure, or Specific Visa Category to Recognise and Protect Stateless Persons

Australia should adopt a Statelessness Determination Procedure (SDP):

41. As noted above, Australia does not have a procedure within its legislative framework to identify and protect 'stateless persons'.⁵⁹
42. Despite no explicit requirement in the Convention Relating to the Status of Stateless Persons ('1954 Convention'), it is intrinsic to the notion of identifying stateless persons that a procedure to determine who is stateless, is necessary. As noted by the UNHCR:

*"Whilst the 1954 Convention establishes the international legal definition of 'stateless person' ... it does not prescribe any mechanism to identify stateless persons as such. Yet, it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments".*⁶⁰

43. This sentiment was further iterated in a Guidance Note of the Secretary-General that 'state based stateless determination procedures are an implicit requirement of state parties meeting their obligations under the 1954 and 1961 Conventions'.⁶¹

As noted, Australia currently has no such process and as such, key treaty obligations are yet to be implemented into domestic law. Without any mechanisms to determine statelessness, many affected persons can be denied basic rights.

44. An SDP is required, as while many stateless persons may receive protection as a refugee for other reasons, 'statelessness on its own is not a ground for refugee protection'.⁶² Furthermore, the refugee status determination process does not provide an avenue for *in situ* stateless populations.
45. In accordance with UNHCR Guidelines, statelessness determination procedures should be 'formalized in law' and guarantee basic due process rights including an 'effective right to appeal...[to] an independent body'.⁶³ The burden of proof should be shared,⁶⁴ the standard of proof should be to a 'reasonable degree',⁶⁵ states may combine statelessness and refugee determination procedures, while maintaining confidentiality for asylum applications,⁶⁶ everyone on the territory should have access to the procedure, regardless of whether or not they are lawfully in the state,⁶⁷ the UNHCR should have a role in assisting in the development and implementation of procedures,⁶⁸ and 'age, gender and diversity considerations may require that some individuals are afforded additional procedural and evidentiary safeguards'.⁶⁹

⁵⁹ Foster, McAdam and Wadley, 'The Protection of Stateless Persons in Australian Law: The Rationale for the Statelessness Determination Procedure' (n 35) 421.

⁶⁰ UNHCR, *Handbook on the Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (2014) 6 [8].

⁶¹ Guidance Note of the Secretary-General, The United Nations and Statelessness (November 2018) 7.

⁶² Foster, McAdam and Wadley, 'The Protection of Stateless Persons in Australian Law: The Rationale for the Statelessness Determination Procedure' (n 35) 455.

⁶³ UNHCR, *Handbook on the Protection of Stateless Persons* (n 63) 28 [71], 30 [76].

⁶⁴ *Ibid* 34 [89].

⁶⁵ *Ibid* 34 [91].

⁶⁶ *Ibid* 27-28 [66].

⁶⁷ *Ibid* 28 [69].

⁶⁸ *Ibid* 42 [116].

⁶⁹ *Ibid* 42-43 [118].

Australia should adopt a permanent visa category for stateless persons that includes a clear and accessible pathway to naturalisation within a reasonable timeframe:

46. A **specific visa category** should also be established for all recognised stateless persons, irrespective of their mode of arrival to Australia, providing for ‘permanent protection’ with the realistic possibility of naturalisation within a reasonable timeframe, in accordance with article 32 of the 1954 Convention.⁷⁰
47. Between 2013 and 2019 approximately 900⁷¹ people (including stateless persons) - who arrived in Australia seeking asylum by boat - were transferred to Nauru or Papua New Guinea (PNG) by the Australian government.⁷² Due to legal action (or threat thereof), the government subsequently returned them to Australia for urgent medical care.⁷³ Known as ‘**transitory persons**’, they remain in Australia **with no pathway to permanency**. This cohort includes young **stateless children** and families who continue to exist on short term rolling Bridging Visas, creating a life of uncertainty and instability, with debilitating mental health impacts.⁷⁴
48. In February 2023 the Australian government introduced a new permanent visa for certain refugees (including stateless persons) on particular temporary visas (Temporary Protection Visas and Safe Haven Enterprise Visas).⁷⁵ While the introduction of this permanent ‘*Resolution of Status Visa*’⁷⁶ (‘RoS visa’) is a welcome development, many - including stateless persons - currently living in Australia remain ineligible to apply for *any* form of visa.⁷⁷ They continue to live in Australia in a state of legal limbo on a ‘transitory’ basis (as discussed at 47 above) and remain at risk of removal at any time.⁷⁸

⁷⁰ Ibid 453.

⁷¹ Legal and Constitutional Affairs Legislation Committee (2025) *Senate: Legal and constitutional affairs legislation committee estimates*, Australian Government: https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/28735/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2025_02_24_Official.pdf;fileType=application%2Fpdf

⁷² For more information about Australia’s offshore processing regime see: Refugee Council of Australia, ‘Australia’s Offshore Processing Regime: The Facts,’ <<https://www.refugeecouncil.org.au/offshore-processing-facts/>>

⁷³ For more information about a coordinated campaign by medical and legal organisations to return asylum seekers and refugees from Nauru and PMG to Australia for urgent medical care (‘Medevac’) see Asylum Seeker Resource Centre, ‘Medevac process explained’ <<https://asrc.org.au/medevac-process-explained/>>

⁷⁴ See A Nickerson, Y Byrow, M O’Donnell Et al, ‘The association between visa insecurity and mental health, disability and social engagement in refugees living in Australia’ (2019) 10(1) *European Journal of Psychotraumatology* <<https://www.tandfonline.com/doi/full/10.1080/20008198.2019.1688129>>.

⁷⁵ Refugee Advice and Casework Service, *An Overview of the Current Legal Situation for People Seeking Asylum in Australia* (Factsheet, November 2019) 3 <<https://www.racs.org.au/s/101-An-Overview-of-the-Current-Legal-Situation-for-People-Seeking-Asylum.pdf>>; Refugee Advice and Casework Service, *Fact Sheet: Temporary Protection Visas (TPV) and Safe Haven Enterprise Visas (SHEV)* (Factsheet, November 2019) 2 <<https://www.racs.org.au/s/202-TPV-and-SHEV-Boat-Arrivals.pdf>>.

⁷⁶ Subclass 851 Resolution of Status Visa see ‘Subclass 851 Resolution of Status’, *Australian Government, Department of Home Affairs, Immigration and Citizenship* (Web Page, 2023) <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/resolution-of-status-851>>.

⁷⁷ Susan Love, ‘Resolving the Status of Temporary Protection Visa Holders: a Quick Guide’ (*Parliament of Australia*, 16 May 2023) <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Quick_Guides/2022-23/ProtectionVisaHolders>.

⁷⁸ As of 22 May 2023, there were 1,152 people in Australia ineligible for any form of visa. Classified as ‘transitory persons’ under the *Migration Act* (n 33), these are refugees and asylum seekers who were initially transferred to a regional processing country (Nauru or PNG) then returned to Australia for a ‘temporary purposes’ such as medical treatment under s 198B of the *Migration Act*. Although the Australian government considers their stay in Australia temporary, majority in this cohort have now been in Australia for years with no clear indication they will be removed. An application for a visa is not considered a valid application under the *Migration Act* if it is made by a ‘transitory person’ who is in Australia and who is either an unlawful non-citizen or a person who holds a bridging visa, a temporary protection visa, or certain other prescribed temporary visas: s 46B(1). Further, if a transitory person, who has been present in Australia for a temporary purpose, no longer needs to be in Australia for that purpose, then the person must be removed from Australia as soon as reasonably practicable: s 198(1A).

49. Any new arrivals of asylum seekers (including stateless persons) entering Australia by sea also remain ineligible for any form of visa.⁷⁹ The Australian Government has maintained its practice of turning boats back at sea, thus making it virtually impossible for asylum seekers to arrive by such means.⁸⁰
50. Furthermore, the Australian government continues to only offer temporary visas to stateless persons or those at risk of statelessness fleeing particular conflicts.⁸¹

ISSUE 2: The Prolonged Detention of Stateless Persons in Australia

51. As set out by UNHCR, ‘the absence of status determination procedures to verify identity or nationality can lead to prolonged or indefinite detention’.⁸² The risk of detention is heightened in the Australian context, due to the mandatory nature of immigration detention that, until very recently, could be imposed indefinitely.
52. As neither Nauru nor PNG have ratified the 1954 Convention further concern exists over the rights afforded to stateless persons who are held in Australia’s offshore immigration detention locations.⁸³
53. To date, the UN Human Rights Committee (UNHRC) has issued numerous decisions in which it finds Australia’s policy of mandatory immigration detention in breach of Article 9 of the ICCPR.⁸⁴ The Working Group on Arbitrary Detention has reiterated the UNHRC’s views and noted that non-citizens have no effective remedy against their continued administrative detention, resulting in arbitrary detention.⁸⁵ UNHRC has stated that Australia is under obligation to take steps to prevent similar violations in future.⁸⁶
54. The Australian legislative framework does not account for stateless persons who were not born in Australia, or who previously held citizenship from another country which has since been lost. Stateless persons who do not meet the requirements for citizenship can only reside, study and work in Australia if they are eligible for a temporary or substantive visa (usually within Australia’s refugee protection framework) or successfully obtain ministerial intervention.⁸⁷

⁷⁹ Ibid s 46A.

⁸⁰ Anthony Galloway, ‘Albanese Government Turns Around its First Asylum Seeker Boat’, *The Sydney Morning Herald* (online, 24 May 2022) <<https://www.smh.com.au/politics/federal/albanese-government-turns-around-its-first-asylum-seeker-boat-20220524-p5ao2y.html>>.

⁸¹ Australian Government Department of Home Affairs, ‘Hamas-Israel Conflict: Temporary Humanitarian Stay pathway for Palestinians and Israelis in Australia’ (Web Page) <<https://www.homeaffairs.gov.au/help-and-support/hamas-israel-conflict/information-for-palestinian-israeli-nationals-temporary-humanitarian-stay>> and Australian Government Department of Home Affairs, ‘Ukraine visa support’ (Web Page) <https://www.homeaffairs.gov.au/help-and-support/ukraine-visa-support>.

⁸² UNHCR, *Handbook on the Protection of Stateless Persons* (n 63) 41 [115].

⁸³ The Australian Government has been detaining people seeking asylum who arrived in Australia without a valid visa by boat in Nauru and Papua New Guinea since 2012, raising serious human rights concerns. For more information, see ‘Offshore Processing’, *Refugee Council of Australia* (Web Page) <<https://www.refugeecouncil.org.au/offshore-processing/>>.

⁸⁴ Human Rights Committee, *Views: Communication No 900/1999*, 76th sess, UN Doc CCPR/C/76/D/900/1999 (28 October 2002); Human Rights Committee, *Views: Communication No 1014/2001*, 78th sess, UN Doc CCPR/C/78/D/1014/2001 (18 September 2003); Human Rights Committee, *Views: Communication No 1324/2004*, 88th sess, UN Doc CCPR/C/88/D/1324/2004 (13 November 2006); Human Rights Committee, *Shams et al. v. Australia*, 90th sess, UN Doc CCPR/C/90/D/1255,1256,1259,1260,1266,1268,1270&1288/2004 (20 July 2007); Human Rights Committee, *Views: Communication No 1069/2002*, 79th sess, UN Doc CCPR/C/79/D/1069/2002 (6 November 2003); Human Rights Committee, *Views: Communication No 1050/2002*, 87th sess, UN Doc CCPR/C/87/D/1050/2002 (9 August 2006); Human Rights Committee, *Views: Communication No 2229/2012*, 116th sess, UN Doc CCPR/C/116/D/2229/2012 (17 November 2016); and Human Rights Committee, *Views: Communication No 2233/2013*, 116th sess, UN Doc CCPR/C/116/D/2233/2013 (2 May 2016); *Human Rights Council Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20 – 24 November 2017*, UN Doc A/HRC/WGAD/2017/71 (21 December 2017).

⁸⁵ *Human Rights Council Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20 – 24 November 2017*, 80th sess, UN Doc A/HRC/WGAD/2017/71 (21 December 2017) [53]-[55].

⁸⁶ Human Rights Committee, *Views: Communication No 2233/2013*, 116th sess, UN Doc CCPR/C/116/D/2233/2013 (2 May 2016) [12].

⁸⁷ Refugee Council of Australia, *Statelessness in Australia* (Report, August 2015) 14–15 <<https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/1508-Statelessness.pdf>>. See also Peter McMullin Centre on Statelessness, *Australia should adopt a Human*

Generally, people who are unsuccessful in obtaining a visa are expected to return to their country of origin.⁸⁸ Stateless people, however, have no country to return to. This leaves them at a heightened risk of being detained.

55. As at 31 August 2023, stateless people were held in immigration detention for an average of 992 days.⁸⁹
56. Until 2023, it was legal for people to be held in immigration detention indefinitely. In *Al-Kateb v Goodwin* (2004) the High Court of Australia (HCA) held that due to Mr Al-Kateb's failed claim to protection, the unavailability of a visa as a result of his status as a stateless Palestinian born in Kuwait, and his inability to be returned to another country, it was lawful to indefinitely detain him.⁹⁰
57. *Al-Kateb v Goodwin* was overturned by the HCA in 2023 in *NZYQ v The Minister for Immigration, Citizenship and Multicultural Affairs*.⁹¹ Stateless Rohingya man 'NZYQ' had been detained for more than 5 years. Having had his visa cancelled due to a criminal conviction and unable to be returned to Myanmar due to his statelessness, he faced the very real potential of being detained for the rest of his life. In a landmark judgement overturning almost twenty years of legal precedent, the HCA found that because there was no real prospect of his removal from Australia 'becoming practicable in the reasonably foreseeable future,' his detention was unlawful and he must be immediately released.⁹²
58. At the time of the NZYQ judgement, available government statistics indicated that there were over 1000 people in immigration detention, 31 of whom were believed to be stateless.⁹³ The average length of detention at the time was 708 days, with more than 100 people having been held for more than five years.⁹⁴
59. Despite the overturning of the legality of indefinite detention in Australia the situation for stateless people remains extremely precarious.⁹⁵
60. In response to NZYQ, the government passed the *Migration Amendment (Bridging Visa Conditions) Act 2023* (Cth), the *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023* (Cth) and the *Migration Amendment (Removal and Other Measures) Act 2024* (Cth).
61. The *Migration Amendment (Bridging Visa Conditions) Act 2023* (Cth) introduced new temporary Bridging R (Removal Pending) (subclass 070) ('BVR') visas for persons released from detention that offer limited rights and no pathway to permanent residency. It also included mandatory monitoring conditions, imposition of a curfew and the wearing of monitoring

Rights Act to protect the rights of stateless people, including children: Submission to the Parliamentary Joint Committee on Human Rights – Inquiry into Australia's Human Rights Framework (Submission, 29 June 2023) 11–12.

⁸⁸ Refugee Council of Australia (Ibid) 14–15.

⁸⁹ Australian Border Force, *OSE23-741 - Onshore Immigration Detention - Length of Time by Nationality* (Question on Notice No 741, October 2023).

⁹⁰ *Al-Kateb v Goodwin* (2004) 219 CLR 562.

⁹¹ *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 415 ALR 254. See also Hannah Gordon, 'NZYQ v Minister For Immigration, Citizenship and Multicultural Affairs: the End of Indefinite Immigration Detention in Australia?' (2024) 6(1) *Statelessness & Citizenship Review* 143.

⁹² *NZYQ* (n 96) [70], [74].

⁹³ Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (Report, August 2023) 4, 9 <<https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2023.pdf>>.

⁹⁴ Ibid 12.

⁹⁵ For the significance of this judgement as it pertains to stateless people in Australia, see Katie Robertson and Michelle Foster, "I have no rights': what happens to stateless people in Australia after the High Court's ruling?", *The Conversation* (10 November 2023) <<https://theconversation.com/i-have-no-rights-what-happens-to-stateless-people-in-australia-after-the-high-courts-ruling-217363>>.

devices (such as ankle monitors). The HCA subsequently held that the conditions imposed on BVR holders were punitive and was therefore unconstitutional.⁹⁶

62. The *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023* (Cth) introduced a preventive detention regime, which allows the Minister for Home Affairs or the Minister for Immigration to seek a community safety detention order or supervision order for up to three years.
63. The *Migration Amendment (Removal and Other Measures) Act 2024* (Cth) introduced a duty for 'removal pathway non-citizens' to cooperate with the Minister's assessment of their prospects for removal and criminalises non-cooperation. This legislation has received significant criticism from human rights organisations.⁹⁷
64. Statistics indicate that even after the ending of indefinite detention in Australia, stateless persons experience a disproportionately higher risk of detention. As of 29 February 2024, 881 people remained in immigration detention, including 11 stateless individuals.⁹⁸ The average length of detention was 624 days with 95 people having spent between 5-10 years in detention and six individuals having been detained for more than six years.⁹⁹
65. Although the Australian government is not currently placing children in immigration detention, detention of minors – including stateless minors - has been common practice for many years and remains legal in Australia.

ISSUE 3: Australia's Citizenship Deprivation Powers Risk Rendering Persons Stateless

66. There are numerous ways a person may cease to be a citizen under Australian law, including renunciation by application,¹⁰⁰ revocation due to offences or fraud,¹⁰¹ revocation due to a failure to comply with special residence requirements,¹⁰² cessation through engaging in terrorist related conduct,¹⁰³ cessation through service in the armed forces of an enemy country or declared terrorist organisation,¹⁰⁴ or cessation due to conviction for terrorism offences.¹⁰⁵
67. Under international law, States have traditionally been granted broad discretion in the regulation of nationality matters. This is not an absolute discretion; States' prerogative in nationality matters has been gradually limited by the evolution of human rights law.¹⁰⁶

⁹⁶ *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40.

⁹⁷ See, for example, Human Rights Law Centre, *Explainer: High Court Decision on Indefinite Detention* (26 March 2024) <https://www.hrlc.org.au/explainers/2024-03-26-indefinite-detention/>

⁹⁸ Department of Home Affairs, *Freedom of Information Request – FA 24/03/00245* (29 February 2024).

⁹⁹ *Ibid.*

¹⁰⁰ *Australian Citizenship Act 2007* (Cth) s 33; see also Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 4) 487.

¹⁰¹ *Australian Citizenship Act 2007* (Cth) s 34; see also Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 4) 487.

¹⁰² *Australian Citizenship Act 2007* (Cth) s 34A; see also Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 4) 487.

¹⁰³ *Australian Citizenship Act 2007* (Cth) s 33AA; see also Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 4) 487.

¹⁰⁴ *Australian Citizenship Act 2007* (Cth) s 35; see also Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 4) 487.

¹⁰⁵ *Australian Citizenship Act 2007* (Cth) s 35A; see also Foster, McAdam and Wadley, 'The Prevention and Reduction of Statelessness in Australia: An Ongoing Challenge' (n 4) 487.

¹⁰⁶ Peter McMullin Centre on Statelessness, Submission No 15 to *Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, Advisory Report on the Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018* (18 January 2019) 2 < https://law.unimelb.edu.au/__data/assets/pdf_file/0005/3025850/PMCS-Joint-Committee-Submission-Jan-2019.pdf >.

68. The *Principles on Deprivation of Nationality as a National Security Measure*,¹⁰⁷ and the *UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality*¹⁰⁸ provide important guidance on the question of deprivation of nationality. Accordingly, state discretion in this area is subject to the individual right to nationality,¹⁰⁹ the prohibition of arbitrary deprivation of nationality,¹¹⁰ the prohibition of discrimination¹¹¹ and the obligation to avoid statelessness.¹¹² Furthermore, the impact of nationality deprivation on the enjoyment of other human rights, humanitarian and refugee law obligations and standards must be taken into consideration when assessing the legality of citizenship deprivation. These include, the right to enter and remain in one's own country, the prohibition of *refoulement*, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the liberty and security of the person the right to private and family life; legal personhood and the rights of the child.¹¹³ Any measures to deprive nationality must also comply with due process safeguards and the right to a fair trial.¹¹⁴
69. In 2015, the Australian Parliament passed amendments to the Citizenship Act through the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* (Cth) that broadened the Government's power to strip Australian nationals of their citizenship.¹¹⁵
70. Under the 1961 Convention, deprivation of nationality is generally prohibited where it would render a person stateless.¹¹⁶ Although Article 8(3) of the 1961 Convention contains a narrow set of exceptions under which a state may deprive a person of nationality even where that may render the person stateless, the exclusion clause is applicable only if the state made a declaration to that effect at the time of accession. Australia did not make such a declaration.¹¹⁷
71. As noted by the PMCS in previous submissions to the Australian Government, existing citizenship deprivation provisions in the Citizenship Act risk rendering Australian citizens

¹⁰⁷ Institute on Statelessness and Inclusion, *Principles on Deprivation of Nationality as a National Security Measure* (March 2020) <<https://files.institutesi.org/PRINCIPLES.pdf>>.

¹⁰⁸ UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/20/05 (May 2020) <<https://www.refworld.org/docid/5ec5640c4.html>>.

¹⁰⁹ Human Rights Council Resolution 7/10, *Human Rights and Arbitrary Deprivation of Nationality*, UN Doc A/HRC/RES/7/10 (27 March 2008); Human Rights Council Resolution 10/13, *Human Rights and Arbitrary Deprivation of Nationality*, UN Doc A/HRC/RES/10/13 (26 March 2009); Human Rights Council Resolution 13/2, *Human Rights and Arbitrary Deprivation of Nationality*, UN Doc A/HRC/RES/13/2 (24 April 2010); Human Rights Council Resolution 20/4, *The Right to a Nationality: Women and Children*, UN Doc A/HRC/RES/20/4 (16 July 2012); Human Rights Council Resolution 20/5, *Human Rights and Arbitrary Deprivation of Nationality*, UN Doc A/HRC/RES/20/5 (16 July 2012); Human Rights Council Resolution 26/14, *Human Rights and Arbitrary Deprivation of Nationality*, UN Doc A/HRC/RES/26/14 (11 July 2014); Human Rights Council Resolution 32/5, *Human Rights and Arbitrary Deprivation of Nationality*, UN Doc A/HRC/RES/32/5 (15 July 2016).

¹¹⁰ Institute on Statelessness and Inclusion, *Principles on Deprivation of Nationality as a National Security Measure* (March 2020) Principle 7 <<https://files.institutesi.org/PRINCIPLES.pdf>>. See also Institute on Statelessness and Inclusion, *Draft Commentary to the Principles on Deprivation of Nationality as a National Security Measure* <files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf>.

¹¹¹ Ibid Principle 6.

¹¹² Ibid Principle 5.

¹¹³ Ibid Principle 9.

¹¹⁴ Ibid Principle 8.

¹¹⁵ *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* (Cth). These amendments included:

- a. The introduction of section 33A, allowing citizenship cessation if a person engages in various terrorist activities deemed '[inconsistent] with their allegiance to Australia';
- b. The amendment of section 35, providing for citizenship cessation due to service in the armed forces of an enemy country or a declared terrorist organisation defined in section 35AA;
- c. The introduction of section 35A, providing for citizenship cessation upon the Minister's determination if a person has been convicted for terrorism offences or certain other offences demonstrating a '[repudiation of] their allegiance to Australia'.

¹¹⁶ *Convention on the Reduction of Statelessness* (n 27) art 8(1). See also *Guidelines on Statelessness No. 5* (above n 115).

¹¹⁷ *Convention on the Reduction of Statelessness* (n 27) art 8(3); Peter McMullin Centre on Statelessness, *Submission No 19 to Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, Review into the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (16 October 2019) 6 <https://law.unimelb.edu.au/__data/assets/pdf_file/0005/3209468/Sub-19-Peter-McMullin-Centre-on-Statelessness.pdf>.

stateless, and arguably breach Australia's obligations under international law, including the prohibition of arbitrary deprivation of nationality.¹¹⁸

72. Further changes were made to Australian law in September 2020 rendering Australians increasingly vulnerable to the risk of statelessness.¹¹⁹
73. These changes further rendered the Citizenship Act inconsistent with Australia's international legal obligations by weakening already inadequate protections against statelessness, and further undermining the right to nationality and the institution of citizenship.¹²⁰

ISSUE 4: In the Context of Climate Change, Australia Must Ensure That Issues of Citizenship and Potential Risks of Statelessness are Addressed in Population Relocation Agreements that it Enters Into With Other Countries

74. The impacts of climate change, be they sudden-onset events (such as tropical storms, cyclones, bushfires, or flooding), or slower-onset events (such as sea-level rise, rising temperatures, and desertification) are being experienced by communities around the world. Those living in low-lying island States, including in the Pacific, are particularly vulnerable.
75. Climate-related mobility, in the form of voluntary and involuntary movement within or across State borders, is an adaptation response that is already taking place.¹²¹
76. In November 2023, Australia and Tuvalu entered into the world's first bilateral agreement on human mobility in the context of climate change, the *Falepili Union Treaty* ('Treaty').¹²² Under the Treaty, from 2025 onwards, Australia will grant permanent residence to up to 280 Tuvaluans facing dangers posed by climate change each year. Although the Treaty notes that these Tuvaluans will be able to '(a) live, study and work in Australia; (b) access Australian education, health, and key income and family support on arrival,' it is silent on issues of nationality.
77. In May 2024, the Australian Government issued an Explanatory Memorandum to the Treaty, clarifying that

'Falepili visa holders would be eligible to apply for Australian citizenship on the same basis as other Permanent Residents. Australian citizenship will not affect Tuvaluan

¹¹⁸ Peter McMullin Centre on Statelessness, Submission No 18 to Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Inquiry into the Australian Citizenship Renunciation by Conduct and Cessation Provisions* (13 August 2019) 2 <https://law.unimelb.edu.au/__data/assets/pdf_file/0007/3151978/Sub-18-PeterMcMullinCentre.pdf>.

¹¹⁹ *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (Cth) cls 36B, 36C, 36D. The *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (the **Bill**) amended existing citizenship deprivation provisions to provide that, at the discretion of the Minister for Home Affairs, a person who is a national or citizen of a country other than Australia ceases to be an Australian citizen in three circumstances:

- a. renunciation by conduct when a person engages in specified terrorism related activities;
- b. cessation of citizenship when a person fights for, or is in the service of, a declared terrorist organisation outside of Australia; or
- c. cessation by conviction for a specified offence with a sentencing period of at least 3 years.

¹²⁰ Peter McMullin Centre on Statelessness, Submission No 19 to Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Review into the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (n 109) 14.

¹²¹ CARICOM, 'Climate Change and Nature Disasters Key Drivers of Displacement in the Caribbean' (online, 10 July 2024) <<https://caricom.org/climate-change-and-natural-disasters-key-drivers-of-displacement-in-the-caribbean/>>; Craig Reucassel, Deborah Richards and Victoria Allens, 'In Fiji, the Climate Crisis Is No Longer off in the Future – It's a Daily Reality', *ABC News* (April 2023) <<https://www.abc.net.au/news/2023-04-06/fiji-climate-change-moving-villages-vunidogoloa/102186670>>.

¹²² Australia-Tuvalu Falepili Union (2023).

*citizenship. Genuine Tuvaluan citizens could apply for the special pathway from anywhere in the world and would be free to secure work of their choice.*¹²³

While the clarification is welcome, the Explanatory Memorandum is not binding on the parties to the Treaty. Further, it remains unclear what is meant by ‘genuine Tuvaluan citizens’.

78. Furthermore, there appears to have been a lack of adequate due diligence on potential risks of statelessness arising from some Tuvaluans who may wish to migrate permanently to Australia under the Treaty. Under Tuvalu’s *Citizenship Act 2008 (Tuvalu Citizenship Act)*, persons who have gained citizenship through the processes of naturalization or registration are vulnerable to deprivation of their citizenship if they fail to comply with any of the three prescribed conditions stipulated under s 6(4)(b),(c) and (f) of the Tuvalu Citizenship Act. Under s 6(4)(b) naturalized citizens are required to ‘intend to make Tuvalu [their] permanent home’ and face the risk of citizenship deprivation in instances where they do not.¹²⁴
79. The citizenship loss provisions in the Tuvalu Citizenship Act do not specify a specific timeframe of residence abroad to enliven these provisions providing decision-makers with broad discretion regarding citizenship deprivation. Persons affected by these provisions further risk statelessness as no safeguards exist in the Citizenship Act to prevent statelessness in such instances. This risk is especially heightened for naturalized citizens as they are required to renounce any other citizenship prior to naturalization. In theory, it is therefore possible that some Tuvaluans will be left stateless if they are deprived of their Tuvaluan citizenship as a result of becoming permanent residents in Australia, but before they have acquired Australian citizenship.¹²⁵

¹²³ Explanatory Memorandum – Falepili Union between Australia and Tuvalu (2024).

¹²⁴ Radha Govil and Hannah Gordon, Peter McMullin Centre on Statelessness, *Inquiry into the Australia-Tuvalu Falepili Union Treaty: Submission to the Joint Standing Committee on Treaties* (April 2024).

https://law.unimelb.edu.au/__data/assets/pdf_file/0004/4922581/PMCS-submission-to-Joint-Standing-Committee-on-Treaties.pdf

¹²⁵ Ibid.

Recommendations

80. Based on the above analysis, PMCS and NFA urge reviewing States to make the following recommendations to Australia:

1. Fully promote, respect, protect and fulfil its obligations towards stateless persons and the right to a nationality under international human rights law;
2. Develop and introduce a legislative statelessness determination procedure, ensuring that the procedure is fair, effective and accessible to all persons in Australia regardless of their legal status. This includes funded access to interpreting services and legal support. The procedure should comply with international standards of due process and follow the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons;
3. Develop and introduce a dedicated visa category for all stateless persons, regardless of their mode of arrival in Australia, providing them with permanent protection and a pathway to naturalisation and funded legal services to assist them in apply for this visa category and associated naturalisation processes (i.e. citizenship);
4. Abolish temporary protection;
5. Provide targeted funding to appropriate legal services to assist eligible stateless persons to apply for Australian citizenship;
6. Ensure applications for Australian citizenship by eligible stateless persons are processed within a mandated and reasonable time-frame;
7. Ensure that its treatment of stateless persons, including those in immigration detention fully complies with its international obligations, and that alternatives to detention are implemented to protect against arbitrary detention in all circumstances;
8. Introduce legislated maximum timeframes and independent review mechanisms for immigration detention, in accordance with international law;
9. Protect everyone's right to a nationality, and ensure that national laws comply with international obligations which prohibit the arbitrary deprivation of nationality and discrimination, while ensuring the avoidance of statelessness;
10. Amend the existing citizenship deprivation laws in the *Australian Citizenship Act 2007* (Cth) to ensure they are fully compliant with international law;
11. Take a leadership role in the Asia-Pacific region in reducing and addressing statelessness by engaging in constructive partnerships with neighbouring nations;
12. Ensure that risks of statelessness are identified and addressed prior to entering into human mobility agreements with other States in the context of climate change;
13. In the context of the Australia-Tuvalu Falepili Treaty, ensure that risks of statelessness are addressed and removed before Tuvaluans migrate to Australia; and
14. Ensure that human mobility agreements with other States explicitly address the question of how Australian citizenship may be acquired by those migrating to Australia in the context of climate change.