



THE UNIVERSITY OF
MELBOURNE

Peter McMullin Centre
on Statelessness

Factsheet

Statelessness in Australia

a. Are there stateless people in Australia?

Yes.

Most stateless people in Australia originally arrived from other countries seeking protection due to their statelessness.¹ The number of stateless people in Australia increased significantly after World War II as Australia welcomed many migrants and refugees, predominantly from Europe, who were deprived of their nationality during or after the war. Stateless people continue to seek protection in Australia.

For detailed information on the causes of statelessness, please see our factsheets:

- [*An Overview of Statelessness*](#)
- [*How does someone become stateless?*](#)
- [*Childhood Statelessness*](#)
- [*Gender Discriminatory Nationality Laws*](#)

b. How many stateless people are in Australia?

There are many stateless persons in Australia, however accurate figures are unknown due to a 'lack of coordinated or consistent approach' to recording such persons.² The most recent data published by UNHCR in June 2023 indicates that there were 8,313 stateless persons in Australia.³ Statistics reported by the Australian government to the UNHCR regarding the number of stateless persons in Australia have increased significantly over the past seven years,⁴ with 52 stateless persons reported in 2017⁵ and 132 in 2018.⁶

As noted by the UNHCR however, these statistics **cannot** be considered an accurate estimate of stateless persons in Australia, due to a lack of both a statelessness determination procedure and a consistent and coordinated system for counting stateless persons in Australia.⁷ The true number of stateless persons in Australia is likely to be much higher.⁸

c. What are Australia's international legal obligations to stateless people in Australia?

Australia is party to both the **1954 Convention relating to the Status of Stateless Persons** ('the 1954 Convention') and the **1961 Convention on the Reduction of Statelessness** ('the 1961 Convention'), which establish the international law on statelessness.

The *1954 Convention* defines statelessness, establishes minimum standards for the protection of stateless persons and promotes 'the widest possible exercise of [their] fundamental rights.'⁹ The *1961 Convention* establishes obligations on states to prevent and reduce statelessness within their territory.

For detailed information on the causes of statelessness, please see our factsheets:

- [**United Nations Statelessness Conventions: An Introduction**](#)
- [**The 1954 Convention relating to the Status of Stateless Persons**](#)
- [**The 1961 Convention on the Reduction of Statelessness**](#)

Because Australia has ratified the 1954 Convention and the 1961 Convention without reservation, it is bound to comply with the Conventions under international law. However, as a 'dualist' country, international treaties are unenforceable in Australian domestic law unless they are implemented through legislation by the Federal Parliament. There are several core obligations under the UN Statelessness Conventions that Australia has not yet enacted in its domestic law.¹⁰

Australia is also party to other international human rights treaties, including the **International Covenant on Civil and Political Rights**, the **International Convention on the Elimination of All Forms of Racial Discrimination**, the **Convention on the Elimination of All Forms of Discrimination against Women**, the **Convention on the Rights of the Child** and the **Convention on the Rights of Persons with Disabilities**, which impose binding obligations relevant to the right to a nationality and the protection of stateless persons. Importantly, obligations under these conventions are imposed on party States in relation to 'all individuals in their territory', including non-citizens and stateless persons.¹¹

For more information on specific articles relevant to the right to nationality, please see our factsheet:

- [**United Nations Statelessness Conventions: An Introduction**](#)

d. How does Australia identify and process stateless persons?

Australia lacks a comprehensive legal procedure for identifying stateless persons. However, Australia has pledged to 'better identify stateless persons and assess their claims.'¹²

The UNHCR has recommended that parties to the 1954 Convention (including Australia) establish a statelessness determination procedure ('SDP') – a formal centralised domestic process for determining the status of stateless persons. Without an SDP, it is difficult to determine who is owed rights and entitlements under the 1954 Convention. To date, 28 countries have established an SDP.¹³

In establishing an SDP there is the opportunity to create a specific visa category for recognised stateless persons, providing for 'permanent protection' with the possibility of naturalisation, in conformity with the 1954 Convention.¹⁴ An SDP would also assist in compiling accurate and comprehensive data about the extent of statelessness in Australia.

e. What are the pathways to protection for stateless people who arrive in Australia?

Australia does not have a specific visa category for stateless people. Stateless persons seeking protection in Australia are currently processed for a Protection Visa under the refugee or complementary protection regimes through Australia's refugee status determination (RSD) procedure. However, not all stateless people meet the definition of a refugee and statelessness is not an 'independent ground for being granted' a Protection Visa.¹⁵

f. Protecting against indefinite immigration detention of stateless persons in Australia

Usually, when a person is refused a protection visa or their visa is cancelled, they are removed from Australia and returned to their country of origin. However, there is no country that a stateless person can be returned to as a national. For almost two decades, stateless persons were at risk of being subjected to prolonged or indefinite mandatory immigration detention if their visa was refused or cancelled.¹⁶ On 31 August 2023, there were 1056 people held in immigration detention facilities, of which 31 were stateless.¹⁷

However, on 8 November 2023, the High Court in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*¹⁸ ruled that indefinite detention is unlawful. As a result, people can no longer be detained if there is 'no real prospect' of their removal from Australia 'becoming practicable in the reasonably foreseeable future'.¹⁹ This decision marks important progress in safeguarding against people being deprived of their liberty, but more must be done to ensure Australian law effectively protects the human rights of stateless persons in Australia.²⁰

For more information on *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* and its impact on stateless people in Australia, please see our factsheet:

- [**What happens to stateless people in Australia after the High Court ruling?**](#)

g. How can someone become an Australian citizen?

A key strategy to reduce statelessness is to facilitate access to citizenship for stateless persons. Citizenship is not defined under the Australian Constitution,²¹ nor does Australia have a National Bill of Rights. Under the *Australian Citizenship Act 2007* (Cth) (**the Citizenship Act**), citizenship can be obtained by **automatic acquisition** (i.e. by being born in Australia in certain circumstances) or **application** (i.e. by applying to the Australian government).

h. Are you automatically an Australian citizen if you are born on Australian soil?

No.

A child born in Australia automatically becomes an Australian citizen if:

(1) their parent is an Australian citizen or permanent resident at the time the child is born,²² or

(2) the child is 'ordinarily resident' in Australia for 10 years from the day they were born.²³

i. How does Australia prevent children from being born stateless?

Australia is a party to the 1961 *Convention on the Reduction of Statelessness* and therefore has an international obligation to prevent children from being born stateless.

Section 21(8) of the *Australian 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 (i.e. is stateless), is eligible for Australian citizenship.

The intention of the Australian Parliament in including s 21(8) was to ensure Australia's obligations under the 1961 Convention were met by ensuring that no-one born in Australia remains stateless.²⁴

It is important to note that 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, as 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.²⁵

The [Stateless Legal Clinic](#), based at the Peter McMullin Centre on Statelessness at the Melbourne Law School, works with partner Refugee Advice Casework Service to assist Australian born children apply for Australian citizenship and navigate these significant administrative barriers.

j. Can Australian citizens have their citizenship taken away?

Yes.

The *Australian Citizenship Act 2007* sets out when Australian citizenship may be revoked.²⁶ The circumstances in which a person may lose their Australian citizenship differ based on how the person first acquired Australian citizenship.

k. What about stateless people born outside of Australia?

There are limited pathways to Australian citizenship for stateless persons who seek protection in Australia and the availability of pathways depends on the mode of arrival into Australia. Applicants for Australian citizenship must meet the following criteria: length of residence requirement, 'good character' requirement, knowledge of Australia, English language requirement and close and continuing link to Australia.²⁷ These requirements may be difficult to meet for some stateless persons.

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 substantive visa.

Australia has an obligation under both the 1954 Convention and the *1951 Convention Relating to the Status of Refugees* to 'facilitate the assimilation and naturalisation' of stateless persons and refugees.²⁸ This requires making 'every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings'.²⁹ To meet this obligation, the UNHCR has recommended states 'dispense with as many formalities in their naturalisation process as possible',³⁰ and remove any procedural requirements or cost barriers that may disadvantage stateless persons in applying for citizenship.³¹

Suggested further reading

Joint Submission to the Human Rights Council's Universal Periodic Review: Australia (9 July 2020), <https://law.unimelb.edu.au/_data/assets/pdf_file/0006/3436278/ISI-UPR-Submission-Australia-For-Website.pdf>

Foster, Michelle, 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* 401.

Foster, Michelle, 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.

Ainsworth, Sian, 'Why Did Australia Abolish Birth Right Citizenship?', *Right Now* (3 February 2020) <<http://rightnow.org.au/analysis/why-did-australia-abolish-birthright-citizenship/>>.

Department of Home Affairs, 'Become an Australian Citizen' (Web Page) <<https://immi.homeaffairs.gov.au/citizenship/become-a-citizen>>.

Klapdor, Michael, Moira Coombs and Catherine Bomm, 'Australian Citizenship: A Chronology of Major Developments in Policy and Law', *Parliament of Australia* (11 September 2009)

<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/AustCitizenship>.

Katie Roberson and Sarah Dale, 'A Place to Call Home: Shining a Light on Unmet Legal Need for Stateless Refugee Children in Australia' (Report, Refugee Advice & Casework Service (RACS), March 2021)

<https://law.unimelb.edu.au/data/assets/pdf_file/0007/3645547/StatelessChildrenReport.pdf>

Last updated February 2024

¹ Michelle Foster, Jane McAdam and Davina Wadley, 'Part One: The Protection of Stateless Persons in Australian Law — The Rationale for a Statelessness Determination Procedure' (2017) 40 *Melbourne University Law Review* 401, 411.

² *Ibid* 416.

³ UNHCR, 'Refugee Data Finder: Australia 2023' (June 2023) <<https://www.unhcr.org/refugee-statistics/download/?url=UdJba1>>.

⁴ Prior to 2017, the UNHCR only collected data about persons under its statelessness mandate. Since 2017 data captured about persons with 'undetermined nationality' as well as persons falling under the UNHCR's statelessness mandate because they meet the international definition of a stateless person.

⁵ UNHCR, *Global Trends – Forced Displacement in 2018* (2019) 65 <<https://www.unhcr.org/en-au/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>>.

⁶ UNHCR, *Global Trends – Forced Displacement in 2017* (2018) 64 <<https://www.unhcr.org/en-au/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>>.

⁷ Annex table 5 in UNHCR, *Global Trends – Forced Displacement in 2021* (Report, 16 June 2022) <<https://www.unhcr.org/62a9d1494/global-trends-report-2021>>

⁸ PMCS is currently working on the first 'mapping' study of statelessness in Australia that aims to provide a more accurate estimate of the number, location and protection needs of stateless persons in Australian.

⁹ *1954 Convention Preamble*.

¹⁰ Michelle Foster, Jane McAdam and Davina Wadley, 'Part One: The Protection of Stateless Persons in Australian Law — The Rationale for a Statelessness Determination Procedure' (2017) 40 *Melbourne University Law Review* 401, 404–5.

¹¹ See, eg, UN Human Rights Committee, *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) paras 3, 10.

¹² UNHCR, *Pledges 2011*, UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons* (Geneva, Palais des Nations, 7–8 December 2011) (2012) 49.

¹³ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons* (Report, July 2020) 44–66 <<https://www.refworld.org/docid/57836cff4.html>>; UNHCR, 'Cote d'Ivoire adopts Africa's first legal process to identify and protect stateless people' (Web Page, September 2020) <<https://www.unhcr.org/en-au/news/press/2020/9/5f51f33b4/cote-divoire-adopts-africas-first-legal-process-identify-protect-stateless.html>>.

¹⁴ Art 32.

¹⁵ For more information on Australia's RSD process, please see the Refugee Advice & Casework Service's factsheet 'An Overview of the Current Legal Situation For People Seeking Asylum in Australia': <<https://static1.squarespace.com/static/5ca341d4aadd343de55b7b50/t/63db0b9ab461821b25621ce0/1675299739428/1.01%2BAn%2BOverview%2Bof%2Bthe%2BCurrent%2BLegal%2BSituation%2Bfor%2BPeople%2BSeeking%2BAsylum.pdf>>; Foster, McAdam and Wadley 416, 455; Michelle Foster and Hélène Lambert, *International Refugee Law and the Protection of Stateless Persons* (Oxford University Press, 2019).

¹⁶ UNHCR, *Handbook on the Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (2014) 442–3.

¹⁷ Department of Home Affairs, *Immigration Detention and Community Statistics Summary: August 2023* (31 October 2023) <<https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2023.pdf>>.

¹⁸ Case S28/2023, *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023], <https://www.hcourt.gov.au/cases/case_s28-2023>

¹⁹ *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* [2023] HCATrans 154 (8 November 2023), <<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/2023/154.html>>

²⁰ 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>>

²¹ *Constitution of the Commonwealth of Australia*; Rubenstein, Kim and Jacqueline Field, *Australian Citizenship Law* (Thomson Reuters (Professional) Australia Ltd, 2nd ed, 2017), 53.

²² *Ibid* s 12(1)(a).

²³ *Ibid* s 12(1)(b).

²⁴ Michelle Foster, Jane McAdam and Davina Wadley, 'Part Two: The Prevention and Reduction of Statelessness in Australia — An Ongoing Challenge' (2017) 40 *Melbourne University Law Review* 456, 472-73, quoting *Revised Explanatory Memorandum, Australian Citizenship Bill 2005* (Cth) 38.

²⁵ Katie Robertson, 'Practical Measures to Meaningfully Implement Article 1(1) of the 1961 Convention on the Reduction of Statelessness in Australian Law and Practice' (2022) *The Statelessness & Citizenship Review*, 4(1), 204, 208.

²⁶ Sections 34 to 36 outlines the circumstances in which a person can lose their citizenship.

²⁷ Australian Government (Department of Home Affairs), 'Become an Australian citizen (by conferral): Permanent residents or eligible New Zealand citizens' <<https://immi.homeaffairs.gov.au/citizenship/become-a-citizen/permanent-resident#Eligibility>> .

²⁸ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) art 32; *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) art 34.

²⁹ UNHCR, 'Objectives and key provisions of the 1954 Convention relating to the Status of Stateless Persons' (1 October) <<https://www.unhcr.org/en-au/protection/statelessness/3bd7d3394/objectives-key-provisions-1954-convention-relating-status-stateless-persons.html>> .

³⁰ UNHCR London, 'Consultation Response: Charging for Immigration and Visa Applications' (2009) <<https://www.unhcr.org/en-ie/575995167.pdf>>.

³¹ UNHCR, *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (2014) 54 [156].