BEYOND OPERATION SOVEREIGN BORDERS

A LONG-TERM ASYLUM POLICY FOR AUSTRALIA

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Beyond Operation Sovereign Borders: A Long-term Asylum Policy for Australia

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Executive Summary

In the period 1998–2013, reflecting geopolitical disturbances outside the region, Australia experienced two surges of asylum seekers arriving irregularly by sea, the second considerably larger than the first. Some 12,000 people arrived in the period 1998–2007 and some 50,000 people in the period 2008–2013 (calculated by financial year).

Most of this flow of asylum seekers has been facilitated by people smugglers. This has produced the by-product of exploitation and numerous deaths at sea. Most of the asylum seekers have been found to be refugees under the 1951 Refugee Convention. The maritime asylum seeker issue and the policy responses of successive governments have been bitterly divisive within the Australian community.

Asylum policies implemented by the Labor government, and more recently the Coalition government in the form of "Operation Sovereign Borders", have had the effect of stopping the flow of asylum seekers arriving in Australia by sea.

This provides the opportunity for reflection on what lessons Australia has learnt over the past 15 years, and for development of depoliticized, best practice policy responses for the future.

The global environment is one in which the demand for migration opportunities to achieve protection, a new home or access to better economies far outstrips the migration and refugee resettlement places that governments are willing to make available. In a regional environment in which few countries are parties to the 1951 Refugee Convention, Australia is an attractive destination for asylum seekers, particularly when Australia's traditional Protection Visa system delivers high refugee recognition rates and a pathway to permanent residence and Australian Citizenship. There is no obvious upper limit to the number of people that people smugglers can deliver to Australian territory if the traditional approach to the Protection Visa system is maintained.

To achieve an orderly system of protection within the region and defeat the people smuggling system, there is a strong case for new and innovative approaches, outside of the standard Australian Protection Visa system, to managing protection for people who might otherwise have recourse to people smugglers.

The two key challenges facing Australia now are:

- the resolution of the future of the 34,500 maritime asylum seekers in Australia, Papua New Guinea (PNG) and Nauru; and
- the development of a future Australian refugee policy, including measures to improve regional protection, but limiting the scope for asylum seekers to be smuggled by sea.

The immediate priority in relation to the maritime asylum seekers in Australia, PNG and Nauru is to achieve resolution of their future and to provide decent living arrangements while this is done, preferably not in a detention environment. Firm time frames need to be set down for refugee status decisions to be made, with a much shorter period for those in PNG and Nauru, given their very difficult living conditions.

Processing centres in PNG and Nauru should become open centres. Local integration support should be given to assist refugees to remain in PNG and Nauru. Australia should assist in finding resettlement opportunities in third countries for some of this group. Detention in Australia needs to be kept to an absolute minimum and some form of work rights should be given to asylum seekers pending a decision on their case. For those found to be refugees in Australia, appropriate temporary and permanent visa options should be considered, with a defined pathway to Australian Citizenship. People who are found not to be refugees (or otherwise in need of protection) should be assisted to return to their countries of origin.

To deal with future asylum challenges, Australia should develop an integrated refugee policy that moves beyond "quick fixes". The policy should articulate Australia's responses to global and regional refugee issues, including foreign policy, aid policy, the humanitarian program and domestic asylum (including both maritime and visaed arrivals).

Australia should be prepared to take the long view and pursue long, medium and short-term goals in the region.

A renewed regional refugee strategy should seek to encourage ratification of the 1951 Refugee Convention and its 1967 Protocol (or at least, a regionally-agreed set of principles on protection), improvement of regional and national institutions dealing with migration and protection issues, and a lifting of standards of protection in practice.

Australian diplomacy on regional refugee protection should be complemented by the development of a Track 2 dialogue on this issue.

As part of its approach to working cooperatively with regional governments, Australia needs to consider increasing its own contribution to resolving regional refugee and protection issues through: greater diplomatic activity, aid to support refugee populations in the region, capacity building, significantly increasing its refugee resettlement program and targeted use of migration options.

In practical terms, responses to specific cohorts of asylum seekers should reflect unique national and other characteristics of each particular group.

In responding to particular flows of maritime asylum seekers to Australia facilitated by people smugglers, Australia must be prepared to consider denying access to the standard Protection Visa system and using readmission/transfer agreements with regional transit countries, subject to acceptable conditions.

Introduction

> *It has not been easy for organised world opinion in the United Nations or elsewhere to act directly in respect of some of the dreadful events which have driven so many people from their own homes and their own fatherland, but at least we can in the most practical fashion show our sympathy for those less fortunate than ourselves who have been the innocent victims of conflicts and upheavals of which in our own land we have been happy enough to know nothing.*
>
> *It is a good thing that Australia should have earned a reputation for a sensitive understanding of the problems of people in other lands; that we should not come to be regarded as people who are detached from the miseries of the world. I know that we will not come to be so regarded, for I believe that there are no people anywhere with warmer hearts and more generous impulses. This appeal therefore, is at one and the same time a challenge and an opportunity.*
>
> Prime Minister Robert Menzies – Broadcast by the Prime Minister for the Opening of World Refugee Year in Australia (27 September 1959)

Since 1945, Australia has welcomed over 7.5 million migrants, of whom some 800,000 were accepted for a range of humanitarian reasons (including, but not limited to, being a refugee under the 1951 Refugee Convention).

In general, these migrants and humanitarian entrants have become part of Australia's multicultural society with very little disharmony in the community. Similarly, management of asylum seekers arriving by air with visas has been uncontroversial. Current migration and temporary entry programs continue to run at, or near, all-time record levels with a strong level of community acceptance.

Historically, Australia has been regarded internationally as a model immigration country in terms of its broader immigration program, discretionary offshore humanitarian resettlement program and meeting its international legal obligations to asylum seekers arriving on its territory.

Against the background of this broad Australian consensus on migration, the phenomenon of maritime asylum seekers, most of whom have been smuggled to Australia in the period 1998–2013, and the policy responses of successive governments, have been bitterly divisive in the Australian community.

Asylum policies implemented by the Labor government, and more recently the Coalition government in the form of "Operation Sovereign Borders", have stopped the flow of asylum seekers reaching Australia by boat.

This provides the opportunity for reflection on what has happened, and consideration of what comes next.

This paper seeks, in an objective and non-partisan way, to consider what lessons Australia has learnt in the past 15 years from the various approaches to dealing with the maritime asylum seeker phenomenon, and what future policies could best be applied in the short, medium and long term.

The paper assumes a basic knowledge of international refugee issues and data on the part of the reader. It is written from a policy-making perspective.

A. Operation Sovereign Borders and the Regional Deterrence Framework

1.   "Operation Sovereign Borders" is the Australian government's military-led response to deter and prevent people from arriving by sea to Australian territory to seek asylum. The policy involves a Regional Deterrence Framework that seeks to stop the flow of people by interventions in source and transit countries and at sea. Implementation is driven by a Joint Agency Task Force headed by an Australian three star general. Broadly speaking, the policy comprises four main elements:

- the external disruption and deterrence measures with regional partners to combat people smuggling;
- the detection and interception of Suspected Illegal Entry Vessels (SIEVs) and the safe transfer of passengers to a location outside Australia;
- the detention of SIEV passengers in third countries and assessment of their claims to determine whether or not they are refugees; and
- the return of SIEV passengers who are not refugees to their country of origin. For those found to be refugees, resettlement in a third country is the primary option. As a last resort, resettlement in Australia is administered through Temporary Humanitarian Concern visas only.

2.   The Minister for Immigration and Border Protection, Scott Morrison MP, outlined the government's position on the Operation Sovereign Borders policy at a press conference in Sydney on 1 November 2013, stating: "Critical in our implementation is our commitment to universal application of the measures. It does not matter if you're ethnic Hazara, a stateless Rohingyan, whether you have an education or not, whether you are male, female, accompanied or unaccompanied, child or adult, the policy is the same and it will not change."[1]

3.   The immediate objective of the asylum policy of the previous Australian Labor government and the current Coalition government is to reduce maritime asylum seeker arrivals in Australia to very few or none. This has been achieved for a period of some months.

4.   The questions that now arise are: what policy responses are necessary to resolve the future of asylum seekers who remain in Australia and regional processing locations from the 2008–2013 cohort, and how can Australian policy be better positioned for future maritime asylum challenges.

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[1] http://www.minister.immi.gov.au/media/sm/2013/sm209273.htm.

B. Defining Australia's maritime asylum seeker "problem" in more detail

5.   In the period 1998–2013, reflecting geopolitical disturbances outside the region, Australia experienced two surges of asylum seekers arriving irregularly by sea, the second considerably larger than the first. Some 12,000 people arrived in the period 1998–2007 and some 50,000 people in the period 2008–2013 (calculated by financial years).

6.   In both cases, the flow of people was heavily facilitated by people smugglers for financial gain.

7.   In both cases, the movements were heterogeneous, involving a variety of source countries. The second period saw considerably more diverse arrivals – Iranians, Sri Lankans, Afghans, Pakistanis, Rohingyas and smaller numbers of people from a range of the Middle Eastern and African countries. Very few of the asylum seekers were from Australia's near region.

8.   In relation to the post-2008 flow of people, policy responses by both Labor and Coalition governments progressively sought to discourage such movement through a variety of measures, ranging from increased offshore resettlement and information campaigns, through to actively combating people smuggling and denying access to Australian territory and the Australian refugee status determination system.

9.   A combination of those measures, particularly denial of access to Australian territory, appears to have stopped the flow of people arriving in Australia.

10.   At the end of February 2014, there remained some 2,500 maritime asylum seekers in detention centres in PNG and Nauru and some 32,000 maritime asylum seekers in Australia.[2] Their futures have to be determined, whether it be return to country of origin, remaining in current offshore location, remaining in Australia or going to a third country.

11.   Given the difficult, and heavily criticized, living circumstances of those in PNG and Nauru, and the complex circumstances of people in Australia (ranging from people in detention to those in the community without work rights), a clear strategy is needed to resolve the status of this very large group of people – and avoid the social dislocation that will necessarily result if there is no certainty for them.

12.   More broadly, Australia has been politically and socially divided from the outset in relation to policy responses to maritime asylum seekers. These divisions have had

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[2] Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary* (28 February 2014).

the effect of promoting short-term, quick fixes at the expense of practical longer-term policies of shared responsibility for asylum flows with regional transit countries.

13.   Proponents on all sides of the debate have made mistakes. A rethinking is needed by all concerned to achieve a consensus position as a foundation for a policy that enables Australia to meet its obligations under the 1951 Refugee Convention (in its own right or, collectively, with its neighbours) and achieves the end goal of improving protection in the region, but denies a role for people smugglers.

14.   As with all complex problems, compromises will be necessary in developing policies to achieve balanced outcomes.

15.   At its roots, the key problem is the lack of high quality protection opportunities in the region, and the reluctance of states to work together on these issues in partnership with the United Nations High Commissioner for Refugees (UNHCR). This has left the field open to people smugglers to arrange and direct a significant flow of asylum seekers in an unsafe manner.

16.   A renewed strategy is needed that enables Australia to work with its neighbours and UNHCR on regional protection issues, in a way that goes beyond law enforcement and deterrence. Such a strategy should aim to be comprehensive and flexible enough to deal with future flows of maritime asylum seekers in the region and not just those that come to Australian shores.

C. The lessons learnt from maritime arrivals, 1998–2013

17.   To have any hope of achieving a consensus strategy underpinning a future asylum policy, all interested parties need to find some common ground in understanding Australia's past responses and building our future ones. This section outlines some key practical lessons from Australia's experience with maritime asylum seekers over the past 15 years:

- As a developed country that has ratified the Refugee Convention, situated in a region of less developed countries that are not parties to the Convention, Australia is an attractive destination for people from outside, and within, the region wishing to claim asylum.
- The existence of Australian territory (Christmas Island) close to Indonesian territory makes arrival by sea a viable option.
- In a global environment where demand for readily available, high-quality protection and migration opportunities far exceeds supply, people smugglers will exploit asylum seekers and economic migrants and bring them to Australia (amongst other destinations) for profit.
- In the absence of effective policies to prevent this, or to provide alternative options, the only limit to the size of the people flows is the size of the pool of people who have sufficient funds to pay for a smuggled passage to Australia. Arrivals to Australia by such means reached 25,000 persons in 2012–13 and over 4,000 in a single month.
- Over 1,000 deaths of asylum seekers have resulted from this inherently unsafe and disorderly movement of people. Numbers of deaths in future will likely be proportionate to the size of any flow.
- Given the generous nature of Australia's standard Protection Visa system and associated appeal arrangements, together with a lack of cooperation of most countries of origin in relation to returns, most people from troubled developing countries who have heavily committed themselves to travelling to Australia by the smuggled route and who access this system, are likely to be able to remain in Australia in the long term, irrespective of whether they have strong refugee claims. This provides further strong attraction for use of the smuggled route.
- Safe and orderly management of asylum seekers into the region, and a well-managed system of protection by states and UNHCR, is to be preferred to disorderly flow of people because of the safeguards that this provides for both asylum seekers and states.
- Every national cohort of asylum seekers will have unique circumstances that require differentiated responses from governments and UNHCR.

- Gradual securitization of the maritime asylum seeker issue by successive governments has redefined it away from its inherent civil nature as an issue of regional protection and management of the movement of people.
- To put more order into the system of regional protection and permanently defeat the smuggling system, there is a strong case for new and innovative approaches, outside of Australia's standard Protection Visa system, to managing protection for people who might otherwise have recourse to people smugglers.

D. Australian policy responses and their impacts

18.   A wide range of policy responses has been applied by successive Australian governments to the two major flows of maritime asylum seekers.

19.   The impacts of various responses can be summarized as follows:

- Policy responses that admit maritime arrivals to Australia and process them through the standard Protection Visa process achieve very high-quality protection outcomes for refugees (because of a sophisticated decision-making system, grant of permanent resident status and a defined pathway to Australian Citizenship). However, they attract very large numbers of people. Anti-people smuggling law enforcement measures in this context only provide a slight brake on the numbers. Exploitation and deaths at sea are part of this inherently disorderly movement.
- Policy responses that aim to provide an alternative to a smuggled passage to Australia through increased resettlement opportunities at key locations do not, in themselves, reduce irregular maritime arrivals as long as the irregular channel remains open in parallel.
- Policy responses that divert smuggled maritime asylum seekers to a processing location outside Australia for refugee status determination and resolution of their future may achieve reasonable to good protection outcomes, depending on the location chosen and the conditions of stay. Such policies are most likely to achieve a significant reduction of maritime arrivals because they defeat the essential purpose of this means of travel to Australia (i.e. settlement in Australia)
- Policy responses that are exclusively deterrence-based are pursued with low regard to protection outcomes (i.e. the impacts on asylum seekers and the ability of refugees to obtain protection). They may be effective in substantially reducing irregular flows of people, but carry very significant risks. Boat turnarounds risk deaths at sea and damage to Australia's bilateral relationship with Indonesia. Long-term detention risks major disturbances, destruction of detention centres, death and injuries to detainees and staff, mental illness, hunger strikes and unacceptable circumstances for children and the aged. It also poses long-term risks to those managing the detention regime. For those in the community, denial of access to benefits and the labour market risks destitution and marginalization of those affected. Ultimately, deterrence may not be sustainable because of the high commitment of military and other resources required.

20.   The balance of this paper examines options in two broad areas of this highly contested zone of public policy:

- the future of the 34,500 asylum seekers in Australia, PNG and Nauru; and
- the nature of a future Australian refugee policy, including measures to strengthen regional engagement and protection.

E. **Resolving the future of 2008–2013 arrivals** *(people already in Australia, PNG and Nauru)*

21.   The resolution of the status of asylum seekers already in Australia or transferred to PNG or Nauru is urgent. There are currently some 34,500 people in administrative limbo (32,000 in Australia and 2,500 in PNG and Nauru).

22.   In order for this to happen there needs to be an agreed set of underlying policy principles around which such a resolution could occur, and which would guide both processing and care for people whether they are held in some form of immigration detention or living in the community pending a decision on their status.

23.   Three are proposed for discussion:

- Decisions on refugee status should be made in a reasonable period of time and in a fair and reliable manner;
- Asylum seekers should live in decent conditions while their claims are processed. This includes situations where processing times may be long (e.g. if there is a surge in arrivals, or where there are concerns about an individual asylum seeker's security profile or credibility). Arrangements must also meet the different needs of particular groups of people affected;
- It is reasonable to contemplate a variety of outcomes for individual asylum seekers as part of a comprehensive strategy: e.g. arrangements for permanent settlement in Australia, resettlement elsewhere, temporary stay or return to country of origin.

a. **A reasonable time frame for decisions on asylum claims**

24.   In 2005 the Migration Act was amended to require that a primary decision on an application for a Protection Visa be made within 90 days. It also required reporting to Parliament for any processing delays outside of this period. This provided a level of scrutiny, accountability and transparency to the process.

25.   Although the 2005 time frame for decision-making was ambitious, and less frequently achieved as the years passed, it is not unreasonable – even in a non-statutory processing arrangement – to have agreed time frames for the resolution of asylum claims for the majority of cases.

(i)   **People in Australia**

26.   Allowing for the size of the caseload and domestic processing capacities, a reasonable time frame for primary decisions to be made on all asylum claims of

maritime asylum seekers in Australia might be three years (by the end of June 2017), with a much shorter period for those who are, for any reason, in long-term detention.

27.   Whatever decision-making timeline and process the government adopts, there needs to be a formal determination on whether or not an asylum seeker has refugee status.

28.   The Australian government's policy has been to re-introduce a form of temporary protection visa for irregular maritime and air arrivals.

29.   Despite the often contentious debate on temporary protection in Australia, giving a person a form of temporary protection, depending on the specifics of the arrangements, may be consistent with Australia's obligations under the Refugee Convention. A number of countries provide some form of temporary protection alongside permanent protection arrangements. For example, people granted asylum in the United States must wait one year before applying for permanent residence.

30.   UNHCR acknowledges that, at times, temporary protection may be the most appropriate arrangement. For example, in circumstances where there are mass influxes (generally involving larger numbers than experienced by Australia), temporary protection may be a valid tool in ensuring protection is available for asylum seekers while allowing authorities the breathing space to more fully examine and determine the need for a permanent protection and stay in a country at a later stage.

31.   Where temporary protection has been used as a "deterrence" tool, the evidence is clear that it has minimal impact. Indeed Australia's use of Temporary Protection Visas (TPVs) in the 2000s led to perverse outcomes, such as the increase in maritime arrivals of family members of temporary protection visa holders in the early 2000s (because family reunion was not allowed for TPV holders), and the adverse mental health impacts for people on TPVs.

32.   Regulations to reintroduce TPVs have been disallowed by Parliament. As a result of the political stalemate, the government has decided to use the existing Temporary Safe Haven (TSHV) and Temporary Humanitarian Concern (THCV) visa instead.

33.   Asylum seekers for whom potential protection issues are identified (and satisfactory health and security checks completed) will be progressively placed on TSHVs. They will then be granted a THCV for up to three years.

34.   If the assessment of protection claims does not identify any "potential protection issues", asylum seekers will be placed on bridging visas.

35.   In this way, the government has moved away from both the statutory and non-statutory Protection Visa assessment arrangements, but has taken steps to "temporarily resolve" cases quickly through the use of existing visa mechanisms.

36.   As the current arrangements apply, however, it would appear that many asylum seekers will remain in a state of limbo with neither a decision on their protection claim nor, if people are not refugees, on their removal.

37.   The consequences of this are that people could remain indefinitely on some form of temporary visa without a final determination of refugee status, with the inevitable long-term impact this has on mental health. Extensive and expensive litigation is inevitable.

38.   It should, however, be noted that in May 2013 the High Court of Australia considered the use of the TSHV by the Minister in order to release people from detention, grant them a TSHV and subsequently a bridging visa. While the plaintiff argued that the actions of the Minister were invalid because the sole reason for this was to prevent the person from making a valid visa application, the High Court rejected this argument noting that "it was open to the Minister to grant a temporary safe haven visa by reference to its legal characteristics and consequences unconstrained by the purpose for which the class of visa was created under the Act".[3]

39.   This form of temporary status only delays a decision on the asylum claim for some time into the future. Such an arrangement is not sustainable in the long term from the perspective of cost and social well-being of asylum seekers as well as the broader community.

40.   At some point, a final refugee determination needs to be made, whether it leads to temporary or permanent stay. It is quite unreasonable, where Australia has accepted that its protection obligations have been engaged, to allow people to remain in a state of limbo. It is cruel and a waste of human capital.

41.   There is also the question of the process by which refugee status determinations are made. Not every asylum seeker who reaches Australia is a refugee or in need of complementary protection. Because of this, there is an absolute need to ensure a fair and transparent process for the testing of a person's claim for protection.

42.   The success rate of asylum seekers, especially maritime asylum seekers, being found to be refugees in Australia has been high by world standards when one compares the rate for asylum seekers of the same nationality in other receiving countries. In recent years there has also been a marked divergence in success rates for maritime

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[3] *M79/2012 v Minister for Immigration and Citizenship* [2013] HCA 24.

asylum seekers between the primary decisions by the Department of Immigration and Border Protection (DIBP) and the review stage by the Refugee Review Tribunal (RRT) . The rate at which the RRT sets aside negative departmental decisions is also higher for maritime asylum seekers compared to those arriving with a visa and claiming asylum.

43.   These differences reflect a range of known difficulties inherent in refugee status determination, such as uncertain identities of asylum seekers, different approaches to credibility of individuals, different assessments as to how refugee law applies to individuals and differing approaches to information about the situation in an individual's country of origin. Nevertheless, a system that produces such wide discrepancies in outcomes for particular caseloads raises questions as to how claims are tested at the primary decision-making stage and on review, and why they have produced such different outcomes. This bears examination. There may be a case for a more streamlined process capable of delivering more uniform results in a quicker time frame.

Issues for discussion

- What is a reasonable time frame for finalizing refugee status decisions for maritime asylum seekers in Australia?
- What place should the TSHV have in the protection regime?
- Why is there such a marked difference in outcomes between the primary decision stage and RRT for some maritime asylum seekers?
- Does it appear that any maritime asylum seeker who asks for asylum under our the standard Protection Visa system would eventually get it, irrespective of whether they have a strong claim for refugee status?
- If so, is this a sustainable system?
- Are there any alternatives for speedier and more accurate decision-making?

(ii)   People in the PNG and Nauru processing centres

44.   There are a relatively small number of asylum seekers in PNG and Nauru (some 2,400) compared to the caseload in Australia. Although there are some differences between their circumstances in PNG and Nauru, they are in detention and reportedly accommodated in poor and unsafe conditions.

45.   In relation to asylum seekers in PNG, although cases have started to be processed, no decisions have been made on refugee status at the time of writing.

46.   UNHCR has raised serious concerns with the arrangement, including "shortcomings in the legal framework for receiving and processing asylum-seekers ... lack of national capacity and expertise in processing, and poor physical conditions

within open-ended, mandatory and arbitrary detention settings." On local integration/resettlement, UNHCR notes: "From UNHCR's first-hand experience in supporting Melanesian and non-Melanesian refugees for nearly 30 years, it is clear that sustainable integration of non-Melanesian refugees in the socio-economic and cultural life of PNG will raise formidable challenges and protection questions".[4]

47.   A stronger legal framework exists in Nauru and progress has been made in processing claims. However, only a small number of decisions has been handed down at the time of writing.

48.   Given the unique problems of confining people in very difficult locations in PNG and Nauru, there is a strong case for decisions on asylum claims to be made more quickly than in Australia. A reasonable time frame might be for all decisions on refugee status to be made within one year – by the end of June 2015.

49.   Although the processing of asylum claims is a matter for PNG and Nauru, the fact that people have been in Australia and that Australia has, through the Regional Resettlement Arrangement, sought these countries' assistance in processing asylum seekers, means that Australia has some responsibility to ensure that these arrangements passed the minimum tests envisaged in the Refugee Convention .

50.   It is a truism in any immigration context that if people are not engaged in "a process", and where detention "feels indefinite,", frustration and despair quickly lead to extreme actions of desperation. Such events and the causes have been documented exhaustively.

51.   Once a decision is made on whether or not a person is a refugee, the policy and process for resettlement or return can be better managed by both the government and the individual asylum seeker.

52.   It is unreasonable not to have efficient decision-making processes underway with a reasonable time frame nominated for completion of the process for the whole caseload. Failure to do has extremely negative effects on asylum seekers, but also creates the risk of further disturbances in detention centres – with ultimate responsibility falling squarely on the shoulders of the PNG and Australian governments as partners in the arrangement.

53.   As the PNG authorities work towards the creation of a legal and administrative protection framework, it would be appropriate for Australia to work with both UNHCR

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[4] Report of UNHCR monitoring visit to Manus Island, Papua New Guinea, 23–25 October 2013, available at http://unhcr.org.au/unhcr/images/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Manus%20Island%20PNG%2023-25%20October%202013.pdf (accessed 22 May 2014).

and PNG on the development and implementation of a deployment and mentoring program to expedite the processing of asylum claims.

54.   Deployments of NGO staff, working in partnership with UNHCR, have been standard practice in connection with processing in Australia's offshore refugee resettlement program. This facility could be employed either through an existing UNHCR Memorandum of Understanding (MOU) with NGOs or development of new mechanisms which allow NGOs to play a part in assisting with assessment, processing and with mentoring of PNG officials.

55.   Similar assistance could be given to Nauru as necessary.

Issues for discussion

- What is a reasonable time frame for decision-making on asylum claims in PNG and Nauru, given the unique circumstances of people being held in detention in these locations?
- How can Australia best assist the governments of these countries in developing high-quality expedited processes for decision-making.

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b. Creation of decent living conditions while awaiting an outcome

56.   While people are waiting for resolution of their status, the least preferable arrangement is to keep them in immigration detention.

57.   Past Australian experience has shown that detention does not deter people from seeking asylum. Long-term detention is a cruel and ineffective way of treating asylum seekers, usually leading to adverse consequences both for the asylum seekers and those implementing the detention system.

58.   The arrangements that the government has recently put in place in Australia to keep asylum seekers out of detention represent a move towards a more humane approach for people while they are waiting for their claims to be determined. The indefinite period and related uncertainty of when decisions will be made on refugee status is what makes them unsustainable in the long term.

(i)   People in Australia living in the community

59.   As at 28 February 2014, 3,092 people were living in Community Detention ("residence determination") and 23,979 were living in the community after the grant of a Bridging Visa E (BVE).

60.   People in Community Detention are not allowed to work. They are provided with financial support, accommodation and healthcare from DIBP via a Community Detention provider.

61.   The vast majority of the 23,797 BVE holders do not have work rights.

62.   Of concern are reports that maritime asylum seekers have not had lapsed BVEs renewed since around August 2013, in effect making then unlawful. Community agencies have reported that this has had a profound impact as people previously on BVEs with work rights have lost jobs and been unable to work causing them to become destitute. They have also been unable to access Medicare which has been detrimental to health and well-being.

63.   Maritime asylum seekers who arrived after 13 August 2012 have been granted BVEs without work rights, but with Medicare access. The majority of these people are receiving DIBP Community Assistance Scheme (CAS) or Asylum Seeker Assistance Scheme (ASAS) support, or have community support.

64.   Agencies have, however, reported that as letters advising asylum seekers of the Government's required code of conduct are being issued, they expect to see more BVEs renewed.

65.   It is to be expected that a sizeable number of the current BVE holders will progressively be granted a TSHV and then a THCV. At the time of writing there was little information available on the implementation of this measure.

66.   THSV holders will be eligible to access health services through Medicare and support benefits through CAS transitional support or ASAS programs if needed.

67.   THCV holders will have access to Medicare and social security benefits (Centrelink), job matching and short-term counselling for torture or trauma.

68.   Access to the basic safety net of health and income support will assist in easing some of the concerns that have been raised around the lack of work rights for BVE holders and indefinite detention. However, the concern remains that there is no endpoint to these arrangements. Keeping people in a state of limbo for an indefinite period will eventually impact very negatively on individual and community well-being so long as their long-term situation remains unresolved and separation from families is prolonged. Longer-term integration into Australian society will also become more problematic for this group.

Work rights

69.   The decision of the previous government to take away work rights for people on bridging visas (originally intended to remove incentives for further arrivals of those people believed only to be seeking work) has had a devastating impact on individuals. Being able to work is fundamental to a sense of self-worth and dignity. Importantly, it also is critical to assisting people to integrate quickly and productively into a community. Denial of work rights helps only to create a new underclass and encourage people to work in the "black economy". Moreover, evidence has shown that people who are not refugees, and for whom return is the only option, are more likely to be able to make such decisions freely in circumstances where they are not only in control of their own destinies but where they have been able to return with some financial security. Being able to work is a pre-condition for that to occur.

70.   The government has stated that in return for assistance or access to benefits, a system of "mutual obligation" should be implemented. At the time of writing there has been no clear government statement on what a mutual obligation arrangement would look like in this context.

> **Issues for discussion**
>
> - What is the appropriate visa status for maritime asylum seekers in Australia awaiting a decision on their protection claim?
> - What is a reasonable benefits safety net for people in these circumstances?
> - Is there now any public policy reason not to give such people full or partial work rights?
> - Is a mutual obligations arrangement relevant and, if so, how would it work?

(ii)   People in Australia in detention

71.   Until 1991, the immigration detention system was generally not focused on asylum seekers arriving by sea, but was used mainly to detain people whose visas had expired and who had no valid reason to remain in Australia.

72.   At the time of the introduction of the mandatory detention policy for maritime asylum seekers it was specifically identified as a deterrent policy.

73.   Since that time, research has largely discredited the idea that detention is, in practice, a deterrent for asylum seekers.[5]

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[5]   R Sampson, G Mitchell and L Bowring, *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Melbourne: The International Detention Coalition, 2011) p. 11.

74. Policy and law surrounding detention of maritime asylum seekers has been progressively articulated in more detail, starting with the amendments to the Migration Act in 2001.

75. There have been positive developments. In 2001 the government introduced legislation to accommodate maritime asylum seekers in community settings. This was further extended in 2005 with reforms that included formalization of community detention arrangements, the principle that children should only be held in detention as a last resort, and the creation of the Immigration Ombudsman's Office.

76. The current Australian government has restated its commitment to mandatory detention, at least for an initial period, for persons arriving without a visa.

77. A debate on the place of detention in an immigration system, and particularly as it relates to asylum seekers, is vital, as is the value of exploring alternatives that neither harm asylum seekers psychologically nor are seen to give special advantages to them.

78. Apart from avoiding the worst outcomes of the detention system, there are very significant cost advantages to government in pursuing alternatives:

"So if I was to look at the onshore network: community detention is about half of what it would cost to hold someone in a detention centre within Australia, and to keep someone on a bridging visa in the community is probably about 20 per cent of what it might cost for someone held in detention".[6]

79. In its 2011 report, the International Detention Coalition (IDC)[7] highlighted how governments can better manage and process asylum seekers, remove people who are not refugees and get better overall outcomes in the arrangements of cross border movements through alternative arrangements. They advocated the implementation of a Community Assessment and Placements Model. The key features of this model are:

- On arrival: a presumption against detention – where policies and practices presume that detention is not necessary for the resolution of a person's immigration status;
- Timely screening and assessment of an individual's case that reduces unnecessary detention where "authorities can identify and assess levels of risk and vulnerability as well as the strengths and needs of each person";
- An assessment of community settings – which support an individual in the community in such a way that they remain engaged with, and can comply with, immigration authorities;

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[6] Bowles, M., Secretary, Department of Immigration and Border Protection, Commonwealth of Australia; Senate Legal and Constitutional Affairs Legislation Committee, Estimates 25 February 2014, p. 88 (Hansard Proof Copy),

[7] Sampson, R., Mitchell, G. and Bowring, L. (2011); There are alternatives: A handbook for preventing unnecessary immigration detention. Melbourne: The International Detention Coalition, pp. 19-50

- Where necessary, the application of conditions such as individual undertakings, monitoring and supervision, as well as intensive case resolution and negative consequences in the event of non-compliance.

80.   In this regard, there is value in exploring the possibility of alternatives to the current detention arrangements or, at a minimum, placing some parameters around the use and administration of detention. These could include, for example, a restatement of immigration detention values, placing limits on time in detention together with reintroduction of judicial oversight of detention arrangements that existed prior to the 1989 Migration Act amendments, and a reaffirmation that children not be held in immigration detention.

Issues for discussion

- What more can be done to minimize the amount of time that maritime asylum seekers spend in detention?
- What policy alternatives and mechanisms are available that would enable asylum seekers to be kept out of detention for anything more than short periods, but that would allow for monitoring, if necessary, in individual cases?

(iii)   People in the PNG and Nauru processing centres

81.   As noted previously, the processing centres in PNG and Nauru have come under heavy criticism by UNHCR and others for the poor quality of their facilities, services and security arrangements.

82.   There have already been two critical incidents – a major fire at the Nauru Centre and a major disturbance at the PNG Centre resulting in injuries and one death.

83.   There is no freedom of movement for asylum seekers in PNG apart from a limited program of excursions. Restrictions on freedom of movement are similar in Nauru, although when the centre there was used in the period up until 2008 and administered by the International Organization for Migration (IOM), it progressively became an open centre.

84.   This situation will necessarily cause frustrations and tensions to rise, with the likelihood of further major security incidents. There is scope to defuse the situation by allowing centres to be open and giving asylum seekers freedom of movement to the extent that the local geographical environment permits.

85.   Local authorities in these locations will have concerns about security when significant numbers of asylum seekers, relative to the local population, arrive in a short

period of time. These legitimate concerns will need to be considered in any freedom of movement plan.

Issues for discussion

- How can the improvement of physical facilities in Nauru and PNG be expedited?
- What scope is there for "open centres" which give greater freedom of movement to asylum seekers, but maintain a sense of security for local communities?

(c) Managing different outcomes for asylum seekers

(i) People in Australia

86. In 2012–13 the Department of Immigration received 8,308 Protection Visa applications from air arrivals. The government has capped the number of Protection Visas to be granted for 2013–14 at 2,750. This number has been reached and the Department is making no new grants. Grants will resume on 1 July 2014.

87. This situation of a capped visa program and divergent outcomes raises concerns about how people will be accommodated and processed in a system that is under such extreme pressure. It raises concerns about the capping of a visa class that aims to meet Australia's Refugee Convention obligations. No other country caps its asylum visas.

88. As noted earlier in this paper, there are precedents for the granting of temporary protection to persons found to be refugees for a set period before permanent protection is afforded. However, there is no public policy value in providing *only* temporary protection for extended periods unless there is a strong prospect of the affected refugees returning safely to their home country.

89. The important thing is that clearly defined and certain pathways exist for an individual's refugee status to be determined and their future status within Australia resolved. If a person is found to be a refugee or otherwise in need of protection, a temporary or permanent visa could be granted. If a temporary visa regime is to be used, there must be clearly articulated processes and time frames – both with respect to consideration of cessation of refugee status or transition to permanent resident status. If there is no prospect of changes in the country of origin that would enable a refugee to be repatriated within a foreseeable time frame, a certain pathway to permanent residence and Australian citizenship within a reasonable time is not only in the interests of individual refugees, but also in the long-term interest of a stable Australian society. To do otherwise, risks creating an alienated underclass.

> **Issues for discussion:**
>
> - Is there value in exploring possible options, ranging from temporary to permanent protection, for maritime asylum seekers found to be refugees?
> - What would such a system look like?
> - In what circumstances would a form of temporary protection be appropriate?
> - What benefits would temporary protection attract (e.g. Housing, work and education rights, as well as more liberal travel arrangements and family reunion)?
> - Is there a space for some restrictions to be placed on some visas? What kinds of restrictions and why?
> - If refugees are to be on temporary visas, what should be the end point?
> - Can there be variable time frames depending on individual circumstances (e.g. minors)?
> - Are there some groups whose case for protection is so strong that a decision could be made to give at least temporary protection without individual refugee status assessments (e.g. Syrians)?

(ii) PNG and Nauru: Local integration/resettlement options

90.   The current policy intention is that asylum seekers in PNG or Nauru who are found to be refugees will be locally integrated in those countries.

91.   While the most urgent challenge is to process asylum claims and address the conditions in which people are housed, the development of a credible local integration program with appropriate assistance is equally urgent if refugees are not permitted to settle in Australia.

92.   It is unlikely that either PNG or Nauru has the capacity to locally integrate many more than the current number of people in the detention centres there, particularly if a high proportion of them are recognized as refugees. Given the size of their local populations, these numbers alone would put them in the top 10 resettlement countries globally, comparable to European resettlement countries and New Zealand.[8]

93.   Given the likely severe constraints on resettlement in the Pacific region, the arrangements with PNG and Nauru should only exist for so long as it takes for workable regional arrangements in transit countries to be developed and implemented.

94.   The agreement with PNG provides for local integration within PNG or resettlement in the region. UNHCR has noted that this presents both logistical and protection challenges.

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[8] Data on programs of international resettlement countries set out in UNHCR; 19th Annual Tripartite Consultations on Resettlement, Geneva 1-3 July 2013, p. 74.

95.   There are, however, options. For over 30 years, Australia has had world-class programs for assisting resettled refugees thanks to the far-sighted vision of the Fraser government. It has helped shape the nation we have become and has done so while strengthening social harmony and diversity at the same time. It has been one of the major building blocks for our continued prosperity.

96.   The fundamental underlying philosophy of Australia's settlement services is early intervention and support. It strengthens our long-term future because people are able to more quickly move into the workforce and participate in and contribute to the social and economic life of the nation.

97.   Past groups of asylum seekers to Australia have brought with them a wealth of skills and expertise – there have been doctors, engineers, teachers, skilled craftsmen and youth with the energy to create new opportunities for themselves and for Australia.[9] The people being transferred to PNG and Nauru will be no different.

98.   The economic and social indicators for PNG and Nauru show countries in need of doctors, teachers, engineers and entrepreneurs that can contribute to their long-term infrastructure, development and economy. For example, there are only 0.11 doctors per 1,000 people in PNG.[10]

99.   A local integration support program that identifies skills needs in PNG and Nauru that can be met by refugees may well assist in addressing needs in those countries, while at the same time supporting refugees in the process of settlement and establishing their lives in a new country. Australia could provide support by way of fast-tracked skills and professional qualification recognition procedures, ESL programs, micro-financing for enterprises, and the establishment of services, such as health clinics in areas of need. For those refugees without skills in immediate demand, training assistance may help smooth the integration process. This may not be optimal for many people found to be refugees, but it at least provides a basis from which to start building a new life, lends hope for family reunion, and simultaneously benefits the host community.

100.   The Australian government has made a step in the right direction with the announcement of a support package for refugees in Nauru.

101.   If PNG and Nauru are not able to accommodate all of those found to be refugees satisfactorily, the Australian and the PNG governments, in cooperation with UNHCR,

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[9] G Hugo, *A Significant Contribution: The Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants* (Department of Immigration and Citizenship, 2011).
[10] World Bank search, "physicians per 1000", PNG data http://data.worldbank.org/country/papua-new-guinea (accessed 22 May 2014).

should pursue resettlement options in other countries. Resettlement in Australia should at least be considered for individual cases of special need.

Issues for discussion

- How can Australia help in local integration support services in PNG and Nauru?
- Is there capacity to deploy Australian settlement workers to assist with the design of programs suitable to the conditions in PNG and Nauru?
- Can Australia assist through orientation, cross-cultural training, community harmony and other such programs?
- Is there a trade-off with PNG on access to targeted visas for skills enhancement to enable capacity-building in local communities?
- Is there a scope for a working group from Australia, PNG, Nauru and NGOs to assist PNG and Nauru in integrating refugees?

(iii)   Return and reintegration assistance: PNG, Nauru and Australia

102.   Not all asylum seekers are refugees. Where this is the case there must be credible, humane and appropriate arrangements in place for the return of non-refugees to country of origin.

103.   A system that does not include this undermines the Refugee Convention and the system of international protection that has been built up over the past five decades.

104.   A feature of many population movements has been the mixed intentions of those on the move. Some are seeking asylum, while others are seeking livelihood opportunities. The ability to send remittances home is a prime motivation for migration. It is hard, and sometimes almost impossible, to identify these overlapping motivations.

105.   Research has shown the importance of remittances to families in Afghanistan from sons who had lived and worked for a few short years in the UK before they were returned as "failed asylum seekers" to Afghanistan. UNHCR has highlighted the role of remittances in lifting families out of poverty when young men were sent by their families and communities to South Africa in search of "asylum and work".[11]

106.   Asylum seekers coming to Australia are in search of a more secure and better life. The balance of these considerations varies between national groups and this is reflected in outcomes of refugee determinations. All come from countries with poor human rights records, civil unrest and conflict which show up consistently in the

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[11] See for example K Koser, 'The Economics of Smuggling People' (2009) 23 *Refugee Transitions*, p. 10;C Boswell and J Crisp,'Poverty, International Migration and Asylum' (UNU-WIDER Policy Brief No 8, 2004).

UNHCR statistics as top sources for asylum seekers and refugees (although not necessarily the top cohorts of people prioritized for international resettlement).

107.   This makes it essential to ensure that the return and reintegration options are sound and transparent for those found not to be refugees.

108.   The international community has had experience over many decades in developing and implementing return programs for people who have been found not to be refugees.

109.   The lessons learnt from these are that, while there may be similarities in arrangements, they need to be tailored and targeted to the specific situation of individuals or cohorts of people, where return to country of origin is the only option.

110.   Achieving returns is usually difficult, and particularly so in the case of maritime asylum seekers who have usually made a larger personal and financial investment (involving indebtedness to moneylenders or families) in trying to settle in Australia than those asylum seekers arriving by air with visas. Arrangements for involuntary return must be part of the government's toolkit, but in the hierarchy of return options, a voluntary return arrangement is always the most desirable and preferable approach.

111.   The models for such arrangements are well documented. IOM has well established arrangements with a number of countries, including Australia, in the delivery of such services. Such models include provision for pre-departure counselling, assistance with travel arrangements, and, on arrival in the country of origin, assistance with re-entry formalities as well as some assistance with re-establishment in home communities. Australia already uses this facility. In 2012–13 IOM assisted 798 people under its Australian Assisted Voluntary Return (AVR) program.

112.   The lessons learnt from previous arrangements are that there must be minimum standards and arrangements that apply:

Pre-departure: well-documented counselling and consent arrangements, as well as a clear understanding and acceptance of the support to be provided on return;

On arrival in country of origin: transparent and facilitated entry arrangements that are agreed in advance by the returning country and country of origin;

At home: assistance that facilitates reintegration with dignity and in which there is a benefit to the returning community as well as to the individual, plus post-arrival monitoring and support.

113.   This latter point is important. Many people leave their countries with the hope that they can provide for their families and communities through remittances. When this does not happen, they may return with shame and enormous debts that place them at risk of retribution. A mechanism that allows for post-arrival monitoring of reintegration is important. It ensures integrity in the arrangements, allows for program adjustments to be made, and gives some insight into safety on return.

114.   Assistance can vary from cash payments, to help with business start-ups, to access to education and training or placement in jobs.

115.   The balance that needs to be found is a system that allows people to return with dignity, yet is not so generous that it becomes a motivation for emigration.

Negotiated return arrangements

116.   Where voluntary return of people found not to be refugees falls down, there is a place to consider some form of negotiated return arrangements with source countries that are willing to negotiate such arrangements.

117.   While in the Australian context these have largely been subject to intense criticism by NGOs, negotiated arrangements must be an important complementary element of a "toolkit" on returns.

118.   Negotiated arrangements provide a clear, documented structure under which returns can take place. Effective negotiated arrangements can include broader issues, such as the possibility of more orderly and managed migration pathways (as was the case with the Orderly Departure Program from Vietnam under the Comprehensive Plan of Action). There is also scope for these agreements to include UNHCR as a partner. This occurred with the tripartite MOU on Migration and Humanitarian Cooperation that Australia signed with Afghanistan and UNHCR in 2011, which included provisions for returns of non-refugees.

119.   As country conditions change, it is imperative that the possibilities for such arrangements are kept under review. For example, the recent developments in Iran and the more active engagement of the international community with Iran opens the possibility of again negotiating arrangements that would allow for the return of people who are not refugees in safety and with dignity. As always, there will be quid pro quos. The balance between what these may be and what Australia wants would need to be carefully weighed.

Issues for discussion

• What are the key issues in developing return and reintegration packages?

- Where are the risks and where are the opportunities?
- Are there benefits that flow to communities in the country of origin?
- How can counselling arrangements assist in informed and voluntary decision-making?
- What would the key features of a negotiated return agreement look like?
- Should arrangements be tripartite, with UNHCR as a key partner?
- Is there a place for bilateral arrangements?
- Should negotiated agreements also respond to returning country needs, such as: financial assistance to communities where people are returning; development assistance; access to more liberal visa arrangements for returning country nationals?
- Is there a role for NGOs in facilitating transparent and credible return programs?
- What type of transitional and temporary arrangements could be considered to allow people to live outside of detention pending return?
- Is there a case for strategic use of the Return Pending Visa concept in combination with counselling, support for return and reintegration assistance?
- What entitlements/obligations should go with any such visas (e.g. access to work and education)?

F. A future Australian asylum policy

a. An integrated refugee policy

120.   Australia is one of many countries trying to manage regular and irregular flows of asylum seekers in a way that deals with both the protection issues concerned and the orderly management of people.

121.   These movements of people are part of a wider global phenomenon which sees many more people on the move across international borders, either for economic reasons or protection. The demand for migration to achieve protection, a new home or access to work opportunities in successful economies far outstrips the available places that governments (of both developed and developing) destination countries across the world are willing to offer. The situation is further complicated as the protection space for many displaced people in countries of first asylum shrinks because of local political and social instability (e.g. as experienced by some Afghans in Pakistan).

122.   This imbalance, and associated migration pressures, can be expected to increase. The ease of global travel and the growth of global information connectivity create opportunities for people smugglers and corrupt officials to exploit this market and create, or foster, very substantial irregular migration flows. Arguably, these trends are getting well ahead of global, regional and national governance of migration.

123.   The specific problem of mixed flows of migrants and asylum seekers by sea has been experienced by the United States, Spain, Italy, Greece and Malta, as well as by states in the Gulf of Aden. The policy responses by all affected governments have aimed to diminish the flows. None has been regarded as entirely successful.

124.   The intense politicization of maritime asylum arrivals in Australia over the last 15 years has resulted in a narrow focus on that phenomenon. It has driven "quick fixes", arguably isolated from the bigger picture.

125.   A desirable starting point for Australia might be to develop an integrated refugee policy that articulates our responses to global and regional refugee issues, including foreign policy, aid policy, the humanitarian program and domestic asylum (including both maritime and visaed arrivals).

126.   Such an approach was attempted by the Coalition government as early as 1977, when the then Minister for Immigration, the Hon Michael McKellar MP, set out a basic refugee policy. Although limited in nature and oriented towards the Indochinese

refugee crisis of the time, the very articulation of a basic policy recognized the need for some broad principles in Australia's approach to refugee issues.[12]

127.   Any future asylum policy is likely to be more effective if it is part of a broader Australian policy approach that deals with the bigger picture.

b. Realistic and practical regional cooperation – partnership rather than unilateralism

128.   To make improvements to the governance of migration in the region, to improve the quality of protection, (and to take people smugglers out of the picture) cooperation with source and transit countries is essential. In particular, for Australia, this means developing appropriate cooperative arrangements with regional countries, in partnership with UNHCR and IOM. These arrangements must go well beyond the narrow field of law enforcement.

129.   The objectives of such cooperation should be to achieve a more effective and uniform system of dealing with protection issues in the region, recognizing the limited numbers of states that are parties to the Refugee Convention, and legal and cultural differences.

130.   Such arrangements are likely to involve collective responsibility, as well as individual national responsibility for dealing with refugees and protection issues.

131.   Such cooperation is likely to mean that Australia will need to be more responsive to refugee protection issues in the wider region, in addition to the problem of maritime asylum seekers reaching its own shores, and be prepared to make a larger contribution to the resettlement of refugees in the region.

132.   Cooperation cannot be exclusively on Australia's terms and must necessarily involve some adjustment to the approaches of regional partners.

133.   Realistically, no Australian government will continue to implement our Refugee Convention responsibilities through the standard Protection Visa system – and accept people smuggler-controlled flows of tens of thousands of asylum seekers from beyond the region, together with hundreds of deaths at sea as the collateral damage that goes with that approach.

134.   In the circumstances, we have to consider reasonable alternative asylum management options.

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[12] The Hon Michael MacKellar, (Minister for Immigration and Ethnic Affairs), Ministerial Statement in the House of Representatives: Refugee Policy and Mechanisms (Hansard 24 May 1977).

135.   Australia is starting from a difficult position in that prospects of cooperation with potential regional partners have been damaged by lack of policy consensus within Australia, unilateral actions of the Australian government, and intemperate and unjustified criticisms of regional governments by the Australian media and refugee advocates.

136.   There are long-term, medium-term and short-term options. All should be pursued. There is a continuing strong sense of urgency for quick fixes, but it is important that no quick fix is adopted which prejudices long-term sustainable outcomes.

137.   In the **long term**, the best solution would be for all governments in Australia's near region to ratify the Refugee Convention and other human rights treaties, and to implement effective asylum systems providing reasonable outcomes for asylum seekers. Only a very limited number of countries in Australia's near region have seen fit to become parties to the Convention (PNG, Timor Leste, Cambodia, the Philippines, New Zealand and a number of small Pacific Island countries). Although some other governments in Australia's near region have foreshadowed the possibility of becoming parties to the Convention, including Indonesia, this is not a realistic prospect any time soon. There is no critical strategic event happening in the region which would see a change of approach in this direction.

138.   ASEAN, which recently adopted a Human Rights Declaration, has significant potential as a forum for increased interest in, and agreement on, regional governance of migration and protection issues.

139.   Any movement by governments in the region to become parties to the Refugee Convention will have to be generated internally in those countries. It cannot be dictated by Australia.

140.   Australia can, however, keep this long-term issue on the agenda in its relations with regional governments and ASEAN.

141.   The possibility of a Track 2 dialogue to facilitate this is discussed later in this paper.

142.   In the **medium term**, some sort of regional agreement or instrument, either generated by ASEAN or a smaller select group of countries, relating to managing forced movements of people (similar to those adopted in South America and Africa) would probably be more achievable. The absence of a refugee event of critical scale in the region means there is a lack of political stimulus to move in this direction. However, Australia should pursue this as a medium-term goal as it offers a more realistic way of

getting some agreed principles and approaches to the cooperative governance of forced migration within the region.

143.   In the **short term**, Australia will have to build on the institutions we already have in the region to achieve active collective management arrangements for asylum. This means starting with small steps.

144.   A decade of work in the Bali Process (Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime) provides a foundation for this. The Bali Process started to move beyond law enforcement for the first time in 2009. In 2011, the Ministerial co-Chairs acknowledged that "practical cooperative solutions that also address humanitarian and protection needs are required". They also acknowledged "collective responsibility" and agreed to a non-binding Regional Cooperation Framework. In terms of practical application of the framework, ministers agreed that it could be "operationalised through interested states entering into practical bilateral or other sub-regional arrangements".

145.   The Regional Cooperation Framework authorized by the Bali Process Ministers, with UNHCR and IOM as participants, provides an existing basis for solutions in the short term.

146.   Desirable characteristics for short-term solutions are as follows:

- Australia must increase its depth of understanding, through increased intelligence and research, of global movements of people, whether forced migration and displacement, economic migration or mixed flows;
- Australia must pursue appropriate diplomatic action in relation to conditions in source countries producing asylum seeker flows, and also be prepared to seek collective international action to deal with the protection needs of particular asylum seeker flows targeted by the international people smuggling market;
- Australia must work with regional partners to improve the structures for governance of migration within the region;
- Australia must take appropriate opportunities in multilateral and regional forums in Southeast Asia, as well as bilaterally, to raise the level of refugee and protection issues on the international agenda;
- Australia must work with UNHCR and regional partners to gradually build up the quality of protection available in Southeast Asia;
- Australia must encourage regional partners to develop their institutional capacities and expertise to deal with protection issues – the Regional Support Office in Bangkok established through the Bali Process has been a useful first step;
- Australia must be prepared to commit financial resources for the upkeep of refugees in the region and developing the hosting capacities of regional countries;

- Australia must be prepared to do more to resettle refugees from countries in the region as part of responsibility sharing, taking into account the priorities of those countries for resettlement. It should also be prepared to consider increasing the program beyond 13,750 places annually. This could be either by setting it at a fixed proportion (e.g. 10 or 15%) of its general migration program (currently running at 190,000 persons a year), or by setting an achievable fixed number, such as 20,000 persons a year;
- Australia should encourage regional partners to also allow permanent settlement/integration of reasonable numbers of refugees on their territory.

147.   To deal with the specific problem of smuggled flows of people to Australia, Australia needs to build a practical arrangement with one or more countries, with UNHCR's cooperation, that will remove the incentive for asylum seekers to resort to people smuggling. It has to be built around the concept that asylum seekers who resort to people smugglers will have their case fairly assessed and their future resolved in a designated location (which is not the planned destination country). The arrangement must be compulsory for the people to whom it applies. It must not be possible for asylum seekers to opt for a better outcome through the use of people smugglers.

148.   What would a collective asylum management arrangement that aims to cut maritime people smugglers out of the picture look like?

149.   To give practical effect to this concept is not straightforward. The possibilities have to be evaluated against some sort of "acceptable criteria". In determining whether any practical arrangements to this end are likely to be successful and sustainable in the long term, the arrangements should:

- be a sensible strategic partnership with a country or countries that are part of the asylum seeker flow (transit countries) and have the overall effect of improving protection arrangements in the region;
- actually have the effect of making asylum seekers choose not to invest in a smuggled sea trip to Australia;
- enable Australia to meet its Refugee Convention and other international obligations, collectively, in partnership with another country or countries and with UNHCR operational participation;
- be with a partner country or countries that will agree to satisfactory arrangements, including *non-refoulement* of refugees;
- provide a satisfactory basis of temporary stay for asylum seekers in the partner country or countries pending resolution of their long-term future (i.e. In the community rather than detention and with a reasonable basis of living – some form of access to work, health care and welfare);

- be with a country or countries that have in place infrastructure (such as an established UNHCR office) to determine asylum claims and with an effective pathway for refugees to local integration, resettlement in a third country, or (in the case of non-refugees) return home;
- be practical in the sense that safe air transfers of smuggled asylum seekers from Australia to the designated location can actually be achieved;
- attract the active participation or support of important partners such as the UNHCR, IOM, Bali Process co-Chair and other countries that may need to resettle refugees from the designated location.

150. The question of whether a partner country is a party to the Refugee Convention is less important than whether the above criteria can be met in practice. Australia's neighbours and partners in managing asylum flows in the region are generally not parties to the Refugee Convention (those that are have very limited capacity anyway). It would be entirely counter-productive for Australia to limit future cooperation solely on the grounds that a particular country was not a party to the Refugee Convention. In fact, the existence of such arrangements could assist practical development of better protection practices in a region which already hosts hundreds of thousands of refugees.

151. Similarly, there is no basis for Australia to insist that any partner country legislate to implement any cooperative arrangement. We do not do this in other spheres of activity and it is reasonable to accept political guarantees by partner countries.

152. Any partnership arrangement, would, of course, involve Australia taking on more responsibility for dealing with the refugee caseload in the region, either through increased resettlement activities or increased aid.

153. There are a limited number of possible countries which would meet the criteria for a collective responsibility solution. The detailed arrangements which have to be worked out to underpin any collective responsibility solution take a great deal of planning and time.

154. Australia is asking partner countries to take on responsibilities which they currently do not have and which are low in their priorities, but high in ours. In order to gain priority attention, Australia should be prepared to offer potential partner countries cooperation in areas of high priority to them, which may be completely outside the sphere of people movement.

155. Indonesia and Malaysia, as principal transit countries, are the obvious partners for such a collective responsibility approach along these lines. Malaysia has been the country most willing, without preconditions, to accept significant responsibility for people transiting Malaysia to Australia on the people smuggling route. The Transfer Agreement with Malaysia met the criteria for a sustainable solution and was

acknowledged by UNHCR as being "workable". Unfortunately, it was rejected by a politically divided Australia – ultimately leading to the transfer of asylum seekers to PNG and Nauru.

156.   Australia must seek to rebuild the bridges which it has damaged with Malaysia and Indonesia to work towards a collective responsibility arrangement along these lines to deal with future flows of smuggled asylum seekers.

157.   Although there is willingness on the part of PNG and Nauru (and potentially other Pacific Island countries) to take part in such cooperative arrangements, they are less appropriate countries for a collective responsibility arrangement. They are not part of the flow of smuggled people to Australia and do not meet some key criteria for such an arrangement.

c.   Track 2 dialogue

158.   As noted previously, countries in Australia's region are in most cases not parties to the Refugee Convention and, if they are, have weak institutions to implement Convention responsibilities.

159.   More broadly, as countries of emigration, or with little historical people movement across their borders, many have relatively weak institutions to govern migration, whether it is economic or forced migration.

160.   Australia has a strong national interest in encouraging better governance of migration in the region, both at the national and multilateral levels.

161.   However, the impetus for this cannot come solely from governments and must be driven by internal constituencies in those countries, reflecting their national priorities, not only for refugees, but for related issues such as trafficking.

162.   Foundations for a strategic dialogue already exist. These include the Council for Security Cooperation in the Asia-Pacific (CSCAP), the Indonesian Centre for Policy Studies and Strategic Dialogue (CPSSD) and the more formal inter-governmental processes such as the Bali Process and its various working groups.

163.   The missing link in these arrangements is a mechanism that engages government and civil society in a strategic migration and asylum policy dialogue beyond the intelligence/security and law enforcement issues that have characterized these arrangements.

164.   There is an urgent need to start the work of establishing such a process and creating a framework that brings governments and civil society in the region into a structured and constructive policy dialogue.

165.   The objective of this "unofficial dialogue" would be to develop a shared understanding and a shared acknowledgement of the problem and the role of diverse players. This would include people working in immigration, security, intelligence and border protection areas of government, as well as refugee and asylum experts in civil society and academia.

166.   Done well, this approach has the potential to be transformational in breaking down the unproductive suspicions of the different parties, the current dynamics of which are self-perpetuating and reinforce the existing stalemate.

167.   While building a track 2 dialogue takes enormous effort and commitment, the dividends can be many:

- It can remove the discussion on asylum, people smuggling and displacement from public contention to a neutral space;
- It can give greater freedom to explore alternative perspectives and formulate new (joint) ideas as well as giving all players a stake in the partnership and responsibilities in addressing the issues;
- It can present an opportunity for those players outside government to influence new policy thinking and for government officials, often stuck in rigid roles and with less flexibility, to explore and test new policy models which gives them the opportunity to "think aloud";
- It can promote a rational public discourse using facts and reason and can strengthen the voices of moderation;
- It can kick start a process that could lead to a new framework balancing the complementary concepts of asylum and burden sharing regionally.

168.   If successful, such a dialogue could conceivably be expanded into a regional approach sitting alongside or under the Bali Process or ASEAN plus arrangements.

d. Alternative migration options

169.   A central focus of the international discussion on population movements and asylum has been the concept of mixed migratory movements.

170.   The literature and research on such movements highlights the complexities inherent in making simple assumptions. A migration path that, on the face of it, started principally for "economic" reasons, might, when more fully probed, have compelling

refugee dimensions as well. In a 2004 study[13] on mixed migration, the absence of alternative migration pathways was cited as one possible reason for the growing "asylum" populations because no other alternatives existed. We should understand these dynamics better and examine ways to use extant visa programs as one way of easing the pressure on asylum systems as the only migration option available.

171.   Australia has faced such dilemmas before and responded with arrangements such as the Orderly Departure Program from Vietnam and the Special Assistance Category visas created for specific circumstances to release migration pressures that could otherwise have moved into an irregular migration pathway.

172.   The government, therefore, has in its toolkit a number of visa options that could be considered, and there is a persuasive case for the creation of a carefully targeted, negotiated Orderly Departure and/or Special Assistance Category program from countries such as Afghanistan or Sri Lanka. In the case of Afghanistan, it could be incorporated into the discussions on the changing nature of Australia's engagement with Afghanistan in the wake of the draw-down of our military presence. Other vulnerable populations that could be considered are, for example, the Tamils in Sri Lanka or Rohingya in Burma.

173.   While there will always be difficult bilateral issues, with such arrangements these can be addressed through robust diplomatic engagement and discussion, as they have been in the past.

174.   Balanced with a commitment to resettlement and appropriate alternative migration pathways, as well as safe and transparent return for people who are not refugees or who do not qualify for other visa programs, this would go a long way to restoring the spirit of international cooperation envisaged in the Refugee Convention.

Issues for discussion

- What would be the core elements of an integrated Australian refugee policy?
- How can Australia best encourage greater engagement in migration governance and protection issues in its near region?
- How can we achieve collective responsibility arrangements to deal with flows of asylum seekers and refugees from within and beyond the region?
- What leverage does Australia have and what do we have to offer?
- What use can be made of existing structures?
- How can a track 2 dialogue help and how can it be started?
- How can Australia use bilateral arrangements with regional countries to provide reasonable alternative protection arrangements, based on safe transfers, to deny access to Australian territory to asylum seekers using maritime people smugglers?

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[13] Boswell and Crisp, above n 11.

- How can Australia use orderly migration pathways in a targeted way to ease pressures for irregular migration to Australia?

Conclusions

General

- A rethinking is needed by all parties in Australia to achieve a consensus position that enables Australia to both meet its Refugee Convention and other Convention responsibilities in its own right, or, collectively, with regional neighbours, but that denies a role for people smugglers.

- As with all complex problems, compromises will be necessary in developing policies to achieve balanced outcomes.

- To put more order into the system of regional protection and permanently defeat the smuggling system, there is a strong case for new and innovative approaches, outside of the standard Australian Protection Visa system, to managing protection for people who might otherwise have recourse to people smugglers.

Resolving the future of existing caseloads of maritime asylum seekers

- A clear strategy with firm timelines is needed to decide the asylum claims of existing maritime asylum seeker populations in Australia, PNG and Nauru and to resolve their futures.

- Allowing for the large size of the caseload and domestic processing capacities, a reasonable time frame for primary decisions to be made on all asylum claims of maritime asylum seekers in Australia might be three years (by the end of June 2017).

- Given the unique problems of confining people in very difficult locations in PNG and Nauru, there is a strong case for decisions on asylum claims there to be made more quickly than in Australia. A reasonable time frame might be for all decisions on refugee status to be made within one year (by the end of June 2015).

- Pending refugee status decisions being made in Australia, reasonable arrangements need to be made for maritime asylum seekers in the community, including clear visa status, work rights and appropriate health and welfare safety nets.

- Detention of asylum seekers in Australia should be kept to an absolute minimum and alternatives put in place wherever possible.

- Pending decisions being made in PNG and Nauru, arrangements should be negotiated with those governments which allow reasonable freedom of movement of asylum seekers accompanied by security safeguards for the local community.

- For those maritime asylum seekers in Australia found to be refugees, access to permanent residence and Australian Citizenship should be available, although it is reasonable to consider periods of temporary residence initially, with a defined process leading to permanent residence.

- For those maritime asylum seekers in PNG and Nauru found to be refugees, Australia should work with the governments of those countries to provide local integration assistance packages, appropriate to local conditions. Australia should also assist in obtaining third country residence for those refugees unable to settle there successfully.

- For those not found to be refugees in Australia, PNG and Nauru, return arrangements (including involuntary return) should be put in place with preference given to voluntary return supported by reintegration packages. Consideration should also be given to short-term temporary stay with work rights, pending return.

A future Australian asylum policy

- Australia should develop and an integrated refugee policy that articulates our response to global refugee issues, regional refugee issues, including foreign policy, aid policy, the humanitarian program and domestic asylum (including both maritime and visaed arrivals).

- Australia should increase its own capacities and depth of understanding of global movements of people, whether forced migration and displacement, economic migration or mixed flows, through increased intelligence and research, in order to underpin policy.

- A renewed regional refugee strategy should be developed that enables Australia to work with regional neighbours, UNHCR and IOM to deal with regional protection issues in a cooperative manner, beyond the law enforcement and deterrence envelope. Such a strategy should aim to be comprehensive and flexible enough to deal with future flows of maritime asylum seekers in the region and not just those that come to Australia shores.

- Australia's regional refugee strategy should comprehend long-term, medium-term and short-term goals.

- As a long-term goal, Australia should encourage regional governments in Southeast Asia to become parties to the Refugee Convention and other human rights treaties.

- As a medium-term goal, Australia should encourage regional governments to consider some form of regional declaration or understanding on refugee protection through ASEAN or a smaller grouping.

- As a short-term goal, Australia should work actively within existing mechanisms to improve regional arrangements on refugee protection.

- In working with regional governments, Australia should encourage development of stronger national institutions for migration and protection governance.

- In responding to particular flows of people facilitated by people smugglers, the use of readmission/transfer agreements with regional transit countries, subject to acceptable conditions, can be an important tool in discouraging use of people smugglers.

- Responses to particular flows of asylum seekers should reflect the unique national and other characteristics of each group of people.

- As part of its approach in working cooperatively with regional governments, Australia needs to consider increasing its own contribution to resolving regional refugee and protection issues by: greater diplomatic activity, funding to support refugee populations in the region, capacity building, significantly increasing its refugee resettlement program and targeted use of migration options.

- Australian diplomacy on regional refugee protection issues should be complemented by the development of a Track 2 dialogue on these issues.

Attachment A: Maritime asylum seeker arrivals 1976 – 2013: calendar year
Source:
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/BoatArrivals

Year	Number of boats	Number of people
1976		111
1977		868
1978		746
1979		304
1980		0
1981		30
1982–88		0
Year	**Number of boats**	**Number of people (excludes crew)**
1989	1	26
1990	2	198
1991	6	214
1992	6	216
1993	3	81
1994	18	953
1995	7	237
1996	19	660
1997	11	339
1998	17	200
1999	86	3,721
2000	51	2,939
2001	43	5,516
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161

Year	Number of boats	Crew	Number of people (excludes crew)
2009	60	141	2,726
2010	134	345	6,555
2011	69	168	4,565
2012	278	392	17,202
2013 (to 30 June)	196	407	13,108

Attachment B: Maritime asylum seeker arrivals 1976–2013: financial year
Source:
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/BoatArrivals

Year	Number of boats	Number of people
1975–76	1	5
1976–77	7	204
1977–78	43	1,423
1978–79	6	351
1979–80	2	56
1980–81	1	30
1981-82 to 1988-89	0	0
1989-90	3	224
1990-91	5	158
1991-92	3	78
1992-93	4	194
1993-94	6	194
1994-95	21	1,071
1995-96	14	589
1996-97	13	365
1997-98	13	157
1998-99	42	921
1999-00	75	4,175
2000-01	54	4,137
2001-02	19	3,039
2002-03	0	0
2003-04	3	82
2004-05	0	0
2005-06	8	61
2006-07	4	133
2007-08	3	25

Year	Number of boats	Number of people (excludes crew)	Number of people (includes crew)
2008-09	23	985	1,033
2009-10	117	5,327	5,609
2010-11	89	4,730	4,940

Year	Number of boats	Crew	Number of people (excludes crew)
2011-12	110	190	7,983
2012-13	403	423	25,173

Attachment C: Maritime asylum seeker populations, February 2014

Source: Department of Immigration and Border Protection (28 February 2014) *Immigration Detention and Community Statistics Summary*. Available at: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-feb2014.pdf.

Note: The tables below have been copied from the Department's summary.

Existing Numbers in Detention and the Community: Location and Nationality Statistics

As at 28 February 2014 there were 2,982 people in immigration detention on the mainland and 1,717 in immigration detention on Christmas Island (Summary, p. 3).

3,092 people are living in the community after being approved for a residence determination and 23,979 are living in the community on a Bridging Visa E (Summary, p. 3).

People in Onshore Immigration Detention Facilities, the Community and Alternative Places of Detention (APOD)

Place of immigration detention	Men	Women	Children	Total	Change from Previous Summary 31/01/2014
Christmas Island Immigration Detention Centre	923			923	- 21
Curtin Immigration Detention Centre	334			334	- 515
Maribyrnong Immigration Detention Centre	88	8		96	+ 12
Northern Immigration Detention Centre (Darwin)	64			64	- 134
Perth Immigration Detention Centre	40	13		53	+ 10
Scherger Immigration Detention Centre					- 83
Villawood Immigration Detention Centre	380	66		446	+ 22
Wickham Point Immigration Detention Centre	144			144	- 60
Yongah Hill Immigration Detention Centre	359			359	- 48
Total in Immigration Detention Centres	2332	87		2419	- 817
Perth Immigration Residential Housing	5	6	15	26	+ 12
Port Augusta Immigration Residential Housing					0
Sydney Immigration Residential Housing	6	10	19	35	- 4
Adelaide Immigration Transit Accommodation	17	2	1	20	- 3
Brisbane Immigration Transit Accommodation	43	17	15	75	+ 5
Melbourne Immigration Transit Accommodation	118	79	77	274	- 58
Total in Immigration Residential Housing and Immigration Transit Accommodation	189	114	127	430	- 48
Alternative Places of Detention (Christmas Island and Cocos Keeling Island)	185	253	356	794	- 162
Alternative Places of Detention (Mainland)	279	331	446	1056	- 141
Restricted on Board Vessels in Port					0
Total Facility and APOD	2985	785	929	4699	- 1168
Total Community under Residence Determination	853	660	1579	3092	- 299
Total Community on Bridging Visa E (Including people in a re-grant process)	19912	2251	1816	23979	+ 1309

Source: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-feb2014.pdf (p. 3).

People in offshore processing centres

Offshore Processing Centres	Men	Women	Children	Total	Change from Previous Summary 31/01/2014
Republic of Nauru	630	300	177	1107	+95
Manus Province, Papua New Guinea	1325			1325	-28
Total Offshore Processing Centres	**1955**	**300**	**177**	**2432**	**+67**

Source: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-feb2014.pdf (p 4).

Community detention population by state/territory

State/Territory	Adult		Child (<18 years)		Total
	Male	Female	Male	Female	
ACT	13	6	22	5	46
NSW	164	111	165	95	535
NT					
QLD	162	139	198	110	609
SA	68	58	89	62	277
TAS	11	9	35	4	59
VIC	353	280	437	228	1298
WA	82	57	90	39	268
Total	853	660	1036	543	3092

Source: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-feb2014.pdf (p 6).

Nationalities of people in immigration detention facilities and alternative places of detention

Nationalities	Adult		Child (<18 years)		Total
	Male	Female	Male	Female	
Iran	734	285	188	119	1326
Sri Lanka	403	101	80	57	641
Vietnam	430	89	68	39	626
Afghanistan	185	9	28	8	230
Iraq	149	26	29	20	224
Pakistan	176	11	12	6	205
Bangladesh	79				79
Indonesia	25	23		3	51
Myanmar	15	6	6	10	37
Other	789	235	135	121	1280
Total	2985	785	546	383	4699

Source: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-feb2014.pdf (p 6).

Nationalities of people in the community under Residence Determination

Nationalities	Adult		Child (<18 years)		Total
	Male	Female	Male	Female	
Iran	280	252	190	160	882
Sri Lanka	226	168	224	137	755
Afghanistan	88	29	271	26	414
Iraq	74	41	61	38	214
Palestinian Authority	16	20	19	22	77
Other	169	150	271	160	750
Total	853	660	1036	543	3092

Source: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-feb2014.pdf (p 7).

Nationalities of people in detention facilities and places of detention

Nationalities	Adult		Child (<18 years)		Total
	Male	Female	Male	Female	
Iran	734	285	188	119	1326
Sri Lanka	403	101	80	57	641
Vietnam	430	89	68	39	626
Afghanistan	185	9	28	8	230
Iraq	149	26	29	20	224
Pakistan	176	11	12	6	205
Bangladesh	79				79
Indonesia	25	23		3	51
Myanmar	15	6	6	10	37
Other	789	235	135	121	1280
Total	**2985**	**785**	**546**	**383**	**4699**

Source: http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-feb2014.pdf (p. 7).
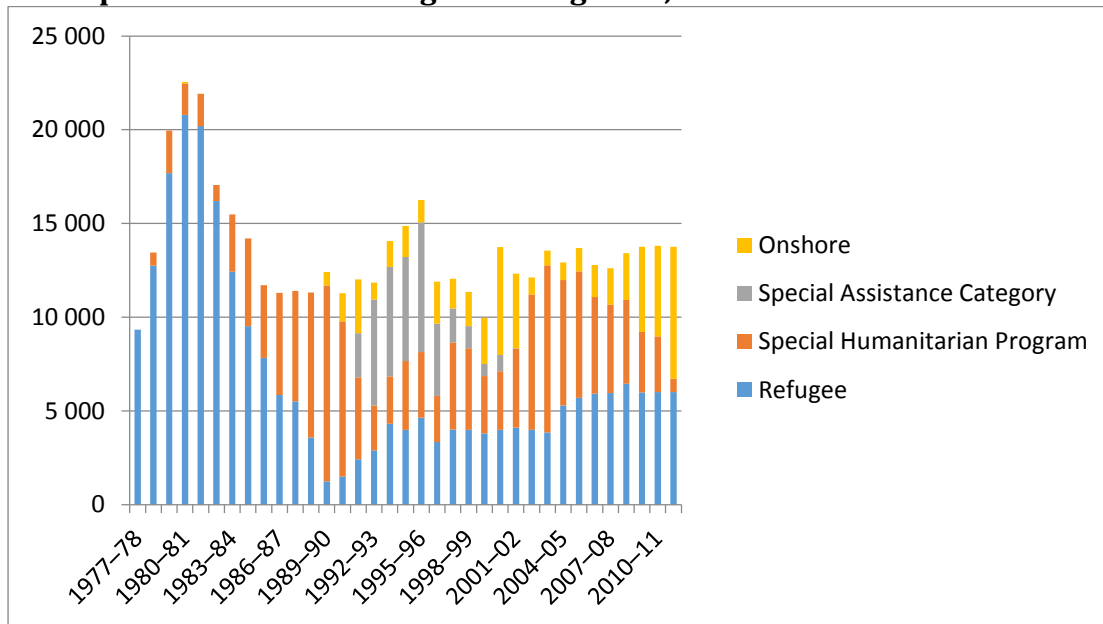
Attachment D: Humanitarian program visa grants, 1977–78 to 2011–12

| Year	Refugee	Special Humanitarian Program	Special Assistance Category	Onshore	Total
1977–78	9 326	0	0	0	9 326
1978–79	12 750	700	0	0	13 450
1979–80	17 677	2 277	0	0	19 954
1980–81	20 795	1 675	0	75	22 545
1981–82	20 195	1 722	0	0	21 917
1982–83	16 193	861	0	0	17 054
1983–84	12 426	3 059	0	0	15 485
1984–85	9 520	4 687	0	0	14 207
1985–86	7 832	3 868	0	0	11 700
1986–87	5 857	5 434	0	0	11 291
1987–88	5 514	5 878	0	0	11 392
1988–89	3 574	7 735	0	0	11 309
1989–90	1 238	10 451	0	726	12 415
1990–91	1 497	8 287	0	1 500	11 284
1991–92	2 424	4 360	2 363	2 862	12 009
1992–93	2 893	2 392	5 657	903	11 845
1993–94	4 315	2 524	5 840	1 391	14 070
1994–95	3 992	3 675	5 545	1 646	14 858
1995–96	4 643	3 499	6 910	1 200	16 252
1996–97	3 334	2 470	3 848	2 250	11 902
1997–98	4 010	4 636	1 821	1 588	12 055
1998–99	3 988	4 348	1 190	1 830	11 356
1999–00	3 802	3 051	649	2 458	9 960
2000–01	3 997	3 116	879	5 741	13 733
2001–02	4 105	4 197	40	3 974	12 316
2002–03	3 996	7 212	0	911	12 119
2003–04	3 851	8 912	0	784	13 547
2004–05	5 289	6 684	0	952	12 925
2005–06	5 699	6 739	0	1 247	13 685
2006–07	5 924	5 157	0	1 707	12 788
2007–08	5 951	4 721	0	1 932	12 604
2008–09	6 446	4 471	0	2 495	13 412
2009–10	5 988	3 234	0	4 535	13 757
2010–11	5 998	2 973	0	4 828	13 799
2011–12	6 004	714	0	7 041	13 759

Source data: MPMS, ICSE and IMIRS, DIAC
Note: Data prior to 2001–02 is based on published historical information. Data from 2001–02 onwards was extracted from departmental systems at 30 June 2011 and therefore may differ from statistics previously published in annual reports or elsewhere.

D: Graph: Humanitarian Program visa grants, 1977–78 to 2011–12

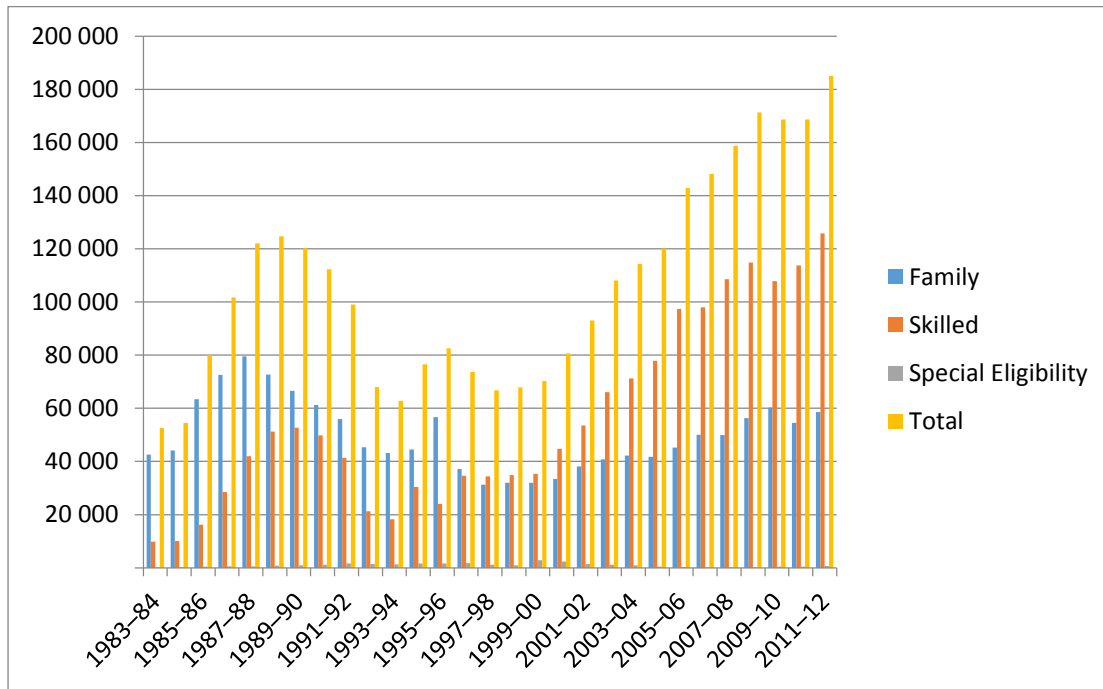**100 % Graph: Humanitarian Program visa grants, 1977–78 to 2011–12**
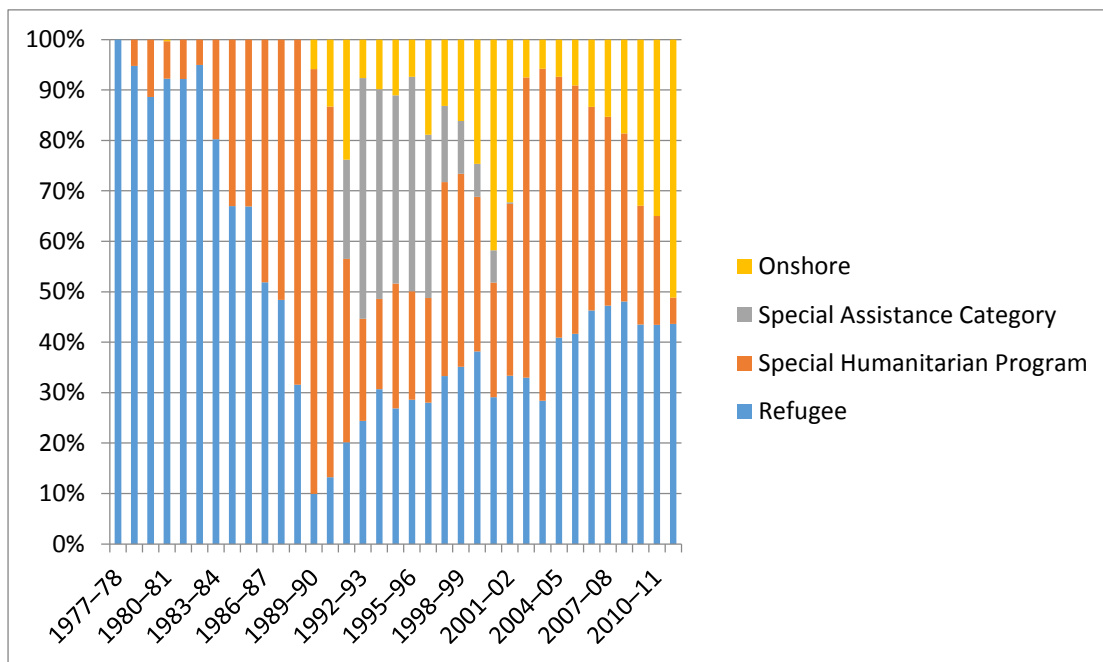
Attachment E: Family, skilled and special eligibility visa grants 1983–2012

Year	Family	Skilled	Special Eligibility	Total
1983–84	42 600	9 800	200	52 600
1984–85	44 200	10 100	200	54 500
1985–86	63 400	16 200	400	80 000
1986–87	72 600	28 500	600	101 700
1987–88	79 500	42 000	600	122 100
1988–89	72 700	51 200	800	124 700
1989–90	66 600	52 700	900	120 200
1990–91	61 300	49 800	1 200	112 300
1991–92	55 900	41 400	1 700	99 000
1992–93	45 300	21 300	1 400	68 000
1993–94	43 200	18 300	1 300	62 800
1994–95	44 500	30 400	1 600	76 500
1995–96	56 700	24 100	1 700	82 500
1996–97	37 176	34 676	1 735	73 587
1997–98	31 281	34 446	1 113	66 840
1998–99	32 038	34 895	888	67 821
1999–00	32 017	35 352	2 868	70 237
2000–01	33 461	44 721	2 415	80 597
2001–02	38 082	53 507	1 465	93 054
2002–03	40 794	66 053	1 225	108 072
2003–04	42 229	71 243	890	114 362
2004–05	41 736	77 878	450	120 064
2005–06	45 291	97 336	306	142 933
2006–07	50 079	97 922	199	148 200
2007–08	49 870	108 540	220	158 630
2008–09	56 366	114 777	175	171 318
2009–10	60 254	107 868	501	168 623
2010–11	54 543	113 725	417	168 685
2011–12	58 604	125 755	639	184 998

Figures taken from: DIAC Historical Migration Statistics spread sheet

E: Graph: Family, skilled and special eligibility visa grants 1983–2012

100% Graph: Family, skilled and special eligibility visa grants 1983-2012