Australian Government

Department of Immigration and Citizenship

Submission to the Joint Select Committee on Australia's Immigration Detention Network September 2011

Department of Immigration and Citizenship

people our business

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Executive summary

The environment in which the department works is one of constant motion–as a people-centred operation this is to be expected. In any 24-hour cycle the Department of Immigration and Citizenship (the department) will have officers on interviewing trips in remote locations of the world deciding on visas for students, visitors, refugees and migrants. Officers will be representing Australia's interests in international meetings and the department will be working with community based organisations in Australia to support the settlement of newly arrived refugees and migrants. We will be talking with, interviewing and making sure people housed in immigration detention facilities (IDFs) have access to services and that their cases are being properly considered. We will also be deciding on and conferring Australian citizenship.

Global population movements have been an enduring feature of the geopolitical landscape for centuries. In the 1970s the first wave of irregular maritime arrivals (IMAs) in the post-war period arrived in Australia from Vietnam. By the early 1990s it was clear this was to be an ongoing occurrence. Since then, the issues shaping immigration detention and asylum processing have included the need to manage successive waves of IMAs while ensuring the humane treatment of asylum seekers.

The fluctuating number and demographics of IMAs have presented many challenges. Usually these fluctuations reflect developments in international humanitarian situations. The challenges for the department in this context include keeping times spent in immigration detention low, maintaining healthy and safe conditions in IDFs, accurately and quickly determining people's refugee status, and deterring more asylum seekers from taking the often dangerous journey to Australia.

In this complex environment, the department must implement government policies. Over time major government policies have included mandatory detention, excision, offshore processing, and suspension of processing certain asylum seeker applications.

As the number of IMAs has increased and the situations in source countries have changed, the issues of processing times and length of time spent in immigration detention have become increasingly challenging to manage. In response, we have implemented a new and quicker method of asylum processing; streamlined security clearance procedures; and increased the use of alternative forms of detention.

While many IMAs are found to be refugees and granted Protection visas, others are not and require a more complex status resolution pathway while they pursue reviews and appeals. Many access the complaint and legal systems available to them and spend longer periods of time in immigration detention as a result.

With increasing numbers of people held in immigration detention, the department has sought to ensure that the facilities and environment of IDFs have remained positive and healthy. To this end, the department has engaged the expertise of a number of independent agencies and advisory bodies to provide scrutiny and suggestions for improvements, such as the Commonwealth Ombudsman, Council on Immigration Services and Status resolution (CISSR) and the Detention Health Advisory Group (the DeHAG). The department has also sought to ensure the resources and space available in each detention facility is adequate for the detention population accommodated there.

Women, children and vulnerable people have been increasingly accommodated in community detention and other alternative detention arrangements. These provide an environment more suitable for the needs of these groups than immigration detention centres.

Due to the combination of higher numbers of people in detention who have been found not to be refugees and longer processing times, the number of incidents occurring at IDFs has increased. In response, we have focused more efforts on appropriately training staff, improving the conditions of detention facilities and creating individual management plans for people in detention. The department has also clarified procedures to be followed in case of incidents, especially in relation to clarifying the roles of Serco staff, the Australian Federal Police (AFP) and state and territory police forces. The government recently introduced strengthened character provisions to provide that where people have been convicted of an offence in immigration detention they will automatically fail the character test.

This combination of factors places many pressures on the immigration detention network. We must administer services to a growing detention population within the constraints of budget and existing

infrastructure. The variable nature of irregular boat arrivals makes it difficult to maintain constant capacity for responding to sudden increases in IMA activity.

The recent agreement with Malaysia under the regional cooperation framework, endorsed by the Bali Process, is an example of our active international engagement strategies. Such an arrangement presents an opportunity to contribute to stabilising displaced populations within the region and starts the long process of strengthening the protection environment in the region and engaging countries more broadly on the question of refugee protection.

In this challenging policy environment, the department has sought to optimise resources for improving conditions in detention, acknowledge past mistakes and minimise risks. While these endeavours have not always led to the desired outcomes, many have successfully improved the immigration detention network for all stakeholders involved: people in detention, Australian Government staff, and the Australian public.

Immigration detention is part of a much broader framework of Australian immigration policy and administration. Our orderly and well-managed programs bring migrants who make a substantial economic, social and cultural contribution to Australia. Our staff and systems are involved in a diverse range of activities including administering an annual permanent migration program, issuing visas and facilitating border crossings, resettling refugee and humanitarian entrants and deciding and conferring citizenship. The work of our department is fundamental in building and shaping our nation.

A note on terminology and data

Terminology

Irregular maritime arrivals (IMAs): Over the past 30 years people who have arrived by boat in Australia have variously been described by a range of terms including 'unauthorised boat arrivals,' 'boat people' and 'illegal immigrants.' The current terminology is IMAs and the department has used this term throughout the submission irrespective of the period under discussion.

Asylum seekers and refugees: Public commentary often uses these terms interchangeably. The term asylum seeker is used throughout this submission for the period during which a person's claims to become a refugee are being considered and until such time as a determination is made that they meet the Refugee Convention definition of a refugee. Not all asylum seekers are necessarily refugees, but all refugees have at some point in time been an asylum seeker. The term refugee applies only when a determination has been made that a person meets the definition of a refugee under Article 1A of the Refugee Convention.

Negative pathways: This term is used for people who have had a negative decision at either the primary or review stage but have not started or exhausted their review rights through the independent protection assessment process or judicial review. Depending on the outcome of a review, a negative decision can be overturned and a person subsequently granted protection to remain in Australia.

Immigration detention framework: This is a high-level description and encapsulates the many different aspects of the detention operations environment. Below this sit a number of other terms and descriptions including:

Immigration detention facilities (IDFs): This covers all the various types of accommodation arrangements that exist in the detention environment:

- **Immigration detention centres (IDCs)**—meaning the more restrictive detention environments that are fully guarded, such as the North-West Point facility on Christmas Island and the Villawood IDC.
- **Alternative places of detention (APODs)**—meaning places that have been specifically authorised for immigration detention that are not an IDC or community detention. They include immigration transit accommodation, immigration residential housing and other places in the broader community, such as hotels and hospitals.
- **Immigration residential housing (IRH)**—meaning accommodation that is less institutional, allowing for a more domestic and independent environment. It is used for low flight and low security risk people, particularly families with children.
- **Immigration transit accommodation (ITA)**—meaning accommodation used for short-term, low flight-risk people, providing hostel-style accommodation, with central dining areas and semi-independent living

Community detention—meaning immigration detention where people live and can move about freely in the community without needing to be accompanied or restrained by an officer. The department contracts non-government organisations to provide services for people in community detention.

Residence determination—refers to the process by which the minister specifies that a person may live in community detention.

Immigration detention network: This term describes the facilities and services, beyond accommodation, that are available in detention centres. It also includes the various providers and contractors that operate within the detention environment. It is sometimes interchangeably used with the term detention operations.

The use of data

The environment of detention is dynamic and fast moving. As decisions on cases are made and arrangements for removal finalised, people are constantly moving into and out of detention. Where people are housed within the detention environment is also dynamic and constantly changing. Consequently, recording accurate statistics is a difficult exercise and statistical snapshots are only produced periodically. This submission has used the most up to date statistics wherever possible.

Wherever statistics are provided, specific dates for which they apply are identified.

Commonly used acronyms

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
APOD	alternative place of detention
APS	Australian Public Service
ASIO	Australian Security Intelligence Organisation
AVR	assisted voluntary return
CAAIP	Committee to Advise on Australia's Immigration Policies
CGN	country guidance notes
CISNET	DIAC's Country Information Service system
CISSR	Council on Immigration Services and Status Resolution
CPA	comprehensive plan of action
CSRS	Community Status Resolution Service
DeHAG	Detention Health Advisory Group
DIAC	Department of Immigration and Citizenship
DORS	Determination of Refugee Status Committee
DSM	detention services manual
DTEP	Domestic Protection Temporary Entry Permit
EAP	employee assistance program
FTE	full-time equivalent
IDC	immigration detention centre
IDF	immigration detention facility
IHMS	International Health and Medical Services group
IAAAS	Immigration Advice and Application Assistance Scheme
IMA	irregular maritime arrival
IMP	Individual management plan
IOM	International Organization for Migration
IPA	Independent Protection Assessment
IRH	Immigration Residential Housing
IRPC	Immigration reception and processing centre
ITA	Immigration Transit Accommodation
ITOA	International Treaties Obligations Assessment
MoU	memorandum of understanding
NGO	non-government organisation
ODP	Orderly Departure Program
OEP	offshore entry person
OHS	occupational health and safety
OPCG	Onshore Protection Consultative Group
OTCM	orientation to case management training
PNG	Papua New Guinea
POD	Protection Obligation Determination
POE	Protection Obligation Evaluation
PRE	pre-review examination
PRC	People's Republic of China
RACGP	Royal Australian College of General Practitioners
RMT	Regional Management Team
RRT	Refugee Review Tribunal
RSD	Refugee Status Determination
RTO	registered training organisation
SIEV	suspected illegal entry vessel
TPV	Temporary Protection Visa
UNHCR	United Nations High Commissioner for Refugees
UNTAC	United Nations Transitional Authority in Cambodia

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Joint Select Committee on Australia's Immigration Detention Network Terms of Reference

(a) any reforms needed to the current Immigration Detention Network in Australia;

(b) the impact of length of detention and the appropriateness of facilities and services for asylum seekers;

(c) the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties;

(d) the health, safety and wellbeing of asylum seekers, including specifically children, detained within the detention network;

(e) impact of detention on children and families, and viable alternatives;

(f) the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers;

(g) the impact, effectiveness and cost of mandatory detention and any alternatives, including community release; and

(h) the reasons for and nature of riots and disturbances in detention facilities;

(i) the performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of IMAs or other persons;

(j) the health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties relating to IMAs or other persons detained in the network;

(k) the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols;

(l) compliance with the Government's immigration detention values within the detention network;

(m) any issues relating to interaction with States and Territories regarding the detention and processing of IMAs or other persons;

(n) the management of good order and public order with respect to the immigration detention network;

(o) the total costs of managing and maintaining the immigration detention network and processing IMAs or other detainees;

(p) the expansion of the immigration detention network, including the cost and process adopted to establish new facilities;

(q) the length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network;

(r) processes for assessment of protection claims made by IMAs and other persons and the impact on the detention network; and

(s) any other matters relevant to the above terms of reference.

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Section 1: Policy evolution

Responding to irregular maritime arrivals

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Policy evolution

Introduction

Population shifts and movements have been an enduring feature of the global landscape. The accompanying issues paper, *Global population movements: sources and destinations,* details the many factors influencing population movement and destinations.

Unregulated movements have challenged governments across the world in developing policy responses that balance humanitarian considerations with the need to know who is crossing their borders.

This difficult balance of strengthening the international protection system while respecting the sovereignty of states in managing their borders has been a consistent theme running through many of the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR). [1]

The genesis of Australia's contemporary policy responses to the reception of asylum seekers, the processing of their claims and establishing regional cooperation arrangements can be traced to the exodus of South Vietnamese from Vietnam in the late 1970s.

At least eight times between 1975 and 1980 Cabinet considered the matter of boat arrivals, including their reception, detention and processing, and responses to the continuing refugee outflows from Indochina. New approaches to asylum practices and processing and to regional cooperation (new measures to deter arrivals) were developed as a result of these deliberations. For further information please see the attached issues paper *An historical perspective of refugees and asylum seekers in Australia 1975-2011.*

When the first boats arrived in 1976 and 1977, issues of concern to Australian policy makers included:

- no established asylum processing system—processing of asylum requests was guided by policy directions dating back to the early 1960s and was essentially handled under the migration program's broader entry permit arrangements
- purpose of immigration detention—the purpose was to facilitate the removal of people from Australia
- lack of coordinated international response—in particular for the unprecedented influx of Vietnamese refugees into regional countries.

A 1979 Australian Government Cabinet document advised that the question of Vietnamese refugees 'should not be seen as a 'one-off problem'' and observed that '… the refugee question could well become dominant, both in domestic politics and in foreign policy during the rest of the century.' [2]

This 1979 observation was remarkably prescient and the issues of asylum, refugee and border management policies have since been an enduring feature of the administration of the Australian Government's immigration portfolio.

This same document also highlighted the escalating refugee situation as a potential threat to regional stability and Australian unity. Looking beyond the immediate numbers of refugee arrivals, the government was concerned that continuing outflows could destabilise the fragile internal social, political and ethnic balance of many Association of Southeast Asian Nations countries—internal political pressure was causing many countries of first asylum to harden their refugee policies.[3]

Australia had an urgent need to develop a comprehensive and coordinated refugee policy. The policy challenge was to balance public confidence in the government's ability to handle direct boat arrivals with the need to honour Australia's obligations under the 1951 Convention Relating to the Status of Refugees (The Refugee Convention). Australia faces a similar policy challenge today.

[1] For example, Executive Committee (ExCom) conclusion no. 97 (LIV) – 2003 – (iv), calls on all countries to allow access to international protection. The UNHCR's ExCom comprises 85 members who meet annually to review and approve UNHCR programmes and budget, discuss issues with intergovernmental, non-governmental partners and UNHCR, and advise on international protection. ExCom also meets several times a year between plenary sessions. Although not formally binding, its conclusions are relevant to the interpretation of the international protection regime. The conclusions constitute expressions of opinion that broadly represent the views of the international community. ExCom's specialist knowledge and the fact that its conclusions are taken by consensus add further weight. UNHCR, A Thematic Compilation of Executive Committee Conclusions, 2009, viewed 31 August 2011, <http://www.unhcr.org/3d4ab3ff2.html>.
[2] NAA: A12930, 380 – Cabinet Memorandum no. 380, 'Indo-Chinese Refugees', July 1979
[3] Ibid

This section examines Australia's policy evolution—how successive governments have sought to strike this balance. The options focused on three main policy areas:

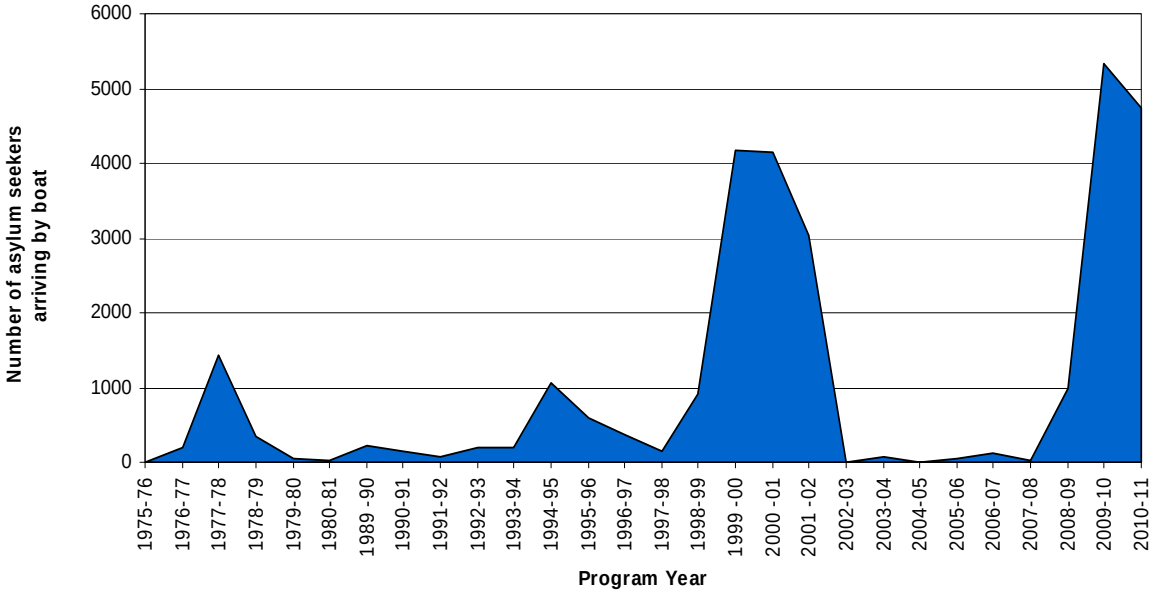
- reception arrangements
- asylum processing for people who arrive in Australia
- offshore cooperation, capacity building and processing.

A chronology of these developments is at attachment A.

Boat arrivals 1976–2011

Around 580 direct boat arrivals carrying some 29 000 passengers have arrived in Australia since 1976, covering four distinct periods (Figure 1).[4]

Figure 1: Irregular maritime arrivals from 1975–76 to 2010–11



Period 1 (1976 to 1981): On 27 April 1976 the first direct boat arrival carrying five Vietnamese asylum seekers reached Australia. This was followed by seven boats carrying 204 asylum seekers later that year. This movement peaked in 1977–78, when 43 boats arrived carrying 1432 people.[5]

In October 1981 a boat carrying 146 people claiming to be refugees from Vietnam arrived in Darwin. This group was detained while extensive investigations were conducted by the department, the Australian Federal Police (AFP), and the Hong Kong Police. The investigations revealed that the people aboard the boat had paid large sums of money as part of an organised attempt at illegal entry into Australia and all 146 people were deported to Taiwan and Hong Kong. No further boats arrived over the next eight years.

Period 2 (1989 to 1998): In November 1989 a boat carrying 26 Cambodians arrived on the north-west coast near Broome. From 1989 to 30 June 1995 a further 41 boats carrying 1893 people arrived in Australia, most of whom came from Cambodia, the People's Republic of China (PRC) and Vietnam.[6] Those from PRC were

[4] Figures represent arrivals to 30 June 2011, rounded up to the closest ten boats or to the closest thousand passengers. Correct figures are 579 boats and 28 723 passengers. Taken from the accompanying issues paper, *An historical perspective of refugees and asylum seekers in Australia 1976–2011* pp. 4,8,13,21,23.

[5] For more detail refer to the accompanying issues paper, *An historical perspective of refugees and asylum seekers in Australia 1976–2011* p.4.

[6] For more detail refer to the accompanying issues paper, *An historical perspective of refugees and asylum seekers* in Australia 1976–2011 p.8.

Sino-Vietnamese who had been resettled in the PRC, and PRC nationals, mainly from the coastal province of Fujian.

No Cambodian IMAs arrived after the United Nations Transitional Authority in Cambodia (UNTAC) mission was established in 1991. The flow of Vietnamese IMAs effectively stopped in 1995–96, with none arriving in the next three financial years. The last major arrival of IMAs from PRC was in 2000, with 25 arrivals.

Period 3 (1999 to 2001): The profile and origins of IMAs coming to Australia began to change in 1999. Previously, most IMAs had come from Cambodia, PRC and Vietnam. As the tide of IMAs from east Asia and south-east Asia receded, a new movement of IMAs—predominantly from Afghanistan, Iran, Iraq and Sri Lanka—emerged. In total, 12 272 people arrived in this period.

Period 4 (2009 to 2011): Boats began arriving again in October 2008. Over the course of 2009–10 the number of asylum seekers increased significantly. As with the preceding wave, the majority of IMAs came from Afghanistan, Iran, Iraq and Sri Lanka. Notably, however, the number of Iranians to arrive since January 2011 has increased significantly.

Australia's experience with the country of origin of asylum seekers was broadly consistent with international trends throughout these periods.[7] See the accompanying issues paper *Global Population Movements: Sources and Destinations* for further information on international trends.

Figure 2 shows the arrival of boats and irregular maritime arrivals to Australia from 1975–2011.

Figure 2: Arrivals of boats and irregular maritime arrivals to Australia 1975–2011

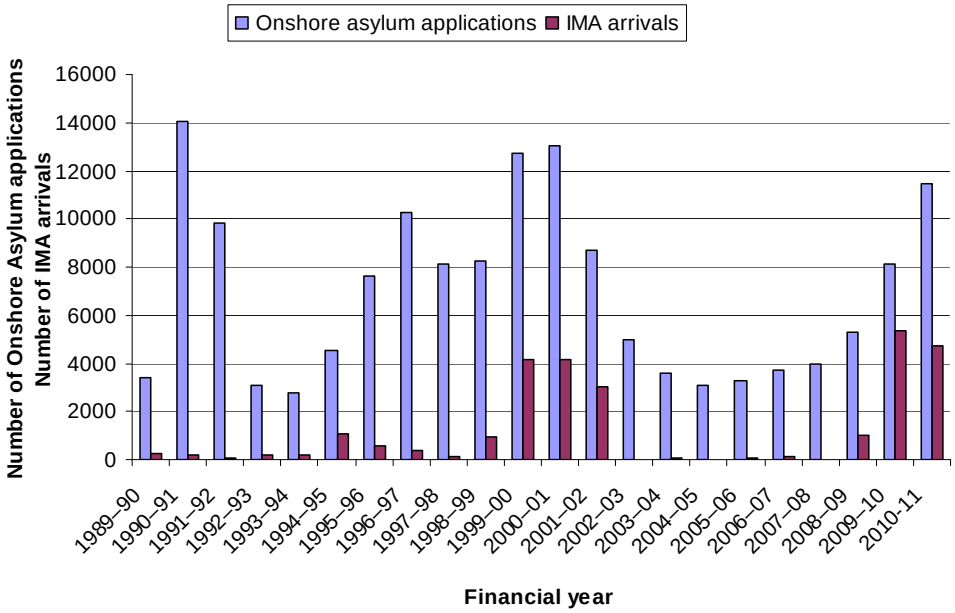
Year	Number of boats	Number of arrivals	Financial year	Number of boats	Number of arrivals
1975-76	1	5	1994-95	21	1071
1976-77	7	204	1995-96	14	589
1977-78	43	1432	1996-97	13	365
1978-79	6	351	1997-98	13	157
1979-80	2	56	1998-99	42	921
1980-81	1	30	1999-2000	75	4175
1981-82	0	0	2000-01	54	4137
1982-83	0	0	2001-02	19	3039
1983-84	0	0	2002-03	0	0
1984-85	0	0	2003-04	3	82
1985-86	0	0	2004-05	0	0
1986-87	0	0	2005-06	8	61
1987-88	0	0	2006-07	4	133
1988-89	0	0	2007-08	3	25
1989-90	3	224	2008-09	23	985
1990-91	5	158	2009-10	117	5327
1991-92	3	78	2010-11	89	4730
1992-93	4	194			
1993-94	6	194	**Total**	**579**	**28 723**

[7] UNHCR, 'Asylum Applications in Industrialised Countries: 1980–1999', 2001, viewed 1 September 2011, <www.unhcr.org/3c3eb40f4.pdf>.

Non-irregular maritime arrival applications for asylum

Figure 3 represents the number of unauthorised boat arrivals in comparison to the number of onshore Protection visa applications lodged from 1989–90 to 2010–11. It becomes evident when these figures are compared that, for the most part, unauthorised boat arrivals comprise only a small percentage of total Protection visa applicants.

Figure 3: Onshore asylum applications compared to IMA arrivals 1989-90 to 2010-11



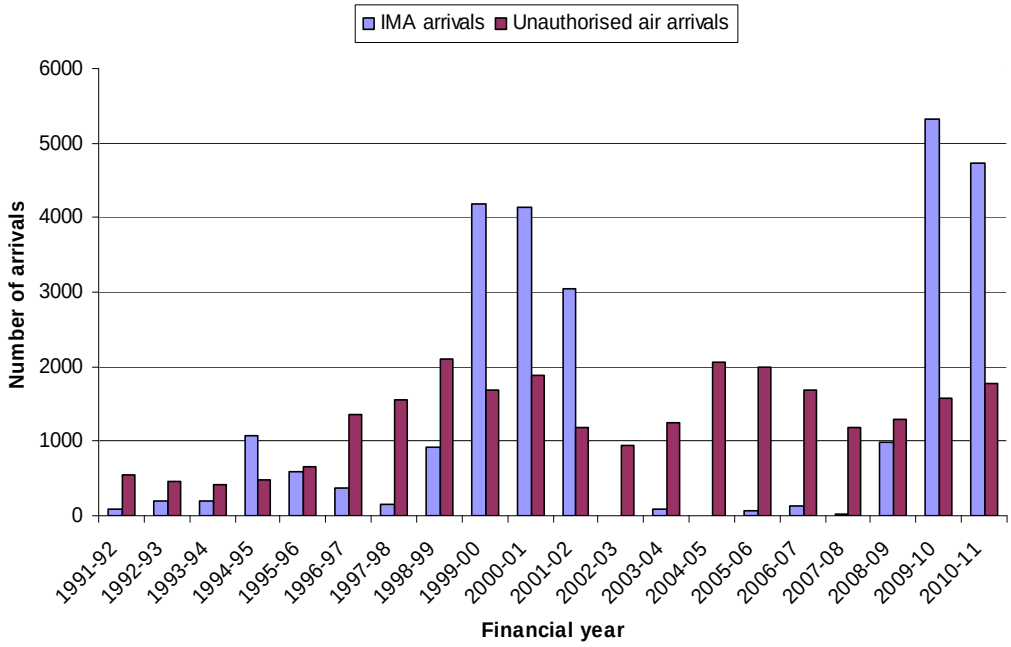
Source: DIAC

Note: The majority of unauthorised boat arrivals lodge Protection Visa applications. As such, the numbers of boat arrivals represented in the figure are already included in the total application figures.

Unauthorised air arrivals

The majority of onshore Protection visa applications are made by people who arrive lawfully in Australia on valid visas or by unauthorised air arrivals. Figure 4 compares unauthorised air and boat arrivals for the period 1991–92 to 2010–11. While the periods of high IMA arrivals are clearly visible, the figure also demonstrates that the number of unauthorised air arrivals generally exceeds the number of boat arrivals.

Figure 4: Comparison of irregular maritime arrivals and unauthorised air arrivals 1989–90 to 2010–11



Source: DIAC

Asylum seeker processing

Following a recommendation by the 1976 Senate Standing Committee on Foreign Affairs and Defence review of asylum processes[8] the Australian Government established the interdepartmental Determination of Refugee Status Committee (DORS) in March 1978.[9] The committee was chaired by the then Department of Immigration and Ethnic Affairs and comprised representatives of the Prime Minister and Cabinet, Attorney-General's and Foreign Affairs departments.[10] A UNHCR representative was also involved in an advisory role. This committee made recommendations to the minister based on interviews and other information submitted by applicants on whether their claims engaged Australia's protection obligations.

If the DORS Committee recommended that a person did not engage Australia's protection obligations, it could still propose that the applicant be allowed to remain temporarily or permanently in Australia on humanitarian or compassionate grounds.[11] The minister was the final decision maker. Pending the decision, applicants were granted a temporary entry permit or held in government accommodation (either a detention centre or a migrant accommodation centre).

In 1980 the *Migration Act 1958* (Migration Act) was amended to allow people to apply to remain in Australia on compassionate and humanitarian grounds.[12] New legislation—the *Immigration (Unauthorised Arrivals) Act 1980*—was introduced to deal with IMAs and people smugglers.[13] The new legislation did not include the seven-day limit for authorising detention. This meant a person had to remain in detention until they were 'conveyed from Australia' or 'granted an entry permit'.[14] This legislation ceased in 1983, but is arguably the antecedent to legislation introduced in 1991, 1992 and 2005 dealing with the status and processing of IMAs.

[8] Senate Standing Committee on Foreign Affairs and Defence, Parliament of Australia, *Australia and the refugee problem: the plight and circumstances of Vietnamese and other refugees*, Australian Government, Canberra, 1977.
[9] Department of Immigration and Ethnic Affairs, *Review '78,* Australian Government, Canberra, p. 6.
[10] Ibid, p. 28.
[11] Department of Immigration and Ethnic Affairs, Determination of Refugee Status: Notes for the Guidance of Interviewing Officers, circa 1978. (This document is not dated, but research has indicated it was produced shortly after the establishment of the DORS Committee in 1978).
[12] *Migration Amendment Act (No.2) 1980* (Cwlth), s. 6.
[13] *Immigration (Unauthorised Arrivals) Act 1980* (Cwlth).
[14] *Ibid* s. 12. For more information, see the accompanying issues paper, *Evolution of the Australian legislative framework and policy for immigration detention*, p. 12.

A major turning point for the immigration system was in 1989. Following the report of the Committee to Advise on Australia's Immigration Policies[15] which called for a significant restructure of the way Australian immigration law operated, the Migration Act was overhauled. This resulted in the *Migration Legislation Amendment Act 1989*. The government moved its immigration decision making from a largely policy-based framework into a codified and regulatory environment.[16]

Over the next five years further refinements to the Migration Act were made, including the introduction into legislation of the Protection visa in the *Migration Reform Act 1992 (*Migration Reform Act).

In June 1990 the government announced that those assessed as being refugees or as having strong humanitarian claims would initially be given temporary entry permits (Domestic Protection Temporary Entry Permits or DPTEP) rather than resident status.

When these first permits began to expire in 1994, the government had to consider the most effective way to administratively handle the large number of people who would be applying for new visas. Recognising the likelihood of these visa holders being granted further stay in Australia, the government announced a new policy (1 November 1993), giving them access to permanent residence.[17] Holders of such a permit from 1 September 1994 were taken to have applied for a permanent protection visa, if they had not already done so.[18]

Due to the unprecedented number of IMAs in 1999, Australia's response to asylum seekers changed substantially. The government implemented reforms such as the Temporary Protection visa (TPV) to impress upon potential arrivals that if they were an unauthorised arrival, they would not receive the same benefits as those who arrived lawfully.[19]

TPVs were introduced in October 1999.[20] They were granted to unauthorised arrivals assessed to be refugees.[21] TPVs were valid for three years, and after 30 months holders could be granted a Permanent Protection visa. While TPV holders could not sponsor family members or re-enter Australia once they had departed, they had the right to work while in the country and access to limited social security, Medicare and other programs such as torture and trauma counselling.

In September 2001 the legislation was further amended so if an asylum seeker spent more than seven days in a country where they could have sought and obtained protection since leaving their home country, but did not do so, they were not eligible to obtain a permanent Protection visa.[22] This was known as the 'seven-day rule'.

Two temporary humanitarian visas—Secondary Movement Relocation (Temporary)(subclass 451) and Secondary Movement Offshore Entry (Temporary)(subclass 447)—were introduced at this time.[23] These were valid for five and three years respectively and were similar to TPVs in the conditions and services provided to visa holders. The purpose of these visas was to deter further movement from, or the bypassing of, other safe countries. They were also granted to certain people relocated in Australia after assessment in countries such as Nauru. Those who were resettled in Australia from transit countries were not eligible for a permanent visa for 4.5 years.

[15] Committee to Advise on Australia's Immigration Policies, Parliament of Australia, *Immigration: A Commitment to Australia*, Australian Government, Canberra, 1988.
[16] Refer to Section 2 for further information. Also, for more information see the accompanying issues papers, *Evolution of the Australian legislative framework and policy for immigration detention* and *An historical perspective of refugees and asylum seekers in Australia 1976–2011*.
[17] Department of Immigration and Ethnic Affairs, *Annual Report 1993–94*, p. 51.
[18] *Migration Reform (Transitional Provisions) Regulations 1994* (Cwlth) Reg. 36 (as in force 1 September 1994).
[19] For more information refer to the accompanying issues papers, *An historical perspective of refugees and asylum seekers in Australia 1976–2011* p.15.
[20] *Migration Amendment Regulations 1999 (No. 12)* (Cwlth), sch. 1.
[21] Department of Immigration and Multicultural Affairs, *Annual Report 1999-2000*, p. 3.
[22] *Migration Amendment (Excision from Migration Zone)(Consequential Provisions) Act 2001* (Cwlth), Sch. 1.
[23] Ibid

By May 2004 the TPVs held by some 5000 refugees living in Australia were about to cease. This issue was addressed through measures introduced in August 2004 that included:

- providing access to a reintegration assistance package for all current and former TPV holders prepared to return voluntarily to their home countries
- introducing the Return Pending visa[24] to provide 18 months stay in Australia for people no longer owed protection, to enable them to make departure arrangements
- enabling people who were in Australia and held a TPV on 27 August 2004 to apply for mainstream onshore visas.[25]

In December 2005, the Migration Act was further amended to require all valid applications for protection visas to be processed within 90 days.[26] However, this time limit did not apply to offshore entry persons, as they were not automatically eligible to make a valid application for a protection visa.

From unprocessed persons to offshore entry persons

In 1991 the first legislative provisions, since the *Immigration (Unauthorised Arrivals) Act 1980* had lapsed in 1983, were created specifically for processing IMAs arriving in Australia.

The *Migration Amendment Act 1991* sought to address the complex processing needs of unauthorised arrivals, particularly IMAs.[27] It created the status of an 'unprocessed person'.[28]

This in essence revived a clause of the 1980 legislation and was effectively a precursor to the creation of the status of an OEP. In explaining the reasoning for these Migration Act amendments the minister noted:

> Honourable members will appreciate that when such people arrive in Australia it is necessary to check their identities and that their claims for entry to Australia be thoroughly investigated. To do otherwise would provide Australia with a reputation for being a soft target for persons simply wishing to find a better place to live. The new provisions will allow immigration officials the time necessary to make fully informed decisions about the entry of these people to Australia. Until these people are properly processed for immigration purposes they will be regarded as not having entered Australia for the purposes of the Migration Act.[29]

However, the concept of 'unprocessed persons' did not last long, being abolished the next year by the Migration Reform Act that took effect on 1 September 1994. The Migration Reform Act amalgamated various classes of people into lawful and unlawful non-citizens and introduced Protection visas. The classification of 'unprocessed persons' was subsumed by the term 'unlawful non-citizen'.[30]

The Migration Reform Act also removed the distinction between physical entry to Australia and legal entry.[31] Entry to Australia became defined as 'entering the migration zone'.[32]

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[24] The Return Pending visa was introduced in August 2004 and abolished in August 2008 (*Amendment Regulations 2004 (No. 6) 2004* (Cwlth), sch. 1.) A similar initiative was the Removal Pending Bridging visa, created in May 2005 to enable the release, pending removal, of any person in immigration detention (including compliance cases) who has been cooperating fully with efforts to remove them from Australia, but whose removal is not possible at the time.

[25] DIAC, Refugee and Humanitarian: Overview of the August 2004 Measures for TPV/HPV holders, viewed 1 September 2011, <http://www.immi.gov.au/refugee/tpv_thv/1.htm>.

[26] *Migration and Ombudsman Legislation Amendment Act 2005* (Cwlth), sch. 1.

[27] Australian Government, Parliamentary Debates, House of Representatives, 17 April 1991, p. 2846, Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray.

[28] An individual was deemed to be an 'unprocessed person' where they sought to enter Australia and an authorised officer reasonably believed they would become an illegal entrant and where it was impractical to decide if to grant them an entry permit immediately. In short, the 'unprocessed person was someone who, while physically in Australia, would be considered to not have entered Australia for the purposes of the Migration Act until their immigration processing had been completed. *Migration Amendment Act 1991* (Cwlth) s. 14.

[29] Australian Government, *Parliamentary Debates,* House of Representatives, 17 April 1991, p. 2846, Minister for Immigration, Local Government and Ethnic Affairs.

[30] *Migration Reform Act 1992* (Cwlth), ss. 4 & 7; Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP, Migration Reform Bill 1992, Migration (Delayed Visa Applications) Tax Bill 1992: Explanatory Memorandum, Australian Government, Canberra, 1992, p. 15.

[31] Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP, *Migration Reform Bill 1992* (Cwlth), *Migration (Delayed Visa Applications) Tax Bill 1992: Explanatory Memorandum*, Australian Government, Canberra, 1992, p. 4.

[32] The 'migration zone' was defined as the area consisting of the states, the territories, Australian resource installations and Australian sea installations. It included land that is part of a state or territory at mean low water, sea within the limits of both a state or a territory and a port, and piers or similar structures connected to land or to ground under such sea, but did not include sea within the limits of a state or a territory but not in a port. *Migration Reform Act 1992* (Cwlth). s. 4.

In 2001, through the passage of the *Migration Amendment (Excision from Migration Zone) Act 2001*, a new class of person was created—the OEP. While the Act prevented OEPs from lodging valid visa applications, the minister could use his non-compellable personal power to enable a valid visa application to be made by an OEP if it was in the public interest to do so.[33] The excision policy also facilitated offshore processing, which involved transferring IMAs to Manus Island in Papua New Guinea and to Nauru.[34]

In a related move, the government introduced a privative clause seeking to limit review rights for many immigration decisions.[35] However, the High Court held that the right to appeal to a court on the basis of 'jurisdictional error' could not be removed by any Act of Parliament as it is a constitutionally vested power of the courts.[36]

Again seeking to balance humanitarian principles with pragmatic policies of deterrence, the government, newly elected in 2007, started a systematic review of asylum processing and detention arrangements for IMAs. The resulting changes included abolishing the TPV and addressing some of the anomalies in the processing arrangements for asylum seekers arriving at an offshore place. These measures are discussed more fully in the accompanying issues paper *An historical perspective of refugees and asylum seekers in Australia 1976–2011*.'

The current processing arrangements for IMAs are discussed in detail in Section 3: Key Strategic Themes – 'Processing Asylum Claims.'

Reception and management arrangements

Detention policy and legislation

With the exception of the *Immigration (Unauthorised Arrivals) Act 1980* which lapsed in 1983, until 1989 immigration detention was primarily designed for housing compliance cases (people who have breached visa conditions) awaiting deportation. Regulation was minimal, but included requirements for a prescribed officer to authorise detention within 48 hours of a person being detained and every seven days thereafter.[37]

The *Migration Legislation Amendment Act 1989* fundamentally changed detention policy and the treatment of unlawful non-citizens. Changes included:

- mandatory deportation of unlawful non-citizens after a grace period of 28 days
- costs of detention and deportation becoming a debt to the Australian Government
- increased penalties for becoming an illegal entrant—from a maximum fine of $1000 and/or up to six months imprisonment, to a maximum fine of $5000 and/or up to two years imprisonment
- increased bail for illegal entrants, from $2000 to $20 000.[38]

In response to the third boat wave—starting in 1999—the government initiated more reforms to immigration detention. After the introduction of the TPV in 1999, the government introduced the excision policy and what was known as the 'Pacific Solution' in 2001. By 2005 the number of boats arriving had decreased and attention turned to resolving the status of those people remaining in immigration detention. The government introduced measures to make detention more flexible and transparent. It introduced community detention, legislated for Commonwealth Ombudsman oversight, and created the Removal Pending Bridging visa, which allowed for the release of some people in detention who were cooperating with efforts to remove them from Australia but form whom removal was not reasonably practicable.[39]

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[33] *Migration Amendment (Excisions from Migration Zone) Act 2001* (Cwlth), sch. 1.

[34] For more information see the accompanying issues paper, 'Evolution of the Australian Legislative Framework and Policy for Immigration Detention' pp. 3 & 17. *Migration Amendment (Excision from Migration Zone)(Consequential Provisions) Act 2001* (Cwlth), sch. 1.

[35] *Migration Legislation Amendment (Judicial Review) Act 2001* (Cwlth), sch. 1.

[36] *Plaintiff S157/2002 v Commonwealth* [2003] HCA 2, [104] (Gaudron, McHugh, Gummow, Kirby & Hayne JJ).

[37] A prescribed authority was someone appointed by the minister who was or had been a judge of the federal court or of the supreme court of a state or territory, or a barrister or a solicitor of the High Court or of the supreme court of a state for at least five years. *Migration Act 1958-1973* (Cwlth) ss. 38 & 40.

[38] *Migration Legislation Amendment Act 1989* (Cwlth), ss. 5, 8,12,14.

[39] *Migration Amendment Regulations 2005 (No. 2)* (Cwlth).

On 28 July 2008, in the New Directions in Detention speech, the minister announced reforms to immigration detention policy.[40] These included introducing seven key immigration detention values to guide detention policy and practices and implementing a new processing regime for IMAs on Christmas Island. The reforms sought to enhance border security while ensuring the fair and humane treatment of people in detention. The implementation of the detention values is discussed in Section 3.4 of this submission.

From holding centres to detention of IMAs

Despite the initially benign position on reception arrangements for earlier Vietnamese boat arrivals, in November 1978 Cabinet considered the establishment of a refugee 'holding centre' in the Northern Territory with the minister noting:

> I see no other alternative course for handling the arrival of large shiploads of refugees in Darwin. We will not stop the flow of refugees by saying we have no camp. We may not be able to cope with a crisis without such a camp.[41]

By 1980 the *Immigration (Unauthorised Arrivals) Act 1980* was introduced. The Act contained provisions for detaining passengers without the seven-day limit before which continued detention had to be authorised by a prescribed authority. A person had to remain in immigration detention until they were conveyed from Australia or were granted an entry permit.[42]

While the primary intention of this Act was to deter people and entities from profiting and/or facilitating people smuggling to Australia, it arguably set the precedent for a differentiated system of reception and processing of IMAs. This legislation ceased in September 1983, two years after the end of the first wave of boat arrivals.

At the same time these measures were implemented the government also made arrangements allowing for asylum seekers to be transferred to an offshore processing centre. The use of Christmas Island as a 'refugee centre and quarantine station' was suggested as early as December 1978.[43]

The second wave of boat arrivals began when the *Pender Bay* arrived on 28 November 1989, carrying Cambodian asylum seekers. These people initially stayed in a holding centre near Broome, and later in immigration detention centres at Villawood and near Darwin. The nature of immigration detention was about to change.

The creation of the unprocessed person status in 1991 was accompanied by the creation of a designated 'processing area', where unprocessed people would stay until a decision was made on whether to grant them an entry permit.[44] The Port Hedland Immigration Reception and Processing Centre opened in 1991 to house IMAs.[45]

By 1992 the government, with the support of the opposition, passed amendments to the Migration Act that gave the government authority–beyond doubt–to detain and hold in detention IMAs until their claims to remain in Australia were resolved.[46] The minister said of the *Migration Amendment Bill 1992* (Migration Amendment Bill) being introduced that the government was 'conscious of the extraordinary nature of the measures' and was '... determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community …'[47]

While at the time it was centred on a group of Cambodian IMAs who were still in detention, this legislation also anticipated the possibility of large outflows of immigrants from Hong Kong as confidence in the handover to the PRC in 1997 waned following the 1989 Tiananmen Square incident.[48]

The Bill's amendments also introduced mandatory detention for IMAs. Of these legislative amendments the minister said that the:

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[40] Minister for Immigration and Citizenship, Senator the Hon. Chris Evans, ' New Directions in Detention–Restoring Integrity to Australia's Immigration System', speech at Australian National University, Canberra, 29 July 2008.
[41] NAA: 12909, 2771 - Cabinet Submission 2771, ' Review of the Indo-Chinese Refugee program,' 17 November 1978.
[42] *Immigration (Unauthorised Arrivals) Act 1980* (Cwlth).
[43] Cabinet Minute – Refugees – Interview with Dr Everingham on Radio Australia, 7 December 1978.
[44] *Migration Amendment Act 1991* (Cwlth), s. 14.
[45] Joint Standing Committee on Migration, Australian Parliament, *Asylum, Border Control and Detention*, 1994, pp. 160–2.
[46] *Migration Amendment Act 1992* (Cwlth), s. 3 & sch. 1.
[47] Australian Government, *Parliamentary Debates,* House of Representatives, 5 May 1992, p. 2370, Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP.
[48] Marion Le, *Migrants, Refugees and Multiculturalism: The curious Ambivalence of Australia's Immigration Policy* , speech at Capitol Theatre, 12 May 2001.

> Government has no wish to keep people in custody indefinitely and I could not expect Parliament to support such a suggestion … the amendment calls for custody for a limited period … [and] this legislation is only intended to be an interim measure … [49]

The intervening 20 years have seen this policy evolve and embed the concept of 'mandatory detention' as a key policy response to IMAs. In short, the four founding principles for the current system of mandatory detention are that it be:

1) an interim measure
2) not indefinite, but have time limits
3) a deterrent
4) a matter of migration management until a person's claims for protection have been resolved.[50]

Later in 1992 the Migration Reform Act was passed by the parliament to overhaul the legislative framework for detention, introducing mandatory detention as on ongoing measure and removing the time limits on detention for people detained from 1 September 1994.

By 2004 the principle that detention not be indefinite was abandoned when the High Court found that unlawful non-citizens could be held in detention for the purpose of removal, even when removal was not foreseeable in the near future.[51]

The intention of mandatory detention was to support orderly migration management and this continued, albeit in a different capacity. The excision policy and offshore processing introduced in 2001 emphasised that 'migration to Australia may not be achieved by simply arriving in this country'. How these principles have continued to evolve into contemporary immigration detention policy is outlined in section 3 of this submission.

Managing incidents

In 1989–90, the average length of stay in immigration detention was 15.5 days.[52] The average length of stay for the Cambodians who arrived on the *Pender Bay* in November 1989 was 523 days from the date applications for refugee status were lodged to the primary decisions on refugee status. By 31 January 1994, three of the 26 people who arrived on the *Pender Bay* were still in detention.[53] Detention periods were becoming much greater than the government had envisaged, and the nature of services available to people in detention was upgraded to meet the changing detention dynamics.[54] Security arrangements were also progressively upgraded.[55]

Since the early 1990s the pressures of extreme fluctuations in IMAs have, at times, significantly increased the detention population and strained detention infrastructure. Immigration detention has, at times, been overcrowded, resulting in decreased living conditions, less access to facilities and longer processing times. In turn, there was an increase in self-harm and other adverse incidents at detention facilities.

These factors were evident throughout a number of significant events that occurred from the early 1990s. In response to unrest in immigration detention, the department created counselling teams to work with Cambodian people in detention on hunger strike in Villawood and Port Hedland in 1992.[56] Nevertheless, unrest continued with more hunger strikes and a rooftop demonstration by Cambodians in late 1992 and by PRC nationals in 1994.[57]

In 2000 there were a number of riots and protests in Woomera IDC, including a mass escape involving more than 500 people. The start of 2001 saw a serious incident involving approximately 300 people in detention at

[49] Australian Government, *Parliamentary Debates,* House of Representatives, 5 May 1992, p. 2370, Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP.

[50] Ibid.
[51] *Al-Kateb v Godwin* [2004] HCA 37.
[52] Department of Immigration, Local Government and Ethnic Affairs, *Annual Report 1989–90*, p. 60.
[53] Joint Standing Committee on Migration, Australian Parliament, *Asylum, Border Control and Detention*, 1994, p. 34.
[54] Department of Immigration, Local Government and Ethnic Affairs, *Annual Report 1991–92,* p. 117.
[55] Joint Standing Committee on Migration, Australian Parliament, *Asylum, Border Control and Detention*, 1994, p. 111.
[56] Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP, press release, MPS 69/92, 11 November 1992.
[57] Minister for Immigration, Local Government and Ethnic Affairs , the Hon. Gerry Hand MP, press release, MPS 47/92, 5 August 1992.

the Curtin IDC.[58] This was soon followed by a riot at the Port Hedland detention facility[59] and a further disturbance in June involving 200 people in detention at Curtin.[60] Meanwhile, some people in detention managed to escape, with 50 people from Villawood and Woomera escaping in June and July 2001.[61]

In response to these incidents, the minister announced new measures to boost security. The Migration Act was amended on 18 July 2001 to make it an offence for a person in immigration detention to manufacture, possess, use or distribute a weapon and penalties for escaping were increased.[62] The Migration Act was further amended to enhance security arrangements following the *MV Tampa* incident in September 2001.[63] However, disturbances continued in November and December[64] with the damage bill from arson at the Woomera facility rising to $2 million by 19 December.[65]

Issues relating to the current detention environment are discussed in Section 3.3 (c).

Tragedies involving asylum seeker boats

In the two most recent waves of IMAs—1999 to 2001 and 2009 to current—well documented tragedies have occurred in which vulnerable asylum seekers have lost their lives, mainly through drowning at sea. These tragedies include:

- Suspected Illegal Entry Vessel (SIEV) X in October 2001— more than 350 people drowned after the vessel sank in a storm
- Flemington (SIEV 36) in April 2009—an onboard explosion caused the deaths of five people and injured many more
- Reservoir (SIEV 69) in November 2009—it is believed 12 people drowned when the vessel sank
- Cocos Island rescue in May 2010— involved a rescue operation that saved 59 people in distress but where it is believed five people perished
- Janga (SIEV 221) in December 2010—a boat foundered on the cliffs at Christmas Island and at least 30 people drowned.

There have also been tragedies at sea for which there are no specific details, but where refugee advocates, relatives and others have made claims of countless lives lost at the hands of people smugglers.

Alternatives to immigration detention centres

In 2001 the minister announced a pilot immigration residential housing program. This program housed eligible families with children in a more domestic and independent environment. It was assessed as a success and implemented on a broader scale in the following years.

In 2005 two private member's Bills were introduced into the parliament to limit time spent in detention and to release children and others from detention where it was not required. The Bills also sought to increase judicial oversight for immigration detention.[66] Although neither was passed, the government introduced reforms that year including community detention, Ombudsman investigations of long-term detention cases and the quicker

[58] Department of Immigration and Multicultural Affairs, 'Incident at Curtin Immigration Reception and Processing Centre', press release, 30 January 2001.
[59] Department of Immigration and Multicultural Affairs, 'People in detention Charged over Detention Centre Riot', press release, 26 May 2001.
[60] Department of Immigration and Multicultural Affairs., 'Disturbance at Curtin Detention Centre', press release, 2 June 2001.
[61] Department of Immigration and Multicultural Affairs, 'People in detention Abscond from Woomera Detention Centre', press release, 10 June 2001; '23 Escape from Immigration Detention', press release, 19 July 2001; , '23 Escape from Immigration Detention', press release, 22 July 2001.
[62] *Migration Legislation Amendment (Immigration People in detention) Act 2001* (Cwlth), sch. 1.
[63] *Migration Legislation Amendment (Immigration People in detention) Act (No. 2) 2001* (Cwlth), sch. 1.
[64] Department of Immigration and Multicultural Affairs, 'Further Fires lit at Woomera', press release, 24 November 2001; 'More Fires at Woomera', press release, 7 December 2001.
[65] Department of Immigration and Multicultural Affairs, 'Six Staff Injured as Damage Bill at Woomera Climbs to $2 million', press release, 19 December 2001.
[66] Migration Amendment (Mandatory Detention) Bill 2005 (Cwlth); Migration Amendment (Act of Compassion) Bill 2005 (Cwlth).

processing of thousands of people on TPVs.[67] The Migration Act was also amended to include the principle that children would only be detained as a last resort.[68]

Community detention was introduced in June 2005 to enable children, families with children and people with special needs to be placed in detention in the community, rather than in a secure IDC. It enables people in detention to live in the community, subject to certain conditions, while their immigration status is resolved.[69] By the end of the program year, 30 June 2000, there were 73 people in community detention out of a total detention population of 749.[70]

In October 2010 the government announced that community detention arrangements were to be expanded so that greater numbers of unaccompanied minors, children and vulnerable families could be moved into community-based accommodation.[71] Following this announcement, between 18 October 2010 and 26 September 2011, a total of 1981 individuals were approved for transferring into community detention, including 608 accompanied children and 305 unaccompanied minors. On 26 September 2011 there were 1073 people in community detention and no children in IDCs.

Status Resolution Initiatives

The department has also increased its use of early intervention and active management of compliance cases in the community. This approach supports the Australian Government's immigration detention values, in particular, using detention as a last resort and for the shortest time practicable.

In 2010–11 the number of people who were located in the community by the department whose status was subsequently resolved, increased by almost 7 per cent over the previous financial year.[72] This strategy is achieving quicker, more cost effective and appropriate resolutions of immigration status without the use of immigration detention.

The status resolution approach includes:

- a national Community Status Resolution Service for, in general, Bridging E visa holders who require intervention to resolve their immigration status—this complements the existing Case Management Service which manages more complex and vulnerable clients
- a nationally expanded Assisted Voluntary Return service delivered by the International Organization for Migration (IOM) to facilitate voluntary departures from the community
- the Community Assistance Support program
- more active and direct client engagement, including through an overarching communication strategy which reinforces and reiterates consistent, targeted messages. This strategy uses tools such as translated fact sheets, a website, a telephone line, community outreach visits, and targeted media advertising
- a new compliance pilot was introduced in May 2006 to support people clients living in the community. The Community Care Pilot, which later became the national Community Assistance Support Program, provided immigration advice, information and counselling support to the department's vulnerable clients while addressing their health and welfare needs and providing income support.

People with no lawful entitlement to remain in Australia are told they have to depart voluntarily or they will be detained and removed. Clients are actively managed towards this outcome. Those on a removal pathway undergo a fair and comprehensive process to resolve their status before they are detained and removed, if that is their immigration outcome.

The percentage of compliance clients voluntarily departing increased from 74 per cent in 2008 (before the commencement of the status resolution approach) to 91 per cent in 2010–11. In 2010–11, 419 clients departed with help provided under the Assisted Voluntary Return program.

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[67] *Migration Legislation Amendment Act 1989* (Cwlth), ss. 5, 8, 12 & 14.
[68] Migration Amendment (Detention Arrangements) Act 2005, sch. 1.
[69] Department of Immigration and Multicultural Affairs, Annual Report 2005-06, p. 167.
[70] Ibid. p. 164.
[71] Minister for Immigration and Citizenship, the Hon. Chris Bowen MP, 'Government to move children and vulnerable families into community-based accommodation', press release, 18 October 2010.
[72] This accounts for all people previously located by the department whose status was resolved each financial year, regardless of how that was achieved (that is by visa or departure). It includes some people granted a Bridging E visa as part of case resolution engagement who might overstay that visa before departing voluntarily.

The status resolution approach is also reflected in the department's interaction with IMAs in IDCs. IMAs have their options clearly explained to them and have access to the returns counselling service provided by IOM, which provides independent and impartial advice. Those wanting to return voluntarily are provided with a reintegration assistance package which facilitates dignified and sustainable returns.

Regional cooperation and offshore processing

The literature on displacement over many decades has shown that no one country acting on its own can effectively manage the unprecedented scale of population movements that the world is experiencing.

Australian governments have long recognised the need to complement their domestic arrangements with active international cooperation and engagement. Similarly, regional governments have consistently agreed that the most effective way to deter irregular migration is to address 'push factors' at the source.

For example, the 1989 Comprehensive Plan of Action is today seen as a model of how complementary measures addressing asylum, resettlement and repatriation can promote regional cooperation in response to a humanitarian displacement situation.[73] See the accompanying issues paper *An historical perspective of refugees and asylum seekers in Australia 1976 –2011* for further information on the Comprehensive Plan of Action.

Another significant development was Operation Relex (September to December 2001) in which boats were intercepted in international waters by the Royal Australian Navy and instructed to return 'from whence they had come'. In total, 12 boats were intercepted under these arrangements, four of which returned to Indonesia.[74] In an interview on 19 October 2001, the prime minister indicated that this measure had an effect on the number of boats departing from Indonesia.[75]

In the current context, the government has in place a multifaceted strategy on refugees which builds on its long experience in the region, including bilateral and multilateral agreements and arrangements such as:

Safe Third Country Agreement with the PRC

(January 1995)—under which Sino-Vietnamese refugees who had been resettled in the PRC but then travelled to Australia to make asylum applications could be returned to the PRC.

Memorandum of understanding with Papua New Guinea

(August 2003)—under which a person who has been in Papua New Guinea (PNG) or Australia for more than seven days and who subsequently crosses to the other country and claims asylum can be returned to the first country from which they came and pursue asylum there.

International treaty instruments to combat transnational people smuggling

(May 2004)—the United Nations Convention Against Transnational Organised Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air.[76]

Memorandum of understanding with Afghanistan

(January 2011)—under which the readmission to Afghanistan of Afghans in Australia who are found not to be refugees is facilitated.

[73] For more information refer to the accompanying issues paper, Global population movements: sources and destinations, p. 7.
[74] Senate Select Committee on a Certain Maritime Incident, Australian parliament, *A Certain Maritime Incident,* 2002, p. 27.
[75] Transcript of Prime Minister, the Hon John Howard MP, doorstep interview, Sheraton Hotel, Brisbane, 19 October 2001.
[76] Attorney-General's Department, *Transnational Organised Crime*, 2011, viewed 15 August 2011, <http://www.ag.gov.au/agd/www/Ncphome.nsf/Page/RWPD81566794BD1081CCA256EBE001D23A8?OpenDocument>.

Regional cooperation arrangements with Indonesia

Including a range of activities designed to deter and repel boat arrivals such as:

- an information campaign aimed at source and transit countries of unlawful arrivals advising what happens to people who come to Australia illegally and warning of the penalties for bringing people to Australia illegally
- a Regional Cooperation Arrangement under which asylum seekers are provided with care from IOM and given access to a refugee determination process through the UNHCR. This agreement provided grounds for Australia to turn vessels back towards Indonesia without ascertaining the need for protection.

Malaysia Transfer Arrangement

The arrangement with Malaysia, a key transit country, could provide new opportunities for continuing to support the building of a strengthened regional cooperation framework.

Regional dialogue and confidence building

The Australian Government also continues to engage in a range of international forums in support of efforts to protect refugees while mitigating the threat of organised people smuggling.

The Bali Process on People Smuggling, Trafficking and Related Transnational Organised Crime (The Bali Process)

The Bali Process is an international framework agreement, co-chaired by the Australian and Indonesian governments. Its objectives include combating people smuggling and trafficking networks, verifying identity and nationality and tackling the root causes of illegal migration through regional cooperation. In its early years the Bali Process focused on enforcing and criminalising people smuggling and trafficking activities. In recent years it has also recognised the humanitarian dimensions of people smuggling and population flows. The strong endorsement at the last ministerial meeting (March 2011) of a regional cooperation framework forms the platform upon which this regional approach to protection management issues is being built.

Excision and offshore processing

Perhaps the most well-known regional agreement struck by Australia with Nauru to deter IMAs was the policy and offshore processing implemented in 2001 in response to the arrival of the *MV Tampa* off the coast of Australia in August of that year.[77]

The government amended the Migration Act to excise various places from Australia's migration zone, including Christmas Island and the Cocos (Keeling) Islands. If people arrived in Australia at an excised offshore place they were classed as OEPs and had reduced legal rights compared to those who arrived in the migration zone. They were, for instance, barred from lodging a valid visa application unless the minister lifted this statutory bar.

Notably, OEPs could be taken to a designated country where Australia's protection obligations to them could be determined.[78] Australia signed a memorandum of understanding (MoU) with Nauru and PNG to establish offshore processing centres for offshore asylum seeker processing. The centres on Nauru and PNG's Manus Island were managed by IOM.[79] Under the 'Pacific Solution' the Australian Government used these two centres to process the asylum claims of IMAs arriving in the third boat wave. At the request of government of

[77] For more information refer to accompanying issues paper, *Evolution of the Australian legislative framework and policy for immigration detention* p. 16.
[78] *Migration Amendment (Excision from Migration Zone)(Consequential Provisions) Act 2001* (Cwlth), sch. 1.
[79] Department of Immigration and Multicultural and Indigenous Affairs, *Annual Report 2004–05*, p. 139.

Nauru, UNHCR undertook refugee processing of the first group of asylum seekers transferred to that country for processing.

A judgement by the High Court (31 August 2011), which prevented the removal of asylum seekers under the Malaysia Arrangement, rendered the future of third country offshore processing operationally uncertain.

The High Court held that s198A of the Migration Act is the only power under the Act through which asylum seekers can be taken from Australia to another country to determine their refugee status. The High Court also held that this power cannot be used to take such persons from Australia to Malaysia under the recently signed Malaysia transfer MoU.[80]

In advice provided by the Solicitor-General to the government on this ruling, the implications of the High Court judgement were such that they put future offshore processing on Nauru or PNG into doubt.

On 12 September 2011 the Prime Minister and the minister announced that the government will introduce legislation to enable the transfer of IMAs to third countries for the processing of their asylum claims. The amendments, if enacted, would restore the understanding of the third country transfer provisions of the Migration Act 1958 that existed before the High Court's decision.

Conclusion

There is no one simple solution to these complex issues. How people move and to where they move is based on many factors including the situation at any given time in source and transit countries. Australian governments have found that responses to IMAs must combine not only domestic measures for processing people's claims to remain in Australia while ensuring strong regional and international engagement.

[80] Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship [2011] HCA 32.

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Section 2: Implementation challenges and tensions

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Implementation challenges and tensions

As the Australian Government department responsible for immigration matters, the department must act impartially and with the highest professional standards to implement the policy intent of the government of the day. However, this can be contentious. As a former secretary put it when describing the work of an immigration officer:

> This work is not glamorous but it is necessary. Public opinion is rarely kind to the Department. Those with intentions to migrate who are not approved see us as heartless and frustrating bureaucrats … [others] … as part of a movement to subvert [our] way of life by admitting people of the 'wrong kind'. The reality is that the department [gives] … effect to [wishes of Parliament and Executive] for the orderly and protected development of the Australian community.[81]

The department has a role in nation building, in ensuring high levels of integrity across all of its operations, and in working with and supporting people who have dealings with it in a number of capacities, including settlement, refugees or compliance. This work can be deeply rewarding for those working in the department, individually and collectively.

However, the contestability of the public policy the department must administer can also be confronting. Getting the right balance between being impartial and being compassionate has been a constant factor in the administration of the department. It was so in 1945 when it was first established, in 1978 when the former secretary made the above observation and today in 2011.

Public service

The department operates within the broader legislative and policy framework of the Australian Public Service (APS). This framework includes the *Public Service Act 1999* (Public Service Act), the *Financial Management and Accountability Act 1997* and the *Auditor-General Act 1997* among others. Its purpose is to ensure appropriate behaviour, accountability and transparency in departmental administration and conduct of the department and its officers.

Activities of government departments are scrutinised through a number of mechanisms including the parliament and its committees, the Commonwealth Ombudsman and the Australian National Audit Office.[82] This external scrutiny of the work of the APS is critical to ensure its accountability and compliance with relevant laws.

The Public Service Act sets out the APS Values and the APS Code of Conduct, which guide the work of the public service. While the Values and Code of Conduct were only incorporated into legislation in 1999, they had been a 'work in progress' for several decades prior and had informed the continuing professionalisation of the APS for much of its history.

In the department, the APS Values and Code of Conduct are supplemented by specific departmental values that reinforce key aspects of its work. These include:

- a commitment to service excellence
- being open and accountable for its actions
- listening and responding to the needs of clients, stakeholders and colleagues
- fostering teamwork
- ensuring integrity in all decision making and business activities.

These values apply to every aspect of the department's work regardless of where that work is conducted—Brisbane or Beijing, Canberra or Christmas Island. They apply to all business activities, whether:

- interviewing a client for a visa or conferring citizenship
- supporting people to settle in Australia through the department's extensive network of resettlement services
- managing a detention centre.

[81] L W B Engeldow (Secretary, Department of Immigration and Ethnic Affairs), Department of Immigration and Ethnic Affairs, *Review '78,* Australian Government Publishing Service, Canberra 1978, p. 1

[82] Australian National Audit Office, Better Practice Guide – Innovation in the Public Sector, p. 3

Embedding these values into all aspects of the department's work and business planning has been an important part of the department's reform agenda since 2005. The incorporation of these values has been critical in enhancing trust in the work of the department by governments, clients, stakeholders and the wider community.

DIAC in perspective

Facing and responding to new challenges is an enduring feature of a contemporary public service. The future is always uncertain. The department has always been highly visible because it impacts on the lives of all Australians at a fundamental level. The post war migration program has been at the heart of nation building. It has changed our neighbourhoods and communities, and its role in helping shape the prosperity of Australia cannot be underestimated. All Australians have a view on the impacts of immigration on their lives and communities.

By 2010 more than one in four of the 22 million people in Australia were born overseas.[83] Close to 45 per cent were born overseas or had at least one parent who was born overseas.[84]

In this context it is natural that the department is subject to intense public scrutiny over how it works, how it interacts with its clients, stakeholders and the broader community, and how it implements the policy intent of the government of the day.

In the coming year the department will:

- administer a permanent migration program of 185 000 people
- issue more than four million visas
- facilitate at least 28 million crossings of the Australian border by passengers and crew
- resettle 14 750 refugee and humanitarian entrants
- manage the complex logistics and processing of IMAs
- decide and confer Australian citizenship on around 120 000 people.

Impacts of a changing policy environment

In the last 25 years there have been two seminal events that have profoundly impacted on the way the department works:

1. the move into a regulatory and highly codified decision making environment in 1989, following the Report of the Committee to Advise on Australia's Immigration Policies (CAAIP report)[85]

2. the substantial reform process initiated following the 2005 reports into the department's handling of the detention of an Australian permanent resident—*Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (Palmer report)[86] and the deportation of an Australian citizen—*Inquiry into the Circumstances of the Vivian Alvarez Matter* (Comrie Report).[87]

The following examines the impacts of these events on the administration and leadership of the department as it has moved to reshape and build a stronger and more accountable organisation.

Impacts of the 1989 Migration Act amendments

Following the recommendations of the CAAIP report the government elected to proceed with a fundamental overhaul of the Migration Act in 1989. In that process it moved the decision making framework from a largely

[83] Australian Bureau of Statistics, '6 million migrants call Australia home', press release, 16 June 2011.
[84] DIAC, *Annual Report 2009-10*, p. 444.
[85] Committee to Advise on Australia's Immigration Policies, Australian Government, Immigration*: A commitment to Australia*, 1988.
[86] MJ Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report*, 2005, Australian Government, Canberra.
[87] Commonwealth Ombudsman, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, 2005, Australian Government, Canberra.

discretionary and policy driven approach to one embedded in Regulations—highly codified and with limited discretions.

A key objective was to remove what had become a generally held belief that the wide range of discretions in immigration decision making was compromising the integrity of the overall migration program. The CAAIP report stated that the Migration Act:

> … allows discriminatory interpretation through its lack of defined entry and selection guidelines and flexibility in the exercise of discretions. It is confusing and unspecific, and the subjective manner in which it can be applied underlines the ad hoc nature of current policy…One of the major criticisms of the present migration legislation concerns its indiscriminate conferral of uncontrolled discretionary decision making powers.[88]

The way the department worked was considered by many as both opaque and unaccountable, yet it is probably one of the most closely scrutinised departments in the Australian Government. Indeed with the introduction of the 1989 Bill the minister said:

> The wide discretionary powers conferred by the Migration Act have long been a source of public criticism. Decision-making guidelines are perceived to be obscure, arbitrarily changed and applied, and subject to day-to-day political intervention in individual cases. [89]

The Bill received assent on 19 June 1989 and most amendments took effect on 19 December 1989. In the intervening six months a comprehensive set of regulations had to be drafted and tabled in parliament. These regulations had to cover the range of immigration work from all forms of visas to compliance and detention operations. The only areas largely untouched by this overhaul of the Migration Act were citizenship operations (subject to separate legislation) and delivery of settlement services.

Roughly 70 per cent of the department's average staffing level was based in the migration and visitor entry program during 1989-90.[90]

In the space of six months (June to December 1989) the number of migration Regulations essentially quadrupled, and a series of policy advice manuals drafted to replace the one volume *Migrant Entry Handbook.*

Virtually overnight, the department moved from a decision-making culture based within broad policy framework with high levels of discretion into a highly codified and regulatory structure.

These changes were also being implemented against the backdrop of a federal election in which the toughness of the new legislation, and the efficiency and professionalism of the department's public servants, were being questioned.

The wide ranging nature of the changes and the speed with which they were implemented inevitably led to 'unintended consequences'.[91] This is best illustrated by the number of later amendments and changes that had to be made over the following three years culminating in the Migration Reform Act of 1992.[92]

The lessons learned by government and the department while implementing the 1989 changes were fully appreciated by the time the Migration Reform Act was in place. While the Migration Reform Bill was passed in 1992, the changes were so detailed they did not come into effect until September 1994.[93] The impact on the

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[88] Committee to Advise on Australia's Immigration Policies, Australian Government, *Immigration: A commitment to Australia, 1988*, pp 111-2.

[89] Australian Government, *Parliamentary Debates*, Senate, 5 April 1989, p. 922, Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray.

[90] The Migration and Visitor entry program included migration and population research and planning, migration and resident status, review, visitors and entry, compliance, and program management and support. At the time, the office of local government also contributed to the department's overall staffing level. Department of Immigration, Local Government and Ethnic Affairs, *Annual Report 1989-90*, p. 225.

[91] Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP, 'Amendments to Migration Legislation', press release, 9 May 1990, p. 1

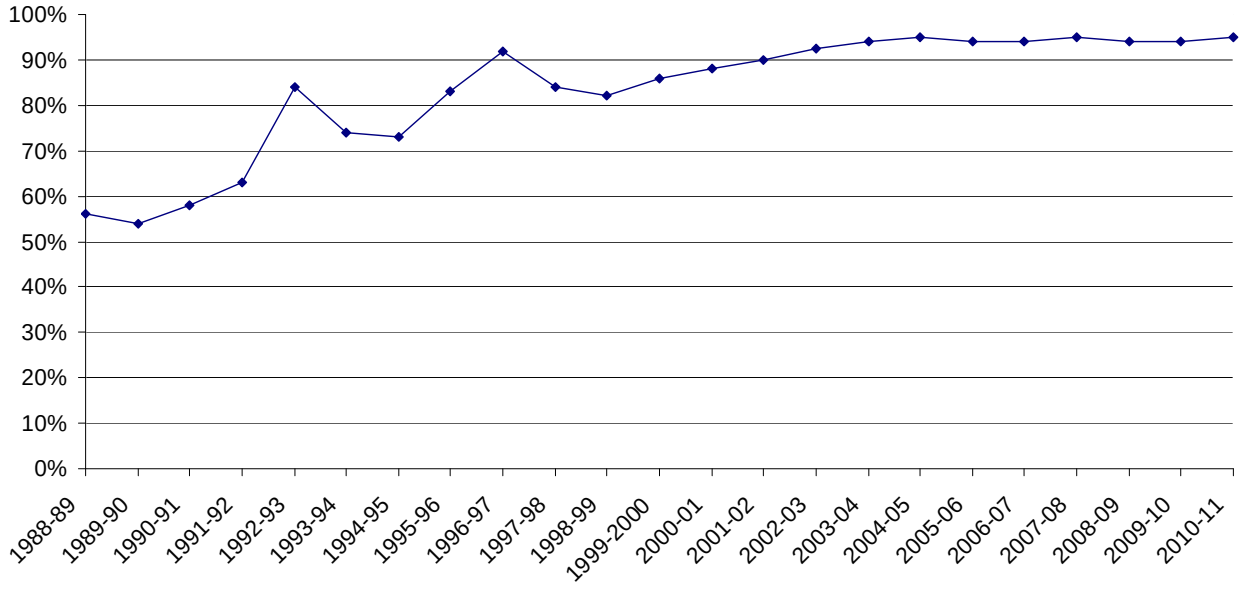
[92] For more information refer to the accompanying issues paper, Evolution of the Australian legislative framework and policy for immigration detention', pp. 12-15.

[93] Migration Legislation Amendment Bill 1994 Explanatory Memorandum, p. 2

department was, once again, intense. However, this time it was better equipped to handle these extensive changes.

The codification of policy improved the department's decision making. An objective measure was, and continues to be, the proportion of the department's decisions that are upheld upon legal challenges in the courts. Figure 5 plots this trend from 1988-89 to 2009-11.

Figure 5: Percentage of court judgments in the department's favour by program year—1988–89 to 2010–11 [94]



Moving from a discretionary to a regulatory environment left little room for mistakes. This meant the department's management and information systems had to be able to respond quickly to any 'unintended consequences' that arose.

Codification, however, also presented new challenges. Laws are mostly drafted to fit the broad parameters of policy, but seldom can they anticipate the unique nature of an individual's circumstances. This highly regulated environment did not afford much flexibility in some areas and errors could not be easily reversed. Over time this led to the development of a more risk averse and inflexible culture in the department.

With the next surge of boat arrivals in the late 1990s the department had to quickly gear up to dealing with a complex set of new pressures—expanding the detention network in a short period and managing a growing and diversifying asylum caseload.

The government's response to the complex issue of continuing flows of IMAs to Australia at that time involved toughening the visa, detention and compliance policy environment and its accompanying legislative structure.

Implementing these more stringent policy and regulatory measures reinforced the department's culture.

It was against this backdrop of heightened pressures and a fast moving policy environment that the systems that had been developed a decade earlier proved not to be sufficiently robust for staff to recognise or intervene at an early stage when problems emerged. This became most apparent in the circumstances that led to cases of unlawful detention documented in the Ombudsman's reports into immigration detention cases[95] and the Palmer and Comrie reports.

[94] Note: The following were not counted in calculating the win percentage: applicant withdrawals, ministerial withdrawals, proceedings administratively consolidated, and remittals in full. Data taken from DIAC Annual Reports 1988-89 to 2010-11 and other DIAC sources.
[95] For example see: Commonwealth Ombudsman, *Report on referred immigration cases: Mr T.,* 2006.

Beyond 2005—Reformation after Palmer and Comrie

Culture and leadership have been at the heart of public commentary on the department's performance. It is often characterised as opaque and unaccountable, yet it is probably one of the most closely scrutinised departments in the Australian Government.

This intense scrutiny is partly due to the impact the department's decisions have on people and the complex interrelationships between facilitation, control and integrity of the immigration systems.

As has been documented, the Palmer and Comrie reports, along with the Ombudsman reports of the 247 cases of detention,[96] were the catalysts for comprehensive business and cultural change in the department.

A list of inquiries and reports into immigration detention in Australia from 1992-2011 is at attachment B.

Organisational change

The Palmer, Comrie and Ombudsman reports were a turning point in the department and marked the beginning of a longer journey to drive and integrate reform and transform into a different culture.

However, the most important first steps were to recover the self-confidence of people working in the department, as well as to rebuild trust and respect in the work of the department.

Three strategic themes have been the bedrock of the department's reform agenda since:

- fair and reasonable dealings with clients
- open and accountable decision making
- well developed and supported staff.

Guided by these themes, reforms have focused on issues of leadership, governance, values, behaviour, client service, record keeping, training and support for staff.

This focus was further reinforced by the Ombudsman's *Ten Lessons* report[97] highlighting the importance of having good leadership, systems and behaviours in organisations engaged in public administration.

The Ombudsman's report and the subsequent review by Elizabeth Proust, *Evaluation of the Palmer and Comrie Reform Agenda—including Related Ombudsman's Reports,* (the Proust report), continued to inform the process of the reform agenda and have helped reshape the process as it has matured.

The Proust report found a great deal had been achieved with departmental reform and recommended the department move *'…*to focus on building and maintaining a high performance culture; one which would ensure that the lessons from these various reports continue to be learnt*.'*

The report also noted that:

> While this evaluation makes it clear there is more to be done, it must be stressed how much has been achieved in three years. I pay tribute to the people in DIAC and elsewhere who acknowledged the extensive shortcomings in the system of detention and other aspects of their department, and who have worked diligently to rectify those shortcomings …that so much has been achieved to rectify the wrongs identified by Palmer and Comrie while all this has occurred is significant indeed.[98]

Reform, however, is never static. It is a constantly evolving process anticipating new paradigms in public administration and organisational cultures. Fundamental to driving change is that it must also be guided by a values-based culture.

Integral to this process has been the building of an ethos of leadership and an integrated department. The importance of the strategic themes for creating unity and for driving engagement cannot be underestimated. The values they encapsulate have provided the principles for sound decision making. They also provide a

[96] See: MJ Palmer, Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report, 2005, Australian Government, Canberra.; Commonwealth Ombudsman, Inquiry into the Circumstances of the Vivian Alvarez Matter, 2005, Australian Government, Canberra; Commonwealth Ombudsman, Lessons for public administration: Ombudsman investigation of referred immigration cases, 2007; E Proust, Evaluation of the Palmer and Comrie Reform Agenda –including Related Ombudsman Reports, 2008.
[97] Commonwealth Ombudsman, Lessons for public administration: Ombudsman investigation of referred immigration cases, 2007
[98] Proust, op. cit., p. iv

framework that can be used to inform and test the department's operational plans and strategies. It is fair to say that every aspect of the department's work today can be traced back to these values.

Business transformation

In conjunction with this organisational reform, the department has progressively transformed its business architecture. This includes a fundamental overhaul of its systems and operating models. The department has built technological solutions that support its business and its people and created structures and policies that facilitate a professional approach to working with clients.

For example, in 2005 the government introduced changes to allow for community detention and implemented a Community Care Pilot for clients living in the community (see Section one: Alternatives to immigration detention and Status Resolution). The current government has built upon these initiatives with the implementation of the Community Assistance Support Program and the recent decision to expand community detention announced in October 2010 (see Section three: 'Children and families and immigration detention' and Section three: 'Alternatives to the use of immigration detention'). These decisions by government have helped to restore some flexibility and alternatives into the detention environment. They have also given staff the tools to respond appropriately to the vulnerabilities and needs of a diverse client group.

Undoubtedly, organisational structures and the business architecture have changed and been modified over time. Indeed to continually improve, the department has recently embarked on a process of transforming its operating model. This complements and builds on the department's focus on driving through the cultural changes described above.

Stakeholder engagement

The department is a people centred organisation. To do its job well it needs to work and be connected with many types of organisations and people. It needs to know how its services are impacting on these organisations and people. It needs to hear how it can improve its services within the policy settings that have been set by government. It needs to inform and explain how its services work, and the context within which these policies are implemented. It also needs to know where problems occur and whether there are better ways to address them.

The department's stakeholder engagement strategy is central to its operating environment. It is a multi-layered approach comprising formal consultative mechanisms, informal strategic conversations, discussions with clients and people who use the department's services and the bringing together of experts and groups on an ad hoc basis when needed.

Formal consultative mechanisms include forums for the business, tourism and education sectors, such as the Tourism Visa Advisory Group (TVAG), and department and industry stakeholder consultations, known as DISC, with international education providers.

Some of the key advisory councils and consultative groups that the department works with include:

- Australian Multicultural Council
- Council for Immigration Services and Status Resolution (CISSR)
- Detention Health Advisory Group (DeHAG)
- DIAC/NGO Dialogue
- Onshore Protection Consultative Group (OPCG).

However, equally important is the informal discussion that occurs daily with clients (individuals and businesses) who use the services of the department, and discussions with the service providers contracted by the department. These interactions often provide early indicators of potential issues or problems and they open up opportunities to generate ideas and consider alternative solutions.

The recent work of CISSR and the DeHAG in detention centres, for example, has supported the creation of client consultative groups in detention centres. These allow the department to better respond to the needs of people in immigration detention and more effectively improve conditions in detention.

The opportunities provided by constructive discussion—and the risks associated with not consulting—are well understood. Consequently, stakeholder engagement is a core element in the department's agenda.

The recent high tempo of policy change and public comment has tested how far the department has developed its consultative practices. Efforts in this regard have been substantial, and are ongoing.

Conclusion

The department does not work in a vacuum. Its decisions fundamentally affect the lives of thousands of people daily. The importance of every decision is such that each member of staff is trained to understand that they must be made in an open and accountable way.

Since 2005 the department has progressed an extensive improvement and reform process in response to the Palmer and Comrie reports. The three strategic themes of the reform agenda – fair and reasonable dealings with clients, open and accountable decision making and well developed and supported staff – have been backed up with the development of a strong values-based model by its leaders.

Change, however, does not happen overnight and is a continual process. There have been significant achievements in building a united department. However, the response to the growing population of people in immigration detention continues to present new challenges for the department and demand new responses.

Section 3 examines some of these challenges.

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Section 3: Key strategic themes

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Key strategic themes

Introduction

As the preceding two sections of this submission have outlined, successive governments have largely built on policy developments and the evolution of the domestic legal framework in two key areas–asylum processing and reception.

This section of the submission examines and analyses present issues facing the administration of the detention network, particularly with managing and processing IMAs.

The discussion centres on four strategic themes, consistent with the Committee's terms of reference:

1. asylum processing
2. services and facilities for people being held in immigration detention
3. immigration detention network, including:
    a. detention network administration
    b. costs
    c. role of other Australian Government and state and territory agencies
    d. management of incidents
4. immigration detention policy.

At the beginning of each section the terms of reference under discussion are highlighted in grey. The section then provides an up-to-date statistical and operational overview of the matters of concern and examines the current issues and challenges facing the department in carrying out its functions.

Processing asylum claims

(r) processes for assessment of protection claims made by IMAs and other persons and the impact on the detention network

Introduction

As a signatory to the *1951* Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol Relating to the Status of Refugees (the Protocol), Australia does not return people to countries where they have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group.

In accordance with its protection obligations under the Refugee Convention, Australia has established a legal framework for the protection of refugees in domestic law. While IMAs who arrive at an excised offshore place are barred from lodging a valid visa application under the Migration Act, as discussed in Section one, obligations under the Refugee Convention still apply.

This section outlines the key elements of the Refugee Convention, the current processing arrangements and recent developments and challenges in the processing of IMAs.

The 1951 Refugee Convention

The Refugee Convention is the key legal document defining who is a refugee, their rights and the legal obligations of states. The 1967 Protocol removed geographical and temporal restrictions from the Refugee Convention.

The Refugee Convention defines a refugee as a person who is:

- outside their country of nationality or, having no nationality, is outside their usual country of residence
- unable or unwilling to return to or to seek the protection of that country due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion
- not a war criminal and has not committed any serious non-political crimes or acts contrary to the purposes and principles of the United Nations (UN).[99]

The Refugee Convention does not oblige signatory countries to provide protection to people who do not fear persecution or who have left their country of nationality or residence on the basis of war, famine, environmental collapse or to seek economic opportunities.

Application of the Refugee Convention under Australian law

As a party to the Refugee Convention, Australia has an obligation not to *refoule* (return) a person who has sought Australia's protection and is found to be a refugee to a country where they have a well-founded fear of persecution.

Processing a claim for protection, whether in accordance with the onshore Protection visa process or under the non-statutory process for OEPs, requires a complex and sophisticated assessment. Decision makers must have a sound understanding of relevant and current country information, apply the correct legal tests under the Refugee Convention and relevant Australian law (including applicable common law principles), ensure no effective protection is available elsewhere (including, where reasonable, inside the country of origin), establish and, to the extent possible, verify the identity and age of applicants, assess the credibility of claims and rigorously weigh and consider available evidence. The assessment must also be completed in a timely manner.

[99] *1951 Convention Relating to the Status of Refugees*, Arts. 1A & 1F.

Working with Onshore Protection Consultative Group and UNHCR

The department works closely with key stakeholders on asylum and refugee issues. It has a strong relationship with the UNHCR and works to enhance the function of the international protection system and reduce incentives for secondary movement.

The Onshore Protection Consultative Group, consisting of representatives of the community sector and other stakeholders, was established in 2008-09 to work with the department on policy implementation and process improvement. The department holds regular meetings with this group.

Processing asylum claims

Depending on a person's mode of arrival to Australia, there are separate processes for assessing a claim for protection in Australia—the Protection visa process, which applies to those who have arrived in Australia's migration zone and the Protection Obligation Determination (POD) process, which applies to OEPs.

Protection visa assessments (claims made by people who are in Australia's migration zone)

A person who enters Australia's migration zone and who is not an offshore entry person may lodge an application for a Protection visa (Class XA) (Subclass 866).

A person who arrives at an excised offshore place without a valid visa is prevented from making a valid application for a visa by the Migration Act and if they raise protection claims is subject to the POD process (see below).

All claims for protection are assessed on an individual basis against the criteria at Article 1A of the Refugee Convention, and in accordance with Australian legislation, case law and up-to-date information on conditions in the applicant's country of origin.

Applicants must put their claims in writing. All applicants are invited to an interview to discuss their claims and provide more information if required. Procedural fairness applies to all applicants in responding to information that may affect the outcome of their assessment.

Since 2005 the department is obligated to make Protection visa decisions within 90 days of receipt of the application.[100] In 2010–11, 60.7 per cent of such visa decisions met this timeframe. The department periodically reports to the minister on cases where the 90-day period is not met and these reports are tabled in the parliament.

People found to be refugees are eligible for permanent protection in Australia, provided they have undergone appropriate health screening, met the character requirement, and passed security checks.

Review rights

If a Protection visa application is refused, the applicant can apply to the Refugee Review Tribunal (RRT) for a review of the merits of the case, or to the Administrative Appeals Tribunal if the application was refused for character reasons.

The Refugee Review Tribunal

The RRT is an independent statutory body with the power to review decisions on Protection visa applications unless the minister believes it would be contrary to the national interest to change or review the decision. It examines the applicant's claims against the provisions in the Refugee Convention and provides an informal, non-adversarial setting in which to hear evidence.

The RRT has the power to do one of the following:

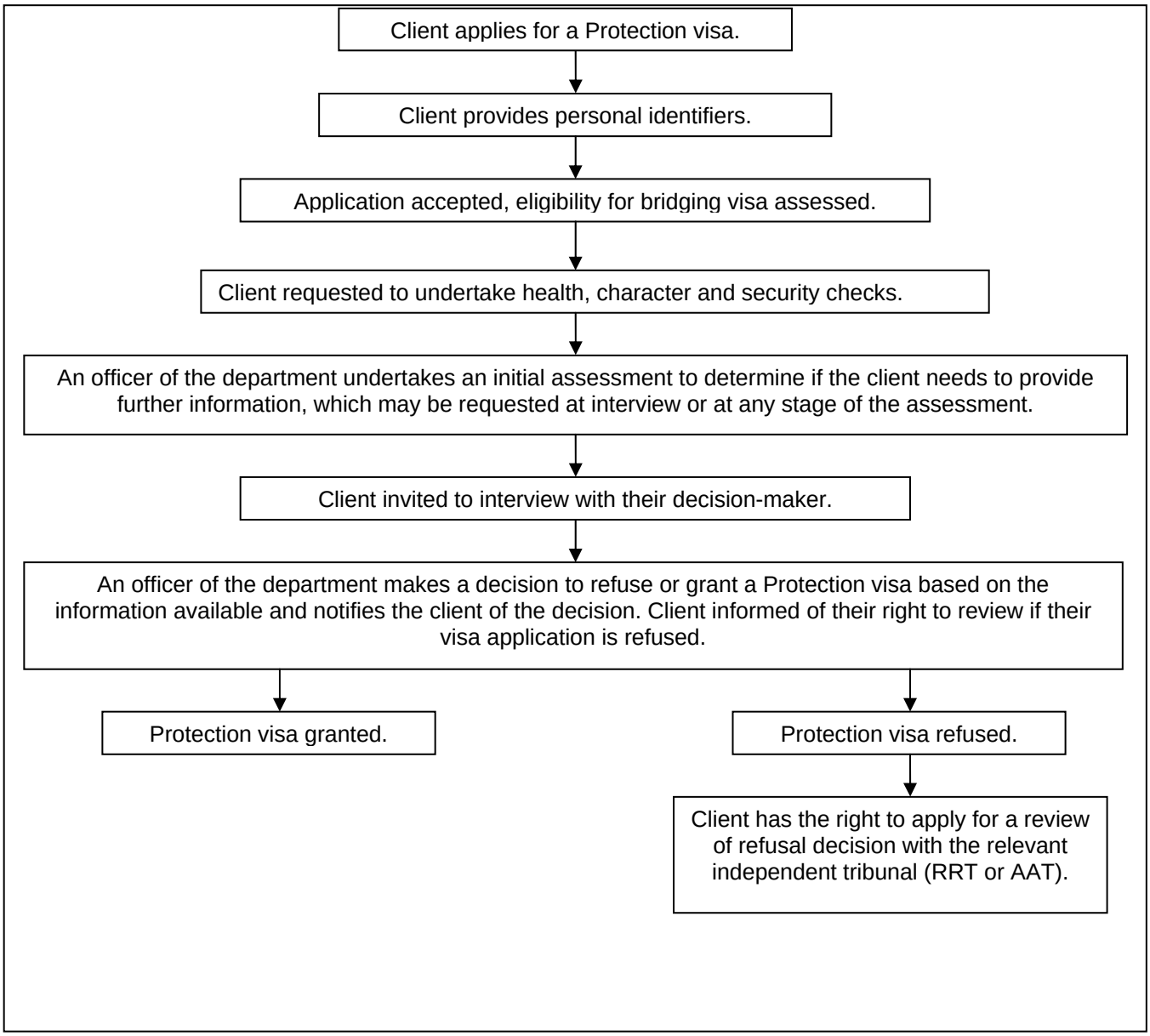
- uphold the primary decision—agreeing that the applicant is not entitled to a Protection visa

100 Migration and Ombudsman Legislation Amendment Act 2005 (Cwlth); Migration Act 1958 (Cwlth) s. 65A.

- vary the primary decision
- refer the matter to the department for reconsideration—the department then makes a fresh assessment of the application, considering the RRT's directions and recommendations
- set aside the department's decision and substitute a new decision—if the RRT finds the applicant is entitled to a Protection visa.

A decision by the RRT to set aside a primary refusal does not necessarily indicate an error in the department's earlier decision. The RRT considers each Protection visa application afresh and takes into account new claims or information provided by the applicant and changes in country information that may have occurred since the initial decision. Figure 6 shows the protection visa assessment process.

Figure 6: Protection visa assessment process



Judicial review

Unsuccessful applicants may appeal to the courts in certain circumstances. Judicial review is available to consider whether legal errors occurred during the decision-making process, but not to re-consider the merits of the facts put forward by the applicant.

If a judicial review finds that a legal error has occurred, then the decision is set aside and remitted to the department for further assessment.

Protection Obligations Determination process for Offshore Entry Persons

The POD process was introduced on 1 March 2011, following the High Court decision on 11 November 2010 that IMAs should be afforded natural justice and have access to judicial review. This replaced the previous Refugee Status Determination (RSD) process. IMAs undergo initial screening to establish if they are seeking asylum and, *prima facie*, may engage Australia's protection obligations.

Regardless of their date of arrival, IMAs who received a primary assessment interview after 1 March 2011 have been processed under the POD process.

The POD process is non-statutory. It mirrors the onshore Protection visa process by assessing IMAs against the criteria in the Refugee Convention and has two parts: a Protection Obligations Evaluation (POE) and, with a negative decision at the POE stage, an Independent Protection Assessment.

The department conducts a POE to determine if the IMA is owed protection under the Refugee Convention.

In this process, IMA claims are assessed against the criteria in the Refugee Convention, in accordance with case law, and with the assistance of current information on the conditions in the client's country of origin. For procedural fairness, IMAs have a chance to comment on the information being considered that may be adverse to their case and to update information if conditions change in their country of origin.

The department reviews information from a range of sources, including:

- its Country Research Service which gathers information from relevant international organisations, human rights groups, Australian overseas posts, foreign governments, published academics and international media
- relevant departmental guidelines and advice on the law, including refugee law, protection policy and procedures
- the client's statement, including supporting material and further comments (provided in writing or at interview with the assistance of an interpreter as necessary).

If the department officer finds the IMA is owed protection, a recommendation is made to the minister for the minister to exercise their personal, non-compellable power to lift the bar and allow the IMA to apply for a Protection visa.

IMAs who recieved a primary assessment interview before 1 March 2011 continue to be processed under the Refugee Status Assessment (RSA) process and Independent Merits Review (IMR) process. This is similar to the POD process, however, the POD process removes the need for IMAs to lodge an application for review.

Review rights: Independent Protection Assessment

Where the department is not satisfied a person is a refugee, the case is referred for an Independent Protection Assessment.

The independent assessor considers the refugee claims and supporting information. They may seek further information and may interview the refugee claimant.

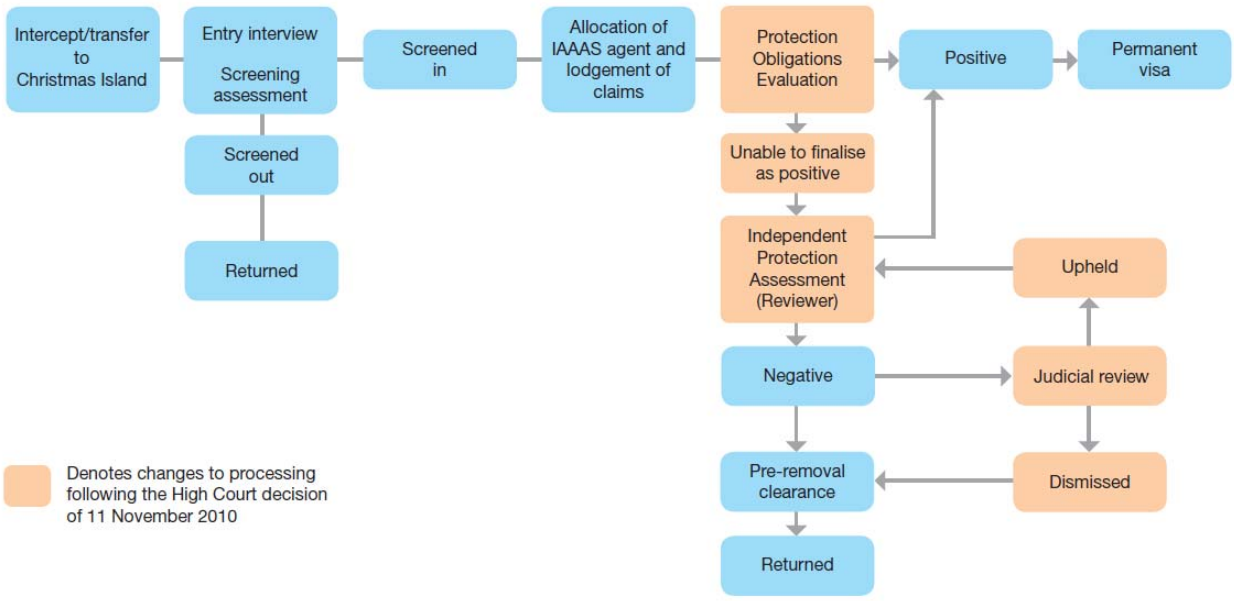
The assessor then recommends whether the person is or is not found to be a refugee.

The government has, during June and July 2011, increased the number of reviewers to 124, and strengthened the professional supervision of IPAO reviewers by appointing a Principal Reviewer and 3 Senior Reviewers.

As a result of this action, the length of time currently taken for reviews to be completed is expected to decrease.

Figure 7 outlines the Protection Obligations Determination process.

Figure 7: Protection Obligations Determination process



Judicial review

As discussed earlier, following the November 2010 High Court decision, IMAs who receive a negative independent protection assessment can seek judicial review if they wish. As with the Protection visa process, judicial review is available to consider if legal errors occurred during the decision-making process, but not to re-consider the claims made by an applicant.

If a judicial review finds that a legal error has occurred, then the decision is set aside and remitted for a further Independent Protection Assessment to be made.

International Treaties Obligations Assessment

Concurrent to judicial review is the triggering of an International Treaties Obligations Assessment.

A person who is found not to engage Australia's protection obligations may be subject to removal from Australia under the provisions of the Migration Act. This removal process takes into account Australia's *non-refoulement* (non-return) obligations under other international human rights instruments, other than the Refugee Convention, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. The removal process also takes into account other unique or exceptional circumstances that may warrant referral of a person's case to the minister under section 195A of the Migration Act.

The International Treaties Obligation Assessment considers Australia's *non-refoulement* obligations to afford protection to people who are not refugees but who nevertheless may not be returned to their country of origin because they would face a real risk of torture or cruel, inhuman or degrading treatment or punishment or violation of the right to life, as well as other unique and exceptional circumstances.

Immigration status pending protection decision

Asylum seekers who have arrived in Australia's migration zone and who subsequently lodged a Protection visa application may receive a bridging visa. In most cases, the bridging visa allows applicants to remain lawfully in Australia while their Protection visa application is being finalised. Consequently, most Protection visa applicants are not detained for long periods, and they often live in the community while their application for protection is being assessed or reviewed.

Dependent on the type of bridging visa issued, an asylum seeker may or may not be able to work. The department has a financial assistance scheme administered under contract by the Australian Red Cross to

assist asylum seekers living in the community who cannot work. The financial component of this assistance does not exceed 89 per cent of the Australian Government's Centrelink Special Benefit.

IMAs are held in immigration detention while their claims are assessed and immigration checks such as health, character and security are undertaken. They remain there if they are found not to be a refugee and seek review of this assessment. If the IMA does not invoke Australia's protection obligations and does not appeal this decision, they must return to their country of origin or former habitual residence.

Statistical overview

The number of IMAs in the POD process (and the former RSA process) has significantly increased over the past year. However, the majority of IMAs are now in the latter stages of the POD process and the numbers waiting on initial assessment have decreased. On 29 June 2011 there were 831 IMAs awaiting a primary RSA outcome and a further 2579 who were found not to be a refugee but who had requested or were undergoing review. One year earlier, on 29 June 2010, the numbers were 1499 and 169 respectively. The number of Protection visas granted to IMAs has also increased substantially and peaked at 620 in May 2011.

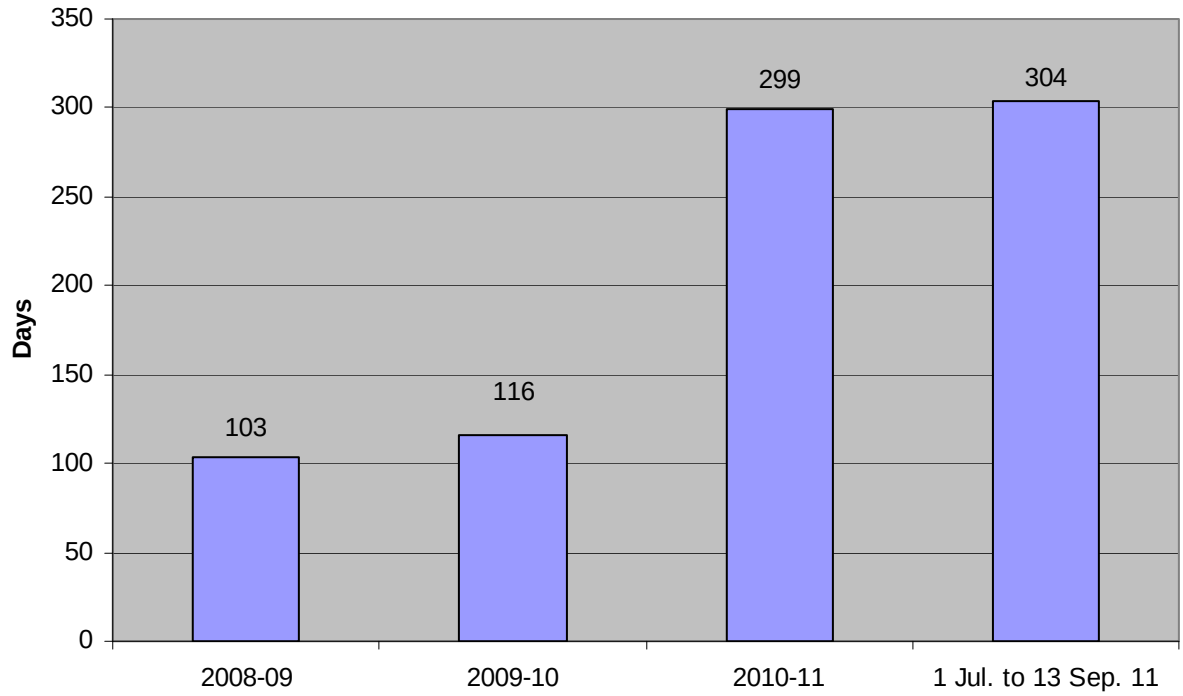
Figure 8: Irregular maritime arrival client processing summary

IMA client processing summary as at 9 September 2011	
Clients screened in/ awaiting primary POE/RSA decision	404
Clients with a negative primary decision and undergoing review	2195
Clients at Judicial Review	350
Total	**2949**

Source: DIAC

The significant increase in the number of IMAs over the past few years has led to a marked increase in the number of people held in detention while their claims for protection are assessed. This has had significant implications on the detention network and, in conjunction with a range of other factors, has led to an increase in the average length of time that people are held in detention. The average processing times for IMAs from arrival to visa grant has increased from 103 days in 2008-09 to 304 days in the 2011-12 program year up to 13 September 2011. As figure 9 illustrates, the average processing times for IMAs from arrival to visa grant increased from 103 days in 2008-09 to 304 days in 2010-11.

Figure 9: Average processing times for irregular maritime arrivals from arrival to visa grant



Source: DIAC
Note: Average processing time is the average total processing time from arrival to grant of Protection visa
This table measures time taken for visa grant. It does not include negative outcomes.

Impacts on timely processing

A number of factors have caused IMA processing times to increase, including:

- the significant and rapid increase in the number of arrivals in 2010
- increasing complexity of claims
- new cohorts of IMAs with different claims
- changes to country of origin information resulting in greater complexity of assessments for clients seeking asylum
    - changing country information also resulted in the temporary suspension of processing of new asylum claims from people from Sri Lanka and Afghanistan for periods of three and six months respectively
- difficulties in determining clients' identity and, in some instances, their country of residence
- infrastructure pressures and detention incidents limiting access to some IDFs
- completing third country checks
- processing times for completion of security assessments
- the need to reconsider a number of client decisions at the Independent Merits Review stage resulting from the November 2010 High Court decision.

Increasing arrivals

The number of IMA arrivals peaked in September 2010 and remained high for the rest of that year. The combination of increasing arrivals and the suspension of processing caused a sharp spike in the caseload, which stretched the department's ability to process asylum claims as efficiently as desired.

Suspension of processing

On 9 April 2010 the government announced the suspension of processing of new asylum claims for Sri Lankan (for three months) and Afghan (for six months) IMAs. The government lifted the suspension for Sri Lankan asylum seekers on 6 July 2010 and for Afghan asylum seekers on 30 September 2010.

Changes to country information

In 2010, the department introduced Country Guidance Notes (CGNs) as one of a range of measures to assist case officers assessing claims by asylum seekers. The CGNs are designed to support robust, transparent and defensible decision making, regardless of the outcome. The CGNs draw on many sources including reports by government and non-government organisations, media outlets and academics. Before they are released, the CGNs are circulated for comment to key stakeholders including other government agencies such as the Department of Foreign Affairs and Trade and the Attorney-General's Department, as well as non-government organisations specialising in asylum and protection issues. In November 2010 the department publicly released the first two CGNs on Afghanistan and Sri Lanka. CGNs on Iran and Iraq were released in July and September 2011 respectively. The CGNs are updated as required (the Afghanistan CGN was reissued in April 2011, following the release of new UNHCR guidelines) and are available on the department's website at:

http://www.immi.gov.au/media/publications/country-guidance-notes.htm.

In addition to the CGNs, case officers have access through the department's country information database (CISNET) to a wide variety of recent and reliable sources on which to base their assessments. This is in line with accepted practice internationally. Where this information is not already in the public domain, migration agents are provided with the latest CISNET entries fortnightly. Those who are not authorised to have immediate access to CISNET information and others can apply for access to specific documents under Australia's Freedom of Information legislation.

Other issues that impact on timely status resolution

Client identity

Many IMAs arrive in Australia with little or no identification. In cases where an IMA is owed protection, the lack of identity documents raises obstacles and integrity concerns during security checks which can contribute to time spent in detention. It can also impact on the ability to obtain a travel document for people subject to removal.

Obstacles to removal and intractable caseloads

There is potential for protracted delays in the return of some clients to their country of origin, which can be anticipated to contribute to the increase in the length of detention. Generally, delays may include a range of factors, including health issues, confirming identity, delays in obtaining a travel document and last minute ministerial intervention requests or litigation to stay removal. Difficulties in obtaining a travel document are likely to become an increasing issue for some IMA groups, particularly where governments of other countries are reluctant to facilitate involuntary return of their nationals. Protracted delays are also likely in identifying possible return options for IMAs who claim to be stateless.

This also includes those who have been found to be refugees and therefore engage Australia's protection obligations but who have received an adverse security assessment and therefore do not satisfy the criteria for the grant of any visa.

Pursuing appeal and review avenues can be a lengthy process. Negotiating return arrangements with other governments is also an issue that is not easily or quickly resolved. As the proportion of clients receiving negative decisions on their asylum claims grows, the impact of these obstacles will be intensified.

Increasing negative decisions at the primary decision stage

In the first half of 2011 Australia's primary grant rates decreased as a result of:

- new measures to strengthen integrity in assessments
- availability of more targeted country information on relevant caseloads
- better understanding and use of country information.

Strategies for improvements in processing

Refined Protection Obligation Determination process

The department has significantly reviewed its determination process as a result of the November 2010 High Court decision. This included introducing the POD process in March 2011, which resulted in a faster initial assessment of claims and a more efficient referral process for negatively assessed clients.

Early provision of the latest country information to migration agents, along with client entry interviews, has assisted agents to prepare more comprehensive statements of claims at the primary stage.

A significant number of IMA cases were resolved in the 2010-11 program year. In total, 2816 people were released from immigration detention. Of these, 2738 people were granted Protection visas and 78 were voluntarily removed from Australia.

The department also has a process known as a Pre-Review Examination, which was implemented from 22 August 2011 and involves checking if original decisions on refugee status of IMAs waiting for independent merits review are still valid and current.

Streamlined security checking

Streamlined security checking is also contributing to faster processing.

In January 2011 the Australian Security Intelligence Organisation (ASIO) developed an intelligence-led and risk-managed security assessment framework for IMAs who meet Article 1A of the Refugee Convention. Since December 2010 only IMAs found to meet Article 1A of the Refugee Convention are referred to ASIO for security assessment.

With the department's support, the new framework was implemented in mid-March 2011. It enabled ASIO to prioritise complex and long-standing IMA cases that required ASIO investigation. ASIO maintains direct responsibility for managing the framework.

Between mid-March 2011 and 9 August 2011 just under 3000 IMAs found to be in need of Australia's protection have been security assessed under the improved framework. The majority of those assessments have been finalised with most applicants granted a visa and now living in the community.

Recruitment, training and support tools

The department conducted a significant recruitment and training program for new POE officers between January 2010 and February 2011. The number of trained staff increased from 30 in early 2010 to a peak of 175 in February 2011. This is discussed in detail in Section 3.3.

In 2011 the department has developed and implemented a number of tools to support refugee decision making, including monitoring and oversight mechanisms:

- CGNs have been developed for the major source countries to assist decision makers assess relevant country information
- training programs and workshops are regularly scheduled as a key component of decision support tools for protection decision makers
- the department has strengthened guidelines to assist decision makers in assessing a claimant's credibility
- enhanced guidance and training on procedural fairness for refugee decision makers has been developed.

Conclusion

The department has continually sought to improve its systems for processing asylum claims to ensure Australia meets its obligations under the Refugee Convention and to overcome the obstacles to efficient asylum processing, discussed above. Notably, the POD process for IMAs has improved natural justice for asylum seekers and allows for quicker processing of their protection claims. Streamlined security checking and significant recruitment and training programs have also contributed to improved asylum seeker processing.

The IMA population currently in detention predominantly consists of people who have received a negative decision at the primary stage and are in the review process. The large number of IMAs currently at this processing stage will be the next major challenge for the department.

People in the immigration detention environment

(b) impact of length of detention and the appropriateness of facilities and services for asylum seekers
(q) length of time detainees have been held in the detention network, the reasons for their length of stay and the impact on the detention network
(d) health, safety and wellbeing of asylum seekers, including specifically children, detained in the detention network
(e) impact of detention on children and families, and viable alternatives

Introduction

Australia's IDFs house a diverse population. The legislative requirements of mandatory detention compel the department to adopt a 'one size fits all' approach and responding to the complex and unique circumstances of every person in detention is challenging. Community detention provides an alternative to accommodation in IDFs for children, families and vulnerable individuals.

In 2010 IMAs arrived faster than they could be processed. Some 6880 people arrived in that year while some 2094 people left the system either by being granted a visa or departing Australia.

This section examines the impacts the increased rate of arrivals has had on the immigration detention network and on the people in detention. It discusses issues relating to access to facilities and services; the health, safety and wellbeing of people held in immigration detention; the situation of women and children; and government responses aimed at alleviating some of these pressures.

Many factors have contributed to the current detention situation in Australia. The complex interplay of the various elements in the reception and care of IMAs, as well as in processing claims, makes it difficult to identify a simple root cause when issues arise. For example, the processing pause on Sri Lankan and Afghan asylum claims (mentioned earlier) significantly impacted on their progress through the system.

The unavoidable reality of the immigration detention network is that it operates in an environment of constant change. This requires the department, other agencies and service providers to be constantly mindful of the changing mood in IDCs in order to minimise the potentially adverse impacts on the people in detention.

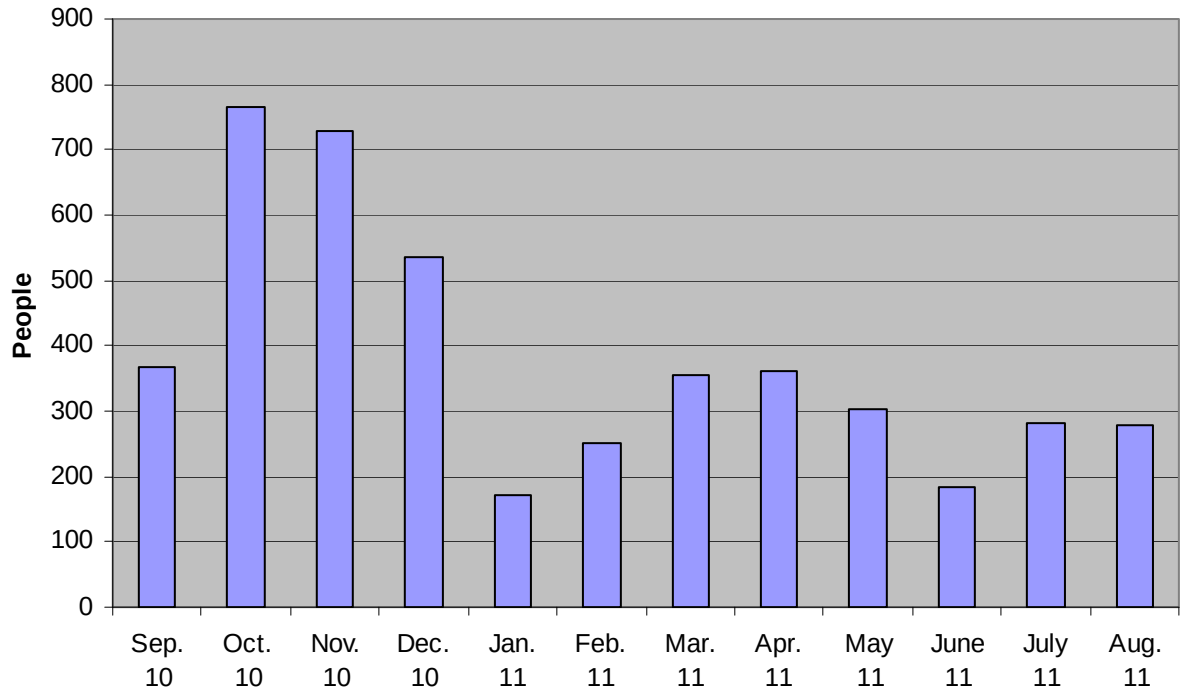
Current detention population

On 31 July 2011 there were 5780 people in detention. Of these, just over 94 per cent were IMAs.[101]

Beginning in 2008 the number of IMAs steadily increased, peaking in September 2010 with 1047 arrivals. Since December 2010 the number of arrivals has been reducing. Figure 10 shows the number of IMAs who arrived in the 12 months from September 2010 to August 2011.

[101] DIAC *Immigration detention statistics summary: 31 July 2011*, 2011, viewed 16 September 2011, <http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20110731.pdf>.

Figure 10: Irregular maritime arrivals by month, September 2010 – August 2011



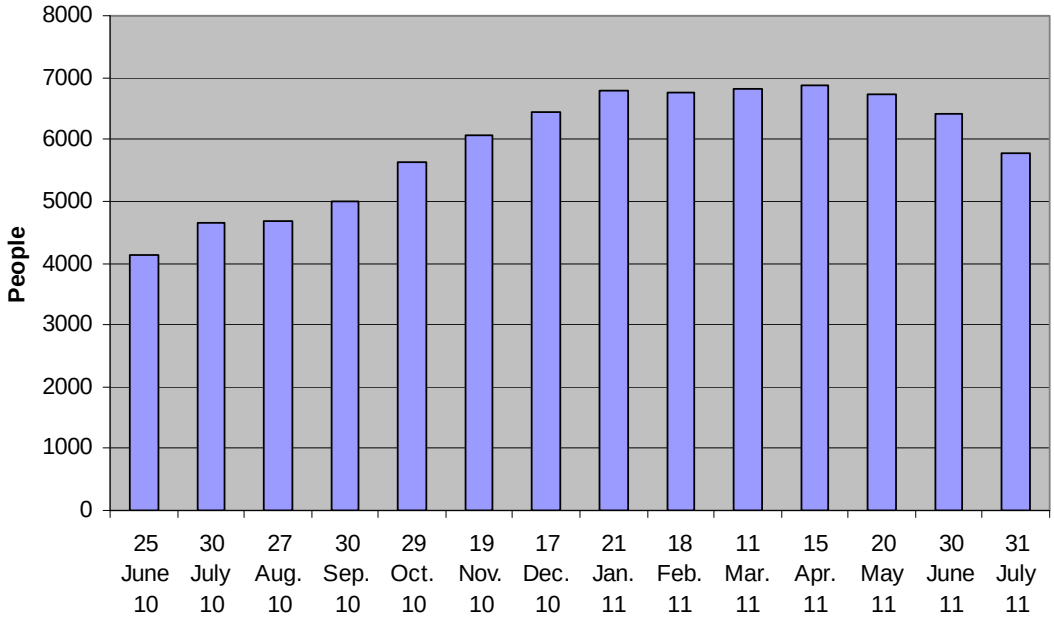
Source: DIAC

Numbers in detention

With the progressive implementation of process improvements and reduced boat arrivals, the overall immigration detention population has steadily decreased (Figure 11) by more than 1000 since April 2011. New intervention strategies, such as the expansion of community detention, have reduced the number of people held in immigration detention facilities.

The department's challenge is to ensure process improvements are sustainable and that its reporting systems can quickly identify shifts in trends that may require process adjustments or new intervention strategies.

Figure 11: Detention population in 2010–11

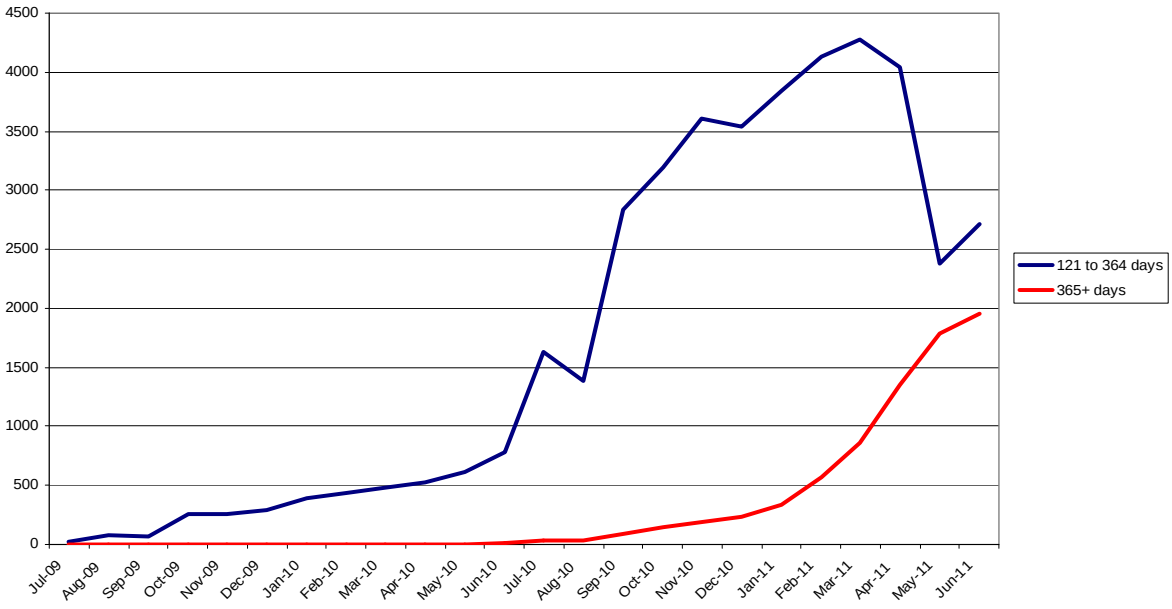


Source: DIAC

Length of time in detention

The overall detention centre population has decreased over the course of 2011. However, the number of IMAs who have spent more than 12 months in detention has increased significantly since September 2010. Figure 12 illustrates the number of IMAs in detention (across all facilities) for 121 to 364 days and those in detention for more than 365 days. The red line shows the marked increase in the number detained for more than 365 days since August 2010.

Figure 12: Number of irregular maritime arrivals in detention for more than 120 days[102]



Source: DIAC

Several factors have worked in combination to overburden Australia's immigration detention and asylum processing system. These include the suspension of processing of Sri Lankan and Afghan asylum claims and the increased number of people in detention on negative pathways.

The subsequent strain on the department's systems has been enormous, with an increased caseload and processing delays. The impacts of this strain are discussed in more detail below under 'Impact on the detention network'.

Negative pathways

The changing proportion of clients with negative decisions at the primary decision or review stage has presented significant client management challenges. These clients have received a negative assessment at the most recent stage of the assessment process, and remain in immigration detention during the removal or appeals process. The longer clients remain on a negative pathway, the less likely they will be granted a visa as different review options are exhausted.

Key Stakeholders

The department works closely with two key advisory groups in relation to immigration detention. These are:

The Council for Immigration Services and Status Resolution (CISSR)

CISSR consists of prominent and respected Australians selected for their expertise and demonstrated commitment to immigration and humanitarian issues. The council provides the minister with independent advice on the development of policies, processes, services and programs necessary to achieve the timely, fair and effective resolution of immigration status for people seeking asylum or other migration outcomes in Australia.

[102] Note: The population displayed in the graph represents a point in time. Detention population includes people detained across all Australian immigration detention facilities, including immigration detention centres, immigration residential housing, immigration transit accommodation, alternative places of detention and community detention.

The Detention Health Advisory Group

The DeHAG is the department's key advisory body on detention health, mental health services and other related issues. Formed in March 2006, its members represent key Australian professional bodies and expert bodies and other health groups. The formation of the DeHAG represents a significant commitment to stakeholder engagement with key components of Australia's health and mental health experts and professional health groups. Although a number of the expert and professional groups represented on the advisory group take a strong stance against prolonged mandatory detention, the DeHAG has played a major role in advising the department on policies and strategies to prevent as far as possible negative health and mental health impacts that can be experienced by those in immigration detention.

The DeHAG provides the department with independent expert and professional advice on designing and implementing health and mental health policy and procedures in immigration detention. Working with the DeHAG has been critical to improving the general and mental health care of people in immigration detention.

Impact on the detention network

Impacts on facilities and services

The length of processing and the growing detention population has required the government to find additional sources of accommodation.

Significant groups of IMAs are now accommodated in more than 25 different locations, many of which are remote and difficult to access. This adds to the difficulties the department faces in processing claims and providing services to people in detention.

People in immigration detention have access to a wide range of services and activities to support their wellbeing. This includes access to the internet, libraries, religious activities, sports facilities, excursions and educational classes. While the department's desire to provide these services and activities remains strong, there is considerable pressure in doing so given the increased detention population. Access times to facilities have had to be adjusted through, for example, rotations, which can lead to frustration between groups. This is not an unusual occurrence in any restricted living environment but has been exacerbated by the increasing number of people in immigration detention.

The department has, in accordance with the detention services manual developed 'client consultative committees' that seek to ensure that:

> Persons in immigration detention will be provided with an appropriate forum for communication between departmental staff, detention service provider staff and other persons in immigration detention concerning detention conditions and the practicalities of daily life in the IDF [and] …will be provided with an opportunity to make suggestions regarding service delivery enhancements.[103]

New meaningful activities have been introduced including exhibitions of art works created by people in detention and opportunities for them to volunteer in local communities. The minister asked CISSR to provide advice on other types of meaningful activities and suggestions put forward are being explored by the department and Serco.

With increased IMA arrivals, temporary infrastructure has had to be deployed in IDCs. For example, when in mid-2009 the North West Point IDC on Christmas Island was reaching peak capacity, temporary beds were placed in areas previously designated as activity rooms and educational blocks. Later that year, other facilities, including exercise areas, educational facilities and prayer rooms, were converted into accommodation areas as the detention population increased.

In response to overcrowding, the government agreed in July 2010 to open a new facility, the Lilac compound, adjacent to North West Point IDC. This new facility, made up of portable buildings, reduced the pressure on accommodation facilities at North West Point. As the detention infrastructure continued to be put under pressure, the department also implemented a strategy of relocating clients to other IDCs to reduce pressure on the Christmas Island infrastructure, especially following the incidents in March 2011 (see Section 3.3 (b) Managing Incidents).

[103] DIAC, Procedures Advice Manual – Detention Services Manual – Chapter 4 – Communication & visits – Client consultative committees (15 August 2011), section 2.

Health, safety and wellbeing of people in detention

The department has a comprehensive health framework and service delivery strategies for people in immigration detention. An important element of this has been the engagement of a range of health professionals, through the department's Detention Health Service provider, to deliver clinically appropriate care.

In the context of the current detention population, mental health services remain an important element in the health services delivery priorities, particularly for those who remain in immigration detention for extended periods of time.

Designated health service provider

The International Health and Medical Services (IHMS) group, a subsidiary of International SOS, is the designated health service provider for people in immigration detention. IHMS started working in immigration detention in 2004 and was awarded a new contract with the department in 2009 following a competitive tender process.

The Detention Health Framework

The Detention Health Framework was developed in 2007, following consultations with members of the DeHAG and other key health stakeholders. This comprehensive policy document articulates the key health challenges that arise in immigration detention, the practical arrangements for health service delivery and a program for ongoing quality improvement.

The framework's primary objectives are to ensure that:

- the department's policies and practices for health care for people in immigration detention are open and accountable
- people in immigration detention have access to health care that is fair and reasonable, consistent with Australia's international obligations and comparable to those available to the broader Australian community
- quality of health services provided to people in immigration detention is assured by independent accreditation.

The framework's aim is to create an immigration detention health system that mirrors the mechanisms in place in the wider Australian health system to ensure quality and appropriate clinical care.

In view of the significant changes in the immigration detention population since the development of the Detention Health Framework— and following advice from the DeHAG—the secretary announced in March 2011 that an internal review of the detention health framework would be conducted. This review was completed in May 2011 and has made a number of recommendations to address challenges arising from the current increases in the immigration detention population.

The department, as part of its review of the Detention Health Framework, has consulted with a number of key stakeholders, including the DeHAG. The DeHAG contributed to the review and has commented on the recommendations. The feedback from the DeHAG has been supportive of the Detention Health Framework Review in terms of policy framework but suggested greater emphasis on better implementation to address the health needs of people in immigration detention.

Health standards in Australian immigration detention centres

As part of the Detention Health Framework the Royal Australian College of General Practitioners (RACGP) was commissioned in 2006 to develop standards for health services in Australian IDCs, based on the college's own standards for general practices (3rd edition). These standards underpin the accreditation requirements of the health services contract which IHMS is required to meet as an independent assurance mechanism and they support the primary objectives that the department is committed to achieving in health care.

The following outlines the health services provided to people in immigration detention.

Health assessments and screening

Every person entering immigration detention is offered an initial health assessment to identify any health conditions requiring attention. This assessment includes taking a personal and medical history as well as conducting a physical examination and a mental health screening. The DeHAG has provided advice on appropriate screening and assessment tools including for children. Because IMAs may have experienced traumatic events before arriving in Australia, the department has policies and services in place to enable the early identification and referral of clients affected by torture and trauma.

Treatment management is coordinated through IHMS for everyone who needs it. As well as an initial health assessment, other strategies are used to identify health needs that may emerge during a person's time in detention, including formal monitoring processes such as regular mental health reviews.

Each person who leaves detention has a 'discharge health assessment' and receives a written health discharge summary that can be used to inform future health providers of relevant health history, treatment received during detention and ongoing treatments. Where appropriate, those being discharged are put in contact with relevant community health providers to facilitate their ongoing care.

General health care services

IHMS provides primary health care services (including general practitioner, nursing, counselling and psychological) on-site at all places of immigration detention. For those in community detention and in immigration residential housing, IHMS coordinates health care through a network of general practices in the community. Where clinically required, individuals are referred to external or tertiary health providers. Dental care is also provided.

IHMS also provides an after-hours paramedic service for the Christmas Island, Scherger and Curtin IDCs.

Mental health services

Mental health services are provided by IHMS, or by community providers networked to IHMS. Services are provided by qualified and registered counsellors, mental health nurses, psychologists and psychiatrists.

In November 2010 the department completed the rollout of three new mental health policies across the immigration detention network. These reflect best practice approaches to identifying mental health issues, providing psychological support and responding to self-harm in immigration detention.

The department recognises that some people in immigration detention arrive with pre-existing mental health issues, while others can develop these during their time in detention. In response, the department takes an active approach to managing a person's health in detention by ensuring access to appropriate support through health care services, including mental health support and regular health assessments provided by qualified health professionals.

All people entering immigration detention undergo a mental health examination within 72 hours of their arrival in immigration detention. This is to identify signs of mental illness or torture and trauma and is undertaken as part of the client's health induction assessment. Where exposure to torture and trauma is identified, clients are referred to specialist providers for assessment and counselling.

Subsequent examinations are offered to identify emerging mental health issues that may arise during a person's time in immigration detention and referral to mental health professionals occurs when a person is identified as requiring support or treatment.

Communicable diseases

All people entering immigration detention on Christmas Island are screened for pre-existing medical conditions, including communicable diseases.

Communicable diseases observed among people in detention include syphilis, tuberculosis, hepatitis B and hepatitis C. The incidence is very low, despite high numbers of arrivals, and is generally representative of the populations from which people originate or the country in which they have lived before arriving in Australia.

In cases where a communicable disease is identified or suspected, IHMS liaises with local public health authorities to put in place appropriate measures, such as quarantine and treatment, to prevent broader exposure.

People with communicable diseases considered to be infectious are not transferred to the Australian mainland unless increased levels of treatment are required.

A list of the communicable diseases identified across the network from 1 July 2009 to 30 June 2011, and the associated management protocols, has been provided to the Joint Select Committee on Australia's Immigration Detention Network in response to discovery questions 37, 38 and 39.

Mental health and immigration detention

Over recent years, a body of knowledge has been developed on the adverse impacts of immigration detention on people's health.[104] This research, some funded by the department, has been instrumental in informing the department on the development of health services to be provided to people in detention.

In 2006 the department funded the University of Wollongong to undertake a study into the health profiles of people in IDCs to identify an appropriate health data collection system to provide a capacity to analyse the health of people in immigration detention. The study examined the health records of 720 people in detention in 2005-06. Published in 2010, it identified from health records that those detained for longer periods reportedly had a significantly larger number of both mental and physical health problems. It also identified that the reasons for detention are significantly related to an increase in health problems with asylum seekers experiencing a greater number than those detained because they have overstayed their visa or breached visa conditions.[105]

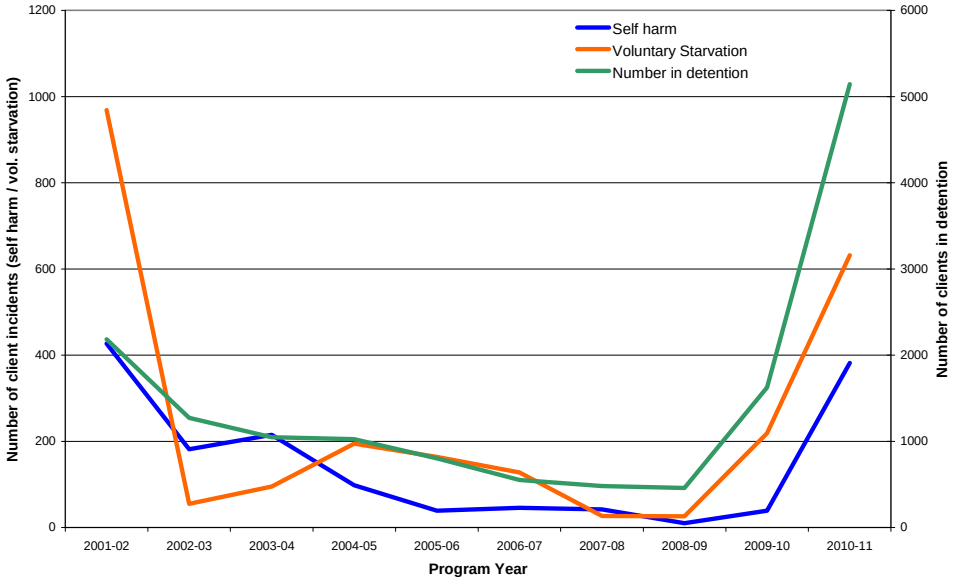
Numerous other studies, conducted in Australia and internationally, corroborate the link between restrictive immigration detention and the development of mental health problems. Various medical and mental health organisations also oppose prolonged restrictive detention, including the Australian Medical Association.

The significant pressures on the detention network, and therefore on people in immigration detention, are illustrated in part by the number and proportion of incidents of self-harm and voluntary starvation that have taken place in detention over time. For example, the high numbers of IMAs in 2001 and 2002 correlated with the high numbers of detainees engaging in voluntary starvation and self-harm. This is similar to today's situation, as illustrated in Figure 13.

[104] See for example P Green & K Eager, 'The health of people in Australian immigration detention centres', 2010, *Medical Journal of Australia* 192(2), pp. 65 – 70; or Z Steel et. al 'Impact of immigration detention and temporary protection on the mental health of refugees', 2006, *The British journal of Psychiatry* 188(1), pp. 58-64. See also footnote 108 for studies on the impact of detention on children and families.

[105] J Green & K Eagar, 2010, 'The health of people in Australian immigration detention centres' *Medical Journal of Australia* 192(2), pp. 65–70.

Figure 13: Serious incidents in detention (2001–02 to 2010–11 year to date)[106]



Source: DIAC

Self-harm is a complex issue and the department is seeking independent expert advice to examine the determinants and ways to reduce the risk of self-harm.

The department recently developed a revised mental health awareness training program in consultation with the DeHAG. This was recently successfully piloted within the department and with IHMS and Serco staff and will now be delivered to all staff from these organisations working in detention facilities who have contact with people in immigration detention.

Other measures underway to help address the incidence of self-harm are:

- The department is undertaking a project to analyse health and incident (including self-harm) data. This data is being analysed with the Mental Health Sub-Group of DeHAG to help identify strategies that could help reduce the risk of self-harm.
- The DeHAG is involved in providing advice on the provision of health services at facilities and will continue to assist in the development of strategies to mitigate self-harm.
- The department is conducting an external review into the implementation of the detention mental health policies implemented in 2010, which it expects will be completed by early 2012.

The department recognises that measures implemented to date have not completely eliminated the issue of self-harm in immigration detention. It remains a great concern and efforts to address the issue are ongoing.

Children and families and immigration detention

Recent studies have highlighted that detention has an impact on children and families with many noting that detention can be associated with post-traumatic stress disorder, high levels of depression and poor mental health as well as an increase in the deterioration of mental health along with time spent in detention.[107]

[106] Note: The population shown in the graph is the average detention population. It represents a point in time rather than a cumulative number. The total population in detention includes IMAs and non-IMAs. Clients who have engaged in multiple self-harm/voluntary starvation incidents are counted more than once.

[107] For example: Steel, Z. Momartin, S., Bateman, C. Hafshejmii, A. Silove, D.M., Everson, N., Roy, K, Dudley, M. Newman, L, Blick, B. and Mares, S. (2004), Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia, *Australia and New Zealand Journal of Public Health,* December 28(6), pp 527-536; Nielsen, S., Norredam, M., Christiansen, K., Obel, C., Hilden, J. & Krasnik, A, (2008), Mental Health among children seeking asylum in Denmark: The effect of length of stay and number of relocations, a cross-sectional study, *BMC Public Health,* 8, pp 293-302; Mares, S. and Jureidini, J. (2004), Psychiatric assessment of children and families in immigration detention: Clinical, administrative and ethical issues,'*Australia and New Zealand Journal of Public Health,* 28, pp 520-526.

CISSR and other stakeholders have recommended that, under a mandatory detention legislative framework, vulnerable individuals and families should be placed in arrangements such as community detention.

Enhanced community detention arrangements for unaccompanied minors and vulnerable families were announced by the Prime Minister and the minister on 18 October 2010. By June 2011 the majority of children and their families had been moved into community-based accommodation. Based on their health needs and other vulnerabilities, some single adult males are also moved into community detention. All unaccompanied minors and families with children who enter immigration detention are progressively referred to the minister for consideration for community detention.

As of 26 September 2011 the minister had approved 1981 clients for community detention. This number includes 1068 adults and 913 children, with 305 of the children being unaccompanied minors. At this date, 1073 clients were living in or transferring into community detention, with this number including 619 adults and 454 children, with 127 of the children being unaccompanied minors.

At the time of the announcement to expand community detention, around 750 children were being held in alternative places of detention. Since then, 913 children have been approved for and are awaiting transfer into community detention. Currently 35 children are either in or awaiting transfer to community detention and 423 have been granted visas since being approved for community detention.

People in community detention are supported by the Australian Red Cross contracted by the department as the lead agency, and its sub-contractors, who source suitable accommodation from the private rental market and church agencies. Public housing is not used for community detention. Family groups, women and children, unaccompanied minors and people who have special needs that cannot be met in an IDC or other type of immigration facility have been the focus of community detention.

Status resolution initiatives

Consistent with the government's detention policies, the status resolution approach has promoted working with onshore compliance clients while they live in the community, as discussed in section one above. Since the approach was scaled up in late 2008, the proportion of onshore compliance clients managed in the community (compared to those in detention) has increased from 95 per cent (June 2008) to 98 per cent (March 2011).

Clients are now better informed about their status resolution pathways and the practical assistance for departure they can access if they need it (for example, Assisted Voluntary Return). Voluntary departures from the community, which cost the Australian Government less than removals from detention, have increased. Some positive outcomes include:

- The percentage of onshore compliance clients voluntarily departing Australia from the community (as compared to those removed from immigration detention) has increased from 74 per cent in 2007–08, to 84 per cent in 2009–10, and to 91 per cent in 2010–11.
- Assisted Voluntary Return departures grew from 143 in 2007–08 to 464 in 2009–10. There were 419 such departures for the 2010–11 financial year.
- The communication program has encouraged more unlawful clients to approach the department voluntarily. In 2007–08, 75 per cent of compliance clients were located voluntarily. This grew to 83 per cent in 2009–10. During 2010–11, voluntary locations were 82 per cent of all onshore compliance locations.

Building a sense of community in detention centres

Building a sense of community in immigration detention is important.

Activities provided in detention, including religious activities and ceremonies, are primarily designed to provide mental and physical stimulation. They also create a sense of community and increase social cohesion between people in detention. For example, activities in detention centres include movie nights, craft classes, gym visits, soccer games, and grocery shopping trips.

Improving access to meaningful activities

Clients in community detention cannot work or undertake training leading to a qualification. The Australian Red Cross therefore works with these clients to identify activities of possible interest such as community-based English lessons, conversation classes, community sewing, swimming and cooking classes. Clients cover the cost of activities from their fortnightly living allowance (89 per cent of the base Centrelink income support payment).

The Red Cross also helps clients find volunteering opportunities, such as at tree planting days or providing assistance at the local school tuck shop. A volunteering framework has been drafted and the Red Cross and the department are working with Volunteering Australia to identify opportunities for clients to volunteer and for volunteers to become involved with the community detention program.

Individual management plans

Serco is required under the contract to implement individual management plans for each client within five days of their arrival in a centre. These plans:

- identify and record the religious, cultural and welfare needs of clients (to be done as soon as possible after entry into a facility)
- allocate a personal officer to each client, who will meet regularly with the client
- document and define responses to client needs
- complement the case management carried out by the department
- provide a point of reference for the Health Services Manager.

Serco must participate in a weekly department review of the individual management plans with the Department Regional Management and the Health Services Manager, or more frequently as directed by the Department Regional Management.

Conclusion

The elements and processes related to the reception and care of IMAs and processing their asylum claims are complex and interwoven. Problems encountered can make matters more complex and cause delays and difficulties in isolating a specific cause.

The department has established valuable relationships and works in conjunction with partners such as the DeHAG and CISSR to ameliorate as much as possible the pressures experienced in the immigration detention network. Most recently, the department streamlined its IMA processing system, expanded the immigration detention network and placed a significant number of vulnerable clients in community-based accommodation. Together, these measures are decreasing processing times and helping to alleviate overcrowding. In turn, this reduction in the detention population has resulted in improved access to facilities and the delivery of meaningful programs and activities for those in immigration detention.

IMA and detention populations fluctuate numerically and demographically. In this challenging context, the department has learned from the past and been proactive in implementing change to improve the conditions for those in immigration detention. The department remains aware that efforts to improve must be constant and align with the requirements of a changing immigration detention population.

Immigration detention network

(c) the resources, support and training for employees of Commonwealth agencies and/or their agents or contractors in performing their duties
(j) the health, safety and wellbeing of employees of Commonwealth agencies and/or their agents or contractors in performing their duties relating to IMAs or other persons detained in the network
(i) the performance and management of Commonwealth agencies and/or their agents or contractors in discharging their responsibilities associated with the detention and processing of IMAs or other persons
(f) the effectiveness and long-term viability of outsourcing immigration detention centre contracts to private providers

Detention network administration

Introduction

Given the pressures of the detention network it has become important to ensure that staff working with people in immigration detention are well supported and have the required capabilities and skills to uphold the values of the public service when discharging their duties. Staff issues have been one of the key elements of the department's reform agenda since 2005.

Departmental officers also need to be able to work effectively with the many other agencies (government and non-government) involved in managing and caring for people in detention.

Staff working in Australia's detention environment face confronting situations every day. The incidence of self-harm and other behavioural management issues continues to grow, as do tensions between groups of people in detention. In this environment it is critical that everyone working in detention centres be equipped with the skills and knowledge to deal with the unexpected. It is also critical that staff have access to appropriate and timely debriefing, counselling and other support services for their wellbeing.

This section covers issues relating to:

- resources, support and training of officers working in IDCs
- health, safety and wellbeing of officers
- performance and management issues.

Resources, support and training

The increased number of IMAs since October 2008 has required the department to review the deployment of resources and staff required to manage processing.

At the time of the initial surge in 2008, the department responded by sourcing and deploying staff to IMA operations short term. As the IMA caseload has continued to expand, so too has the IMA workforce demand.

To limit the impact on other departmental outcomes, the department has adjusted its approach to staffing the IMA caseload by:

- establishing a dedicated IMA workforce
- establishing standard long-term deployment periods and rotations
- refining staffing structures in all IMA related functions.

In November 2009 the department developed its Irregular Maritime Arrivals People Plan. The plan includes scenario-based forecasts and recommended strategies to mitigate and prepare for the forecast workforce shortfall, against identified job roles. Updates to the plan were made in December 2009 and March 2010. In May 2010 the plan was reviewed and renamed the IMA Workforce Plan. Since then, workforce demand and supply have been reported regularly through various governance committees.

These adjustments to the department's staffing approach have necessitated external recruitment processes, which in turn have presented challenges for the department, including recruiting and training appropriately skilled staff to manage the caseload.

The current irregular maritime arrivals workforce

IMA staff are deployed across various facilities and locations and perform various roles.

As at 30 June 2011 the department had around 960 full time equivalents (FTE) undertaking IMA work performing these roles:

- direct service delivery and support roles (818 FTE)
- dedicated corporate support roles (85 FTE)
- indirect or overhead roles (57 FTE).

Training

The department provides job-specific training for staff who work in detention centres. This training is developed and delivered to increase the specialist skills required for staff to deal with the complex situations that can arise in a detention centre.

Specialist modules have been developed for Entry Officers; Regional Management Teams; Protection Visa/Refugee Status Assessment Officers; Case Management Officers; and Removals Officers. Training courses were first developed in response to recommendations made in the Palmer and Comrie reports and continue to evolve in line with changes to legislation, policy and processes. Some of the training offered may lead to a Certificate IV in Government.

Courses are regularly reviewed and subject to external evaluation to ensure they remain relevant and effective.[108]

Each role-based course incorporates assessments to ensure learning objectives are being met and participants can demonstrate the skill sets taught. The assessment involves written tasks, tests on use of the computer system, scenarios, including case work, recall tests and presentations back to the classroom group. Participants are assessed as either competent or not yet competent against the required skill set. If participants are assessed as not yet competent, they are provided with additional training opportunities and re-assessment.

Two courses currently lead to a formal vocational education and training qualification (Case Management and Compliance Field). Assessment activities are compiled into a portfolio and provided to a Registered Training Organisation (RTO). The RTO also attends some training components to formally assess participants.Once participants have met the necessary criteria they are accredited by the RTO.

Mental health training is currently provided to staff through layered modules. Initially staff complete a mental health awareness module focusing on the person in detention, their mental health and the procedures staff should follow. This module now includes the policies covering procedures relating to people in immigration detention. Staff then undertake 'Looking After Yourself' module focusing on maintaining their wellbeing and mental health and providing them with strategies to help them cope with their roles.

The training on mental health and related issues is provided to all staff working with people in immigration detention. This includes departmental and service provider staff.

The department is exploring options to provide a base-level mental health 'first aid' e-learning course. In addition, the department is developing a module that focuses on people in immigration detention and specific issues related to their mental health.

In addition, the department has started a detailed training needs analysis of staff currently working in immigration detention to be completed in the first quarter of 2012. The findings will inform the development of new training programs and be used to recommend appropriate training and/or actions to be included in the department's five-year training plan.

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[108] Helen Proust, 2008, *Evaluation of the Palmer and Comrie Reform Agenda—including Related Ombudsman Reports,* viewed 30 August 2011, <http://dimanet.immi.gov.au/__data/assets/pdf_file/0005/167324/proust-report.pdf>.

More than 700 staff attended job specific training in 2010–11. A further 95 staff attended such training in July 2011. The number of staff trained for IMA related activities in 2009–10 was 438. In 2010-11 it was 713 and in July 2011 it was 95.

Figure 14: Irregular Maritime Arrivals related staff training completed 2009–2011

IMA training	2009–10 FY	2010–11 FY	1 July to 31 July 2011
Entry interview	125	39	0
Orientation to case management training course	0	146*	0
Case management (Certificate IV)	117	224	56
Refugee Status Assessment (RSA) /Protection visa (PV) roles	93	131	0
Pre-deployment training (case management and detention operations) *Note: course ceased in Feb 2010*	103	0	0
Removals	0	19	0
Removals Liaison Officer (RLO)	0	37	23
Detention operations (regional management team training)	0	117	16
Total number of officers trained	**438**	**713**	**95**

Entry Interview Training Program

Course objectives

The Entry Interview Training Program provides staff with the skills knowledge and attributes required to perform the role of an Entry Interview Officer.

The training is structured around the P.E.A.C.E. model of interviewing. The following sessions form the Entry Interview training:

Session 1 **P**lanning and preparation

Session 2 **E**ngage and explain

Session 3 **A**ccount

Session 4 **C**losure

Session 5 **E**valuation

Delivery

The Entry Interview Training Program is delivered by Australian Forensic Services (AFS), and supported by briefings from internal and external subject matter experts including:

- Onshore Protection (DIAC)
- CISNET (DIAC Country Information Service system)
- Attorney-General's Department
- AFP

Duration

The course is four days duration. Following this participants are mentored in the workplace through their initial interviews.

Case management program

Orientation to Case Management Training Course

Course Objectives:

The aim of the Orientation to Case Management Training Course (OTCM) is to provide DIAC staff with the knowledge and skills required to perform the role of an Assistant Case Manager, under supervision of a qualified case manager. The purpose of the program is to provide the department with a pool of suitably trained staff who can be deployed to DIAC's immigration detention centres on short-term deployments to assist the increasing caseload.

The course consists of three modules which cover the following topics:

- introduction to visas and immigration clearance
- case management environment
- case management in DIAC
- irregular maritime arrivals
- case management in IDFs
- duty of care
- case management business process:
    - screening
    - triage
    - research
    - planning
    - reviewing
    - Outcomes
- case management and stakeholders
- working with minors
- cross cultural awareness
- mental health and immigration detention.

Delivery:

The course is delivered by internal facilitators and subject matter experts as well as external specialists. The course was piloted in Canberra during the period 26–30 July 2010. Seven further courses were conducted, the most recent during the period 13-17 December 2010. To date, 146 Assistant Case Managers have been trained through this program.

Duration:

The training course is five days.

Case Management (Certificate IV) Training Program

Course objectives:

The case management training program provides officers with the skills, knowledge and attributes required to perform the role of a case manager.

The following modules form the case management training program:

- The role of the DIAC case manager
- Case management business process
- Legislative and policy framework
- Working with clients
- Stakeholder engagement
- Managing your caseload
- Looking after yourself
- Screening and streaming cases
- Researching cases
- Developing a case plan
- Case review
- Achieving an immigration outcome.

The case management training program is a blended learning experience with classroom training components supported by skills focused, structured on-the-job learning. It requires staff to complete pre-requisites, complete a training course and undergo a mentoring program, as follows:

- Pre-requisites are the department's orientation program and e-learning
- training course is face-to-face in the classroom and includes:

  Block A (the essential underpinning knowledge and skills to perform the role)

  Block B (the case management business process, departmental systems and documentation)

  Block C (formative, contextualised assessment leading to Certificate IV in Government)
- mentoring program (based in state offices): four weeks of observation and applying the knowledge and skills gained through the training course. Participants are paired with a mentor–an experienced case manager–while they perform tasks learned. The mentor identifies opportunities for practice, reflection and further role-based learning.

Delivery:

The program is delivered by internal facilitators, internal subject matter experts and the following external specialists:

- Wisdom Learning—RTO assessing participants for Certificate IV in Government
- New Intelligence—communication and interview skills
- Davidson Trahaire Corpsych—mental health awareness
- Davidson Trahaire Corpsych—self care and resilience
- Beasley Intercultural—cultural awareness.

Duration:

The training program is five weeks, plus four weeks mentoring with an experienced case management officer.

Protection Visa/Refugee Status Assessment (PV/RSA) Training Program

Course objectives:

The Protection Visa/RSA training program provides officers with the skills and knowledge to make effective decisions on Protection visa and RSA applications in Australia.

The following modules form the Protection Visa/RSA training program:

- Australia's response to global people movements
- Refugee Law
- Biometrics and Researching Claims
- Country Information Search
- Interview Techniques
- Torture and Trauma
- Looking after yourself (Employee Assistance Program)
- Fraud and Integrity Awareness
- Making a Decision
- Recording a Decision
- Notifications.

Delivery:

The program is delivered by internal facilitators, internal subject matter experts and the following external specialists:

- New Intelligence–Interview techniques
- Davidson Trahaire Corpsych–Looking after yourself
- Companion House–Torture and Trauma.

Duration:

The training program is 13 days duration, plus two weeks of mentoring with an experienced Protection visa/RSA officer. The mentoring component is mandatory before deployment in an IDC.

Note:

- Between July 2010 and April 2011 the department delivered 9 programs and trained a total of 113 participants.
- The PV/RSA program was last delivered in December 2010.
- There are currently no scheduled programs planned for the 2011–2012 financial year.

Returns and removals training program

Course objectives:

The removals training program provides officers with the skills and knowledge to effectively perform their role. It emphasises client engagement, proactive planning, appropriate management of risks, evidence-based decision making and timely and impartial recording of all activities.

It covers the following:

- The Returns and Removal program (Part A)
- Engaging with clients
- Identity
- Travel documents
- Assessments (Part B)
- Removal logistics
- Operational Departure Plan (ODP)
- Notifications

- Removal Availability Assessment (RAA)
- Removals finalisation, including finishing of Case portal work and course activities.

Delivery:
The program is delivered by internal facilitators, internal subject matter experts and an external specialist:

- Davidson Trahaire Corpsych – Self Care and Resilience.

Duration:
The training program is 13 days in two blocks.

Regional Management Team Training Program

Course objectives:
The Regional Management Team training program provides officers with the skills and knowledge to:

- ensure that the detention of unlawful non-citizens is in accordance with the government's immigration detention values.
- fulfill duty of care requirements to people in immigration detention by ensuring that clients have their needs met through the provision of services.
- monitor and report on the provision of welfare services in IDFs to maintain the lawful, appropriate, humane and efficient detention of unlawful non-citizens by external service providers.

This is achieved through audits, quality assurance, monitoring and stakeholder engagement.

The Regional Management Team training program covers the following modules:

- Immigration detention context and framework
- The client's story
- Managing relationships and working with stakeholders
- Working with and understanding the IDC contract
- Managing risk and incidents
- Responding to and reporting on service delivery
- Simulation.

Note:
As of 25 July 2011, the RMT training program incorporates three tailored session in working with and understanding the department's Compliance, Case Management, Detention and Settlement (CCMDS) Portal.

Courses commencing from 22 August 2011, will incorporate one day mental health awareness training and a half day on self-care and resilience training.

Delivery:
The program is delivered by internal facilitators, internal subject matter experts as and the following external specialists:

- Davidson and Trahaire Corpsych— mental health awareness and self-care and resilience training
- Wisdom Learning—managing risks and incidents and responding to and reporting on service delivery
- Shane Carroll and Associates—Working with and understanding the IDC contract.

Duration:
The training program is ten days duration. In the event that participants are new to the department, a two day orientation program is provided before commencing the RMT training program.

Health, safety and wellbeing of staff

The department's obligations to its staff are covered in the Enterprise Agreement, the *Occupational Health and Safety Act 1991(*OHS Act*)* and in the general provisions of the APS Act*.*

Serco is required to verbally report critical incidents to the Department Regional Manager within 30 minutes and are required to provide the department with a written Incident Report within four hours.

Major incidents are required to be verbally reported to the Department Regional Manager within 60 minutes, with a written Incident Report required within six hours or by the end of the shift.

In the case of a minor incident, Serco is required to provide the department with a written incident report within 24 hours.

The department requires all incident reports to be regularly updated until such time as the incident has been closed.

General health assessments

All officers being deployed for more than three months to an IDF must first have a general health assessment provided by Medibank Health Solutions (a provider from the department's health services panel).

Psychological wellbeing support for department staff

The department's current operating environment requires that many staff undertake roles that can place a significant demand on their physical and psychological wellbeing. These include high pressure roles in areas such as IMAs, onshore detention operations and overseas operations.

The centrepiece of this assistance for staff being deployed into such high pressure environments is the Resilience and Self-Care Support Program managed by the department's Employee Assistance Program provider.

Resilience and Self-Care Support Program

The Resilience and Self-Care Support Program seeks to identify health and safety risks associated with high-pressure environments and puts preventative measures in place to mitigate such risks.

It also provides ongoing support to staff before, during and after deployment.

Resilience assessments are one program component. They provide extra behavioural evidence about which staff are most likely to cope with the working conditions on long-term deployments (three months or greater) in remote and/or harsh environments.

The department has also developed a tailored model for categorising IMA and overseas locations. This provides a baseline measure for assessing and categorising deployment locations as low, medium or high risk.

There have been a number of critical incidents at various IMA and overseas locations since the resilience program has been implemented that have demonstrated the program's effectiveness in minimising psychological risk factors for staff. This support enables departmental officers to draw upon what they have learned about their own resilience and put strategies in place to manage their own wellbeing.

On-site psychological support

The Employee Assistance Program provides onsite counselling services to staff in IDFs. These services started in 2009 at the Christmas Island IDFs and have progressively been extended across the network. Currently the provider has a permanent presence on Christmas Island and a regular schedule of visits to other IDFs as outlined in Figure 15.

Figure 15: Employee Assistance Program attendance at immigration detention facilities

Detention site	Employee Assistance Program schedule
Christmas Island	Permanent presence with rotation of psychologists or counsellors as required
Curtin	2 consecutive days a fortnight
Villawood	3 days a week
Leonora	2 consecutive days a month
Scherger	3 consecutive days a month
Darwin	4.5 days a fortnight

Source: DIAC

The Employee Assistance Program also provides services to all staff and managers through its contract with the department, including:

- free confidential and professional assistance through short-term counselling and consulting for staff and immediate family members, covering a wide variety of problems and concerns including: work place mediation; interpersonal issues; emotional or psychological health; and family and/or relationship issues. It is accessible 24 hours a day/seven days a week through a 1300 number or online service
- Manager Assist Program which supports managers and team leaders in managing a range of workplace situations such as a staff member with problems impacting on their work performance or behaviour; interpersonal conflict; or a distressed or troubled staff member.

Occupational health and safety support

Additional OHS pressures present themselves in an immigration detention environment, making it critical that all people working in the environment are familiar with their responsibilities and obligations in managing a safe workplace.

In 2011 the National OHS Manager started a series of environmental scans across all IDFs to identify OHS issues and help managers and staff to manage these. A number of actions are underway as a result of these scan results, including developing national OHS instructions for staff working in IDFs.

In addition to existing national injury prevention and management support services, the department has recently established a dedicated OHS team in the Health and Safety Section to provide OHS support to managers and staff across the detention network. The team, headed by a national manager, assists staff and managers with OHS issues arising in IDFs including: OHS incident response and reporting; hazard management; OHS policy development; liaison with the regulator; and coordination psychological support services.

National Injury Prevention and Management Plan 2010–12

In May 2010, the secretary launched the National Injury Prevention and Management Plan 2010–2012 to reinforce the department's commitment to continuous improvement in injury and illness prevention and management. The plan's strategic theme is 'well @ work'.

Under the plan, the department commits to strategies to develop or improve injury prevention programs for staff working in high-risk roles (for example, overseas posts and remote localities) and to implement national prevention programs aimed at work-related psychological injuries and illness. The resilience program is a key program to be implemented under the plan and aligns with the department's strategic vision for work health and safety.

Occupational health and safety incident reporting

All departmental officers, including those working at IDFs, are obliged under the OHS Act to report all OHS incidents in which they are involved, or those they personally witness. All incidents (including near misses)

must be reported through the department's online incident register. A summary of OHS incidents reported in the department's OHS incident register is provided in the tables below.

Figure 16: Irregular Maritime Arrivals - incident reports

Irregular Maritime Arrivals: incidents reported—By IDC (1 July 2010 to 30 June 2011)	
Christmas Island	38
Curtin	9
Leonora	1
Port Augusta	1
Northern IDF	8
Scherger	6
Villawood	8
Other	2
Total	73

Irregular Maritime Arrivals—incident types as reported by mechanism of incident (1 July 2010 to 30 June 2011)	
Motor vehicle accidents (MVA), including where no injury sustained	15
Eye issues	2
Slips, trips and falls	29
Client aggression	9
Dangerous occurrence—no injury reported	2
Body stressing	6
Cuts and abrasions	4
Other	6
Total	73

Source: DIAC

Irregular Maritime Arrivals—related workers' compensation claims

The department has a robust injury management framework covering all staff. The department provides Rehabilitation Case Manager support to all staff impacted by injury and illness in the workplace.

Figure 17 summarises IMA-related workers' compensation claims from 1 July 2010 to 30 June 2011.

Figure 17: Irregular Maritime Arrivals—related workers' compensation claims

Irregular Maritime Arrivals—related workers' compensation claims lodged with Comcare (1 July 2010 to 30 June 2011)	
Slips, trips and falls	5
MVA	1
Biological exposure	2
Lifting (luggage)	1
Body stressing (twisted knee—not a slip, trip or fall)	1
Psychological	1
Total	11

Source: DIAC

Section 68 notifications to Comcare

In line with its legislative obligations under s. 68 of the OHS Act, the department must notify Comcare of serious incidents that take place in all IDFs. This applies to incidents involving department staff, Serco staff and people in detention. In 2010–11, the department made 171 notifications to Comcare relating to incidents from IDFs. Most related to cases of attempted self-harm, actual self-harm and major IDF disturbances.

The department facilitates Comcare's investigations into incidents and OHS procedures in detention centres. The department has made improvements on advice from Comcare in the course of its recent investigation into IDFs, particularly in Villawood.[109]

Performance and management

The department is highly responsive to feedback it receives from external stakeholders about its operations, particularly its detention operations, given the significant challenges and risks involved.

The operations of immigration detention have been subject to extensive external scrutiny from agencies such as the Ombudsman and the Australian Human Rights Commission. Regular reviews and reporting from these agencies have played an important role in informing the department on improvements to its processes.

The report on the investigation of IDFs released by Comcare on 21 July 2011 also raised issues relating to the performance and management in this area of the department's operations. The report, together with identifying areas for improvement, highlighted the consequences of overcrowding and the volatility that exists in centres where there are a mix of groups and people with potentially different outcomes to their asylum claims.

The department continues to work closely and cooperatively with Comcare to ensure its obligations under the OHS Act are met.

Recent action taken by the department in response to performance reviews includes:

- establishing a dedicated health and safety team and the national IDF health and safety team, to provide specialised OHS support for staff and managers working in IDFs

[109] Comcare, Investigation Report into Immigration Detention Facilities, [20], viewed 16 September 2011, <http://www.comcare.gov.au/__data/assets/pdf_file/0008/95984/A_copy_of_the_Investigation_Report_on_National_Detention_Facilities.pdf>.

- developing national OHS guidance for staff and managers at IDFs–expected to be finalised and implemented across all IDFs by October 2011; awareness raising training started at the beginning of 2011.
- developing a national IDF hazard inspection schedule (distributed 19 July 2011)
- the national IDF health and safety team has developed a schedule of IDF 'environmental scans' to be conducted over the next seven months. The scans, which began in February 2011, involve comprehensively reviewing current OHS practices, identifying risks and training needs and collecting evidence of local activities for the department's monitoring obligations under the OHS Act 1991.
- establishing with Comcare a process for recording incidents in both departmental and Comcare systems and reconciling results so Comcare can strengthen its guidance on reporting of incidents.
- engaging professional services from Price Waterhouse Coopers to help develop a suite of risk assessments and risk management plans for managing detention services contracts.
- conducting risk assessment workshops at all sites during July and early August 2011.

Contracted service providers

The detention services contracts with service providers such as Serco, IHMS and Life Without Barriers require providers to ensure their staff are appropriately trained. The department works closely with service providers through its regular contract management meetings to ensure these critical obligations are being properly implemented and complement the department's activities in detention centres.

Training is a key component of the contract with the detention service provider and all Serco staff must have completed induction training before they start working at a centre (including a range of programs).

Serco also has to develop a centre-specific security risk assessment for each IDC including individual risk assessments for every person in detention. To do so, Serco has implemented measures designed to enhance support in place for people in detention, increase the level of amenity and promote harmony.

Serco is also required to maintain a national training database with records of training undertaken by their staff. Using this information as a basis, Serco provides quarterly reports to the department and retains, at each immigration detention site, details of training undertaken by rostered staff.

The contract with Serco outlines a Philosophy of Security Services which states that security will be managed cooperatively with the Departmental Regional Manager and the Health Services Manager to provide integrated and effective services. The contract has a number of provisions that require Serco to ensure that IDFs provide a safe and secure environment for all people within.

Risks for members of the public who enter an IDF are minimised through various measures which have both passive and active components. These include the completion of regular site-specific risk assessments, screening of visitors and the provision of visitor escorts where it is deemed necessary.

IHMS is required to ensure all health care providers – including network providers – have the necessary and appropriate registrations, accreditations, qualifications, skills, training and experience to provide health care to people in immigration detention. In addition IHMS must ensure that all staff are appropriately trained in the requirements of the contract, on cultural, race, gender and specific health issues as well as risks and sensitivities relevant to delivering health care to people in detention. Training in code of conduct and OHS is also required.

In their Health Services Plan IHMS must provide the department with details and strategies for measuring implementation as well as on take up and effectiveness of induction and continuing education training. IHMS has also established the Graduate Diploma of Detention Nursing course in consultation with the University of Tasmania. IHMS provides monthly reports to the department on the number of personnel and network providers who have completed induction training, which is required before their commencement.

The contract with Life Without Barriers requires staff to be suitably trained for the role and to undertake mental health awareness and first aid training and to also attend any training recommended by the DeHAG.

Conclusion

The impact of the increasing IMA population on the detention network and its staff cannot be underestimated. It is critical that staff working in such complex and ever-changing environments be well supported and have appropriate services available to support them when managing a highly volatile environment or when delivering sensitive information to people in detention. It is also critical that staff be fully aware of their responsibilities under legislation and be familiar with the operating procedures and protocols notification of incidents to the appropriate authorities. To this end—as has been outlined in this section— the department has taken a number of actions to ensure these staff obligations are well understood and that service providers meet their contractual obligations.

Department interactions with state and territory governments

m) any issues relating to interaction with States and Territories regarding the detention and processing of IMAs or other persons

The department's primary interactions with state and territory governments on the immigration detention network relate to providing services for people in detention – in particular, health, police, education and welfare services.

Health

When detention situations arise that require specialist intervention and treatment, IHMS refers IMAs to external health providers.

State and territory health services provide specialist public health care and hospital services under network provider arrangements with IHMS. Arrangements are in place for this in each state and territory. All costs associated with services provided by state and territory health departments are paid by IHMS on a 'fee for service' basis and passed through to the department for cost recovery. Some state and territory health departments are funded for the additional staffing and overhead costs associated with providing health services to people in immigration detention.

These arrangements are governed by a series of MoUs or in-principle agreements with each state and territory for providing health services to people in immigration detention. The department is currently working with state and territory health departments to review the current arrangements and to prepare new or revised MoUs.

The department has an in-principle agreement with the Department of Regional Australia, Regional Development and Local Government (Regional Australia). Regional Australia is responsible for the Indian Ocean Territories Health Service that provides health care services on Christmas Island.

Education

All school-aged minors (whether living in IDFs or in community detention) are provided with access to education in line with community standards and state and territory laws.

The department arranges for children who are accommodated in APODs to access education through public schools in the community or through services provided by the detention services provider. Children living in community-based detention arrangements are enrolled in a range of government and non-government schools depending on the child's needs and other factors such as the school's proximity to their home and access to English language support.

Access to schools in the community is underpinned by agreements with state and territory governments or other non-government providers, including settling costs and billing arrangements. It is anticipated that these arrangements will be finalised before the end of the 2011 school year.

Education providers support access to school education for children living in immigration detention and are working collaboratively with the department to ensure such access. Enrolments have been taking place smoothly while payment arrangement negotiations have been continuing.

Following the expansion of the use of community detention from late 2010, a small number of existing arrangements needed to be reviewed to take into account the greater number of students requiring access to new arrival programs and intensive English as a Second Language classes.

Police

As the detention population has increased so too has the number of incidents in IDFs requiring police assistance.

The department has been working with the AFP and state and territory police to develop an MoU to ensure appropriate policing responses are provided at IDFs. The MoU will be a tripartite agreement with the AFP and state and territory police and will comprise an overarching MoU with specific annexures for each jurisdiction.

When finalised, the MoU will outline when, how and in what circumstances the relevant police force and the AFP will respond to incidents at IDFs.

Welfare agencies

In making decisions about the welfare and care of unaccompanied minors in IDFs, the department draws on the advice of experts in child welfare, such as psychologists and state child welfare authorities.

The department has entered into MoUs with relevant state and territory agencies about the operation of state and territory child protection and welfare laws in IDFs.

These address the roles and responsibilities of the department and the individual state or territory welfare authorities about child welfare and protection in facilities and the processes for identifying, reporting and following up allegations of abuse or neglect.

It is mandatory for departmental staff and people working on behalf of the department, detention service provider staff and non-government organisation carers to cooperate with any investigation by a state or territory child welfare authority concerning allegations of abuse or neglect in keeping with the MoUs or standard practice where there is as yet no MoU in place.[110]

[110] DIAC, Procedures Advice Manual, Detention Services Manual – Chapter 2 – Client placement – Minors in Detention – Roles and Responsibilities, 15 August 2011, section 18.2.

Managing incidents

k) the level, adequacy and effectiveness of reporting incidents and the response to incidents within the immigration detention network, including relevant policies, procedures, authorities and protocols
(h) the reasons for and nature of riots and disturbances in detention facilities
(n) the management of good order and public order with respect to the immigration detention network

Introduction

The risk of incidents, such as riots and self-harm attempts, are ever present in a confined and restrictive environment. Immigration detention is no different. But the uncertainty of how long a person is to remain in immigration detention and the outcomes of their claims to remain in Australia heighten the anxiety of individuals. When such anxieties extend to groups of people, the potential for major disturbances and protest becomes greater.

Incidents have occurred in IDFs in the past and continue to occur today. The scale of these events can vary from quite minor, perhaps affecting one individual, to significant, involving a group in a centre, or groups inside and outside a centre. Incidents in an immigration detention environment have the potential to harm clients and staff; damage buildings and other property and disturb the public. The department seeks to minimise these incidents, while acknowledging the complex interplay of factors that can contribute to unrest.

This section provides an overview of the current policy and procedures for managing incidents in immigration detention centres. It provides a snapshot of:

- recent incidents across the immigration detention network
- the reporting of incidents and response to incidents
- recent initiatives responding to the nature of some of the incidents.

This section does not cover in detail the riots that occurred in Christmas Island and Villawood in 2011 because the government has commissioned an independent review into the circumstances of these events jointly led by two prominent former senior public servants, Mr Alan Hawke AC and Ms Helen Williams AO. This report (the Hawke Williams Review) will examine *inter alia* the circumstances around the major disturbance at Christmas Island IDC in March 2011 and the circumstances of the Villawood disturbance in April 2011.The review is expected to examine and report on the preparedness and response of the department and Serco in managing these incidents and make recommendations for improvements or changes to the current operating models. It is expected that once the government has considered the findings of this report it will be publicly released.

The nature of the incidents

Incidents in detention centres can include self-harm, voluntary starvation, and major disturbances involving large numbers of clients and/or members of the public.

The department's contract with Serco reports against three incident categories:

1. **Critical incident**—an incident or event that critically affects the good order and security of the facility or where there is serious injury or a threat to life, including escapes, self-harm and serious assault.
2. **Major incident**—an incident or event which seriously affects, or has the potential to threaten or harm, the security of the facility, the welfare of people in detention, or the success of escorts, transfer or removal activities. Major incidents include an epidemic, sabotage or a demonstration by people in detention.
3. **Minor incident**—an incident or event that affects, but to a lesser degree than a major incident, the safety and security of the facility, the welfare of people in detention, or that threatens the success of escorts, transfers or removal activities. Minor incidents include food poisoning or missing property.

Incidents of self-harm are discussed in the 'health, safety and wellbeing of people in detention' section above. This section focuses on major disturbances in immigration detention.

Incidents across other parts of the immigration detention network in 2011

Along with the Christmas Island and Villawood incidents that have been well documented and are the subject of an independent review, a number of other incidents have occurred across the immigration detention network in 2011. Some key recent incidents are detailed here:

- Northern IDC (25 to 27 July 2011)—large numbers of clients protested on the roof.
- Scherger IDC (21 to 25 July 2011)—large numbers of clients conducted a peaceful protest in an outdoor common area.
- North West Point IDC, Christmas Island (21 July 2011)—large numbers of clients were involved in an incident, using makeshift weapons and setting fires which significantly damaged the centre.
- Northern IDC (28 and 29 June 2011)—large numbers of clients were involved in physical altercation, with some protesting on the roof, damaging the facility.
- North West Point IDC, Christmas Island (16 June 2011)—a number of clients lit fires and damaged the facility.
- North West Point IDC, Christmas Island (9 June 2011)—clients coordinated a number of protests, destroying property and damaging gates.
- North West Point IDC, Christmas Island (20 May 2011)—large group of clients were involved in a physical altercation that included conflict between nationality groups and injured two Serco officers.
- Scherger IDC (16 May 2011)—an altercation between two individuals escalated into a physical altercation involving clients from two nationality groups who armed themselves with makeshift weapons. Six injuries were reported.

Major disturbances in immigration detention facilities before 2011

Major disturbances in IDFs also occurred during previous periods when large numbers of people were held in immigration detention. For example, in 1992, a number of clients in the Port Hedland IDC were transferred to the state prison in Roebourne following escapes and unrest at the centre.

The period between 1999 and 2002 also witnessed a large number of significant incidents in IDFs. Some key incidents are detailed here:

- Baxter (December 2002)—serious fire at Baxter lit by clients
- Port Hedland (April 2002)—large numbers of clients were involved in a violent protest resulting in damaged property
- Curtin (April 2002)—100 clients at Cutin were involved in smashing computers and other vandalism
- Woomera (March 2002)—around 500 clients protested and tore down the perimeter fence
- Woomera (December 2001)—clients threw burning aerosol cans at detention staff, with some detention service provider staff injured
- Woomera (December 2001)—13 buildings were damaged or destroyed by fire over several days
- Curtin (June 2001)—Around 200 clients burnt down a small building and damaged other property
- Port Hedland (May 2001)—clients were involved in a riot with 22 later charged over their involvement
- Curtin (January 2001)—a large-scale incident occurred involving a significant number of clients who attacked staff with makeshift weapons
- Woomera (June 2000)—a mass escape involving over 500 people into Woomera township.

Many other incidents from this period are not listed.

Issues affecting management of incidents in detention centres

Incidents in immigration detention can occur for many reasons, including:

- number of people in detention, including overcrowding and substandard accommodation
- disposition of detained clients, resulting from boredom and lack of meaningful activities or anxiety stemming from family separation or other trauma
- asylum processing environment, including the timeliness of decisions and the nature of the outcomes (behaviour can be affected, for example, by whether the clients are on positive or negative pathways).

These issues are discussed in more detail in section 3.2 'People in the immigration detention environment.'

How incidents are reported

As the detention services provider, Serco is responsible for the initial reporting of and response to incidents. The detention services contract requires Serco to verbally report incidents in a defined timeframe (depending on the scale of the incident), and to record the incident through departmental systems. Serco is also required under the terms of its contract to maintain an accurate and comprehensive Incident Management Log detailing the time, date and location of the incident and any instructions issued or actions taken in response.

When the situation escalates

Staff of the department are not employed or trained to have the requisite skills or experience to handle major incidents involving violence. The department has in place a set of protocols to guide staff on incident and emergency management. The detention services contract requires Serco to have in place requisite incident management protocols and to ensure their staff are trained to required levels.

The application of reasonable force and/or restraint

The immigration detention values (detailed in Section 3.14 and Section 1) state that persons in immigration detention will be treated fairly and reasonably within the law and that conditions of immigration detention will ensure the inherent dignity of the human person. For the application of reasonable force and/or restraint in the immigration detention environment this means that conflict resolution through negotiation and de-escalation is to be used as the first option where possible. The use of reasonable force and/or restraints is a last resort measure.[111]

Departmental policy on the application of reasonable force and/or restraint is set out in the department's Detention Services Manual (DSM).

Reasonable force is defined in the DSM as the minimum amount of force, and no more, necessary to achieve legislative outcomes and/or ensure the safety of all persons in immigration detention, staff and property. The use of force is considered to be reasonable if it is objectively justifiable and proportionate to the risk faced. Actions that may be used to control a situation will range from non-contact options (for example, physical presence alone), to options involving physical contact.[112]

[111] DIAC, Procedures advice Manual, Detention Services Manual – Chapter 8 – Safety and Security – Use of reasonable force in immigration detention, 15 August 2011, section 10.
[112] Ibid, section 4

The DSM states that unless a situation requiring instruments of restraint is an emergency, any planned application of restraints first requires a detailed risk-management assessment to be undertaken. The DSM also states that instruments of restraint must only be used by trained officers and must:

- never be applied as a punishment or for discipline
- never be applied as a substitute for medical treatment
- never be used for convenience or as an alternative to reasonable staffing
- be removed once the threat has diminished and the officer believes that the person is no longer a threat to themselves, others or property.[113]

Serco's responsibilities with using force and restraints are outlined in the detention services contract.

The role of police

The powers of police involved in immigration matters are much broader than those of the detention service provider. The general legal duty of police to keep the peace persists, despite the presence of private contractors in IDFs.

Plans for managing incidents are developed for each detention facility by Serco. However, the department is working with the AFP, state and territory police and Serco to develop a MoU. Further details are outlined in section 3.3 (b) 'Department interactions with state and territory governments.' In the interim the department, the AFP and Serco have developed a joint incident management protocol for any large-scale incidents on Christmas Island.

During the major incident on Christmas Island in March 2011, the department formally handed responsibility for the IDC to the AFP. This was a joint decision between the department, the AFP and Serco, based on a reasonable decision-making process that determined the situation had escalated beyond the capacity and capability of Serco to keep control. The AFP retained control until order was restored and the safety and security of all people could be reasonably assured.

Review and external scrutiny

In March 2010 the department commissioned Knowledge Consulting to review the security arrangements at Villawood IDC. Following this consultancy, security at Christmas Island was reviewed. The terms of reference for these reviews included advice as to the optimal capacity of infrastructure on the island, an assessment of the risks currently being faced in administering the facilities in a safe, secure and humane manner, and a review of the security arrangements in place, including intelligence gathering.

On 14 April 2011 the Commonwealth Ombudsman announced his intention to conduct an Own Motion investigation concerning the use of force on Christmas Island. The Ombudsman investigated the cross-agency activities on Christmas Island, and in particular the use of force by AFP members and Serco. The Ombudsman examined whether both parties demonstrated due process and considered decision making. Attention was to be paid to cross-agency coordination and training, management and oversight, information systems, quality assurance and controls over the use of powers. The draft report is expected to be provided to the department for comment in late September or early October 2011.

The Character Bill—Migration Amendment (Strengthening the Character Test and Other Provisions) Act 2011

In response to the serious riots in March and April 2011, the government moved to strengthen the character provisions by providing that where people in detention have been convicted of an offence in immigration detention, they will automatically fail the character test.[114] *The Migration Amendment (Strengthening the Character Test and other Provisions) Act 2011* received Royal Assent on 25 July 2011.

[113] Ibid, section 8

[114] *Migration Amendment (Strengthening the Character Test and Other Provisions) Act 2011* (Cwlth), Sch 1.

In effect, the amendments provide grounds on which a visa can be refused to people in detention who are found to have been convicted of criminal conduct while in detention. A decision on whether to exercise the discretion to refuse or cancel a visa continues to be a matter which takes account of all relevant features of the case in question. The amendments also increased the punishment for people in immigration detention who are found to be manufacturing, possessing or distributing weapons to five years imprisonment.

These amendments aim to create bigger disincentives for people in detention to engage in criminal behaviour.

Conclusion

The scale and nature of IMA arrivals and the consequent increases in the detention population has resulted in a series of complex challenges for the department. There continues to be significant pressure on the detention network and every effort is being made to deal with these pressures in a coordinated and comprehensive manner.

In response to its own observations and recommendations from numerous investigations and reports, the department has implemented measures to improve current practices.

Costs

(o) the total costs of managing and maintaining the immigration detention network and processing IMAs or other detainees
(g) the impact, effectiveness and cost of mandatory detention and any alternatives, including community release
(p) the expansion of the immigration detention network, including the cost and process adopted to establish new facilities

Costs of managing and maintaining the immigration detention network

The department has currently budgeted $1.287 billion for the detention network and compliance operations. This compares to estimated actual expenses of $985.917 million in 2010-11. Of the amount allocated for 2011–12, $1.06 billion has been assigned to offshore asylum seeker management, while $90 million has been assigned to the onshore detention network.[115] This section discusses the reasons for these costs.

The irregular maritime arrivals calculation

The increase in estimated costs for managing and caring for IMAs results from a financial estimates model based on IMA arrivals and average occupancy rates throughout the year. This cost estimate is an average across all IDFs including community-based detention. It includes:

- costs for processing and managing IMAs in detention
- continued use of appropriate detention facilities on the mainland (currently 22 sites)[116] and facilities on Christmas Island (currently three sites)[117] to accommodate IMAs
- expansion of the community detention program that moved significant numbers of unaccompanied minors and vulnerable family groups out of IDFs and into community-based accommodation
- increased time some IMAs will spend in detention because of the High Court decision (late 2010) that gave asylum seekers the right to a judicial review of a negative assessment for their claims of refugee status (this will be partially offset by key measures implemented to reduce the numbers in detention through efficiencies in processing IMA claims)
- estimate of 750 new arrivals in 2011–12 and an average occupancy throughout the year of 6566 clients.

The department cannot provide costs for the model's individual components, as it is based on actual averages over time and not on specific individual cost components. The 2011–12 cost estimates do not include depreciation as Australian Government departments are no longer funded for depreciation.

Costs of processing irregular maritime arrivals and other people in detention

The department uses different types of IDFs to provide flexible services to people in immigration detention. These facilities include IDCs, immigration residential housing, immigration transit accommodation, alternative places of detention and community detention programs facilitated by NGOs such as the Australian Red Cross.

The significant increase in the number of IMAs in recent years has required Australia to expand its immigration detention network. This has included developing facilities to accommodate IMAs on the mainland

[115] Australian Government, Budget, Portfolio Budget Statements 2011-12: Immigration and Citizenship Portfolio.
[116] Does not include detention in the community, correctional facilities, watch houses, foster care and hospitals. Adelaide APOD, Brisbane APOD, Brisbane ITA, Curtin IDC, Darwin APOD, Darwin IDC, Inverbrackie, Leonora, MIDC, MITA, Pontville, PAIRH, PIDC, PIRH Perth APOD, Scherger, Villawood IRH, Villawood IDC, Yongah Hill, Wickham Point, Pontville, Jandakot—includes sites currently under construction.
[117] Christmas Island IDC, Construction Camp, Phosphate Hill.

after their initial reception and processing IMAs on Christmas Island. It has also included expanding residence determination program to move children and vulnerable families into community detention.

For more information on the expansion of the immigration detention network, see the accompanying issues paper *Immigration detention network facilities in Australia.*

The process for establishing new facilities

New facilities can be established in several ways—depending on need—including:

- using Department of Defence buildings with pre-existing infrastructure, such as Scherger in Weipa, Queensland
- block booking commercial sites, such as the Darwin Airport Lodge in Darwin, Northern Territory
- building new facilities, such as Pontville near Hobart, Tasmania.

Recent years have seen a gradual move from IDFs in remote locations to locations in, or close to, metropolitan areas. The rationale behind this has been to balance reliance on availability of space in different states and territories with the need to avoid overstretching services. Less remote locations are also more convenient for access and the availability of certain services. At the end of the day, however, the key is the availability of viable sites.

In all cases Australian Government procurement guidelines are adhered to when establishing new facilities.

In determining the opening of new facilities, the department conducts stakeholder engagement and consultation with the local communities as part of the development process. For all new facilities that are being built, a Community Reference Group is set up. This is a formal meeting that enables the department to interact with the community and share ideas and concerns regarding the establishment of an immigration detention facility.

The department is also committed to exploring the ongoing use of local businesses and contractors in the development and operations of its facilities where possible.

The government has recently announced several new capital works projects to build and upgrade IDFs. These include establishing new facilities in Tasmania, Western Australia and the Northern Territory, in addition to upgrading the Villawood IDC in New South Wales.

These arrangements are detailed below:

Pontville—Tasmania

On 5 April 2011 the government announced a new IDC would be commissioned at the Defence facility at Pontville in Tasmania. The centre is expected to accommodate up to 400 single men assessed as ‘low risk’.

The department engaged a network of engineers, architects and environmental scientists to undertake an environmental and heritage review of the Pontville site. This included an examination of existing reports provided by Defence, which owns the land. The department has also contacted Indigenous communities and held meetings with local residents about the construction and timeframe of the project**.**

A Tasmanian firm of architects and a local construction company were engaged to upgrade existing buildings and develop the new facility.

Stages 1 and 2 were completed in the week starting 29 August 2011 and the first group of clients was flown in shortly after. Stage 3 is scheduled for completion in early October, taking the facility to its capacity of 400.

The capital budget for the construction of Pontville is $14.8 million.

Yongah Hill—Western Australia

On 18 October 2010 the government announced the decision to construct a new IDF on Defence land at Yongah Hill, at Northam in Western Australia.

The centre was originally designed to accommodate 1500 clients. However, this has since been reduced to 600 clients.

Following the 2011-12 Budget the capital budget for Yongah Hill is now $124.50 million.

Wickham Point—Northern Territory

On 3 March 2011, the government announced the decision to lease a new detention facility at Wickham Point in the Northern Territory for three years. These lease arrangements were a different approach of establishing new immigration detention facilities without the need for large capital costs.

The centre is expected to accommodate 1500 single adult men.

As at 30 June 2011 the total cost of the department's infrastructure at the new detention facility was expected to be $9.2 million. This money is only for the fencing, office accommodation and the extra facilities required for immigration detention, as the actual accommodation is being built by a private sector developer.

Building started at Wickham Point in June 2011. Stage 1 construction (500 beds) is expected to be completed by November 2011. Stage 2 and 3 of the facility will be completed by April 2012.

Asti Hotel—Northern Territory

The department had a block booking of accommodation at the Asti Hotel, in Darwin, Northern Territory, and used it as an alternative place of detention to accommodate up to 175 clients. The first intake of clients occurred in May 2010.

On 3 March 2011 the government announced the department would vacate the Asti Hotel and relocate all clients to the expanded Darwin Airport Lodge. The Asti Hotel ceased to be a place of detention on 4 July 2011.

Total payments made for the lease of accommodation at the Asti Hotel over the period May 2010 to July 2011 were $5.33 million.

Villawood Immigration Detention Centre upgrade

The government announced the provision of $186.7 million to extensively redevelop the Villawood IDC as part of the 2009–10 Budget. The Department of Finance and Deregulation is managing the redevelopment on behalf of the department.

Remediation of soil and site establishment started on 20 April 2011. The project's schematic design and cost plan are well advanced following extensive user group workshops and consultation. The project will be tendered in packages in 2011, with the redevelopment completed in stages. Higher-risk accommodation and all central facilities are scheduled to be completed by early 2013 with the refurbished and extended lower and medium-risk buildings scheduled to be completed in 2015.

The IDC will continue to operate during redevelopment. The managing contractor has prepared a staging plan to support the security, amenity and safety of the centre for the life of the project.

The redevelopment will include replacing the higher-security accommodation (Blaxland) with a new 90-room facility and new central facilities (kitchen, dining, medical, mental health, education, recreation and sporting facilities). The lower and medium-risk accommodation blocks (Hughes and Fowler) will be substantially replaced.

History of capital funding since October 2009

This section provides a detailed timeline of capital funding decisions since October 2009.

October 2009

In October 2009 the government agreed to capital funding of $34.225 million for expanded facilities on Christmas Island as a result of increasing numbers of IMAs being accommodated there. This was appropriated to the department as part of the 2009–10 Additional Estimates process.

April 2010

In April 2010 the government agreed to capital funding of $183.320 million over two years for recommissioning the Royal Australian Air Force Base Curtin (Curtin) the upgrade of facilities on Christmas Island and other onshore detention facilities. This was necessitated by the increase in IMA numbers and the decision to accommodate some IMAs on the mainland to relieve overcrowding on Christmas Island. This was reflected in the 2010–11 Portfolio Budget Statements.

July 2010

In July 2010 the government agreed to funding to expand onshore detention centres. A further $97.833 million of capital funding was approved.

October 2010

The planned capital works the government announced in July 2010 did not proceed due to changing operational requirements. In October 2010 the announced funds were reallocated to a revised list of capital works projects needed to meet urgent operational requirements. This included commissioning two new detention facilities, one at Northam in Western Australia and one at Inverbrackie in South Australia. Savings in capital costs were also realised with the work to be done at Curtin as a result of the operational decision to lease rather than construct staff accommodation. The government announced further new funding of $54.917 million on 18 October 2010.

March 2011

On 3 March 2011 the government approved funding of $9.160 million for capital works to be undertaken at Wickham Point in Darwin. Wickham Point will be a privately leased facility. The funding is shown in the 2011–12 Portfolio Budget Statements.

April 2011

On 5 April 2011 the government announced funding of $14.806 million for capital works associated with the use of Pontville Defence facility as a temporary measure until other capital works had been completed. The funding is shown in the 2011–12 Portfolio Budget Statements.

May 2011

In May 2011 the government announced that the capacity of the Yongah Hill IDC was to be reduced to 600 single adult males from the 1500 capacity which was originally announced in October 2010.

The minister did not announce the saving that would be achieved as a result of this decision but it was estimated at $40 million. This announcement was not included in the 2011–12 Portfolio Budget Statements but will be included in the 2011–12 Additional Estimates.

Alternatives to the use of detention centres

Unlawful non-citizens are housed in immigration detention. While most people are placed in IDCs, in certain circumstances, the department may consider alternative arrangements. Under Section 5 of the Migration Act, immigration detention can be maintained by individuals either being in the company of, and restrained by, an officer, or another person directed by the secretary to accompany and restrain the individual. Section 5 of the Act also states that immigration detention can be maintained by individuals by being held by, or on behalf of an officer, in an immigration detention centre or other places, including any place approved by the minister in writing.[118]

Alternative places of detention provide some flexibility to meet the practical and special needs relating to people in immigration detention. Alternative places range from residential housing projects established by the department through to motels where, for example, people may spend one night while in transit to a detention facility or awaiting removal from Australia.

Since 2001 there has been scope to accommodate people in community settings. This began with the introduction of a residential housing project in Woomera. This trial established family-style accommodation in the township for up to 25 women and children. Further residential housing projects were established in 2003 at Port Hedland and at Port Augusta.

A range of alternative detention options have been explored and introduced. For example, in 2001 a pilot program for alternative detention arrangements for women and children was initiated. Following its success alternative detention arrangements in the community have been formalised and expanded, with the help of community organisations.

In July 2005 all minor children and their families were moved from IDCs into community detention. Since October 2010 there has been concerted effort to move children and families out of immigration transit

[118] *Migration Act 1958* (Cwlth) s. 5 “immigration detention”.

accommodation and alternative places of detention into community detention. No children are knowingly held in immigration detention centres.

All unaccompanied minors and families with children who enter immigration detention are progressively referred to the minister for consideration for community detention.

Community detention is a form of immigration detention, which can only be authorised by the minister personally under the Migration Act. The legislation allows the minister to make a residence determination allowing people in immigration detention to be detained in the community if the minister believes it is in the public interest to do so.

This form of immigration detention does not require the client to be in the company of, or restrained by, an officer or other appropriately authorised person. While community detention allows a person to move about in the community without being accompanied, it is still a form of immigration detention and does not give the person lawful status, or the rights or entitlements of a person living in the community on a valid visa.

People in community detention are supported by the Australian Red Cross contracted by the department as the lead agency, and its sub-contractors who source suitable accommodation from the private rental market and church agencies. Public housing is not used for community detention. Family groups, women and children, unaccompanied minors and people who have special needs that cannot be met in an IDC or other immigration facility have been the focus of consideration for this form of immigration detention.

The cost of the community detention program for the 2010–11 financial year was $17.3 million. The costs incurred to date reflect the initial set-up costs for the program such as securing leases, connection fees for utilities and provision of household goods in each property.

Immigration detention policy

(a) any reforms needed to the current Immigration detention network in Australia
(l) compliance with the government's immigration detention values within the detention network

Introduction

Reforms to detention have been underway since 2005. These have involved significant business and cultural change transformation designed to improve the circumstances of people in immigration detention. They include an increased focus on making detention more transparent and flexible, such as with the introduction of community detention, the Commonwealth Ombudsman oversight of long-term detention cases and an enhanced client service approach to better match the needs of people in immigration detention to the most appropriate detention accommodation option.

Background—New Directions in Detention policy

On 28 July 2008 the minister announced the New Directions in Detention policy, a suite of initiatives to guide the development of Australia's immigration detention values. These are being implemented administratively, within the framework of existing domestic law.

When the policy was announced the minister made it clear the values would apply on Christmas Island to the full extent possible within the Government's excision and refugee status processing arrangements.

The seven key immigration detention values are:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
    a. all unauthorised arrivals, for management of health, identity and security risks to the community
    b. unlawful non-citizens who present unacceptable risks to the community and
    c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

In addition to these seven immigration detention values, the policy considers that:

- the presumption that persons will remain in the community while their immigration status is resolved
- the department has to justify the decision to detain and cannot presume detention
- a key determinant of the need to detain a person is risk to the community
- a person who is to be detained must be detained in a facility commensurate to the risk they present
- detention is a last resort.

Progress in implementation of New Directions in Detention

Mandatory detention (immigration detention values 1 and 2)

Australia's universal visa regime requires that anyone in Australia who is not an Australian citizen must hold a valid visa. If they do not, they are considered to be an unlawful non-citizen and liable to detention and removal.

Mandatory detention is used to manage risk. People who arrive in Australia, or who seek to enter Australia, without the appropriate authority do not provide the government with an opportunity to assess risks they might pose to the Australian community before presenting at the border.

The Australian Government has therefore put into place a framework covering the need to detain unauthorised arrivals at the border to manage any health, identity and/or security risks to the community.

In contrast, people who arrive lawfully have been assessed through Australia's visa process, which has enabled the government to undertake appropriate health, identity, security and *bona fides* checks. People who arrive lawfully in Australia and later become unlawful non-citizens, or later claim asylum, almost always remain in the community while their claims are assessed, except where they present unacceptable risks to the community.

This practice is in accordance with the presumption that persons will remain in the community while their immigration status is resolved.

Children in detention (immigration detention value 3)

Value 3 states that children are not to be held in IDCs. While the Migration Act was amended in 2005 to affirm the principle that children should only be detained as a last resort, the principle does not limit the location and nature of such detention. This detention value builds on this principle by explicitly banning children from being detained in IDCs.

The government has adhered to its commitment to not knowingly detain children in IDCs. Current practice is that children who are unauthorised arrivals are accommodated in lower security alternative places of detention in the immigration detention network (such as immigration residential housing and immigration transit accommodation). This would also be the appropriate approach where there are overriding considerations, for example in relation to maintaining family unity and care and supervision by parents.

Following the minister's announcement in October 2010, the department is progressively moving the majority of children and vulnerable families out of detention facilities and into community detention. As at 26 September 2011, of the 845 children who are currently being processed, 398 are in alternative places of detention. The remainder are accommodated under community detention arrangements. No children are held in IDCs.

The Minister has instructed the department to ensure that the 'best interests of the child' principle guides staff in carrying out their legal responsibilities under the Migration Act. This is consistent with the Convention on the Rights of the Child to which Australia is a party. This maintains migration program integrity while ensuring the delivery of appropriate care and support to young people in detention.

Detention is not indefinite or arbitrary and is subject to regular review (immigration detention value 4)

Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, are subject to regular review.

These reviews are conducted every three months and alternate between departmental senior officer reviews and Commonwealth Ombudsman reviews. The reviews consider the lawfulness and appropriateness of the person's detention, their detention arrangements and other matters relevant to their ongoing detention and case resolution.

Continuing detention is not limited by a set timeframe but is dependent upon factors such as management of health, identity and security risks and ongoing assessments of risks to the community or the integrity of Australia's migration programs. Whilst continuing immigration detention may become arbitrary after a certain period of time without proper justification, the determining factor is not the length of detention, but whether the grounds for the detention are justifiable.

Immigration detention is subject to regular scrutiny from external agencies such as the Australian Human Rights Commissioner, the Commonwealth Ombudsman, UNHCR and CISSR, to ensure people in immigration detention are treated humanely, decently and fairly.

Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time (immigration detention value 5)

While immigration detention is a key component of immigration compliance, it is only one aspect of a suite of management options available. If a client is not an unauthorised arrival and poses no unacceptable risk to community or the integrity of Australia's migration programs, a bridging visa is usually granted while their status is resolved and they remain in the community.

In most instances, asylum seekers who arrive onshore do so while holding a valid visa and the majority of these people have their claims considered and processed while they remain lawfully in the Australian community.

All clients in immigration detention (whether on Christmas Island or the mainland) are subject to regular departmental senior officer reviews and Commonwealth Ombudsman reviews, which include assessment of the appropriateness of the client's placement. In considering the recommendations from these reviews, and balancing the risks to the Australian community, the department explores alternative placement options. Where considered appropriate, the department also refers cases to the minister for consideration of a community detention placement in accordance with the s197AB ministerial intervention guidelines.

People in detention will be treated fairly and reasonably within the law (immigration detention value 6)

Government policy requires that people in immigration detention be treated fairly and reasonably within the law. This policy applies not only to Australian Government officers, but also to people providing services to people in immigration detention on behalf of the Commonwealth.

The fair and reasonable treatment of people in immigration detention is subject to a range of Commonwealth legislation and other obligations including:

- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Immigration (Guardianship of Children) Act 1946*
- *Occupational Health & Safety (Commonwealth Employment) Act 1991*
- *Racial Discrimination Act 1976*
- *Sex Discrimination Act 1984*
- Convention on the Rights of the Child.

Conditions of detention will ensure the inherent dignity of the human person (immigration detention value 7)

Conditions in immigration detention include people in detention being provided access to:

- visitors, as well as telephones, computers, internet, fax machines and mail services
- culturally appropriate programs and activities including religious activities and the provision of culturally appropriate food
- points under the individual allowance program that can be exchanged for small personal items at the facility shop or for special purchases.

Children also have access to school to meet their educational needs.

To ensure that living conditions in immigration detention provide for the dignity of people in detention, the operations of immigration detention are continually subject to scrutiny from external agencies such as:

- the Australian Human Rights Commission
- the Commonwealth Ombudsman
- the United Nations High Commissioner for Refugees
- the Council for Immigration Services and Status Resolution
- Detention Health Advisory Group

Conclusion

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Conclusion

This submission has drawn together the threads of more than three decades of Australian policies on asylum and immigration detention. Current arrangements and policies need to be viewed in this broader historical context.

Successive governments have had to contend with comparable issues in relation to receiving people who arrive by boat and then processing their claims for asylum. This has been a 'hot-button issue' in the political context as governments have sought to meet Australia's international treaty responsibilities with the concerns of Australian citizens for a managed and orderly migration system.

The current pressures on the immigration detention system and on the processing of asylum claims have understandably raised community concerns. People should not be in detention for any longer than is necessary to determine if they have a claim to remain in Australia. However, it is also imperative that the community is protected from unacceptable risks and that immigration detention remains available to deal with people who will not cooperate in the resolution of their status.

Over the past six years the department has made a substantial investment in its people and infrastructure to enable it to respond to the needs of people in detention and to emergencies as they arise. To this end the department has:

- developed and implemented comprehensive training programs to ensure staff working with IMAs are appropriately trained
- made available a broader range of policy tools, such as community detention, to support asylum seekers once they have been initially screened and initial checks have been completed
- developed working relationships with key advisory groups such as the DeHAG and CISSR to improve conditions and access to services for those living in immigration detention.

The department is now at a crossroads. A sustainable and long-term strategy needs to be implemented to ensure that the immigration detention network is able to grow and retract as circumstance warrants over the coming years. This means building a flexible immigration detention and accommodation infrastructure model that can support immigration detention populations in various settings. This model needs to be backed up by sensible community-based programs such as the Community Assistance Support Program.

Complementing domestic Australian measures is the need for an active and highly effective international engagement strategy. The more Australia can do to support displaced populations closer to the source of displacement, address the criminal smuggling enterprises and promote orderly resettlement avenues, the more likely it is that people will not feel compelled to make dangerous journeys to this country.

Australia has a long history of regional and international engagement on these issues with regional partnerships dating back to the first exodus of refugees from Vietnam in the mid-1970s. These partnerships were strengthened by the Comprehensive Plan of Action of 1989.

The recent move to reach an agreement with Malaysia built on these experiences and relationships and was an opportunity to start the long process of strengthening the protection environment in the region and engaging countries more broadly on the question of refugee protection.

There is no one answer to these complex matters of immigration and immigration detention. How people move, and, why they move and to where they move, are based on often highly personal factors, including the situation in source, transit and destination countries at the time of movement.

The department, in drawing on long experience, considers it vital that all elements be considered in current and future efforts to manage the recurring issue of irregular maritime arrivals and humanitarian displacement.

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Attachment A: Chronology

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Annotated chronology of some key events concerning immigration detention, refugee and asylum issues

This chronology lists certain key events of relevance to immigration detention, refugees and asylum issues in Australia. It draws upon the measures mentioned throughout the Submission to the Joint Selection Committee on Australia's immigration detention network (September 2011) and other notable global, regional and domestic issues. It is not a complete history.

1945

Domestic

- Department of Immigration established.

1954

Domestic

- January—Australia signs United Nations (UN) Convention Relating to the Status of Refugees.

1958

Domestic

- Migration Act 1958 introduced.

1973

Domestic

- December—Australia ratifies 1967 Protocol Relating to the Status of Refugees.

- *Migration Act 1973* (Cwlth) amendment provides that a 'prohibited immigrant' can be detained and brought before a prescribed authority without warrant within 48 hours and detained for a period of seven days at any one time.

1975

International

- Communist victories in Cambodia, Laos and Vietnam resulting in the displacement of three million people over the next 20 years.

Domestic

- Australia informs United Nations High Commissioner for Refugees (UNHCR) of its willingness to accept refugees from Indochina.

1976

Regional

- Exodus from Vietnam continues to grow.

- April—first direct boat carrying Vietnamese asylum seekers arrives.

Domestic

- Beginning of first wave of asylum seekers to Australia by boat.

- Senate Standing Committee on Foreign Affairs and Defence issues its report, *Australia and the Refugee Problem*. The report finds a 'complete lack of policy for the acceptance of people into Australia as refugees' and recommends 'an approved and comprehensive set of policy guidelines and the establishment of appropriate machinery' to be applied to refugee situations. This leads to the formulation of procedures for designating refugee situations and appropriate responses to them and the establishment of an inter-departmental committee to advise the minister on Australia's capacity to accept refugees.

1977

Regional

- First wave boat arrivals peak at 1432 people on 43 boats (1977–78).

Domestic

- May—minister announces key components of Australia's new refugee policy in response to Senate Standing Committee on Foreign Affairs and Defence report and growing concerns that Australia needs to reform its refugee program. This is the beginning of Australia's modern Humanitarian Program.

1978

Domestic

- Standing Inter-departmental Committee on Refugees established to advise the minister on refugee issues and to regularly review the refugee intake.

- A separate Refugee and Special Programs Branch created in the department.

- March—new procedures for dealing with onshore applications for refugee status established. Determination of Refugee Status Committee (DORS) established.

- July—minister states that so-called 'boat people' are not illegal immigrants.

- Refugee holding centre established in Darwin.

- First suggestion of use of Christmas Island as a detention centre and quarantine station.

1979

Regional

- July—international conference on refugees held in Geneva, under UN auspices. Australia and other countries offer to increase their resettlement places for Indochinese refugees. Also from this conference, the government of Vietnam pledges to stop the outflow of 'boat people'. The conference results in a decrease in the number of boats leaving Vietnam.

Domestic

- October—Australian Refugee Advisory Council (ARAC) established to advise the minister on aspects of the movement to and settlement in Australia of refugees.

- Australia provides $250 000 to the UNHCR toward the establishment of a refugee processing centre in Indonesia.

1980

Domestic

- September—*Immigration (Unauthorised Arrivals) Act 1980* (Cwlth) introduced providing: for setting aside the seven-day limit of detention for an indefinite period of detention; that a person must remain in immigration detention until they were removed from Australia or granted an entry permit; and for penalties for crew members of vessels bringing people illegally to Australia.

1981

Regional

- October—last boat arrival of first wave, bringing the number of boat arrivals since 1976 to 2078 people on 60 boats (1981–82). The passengers on this boat are deported to Taiwan and Hong Kong when it is shown they are part of a people smuggling operation.

Domestic

- Australia initiates the concept of 'temporary refuge' at a meeting of the Executive Committee of the UNHCR. The committee unanimously endorses the concept.

- Global Special Humanitarian Program (SHP) introduced. People applying under this category must demonstrate they are: subject to substantial discrimination amounting to a gross violation of human rights in their home country; are living outside their home country; and have a proposer in Australia.

- Perth immigration detention centre (IDC) established.

1982

Regional

- March—Orderly Departure Program negotiated between Australia and Vietnam enabling families to be reunited in Australia. In November, the first group from Vietnam is accepted under this program.

Domestic

- July—guidelines for the determination and processing of refugees introduced. They interpret the UN Refugee Convention definition of refugees in light of Australia's own priorities and criteria for refugee selection.

1983

Domestic

- May—Maribyrnong IDC established.

- September—The Human Rights Commission report on Villawood IDC, *The Observance of Human Rights at the Villawood Immigration Detention Centre*, is tabled in parliament. It is critical of the conditions at and management of the centre and reports there is an 'unnecessary circumscription of many rights and freedoms' of those living in detention, which amounts to a system of 'arbitrary detention' inconsistent with Australia's obligations under the International Covenant on Civil and Political Rights and the then Declaration of the Rights of the Child.

- *Immigration (Unauthorised Arrivals) Act* lapses.

1988

Domestic

- June—Committee to Advise on Australia's Immigration Policies (CAAIP) report is tabled. The report calls for *inter alia* urgent reform to immigration policy and a gradual disengagement from Indo-Chinese resettlement.

1989

International

- June—Tiananmen Incident in Beijing People's Republic of China

Regional

- June—Comprehensive Plan of Action endorsed. This is designed to achieve a durable solution to the problem of the Indo-Chinese outflow and builds on the 1979 Geneva conference understandings.

- November—beginning of second wave of asylum seekers to Australia by boat.

Domestic

- Chinese citizens who are normally resident in China but legally temporarily resident in Australia, are permitted to remain in Australia on a temporary basis until July 1990. This is later extended to June 1994.

- June—*Migration Legislation Amendment Act 1989* (Cwlth) receives assent. It is introduced in response to the CAAIP report and moves immigration decision making from a policy-based framework to codified and regulatory environment. It also provides for: mandatory deportation of unlawful non-citizens after 28 days; costs of detention or deportation becoming a debt to the Australian Government; increased penalties for becoming an illegal entrant; the creation of Migration Review Tribunal to improve the independence of the review system.

- The department's Procedures Advice Manual is created.

1990

Domestic

- In 1990 there are around 20 000 Chinese citizens in Australia who are eligible to stay until June 1994.

- June—those assessed as being refugees or as having strong humanitarian claims to be given Domestic Protection Temporary Entry Permits, valid for four years.

- October—new system of determining claims for refugee status and humanitarian stay is introduced to speed up decision making on refugee applications. Under the new arrangement, a Refugee Status Review Committee replaces the DORS Committee. Refugee applications now go through three stages: a primary stage for applications to be assessed and decisions made quickly; a review stage for negative assessments; temporary entry on humanitarian grounds, based on minister's approval where there are clear grounds for humanitarian stay but where refugee status is not recommended.

1991

Regional

- End of Cambodian arrivals.

Domestic measures

- June—*Migration Amendment Act 1991* (Cwlth) receives assent. It creates the status of 'unprocessed person' and increases the time limits for appealing immigration decisions.

- October—Port Hedland Immigration Reception and Processing Centre opened.

1992

Regional

- Global refugee numbers peak at around 18 million and have remained high ever since.

Domestic

- May—*Migration Amendment Act 1992* (Cwlth) receives assent. The Bill is instigated because of an imminent Federal Court hearing to consider the release from detention of 37 Cambodian boat people who had been in detention since November 1989 and March 1990. It introduces mandatory detention for non-citizens who arrive in Australia by boat without a visa. These non-citizens are specifically prohibited from being released from custody. It also disallows judicial review but limits detention to 273 days in most cases.

- November—announcement that Domestic Protection Temporary Entry Permits holders will be given access to permanent protection visas.

- December—*Migration Reform Act 1992* (Cwlth) introduces fundamental reforms including: the introduction of visas, including the Protection visa; reduction of the various forms of status for non-citizens to two: 'lawful' and 'unlawful'; and broadens scope of mandatory detention to include all 'unlawful non-citizens'.

- December—In the case of *Lim v. the Minister for Immigration, Local Government and Ethnic Affairs,* the High Court upholds the Government's custody provisions for the detention of people who arrive by boat without proper authority. All seven judges say the Government's mandatory detention policy is a valid use of government power, provided it is to facilitate processing and removal and is not punitive.

- Asylum Seeker Assistance Scheme introduced to help asylum seekers with needs including accommodation, counselling and income support.

- Migration (1992) Regulations incorporate refugee determinations and set binding time limits for various aspects of the refugee determination process. The aim is to 'ensure that people making asylum claims can no longer routinely anticipate extended stay because of processing delays'. The minister says it is crucial to speed up procedures to 'reduce the trauma of holding people in detention but also to reduce the very considerable cost to taxpayers of maintaining them in custody'.

- Hunger strikes and rooftop protests by Cambodian nationals at Villawood and Port Hedland IDCs.

1993

Domestic

- Refugee Status Review Committee replaced by Refugee Review Tribunal.

1994

Regional

- Second wave boat arrivals peak at 1071 people on 21 boats (1994–95).

Domestic

- March—*Migration Regulations (Amendment) Act 1994* (Cwlth) introduces release of detained IMAs under 18 in certain limited circumstances and for certain other detained people on compassionate grounds.

- Hunger strikes and rooftop protests staged by Chinese nationals held in detention.

1995

Regional

- End of Vietnamese arrivals.

- Safe third country agreement signed with PRC that allows for the return to PRC of Sino-Vietnamese refugees who had been resettled in China. Subject to renewal every two years.

Domestic

- March—Curtin immigration reception and processing centre (IRPC) commissioned.
- December—Curtin decommissioned.

1996

Regional

- Comprehensive Plan of Action ends—between 1975 and 1996 Australia had resettled some 137 000 Indochinese refugees.

1997

Domestic

- April—Refugee Resettlement Advisory Council established to advise the minister on the settlement of refugees, especially the adequacy of Australian Government services.
- July— Immigration Advice and Application Assistance Scheme established.
- November—management of IDCs outsourced to private companies. Contract awarded to Australian Correctional Services Pty Ltd., a subsidiary of the United States-based Wackenhut Corrections Corporation.

1998

Regional

- Last boat arrival of second wave, bringing the total number of boat arrivals since 1989 to 3951 people on 124 boats.

Domestic

- Human Rights and Equal Opportunity Commission report, *Those who've come across the seas: detention of unauthorised arrivals*, released.
- Port Hedland IRPC refurbished.
- Australian Government allocated $35 million for major redevelopment of Villawood IDC.

1999

Regional

- Beginning of third wave of asylum seekers to Australia by boat. Boat arrivals peak at 4175 people on 75 boats (1999–2000).

Domestic

- September—Curtin IRPC reopened.
- October—Temporary protection visas introduced for people who arrive without authorisation and are found to be refugees.
- November—Woomera IRPC opened.
- Christmas Island used to accommodate unauthorised arrivals.
- Border Protection Legislation Amendment Bill introduced to give the department and Customs the power to enforce Australia's border strategies in international waters and to detain, forfeit, seize and dispose of ships and aircraft used in people smuggling operations.

- Overseas information campaign launched as part of the government's strategy against illegal air and boat arrivals. The campaign distributes publicity material throughout people smuggling-source countries and transit countries explaining new penalties for people smugglers and the risks of travelling to Australia by boat.

2000

Regional

- Regional Cooperation Arrangement developed with Indonesia and IOM that supports people who have been intercepted with access to accommodation and basic services and also ensures people have access to UNHCR to enable them to have their refugee claims assessed.

Domestic

- Integrated Humanitarian Settlement Strategy introduced as a suite of specialised on-arrival services for humanitarian entrants.

- Protests (including lip sewing and hunger striking) at Curtin and Woomera IDCs over slow processing and poor conditions.

- Series of mass escapes from IDCs in Woomera, Curtin and Port Hedland.

2001

International

- United States-led invasion of Afghanistan following 11 September terrorist attacks on Twin Towers buildings in New York.

- Overthrow of Taliban government in Afghanistan—major inflow of Afghans returning to Afghanistan.

Regional

- End of third wave of boat arrivals, bringing the total number of boat arrivals to 11 351 people on 148 boats.

- August—*MV Tampa* rescues 439 Afghan asylum seekers from international waters near Australia. Most asylum seekers aboard are transported to Nauru.

- September—statement of principles signed with Nauru on establishing a processing centre

- October—memorandum of understanding signed with Papua New Guinea on establishing a processing centre on Manus Island.

- October—Suspected Illegal Entry Vessel (SIEV) X sinks between Indonesia and Christmas Island. More than 350 people drown.

- December—memorandum of understanding signed with Nauru increasing the funding for and capacity of processing centre.

Domestic

- A series of incidents in immigration detention centres occur including:
    - March—14 people escape from Villawood IDC
    - May—riot at Port Hedland IDC and 22 people later charged over their involvement
    - June—around 200 people burn down a building and damage other property at Curtin IDC
    - December—13 buildings at Woomera IDC are damaged or destroyed as part of a protest
    - disturbance at Curtin IRPC involving around 300 people who attack staff with makeshift weapons
    - six officers at Woomera IDC are injured during arson and violence on the part of about 300 detainees with tear gas and water cannon used.

- A series of Commonwealth legislative amendments introduced including:
    - July—*Migration Legislation Amendment (Immigration Detainees) Act 2001* introduced to: create an offence for a person in detention to manufacture, possess, use or distribute weapons; increase penalties for escape; enhance security measures
    - August—The Border Protection Bill, prompted by the unauthorised arrival of the *MV Tampa*, is introduced providing the power to remove any ship in the territorial waters of Australia (this came to be known as the Pacific Solution)
    - *Migration Amendment (Excision from Migration Zone) Act 2001*—introduced to excise certain territories from the Australian migration zone
    - September—*Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* introduces the ability to remove people who entered at an excised zone and send them to a designated country for their claims to be processed. Status of 'offshore entry person' is created
    - September—*Migration Legislation Amendment (Judicial Review) Act 2001* introduced a privative clause designed to limit judicial review to the Federal and High Courts, thereby limiting the volume and costs of litigation.

- August—alternative detention project for women and children at Woomera starts.

- September—Australian Defence Force starts Operation Relex to interdict vessels containing asylum seekers.

- September—introduction of seven-day rule so if an asylum seeker spent more than seven days in another country where they could have sought asylum they were ineligible for permanent protection.

- September—exchange of letters with IOM to manage and provide services at offshore processing centres.

- Introduction of Secondary Movement Relocation (Temporary) and Secondary Movement Offshore Entry (Temporary) visas.

- Darwin IDC (now known as Northern IDC) established.

- Provision of immigration detention services is put to tender.

- Demountable buildings erected on Christmas Island to replace tents used to accommodate growing numbers of IMAs.

2002

International

- Ceasefire in Sri Lankan conflict—increase in Sri Lankan refugees returning to Sri Lanka.

- March—Afghanistan voluntary repatriation program, under the auspices of the UNHCR starts. Between 2002 and 2009 this program facilitates the return of more than 4.3 million refugees returning mainly from Pakistan and Iran.

Regional

- February—Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime held, bringing together 38 countries from throughout the region. Subsequent conferences held in April 2003, April 2009 and march 2011 have continued to review, refine and guide the work of the Bali Process.

Domestic

- January—more than 200 people in Woomera IDC are on hunger strike.
- March – April—around 50 people escape from Woomera IDC.
- March—announcement of plans to construct a processing centre on Christmas Island.
- July—the first group of refugees from the Manus Island processing centre arrive in Australia and are granted three-year Temporary protection visas.
- August—Curtin IDC closed.
- December—Australia signs People Trafficking Protocol.
- Baxter immigration detention facility opened.

2003

International

- March—US-led invasion of Iraq begins. Saddam Hussein's government is toppled. This marks the start of years of violent conflict with different groups competing for power.

Regional

- August—memorandum of understanding with Papua New Guinea signed to allow for the return of people who have been in one country for more than seven days and then crossed to the other country and sought asylum.

Domestic

- April—Woomera IDC closed.
- August—Temporary protection visa arrangements broadened to apply to those who had arrived lawfully in Australia.
- August—Global Solutions Limited Australia (GSL) replaces ACS as the department's immigration detention services provider.
- Port Augusta residential housing project opened.

2004

Domestic

- May—UN Convention Against Transnational Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air signed.
- June—Port Hedland IDC closed.
- June—final resident of Manus Island processing facility is granted a Protection visa and resettled in Australia.
- August—High Court rules that harsh detention conditions are not unlawful (*Behrooz v Secretary of DIMIA*).
- August—High Court rules that asylum seekers can be detained indefinitely (*Al Kateb v Godwin*).
- August—reintegration assistance packages introduced for those prepared to return voluntarily to their countries.
- August—Return Pending visa introduced.

2005

Regional

- Estimated 10-year low point of 8.4 million refugees worldwide reached.

Domestic

- February—construction of Christmas Island IDC started.
- Reports from the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau and Inquiry into the Circumstances of the Vivian Alvarez Matter lead to major reforms in the department.
- 11 May—Migration Amendment Regulations 2005 (no. 2) provides for creation of Removal Pending Bridging visa.
- 29 June—*Migration Amendment (Detention Arrangements) Act 2005* (Cwlth) introduces the principle that minors should only be detained as a last resort; introduces non-compellable powers to allow the minister to specify alternative detention arrangements or grant a visa to someone in immigration detention; mandates regular reporting by the department to the Commonwealth Ombudsman on people who had been in detention two years or more.
- Two private member's bills—Migration Amendment (Mandatory Detention) Bill 2005 and Migration Amendment (Act of Compassion) Bill 2005—introduce a limit on time spent in detention and release of women, children and long-term detainees. These are not given assent.
- Migration Amendment Regulations 2005 (no. 6) introduces prescribing certain islands are excised from Australia's migration zone.
- Australian National Audit Office report on *Management of the Tender Process for the Detention Services Contract*.

2006

International

- Deterioration of situation in Afghanistan leads to increase in Afghan refugees.
- Violence in Sri Lanka begins to escalate again.

Domestic

- March—the Detention Health Advisory Group established.
- Community Care Pilot introduced.

2007

Domestic

- August—Baxter IDC closed.
- November—Brisbane immigration transit accommodation opened.
- December—Pacific Strategy abolished.
- Detention Health Framework developed.

2008

Regional

- Beginning of fourth wave of asylum seekers to Australia by boat.

- Sharp increase in numbers of civilian casualties in Afghanistan.

Domestic

- February—last residents of Nauru Offshore Processing Centre granted visas and resettled in Australia.
- March—Nauru and Manus Island processing centres formally closed.
- April—department takes possession of Christmas Island IDC.
- June—Melbourne immigration transit accommodation opened.
- July—Proust report released, recognising that the department has substantially implemented the Palmer and Comrie recommendations.
- July—New Directions in Detention speech made by minister introducing seven key immigration detention values.
- Migration Amendment Regulations 2008 (no. 5) provides for abolition of Temporary protection visas and 7-day rule.

2009

International

- May 2009—official end of military conflict in Sri Lanka leading to improvement in security situation and return of some Sri Lankan refugees and displaced people.

Regional

- Boat arrivals for fourth wave peak at 5327 people on 117 boats.

Domestic

- April—explosion on SIEV 36 near Ashmore Reef results in the death of up to five asylum seekers and many injuries.
- June—contract for Serco Australia Pty Ltd to manage immigration residential housing and immigration transit accommodation signed.
- September—Council for Immigration Services and Status Resolution formed.
- November—transfers from Christmas Island to mainland start.
- November—SIEV 69 sinks, 12 people believed to have drowned.
- International Health and Medical Services Pty Ltd awarded detention health contract.
- Migration Amendment (Immigration Detention Reform) Bill 2009—introduced, but not debated. This bill has now lapsed.
- Eligibility to access Integrated Humanitarian Settlement Strategy extended to onshore protection visa holders.
- *Migration Amendment (Abolishing Detention Debt) Act 2009* (Cwlth) removes the practice of charging people for their time spent in detention.

2010

Regional

- December 2010—SIEV 221 founders off the coast of Christmas Island, 42 people rescued and 50 people believed to have drowned.

Domestic

- A series of announcements relating to the expansion of the immigration detention network are made including:
    - April—minister announces reopening of Curtin IDC
    - May—Lilac Compound of Christmas Island IDC opened
    - June—minister announces opening of Leonora IDC
    - September—minister announces opening of Scherger IDC and expansion of Curtin IDC
    - October—minister announces decision to construct new detention facility at Yongah Hill at Northam and Inverbrackie in South Australia.

- March—external review of security arrangements of Christmas Island and Villawood IDCs commissioned.

- April—suspension of processing of asylum claims from Sri Lanka and Afghanistan for three and six months respectively.

- May—Australian Navy rescues boat in distress. A total of 59 people saved and five people believed to have drowned.

- July—suspension of processing Sri Lankan asylum claims lifted.

- September—suspension of processing Afghanistan asylum claims lifted.

- October—Australian Government announces it will begin moving children and vulnerable family groups out of IDCs and into community-based accommodation.

- November—High Court rules that those processed under arrangements that apply to asylum seekers entering Australia through excised territory are denied procedural fairness in the review of their claims.

- SIEV 221 founders on cliffs at Christmas Island resulting in the deaths of at least 30 people.

2011

Regional

- January—memorandum of understanding between Australia and Afghanistan permitting the involuntary repatriation of failed Afghan asylum seekers signed.

- March—4th Bali Regional Ministerial Conference endorses the development of a regional cooperation framework.

Domestic

- Government makes series of announcements concerning the expansion of the immigration detention network including:
    - March—Darwin Airport lodge expanded
    - March—lease of new detention facility at Wickham Point near Darwin announced
    - April—new IDC at Pontville announced
    - April—extensive redevelopment of Villawood started
    - April—Adelaide immigration transit accommodation opened.

- January—Australian Government announces changes to the refugee determination process in response to the November 2010 High Court ruling.

- January—streamlined security assessment framework developed.

- March—widespread unrest in Christmas Island IDC. AFP takes control of the centre.

- March—Australian Government announces an independent inquiry into the protests at Christmas Island IDC.

- Introduction of POD process.
- April—protests, hunger strikes and unrest in many IDCs.
- July—*Migration Amendment (Strengthening the Character Test and Other Provisions) Act 2011* (Cwlth) provides for strengthening character provisions to provide grounds on which a visa can be refused to people in detention who have engaged in criminal conduct.
- July—agreement between Australian and Malaysian governments signed providing for the transfer of IMAs in exchange for refugees. A ruling by the High Court in August renders this operationally uncertain.
- August—introduction of Pre-Review Examination.
- September—announcement that the Australian Government will introduce legislation to enable to transfer of IMAs to third countries.
- Commonwealth Ombudsman announces intention to conduct Own Motion Investigation about the use of force on Christmas Island.

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Attachment B: External reviews into Australia's immigration detention network and asylum processing 1992 - 2011

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Please note that this document is a *select* list of inquiries, reviews and reports into Australian immigration detention and other IMA related issues, and as such, should not be seen as a comprehensive list.

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Attachment C: Global population movements: sources and destinations

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Executive summary

Global refugee movements have been an enduring feature of the geopolitical landscape for centuries. In the early 20th century mass population displacements, amounting to approximately five million people, occurred in Europe between 1919 and 1939. The immediate aftermath of the Second World War—for the first time—systematically challenged the international community in finding durable solutions to a massive and unprecedented humanitarian disaster. There were more than 40 million displaced people in Europe. While these refugees were eventually repatriated or resettled, the refugee problem was far from solved.

From the 1940s onwards new refugee populations emerged as the decolonisation process in Africa and Asia played itself out in bitter civil wars and ethnic disputes. The redrawing of national boundaries led to the displacement of millions of people. For instance, more than 14 million people were displaced by the division of India in 1947.

The advent of the Cold War and ensuing political turmoil also brought about new refugee movements of people escaping political persecution. For instance, the establishment of the People's Republic of China in 1949, and the communist victories in Cambodia, Laos and Vietnam in 1975, caused millions of people to flee these countries. Notably, the Soviet Union's intervention in Afghanistan in 1979 set in motion one of the most significant and enduring refugee situations since World War II, with the Afghan refugee population rising to more than six million people by 1990.

The global refugee population peaked in 1992 at more than 18 million. However, the end of the Cold War did not bring about the much anticipated peace dividend. Several conflicts have caused the global refugee population to remain high since then, with approximately 10.5 million refugees at the end of 2010. Numerous wars in countries such as Afghanistan, Iraq and Somalia have contributed to this ongoing refugee problem.

Australia is not immune to these global trends.

While the vast majority of people fleeing persecution seek refuge in their own and neighbouring countries, some make the journey to industrialised countries. Australia does not receive many asylum seekers by international comparisons, especially compared to developing countries. Nevertheless, several humanitarian situations have significantly impacted on Australia's humanitarian program.

Of asylum seekers coming to Australia by boat in 2010, most were Afghan citizens, followed by Iranians, Iraqis and Sri Lankans. Of those lodging protection visa applications onshore (who were not irregular maritime arrivals—IMAs), the top countries of citizenship were China, Fiji, Pakistan and India.

Introduction

The first major global refugee event affecting Australia was the mass displacement of people at the end of World War II, after which Australia settled thousands of European refugees. Since then, Australia has settled over 700 000 refugees and displaced people.[119] Australia has ratified both the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its accompanying 1967 Protocol Relating to the Status of Refugees (Refugee Protocol). Australia continues to maintain an annual humanitarian program, with an intake of 13 770 in 2009–10. This paper—*Global population movements—sources and destinations*—places Australia's experiences in the context of global population movements since World War II.

The first part of the paper overviews significant events and trends that have affected global population movements over the past century.

The second part outlines current trends in global population movements, particularly focusing on refugee source and destination countries.

The third part is a more detailed discussion of selected source countries for refugees and the humanitarian situations causing population flows.

The final part examines Australia's experiences with refugees and asylum seekers in more detail, placing particular emphasis on the countries of origin of those seeking protection in Australia.

It should be noted that statistics used in this paper have been informed by United Nations (UN) High Commissioner for Refugees (UNHCR) publications and the UNHCR Statistical Online Population Database. Appendix A summarises the data sources, methods and category definitions used by the UNHCR.[120]

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[119] E Karlsen, J Phillips & E Koleth, Parliamentary Library, 'Seeking asylum: Australia's humanitarian program', *Background Note*, 2011, viewed 5 July 2011, http://www.aph.gov.au/library/pubs/bn/sp/SeekingAsylum.pdf.

[120] For more information see also: UNHCR, *UNHCR Statistical Online Population Database: Sources, Methods and Data Considerations*, 2007, viewed 14 July 2011, http://www.unhcr.org/statistics/STATISTICS/45c06c662.html.
It should be noted that there were small discrepancies between different UNHCR data publications. The statistics for this paper have been primarily taken from the *UNHCR Statistical Online Population Database* because it is the most comprehensive UNHCR data source and is updated on an ongoing basis.

Global population movements

Global refugee movements have been an enduring feature of the geopolitical landscape throughout history. However, it was not until the mid 20th century, following the displacement of millions of people after World War II, that the international community agreed on a common approach to deal with global refugees. This agreement took the form of the 1951 UN Refugee Convention, which first defined the concept 'refugee', set out various protection obligations toward refugees owed by states parties to the convention, and gave people the right to apply for asylum. This allowed for a more structured and internationally consistent approach to managing refugees.

International framework for global population movements

The primary feature of the international approach to forced displacement is the recognition and protection of refugees. A refugee is defined as someone who is outside of their country of nationality or habitual residence due to a 'well-founded fear of being persecuted due to their race, religion, nationality, membership of a particular social group or political opinion'.[121] The Refugee Convention and the Refugee Protocol require that states not expel refugees or impose penalties on them.[122] Rather, states must ensure refugees are treated similarly to nationals of the country of refuge and that their welfare be provided for.[123]

Before someone is recognised as a refugee they must first go through an asylum process. Asylum seekers are people who have sought asylum in a country that is not their usual country of residence but whose application for refugee status has not been finalised. However, it should also be noted that many people who seek asylum in other countries may not lodge a formal asylum application and will therefore be overlooked by asylum application statistics.

For someone to be considered an asylum seeker or refugee they must have crossed an international border. Consequently, refugee numbers do not take into account people who have fled localised conflict or persecution and taken refuge in other parts of their country of residence. Such people are known as internally displaced persons (IDPs). IDPs face a difficult situation in that there are no international legal instruments covering them and many donor countries are reluctant to intervene in internal conflicts.[124] It should be noted that the numbers of IDPs outlined in this paper do not include people displaced by natural or human-made disasters.

However, the Refugee Convention was only developed relatively recently, following numerous displacements throughout the 20th century. The following section outlines some of these early global population movements.

Population movements in the 20th century

The practice of granting asylum to people fleeing persecution was referred to in texts written 3500 years ago during the rise of empires in the Middle East, including the Hittites, Babylonians, Assyrians, and the ancient Egyptians.[125] There have been countless displaced peoples since this time. For instance, in the 17th century approximately 200 000 Protestant Huguenots sought refuge in England and Northern Europe due to systematic religious persecution in France.[126]

In the early 20th century, from 1919 to 1939, a series of violent conflict and political turmoil displaced over five million people in Europe alone, including Russians, Greeks, Turks, Armenians and Spaniards together with significant numbers of Jews fleeing religious persecution.[127]

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[121] Convention Relating to the Status of Refugees 1951, art 1(A)(2); Protocol Relating to the Status of Refugees 1967, art 1.

[122] Ibid., arts 31–33.

[123] Ibid., arts 12–24.

[124] UNHCR, *Internally Displaced People: Questions & Answers*, 2007, viewed 20 July 2011 http://www.unhcr.org/405ef8c64.html.

[125] UNHCR, *Flowing Across Borders*, 2011, viewed 28 July 2011, http://www.unhcr.org/pages/49c3646c125.html.

[126] The Huguenot Society of Great Britain & Ireland, *Huguenot History*, viewed 28 July 2011, http://www.huguenotsociety.org.uk/history.html.

The League of Nations attempted to reach international coordination in the effort to assist refugees, but their efforts did not translate to a lasting international agreement.

The aftermath of World War II created a new impetus to find a solution to the refugee problems with record numbers of displaced people throughout Europe. It was estimated that in May 1945 there were more than 40 million people displaced in Europe in addition to ethnic Germans who fled Soviet armies in the east and forced labourers present within Germany.[128] Approximately 13 million ethnic Germans were expelled from Eastern European countries in the following months.[129] World War II also caused millions of Chinese to be displaced by the occupying Japanese forces in China.[130]

The large numbers of displaced people as a result of World War II fuelled the political will to find international agreement on the matter of refugees. In 1951, the Refugee Convention was agreed to and ratified by some states in the following years. Australia ratified the Refugee Convention in 1954, and there are now 147 signatory countries. However, this convention only applied to refugees resulting from events occurring in Europe before 1 January 1951.[131]

The issue of refugees did not abate following the end of World War II. Both India and Pakistan hosted approximately 14 million refugees following the partition of India into two separate states in 1947.[132] Some Hindus and Sikhs in Pakistan fled to India while some Muslims in India fled to Pakistan. The beginning of the Cold War, the Berlin blockade of 1948–49, Mao Zedong's rise to power in China and the start of the Korean War in 1950 all contributed to a realisation that global refugee movement would not be a temporary phenomenon.[133]

Refugee movements continued in the latter half of the 20th century. Approximately 200 000 people fled Hungary after the Soviet Union's intervention to suppress an uprising in 1957.[134] Decolonisation in Africa was also creating new refugee movements. The Algerian war of independence against France resulted in an estimated 1.2 million displaced people in Algeria by March 1960. A further 260 000 fled to Morocco and Tunisia.[135]

In the 1960s, the independence of the Congo, Rwanda and Burundi was followed by violence leading to massive displacement. Displacement following decolonisation was widespread throughout Africa.[136] For instance, the Biafra war that began in Nigeria in 1967 caused approximately two million people to be displaced.[137]

In addition to the many IDPs, it was estimated there were approximately 850 000 refugees in Africa by 1965.[138] With the tide of global population movements showing no signs of receding, work began on expanding the 1951 Refugee Convention to include refugees resulting from events after. This was accomplished through the 1967 Protocol, which restated the Refugee Convention in broader terms to be inclusive of refugees irrespective of when or where they were displaced.[139]

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[127] UNHCR, *State of the World's Refugees 2000: Fifty Years of Humanitarian Action,* 2000, p. 15, viewed 28 July 2011, http://www.unhcr.org/4a4c754a9.html.

[128] Ibid., p. 13.

[129] Ibid.

[130] Ibid.

[131] Convention Relating to the Status of Refugees 1951, art 1(B)(1).

[132] UNHCR, *State of the World's Refugees 2000*, op. cit., p. 59.

[133] Ibid., p. 18.

[134] Ibid., p. 26.

[135] Ibid., p. 41.

[136] Ibid., p. 44.

[137] Ibid., pp. 46–7.

[138] Ibid., p. 52.

[139] Protocol Relating to the Status of Refugees 1967, art 1.

While decolonisation in Africa continued to cause global population movements, Asia became a major focal point in the 1970s. The war in Bangladesh (formerly East Pakistan) in 1971, led to approximately 10 million people fleeing to India.[140] Not much later, the communist victories in Vietnam, Cambodia and Laos in 1975 led to the displacement of more than three million people over the following two decades.[141] Afghanistan experienced civil war in the late 1970s and by 1980 there were approximately 600 000 people taking refuge in neighbouring Pakistan. By 1990 it was estimated there were more than six million global refugees originating from Afghanistan.[142]

Global refugee numbers peaked at around 18 million in 1992[143], but have remained high since then. Recent areas of conflict and human rights violations, such as Somalia, Sudan, Zimbabwe, Afghanistan, Iraq, Iran and Sri Lanka, have created new population movements. Many of these source countries are discussed in more detail below.

Recent trends in displacement

At the end of 2010 there was an estimated 43.7 million people globally who were displaced as a result of persecution and conflict[144], of which 10.55 million were refugees under the mandate of the UNHCR.[145] There were approximately 14.7 million IDPs being assisted by the UNHCR.[146]

While the global number of refugees has decreased from a peak of around 18 million in 1992, the evolving and changing security situation in many parts of the world has meant that refugee outflows and internal displacement remains an enduring feature of the contemporary geopolitical landscape. The past three years have seen the global refugee population remain at more than 10 million. The following graph shows the global number of refugees from 1960 to 2010 according to UNHCR estimates.[147]

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[140] UNHCR, *State of the World's Refugees 2000*, op. cit., p. 61.

[141] Ibid., p. 80.

[142] Ibid., p. 115.

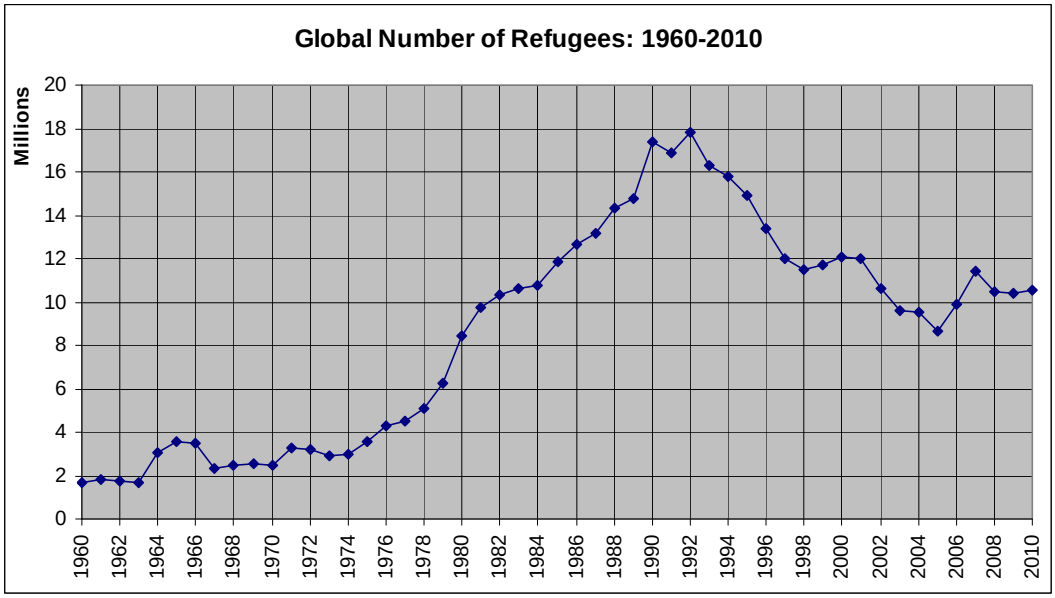
[143] UNHCR, *UNHCR Statistical Online Population Database: Total Refugee population by country of asylum, 1960-2010 & total refugee population by origin, 1960–2010* , viewed 28 July 2011, http://www.unhcr.org/statistics/Ref_1960_2010.zip.

[144] UNHCR, *UNHCR Global Trends in 2010*, 2011, p. 5, viewed 4 July 2011, http://www.unhcr.org/4dfa11499.html.

[145] Ibid. p. 11.

[146] Ibid., p. 2.

[147] Note: From 2007 onwards the refugee figures include people in refugee-like situations, creating difficulties when comparing values before and after 2007. Refugee numbers do not include Palestine refugees, as they are covered by United Nations Relief and Works Agency. Statistics are for the end of each year. See *Appendix A* for more details. Statistics taken from: UNHCR, *Total Refugee population by country of asylum*, op. cit.



In 2010 at least 845 800 individual asylum applications were submitted to governments and the UNHCR in 166 countries and territories.[148] This represents an 11 per cent decrease on the 948 400 asylum applications lodged in 2009. The decrease was due to the reduction of asylum applications originating from a variety of countries including Zimbabwe, Ethiopia and Myanmar.

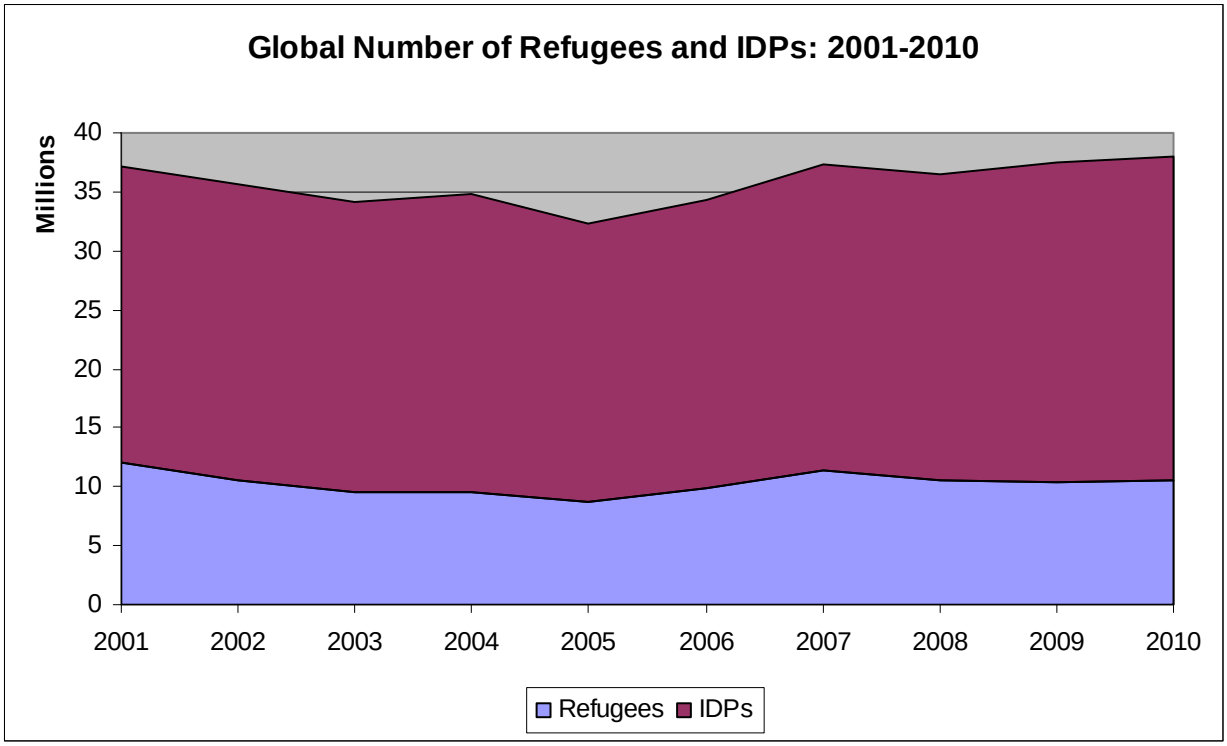
A total of 12 545 people sought asylum in Australia in 2010,[149] compared to 7383 in 2009. This increase is partly due to a rise in the number of IMAs from Afghanistan and Iran. It should be noted that despite regular fluctuations in asylum seekers numbers, Australia's overall humanitarian program numbers, set by successive governments, have remained largely the same, with 13 770 in 2009–10, 13 507 in 2008–09, 13 014 in 2007–08 and 13 017 in 2006–07.

The majority of people who are displaced by conflict or persecution do not leave their home countries. While the global number of refugees has dropped slightly since 2001, the number of IDPs has risen over the same period—from approximately 25 million in 2001 to 27.5 million in 2010. The following graph compares the number of refugees and IDPs from 2001 to 2010.[150]

[148] UNHCR, *Global Trends in 2010*, op. cit.

[149] Asylum seeker statistics for Australia include non-IMA Protection visa applications plus IMA Protection Obligation Determination requests (formerly RSD request). Need in full. Also check our edits on caps with the main paper—we have question usage there also.

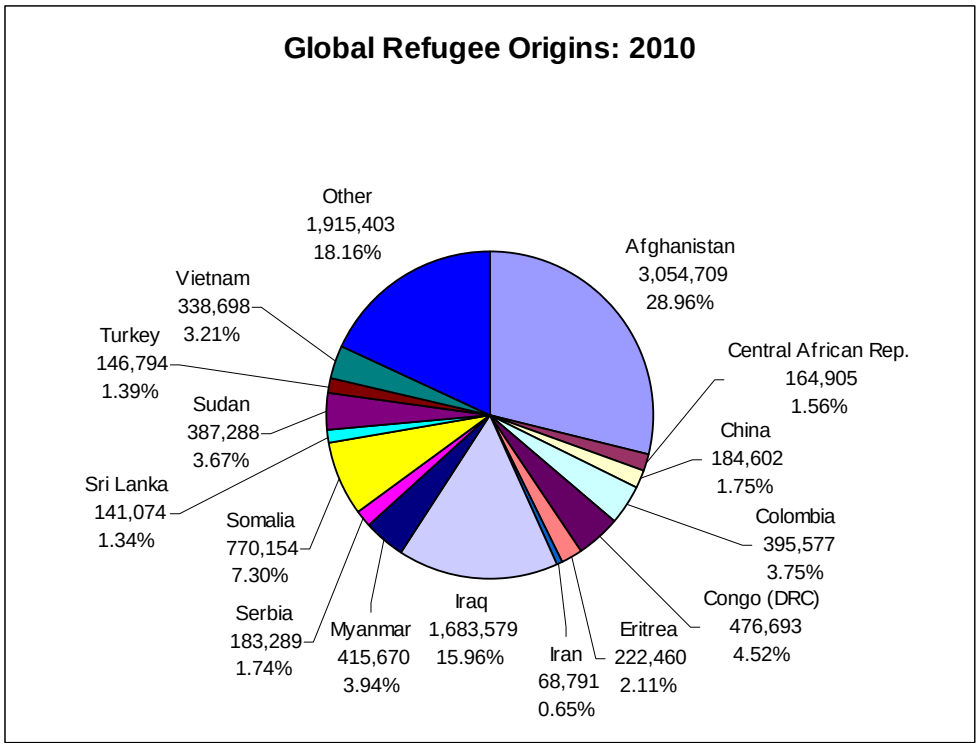
[150] Statistics do not include Palestine refugees under the mandate of the UN Relief and Works Agency. Refugee statistics taken from: UNHCR, *UNHCR Global Trends 2010: Annex Tables*, 2011, 2011, table 23, viewed 6 July 2011, http://www.unhcr.org/globaltrends/2010-GlobalTrends-annex-tables.zip; IDP statistics taken from: Internal Displacement Monitoring Centre, *Global IDP estimates (1990–2010)*, viewed 20 July 2011, http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/10C43F54DA2C34A7C12573A1004EF9FF?OpenDocument.



The number of IDPs and refugees reached an estimated 10-year low point of 32.3 million in 2005, before rising to 38 million in 2010. It is important to note the situation of IDPs to gain an understanding of the overall international humanitarian situation and the effect of various crises on humanitarian populations. However, as this paper seeks to focus on global population movements that have affected Australia, it will limit its focus to refugees and asylum seekers.

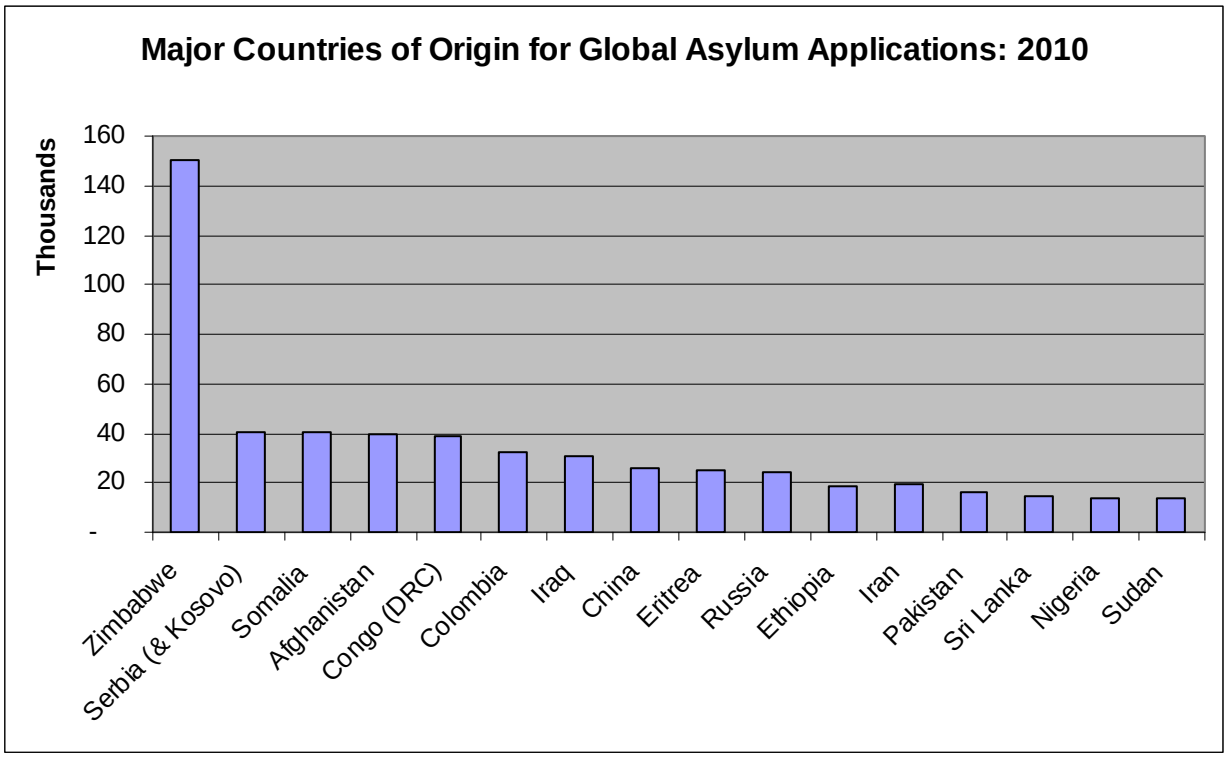
Sources and destinations in 2010

Ongoing conflicts in Asia and Africa have caused many people to flee their homes. Afghanistan continued to be the biggest source country globally of refugees in 2010, followed by Iraq and Somalia. Together, these three countries made up more 50 per cent of the global refugee population. However, the rest of the world's refugees came from a wide variety of countries, illustrating the enormity of efforts that would be required to resolve the causes of global population movements. The graph below shows the countries of origin of the world's 10.5 million refugees at the end of 2010.[151]



[151] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

While refugee statistics provide a broad overview of long term trends, a better reflection of the changing dynamics of humanitarian situations can be seen from asylum seeker statistics. The main source countries for global asylum seeker applications lodged in 2010 were Zimbabwe, Serbia (and Kosovo), Afghanistan, Democratic Republic of the Congo and Somalia.[152] The higher number from Serbia and Kosovo may be partially a result of more people applying for asylum in Europe after the European Union relaxed visa requirements for these countries at the beginning of 2010.[153] The graph below shows the main countries of origin of people making asylum applications in 2010.[154]

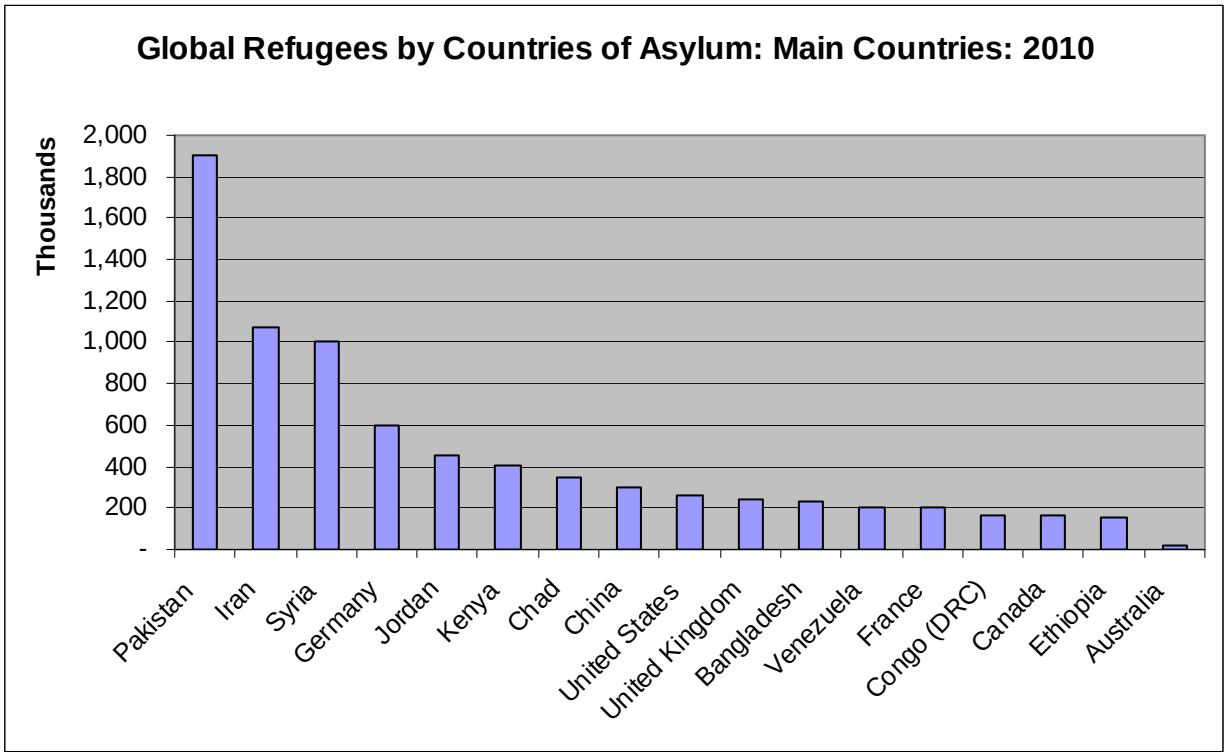


[152] Statistics taken from: UNHCR, *Global Trends in 2010*, op. cit.

[153] Ibid.

[154] Ibid., table 11.

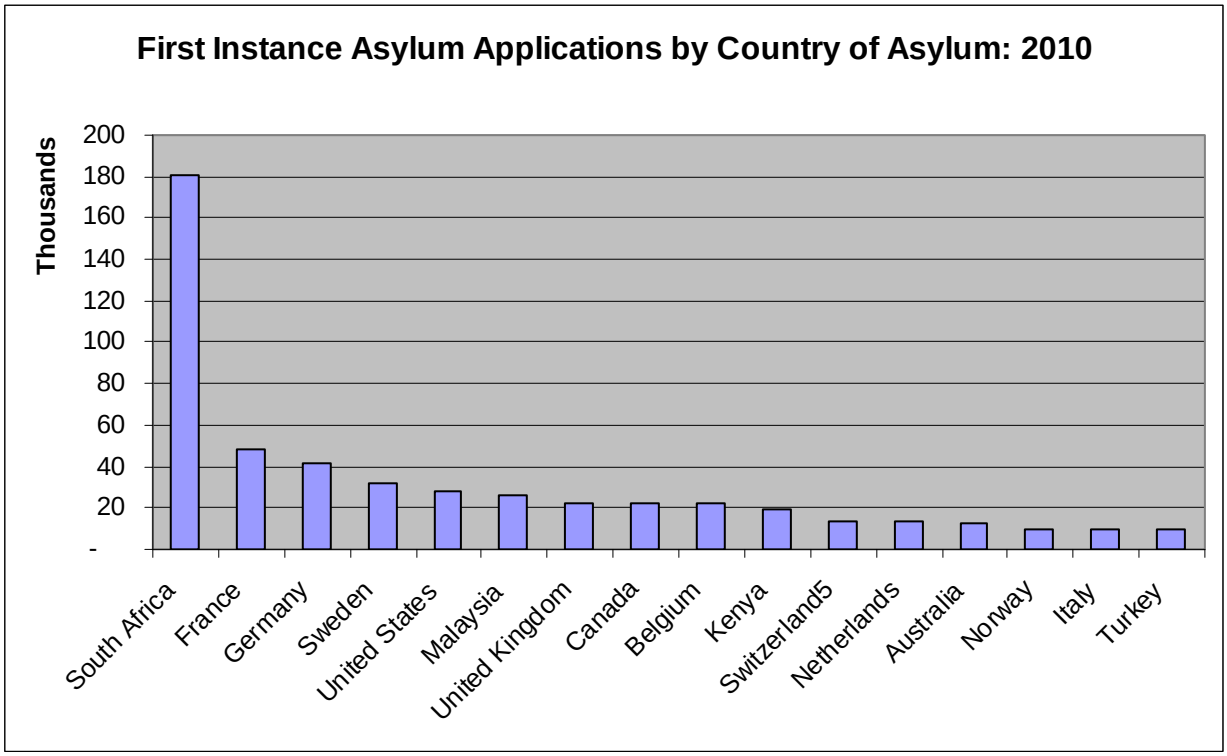
The vast majority of displaced people remain in their country of origin or take refuge in neighbouring countries. At the end of 2010, approximately three quarters of the global refugee population lived in a country neighbouring their country of origin.[155] This trend is reflected in the statistics of destination countries of asylum. For instance, as a direct result of the humanitarian situation in neighbouring Afghanistan, Pakistan became the biggest host country of refugees in 2010, followed by Iran and beyond bordering countries, Syria. This is a direct result of the humanitarian situations in nearby Afghanistan and Iraq. The following graph shows the global breakdown of refugees by country of asylum at the end of 2010.[156]



[155] UNHCR, *Global Trends in 2010*, op. cit., p. 11.

[156] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

South Africa had the highest number of asylum applications worldwide, with 180 600 new asylum seekers lodging applications in 2010.[157] This was largely due to the fact that nine out of 10 Zimbabwean asylum applications were lodged in South Africa[158], with Zimbabwe being the biggest single source country of asylum seeker applications as outlined above. Other main destination countries for new asylum seekers were the United States, France, Germany, Sweden, Ecuador, Malaysia, Canada, United Kingdom and Belgium.[159] The following graph shows selected destination countries for first-instance asylum applications during 2010.[160]



There are a number of reasons for the stark differences between countries of origin for asylum seekers and refugees. As mentioned earlier, asylum seeker numbers reflect the more immediate consequences of humanitarian situations while refugee populations measure longer-term population movements. The statistical differences also reflect the reception procedures in destination countries. In countries where the vast majority of asylum seekers go through a formal Refugee Status Determination (RSD) process the asylum seeker numbers are higher. Conversely, in countries where the process is less formal, such as Pakistan and Iran, the official asylum seeker application numbers are lower relative to the number of refugees in these countries.

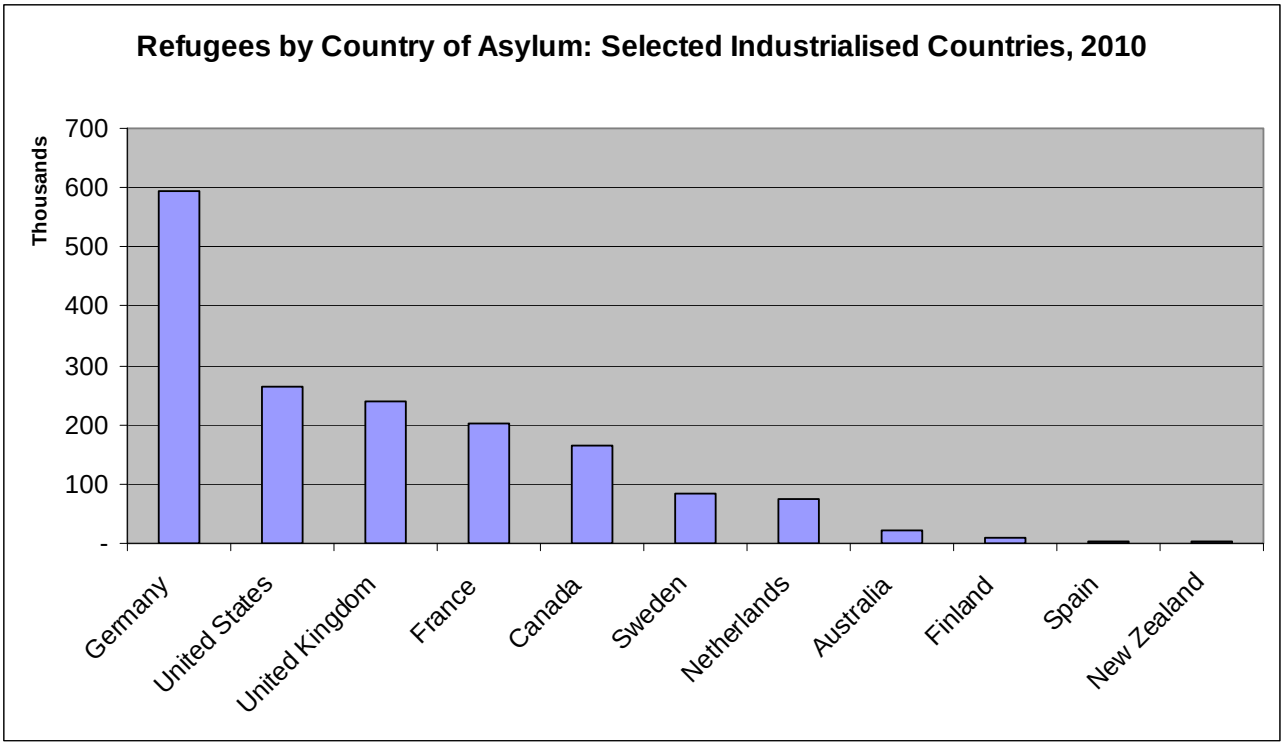
[157] UNHCR, *Global Trends in 2010*, op. cit., p. 26.

[158] Ibid.

[159] Ibid., p. 25.

[160] Statistics taken from: UNHCR, *Global Trends 2010: Annex Tables,* op. cit., Table 10. DIAC statistics used for Australian asylum applications.

Approximately 80 per cent of refugees are hosted by developing countries.[161] This reflects the tendency of people to seek refuge in surrounding areas. In instances where people do seek asylum in industrialised countries, they still tend to travel to countries relatively close to their origin, resulting in the relatively high number of refugees in Europe compared to North America and Oceania. The following graph shows the populations of refugees and people living in refugee-like situations in selected industrialised countries at the end of 2010.[162]

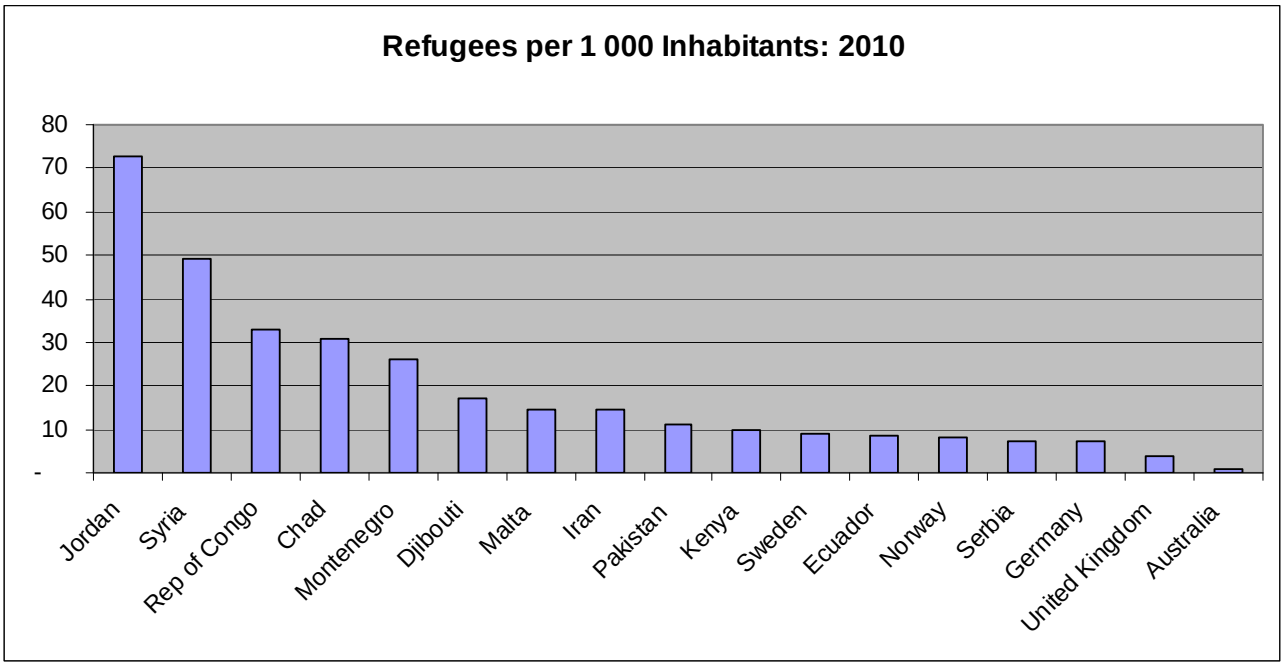


Other factors affecting where people will seek asylum include historic, linguistic and cultural ties between the origin and destination countries, where immigrant communities from the origin country are already settled, and migrant networks. Such factors explain why people from certain countries are more likely to seek asylum in particular destination countries. For instance, existing migrant networks and previously settled communities may explain why a relatively high proportion of Chinese and Afghan asylum seekers choose Australia as their asylum destination.

[161] UNHCR, *Global Trends in 2010*, op. cit., p. 2.

[162] Statistics taken from: UNHCR, *UNHCR Global Trends 2010: Annex Tables,* op. cit., Table 3.

In terms of refugees per capita, Australia ranked 61st among countries for which UNHCR recorded data.[163] This represented a rise from 68th place in 2009, but was still lower than Australia's 42nd place ranking for the period 2002 to 2006.[164] Jordan and Syria had the highest number of refugees per capita. The following graph shows a comparison of selected countries by GDP per capita for 2010.[165]

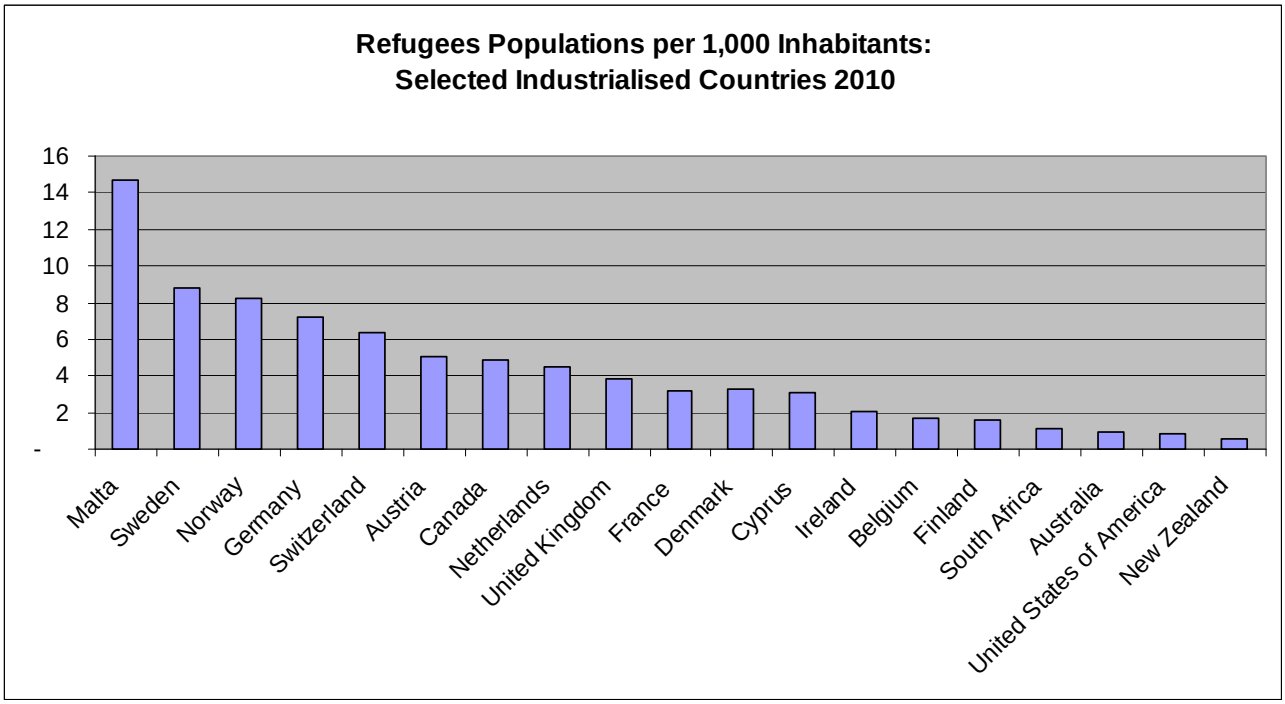


[163] Ibid., Table 24.

[164] Note: The number of countries included in these rankings ranged from 165 in 2006 to 181 in 2010. UNHCR, *UNHCR Statistical Yearbook 2009: Statistical Annex,* 2009, Table 24, viewed 28 July 2011, http://www.unhcr.org/4ce532ff9.html; UNHCR, *UNHCR Statistical Yearbook 2006: Statistical Annex,* 2006, Table 17, viewed 28 July 2011, http://www.unhcr.org/4ce532ff9.html.

[165] Ibid.

Of industrialised countries, European countries generally had the highest refugee populations per capita, with more than 14 refugees per 1000 people present in Malta perhaps as a result of the combination of its accessibility and European Union membership. In terms of new asylum applications lodged in industrialised countries in 2010, Sweden received the highest number per capita followed by Cyprus and Liechtenstein.[166] The following graph shows a comparison of selected industrialised countries by refugees per capita for 2010.[167]



[166] UNHCR, *Asylum Levels and Trends in Industrialized Countries 2010: Statistical overview of asylum applications lodged in Europe and selected non-European countries*, 2011, p. 15, viewed 7 July 2011, http://www.unhcr.org/4d8c5b109.html.

[167] Ibid.

Selected countries of origin

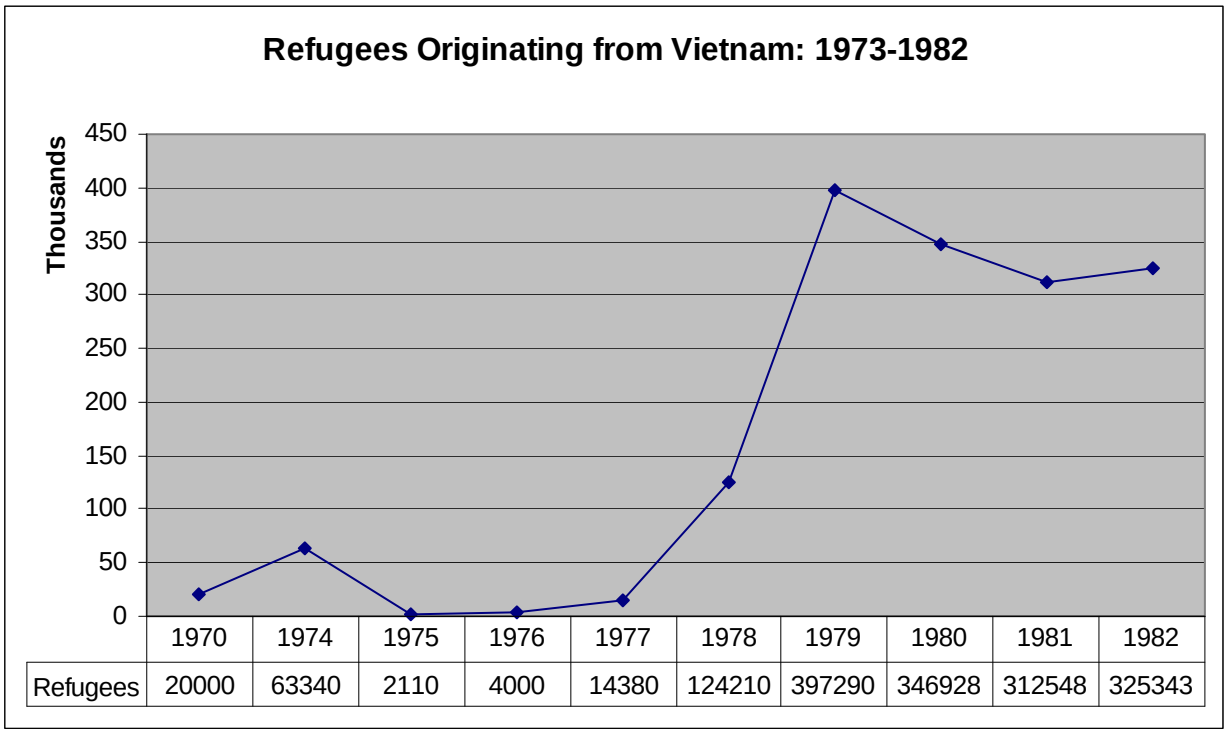
In 2010 the main origins of refugees and people living in refugee-like situations were Afghanistan, Iraq and several African countries.[168] This section outlines the statistics and events surrounding some of the major source countries for refugees and asylum seekers, most of which have had a significant impact on Australia's humanitarian program.

Vietnam

Australia's first major experience with unauthorised population movements was the wave of IMAs that came to Australia in the late 1970s and early 1980s. The accompanying issues paper *An historical perspective of refugees and asylum seekers in Australia 1976–2011* has more information.

The 1975 communist victories in Vietnam, Cambodia and Laos led to the displacement of more than three million people over the following 20 years.[169] Asylum seekers arriving in Australia by boat in the late 1970s were predominantly from Vietnam.

Many Vietnamese asylum seekers were supporters of the South Vietnamese Government. Approximately 140 000 Vietnamese affiliated with the South Vietnamese Government were evacuated and resettled in the United States in 1975.[170] However, the outflow of people from Vietnam continued for a number of years. In 1978–79 alone, approximately 250 000 Vietnamese sought refuge in neighbouring China.[171] In 2010 there were still over 300 000 Vietnamese refugees living in China.[172] The following graph shows the number of refugees coming from Vietnam from 1973 to 1982.[173]



	1970	1974	1975	1976	1977	1978	1979	1980	1981	1982
Refugees	20000	63340	2110	4000	14380	124210	397290	346928	312548	325343

[168] UNHCR, *Global Trends 2010: Annex Tables*, op. cit., Table 4.

[169] UNHCR, *The State of the World's Refugees 2000*, op. cit., p. 80.

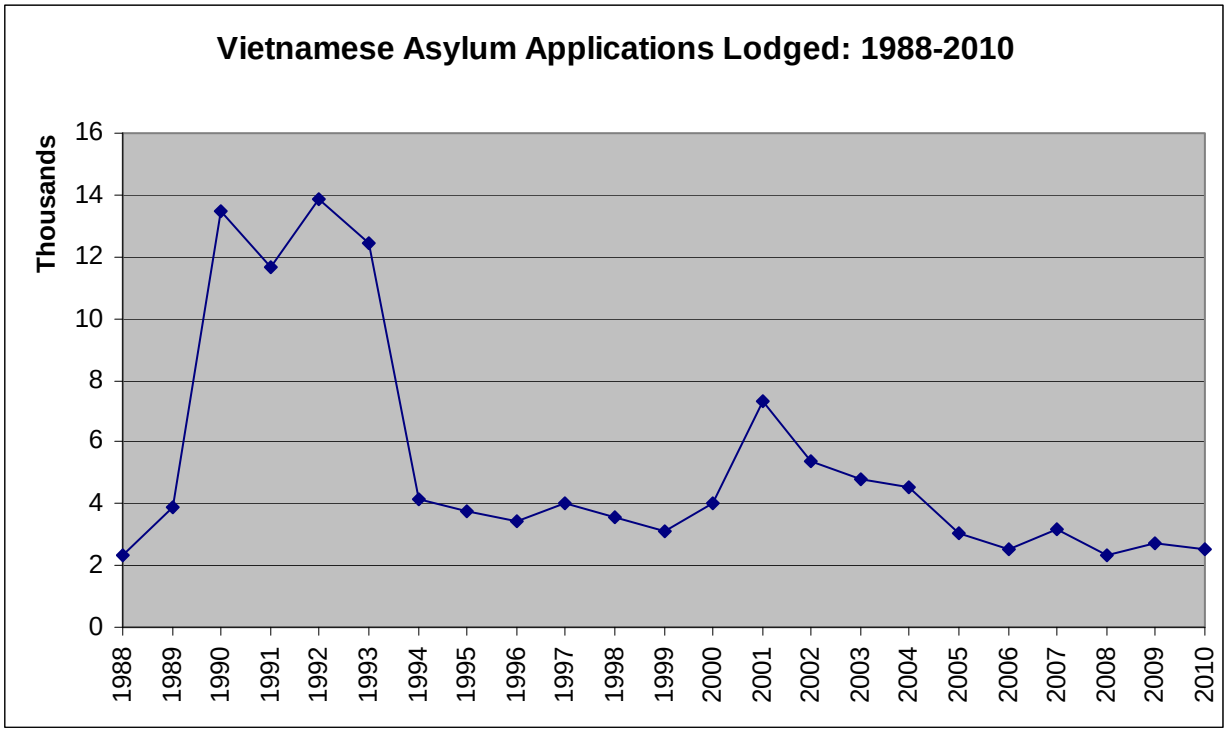
[170] Ibid., p. 81.

[171] UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No. 12* (A/35/12, 24 September 1980), General Assembly, Thirty-fifth Session.

[172] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

[173] Ibid.

Although there were still estimated to be almost 340 000 refugees originating from Vietnam at the end of 2010, the refugee outflow from Vietnam has reduced drastically since the original outflow in the 1970s.[174] The following graph shows the estimated number of Vietnamese asylum applications lodged each year between 1988 and 2010.[175]



[174] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

[175] Ibid.

Afghanistan

Afghanistan has been a major source country for refugees since the 1980s.[176] In 1978 there was internal conflict as a result of opposition against attempts to establish a communist state in Afghanistan. This led to a military response by the communist government, with the assistance of the Soviet Union.[177] By early 1979 more than 20 000 people had sought refuge in neighbouring Pakistan.[178]

After the communist government started losing ground to its armed opposition, the Soviet Union invaded Afghanistan in December 1979.[179] Within weeks, approximately 600 000 Afghans were seeking refuge in Pakistan and Iran. The situation did not improve and by December 1990, an estimated 6.3 million Afghan refugees were in neighbouring countries.[180] The Soviet forces withdrew from Afghanistan in 1989, but the war between the communist regime and the Mujahideen opposition continued until 1992. However, fighting between factions of the Mujahideen continued for some time.[181]

From 1994 to 2001 there was a civil war in Afghanistan between the Mujahideen and the Taliban.[182] This exacerbated the refugee situation. In 1999 there were still more than 2.5 million Afghan refugees living abroad, with the vast majority located in Pakistan and Iran.[183]

The next major event to create refugee flows was the coalition invasion of Afghanistan following the September 11 2001 terrorist attacks. Following the overthrow of the Taliban-led government in late 2001, a major influx of Afghan refugees was returning to Afghanistan. In 2002 alone, almost two million Afghan refugees returned to Afghanistan.[184] The repatriation program has continued, but the numbers returning have declined substantially.[185]

Armed conflict has continued since 2001 with the Afghan Government and its international allies fighting against various groups of insurgents.[186] Afghanistan continues to face problems in respect of corruption, ineffective administration of justice, failure to remedy human rights violations, weak or non-existent social services and the hampering of access to the country by the UN and other aid organisations.[187] There are still more than three million Afghan refugees living in other countries, in addition to more than 350 000 IDPs.[188]

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176 UNHCR, *The State of the World's Refugees 2000,* op. cit., p. 115.

177 Ibid., p. 116.

178 Ibid.

179 Ibid.

180 Ibid.

181 Ibid., p. 121.

182 UNHCR, *UNHCR eligibility guidelines for assessing the international protection needs for asylum seekers from Afghanistan*, 2009, p. 6 , viewed 13 July 2011, http://www.unhcr.org/refworld/docid/4a6477ef2.html.

183 UNHCR, *The State of the World's Refugees 2000,* op. cit., p. 119.

184 Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

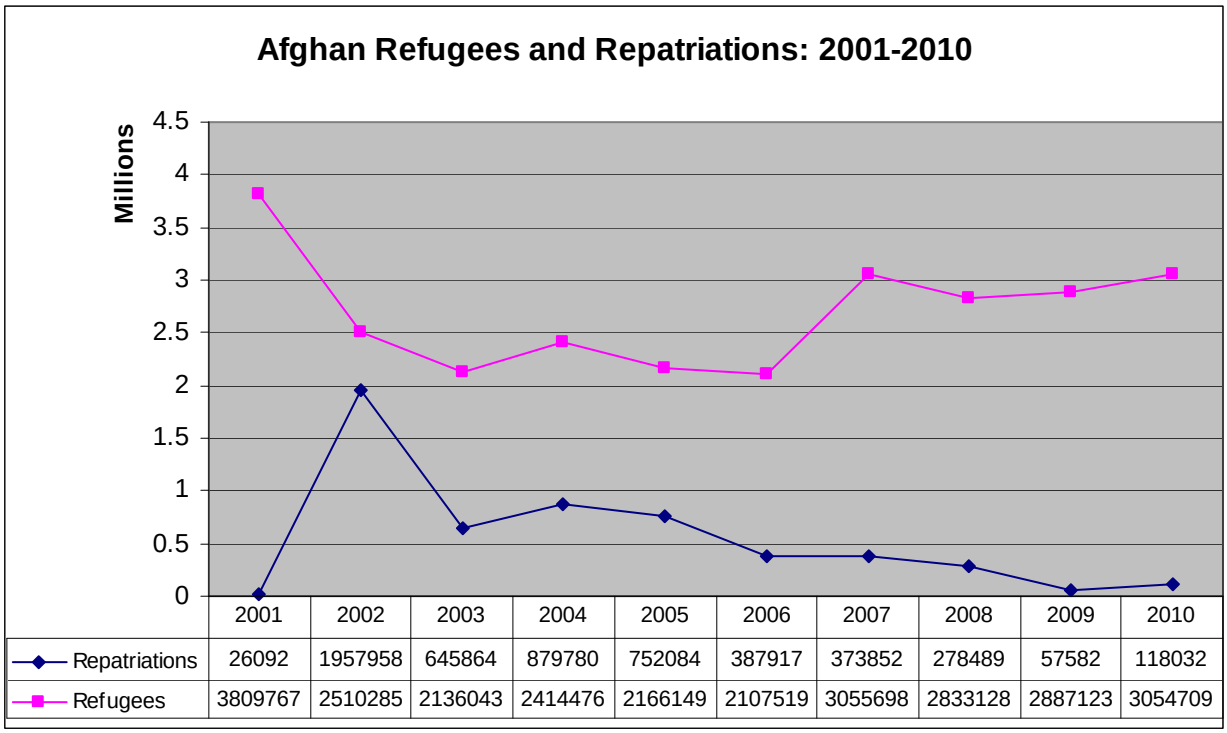
185 Ibid.

186 UNHCR, *UNHCR eligibility guidelines for assessing international protection needs for asylum seekers from Afghanistan*, op. cit., p. 7.

187 Ibid.

188 UNHCR, *2011 UNHCR country operations profile—Afghanistan*, viewed 6 July 2011, http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6.

As mentioned earlier, the number of repatriations reached a peak in 2002 following the fall of the Taliban Government. Since 2002 the number of repatriations has generally declined, while the number of refugees originating from Afghanistan has increased. The following graph shows the number of refugees originating from Afghanistan compared to the number of repatriations to Afghanistan from 2001 to 2010.[189]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Repatriations	26092	1957958	645864	879780	752084	387917	373852	278489	57582	118032
Refugees	3809767	2510285	2136043	2414476	2166149	2107519	3055698	2833128	2887123	3054709

The sudden increase in the number of refugees recorded in 2007 was at least partially affected by changes in statistical data methods employed by UNHCR (Appendix A). However, it is important to note that conditions in Afghanistan are seen to have worsened in 2006. The International Crisis Group observed that the situation was predominantly deteriorating in Afghanistan during 2006.[190]

The Minority Rights Group International (MRGI) uses a peoples under threat (PUT) index to identify the risk of genocide, mass killing or other systematic violent repression occurring.[191] Such indices are often a good indicator of international refugee movements as people seek refuge from such atrocities. For example, MRGI increased its PUT index rating for Afghanistan for 2007, due to the situation in 2006.[192] After dropping for 2008, the index continued to climb from 2009.[193] This mirrors the numbers of refugees originating from Afghanistan for those years, as seen in the graph above.

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[189] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

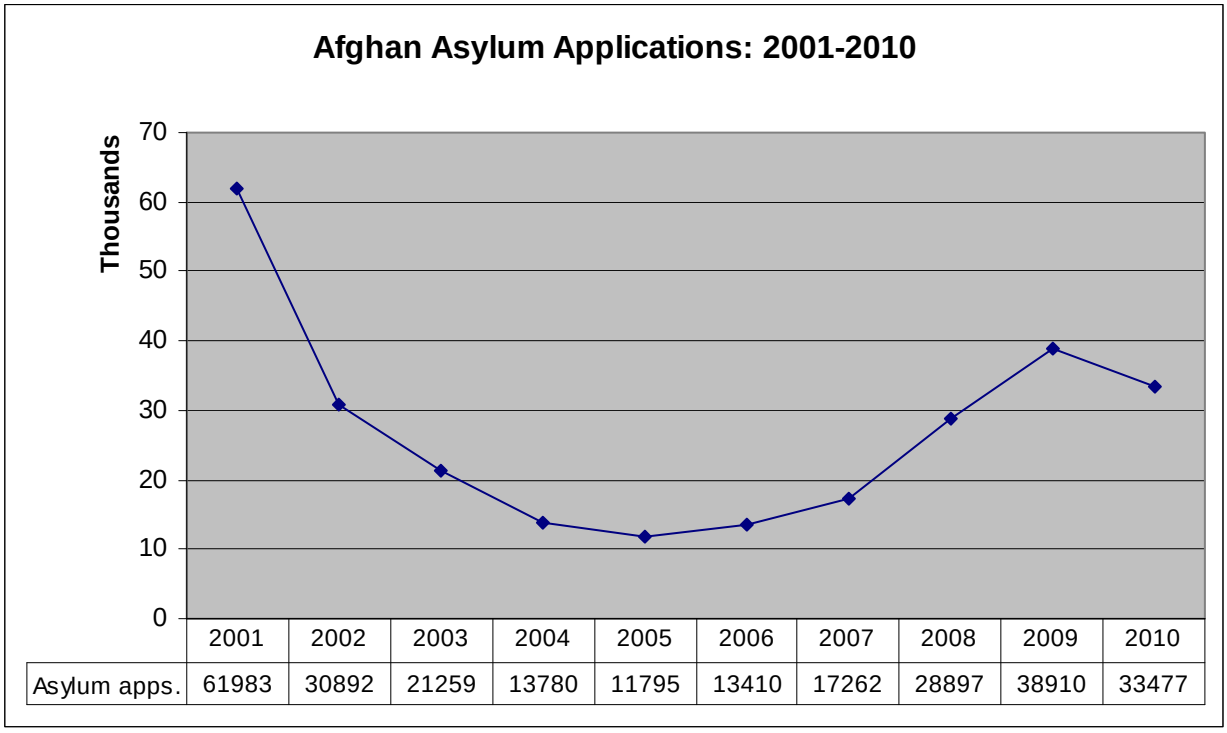
[190] International Crisis Group, *Crisis Watch: Afghanistan*, 1 February 2006– 2 January 2007, viewed 20 July 2011, http://www.crisisgroup.org/en/publication-type/crisiswatch/crisiswatch-database.aspx?CountryIDs=%7bA860153E-CDC9-46DC-8FF7-7C03740C2DCF%7d#results.

[191] MRGI, *State of the World's Minorities and Indigenous Peoples 2011: Events of 2010*, 2011, p. 235, viewed 20 July 2011, http://www.minorityrights.org/990/state-of-the-worlds-minorities/state-of-the-worlds-minorities.html.

[192] MRGI, *State of the World's Minorities 2006: Events of 2004–05*, 2005; *State of the World's Minorities 2007: Events of 2006*, 2007; *State of the World's Minorities 2008: Events of 2007*, 2008; *State of the World's Minorities and Indigenous Peoples 2009: Events of 2008*, 2009; *State of the World's Minorities and Indigenous Peoples 2010: Events of 2009*, 2010; *State of the World's Minorities and Indigenous Peoples 2011: Events of 2010*, 2011, all viewed 20 July 2011, http://www.minorityrights.org/990/state-of-the-worlds-minorities/state-of-the-worlds-minorities.html.

[193] MRGI, *State of World's Minorities* reports, op. cit.

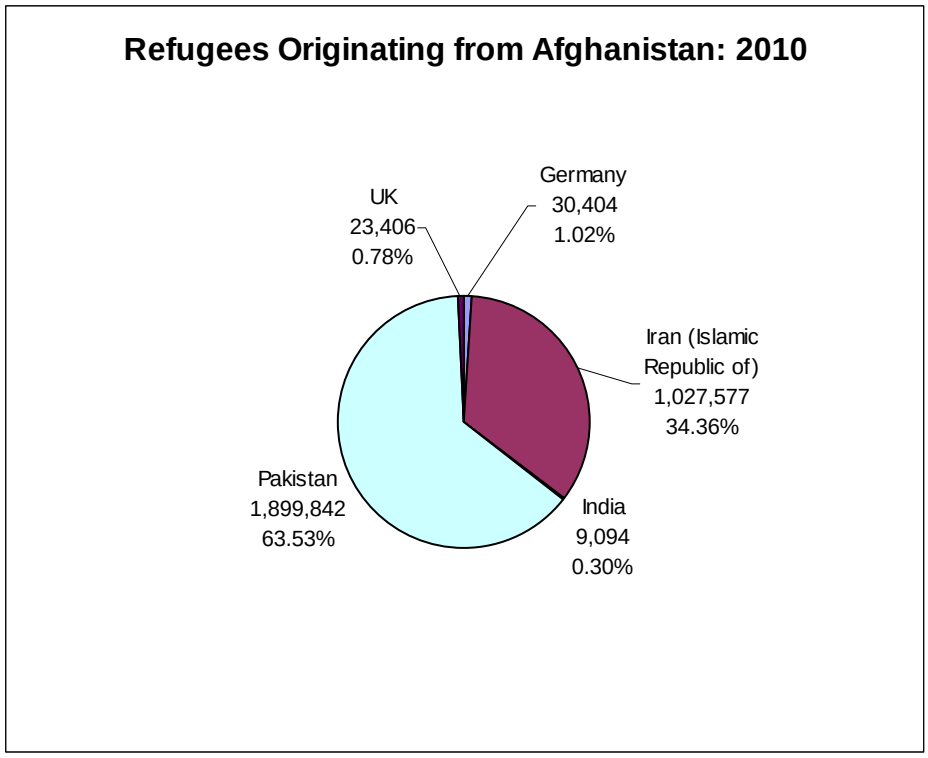
The number of new asylum applications lodged by people originating from Afghanistan dropped significantly following the 2001 invasion, but has generally increased since reaching a low of 11 795 in 2005. It should be noted that these figures only take into account formal asylum applications and may not include many people who escaped to neighbouring Pakistan and Iran and who did not submit an asylum application. The following graph shows the number of Afghan asylum applications lodged globally in the first instance (that is, excluding appeals) for 2001 to 2010.[194]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Asylum apps.	61983	30892	21259	13780	11795	13410	17262	28897	38910	33477

[194] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

The MRGI's PUT index rating given to Afghanistan for 2011 (based on 2010 events) is at its highest level in five years, suggesting that refugee flows out of Afghanistan may continue or increase.[195] The main recipient countries for the outflow of people from Afghanistan are Pakistan and Iran, which, together, hosted more than 95 per cent of Afghan refugees. The following graph shows the percentage breakdown, by country of residence, of Afghan refugees in 2010.[196]



[195] MRGI, *State of World's Minorities* reports, op. cit.

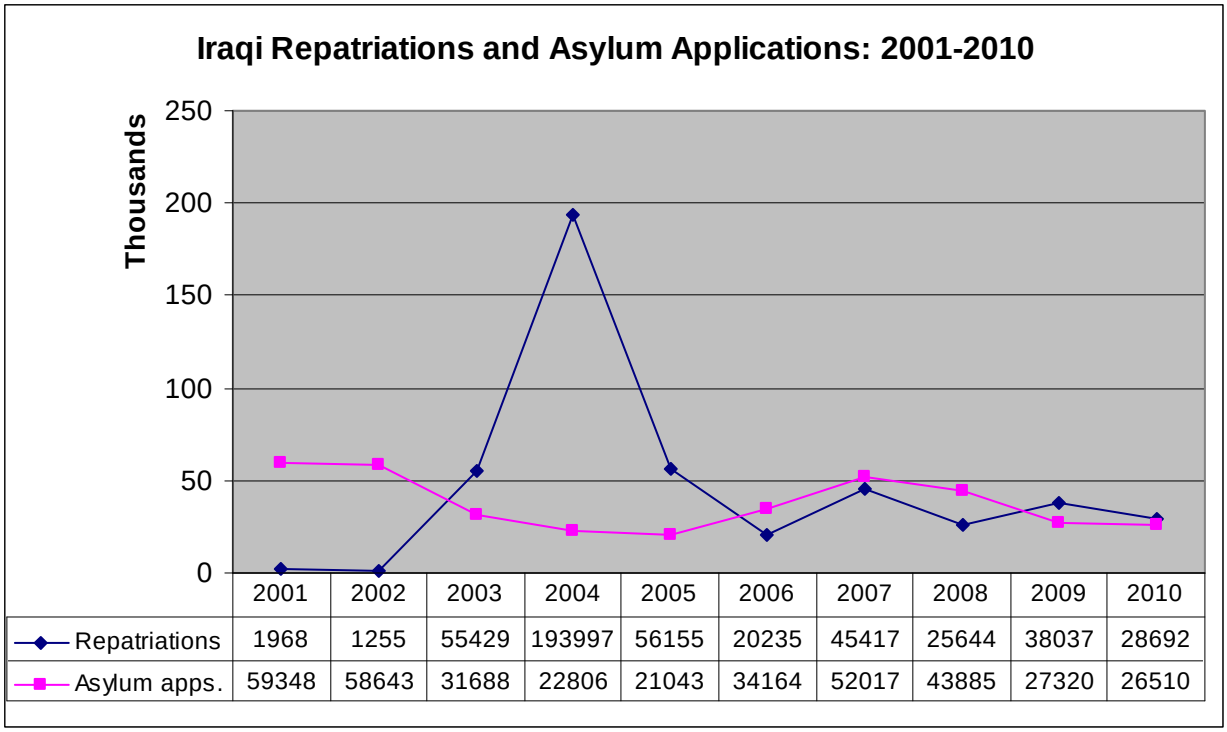
[196] According to UNHCR estimates, 5518 Afghan refugees were in Australia. Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

Iraq

Iraqi refugees were fleeing the country long before the United States-led invasion of Iraq in 2003. The number of refugees originating from Iraq reached its first peak in the early 1990s, with approximately 1.3 million Iraqi refugees.[197] This number dropped immediately following the invasion of Iraq, before rising again with a renewed outflow of refugees. At the end of 2004 there were just over 300 000 Iraqi refugees[198], although the number of IDPs was significantly higher at around 1.2 million people.[199]

Tensions between ethnic and religious groups, in addition to the ongoing armed conflict between the security forces and insurgents, led to renewed displacement following the fall of Saddam Hussein Government.[200] From 2006 to 2008, Iraq was the single biggest country of origin for the number of asylum seekers in the 44 industrialised countries reported on by UNHCR.[201] Unfavourable security conditions were also problematic for the repatriation of displaced people.[202]

Following the fall of the Saddam Hussein Government, the number of repatriations spiked sharply in 2004 and the number of new asylum applications by Iraqis reached a 10-year low in 2005. Most of the refugees returning in 2004 came from neighbouring Iran.[203] The following table shows the number of repatriations to Iraq and the number of new Iraqi asylum applications lodged from 2001 to 2010.[204]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Repatriations	1968	1255	55429	193997	56155	20235	45417	25644	38037	28692
Asylum apps.	59348	58643	31688	22806	21043	34164	52017	43885	27320	26510

197 UNHCR, *Country of Origin Information: Iraq*, 2005, p. 177, viewed 7 July 2011, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=435637914.

198 Ibid.

199 Ibid., p. 24.

200 Ibid.

201 UNHCR, *Asylum Levels and Trends in Industrialized Countries 2010*, op. cit., p. 44.

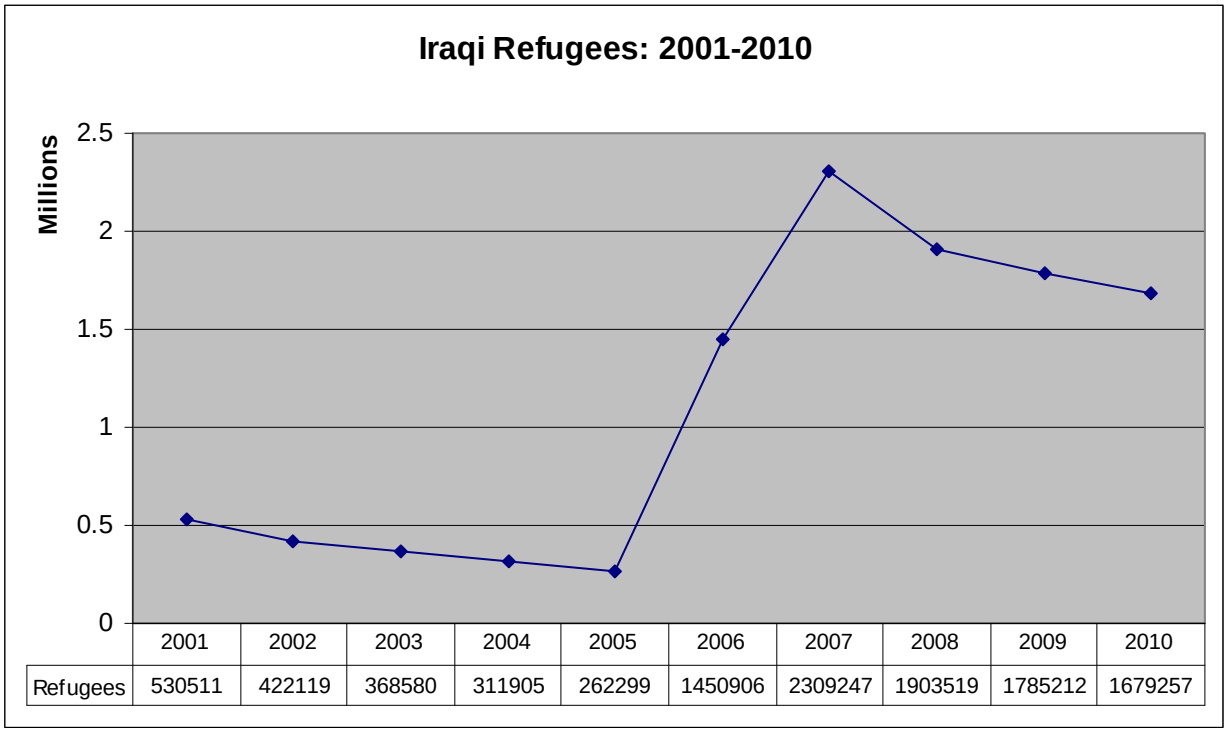
202 UNHCR, *Country of Origin: Iraq*, op. cit., p. 29.

203 UNHCR, *UNHCR Global Report 2004— Iraq*, 2005, pp. 324–5, viewed 7 July 2011, http://www.unhcr.org/42ad4da20.html.

204 Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

The graph above does not show the significant increase in refugees originating from Iraq in 2006 and 2007, possibly because many of those fleeing Iraq to neighbouring countries did not lodge formal asylum applications. Sectarian violence between the Shi'ite and Sunni communities in Iraq accounted for most of the large-scale displacement of Iraqis in 2006 and 2007.[205] Members of various minorities were targeted in attacks, including Christians, Yazidis, Sabaean-Mandaeans, homosexuals and women considered to be violating Islamic rules or damaging their family's honour.[206]

While violence in Iraq continues, there has been a significant reduction in new displacements since the peak in 2007.[207] The MRGI's PUT index rating for Iraq improved from 2009 to 2010, suggesting that the number of refugees originating from Iraq may continue to decline.[208] The following graph shows the number of refugees originating from Iraq from 2001 to 2010.[209]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Refugees	530511	422119	368580	311905	262299	1450906	2309247	1903519	1785212	1679257

[205] UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-seekers*, 2009, p. 12 , viewed 13 July 2010, http://www.unhcr.org/4a2640852.html.

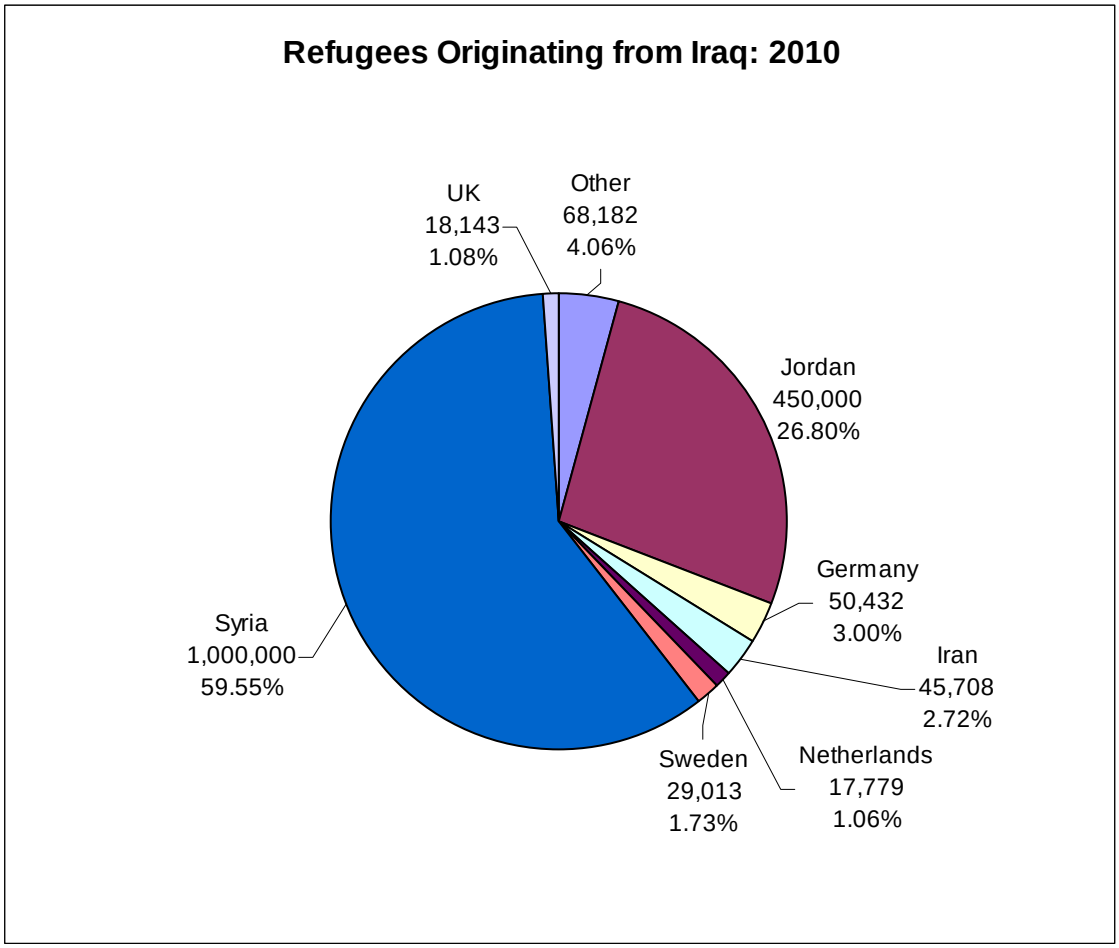
[206] Ibid., p. 15.

[207] Ibid., p. 12.

[208] MRGI, *State of World's Minorities* reports, op. cit.

[209] Some of the increase in 2007 may have been due to changes in data methodology (Appendix A). Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

Almost 1.5 million displaced Iraqis are still living in Syria and Jordan, making up the vast majority of Iraqi refugees. The main populations of displaced Iraqis in industrialised countries are found in Germany, Sweden and the United Kingdom. The graph below shows the distribution of Iraqi refugees, and people living in refugee-like situations, in 2010.[210]

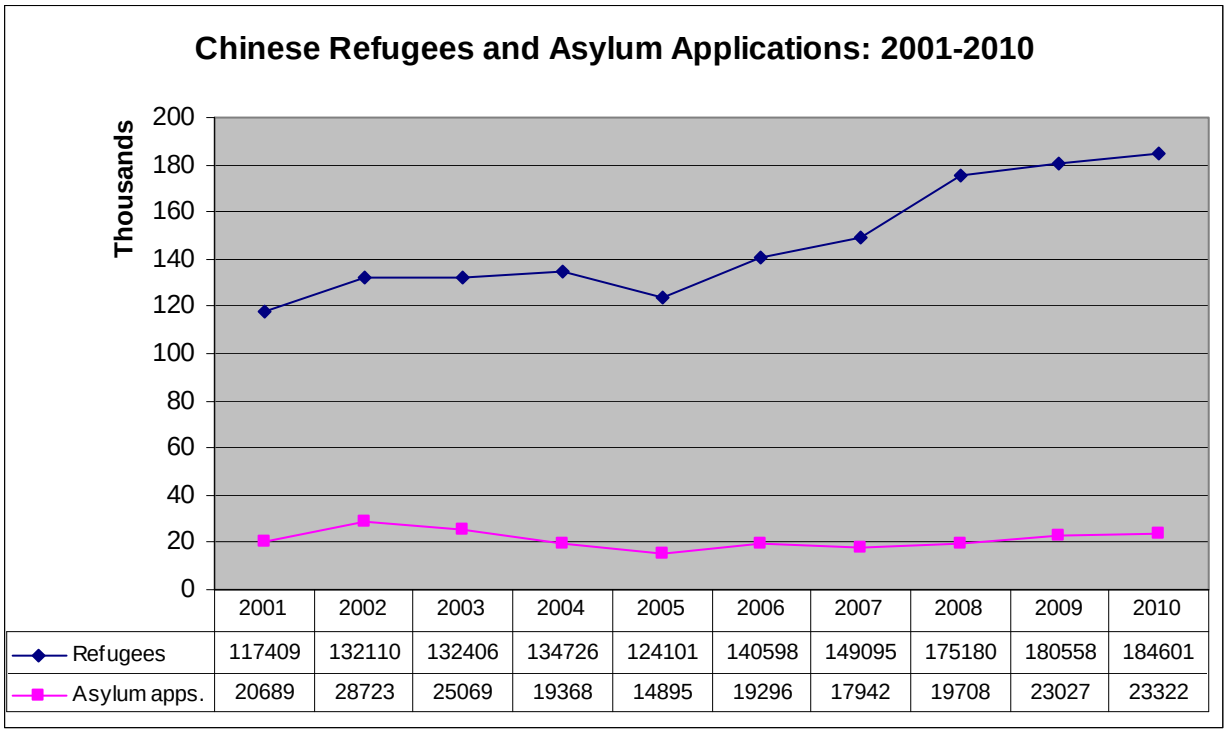


[210] According to UNHCR estimates, 3791 Iraqi refugees were in Australia in 2010. Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

People's Republic of China

The communist party has remained in government in PRC since the end of World War II. Under the Mao Zedong Government there were considerable restrictions on personal liberties and many were killed through political persecutions, until a major shift in government policy in 1978.[211] Despite notable human rights events, such as the Tiananmen Square incident, there have been no large-scale population movements out of PRC since the end of Mao Zedong's Cultural Revolution in 1978. However, political liberty and freedom of religion are still significantly restricted.[212]

Over the past decade there has been a steady and moderate outflow of asylum seekers from PRC, with negligible refugee repatriations.[213] While the proportion of people displaced from PRC is relatively low compared to countries like Iraq, because of its large population the actual numbers of asylum seekers from PRC is still significant. The following graph outlines the number of Chinese refugees and the number of new asylum applications originating from PRC lodged each year from 2001 to 2010.[214]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Refugees	117409	132110	132406	134726	124101	140598	149095	175180	180558	184601
Asylum apps.	20689	28723	25069	19368	14895	19296	17942	19708	23027	23322

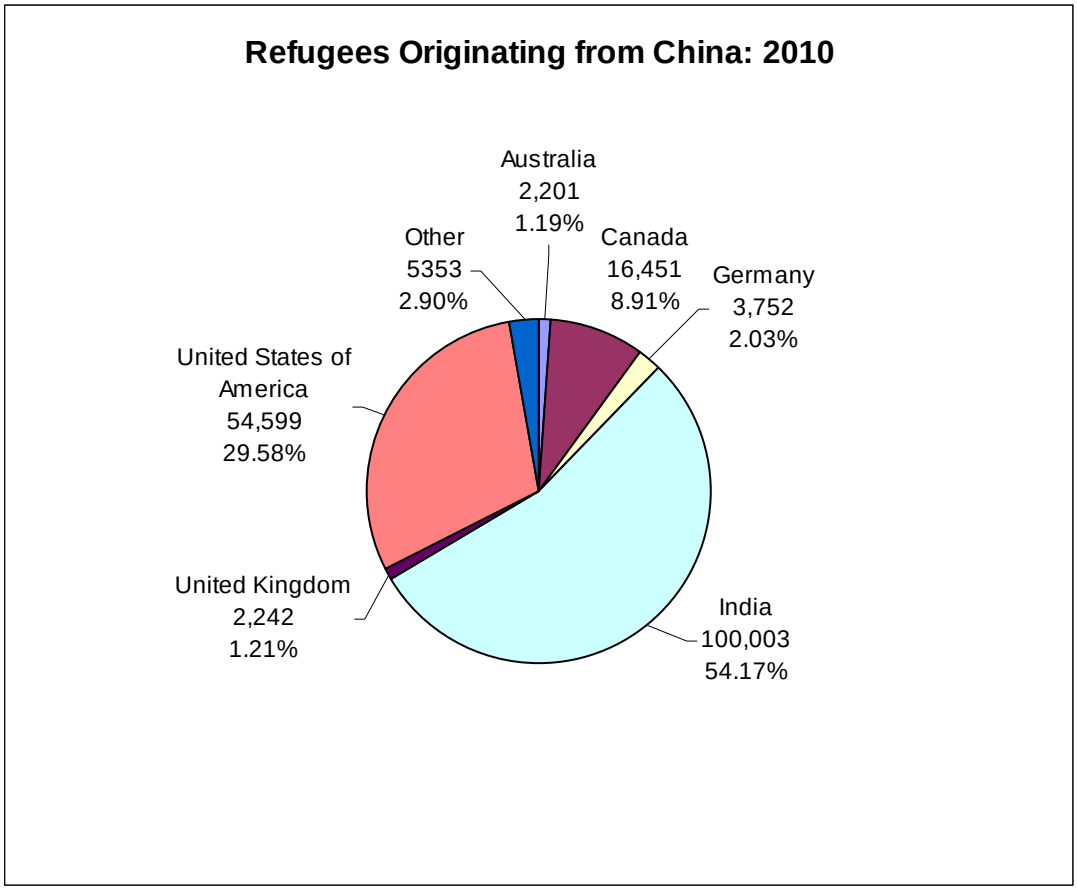
[211] Central Intelligence Agency, *CIA World Factbook: China*, 2011, viewed 13 July 2011, https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html.

[212] United States Department of State, *Background Note: China*, 2010, viewed 13 July 2011, http://www.state.gov/r/pa/ei/bgn/18902.htm.

[213] *UNHCR Statistical Online Population Database*, op. cit.

[214] Ibid.

PRC was the second biggest source country of asylum applications made in Australia for the year 2010.[215] Australia's proximity to PRC in addition to the already settled Chinese communities in Australia makes it a relatively appealing destination for asylum seekers from PRC. At the end of 2010 Australia ranked sixth among countries hosting refugees originating from PRC, with 2201 Chinese refugees living in Australia. The following graph shows the main destination countries of refugees originating from PRC in 2010.[216]



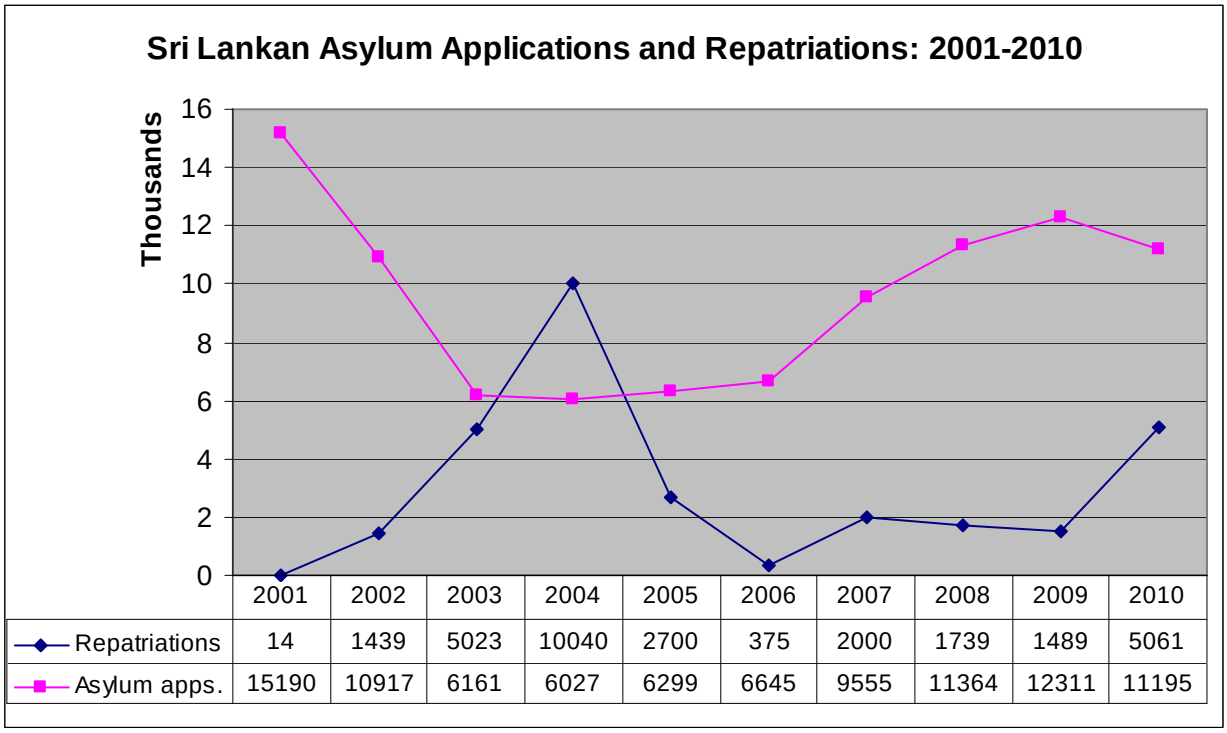
[215] UNHCR, *Asylum Levels and Trends in Industrialised Countries 2010,* op. cit., p. 36.

[216] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

Sri Lanka

The conflict between the ethnic Sinhalese and Tamil populations from 1984 to 2009 created significant refugee outflows. A ceasefire was negotiated in 2002. However, peace talks failed in 2006 and the conflict re-erupted, putting Tamils and Muslims at particular risk of persecution.[217] Consequently, Sri Lanka's MRGI's PUT index for 2007 increased substantially.[218] The defeat of the Tamil Tigers in May 2009 resulted in the displacement of many Tamils.[219] The security situation improved markedly in 2010 and at the end of the year it was estimated there were approximately 200 000 IDPs in Sri Lanka despite 160 000 people returning to their homes during that year.[220]

After the ceasefire ended in 2005 the fighing intensified leading up to the end of the war in 2009. During this period there were an increasing number of asylum seekers originating from Sri Lanka.[221] It should be noted that asylum seeker numbers do not include those who fled Sri Lanka but did not lodge an application for asylum. The following graph shows the number of Sri Lankan asylum applications lodged globally and the number of refugee returns to Sri Lanka from 2001 to 2010.[222]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Repatriations	14	1439	5023	10040	2700	375	2000	1739	1489	5061
Asylum apps.	15190	10917	6161	6027	6299	6645	9555	11364	12311	11195

[217] MRGI, *State of the World's Minorities 2007,* op. cit., p. 12.

[218] See: *State of the World's Minorities and Indigenous Peoples* reports, op. cit.

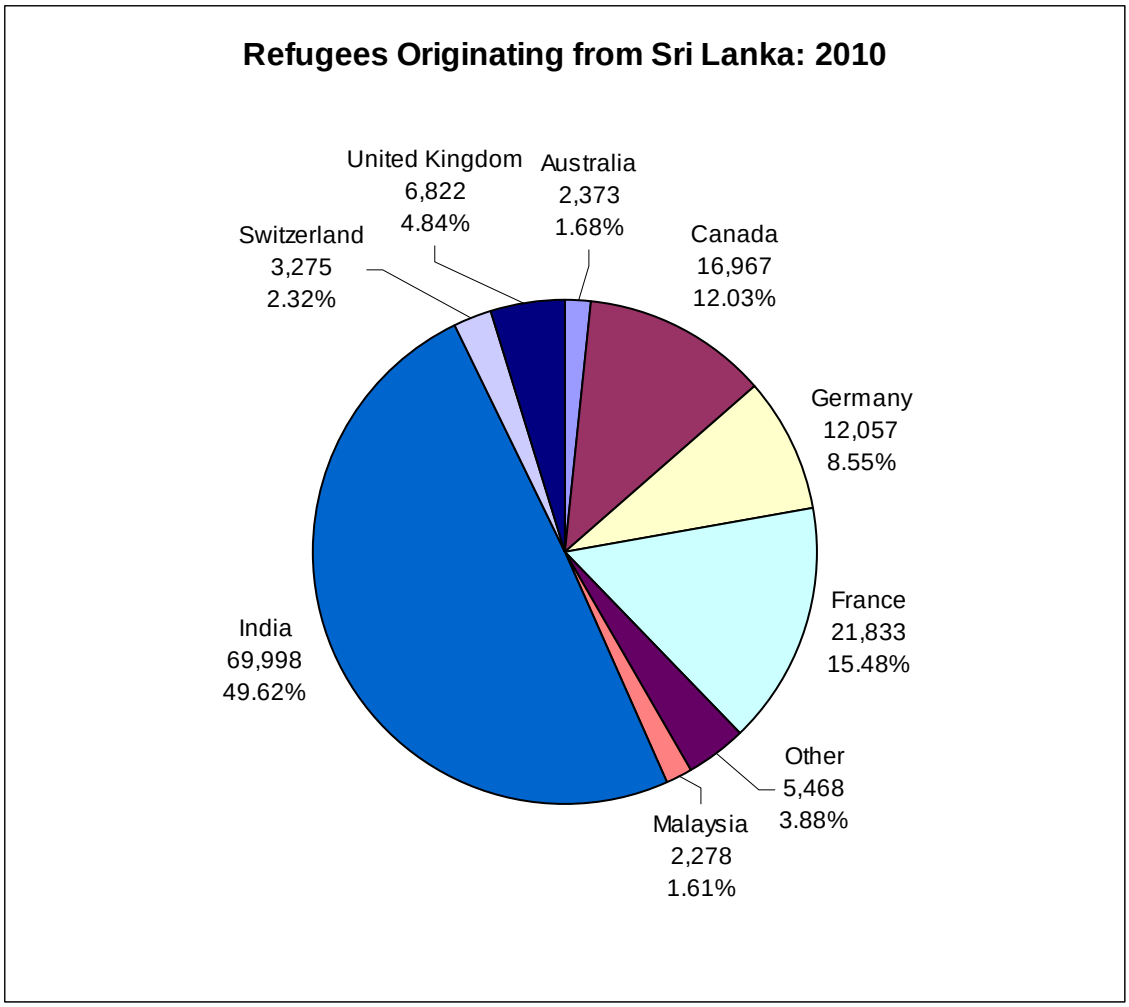
[219] UNHCR, *2011 UNHCR country operations profile—Sri Lanka* , viewed 13 July 2011, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4878e6.

[220] UNHCR, *UNHCR Global Report 2010: Sri Lanka*, 2011, p. 254, viewed 13 July 2011, http://www.unhcr.org/4dfdbf550.html.

[221] *UNHCR Statistical Online Population Database*, op. cit.

[222] Ibid.

The graph above shows the increasing number of repatriations following the cease-fire in 2002. Repatriations then remained relatively low from 2006 to 2009, before significantly increasing again in 2010, following the defeat of the Tamils. Almost all the refugees who returned to Sri Lanka during 2001 to 2010 came from India.[223] Nevertheless, at the end of 2010 almost half of the refugees originating from Sri Lanka were living in India. The graph below illustrates the global distribution of Sri Lankan refugees, and people in refugee-like situations, in 2010.[224]



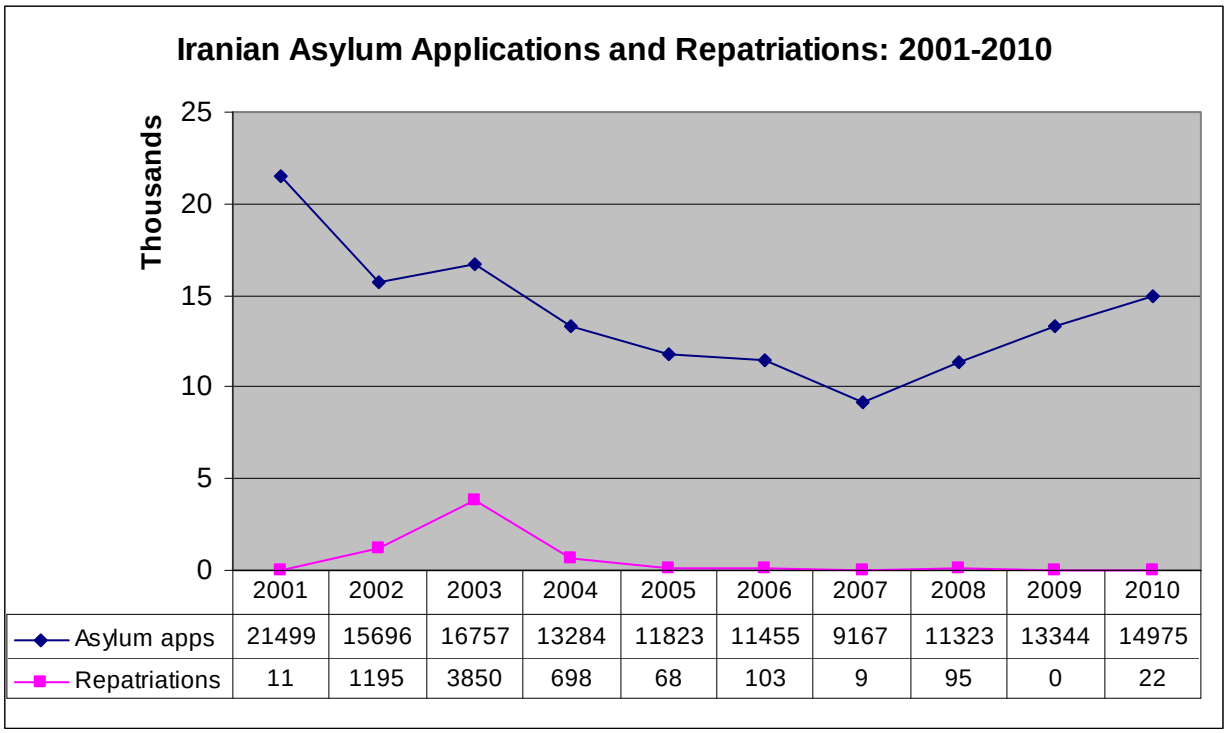
[223] *UNHCR Statistical Online Population Database*, op. cit.

[224] Ibid.

Iran

Iran has had a turbulent political history, with several abrupt changes in government since 1925. Following the 1978 revolution that ousted the governing Shah, Iran started to become a theocratic republic.[225] By 1982 the clergy had won various power struggles to eliminate the centre and left of the political spectrum.[226] Since this time, Iran has been characterised by religious austerity and severe social constraints.

There have been a relatively large number of asylum applications by people originating from Iran over the past decade, while very few have been repatriated to the country.[227] The bump in repatriations in 2003 is most likely due to the war in neighbouring Iraq, with almost all of the repatriations from 2002 to 2004 being constituted by returning Iraqis.[228] The following graph shows the number of new Iranian asylum applications and the number of refugee returns to Iran from 2001 to 2010:[229]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Asylum apps	21499	15696	16757	13284	11823	11455	9167	11323	13344	14975
Repatriations	11	1195	3850	698	68	103	9	95	0	22

The graph above shows that, after reaching a low in 2007, the number of asylum applications lodged per year increased. With the MRGI's PUT index for Iran generally increasing since 2006 and reaching its highest peak for 2011, the upward trend of asylum applications may well continue in the coming year.[230]

[225] United States Department of State, *Background Note: Iran*, 2011, viewed 13 July 2011, http://www.state.gov/r/pa/ei/bgn/5314.htm.

[226] Ibid.

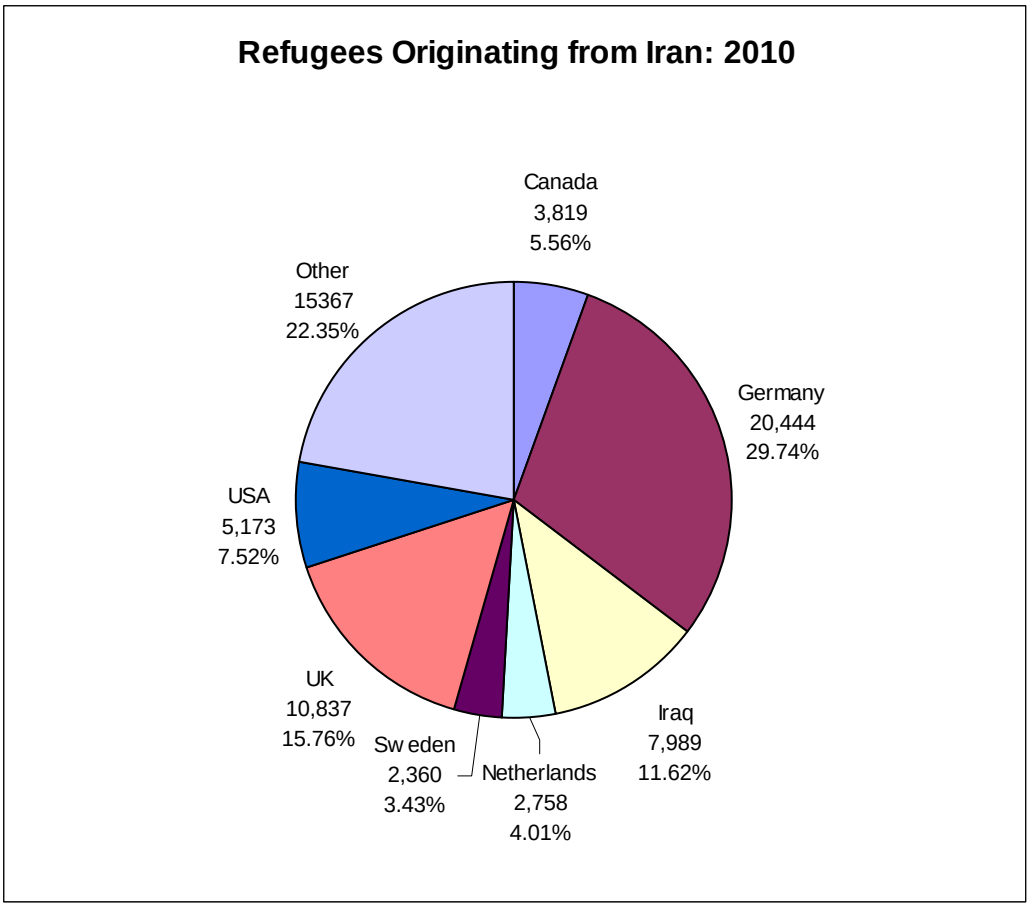
[227] *UNHCR Statistical Online Population Database*, op. cit.

[228] Ibid.

[229] No information was available on the number of repatriations in 2009. Statistics taken from: Ibid.

[230] MRGI, *State of the World's Minorities and Indigenous Peoples* reports, op. cit.

In 2010, more than half of all Iranian refugees were living in Germany, the United Kingdom and Iraq. The following graph shows the countries of residence of refugees, and people living in refugee-like situations, originating from Iran as at the end of 2010.[231]



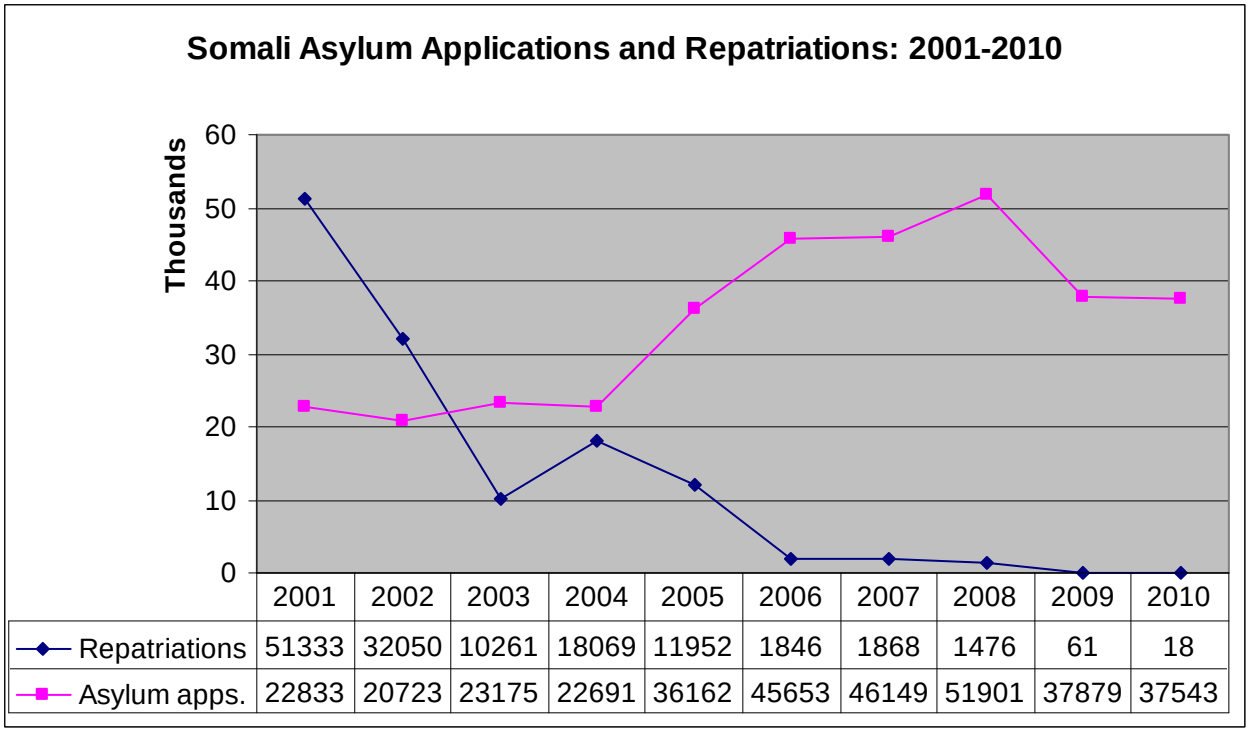
[231] According to UNHCR estimates, 1327 Iranian refugees were in Australia. Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

Somalia

Somalia has been a crisis area for a number of years and is embroiled in a civil war. Both women and minorities suffer discrimination throughout the country, with women of minority groups particularly at risk.

The Transitional Federal Government is unable to provide stability or maintain control of Somalia amid fighting against several rebel movements.[232] The Islamist group al-Shabaab now controls most of south-central Somalia, where minority groups such as the Bantu, Benadiri and Bajuni face discrimination and persecution.[233] Al-Shabaab enforces a severe version of Sharia law that breaches international human rights standards, particularly in respect of women and minority religions.[234] The situation is exacerbated by difficulties in getting humanitarian aid to minorities and IDPs, especially in light of al-Shabaab's ban of more than 20 aid agencies.[235]

Somalia has been the highest risk country according to the PUT index since 2007, having increased every year since the index was first published in 2006.[236] In recent years, from 2006 to 2010, the number of repatriations dropped to negligible figures, while the number of new asylum seekers originating from Somalia remained high. The following graph shows the number of Somali first instance asylum applications and repatriations from 2001 to 2010.[237]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Repatriations	51333	32050	10261	18069	11952	1846	1868	1476	61	18
Asylum apps.	22833	20723	23175	22691	36162	45653	46149	51901	37879	37543

232 UNHCR, *2011 UNHCR country operations profile—Somalia*, viewed 25 July 2011, http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483ad6.

233 MRGI, *State of the World's Minorities and Indigenous Peoples 2011*, op. cit, pp. 79–80.

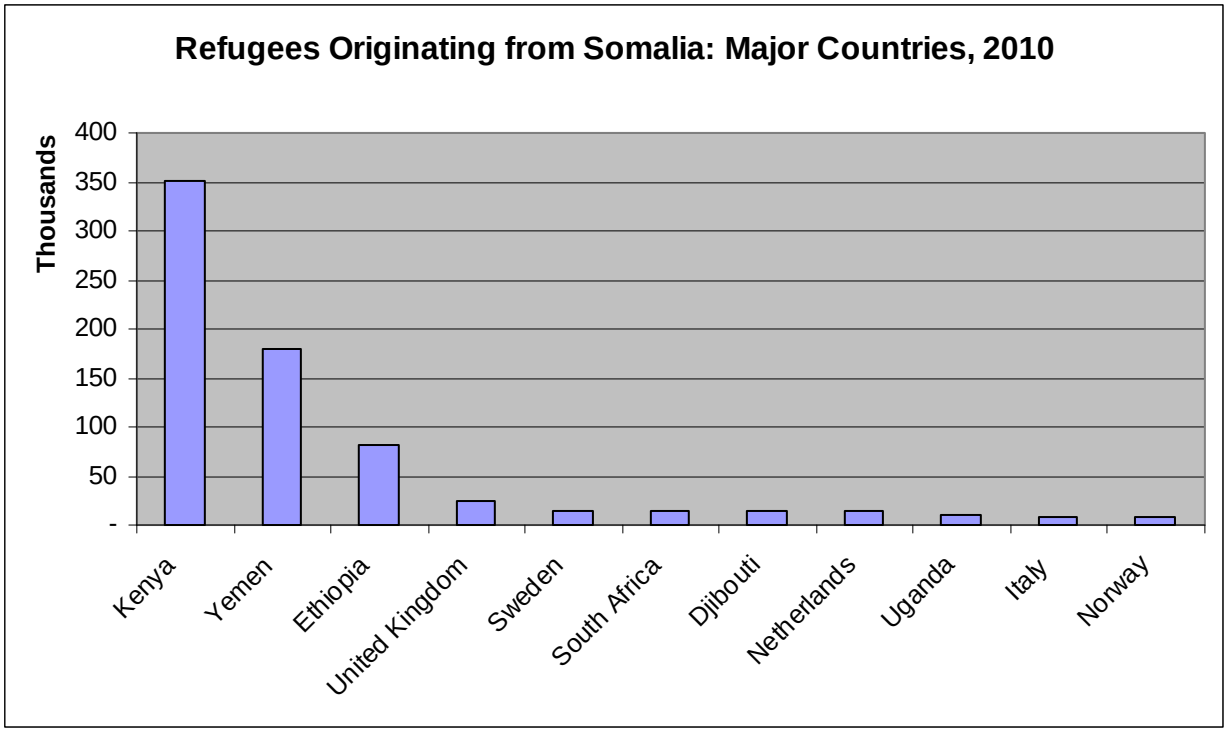
234 Ibid., p. 82.

235 Ibid., p. 80.

236 MRGI, *State of the World's Minorities and Indigenous Peoples* reports, op. cit.

237 Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

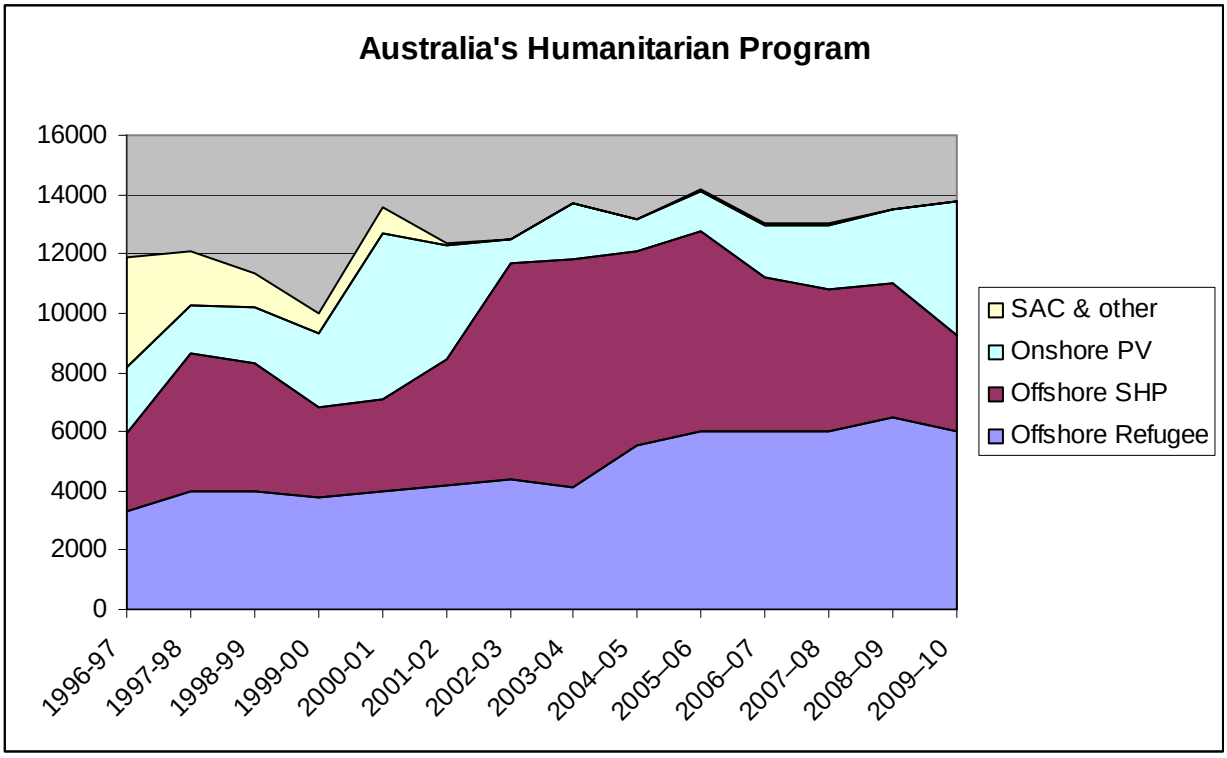
Consistent with other major humanitarian crises, refugees originating from Somalia have overwhelmingly sought refuge in neighbouring countries (Kenya, Yemen, Ethiopia and Djibouti). Of those seeking refuge further abroad, the main destination countries were the United Kingdom, Sweden, South Africa and the Netherlands. The following graph shows the main destination countries of refugees originating from Somalia, as at the end of 2010.[238]



[238] Statistics taken from: UNHCR, *UNHCR Global Trends 2010: Annex Tables,* op. cit., Table 5.

Australia as a destination

Australia's humanitarian program comprises two components—offshore and onshore. The offshore resettlement program relates to refugees, usually referred by the UNHCR, though other people in refugee or refugee-like situations may be proposed under the Special Humanitarian Program (SHP). The onshore component of the humanitarian program aims to provide options for people who wish to apply for protection (or asylum) in Australia. While the humanitarian intake has remained relatively stable in Australia, the breakdown of onshore to offshore visa grants may vary. The following graph shows Australia's humanitarian program intake from 1996–97 to 2009–10.[239]



This graph shows that as the fourth wave of IMAs started in late 2008, the number of onshore visa grants increased and the number of special humanitarian (offshore) visa grants decreased. For more information on the fourth wave of IMAs and for a discussion about IMAs more generally, see the accompanying issues paper *An historical perspective of refugees and asylum seekers in Australia: 1976–2011.*

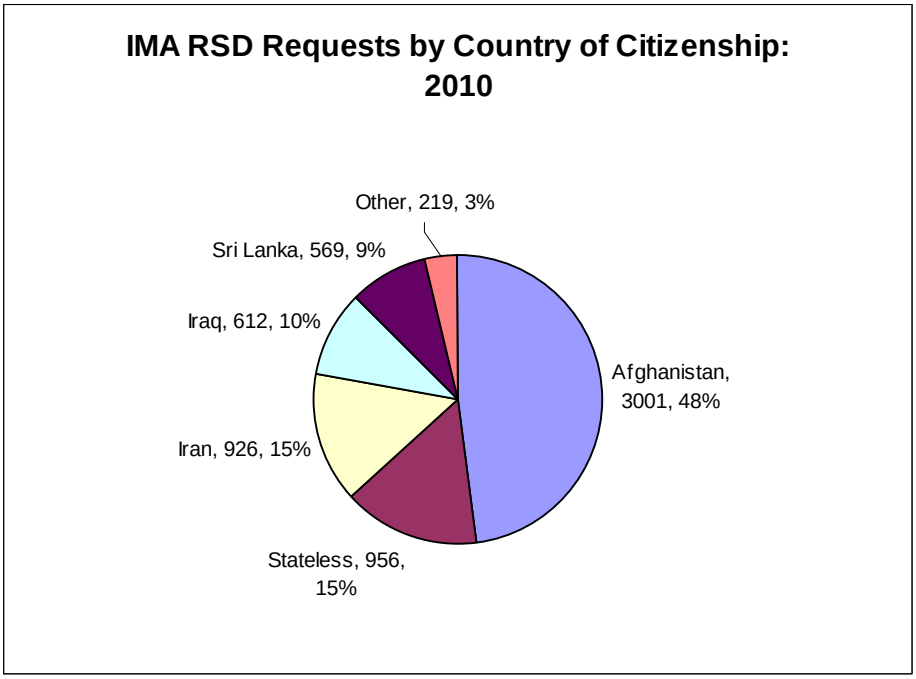
Onshore asylum seekers

Onshore asylum seekers may take one of two pathways depending on their mode of arrival. IMAs are unable to make visa applications unless this prohibition is specifically waived, but have access to a RSD process (see the accompanying issues paper *Evolution of the Australian legislative framework and policy for immigration detention*).[240]

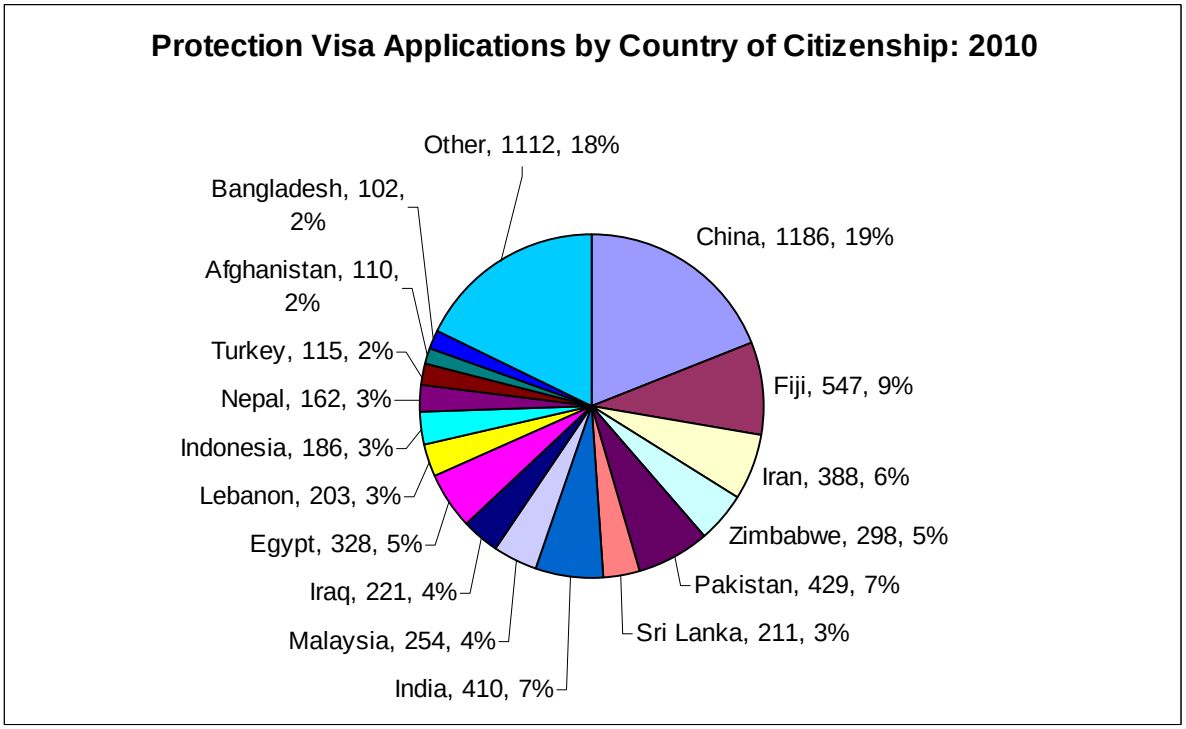
[239] SAC refers to Special Assistance Category' visas. These were introduced to assist specified groups of people with close links to Australia whose circumstances did not fit into traditional refugee or humanitarian categories. All SACs were discontinued by November 2000.

[240] This was known as a Refugee Status Assessment (RSA) up to 28 February 2011. After this date it became the Protection Obligation Determination process. Consequently, statistics for 2010 reflect the RSA process used to assess IMA asylum claims.

Almost half of all IMAs making RSD requests in 2010 were citizens of Afghanistan. The following graph shows the number of RSD requests made in 2010 by countries of citizenship.[241]



In contrast to the process for IMAs, onshore asylum seekers may apply directly for a Protection visa. Of non-IMAs applying for Protection visas in Australia in 2010 China represented the single biggest source country, followed by Fiji and Iran. The following graph shows the number of onshore Protection visa applications lodged in Australian in 2010, excluding IMAs, by country of citizenship.



[241] The POD process was implemented from 1 March 2011.

Appendix A: Source and definitions

The UNHCR Statistical Online Population Database was used to compile most graphs and statistics used in this paper (specific references are in the footnotes). The database is available at: http://www.unhcr.org/pages/4a013eb06.html

The sources and category definitions are summarised below.[242]

Data sources

Data sources for most countries include government agencies, UNHCR field offices and non-government organisations. For industrialised countries, data provided by the government of that country is usually relied upon.

Refugees (and people in refugee-like situations)

Refugees include individuals recognised under the 1951 Convention and Protocol relating to the Status of Refugees; its 1967 Protocol; the 1969 OAU Convention: Governing the Specific Aspects of Refugee Problems in Africa; those recognised in accordance with UNHCR Statute; individuals granted complementary forms of protection; or, those enjoying 'temporary protection'.

From 2007, UNHCR refugee population category also includes people in a refugee-like situation. This sub-category includes groups of people who are outside their country of origin who face protection risks similar to those of refugees, but for whom refugee status has, for practical or other reasons, not been ascertained.

From 2007, resettled refugees are excluded from the refugee estimates in all countries. The 4.7 million Palestine refugees under the mandate of United Nations Relief Works Agency are not included in UNHCR statistics.[243]

For Australian statistics of refugees, the number is estimated using a 10 year trend of positive RSD decisions. Arrivals by both air and sea are counted for 10 years after their positive RSD decision. Refugees resettled in Australia but who were recognised as refugees outside of Australia are not counted. UNHCR does not consider there to be any people in refugee-like situations in Australia

Returned refugees (repatriation)

This category refers to refugees who have returned to their country of origin.

Asylum-seekers

Asylum-seekers are people who have applied for asylum or refugee status, but who have not yet received a final decision on their application. The statistics only count asylum seeker applications that were submitted in the first instance (that is, not applications for review).

Internally displaced persons

IDPs are people or groups of individuals who have been forced to leave their homes or places of habitual residence, often due to armed conflict, but who have not crossed an international border, and may thus not be defined as refugees.

Stateless persons

Stateless persons are individuals who are not, under law, considered as national in any state. Statistics on statelessness also include people with an undetermined nationality.

Other persons of concern

For the sake of simplicity, this paper has not provided statistics on other persons of concern on which the UNHCR collects data. This includes returned IDPs, stateless persons and other persons who do not fall directly into any of the abovementioned groups but who receive help from the UNHCR based on humanitarian or other special grounds.

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[242] For more comprehensive information see: UNHCR, *UNHCR Statistical Online Population Database: Sources, Methods and Data Considerations*, 2007, viewed 13 July, http://www.unhcr.org/statistics/STATISTICS/45c06c662.html.

[243] For more information, see: UNHCR, *UNHCR Statistical Online Population Database: General Notes*, 2009, viewed 13 July 2011, http://www.unhcr.org/4a01417d6.html.

Appendix B: Peoples under threat index

The following table only shows the PUT index rating for selected countries. For full listings, consult Minority Rights Group International publications.[244]

PUT index: selected countries (2006–11)

Year beginning	Afghanistan	China	Iran	Iraq	Sri Lanka	Vietnam	Somalia
2006	20.69	10.80	13.67	22.04	9.63	11.43	21.17
2007	21.03	11.08	15.02	21.61	16.00	10.97	21.95
2008	20.89	11.11	15.71	22.56	16.63	9.99	22.81
2009	20.95	11.05	16.11	22.14	17.76	10.20	23.30
2010	21.39	11.77	15.79	21.90	16.19	10.84	23.63
2011	21.77	11.82	16.48	21.31	15.63	10.80	23.66

Highest PUT index: 2006–2011

Year beginning	Highest	Second highest	Third highest
2006	Iraq (22.04)	Sudan (21.17)	Somalia (21.17)
2007	Somalia (21.95)	Iraq (21.61)	Sudan (21.50)
2008	Somalia (22.81)	Iraq (22.56)	Sudan (21.56)
2009	Somalia (23.30)	Iraq (22.14)	Sudan (21.65)
2010	Somalia (23.63)	Sudan (21.95)	Iraq (21.90)
2011	Somalia (23.66)	Sudan (21.89)	Afghanistan (21.77)

[244] MRGI, State of World's Minorities reports, op. cit.

Attachment D: An historical perspective of refugees and asylum seekers in Australia 1975-2011

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Introduction

The United Nations (UN) 1951 Convention Relating to the Status of Refugees (the Refugee Convention) is the key legal document defining who is a refugee, their rights and the legal and moral obligations of states.

The original Refugee Convention only applied to post World War II European refugee situations. The 1967 Protocol Relating to the Status of Refugees removed these limitations to allow the convention to cover refugee situations in any country. The Refugee Convention and 1967 Protocol remain the cornerstones of refugee protection throughout the world.

Australia signed the Refugee Convention on 22 January 1954, the sixth country to do so, and ratified the 1967 Protocol on 13 December 1973. In accordance with Australia's refugee protection obligations under both the convention and protocol, Australia has established a legal framework for the protection of refugees in domestic law. While irregular maritime arrivals (IMAs) who arrive at an excised place are barred from applying for a visa onshore under the *Migration* Act 1958 (Cwlth), the obligations under the Refugee Convention still apply.

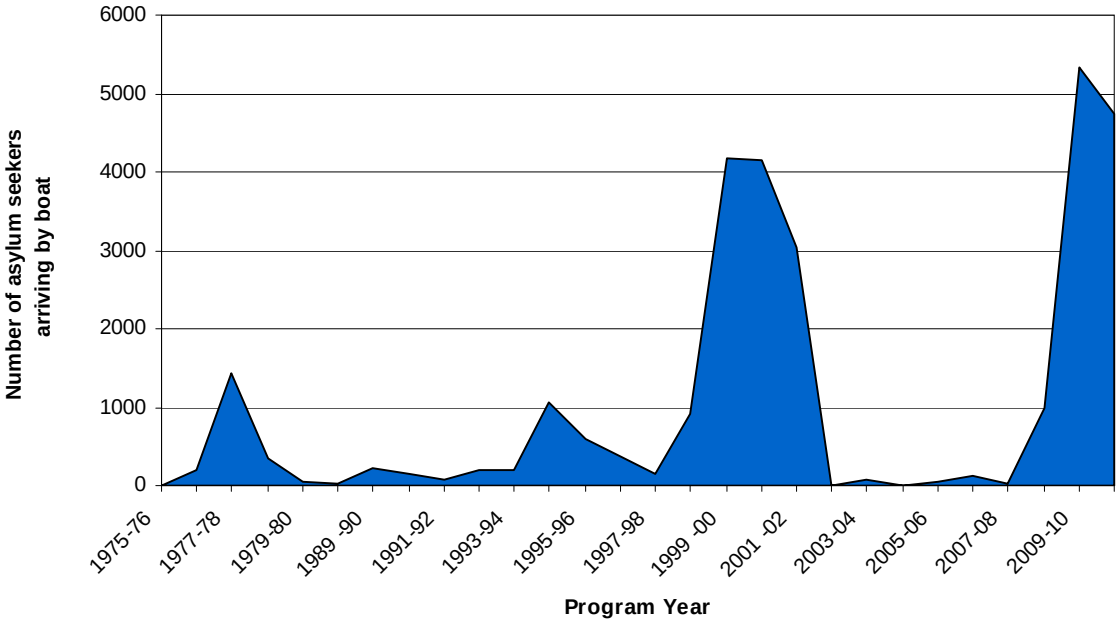
Australia is obliged, as a signatory of the Refugee Convention, to not return people to countries where their life or liberty would be threatened by their religion, race, nationality, political view or membership of a social group.

One major challenge facing the world today is the protection of refugees forced to leave their homes by armed conflict and human rights abuses. As a member of the international community, Australia shares responsibility for protecting these refugees and resolving refugee situations. This commitment is most strongly expressed through Australia's Humanitarian Program.

Australia has had four 'waves' of IMAs since 1976 (Figure 1), each of which has had repercussions on the country's immigration system, policy, and law. Successive waves of boat arrivals have required successive governments to respond to the complex and conflicting pressures of managing Australia's borders. At the same time, governments have had to give due consideration to both domestic and political concerns, the humane treatment of asylum seekers and the need to honour international obligations.

This paper provides an historical perspective of the various waves of refugees and asylum seekers entering Australia from 1976 through to the present day, detailing the ways in which successive governments have responded to the plight of asylum seekers over the past 35 years. The overall perspective is of Australia balancing obligations under the Refugee Convention while maintaining regional stability to reduce the movement of displaced people.

Figure 1 The four waves of irregular maritime arrivals, 1976–2011



Source: DIAC statistics, *Boat Arrivals in Australia since 1976,* Parliamentary Background Note, updated 11 February 2011.

The first wave: 1976–81

Boat arrivals

During the 1970s, after more than 30 years of war and instability, more than two million refugees fled Cambodia, Laos and Vietnam to find refuge elsewhere. On April 30 1975 the American-backed South Vietnamese Government fell to the Communist-backed north and, as a result, around 130 000 refugees fled Vietnam. Many escaped in small and often unseaworthy boats with the hope of surviving the nearly 1000 km journey to the Malaysian coast.[245]

On 27 April 1976 the first small boat carrying Vietnamese refugees reached Darwin. The vessel carried five people. A further seven boats carrying 204 refugees arrived on the shores of north and north–western Australia in the following months. All of these arrivals were permitted to remain in Australia permanently. The number of arrivals rose substantially in 1977–78, with an extra 1432 refugees arriving on 43 boats.

In 1978–79 fewer boats arrived in Australia (six boats carrying 351 people). The Minister for Immigration and Ethnic Affairs stated it seemed evident that officials in Vietnam were engaged in the 'export' of ethnic Chinese and Vietnamese people 'at a price'[246], involving larger vessels flying flags of convenience.[247] In October 1981, a total of 146 people posing as Vietnamese refugees arrived in Darwin. The group was detained and extensive investigations revealed they had paid for their passage as part of an organised attempt at illegal entry into Australia. All 146 people were deported back to Taiwan and Hong Kong.

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[245] CBC Digital Archives, *Boat People: A refugee crisis,* viewed 22 June 2011, http://archives.cbc.ca/society/immigration/topics/524.
[246] Department of Immigration and Ethnic Affairs (DIEA), *Annual Report 1978–1979*, Australian Government, Canberra, 1979. p. 6.
[247] Flag of convenience: A ship is flying a flag of convenience where it is registered under the maritime laws of a country which is not the home country of the ship's owners, usually because the country of registry offers low tax rates and/ or leniency in crew and safety requirements.

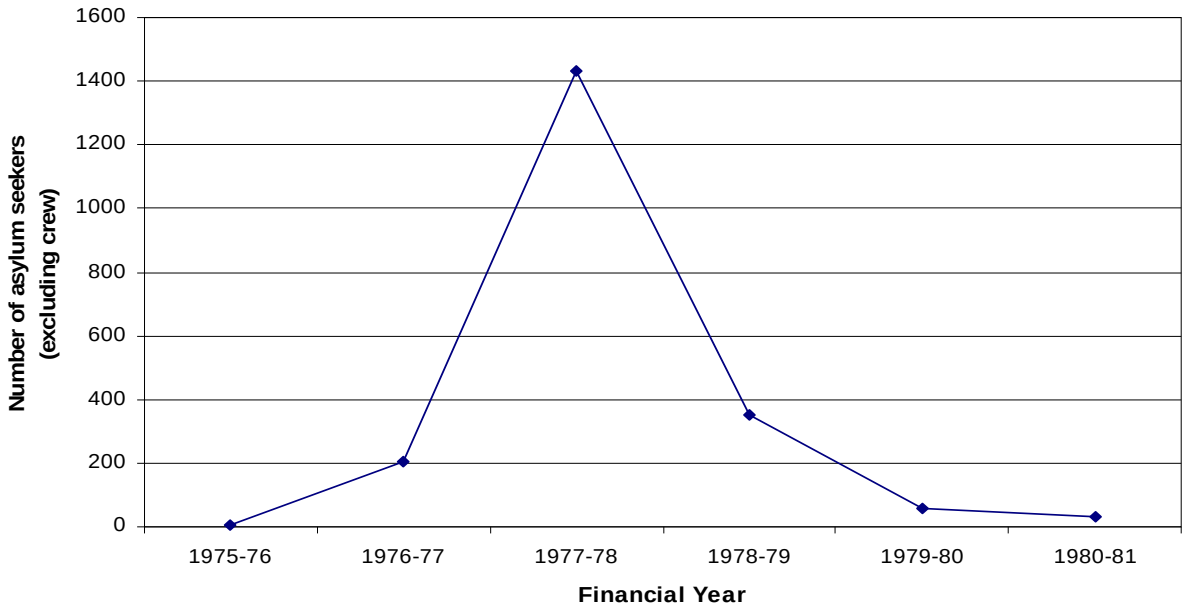
By June 1981 the number of people in South-East Asian refugee camps had declined significantly though there remained a large outflow of people leaving Vietnam by land and sea. However, no further Indo-Chinese boats would arrive on Australian shores until November 1989. Table 1 shows the number of asylum seekers arriving in Australia by boat between 1975 and 1981.

Table 1 Total number of asylum seekers arriving by boat 1975–76 to 1980–81

Program year	Boats	Asylum seekers
1975–76	1	5
1976–77	7	204
1977–78	43	1432
1978–79	6	351
1979–80	2	56
1980–81	1	30*
TOTAL	**60**	**2078**

* This figure does not include the boat carrying 146 people that arrived in October 1981.
Source: DIEA annual reports, 1976 to 1981.

Figure 2 The first wave: 1975–76 to 1980–81, asylum seeker arrivals



Source: DIEA, annual reports 1976 to 1981.

Offshore refugee intake

In addition to boat arrivals, the Australian Government began resettling Indo-Chinese refugees from the region. Between 1 July 1975 and 30 June 1981 Australia resettled an average of 8630 Indo-Chinese refugees a year, 51 780 for the period. Most of these were assessed by Australian officials in refugee camps in Malaysia, Indonesia and Thailand.

Australia did not limit its refugee intake to people from Indo-China during this period, also resettling large numbers of refugees from East Timor and Eastern Europe, and small groups of Assyrians from Greece, Chileans from Argentina, Cubans, and White Russians from China.

Government responses to the 'first wave'

The initial response—Indo-Chinese offshore refugees

Before the Indo-Chinese refugee crisis, Australia had no established mechanisms for processing refugees, and initially limited its response to resettling only those with close links to Australia. This included: spouses and children of Australian citizens; spouses and children of Vietnamese students resident in Australia; and Vietnamese citizens with a long and close Australian association, whose life could be considered in danger.[248]

The combination of large numbers of refugees in South-East Asia and direct boat arrivals carrying asylum seekers from that region prompted the Australian Government to develop a more comprehensive refugee policy.

The Senate Standing Committee's 1976 report *Australia and the refugee problem: the plight and circumstances of Vietnamese and other refugees* called for 'the formulation of a comprehensive set of policy guidelines and the establishment of appropriate machinery [to] be tackled with some degree of urgency.'[249] In response to this report, the Minister for Immigration and Ethnic Affairs announced a strategy involving these key points:

- adoption of procedures for designating refugee situations and appropriate responses to these, including the possibility of offering financial contributions
- establishment of an interdepartmental committee to advise [the minister], in consultation with voluntary agencies, on Australia's capacity to accept refugees
- examination of other ways in which voluntary agencies could be encouraged to participate in refugee resettlement
- strengthening of the department's Refugee Unit to enable prompt and efficient responses to refugee situations.[250]

Elaborating on this 1977 policy statement, the minister made an announcement on 17 May 1978 that the Australian Government was moving to 'internationalise' its approach to refugees, by joining with the United States to persuade more countries to accept refugees for resettlement. The government would also seek cooperation on a regional level by approaching governments to hold refugee vessels in transit, thereby allowing processing to occur in these countries.

The United Nations Conference on Indo-Chinese refugees, held in Geneva in July 1979, was attended by 66 nations. A major outcome of this meeting was an undertaking by the Vietnamese Government to place a moratorium on the outflow of boats from its territory. The moratorium resulted in a significant decrease in the number of refugees leaving Vietnam by boat, and in the caseload of boat arrivals in countries of first asylum.[251]

Additional measures

In June 1979 the Australian Government provided $250 000 to the United Nations High Commissioner for Refugees (UNHCR) to aid in the Indonesian Government's establishment of an island processing centre, while noting that the '… volume of refugees will remain as a problem … and the stage could be reached where Australia may have to consider actions additional to the setting up of an Indonesian camp.'[252]

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[248] Senate Standing Committee on Foreign Affairs and Defence, Parliament of Australia, *Australia and the refugee problem: the plight and circumstances of Vietnamese and other refugees,* Australian Government, Canberra, 1977, p 6.
[249] Senate Standing Committee, *Australia and the refugee problem,* op. cit., p. 89.
[250] Minister for Immigration and Ethnic Affairs, the Hon. Michael Mackellar MP, 'Statement,' House of Representatives, *Debates,* 24 May 1977, pp. 1713–16.
[251] DIEA, *Annual Report 1979–1980*, Australian Government, Canberra, 1980, p. 46.
[252] Cabinet Minute, decision no. 8115, Perth, 23 April 1979.

In response to the Senate Standing Committee's call for a mechanism to assess refugee claims onshore, the Australian Government established the Interdepartmental Determination of Refugee Status Committee (DORS) in March 1978. All people seeking refugee status in Australia were required to apply to the committee to have their status assessed. This was followed by the establishment of a Standing Interdepartmental Committee on Refugees, comprising senior staff members of the departments of Prime Minister and Cabinet, Immigration and Ethnic Affairs, Employment and Industrial Relations, Social Security, and Health and Education. The committee's function was to maintain communication with voluntary agencies (such as the Indo-China Refugee Association and the Australian Red Cross), advise the minister on refugee issues and review regularly the refugee intake to ensure Australia maintained the capacity for resettlement.

Further measures were introduced in 1979, with the establishment of the Australian Refugee Advisory Council to advise the minister on all aspects of refugee movement and settlement, and the Community Refugee Settlement Scheme to provide refugees with social support, general orientation assistance and help with finding accommodation and employment. Under the scheme, newly arrived refugees were aided by community groups to move directly into the community, rather than government-run hostels.

Onshore Indo-Chinese students

South Vietnamese and Cambodian students already in Australia were granted resident status on application in 1975, as were other temporary entrants from South Vietnam, Cambodia and Laos. In addition, students from Laos were included in this policy from 1976.[253]

People trafficking

In response to information that the Vietnamese Government was charging people to board vessels headed for South-East Asia, the minister announced in January 1979 that the Australian Government 'would not give support or encouragement to schemes organised by unscrupulous merchants in human cargoes whose aim was financial gain.'[254] Passengers of these ships would be denied entry into Australia and the government would not deal with the ships' owners or masters.

The *Immigration (Unauthorised Arrivals) Act 1980* (Cwlth), given assent on 8 September 1980, enshrined this in law. Under this Act, masters of vessels carrying unauthorised entrants to Australia were subject to penalties of up to $5000 and the unauthorised entrants themselves were prohibited from disembarking from vessels without permits from the Australian Government.[255] This legislation ceased to be in effect from 30 September 1983, after it was decided the validity period would not be renewed.[256]

A lull in arrivals: 1982–89

No unauthorised boats carrying asylum seekers arrived in Australia between 1982 and 1988. In light of Australia's now more sophisticated refugee policy, Australia continued to participate in global resettlement efforts. This included the resettlement of refugees rescued by ships under the UNHCR's Rescue at Sea Pool and Rescue at Sea Resettlement Offers Scheme.

Over time, the refugee intake was diversified to include groups from Central and South America and the Middle East.

Under Australia's humanitarian program, more than 112 000 people from more than 35 countries were resettled in Australia from 1 July 1982 to 30 June 1989.

Preventative measures: 1982–89

Although there were no unauthorised boat arrivals in Australia between 1982 and 1988, the Australian Government continued to maintain high levels of international cooperation and domestic policy review.

[253] DIEA, *Review '76*, Australian Government, Canberra, 1976.
[254] Minister for Immigration and Ethnic Affairs, the Hon. Michael Mackellar MP, 'Refugees from Vietnam', press release, 4 January 1978.
[255] *Immigration (Unauthorised Arrivals) Act 1980* (Cwlth).
[256] See *Evolution of the Australian Legislative Framework and Policy for Immigration Detention* for more details on this legislation.

Australia's refugee programs were extensively reviewed in 1982 by the government. The review resulted in the introduction of individual determination of the refugee status of asylum seekers to ensure that 'economic migrants' were not being admitted under the umbrella of the refugee program.

In 1982 Australia successfully negotiated an agreement with Vietnam, the outcome of which was the Orderly Departure Program. The aim of this program was to reunite the families of Vietnamese refugees already in Australia in an organised and authorised manner. The first group of Vietnamese from the program arrived in November, with 624 being admitted during 1982–83.

During this period, the Australian Government placed an emphasis on negotiated agreements as durable solutions to the refugee situation.

Australian Government representatives also pursued priorities relating to refugees in regional and international forums. At a meeting of the Executive Committee of the UNHCR (EXCOM) in 1982, Australia initiated the concept of 'temporary refuge'—a practice whereby refugees are admitted temporarily into a country of first arrival, pending the provision of a durable solution for resettlement. The concept, unanimously endorsed by the committee, was initiated with the aim of promoting international cooperation in the resolution of refugee situations.

In June 1988 the minister tabled *Immigration—a commitment to Australia,* the report of the Committee to Advise on Australia's Immigration Policies in the Parliament. The report called for urgent reforms to immigration policy and, while it recommended maintaining Australia's humanitarian program, it also called for a 'gradual disengagement from Indo-Chinese resettlement.' The government's response was announced in December, with reforms including the separation of the immigration program into three streams (skilled, family and humanitarian) and the establishment of the Bureau for Immigration Research.

In mid-June 1989 Australia participated in an international conference held under the auspices of the UN Secretary-General in Geneva. The conference aimed to resolve the situation of Indochinese refugees in camps in South East Asia. Australia, along with 77 other countries, endorsed a Comprehensive Plan of Action designed to achieve a durable solution to the problem of the Indo-Chinese outflow. Australia had a significant role in the operation of the comprehensive plan, joining the steering committee to monitor its implementation.

The plan's key objectives were to:

- reduce clandestine departures of refugees from their home country by promoting increased opportunities for legal migration under the Orderly Detention Program
- ensure countries in South-East Asia continued to act as 'countries of first asylum' and grant temporary refuge to all asylum seekers
- standardise procedures to determine the refugee status of all asylum seekers in accordance with internationally agreed criteria
- resettle people found to be genuine refugees in third countries
- repatriate people found not to be refugees and reintegrate them in their home countries.

By the end of the Comprehensive Plan of Action on June 30 1996, Australia had resettled approximately 19 000 Indochinese under the plan.

The second wave: 1989–98

Boat arrivals

On 28 November 1989 a small boat carrying 26 Cambodians fleeing their country after more than a decade of civil war was the first unauthorised boat to arrive in Australia since 1981. This marked the beginning of the second wave of arrivals for Australia, and was followed by another two boats arriving on 31 March and 1 June 1989. The three boats combined held 224 people seeking asylum.

One hundred and twenty four boats would arrive between 1989-90 and 1998-99, carrying 3951 people. Most of these asylum seekers were from Indo-China, although there were others from China, South Asia and the Middle East.

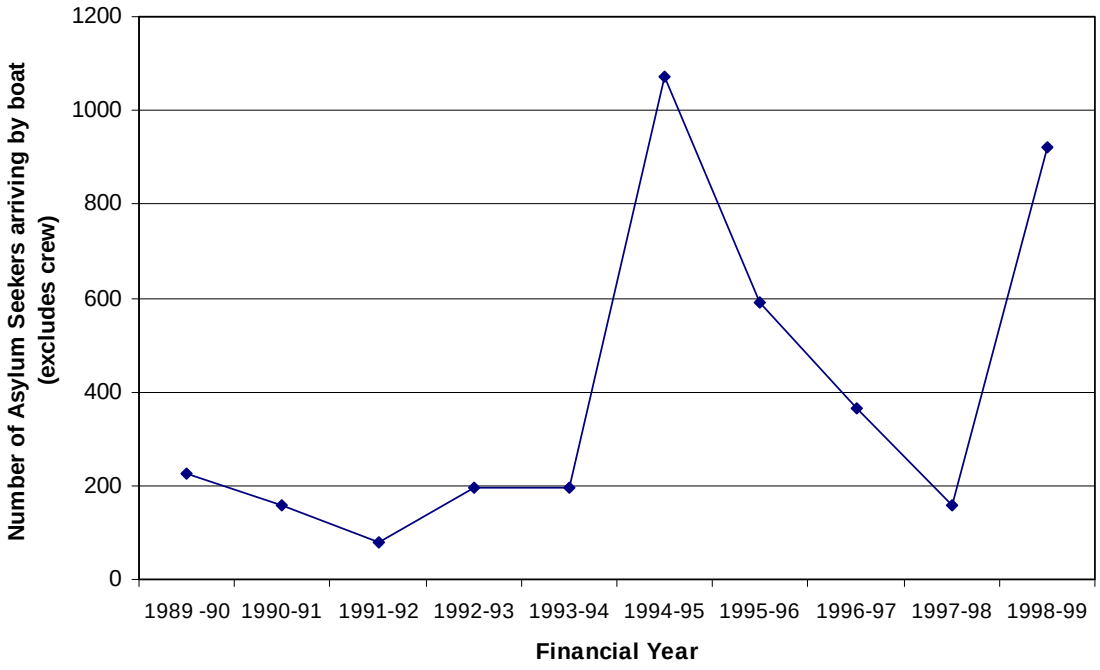
Table 2 shows the number of boat arrivals between 1989 and 1998. Figure 3 plots the arrival of asylum seekers by boat during the same period. The peak of this wave came in 1994–95.

Table 2 Total number of boats and boat arrivals 1989–90 to 1998–9[257]

Financial year	Boats	Boat arrivals
1989–90	3	224
1990–91	5	158
1991–92	3	78
1992–93	4	194
1993–94	6	194
1994–95	21	1071
1995–96	14	589
1996–97	13	365
1997–98	13	157
1998–99	42	921
TOTAL	**124**	**3951**

Source: *Arrivals in Australia since 1976,* parliamentary background note, updated 11 February 2011.

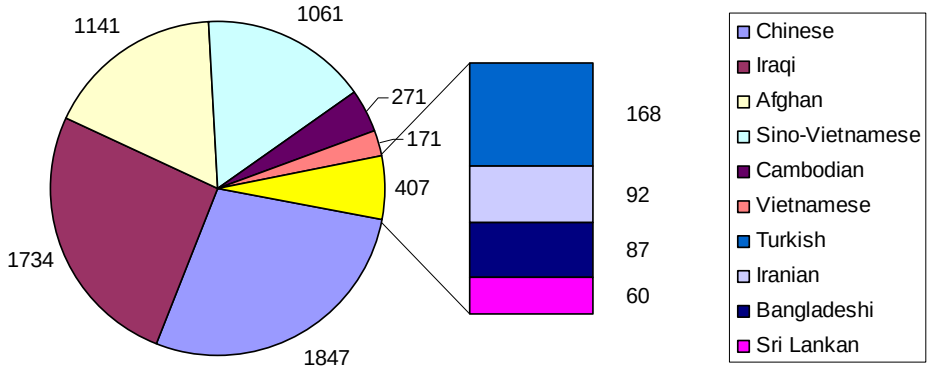
Figure 3 The second wave: 1989–90 to 1998–99, asylum seeker arrivals by boat



Source: *Arrivals in Australia since 1976,* Parliamentary background note, updated 11 February 2011.

[257] J Phillips & H Spinks, Parliamentary Library, 'Boat Arrivals in Australia since 1976', *parliamentary background note,* 2011, viewed 1 June 2011, http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm#_Toc285178607.

Figure 4 Top 10 ethnicities of boat arrivals 1989 to 1999–2000[258]



Source: Department of Immigration and Multicultural Affairs, fact sheet 81, 'Unauthorised Arrivals by Air and Sea'.

Unauthorised air arrivals

At the beginning of 1989 more than five times more unauthorised arrivals arrived in Australia by boat than by air without a valid visa. The number arriving by air without a valid visa stayed relatively steady, and was overtaken by the number arriving by boat in 1994–95, before experiencing a dramatic increase in 1997–98 and again in 1998–99. Table 3 demonstrates that for most of this period, the number of unauthorised air arrivals was significantly higher than the number of unauthorised boat arrivals.

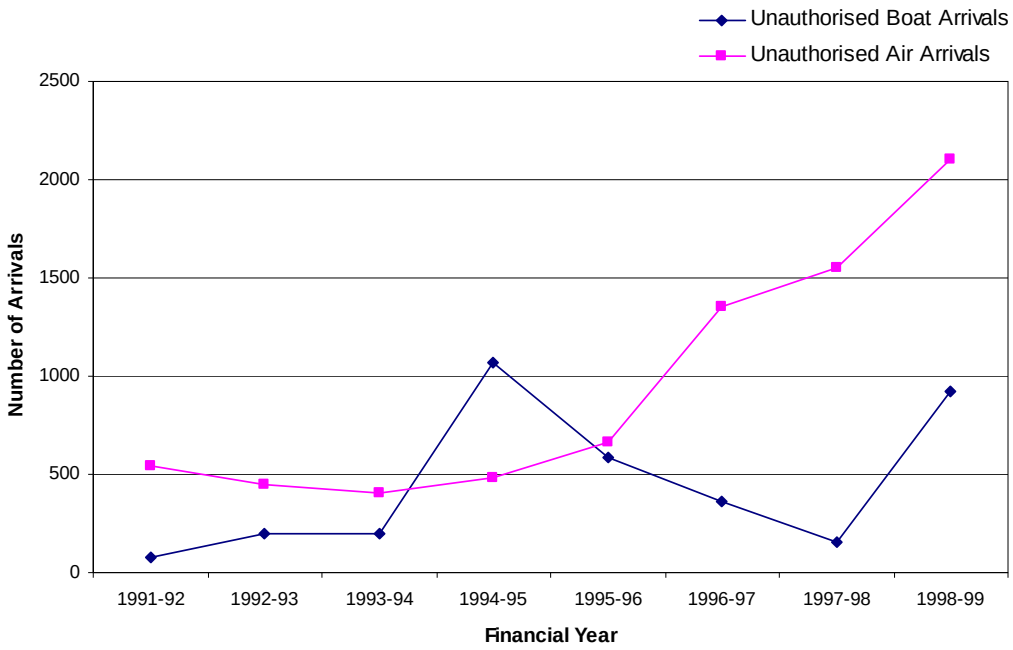
Table 3 Number of unauthorised air arrivals 1991–92 to 1998–99

Financial year	Air arrivals
1991–92	540
1992–93	452
1993–94	408
1994–95	485
1995–96	663
1996–97	1350
1997–98	1555
1998–99	2106
Total	**7559**

Source: DIAC statistics.

[258] Source: Department of Immigration and Multicultural Affairs, fact sheet 81, 'Unauthorised Arrivals by Air and Sea, cited in Australian Bureau of Statistics', 'Unauthorised Arrivals and Overstayers,' *Year Book 2002*, viewed 27 July 2011, http://www.abs.gov.au/Ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article32002?opendocument&tabname=Summary&prodno=1301.0&issue=2002&num=&view=.

Figure 5 Unauthorised boat and air arrivals 1991–92 to 1998–99



Source (boat arrivals): *Arrivals in Australia since 1976,* parliamentary background note, updated 11 February 2011.
Source (air arrivals): DIAC statistics.

Offshore refugee intake

The Australian Government continued to offer resettlement to refugees outside of Australia during this period, continuing with the Indo-Chinese intake, though at a lower level as recommended by the Committee to Advise on Australia's Immigration Policies report, and implementing new programs for the Middle East, Africa, and Central America.

In late 1989, following discussions with the UNHCR, Australia became the first country to implement a separate program for women at risk, providing accelerated processing and movement arrangements for refugee women and their families in vulnerable situations including abuse and exploitation and for refugees and others who were victims of persecution.

Government responses to the second wave

The Australian Government implemented a number of legislative changes between 1989 and 1998 in response to the second wave of boat arrivals. These changes included the introduction of temporary visas and mandatory immigration detention for boat arrivals.

The first change to come into effect during this period was the *Migration Legislation Amendment Act 1989* (Cwlth). The Bill was introduced into Parliament before the first boat arrival of the second wave, and came into effect on 19 December 1989. The Act resulted in tighter control of the management of Australia's immigration program and created a two-tiered review system for migration decisions, with the intention of improving the efficiency and fairness of the migration appeal process and reducing the reliance on judicial review.[259] The new Act and Regulations did not disadvantage asylum seekers, with status determination remaining as it was before 19 December.

[259] M Chaaya, 'Proposed Changes to the Review of Migration Decisions: Sensible Reform Agenda or Political Expediency?', *Sydney Law Review,* vol. 19, no. 4, 1997.

Tiananmen Square incident and the four-year temporary visa

In June 1989 China's Tiananmen Square incident occurred, resulting in the deaths of hundreds of people. In response to the concerns of many Chinese students studying in Australia at the time, the Australian Government announced that Chinese citizens legally and temporarily in Australia would be allowed to remain in the country on a temporary basis until 31 July 1990. This announcement led to a dramatic increase in refugee status applications, in response to which new policy was announced that would grant those found to be refugees a temporary stay of four years. Under this policy, the stay for temporary visa holders from the People's Republic of China (PRC) was extended until June 1994.

During 1990–91, a total of 16 248 Protection visa applications lodged in Australia, with about 77 per cent of them being made by Chinese nationals.

This new temporary visa policy separated the obligation to offer protection from the automatic grant of permanent residence for the first time.

Three-stage refugee assessment process

Following the introduction of four-year temporary residence permits in June, and the dramatic increase in refugee status applications that followed, in October 1989 the government announced a new system designed to hasten decisions on refugee applications. The system was implemented in December 1990, with the DORS Committee being replaced by a Refugee Status Review Committee. Under this system applications were to go through a three-stage assessment process, initial assessment of refugee status, review (for negative primary assessments), and if still negative for refugee status but showing clear grounds for a humanitarian stay, referral to the minister for possible approval for temporary entry on humanitarian grounds.

The Refugee Status Review Committee was replaced by a statutory body known as the Refugee Review Tribunal (RRT) in 1993. The RRT provided an independent merits review of decisions made by delegates of the minister.

Mandatory detention

In May 1992, the Migration (Amendment) Bill was introduced to Parliament. The new legislation required that people arriving in Australia without authorisation not be released into the community. Boat arrivals were required to be detained until their asylum applications had been processed and refugee status finally determined, inclusive of the review process.[260] The rationale given by the minister to support the introduction of mandatory detention was that it would save the cost of locating unlawful non-citizens in the community and facilitate the processing of refugee claims.[261] Fundamental reforms to the Act, announced on 17 July 1992, are outlined in the accompanying issues paper *Evolution of the Australian legislative framework and policy for immigration detention.*

International cooperation and return to country of origin

The increase in boat arrivals also prompted Australia to seek greater levels of cooperation with countries in the region. Australia and the PRC signed a memorandum of understanding on 25 January 1995, under which Australia was permitted to return to the PRC Vietnamese refugees who had settled in the PRC since 1979 and who had arrived in Australia unlawfully after 1 January 1996. The status of the PRC as a 'safe third country' was set down in the Migration Regulations 1994 (reg 2.12A).

The PRC also allowed the Australian Government to return failed Chinese asylum seekers, under assurance from the Chinese Government that they would not be punished.

Additional responses

In conjunction with the Australian Red Cross, the department established the Asylum Seeker Assistance Scheme in 1992. Under this scheme, the department funded Australian Red Cross caseworkers to assist

[260] Commonwealth, *Parliamentary Debates,* House of Representatives, 5 May 1992, p. 2370, Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP.
[261] Ibid.

asylum seekers to meet a range of needs, including counselling, accommodation, education, legal referrals and health and income support.

On 7 July 1994 a total of 17 Vietnamese boat arrivals landed in Australia. By their own admission the group had already been processed and denied refugee status at Indonesia's Galang Processing Centre. In response to this incident, the minister announced the intention to amend legislation so that individuals denied refugee status under UNHCR process in other countries would not be able to lodge new applications in Australia. While the amendments were in progress, another group of 31 boat arrivals claiming to come from the Galang Processing Centre arrived near Broome, Western Australia.

With the intention of reducing the number of people using Australia's review system to prolong their stay, changes to the system were announced in March 1997. The RRT would remain in place, but changes would be implemented to ensure only serious applications were lodged. A $1000 fee was introduced for those who applied but did not obtain refugee status; restrictions were placed on the right to work during the review period; and application time limits reduced. These changes came into effect on 1 July 1997.

The Immigration Advice and Application Assistance Scheme was created in July 1997 to provide Protection visa application assistance to all asylum seekers in immigration detention and visa application assistance and immigration advice services to eligible disadvantaged asylum seekers and other visa applicants in the community.

In 1998 the department first implemented the Advance Passenger Processing (APP) system for incoming passengers from Singapore by Singapore Airlines, and Air New Zealand flights. APP built on the previous Advance Passenger Information system, and provided border agencies with advance notice of the arrival of a passenger on a particular flight. Used at airline check-in, the APP facility enables airlines to confirm passengers hold a valid visa before they travel to Australia, and provides advance information on travellers to Australia's border agencies before their flight arrives. The system therefore allows improved screening capabilities for Australia's border agencies. Since January 2003 APP has been mandatory for airlines flying into Australia and has significantly enhanced Australia's border integrity regime.

The third wave: 1999–2001

Boat arrivals

During 1999 the numbers of unauthorised boats and asylum seekers increased significantly from the previous year. In 1998–99, 42 boats arrived carrying 921 people and in 1999–2000, 75 boats arrived carrying 4175 people.

The boats that arrived during the third wave were often larger and more seaworthy than those in previous waves, and their departures had been organised by people smugglers. The composition and origins of asylum seekers also changed, with vessels predominantly carrying young males from the Middle East (Iraq, Afghanistan, Turkey, and Iran), South Asia (Pakistan, Sri Lanka and Bangladesh) and the southern provinces of China.

Table 4: Total number of boats and boat arrivals 1999–2001[262]

Financial year	Boats	Boat arrivals
1999–00	75	4175
2000–01	54	437
2001–02	19	3039
TOTAL	**148**	**11 351**

Source: *Arrivals in Australia since 1976,* parliamentary background note, updated 11 February 2011.

[262] Phillips & Spinks, op. cit.

Unauthorised air arrivals

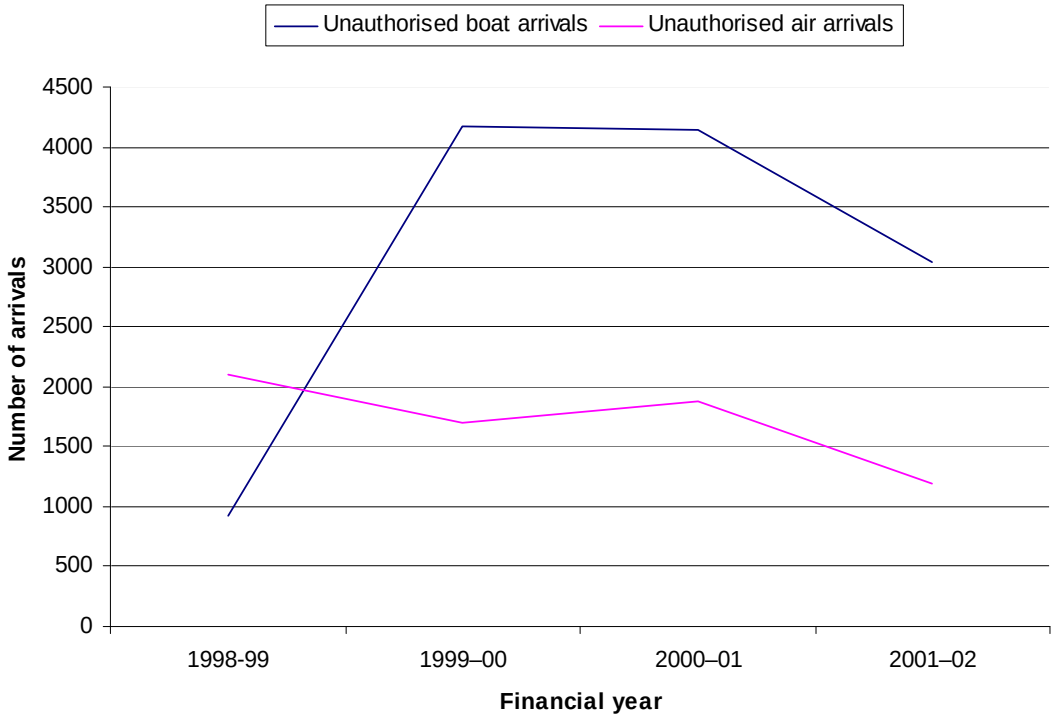
After a sharp increase in unauthorised air arrivals in 1997–98, the number of people arriving by air without a valid visa remained below 2000 a year during the third wave. The significant increase in boat arrivals was accompanied by a corresponding decrease in unauthorised air arrivals (Figure 6).

Table 5 Total number of unauthorised air arrivals 1999–2000 to 2001–02

Financial year	Air arrivals
1999–00	1695
2000–-01	1877
2001–02	1193
Total	**4765**

Source: DIAC statistics.

Figure 6 Unauthorised boat and air arrivals 1999–2000 to 2001–02



*1998–99 has been included on the chart to demonstrate the significant increase in arrivals.
Source (boat arrivals): *Arrivals in Australia since 1976,* parliamentary background note, updated 11 February 2011
Source (air arrivals): DIAC statistics.

Unauthorised boats arrived in New South Wales for the first time in 1998–99. A new route taken to the north of Papua New Guinea enabled boats to travel further east than previously, thereby avoiding Australian and Indonesian surveillance.

The boats that arrived in 1999 came from Papua New Guinea and Indonesia and carried nationals from the Middle East, North Africa, South Asia, the PRC, Singapore and Kazakhstan.

Such unprecedented numbers of boat arrivals continued throughout 2000, with 51 boats bringing 2939 people. Although fewer boats arrived in 2001 (43), the number of people nearly doubled over the previous year, to 5516. Most of these were from Afghanistan and Iraq, and were fleeing conflict and persecution.

People smuggling

Active people smuggling recruitment in Fujian Province, PRC, resulted in a renewed interest in Australia as a destination for Chinese during this period. In the last seven months of 1998–99, nine boats carrying 471 PRC nationals arrived in Australia. People smugglers falsely promised one group of Chinese nationals arriving by boat employment on Olympic building projects in Sydney and informed them that the Australian Government would be offering an amnesty on unlawful non-citizens during the Olympic Games**.**

Reports of people smugglers planning to bring 2000 Somalis to Australia by boat in May 1999 prompted the government to enlist the help of international media to inform potential passengers that their impending journey and entry into Australia were not sanctioned by the Australian Government. The Somali smuggling scheme failed as a result.

In 1999–2000, the unprecedented level of unauthorised boat arrivals created significant pressures on detention operations, requiring the re-commissioning of immigration processing and reception centre facilities at the RAAF base in Curtin, Western Australia, and the construction of a new centre at Woomera in South Australia.

Offshore refugee intake

Reflecting the international resettlement priorities of the UNHCR, the priority regions for Australia's refugee program between 1999 and 2002 were the Balkans, the Middle East and South-West Asia and Africa, with 12 157 offshore refugee visas granted.

Government responses to the third wave

In response to the significant number of boat arrivals and the increased activity of people smugglers, the Australian Government introduced several new measures aimed at impressing upon potential asylum seekers that if they were to arrive in Australia in an unauthorised manner, they would not receive the same benefits as those who arrived lawfully.

TPVs were introduced in October 1999 for unauthorised arrivals subsequently assessed to be refugees. These visas were valid for three years, with the ability to apply for further protection at the end of the term. Under legislation introduced in 2001, however, TPV holders who, 'since leaving their home country had resided for seven days or more in a country where they could have sought and obtained protection' were unable to be granted a Protection visa.

On 22 July 1999 the minister announced the passing of new legislation aimed at stopping people smugglers. This legislation introduced a new offence of 'knowingly organising the illegal entry of groups of five or more people' into Australia, substantially increased penalties, and removed the prosecution time limit for the prosecution of smuggling offences.

With the aim of developing a 'global approach ' to the issue of people smuggling, the Australian Government engaged in an active program of bilateral and multilateral consultation during this period**.** Australian Government officials attended meetings with government officials from source, transit and destination countries, and with representatives of the UNHCR and the International Red Cross. International engagement during the third wave resulted in multiple agreements between Australia and various countries for increased technical cooperation and intelligence sharing, and the return to country of origin for asylum seekers deemed not to be refugees.

In response to the unparalleled number of boat arrivals in 1999, the Australian Government established a Border Protection Taskforce to address people smuggling issues. As a result, a number of initiatives to curb illegal migration were announced, including increased border control and immigration staffing in key locations, enhanced cooperation with regional countries and additional funding to support detection and removal strategies in neighbouring transit countries.

The *MV Tampa*: 2001

On 22 August 2001 the *MV Tampa,* a Norwegian container vessel on its way from Fremantle to Singapore, was asked to help a vessel in distress located around 158 miles from the Indonesian mainland and 85 miles from Christmas Island. The damaged 20-metre wooden vessel was dangerously overloaded with 438 asylum seekers, including women and children. Once taken onboard the *Tampa,* the asylum seekers demanded to be taken to Christmas Island.[263]

On approach to Australian territorial waters, the Master of the *Tampa* was advised by Australian authorities not to enter. On 29 August the *Tampa* issued a distress call in an attempt to obtain medical assistance for asylum seekers on board who were ill or injured. The vessel then moved to within two miles of Christmas Island where it was boarded by Australian Defence personnel.

The asylum seekers were moved to Australian naval vessel *HMAS Manoora* on 3 September and taken to Nauru, the government of which agreed to process their claims with Australian Government assistance.

The Indonesian crew of the vessel who had been rescued by the *Tampa* were disembarked at Christmas Island and charged with people smuggling.[264]

In response to this incident and concurrent action taken by a civil liberties group to have the rescued asylum seekers admitted to the Australian mainland[265], the prime minister tabled the Border Protection Bill 2001. The Bill sought to confirm beyond doubt the legal basis for the action taken by the Australian Government against foreign ships in Australian territorial waters, but was rejected by the Senate.[266]

The Pacific Solution: 2001–07

Measures aimed at strengthening Australia's territorial integrity and reducing the incentive for people to make hazardous voyages to Australian territory were introduced by the Government in 2001. The measures, which became known as the Pacific Solution, included changes to migration legislation, the excision of some territories from Australia's migration zone, and the construction of a permanent processing centre on Christmas Island to enable the offshore processing of asylum seekers.[267]

The Pacific Solution legislation

Under the series of new migration laws passed in September 2001[268], asylum seekers arriving in Australia at an offshore place were deemed to have not entered the Australian migration zone and were therefore prohibited from applying for an Australian visa. This legislation framework is called 'excision'.

The legislative changes implemented a tiered approach to providing people with protection. People who remained in their country of first asylum to undergo normal offshore resettlement processes were able, once selected, to enter Australia as permanent residents. Those who had moved beyond their country of first asylum to a third country to undergo processing for resettlement from there were granted a five-year visa. After four and a half years these people would be entitled to permanent residence status, subject to a continuing need for protection.

People who came to Australia without taking opportunities available to seek protection during their travel could only access successive temporary visas should they be in continuing need of protection.

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[263] M White, *MV Tampa and Christmas Island Incident, August 2001,* 2001, pp. 1–2, viewed 3 July 2011, http://www.ila.org.au/pdfs/ex_The%20M.V.%20Tampa%20and%20the%20Christmas%20Island%20Incident%20(Updated).PDF.

[264] Ibid., pp. 3– 4.

[265] This was successful in the Federal Court, but overturned by the Full Bench of the Federal Court on appeal by Minister Ruddock.

[266] N Hancock, Parliamentary Library Border Protection (Validation and Enforcement Powers) Bill 2001, *Bills Digest,* no. 62*,* Australian Government, Canberra, 2001, p. 34.

[267] These amendments are detailed in the "Evolution of the Australian Legislative Framework and Policy for Immigration Detention", page 18.

[268] Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001 (Cwlth), Migration Amendment (Excision from Migration Zone) Bill 2001 (Cwlth), Migration Legislation Amendment (Immigration Detainees) Bill (no. 2) 2001 (Cwlth).

Offshore processing

In September 2001, as part of the response to the *Tampa* incident, the government passed amendments that allowed for offshore processing of unauthorised arrivals. The amendments gave discretion to officers to detain people who they reasonably believed were seeking to enter or had entered excised offshore places, and to remove them to a designated country where their need for protection could be assessed.[269] In effect, this allowed unauthorised arrivals to be processed on Nauru and Papua New Guinea's Manus Island.

On 12 March 2002 the minister announced the construction of a permanent immigration processing and reception centre on Christmas Island. The minister stated the establishment of a processing centre on the excised island would 'provide a disincentive for people to put their lives at risk by boarding unseaworthy boats to come to Australia.'

Assistance for voluntary returns

In May 2002 the Immigration Minister announced that the 2002–03 Budget would 'focus on removing some of the "push factors" from source countries,' with $5.8 million provided over three years in assistance for Afghan asylum seekers who volunteered to return to Afghanistan. Eligibility for the assistance package was extended on 30 May 2002 to include non-Afghans detained on Manus Island and Nauru.

International cooperation—prevention and return

The Australian Government remained active in the establishment of international cooperative agreements to fight people smuggling and in developing memorandums of understanding for the return of negatively assessed asylum seekers.

Between 2001 and 2007 agreements were signed with Afghanistan, South Africa, Iran, Malaysia and the United States on issues ranging from the voluntary repatriation of failed asylum seekers to the development and implementation of border control systems.

Co-chaired by Australia and Indonesia, the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was held in February 2002 and attended by representatives from 38 regional source, transit and destination countries. Since this initial conference, more than 30 workshops have been held to build regional capacity and cooperation. Participation has also expanded, with 43 regional countries now participating. Australia is a key member of the Bali Process Steering Committee.[270]

Australia also joined 112 other countries in becoming a signatory to the UN Trafficking Protocol on December 11 2002.

Changes to the visa system

On 28 August 2003 the minister announced changes to Australia's TPV system, broadening existing arrangements to apply to those applying for a Protection visa after arriving lawfully in Australia.

Further changes during this period allowed TPV holders to apply for permanent mainstream visas which would allow them to remain in Australia permanently, and introduced the Return Pending visa, allowing those with negative assessments to remain for a further 18 months while arranging to return to their country of origin or another country.

The Removal Pending Bridging Visa was introduced in May 2005 to manage a small group of negatively assessed asylum seekers in detention who had exhausted the appeal process but were unable to return to their country of origin in the short term. Regulations were broadened a month later giving a greater number of detainees access to the visa.

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[269] *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cwlth).

[270] The Bali Process Committee, 'About the Bali Process,' viewed 27 July 2011, http://www.baliprocess.net/index.asp?pageID=2145831401.

Excision from the migration zone

Further to the 2001 amendments, and in response to indications that people smugglers were intending to focus their operations on islands closer to Australia, the Migration Amendment Regulations 2005 (No. 6) came into force on 22 July 2005, prescribing the islands excised from Australia's migration zone (Figure 7).[271]

Figure 7 Islands excised from Australia's migration zone 2005[272]

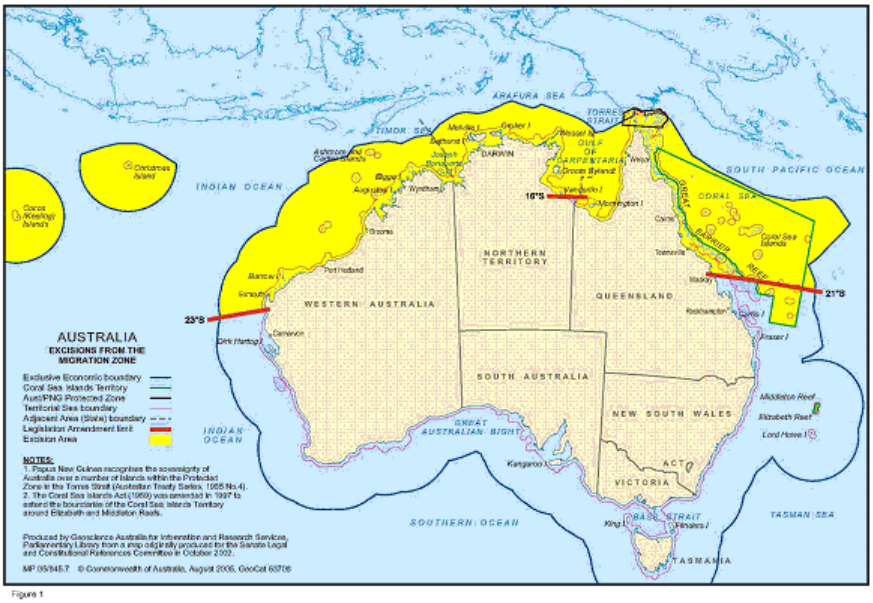


Figure 1

2005 reforms

In 2005 the cases of Cornelia Rau and Vivian Alvarez prompted investigation into immigration detention processes. In July of that year, a report by Mr Mick Palmer AO APM of his Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau was released.[273] That report also covered aspects of the department's handling of the case of Vivian Alvarez, on which an additional report was made by Mr Neil Comrie AO APM under the auspices of the Ombudsman in October 2005.[274] In addition, the Ombudsman reviewed a number of other cases of people held in long-term detention.[275]

The reports identified shortcomings in a number of the department's operations and resulted in the start of a significant reform program focusing on leadership, governance, values and behaviour, client service, record-keeping, training and support for staff.

In 2008 the department commissioned Elizabeth Proust AO to review the reform agenda.[276] A key finding of this report was that the department had substantially implemented the Palmer and Comrie recommendations, and were continuing to do so.

Two private member's Bills were introduced into parliament in 2005 in an attempt to abolish mandatory detention.[277] Although mandatory detention remained, the Bills led to significant reforms, including measures

[271] M Coombs, Parliamentary Library, 'Excising Australia: Are we really shrinking?', research note no. 5, 2005–06, 2005, viewed 4 July 2011, http://www.aph.gov.au/library/pubs/rn/2005-06/06rn05.htm.
[272] Ibid.
[273] M Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report*, Australian Government, Canberra, 2005.
[274] Commonwealth Ombudsman, *Inquiry into the Circumstances of the Vivian Alvarez Matter: Report under the Ombudsman Act 1976 by the Commonwealth Ombudsman, Prof. John McMillan, of an inquiry undertaken by Mr Neil Comrie AO APM*, Australian Government, Canberra, 2005.
[275] Commonwealth Ombudsman, *Immigration detention review reports*, 2005–11, http://www.ombudsman.gov.au/reports/immigration-detention-review/.
[276] E Proust, DIAC, *Evaluation of the Palmer and Comrie Reform Agenda— including Related Ombudsman Reports*, 2008, viewed 9 August 2011, http://www.immi.gov.au/about/department/perf-progress/evaluation-report/proust-report.pdf.
[277] Migration Amendment (Mandatory Detention) Bill 2005 (Cwlth).

allowing for the release of the small number of children in detention centres, the empowerment of the Ombudsman to investigate cases of long-term detention, and the rapid processing of thousands of people on TPVs, with 80 per cent granted permanent protection.[278]

By the end of June 2006 most asylum seekers in Australia had arrived on valid visas and were residing in the community while their claims for protection were being processed. Only 15 per cent of people in immigration detention were seeking asylum or seeking review of a decision on their application for a Protection visa, with most having been detained for compliance reasons.

Offshore refugee intake

The Australian Government re-evaluated the priority regions for the Humanitarian Program to reflect situational changes in priority countries and advice received from the UNHCR. By the end of 2001–07, fewer places were being allocated to refugees from Africa and more to those from the Middle East and Asia. The places allocated to refugees from Europe decreased by more 30 per cent. The increased refugee and humanitarian intake from Asia reflected Australia's commitment to resettle Burmese refugees waiting in Thailand and Bhutanese refugees in Nepal. In total, Australia granted 30 206 offshore humanitarian visas during this time.

Boat arrivals 2002–07

The lull in boat arrivals continued into the first six months of 2003 and was accompanied by a decrease in unauthorised air arrivals.

The first boat arrival in more than 18 months occurred on 1 July 2003, when an unauthorised boat arrived off the coast of Port Hedland, Western Australia. The 53 Vietnamese on board were taken to Christmas Island to have their asylum claims processed. During 2003–04, 82 unauthorised people tried to enter Australia by boat, 53 of whom landed in the migration zone.

On 18 January 2006 a traditional outrigger canoe carrying 43 Indonesians from Papua Province in Indonesia was intercepted off Cape York. The group was taken to Christmas Island for processing before being granted TPVs and then moved to Melbourne in March. In February, 83 Sri Lankan asylum seekers were intercepted off Christmas Island, with 82 moved to Nauru to have their claims assessed and one to Perth for medical treatment. Two men who were part of this group were later arrested and charged with facilitating the unlawful entry into Australia of five or more people. A further 14 unauthorised arrivals were intercepted at Ashmore Reef in August 2006 and were taken to Christmas Island for health checks and then to Nauru for processing.

Table 6 shows the number of boat arrivals between 2002 and 2007.

Table 6 Total number of boats and boat arrivals 2002–03 to 2007–08

Financial year	Boats	Boat arrivals
2002–03	0	0
2003–04	3	82
2004–05	0	0
2005–06	8	61
2006–07	4	133
2007–08	3	25
Total	**18**	**301**

Source: Senate Legal and Constitutional Affairs Committee, Immigration Portfolio, Additional Estimates 2008–09, 24 February 2009, pp. 48–51.
Source (air arrivals): DIAC statistics.

[278] Foundation House, 'Petro Georgiou delivers annual oration', 27 July 2010, viewed 1 August 2011, http://www.foundationhouse.org.au/AnnouncementRetrieve.aspx?ID=34439.

The lull in boat arrivals had been accompanied globally by a significant number of Afghan and Iraqi refugees returning to their homelands due to improved security situations. However, this did not last, with a new global outflow of asylum seekers from the Middle East region occurring from late 2006. These 'push factors' are further discussed in the accompanying issues paper *Global Population Movements: sources and destinations.*

Unauthorised air arrivals

The decrease in boat arrivals was also accompanied by a slight decrease in unauthorised air arrivals during 2002–03. However, the number of people arriving by air without valid visas increased again the following financial year, peaking at 2058 in 2004–05 before dropping slightly again (Table 7).

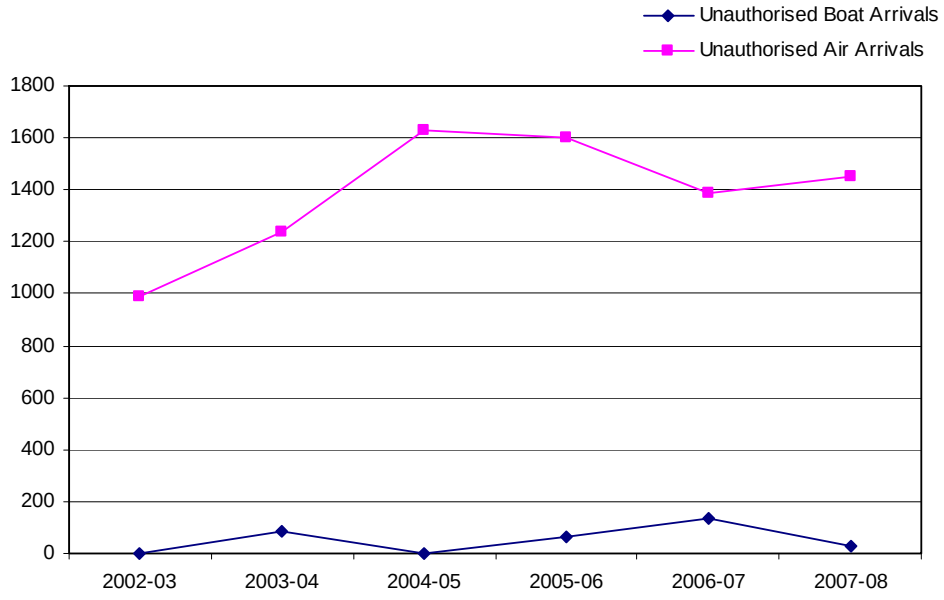
As demonstrated by Figure 8, more than 2500 per cent more people arrived in an unauthorised manner by air than by sea during this period.

Table 7 Total number of unauthorised air arrivals 2002–03 to 2007–08

Financial year	Air arrivals
2002–03	937
200–-04	1241
2004–05	2058
2005–06	1995
2006–07	1678
2007–08	1189
Total	**9098**

Source: DIAC statistics.

Figure 8 Unauthorised boat and air arrivals 2002–03 to 2007–08



Source (boat arrivals): Senate Legal and Constitutional Affairs Committee, Immigration Portfolio, Additional Estimates 2008–09, 24 February 2009, pp. 48–51.
Source (air arrivals): DIAC statistics.

Policy change: 2007–08

An unauthorised boat carrying four people arrived at the Australian Territory of Ashmore and Cartier Islands on 16 December 2007. The newly appointed minister announced that the asylum seekers would be taken to Christmas Island for processing in line with established procedures. The minister also reaffirmed the government's commitment to close the offshore processing facilities on Manus Island and Nauru.[279]

Closure of Manus Island and Nauru

The minister used the announcement of the first boat arrival after the change of government to reiterate the new government's approach in dealing with people who tried to enter Australia without authorisation, confirming that the Nauru and Manus Island processing centres would be closed. The government would maintain mandatory detention and tough people-smuggling measures, but would seek to quickly remove people with no claim for protection and find alternative forms of management for those in detention for a long time who posed no risk to the community. The final resident of the Manus Processing facility was granted a Protection visa and resettled in Australia in June 2004 and the last of Nauru's Offshore Processing Centre residents were resettled in Australia on 8 February 2008. Both centres were formally closed on 31 March 2008.

Abolition of the TPV

The abolition of the TPV was announced on 13 May 2008. From 9 August 2008, refugees would receive a permanent visa, regardless of how they entered Australia. In addition, around 1000 people holding TPVs when the announcement was made would be eligible for a Resolution of Status visa, a permanent residence visa that would allow them to access the same benefits as a permanent Protection visa holder without having to have their claim reassessed.

Detention values

The minister announced the government's Key Immigration Detention Values in July 2008. Under these detention values, mandatory detention remained an essential component of effective border control, but the values provided a framework under which people in detention would be treated with dignity, held in detention for the shortest time possible and treated fairly and reasonably within the law. In addition, children were not to live in detention centres.

New processing arrangements

In July 2008 the minister announced new processing arrangements for asylum seekers arriving at an excised offshore place.

These arrangements included provision of publicly funded independent advice and assistance, independent merits review of unfavourable RSAs, robust procedural guidance for RSA officers and external scrutiny of the RSA process by the Commonwealth Ombudsman. The new arrangements also specified that officials from the UNHCR would periodically observe. From the start of the new arrangements, priority was given to processing unaccompanied minors, family groups, torture and trauma victims and others with special needs.

Offshore refugee intake

In 2008–09, the offshore refugee intake was increased to 6500 places, which included a one-off, 500-place increase to help those affected by the conflict in Iraq. The Australian Government also introduced a new visa policy for the permanent resettlement of Iraqis and their families who were at risk because they worked with the Australian Government in Iraq. People resettled under this policy included locally engaged employees who had worked for, or with, the Australian Defence Forces in Iraq.

In 2007–08, a total of 5951 offshore refugee visas were granted, with 13.7 per cent of these to women at risk. In line with international concerns, the Australian Government continued to resettle Burmese refugees from

[279] Minister for Immigration and Citizenship, Senator the Hon. Chris Evans, 'Four people detected at Ashmore Islands', press release, 17 December 2007.

camps on the Thai – Burma border and other parts of Asia. During this period, 2961 Burmese refugees were granted resettlement visas to Australia.

The fourth wave: 2009—11

During 2009–10—the mid-way point of the fourth wave—the number of asylum seekers arriving by boat in Australia increased significantly. At 30 June 2010 the number of people in immigration detention who had arrived by boat over the previous 12 months was 3867, an increase from 782 in 2008–09. Most boat arrivals were fleeing cultural, ethnic or gender-based issues or armed conflicts in Afghanistan, Sri Lanka and Iraq.

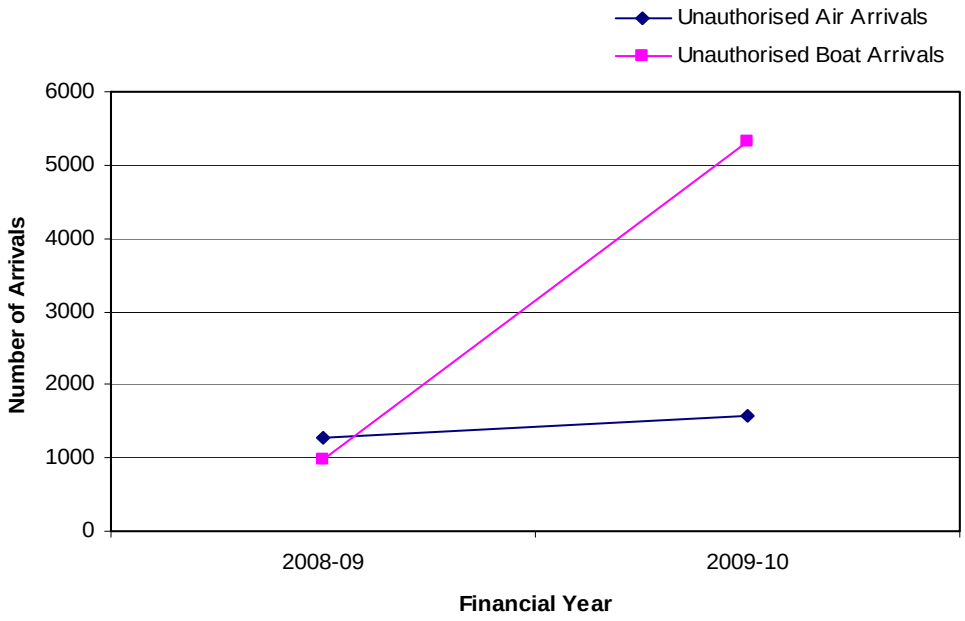
Table 8 shows the the number of boat arrivals between 2008-09 and 2010-11.

Table 8 Total number of boats and boat arrivals 2008–09 to June 30 2011

Financial year	Boats	Boat arrivals
2008–09	23	985
2009–10	117	5327
2010–11	89	4730
TOTAL	**229**	**11 042**

Source: DIAC statistics.

Figure 9 Unauthorised air and boat arrivals 2008–09 to 2009–10



Source (air arrivals): DIAC *Annual Report 2009–10*, numbers relate to those refused immigration clearance at airports.
Source (boat arrivals): DIAC statistics.
Note: 2010–11 Unauthorised air and boat arrivals not included as only half year figures available for boats and figures unavailable for air.

Unauthorised air arrivals

In contrast to the significant increase in boat arrivals, the number of unauthorised arrivals to Australia by air remained relatively steady throughout the fourth wave.

Table 9 Total number of unauthorised arrivals by air 2008–09 to 2009–10

Financial year	Air arrivals
2008–09	1284
2009–10	1573
Total	**2857**

Source: DIAC *Annual Report 2009–10*, numbers relate to those refused immigration clearance at airports.

Offshore refugee intake

In 2009–10, a total of 5979 offshore refugee visas were granted. Included in this figure were 1959 visas granted to Burmese refugees and 1144 visas granted to Bhutanese refugees. The commitment and recognition of the vulnerabilities of women has continued through the Women at Risk refugee visa, with 13.4 per cent of the 2009–10 total granted to this category. Currently, 12 per cent of Australia's 7000 refugee places are reserved for women at risk.

In response to an urgent international appeal from the UNHCR, Australia also resettled vulnerable Palestinian Iraqis who had been stranded for a number of years between the borders of Iraq and Syria, and a group of Somali refugees from Eritrea.

Suspension of processing

Changing circumstances in Sri Lanka and Afghanistan resulted in the Australian Government announcement on 9 April 2010 that new asylum claims from these countries would be suspended as of that date. This decision resulted from new information becoming available and advice from the UNHCR that they were reviewing the conditions in these countries. The suspension was lifted for asylum seekers from Sri Lanka on 6 July 2010 and for those from Afghanistan on 30 September 2010.

International cooperation

The Australian Government continued to prevent maritime people smuggling and increase initiatives to combat this crime through international cooperation. Initiatives included allocating additional resources to Australian agencies to increase their response capabilities, build the capability of regional partners and ensure greater engagement with government and non-government agencies throughout the region. Australia also maintained a strong presence at major multilateral forums, including the Bali Process on People Smuggling, Human Trafficking and Related Transnational crime.

The protection obligations determination process

Revised processing arrangements referred to as the protection obligations determination (POD) process were implemented 1 March 2011 to provide procedural fairness consistent with the High Court judgement of 11 November 2010 that all IMAs seeking protection are able to seek judicial review of a negative assessment of their claims for refugee status. The revised arrangements also streamlined the refugee assessment process so if judicial reviews would take place as early as possible.

The main difference between the RSA and the protection obligations determination processes is that the independent assessors can start their assessment sooner and finalise it quicker, due to the department's new referral processes. This means it will not take as long for a person's refugee status to be determined.

The new POD process is expected to reduce the time for processing asylum seeker claims.

The fourth Bali ministerial meeting

On 31 March 2011 the Bali Process ministers agreed to a regional cooperation framework of practical measures to combat people smuggling in the region. These measures were:

- development of bilateral arrangements to undermine people smuggling and create disincentives for irregular movement, including, where appropriate, transfers, returns and readmissions
- targeting of people smuggling enterprises through coordinated border security arrangements and strengthened information and intelligence sharing.

The Malaysia transfer arrangement

On 25 July 2011 the Minister for Immigration and Citizenship and the Malaysian Minister of Home Affairs signed an arrangement providing for the transfer from Australia to Malaysia of up to 800 IMAs. This arrangement also formalised Australia's commitment to accept 1000 additional genuine refugees from Malaysia every year for four consecutive years, increasing Australia's overall annual humanitarian intake to 14 750 places.

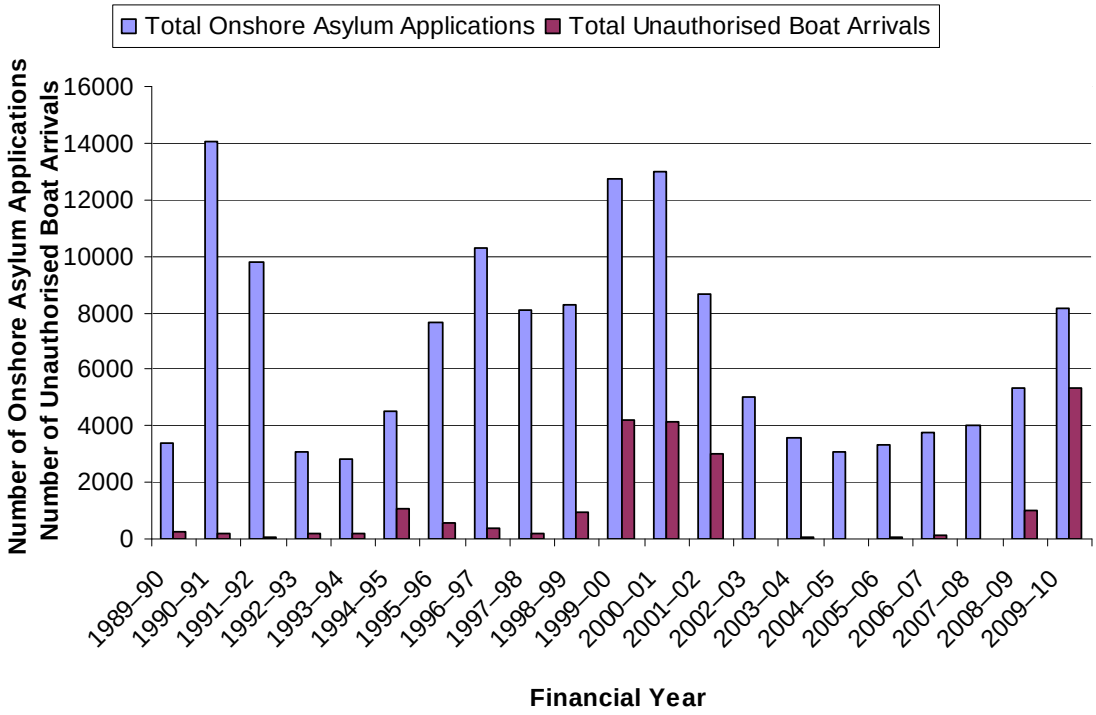
This transfer arrangement between Australia and Malaysia also provides that:

- arrivals will be subject to pre-transfer assessments to ensure fitness and suitability for transfer, along with basic biometric testing
- transferees will be lawful in Malaysia and provided with exemption under the Malaysian Immigration Act and Passports Act
- transferees will be first accommodated in a transit centre in Malaysia for up to 45 days, with support from the UNHCR and the International Organization for Migration
- following initial processing, transferees will move into the community, with work rights, access to education and health care
- transferees will receive no preferential treatment in the processing of their claims or arrangements for resettlement over other asylum seekers in Malaysia.

Unauthorised boat arrivals and onshore Protection visa applications 1989–90 to 2009–10

Figure 10 compares the number of unauthorised boat arrivals to the number of onshore Protection visa applications lodged for 1989–90 to 2009–10. It is evident that, for the most part, unauthorised boat arrivals comprise only a small percentage of total Protection visa applicants.

Figure 10 Total number of unauthorised boat arrivals and total number of onshore asylum applications 1989–90 to 2009–10



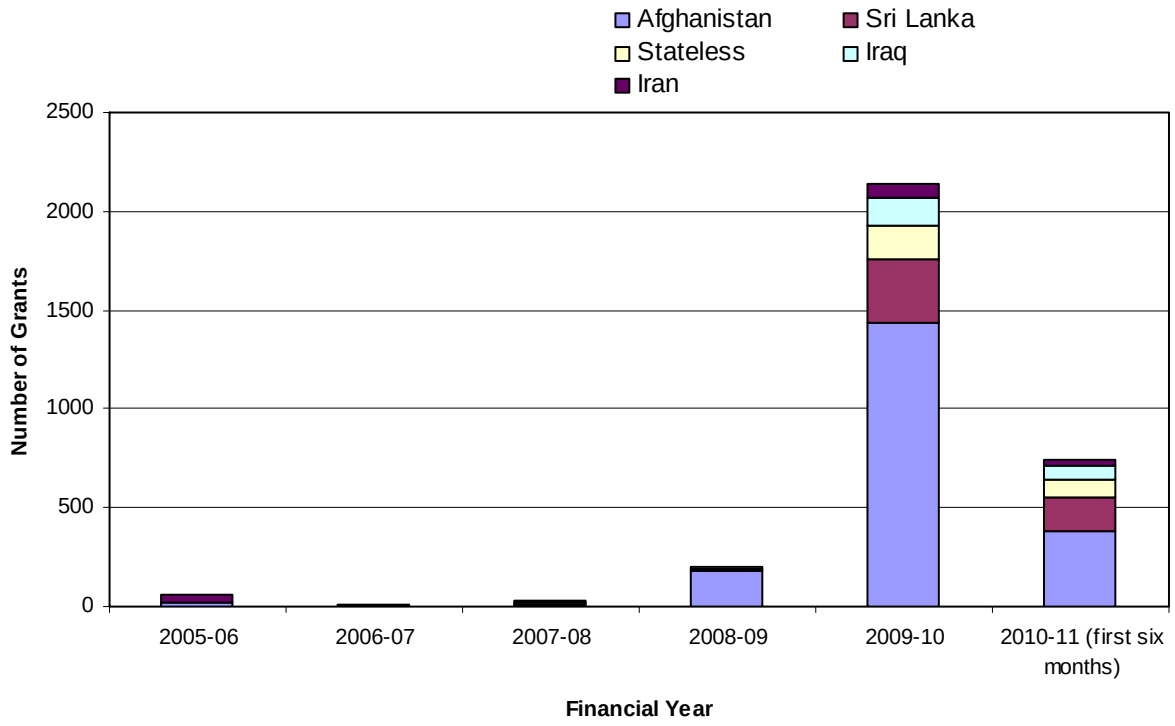
Note: Most unauthorised boat arrivals lodge Protection visa applications. As such, the numbers of boat arrivals represented in the figure are already included in the total application figures.
Source: DIAC statistics.
Parliamentary background note 'Seeking asylum: Australia's humanitarian program'.[280]

Final Protection visa grants 2005–06 to 2010–11

Figures 11, 12 and 13 represent the overall composition, by country of citizenship, for all people granted a Protection visa from 2005–06 to the first six months of 2011. Figure 10 represents Protection visa grants for asylum seekers arriving by boat, and Figure 11 represents all Protection visa grants for air arrivals. When these figures are combined (Figure 12), it can be seen that boat arrivals during this period only made up a small proportion of overall Protection visa grants.

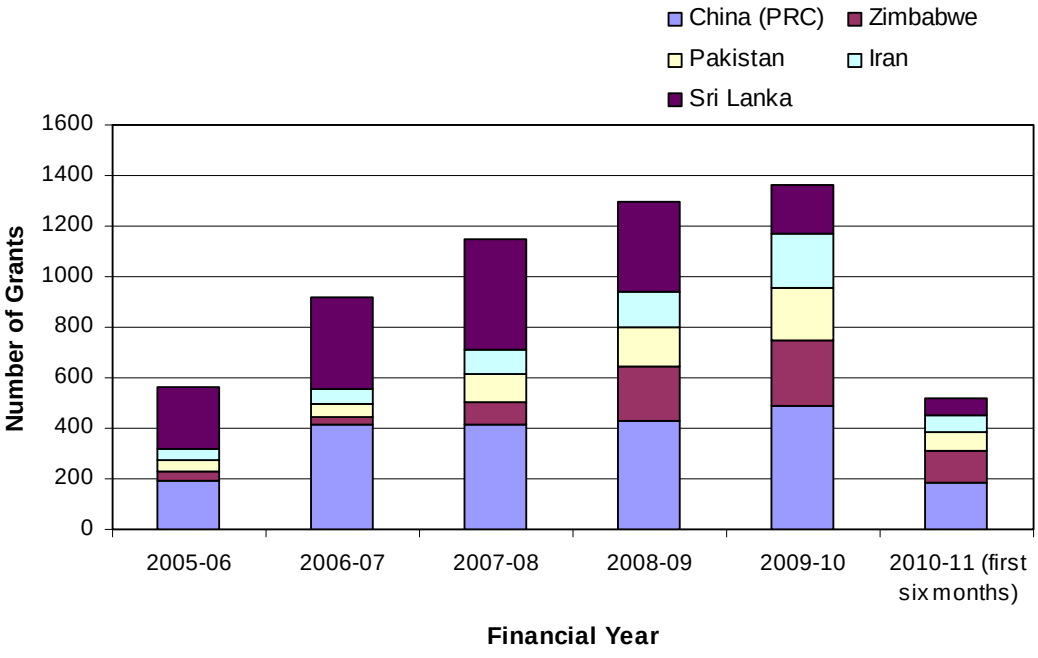
[280] E Karlsen, J Phillips & E Koleth, Parliamentary Library, 'Seeking asylum: Australia's humanitarian program', parliamentary background note, 2011, viewed 5 July 2011, http://www.aph.gov.au/library/pubs/bn/sp/SeekingAsylum.pdf.

Figure 11 Number of final Protection visa grants by top five countries of citizenship—boat arrivals 2005–06 to 2010–11 (first six months)



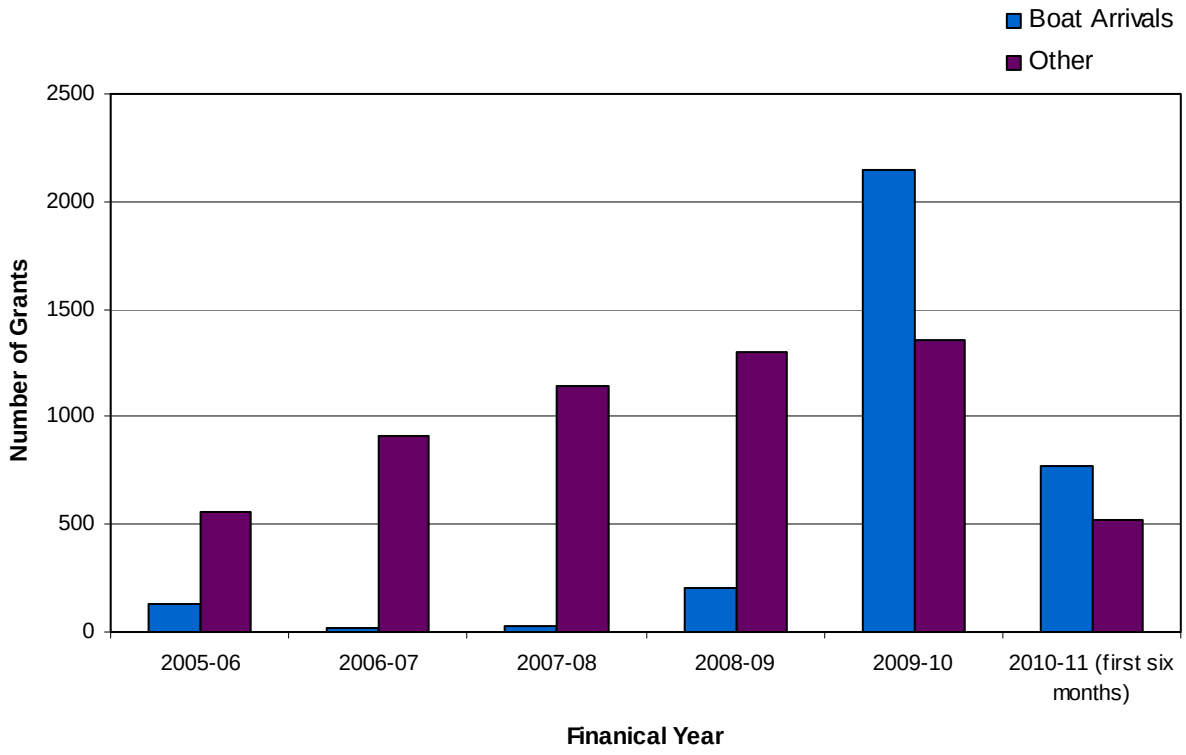
Source: DIAC statistics.

Figure 12 Number of final Protection visa grants by top five countries of citizenship—Other—2005–06 to 2010–11 (first six months)



Source: DIAC statistics.

Figure 13 Number of final Protection visa grants—boat arrivals and other—2005–06 to 2010–11 (first six months)



Source: DIAC statistics

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Attachment E: Evolution of the Australian legislative framework and policy for immigration detention

Contents

Introduction

Section 273 of Australia's *Migration Act 1958* (Cwlth) (the Migration Act) gives the Minister for Immigration and Citizenship power to establish and maintain immigration detention centres (IDCs), and to make regulations about the operation and regulation of these detention centres.

The immigration detention network is extensive. Different types of immigration detention facilities (IDFs) are used to enable Australia to be flexible in providing services to people in immigration detention. The detention network is not static. It has expanded and contracted over many years to respond to need.

This paper's five sections outline the:

1. type and purpose of the different IDFs in the immigration detention network
2. contract arrangements for the provision of detention services from 1996, when detention services were outsourced to the private sector
3. overview of the development of immigration detention infrastructure before 2008
4. discussion on the expansion of the immigration detention network as a result of the recent increase in irregular maritime arrivals (IMAs)
5. challenges associated with IDFs.

Immigration detention facilities

The Department of Immigration and Citizenship (the department) uses different types of IDFs to provide flexibility in providing services to people in immigration detention. These facilities include IDCs, immigration residential housing (IRH), immigration transit accommodation (ITA), alternative places of detention (APOD), and residence determination (community detention) programs facilitated by non-government organisations such as the Australian Red Cross.

Under government policy all IMAs intercepted outside Australia's migration zone at an excised offshore place are subject to mandatory detention for health, character and security checks while their claims to remain in Australia are considered. Following the Australian Government's announcement on 25 July 2011, these IMAs will be transferred to Malaysia.

Immigration detention centres

IDCs primarily accommodate individuals with a higher risk profile. This may include individuals who have overstayed their visa, individuals who have breached their visa conditions and had their visa cancelled or individuals who have been refused entry at Australia's entry ports. For example, people who have been refused a visa or had their visa cancelled because they fail the character test under section 501 of the Migration Act may be held in an IDC. IMAs are also accommodated in IDCs.

IDCs are located at:

- Villawood
- Maribyrnong
- Perth
- Christmas Island
- Northern
- Curtin
- Scherger
- Yongah Hill (under construction in Northam, Western Australia)
- Wickham Point (under construction near Darwin, Northern Territory)
- Pontville (under construction in Hobart, Tasmania).

Immigration residential housing

IRH is a less institutional, more domestic and independent environment for low flight and low-behavioural risk people in detention, particularly families with children. Participation in IRH is subject to meeting eligibility criteria.

Families are eligible for accommodation in IRH subject to:

- places being available
- satisfactory completion of identity and health checks
- an assessment of whether the person in detention is likely to abscond
- operational issues particular to the person in detention
- operational issues particular to the effective management of the IRH.

IRH is located in Sydney adjacent to the Villawood IDC, in Perth near the Perth IDC and in Port Augusta, South Australia.

Immigration transit accommodation

ITA has been introduced for short term, low-flight risk people. Generally, people who are low risk but are on a removal pathway and are expected to depart Australia in the near future are accommodated in ITA. However, recently ITA in has been used to accommodate some IMAs and unaccompanied minors. As such, facilities have been upgraded to provide extra amenities for detainees accommodated in ITAs for longer periods.

ITA offers hostel-style accommodation, with central dining areas and semi-independent living. ITA has a narrower range of services at a less intensive level than is typically offered in an IDC because of the short-stay nature of the people staying there.

ITA is located in:

- Brisbane (opened in November 2007)
- Melbourne (opened in June 2008)
- Adelaide (opened in April 2011).

Alternative places of detention

APOD typically accommodate people assessed as posing a minimal risk to the Australian community.

APOD may range from hospital accommodation in cases of necessary medical treatment; schools for providing education to school-aged minors; rented accommodation in the community (hotel rooms and apartments), and accommodation in the community made available through arrangements with other government departments or commercial facilities, such as Defence Housing Australia (Inverbrackie outside Adelaide and Darwin Airport Lodge). Correctional facilities are also used as APOD from time to time.

Residence determination (community detention)

Residence determination (community detention) was introduced in June 2005 and is a form of immigration detention that enables people to live in the community without needing to be formally monitored.

Residence determination does not give a person lawful status, or permission to work or study in Australia.

People in detention are informed, and must agree to, the conditions of their residence determination arrangements upon entry into community detention program. . Conditions include a mandatory requirement to report regularly to the department and/or its relevant service provider and live at the address specified by the minister.

Expanded residence determination arrangements for unaccompanied minors and vulnerable families were announced by the Prime Minister and the minister on 18 October 2010.

The Australian Red Cross is the lead agency subcontracted for this program and is supported by other subcontracted non-government organisations in providing care to people in detention. Funding covers costs for housing, residential/out-of-home care for unaccompanied minors, case workers, an allowance to meet daily living costs and a range of activities including recreational excursions.

Children in the program have access to schooling, including English language classes.

Health care is provided through the department's contracted detention health provider, IHMS.

Immigration detention services contracts

In 1996, the Australian Government established a National Commission of Audit (the commission). This commission was tasked with examining the finances of the Australian Government, identifying duplication, overlap and cost shifting between Australian Government and the state/territory governments in service delivery and establishing a methodology for developing and implementing financial performance targets for Australian Government departments and agencies.

Following its inquiry, the commission recommended the government should undertake a fundamental review of its objectives and justification for all of its programs, activities and services. This included the services of the Australian Protective Services, which was providing guard services in IDFs.[281]

In the 1996–97 Budget, the government announced immigration detention guarding services would be put to competitive tender. The government subsequently decided to put the full detention function to tender.

In September 1997 the department announced Australasian Correctional Services as the successful tenderer and a contract was signed on 27 February 1998. Service delivery was subcontracted to Australasian Correctional Management Pty Ltd, the operational arm of Australasian Correctional Services. The company was contracted through a 10-year general agreement that established a broad framework for service provision, including guarding, catering and providing health, welfare and educational services in Australian IDFs.

There was a significant increase in the number of unauthorised arrivals in 1999 and 2000 compared with the early 1990s, resulting in more than 3000 people in detention in early 2001.

The sudden increase in the number of people in detention raised concerns that the contract with Australasian Correctional Management did not represent best value for money and in 2001 the department announced that the provision of immigration detention services was again to go to tender.

GSL Australia Pty Ltd was announced as the successful tenderer in December 2002 and the contract was signed on 27 August 2003.

Significant reforms occurred in detention arrangements from 2005 following the Palmer Report in to the circumstances of the detention of Cornelia Rau. (These reforms are discussed in the accompanying issues paper *Evolution of the Australian legislative framework and policy for immigration detention*).

The subsequent tender for delivery of immigration detention services reflected these reforms and the recommendations made by the Australian National Audit Office on the management of the tender process.[282] The department released three requests for tender on 24 May 2007 for the provision of:

- detention services for people in IDCS
- health services for people in immigration detention
- detention services for people in IRH and ITA.

On coming to office in December 2007, the Australian Government reviewed its policy on public sector management of detention services. Recognising that cancellation of the advanced tender process would expose the government to considerable costs, the government decided to finalise the tender process, noting that the broader policy issues of public versus private sector management of detention services would be addressed after the evaluation specified in the terms of the current five-year contract.

On 29 June 2009 the department entered into a five-year contract with Serco Australia Pty Ltd. The contract, valued at about $370 million, covers the provision of detention services at IDCs (including those on Christmas Island) and APOD as well as a range of transport and escort services to people in detention.

In addition, the department signed a contract in January 2009 with IHMS to provide general and mental health services to people in immigration detention.

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[281] National Commission of Audit, *Report to the Commonwealth Government: June 1996*, Australian Government, Canberra, 1996.

[282] Australian National Audit Office, *ANAO Report No.32 2005–06: Management of the Tender Process for the Detention Services Contract*, Australian Government, Canberra, 2005.

On 11 December 2009 the department entered into a five-year contract with Serco Australia Pty Ltd to provide services to people in IRH and ITA throughout Australia.

Immigration detention network before 2008

In the late 1970s, Australia had three IDCs—in Villawood, Perth and Melbourne. Of these three facilities, only Villawood was considered to be a modern centre as it consisted of infrastructure from the 1960s and 1970s while the other two centres comprised infrastructure constructed pre-1945.[283] It should be noted that the infrastructure at Villawood at the time consisted of buildings and amenities that became known as 'Stage 1' and, later, the 'Blaxland Compound'. A case study on Villawood's infrastructure is below.

In the early 1980s, the centres in Perth and Melbourne were replaced with new facilities. The Perth Immigration Detention Centre was established in 1981 and Melbourne's Maribyrnong Immigration Detention Centre in 1983.

In 1989 the Australian Government introduced administrative detention for all people entering Australia without a valid visa and people who subsequently became unlawful.[284]

In late 1989 Australia began to experience a surge in unauthorised boat arrivals (IMAs) primarily from Vietnam, Cambodia and China. These arrivals were moved into 'loose' detention—in the open parts of the Westbridge Migrant Centre in New South Wales (now the Villawood Immigration Detention Centre) and the Enterprise Migrant Centres in Victoria and in Perth. Individuals held in this way were not allowed to leave the centre and had to report for rollcall daily.[285] In 1991 part of the Westbridge Migrant Centre was converted into a low-security detention facility known as 'Stage 2' of the Villawood Immigration Detention Centre.

In October 1991 the Port Hedland Immigration Reception and Processing Centre (IRPC) was established as Australia's primary facility for IMAs. The centre was located in a residential area in Port Hedland on the site of what was formerly a mining company's single men's quarters. Upon establishment Port Hedland IRPC could accommodate 700 people. The facility was refurbished in 1998 and its capacity increased to 218 single male beds, 21 single female beds and 44 family units with 264 beds.[286] Port Hedland IRPC was closed in 2004. It is presently leased for private accommodation to alleviate the acute housing shortage in the Pilbara.

The Curtin IRPC was commissioned in March 1995 to accommodate IMAs after capacity was reached at the Port Hedland IRPC. The Curtin IRPC was located on the Curtin Royal Australian Air Force (RAAF) Base approximately 40 kilometres south-east of Derby in Western Australia. Curtin IRPC was subsequently decommissioned in December 1995 and handed back to the Department of Defence.

From 1998 the significant increase in IMAs placed further pressure on an immigration detention network already accommodating a large number of non-IMAs as a result of the government's focus on compliance-related activities.

Since 1999 various facilities on Christmas Island have accommodated unauthorised arrivals.

In response to this surge, the IRPC at Curtin RAAF Base was reopened in September 1999 and the Woomera IRPC was opened in November 1999. The opening of Woomera posed some challenges as people were accommodated during the building process. At the peak of the boat arrivals in 1999–2000, Curtin accommodated approximately 1200 unauthorised boat arrivals, with more than 1400 at Woomera. Curtin and Woomera were decommissioned in 2002 and 2003 respectively.[287]

Woomera IRPC was located outside of Woomera township in South Australia, 487 kilometres from Adelaide. Woomera IRPC's nominal capacity was 1200, however the facility at times accommodated more people.

The Woomera Residential Housing Project (RHP) was opened in August 2001 to enable women and children to live a more independent lifestyle while still in immigration detention. It was located in a residential area of

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[283] Department of Immigration and Ethnic Affairs, *Review '78*, Australian Government, Canberra, 1978.

[284] Joint Standing Committee on Migration, Parliament of Australia, *Report into Immigration Detention In Australia*, Australian Government, Canberra, 2009.

[285] Millbank, A, Parliamentary Library, 'The Detention of Boat People', *Current Issues Brief 8: 2000–01*, 2001, viewed 29 July 2011, http://www.aph.gov.au/library/pubs/CIB/2000-01/01cib08.htm.

[286] Joint Standing Committee on Migration, Parliament of Australia, *Report of inspections of detention centres throughout Australia*, Australian Government, Canberra, 1998.

[287] Millbank, 'Detention of Boat People', op. cit.

Woomera township and initially accommodated 25 people. It was expanded in May 2002 to accommodate 40 people.[288]

An IDC in Darwin (now known as Northern IDC) was constructed following the decision announced in August 2001 to establish contingency IDCs. The original IDC was located within the fence line of Defence Establishment Berrimah, formerly known as HMAS Coonawarra.

The facility was subsequently upgraded because of increased apprehension of illegal foreign fishers in the northern waters of Australia. The Northern IDC has a number of buildings including three compounds, accommodation buildings, a commercial kitchen, and recreation buildings. It can accommodate up to 554 people.

In 2002 the Baxter IDF was opened as part of the government's long-term strategy for unauthorised boat arrivals and operated until August 2007. Baxter IDF was located near the Port Augusta township, approximately 275 kilometres north-west of Adelaide. Baxter IDF could accommodate 660 people and had the ability to accommodate another 220. Infrastructure at Baxter IDF comprised new and used transportable buildings. There were nine accommodation compounds, grassed and landscaped common places, recreational facilities, an education complex, a primary care medical complex, a management unit and a visitors' centre. Baxter IDF was closed in 2007. The facility was handed back to the Department of Defence in 2008.

The Port Augusta RHP opened in 2003 to enable women and children to live a more independent lifestyle while still in immigration detention. It was located in Port Augusta township and could accommodate 40 people, plus an extra eight if needed. Port Augusta RHP comprised eight self-contained, three bedroom houses and an administration building.[289]

Offshore processing centres

In September 2001, as part of the response to the *Tampa* incident, the government passed amendments that allowed for offshore processing of certain unlawful non-citizens. The amendments gave discretion to officers to detain people who they reasonably believed were seeking to enter excised offshore places, and to remove them to a declared country where their need for protection could be assessed.

A processing centre on Nauru was established on 10 September following the signing of an Administrative Agreement and Statement of Principles. A memorandum of understanding replacing the Administrative Agreement was signed on 11 December 2001, which allowed for up to 1200 people to be accommodated at any one time at the centre in Nauru.

A memorandum of understanding was signed with the Government of Papua New Guinea on 11 October 2001. This agreement established a processing centre to accommodate and assess the claims of asylum seekers on Manus Island. The agreement with Papua New Guinea provided for the facility at Manus Island, which could accommodate 1000 people.

The department exchanged letters with the International Organization for Migration in September 2001 for it to manage and provide services at offshore processing centres.

On 31 March 2008, following the government's decision to end offshore processing, the centres in Nauru and Manus Island were closed and assets were gifted to the respective host governments. Closure of the centres formally ended the *Pacific Strategy*.

As a result, the government decided all IMAs would be processed on Christmas Island, and as such, IDFs on Christmas Island became a key component of the government's border security arrangements.

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[288] Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention*, Human Rights and Equal Opportunity Commission, Sydney, 2004.

[289] Joint Standing Committee on Migration, Parliament of Australia, *Report of the Inspections of Baxter Immigration Detention Facility and Port Augusta Residential Housing Project*, Australian Government, Canberra, 2005.

Villawood immigration detention centre

Villawood IDC plays a significant role in the department's broader detention network and is considered Australia's primary immigration detention facility.

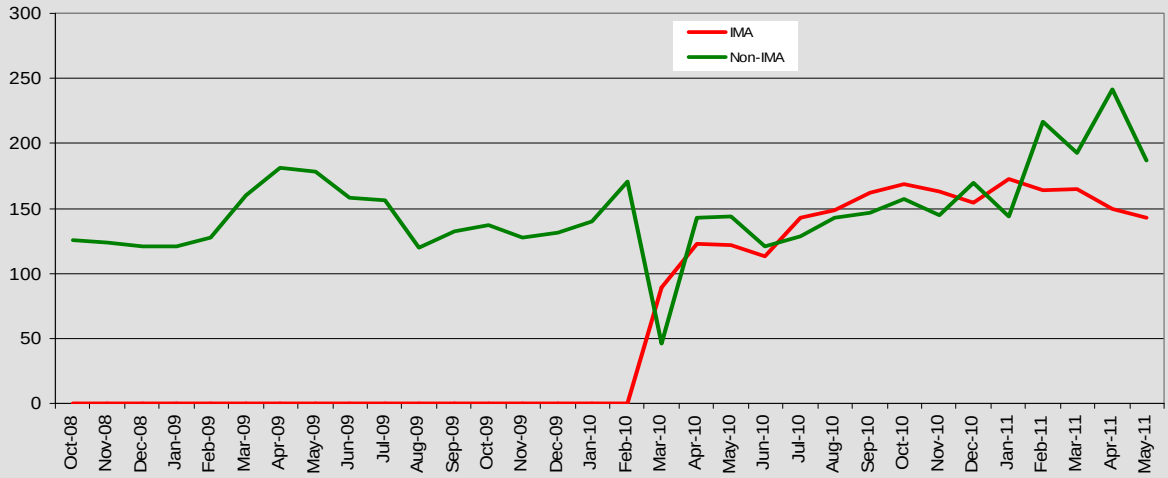
It is located on the site of what was initially established as the Villawood Migrant Hostel in 1949 and became the Villawood and Westbridge Migrant Hostels in 1968. From 1976 Villawood was progressively redeveloped and established as a secure immigration detention centre. As part of this redevelopment, a purpose built, high-security complex known as Stage 1 (now known as Blaxland) was established. In 1991, eight of the existing two-storey buildings were enclosed and several demountable buildings installed to create a 200-person, low-security complex known as Stage 2 (now known as Hughes). In late 1999 a new medium-security complex known as Stage 3 (now known as Fowler) was created by separating four existing accommodation buildings from Stage 2 with a palisade fence.

Villawood IDC has typically accommodated people pending removal from Australia, namely those who have breached their visa conditions or who have been denied entry to Australia at the border and are being returned to their country of origin. The centre's higher risk accommodation option means it can accommodate more complex cases (usually non-IMA compliance cases). These people, because of the complexity of their cases, may be in immigration detention for an extended period (for example, people not eligible for the grant of a visa or who are on a removal pathway because they have not passed the character test under section 501 of the Migration Act).

In addition to its traditional compliance population, over the past 18 months Villawood has also been used to accommodate IMAs. In March 2010 the minister announced that 89 IMAs would go to the centre from Christmas Island. These people were on an indicative negative pathway after their primary refugee status assessment had been completed.[290] Since the minister's announcement, IMAs continued to be transferred to Villawood.

Graph 1 illustrates the change in the composition of those who have lived at Villawood from 2008 to 2011, including following the government's decision to accommodate IMAs at the centre.

Graph 1: VIDC detention population (2008–2011)



Note: The population displayed in this graph represents a point in time.
Sources: This graph is generated from data in the IMA Key Statistics and Immigration Detention Statistics Summary.

[290] Minister for Immigration and Citizenship, Senator the Hon. Chris Evans, '89 asylum seekers refused and transferred to Villawood Immigration Detention Centre', press release, 27 March 2010.

The complexity of the population living at Villawood, especially since March 2010, coupled with the inherent limitations of the facilities have hampered the department's ability to effectively manage growing pressures at the centre and presented challenges in responding flexibly and appropriately to the changing priorities of the people accommodated there.

In 1992 the department identified that the centre's infrastructure was inappropriate. Since then, the department has put forward options to successive governments to remedy these concerns. Options have included significantly redeveloping Villawood and upgrading its infrastructure focusing on security or constructing a new, purpose-built facility.

Small refurbishments and minor works projects have been undertaken at Villawood over the years. However, infrastructure is still not optimal or fit-for-purpose, especially when compared to facilities purpose built for use as IDCs.

Infrastructure at Villawood has been the subject of wide ranging criticism, including from the Red Cross, the Commonwealth Ombudsman and the Australian Human Rights Commission, which in particular, has raised concerns about the infrastructure and facilities in each of its annual inspection reports since 1999, even noting it has 'dilapidated infrastructure'.[291]

To address these issues, the government announced $186.7 million, as part of the 2009–10 Budget, to redevelop Villawood. Remediation works started in May 2011 in preparation for the redevelopment. The project will provide better amenities and improved privacy for people in detention, while providing appropriate security.

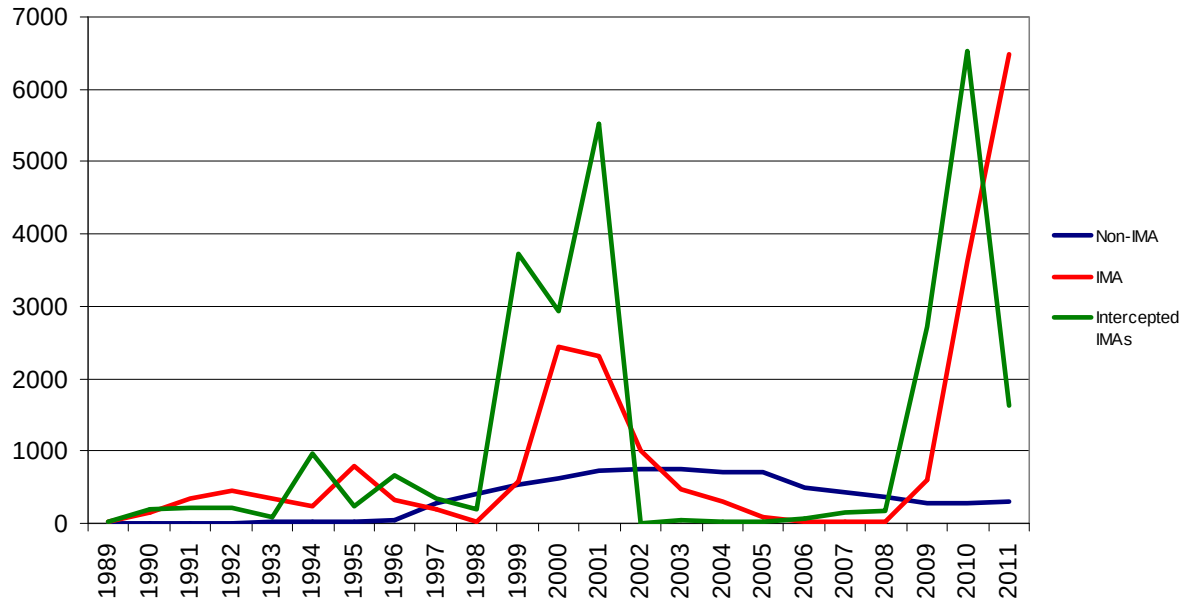
[291] Australian Human Rights Commission, Submission to the Parliamentary Standing Committee on Public Works, 'Proposed Redevelopment of the Villawood Immigration Detention Facility', 2009.

Recent expansion of the immigration detention network

The significant increase in the number of IMAs in recent years required an expansion of Australia's immigration detention network. This included the development of facilities to accommodate IMAs on the mainland after their initial reception and processing on Christmas Island, as well as an expansion of residence determination to move children and vulnerable families into community detention.

Graph 2 shows Australia's detention population over time (1989–2011). The two waves beginning in 1998 and 2008 reflect significant IMA increases and these, in combination with an increased focus on compliance activities around 2000, had a consequential impact on the immigration detention network.

Graph 2: Detention population and irregular maritime arrivals intercepted (1989–2011)



Note: The population displayed in this graph represents a point in time. It also includes people in community detention. As at 20 July 2011, 999 people were in community detention.
Sources: This graph is generated from data in the Detention Statistics Summary and the Intelligence Analysis Section IMA document.

The government decided to accommodate those who arrived in early 2008 at the detention facilities at Phosphate Hill on Christmas Island. In 2008 the department took possession of the purpose-built Christmas Island IDC.

Christmas Island immigration detention facilities

Following the government's decision to end offshore processing of IMAs, the Christmas Island IDC became a significant component of Australia's border security strategy. Christmas Island IDC is the primary facility for accommodating IMAs and does not accommodate non-IMAs.

The Christmas Island IDC is a purpose-built immigration detention facility at North West Point (NWP), about 17 kilometres from the main settlement on Christmas Island.

The centre has permanent, purpose-built facilities including accommodation compounds, medical centre and first-aid rooms, a commercial kitchen, laundry, educational and recreational facilities and sporting facilities. The facility was designed to accommodate 400 people and another 400 if needed. Recently the IDC has held as many as 1116 people.

In addition to the IDC, other IDFs on Christmas Island include the Phosphate Hill APOD and Construction Camp APOD. These facilities have accommodation units, a medical facility, gymnasium, classroom, recreational facilities and a commercial kitchen.

Construction of the Christmas Island IDC began in February 2005 and was completed in early 2008, at a project cost of approximately $396 million. Christmas Island IDC was handed over to the department in April 2008 but was not used to accommodate IMAs until December 2008.

When IMAs first began arriving in early 2008 the government decided to accommodate them at the facilities at Phosphate Hill. This continued until the facilities at Phosphate Hill and community detention had reached maximum capacity, and resulted in the December 2008 decision by the minister to accommodate single male detainees at NWP.

The rapidly increasing number of IMAs meant that the Christmas Island IDC quickly reached capacity after it was brought into service, and other accommodation options were needed. To increase the capacity of Christmas Island IDC, extra beds were placed in the surge accommodation dormitories, activity rooms and in the Block 3 education area. Extra beds were also placed in air-conditioned marquees in the area adjacent to Red Compound in December 2009, and more marquees erected in January 2010.

In December 2009 construction of a 200-person camp made up of portable buildings started. This area was known as the Lilac Compound and had accommodation, ablutions, laundry facilities, a dining room and open air cabanas. It opened in January 2010. While this facility was under construction, work also started on a 400-bed facility called Aqua, adjacent to Lilac. Work on Aqua began in early 2010 and it opened in May 2010.

Notwithstanding the various facilities that had been brought into service and the transfer of IMAs to mainland facilities, the continuing arrivals of new IMAs meant the Christmas Island IDC continued to experience accommodation pressures.

In December 2008, when no more people could be accommodated at the facilities at Phosphate Hill and in community detention on Christmas Island, the minister allowed single male detainees to live at the Christmas Island IDC.

In 2009 the increasing number of IMAs meant that NWP quickly became full, which meant other accommodation options were needed.

Transfers to ITA in Brisbane and Melbourne began in November 2009, and then to Northern IDC in December 2009. In March and April 2010 small numbers of IMAs were transferred to Villawood IDC and Brisbane Virginia Palms APODs.

The transfers were on a case-by-case basis and determined on a number of factors, including vulnerability. As a result, 545 people were transferred to the mainland between 1 November 2009 and 9 April 2010.

The government's position that all IMAs remain on, or be taken to, Christmas Island for initial health and entry processing continued during this period. Following the announcement on 25 July 2011, they will be transferred to Malaysia.

In February 2010 the minister announced measures to ease congestion at the Christmas Island immigration facilities, including the transfer of IMAs in the final stages of a positive pathway to the Northern Immigration Detention Centre in Darwin, and the transfer of a group of unaccompanied minors to the Port Augusta immigration facility.

On 18 April 2010 the government announced it would re-open the RAAF Base Curtin to accommodate IMAs.

On 1 June 2010 the government made a further announcement that a site in Leonora, Western Australia, would be used to temporarily house family groups of IMAs.

In September 2010 the minister announced immigration detention accommodation for families and unaccompanied minors in Melbourne, and for single adult men in northern Queensland and in Western Australia. This announcement intended that the:

- Melbourne Immigration Transit Accommodation (MITA) would be expanded for use by families and children (The proposed expansion did not proceed because the subsequent decision to move children and vulnerable families into the community meant this large expansion was no longer needed. However, there was a smaller and temporary expansion of MITA with the leasing of several demountable buildings).
- Scherger Air Force Base (near Weipa in Queensland) would be adapted to accommodate up to 300 single adult men.
- Curtin Immigration Detention Centre would be expanded to accommodate up to 1200 single adult men.
- The Prime Minister and minister announced on 18 October 2010 that the Australian Government would expand the existing residence determination program and move most children and a significant number of vulnerable families into community detention by the end of June 2011.[292] In addition, the government announced the commissioning of two new detention facilities to house IMAs.
- Yongah Hill (Northam) in Western Australia was originally supposed to accommodate 1500 single men. In May 2011, the minister announced the facility would accommodate 600.
- Inverbrackie in South Australia would accommodate family groups.[293]

In response to continuing pressures on immigration detention accommodation, the minister announced an update on the government's IMA accommodation strategy on 3 March 2011. This updated strategy involved the commissioning of more appropriate detention accommodation, the expansion of some existing facilities,

[292] Minister for Immigration and Citizenship, the Hon. Chris Bowen MP and Prime Minister, the Hon. Julia Gillard MP, 'Government to move children and vulnerable families into community-based accommodation' (Press Release, 18 October 2010).

[293] Ibid

the decommissioning of less suitable accommodation, and the expanded use of existing residence determination powers for unaccompanied minors and vulnerable families.

The following mainland facilities were commissioned or expanded:

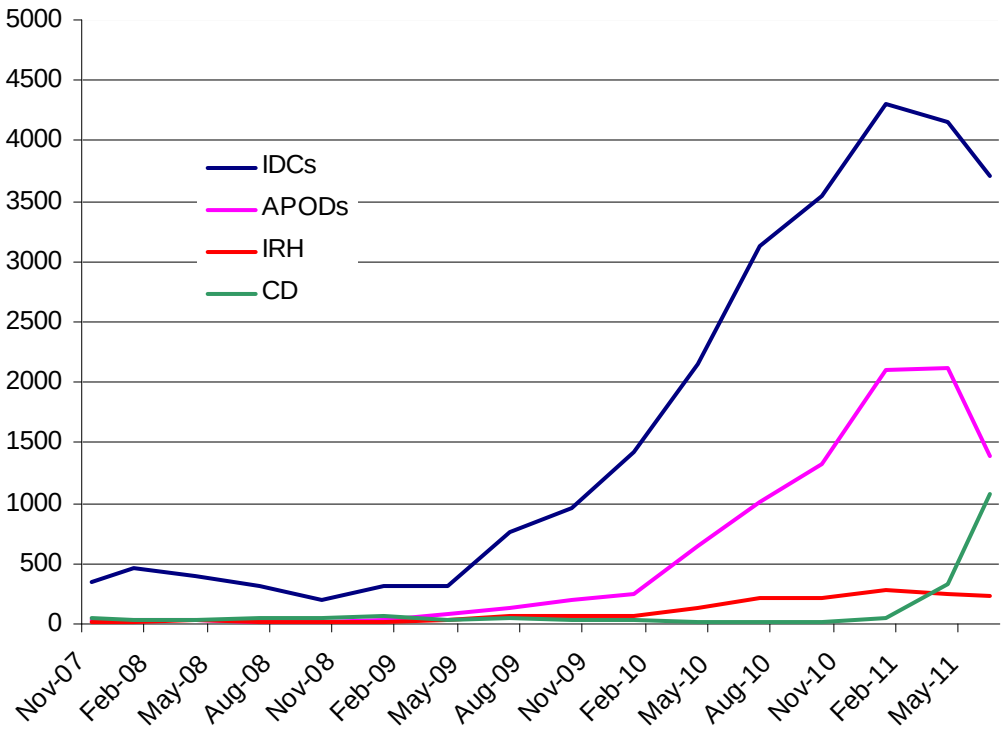
- a new immigration detention centre at Wickham Point (35 kilometres south-east of Darwin)
- expansion of the Darwin Airport Lodge by up to 435 places at existing facilities adjacent to the current accommodation
- continued use of the facility at RAAF Base Scherger near Weipa in Queensland for a further 12 months, until 2012.

In addition, the minister announced, on 5 April 2011, the government's intention to lease a Defence facility to build a new IDC in Pontville near Hobart to eventually accommodate 400 people.

All of this increased accommodation meant the government could close the Virginia Palms APOD in Brisbane and the Asti Hotel APOD in Darwin by mid-2011, and reduce the proposed capacity of the Yongah Hill Centre.

Graph 3 shows the number of people in immigration detention between 1 November 2007 and 30 June 2011 and where they were accommodated.

Graph 3: Immigration detention network (1 November 2007–30 June 2011)



Note: The population displayed in this graph represents a point in time.
Sources: This graph is generated from data in the Detention Statistics Summaries.

Dates irregular maritime arrivals were first accommodated in immigration detention and at what facility, from 2010

Detention facility	Dates when IMAs were first accommodated at the facility from 2010
Immigration detention centre	
Curtin IDC, Western Australia	12 June 2010
Maribyrnong IDC, Victoria	27 September 2010
Northern IDC, Northern Territory	13 January 2010
Perth IDC, Western Australia	8 January 2010
Scherger IDC, Queensland	22 October 2010
Villawood IDC, New South Wales	27 March 2010
Immigration residential housing	
Perth IRH, Western Australia	13 January 2010
Port Augusta IRH, South Australia	19 April 2010
Sydney IRH, New South Wales	15 April 2010
Immigration transit accommodation	
Adelaide ITA, South Australia	4 July 2011
Brisbane ITA, Queensland	20 January 2010
Melbourne ITA, Victoria	5 February 2010
Alternative place of detention	
Ascot Quays, Western Australia	30 June 2010
Asti Motel, Northern Territory	15 May 2010
Banksia Tourist Park, Western Australia	1 April 2010
Berrimah House, Northern Territory	17 March 2010
Botanic Gardens, Northern Territory	5 August 2010
Britton Street APOD, South Australia	8 July 2010
Darwin Airport Lodge, Northern Territory	8 July 2010
Gwalia Lodge, Western Australia	20 December 2010
Inverbrackie APOD, South Australia	17 February 2011
Jandakot Airport Chalets, Western Australia	2 May 2011
Leonora APOD, Western Australia	7 June 2010
Virginia Palms APOD, Queensland	17 September 2010
Willare Bridge Road House, Western Australia	21 March 2011

List of current immigration detention facilities and capacity (as of 30 June 2011)

	Facility	Operational capacity (people)	Contingency capacity (people)
IDCs	Christmas Island IDC	400	1116
	Curtin IDC	1200	1500
	Maribyrnong IDC	56	99
	Northern IDC (including Darwin Hospital)	536	554
	Perth IDC (including Perth Hospital)	27	42
	Phosphate Hill Compound B	48	168
	Scherger IDC	300	596
	Villawood IDC—Fowler	80	171
	Villawood IDC—Blaxland	60	60
	Villawood IDC—Banksia	35	35
	Villawood IDC—Hughes	220	220
IRHs	Perth IRH	11	16
	Port Augusta IRH	58	64
	Sydney IRH	24	48
ITAs	Brisbane ITA	29	58
	Melbourne ITA	130	144
	Berrimah House	12	16
APODs	Christmas Island Lilac APOD	–	126
	Construction Camp APOD	200	310
	Darwin APOD (Airport Lodge)	–	435
	Inverbrackie APOD	350	400
	Leonora APOD	210	210
	Phosphate Hill A and C	96	150

The ongoing challenges associated with immigration detention infrastructure

The department is conscious of the need to ensure that infrastructure across the immigration detention network is consistent with the government's Detention Values announced in 2008 and supports the flexible management of people in detention. A range of factors present challenges for detention infrastructure. Of particular note are the:

- need to rapidly upscale operations in response to increased numbers of IMAs. This creates significant operational challenges, particularly at facilities that are not purpose-built for use as an immigration detention facility
- remoteness of IDFs, particularly facilities that only accommodate IMAs
- increased regulatory requirements that have become effective in the past 10 years with environment, heritage, occupational health and safety and planning laws—these have increased the cost and time needed to establish IDCs
- limited availability of Australian Government land that is appropriate for establishing IDFs.

The department continues to address these challenges in response to the current detention policy framework.

Attachment F: International comparisons of immigration detention

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International comparisons of immigration detention

The global movement of people across national borders is not a new phenomenon; people have been escaping persecution and seeking a better life for centuries. In the modern context, most governments seek to regulate migration into their countries in some way. While the vast majority of people fleeing persecution seek refuge in their own or neighbouring countries, some make the journey to developed countries. These developed countries face managing legal migration programs while at the same time managing the arrival and stay of irregular migrants and asylum seekers. While the majority of migration to these countries is through legal avenues, the flows of irregular migrants present management challenges for states.

Immigration detention is used to manage the number of unauthorised arrivals, to address security concerns and for removal. It is used by different governments at various stages of the process and implemented in a range of settings.

This paper provides an overview of immigration detention and asylum processing at the international level. It outlines the policies and practices in Australia, Canada, New Zealand, United Kingdom, United States—which are part of a regular cooperation framework on immigration issues—as well as Italy, Spain and Sweden. . These countries have relatively similar overall social policies and public institutions. Sweden, Italy and Spain were chosen for their diversity from a European perspective: Sweden because it has pioneered alternatives to detention and Italy and Spain because of their similar experiences to Australia in receiving large numbers of irregular boat arrivals.

While there are some similarities between the countries chosen, the migration and detention arrangements in these countries differ significantly. While it is interesting to compare the differences, it is important to note that all countries operate migration and border control programs to meet their own domestic priorities. The programs are developed and adjusted in response to local, regional and geographical factors.

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
Australia	**Detention policy**—Mandatory detention was introduced in 1992. The purpose of the policy is to ensure that people who enter Australia without a valid visa do not enter the community until their identity and status have been assessed. Asylum seekers are not detained because they have sought asylum. **Decision to detain**—The decision to detain should be used as a last resort for those already in Australia. Detention is mandatory for all irregular maritime arrivals (IMAs) or people who arrive by air with no valid visa. **Review**—There is no administrative review of mandatory detention. However, a person may seek judicial review of the lawfulness of the decision to detain. Mandatory detention includes accommodation in detention centres, alternative places of detention and community detention. Community detention allows the person to live in the community while their application for asylum is being processed, following initial checks.	**Nature of detention cohort**—As at 30 June 2011, 95 per cent IMAs and 5 per cent non-IMA cases, comprising unauthorised air arrivals, foreign fishers and people taken into detention after overstaying visas or breaching visa conditions. **Management/infrastructure**—As of 30 June 2011 a total of 6054 people in detention: 4978 immigration detainees confined in 22 official detention sites (including Christmas Island); 1076 in community detention. **Length of detention**—The average length of detention for the financial year 2010–11 was 273 days. This figure is based on data that includes people who were detained in the previous financial year/s and who continued to be in immigration detention. This includes periods in community detention. **Treatment of minors/other vulnerable groups**—Where possible, children, families and other vulnerable people (such as torture and trauma victims) are accommodated in community detention arrangements. **Services in detention**—Healthcare, education, English	**Bond/reporting**—There are no bail or reporting requirements for non-detained clients who have applied for asylum. **Financial assistance/work rights**—People in detention do not receive financial assistance and do not hold work rights. People in community detention are supported by the Australian Government Department of Immigration and Citizenship through a financial allowance set at 89 per cent of the Centrelink income support payments, excluding rent assistance and family benefits payment (Centrelink is part of the Department of Human Services). Asylum seekers who hold a valid bridging visa generally do not have work rights. **Healthcare**—All detainees have access to appropriate healthcare. Detainees located in community detention and immigration residential housing receive healthcare services from community-based health care providers. Those in facility-based detention receive most health services onsite. If required, referral to external health providers is used for non-detainees. **Education**—Educational services are provided to adults and children in detention. All children in detention have access to educational services such as school, after-school care, school holiday programs and unstructured play time. Services provided to adults include English as a second language and other life-skills programs.	**Avenues for asylum seekers not permitted to stay**—For IMAs who have been assessed as non-genuine refugees and where the courts do not uphold their appeal, plans are made to have the person leave Australia (subject to any international obligations). The Australian Government funds the International Organization for Migration (IOM) to operate an Assisted Voluntary Return Program.

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
		language classes, living and life skills classes, sports, excursions.	**Community models**—Two alternative detention programs are used: Community Detention and Alternative Temporary Detention in Community. People who arrived in Australia with a visa may be eligible to remain in the community on a bridging visa while their asylum claim is processed. **Legal support**—IMAs are assigned a migration agent through the Immigration Advice and Application Assistance Scheme at the start of their refugee determination process. This agent—not necessarily a lawyer—provides help and advice in preparing statements of claims against the convention definition of a refugee. The agent does not provide legal advice as such.	

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
Canada	**Detention policy**—The Canada Border Services Agency (CSBA) has the legislative authority to detain foreign nationals believed to be 'inadmissible' to Canada. For all detentions, an officer must have reasonable grounds to believe the person is inadmissible and is a danger to the public or likely to abscond. Detention is used as a last resort. Alternatives, such as release on conditions or financial guarantees, are always considered before someone is detained. The onus lies with the government on why a person should be detained. **Decision to detain**—Immigration officers from the CSBA first determine if a person is to be detained depending on whether they are: • unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the minister's delegate under A44(2) • a danger to the public • inadmissible on security grounds or for violating human or international rights • able to establish their identity. **Review**—The initial CBSA decision to detain or release is reviewed by another immigration officer and by the Immigration Review Board (IRB) within 48 hours of the initial decision. Thereafter, the case is reviewed in light of new evidence, within the first seven	**Nature of detention cohort**—In 2008–09, 44 per cent of detainees were asylum claimants and 6 per cent minors. **Management/infrastructure**—The CBSA manages its own detention facility and relies on municipal and provincial facilities to hold the remainder. In general, those assessed as posing a greater risk to security are placed in municipal facilities. **Length of detention**—In 2008–09, Canada detained 14 359 individuals for an average of 17 days. About 60 per cent were detained for less than 48 hours. **Treatment of minors/other vulnerable groups**—Canadian legislation sanctions the detention of minor asylum seekers. However, minors are only detained if no other recourse is available. In cases with no safety or social considerations, authorities try to avoid detaining unaccompanied and other minors.	**Bail/reporting**—Those with unresolved immigration status who are not detained are released unconditionally while awaiting resolution of their status or subject to reporting and/or bail requirements. In most cases, the terms of release require some form of bail, either a deposit of money or performance bond. The Toronto Bail Program (TBP)—a non-profit agency operating in the greater Toronto area—posts bail for detainees who the CIC deems can be released (by passing security identity tests) but who have no contacts in the community to help them pay their bail. By posting bail for asylum claimants, the TBP accepts responsibility for their compliance. TBP also helps them find housing, apply for legal aid and to locate *pro bono* lawyers and other forms of support. Claimants must report bi-weekly to the TBP offices (sometimes in addition to a reporting requirement directly to the CIC), undergo counselling, and frequent and unannounced house checks. They must work, study, or receive treatment if they have mental health issues **Financial assistance/work rights**—Asylum seekers not detained are automatically eligible to receive social assistance and can apply for a work permit. Asylum seekers who have been rejected in the first instance may also apply for a work permit. **Health care**—Asylum seekers are not eligible for regular universal health care but are entitled to 'emergency' health care. **Education**—Asylum seekers have the right to study: elementary and high school is free, and at the university level they have to pay the	**Avenues for failed asylum seekers**—The Warrant Response Centre, created to meet the steps to increase removals from Canada through the coordination of immigration and law enforcement agencies to locate non-citizens. Failed Refugee Project, run by the CIC to cater to those asylum seekers who have exhausted all appeals. People in the project are given a Pre-Removal Risk Assessment, their departure orders in detention, counselling on their options and 30 days to leave the country.

	days and henceforth every 30 days. Claimants with new evidence can ask if they can be released in between the seven and 30-day periods. At the detention review, the IRB's adjudicator determines, with input from Citizenship and Immigration Canada (CIC), whether an individual can be released, and under what conditions. For example, providing an address where the individual can be contacted by authorities and agreeing to present themselves to the authorities on a periodic basis. Judicial review is also available.		rate foreigners pay. **Community models**—Small (approximately 35 bed) asylum shelters cater to detainees who cannot be released because they have no address where immigration authorities can visit and check up on them. The shelters provide an address for former detainees so they can move into the community. Rather than being formally supervised, residents have regular one-on-one contact and support through interpreters, legal aid, social services and an informal community network. **Legal support**—The Toronto Refugee Affairs Council, a non-government initiative in Toronto providing detainees with legal information from volunteers and local NGO staff. A UNHCR sponsored program in collaboration with the Osgoode Hall Law School facilitates the visits of law students to detention centres to offer orientation programs. Montreal Refugee Action, an initiative to protect and defend the rights of detained refugee claimants, monitoring detention and providing information on immigration and refugee law.	

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
Italy	**Detention policy**—Unauthorised presence in Italy is a crime and foreigners who remain in the country face an expulsion order, mandatory arrest and up to one year imprisonment with a 2000 Euro fine. Detention is mandatory for irregular migrants. **Decision to detain**—People who enter Italy by evading border controls or overstay their visa by two months or more are issued with an administrative expulsion order. The Central Directorate of the Immigration and Frontiers Police are responsible for managing immigration-related issues, with the police authorised to carry out all border control activities, including expulsions. The Italian military is commissioned to play a part in the police's immigration related operations.	**Management/infrastructure**—There are two forms of detention: i. *I Centri di Accoglienza* (CDA)—detention facility ii. *I Centri di Identificazione ed Espulsione* (CIE)—deportation centre Non-citizens detained for not having appropriate authorisation are initially detained at CDAs. Once their status is determined, they are transferred to a CIE or a non-secure centre for asylum seekers. CDAs are managed at national level by the Central Directorate of Civil Services for Immigration and Asylum. CIEs are managed by local prefectures. Italy has an agreement with United Nations High Commissioner for Refugees (UNHCR), IOM and Red Cross to maintain a joint presence at the detention facility on Lampedusa Island. **Length of detention**—The maximum length of detention for irregular immigrants is 180 days. People arrested for unauthorised presence can also be imprisoned for up to 12 months. **Services in detention**—IOM provides information to immigrants about Italian legislation on migration matters and helps those who opt to voluntarily return to their countries of origin.	**Legal support**—Everyone in Italy has the right to be represented by a lawyer through legal aid. This includes all non-citizens.	**Avenues for failed asylum seekers**—Italy has approximately 30 readmission agreements with countries for the return of their citizens, including Morocco and Tunisia.

		The Red Cross provides humanitarian assistance. It offers food, health care, accommodation, psycho-social counselling, cultural-linguistic assistance, and facility maintenance.		

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
New Zealand	**Detention policy**—An immigration officer must justify any restrictions on movement, including detention. **Decision to detain**—Police can detain a foreign national if they are: • denied entry into the country at an airport and awaiting deportation • not carrying proper identification documents • suspected of constituting a threat or risk to security • in breach of residence and reporting requirements. Immigration officers have the authority to arrest and detain for a maximum of hours foreign nationals suspected of being unlawfully in New Zealand for a maximum of four hours. If a foreign national has a false, fraudulent, or expired visa, has had their refugee status cancelled, or is deemed a security threat, they can be deported and therefore detained. **Review**—The administrative review process requires immigration officers to reconsider the grounds of detention 'as soon as practicable' following new evidence about the detainee within two weeks from the start of detention. There is further review after 28 days in detention and periodically thereafter, generally in seven day cycles.	**Management/infrastructure**—New Zealand has no dedicated detention facilities. Any police station ican be used to detain a person without a warrant of commitment for up to 96 hours. If a claimant is to be detained for a period longer than 96 hours a warrant of commitment must be obtained. If it is apparent that a claim for refugee or protection status cannot be determined within the period of custody of up to 28 days, an officer may apply for an extension to the warrant. The court has the discretion to extend the period of detention every seven days. While cases are being resolved, unauthorised non-citizens are placed somewhere along the 'sliding scale' of detention options: detention in prison, detention in Mangere Accommodation Centre (MAC), conditional release, or unrestricted release. **Treatment of minors/other vulnerable groups**—a responsible adult is designated to act in the best interests of an unaccompanied minor.	**Bail/reporting**—Persons not detained in prison or MAC are released on conditional release—requiring supervision or reporting—or unrestricted release. **Financial assistance/work rights**—Asylum claimants may apply for a work permit while waiting for a decision. They may apply for unemployment benefits on the same basis as permanent residents or citizens. Asylum seekers must make their own arrangements for accommodation. **Healthcare**—All asylum seekers are eligible for medical care for the duration of their claim on the same basis as citizens. They may have to pay fees for prescriptions and doctors. **Education**—Education is provided for all asylum claimants aged five to 16 years. **Community models**—Nearly all people are detained in MAC, which has few restrictions on movement. Though technically a place of detention, MAC in many ways resembles an alternative to detention. Detainees must request permission to leave during the daytime, but in practice, this has never been refused. **Legal support**—Asylum seekers are provided with access to the advice of legal counsel. Legal aid is provided for making refugee claims and appeals on the basis of the asylum-seeker's income and prospects for success.	**Avenues for failed asylum seekers**—Those whose claims are finally rejected are required to leave New Zealand. Voluntary departure is promoted and is achieved in most cases. If a person refuses to cooperate, or absconds and is later located, that person may be detained. A failed claimant who is detained and cannot be removed may be released, as indefinite detention is not consistent with New Zealand law.

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
Spain	**Detention policy**—Under Spanish law, people cannot be detained for more than 60 days. Asylum seekers are not detained because they have sought asylum, but can be detained for reasons of expulsion. **Decision to detain**—Migrants can be detained under the following conditions: • for purposes of expulsion because of alleged violations in being on Spanish territory without proper authorisation, posing a threat to public order and/or participating in clandestine migration • when a judge issues a judicial order for detention in cases where authorities are unable to carry out a deportation order within 72 hours of its issue • when a non-citizen fails to depart the country within the prescribed time limit after being issued a deportation order.	**Nature of detention cohort**—The majority of those detained in detention centres in the Canary Islands and Southern Spain are predominately from Sub-saharan African countries, while those detained in major cities are primarily from Latin America, North Africa and Eastern Europe. **Management/infrastructure**—Open reception centres enable residents to come and go as they please. **Length of detention**—Persons who claim asylum at the airport are detained at airport accommodation facilities for a maximum of seven days while the admissibility of their claims is assessed. They may then seek their own accommodation or choose to live at a Refugee Reception Centre. Those who arrive by sea and are taken to the Canary Islands are detained for a maximum of 60 days. **Treatment of minors/other vulnerable groups**—Asylum claims from unaccompanied minors are prioritised. Minors are usually interviewed twice and assigned a legal guardian to attend an interview. **Services in detention**—Meals, education, healthcare,	**Bail/reporting**—Asylum seekers have an obligation to keep OAR informed of their address during the asylum procedure **Financial assistance/work rights**—Asylum seekers are entitled to a work permit six months after making their asylum application. They do not have work rights during an appeal of the first decision or when they have received a negative decision on their asylum claim. **Healthcare**—Asylum seekers have access to a social worker. They are entitled to the same health care benefits as citizens. **Education**—Asylum seekers have access to a range of courses such as language classes and professional training. Children under 16 have access to the regular school system. **Community models**—Refugee reception centres are open accommodation facilities. Residents can come and go as they please **Legal support**—Free legal representation is provided.	

		recreational activities, psychological services		

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
Sweden	**Detention policy**—The authority handling asylum cases—the Police, the Migration Board, the Ministry of Justice or the Courts—may decide to detain a person or place a person under supervision. Rather than do so for a short period, the Swedish Migration Board (SMB) is more likely to get the details of the person, issue them with an identity card and let them live in the community with welfare benefits to support them while they wait on the outcome of their application to stay in Sweden. **Decision to detain**—Non-citizens who do not request asylum but arrive at the border are investigated by border police and may be expelled immediately. Asylum seekers have their cases referred to the SMB. There are three categories of detainees: • those unable to establish their identity adequately • those who will be quickly denied entry into Sweden or who have failed in their claims to stay and who refuse to leave the country • those for whom it is necessary to conduct an investigation on the person's right to stay in Sweden. **Review**—Under Swedish law, all detainees have a right to appeal being	**Management/infrastructure**—Immigration detention in Sweden is the responsibility of the SMB. Detention centres are not staffed by security guards but by caseworkers with social work experience. These case workers have enforcement and care roles. **Length of detention**—Maximum of two weeks detention for those who cannot establish their identity or have failed in their claims to stay and who refuse to leave the country. Maximum of 48 hours where an investigation into a person's right to stay in Sweden is necessary. While SMB checks an asylum seeker's status, they may be detained for up to 48 hours. Thereafter, people may be detained for three reasons: i. identification detention to determine identity, which is limited to two weeks with a possible extension up to two months ii. investigative detention to confirm if the detainee can be released into the community—limited to two months and can be extended to six months iii. expulsion detention before removal which lasts until travel documents are prepared for	**Bail/reporting**—After a person is released into the community, Swedish authorities generally require them to report regularly to a police station. **Financial assistance/work rights**—Emergency medical treatment and housing are provided to all asylum seekers during the asylum decision making process. If SMB believes an asylum decision may take longer than four months the applicant is given the right to work without the need to obtain permits. They are paid a daily allowance if they have no other way of providing for themselves. SMB also expects asylum seekers to participate in their organised activities. **Healthcare**—Children have the right to access healthcare. **Education**—Non-compulsory education is offered to children. **Community models**—Asylum seekers arriving at SMB offices to claim asylum must prove who they are. They are then given a medical check, paid for by SMB, and information about the asylum system. Following this, if the person is not detained they may choose to live in the community providing they have a contact address of where they are staying. They may also choose to live at a reception centre supported by SMB. **Legal support**—If the SMB determines an asylum seeker's application should be heard in Sweden, a lawyer is provided free of charge to help with the application and an interpreter	**Avenues for failed asylum seekers**—Where asylum seekers fall under the Dublin Convention or have unfounded claims, they are detained and returned across the border as soon as possible, generally within three days. When asylum seekers who have applied receive a negative decision they are assigned a return officer by SMB. This officer explains to the asylum seeker that they have three options for leaving the country: i. voluntary departure ii. escorted by their case worker iii. police removal. Voluntary departures have two months to arrange their affairs and depart. The removal is paid for by SMB and arranged for by the caseworker. Those willing to leave are referred to the

	held in detention, and those in detention for more than three days have the right to a lawyer. Appeals are sent to the Migration Courts.	returning to the country of origin. **Treatment of minors/other vulnerable groups**—Minor asylum seekers have the same access to healthcare services and dental care as other children in Sweden. Minors are only detained in exceptional circumstances: if a decision on rejection or return is likely to be implemented immediately, or if the matter concerns the imminent implementation of a decision on rejection or return when there is an obvious risk of the child's disappearing.	is also provided.	police who may use handcuffs or other restraints to remove them.

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
United Kingdom	**Detention policy**—The United Kingdom operates a presumption against detention. *The Immigration, Nationality and Asylum Act 2006* allows for the detention of asylum seekers under the following circumstances: • while establishing the legitimacy of their claims • if they are at risk of absconding • during fast-track asylum processing • to aid in the removal of asylum seekers who cannot stay. Indefinite detention is illegal. **Decision to detain**—United Kingdom immigration authorities detain or grant temporary admission to people through administrative discretion. The United Kingdom Border Agency (UKBA) undertakes the removal of all persons from the United Kingdom who do not have the legal right to stay, including illegal entrants as well as those who overstay their visas, breach their terms of stay, are subject to deportation, or have been refused asylum. **Review**—All detainees have the right to apply for review to the Asylum and Immigration Tribunal (AIT).	**Management/infrastructure**—Detainees are put into Immigration Removal Centers. These house detainees at various stages of their application processes, not just removal. **Length of detention**—There is no upper limit on the length of detention, but detention may only continue if considered reasonable in light of all the circumstances of the case. As of March 2009, there were 2460 people in immigration detention. Of these, 960 had been in detention for less than 29 days, 425 for between 29 days and 2 months, 225 for between 4 and 6 months, 270 for between 6 months and a year and the remaining 215 for more than a year. **Treatment of minors/other vulnerable groups**—Detention is not considered suitable for minors, some pregnant women and people with health problems. **Services in detention**—Clients have access to libraries, education, on the job training and primary healthcare.	**Bail/reporting**—Detainees can apply to the AIT for bail. Reporting schemes are used for some individuals to ensure they comply with immigration guidelines. All support benefits are linked to reporting requirements. If an applicant fails to report to a Reporting Centre their ARC is cancelled and they cannot receive support payments. **Financial assistance/work rights**—Claimants receive a weekly cash support payment, which they get after showing their Asylum Registration Card at a post office. Those failed asylum seekers who cannot return to their country of origin can apply for accommodation support and welfare in the form of vouchers that are used to purchase food, toiletries, and other essential items from selected outlets. Asylum seekers cannot work while their cases are being resolved, with the exception of those who have not received an initial decision on their claim after 12 months. **Healthcare**—Applicants have access to the National Health Service. **Education**—Applicants have access to education. **Community models**—People who arrive illegally and who are not deemed to be a flight or safety risk live in community housing and are given welfare to support themselves while they await a decision. Asylum applicants are entitled to accommodation while their claims are being processed. Asylum seekers may also choose to live with family or remain close to support networks.	**Avenues for failed asylum seekers**—Unauthorised immigrants can leave the United Kingdom voluntarily. People who do not agree to depart voluntarily can be issued a deportation order by the Home Secretary and be detained for examination or removal. **Voluntary Assisted Return and Reintegration Programme** —Provides financial assistance to encourage the voluntary and permanent return to the country of origin for asylum seekers, other protection claimants, and failed asylum seekers. **Assisted Voluntary Return of Irregular Migrants**—Assists people accepted by the UKBA as having been the victim of trafficking, entering the United Kingdom without

			Legal support—If an asylum seeker wants legal advice they should use a solicitor who is a qualified member of the Law Society. An alternate option is engaging the services of an adviser who is officially regulated by the Office of the Immigration Services Commissioner. If the asylum seeker does not have the money to obtain legal advice, they may qualify for legal aid.	authorisation, broken a condition of their leave to remain, or are detained by the UKBA for immigration status offences with travel arrangements.

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
United States of America	**Detention policy**—Asylum seekers are detained on arrival or soon after arriving in the United States. Detention is mandatory for those awaiting 'credible fear' interviews. Asylum seekers who make a claim while in the country are free to live in a place of their choosing pending the completion of their asylum procedure. Asylum seekers who arrive at a United States border without documentation and are found to have a 'credible fear' may be considered for discretionary release. **Decision to detain**—Any person who enters the United States without valid documents, or documents that an immigration officer believes may have been obtained by fraud or misrepresentation—whether seeking asylum or not—becomes the subject of Expedited Removal. Asylum seekers found not to have a credible fear will be removed. Those who receive a credible fear decision are assessed by Immigration and Customs Enforcement (ICE) as to whether they should remain detained or released. People who have already entered the country but do not have a valid visa have their eligibility for release from detention assessed based on whether they are a threat to national security or the risk of absconding. Asylum officers from the DHS take such things as prior arrests/convictions, manner of entry, length of time in the US, family ties, and financial ability to	**Nature of detention cohort**—The overwhelming majority of those detained upon entry without valid documents are asylum seekers. **Management/infrastructure**—ICE puts detainees into Intergovernmental Service Agreement facilities. These are state or local prisons that service the IGSA contract. US has the largest immigration detention infrastructure in the world **Length of detention**—In 2009 the average time spent in detention was 30 days. **Treatment of minors/other vulnerable groups**—A Family Residential Centre opened in Leesport, Pennsylvania, in 2001. Services include healthcare, education, recreational activities and access to the voluntary work program. **Services in detention**—Healthcare, education, recreational activities and the voluntary work program.	**Bail/reporting**—Individuals can be released with no conditions attached on bond and/or attached to reporting requirements. **Healthcare**—Healthcare is available for clients in detention through the Public Health Service's Division of Immigration Health Services. **Education**—Assess to education is available to all children in detention. **Community models**—ICE funds two programs of alternate detention, which both run under a model of enforcement. The programs are the Intensive Supervision Appearance Program (ISAP) and the Enhanced Supervision/Reporting Program (ESR). **ISAP**—Case specialists make unannounced home visits, monitor local office and telephone reporting requirements, employment verification and curfews. They conduct electronic monitoring by way of radio frequency and global positioning equipment. ISAP assists federal, state, and local agencies to supervise low to high-risk offenders. **ESR**—Similar to the ISAP program but with fewer requirements for home and in-person reporting requirements. Electronic monitoring is used for both ISAP and ESR. This requires participants to be home between certain hours of the day, with higher restrictions at the start of the monitoring program (2pm to 9am Sunday to Friday and all day Saturday), which gradually become less intense over time.	**Avenues for failed asylum seekers**—People who do not claim some form of asylum are given an Expedited Removal order. This bars them from re-entry to the US for five years after initial removal.

	post bond into consideration when deciding to detain. **Review**—Non-Expedited Removal detainees can apply to an immigration judge from Executive Office for Immigration Review for release on bond or to request a smaller bond amount. Decisions about release by an immigration judge can be appealed to the Board of Immigration Appeals. An immigration judge can also make a later bond redetermination if the detainee's circumstances change.		Community-based asylum shelters are emergency housing resources for former detainees seeking refugee protection. Through a case management model those who work at the shelters help former detainees find language classes, legal representation, education and employment. **Legal support**—Non-citizens are entitled to legal representation at their own expense or on a *pro bono* basis. They can also represent themselves. **Legal Orientation Program**—This is provided by non-profit legal service providers who inform immigrant detainees who are being removed about their rights, the immigrant courts and the detention process. **Capital Area Immigrants' Rights Coalition**—works closely with DHS to ensure all people in Expedited Removal proceedings through the Arlington Asylum Office are offered *pro bono* counsel for their credible fear interview.	

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