Australian Government

Department of Immigration and Citizenship

Global Population Movements

Sources and Destinations

Prepared for the Joint Select Committee on Australia's Immigration Detention Network

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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 over 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, over 14 million people were displaced by the division of India in 1947.

The advent of the Cold War and the 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 Vietnam, Cambodia and Laos 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 over six million people by 1990.

The global refugee population peaked in 1992 at over 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 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), 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 persons.[1] Australia has ratified both the *1951 Refugee Convention on the relating to the Status of Refugees* and it accompanying *Refugee Protocol*. Australia continues to maintain an annual humanitarian program, with an intake of 13 770 in the 2009-10 program year. This paper locates 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 contains 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 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.[2]

[1] Karlsen, E, Phillips, J and Koleth, E, 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>.

[2] For more information see also: United Nations High Commissioner for Refugees (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 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 of a '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'.[3] The *Convention Relating to the Status of Refugees* (hereafter the *Refugee Convention*) and the *Protocol Relating to the Status of Refugees* (hereafter the *Refugee Protocol*) require that states not expel refugees or impose penalties on them.[4] Rather, states must ensure refugees are treated similarly to nationals of the country of refuge and that their welfare be provided for.[5]

Before someone is recognised as a refugee they must first go through an asylum seeker 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.

In order 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 IDPs and many donor countries are reluctant to intervene in internal conflicts.[6] 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 3 500 years ago during the rise of empires in the Middle East, including the Hittites, Babylonians, Assyrians, and the ancient Egyptians.[7] 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.[8]

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[3] *Convention Relating to the Status of Refugees* (1951) art 1(A)(2); *Protocol Relating to the Status of Refugees* (1967) art 1.

[4] Ibid., arts 31-33.

[5] Ibid., arts 12-24.

[6] UNHCR, *Internally Displaced People: Questions & Answers*, 2007, viewed 20 July 2011 <http://www.unhcr.org/405ef8c64.html>.

[7] UNHCR, *Flowing Across Borders*, 2011, viewed 28 July 2011, <http://www.unhcr.org/pages/49c3646c125.html>.

[8] The Huguenot Society of Great Britain & Ireland, *Huguenot History*, viewed 28 July 2011 <http://www.huguenotsociety.org.uk/history.html>.

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 also.[9]

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 persons throughout Europe. It was estimated that in May 1945 there were over 40 million people displaced in Europe in addition to ethnic Germans who fled Soviet armies in the east and forced labourers present within Germany.[10] Approximately 13 million ethnic Germans were expelled from Eastern European countries in the following months.[11] World War II also caused millions of Chinese to be displaced by the occupying Japanese forces in China.[12]

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 it now has 147 signatory countries. However, this convention only applied to refugees resulting from events occurring in Europe before 1 January 1951.[13]

The issue of refugees did not abate following the end of World War II. Both Pakistan and India hosted approximately 14 million refugees following the partition of India into two separate states in 1947.[14] 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.[15]

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.[16] 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.[17]

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.[18] For instance, the Biafra war that began in Nigeria in 1967 caused approximately two million people to be displaced.[19]

In addition to the many IDPs, it was estimated there were approximately 850 000 refugees in Africa by 1965.[20] 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

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[9] 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>.

[10] Ibid. p. 13.

[11] Ibid.

[12] Ibid.

[13] *Convention Relating to the Status of Refugees* (1951) art 1(B)(1).

[14] UNHCR, *State of the World's Refugees 2000*, op. cit., p. 59.

[15] Ibid. p. 18.

[16] Ibid. p. 26.

[17] Ibid., p. 41.

[18] Ibid., p. 44.

[19] Ibid., pp. 46-7.

[20] Ibid., p. 52.

the *1967 Protocol*, which restated the *Refugee Convention* in broader terms to be inclusive of refugees irrespective of when or where they were displaced.[21]

[21] *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.[22] Not much later, the communist victories in Vietnam, Cambodia and Laos in 1975 led to the displacement of over three million people over the following two decades.[23] 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 over six million global refugees originating from Afghanistan.[24]

Global refugee numbers peaked at around 18 million in 1992,[25] 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 global total of 43.7 million people who were displaced as a result of persecution and conflict,[26] of which 10.55 million were refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR).[27] There were approximately 14.7 million IDPs being assisted by the UNHCR.[28]

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 remain an enduring feature of the contemporary geopolitical landscape. The past three years have seen the global refugee population remain at more than ten million. The following graph shows the global number of refugees from 1960 to 2010 according to UNHCR estimates:[29]

[22] UNHCR, *State of the World's Refugees 2000*, op. cit., p. 61.

[23] Ibid., p. 80.

[24] Ibid., p. 115.

[25] 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>.

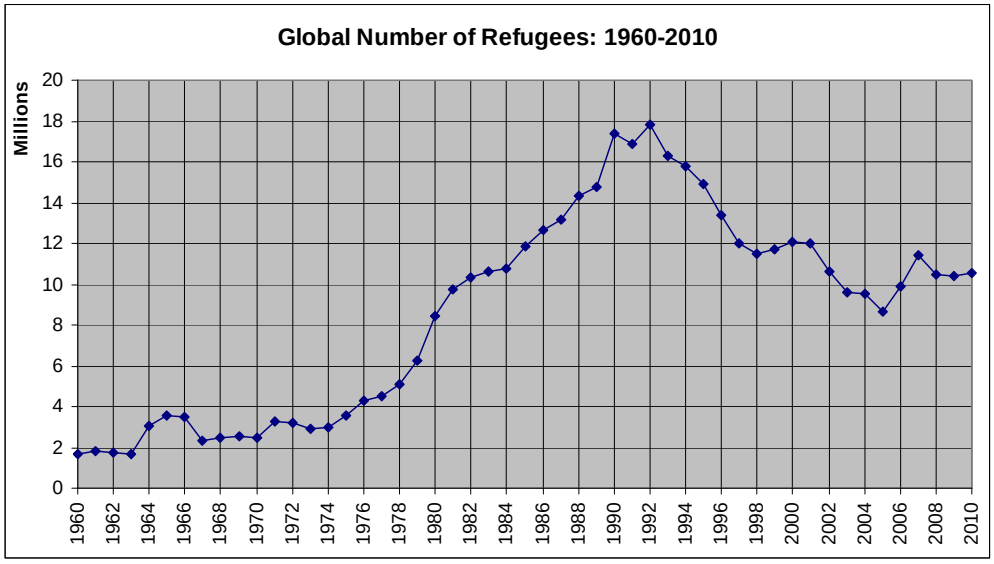
[26] UNHCR, *UNHCR Global Trends in 2010*, 2011, p. 5, viewed 4 July 2011, <http://www.unhcr.org/4dfa11499.html>.

[27] Ibid. p. 11.

[28] Ibid. p. 2.

[29] 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 (UNRWA). 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 UNHCR in 166 countries/territories.[30] 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.

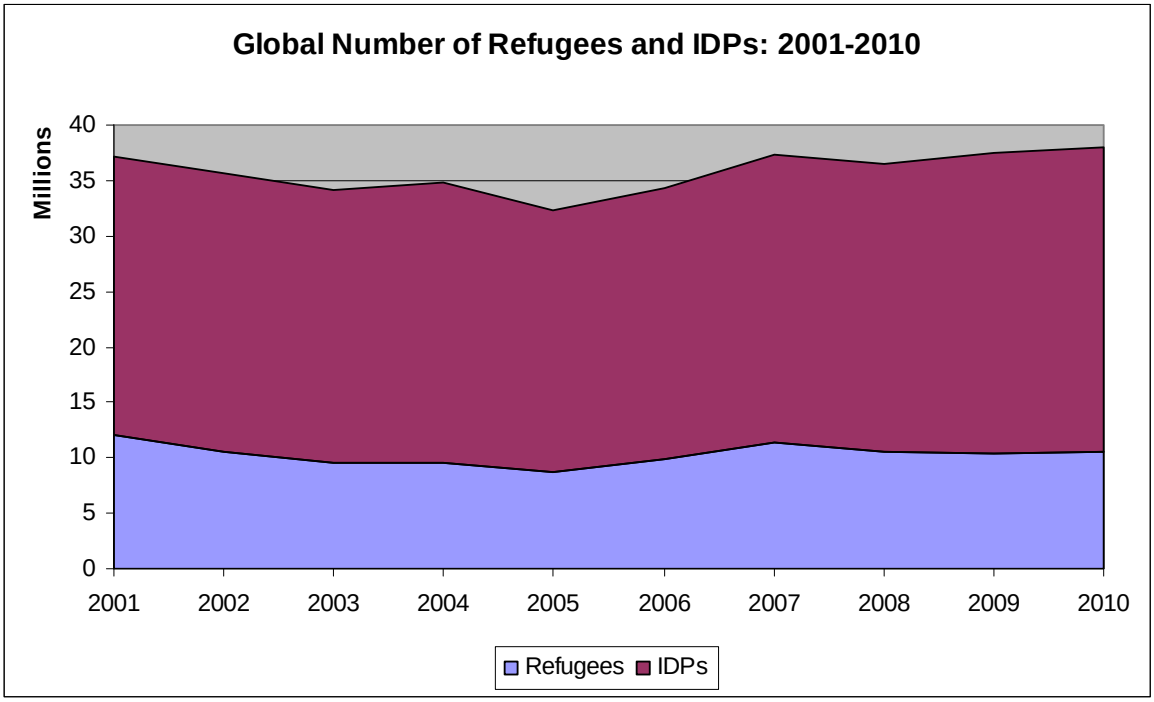
A total of 12 545 people sought asylum in Australia in 2010,[31] compared to 7 383 in 2009. This increase is partly due to a rise in the number of IMA arrivals from Afghanistan and Iran. It should be noted that despite regular fluctuations in asylum seekers numbers, Australia's overall humanitarian program 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:[32]

[30] UNHCR, *Global Trends in 2010*, op. cit.

[31] Asylum seeker statistics for Australia include non-IMA protection visa applications plus IMA Protection Obligation Determination requests (formerly RSD request).

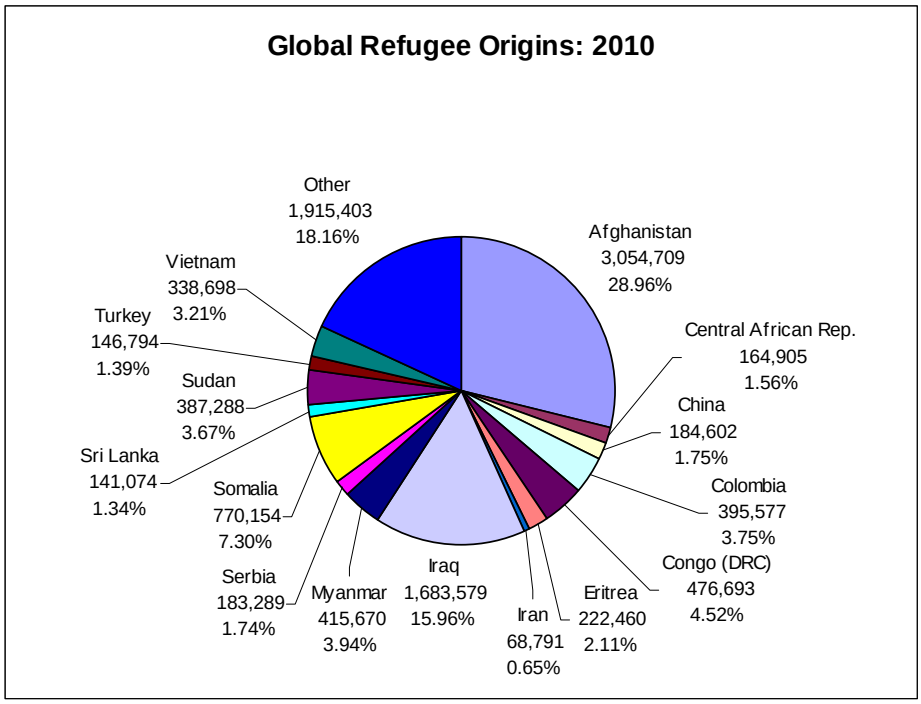
[32] Statistics do not include Palestine refugees under the mandate of UNRWA. Refugee statistics taken from: UNHCR, *UNHCR Global Trends 2010: Annex Tables*, 2011, 2011, Table 23, viewed 6 July 2011, <http://www.unhcr.org/globaltrends/2010-GlobalTrends-annex-tables.zip>; IDP statistics taken from: Internal Displacement Monitoring Centre, *Global IDP estimates (1990-2010)*, viewed 20 July 2011, <http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/10C43F54DA2C34A7C12573A1004EF9FF?OpenDocument>.



The total number of IDPs and refugees reached an estimated ten 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 in order 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.

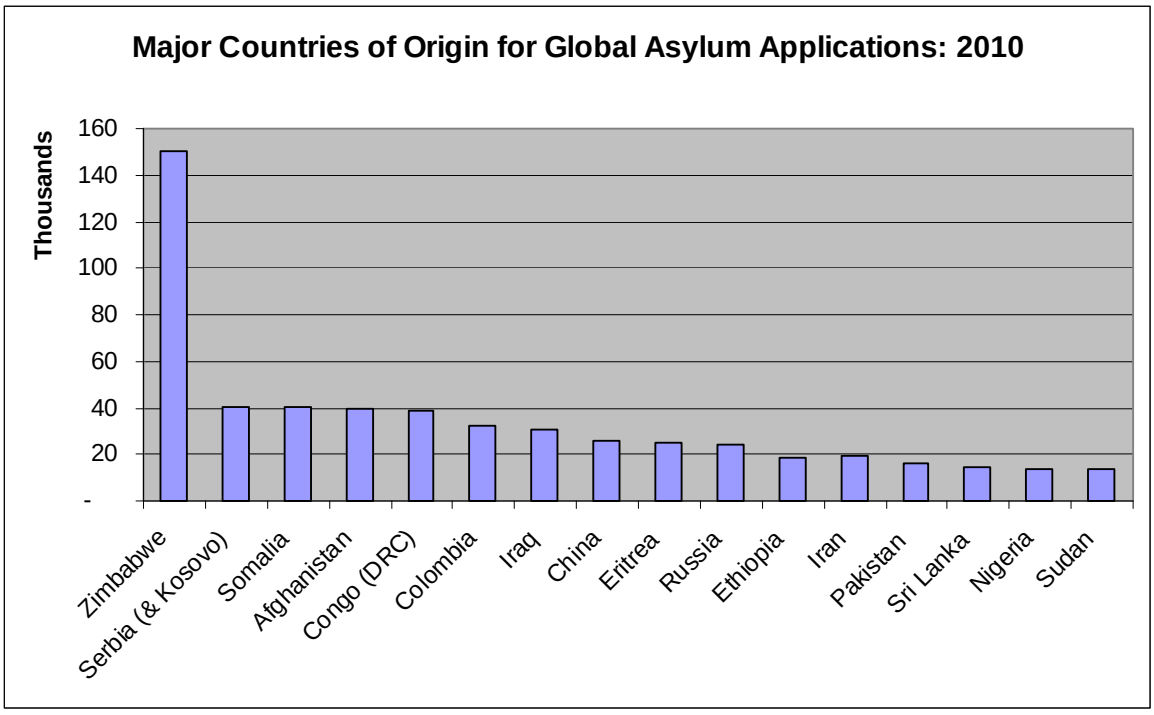
Sources and Destinations in 2010

Ongoing conflicts in Asia and Africa have caused many people to flee their homes. Afghanistan continued to be the biggest source country of global refugees in 2010, followed by Iraq and Somalia. Together, these three countries made up over 50% 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:[33]



[33] 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.[34] 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.[35] The graph below shows the main countries of origin of people making asylum applications in 2010:[36]

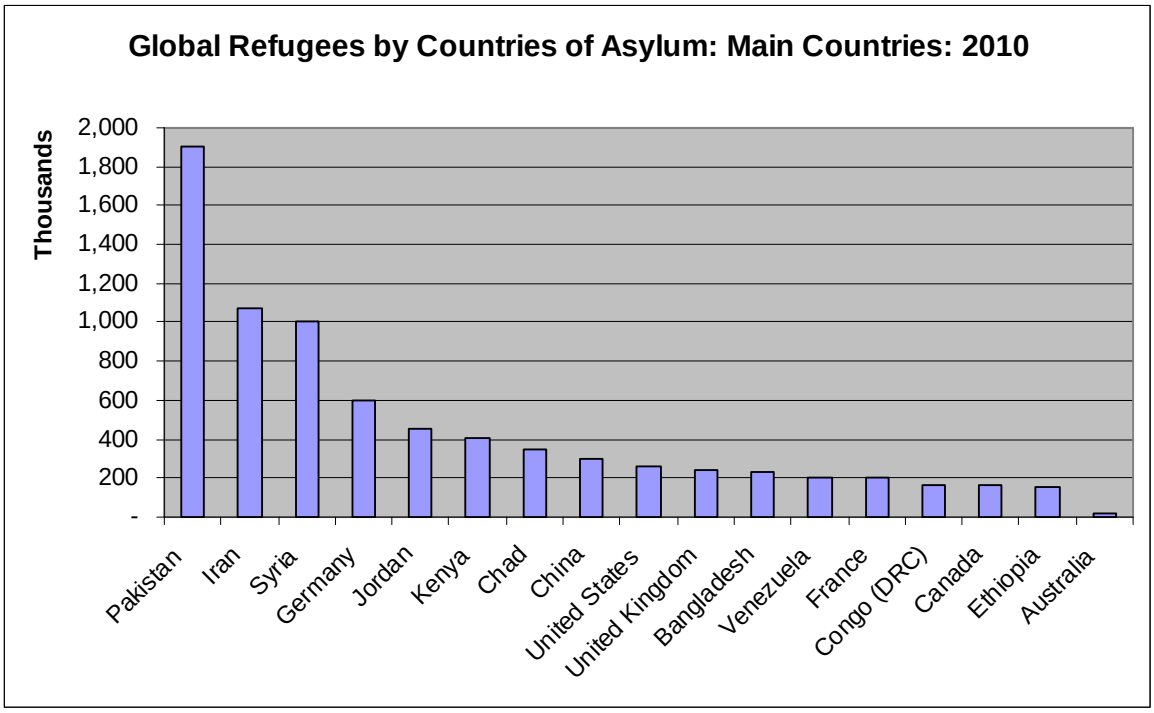


[34] Statistics taken from: UNHCR, *Global Trends in 2010*, op. cit.

[35] Ibid.

[36] Ibid. Table 11.

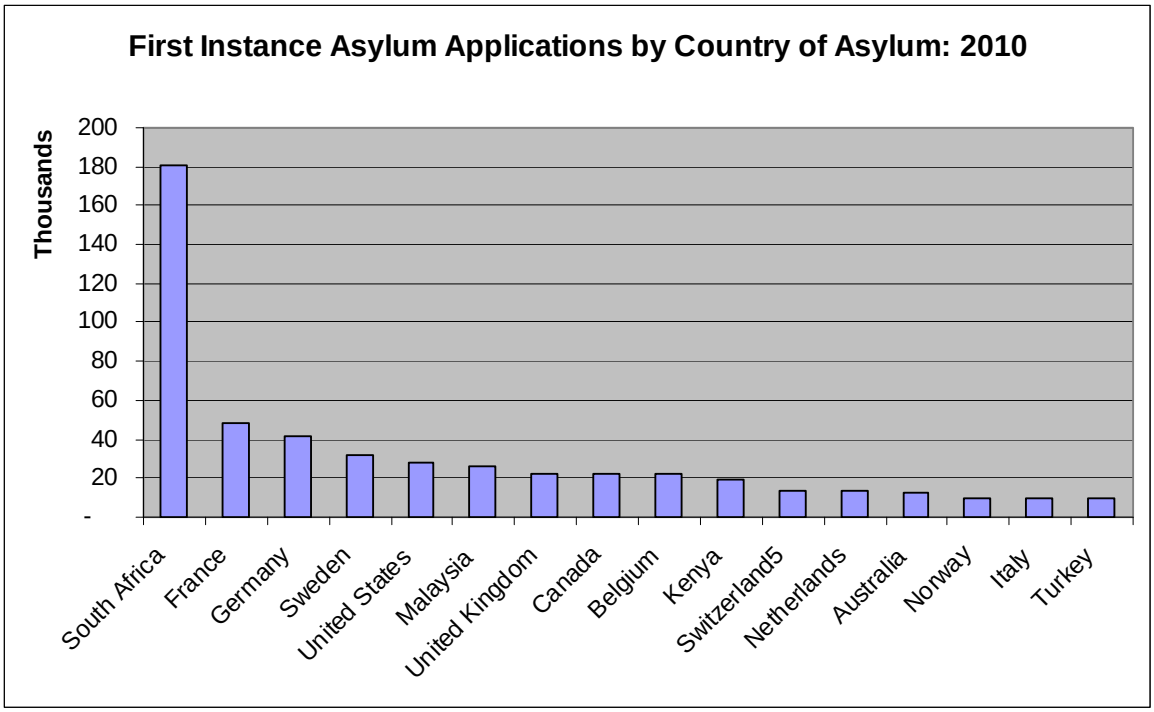
The vast majority of displaced persons remain in their country of origin or take refuge in neighbouring countries. At the end of 2010, approximately three quarters of the global refugee population resided in a country neighbouring their country of origin.[37] This trend is reflected in the statistics 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:[38]



[37] UNHCR, *Global Trends in 2010*, op. cit., p. 11.

[38] 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.[39] This was largely due to the fact that nine out of ten Zimbabwean asylum applications were lodged in South Africa,[40] 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.[41] The following graph shows selected destination countries for first instance asylum applications during 2010:[42]



The stark differences between countries of origin for asylum seekers and refugees exist for a number of reasons. As mentioned previously, 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.

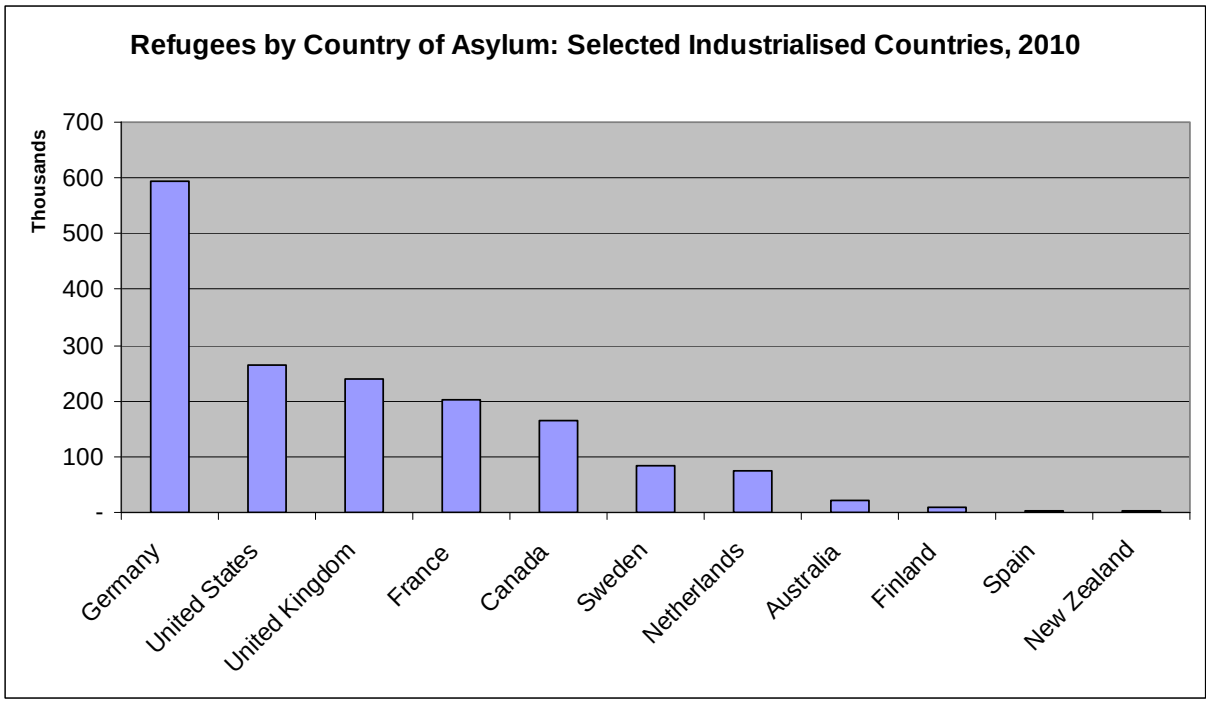
[39] UNHCR, *Global Trends in 2010*, op. cit., p. 26.

[40] Ibid.

[41] Ibid., p. 25.

[42] Statistics taken from: UNHCR, *Global Trends 2010: Annex Tables,* op. cit., Table 10. DIAC statistics used for Australian asylum applications.

Approximately 80% of refugees are hosted by developing countries.[43] 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 that are 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:[44]

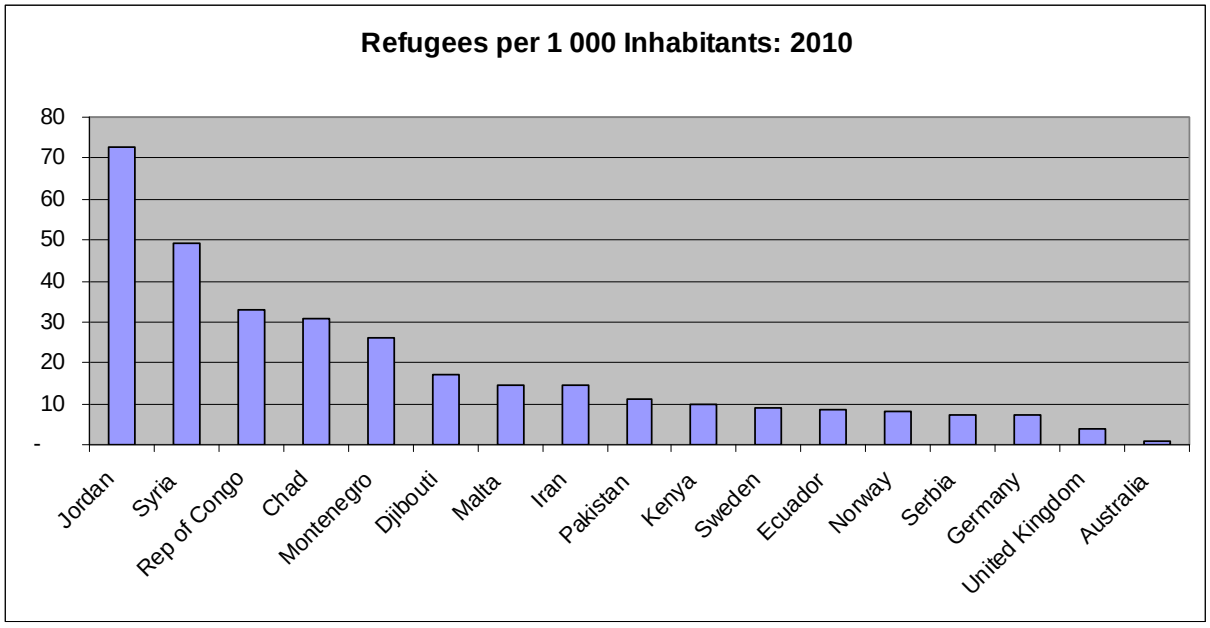


Other factors affecting where people will seek asylum include historic, linguistic and cultural ties between the origin and destination countries, where immigrant communities from the origin country are already settled, and migrant networks. Such factors explain why people from certain countries are 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.

[43] UNHCR, *Global Trends in 2010*, op. cit., p. 2.

[44] 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.[45] 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.[46] Jordan and Syria hosted the highest number of refugees per capita. The following graph shows a comparison of selected countries by GDP per capita:[47]

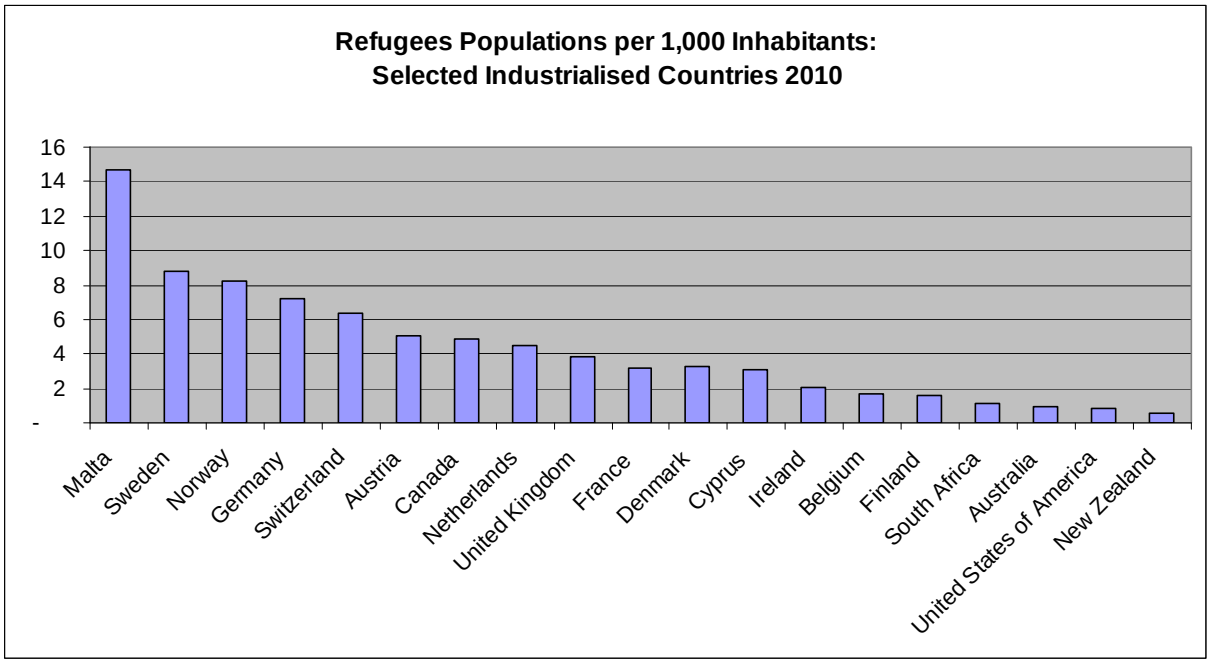


[45] Ibid., Table 24.

[46] 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>.

[47] Ibid.

Of industrialised countries, European countries generally had the highest refugee populations per capita, with over 14 refugees per 1 000 people present in Malta perhaps as a result of the combination of its accessibility and EU 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.[48] The following graph shows a comparison of selected industrialised countries by refugees per capita:[49]



[48] 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>.

[49] Ibid.

Selected Countries of Origin

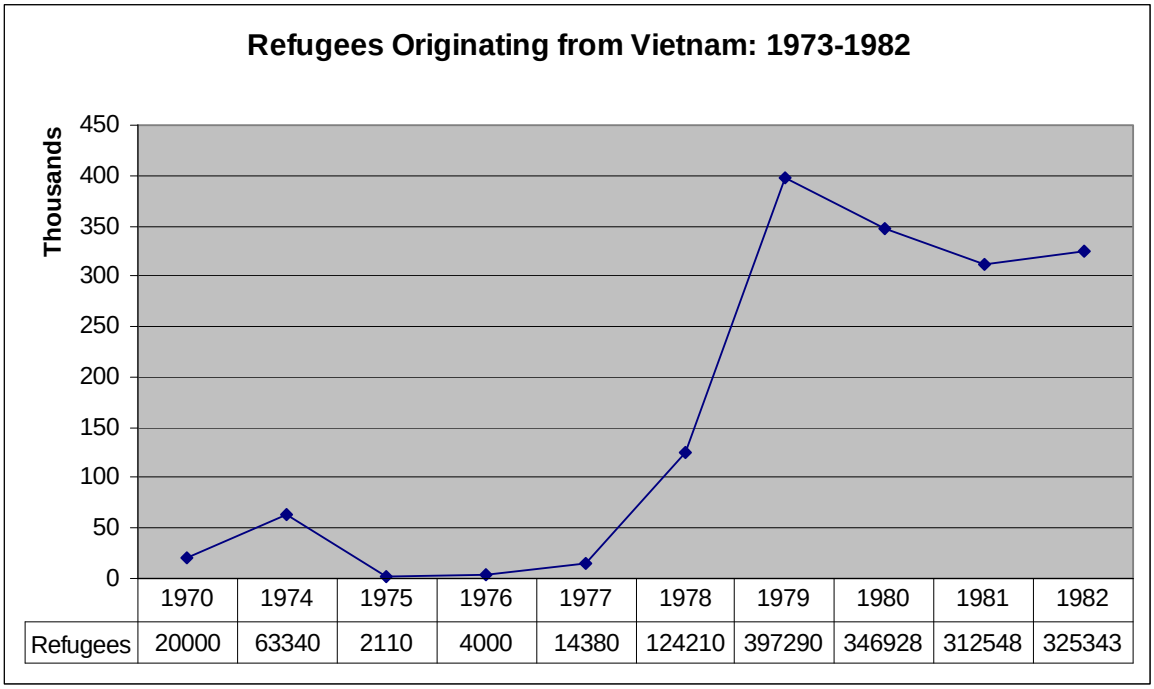
In 2010, the main origins of refugees and people living in refugee-like situations were Afghanistan, Iraq and several African countries.[50] The following sections outline the statistics and events surrounding some of the major source countries for refugees and asylum seekers, most of which have had a significant impact on Australia's humanitarian program.

Vietnam

Australia's first major experience with unauthorised population movements was the wave of irregular maritime arrivals (IMAs) that came to Australia in the late 1970s and early 1980s. See the issues paper titled *An Historical Perspective of Refugees and Asylum Seekers in Australia: 1976-2011* for more information.

The 1975 communist victories in Vietnam, Cambodia and Laos led to the displacement of over three million people over the following 20 years.[51] 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.[52] 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.[53] In 2010, there were still over 300 000 Vietnamese refugees residing in China.[54] The following graph shows the number of refugees originating from Vietnam in the period of 1973 to 1982:[55]



	1970	1974	1975	1976	1977	1978	1979	1980	1981	1982
Refugees	20000	63340	2110	4000	14380	124210	397290	346928	312548	325343

[50] UNHCR, *Global Trends 2010: Annex Tables*, op. cit., Table 4.

[51] UNHCR, *The State of the World's Refugees 2000*, op. cit., p. 80.

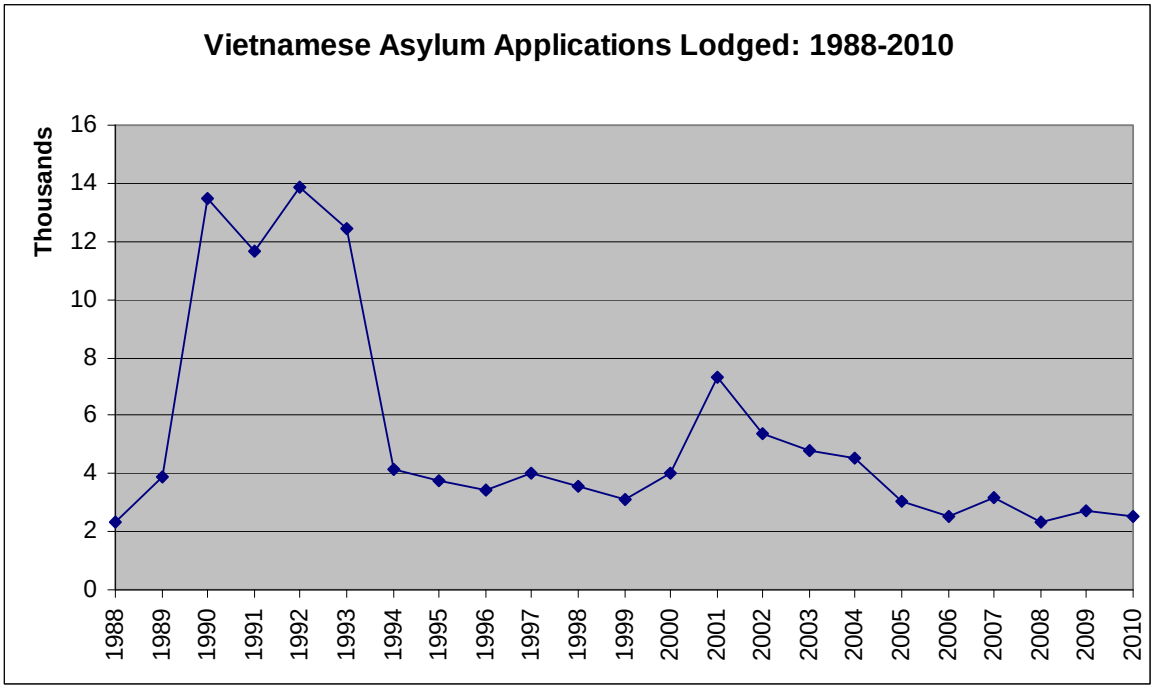
[52] Ibid., p. 81.

[53] UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No. 12* (A/35/12, 24 September 1980), General Assembly, Thirty-fifth Session.

[54] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

[55] Ibid.

Although there are 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.[56] The following graph shows the estimated number of asylum applications lodged per year by people originating from Vietnam, between 1988 and 2010:[57]



[56] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

[57] Ibid.

Afghanistan

Afghanistan has been a major source country for refugees since the 1980s.[58] 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.[59] By early 1979 over 20 000 people had sought refuge in neighbouring Pakistan.[60]

After the communist government started losing ground to its armed opposition, the Soviet Union invaded Afghanistan in December 1979.[61] Within weeks, there were approximately 600 000 Afghans seeking refuge in Pakistan and Iran. The situation did not improve and by December 1990, it was estimated there were a total of 6.3 million Afghan refugees in neighbouring countries.[62] 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.[63]

From 1994 to 2001 there was a civil war in Afghanistan between the Mujahideen and the Taliban.[64] This exacerbated the refugee situation. In 1999 there were still over 2.5 million Afghan refugees residing abroad, with the vast majority located in Pakistan and Iran.[65]

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, there was a major influx of Afghan refugees returning to Afghanistan. In 2002 alone, almost two million Afghan refugees returned to Afghanistan.[66] The repatriation program has continued since then, but the numbers returning have declined substantially.[67]

Armed conflict has continued since 2001 with the Afghan Government and its international allies fighting against various groups of insurgents.[68] 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.[69] There are still over three million Afghan refugees living in other countries, in addition to over 350 000 IDPs.[70]

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[58] UNHCR, *The State of the World's Refugees 2000,* op. cit., p. 115.

[59] Ibid., p. 116.

[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] Ibid., p. 121.

[64] 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>.

[65] UNHCR, *The State of the World's Refugees 2000,* op. cit., p. 119.

[66] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

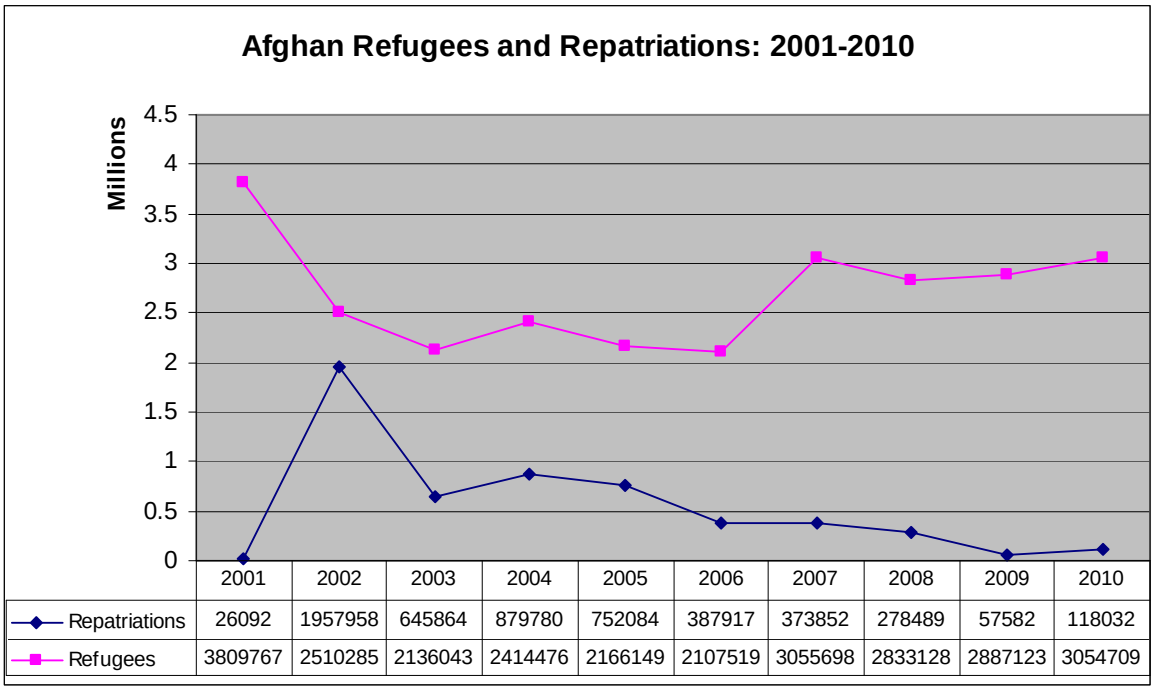
[67] Ibid.

[68] UNHCR, *UNHCR eligibility guidelines for assessing international protection needs for asylum seekers from Afghanistan*, op. cit., p. 7.

[69] Ibid.

[70] UNHCR, *2011 UNHCR country operations profile – Afghanistan*, viewed 6 July 2011, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6>.

As mentioned above, 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 2000 to 2010:[71]



	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 (see appendix A). However, it is important to note that conditions in Afghanistan were seen to have worsened in 2006. The International Crisis Group observed that the situation was predominantly deteriorating in Afghanistan during 2006.[72]

The Minority Rights Group International (MRGI) uses a 'peoples under threat' index to identify the risk of genocide, mass killing or other systematic violent repression occurring.[73] Such indices are often a good indicator of international refugee movements as people seek refuge from such atrocities. For example, MRGI increased its 'Peoples Under Threat' (PUT) index rating for Afghanistan for 2007, due to the situation in 2006.[74] After dropping for 2008, the index has continued to climb for the years 2009 to 2011.[75] This mirrors the total numbers of refugees originating from Afghanistan for those years, as seen in the graph above.

[71] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

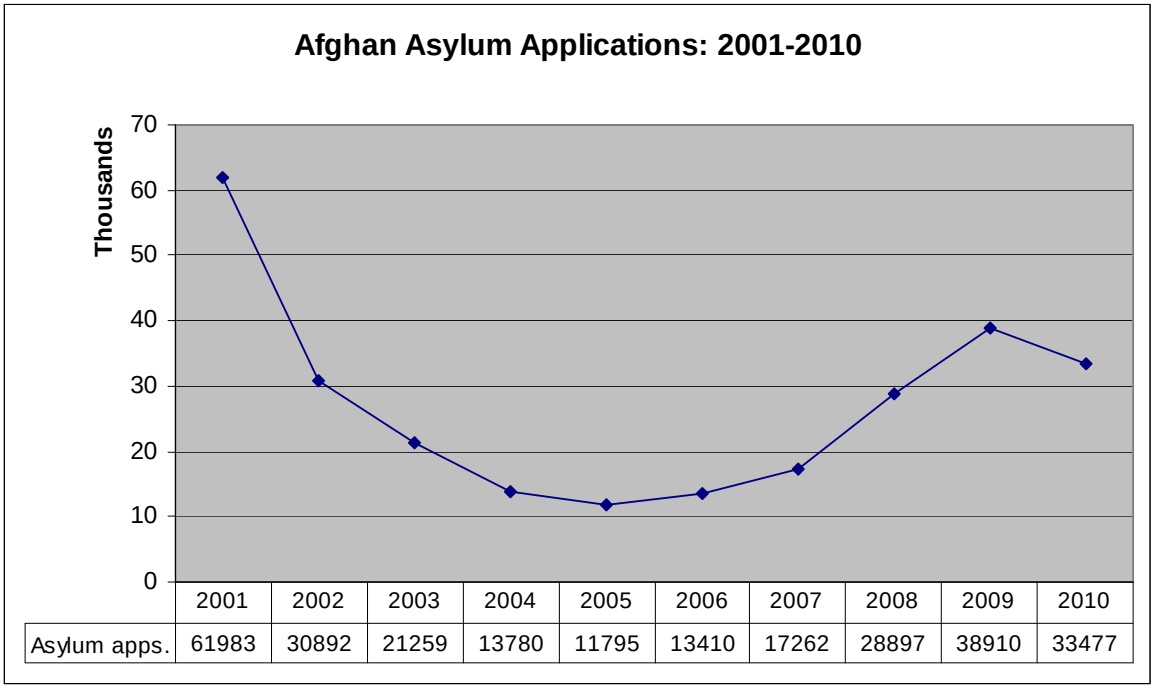
[72] International Crisis Group, *Crisis Watch: Afghanistan*, 1 February 2006 - 2 January 2007, viewed 20 July 2011, <http://www.crisisgroup.org/en/publication-type/crisiswatch/crisiswatch-database.aspx?CountryIDs=%7bA860153E-CDC9-46DC-8FF7-7C03740C2DCF%7d#results>.

[73] Minority Rights Group International (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>.

[74] MRGI, *State of the World's Minorities 2006: Events of 2004-5*, 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>.

[75] MRGI, *State of World's Minorities* reports, op. cit.

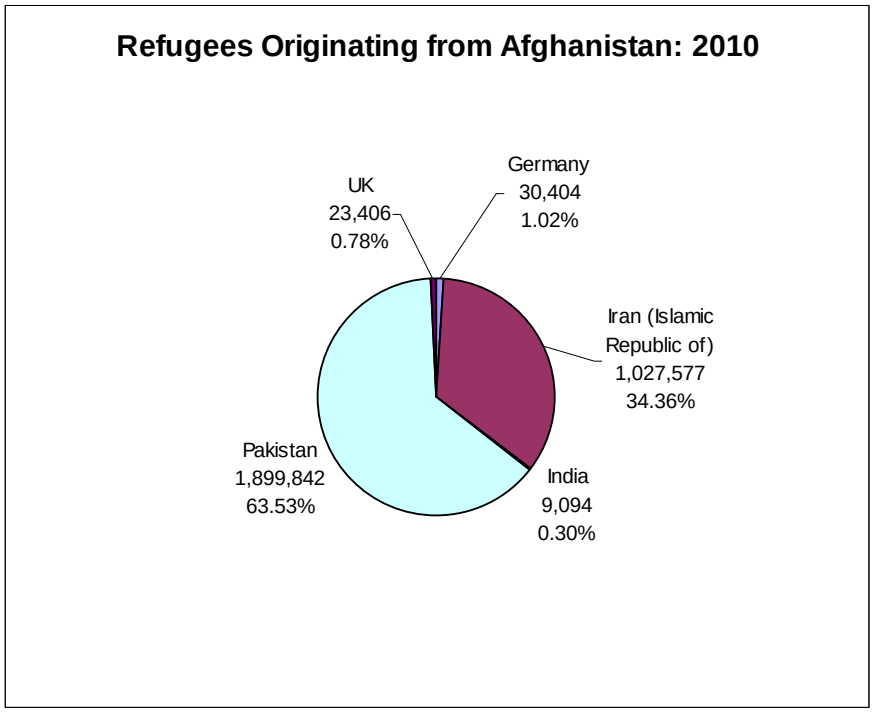
The number of new asylum applications lodged by people originating from Afghanistan dropped significantly following the 2001 invasion, but has generally increased since reaching a low of 11 795 in 2005. It should be noted that these figures only take into account formal asylum applications and may not include many people escaping to neighbouring Pakistan and Iran who did not submit an asylum application. The following graph shows the number of asylum applications lodged globally in the first instance (i.e. excluding appeals) by people originating from Afghanistan for the years 2001 to 2010:[76]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Asylum apps.	61983	30892	21259	13780	11795	13410	17262	28897	38910	33477

[76] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

The MRGI's PUT index rating given to Afghanistan for the year 2011 (based on 2010 events) is at its highest level in five years, suggesting that the refugee flows out of Afghanistan may continue or increase.[77] The main recipient countries for the outflow of people from Afghanistan are Pakistan and Iran, who together hosted more than 95% of Afghan refugees. The following graph shows the breakdown, by country of residence, of Afghan refugees in 2010:[78]



[77] MRGI, *State of World's Minorities* reports, op. cit.

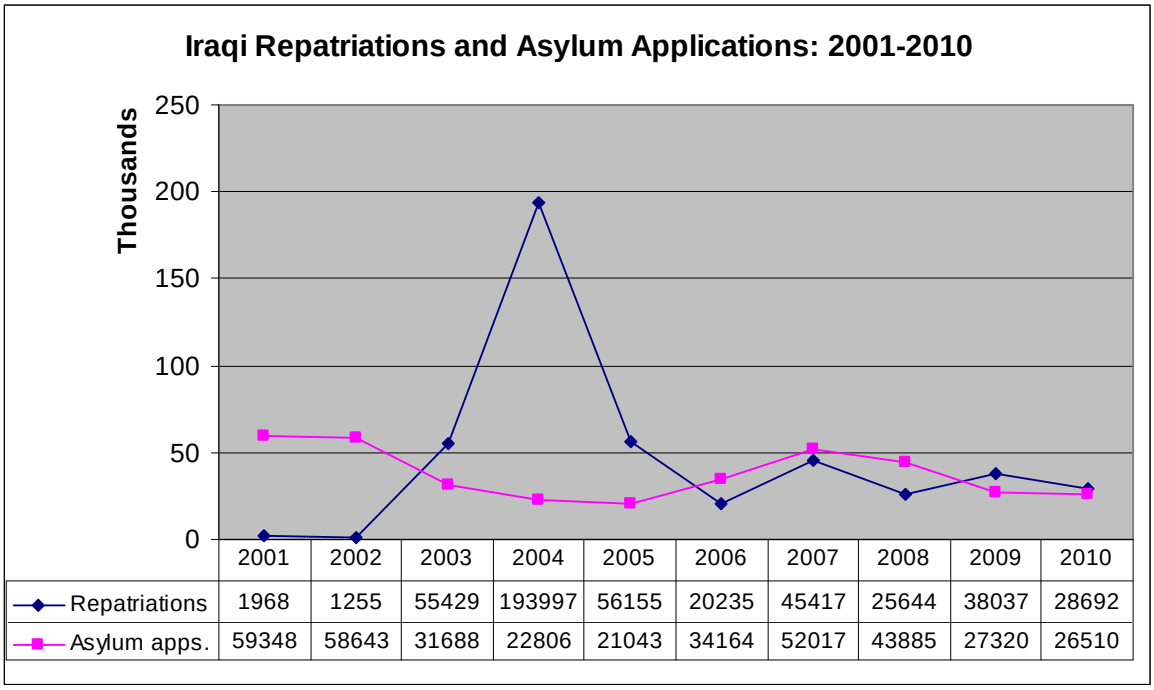
[78] According to UNHCR estimates, there were 5,518 Afghan refugees in Australia. Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

Iraq

Iraqi refugees were fleeing the country long before the US-led invasion of Iraq in 2003. The number of refugees originating from Iraq reached its first peak in the early 1990s, when there were approximately 1.3 million Iraqi refugees.[79] 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,[80] although the total number of IDPs was significantly higher at around 1.2 million people.[81]

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.[82] From 2006 to 2008, Iraq was the single biggest country of origin for the number of a asylum seekers in the 44 industrialised countries reported on by UNHCR.[83] Unfavourable security conditions were also problematic for the repatriation of displaced persons.[84]

Following the fall of Saddam Hussein Government, in 2004 the number of repatriations spiked sharply and the number of new asylum applications by Iraqis reached a ten year low in 2005. Most of the refugees returning in 2004 came from neighbouring Iran.[85] The following table shows the number of repatriations to Iraq and the number of new asylum applications lodged by people originating from Iraq from 2000 to 2010:[86]



	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

[79] 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>.

[80] Ibid.

[81] Ibid., p. 24.

[82] Ibid.

[83] UNHCR, *Asylum Levels and Trends in Industrialized Countries 2010*, op. cit., p. 44.

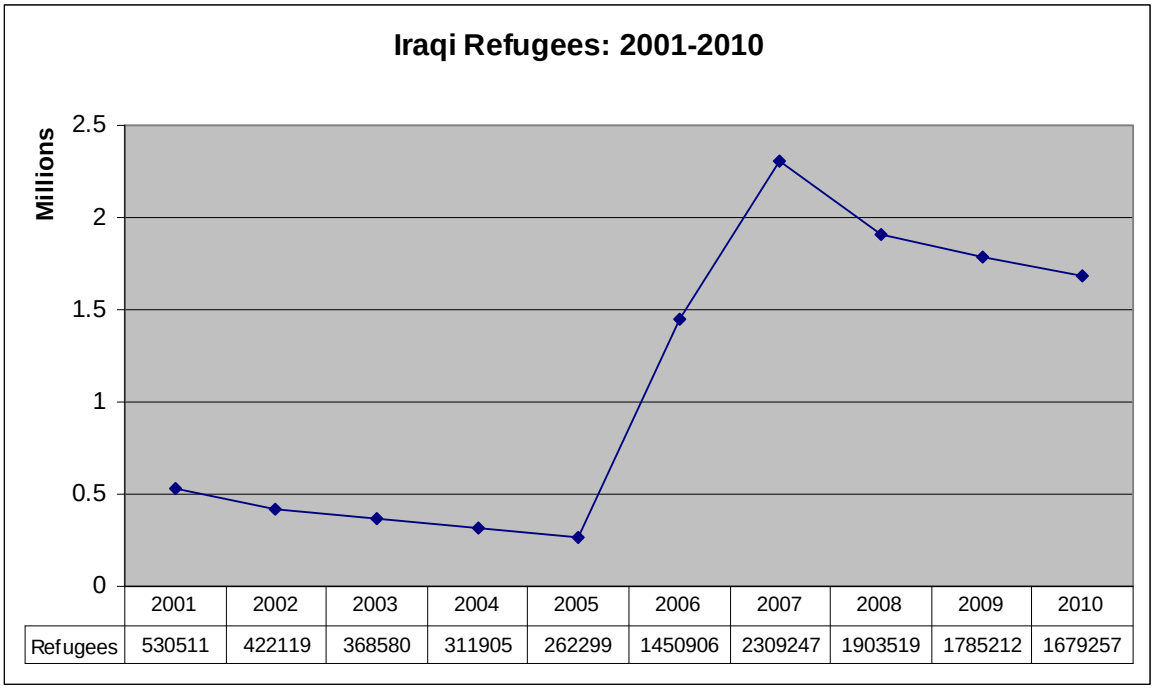
[84] UNHCR, *Country of Origin: Iraq*, op. cit., p. 29.

[85] UNHCR, *UNHCR Global Report 2004 – Iraq*, 2005, pp. 324-5, viewed 7 July 2011 <http://www.unhcr.org/42ad4da20.html>.

[86] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

The graph above does not show the significant increase in refugees originating from Iraq that came about 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.[87] Members of various minorities are targeted in attacks, including Christians, Yazidis, Sabaean-Mandaeans, homosexuals and women considered to be violating Islamic rules or damaging their family's honour.[88]

While violence in Iraq continues, there has been a significant reduction in new displacements since this peak in 2007.[89] The MRGI's PUT index rating for Iraq has improved for the years 2009 to 2011, suggesting that the total number of refugees originating from Iraq may continue to decline.[90] The following graph shows the number of refugees originating from Iraq in the period 2000 to 2010:[91]



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Refugees	530511	422119	368580	311905	262299	1450906	2309247	1903519	1785212	1679257

[87] 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>.

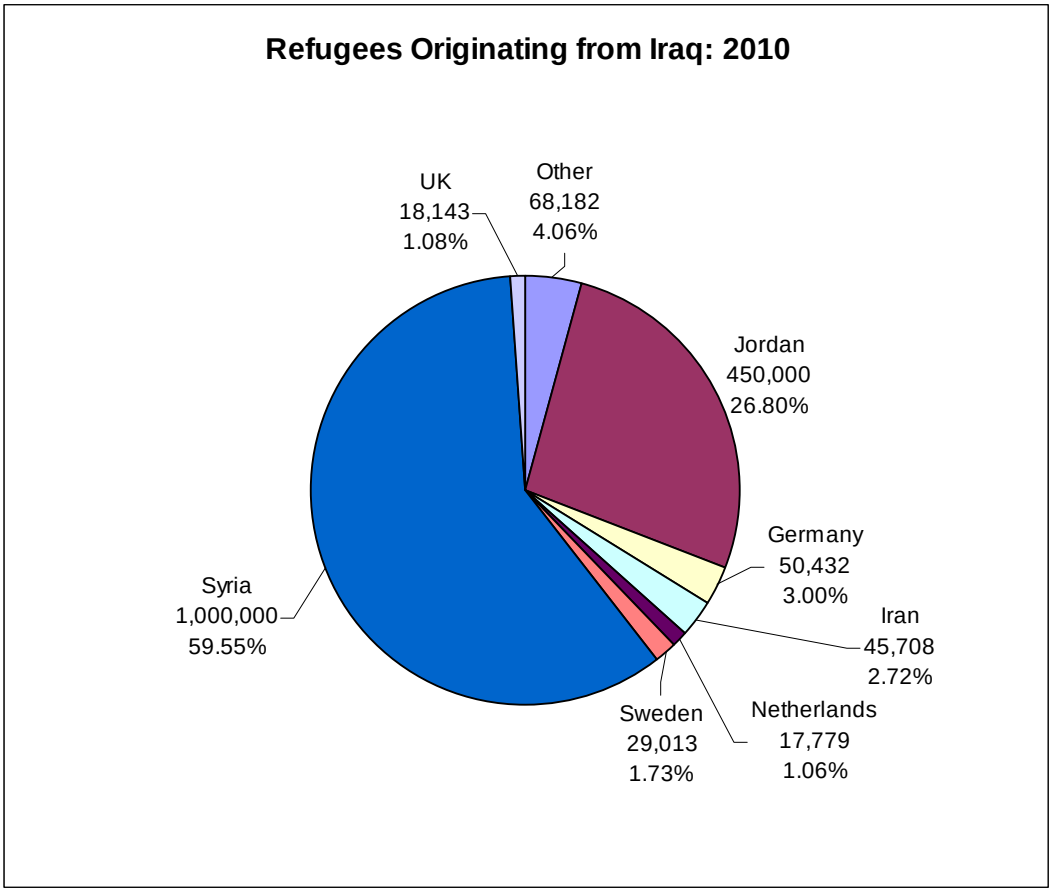
[88] Ibid., p. 15.

[89] Ibid., p. 12.

[90] MRGI, *State of World's Minorities* reports, op. cit.

[91] Some of the increase in 2007 may have been due to changes in data methodology (see Appendix A). Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

Almost 1.5 million displaced Iraqis are still residing 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 UK. The graph below shows the distributions of Iraqi refugees, and people living in refugee-like situations, in 2010:[92]

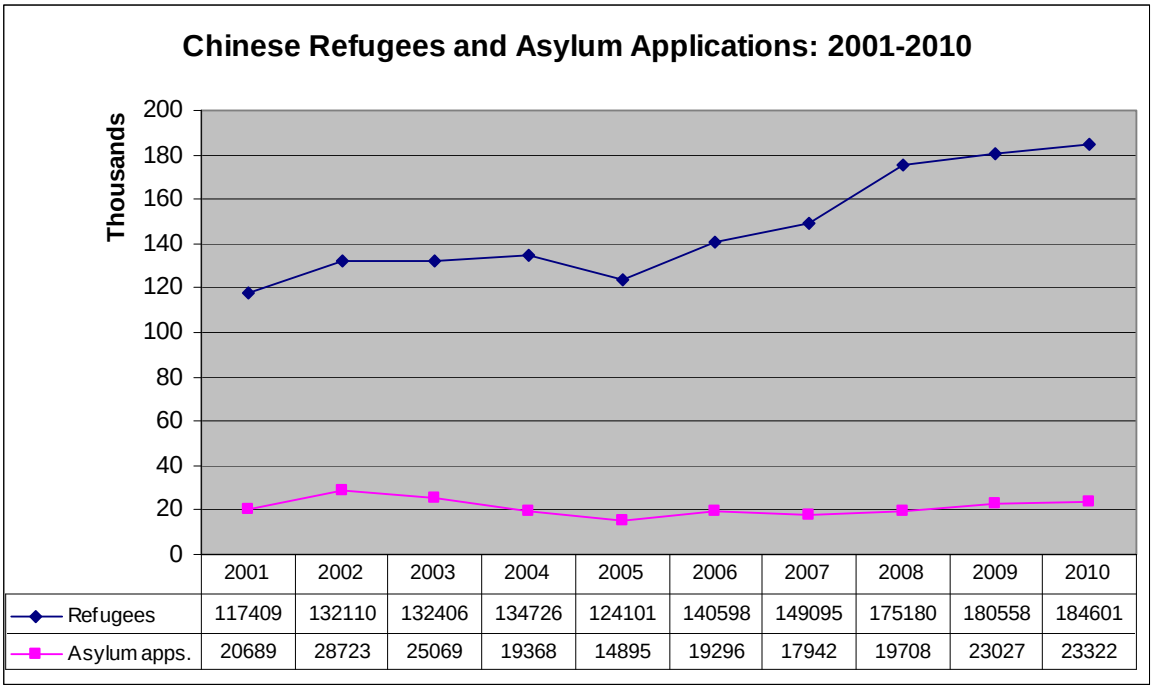


[92] According to UNHCR estimates, there were 3,791 Iraqi refugees in Australia Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

China

The communist party has remained in government in China since the end of WW II. Under the Mao Zedong Government there were considerable restrictions on personal liberties and many were killed through a series of political persecutions, until a major shift in government policy in 1978.[93] Despite notable human rights incidents, such as the Tiananmen Square massacre, there have been no large-scale population movements out of China since the end of Mao Zedong's Cultural Revolution in 1978. However, political liberty and freedom of religion are still significantly restricted.[94]

Over the past decade there has been a steady and moderate outflow of asylum seekers from China, with negligible refugee repatriations.[95] While the proportion of people displaced from China is relatively low compared to countries like Iraq, because of its large population the actual numbers of asylum seekers from China is still significant. The following graph outlines the total number of Chinese refugees and the number of new asylum applications originating from China lodged each year from 2001 to 2010:[96]



	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

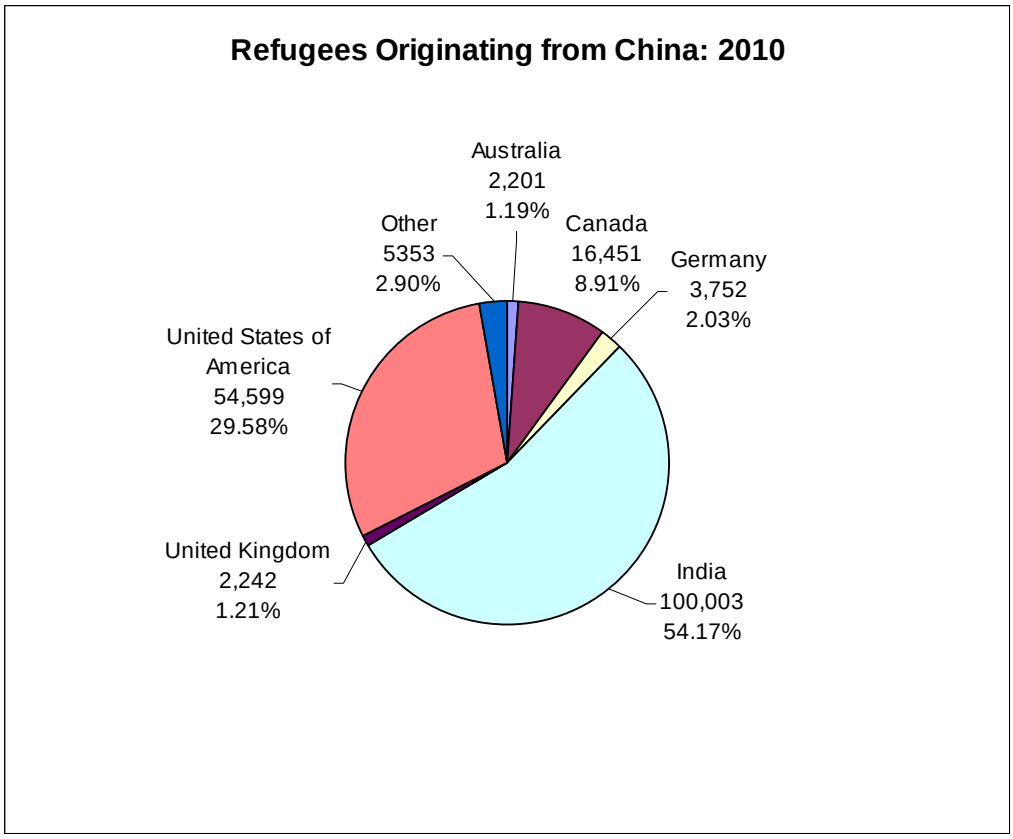
[93] Central Intelligence Agency, *CIA World Factbook: China*, 2011, viewed 13 July 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>.

[94] US Department of State, *Background Note: China*, 2010, viewed 13 July 2011, <http://www.state.gov/r/pa/ei/bgn/18902.htm>.

[95] *UNHCR Statistical Online Population Database*, op. cit.

[96] Statistics taken from: Ibid.

China was the second biggest source country of asylum applications made in Australia for the year 2010.[97] Australia's proximity to China in addition to the already settled Chinese communities in Australia makes it a relatively appealing destination for asylum seekers from China. At the end of 2010, Australia ranked sixth among countries hosting refugees originating from China, with a total of 2,201 Chinese refugees residing in Australia. The following graph shows the main destination countries of refugees originating from China in 2010:[98]



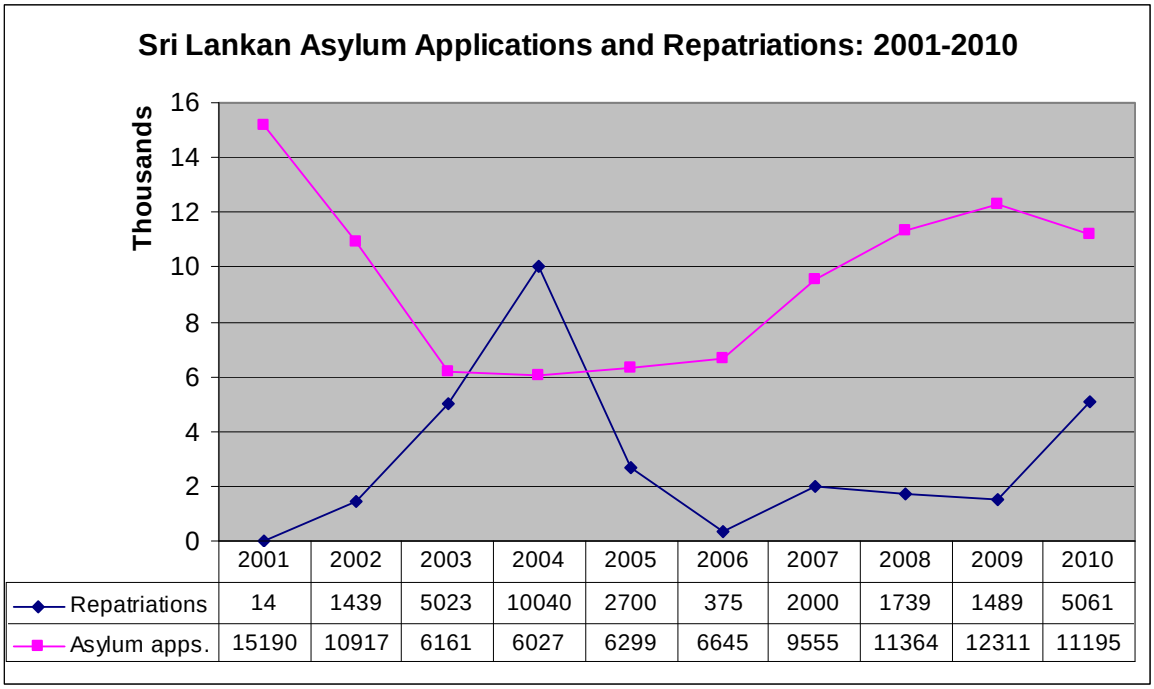
[97] UNHCR, *Asylum Levels and Trends in Industrialised Countries 2010,* op. cit., p. 36.

[98] 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-eruped, putting both Tamils and Muslims at particular risk of persecution.[99] Consequently, Sri Lanka's MRGI's PUT index for 2007 increased substantially.[100] The defeat of the Tamil Tigers in May 2009 resulted in the displacement of many Tamils.[101] The security situation improved markedly in 2010 and at the end of 2010 it was estimated there were still approximately 200 000 IDPs in Sri Lanka despite 160 000 people returning to their homes during that year.[102]

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.[103] 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 asylum applications lodged globally by people originating from Sri Lanka and the number of refugee returns to Sri Lanka from 2000 to 2010:[104]



	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

[99] MRGI, *State of the World's Minorities 2007,* op. cit., p. 12.

[100] See: *State of the World's Minorities and Indigenous Peoples* reports, op. cit.

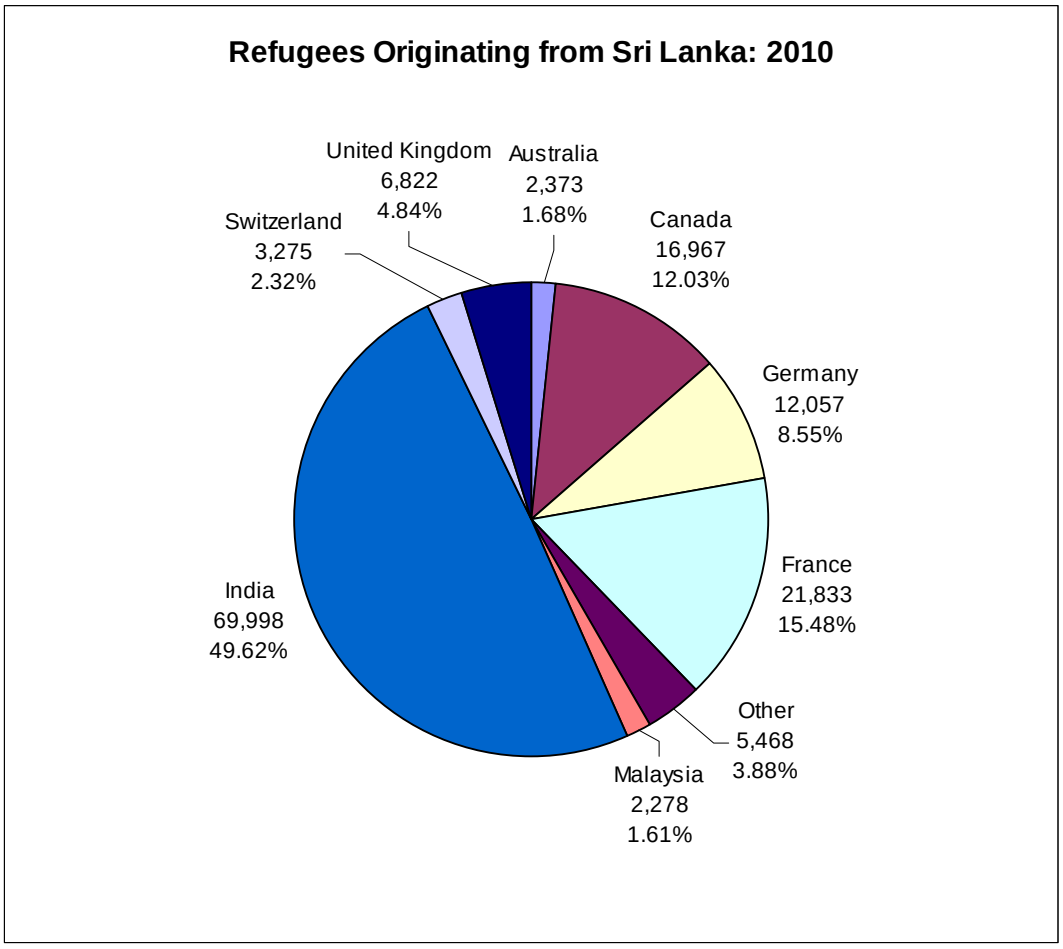
[101] UNHCR, *2011 UNHCR country operations profile – Sri Lanka* , viewed 13 July 2011, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4878e6>.

[102] UNHCR, *UNHCR Global Report 2010: Sri Lanka*, 2011, p. 254, viewed 13 July 2011, <http://www.unhcr.org/4dfdbf550.html>.

[103] *UNHCR Statistical Online Population Database*, op. cit.

[104] Statistics taken from: Ibid.

From the graph above it is clear to see the increasing number of repatriations following the cease-fire in 2002. Repatriations then remained low from 2006 to 2009, before significantly increasing again in 2010, following the defeat of the Tamils. Almost all of the refugees returning to Sri Lanka during 2001 to 2010 came from India.[105] Nevertheless, at the end of 2010 almost half of the total refugees originating from Sri Lanka were residing in India. The graph below illustrates the global distribution of refugees and people in refugee-like situations originating from Sri Lanka in 2010:[106]



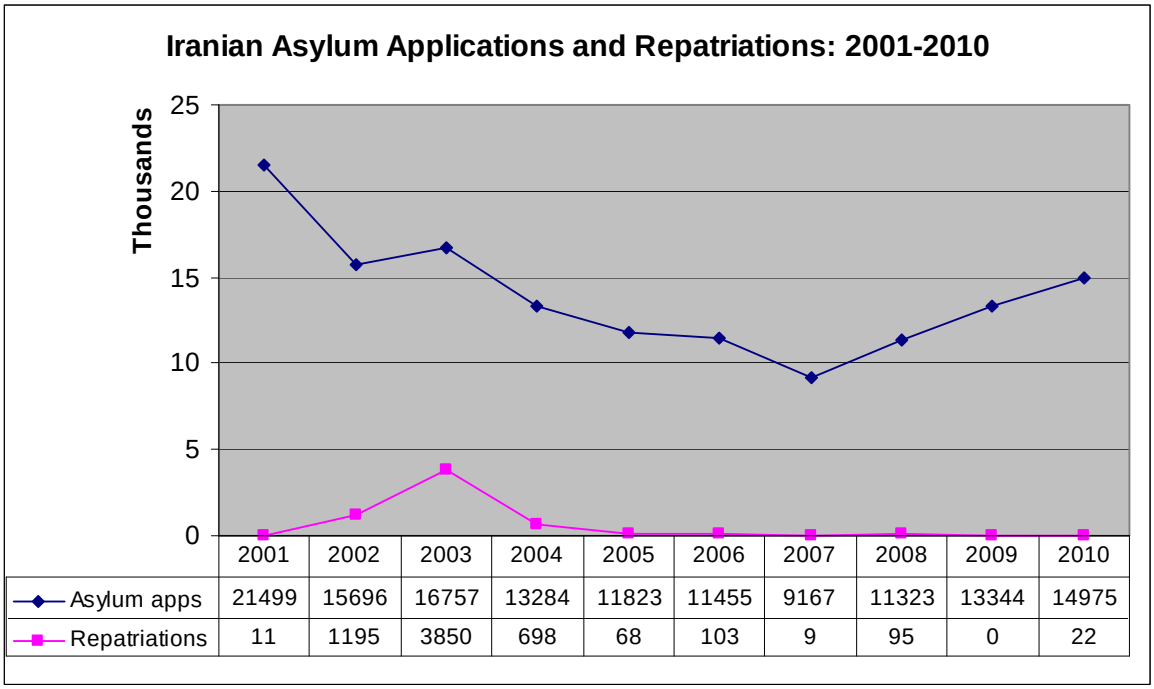
[105] *UNHCR Statistical Online Population Database*, op. cit.

[106] Statistics taken from: 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 at the time, Iran started on its course to becoming a theocratic republic.[107] By 1982 the clergy had won various power struggles to eliminate the centre and left of the political spectrum.[108] 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 people have been repatriated to Iran.[109] 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.[110] The following graph shows the number of new asylum applications by people originating from Iran and the number of refugee returns to Iran from 2000 to 2010:[111]



	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 has been increasing. 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.[112]

[107] US Department of State, *Background Note: Iran*, 2011, viewed 13 July 2011, <http://www.state.gov/r/pa/ei/bgn/5314.htm>.

[108] Ibid.

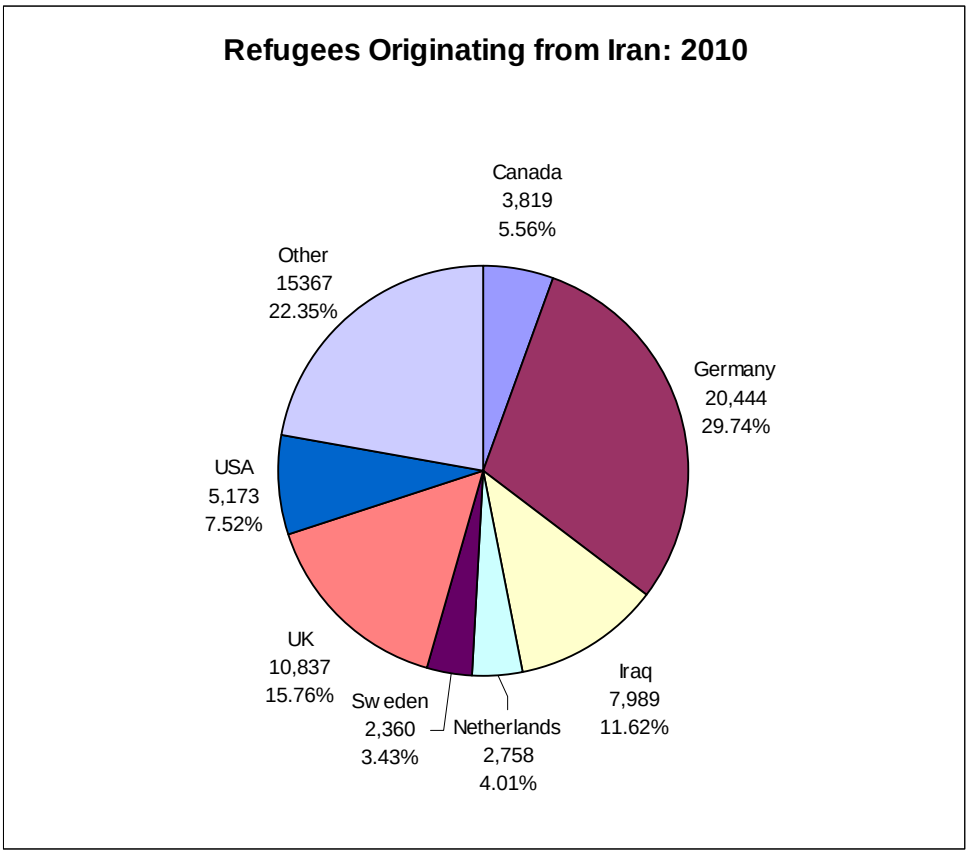
[109] *UNHCR Statistical Online Population Database*, op. cit.

[110] Ibid.

[111] No information was available on the number of repatriations in 2009. Statistics taken from: Ibid.

[112] MRGI, *State of the World's Minorities and Indigenous Peoples* reports, op. cit.

In 2010, over half of all Iranian refugees were residing in Germany, the UK 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:[113]



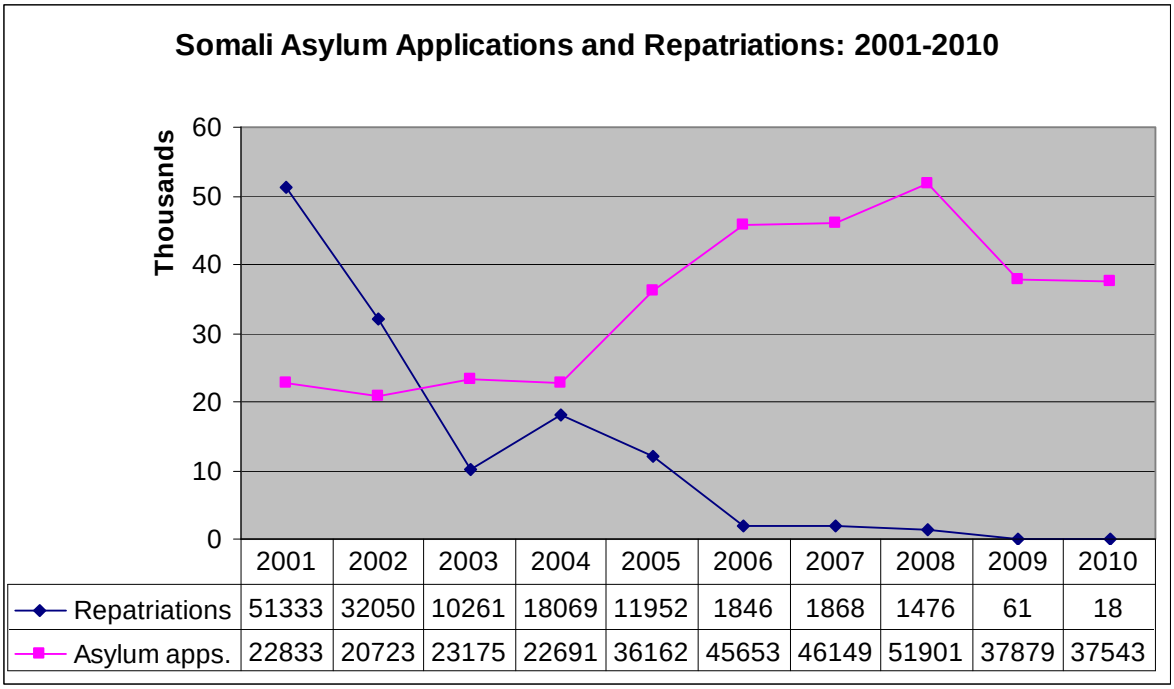
[113] According to UNHCR estimates, there were 1,327 Iranian refugees in Australia. Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

Somalia

Somalia has been a crisis area for a number of years and is currently 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.[114] 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.[115] Al-Shabaab enforces a severe version of Sharia law that breaches international human rights standards, particularly in respect of women and minority religions.[116] The situation is exacerbated by difficulties in getting humanitarian aid to minorities and IDPs, especially in light of al-Shabaab's ban of over 20 aid agencies.[117]

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.[118] In recent years, the number of repatriations has dropped to negligible figures, while the number of new asylum seekers originating from Somalia has remained high. The following graph shows the number of first instance asylum applications and repatriations from 2001 to 2010:[119]



	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

[114] UNHCR, *2011 UNHCR country operations profile – Somalia*, viewed 25 July 2011, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483ad6>.

[115] MRGI, *State of the World's Minorities and Indigenous Peoples 2011*, op. cit, pp. 79-80.

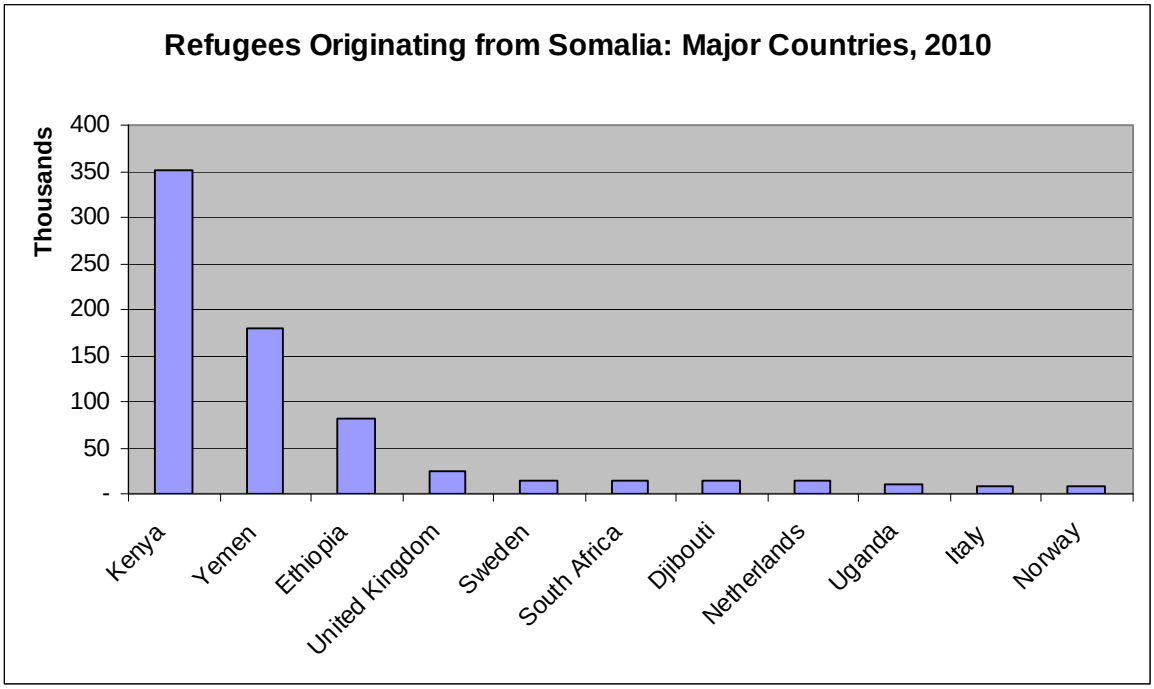
[116] Ibid., p. 82.

[117] Ibid., p. 80.

[118] MRGI, *State of the World's Minorities and Indigenous Peoples* reports, op. cit.

[119] Statistics taken from: *UNHCR Statistical Online Population Database*, op. cit.

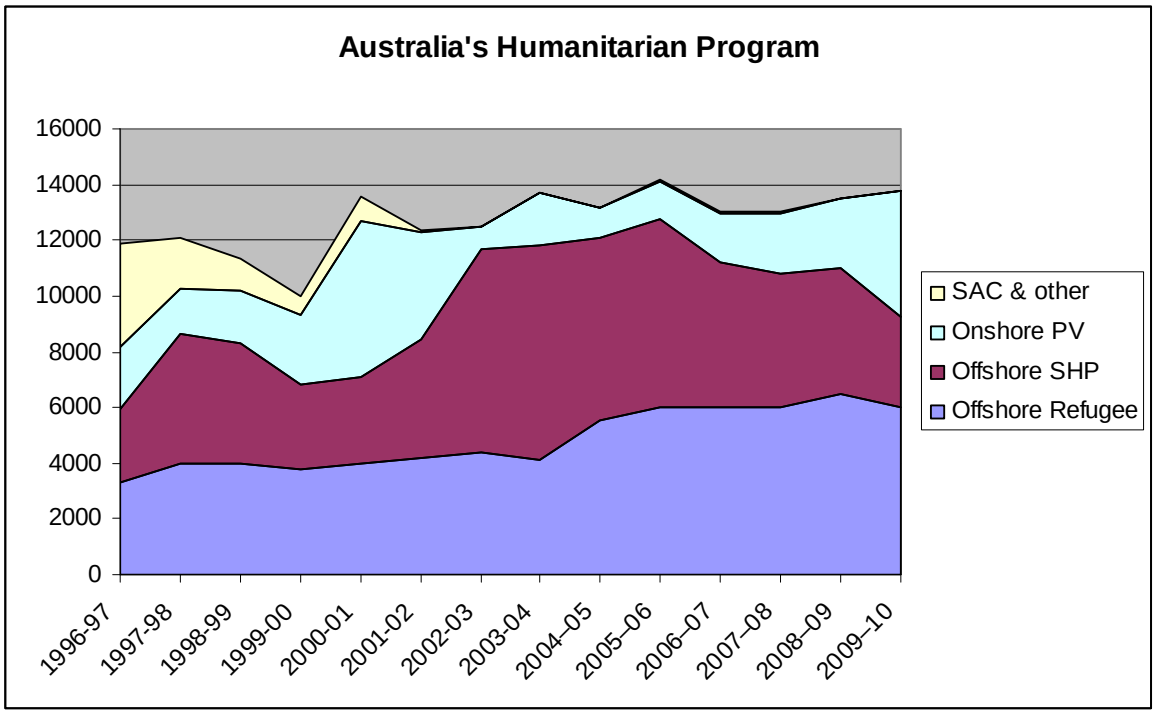
Consistent with other major humanitarian crises, refugees originating from Somalia have overwhelmingly sought refuge in neighbouring countries (Kenya, Yemen, Ethiopia and Djibouti). Of those seeking refuge further abroad, the main destination countries were the United Kingdom, Sweden, South Africa and the Netherlands. The following graph shows the main destination countries of refugees originating from Somalia, as at the end of 2010:[120]



[120] 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 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 total 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 for recent program years:[121]



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 issues paper titled *An Historical Perspective of Refugees and Asylum Seekers in Australia: 1976-2011.*

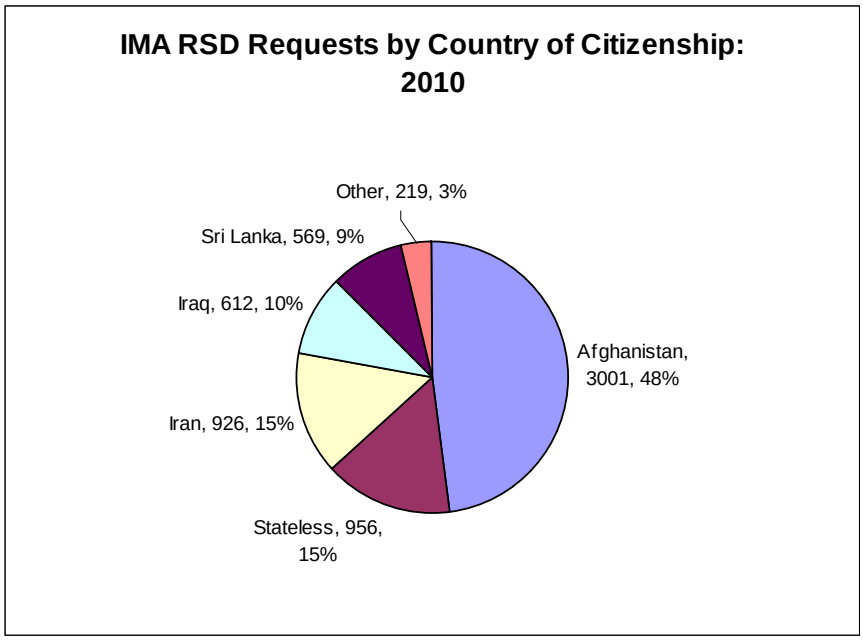
Onshore Asylum Seekers

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 refugee status determination (RSD) process (see issues paper *Evolution of the Australian Legislative Framework and Policy for Immigration Detention*).[122]

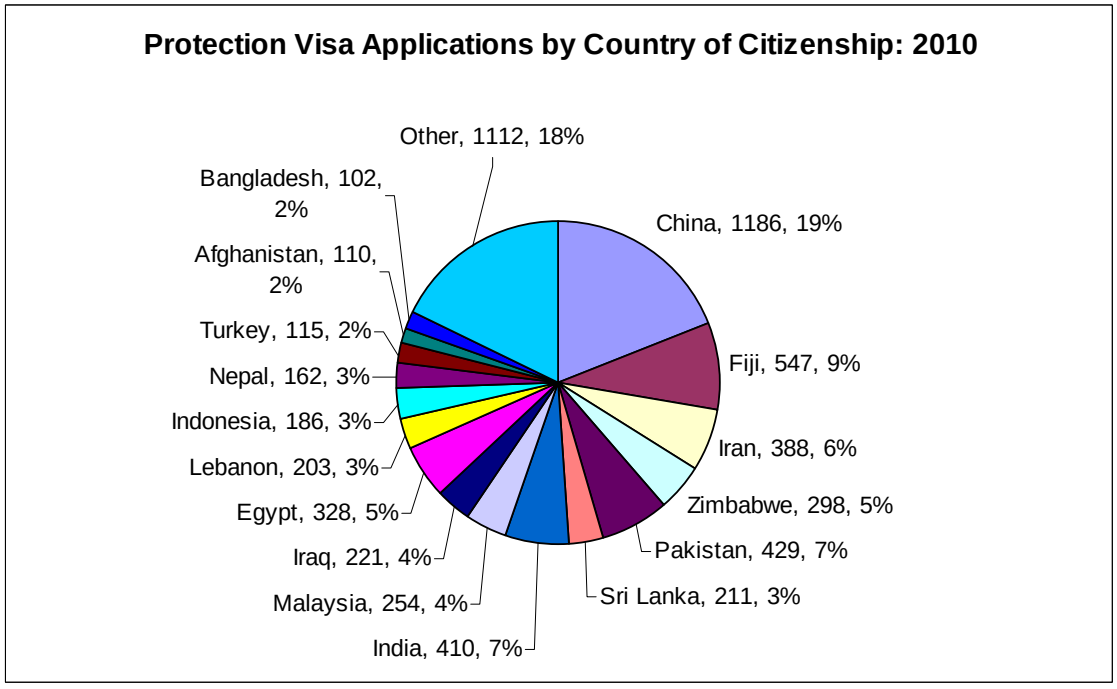
[121] SAC refers to 'Special Assistance Category' visas. SACs were introduced to assist specified groups of people with close links to Australia whose circumstances did not fit into traditional refugee or humanitarian categories. All SACs were discontinued by November 2000.

[122] This was known as a Refugee Status Assessment (RSA) up to 28 February 2011. After this date it became the Protection Obligation Determination (POD) 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:[123]



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:



[123] The POD process was implemented from 1 March 2011.

Appendix A: Source and Definitions

UNHCR Statistical Online Population Database was used to compile most graphs and statistics used in this paper (see footnotes). The database is available at:

http://www.unhcr.org/pages/4a013eb06.html

The sources and category definitions are summarised below.[124]

Data Sources

Data sources for most countries include government agencies, UNHCR field offices and NGOs. 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 recognized 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 recognized 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 persons 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 (UNRWA) are not included in UNHCR statistics.[125]

For Australian statistics of refugees, the number is estimated using a 10 year trend of positive refugee status determination (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 persons 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 (i.e. not applications for review).

Internally Displaced Persons (IDPs)

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 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 UNHCR helps based on humanitarian or other special grounds.

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[124] 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>.

[125] 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.[126]

PUT Index: Selected Countries: 2006-2011

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)

126 MRGI, State of World's Minorities reports, op. cit.

Australian Government
Department of Immigration and Citizenship

An Historical Perspective of Refugees and Asylum Seekers in Australia 1976-2011

Prepared for the Joint Select Committee on Australia's Immigration Detention Network
August 2011

Introduction

The *United Nations 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 removed these limitations to allow the convention to cover refugee situations in any country. The *Refugee Convention* and *1967 Protocol* remain as 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 the *Refugee Convention* and *1967 Protocol*, Australia has established a legal framework for the protection of refugees in domestic law. While irregular maritime arrivals (IMAs) who arrived at an excised place are barred from applying for a visa onshore under the *Migration Act*, the obligations under the *Refugee Convention* still apply.

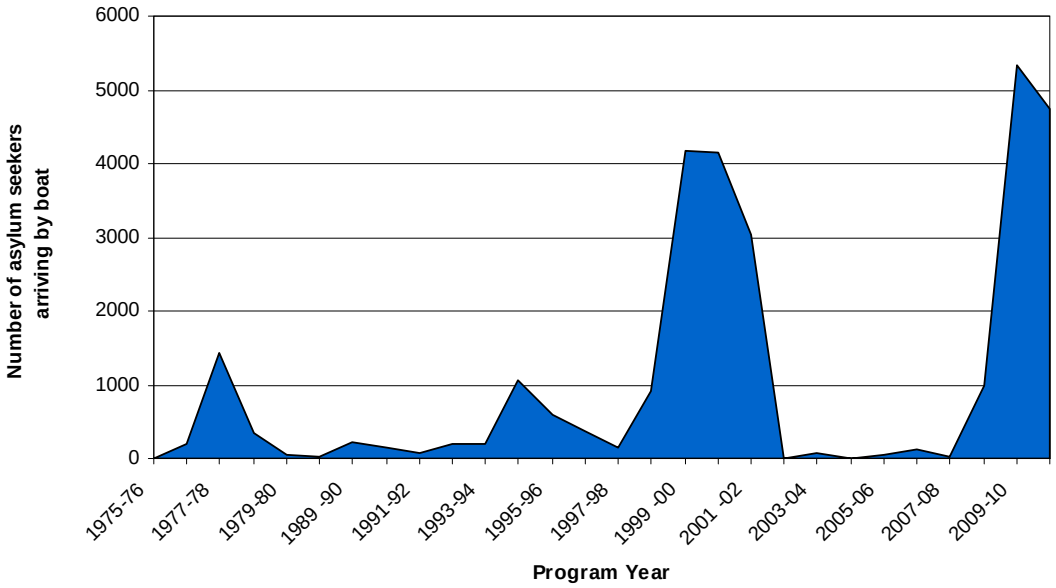
Australia is obliged, as a signatory of the *Refugee Convention,* to not return people to countries where their life or liberty would be threatened by their religion, race, nationality, political view or membership of a social group.

One of the major challenges 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 witnessed four distinct 'waves' of maritime arrivals since 1975, each of which has had repercussions on Australia'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 36 years. The overall perspective is of Australia balancing obligations under the Refugee Convention while maintaining regional stability in an effort to reduce the movement of displaced persons.

Figure 1: The Four Waves: 1975 -2011



Source: DIAC Statistics, *Boat Arrivals in Australia since 1976,* Parliamentary Background Note, updated 11 February 2011

The First Wave: 1976 -1981

Boat Arrivals

During the 1970s, after more than 30 years of war and instability, over two million refugees fled Vietnam, Laos and Cambodia 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 1 000 km journey to the Malaysian coast.[1]

On 27 April 1976, the first small boat carrying Vietnamese refugees reached Darwin. This vessel carried five people. A further seven boats carrying a total of 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 the 1977-78 financial year, with a further 1 432 refugees arriving on 43 boats.

In 1978-79 fewer boats arrived in Australia (six boats carrying 351 people). The then Minister for Immigration and Ethnic Affairs stated that it seemed evident that officials in Vietnam were engaged in the 'export' of ethnic Chinese and Vietnamese people 'at a price',[2] involving larger vessels flying flags of convenience.[3] In October

[1] CBC Digital Archives, *Boat People: A refugee crisis,* viewed 22 June 2011, <http://archives.cbc.ca/society/immigration/topics/524>.
[2] Department of Immigration and Ethnic Affairs, *Annual Report 1978-1979*, Australian Government, Canberra, 1979. p. 6.

1981, 146 people posing as Vietnamese refugees arrived in Darwin. The group was detained, and extensive investigations revealed that 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.

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 both land and sea. However, no further Indo-Chinese boats would arrive on Australian shores until November 1989.

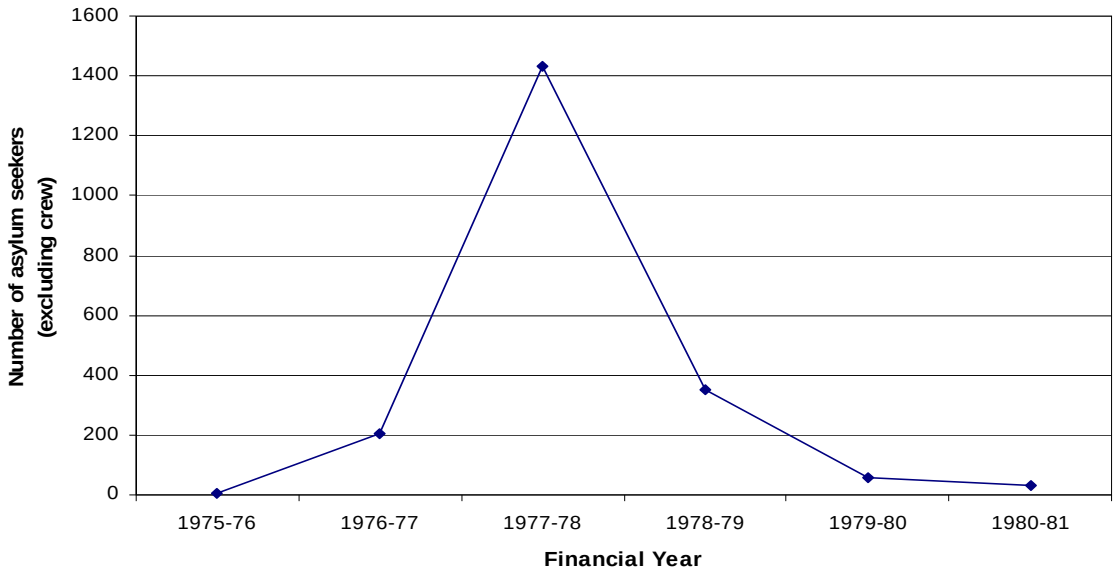
Table 1: Total Number of asylum seekers arriving by Boat 1975-76 to 1980-81

Program Year	Number of Boats	Number of asylum seekers arriving by boat (excludes crew)
1975-76	1	5
1976-77	7	204
1977-78	43	1 432
1978-79	6	351
1979-80	2	56
1980-81	1	30*
TOTAL	**60**	**2 078**

* This figure does not include the boat of 146 people that arrived in October 1981

Source: DIEA Annual Reports 1976-1981

Figure 2: The First Wave: 1975-76 to 1980-81, Asylum Seeker Arrivals



Source: DIEA Annual Reports 1976-1981

[3] 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.

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 per year; a total of 51 780 for the period. The majority of these refugees 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

Prior to 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.[4]

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."[5] In response to this report, the Minister for Immigration and Ethnic Affairs announced a strategy involving the following key points:

- the adoption of procedures for designating refugee situations and appropriate responses to these, including the possibility of offering financial contributions;
- the establishment of an interdepartmental committee to advise [the Minister], in consultation with voluntary agencies, on Australia's capacity to accept refugees;
- the examination of other ways in which voluntary agencies could be encouraged to participate in refugee resettlement; and
- the strengthening of the department's Refugee Unit to enable prompt and efficient responses to refugee situations.[6]

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 of America 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 was held in Geneva in July 1979, and 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

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[4] 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.
[5] Senate Standing Committee, *Australia and the refugee problem,* op. cit., p. 89
[6] Minister for Immigration and Ethnic Affairs, the Hon. Michael Mackellar MP, 'Statement,' House of Representatives, *Debates*, 24 May 1977, pp. 1713 -16.

decrease in the number of refugees leaving Vietnam by boat, and in the caseload of boat arrivals in countries of first asylum.[7]

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, whilst also 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."[8]

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 within 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 Immigration and Ethnic Affairs, Prime Minister and Cabinet, Employment and Industrial Relations, Social Security, and Health and Education. The function of this committee was to maintain communication with voluntary agencies (such as the Indo-China Refugee Association and the Australian Red Cross), advise the Minister on a range of refugee issues, and to 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 (ARAC) to advise the Minister on all aspects of refugee movement and settlement, and the Community Refugee Settlement Scheme (CRSS) to provide refugees with social support, general orientation assistance and help with finding accommodation and employment. Under the CRSS, 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.[9]

People Trafficking

In response to information that the Vietnamese Government was charging people to board vessels headed for South-East Asia, the then 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."[10] 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*, 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.[11] This legislation ceased to be in effect from 30 September 1983, after it was decided the validity period would not be renewed.[12]

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[7] Department of Immigration and Ethnic Affairs Annual Report 1979-1980, Australian Government, Canberra, 1980, p. 46.
[8] Cabinet Minute, Decision No. 8115, Perth, 23 April 1979.
[9] Department of Immigration and Ethnic Affairs, *Review '76*, Australian Government, Canberra, 1976.
[10] Minister for Immigration and Ethnic Affairs, the Hon. Michael Mackellar MP, 'Refugees from Vietnam', (Press Release, 4 January 1978).
[11] *Immigration (Unauthorised Arrivals) Act 1980* (Cth).
[12] See *Evolution of the Australian Legislative Framework and Policy for Immigration Detention* for further details of this legislation.

A Lull in Arrivals: 1982 - 1989

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 over 35 countries were resettled in Australia from 1 July 1982 to 30 June 1989.

Preventative Measures: 1982 -1989

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.

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' (ODP). 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 ODP arrived in November, with a total of 624 being admitted during the 1982-83 program year.

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 for Immigration tabled *Immigration – a commitment to Australia,* the Report of the Committee to Advise on Australia's Immigration Policies (CAAIP) in the Federal Parliament. The CAAIP Report called for urgent reforms to immigration policy and, while it did recommend the maintenance of 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 (CPA) designed to achieve a durable solution to the problem of the Indo-Chinese outflow. Australia had a significant role in the operation of the CPA, joining the Steering Committee to monitor its implementation.

The key objectives of the Plan were to:

- reduce clandestine departures of refugees from their home country by promoting increased opportunities for legal migration under the ODP;
- 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 those found to be genuine refugees in third countries; and
- repatriate those found not to be refugees and reintegrate them in their home countries.

By the end of the CPA on June 30 1996, Australia had resettled approximately 19 000 Indochinese under the CPA.

The Second Wave: 1989 -1998

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 a further two boats on 31 March and 1 June 1989. The three boats combined held a total of 224 people seeking asylum.

A total of 90 boats would arrive between 1988 and 1998, carrying 3124 people. The majority of asylum seekers were from Indo-China, although there were others from China, South Asia and the Middle East.

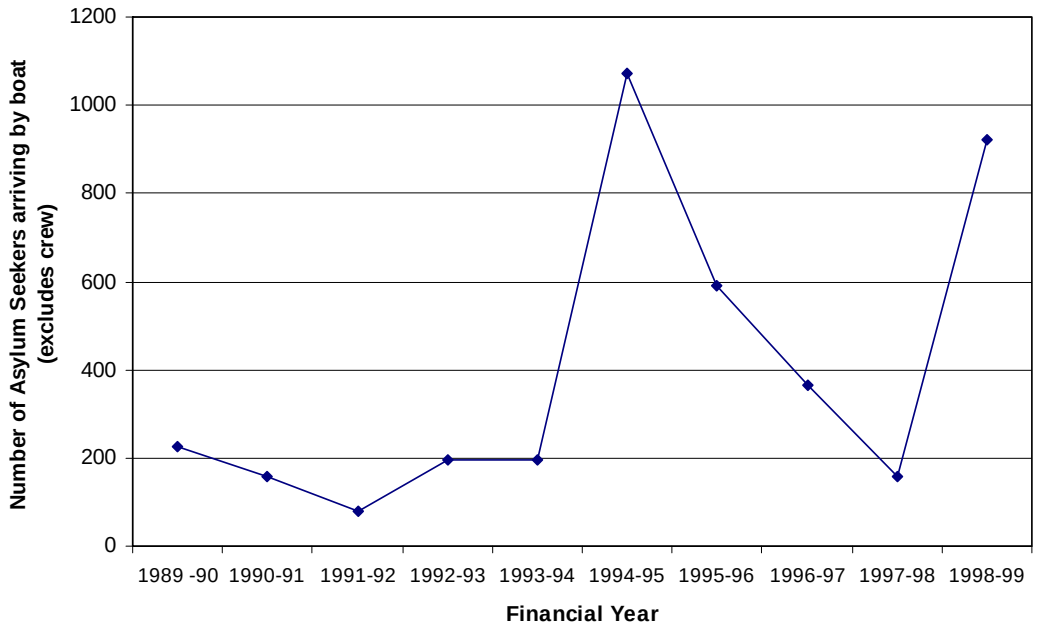
Table 2: Total number of boats and boat arrivals 1989-90 to 1998-99[13]

Financial Year	Number of Boats	Number of Boat Arrivals (excludes crew)
1989-90	3	224
1990-91	5	158
1991-92	3	78
1992-93	4	194
1993-94	6	194
1994-95	21	1 071
1995-96	14	589
1996-97	13	365
1997-98	13	157
1998-99	42	921
TOTAL	**124**	**3 951**

Source: *Arrivals in Australia since 1976,* Parliamentary Background Note, updated 11 February 2011

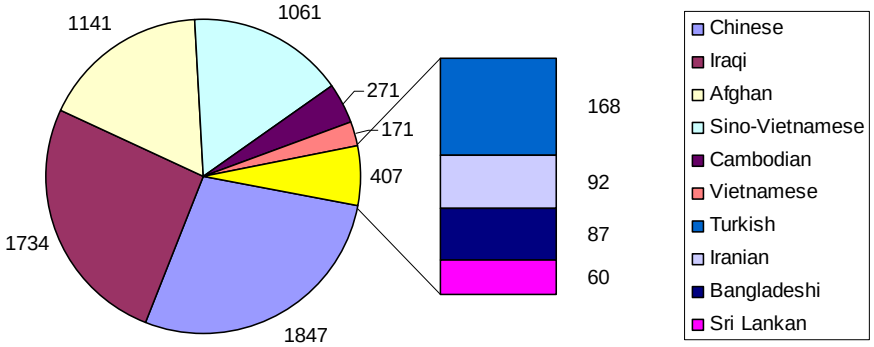
[13] Phillips, J, and Spinks, H, Parliamentary Library, 'Boat Arrivals in Australia since 1976', *Parliamentary Background Note*, 2011, viewed 1 June 2011, <http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm#_Toc285178607>.

Figure 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

Figure 4: Top Ten Ethnicities of Boat Arrivals 1989 to 1999-00[14]



Source: Department of Immigration and Multicultural Affairs, Fact Sheet 81, Unauthorised Arrivals by Air and Sea

[14] 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=>.

Unauthorised Air Arrivals

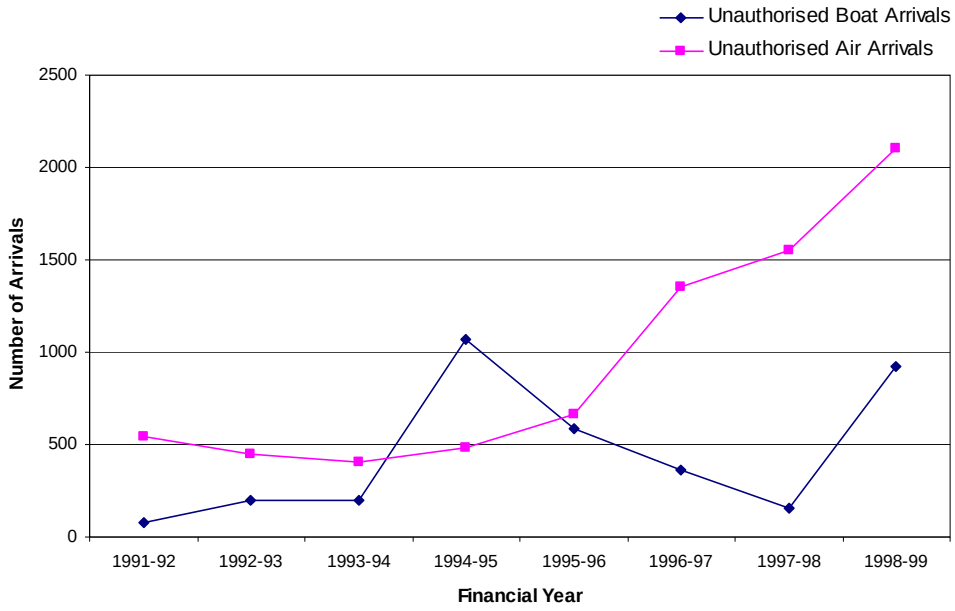
At the beginning of this period, over five times more unauthorised arrivals came by boat than by air. The number of people arriving in Australia by air without a valid visa stayed relatively steady, and was overtaken by the number of people arriving by boat in the 1994-95 financial year, before experiencing a dramatic increase in 1997-98 and 1998-99. The graph below demonstrates that for the majority 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	Number of Unauthorised Air Arrivals
1991-92	540
1992-93	452
1993-94	408
1994-95	485
1995-96	663
1996-97	1 350
1997-98	1 555
1998-99	2 106
Total	**7 559**

Source: DIAC Statistics

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 CAAIP 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.* 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.[15] The new Act and Regulations did not disadvantage asylum seekers, with status determination remaining as it was prior to 19 December.

Tiananmen Square Incident and the Four-Year Temporary Visa

In June 1989 the 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 there was 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 (RSRC). 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 RSRC 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 for Immigration.

[15] Chaaya, M, 'Proposed Changes to the Review of Migration Decisions: Sensible Reform Agenda or Political Expediency?', *Sydney Law Review*, vol. 19, no. 4, 1997.

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.[16] The rationale given by the then Immigration 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.[17] 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 (MOU) 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, DIAC established the Asylum Seeker Assistance Scheme in 1992. Under this scheme, the department funded Australian Red Cross caseworkers to assist asylum seekers to meet a range of needs, including counselling, accommodation, education, legal referrals and health and income support.

On 7 July 1994, 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 for Immigration 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. Whilst the amendments were in progress, a further 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 refugee review system (the RRT) 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 failed to obtain refugee status; restrictions were placed on the right to work during the review period; and application time limits were reduced. These changes came into effect on 1 July 1997.

The Immigration Advice and Application Assistance Scheme (IAAAS), was created in July 1997 with the aim of providing 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 system (APP) 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

[16] Commonwealth, *Parliamentary Debates,* House of Representatives, 5 May 1992, p. 2370 (Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP).
[17] Ibid.

passengers hold a valid visa before they travel to Australia, and provides advance information on travellers to Australia's border agencies prior to the arrival of their flight into Australia. 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. Where there were 42 boats carrying 921 people in the 1998-99, in the 1999-00 year 75 boats arrived carrying a total of 4175 asylum seekers.

The boats that arrived during this period 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[18]

Financial Year	Number of Boats	Number of Boat Arrivals (Excluding Crew)
1999 -00	75	4 175
2000 -01	54	4 137
2001 -02	19	3 039
TOTAL	**148**	**11 351**

Source: *Arrivals in Australia since 1976,* Parliamentary Background Note, updated 11 February 2011

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 per year during this period (1999-2001). It is interesting to note that the significant increase in boat arrivals was accompanied by a corresponding decrease in unauthorised air arrivals, as evidenced by Figure 6.

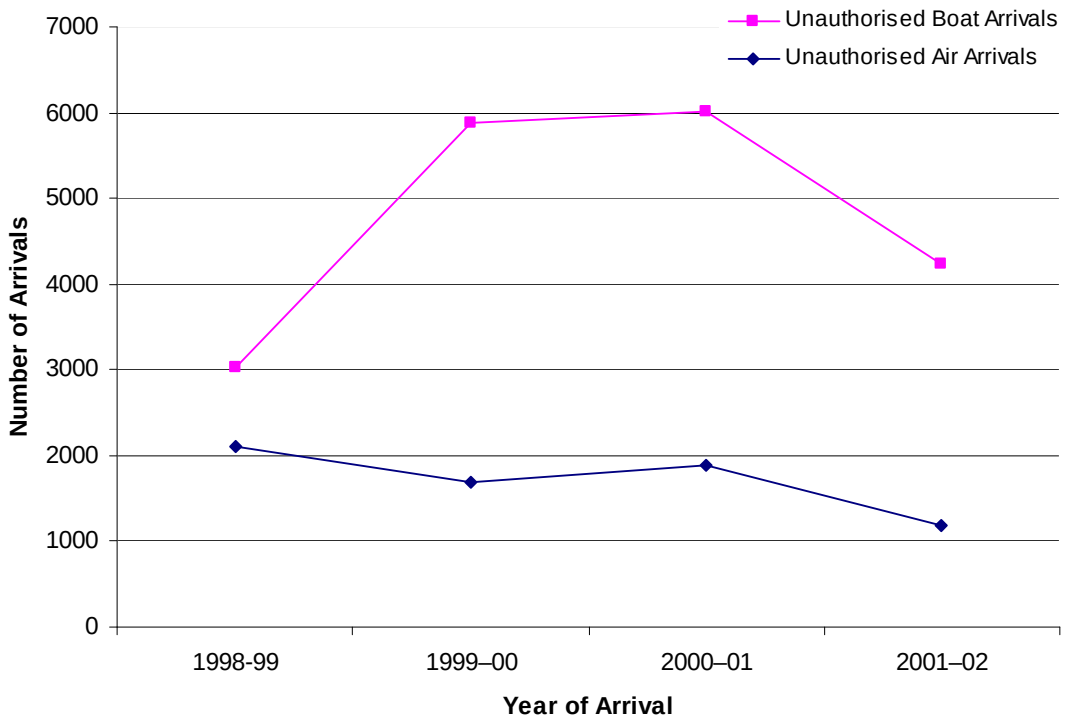
Table 5: Total number of unauthorised air arrivals 1999-00 to 2001-02

Financial Year	Number of Unauthorised Air Arrivals
1999-00	1 695
2000-01	1 877
2001-02	1 193
Total	**4 765**

Source: DIAC Statistics

[18] Phillips and Spinks, op. cit.

Figure 6: Unauthorised Boat and Air Arrivals 1999-00 to 2001-02



*1998-99 Financial Year has been included on the chart to effectively demonstrate the significant increase in arrivals.
Source (Boat Arrivals): *Arrivals in Australia since 1976,* Parliamentary Background Note, updated 11 February 2011
Source (Air Arrivals): Source: DIAC Statistics

Unauthorised boats arrived in New South Wales for the first time during the 1998-99 financial year**.** A new route taken to the north of Papua New Guinea (PNG) enabled boats to travel further east than previously, thereby avoiding Australian and Indonesian surveillance.

The boats that arrived in 1999 came from PNG 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 the figure of the previous year, with a total of 5516. The majority of these boat arrivals 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 the 1998-99 financial year, 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 also informed them that the Australian Government would be offering an amnesty on Unlawful Non Citizens (UNCs) 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 of this intervention.

In the 1999-2000 program year, the unprecedented level of unauthorised boat arrivals created significant pressures on detention operations, requiring the re-commissioning of immigration processing and reception centre (IPRC) facilities at the RAAF base in Curtin, Western Australia, and the construction of a new IPRC 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 a total of 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.

Temporary Protection Visas (TPV) were introduced in October 1999 for unauthorised arrivals subsequently assessed to be refugees. TPVs were valid for a period of three years, with the ability to apply for further protection at the end of that term. Under legislation introduced in 2001, 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 for Immigration 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 International Red Cross. International engagement during this period resulted in multiple agreements between Australia and a variety of 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 requested 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.[19]

On approach to Australian territorial waters, the Tampa's Master 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 those asylum seekers that 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 transferred to Australian naval vessel *HMAS Manoora* on 3 September and taken to Nauru, the government of which agreed to process their claims with the aid of the Australian Government.

The Indonesian crew of the vessel who had been rescued by the *Tampa* were disembarked at Christmas Island and charged with people smuggling.[20]

In response to both this incident and concurrent action taken by a civil liberties group to have the rescued asylum seekers admitted to the Australian mainland,[21] the then 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.[22]

The Pacific Solution: 2001 - 2007

A series of measures aimed at supporting the strengthening of Australia's territorial integrity and reducing the incentive for people to make hazardous voyages to the Australian territories was introduced by the Australian Government in 2001. The measures, which would come to be 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.[23]

The 'Pacific Solution' Legislation

Under the series of new migration laws passed in September 2001,[24] 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 a visa under the Australian system. This legislation framework is known as "excision".

The legislative changes implemented a tiered approach to providing people with protection. Persons who remained in their country of first asylum to undergo normal offshore resettlement processes were able, once selected, to enter Australia as permanent residents. Persons 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 they would be entitled to permanent residence status, subject to a continuing need for protection.

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[19] White, M, *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>.

[20] Ibid., pp. 3- 4

[21] This was successful in the Federal Court, but overturned by the Full Bench of the Federal Court on appeal by Minister Ruddock

[22] Hancock, N, Parliamentary Library ' Border Protection (Validation and Enforcement Powers) Bill 2001', *Bills Digest*, No. 62, Australian Government, Canberra, 2001, p. 34.

[23] The detail of these amendments is outlined in the "Evolution of the Australian Legislative Framework and Policy for Immigration Detention", section page 18.

[24] *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001* (Cth), *Migration Amendment (Excision from Migration Zone) Bill 2001* (Cth), *Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001* (Cth).

Persons who came to Australia without taking opportunities available to them to seek protection during their travel would be able to access only successive temporary visas should they be in continuing need of protection.

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.[25] In effect, this allowed unauthorised arrivals to be processed on Nauru and Manus Island.

On 12 March 2002, the Minister for Immigration announced the construction of a permanent IPRC on Christmas Island. The Minister stated that 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 2002–2003 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 MOUs 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, over 30 workshops have been held, with the aim of capacity and cooperation building throughout the region. Participation has also expanded, with 43 regional countries now participating. Australia is a key member of the Bali Process Steering Committee.[26]

Australia also joined 112 other countries in becoming a signatory to the People Trafficking Protocol on December 11 2002.

Changes to the Visa System

On 28 August 2003, the Minister for Immigration announced changes to Australia's TPV system, broadening existing TPV arrangements to also apply to those making a protection visa application 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 they arranged to return to their country of origin or another country.

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[25] *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cth).
[26] The Bali Process Committee, 'About the Bali Process,' viewed 27 July 2011, <http://www.baliprocess.net/index.asp?pageID=2145831401>.

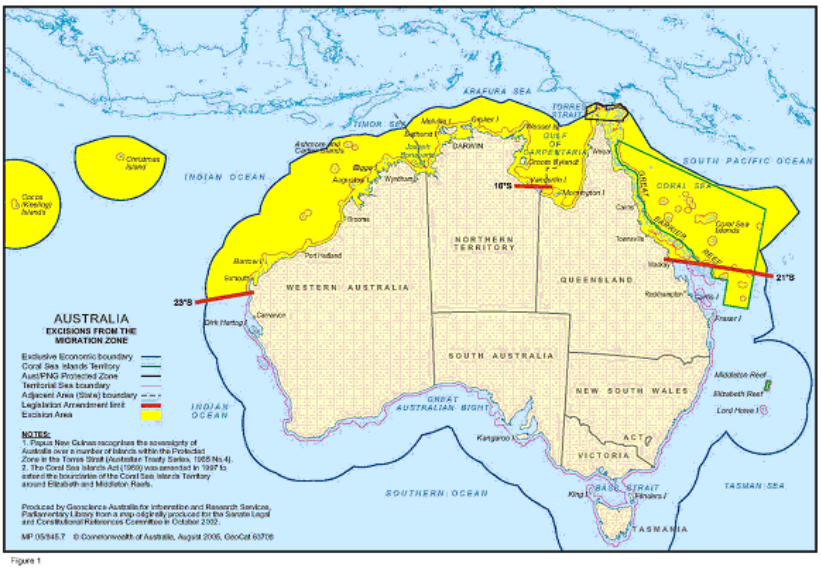
The Removal Pending Bridging Visa was introduced in May 2005 to manage a small group of negatively assessed asylum seekers in detention who had exhausted the appeal process but were unable to return to their country of origin in the short term. Regulations were broadened a month later allowing a greater number of detainees access to the visa.

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 as indicated on the map below as excised from Australia's migration zone.[27]

[27] Coombs, M, 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>.

Figure 7: Islands excised from Australia's Migration Zone 2005[28]



2005 Reforms

During 2005 the cases of Cornelia Rau and Vivian Alvarez prompted investigation into immigration detention processes. In July 2005 a report by Mr Mick Palmer AO APM of his Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau was released.[29] 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.[30] In addition, the Ombudsman conducted a review of a number of other cases of people held in long term detention.[31]

The reports identified shortcomings in a number of areas of departmental operations and resulted in the commencement of a significant reform program within the department. The reforms focused on leadership, governance, values and behaviour, client service, record-keeping, training and support for staff.

In 2008 the department commissioned Elizabeth Proust AO to conduct a review of the reform agenda since the 2005 reports mentioned above[32]. A key finding of her report recognised that the department had substantially implemented the Palmer and Comrie recommendations, and where they were not yet complete, plans existed for their implementation.

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[28] Ibid.
[29] Palmer, M, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report*, Australian Government, Canberra, 2005.
[30] 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.
[31] Commonwealth Ombudsman, *Immigration detention review reports*, 2005-2011, <http://www.ombudsman.gov.au/reports/immigration-detention-review/>.
[32] Proust, E, Department of Immigration and Citizenship, *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>.

A private member's Bill was introduced into parliament in 2005 in an attempt to abolish mandatory detention[33]. Although mandatory detention remained, the Bill led to significant reforms, including measures that allowed 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.[34]

By the end of June 2006, the majority of asylum seekers in Australia had arrived on valid visas and were able to reside 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 in relation to their application for a protection visa, with the majority of people 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 from the UNHCR. By the end of the 2001-2007 period, fewer places were being allocated to refugees from Africa and more allocated to those from the Middle East and Asia, while the places allocated to refugees from Europe decreased by over 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 period.

Boat Arrivals 2002-2007

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 over 18 months occurred on 1 July 2003, when an unauthorised boat arrived off the coast of Port Hedland in Western Australia. Fifty three Vietnamese on board were taken to Christmas Island to have their asylum claims processed. During 2003-2004, 82 persons sought unauthorised entry by boat to Australia, 53 of whom landed within 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 transferred to Christmas Island for processing before being granted TPVs and transferred to Melbourne in March. In February, 83 Sri Lankan asylum seekers were intercepted off Christmas Island, with 82 subsequently moved to Nauru to have their claims assessed and one transferred 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 on to Nauru for processing.

[33] *Migration Amendment (Mandatory Detention) Bill 2005* (Cth).
[34] Foundation House, 'Petro Georgiou delivers annual oration', 27 July 2010, viewed 1 August 2011, <http://www.foundationhouse.org.au/AnnouncementRetrieve.aspx?ID=34439>.

Table 6: Total number of boats and Boat Arrivals 2002-03 to 2007-08

Financial Year	Number of Boats	Number of Boat Arrivals (excludes crew)
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): Source: DIAC Statistics

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 onwards. These 'push factors' are further discussed in the accompanying issues paper 'Global Population Movements.'

Unauthorised Air Arrivals

The decrease in boat arrivals was also accompanied by slight decrease in unauthorised air arrivals during the 2002-03 financial year. However, the number of people arriving by air without valid visas increased again the following year, rising to a peak of 2 058 in 2004-05 before dropping slightly again.

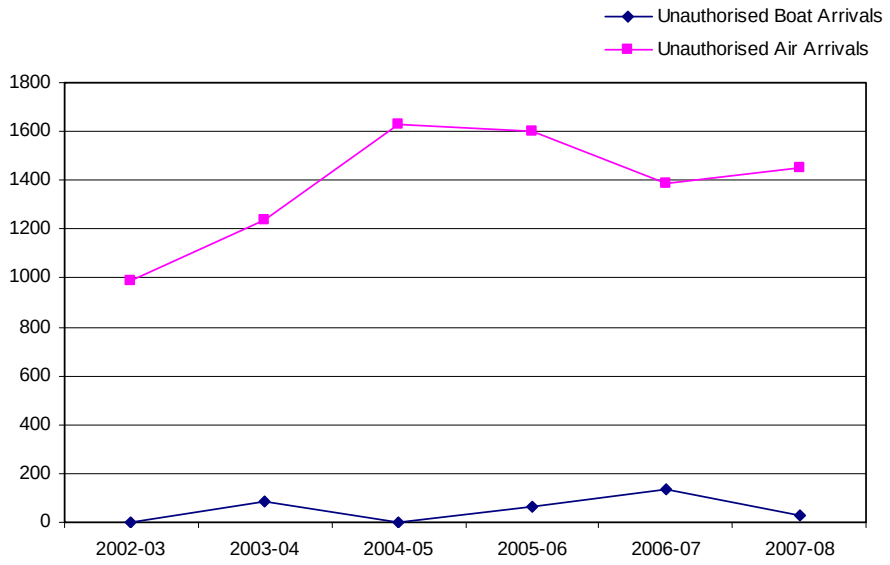
As demonstrated by Figure 8, over 2500 per cent more people arrived in an unauthorised manner by air than by sea during this period.

Table 7: Total number of unauthorised air arrivals 2002-03 to 2007-08

Financial Year	Number of Unauthorised Air Arrivals
2002-03	937
2003-04	1 241
2004-05	2 058
2005-06	1 995
2006-07	1 678
2007-08	1 189
Total	**9 098**

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- 2008

An unauthorised boat carrying four people arrived at Ashmore and Cartier Islands on 16 December 2007. The newly appointed Minister for Immigration 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.[35]

Closure of Manus Island and Nauru

The Minister for Immigration 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 sought to enter Australia without authorisation, confirming that the Nauru and Manus Island processing centres would be closed. The Labor 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 long-term detainees deemed to pose 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 February 8, 2008. Both the Nauru and Manus centres were formally closed on March 31 2008.

Abolition of the TPV

The abolition of the Temporary Protection Visa was announced on 13 May 2008. From 9 August 2008, people found to be refugees would receive a permanent visa, regardless of how they entered Australia. In addition, around 1000 persons holding TPVs at the time of the announcement 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.

[35] Minister for Immigration and Citizenship, Senator the Hon. Chris Evans, 'Four people detected at Ashmore Islands' (Press Release, 17 December 2007).

Detention Values

The Minister for Immigration 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 also 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 be accommodated in detention centres, with alternative forms of detention preferred where possible.

New Processing Arrangements

In July 2008, the Minister also 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 Refugee Status Assessments (RSAs), robust procedural guidance for RSA officers and external scrutiny of the RSA process by the Commonwealth Ombudsman. Officials from UNHCR also observed the new arrangements. 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 the 2008-2009 program year, the offshore refugee intake was increased to 6 500 places, inclusive of a one-off 500 place increase to aid those affected by the conflict in Iraq. Additionally, the Australian Government introduced a new visa policy to enable the permanent resettlement in Australia of Iraqis and their families who were at risk due to their engagement in Iraq with the Australian Government. Those resettled included locally engaged employees and Iraqis who had worked for or with the Australian Defence Forces in Iraq.

In the 2007-2008 program year, 5951 offshore refugee visas were granted, with 13.7 per cent of these granted to women at risk. In line with international concerns, the Australian Government continued to resettle Burmese refugees from 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 - 2011

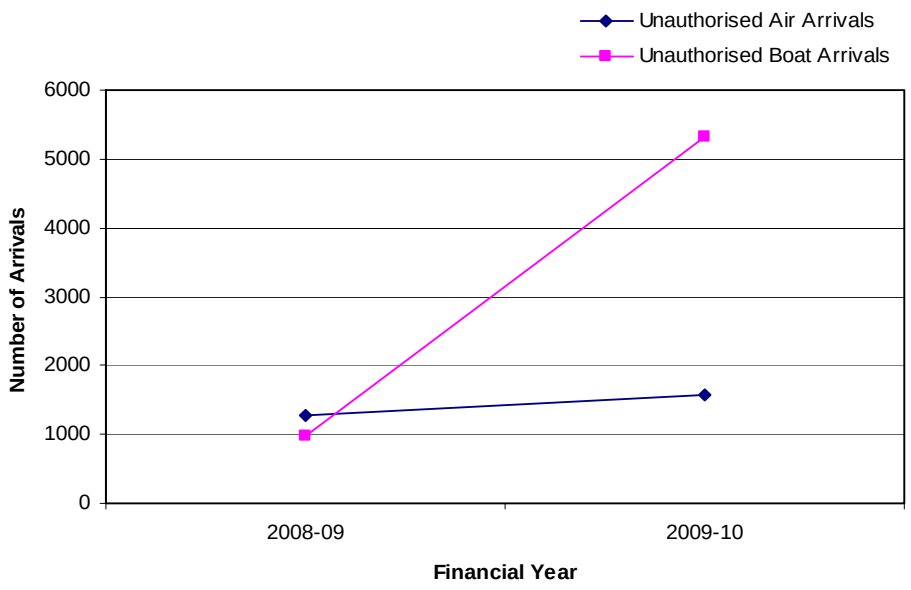
Over the course of 2009-10, the number of asylum seekers arriving by boat in Australia increased significantly. At 30 June 2010, the number of people in immigration detention who had arrived by boat over the previous 12 months was 3867, an increase from 782 in 2008-09. The majority of boat arrivals were fleeing cultural/ ethnic/ gender-based issues or armed conflicts in Afghanistan, Sri Lanka and Iraq.

Table 8: Total number of boats and boat arrivals 2008-09 to June 30 2011

Financial Year	Number of Boats	Number of Boat Arrivals (excluding crew)
2008-09	23	985
2009-10	117	5 327
2010-11 (to June 30 2011)	89	4 730
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, 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 this period.

Table 9: Total number of unauthorised arrivals by air 2008-09 to 2009-10

Financial Year	Number of unauthorised air arrivals
2008-09	1 284
2009-10	1 573
Total	**2 857**

Source: DIAC Annual Report 2009-10, numbers relate to those refused immigration clearance at airports

Offshore Refugee Intake

In the 2009-2010 program year, 5979 offshore refugee visas were granted. Included in this figure are 1 959 visas granted to Burmese refugees and 1144 visas granted to Bhutanese refugees. The commitment and recognition of the particular vulnerabilities of women has continued via the Women at Risk Refugee visa, with 13.4 per cent of the 2009-2010 total granted to this category. Currently, 12 percent of Australia's 7000 refugee places are reserved for the Woman at Risk Category.

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 an announcement from the Australian Government on 9 April 2010 that new asylum claims from these countries would be suspended as of that date. This decision was a result of new information becoming available and advice from 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 in its efforts to prevent maritime people smuggling, and has increased its initiatives to combat this crime. Initiatives include the allocation of additional resources to Australian agencies to increase their response capabilities, building the capability of regional partners, and greater engagement with both government and non-government agencies in the region. Australia has also maintained a strong presence at 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 process (POD) were implemented 1 March 2011. The process was intended to provide procedural fairness consistent with the High Court judgement of 11 November 2010 that all irregular maritime arrivals 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 there is to be a judicial review, it occurs as early as possible.

The main difference between the RSA process and the POD process is that the independent assessors will be able to commence their assessment sooner and finalise it quicker, due to the new referral processes from the department. This means that a client who is found to be a refugee will be decided earlier.

The new POD process is expected to reduce the time taken to process the claims of asylum seekers.

The Fourth Bali Ministerial Meeting

On 31 March 2011, Bali Process Ministers agreed to a regional cooperation framework that provided practical measures to combat people smuggling in the region. The measures were:

- the development of bilateral arrangements to undermine people smuggling and create disincentives for irregular movement, including where appropriate, transfers, returns and readmissions; and
- the 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 irregular maritime arrivals. This arrangement also formalised Australia's commitment to accept 1000 additional genuine refugees from Malaysia every year for the next four years, increasing Australia's overall annual humanitarian intake to 14 750 places.

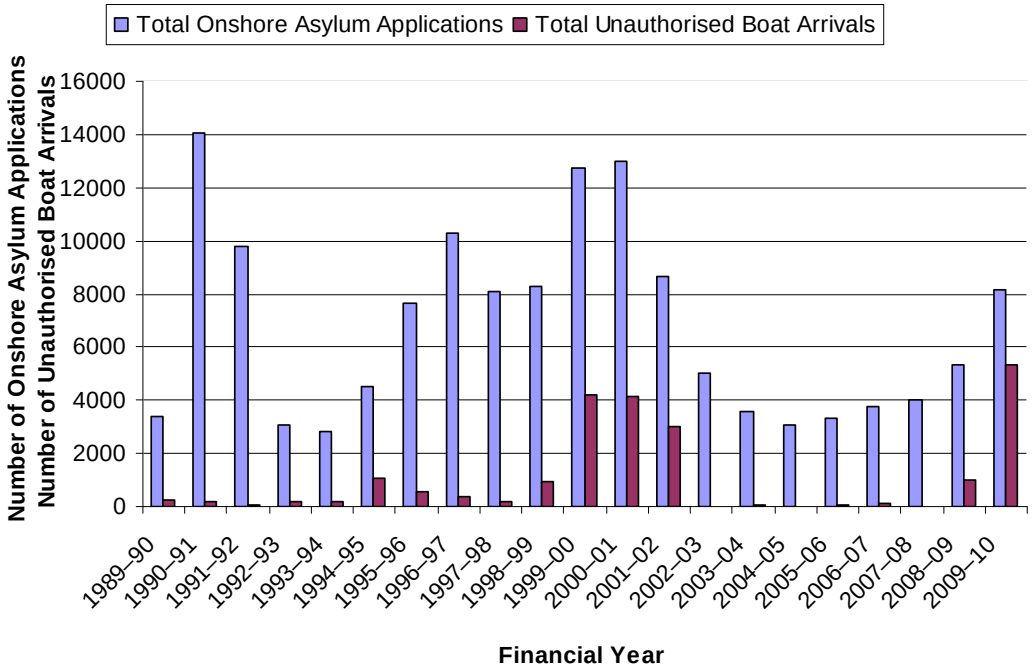
The transfer arrangement between Australia and Malaysia also provides that:

- 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 initially 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

The graph below represents the total number of unauthorised boat arrivals in comparison to the total number of onshore Protection Visa applications lodged for the period 1989-90 to 2009-10. 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 10: Total number of unauthorised boat arrivals and total number of onshore asylum applications 1989 – 90 to 2009-10



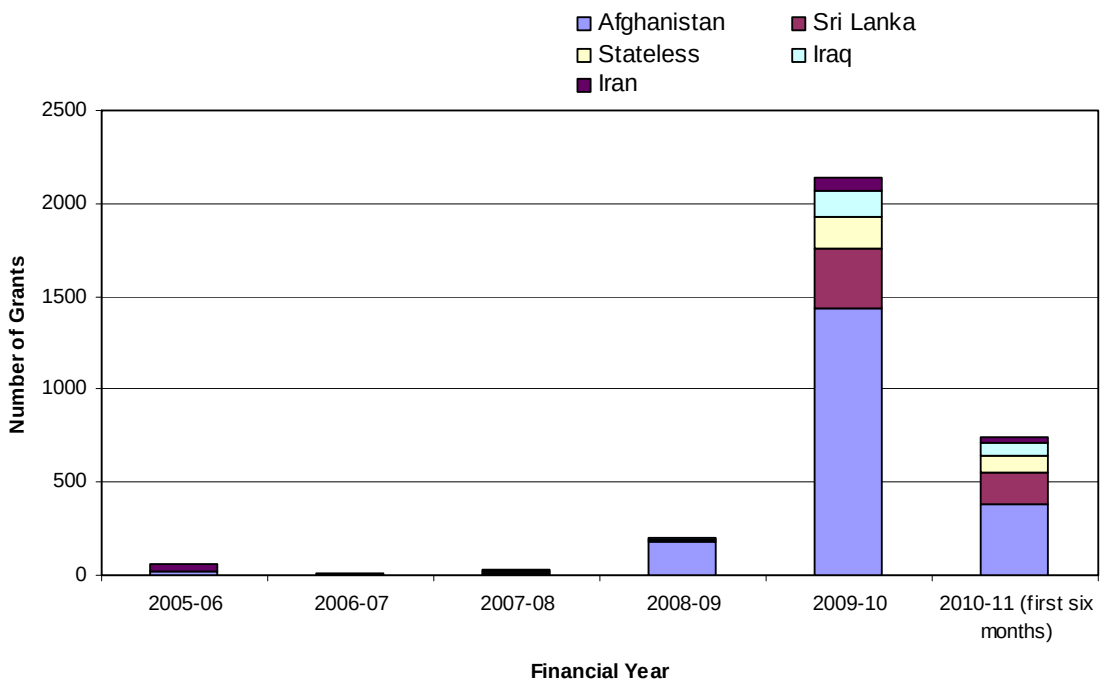
Note: The majority of unauthorised boat arrivals lodge Protection Visa applications. As such, the numbers of boat arrivals represented on the graph are already included in the total application figures.
Source: DIAC Statistics
Parliamentary Background Note Seeking asylum: Australia's humanitarian program[36]

[36] Karlsen, E, Phillips, J and Koleth, E, 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>.

Final Protection Visa Grants 2005-06 to 2010-11

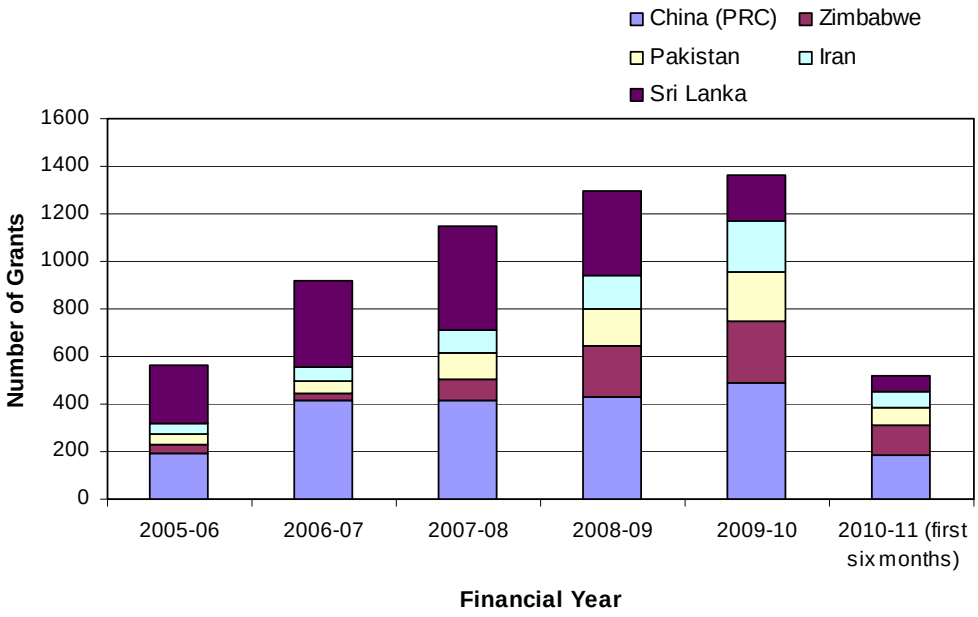
The graphs below represent the overall composition, by country of citizenship, for all persons granted a Protection Visa from 2005-06 through to the first six months of 2011. Figure 10 represents Protection Visa grants for asylum seekers arriving by boat, and Figure 11 represents all Protection Visa grants for air arrivals. It becomes evident, when these figures are combined (Figure 12), that, for the majority of this period, boat arrivals have made up only a small proportion of overall Protection Visa grants.

Figure 11: Number of final Protection Visa Grants by top five countries of citizenship – Boat Arrivals – 2005-06 to 2010-11 (first six months)



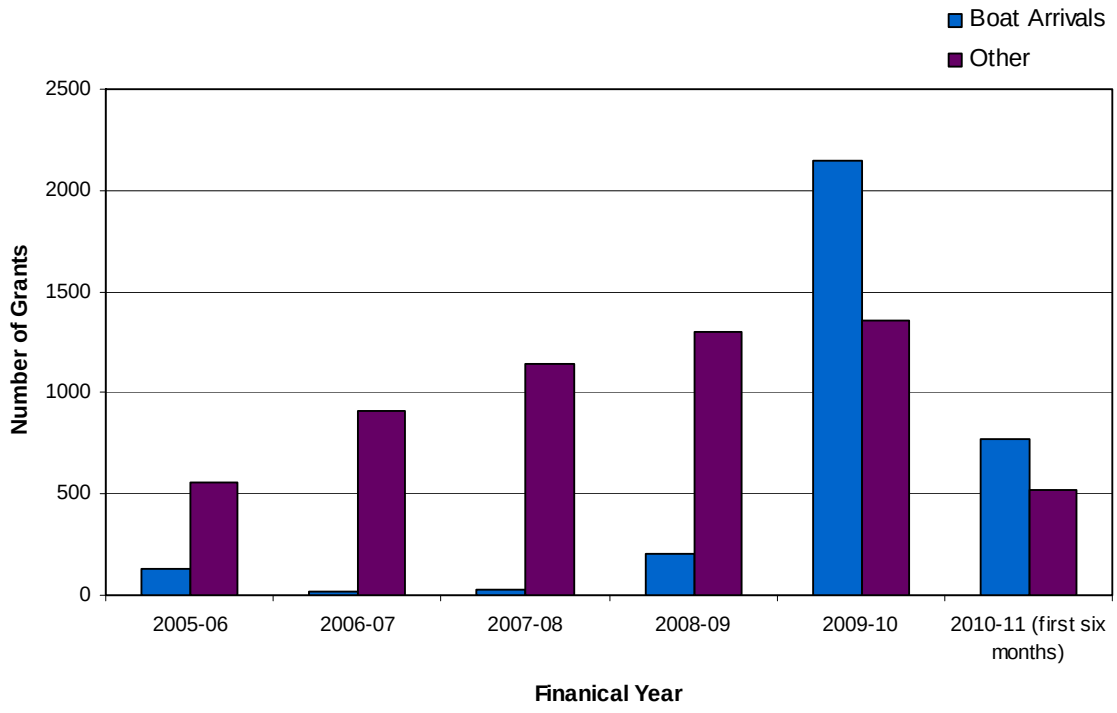
Source: DIAC Statistics

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

Australian Government

Department of Immigration and Citizenship

Evolution of the Australian Legislative Framework and Policy for Immigration Detention

Prepared for the Joint Select Committee on Australia's Immigration Detention Network

August 2011

Executive Summary

Key issues shaping the framework for immigration detention have included the desire to manage successive waves of irregular maritime arrivals since the late 1970s, and to ensure the humane treatment of asylum seekers.

Decades of balancing these competing policy considerations have resulted in a legislative and policy framework that seeks to protect Australia's national interests and better control potential irregular maritime arrivals, while also upholding Australia's international refugee obligations and respecting detainees' human rights.

To achieve these competing policy interests, the legislative framework for detention has become increasingly comprehensive and complex. For instance, there are now several different types of immigration detention designed to meet the needs of diverse client groups.

Introduction

Immigration detention arrangements were enshrined in Australian law well before the first large wave of boat arrivals began in the late 1970s. In response to the rapidly changing global dynamics since this time, immigration detention policies and regulations have undergone many amendments and modifications. This paper overviews the legislative and policy framework for detention and its evolution.

While the fundamental framework for immigration detention is found in the legislation and regulations, many important aspects of the detention network are actually determined by policy. This paper relates some of the key shifts in immigration detention and the respective developments in the legislative and policy framework.[1]

The first part of this paper focuses on the current legislative and policy provisions governing the management of immigration detention. The second part outlines the major reforms pertaining to immigration detention since 1973.

[1] It should also be noted that the immigration detention system has been indirectly influenced by various international instruments, such as the *International Covenant on Civil and Political Rights* and the *1951 Refugee Convention*. However, this paper will limit its focus on Australian legislation and policy.

Current Legislative Framework and Policy

The power to place persons in immigration detention is known as 'administrative detention' and is a function of the executive arm of government as opposed to the judiciary. Consequently, immigration detention must be for the non-punitive purposes of processing an application for entry and removal,[2] and must not go beyond what is reasonably necessary to effect the person's application or deportation.[3] Otherwise, the immigration detention arrangements would infringe the constitutionally vested judicial power of the courts.

The *Migration Act 1958* (hereafter the 'Act') regulates the lawful entry and stay of people in Australia and is the legislative basis upon which people are placed in immigration detention. The following sections outline major aspects of the current legislative and policy framework of immigration detention.

Lawful v Unlawful non-citizens

All persons present in Australia are divided into three categories: citizens, lawful non-citizens, and unlawful non-citizens (UNCs). Only UNCs are subject to immigration detention. A lawful non-citizen holds a valid visa that is in effect,[4] while a UNC is defined as someone who is present in the migration zone but is not lawful.[5] UNCs are further defined according to whether or not they have entered Australia at an excised offshore place.[6]

Excision and Mandatory Detention

An officer[7] *must* detain a person if they know or reasonably suspect that a person that has entered, or is seeking to enter, the migration zone (other than an excised offshore place) is a UNC.[8] This is known as mandatory detention. However, the legislative power to detain persons is discretionary where the location in question is an excised offshore place (e.g. Christmas Island), in which case the officer *may* detain a person.[9]

Someone who enters Australia at an excised offshore place and becomes a UNC because of that entry, is defined as an Offshore Entry Person (OEP).[10] The distinction between OEPs and other UNCs allows for processing based on the circumstances of their arrival and is consistent with legislation. This includes bars on certain legal proceedings relating to OEPs,[11] restrictions on OEPs being able to make valid visa applications,[12]and allowing OEPs to be taken to a third country for processing.[13] In essence, this is the legislative basis for the different treatment of IMAs compared to all other UNCs.

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[2] *Chu Kheng Lim v The Minister for Immigration, Local Government and Ethnic Affairs* [1992] HCA 64, [30] (Brennan, Deane and Dawson JJ). *Al-Katel v Godwin* (2004) 219 CLR 562.

[3] Ibid. [39] (McHugh J).

[4] *Migration Act 1958* (Cth) s 13.

[5] Ibid. s 14.

[6] E.g. see: *Migration Act 1958* (Cth) s 5(1) 'offshore entry person'.

[7] 'Officers' are officers of the Department of Immigration and Citizenship, a person who is an officer for the purposes of the Customs Act 1901 (Cth), a person who is a protective service officer for the purposes of the Australian Federal Police Act 1979 (Cth), member of the Australian Federal Police or of the police force of a Sate or internal Territory, members of the Australian Defence Force, and other persons authorised in writing by the minister to be an officer for the purposes of the Act.

Migration Act 1958 (Cth) ss 5, 189(5).

[8] Ibid. s 189(1-2).

[9] Ibid. s 189(3-4).

[10] Ibid. s 5(1) "offshore entry person".

[11] Ibid. s 494AA.

[12] Ibid. s 46A.

[13] Ibid. s 198A.

Release from detention

A person detained under section 189 of the Act must be kept in immigration detention until they are removed from Australia under sections 198 or 199, deported under section 200, or granted a visa.[14] Moreover, the courts are specifically prohibited from releasing UNCs,[15] unless they determine that specific persons are actually lawful.[16] However, it should be noted that these limitations on release from detention do not mean UNCs will necessarily be required to reside in immigration detention centres (IDCs) for the duration of their detention, as discussed below.

Bridging Visas

Bridging visas (BVs) are temporary non-substantive visas[17] used to make non-citizens lawful, which in effect means they avoid being subject to mandatory detention. Bridging visas may be granted to people during the processing of an application made in Australia, while arrangements are made to leave Australia, and at other times when they do not have a visa but it is not necessary for the person to be kept in immigration detention (e.g. if they are seeking judicial review). The following table outlines a simplified description of different types of bridging visas.[18]

[14] Ibid. s 196.

[15] Ibid. s 196(3).

[16] Ibid. s 196(2).

[17] The Migration Act 1958, at section 5, defines a "substantive visa" as a visa other than: (a) a bridging visa; or (b) a criminal justice visa; or (c) an enforcement visa. A bridging visa provides the holder with lawful status, but holding a bridging visa does not satisfy the criteria for grant of a visa of another class.

[18] For more information about bridging visas see: Department of Immigration and Citizenship (DIAC), *Bridging Visas: Form* 1024i, 2010, viewed 27 July 2011, <http://www.immi.gov.au/allforms/pdf/1024i.pdf>.

Bridging Visa Type	Description
BVA	Generally for applicants who hold or held a substantive visa when they have made a valid application for another substantive visa. Has the same work conditions as the substantive visa the applicant holds
BVB	For applicants who hold a BVA and need to travel overseas during process of substantive visa application. The only BV that allows travel overseas.
BVC	Generally for applicants who do not hold a substantive visa, are not in detention, have not held a BVE since last holding a substantive visa, and have made a valid application for a substantive visa. Usually does not give permission to work.
BVD	For UNCs who have attempted to make a substantive visa application but need more time; OR UNCs unable/unwilling to make a substantive visa application and Compliance staff are unavailable to interview them. Has validity of 5 working days to allow a valid application to be made or to allow the applicant to be interviewed by the department.
BVE	For an applicant who is unlawful; or UNC in criminal detention; or an applicant who has made a valid substantive visa application and last held a BVE; or applicant who is the subject of an initial request for ministerial intervention.
BVF	For UNCs who are identified by the AFP or State or Territory police as suspected victims of people trafficking. Enables a stay of up to 45 days regardless of whether they wish to assist police. A BVF holder has no work rights but has access to intensive support under the Support for Victims of People Trafficking Program.
BVR (/RPBV)	Removal Pending Bridging Visa – For UNCs in immigration detention whose removal from Australia is not reasonably practicable, where the person is cooperative in leaving Australia, and where all visa applications made by the person have been finalised. Gives work rights, access to Centrelink, access to Medicare, access to public school for school-age minors etc.

Immigration services in detention

People who became UNCs due to entering Australia at an excised offshore place are barred from lodging a visa application unless the Minister personally intervenes to allow them to make an application.[19] The rules differ for other detainees, who may apply for a visa within 2 working days of being detained and made aware of laws regarding their right to apply for a visa. After this time period, if the detainee has not expressed an intention to apply for a visa, she or he may only apply for a bridging visa or a protection visa.[20] However, it should be noted that the Minister has a non-compellable and non-delegable power to grant a visa to someone detained under s189 if she or he believes it is in the public interest to do so.[21]

[19] *Migration Act 1958* (Cth) ss 5(1) "offshore entry person" & 46A..

[20] Ibid. s 194-5.

[21] Ibid. s 195A.

While the abovementioned restrictions on applying for visas in immigration detention limit detainees' access to Australia's comprehensive visa and review system, there are also provisions designed to empower detainees to pursue their immigration cases. Persons held in immigration detention must be provided with the following, where requested:

- application forms for a visa;
- facilities for making statutory declarations;
- facilities for obtaining legal advice; and
- facilities for running legal proceedings in relation to their immigration detention.[22]

Furthermore, since the introduction of the 'New Directions in Detention' policy, announced by the government in July 2008, asylum seekers who arrived at excised offshore places receive publicly funded independent advice and assistance, and access to independent merits review of unfavourable refugee status assessment decisions.

Health Care

The management of health services has been contracted to International Health and Medical Services Pty Ltd (IHMS) since 2009. All detainees are provided with an initial health assessment when first entering immigration detention, including a physical examination and mental health screening.

Detainees receive appropriate health care, commensurate with the level of care available to the broader community. People in facility-based detention are generally provided with primary health care services onsite, with referrals made to external providers as required. IHMS provides both the initial health assessment and the onsite primary and mental health medical services. IHMS also coordinates referrals and treatment management where detainees have ongoing medical treatment needs.

Where detainees reside in community detention or immigration residential housing, they are generally provided with health care by community-based health providers.

Upon discharge from detention, persons are provided with a discharge health assessment, which informs future health providers of the detainee's relevant health history, treatment received, and ongoing treatment regimes.

Detention Health Advisory Group

Formed in March 2006, the Detention Health Advisory Group (DeHAG) provides independent expert advice to the department regarding the design, implementation and monitoring of improvements in detention health care. The group is composed of practitioners from key health and mental health professional and consumer groups, such as the Australian Medical Association and the Public Health Association of Australia.

To facilitate its work, DeHAG has been supported by two sub-groups working on issues pertaining to mental health and infectious disease management.

[22] Ibid. s 256.

Character Requirement

Where someone fails the character test, the visa decision maker is given discretion to decide to refuse a visa or cancel a visa held by that person.[23] Recent amendments to the Act have introduced a rule that where detainees have been convicted of an offence in immigration detention, such as escaping from immigration detention, they will automatically fail the character test. The purpose of these provisions is to create a major disincentive for criminal behaviour by people in immigration detention.[24]

Immigration Detention Facilities

The Act gives the Minister power to cause detention centres to be established and maintained, and to make regulations in relation to the operation and regulation of these detention centres.[25]

IDCs primarily accommodate people who have overstayed their visa, breached their visa conditions and had their visa cancelled, or have been refused entry at Australia's entry ports. The management of IDCs has been contracted to Serco Australia Pty Ltd, with the department monitoring performance standards such as the interaction and well-being of people in detention, programs and activities, catering, transport, reception, cleaning, reporting of incidents, and complaint handling.

However, the department does not exclusively employ IDCs to house detainees, but uses a number of immigration detention programs to provide flexibility in the provision of services tailored to detainees' circumstances. These arrangements include community detention, immigration residential housing, immigration transit accommodation and foster care arrangements (for unaccompanied minors). The alternative immigration detention programs are outlined below.

Community Detention

Where the Minister believes it is in the public interest to do so, she or he may determine that detainees are to reside at a specified place instead of being detained under ordinary immigration detention arrangements.[26] This is known as a 'residence determination.' This ministerial power is non-delegable and non-compellable,[27] although detainees can make a request to the department to consider whether their case should be referred to the Minister for placement in community detention.

In practice, residence determinations allow people to be moved into community detention, where they reside and move about freely in the community without needing to be accompanied or restrained by an officer. Community detention is subject to a number of conditions, such as reporting regularly to the department (or community detention service provider), and residing at the address specified by the Minister.

The department employs non-government organisations (NGOs) to ensure people placed in community detention are appropriately supported. NGOs are funded by the department to source appropriate housing, provide payment of living expenses, to ensure access to relevant health and community services, and to ensure social support networks are provided.

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[23] *Migration Act 1958* (Cth) s 501.

[24] Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011 [Provisions]*, 2011, viewed 27 July 2011, <http://www.aph.gov.au/senate/committee/legcon_ctte/migration_strengthening/report/report.pdf>.

[25] *Migration Act 1958* (Cth) s 273.

[26] Ibid. s 197AB.

[27] Ibid. ss 197AE & 197AF.

It should be noted here that since 2005 the Act has affirmed the principle that a minor should only be detained as a measure of last resort.[28] The residence determination arrangements were significantly expanded in late 2010, to allow for unaccompanied minors and vulnerable families to be moved into community-based accommodation. Following this announcement, between 18 October 2010 and 27 July 2011, 1504 individuals were transferred into community detention, including 486 accompanied children and 249 unaccompanied minors.

Alternative Places of Detention

Pursuant to the Act, the Minister has given written authorisation for a number of alternative places of detention (APODs).[29] Once approved, people are placed in APODs when a departmental officer assesses it as the most appropriate placement within the immigration detention network. This assessment takes into account a person's individual circumstances, including their health and wellbeing, family structure, availability of community support, immigration pathway, cultural and religious sensitivities, availability of detention accommodation, and an assessment of their security and flight risk. Placement processes differ from community detention in that, once the Minister has approved an APOD, a departmental officer may place people there without needing to obtain the Minister's personal approval for each client.

Immigration Transit Accommodation

Immigration transit accommodation was introduced for short-term, low flight risk people. It offers hostel-style accommodation with central dining areas and semi-independent living arrangements. Immigration transit accommodation provides 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 client group.

Immigration Residential Housing

Immigration residential housing is a less institutional, more domestic and independent environment for low flight and security risk people in detention, particularly families with children. It provides housing within a community setting, allowing detainees to lead a more self-sufficient lifestyle and to take supervised trips to town or other locations for recreation and shopping.

Eligibility criteria for placement in immigration residential housing includes:

- satisfactory completion of identity and health checks;
- being a low flight risk (following a security risk assessment); and
- operational issues particular to the person in detention and to the effective management of the housing.

Other types of APODs

Under policy, places should be authorised as APODs if a detainee:

- is present in immigration detention there overnight or longer; and
- spends part of their day there and it is not appropriate or possible for them to be accompanied at all times.

This may include hospitals, hotels, home-based care using private accommodation owned or leased by relatives, community-based care by NGOs, schools, medical facilities used for day procedures, and places of religious or social interaction.

[28] Ibid. s 4AA.

[29] Ibid. s 5(1) "immigration detention" (b)(v).

New Directions in Detention

In July 2008, the then Minister for Immigration and Citizenship announced seven key immigration detention values, which are now incorporated in the department's policies governing detention.[30] The values are as follows:

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.*

Based on these detention values, the department has identified three key service delivery values for the community and immigration detention services environment: respect for human dignity, fair and reasonable treatment within the law, and appropriate services.

Implementation of detention values

In addition to providing free immigration advice and assistance, and access to independent merits review of refugee status assessments, the New Directions in Detention measures provided for increased external scrutiny by the Commonwealth and Immigration Ombudsman. The measures build on strengthened procedural guidance for the department's officers conducting refugee status assessments, seeking to ensure that all IMAs have their asylum claims assessed as expeditiously as possible.

External Scrutiny

Immigration detention is subject to regular scrutiny from various agencies, which assists the department in improving the management of IDCs and related services. This supports the department's efforts to ensure people are treated humanely, decently and fairly. This scrutiny is provided by agencies such as the Australian Human Rights Commissioner, the Commonwealth Ombudsman, the United Nations High Commissioner for Refugees, and the Council for Immigration Services and Status Resolution. As noted above, DeHAG also provides advice to the department on general health and mental health matters related to immigration detention.

[30] Minister for Immigration and Citizenship, Senator the Hon. Chris Evans, '*New Directions in Detention – Restoring Integrity to Australia's Immigration System*' (Speech delivered at Australian National University, Canberra, 29 July 2008).

Council for Immigration Services and Status Resolution

CISSR was formed in September 2009 to provide 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. It consists of 11 prominent and respected Australians with expertise and demonstrated commitments to immigration and humanitarian issues.

Among other tasks, CISSR identifies priority issues to be addressed and responds to specific issues identified as a priority by the Minister. It provides advice to the Minister on a variety of matters including:

- Policies, services and programs designed to support the timely resolution of immigration status outcomes;
- The appropriateness and adequacy of services available to assist people whose immigration status is unresolved;
- Detention matters including, but not limited to, the suitability of facilities, accommodation and service arrangements.

Other Detention Provisions

With the increasing sophistication of legislation relating to immigration detention, many other aspects of detention have been legislated for. See Appendix A for a list of key detention related provisions in the Act.

Historical development of the Legislative Framework for Detention

Immigration to Australia has been restricted since colonial times, with early legislation providing for the imprisonment of persons contravening certain provisions of immigration law.[31] Similarly, the first piece of Commonwealth immigration legislation enacted in 1901 provided for the imprisonment of 'prohibited immigrants'.[32] Under these early acts the nature of immigration detention was judicial and punitive, rather than administrative. The judiciary was required to convict a person of an immigration offence in order for them to be imprisoned.

By 1973 the immigration detention arrangements had developed into procedures that primarily resembled administrative detention, as opposed to judicial detention. The following sections outline the evolution of the legislative framework for detention since 1973.

1973 – Legislative framework for immigration detention

By contrast to the comprehensive system of legislative provisions governing immigration detention summarised in the first part of this paper, the Act as it read in 1973 was very simplistic. The law consisted of only a few provisions dealing with immigration detention.

The Act stated that if an officer 'reasonably supposes' a person to be a 'prohibited immigrant', then that officer could detain that person without warrant and bring them before a prescribed authority within 48 hours.[33] A 'prohibited immigrant' was anyone who entered Australia and did not have a valid entry permit.[34] A 'prescribed authority' had to be a former judge, or an experienced barrister or solicitor.[35] It is interesting to note that the detention of UNCs in 1973 amounted to administrative detention in that it did not require a conviction, but it still relied on the determinations of persons involved in the judicial arm of government if the detention was to extend beyond 48 hours.

The prescribed authority determined whether there were reasonable grounds for supposing that the person is a prohibited immigrant and, if so, ordered their continued detention.[36] The maximum prescribed period for which detention could be authorised at any one time was seven days, although this period could be extended as required.[37] 'Prohibited immigrants' were to be kept in custody until their status had been regularised or, if they had been the subject of an order for deportation, until they were deported.[38]

Other legislative sections pertaining to detention

There were few other sections governing immigration detention. However, some issues that were legislated for were the questioning of detainees,[39] the provision of reasonable facilities to obtain legal advice and conduct legal proceedings,[40] and authority for officers to do all things reasonably necessary to facilitate the detainees' present or future identification.[41]

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[31] E.g. see: *Chinese Immigration Act 1855* (Vic) s IX.

[32] *Immigration Restriction Act 1901* (Cth) s 7.

[33] *Migration Act 1958-73* (Cth) s 38(1-2), as amended by *Migration Act 1973* (Cth).

[34] Ibid. s 6.

[35] For detailed criteria see: *Ibid* s 40.

[36] Ibid. s 38(3).

[37] Ibid. s 38 (3-4).

[38] Ibid. s 39.

[39] Ibid. s 42.

[40] Ibid. s 41.

[41] Ibid. s 43.

1980 – Response to Vietnamese asylum seekers

Following a wave of unauthorised boat arrivals from Vietnam in the late 1970s, the *Immigration (Unauthorised Arrivals) Act 1980* was passed as a temporary measure to address challenges relating to this influx of people. The Act received assent on 8 September 1980.

In introducing this legislation, the then Minister for Immigration and Ethnic Affairs, stated that these measures were primarily directed at deterring those profiting and facilitating people smuggling to Australia, rather than the passengers themselves. In particular, he noted concern about the Vietnamese Government condoning the organised departure of its people to Australia. [42] This legislation imposed penalties of up to 10 years imprisonment and fines of up to $100,000 for the master and crew members of ships and aircraft that illegally brought people to Australia.[43]

Nevertheless, the measure did contain provisions applying specifically to passengers who were not authorised to be in Australia. Notably, the rules regarding the detention of unlawful passengers did not contain the seven day limit set out in the *Migration Act,* but rather allowed for an indefinite period of detention. A person could only be released once they were conveyed from Australia, granted an entry permit, or the Minister determined that the *Migration Act* provisions should apply instead.[44]

This legislation ceased to be in effect from 30 September 1983, after it was decided the validity period would not be renewed. The first wave of IMAs had ended in 1981.

1989-91 – Mandatory deportation and legislative enhancements

In 1988, the Committee to Advise on Australia's Immigration Policies released its report on Australia's immigration program.[45] In response to this and other reports, the government passed the *Migration Legislation Amendment Act 1989*, which received assent on 19 June 1989. The then Minister for Immigration, Local Government and Ethnic Affairs stated that these amendments were 'tough' measures designed to 'curb abuse of the immigration program by people seeking to come to Australia illegally'.[46]

The amendments included the mandatory deportation of UNCs after a period of grace,[47] which was 28 days from the day when the person became an 'illegal entrant'.[48] Furthermore, the costs of such deportations and the costs of keeping the deportee in detention would be raised against the deportee as a debt due to the Commonwealth.[49] A visa could not be granted to a person who had an outstanding debt to the Commonwealth due to the costs of their deportation.[50]

The penalty for someone who became an illegal entrant (e.g. because their entry permit expired) was increased to a maximum $5000 fine and/or a maximum 2 years imprisonment.[51] Other punitive aspects of the Act were also made more severe. For example, sureties for bail were increased from $2,000 to $20,000.[52]

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[42] Commonwealth, *Parliamentary Debates,* House of Representatives, 1 May 1980, 2517 (Minister for Immigration and Ethnic Affairs, the Hon. Ian Macphee MP).

[43] *Immigration (Unauthorised Arrivals) Act 1980* (Cth) s6, (ceased).

[44] Ibid. s 12(3).

[45] Committee to Advise on Australia's Immigration Policies, Parliament of Australia, *Immigration: A Commitment to Australia,* Australian Government, Canberra, 1988.

[46] Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray, 'Minister Ray Hails Start of a New Era in Immigration' (Press Release, 18 December 1989) 2, MPS 88/89.

[47] *Migration Legislation Amendment Act 1989* (Cth) s 8.

[48] Ibid. s 5.

[49] Ibid. s 12.

[50] Ibid. s 6.

[51] Ibid. s 14.

[52] Ibid.

Other reforms

A key purpose of these amendments was to put in place a more rigid structure for making immigration decisions by curbing discretionary powers in the Act.[53]

Together with the *Migration Regulations,* these amendments provided a legal entitlement to be granted a visa where a person satisfied all of the prescribed criteria for that visa.[54] This provided a more transparent and certain system for granting visas.

The amendments also sought to improve the independence of the review system.[55] They created a two tier system for merits review of immigration decision, including the creation of the independent Migration Review Tribunal (MRT).[56] However, the Minister was able to prevent a decision being reviewed in certain situations, such as where changing the decision would prejudice the security, defence or international relations of Australia.[57] The Minister could also set aside the MRT's decision where a decision more favourable to the applicant would be in the public interest.[58]

Finally, it is also noteworthy that the department's Procedures Advice Manual (PAM) was created in conjunction with these amendments.[59] The PAM contains detailed operating and policy instructions that assist in administering the detention network and other aspects of the Act.

Migration Amendment Act 1991

The *Migration Amendment Act 1991*, receiving assent on 26 June 1991, sought to address the complex processing needs of unauthorised arrivals, particularly IMAs.[60] Where someone sought to enter Australia and an authorised officer reasonably believed they would become an illegal entrant, and where it was impracticable to decide whether to grant them an entry permit immediately, they could be taken to a designated processing area.[61] Although people could be prevented from leaving processing areas, such people were not deemed to be in custody while being held at the processing area.

The amendments also allowed deportees to voluntarily depart sooner than required,[62] which was designed to minimise their liability for custody costs.[63] Finally, these amendments sought to enhance merits review by increasing the time limits for appealing immigration decisions.

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[53] Commonwealth, *Parliamentary Debates,* Senate, 5 April 1989, 922 (Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray).

[54] *Migration Legislation Amendment Act 1989* (Cth) s 6.

[55] Commonwealth, *Parliamentary Debates,* Senate, 5 April 1989, 922 (Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray).

[56] *Migration Legislation Amendment Act 1989* (Cth) s 26.

[57] Ibid. s 25.

[58] Ibid.

[59] Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray, 'Minister Ray Hails Start of a New Era in Immigration' (Press Release, 18 December 1989) 8, MPS 88/89.

[60] Commonwealth, *Parliamentary Debates,* House of Representatives, 17 April 1991, 2846 (Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray).

[61] *Migration Amendment Act 1991* (Cth) s 14.

[62] Ibid. ss 15-16.

[63] Commonwealth, *Parliamentary Debates,* House of Representatives, 17 April 1991, 2846 (Minister for Immigration, Local Government and Ethnic Affairs, Senator the Hon. Robert Ray).

1992-94 – Mandatory detention and other reforms

The *Migration Amendment Act 1992* was assented to and came into effect on 6 May 1992. It introduced mandatory detention for 'designated persons', who were defined as non-citizens without a visa who had arrived by boat since 19 November 1989. It only allowed for their release from detention if they were removed from Australia or granted a valid entry permit.[64] Section 54R of the amended Act specifically prohibited the release from custody of such people by a court.[65] It should be noted that the discretionary basis for detaining other illegal entrants and deportees continued.[66]

In his second reading speech for the bill to introduce mandatory detention, the then Minister for Immigration, Local Government and Ethnic Affairs stated that mandatory detention would avoid applicants seeking to delay the processing of their refugee applications, and that it would send a clear signal 'that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community'.[67] The policy of mandatory detention was espoused as an 'interim measure' to address the possibility of large numbers of unauthorised boat arrivals and to help maintain tighter control over migration.[68]

There were limits to the length of detention allowed under the mandatory detention laws. The Minister stated that while the government had no intention to keep people in custody indefinitely, the release of 'boat people' into the community would 'undermine the government's strategy for determining their refugee status or entry claims'.[69] The mandatory detention provision did not apply where a designated person had been detained for a continuous period of 273days,[70] although this time limit could be extended in certain circumstances.

Broadening Scope of Mandatory Detention

On 7 December 1992 the Australian Parliament assented to major reforms to the immigration system in the form of the *Migration Reform Act 1992*. This act took effect on 1 September 1994. It broadened the scope of mandatory detention to include all 'unlawful non-citizens', instead of just 'designated persons' who arrived by boat.[71]

The reforms also introduced bridging visas, which could be granted to keep someone lawful until a substantive visa application was decided.[72] In practice most over-stayers who apply for protection or visas are usually given lawful status through bridging visas and are not held in detention while their claims were assessed.[73] The rationale for this differing treatment is that over-stayers, as opposed to IMAs, have been through the identity, health and character checks required for entering Australia.[74]

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[64] *Migration Amendment Act 1992* (Cth) s 3.

[65] Ibid.

[66] Department of Immigration and Citizenship, Submission to Joint Standing Committee on Migration: Inquiry into Immigration Detention in Australia, 2008, p. 39, <http://www.aph.gov.au/house/committee/mig/detention/subs/sub129.pdf>.

[67] Commonwealth, *Parliamentary Debates,* House of Representatives, 5 May 1992, 2370 (Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP).

[68] Ibid.

[69] Ibid.

[70] *Migration Amendment Act 1992* (Cth) s 3.

[71] *Migration Reform Act 1992* (Cth) s 13.

[72] Ibid. ss 10 & 13.

[73] 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>.

[74] Ibid.

When originally introduced into legislation, the definition of a 'designated person' to whom mandatory detention applied was a person who had been in the territorial sea of Australia after 19 November 1989 and before 1 December 1992.[75] This reflected the temporary nature of mandatory detention. However, the dates applying to 'designated persons' were extended through two further amendments so that they applied to all such people in Australia's territorial seas up to 1 September 1994.[76] From this date onwards, those who would have been defined as 'designated persons' albeit for the time limit of 1 September 1994, would be detained under the broadened mandatory detention provisions as discussed above.

'Unlawful non-citizens'

Prior to 1992, legislative provisions enabling detention were mainly focused on the mode of entry.[77] However, the 1992 amendments introduced the criteria of detaining people who were in Australia, not a citizen, and did not hold a valid entry permit or a properly endorsed visa.[78] The *Migration Reform Act 1992* further reformed this criteria by eliminating the distinction between border arrivals, illegal entrants and deportees, and replacing them with UNCs.[79]

Security Arrangements

Before 1993, unauthorised boat arrivals were detained in unfenced migrant centres that they were not allowed to leave and where they had to report for a roll call daily.[80] In a 1994 inquiry into immigration detention it was reported that a total of 57 IMAs escaped from detention between November 1989 and October 1993.[81] This was a small proportion of the total detainee population. In the financial year 1992-1993 alone, a total of 3757 people were admitted to immigration detention centres. The security arrangements of IDCs were subsequently upgraded.[82]

Regulation changes

In 1992 the government incorporated refugee determinations into the Migration Regulations and set binding time limits for various aspects of the refugee determination process.[83] According to the then Minister for Immigration, Local Government and Ethnic Affairs the intent of these changes was to reduce the trauma of people in detention, reduce the cost to taxpayers and to ensure that asylum claimants could 'no longer routinely anticipate extended stay (sic) because of processing delays'.[84]

In 1994 the Migration Regulations were further amended to allow for the release of detained IMAs aged under 18, in certain limited situations.[85] Regulations were also made to allow the release of certain detainees on compassionate grounds (e.g. poor health).[86] However, few people were actually released under these two initiatives.[87]

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[75] *Migration Amendment Act 1992* (Cth) s 3.

[76] *Migration Amendment Act (No.4) 1992* (Cth) s 3; *Migration Laws Amendment Act 1993* (Cth) s 18.

[77] E.g. see: *Migration Act 1958-73* (Cth) s 6, as amended by *Migration Act 1973* (Cth); Millbank, *The Detention of Boat People,* op. cit.

[78] *Migration Amendment Act (No.2) 1992* (Cth) s 5.

[79] *Migration Reform Act 1992* (Cth); DIAC submission to JSCM, Inquiry into immigration detention in Australia', op. cit., p. 39.

[80] Millbank, *The Detention of Boat People*, op. cit.

[81] Joint Standing Committee on Migration, Parliament of Australia, *Asylum, Border Control and Detention*, Australian Government, Canberra, 1994, p. 30.

[82] Millbank, *The Detention of Boat People,* op. cit.

[83] *Migration (1993) Regulations 1992* (Cth).

[84] Minister for Immigration, Local Government and Ethnic Affairs, the Hon. Gerry Hand MP, 'New Measures to Improve On-shore Refugee Processing System' (Press Release, 12 February 1992) MPS 12/92.

[85] *Migration Regulations (Amendment) 1994* (Cth).

[86] Ibid.

[87] Millbank, *The Detention of Boat People,* op. cit.

1997 – The competitive tendering of detention services

Until 1997, the security at Australia's immigration detention facilities was managed on behalf of the department by the Australian Protective Service, a Commonwealth Government agency. In November 1997, as a result of a decision to open the provision of immigration detention services to competitive tendering, the government outsourced the management of IDCs to Australian Correctional Services (ACS) Pty Ltd, a subsidiary of the US-based Wackenhut Corrections Corporation.[88] ACS would take responsibility for the guarding, catering, health, welfare, education and transportation of detainees at the Villawood Immigration Detention Centre.[89] Subsequent tendering and contractual processes have occurred since this time. Serco is the current provider.

2001 – The *MV Tampa*, 'Pacific Solution' and other key reforms

Much of the modern legislative framework for immigration detention was established through a series of significant amendments responding to various immigration challenges faced in 2001.

Security Incidents at Detention Centres

In 2001, the then Minister referred to violence at the Woomera, Curtin and Port Hedland Immigration Reception and Processing Centres when announcing new measures to boost security in IDCs.[90] These new measures received assent on 18 July 2001 and included amendments to the Act that:

- made it an offence for a detainee to manufacture, possess, use or distribute a weapon;
- increased the penalty for escape from an IDC; and
- introduced new security measures for visitors.[91]

These security arrangements were further enhanced following the *MV Tampa* incident (outlined below). Amendments to the Act received assent on 17 September 2001 and inserted provisions into the Act that legislatively governed officers' powers to screen detainees, conduct strip searches, and retain certain things obtained through screening or strip searching.[92]

***MV Tampa* incident**

In August 2001 the Norwegian freighter ship *MV Tampa* rescued over 400 asylum seekers and brought them into Australia's territorial waters, off the coast of Christmas Island. This incident caused much public controversy and sparked a set of further amendments to the Act.[93]

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[88] Ibid.

[89] Department of Immigration and Multicultural Affairs, 'Company Takes up Responsibility for Immigration Detention Centre (Press Release, 14 November 1997).

[90] Minister for Immigration and Multicultural Affairs, the Hon. Phillip Ruddock MP 'New Measures to Ensure Safety of Detainees' (Press Release, 29 June 2001) MPS 083/2001.

[91] *Migration Legislation Amendment (Immigration Detainees) Act 2001* (Cth).

[92] Ibid.

[93] Phillips, J and Millbank, A, Parliamentary Library, 'Protecting Australia's Borders', *Research Note no. 22: 2003*-04, 2003, viewed 30 June 2011, <http://www.aph.gov.au/library/pubs/rn/2003-04/04rn22.htm>.

The 'Pacific Solution'

In September 2001, as part of the response to the Tampa incident, the government passed amendments that allowed for offshore processing of certain UNCs. 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.[94] In effect, this allowed IMAs to be processed on Nauru and Manus Island, in what was commonly referred to as the 'Pacific Solution'. The asylum seekers who arrived on the Tampa a month earlier were taken to Nauru for processing.[95] Both the Manus Island and Nauru facilities were managed by the International Organization for Migration (IOM).[96]

Excision and Offshore Entry Persons

The Act was amended to create two classes of UNCs based on where they entered Australia. Certain areas were classed as 'excised offshore places', including Christmas Island, the Cocos (Keeling) Islands, Ashmore and Cartier Islands and any Australian sea or resource installations.[97] People who became UNCs due to entering Australia at an excised offshore place were defined as Offshore Entry Persons (OEPs).[98] While OEP is the legislatively defined term, such people are more commonly referred to as IMAs.

Based on this distinction between different types of UNCs, OEPs faced a number of disadvantages. The Act prevented OEPs from lodging a valid visa application. While the Minister could lift this bar on making visa applications where she or he deemed it was in the public interest to do so,[99] in effect, these new provisions significantly reduced IMAs' access to Australia's visa application and review system. It is interesting to note that the amendments also removed mandatory detention for OEPs and replaced it with discretionary detention.[100] However, in practice OEPs continued to be detained.

Limiting Judicial Review

In a related move, the government introduced a privative clause that sought to limit review rights for many immigration decisions.[101] 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.[102]

2005 – Enhanced flexibility and transparency of detention

In 2005, the government introduced a number of reforms that sought to provide greater flexibility and transparency in the administration of immigration detention. The amendments made three noteworthy additions to the Act. First, they inserted a section that affirmed the principle that minors should only be detained as a 'measure of last resort'.[103]

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[94] *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cth).

[95] Phillips and Millbank, *Protecting Australia's Borders,* op. cit.

[96] Ibid.

[97] *Migration Amendment (Excisions from Migration Zone) Act 2001* (Cth) Sch 1.

[98] Ibid.

[99] Ibid.

[100] *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cth) Sch 1.

[101] *Migration Legislation Amendment (Judicial Review) Act 2001* (Cth).

[102] *Plaintiff S157/2002 v Commonwealth* [2003] HCA 2, [30] (Gaudron, McHugh, Gummow, Kirby and Hayne JJ).

[103] *Migration Amendment (Detention Arrangements) Act 2005* (Cth).

Second, they introduced two new non-compellable and non-delegable powers for the Minister. These powers allowed the Minister to specify alternative detention arrangements for a particular detainee or grant a visa to a person in immigration detention.[104] In practice, specifying an alternative detention arrangement would mean that families with children in detention could be placed in the community, under community detention arrangements.[105]

Third, the amendments mandated regular reporting by the department to the Commonwealth Ombudsman. The department was to report on a six monthly basis on people who had been detained for two years or more. The Ombudsman would provide an assessment and recommendation relating to these people to the Minister, who would then table the report in Parliament.[106] The department reviews these reports and, where appropriate, implements the recommendations made by the Ombudsman.

2005 Reforms to Regulations

In 2005, the Migration Regulations were amended to create the 'Removal Pending Bridging Visa', which could only be applied for after receiving an invitation in writing from the Minister. This was a temporary visa that, in effect, allowed people to be released from detention if they were cooperative with efforts to remove them from Australia but where their removal was not practicable at the time.[107]

Recent developments & 'New Directions in Detention'

The Rudd government's policies on immigration detention were progressively implemented after the 2007 election. These policies included discontinuing the processing of asylum seekers on Nauru and Manus Island. By February 2008 the last asylum seekers on Nauru arrived in Australia, ending the 'Pacific Solution' that had been implemented by the previous government seven years earlier.[108]

New Directions in Detention

While the legislative framework for detention was mostly left in place, the government's 'New Directions in Detention' policy, announced in July 2008, created a distinct shift in the approach to immigration detention and promoted a set of detention values and associated procedural reforms.[109]

In practice, this policy shift meant that a risk-based approach was taken in deciding whether persons were placed in IDCs. Furthermore, the government funded various enhancements to processing arrangements, such as the provision of free immigration advice to detainees and more frequent Commonwealth Ombudsman reviews.[110]

Amendments to the Act and Regulations

In 2008 the regulations were amended to abolish temporary protection visas.[111] This change effectively meant that people granted refugee status would not have to apply for another protection visa after their initial temporary protection visa expired. The 2008 amendments also lifted other restrictions on who could be granted a protection visa, such as the '7 day rule'.[112]

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[104] Ibid.

[105] Prime Minister, the Hon. John Howard MP, 'Immigration Detention' (Press Release, 17 June 2005).

[106] *Migration Amendment (Detention Arrangements) Act 2005* (Cth).

[107] *Migration Amendment Regulations 2005 (No. 2)* (Cth).

[108] Ibid.

[109] Senator the Hon. Chris Evans, *New Directions in Detention* (speech), op. cit.

[110] Minister for Immigration and Citizenship, Senator the Hon. Chris Evans 'Budget 2009-10 – New Directions in Detention' (Press Release, 12 May 2009); Karlsen, E, Parliamentary Library, 'Developments in Australian Refugee law and policy 2007-10: Labor's first term in office', *Background Note*, 2010, viewed 30 June 2011, <http://www.aph.gov.au/library/pubs/BN/law/RefugeeLaw.htm#_ftn74>.

[111] *Migration Amendment Regulations 2008 (No.5)* (Cth).

[112] The '7 day rule' referred to a law whereby asylum seekers who had resided for 7 days or more in a country where they could have obtained effective protection since leaving their home country, could not be granted a protection or humanitarian visa. Minister for Immigration and Citizenship, *Explanatory Statement: Migration Amendment Regulations 2008 (No. 5)*, Australian Government, Canberra, 2008.

In 2009, the Migration Act was amended to extinguish, subject to certain conditions, outstanding detention debts and to abolish debts arising from detention for certain persons who were being held in immigration detention.[113]

In June 2009, the Department of Immigration and Citizenship signed a contract with Serco, a private company, to manage and operate all immigration detention centres in Australia, including alternative places of detention like those on Christmas Island.[114]

This was soon followed by a contract signed in December 2009 for Serco to manage immigration residential housing and immigration transit accommodation.[115]

Migration Amendment (Immigration Detention Reform) Bill 2009

The government's detention values, as part of the 'New Directions in Detention' policy, were drafted into a bill to amend the Act in 2009.[116] However, this bill lapsed at the end of Parliament in September 2010 and the government has not re-introduced the bill since its election in 2010.

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

These amendments received assent on 25 July 2011. They strengthened the character provisions by providing that where detainees have been convicted of an offence in immigration detention they will automatically fail the character test.[117] In effect, this provides additional grounds on which a visa can be refused where immigration detainees have engaged in criminal conduct. The amendments also increased the maximum penalty for immigration detainees who are convicted of manufacturing, possessing or distributing weapons to 5 years imprisonment.[118]

The aim of these amendments is to create bigger disincentives for detainees to engage in criminal behaviour.[119] They were designed, at least in part, in response to the recent criminal damage and riots at the Christmas Island and Villawood Detention Centres.

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[113] *Migration Amendment (Abolishing Detention Debt) Act 2009* (Cth).

[114] Department of Immigration and Citizenship, 'Immigration Detention Services Contract Signed' (Press Release, 29 June 2009).

[115] Department of Immigration and Citizenship, 'Serco Contract Signed' (Press Release, 11 December 2009).

[116] Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Migration Amendment (Immigration Detention Reform) Bill 2009*, Australian Government, Canberra, 2009, p. 1.

[117] *Migration Amendment (Strengthening the Character Test and Other Provisions) Act 2011* (Cth) Sch 1.

[118] Ibid.

[119] Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011 [Provisions]*, 2011, p. 1, viewed 27 July 2011, <http://www.aph.gov.au/senate/committee/legcon_ctte/migration_strengthening/report/report.pdf>.

Appendix A – Table of detention related powers

It should be noted that the table below is not a complete list of provisions relating to detention. There are other provisions relevant to immigration detention not listed below.

The provisions below are paraphrased. For precise wording, see the relevant provisions of the Act and Regulations.

Key detention related provision in the Migration Act[120]

Section	Description
4AA	The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort
5(1)	Defines the meaning of the terms to detain, detainee, excised offshore place, excision time, immigration detention, migration zone, officer, authorised officer, offshore entry person, remove and transitory person
13	Definition of lawful non-citizen
14	Definition of unlawful non-citizen
72(1)(c)	Minister has the power to determine that a protection visa applicant held in detention for in excess of 6 months is an eligible non-citizen who can apply for a Bridging E visa. See DSM Chapter 3 - Entering & leaving detention - Protection visa applicants in immigration detention: ministerial powers to allow BVE applications under section 72(1)(c)
189	Provides authority for officers of the department to detain UNCs. (for more information refer to section 5 Mandatory detention under s189(1))
193	Provides that the requirements of s194 (detainee to be told of consequences of detention) and s195 (Detainee may apply for visa) do not apply to a person detained under s189(1) in a number of circumstances
194	Provides that officers of the department must ensure that a person detained under s189 is made aware of the provisions of s195 (a detainee may apply for visa) and s196 (duration of detention), and if a visa held by the person has been cancelled under s137J, the provisions of s137K (applying for revocation of cancellation)
195(1)	A person in detention may apply for a visa within 2 working days
195(2)	After expiry of the periods allowed for by s195(1), a detainee may apply only for a bridging visa or protection visa
195A	The Minister personally may grant any visa to a person who is in detention under s189 whether or not an application has been made
196	A UNC detained under s189 (detention of UNCs) must be kept in immigration detention until they are: removed from Australia under s198 (removal from Australia of UNCs) or s199 (dependants of removed non-citizens), deported under s200 (deportation of certain non-citizens), or granted a visa
196(2)	A court may order the release of a person it finds to be a lawful non-citizen

[120] Department of Immigration and Citizenship, *Procedures Advice Manual (PAM3) – Migration Act – Detention Services Manual – Chapter 1 – Legislative and principles overview – section 10.1* (1 July 2011).

196(3)	A court may not order the release of a UNC
197	A person who escapes from immigration detention and who is taken back into detention is taken never to have left immigration detention
197AB	The Minister personally may determine that a person is to reside at a specified place rather than being held in a detention facility - see DSM Chapter 2 - Client placement - Alternative temporary detention
197A	Escape from immigration detention is an offence
197B	A detainee is guilty of an offence if they manufacture, obtain or possess a weapon
198	Contains many subsections that refer to the removal of UNCs when various conditions are met
235(7)	Enables a person in an immigration detention centre to voluntarily engage in approved work. Unapproved work is an offence under this section of the Act
245AF	Enables a person in immigration detention to voluntarily engage in work of a kind approved by the Secretary
252(1)	Enables an authorised officer to search a person who is detained, and the person's clothing and any property in their possession to find out whether they are carrying a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from immigration detention
252(4)	An authorised officer may take possession of certain things found in a search
252AA	Enables an authorised officer to conduct a screening procedure on a detainee (metal detector, hand held wand etc) to find out whether they are carrying a weapon or other thing capable of being used to inflict bodily injury, or to help the detainee or any other detainee, to escape from immigration detention - see DSM Chapter 8 - Safety& security - Screening of persons in immigration detention
252A	Enables an authorised officer to strip search a detainee, and their clothing and any thing in their possession, to find out whether they are carrying a weapon or other thing capable of being used to inflict bodily injury, or to help the detainee or any other detainee, to escape from immigration detention - see DSM Chapter 8 - Safety and security - Strip searches of persons in immigration detention
252B	Rules for conducting a strip search - see DSM Chapter 8 - Safety and security - Strip searches of persons in immigration detention
252C	Possession and retention of items obtained in a strip-search or screening procedure - see DSM Chapter 8 - Safety and security - Strip searches of persons in immigration detention
252F	Applies to a detainee if they are held in immigration detention in a prison or remand centre of a state or territory; and a law of that state or territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre
252G(1)	Enables the screening of persons entering an IDC using screening equipment such as a metal detector or similar device for detecting objects or particular substances - see DSM Chapter 4 - Communication & visits - Screening & inspection powers: Entry to immigration detention centres
252G(3) and (4)	An authorised officer may, if they reasonably suspect a person about to enter a detention centre has an item in their possession that might endanger the safety of detainees or staff, or disrupt the order and security of the centre, request the person to remove outer clothing, open and inspect items in the person's possession, etc - see DSM Chapter 4 - Communication & visits - Screening

	& inspection powers: Entry to immigration detention centres
252G(5)	A person who has items removed from them under s252G(4) may reclaim them on departure from the centre - see DSM Chapter 4 - Communication & visits - Screening & inspection powers: Entry to immigration detention centres
252G(6)	An authorised officer may retain or take possession of items from a person entering a detention centre when possession of those items is unlawful under state, territory or Commonwealth law, and hand them to the relevant police - see DSM Chapter 4 - Communication & visits - Screening & inspection powers: Entry to immigration detention centres
252G(7)	A person may be refused admission to a detention centre if they refuse a request under s252G(1) or (4) - see DSM Chapter 4 - Communication & visits - Screening & inspection powers: Entry to immigration detention centres
256	A person in immigration detention, if they request, shall be given application forms for a visa - see section 8 Rights of a person to apply for a visa
257(1)	An officer may make inquiries of a person in immigration detention to establish whether the person is in fact a UNC
257(2)	Where a person is asked questions under s257(1), it is an offence to refuse or fail to answer the question, or to make a statement which is materially false or misleading
261AA	Division 13AA contains subsection 261AA, which states that immigration detainees must provide personal identifiers DSM Chapter 3 Collection of personal identifiers
273(1)	The Minister may, on behalf of the Commonwealth, cause detention centres to be established and maintained. Detention centre means a centre for the detention of persons whose detention is authorised under the Act
273(2) and (3)	Regulations may be made in relation to the operation and regulation of detention centres, including matters such as conduct and supervision of detainees, and powers of supervising staff
504	General power to make regulations
Division 13AA and AB	Provisions relating to the provision of personal identifiers by immigration detainees

Detention Related Provision in the Migration Regulations[121]

Regulation	Description
Reg. 5.32A	In the context of s235 of the Act, work performed by a person in immigration detention is not an offence if it is allocated to the person at their request by an officer at the detention centre
Reg. 5.35	The Secretary may authorise medical treatment to be given to a detainee if a medical practitioner recommends urgent medical treatment, and the detainee does not or can not consent to the treatment. This includes the administration of food, fluids and treatment in hospital

[121] Department of Immigration and Citizenship, *Procedures Advice Manual (PAM3) – Migration Act – Detention Services Manual – Chapter 1 – Legislative and principles overview – section 10.2* (1 July 2011).

Australian Government
Department of Immigration and Citizenship

Immigration Detention Network Facilities in Australia

Prepared for the Joint Select Committee on Australia's Immigration Detention Network
August 2011

Table of Contents

Introduction

Section 273 of Australia's Migration Act 1958 (the Act) gives the Minister for Immigration and Citizenship power to establish and maintain immigration detention centres, and to make regulations in relation to the operation and regulation of these detention centres.

The immigration detention network is extensive. A number of different types of immigration detention facilities are utilised that provides flexibility in the provision of services to people in immigration detention. The detention network is not static. It has expanded and contracted over many years in order to respond to need.

There are five sections of this paper outline the following:

- type and purpose of the different immigration detention facilities in the immigration detention network.
- contract arrangements for the provision of detention services from 1996, when detention services were outsourced to private sector.
- an overview of the development of immigration detention infrastructure prior to 2008.
- A discussion on the expansion of the immigration detention network as a result of the recent increase in Irregular Maritime Arrivals (IMAs).
- challenges associated with immigration detention facilities.

Immigration Detention Facilities

The department utilises a number of different types of immigration detention facilities in order to provide flexibility in the provision of services to people in immigration detention. These facilities include Immigration Detention Centres (IDC), Immigration Residential Housing (IRH), Immigration Transit Accommodation (ITA), Alternative Places of Detention (APOD), as well as residence determination (community detention) programs facilitated by non-government organisations such as the Red Cross.

Under government policy all IMAs who are intercepted outside Australia's migration zone at an excised offshore place are subject to mandatory detention for the purposes of health, character and security checks while their claims to remain in Australia are considered. Following the announcement on 25 July 2011, they will be transferred to Malaysia.

Immigration Detention Centres (IDC)

Immigration detention centres 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, those individuals 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 immigration detention centre. IMAs are also accommodated in IDCs.

Immigration Detention Centres are located at:

- Villawood
- Maribyrnong
- Perth
- Christmas Island
- Northern
- Curtin
- Scherger
- Yongah Hill (currently under construction in Northam, Western Australia)
- Wickham Point (currently under construction near Darwin, Northern Territory)
- Pontville (currently under construction in Hobart, Tasmania).

Immigration Residential Housing (IRH)

Immigration residential housing 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 immigration residential housing accommodation is subject to meeting eligibility criteria.

Families are eligible for accommodation in immigration residential housing subject to:

- places being available
- satisfactory completion of identity and health checks
- an assessment of whether the person in detention is likely to abscond
- any operational issues particular to the person in detention
- any operational issues particular to the effective management of the IRH.

Immigration residential housing is currently located in Sydney adjacent to the Villawood Immigration Detention Centre, in Perth near the Perth Immigration Detention Centre and in Port Augusta, South Australia.

Immigration Transit Accommodation (ITA)

Immigration transit accommodation has been introduced for short-term, low flight risk people. Generally, individuals with a low-risk risk profile that are on a removal pathway and are expected to depart Australia in the near future are accommodated in the immigration transit accommodation. However, recently immigration transit accommodation in has been used to accommodate some IMAs and unaccompanied minors. As such, facilities have been upgraded to provide additional amenity for detainees who are accommodated in ITAs for longer periods.

Immigration transit accommodation offers hostel-style accommodation, with central dining areas and semi-independent living. Immigration transit accommodation provides a narrower range of services at a less intensive level than is typically offered in an immigration detention centre because of the short-stay nature of the client group.

Immigration Transit Accommodation is located in:

- Brisbane (opened in November 2007)
- Melbourne (opened in June 2008)
- Adelaide (opened in April 2011).

Alternative Places of Detention (APOD)

An alternative place of detention (APOD) accommodates typically people who have been assessed as posing a minimal risk to the Australian community.

Alternative places of detention may range from hospital accommodation in cases of necessary medical treatment; schools for facilitating education to school-aged minors; rented accommodation in the community (hotel rooms, apartments), and accommodation in the community made available through arrangements with other government departments or commercial facilities, such as Defence Housing at Inverbrackie outside Adelaide and Darwin Airport Lodge. Correctional facilities are also used as alternative places of detention from time to time.

Residence Determination (Community Detention)

Residence determination was introduced in June 2005 and is a form of immigration detention that enables people to reside in the community without needing to be formally monitored.

Residence determination does not give a person any lawful status in Australia, nor are they permitted to work or study.

Clients are informed, and must agree to, the conditions of their residence determination arrangements upon entry into the program. Conditions include a mandatory requirement to report regularly to the department and/or their service provider, and reside at the address specified by the Minister.

Expanded residence determination (community detention) arrangements for unaccompanied minors and vulnerable families were announced by the Prime Minister and the Minister for Immigration and Citizenship on 18 October 2010.

The Australian Red Cross is the lead agency for this program and is supported by other subcontracted non-government organisations in providing care to clients. The funding includes costs such as 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, International Health and Medical Services.

Immigration Detention Services Contracts

In 1996, the government established a National Commission of Audit (the Commission). This Commission was tasked with examining the finances of the Commonwealth, identifying duplication, overlap and cost shifting between Commonwealth and the state/territory governments in service delivery and establishing a methodology for developing and implementing financial performance targets for Commonwealth 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, who provided guarding services in immigration detention facilities.[1]

In the 1996 - 97 Budget, the government announced that 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 (ACS) as the successful tenderer and a contract was signed on 27 February 1998. Service delivery was subcontracted to Australasian Correctional Management Pty Ltd (ACM), the operational arm of ACS. ACS was contracted through a ten year general agreement that established a broad framework for the provision of services, including guarding, catering and providing health, welfare and educational services in Australian immigration detention facilities.

There was a significant increase in the number of unauthorised arrivals in 1999 and 2000 compared with the early 1990s, resulting in over 3000 people in detention in early 2001.

The sudden increase in the number of people in detention raised concerns that the contract with ACM did not represent 'best value for money', and in 2001 the Department announced that the provision of immigration detention services was to go to tender.

GSL Australia Pty Ltd (GSL) 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. (Detail of these reforms is discussed in the 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, as well as recommendations made by the Australian National Audit Office on management of the tender process[2]. The department released three requests for tender to the market on 24 May 2007 for the provision of:

- detention services for people in immigration detention centres
- health services for people in detention
- detention services for people in immigration residential housing and immigration transit accommodation.

On coming to office in December 2007, the government reviewed its policy regarding public sector management of detention services. Recognising that cancellation of the advanced tender process would have exposed the Commonwealth 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 following an evaluation within the term of the current five year contracts.

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 immigration detention centres (including those on Christmas Island) and alternative places of detention as well as a range of transport and escort services to people in detention.

The department signed a contract in January 2009 with International Health and Medical Services Pty Limited (IHMS) to provide general and mental health services to people in immigration detention.

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[1] National Commission of Audit, *Report to the Commonwealth Government: June 1996*, Australian Government, Canberra, 1996.

[2] 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 immigration residential housing and immigration transit accommodation throughout Australia.

Immigration Detention Network Prior to 2008

In the late 1970s, three immigration detention centres existed. These were located 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[3]. It should be noted that the infrastructure at Villawood at the time consisted of those buildings and amenities that became known as Stage 1 and later Blaxland compound. A case study on Villawood Infrastructure is below.

In the early 1980s, the existing centres in Perth and Melbourne were replaced with new facilities. The Perth Immigration Detention Centre was established in 1981 and the Maribyrnong Immigration Detention Centre was established in Melbourne in 1983.

In 1989 the Australian Government introduced administrative detention for all persons entering Australia without a valid visa and people who subsequently became unlawful[4].

In late 1989, Australia began to experience a surge in unauthorised boat arrivals primarily from Vietnam, Cambodia and China. These unauthorised arrivals were held in 'loose' detention; people were held in an open part of the Westbridge Migrant Centre in New South Wales (now the Villawood Immigration Detention Centre), the Enterprise Migrant Centre in Victoria and in Perth. Individuals held in this way were not allowed to leave the centre and had to report for rollcall daily[5]. 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 detaining unauthorised maritime arrivals. 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 had a capacity of 700 persons. The facility was refurbished in 1998 changing its capacity to 218 single male beds, 21 single female beds and 44 family units with 264 beds[6]. 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 was handed back to the Department of Defence.

From 1998, the significant increase in unauthorised boat arrivals placed pressure on the immigration detention network that was already accommodating a large compliance cohort (non-IMAs) as a result of the government's focus on compliance-related activities.

Since 1999, various facilities on Christmas Island have been used to accommodate unauthorised arrivals.

In response to this surge in arrivals the IRPC at the 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 during 1999-2000, Curtin accommodated approximately 1 200 unauthorised boat arrivals, with more than 1 400 at Woomera. Curtin and Woomera were decommissioned in 2002 and 2003 respectively[7].

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[3] Department of Immigration and Ethnic Affairs, *Review '78*, Australian Government, Canberra, 1978.

[4] Joint Standing Committee on Migration, Parliament of Australia, *Report into Immigration Detention In Australia*, Australian Government, Canberra, 2009.

[5] 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>.

[6] Joint Standing Committee on Migration, Parliament of Australia, *Report of inspections of detention centres throughout Australia*, Australian Government, Canberra, 1998.

[7] Millbank, 'Detention of Boat People', op. cit.

Woomera IRPC was located outside of the Woomera township in South Australia, 487 kilometres from Adelaide. Woomera IRPC's nominal capacity was 1 200 however, at times, the facility accommodated more people at surge capacity.

The Woomera Residential Housing Project (RHP) was opened in August 2001 to provide opportunities for women and children to live a more independent lifestyle. The Woomera RHP was located in a residential area of the Woomera township and initially had a capacity of 25 people but was expanded in May 2002 to accommodate 40 detainees[8].

An immigration detention centre at Darwin (now known as Northern IDC) was constructed following the decision announced in August 2001 to establish contingency immigration detention centres. The original facility was located within the fence line of Defence Establishment Berrimah, formerly known as HMAS Coonawarra.

The existing facility was subsequently upgraded due to the increased apprehension of illegal foreign fishers in the northern waters of Australia. The Northern IDC currently comprises a number of buildings including three compounds, accommodation buildings, commercial kitchen, and recreation buildings. The Centre has capacity for up to 554 people.

In 2002, the Baxter Immigration Detention Facility (IDF) was opened as part of the government's long-term strategy in respect of 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 had a capacity of 660 and the ability to accommodate another 220 individuals when operating at surge capacity. 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 subsequently handed back to the Department of Defence in 2008.

In addition, the Port Augusta Residential Housing Project (RHP) was opened in 2003 to provide opportunities for women and children to live a more independent lifestyle while still in immigration detention. The Port Augusta RHP was located in the Port Augusta township and had an operational capacity of 40 people with the ability to accommodate an additional 8 people at surge capacity. Port Augusta RHP comprised eight self-contained three bedroom houses and an administration building[9].

Offshore Processing Centres (OPCs)

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 (MOU) replacing the Administrative Agreement was signed on 11 December 2001, which allowed for up to 1 200 persons to be accommodated at any one time at the centre in Nauru.

An MOU was signed with the Government of Papua New Guinea (PNG) 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 PNG provided for the facility at Manus Island to have a potential capacity of 1 000 places.

The department exchanged letters with the International Organization for Migration (IOM) in September 2001 for it to manage and provide services at the offshore processing centres.

On 31 March 2008, following the government's decision to end offshore processing, the centres in Nauru and Manus were closed, the sites were returned and the centre's assets were gifted to the respective host governments. Closure of the centres formally ended the 'Pacific Strategy'.

[8] Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention*, Human Rights and Equal Opportunity Commission, Sydney, 2004.

[9] 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.

As a result, the government decided that all IMAs would be processed on Christmas Island, and as such, immigration detention facilities on Christmas Island became a key component of the government's border security regime.

Villawood Immigration Detention Centre

Villawood IDC (VIDC) plays a significant role in the department's broader detention network and is considered Australia's primary immigration detention facility.

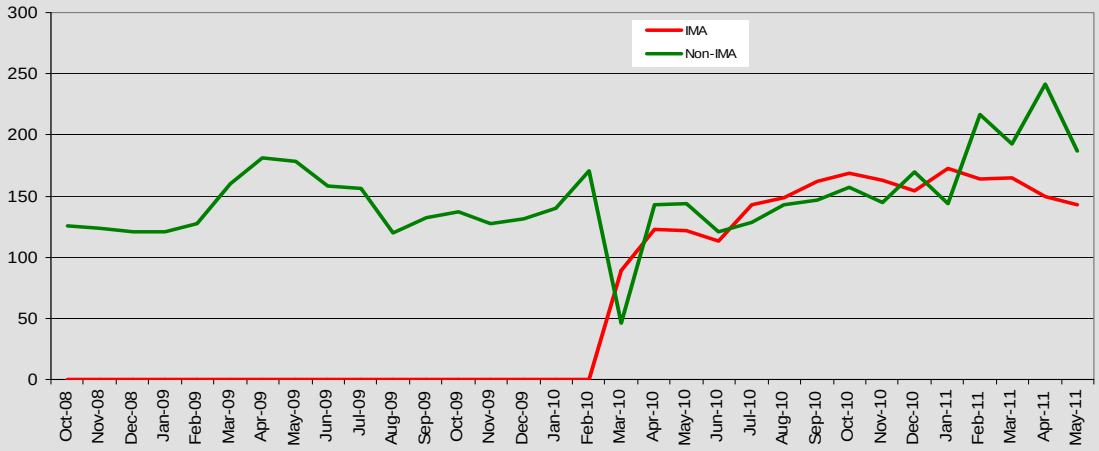
VIDC is located on the site of what was initially established as the Villawood Migrant Hostel in 1949 and became the Villawood and Westbridge Migrant Hostels in 1968. From 1976 VIDC was progressively redeveloped and established as a secure immigration detention centre. As part of this redevelopment, 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 at VIDC were enclosed and several demountable building were installed to create a 200 person low-security complex known as Stage 2 (now known as Hughes). In late 1999, a new medium security-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.

VIDC has typically been used to accommodate individuals pending removal from Australia, namely those individuals 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. VIDC's higher risk accommodation options mean that the centre is also used to accommodate more complex cases (usually non-IMA compliance cases). Such individuals may be in immigration detention for an extended period of time because of the complexity of their case. For example, individuals who are not eligible for the grant of a visa or who are on a removal pathway because they have failed the character test under section 501 of the Migration Act may be accommodated at VIDC.

In addition to its traditional compliance population, over the past 18 months VIDC has also been used to accommodate IMAs. In March 2010, the former Minister for Immigration and Citizenship announced the transfer of 89 IMAs to VIDC from Christmas Island. The 89 individuals were on an indicative negative pathway after their primary refugee status assessment had been completed[10]. Since the former Minister's announcement, IMAs have continued to be transferred to VIDC.

The following graph illustrates the change to the composition of the detention population at VIDC, particularly 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.

[10] 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).

Sources: This graph is generated from data in the IMA Key Statistics and Immigration Detention Statistics Summary.

The complexity of the VIDC detention population generally, but particularly since March 2010, coupled with the inherent limitations of the existing facilities have hampered the department's ability to effectively manage growing pressures at the centre and presented challenges in responding flexibly and appropriately to changing priorities.

Since 1992, the department has identified that VIDC has inappropriate infrastructure and has put forward options to successive governments to remedy infrastructure concerns. Options have included significantly redeveloping VIDC and upgrading infrastructure with a focus on security or constructing a new, purpose built facility for use as an immigration detention centre on an alternative site.

Small refurbishments and minor works projects have been undertaken at VIDC. However, infrastructure at the centre is still not optimal and not fit for purpose, especially when compared to facilities that were purpose built for use as immigration detention centres.

Infrastructure at VIDC has been the subject of wide ranging criticism, including from the Red Cross, the Commonwealth Ombudsman and the Australian Human Rights Commission (AHRC). The AHRC, in particular, has raised concerns about infrastructure and facilities at VIDC in each of its annual inspection reports from 1999 onwards, noting that the centre has "dilapidated infrastructure"[11].

To address these issues, the government announced the provision of $186.7 million, as part of the 2009-10 Budget, to redevelop VIDC. Remediation works commenced at VIDC in May 2011 in preparation for the redevelopment. The project will provide better amenities and improved privacy for people in detention, while also providing appropriate security at the facility.

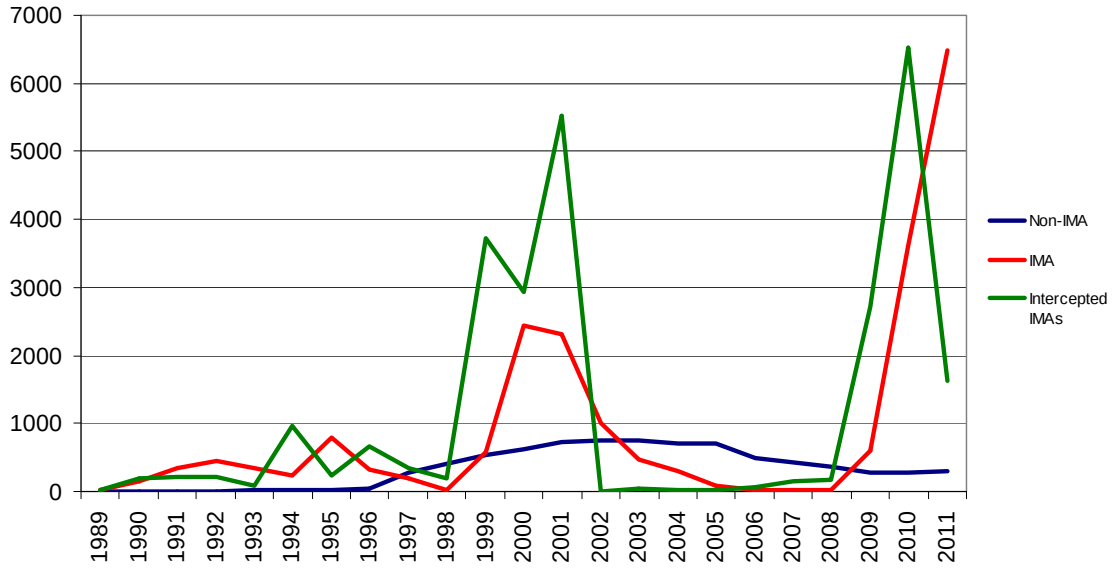
[11] Australian Human Rights Commission, Submission to the Parliamentary Standing Committee on Public Works, 'Proposed Redevelopment of the Villawood Immigration Detention Facility', 2009.

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.

The graph below shows Australia's detention population over time (1989-2011). The two peaks 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 IMAs 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.

With the early 2008 arrivals, the government decided to accommodate detainees at the old detention facilities located at Phosphate Hill on Christmas Island. In 2008 the department took possession of the purpose-built Christmas Island Immigration Detention Centre (IDC).

Christmas Island Immigration Detention Facilities

As noted earlier, 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 any non-IMA detainees.

The Christmas Island IDC is a purpose built immigration detention facility located 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, commercial kitchen, laundry, educational and recreational facilities and a range of sporting facilities. The facility was designed to house 400 clients, with a temporary surge capacity of 800 clients. Recently the contingency capacity has been increased to give a total capacity of 1 116 people.

In addition to the IDC, other immigration detention facilities on Christmas Island include the Phosphate Hill APOD and Construction Camp APOD. These facilities consist of accommodation units, a medical facility, gymnasium, classroom, recreational facilities and 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 detainees until December 2008.

When IMAs first began arriving in early 2008 a decision was taken by the government to accommodate the detainees at old detention facilities located at Phosphate Hill. This approach continued after the NWP facility became available for use until the facilities at Phosphate Hill and community detention had reached maximum capacity, and resulted in the December 2008 decision by the former Minister to allow the accommodation of single male detainees at NWP.

The rapidly increasing number of IMAs meant that Christmas Island IDC quickly reached capacity after it was brought into service, and other accommodation options were required. 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. Additional beds were also placed in air-conditioned marquees in the area adjacent to Red Compound in December 2009, and further marquees were erected in January 2010.

In December 2009 construction of a 200-person camp made up of portable buildings commenced. This area was know as the Lilac compound and comprised accommodation rooms, ablutions, laundries, a dining room, and open air cabanas. It became operational in January 2010. While this facility was under construction, work also started on an additional 400 bed facility called Aqua, adjacent to Lilac. Work on this compound began in early 2010 and it was operational 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 that the Christmas Island IDC continued to experience accommodation pressures.

In December 2008, when the facilities at Phosphate Hill and community detention on Christmas Island reached maximum capacity, the Minister decided to allow the accommodation of single male detainees at the Christmas Island IDC.

During 2009 the increasing number of IMAs meant that NWP quickly reached capacity after it was brought into service, and other accommodation options were required.

Transfers to immigration transit accommodation 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 also transferred to Villawood IDC and Brisbane Virginia Palms alternative place of detention.

The transfers were done on a case-by-case basis and were determined on a number of factors, including vulnerability. As a result of this, 545 persons 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 also 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 house family groups of IMAs temporarily.

In September 2010 Minister Bowen announced additional immigration detainee accommodation for families and unaccompanied minors in Melbourne, and for single adult men in northern Queensland and in Western Australia.

- Melbourne Immigration Transit Accommodation (MITA) was to be expanded for use by families and children. The proposed expansion did not proceed as the subsequent decision to move children and vulnerable families into the community meant the large expansion of the facility for this purpose was no longer required. 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) was adapted to accommodate up to 300 single adult men.
- Curtin Immigration Detention Centre would also 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 the majority of children and a significant number of vulnerable families into community detention by the end of June 2011[12].

In addition, the government announced the commissioning of two new detention facilities to house IMAs:

- Yongah Hill (Northam) in Western Australia, originally proposed as a facility for up to 1500 single men. In May 2011, the Minister announced that the capacity of this facility would be reduced to 600.
- Inverbrackie in South Australia to accommodate family groups[13].

[12] 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).

[13] Ibid

In response to continuing pressures on immigration detention accommodation, Minister Bowen announced an update on the IMA accommodation strategy on 3 March 2011.

The updated strategy entailed combining the commissioning of more appropriate detention accommodation, the expansion of certain existing facilities, 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:

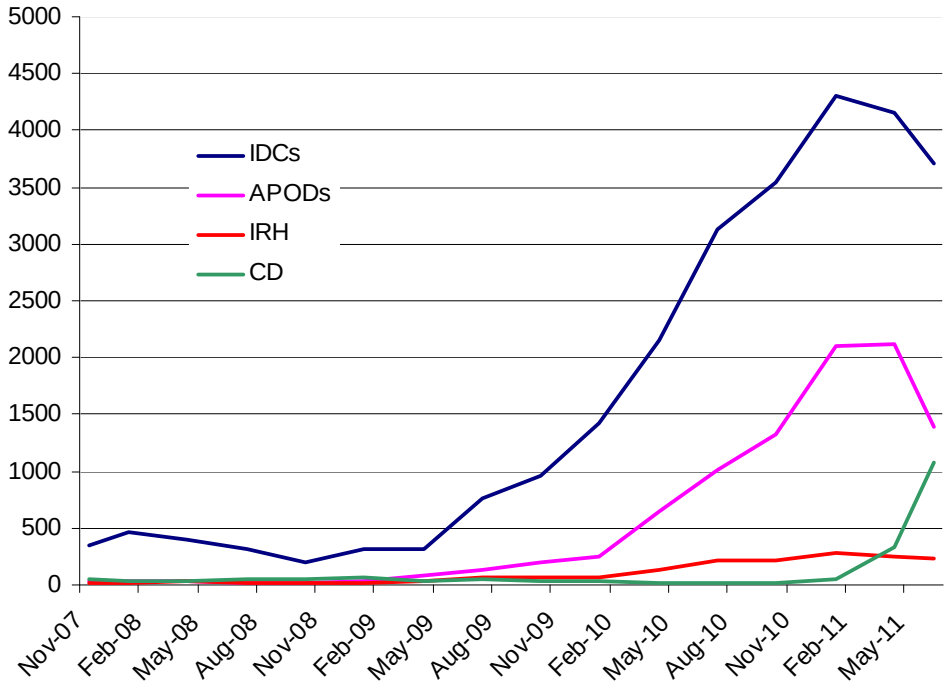
- a new immigration detention centre at Wickham Point (35 kilometres south-east of Darwin);
- the expansion of the Darwin Airport Lodge by up to 435 places at existing facilities adjacent to the current accommodation; and
- the continued use of the facility at RAAF Base Scherger near Weipa in Queensland for a further 12 months, until 2012.

In addition to the above expansions, Minister Bowen announced on 5 April 2011 the government's intention to lease a Defence facility for the construction of a new Immigration Detention Centre in Pontville near Hobart. The final capacity of the centre will be up to 400 clients.

Increased accommodation capacity outlined above would permit the closure of the Virginia Palms APOD in Brisbane and the Asti Hotel APOD in Darwin by mid 2011, as well as the reduction in proposed capacity of the Yongah Hill centre.

The following graph shows the number of people in immigration detention and where those individuals where accommodated.

Graph 3: Immigration Detention Network (1 Nov 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 IMAs where first accommodated in Immigration Detention Facilities from 2010

Detention facility	Dates when IMAs were first accommodated at the facility from 2010
Immigration Detention Centre (IDC)	
Curtin IDC, WA	12 June 2010
Maribyrnong IDC, VIC	27 September 2010
Northern IDC, NT	13 January 2010
Perth IDC	8 January 2010
Scherger IDC, QLD	22 October 2010
Villawood IDC, NSW	27 March 2010
Immigration Residential Housing (IRH)	
Perth IRH	13 January 2010
Port Augusta IRH, SA	19 April 2010
Sydney IRH	15 April 2010
Immigration Transit Accommodation (ITA)	
Adelaide ITA	4 July 2011
Brisbane ITA	20 January 2010
Melbourne ITA	5 February 2010
Alternative Place of Detention (APOD)	
Ascot Quays, WA	30 June 2010
Asti Motel, NT	15 May 2010
Banksia Tourist Park, WA	1 April 2010
Berrimah House, NT	17 March 2010
Botanic Gardens, NT	5 August 2010
Britton Street APOD, SA	8 July 2010
Darwin Airport Lodge, NT	8 July 2010
Gwalia Lodge, WA	20 December 2010
Inverbrackie APOD, SA	17 February 2011
Jandakot Airport Chalets, WA	2 May 2011
Leonora APOD, WA	7 June 2010
Virginia Palms APOD, QLD	17 September 2010
Willare Bridge Road House, WA	21 March 2011

List of current Immigration Detention Facilities and Capacity (as of 30 June 2011)

	Facility	Operational Capacity (Persons)	Contingency Capacity (Persons)
IDCs	Christmas Island IDC	400	1116
	Curtin IDC	1200	1500
	Maribyrnong IDC	56	99
	Northern IDC (incl Darwin Hospital)	536	554
	Perth IDC (incl 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 Immigration Residential Housing IRH	24	48
ITAs	Brisbane ITA	29	58
	Melbourne Immigration Transit Accommodation	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 & 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 clients. There is a range of factors that present challenges in relation to 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;
- the remoteness of immigration detention facilities, particularly those facilities that only accommodate IMAs;
- the increased regulatory requirements that have become effective in the past ten years in relation to the environment, heritage, occupational health and safety and planning laws. These have increased the costs and time required to establish immigration detention centres; and
- the limited availability of Commonwealth land that is appropriate for the establishment of immigration detention facilities.

The department continues to address these challenges in response to the current detention policy framework.

Australian Government

Department of Immigration and Citizenship

International Comparisons of Immigration Detention

Prepared for the Joint Select Committee on Australia's Immigration Detention Network
August 2011

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 industrialised countries. Developed countries face the situation of 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 via legal avenues, the flows of irregular migrants present management challenges for states.

Immigration detention is used as a tool to manage the number of unauthorised arrivals, to address security concerns and to facilitate 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 practice in Australia, New Zealand, Canada, United Kingdom, United States, Sweden, Italy and Spain. Australia, New Zealand, Canada, United Kingdom and United States are part of a regular cooperation framework on immigration issues. They have relatively similar overall social policies and public institutions. Sweden, Italy and Spain were chosen to provide diversity from a European perspective: Sweden because it has pioneered the use of a number of alternatives to detention and Italy and Spain because of their similar experiences to Australia in terms of receiving large numbers of irregular boat arrivals.

While there are some similarities between the countries chosen for this purpose, the migration and detention arrangements in these countries differ significantly. While it is interesting to compare these differences, it is important to note that all countries operate migration and border control programs to meet their own domestic priorities. They are developed and adjusted in response to a range of 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 their status have been assessed. Asylum seekers are not detained for the fact of having 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 (APODs) and community detention. Community detention allows the client to live within 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 unauthorized air arrivals, foreign fishers and people taken into detention after overstaying visas or breaching visa conditions. **Management/infrastructure** – As of 30 June 2011 there was 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 the 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 language classes, living and life	**Bond/reporting** –There are no bail or reporting requirements for non-detained clients who have lodged an application for asylum. **Financial assistance/work rights** – People in detention do not receive financial assistance and do not hold any work rights. Clients in community detention are supported by the department through a financial allowance which is set at 89% of the Centrelink income support payments (excluding rent assistance and family benefits payment). Asylum seekers who hold a valid bridging visa generally do not have work rights. **Healthcare** – All detainees have access to appropriate healthcare. For detainees who are located in community detention and immigration residential housing, healthcare services are provided by community-based health care providers. For those in facility-based detention most health services are provided onsite. If required referral to external health providers in the community can be provided 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 times. Services provided to adults include English as a Second language (ESL) and other life-skills programs. **Community models** – Two alternative detention programs – Community Detention	**Avenues for failed asylum seekers** – For IMAs who have been assessed as non-genuine refugees and where the courts do not uphold their appeal, plans will be made to remove the person from Australia. This is subject to any other international obligations. The government funds the International Organization for Migration (IOM) to perform this service. IOM also operates an Assisted Voluntary Return Program.

COUNTRY	STATUS PROCESS	DETENTION	DETENTION ALTERNATIVES	RELEASE AND REMOVAL
		skills classes, sports, excursions	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 during the processing of their asylum claim. **Legal support** – IMAs are allocated a migration agent through the Immigration Advice and Application Assistance Scheme (IAAAS) at the commencement of the refugee determination process. The agent is not necessarily a lawyer and provides assistance and advice in the preparation of 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 only as a last resort. Alternatives to detention, such as release on conditions or financial guarantees are always considered before detaining someone. The onus of why a person should be detained lies with the government. **Decision to detain -** Immigration officers from the CSBA initially determine if a person is to be detained depending on whether or not 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 the ground of security or for violating human or international rights; or • able (or unable) to establish their identity. **Review -** The initial CBSA decision to detain or release an individual is reviewed by another immigration officer and also by the Immigration Review	**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 the use of 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 of those 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 where no safety or social considerations need to be taken, the authorities try to avoid detaining both unaccompanied and other minors.	**Bail/reporting -** Those with unresolved immigration status who are not detained are either released unconditionally while awaiting resolution of their status or are 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 whom the CIC deems releasable (by passing security identity tests) but have no contacts in the community to assist them with the payment of their bail. By posting bail for asylum claimants, the TBP accepts responsibility for their compliance. TBP also helps its clients to find housing, apply for legal aid and to locate *pro bono* lawyers and other forms of support. Claimants are required to 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. Clients must either work, study, or receive treatment should they have any mental health issues **Financial assistance/work rights -** Asylum seekers who are 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	**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 PRRA (Pre-Removal Risk Assessment), their departure orders in detention, counselling on their options and 30 days to leave the country.

	Board (IRB) within 48 hours of the initial CBSA decision. Thereafter, the case is periodically reviewed in light of new evidence, within the first seven days and henceforth every 30 days. Claimants with new evidence can request consideration of release in between these 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. E.g. providing an address where the releasee can be contacted by authorities and agreeing to present themselves to the authorities on a periodic basis. Judicial review is also available.		study: elementary and high school is free, and at the university level they have to pay the rate that foreigners pay. **Community models -** Small (approximately 35 bed) asylum shelters cater to detainees who cannot be released due to the fact that they have no address where immigration authorities can visit and check up on them. The shelters provide an address for former detainees so that they can be released back into the community. Rather than formal supervision, managers of these facilities have regular one-on-one contact with the residents through the provision of support that includes interpreters, legal aid, social services, and an informal community network. **Legal support -** The Toronto Refugee Affairs Council (TRAC) - a non-governmental initiative in Toronto designed to provide 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.	
Italy	**Detention policy –** Unauthorised presence in Italy is deemed a crime and foreigners who remain in Italy notwithstanding an expulsion order face 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	**Management/infrastructure –** There are two forms of detention in Italy: i. I Centri di Accoglienza (CDA) ii. I Centri di Identificazione ed Espulsione (CIE) Non-citizens who are detained for not having appropriate authorization to be in Italy are	**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.

	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 the authority responsible for the management of immigration-related issues, with the police authorized to carry out all border control activities, including expulsions. The Italian military is also commissioned to play a part in the police's immigration related operations.	initially detained at the CDAs. Once their status is determined, they are either transferred to a deportation centre (CIE) or a non-secure centre for asylum seekers. CDAs are managed at the national level by the Central Directorate of Civil Services for Immigration and Asylum. CIEs are managed by the local prefectures. Italy has an agreement with 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 the immigrants about Italian legislation on migration matters and assists immigrants who opt to voluntarily return to their countries of origin. 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 he/she is: • 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; or • Has breached residence and reporting requirements. Immigration officers have the authority to arrest and detain foreign nationals suspected of being unlawfully in New Zealand for a maximum of 4 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 are liable for deportation and can be 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 2 weeks from the start of detention. There is further review after 28 days in detention and periodically thereafter, generally in 7 day cycles.	**Management/infrastructure** – New Zealand has no dedicated detention facilities. Any police station in New Zealand can 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 of extending the period of detention every seven days. While cases are being resolved, unauthorised non-citizens will be 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 pay fees for prescriptions and doctors. **Education** – Education is provided for all asylum claimants aged 5 to 16. **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.

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Spain	**Detention policy** – Under Spanish law, people cannot be detained for more than 60 days. Asylum seekers are not detained for the fact of having 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 relation to being on spanish territory without proper authorisation, posing a threat to public order and/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, Morocco and Eastern Europe. **Management/infrastructure** – Open reception centres enable residents to come and go as they like. **Length of detention** – Persons who claim asylum at the airport are detained at airport accommodation facilities for a maximum of 7 days while the admissibility of their claims is assessed. They may then seek their own accommodation or choose to reside at one of the Refugee Reception Centres. 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.	**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 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	

		Services in detention – meals, education, healthcare, recreational activities, psychological services		

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Sweden	**Detention policy** – The authority handling an asylum case – that is, 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 detain a person for a short period, the Swedish Migration Board (SMB) is more likely to ascertain the details of the person, issue them with an identity card and then release them into the community with welfare benefits to support them whilst they await an outcome on their bid to remain in Sweden. **Decision to detain** – When non-citizens who not request asylum arrive at the border they are investigated by border police and may be expelled immediately. Asylum seekers have their cases referred to the SMB. Detained people fall under three categories: • 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 refuse to leave the country • Where it is necessary for an investigation to be conducted concerning a person's right to	**Management/infrastructure** – Immigration detention in Sweden is the responsibility of the SMB. Detention centers are not staffed by security guards but by caseworkers with social work experience. These case workers undertake both enforcement and care roles. **Length of detention** – Maximum of two weeks detention for those unable to establish their identity or have failed in their claims to stay and 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 3 reasons: i. identification detention to ascertain identity, which is limited to two weeks with the possibility of extension up to two months ii. investigative detention to confirm if the detainee can be released into the community. This is limited to two months and can be extended to six months iii. expulsion detention prior to removal which lasts until travel	**Bail/reporting** – After they are released into the community, Swedish authorities generally require that a person report to a police station at regular intervals. **Financial assistance/work rights** – Emergency medical treatment and housing are provided to all asylum seekers during the asylum decision making process. If SMB believes that an asylum decision may take longer than four months the applicant is given the right to work without the need to obtain the relevant permits. A daily allowance is paid to those individuals who have no other way of providing for themselves. SMB also expects asylum seekers to participate in their organized activities. **Healthcare** –Children have the right to access healthcare. **Education** – Non compulsory education is offered to children. **Community models** – Asylum seekers arriving at the SMB offices to claim asylum must provide identification. 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 reside at a reception centre supported by SMB. **Legal support** – If the SMB determines that an asylum seeker's application should be heard in Sweden, a lawyer is provided free of	**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 can be arranged, generally within three days. When asylum seekers who have undergone the procedure for applying receive a negative decision they are assigned a return officer by SMB. The Return Officer outlines the following three options for return/removal: i. voluntary departure ii. escort by the individuals 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.

	stay in Sweden **Review** – Under Swedish law, all detainees have a right to appeal being 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.	documents are prepared for the purpose of 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.	charge to assist with the asylum application accompanied by an interpreter.	Those not willing to leave are referred to the 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; or • to aid in the removal of failed asylum seekers. Indefinite detention is illegal. **Decision** to detain – UK 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 UK who do not have the legal right to stay, including illegal entrants, 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 (IRCs). These facilities 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 be continued if considered reasonable in the 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 two months, 225 for between four and six months, 270 for between six months and a year and the remaining 215 for over 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 their compliance 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 are unable to access support payments. **Financial assistance/work rights** – Claimants receive a weekly cash support payment received by showing their Asylum Registration Card (ARC) at the 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 people who have received no 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 whilst they await a decision on their future. Asylum applicants are entitled to accommodation while their claims are being processed. Asylum seekers may also choose to live with	**Avenues for failed asylum seekers** Unauthorised immigrants have the opportunity to leave the UK 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 (VARRP)** – 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 (AVRIM)** – assists people accepted by the UKBA as having been the victim of trafficking,

			family or remain close to support networks. Legal support –If an asylum seeker would like legal advice they should use a solicitor who is a qualified member of the Law Society. An alternate option is engaging in the services of an adviser who is officially regulated by the Office of the Immigration Services Commissioner (OISC). If the asylum seeker does not have the funds to obtain legal advice them they may qualify for legal aid.	entering the UK without authorization, broken a condition of their leave to remain, or detained by the UKBA for immigration status offences with travel arrangements.

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United States of America	**Detention policy –** Asylum seekers are detained on arrival or soon after arriving in the US. Detention is mandatory for those awaiting 'credible fear' interviews. Asylum seekers who make a claim while they are present in US are free to live in a place of their choosing pending the completion of their asylum procedure. Asylum seekers who arrive at the US 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 US without valid documents or documents that an immigration officer believes may have been obtained by fraud or misrepresentation – whether seeking asylum or not – is to be the subject of Expedited Removal. Asylum seekers who are 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 or not they should remain detained or released. People who have already entered the US 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 (IGSAs). IGSAs 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 that are provided 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 (DIHS). **Education –** Assess to education is available to all children in detention. **Community models –** ICE funds two programs of alternate detention. However, these alternatives still run under a model of enforcement. These programs are the Intensive Supervision Appearance Program (ISAP) and the Enhanced Supervision/Reporting Program (ESR). **ISAP –** case specialists make unannounced home visits, local office and telephone reporting requirements, employment verification, curfews, electronic monitoring via 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. A part of both ISAP and ESR is the use of Electronic Monitoring (EM). EM requires participants to be home between certain hours of the day, with higher restrictions at the start of the monitoring program (2pm – 9am Sunday to Friday and all day Saturday), which	**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 5 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 (EOIR) 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 (BIA). An immigration judge can also make a later bond redetermination if the detainee's circumstances change.		gradually become less intense over time. Community-based Asylum Shelters are emergency housing resources for former detainees seeking refugee protection that provides a case management model that assists in finding language classes, legal representation, education, and employment. **Legal support –** Non-citizens are entitled to legal representation at their own expense, on a *pro bono* basis, or the opportunity to represent themselves. **Legal Orientation Program –** this program is provided by nonprofit legal service providers inform immigrant detainees in removal proceedings about their rights, the immigrant courts, and the detention process. **Capital Area Immigrants' Rights (CAIR) Coalition –** works closely with DHS to ensure that 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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