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BACKGROUND NOTE

Seeking asylum: Australia's humanitarian program

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Introduction

Since 1945 Australia has resettled over 700 000 refugees and displaced persons, including thousands during and immediately after World War II. Today, as part of its planned Humanitarian Program, the government allocates places each year to refugees and others with humanitarian needs.¹ There were 13 750 places allocated under Australia's Humanitarian Program for 2009–10 (an increase of 250 places on 2008–09 planning levels). This comprised 6000 planned places for the resettlement of refugees under the Refugee category mostly referred to Australia by the Office of the United Nations High Commissioner for Refugees (UNHCR) and 7750 planned places under the Special Humanitarian Program (SHP). Australia's focus for the resettlement of refugees in 2009–10 continued to be on those from Africa, Asia and the Middle East.²

While many are aware that Australia accepts a certain number of refugees and other humanitarian entrants each year, there is a great deal of misunderstanding on the details of Australia's humanitarian responses and the complex visa arrangements for refugees and humanitarian entrants. Often the critical distinction between the places allocated for 'refugees' (people subject to persecution) and those allocated for humanitarian entrants (people subject to substantial discrimination) is blurred. This is compounded by the fact that the Humanitarian Program numbers are comprised of both onshore and offshore applicants. This means the 7750 places currently allocated under the SHP are shared between offshore humanitarian applicants and refugees granted onshore Protection visas (including those processed on Christmas Island) and immediate family members of Humanitarian and Protection visa holders already in Australia.

Similarly, few understand the difference between Australia's obligations owed under the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) which are met through the onshore component (asylum seekers applying for protection within Australia, including on Christmas Island) as opposed to its voluntary involvement in the resettlement of 'refugees' referred by the UNHCR which Australia does through the offshore component of the Humanitarian Program.³

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1. Department of Immigration and Citizenship (DIAC), *Australia's refugee and humanitarian program*, fact sheet no. 60, viewed 1 December 2009, <http://www.immi.gov.au/media/fact-sheets/60refugee.htm>
 2. C Evans (Minister for Immigration and Citizenship), *Budget 2009–10: Humanitarian Program*, media release, 12 May 2009, viewed 3 December 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FCMV6%22>
 3. The Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; The Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

Other misunderstandings in the public debate arise from confusion between the offshore component and the 'offshore' processing of asylum seekers on Christmas Island. This is not assisted by the latter being counted as part of the onshore component while those previously processed extraterritorially under the 'Pacific Solution' were mostly counted under the offshore component of the Humanitarian Program.

The aim of this Background Note is to provide greater clarity by tracking the development of Australia's humanitarian responses. This then provides a context for examining the main criteria and processes for entry under both the refugee and humanitarian categories of the *offshore* component and refugee entry under the *onshore* component of the current Humanitarian Program. Some recent settlement initiatives for refugee and humanitarian entrants are also briefly examined.⁴ This paper also explains some key terms (in appendix A) and includes statistics back to 1945 (in appendix B).

Part I – Background

Overview of Australia's humanitarian response since 1945

Australia's first Commonwealth immigration department was established in July 1945. Subsequently, Australia resettled thousands of post-war refugees from Europe and ratified the 1951 Refugee Convention on 22 January 1954.

Prior to the 1970s, Australia's approach was to respond to humanitarian crises as they arose in the international arena with a focus on assisting refugees 'offshore'.⁵ However, with the arrival of the Indochinese 'boat people' on Australian shores seeking 'onshore' protection in the 1970s, the Government saw the need to assess the existing practices and develop a refugee policy specifically designed to respond to refugee and humanitarian issues.⁶

The then Minister for Immigration and Ethnic Affairs, Michael MacKellar, announced that Australia's first refugee policy would be based on the following four principles:

- Australia fully recognises its humanitarian commitment and responsibility to admit refugees for resettlement
- The decision to accept refugees must always remain with the Government of Australia

4. This publication updates the contents of an earlier Parliamentary Library paper; J Phillips, *Australia's humanitarian program*, Research note, no. 9, 2005–06, Parliamentary Library, Canberra, 2005, viewed 11 December 2009, <http://www.aph.gov.au/library/pubs/rn/2005-06/06rn09.pdf>

5. Joint Standing Committee on Migration Regulations, *Australia's refugee and humanitarian system: achieving a balance between refuge and control*, AGPS, Canberra, 1992, p. 31.

6. Ibid. and DIAC, *Refugee and humanitarian issues: Australia's response*, June 2009, p. 21, viewed 25 May 2010, <http://www.immi.gov.au/media/publications/refugee/ref-hum-issues/pdf/refugee-humanitarian-issues-june09.pdf>

- Special assistance will often need to be provided for the movement of refugees in designated situations or for their resettlement in Australia, and
- It may not be in the interest of some refugees to settle in Australia. Their interests may be better served by resettlement elsewhere. The Australian Government makes an annual contribution to the UNHCR which is the main body associated with such resettlement.⁷
- In 1977 the Fraser Government introduced a Humanitarian Program to administer the new policy and respond to the Indochinese humanitarian crisis (and any future crises) in an orderly manner. The program included the establishment of mechanisms to determine onshore protection claims and it was intended that the program would provide the structure whereby future humanitarian intakes from both 'offshore' and 'onshore' could be planned and controlled.⁸

Since the 1970s Australia has adapted its refugee policy in response to various humanitarian crises (for example, following the Tiananmen incident in China). These changes included developing the means to assist asylum seekers who did not fit into the strictly defined 'refugee' category. Until the 1980s, almost all arrivals under the Humanitarian Program were refugees. In 1981 the Fraser Government introduced the Special Humanitarian Program (SHP) to assist people who did not fit neatly into the 'refugee' category, but who were subject to human rights abuses and had family or community ties with Australia.⁹ The SHP, together with the refugee category, marked the beginnings of the annual program that we have today.

In June 1989 a Comprehensive Plan of Action (CPA) was adopted at the International Conference on Indochinese Refugees held in Geneva in response to the flow of asylum seekers from Vietnam and Laos. Australia, under the Hawke Government, was one of 51 nations that endorsed this agreement.¹⁰ Between 1975 and 1991 Australia accepted more than 130 000 Indochinese refugees.¹¹

Between 1989 and 1991 there was an increase in people claiming refugee status due primarily to the Tiananmen Square incident in China in June 1989—most of the Chinese applicants in the

7. M MacKellar, House of Representatives, *Debates*, 24 May 1977, pp. 1713–1716.

8. D McMaster, *Asylum seekers: Australia's response to refugees*, Melbourne University Press, 2001, p. 70; and DIAC, *Refugee and humanitarian issues: Australia's response*, op. cit., p. 21. Most of the 79 000 Vietnamese who arrived in Australia between 1975 and 1985 came from South-East Asian refugee camps. The first refugee boat from Vietnam arrived in Darwin in April 1975. Between May 1977 and 1981 there were an estimated 2097 unauthorised arrivals by boat. Source: J Jupp, *The Australian People: an encyclopaedia of the nation, its people and their origins*, Cambridge University Press, 1988, p. 384. See also B York, *Australia and refugees 1901–2002: an annotated chronology based on official sources*, Chronology, Parliamentary Library, Canberra, 2003, viewed 1 December 2009, <http://www.aph.gov.au/library/pubs/online/03chr02.pdf>

9. DIAC, *Refugee and humanitarian issues: Australia's response*, op. cit., p. 22. The definition of a refugee under the 1951 Refugee Convention is explained in detail later in this paper.

10. Ibid.

11. Ibid.

country at the time were allowed to stay by the Hawke government.¹² There were 16 248 protection visa applications during 1990–91, with about 77 per cent coming from Chinese nationals.¹³

By the early 1990s, a comprehensive refugee system was in place within the immigration portfolio and in January 1993 a decision was made by the Keating government to officially separate the Humanitarian Program from the Migration Program.¹⁴

In 1996 the Howard Government introduced the practice of specifically identifying and linking the onshore and offshore components of the Humanitarian Program 'to improve program management'.¹⁵ This meant that 'offshore refugee and humanitarian' and 'onshore protection' were separately identified and included together in the same program, 'Humanitarian and Refugee Resettlement' for the first time. Before that, onshore protection was included under the 'Onshore Program Delivery' program while the refugee and humanitarian sub-program was included under 'Offshore Program Delivery'.¹⁶ In addition, the Howard Government introduced the practice of setting aside quotas (planned places) for 'onshore' places:

For the first time, a federal government had set aside a quota for refugees arriving in Australia without prior application. Before then refugees had been assessed on the basis of need rather than on the number of places available.¹⁷

Since then practices have varied in terms of planning, managing and counting the onshore or offshore components of the Humanitarian Program. Currently, onshore visa grants are not specifically allocated planning places (they are shared with the overall planning figures for the Humanitarian Program each year).

Australia has continued to respond to global resettlement needs as they have arisen. These have included those resulting from the Balkan crisis in 1991 and from wars and unrest in the Middle East and Central Asia—mostly Iraq and Afghanistan. In 1999 the Government created the temporary safe haven category to deal with Kosovars and East Timorese who had been

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12. K Betts, 'Immigration policy under the Howard government', *Australian Journal of Social Issues*, May 2003, viewed 1 December 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F27M96%22>
 13. DIAC, *Seeking asylum within Australia*, fact sheet no. 61, viewed 8 December 2009, <http://www.immi.gov.au/media/fact-sheets/61asylum.htm>
 14. Department of Immigration and Ethnic Affairs, *Refugee and humanitarian issues: the focus for Australia, 1994*; and DIAC, *Refugee and humanitarian issues: Australia's response*, op. cit., p. 23.
 15. DIAC, *Refugee and humanitarian issues: Australia's response*, op. cit., p. 23.
 16. See the Department of Immigration and Multicultural Affairs 1995–96 and 1996–97 annual reports for more detail.
 17. D McMaster, *Asylum seekers: Australia's response to refugees*, op. cit., p. 62; and P Ruddock (Minister for Immigration and Multicultural Affairs), *1996–97 Humanitarian Program*, media release, 3 July 1996.

displaced by upheaval in their country (DIAC subsequently granted 5900 Safe Haven visas to Kosovars and East Timorese in 1999–2000).

From 2003–04 to 2006–07, Australia's focus was on resettling refugees from Africa. In 2003–04 over 70 per cent of refugee resettlement grants were allocated to Africa and 24 per cent to the Middle East and South-West Asia (down from 40 per cent in 2002–03).¹⁸ In more recent years the priority focus has been more evenly spread between Asia, the Middle East and Africa—in 2008–09 each region was reserved an allocation of 33 per cent under the offshore resettlement program.¹⁹ Iraqis received the largest number of grants under the 2008–09 humanitarian program with 2874 visas granted, followed by Burmese (2412) and Afghans (847).²⁰

Refugee and asylum levels and trends

There is a great deal of confusion about the difference between an asylum seeker and a refugee and often the terms are used interchangeably or incorrectly. An asylum seeker is someone who is seeking international protection but whose claim for refugee status has not yet been determined. In contrast, a refugee is someone who has been recognised under the 1951 Refugee Convention to be a refugee.²¹

The vast majority of people seeking asylum, 75 to 95 per cent, remain in their region of origin, thus placing the burden on neighbouring countries. Four out of five refugees reside in developing countries. According to the UNHCR:

The available statistical evidence demonstrates that most refugees remain in their region of origin and flee to neighbouring countries. Indeed, the major refugee generating regions hosted on average between 75 and 91 per cent of refugees within the region. UNHCR estimates that some 1.7 million refugees (16 per cent out of the total of 10.5 million) live outside their region of origin.²²

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18. Department of Immigration and Multiculturalism and Indigenous Affairs (DIMIA), *Refugee and humanitarian issues: Australia's response*, 2005, pp. 18 and 34, viewed 1 December 2009, <http://www.immi.gov.au/media/publications/pdf/refhumiss-fullv2.pdf>
 19. DIAC, *Refugee and humanitarian issues: Australia's response*, 2009, p. 43, op. cit.
 20. C Evans (Minister for Immigration and Citizenship), *Australia delivers on refugee commitments*, media release, 1 September 2009, viewed 25 August 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FQ0OV6%22>
 21. J Phillips, *Asylum seekers and refugees: what are the facts?*, Background note, Parliamentary Library, Canberra, 2010, viewed 30 July 2010, <http://www.aph.gov.au/library/pubs/BN/sp/AsylumFacts.pdf>
 22. UNHCR, *2008 Global trends*, 2009, pp. 4 and 7, viewed 21 December 2009, <http://www.unhcr.org/4a375c426.html>

For example, in 2008 Pakistan was host to the largest number of refugees worldwide (1.8 million), followed by Syria (1.1 million) and Iran (980 000).²³

Some asylum seekers do make their way to countries in other regions. The UNHCR summarises trends in the number of individual asylum claims submitted in 44 industrialised countries in Europe and selected non-European countries each year. In 2009 these countries received an estimated 377 200 asylum applications.²⁴

Around the world most asylum claims are lodged in Europe, the USA and Canada. More asylum claims are lodged in Europe (particularly in France, Germany and the UK) than in any other part of the world.²⁵ Asylum claims in Europe have remained stable over the last three years with 286 700 asylum claims in 2009; 283 700 in 2008; and 249 600 in 2007. In 2009, the largest number of asylum claims for an industrialised country was in the USA with 49 000 claims, closely followed by France with 42 000 and Canada with 33 300 claims.²⁶ In comparison, a relatively small number—6500 claims—were lodged in Australia and New Zealand combined in 2009.²⁷

The UNHCR also provides indicators of the capacity of destination countries to host asylum seekers. These include statistics on asylum applications as a proportion of the population and GDP per capita. In terms of individual share in the total number of asylum applications received per 1000 inhabitants, Australia had 0.2 asylum applications per 1000 inhabitants in 2008. In these terms, Australia was ranked number 22 out of the 51 countries that were included in the UNHCR report *Asylum levels and trends in industrialized countries 2008*. Australia was ranked number 24 per 1 USD/GDP per capita for 2004–08. The less prosperous countries of Cyprus and Malta were the ones that received the highest number of applications compared to their national populations in 2008. France and the USA received the highest number of applications per capita compared to their national economies.²⁸

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23. Ibid., p. 2. For discussion of the challenges for neighbouring countries see N Kelly, 'International refugee protection challenges and opportunities', *International journal of refugee law*, vol. 19, no. 3, 1 October 2007, viewed 11 December 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FR3NP6%22>
 24. UNHCR, *Asylum levels and trends in industrialized countries 2009*, UNHCR, Geneva, 2010, pp. 3–4, viewed 5 May 2010, <http://www.unhcr.org/4ba7341a9.html>
 25. H Spinks, *Refugees and asylum seekers: a guide to key electronic resources*, Background note, Parliamentary Library, Canberra, 2009, viewed 16 March 2010, http://www.aph.gov.au/library/pubs/BN/sp/AsylumSeekers_Resources.htm and UNHCR, *Asylum levels and trends in industrialized countries 2009*, op. cit.
 26. UNHCR, *Asylum levels and trends in industrialized countries 2009*, op. cit., p. 5.
 27. Ibid., p. 5.
 28. UNHCR, *Asylum levels and trends in industrialized countries 2008*, pp. 8, 9 and 13, viewed 11 December 2009, <http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf>

In summary, Australia's resettlement of refugees and processing of asylum claims are small in the context of these international trends. In terms of our individual share of the number of asylum applications received by industrialised countries only a small number are lodged in Australia (6500 claims were lodged in Australia and New Zealand combined in 2009).²⁹ In terms of refugee resettlement, Australia's contribution is also modest. As noted by the Prime Minister, Julia Gillard, in an address to the Lowy Institute in July 2010:

Last year, Australia received 0.6 per cent of the world's asylum seekers. Refugees, including those referred for resettlement by the United Nations High Commission on Refugees, make up less than 8 per cent of migrants accepted in Australia. Even if all those who arrived in unauthorised boats were found to be refugees—which they will not—they would still be only 1.6 per cent of all migrants to Australia.³⁰

Part II – The Humanitarian Program

Australia's immigration program is divided into two distinct programs—the Migration Program for skilled and family migrants and the Humanitarian Program for refugees and those in humanitarian need. The Humanitarian Program is comprised of an offshore and an onshore component.

The *Offshore* component of the Humanitarian Program

- The majority of Australia's humanitarian program visas are granted under the offshore component, that is, to persons who apply for a visa before coming to Australia. The offshore component includes two categories of permanent visa, the Refugee category and the Special Humanitarian Program (SHP) category.

The Refugee category

According to the 1951 Refugee Convention a *refugee* is any person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former

29. See J Phillips, Asylum seekers and refugees: what are the facts?, op. cit.

30. J Gillard (Prime Minister), *Moving Australia forward*, speech to the Lowy Institute, 6 July 2010, viewed 30 July 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FIE8X6%22>

habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it...³¹

When an asylum seeker (someone who is yet to be recognized as a refugee) flees their homeland for fear of persecution, they will normally approach the authorities in another country (their host State) for protection. Alternatively, or in addition, they may also approach the United Nations High Commissioner for Refugees (UNHCR), especially if the host State is not a party to the 1951 Refugee Convention. The UNHCR will register all asylum seekers and others of concern to the office so that they can (amongst other things) prevent people being returned involuntarily to a place where they could face persecution. Aside from providing legal and physical protection, the UNHCR also assists refugees find an appropriate durable solution to their plight, by voluntarily repatriating to their homeland, integrating into countries of asylum or being resettled to a third country.

Resettlement is the term used by UNHCR to describe 'the transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them'.³² Broadly speaking, resettlement is a mechanism which provides protection to refugees whose life, liberty, safety, health or fundamental human rights are at risk in the country in which they have sought refuge (country of first asylum).³³ Refugees do not have a right to be resettled and States are not legally obligated under the 1951 Refugee Convention or any other instrument to accept refugees for resettlement. It is a voluntary scheme coordinated by the UNHCR which, amongst other things facilitates burden and responsibility sharing amongst signatory States. Only about 20 nations worldwide participate in UNHCR resettlement programs and accept quotas of refugees on an annual basis.³⁴ However, figures indicate that less than one per cent of the world's refugees may be resettled in any given year.³⁵ UNHCR estimates that 747 000 refugees will be in need of resettlement in 2010, but only 79 000 places are offered annually by all resettlement states together.³⁶ Significantly, UNHCR emphasises that resettlement

31. Article 1A(2) of the 1951 Refugee Convention.

32. UNHCR, *UNHCR Master Glossary of Terms*, June 2006, viewed 14 December 2009, <http://www.unhcr.org/refworld/docid/42ce7d444.html>

33. UNHCR, 'Frequently asked questions about resettlement', p. 2, viewed 15 December 2009, <http://www.unhcr.org/4ac0873d6.html>

34. The bulk of the following section has been reproduced from J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Background note, Parliamentary Library, Canberra, 2009, viewed 11 December 2009, <http://www.aph.gov.au/library/pubs/BN/sp/BoatArrivals.pdf>

35. Statement by Erika Feller (UNHCR's Assistant High Commissioner for Protection) at 58th session of the Executive Committee of the High Commissioner's Program, 3 October 2007 cited in UNHCR, 'Frequently asked questions about resettlement', op. cit., p. 1.

36. UNHCR, 'Frequently asked questions about resettlement', op. cit., p. 5.

should complement and not be a substitute for the provision of protection to persons who apply for asylum under the Convention.³⁷

Not every refugee will be eligible for resettlement. In fact, the shortage of places means that UNHCR will only recommend or refer the neediest of cases. The criteria used by UNHCR to select refugees for resettlement include the following:

- When there is no other way to guarantee the legal or physical security of the refugees concerned in the country of first asylum; this includes a threat of *refoulement* (forced return)
- Survivors of torture and violence, where the conditions of asylum could result in further trauma or where appropriate treatment is not available
- Persons with medical needs, in particular life-saving treatment that is unavailable in the country of first asylum
- Women and girls at risk, where there is a real risk that they could be exposed to sexual or gender-based violence
- Children and adolescents, where a best interests determination supports this
- Elderly refugees who may be particularly vulnerable and for whom resettlement appears to be the best solution, generally due to family links
- When it represents the only means to reunite refugee families who, owing to refugee flight or displacement, find themselves divided by borders or by entire continents, or
- When voluntary repatriation or local integration are not available or feasible in the foreseeable future.³⁸

If the UNHCR determines that a refugee does not qualify for resettlement they do not provide detailed reasons for their decision. Moreover, there is no right of appeal if the UNHCR determines that a refugee does not qualify for resettlement.

Though the UNHCR recommends or refers people for resettlement, the ultimate decision to grant a visa rests with the participating State. There are five offshore visa subclasses under Australia's Refugee and Humanitarian (Class XB) visa, though only the following four require the applicant to be subject to persecution:

- Refugee (visa subclass 200)
- In-Country Special Humanitarian (visa subclass 201)
- Emergency Rescue (visa subclass 203), and
- Woman at Risk (visa subclass 204).³⁹

37. Ibid.

38. Ibid., p. 3.

39. The fifth offshore visa subclass is Global Special Humanitarian (Subclass 202) which is discussed in further detail under the 'Humanitarian category' heading below.

In 2009–10, Australia granted 5173 Refugee visas, 24 In-Country Special Humanitarian visas, 0 Emergency Rescue visas, and 806 Woman at Risk visas.⁴⁰

There is no legal requirement that a person be registered with UNHCR prior to applying but in practice applicants have been recognised as refugees by the UNHCR and have been referred to DIAC for resettlement.⁴¹ This means they have satisfied one or more of the above criteria used by the UNHCR to determine which refugees are in need of resettlement. A Refugee visa (subclass 200) differs significantly from the onshore protection visa granted to refugees *within* Australia (discussed below). The main difference is that refugees seeking to enter Australia on a Refugee visa (subclass 200) must satisfy additional visa criteria. In addition to the person being subject to persecution and meeting health, character and national security requirements, the Minister must be satisfied that there are 'compelling reasons for giving special consideration to granting the visa' having regard to:

- the *degree* or severity of persecution to which they are subject
- the *extent* of their connection with Australia⁴²
- whether another country can provide for the applicant's settlement and protection from persecution and
- the capacity of the Australian community to provide for their permanent settlement⁴³.

Also, the Minister must be satisfied that their permanent settlement would be the appropriate course for the applicant and would not be contrary to the interests of Australia.⁴⁴

Moreover, the visa grant must be consistent with 'the regional and global priorities of the Commonwealth in relation to the settlement of persons in Australia on humanitarian grounds'.⁴⁵ In other words, there must be a place available for the grant of a visa within the allocation for the given program year.⁴⁶ Australia decides the size and regional composition of

40. A total of 6003 visas: DIAC, *2009–10 Annual Report*, Canberra, p. 105.

41. 'Failure to register with the UNHCR or government authorities of the host country is not grounds for refusing the applicant a subclass 200 (or any other Class XB subclass) visa. An applicant may present strong claims against subclass 200 criteria and be eligible to be granted the visa even though they have not registered with the UNHCR or the local authorities': DIAC, *Procedures Advice Manual 3 (PAM3)*, GenGuide D–Humanitarian visas–visa application and related procedures, accessed using Legend database.

42. *Ibid.* This requires an assessment of the nature of any family or social ties the applicant has in Australia.

43. *Ibid.* In assessing this factor DIAC takes into account 'whether the applicant has a proposer, and if so, the level of assistance the proposer is likely to be able to provide, other support that may be available to the applicant from relatives, friends and community organisations in Australia, the applicant's likely employment prospects, taking into account their work history, qualifications and English language ability'.

44. There is no merits review available for applicants refused a Refugee (subclass 200) visa.

45. Migration Regulations 1994, Schedule 2, Subclass 200, criterion 200.203.

46. DIAC, PAM3 – Migration Regulations: Assessing offshore humanitarian (Class XB) visa applications, accessed using Legend database.

its resettlement program taking into account information on global resettlement needs and priorities from the UNHCR, the views of stakeholders and the community's capacity to assist. The Minister determines the number of places to be allocated including the regions, nationalities and ethnic or religious groups that will be the focus of the program that year.⁴⁷

Since 1996–97 the Australian Government has numerically linked the onshore and offshore humanitarian programs. This means that the size of the offshore refugee resettlement program is influenced by a number of factors, including the number of people *within* Australia that are found to be refugees. The Refugee Council of Australia argues that numerically linking the onshore and offshore programs in this way blurs the critical distinction that should be maintained between Australia's international obligations and voluntary contribution to burden sharing:

The linking policy blurs the distinction between Australia's obligations as a signatory to the Refugee Convention (addressed through the onshore component) and our voluntary contribution to the sharing of international responsibility for refugees for whom no other durable solution is available (addressed through the offshore component) ... No other country in the world links its onshore and offshore programs in this way.⁴⁸

The following table indicates the number of offshore refugee visas granted to people who were subject to persecution since 1999:

	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09
Offshore refugee visa grants	3802	3997	4160	4976	4134	5511	6022	6003	6004	6499

Source: DIAC, [Population flows: immigration aspects 2008–09](#), source data, chapter 4, 2010.

Significantly, the allocated annual number of refugee visas is also taken by refugees' immediate family members. As DIAC explains:

In most cases, immediate family members are granted the same visa as the proposer and are given the same travel and settlement assistance. For example, the immediate family of a proposer who entered Australia on a Refugee (subclass 200) visa will also be granted a Refugee visa...⁴⁹

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47. DIAC, PAM3, GenGuide D- Humanitarian visas – visa application and related procedures, accessed using Legend database, op. cit.
48. Refugee Council of Australia, 'Myths and facts about refugees and asylum seekers', viewed 6 July 2010, <http://www.refugeecouncil.org.au/docs/news&events/rw/2010/4%20-%20Myths%20and%20facts%20about%20refugees%20and%20asylum%20seekers%202010.pdf>
49. DIAC, 'The Special Humanitarian Program', DIAC website, viewed 6 July 2010, <http://www.immi.gov.au/media/publications/pdf/shp-client-info-sheet.pdf>

The Humanitarian category

The Global Special Humanitarian (subclass 202) is the fifth visa subclass under Australia's Refugee and Humanitarian (Class XB) visa. It is known as the Special Humanitarian Program or SHP. Significantly, this visa is *not* for people fleeing persecution for a Convention reason but rather for people who are 'subject to substantial discrimination amounting to gross violation of human rights' in their home country. Substantial discrimination involves a lower threshold than persecution. It might involve:

- arbitrary interference with the applicant's privacy, family, home or correspondence
- deprivation of means of earning a livelihood, denial of work commensurate with training and qualifications and/or payment of unreasonably low wages
- relegation to substandard dwellings
- exclusion from the right to education
- enforced social and civil inactivity
- removal of citizenship rights
- denial of a passport, or
- constant surveillance or pressure to become an informer.⁵⁰

If the visa applicant is subject to substantial discrimination in their home country, then their entry to Australia must *also* be supported by a proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia. The 'proposer' is responsible for the settlement of the person they have proposed which could include:

- airfares for them to travel to Australia
- providing accommodation upon arrival and assisting them to find permanent accommodation and
- providing information and orientation assistance.⁵¹

Just like refugees, applicants for this humanitarian visa must also satisfy health, character and national security requirements. In addition, those that are being proposed (as described above) must also satisfy the Minister that there are compelling reasons for giving special consideration to granting the applicant a visa (as discussed above under the refugee category).

50. DIAC, PAM3, GenGuide D—Humanitarian visas—visa application and related procedures, accessed using Legend database, op. cit.

51. 'Information and orientation assistance' means assisting the entrant to access: income support through Centrelink; permanent housing; Medicare; health services (e.g. doctor, dentist and pharmacy); employment services (e.g. Job Network); education and training services (e.g. Adult Migrant English Program, children's schooling); translating and interpreting services; banking services; childcare services; and transport'. DIAC, 'Refugee and special humanitarian proposal Form 681', viewed 12 July 2010, <http://www.immi.gov.au/allforms/pdf/681.pdf>

Under what is called the 'split family' provisions, the Special Humanitarian visa is also used to enable the entry of immediate family members of particular visa holders. For instance, a person who has been granted a Special Humanitarian visa can 'propose' their spouse or de facto partner and/or dependent children.⁵² Significantly, refugees *within* Australia who are granted an onshore Protection visa (subclass 866) may also support the applications of their immediate family to enter Australia under the Special Humanitarian visa (subclass 202). This includes immediate family members of refugees currently processed on Christmas Island.⁵³

In 2007–08, more than 34 000 people applied under the SHP.⁵⁴ However, many are refused on the basis that they do not adequately demonstrate compelling reasons for the grant of visa. There is no merits review available for applicants who are refused this visa. According to DIAC, 'the most successful applicants have close family in Australia and have demonstrated strong claims of discrimination in their home country'.⁵⁵

The following table indicates the number of Special Humanitarian (subclass 202) visas granted since 1999:

	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09
SHP visa grants	3051	3116	4258	7280	7669	6585	6736	5313	5110	4630

Source: DIAC, [Population flows: immigration aspects 2008–09](#), source data, chapter 4, 2010.

Interestingly, the Special Humanitarian visa (subclass 202) has also been granted to people *within* Australia who have successfully sought Ministerial intervention.⁵⁶ In addition, some people who entered Australia on a Secondary Movement visa (subclass 447 or 451) after having been processed in Nauru or Papua New Guinea under the former Government's 'Pacific Solution' were also processed under the SHP component of the Humanitarian Program.⁵⁷

52. Immediate family members need not satisfy other primary criteria to be satisfied at time of application, such as being subject to substantial discrimination.

53. DIAC, 'The Special Humanitarian Program', op. cit.

54. Ibid.

55. Ibid.

56. For example, in 2008–09, 75 visas were granted in Australia through Ministerial intervention. See DIAC, *Annual Report 2008–09*, p. 86. Similarly, in 2006–07, 92 visas granted onshore through the ministerial intervention process. See DIAC, *Annual Report 2006–07*, viewed 12 July 2010, http://www.immi.gov.au/about/reports/annual/2006-07/html/outcome1/output1_2_1.htm

57. S Kneebone, 'The Pacific Plan: The Provision of 'Effective Protection'?', *International Journal of Refugee Law*, no. 18, 2006, p. 719.

The Onshore component of the Humanitarian Program

Seeking asylum within Australia

As the bulk of Australia's humanitarian visas are granted to refugees and humanitarian applicants assessed offshore, only a relatively small number of Protection visas go to asylum seekers processed by DIAC officials either on Christmas Island or within Australia. Historically, boat arrivals have only made up a small proportion of asylum applicants. However, more recently this proportion has shifted due to an increase in boat arrivals. As asylum seekers attempting to travel by aeroplane to Australia without the requisite documentation will not be permitted to board, Australia manages the movement of non-citizens across its border by, in effect, pushing the border offshore.⁵⁸

When an onshore Protection visa application is made, the Department decides if the applicant engages Australia's protection obligations under the 1951 Refugee Convention. The criteria for a Protection visa (subclass 866) are set out in the *Migration Act 1958* (Cth) (Migration Act) and the Migration Regulations 1994. Most relevantly, subsection 36(2) of the Migration Act provides that 'a criterion for a Protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol ...'. Particular terms relevant for the purposes of applying the 1951 Refugee Convention have been defined in the Migration Act, such as, 'persecution' (section 91R), 'membership of a particular social group' (section 91S), 'non-political crime' (section 91T), and 'particularly serious crime' (section 91U). An expansive body of common law (court judgments) has also evolved that assists decision-makers when determining Protection visa applications.

Eligible asylum seekers have access to free, professional migration advice and application assistance under the Government's Immigration Advice and Application Assistance Scheme (IAAAS).⁵⁹

The Migration Act requires all unlawful non-citizens (people without a valid visa) to be detained under subsection 189(1) of the Migration Act. However, when a person applies for an onshore Protection visa they automatically apply for a bridging visa to give them 'lawful' status

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58. DIAC, *Seeking asylum within Australia*, fact sheet no. 61, viewed 8 December 2009, <http://www.immi.gov.au/media/fact-sheets/61asylum.htm> Note: According to DIAC annual reports from 2000–01 to 2008–09, each year approximately 1500 people are refused entry at airports and seaports. These are not to be confused with people who enter Australia with a valid visa and subsequently apply for protection; DIAC, 'Managing the border', DIAC website, viewed 26 July 2010, <http://www.immi.gov.au/media/publications/compliance/managing-the-border/pdf/mtb-chapter1.pdf>
59. 'Persons eligible for Application Assistance include all protection visa applicants in detention, and the most disadvantaged protection visa applicants and other visa applicants in the community'. DIAC, *Immigration Advice and Application Assistance Scheme*, fact sheet no. 63, viewed 5 August 2010, <http://www.immi.gov.au/media/fact-sheets/63advice.htm>

while their application is being processed which means that provided the criteria for the bridging visa are satisfied, such people will not be detained.

Independent merits review is available through the Refugee Review Tribunal (RRT) or for character related issues, through the Administrative Appeals Tribunal (AAT). Judicial review proceedings may also be commenced in the Federal Magistrates Court, the Federal Court and/or the High Court of Australia. The Minister may also personally intervene and substitute a decision of the RRT or AAT with a more favourable decision if it is determined to be in the public interest, such as on humanitarian grounds.

Protection visa applicants found to be owed protection and who meet all health, character and security requirements are granted a permanent Protection visa (subclass 866). The number of visas granted to refugees in Australia (including persons processed on Christmas Island) has been relatively low since 2002:

	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09
Onshore refugee visa grants	2458	5741	3891	869	2020	1082	1386	1701	1900	2378

Source: DIAC, [Population flows: immigration aspects 2008–09](#), source data, chapter 4, 2010.

Temporary Protection visas (TPVs)

In October 1999 the Howard Government introduced Temporary Protection visas (TPVs) for asylum seekers arriving without a visa who were subsequently assessed by the department to be refugees. Before then, all refugees, including unauthorised arrivals found to be refugees were given immediate access to permanent Protection visas.⁶⁰

TPV holders were only eligible for some of the settlement services funded by the Commonwealth to assist new arrivals in Australia. Unlike permanent Protection visa holders, TPV recipients had no family reunion rights and no right to re-enter the country if they decided to depart Australia.⁶¹

The TPV was initially granted for a period of three years, with the option of applying for further protection before the end of that period. In September 2001, changes were made to the legislation that determined that TPV recipients applying for further protection were 'not able to access a permanent Protection visa if, since leaving their home country, they had resided

60. For more background see J Phillips, [Temporary Protection Visas](#), Research note no. 51, Parliamentary Library, Canberra, 2004.

61. Ibid.

for at least seven days in a country where they could have sought and obtained effective protection ('the 7 day rule').⁶²

In July 2004, the government announced new measures allowing TPV and other Temporary Humanitarian Visa (THV) holders—such as Temporary Humanitarian Stay Visa or Temporary Humanitarian Concern Visa recipients in Australia when the regulations commenced—to apply for mainstream migration visas to remain in Australia permanently, without requiring them to leave the country to lodge their applications. The then Minister for Immigration and Multicultural and Indigenous Affairs, Amanda Vanstone, stated that 'this decision in relation to the opportunity for those on TPVs to apply to stay in Australia permanently recognises the fact that many TPV holders are making a significant contribution to the Australian community, particularly in regional areas'.⁶³

This initiative took effect on 27 August 2004, along with a new Return Pending visa (Subclass 695) allowing people found not to be in need of further protection to remain in the country for 18 months (with continued access to the same benefits and visa conditions as the TPV and THV), in order to make arrangements to depart.⁶⁴

In the 2008–09 Budget the Rudd Government announced that it would honour an election commitment to abolish the TPV regime which it considered to be inhumane, unfair and ineffective.⁶⁵ The abolition came into effect on 8 August 2008. This meant that all onshore applicants (including those processed on Christmas Island) found to engage Australia's protection obligations would receive a permanent Protection visa.⁶⁶ Some other temporary humanitarian visas granted to people outside Australia (such as those that processed on Nauru and Manus Island) were also abolished on that date. In addition, the '7 day rule' was removed which means that a Protection visa applicant is now eligible for a visa regardless of whether

62. Ibid.

63. A Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs), *New measures for TPV holders*, media release, 13 July 2004, viewed 25 August 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F8HD6%22>

64. This is not to be confused with the [Removal Pending Bridging Visa](#) (Subclass 070), introduced in May 2005, enabling the release from detention of long-term detainees, determined not to be refugees by Australia, but who could not be easily removed in practice.

65. C Evans, *Refugee Policy Under The Rudd Government - The First Year*, Address to the Refugee Council of Australia, 17 November 2008, viewed 5 August 2010, <http://www.chrisevans.alp.org.au/news/1108/immispeeches17-01.php>

66. Current and former holders of a TPV/THV also had their status resolved permanently through the grant of a Resolution of Status (RoS) subclass 851 visa.

since leaving their home country they resided for a period of seven days or more in a country in which they could have sought and obtained effective protection.⁶⁷

In May 2010, the Coalition announced in a policy statement that, if elected:

Consistent with the announcement by the then Leader of the Opposition on 13 November 2009 to introduce a non-permanent visa for asylum seekers who arrive without authorisation, the Coalition will re-introduce temporary protection visas (TPVs).⁶⁸

Seeking asylum in Australian excised territory

Following the so-called 'Tampa incident' of August 2001, the Howard Government succeeded in passing the Migration Amendment (Excision from Migration Zone) Act 2001 that meant asylum seekers who entered Australia at an 'excised offshore place' such as Ashmore and Christmas Islands were legally prevented from making a valid visa application under Australian law.⁶⁹ Excision of Australian territory became part of what is commonly known as the 'Pacific Solution', a broader policy to discourage asylum seekers from travelling to Australia by boat without a valid visa.

Under the 'Pacific Solution', people attempting to enter Australia's migration zone were intercepted at sea and where possible either returned to Indonesia, taken to a third country for processing (Manus Island in Papua New Guinea or Nauru), or taken to Australian immigration facilities at Christmas Island. People found to be refugees had no guarantee of being resettled to Australia.⁷⁰

A total of 1637 people were detained in the Nauru and Manus facilities between September 2001 and February 2008—1153 (70 per cent) were ultimately resettled to Australia or other

67. DIAC, Abolition of temporary protection visas (TPVs) and temporary humanitarian visa (THVs) and the resolution of status visa (subclass 851), fact sheet no. 68, viewed 25 August 2010, http://www.immi.gov.au/media/fact-sheets/68tpv_further.htm

68. Coalition, *Restoring sovereignty and control to our borders*, Policy directions statement, 27 May 2010, viewed 29 July 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2FGRFX6%22>. See also: M Turnbull, *Coalition's strong stand on border protection*, media release, 3 November 2009, viewed 9 December 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FHX6V6%22>

69. The controversial *Tampa* incident involved 433 asylum seekers on route to Australia being rescued by a Norwegian freighter, the *Tampa*. These asylum seekers were refused entry to Australia, transferred to HMAS Manoora and (along with later arrivals) sent to the Pacific island of Nauru. A Millbank and J Phillips, *Protecting Australia's borders*, Research note, no. 22, 2003–04, Parliamentary Library, Canberra, 2003, viewed 9 December 2009, <http://www.aph.gov.au/library/pubs/rn/2003-04/04rn22.htm>

70. Ibid.

countries.⁷¹ Those taken to Australia were mostly granted three or five year Secondary Movement Humanitarian visas.⁷² On 8 February 2008, the 'Pacific Solution' came to an end as the last 21 asylum seekers detained at the Offshore Processing Centre (OPC) in Nauru were resettled to Australia. The Rudd Government announced that the centres on Manus and Nauru would no longer be used, but confirmed that future unauthorised boat arrivals or 'offshore entry persons' as they are known under the Migration Act would continue to be processed on Christmas Island.⁷³

Under current arrangements, asylum seekers that arrive at an 'excised offshore place' without a valid visa are deemed to be 'offshore entry persons' and are not eligible to apply for *any* visa. They are barred from applying under section 46A of the Migration Act. Offshore entry persons *may* be detained under subsections 189(3) or (4) of the Migration Act. Current Government policy is that all 'offshore entry persons' will be detained for the management of health, identity and security risks to the community.

Though asylum seekers that are intercepted at sea and taken to Christmas Island are barred from lodging a visa application under Australian law, they are nonetheless able to seek asylum and have their claims processed under a special non-statutory Refugee Status Assessment (RSA) procedure. This procedure involves departmental officers making an assessment on whether a person is a refugee within the meaning of the 1951 Refugee Convention. Asylum seekers have access to publicly funded migration agents to assist with the process and can seek a non-statutory merits review of negative decisions. Such decisions are not made publicly available. If a person is found to be a refugee, their case will be referred to the Minister for Immigration and Citizenship who will personally decide whether it is in the public interest to permit them to apply for an onshore Protection visa. If so, they will be eligible to make a valid visa application.⁷⁴ The statutory criteria to be satisfied for onshore Protection visas are discussed earlier. Some 'offshore entry persons' such as unaccompanied minors and families that are physically relocated to the Australian mainland appear to retain their original legal status ('offshore entry persons') and are processed as they would be as if they physically remained on Christmas Island.

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71. C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, media release, 8 February 2008, viewed 9 December 2009, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08014.htm>
 72. The Secondary Movement Offshore Entry (Temporary) Subclass 447 and Secondary Movement Relocation (Temporary) Subclass 451 visas were abolished in August 2008. See DIAC, *Abolition of temporary protection visas (TPVs) and temporary humanitarian visa (THVs) and the resolution of status visa (subclass 851)*, op. cit.
 73. Ibid. See also DIAC, *Australia's excised offshore places*, fact sheet no. 81, viewed 9 December 2009, <http://www.immi.gov.au/media/fact-sheets/81excised-offshore.htm>
 74. DIAC answer to a Question on Notice taken at the Senate Legal and Constitutional Affairs Committee hearing into the *Migration Amendment (Immigration Detention Reform) Bill*, 7 August 2009, viewed 15 December 2009, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=21e8b1ad-dfce-49e6-b5ed-9fe8c03379bb>

Some commentators question whether the processing on Christmas Island is equitable and as fair as onshore processing arrangements. In *Immigration detention and offshore processing on Christmas Island*, the Australian Human Rights Commission (AHRC) states that 'the provisions of the Migration Act relating to excised offshore places create a two-tiered system for determining whether an asylum seeker is a refugee' and that asylum seekers arriving in an excised offshore place:

- are barred by the Migration Act from submitting a valid application for any visa, including a Protection visa—this only becomes possible if the Minister exercises his or her discretion to allow an application to be submitted
- do not have access to independent merits review by the RRT or the AAT—instead they have access to an Independent Reviewer who conducts a review of the initial RSA decision and makes a non-binding recommendation to the Minister
- have very limited access, if any, to judicial review of a decision made by a DIAC officer or an Independent Reviewer that the person is not a refugee.⁷⁵

In the last financial year approximately 90–95 per cent of assessments completed on Christmas Island resulted in Protection visas being granted.⁷⁶ A total of 1254 refugee claims from people on Christmas Island were assessed between 1 July 2009 and 31 January 2010.⁷⁷ Of the 1254 claims assessed, 110 people were assessed as not being refugees.⁷⁸ These figures suggest that 1144 (approximately 91 per cent) of those claims assessed on Christmas Island between 1 July 2009 and 31 January 2010 resulted in the claimant being found to be a refugee.

However, in her address to the Lowy Institute on 6 July 2010, the newly appointed Prime Minister, Julia Gillard, confirmed that the acceptance rates for Afghans had dropped markedly since processing was suspended for Afghan (and Sri Lankan) asylum applicants by the Government in April 2010:

The other group of arrivals for whom processing has been suspended is people from Afghanistan. So far this year more than 60 per cent of all asylum seekers arriving by boat have come from that country. Although there was a time when large numbers of Afghan asylum seekers were granted refugee status, since April there have more than 500 primary refusal

75. AHRC, *Immigration detention and offshore processing on Christmas Island*, 2009, pp. 15–16, viewed 9 December 2009, http://www.hreoc.gov.au/human_rights/immigration/idc2009_xmas_island.html

76. DIAC, *Annual Report 2008-09*, Canberra, 2009, p. 96, viewed 23 April 2010, <http://www.immi.gov.au/about/reports/annual/2008-09/html/outcome1/output1-2-2.htm>. Estimates may be calculated from figures provided in the report.

77. Senate Legal and Constitutional Affairs Committee, Answers to questions on notice, Immigration portfolio, Additional Budget Estimates, 9 February 2010, Question 30, viewed 30 July 2010 http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/diac/30_qon.pdf

78. Senate Legal and Constitutional Affairs Committee, Answers to questions on notice, Immigration portfolio, Additional Budget Estimates, 9 February 2010, Question 32, viewed 30 July 2010, http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/diac/32_qon.pdf

decisions for Afghans. During the past month the primary refusal rate has exceeded 70 per cent.⁷⁹

Part III – Settlement Initiatives

Australia's settlement services, designed to assist new migrants and refugees to participate as soon and as fully as possible in Australia's economy and society, have evolved over the last 65 years from the provision of basic on-arrival accommodation and assistance, to more intensive support programs targeted at meeting the specific needs of humanitarian entrants.⁸⁰

The current settlement services offered by the federal government include integrated support for humanitarian entrants, translating services, English language classes, and grants-based funding for projects to promote social cohesion and integration of migrant groups. The Integrated Humanitarian Settlement Strategy (IHSS), introduced in 2000, provides intensive on-arrival assistance for humanitarian entrants. The IHSS continues to be the primary vehicle for delivering settlement assistance to humanitarian entrants.⁸¹

Regional settlement initiatives

Most migrants and refugees settle in major Australian cities, but there have been several attempts by government over recent years to encourage settlement in regional areas.⁸² In January 2004 the Howard government announced that it would try to increase the numbers of migrants and humanitarian entrants in rural and regional areas.⁸³ This announcement was

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79. J Gillard, *Moving Australia forward*, op. cit. The Age newspaper has reported that 'sources claimed that many of the Afghan asylum seekers whose claims were rejected in recent months have had the decisions overturned on appeal. No figures will be released during the election campaign'. M Gordon, 'Pacific Solution returns from day one', *The Age*, 3 August 2010, viewed 5 August 2010, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/G9IX6/upload_binary/g9ix60.pdf
80. H Spinks, *Australia's settlement services for migrants and refugees*, Research paper, no. 29, 2009, Parliamentary Library, Canberra, 2009, viewed 5 August 2010, <http://www.aph.gov.au/Library/pubs/rp/2008-09/09rp29.pdf> See also, L Buckmaster, *Australian government assistance to refugees: fact v fiction*, Background note, Parliamentary Library, Canberra, 2009, viewed 9 August, 2010, http://www.aph.gov.au/Library/pubs/BN/sp/AustGovAssist_Refugees.pdf
81. Ibid.
82. B McDonald-Wilmsen, M Gifford, K Webster, J Wiseman and S Casey, 'Resettling refugees in rural and regional Australia: learning from recent policy and program initiatives', *Australian Journal of Public Administration*, vol. 68, no. 1, pp. 97–111, March 2009, viewed 5 August 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FXMJT6%22>
83. A Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs), *New initiatives to draw more migrants to regional areas*, media release, 12 January 2004, viewed 10 December 2009, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3D\(Id%3Amedia%2Fpressrel%2F0tcb6\);rec%3D0](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3D(Id%3Amedia%2Fpressrel%2F0tcb6);rec%3D0) and DIAC, *Humanitarian Settlement in Regional Australia*, fact sheet no. 97, Canberra, viewed 11 December 2009, http://www.immi.gov.au/media/fact-sheets/97humanitarian_settlement.htm

initiated partly as a result of recommendations made by the government's *Review of settlement services for migrants and humanitarian entrants* in 2002–03, and partly in response to state government interest in new entrants settling in regional areas with labour shortages.⁸⁴

DIAC is able to influence some humanitarian entrants, without any strong ties to family or friends who are already in the country, to settle in regional areas once their settlement needs have been assessed. DIAC's IHSS and Community Settlement Services Scheme (CSSS), for example, had some success in encouraging 'unlinked' refugees to settle in regional areas.⁸⁵ However, most humanitarian entrants continue to settle in urban areas where they will be close to family or community support.⁸⁶

Since the government announced its focus on regional resettlement in 2004 there has been a steady increase in the number of regional resettlement sites and programs and in financial support for regional resettlement initiatives.⁸⁷ In 2009 the Rudd Government confirmed its ongoing commitment to increasing humanitarian settlement in regional areas with existing settlement infrastructure, mainstream services, employment opportunities and community support. It also committed to supporting pilot humanitarian settlement projects in Victoria and South Australia, as well as new projects in NSW and Queensland under the Sustainable Regional Settlement Program.⁸⁸

As humanitarian entrants generally require more settlement support than people arriving under the migration program, the success of regional initiatives depends very much on the level of service delivery and appropriate community support in rural and regional areas. Employment, housing, language assistance, counselling, health services and cultural support are all crucial elements in successfully integrating and supporting new entrants.

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84. DIMIA, *Report of the Review of Settlement Services for Migrants and Humanitarian Entrants*, Canberra, May 2003, viewed 10 December 2009, <http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-policy/review-settlement-services.htm>
85. H Spinks, *Australia's settlement services for migrants and refugees*, op. cit., pp. 5–9; DIMIA, *Report of the Review of Settlement Services for Migrants and Humanitarian Entrants*, op. cit., pp.193–222; The CSSS was replaced by the Settlement Grants Program (SGP) from 1 July 2006; DIAC, *Humanitarian Settlement in Regional Australia*, op. cit.
86. DIAC, *New South Wales—settlement trends and needs of new arrivals 2007*, Canberra, 2007, p. 15, figure 8, viewed 14 December 2009, http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-planning/_pdf/trends_needs_nsw.pdf
87. B McDonald-Wilmsen, op. cit.
88. DIAC, *Annual Report 2008–09*, Canberra, 2009, pp. 172 and 174, viewed 7 December 2009, <http://www.immi.gov.au/about/reports/annual/2008-09/pdf/>; see also DIAC, *Humanitarian Settlement in Regional Australia*, op. cit.

A number of government and non-government reviews have been conducted between 2004 and 2009 assessing the effectiveness of regional refugee settlement initiatives.⁸⁹ Evaluations of regional resettlement initiatives have revealed a number of key issues facing refugees in their attempts to settle in regional areas, including:

- barriers to economic participation, including difficulty finding permanent employment, being underemployed and lack of access to experienced and appropriately resourced job service providers
- difficulty in building social networks in the broader community, often leading to experiences of isolation and
- lack of community and local government investment, lack of suitable housing and limited public transport options.⁹⁰

Successful regional resettlement initiatives rely on central coordination by local settlement planning committees focused on areas such as employment, health, education and housing, and require appropriate levels of funding and resourcing to support case management and capacity building in host and refugee communities.⁹¹

A number of academic commentators and service providers in this field have noted that while current government policy is focused on supporting direct resettlement of refugees in regional areas, there is an increasing trend towards formal and informal secondary migration, or 'relocation', of refugees from metropolitan centres to regional areas.⁹² While direct resettlement is more amenable to being planned and controlled, secondary migration is less predictable and may lead to the formation of small and highly dispersed communities in areas with limited resources and limited human and economic sustainability.⁹³ Commentators argue that existing planning and funding strategies do not provide an adequate response to secondary migration and future policy will need to be able to meet the complex challenges presented by this phenomenon.⁹⁴ They recommend that future planning, funding and service delivery models be based on an integrated, whole of government approach that is responsive to changing demographic needs and focused on building sustainable refugee communities in regional areas.⁹⁵

89. See the following annotated bibliography, Refugee Resettlement Advisory Council (RRAC) and Department of Immigration and Citizenship (DIAC), *Regional Resettlement Reports*, RRAC and DIAC, October 2009, viewed 7 December, http://www.refugeecouncil.org.au/docs/current/Regional_Settlmt_bibliography.pdf

90. B McDonald-Wilmsen, op. cit., pp. 100–102.

91. Ibid., pp. 105–06.

92. Ibid., p. 103.

93. Ibid., pp.103–104.

94. Ibid., and p.107.

95. Ibid., pp.105–109.

On 25 September 2009, the Commonwealth Government announced the establishment of a new Strategic Settlement Framework, following a period of consultations with the settlement assistance sector.⁹⁶ The new framework aims to lay the foundations for an integrated service delivery network to ensure long-term sustainable outcomes across the spectrum of government resettlement programs.⁹⁷

In announcing the 2010–11 Humanitarian Program the Government reaffirmed its commitment to resettling refugees in regional areas 'where there are employment possibilities and a supportive environment to aid in the settlement process'.⁹⁸ The Coalition's 2010 election platform also includes a commitment to resettling more entrants from the refugee and humanitarian programs in regional areas where resettlement programs have proven to be highly successful.⁹⁹ This has been presented as part of its broader policy on addressing the skills needs of regional and rural areas.

96. L Ferguson, *Parliamentary Secretary announcement of the Strategic Settlement Framework*, speech, Parliament House, Canberra, 25 September 2009, viewed 8 December 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FOYSU6%22>

97. Ibid.

98. C Evans, *Budget 2010–11—Humanitarian Program*, op. cit.

99. Coalition, *The Coalition's policy for population and immigration*, media release, 1 January 2010, pp. 3 and 9, viewed 30 July 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2FBRFX6%22>

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Appendix A: Explanation of key terms

Refugee	<p>Article 1A(2) of the 1951 Convention Relating to the Status of Refugees defines a 'refugee' as a person who:</p> <p>...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.</p>
Asylum seeker	<p>An individual who is seeking international protection. Someone whose claim has not yet been finally decided by the country in which he or she has submitted it. 'Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker'.¹⁰⁰</p>
Internally Displaced People (IDP)	<p>People who flee their homes to escape conflict, violence, human rights abuses or other disasters. An Internally Displaced Person may have been forced to flee their home for the same reasons as a refugee, but have not crossed an internationally recognised border.¹⁰¹</p>
Unlawful non-citizen	<p>Under Australian law, an unlawful non-citizen is a national from another country that does not hold a valid visa. The majority of unlawful non-citizens in Australia have either overstayed their visa or are people who have had their visa cancelled. Some unlawful non-citizens will have entered Australia without a visa.¹⁰²</p>
Migration zone	<p>Under the Migration Act, 'enter Australia' means entering the migration zone. The 'migration zone' means the area consisting of States, the Territories, Australian resource installations and Australian sea installations.¹⁰³</p>

100. UNHCR, UNHCR Master Glossary of Terms, op. cit.

101. Ibid.

102. DIAC, *Overstayers and other unlawful non-citizens*, fact sheet no. 86, viewed 11 June 2009, <http://www.immi.gov.au/media/fact-sheets/86overstayers-and-other-unlawful-non-citizens.htm>

103. DIAC, *Australia's Excised Offshore Places*, fact sheet no. 81, viewed 14 July 2010, <http://www.immi.gov.au/media/fact-sheets/81excised-offshore.htm>

Excised offshore place	In 2001 the Government passed legislation which prohibits people who arrive at an 'excised offshore place' without a valid visa from making a visa application under Australian law. These excised offshore places include the Ashmore and Cartier Islands, Christmas Island and Cocos (Keeling) Islands. The excised offshore places continue to be under Australian jurisdiction and sovereignty in all other respects. The Minister for Immigration and Citizenship retains a discretionary power to allow a valid application to be made by a person who arrives at an excised offshore place. ¹⁰⁴
Humanitarian Program	Australia's Immigration Program has two streams; the Migration Program for skilled and family migrants and the Humanitarian Program for refugees and those in humanitarian need. The Humanitarian Program has an <i>offshore</i> component (comprising a refugee category for those subject to persecution and a humanitarian category for those subject to substantial discrimination). The <i>onshore</i> component of the Humanitarian Program comprises those that have been found to be refugees (that is, to have suffered persecution) whether they have their claims processed within Australia or at an 'excised offshore place' such as Christmas Island.
Onshore protection	Australia's Humanitarian Program includes an onshore component for those people already in Australia seeking Australia's protection. ¹⁰⁵
Unauthorised arrivals	An expression used to describe people entering or attempting to enter Australia without a valid visa.
Boat people	An expression used to describe asylum seekers who arrive or attempt to arrive by boat. DIAC also uses the terms 'unauthorised boat arrivals' or 'unauthorised maritime arrivals' and 'irregular maritime arrivals'. ¹⁰⁶

104. DIAC, *New humanitarian visa system*, fact sheet no. 65, viewed 11 June 2009, <http://www.immi.gov.au/media/fact-sheets/65humanitarian.htm>

105. Ibid.

106. DIAC, *Processing unlawful boat arrivals*, fact sheet no. 75, viewed 11 June 2009, <http://www.immi.gov.au/media/fact-sheets/75processing-unlawful-boat-arrivals.htm>. On the issue of 'illegals' see also J Phillips, *Asylum seekers and refugees: what are the facts?*, Background note, Parliamentary Library, Canberra, 2010, viewed 5 August 2010, <http://www.aph.gov.au/library/pubs/BN/sp/AsylumFacts.pdf>

Appendix B: Statistics

Migration and Humanitarian Program (permanent) visa grants since 1989

Year	Migration Program	Humanitarian Program
1989–90	120 200	12 415
1990–91	112 200	11 284
1991–92	98 900	12 009
1992–93	67 900	11 845
1993–94	62 800	14 070
1994–95	76 500	14 858
1995–96	82 500	16 252
1996–97	73 900	11 902
1997–98	67 100	12 055
1998–99	67 900	11 356
1999–00	70 200	15 860
2000–01	80 610	13 733
2001–02	93 080	12 349
2002–03	108 070	12 525
2003–04	114 360	13 823
2004–05	120 060	13 178
2005–06	142 930	14 144
2006–07	148 200	13 017
2007–08	158 630	13 014
2008–09	171 318	13 507
2009–10	168 623	13 770
2010–11 (planned)	168 700	13 750

Sources: DIAC advice; [Population flows: immigration aspects 2008–09](#), source data, chapter 4, 2010; and C Evans (Minister for Immigration and Citizenship), [Migration Program: the size of the skilled and family programs](#), 12 May 2009; [Migration program targets overseas workers Australia needs](#), 31 August 2009; and [Australia delivers on refugee commitments](#), 1 September 2009; Chris Bowen (Minister for Immigration and Citizenship), Migration program targeting skills, 27 October 2010; and DIAC annual reports.

Note: Migrants and refugees are granted permanent visas under the Migration and Humanitarian Program. These figures do not include data on temporary migration.

Humanitarian Program outcomes by category 1947 to 2009

Year	Refugee	Special Humanitarian	Special Assistance	Onshore Protection	Safe Haven	Total arrivals
Assisted refugees (estimated) 1947-48 to 1974-75*	264 053					264 053
Unassisted refugees (estimated) 1947-48 to 1974-75	33 000					33 000
1975-76	4374					4374
1976-77	8124					8124
1977-78	9326					9326
1978-79	12 750	700				13 450
1979-80	17 677	2277				19 954
1980-81	20 795	1675		75		22 545
1981-82	20 195	1722				21 917
1982-83	16 193	861				17 054
1983-84	12 426	3059				15 485
1984-85	9520	4687				14 207
1985-86	7832	3868				11 700
1986-87	5857	5434				11 291
1987-88	5514	5878				11 392
1988-89	3574	7735				11 309
1989-90	1238	10 451		726		12 415
1990-91	1497	8287		1500		11 284
1991-92	2424	4360	2363	2862		12 009
1992-93	2893	2392	5657	903		11 845
1993-94	4315	2524	5840	1391		14 070
1994-95	3992	3675	5545	1646		14 858
1995-96	4643	3499	6910	1200		16 252
1996-97	3334	2470	3848	2250		11 902
1997-98	4010	4636	1821	1588		12 055
1998-99	3988	4348	1190	1830		11 356
1999-00	3802	3051	649	2458	5900**	15 860
2000-01	3997	3116	879	5741		13 733
2001-02	4160	4258	40	3891		12 349
2002-03	4376	7280		869		12 525
2003-04	4134	7669		2020		13 823
2004-05	5511	6585		1082		13 178
2005-06	6022	6736		1386		14 144
2006-07	6003	5313		1701		13 017
2007-08	6004	5110		1900		13 014
2008-09	6499	4630		2378		13 507
2009-10 (planned)	6000	7750				13 750

Source: DIAC, [Population flows: immigration aspects 2008-09](#), source data, chapter 4, 2010. Note: 1947-48 to 1976-77 data provided by the Department of Immigration to the Parliamentary Library in 2001. *Includes an estimated 170 700 displaced persons who arrives between 1947 and 1954. **This figure includes 5900 Safe Haven visas, comprising 4000 grants to Kosovars offshore and 1900 grants to East Timorese onshore. Notes:

- Australia's first formal refugee program introduced in 1977
- Special Humanitarian Program (SHP) introduced in 1981
- Special Assistance Category (SAC) introduced in 1992
- Humanitarian Program formally separated from the Migration Program in 1993
- Offshore and onshore components of the Humanitarian Program began to be identified separately in 1996

Onshore asylum applications by financial year since 1989

Year	Protection visa lodgements
1989–90	3373
1990–91	14 051
1991–92	9797
1992–93	3087
1993–94	2800
1994–95	4516
1995–96	7640
1996–97	10 267
1997–98	8101
1998–99	8257
1999–00	12 713
2000–01	13 015
2001–02	8670
2002–03	4990
2003–04	3567
2004–05	3105
2005–06	3300
2006–07	3743
2007–08	3987
2008–09	5304
2009–10	8150

Sources: DIAC annual reports. Where the data was not available in annual reports the figures have been taken from departmental fact sheets and advice. Notes: According to departmental annual reports, fewer than 400 onshore asylum claims were received each year until mid 1989. The dramatic increase in the following two years reflects applications from PRC nationals in Australia at the time of the Tiananmen Square incident.

Onshore asylum applications by calendar year 1989–2009

Year	Asylum applications submitted
1989	1262
1990	12 128
1991	16 743
1992	6065
1993	7178
1994	6264
1995	7632
1996	9758
1997	9312
1998	8156
1999	9451
2000	13 070
2001	12 370
2002	5860
2003	4300
2004	3200
2005	3200
2006	3520
2007	3980
2008	4770
2009	6170

Sources:

2005–2009: UNHCR, Asylum levels and trends in selected industrialized countries, 2009

2000–2004: UNHCR, Asylum levels and trends in selected industrialized countries, 2004 and 2005

1993–1999: UNHCR, *Statistical yearbook*, 2002

1989–1992: UNHCR Statistical yearbook, 2001 and Annual statistical overview, 1998.

Regional refugee settlement 2004–2009

Local Government Areas	2004	2005	2006	2007	2008	2009	Total
Albury (C)	1	5	4	19	35	69	133
Ballarat (C)	18	26	15	34	31	11	135
Cairns (C)	52	84	36	47	33	63	315
Coffs Harbour (C)	37	64	39	69	76	87	372
Gold Coast (C)	24	46	75	87	46	167	445
Greater Geelong (C)	65	85	45	59	126	84	464
Launceston (C)	76	111	70	87	148	131	623
Mount Gambier (C)	0	0	0	41	5	92	138
Murray Bridge (RC)	13	15	29	5	0	15	77
Newcastle (C)	122	142	54	69	47	60	494
Shepparton (C)	42	124	169	127	54	45	561
Toowoomba (C)	149	123	95	93	60	34	554
Townsville (C)	16	33	19	19	26	85	198
Wagga Wagga (C)	42	53	71	62	20	62	310
Wollongong (C)	53	67	65	123	94	145	547
Total	710	978	786	941	801	1150	5366

Source: Senate Legal and Constitutional Affairs Committee, Answers to Questions on Notice, Immigration and Citizenship Portfolio, Additional Estimates, 9 February 2010, [Question 107](#)

Note: These figures are current as at 31 December 2009 and capture direct settlement of humanitarian entrants by DIAC and secondary movement numbers into these regional areas.

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