

## Chapter 11

### Pacific Solution: Outcomes and Cost

‘Australia will ensure that no persons are left behind in Nauru.’<sup>1</sup>

#### Introduction

11.1 Legislative changes in September 2001 restructured the arrangements for the processing of asylum applications made by unauthorised boat arrivals. One effect of these changes was to limit the ability of ‘offshore entry persons’ to make valid visa applications.

11.2 The *Migration Amendment (Excision from Migration Zone) Act No. 127 2001* inserts into the *Migration Act 1958* a new definition of ‘excised offshore place’ and a related definition of an ‘offshore entry person’. Excised offshore places include Christmas Island and Ashmore Island. An offshore entry person cannot make a valid visa application if that person is in Australia and is an unlawful non-citizen, except where the Minister decides that it is in the public interest to allow them to do so.<sup>2</sup>

11.3 Provisions of the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act No. 128 2001* authorise the removal of offshore entry persons to ‘declared countries’ where their asylum claims can be processed. This Act also included a privative clause, preventing proceedings relating to offshore entry persons except proceedings brought in the original jurisdiction of the High Court.<sup>3</sup>

11.4 Both Nauru and Papua New Guinea are currently declared countries under Section 198A of the *Migration Act*,<sup>4</sup> providing the legislative framework for the establishment of offshore processing centres in those countries.

11.5 Such offshore processing ensures that the asylum seekers have access to neither the *Migration Act* review procedures nor judicial review under Australian law.<sup>5</sup>

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1 *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia for Cooperation in the Administration of Asylum Seekers and Related Issues*, Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

2 Dy Spooner and Nathan Hancock, Bills Digest No. 69 2001-02, Department of the Parliamentary Library, 26 September 2001, pp.3.

3 Dy Spooner and Nathan Hancock, Bills Digest No. 70 2000-01, Department of the Parliamentary Library, 26 September 2001, p.2.

4 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia’s Relationship with Papua New Guinea and Other Pacific Island Countries, p.34.

11.6 As summed up by the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Philip Ruddock, in foreshadowing the legislation:

What it means is there will be no basis upon which [people] will be able to land on Christmas Island and see it as a taxi rank to brought automatically to Australia, engage our protection obligations, have the opportunity to have their claims considered first by the department, second by the refugee review tribunal and then to enter into the judicial review process which they are doing right now.<sup>6</sup>

11.7 This chapter looks at the refugee status assessment processes in place in PNG and Nauru and the outcomes achieved so far. It also considers the cost of the arrangements.

### **Assessment of Refugee Status**

11.8 Australia's protection obligations under the Refugee Convention extend to refugees who have entered Australia's territorial seas.<sup>7</sup> These protection obligations do not, however, require the processing of claims in Australia, or by Australian officials.

11.9 Determination of asylum seeker claims on Nauru is being undertaken by officials from both Australia and the United Nations High Commissioner for Refugees (UNHCR). Processing on Manus is being undertaken entirely by Australian officials. Neither Nauru nor PNG has its own refugee status determination process in place, although Australia has implemented mechanisms to train Papua New Guinean officials in such matters.<sup>8</sup>

11.10 Nauru requested the assistance of the UNHCR on or about the time the first processing centre was established, and Australia undertook to meet all costs incurred by the UNHCR related to the processing of asylum claims.<sup>9</sup>

11.11 The UNHCR agreed to conduct processing of the group transported by the HMAS *Manoora* to Nauru.<sup>10</sup> This includes those people rescued by the MV *Tampa*,

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5 Ernst Wilhelm, 'MV *Tampa*: the Australian response', presented at *Global Migrations/Domestic Reactions: A Comparative Constitutional Perspective*, Headington Hill Hall, Oxford Brookes University, 24 May 2002. p.25.

6 *Boats, Christmas Island*, Transcript of Press Conference, Minister for Immigration and Multicultural and Indigenous Affairs, 10 September 2001.

7 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.33.

8 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.34.

9 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q4.

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excepting those who were accepted for processing in New Zealand, as well as 237 people intercepted on the *Aceng* in the vicinity of Ashmore Reef. As of 16 April 2002, 525 people on Nauru were being processed by the UNHCR.<sup>11</sup>

11.12 Subsequent groups transferred to Nauru and all of the people transferred to the Manus facility in PNG have been processed by Australian officials, with the UNHCR indicating that it would not be involved in the processing of any other groups.<sup>12</sup> The asylum seekers on Manus do not have access to the UNHCR, and the UNHCR regional representative has not had the opportunity to present his credentials to the PNG government.<sup>13</sup> Forty two officers of the Department of Immigration and Multicultural and Indigenous Affairs had been involved in refugee status assessment on Nauru and Manus by May 2002.<sup>14</sup>

11.13 Unlike Nauru, Papua New Guinea is a signatory to the Refugee Convention, and would be obliged to consider providing protection to any person seeking asylum there. So far none of the people who are being processed on Manus have sought Papua New Guinea's protection.<sup>15</sup>

11.14 Australian officials have stated that they are adopting the UNHCR procedures and standards in the processing of asylum claims. In evidence to the Committee Mr Robert Illingworth, Assistant Secretary, Onshore Protection, DIMIA, advised that:

The processes that are adopted on Nauru by the UNHCR and by the Australian government are essentially the same processes. The Australian processing arrangements have been modelled very closely on the arrangements that the UNHCR follows in Nauru and elsewhere in the world, and we have liaised closely with the UNHCR in refining those arrangements to ensure that is the case.<sup>16</sup>

11.15 The determination process relies to large extent on information gained in interviews with claimants 'by a trained officer who actively explores all of the possible reasons that an individual may have for seeking refugee protection, discusses

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10 Correspondence from United Nations High Commissioner for Refugees to Counsellor (Immigration), Permanent Mission of Australia to the United Nations Office in Geneva, 22 October 2001.

11 Tabled by DIMIA, CMI, 16/4/02.

12 *Transcript of Evidence*, CMI 812.

13 *Transcript of Evidence*, CMI 1477.

14 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q38.

15 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.34.

16 *Transcript of Evidence*, CMI 809.

country information as relevant with that person and discloses any issues that might need a response from the individual'.<sup>17</sup>

11.16 Training received by Australian case officers includes the 1951 Refugee Convention, the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, principles of natural justice and Australian domestic legislation in relation to interpretation of the convention, although Australian jurisprudence does not apply.<sup>18</sup>

11.17 Asylum claimants receive advice about the determination process, but do not have access to assistance in putting together their claim.<sup>19</sup> DIMIA gave evidence to the inquiry that access to legal or other assistance, if requested, would be a matter for the centre managers (IOM under contract to DIMIA) or the Nauru or PNG Governments.<sup>20</sup>

11.18 The group Australian Lawyers for Human Rights advised the committee that they had sought to send a team of lawyers to Nauru to provide independent advice to those claiming refugee status, and that the proposal had in-principle support from the UNHCR. As of 10 July 2002 the proposal had not been proceeded with as the Nauruan Government had declined to issue visas to the lawyers.<sup>21</sup>

11.19 The UNHCR, in evidence to the Senate Inquiry into Migration Amendment (Further Border Protection Measures) Bill 2002, advised that it had worked closely with DIMIA officials on Nauru and it appeared that a fair and effective refugee status determination system was in place.<sup>22</sup>

11.20 The UNHCR did express concern, however, in regard to one significant point of disparity between DIMIA and UNHCR processes, whereby the UNHCR considered that spouses and minor children of recognised refugees should be granted refugee status, and reunited immediately, while DIMIA required that such spouses and children qualify for refugee status on their own merit.<sup>23</sup>

11.21 A further point relating to the assessment of refugee claims has been raised by Dr John Pace, who visited Nauru in November 2001 on behalf of Amnesty International. Dr Pace noted that symptoms of Post Traumatic Stress Disorder had been observed during assessment interviews, and was concerned whether it was

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17 *Transcript of Evidence*, CMI 809.

18 *Transcript of Evidence*, CMI 810.

19 *Transcript of Evidence*, CMI 811.

20 *Transcript of Evidence*, CMI 812

21 *Submission No.19A*.

22 *Submission No. 30*, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, p.7.

23 *Transcript of Evidence*, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, 48.

appropriate to perform refugee screening determination in such situations, when the symptoms of the disorder may seriously affect the eligibility process.<sup>24</sup>

### ***Claim Decisions***

11.22 As of 16 September 2002, 1,495 asylum seekers on Manus and Nauru had received the outcome of their initial refugee status determination. Of this number, 520 people were found to be refugees and 975 were not.<sup>25</sup> Review outcomes are outlined later in this chapter.

11.23 Of the 520 people approved on initial assessment, 432 were Iraqis, 59 Afghans, and 29 of other nationalities. The 975 found not to be refugees included 216 Iraqis, 701 Afghans and 58 of other nationalities (see Table 11.1).<sup>26</sup>

11.24 The initial decision making process is now complete. A small number of people did not receive a decision, generally because they either returned to their country of origin, or were resettled in New Zealand on the basis of a family relationship, prior to a decision on refugee status having been made.

11.25 Initial decisions for Iraqi claimants were successful in 67% of cases, compared to just over 7% for Afghan claimants. The low proportion of Afghans receiving positive decisions reflects the changed circumstances in that country, with the result that those that earlier may have had valid claims no longer met assessment criteria. Afghan decisions were also the most delayed, with people reinterviewed in the light of the overthrow of the Taliban regime, and decision makers waiting 'for the circumstances in Afghanistan to develop'.<sup>27</sup>

11.26 The remoteness of the locations, logistical and resourcing concerns and a need to coordinate UNHCR and Australian announcements has also affected the length of time taken for processing.

11.27 Processing of claims started on Manus in October 2001, for the group from SIEV 4, and a number of weeks later in Nauru. The first 439 asylum claim decisions, most for Iraqis, were released on 8 April 2002. .<sup>28</sup> The majority of decisions for Afghans were handed down in June 2002, some ten months after the rescue of the first

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24 Quoted in *Adrift in the Pacific*, p.14.

25 *Asylum Review Decisions on Nauru and Manus*, Media Release DPS 72/2002 , DIMIA, 18 September 2002.

26 *Asylum Review Decisions on Nauru and Manus*.

27 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p.550.

28 *Asylum Seeker Decisions Handed Down on Nauru and Manus*, Media Release DPS 20/2002, DIMIA, 8 April 2002.

Afghans by the MV *Tampa* prompted the Pacific processing arrangements,<sup>29</sup> and the last of the initial decisions were not handed down until September 2002.

**Table 11.1<sup>30</sup>**  
**Refugee Determination Processing Status**  
**16 September 2002**

NAURU								
	Afghan		Iraqi		Other Nationalities		Pending	TOTAL
	Approved	Refused	Approved	Refused	Approved	Refused		
Initial Decision Australia	27	457	71	68	4	17	0	644
Initial Decision UNHCR	32	244	126	75	14	22	0	513
<b>TOTAL</b>	<b>59</b>	<b>701</b>	<b>197</b>	<b>143</b>	<b>18</b>	<b>39</b>	<b>0</b>	<b>1157</b>
Review Decision Australia	38	399	26	36	0	6	37	542
Review Decision UNHCR	36	198	42	32	12	10	11	341
<b>TOTAL</b>	<b>74</b>	<b>597</b>	<b>68</b>	<b>68</b>	<b>12</b>	<b>16</b>	<b>48</b>	<b>883</b>
MANUS								
	Afghan		Iraqi		Other Nationalities		Pending	TOTAL
	Approved	Refused	Approved	Refused	Approved	Refused		
Initial Decision	n/a	n/a	235	73	11	19	0	338
Review Decision	n/a	n/a	24	22	3	10	33	92

29 *More Asylum Decisions Handed Down on Nauru*, Media Release DPS 38/2002, DIMIA, 20 June 2002.

30 *Asylum Review Decisions on Nauru and Manus*, Media Release DPS 72/2002, DIMIA, 18 September 2002.

11.28 The Committee is concerned at the length of time which has been taken to finalise refugee status determination, and the effects on asylum seekers of such extended periods in the processing centres.

11.29 In comparison to the results on Nauru and Manus, of the 131 people from the MV *Tampa* accepted by New Zealand, 130 have been found to be refugees and resettled in that country.<sup>31</sup> While the high proportion of successful claims may be accounted for by New Zealand's selection of people it thought were likely to be refugees - children, women and family groups - they are also Afghans,<sup>32</sup> who have had a notably low success rate in the other processes.

### ***Review Processes***

11.30 If the outcome of a refugee status determination by Australian officials at one of the offshore processing centres is that a person is not a refugee, the only avenue of appeal is internal review by a more senior departmental officer. DIMIA advises that this is consistent with UNHCR procedures on Nauru.<sup>33</sup> This contrasts with the avenues of appeal open to unsuccessful onshore applicants for protection as refugees, who have access to a merits review from the Administrative Appeals Tribunal or Refugee Review Tribunal and judicial review processes.

11.31 As of 16 September 2002, a further 92 Iraqis, 74 Afghans, and 15 people of other nationalities had been found to be refugees through the review process.<sup>34</sup> Forty eight review decisions were still pending on Nauru, and thirty three on Manus.

11.32 The total number of people processed under Pacific Solution arrangements and found to be refugees as of September 2002 is 701, comprising 524 Iraqis, 133 Afghans, and 44 people of other nationalities. Six hundred and seventy eight people have been found not to be refugees, and 81 still await a review decision.<sup>35</sup>

### ***Resettlement***

11.33 Resettlement of asylum seekers who are found to meet refugee status criteria is reliant upon a place being found for them in Australia or another country. As DIMIA advised a Senate Committee considering estimates in May 2002,

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31 Mary Crock and Ben Saul, *Future Eaters: refugees and the law in Australia* (Sydney, Federation Press, 2002), p.50.

32 Transcript, Interview with Rt Hon Helen Clark, Prime Minister of New Zealand, National Ten Network Meet the Press, 3 March 2002.

33 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q26.

34 *Asylum Review Decisions on Nauru and Manus*.

35 *Outcome of Processing of Offshore Entry Persons*, DIMIA, Response to Question 6, Senate Inquiry into Migration Amendment (Further Border Protection Measures) Bill 2002, Tabled 17 September 2002.

Australia, and the minister, have made it clear that Australia will play a role in relation to resettlement but does not regard it as being the only country with a resettlement obligation or indeed the only country with the ability to offer resettlement places. Our focus will be on people who may have ties or some links with Australia. In relation to resettlement elsewhere, there has been a series of discussions with UNHCR. Essentially we see UNHCR as being the key organisation able to deal with the resettlement issue.<sup>36</sup>

11.34 As of 1 October 2002, 200 refugees processed on Manus or Nauru had been granted protection in Australia,<sup>37</sup> generally with three or five year temporary protection visas. Most were women and children with family members already in Australia.

11.35 Five people had been granted subclass 449 humanitarian stay (temporary) visas, which enable the holders to remain in Australia until a date determined by the Minister.<sup>38</sup> Criteria for this class of visa include not being able to return to one's place of residence and grave fear for personal safety because of the circumstances of displacement. In not requiring that the applicant be subject to persecution or substantial harassment, this type of visa may offer protection to those not successful in obtaining refugee status but without a reasonable prospect of safe return to their home country.

11.36 Both the Australian Government and UNHCR have been in discussion with possible resettlement countries on behalf of those asylum seekers on Nauru and Manus found to be in need of protection.

11.37 As of 16 September 2002;

- 179 persons assessed as refugees had been resettled in New Zealand,
- 8 persons assessed as refugees had been resettled in Sweden;
- 15 others had been resettled in New Zealand either before their refugee status had been determined or before receiving the outcome.<sup>39</sup>

11.38 Ireland was at one time mooted as a potential resettlement country,<sup>40</sup> and DIMIA officials indicated that following the conclusion of elections in that country

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36 *Transcript of Evidence, Estimates, Senate Legal and Constitutional*, 30 May 2002, p.548.

37 *Refugees Arrive in Australia from Manus*, Media Release DPS 77/2002, DIMIA, 1 October 2002.

38 *Outcome of Processing of Offshore Entry Persons*, DIMIA.

39 *Outcome of Processing of Offshore Entry Persons*, DIMIA.

40 Transcript, Minister Ruddock on 7.30 Report, ABC, 10 April 2002.

discussions would continue.<sup>41</sup> The UNHCR had also referred a small number of people with links to Canada and the USA to those countries for consideration.<sup>42</sup>

11.39 With over 300 recognised refugees still awaiting resettlement, and further review decisions pending, the prospect remains of a large number of people who have been found to be refugees remaining in the processing centres for an indeterminate period.

11.40 The UNHCR has expressed its concerns in relation to the situation of these refugees:

Of concern to UNHCR in the cases of Nauru and Manus Island, is that refugees who have been recognized and therefore have had their status regularised remain detained until a durable solution is found. This detention is without time limits or periodic review. The ongoing detention of persons recognized as refugees is a restriction of freedom of movement in breach of Article 26 of the 1951 Convention. Furthermore, such detention is not consistent with Article 31(2) of the Refugee Convention, which provides that restrictions of freedom of movement shall only be applied until the status of refugees in the country is regularised. Even though these recognised refugees are no longer on Australia's territory, Australia's obligations under the Refugee Convention continue to be engaged until a durable solution is found.<sup>43</sup>

### ***Reintegration package***

11.41 On 16 May 2002 the Governments of Australia and Afghanistan signed a Memorandum of Understanding concerning the voluntary return of refugees and asylum seekers. On 23 May, Minister Ruddock announced that Afghans who had arrived at, or were in transit under Australian control to, a processing centre on Nauru or Christmas Island on or before 16 May 2002 would be eligible to apply for a reintegration package if they opted to return to Afghanistan. The offer also extended to Afghans who had arrived in Australia before that date.<sup>44</sup>

11.42 Persons who have been found not to be refugees, or who are awaiting a decision, are eligible to apply for a package of cash assistance of \$2,000 per person

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41 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, p549.

42 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.35

43 *Submission No. 30*, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, p.8.

44 *Reintegration Package for Afghans Announced*, Media Release MPS 38/2002, Minister for Immigration and Multicultural and Indigenous Affairs, 23 May 2002.

(up to \$10,000 per family), assistance with travel documentation, air fare to Kabul, and some on-arrival support.<sup>45</sup>

11.43 On 30 May 2002 the reintegration package offer was extended to non-Afghans on Nauru and Manus who voluntarily returned to their country of origin or third countries which they had permission to enter.<sup>46</sup>

11.44 The offer must be accepted within 28 days of notification of a negative refugee status assessment, or 28 days from the date of notification of a negative review decision. The package is administered by the IOM, which also distributes the cash payment. Australia reimburses the IOM for its costs.<sup>47</sup>

11.45 Asylum seekers who wish to depart before a decision is made on their claim for refugee status must withdraw the claim in writing.<sup>48</sup>

11.46 As of 28 June 2002, seven people from Nauru had returned to their home countries under the reintegration arrangements. These seven were part of a total of ten who had returned home voluntarily from Nauru, with a further four returning from Manus. A further 27 people on Nauru had signed voluntary reintegration papers.<sup>49</sup>

## Visa Regime

11.47 The *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act No. 128 2001* introduced two classes of temporary visa which are relevant to people processed on Nauru and Manus and determined to be in need of protection. As well as meeting the relevant visa criteria, applicants need to demonstrate a compelling case and fall within the relevant quota for the visa class. As summarised by DIMIA officials in evidence to the inquiry:

There are two visas which would be the most relevant. There is the 447 visa, which is a three-year temporary visa which carries the same entitlements as a temporary protection visa onshore carries. That is the visa that should be available to people who are offshore entry persons—that is, people who have landed on an excised offshore place and who are subsequently found to be in need of protection. The other visa, which is a five-year temporary visa,

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45 *Reintegration Package for Afghans*, Fact Sheet No.80, Department of Immigration and Multicultural and Indigenous Affairs.

46 *Reintegration Package Extended to non-Afghans*, Media Release, Minister for Immigration and Multicultural and Indigenous Affairs MPS 42/2002, 30 May 2002.

47 *Transcript of Evidence*, Estimates, Senate Legal and Constitutional, 30 May 2002, pp.551.

48 *Reintegration Package for Afghans*, Fact Sheet No.80, Department of Immigration and Multicultural and Indigenous Affairs.

49 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.35

is the subclass 451 visa, and that is available to people who have not landed on an excised offshore place.<sup>50</sup>

11.48 The legislation was enacted in response ‘to the increasing threats to Australia’s sovereign right to determine who will enter and remain in Australia’ resulting from ‘the growth of organised criminal gangs of people smugglers who bypass normal entry procedures’.<sup>51</sup>

11.49 It also reflected the Government’s concern at what it called the ‘increasingly broad interpretations being given by the courts to Australia’s protection obligations under the refugees convention and protocol.’<sup>52</sup> Others have argued that the reaction is inherently flawed in that it punishes the victims exploited by people smugglers in order to combat the crime.<sup>53</sup>

### ***Offshore entry persons***

11.50 The *Migration Amendment (Excision from Migration Zone) Act No. 127 2001* created a separate visa application regime applying to persons, now called offshore entry persons, who arrive unlawfully at certain places that are excised from the migration zone, for the purposes of limiting their ability to make valid visa applications. DIMIA have identified all the people being processed on Manus Island and at the State House site on Nauru as offshore entry persons.<sup>54</sup>

11.51 The category of ‘offshore entry person’ arises from the insertion of a new definition into section 5 of the Migration Act of ‘excised offshore place’.<sup>55</sup> Such places include Christmas Island, Ashmore and Cartier Islands, Cocos (Keeling) Islands and Australian sea and resources installations. They will also include any other external territories, or State or Territory islands, prescribed by regulations. Offshore entry persons are those who have entered Australia at an excised offshore entry place after the excision time and become an unlawful non-citizen by that entry.

11.52 Offshore entry persons who are in Australia and are unlawful non-citizens are barred from making a valid visa application by the newly inserted Section 46A of the *Migration Act*. This bar, however, does not apply to an offshore entry person who is not in Australia, such as those on Nauru and Manus. The relevant visa class for

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50 *Transcript of Evidence*, CMI 825.

51 *Explanatory Memorandum*, Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001.

52 Philip Ruddock, MP, Second Reading Speech Migration Amendment Bill (No.6) 2001, House of Representatives, *Hansard*, p.30420.

53 Submission 25, p.14.

54 Tabled by DIMIA, CMI, 16/4/02.

55 *Migration Amendment (Excision from Migration Zone) Act No.127, 2001*.

offshore entry persons who are not in Australia and are in need of protection is the Secondary Movement Offshore Entry (Temporary) Subclass 447 Visa.<sup>56</sup>

11.53 An applicant for a subclass 447 visa must either be subject to persecution in the their home country; or subject to substantial discrimination, amounting to gross violation of human rights, or a female person who is subject to persecution or is registered as being of concern to the United Nations High Commissioner for Refugees.

11.54 This visa is valid for three years. Holders of the visa are eligible for successive temporary protection visas if there is a continuing protection need, but are not eligible for permanent residence. They are not eligible to bring their families to Australia, and have the same entitlements as onshore temporary protection visa holders. The UNHCR has expressed concern at the transitory solution offered by subclass 447 visas and the negative impact on family reunification and access to travel documents.<sup>57</sup>

### ***Secondary movement relocation visas***

11.55 For those persons on Nauru who are found to be refugees and did not reach Australian soil at an excised offshore place, but are considered to have bypassed or abandoned protection en route,<sup>58</sup> the relevant visa would be the new Subclass 451 Visa, the Secondary Movement Relocation (Temporary) Visa.<sup>59</sup> Those falling into this category include people from the MV *Tampa* and *Aceng*.<sup>60</sup>

11.56 A person is considered to have bypassed or abandoned protection en route if they have, since leaving their home country, resided for a continuous period of at least seven days in a country, such as Indonesia, in which they could have sought and obtained the effective protection of that country or the offices of the UNHCR in that country.

11.57 The subclass 451 visa is a five year visa which enables a person to gain access to a permanent protection visa after four and a half years if there is a continuing need for protection. The same criteria in respect of persecution or substantial discrimination must be met by applicants for this visa as apply to the subclass 447 visa.

11.58 The Committee finds it curious that those who have been intercepted or rescued at sea have a more favourable potential visa outcome, including the possibility

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56 *New Humanitarian Visa System*, Fact Sheet No.65, Department of Immigration and Multicultural and Indigenous Affairs.

57 *Submission No. 30*, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, p.5.

58 *Transcript of Evidence*, CMI 825.

59 *New Humanitarian Visa System*, Fact Sheet No.65, Department of Immigration and Multicultural and Indigenous Affairs.

60 *Transcript of Evidence*, CMI 813.

of permanent protection, than those who reach Australian soil, simply by virtue of not having completed the journey.

### ***Humanitarian stay (temporary) visas***

11.59 According to evidence provided to the Senate Inquiry into Migration Amendment (Further Border Protection Measures) Bill 2002, five humanitarian stay (temporary) subclass visas 449 have been granted to people processed on Nauru or Manus.<sup>61</sup> This class of visa provides temporary protection for people displaced from their place of residence and with a grave fear for their safety because of the circumstances of that displacement, without requiring circumstances of persecution or substantial harassment. The duration of the visa is determined by the Minister.

### **Cost**

11.60 Although substantial information is available on the costs associated with the operation of the offshore processing centres in Nauru and PNG, the Committee has not been able to collate an accurate picture of the full cost of the Pacific Solution. The substantive difficulty arises from the inability fully to identify the cost of the activities of the Australian Defence Force in support of the arrangements.

### ***Processing centres***

11.61 The establishment and operational costs of the Nauru and Manus facilities lie with the Department of Immigration and Multicultural and Indigenous Affairs. The Department's budget for these activities in 2001-2002 was \$114.5 million (Table 11.2),<sup>62</sup> although recent advice is that the total cost for that year was \$80 million.<sup>63</sup>

**Table 11.2<sup>64</sup>**

**Department of Immigration and Multicultural and Indigenous Affairs**  
**Offshore Asylum Seeker Management Budgeted Costs 2001-2002**  
**Nauru and Manus**

	NAURU \$m	MANUS \$m
Establishment and infrastructure provision	10.0	10.0

61 *Outcome of Processing of Offshore Entry Persons*, DIMIA.

62 Answers to Questions on Notice, Estimates, Senate Legal and Constitutional, 19 and 22 February 2002, Q100.

63 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.36.

64 Answers to Questions on Notice, Estimates, Senate Legal and Constitutional, 19 and 22 February 2002, Q100.

IOM - management of facility	46.0	28.0
APS – additional security*	4.5	
UNHCR – processing	1.0	
DIMIA staffing and support costs	2.7	2.0
Asylum seeker transportation	2.0	1.5
Other (including medical and health)	1.3	1.0
Offshore operations contingency*	4.5	
	72.0	42.5

\* Available for Nauru and Manus

11.62 DIMIA's 2002-2003 budget for the offshore reception and processing of asylum seekers in third countries is \$129.3 million. Forward year budgets are \$99.3 million for 2003-2004, \$100.5 million for 2004-2005, and \$101.7 million for 2005-2006.<sup>65</sup>

11.63 The Department notes that some savings can be expected in onshore processing costs as a result of the transfer of operations offshore, and have estimated these savings at \$28 million in 2001-2002, and over \$86 million a year from 2002-2003 on.<sup>66</sup>

11.64 These savings cannot be solely offset against the cost of the Nauru and Manus centres as they are achieved through processing on Australian external territories, such as Cocos and Christmas Islands, as well as from the Pacific arrangements. DIMIA's budget for 2002-2003 includes \$81.9 million for the reception and processing of asylum seekers at Australia's external territories, with \$122.8 million for 2003-2004, \$124.4 million for 2004-2005 and \$126.0 million for 2005-2006.<sup>67</sup>

11.65 Also included in the budget are capital costs and expenses for the construction of a new, purpose built, permanent Immigration Reception and Processing Centre on Christmas Island as part of the offshore processing strategy. Capital costs are \$195 million over 2001-2002 and 2002-2003, while expenses are \$9.5 million in 2002-2003 and \$8.3 million in forward years.<sup>68</sup> The capital cost includes \$74.7 million provided

65 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p71.

66 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p70.

67 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p71.

68 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p68.

in 2001-2002 to DIMIA and \$116.4 million provided across DIMIA and the Department of Transport and Regional Services in 2002-2003.<sup>69</sup>

11.66 The 2002-2003 budget provisions are based on the processing of 4,500 asylum seekers per annum at offshore locations, either in Australia's external territories or in third countries such as Nauru and PNG.<sup>70</sup>

### ***Reintegration package***

11.67 The DIMIA budget for 2002-2003 also included a total of up to \$5.1 million over three years in personal reintegration assistance for Afghan asylum seekers in Australia or offshore who wished to voluntarily return to Afghanistan, of which \$2.6 million was specifically identified for Afghans at Nauru<sup>71</sup> (there are no Afghans on Manus). A further \$740,000 was allocated in 2002-2003 to a reintegration package for non-Afghan asylum seekers on Nauru and Manus.<sup>72</sup>

### ***Additional aid***

11.68 Australia's commitment to Nauru for extra development assistance under the FAA and MOU totals \$26.5m.<sup>73</sup> \$19.5m was allocated for 2001-2002, \$18.8 million of which was an administered item and \$700,00 a departmental appropriation for expenses such as employee and administrative costs.<sup>74</sup> \$7 million has been allocated in 2002-2003 to fulfil the requirements of the MOU,<sup>75</sup> of which \$6.8 million is an administered item and \$200,000 departmental appropriation.<sup>76</sup> The Budget papers advise that all funding for this package has been in addition to the aid budget.<sup>77</sup>

11.69 Information on AusAID payments to Nauru in 2001-2002 provided to the Senate Estimates process in February 2002 show that up to that time payments for fuel supplies had totalled \$9.738 million, health \$1.524 million, power plant and

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69 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p73.

70 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p71.

71 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p72.

72 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p73.

73 Answers to Questions on Notice, Department of Foreign Affairs and Trade, 19 June 2002.

74 *Portfolio Additional Estimates Statements 2001-02, Foreign Affairs and Trade Portfolio*, p83.

75 *Portfolio Budget Statements 2002-03, Foreign Affairs Defence and Trade Portfolio*, p130.

76 *Portfolio Budget Statements 2002-03, Foreign Affairs Defence and Trade Portfolio*, p127.

77 *Australia's Overseas Aid Program 2002-03*, Statement by the Hon Alexander Downer MP, Minister for Foreign Affairs, 14 May 2002, p.26.

desalination \$359,501, education \$47,229, sports \$35,957, telecommunications \$5,659 and aviation \$1,800.<sup>78</sup>

11.70 There is no additional aid component in the agreement with PNG,<sup>79</sup> which is confined to meeting the costs associated with establishing and operating the site including refurbishment of existing infrastructure and renovation of the naval base.<sup>80</sup>

11.71 In evidence before the Committee, AusAID indicated that there had been no reduction in Australia's financial assistance to other countries as a result of the Pacific Solution funding.<sup>81</sup> Several submissions to the Committee had raised concerns in regard to the impact on Australia's aid budget, and the undermining of the credibility of Australia's good governance programs, which have been a focus of Australia's aid efforts in the region.<sup>82</sup>

11.72 For the purposes of reporting on Australia's overall overseas development aid level, the operational costs of the offshore processing centres on Manus and Nauru are also categorised as aid, providing a potentially misleading if technically accurate picture of Australia's aid commitment. As AusAID advised a Senate Estimates Committee in June 2002,

... it would fall under that category in the sense that it is assistance being provided to displaced persons in a developing country. It does not matter who they are displaced by.<sup>83</sup>

### *Cost of negotiations*

11.73 While it is not possible to quantify the cost of the negotiation phase of the Pacific Solution, the Department of Foreign Affairs and Trade advised that the department had absorbed a cost of about \$81,000 in 2001-2002 for liaison with the Norwegian government during the *Tampa* crisis, staffing a crisis centre, and travel within the Pacific 'to talk to some of the countries about possible sites to house asylum seekers'.<sup>84</sup>

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78 AusAID Answers to Questions on Notice, Estimates, Senate Foreign Affairs Defence and Trade, 20 February 2002, Q2.

79 *Transcript of Evidence*, CMI 828.

80 *Papua New Guinea and Australian Ministers Discuss Issues Concerning Boat People*, Minister for Immigration and Multicultural and Indigenous Affairs Joint Statement with the Hon Prof John D Waiko, PNG Minister for Foreign Affairs, 3 February 2002.

81 *Transcript of Evidence*, CMI 1454.

82 Submissions 17, 18 and 22.

83 *Transcript of Evidence*, Estimates, Senate Foreign Affairs and Trade, 6 June 2002. p. 442.

84 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade, 6 June 2002, p.398.

### ***Temporary Consul in Nauru***

11.74 Under arrangements with Nauru for the processing of asylum seekers Australia has established a Temporary Consul on the island. In 2001-2002 the Department of Foreign Affairs and Trade absorbed the cost of its activities on Nauru, estimated at \$580,000 for the year.<sup>85</sup> The Department also absorbed costs associated with a liaison officer in Manus.

11.75 For 2002-2003, \$2.1 million of new funding was included in the Departmental budget for Australia's diplomatic presence in Nauru in support of the Memorandum of Understanding.<sup>86</sup> \$580,000 of the \$2.1 million is provided for salaries, the balance is spread across administrative expenses, property costs, plant and equipment, vehicles and depreciation.<sup>87</sup> No funding has been identified in the budget papers for forward years.

### ***Defence assistance***

11.76 It has not been possible for the Committee to quantify fully the costs of services provided by the Australian Defence Force and Department of Defence in support of the Pacific Solution.

11.77 Within the Defence Portfolio Budget Statements, funding for Operations Gaberdine and Relex is not separately identified. Both fall under the general description of operations to protect Australia's northern and western borders from unauthorised boat arrivals.<sup>88</sup>

11.78 Defence support of the Department of Immigration and Multicultural and Indigenous Affairs in the management of asylum seekers comes under Operation Gaberdine. Under Gaberdine, the ADF assisted with setting up facilities on Nauru, Manus, Christmas Island and Cocos Island, as well as preparing facilities for the accommodation of asylum seekers at defence establishments on the mainland.<sup>89</sup>

11.79 In the 2001-2002 Defence Portfolio Additional Estimates Statements it is noted that Defence will absorb most of the costs of new operations, one of which is the deterrence of unauthorised boat arrivals. New funding of \$19 million, 'for specific additional costs that cannot be readily absorbed',<sup>90</sup> was provided to Defence in the

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85 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade, 6 June 2002, p.397.

86 *Portfolio Budget Statements 2002-03*, Foreign Affairs and Trade Portfolio, p.35.

87 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade, 6 June 2002, p.401.

88 *Transcript of Evidence*, Estimates, Senate Foreign Affairs, Defence and Trade, 4 June 2002, p.134.

89 Answers to Questions on Notice, Department of Defence, Question W62.

90 *Portfolio Additional Estimates Statements 2001-02*, Defence Portfolio, p.12.

2001-2002 Additional Estimates Statements for this purpose, of which \$12 million is listed as operating costs and \$6 million new capital acquisitions related to the deployments.

11.80 The 2002-2003 Portfolio Budget Statements included a further adjustment of \$22.3 million for 2002-2003, of which \$19.6 million was an appropriation for operating costs and \$2.7 million a new capital injection.<sup>91</sup>

11.81 There is insufficient differentiation in the figures available to separate the Pacific Solution costs incurred by Defence from the broader picture of new funding and absorbed costs for the deterrence of boat arrivals.

11.82 The Defence Department has, however, provided some information on the level of activity concerned, indicating that assistance to the establishment and management of the asylum seeker processing facilities focussed primarily on the provision of ADF air-lift support, specifically C-130 aircraft.<sup>92</sup>

11.83 For the period from August to December 2001, Defence flew 1,065 hours in direct support of DIMIA under Operation Gaberdine,<sup>93</sup> including a period in August 2001 when up to eight C-130 aircraft were employed on Operation Gaberdine missions.<sup>94</sup> Defence also chartered civilian transport aircraft to support ADF involvement, and provided advice and planning support to DIMIA and the IOM in the sourcing and chartering of commercial aircraft.<sup>95</sup>

11.84 In regard to Nauru, Defence personnel were involved in developing recommendations on the contents of the First Administrative Arrangement, in discussions concerning security arrangements with the AFP and Nauru Police, and in the inspection of potential sites.<sup>96</sup>

11.85 Three Defence personnel went to Nauru on 12 September to render safe, or dispose of, old and unstable ordinance and weapons, partly in response to a heightened concern on the part of Nauruan police that 'the risk of civil unrest may increase as a result of the arrival of the people on board HMAS *Manoora*'.<sup>97</sup> Some of the costs associated with their deployment were borne by the Defence Cooperation Program.

11.86 The ADF provided substantial engineering and air transport assistance in the construction of the first site on Nauru. The ADF element involved in the construction

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91 *Portfolio Budget Statements 2002-03*, Defence Portfolio, pp71.

92 Answers to Questions on Notice, Department of Defence, Question W63.

93 Answers to Questions on Notice, Department of Defence, Question W62.

94 Answers to Questions on Notice, Department of Defence, Question W63.

95 Answers to Questions on Notice, Department of Defence, Question W62.

96 Answers to Questions on Notice, Department of Defence, Question W61.

97 Answers to Questions on Notice, Department of Defence, Question W62.

of the processing centre comprised a team of up to 81 personnel, including an army engineering element, RAAF personnel and construction equipment. The ADF presence on the island lasted for a period of more than two weeks, with some equipment remaining on loan to the IOM until December 2001.

11.87 Defence also provided limited support to the establishment of the processing centre in PNG, largely in the form of liaison and coordination duties. Defence was involved in discussions concerning the suitability of the site, and later provided engineering assistance and security advice concerning the centre to the PNG Defence Force under the Defence Cooperation Program.

11.88 A liaison officer was maintained on Manus Island until February 2002, and ADF personnel provided ground services support to ADF aircraft landing in PNG on Operation Gaberdine tasks. Defence provided air transport on behalf of the IOM contractor, Eurest, transporting equipment from Port Moresby and Lae to Manus Island.

11.89 The ADF has also transported asylum seekers to the offshore processing centres including, for example, the protracted involvement of the HMAS *Manoora* in the transportation and disembarkation of asylum seekers from the MV *Tampa* and the *Aceng*. These transportation costs have not been able to be identified.

### ***Comparative Cost***

11.90 DIMIA have estimated that the average cost for reception, processing and detention of an unauthorised arrival in Australia is about \$29,000, noting that such average figures can be misleading given the large variability in the caseload.<sup>98</sup>

11.91 Based on that average figure the cost for processing onshore the 1,515 people who were at one time accommodated on Nauru or Manus would have been around \$44 million. This figure is simplistic in that it does not consider the cost of any expanded capacity which would have been required if those arrivals had needed to be processed on-shore, nor the financial benefits of the deterrent function of offshore processing.

11.92 Nevertheless, it is apparent that the cost of the Pacific Solution processing arrangements on Nauru and Manus to date, including additional aid funding, have been significantly more expensive than onshore processing of the same number of people. This is true even without a full accounting of the cost of the supporting services provided by the Defence Force.

### **2002-2003**

11.93 The DIMIA budget for the operational costs of offshore processing in 2002-2003, including the Australian external territories of Christmas and Cocos Islands as

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98 Answers to Questions on Notice, Department of Immigration and Multicultural and Indigenous Affairs, 12 June 2002, Q14.

well as Nauru and Manus, is based on 4,500 asylum seekers per annum being accommodated through the arrangements.

11.94 If the 4,500 figure is accepted as reasonable, the budgeted per person cost for offshore processing in 2002-2003 is roughly comparable to onshore processing, when projected onshore savings are included. However that assessment does not include the considerable capital cost of the new Christmas Island facility, or, once again, Defence Force expenditure.

11.95 The new Christmas Island permanent Immigration Reception and Processing Centre will have a capacity of 1,200 and is scheduled for completion in January 2003.<sup>99</sup> There is also some minor capacity on Cocos Island. Being able to process 4,500 people a year offshore, as indicated in the budget papers, is an objective apparently dependent on both Papua New Guinea agreeing to renew its MOU when it terminates in October 2002, and Nauru remaining satisfied to continue its cooperation, which can be terminated by either party at any time.

11.96 Even if both MOUs continue at the current level, in light of the processing and resettlement times achieved for the first group of just over 1,500 people accommodated at Nauru and Manus, processing the 4,500 per year figure on which the costings are predicated would appear difficult to achieve.

11.97 Of course if the current reduction in boat arrivals is maintained such capacity will not be required. It is perhaps worth noting that in the last decade such numbers of unauthorised boat arrivals have been reached only in 1999-2000 and 2000-2001. It has been far more common over that period for annual figures to be in the hundreds rather than thousands.<sup>100</sup>

## **Effectiveness**

11.98 No unauthorised boat arrivals have been transferred to the mainland for processing since the Pacific Solution arrangements came on stream,<sup>101</sup> and the objective of blocking access to onshore processing arrangements including judicial review opportunities has been achieved.

11.99 The number of unauthorised boats attempting to reach Australia has declined dramatically, although the effect of the offshore processing arrangements and the new legislative regime in halting the flow of illegal boat arrivals is difficult to isolate from the influence of other factors, including disruption activities, regional anti-smuggling

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99 *Portfolio Budget Statements 2002-03, Immigration and Multicultural and Indigenous Affairs Portfolio*, p68.

100 *Boat Arrival Details*, Fact Sheet No.74a, Department of Immigration and Multicultural and Indigenous Affairs, Revised 1 August 2002.

101 *Offshore Processing Arrangements*, Fact Sheet No.76, Department of Immigration and Multicultural and Indigenous Affairs.

initiatives, the SIEV X disaster, and global developments such as increased border security in the aftermath of September 11, 2001.

11.100 In a recent submission to another Senate inquiry, DIMIA have advised that:

The anti-smuggling regime adopted by Australia in cooperation with other countries in the region has resulted in a virtual cessation of attempts by asylum seekers to enter Australia illegally by boat. The people smuggling rings have been confounded by the disruption and have had to abandon their usual *modus operandi* to seek alternative methods.<sup>102</sup>

11.101 There has also been a major reduction in the number of Afghans entering the smuggling 'pipeline' in the wake of the fall of the Taliban regime. The exodus from that country has started to reverse with ongoing large scale voluntary repatriation from neighbouring countries, although security concerns remain in some less stable regions and for groups with particular protection vulnerabilities.<sup>103</sup>

11.102 While deterrence objectives appear to be achieved, albeit at considerable cost, outcomes in terms of achieving durable protection for refugees processed under Pacific Solution arrangements, and a timely resolution for those found not to be so, are less positive.

11.103 Over a year after the *Tampa* incident, and more than nine months after the last unauthorised arrivals were transported to the islands, less than 400 of the 701 people found to be refugees have been resettled, and eighty one people still await a final decision on their refugee status. A small number of people have returned to their country of origin, or have been resettled without a refugee determination.

11.104 The remainder, whether they have been found to be refugees or not, remain in situations of uncertainty and indeterminate duration.

11.105 Concerns also remain about the impact of the arrangements on the social fabric of the communities where the processing centres have been established, the capacity of the local resource base to support such numbers on Nauru, and Australia's reputation in the region.

## Conclusions

11.106 The so-called Pacific Solution has achieved its objective of preventing on-shore processing of unauthorised boat arrivals. The arrangements ensure that those amongst the arrivals who are found not to be refugees do not have access to lengthy

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102 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.36.

93 *UNHCR Note on Basic Considerations Regarding Returns to Afghanistan from Non-Neighbouring States*, 10 July 2002.

appeal processes, and those who are successful in their claims have no presumed right to resettlement within Australia.

11.107 However, lack of transparency in the implementation of the arrangements, and difficulty in accessing comprehensive costings for some of its aspects, has created an atmosphere of obfuscation quite apart from concerns over the legal and human rights merits of the policy.

11.108 Further, the policy does nothing to address the fundamental issues of the break down in the global response to the refugee problem, although the outcomes have been favoured by an emerging resolution in Afghanistan.

11.109 The uncertain outcomes for those being processed in the centres continues to be a substantial concern. There remains a shortfall in resettlement opportunities for those who have been legitimately found to be refugees. The objective of sharing the burden amongst a range of countries has, with the exception of New Zealand's generosity, been largely unsuccessful to date which, given the relative insignificance within the international context of the burden this group imposes upon Australia, is not surprising. The future for those not found to meet refugee criteria but who cannot safely return to their countries of origin is even more uncertain.

11.110 It appears likely that the majority of those found to be refugees will need to be resettled in Australia, as evidenced by the recent arrival of refugees from both Manus and Nauru. As the Department of Immigration and Multicultural and Indigenous Affairs commented in a submission to another current Senate inquiry:

...if other countries are unable or unwilling to provide protection against non-refoulement for refugees who have entered Australian territorial waters seeking asylum, Australia is obliged to ensure that convention protection is provided.<sup>104</sup>

**Senator Peter Cook**  
**Chairman**

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104 Submission 44, Senate Foreign Affairs, Defence and Trade Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries, p.34.