

Refugee and asylum policy in Australia Between resettlement and deterrence

SUMMARY

Australia has established a refugee policy which has proved highly effective in deterring irregular migrants, but has attracted much criticism from human rights organisations. Its main drivers have been mandatory detention and offshore processing of irregular asylum-seekers arriving by boat. Since it was enacted, drownings at sea no longer occur and irregular migration by boat to its shores has completely stopped.

However, the conditions in the offshore centres in Nauru and Papua New Guinea, where people arriving by boat have been sent, have been criticised as inappropriate by civil society organisations, and these people's indefinite detention there was deemed to constitute arbitrary detention under international law. Further to such criticism, recently, the two countries have decided to allow asylum-seekers to move freely and, if determined to be refugees, to settle in the community. However, the situation of the refugees in the two countries remains extremely precarious and no lasting solution is yet in sight, despite Australia's efforts to secure resettlement agreements with other third countries.

At the same time, Australia has remained open to asylum-seekers and refugees who enter through official channels, and is one of the countries admitting most refugees resettled through the UNHCR.

This briefing is an extended and updated version of an [earlier publication](#), from October 2015.



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Political context

Over a period of [20 years](#), Australia has put into practice [various policies](#) aimed at deterring asylum-seekers from arriving illegally by sea. In September 2001, the Australian government introduced a set of legislative measures known as the '[Pacific Solution](#)'. Under this policy, asylum-seekers arriving by boat were transferred to offshore processing centres in the Republic of Nauru and on Manus Island, Papua New Guinea (PNG), where they were detained while their asylum claims were being processed. In 2008, the Labor government dismantled this system, resettling all refugees in Australia. After a [huge increase](#) in boat arrivals between 2008 and 2012 under the Labor government, with [more than a thousand](#) people drowning at sea, treatment of irregular migrants became a central topic during the electoral campaign for the federal elections in 2013. In its last months in power before the elections, the Labor government introduced harsh [restrictions](#) to the country's immigration policy. Tony Abbott's conservative Liberal party, which had won the elections on a platform promising to 'stop the boats', put in place an even more rigorous policy, in line with its promises. As a consequence, after the Australian authorities had reported the arrival of [300](#) boats in 2013, with approximately 20 000 people on board, in 2014 this number had fallen to [a single boat](#) and there were no incidents of asylum-seekers drowning in Australian waters. Malcolm Turnbull's new Liberal government, formed after elections in July 2016, has upheld this policy and [presented](#) it to the world as a model to emulate during the September UN General Assembly dedicated to the topic of refugees. The policy has been highly effective. As of October 2016, more than [800 days](#) have passed without any boat of irregular migrants arriving on Australia's coasts.

Policy towards lawful asylum-seekers

Despite its harsh deterrence policy against irregular arrivals, Australia remains a very open country to refugees who use formal channels to enter. Refugees are admitted to Australia through the [Humanitarian Programme](#), which has two main components: offshore resettlement for people resettled to Australia from other countries as refugees or persons in need of international protection, and onshore protection for people who come to Australia with a valid visa and subsequently make a successful claim for asylum. The programme has a yearly target. In the 2015-2016 fiscal year, it had a target of minimum [13 750](#) places, which will stay the same during the 2016-2017 fiscal year. Of these, 11 000 places were reserved for people offshore (including up to 1 200 places for women at risk), and the rest for onshore applicants. In practice, according to the [immigration minister](#), the 2015-2016 Humanitarian Programme was the largest offshore programme in more than 30 years, with 15 552 visas issued, including the additional intake of Syrian and Iraqi refugees, and will increase to 18 750 places from 2018-2019 onwards. In September 2015, the then prime minister [announced](#) that the country would accept an extra 12 000 refugees from Syria and Iraq, with a focus on persecuted minorities, but one year later only [one sixth](#) of this number have arrived in Australia.

People who come to Australia *with a valid visa* and fulfill the criteria for being considered a refugee (as defined in Australia's Migration Act of 1958 with subsequent amendments – most references to the Geneva Convention in the migration legislation have recently been [removed](#)), or the complementary protection criteria of the same act are granted a [Protection Visa](#), allowing them to live in Australia as permanent residents. In 2014, Australia [recognised](#) 2 780 asylum-seekers present on its territory as refugees.

Australia is one of the top refugee resettlement countries in the world. People who have experienced persecution in their home country, who are outside that country (and

outside Australia) and for whom there is no other durable solution in view are eligible for resettlement to Australia. Most of the successful applicants for resettlement in Australia are referred by the United Nations Refugee Agency (UNHCR). A further class of persons enjoy protection similar to that provided to refugees: an Australian citizen, permanent resident or organization can propose someone who is subject to substantial discrimination amounting to a gross violation of their human rights in their home country for a [Special Humanitarian Programme visa](#). In 2014-2015, Australia [issued](#) 6 000 refugee visas and 5 000 special humanitarian visas to people offshore, and granted protection visas to around 2 500 people onshore. From the point of view of the number of refugees resettled, Australia ranked [third](#) in the world after USA and Canada in 2015.

Following the Canadian model, Australia is also experimenting with involving private individuals and organisations more extensively in the process of resettlement. [A pilot project](#) was launched in 2013.

Deterring irregular migration

The underlying [principle](#) of Australia's policy, put in place by successive governments, has been that asylum-seekers arriving by boat should not 'jump the queue', i.e. receive an advantage over those waiting elsewhere for resettlement. There is also a stated objective of deterrence. No one who tries to reach Australia 'unlawfully' should be allowed to settle there in the end.

Operation Sovereign Border

Immediately after assuming power in September 2013, the Liberal-National coalition rolled out [Operation Sovereign Borders](#), aimed at stopping illegal boat journeys into Australian waters. Conceived as a deterrence strategy and presented under the [slogan](#) 'No way. You will not make Australia home', the operation conducted by the military [involves](#) forcing, or towing, boats back to international waters. To ensure that no one entitled to international protection is denied it, asylum requests of people arriving in boats have been screened via [videoconference](#) in a few cases. The fairness of this procedure has however been questioned. The [UNHCR](#) and [human rights organisations](#) called this treatment of asylum-seekers a breach of the [Geneva Refugees Convention](#), which prohibits returning refugees to a territory where they risk persecution, and contrary to other international human-rights norms. It was also [criticised](#) for violating Australia's obligations under international maritime law and Indonesia's sovereignty, and for endangering people's lives.

Mandatory detention

Introduced in 1992, Australia's mandatory immigration detention system was expanded in 1994 to apply to all non-citizens without a valid visa. Under [Part 2, Division 7](#) of the [1958 Migration Act](#) (with subsequent amendments), asylum-seekers arriving in Australia without a valid visa are held in immigration detention until they are granted a visa or removed from Australia. Australian law does not put a limit on the length of time for which a person may be held in immigration detention. [According](#) to the [Australian Human Rights Commission](#), some asylum-seekers have spent long periods of time in immigration detention waiting for their refugee claim to be assessed, or their health, identity and security checks to be completed; or awaiting removal from Australia if they have been found not to be a refugee or a person qualifying for 'complementary protection'. At 30 September 2016, there were [1 454](#) people in immigration detention facilities, and a further 608 in community detention. They had either arrived 'unlawfully' by boat (before July 2013, when it was still possible), or by air, had overstayed their visas, or had had their visas cancelled. By comparison, at the end of 2013, there were 13 000 people in

immigration detention. 46.3 % of the persons in immigration in September 2016 detention had spent more than one year in detention.

Backlog of applications resulting from 'illegal' boat arrivals before July 2013

By the September 2013 election, there was a backlog of 30 000 asylum applications resulting mainly from 'illegal' boat arrivals. Most applicants are currently living in Australia on 'bridging visas'. Despite its promises to quickly clear this backlog, the conservative government has so far only reduced this backlog by around [2 000](#) applications. These persons can apply for temporary protection visas at the invitation of the government, but have no prospect of obtaining permanent residence and being reunited with their family.

Agreements with neighbouring countries

In order to resettle asylum-seekers and recognised refugees to third countries, Australia has concluded a number of agreements: on 19 July 2013, a [Regional Settlement Arrangement with Papua New Guinea](#), allowing for unlawful asylum-seekers to be transferred to this country for processing and resettlement; on 3 August 2013, a new [Memorandum of Understanding with Nauru](#), containing similar provisions; on 26 September 2014, a new [Memorandum of Understanding with Cambodia](#) for the permanent resettlement from Nauru of asylum-seekers who have been granted refugee status. Resettlement to Cambodia is to be done exclusively on a voluntary basis. An earlier 2011 [agreement](#) with [Malaysia](#) to swap 800 unlawful asylum-seekers from Australia for 4 000 registered refugees living in Malaysia, in order to deter boat journeys, was [rejected](#) by Australia's High Court, on the grounds that Malaysia is not a party to the Refugee Convention or its Protocol.

As a reinforcement of this policy of offshore transfers, the government currently intends to [ban for life](#) asylum-seekers arriving by boat from ever entering Australia, including on tourist and business visas.

Offshore processing centres

Since [July 2013](#), Australia has transferred all of its illegal maritime entrants, including children, to Nauru or Manus Island, where they are placed in Australian-funded detention centres, and their asylum claims are assessed under local law. The centres are under the national jurisdiction of Nauru and PNG, but are run by private Australian contractors, paid by the Australian government. At the end of September 2016, there were 396 asylum-seekers (including 51 women and 45 children) in the Nauru centre, and 873 adult male asylum-seekers in the Manus Island, PNG centre.

Australia's policy of offshore transfer has been criticised from multiple points of view. It was challenged before Australia's Constitutional Court, which ruled it [legal](#). PNG and Nauru had been designated by the Australian government as safe third countries, and despite much criticism, the government [insists](#) that they remain safe.

[Criticism](#) has emerged about conditions at these centres and the treatment of asylum-seekers there. There have been reports of incidents of violence among asylum-seekers, harassment by guards (including against women in Nauru), self-harm inflicted by asylum-seekers, psychic troubles affecting children too, inadequate medical assistance, unfit hygienic conditions and conflicts with locals. Leaked internal documents from the Nauru centre detail over [2 000 incidents](#), including alleged assaults, sexual abuse, self-harm attempts and child abuse during the period from May 2013 to October 2015.

After visiting [Papua New Guinea](#) and [Nauru](#) in 2013, UNHCR assessed the treatment of asylum-seekers at the centres as 'arbitrary and mandatory detention under international

law' and criticised them for not offering 'safe and humane conditions' or a 'fair, efficient and expeditious system for assessing refugee claims'.

In 2013, violent [protests](#) broke out in the Nauru centre after the resettlement deal with Cambodia was announced. An [independent 2015 review](#) ('the Moss review'), investigating [allegations](#) about the mistreatment of refugees in the centre, recommended improving mechanisms for preventing and reporting cases of sexual and physical assault. An Australian [Senate inquiry](#) from the same year found that the centre is inadequate and unsafe, and that children should be removed from it. Following such criticism, in 2015, the Nauru Government [announced](#) that all asylum-seekers would be allowed to move freely on the island, but relations with the tiny local population of only 10 000 people have been [tense](#). A recent [report](#) by Amnesty International stated that treatment of asylum-seekers in the detention centre could amount to torture under international law.

The Manus Island centre has also come under [heavy criticism](#), especially after the breakout of [violent protests](#) among asylum-seekers, which left one dead in 2014. In January 2015, a [new wave](#) of protests, involving hunger strikes and incidents of self-harm, took place. In April 2016, the Constitutional Court of PNG ruled that detention of asylum-seekers [contravenes](#) the PNG Constitution, as it violates the freedom of the person. In May, further to this decision, the PNG government announced that the asylum-seekers are no longer detained, [being allowed](#) to leave the facility. Their movement is still [controlled](#) by the authorities, and asylum-seekers face practical obstacles to free movement and fear violence from the local population, after some violent incidents occurred. Motions to the PNG Constitutional Court demanding the transfer of asylum-seekers to Australia and financial compensation [have been dismissed](#) on technical grounds. After the April 2016 decision of the PNG Constitutional Court, the Australian immigration minister [made clear](#) that Australia would not take in the asylum-seekers.

Most of the asylum-seekers who had their claims assessed by the authorities were determined to be refugees ([77 %](#) in Nauru and 98 % in PNG). In Nauru, most of the successful asylum-seekers live in the local community, where they face various hardships however, due in part to the difficult economic situation on the tiny island. In PNG, only very few successful asylum-seekers ([24](#) as of October 2016) used the option to settle in the community. Some of them returned to the centre after they had allegedly suffered violence from the locals and had not been able to earn enough money to survive.

Only five successful asylum-seekers used the opportunity provided by Australia to move to and settle in Cambodia, and of these five, [three](#) have decided to leave Cambodia to return home. Australia's obligations under the deal – AUD 40 million in aid and AUD 15.5 million in resettlement assistance to the country – remain to be fulfilled however. The Australian government continues negotiations with other Asian nations in order to resettle the refugees from Nauru and PNG.

Costs of the policy

Offshore resettlement of asylum-seekers comes at a price. The [National Commission of Audit](#) estimated the cost of offshore detention per person per year in 2013-2014 at AUD 430 000 (approximately €300 000 at the current exchange rate).

A model for the EU to follow?

According to some [sources](#), despite the inherent geographical differences, the EU could [emulate](#) the Australian model of border control at least from a practical point of view. However, from a legal point of view, EU Member States face a different situation. Measures to implement a policy similar to that deployed by Australia could be ruled illegal

under the [European Convention on Human Rights](#). The European Court of Human Rights [ruled](#) in 2012 that the return by Italy, to Libya, of migrants intercepted at sea violated its legal obligations under the European Convention on Human Rights. Even in international waters, asylum-seekers who have been taken on board EU ships are under the jurisdiction of the flag state, which has obligations regarding their human rights and cannot therefore return them to countries where they could face serious human rights violations.

In the meantime, ideas similar to the 'Australian solution' have been embraced in Europe not only by anti-immigration parties, but also by high-ranking [politicians](#), such as from the UK and Germany.

Main references

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