Developments in Australian refugee law and policy: the Abbott and Turnbull Coalition governments (2013–2016)

Elbritt Karlsen, Law and Bills Digest Section
Janet Phillips, Social Policy Section

Contents

Introduction ................................................................................................ 2
Chronology of significant events .................................................................. 4
  2013.................................................................................................................... 4
  2014.................................................................................................................... 6
  2015.................................................................................................................. 15
  2016.................................................................................................................. 20
Key policy developments ............................................................................ 23
  Operation Sovereign Borders ......................................................................... 23
  Boat turnbacks ............................................................................................... 24
  Offshore processing and settlement ............................................................... 25
  Temporary protection .................................................................................... 27
  Fast-track processing of asylum claims ......................................................... 29
Key legal developments .............................................................................. 31
  Legislation....................................................................................................... 31
  Government initiated legislation—Bills .......................................................... 31
  Regulations and other legislative instruments .............................................. 37
  Non-government (privately sponsored) legislation ......................................... 40
Case law........................................................................................................... 42
  2013.................................................................................................................... 42
  2014.................................................................................................................... 42
  2015.................................................................................................................. 44
  2016.................................................................................................................. 45
Key reports and inquiries ............................................................................. 46
Introduction

The Liberal Party of Australia, in coalition with The Nationals (together, the Coalition), won the 2013 federal election, defeating the Australian Labor Party (ALP) which had been in power for six years since December 2007. Tony Abbott was duly sworn in as Australia’s 28th Prime Minister on 18 September 2013.

The key asylum and refugee policies that the Coalition took to the 2013 election included:

- restoring Temporary Protection Visas (TPVs) and ensuring no permanent protection visas are issued to any of the unauthorised maritime arrivals in Australia who are awaiting a decision on their application
- establishing Operation Sovereign Borders, bringing together fifteen departments and agencies under a single military-led operational command
- instructing Border Protection Command to turn back boats where it is safe to do so
- withdrawing taxpayer funded immigration assistance to prepare asylum claims under the Immigration Advice and Application Assistance Scheme (IAAAS) for those who arrive without a visa
- denying refugee status for those who are reasonably believed to have deliberately discarded or destroyed their identity documentation
- establishing a new fast track assessment and removal process to have protection claims assessed and immigration status resolved as quickly as possible and
- expanding the offshore processing capacity in Papua New Guinea (PNG) and Nauru.1

One of the first things the newly elected Coalition Government did upon taking office in 2013 was to establish Operation Sovereign Borders (OSB), a military-led, border security operation, bringing together the operational elements of fifteen departments and agencies under a single command led by Lieutenant-General Angus Campbell. However, despite repeated attempts, the Government was unable to reintroduce TPVs, as the Opposition and the Australian Greens united in the Senate to block its attempts. In order to fulfil the Government’s election commitment that no irregular maritime arrivals (IMAs) would be granted permanent protection in Australia, the Immigration Minister instead turned to making administrative determinations to limit the number of protection visas that could be granted in the financial year. However, such a mechanism was soon after found to be invalid by the High Court of Australia.

2014 was a significant year of controversial refugee law and policy reform for the Government. The year began with a series of incidents of rioting, unrest and injury in PNG leading to the death of one asylum seeker and multiple injuries to others. Later in the year, another asylum seeker died at the offshore processing centre in PNG from an infection. There were also numerous reports of sexual assaults and incidents of self-harm at the processing centres. By the middle of the year, the Government was embroiled in legal action as it unsuccessfully tried to return a boat carrying 157 Sri Lankan asylum seekers back to India. Nonetheless, the Government was able to implement three significant administrative measures generally designed to deter future boat arrivals. The first was to give the lowest processing priority to refugees who arrived by boat wanting to be reunited with family members under the family stream; the second was to remove unauthorised arrivals’ access to the Immigration Advice and Application Assistance Scheme; and the third was to implement a prohibition on resettling refugees to Australia from Indonesia (if registered with UNHCR after 1 July 2014).

By September, the Cambodian Government had agreed to resettle refugees from Nauru on a voluntary and permanent basis and, by year’s end, the Australian Government had successfully secured passage of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, which saw the reintroduction of TPVs, the introduction of a fast track assessment process, codification of Australia’s interpretation of its protection obligations under the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) and the introduction of a legislative basis for the Minister to cap the number of protection visas which could be granted. Perhaps most significantly, passage of the Bill also amended the Maritime Powers Act 2013 to clarify the Government’s powers to detain and move vessels and people, thereby paving the way for the High Court to subsequently confirm the legality of the Government’s handling of the 157 Sri Lankan asylum seekers.

---

1. Liberal Party of Australia and the Nationals, Our plan: real solutions for all Australians; The Coalition’s Operation Sovereign Borders policy; The Coalition’s policy to clear Labor’s 30,000 border failure backlog; The Coalition’s policy for a regional deterrence framework to combat people smuggling; The Coalition’s policy to withdraw taxpayer funded assistance to illegal boat arrivals. Election 2013.
In contrast to 2014, 2015 proved to be a quieter year although there were still several significant developments. It began with the tabling of the Australian Human Rights Commission’s report into children in immigration detention. By the middle of the year the Australian Government had announced the arrival of the first four refugees to be settled in Cambodia from Nauru and, in September, in response to growing public pressure, the Australian Government announced that it would resettle an additional 12,000 refugees who had fled the conflict in Syria and Iraq. A change in the Coalition Government leadership led to Malcolm Turnbull being sworn in as Australia’s 29th Prime Minister on 14 September 2015, but he was quick to rule out any change to the Government’s tough policies. While the Government closed the year with an announcement that it had successfully turned back 23 boats carrying 685 asylum seekers since December 2013, the UN refugee agency issued a statement saying that intercepting and turning back boats carrying asylum seekers was contrary to the spirit of the 1951 Refugee Convention.

While 2016 saw the Government announce that there were no longer any children in onshore immigration detention centres (excluding community detention), the year was largely dominated by circumstances in Nauru and PNG. A grass roots campaign ‘Let Them Stay’ aimed at preventing hundreds of asylum seekers (including babies) from being returned to Nauru after medical treatment in Australia, gained significant community support (including from State Premiers and the Chief Minister of the ACT). In April the PNG Supreme Court unanimously found the detention of refugees and asylum seekers on Manus Island to be unconstitutional, and shortly thereafter, two asylum seekers on Nauru self-immolated, resulting in critical injuries and one death. This prompted the UN refugee agency to issue another statement saying arrangements in both PNG and Nauru were ‘completely untenable’ (as detailed below). Meanwhile, all but one of the refugees who voluntarily resettled in Cambodia reportedly left Cambodia during the year.

This Research Paper provides an overview of these and other significant developments in refugee law and policy during the period 18 September 2013 to 2 July 2016 (the Coalition Government’s first term in office). In doing so, it builds upon a number of other Parliamentary Library publications in this series:

- *Developments in Australian refugee law and policy (2012 to August 2013)*
- *Developments in Australian refugee law and policy 2010—2011*
- *Developments in Australian refugee law and policy 2007–10 Labor’s first term in office*
- *Recent developments in refugee and immigration law 2005*
- *Refugee law: recent legislative developments (2001)*

**Acknowledgements**

The authors wish to gratefully acknowledge colleagues Harriet Spinks, Claire Petrie, Pauline Downing and Alissa McCulloch for their assistance with this paper.

---

Chronology of significant events

2013

- 18 September 2013 — the Coalition (Abbott) Government sworn in and Scott Morrison appointed as Minister for Immigration and Border Protection.

- 18 September 2013 — immediately upon forming Government, the Coalition implements Operation Sovereign Borders, which was the cornerstone of its asylum policy prior to the election. A military-led, border security operation, led by Lieutenant-General Angus Campbell, Operation Sovereign Borders commences on 18 September 2013. At the first Operation Sovereign Borders media briefing on 23 September 2013, Immigration Minister Scott Morrison states that the Government would be moving to transfer all ‘illegal’ maritime arrivals to Manus Island or Nauru within 48 hours of their arrival.

- 3 October 2013 — the Minister for Immigration and Border Protection announces a further 500 Syrian refugees would be resettled in Australia.

- 17 October 2013 — the Coalition Government makes an amendment to the Migration Regulations 1994 providing for the re-introduction of Temporary Protection Visas (TPVs). Under this amendment, Temporary Protection (Subclass 785) visas would be the only protection visa available to people who:
  - are unauthorised maritime arrivals as described in the Migration Act 1958
  - otherwise arrived in Australia without a visa or
  - were not immigration cleared on their last arrival in Australia.

Under the Regulation, any application for a protection visa by a person in the above categories which was not decided prior to 18 October 2013 would only be eligible for a TPV, not a permanent protection visa. The intention was to ensure that the approximately 30,000 asylum seekers who arrived by boat already in Australia (who were not subject to offshore processing) could not be granted a permanent visa.

- 18 October 2013 — a disturbance occurs on Manus Island between members of the Royal Papua New Guinea Constabulary (RPNGC) mobile police squad and Papua New Guinea Defence Force (PNGDF) military personnel outside the offshore processing centre (OPC) perimeter.

- 20 October 2013 — the media reports that the Immigration Minister ‘has instructed Departmental and detention centre staff to publicly refer to asylum seekers as ‘illegal’ arrivals and as ‘detainees’, rather than as clients … [and to] call all people who arrive in Australia by boat ‘illegal maritime arrivals’.

- 21 October 2013 — keynote speech to the Migration Institute of Australia (MIA) national conference by the Immigration Minister outlining his priorities.

- 25 October 2013 — the Immigration Minister visits Malaysia. Key outcomes included:
  - ‘An Australian-Malaysian Joint Working Group on Transnational Crime to be established, replacing the Working Group on people smuggling and trafficking in persons, and providing a vehicle for joint border security operations and capability development. The first meeting of the new working group will take place early next year at the latest.
  - A commitment on a series of joint Australia-Malaysia operations involving the Department of Immigration and Border Protection (DIBP), Customs, and the Australian Federal Police together with parallel agencies
The Australian immigration officials will work directly with the Ministry of Home Affairs to assist, plan and prepare for these operations.

- Malaysia’s proposed Memorandum of Understanding on transnational crime will be progressed by Minister Morrison for implementation, in consultation with colleagues including the Attorney-General.
- The Malaysian government has agreed to review visa on arrival arrangements for Iraqi and Syrian nationals and expressed support to graduate the existing biometric data exchange pilot program from its current infant phase to an expanded operational phase.15

- 17 November 2013 — the Prime Minister announces that Australia will give two **patrol boats to Sri Lanka**.16
- 21 November 2013 — the Immigration Minister announces that two Australian Customs and Border Protection Service (ACBPS) officers would be posted to **US Customs and Border Protection (US CBP)** to strengthen joint intelligence capabilities and engagement between the two agencies. ACBPS and US CBP also agree to establish a formal strategic partnership in 2014.17
- 2 December 2013 — the Greens and Labor vote in the Senate to **disallow** the Regulation that reintroduced **TPVs**.18
- 4 December 2013 — in response to the Senate disallowance of the Regulation reintroducing TPVs, the Immigration Minister announces that he would place a **cap** of 1,650 on the number of **protection visas** which could be issued in 2013–14 (which was the number that had been granted prior to the swearing in of the Coalition Government).19 This meant that no more onshore protection visas could be granted (to either IMAs or non-IMAs) in 2013–14. However, this legislative instrument was subsequently revoked by the Government on 19 December 2013.20
- 14 December 2013 — the Government amends the Migration Regulations (through the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013) to introduce a **new criterion** for the grant of a **protection visa**. This amendment was subject to disallowance. The amendment aimed to implement the Government’s intention that persons who arrive in Australia without visas would not be granted permanent protection. The changes to the Regulations meant that a permanent protection visa could only be granted to a person who:
  - held a visa that was in effect on their last entry into Australia
  - was not an unauthorised maritime arrival and
  - was immigration cleared on the applicant’s last entry into Australia.21
- 14 December 2013 — the Government amends the Migration Regulations to introduce a **Code of Behaviour** for asylum seekers living in the community on a bridging visa E (BVE).22 This meant that asylum seekers released from detention on a BVE would be required to sign the code of conduct prior to being granted a BVE, and any asylum seeker on a BVE who breached the code of conduct would be liable to having their BVE cancelled and being returned to detention.
- 16 December 2013 — it was reported that the Government had disbanded the **Immigration Health Advisory Group (IHAG)**, a panel of experts advising the Immigration Department on issues relating to health and well-being in the immigration detention environment. Rather than a panel of experts, there would now be one

---

15. S Morrison (Minister for Immigration and Border Protection), **Malaysia visit reboots cooperation on regional deterrence**, media release, 25 October 2014.
17. S Morrison (Minister for Immigration and Border Protection), **Australia strengthens border protection links with United States**, media release, 21 November 2013.
21. **Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013**, Note that this Regulation was disallowed by the Senate on 27 March 2014 (see below).
22. **Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013**.
advisor. The previous Chair of IHAG, Dr Paul Alexander, accepted the role of the independent health advisor. The Immigration Department stated that this decision was made by the Department, not the Minister.23

• 20 December 2013—the Australian Customs and Border Protection Service (ACPS) reports on internal reviews into three maritime incidents north of Christmas Island to determine whether operational policies and procedures were followed.24

2014

• 9 January 2014 — Family stream visa applications sponsored by permanent visa holders who arrived by boat are to be given the lowest processing priority from January 2014. ‘This means their applications will not be processed for several years’, according to a statement from the Immigration Department.25

• 10 January 2014 — the media reports instances of asylum boat ‘turnarounds’ whereby boats are returned to Indonesia by Australian authorities.26

• 14 January 2014 — detention facility closures are announced at Scherger, Port Augusta Immigration Residential Housing and Leonora Alternative Place of Detention. Pontville, which had been empty since September 2013, was also to close.27

• 3 February 2014 — Australian Human Rights Commission (AHRC) announces an inquiry into children in detention.28

• 6 February 2014 — the Refugee Council of Australia claims that the Government had begun to grant Temporary Humanitarian Concern visas (subclass 786) to refugees who entered Australia by boat as an alternative to granting TPVs.29

• 6 February 2014 — the Government announces that it would deliver two retired Australian Customs and Border Protection Bay Class vessels to Malaysia by mid-2015 ‘to assist in countering maritime people smuggling in the region’.30

• 17–18 February 2014 — a series of incidents of rioting, unrest and injury occur on Manus Island, including one death and multiple injuries to asylum seekers.31

• 19 February 2014 — the Minister acknowledges a breach of privacy, which occurred through an immigration detention statistics report released on the DIBP website on 11 February 2014 that inadvertently provides access to personal data not intended for publishing.32

• 21 February 2014 — Immigration Minister announces a review of the Manus Island incidents of 17–18 February.33 The Secretary of DIBP later confirms in Senate Estimates there would be a review of the Manus Island incidents led by former Attorney-General’s Department Secretary Robert Cornall and also a review of the detention statistics privacy breach.34 On 5 March 2014 the Senate passes a motion establishing an

23. Department of Immigration and Border Protection (DIBP), Clarification on disbandment of Immigration Health Advisory Group, DIBP website (archived), 16 December 2013.
25. DIBP, Changes to family stream visa processing for applicants sponsored by illegal maritime arrivals, DIBP website (archived), 9 January 2014.
27. S Morrison (Minister for Immigration and Border Protection), Closure of four detention facilities saves $88.8 million a year, media release, 14 January 2014.
29. Refugee Council of Australia, Use of Temporary Humanitarian Concern visas as an alternative to Temporary Protection Visas, media release, 6 February 2014.
30. S Morrison (Minister for Immigration and Border Protection), Regional cooperation strengthened - Government announces intention to handover [sic] patrol vessels to Malaysia, media release, 6 February 2014.
31. S Morrison (Minister for Immigration and Border Protection), Statement on further incident at Manus island OPC, media release, 18 February 2014; and Transcript of press conference, Darwin, 18 February 2014.
32. S Morrison (Minister for Immigration and Border Protection), Unacceptable breach of privacy, media release, 19 February 2014. The breach was investigated by the Australian Information Commissioner, with the report released on 12 November 2014 (see below).
inquiry by the Legal and Constitutional Affairs References Committee into the incidents on Manus Island from 16 to 18 February 2014.  

- 23 February 2014 — media reports that the Australian Government has asked the Cambodian Government to consider resettling refugees from Australia.
- 25 February 2014 — media report that the company that had been managing the facility on Nauru since September 2012, Transfield, would take over from G4S in managing the facility on Manus Island. After a transition period Transfield commenced full responsibility for the Manus facility service provision, including welfare services previously provided by the Salvation Army, on 29 March 2014.
- 28 February 2014 — MOU for policing at Northern Territory immigration detention facilities, between DIBP, the Australian Federal Police and the Northern Territory Police, is extended.
- 2 March 2014 — monthly Joint Ministerial Forum is established between Australia and PNG to directly oversee implementation of the Regional Resettlement Arrangement (RRA) between the two countries.
- 5 March 2014 — media reports that PNG will prioritise the processing of asylum-seekers with ‘weak’ claims, saying failed refugees could be dealt with ‘easily’.
- 5 March 2014 — media reports that charges against more than 20 asylum seekers over a riot at Nauru’s detention centre in 2013 have been withdrawn. Nauru’s newly installed Fijian magistrate, Ropate Cabealawa, was due to hear from 61 asylum seekers facing ‘riot’ and ‘unlawful assembly’ charges. The charges related to a riot at the Nauru Regional Processing Centre which the Nauruan government stated resulted in about $60 million worth of damage.
- 5 March 2-14 — Ukrainian nationals authorised to apply for temporary stay visas due to the unrest in their home country.
- 6 March 2014 — a protection visa cap (of 2,773) for asylum seekers who arrive by boat is reinstated (the cap was originally introduced and then revoked in December 2013). The High Court delivers two judgements on 20 June 2014 finding that the Minister’s instrument to be invalid.
- 27 March 2014 — the Senate votes to disallow the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 which would deny permanent protection visas to asylum seekers arriving by boat.
- 31 March 2014 — as promised during the election campaign, unauthorised boat and air arrivals no longer have access to the Immigration Advice and Application Assistance Scheme (IAAAS) as of 31 March 2014.

Additional support will be available to those who are considered vulnerable, including unaccompanied minors.

---

35. Senate Legal and Constitutional Affairs References Committee, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, The Senate, Canberra, December 2014.
40. S Morrison and R Pato (PNG Minister for Foreign Affairs and Immigration), *Australia and PNG to establish monthly joint ministerial forum to oversee implementation of regional resettlement arrangement*, media release, 2 March 2014.
43. S Morrison (Minister for Immigration and Border Protection), *Visa provisions for Ukrainian nationals*, media release, 5 March 2014.
44. *Granting of Protection Class XA Visas in 2013/2014 Financial Year*, (*Explanatory Statement*; *S Morrison, Honouring our promise to provide more resettlement places to offshore humanitarian applicants*, media release, 6 March 2014.
45. See E Karlsen, *High Court strikes down Minister’s decision to cap permanent visas for refugees*, FlagPost, Parliamentary Library blog, 25 June 2014.
47. S Morrison (Minister for Immigration and Border Protection), *End of taxpayer funded immigration advice to illegal boat arrivals saves $100 million*, media release, 31 March 2014.
• 3 April 2014 — media reports that two thirds of the asylum seekers on Manus Island have had their initial refugee status interviews conducted.48
• 2 April 2014 — inaugural Joint Ministerial Forum meeting between Australia and PNG.49
• 9 April 2014 — media reports that the Nauru Government had prevented the UNHCR from inspecting the offshore processing centre.50
• 11 April 2014 — a meeting of the Joint Ministerial Forum to oversee the implementation of the regional processing and resettlement partnership between Australia and Nauru was held in Sydney.51
• 11 April 2014 — media reports of a suicide attempt by a Tamil asylum seeker in the community on a bridging visa (who had set himself alight on 9 April 2014).52
• 11 April 2014 — media reports that two Syrian asylum seekers were refusing food in the offshore processing centre on Manus Island.51
• 17 April 2014 — media report several cases of dengue fever in the Nauru facility.54
• 22 April 2014 — Indonesian Foreign Minister comments on regional cooperation, noting that shared responsibility not shifting responsibility was the way forward.55
• 7 May 2014 — media report two more boat ‘turnarounds’ (number 8 and 9). The passengers from both boats are returned to Indonesian waters in a single boat.56
• 8 May 2014 — the Minister announces that Inverbrackie detention facility in South Australia will close by the end of 2014.57
• 9 May 2014 — the creation of an Australian Border Force (ABF) is announced in a speech to the Lowy Institute by the Minister for Immigration and Border Protection. The details of an election commitment to merge Customs into DIBP are also outlined.58
• 13 May 2014 — Budget 2014–15 immigration-related measures are outlined in detail in the following Budget Review articles:
  – Migration and humanitarian programs
  – Responding to unauthorised arrivals
  – Counter-people smuggling measures and
  – Australian Border Force.59
• 13 May 2014 — Refugee Council of Australia core funding ceases.60
• 22 May 2014 — the first refugees (13) from the Nauru Offshore Processing Centre are settled in Nauru.61
• 23 May 2014 — media reports that the New Zealand Government would not rule out transferring asylum seekers to third countries. New Zealand’s statement, released by the Human Rights Commission, was: ‘New

49. S Morrison (Minister for Immigration and Border Protection) and R Pato (PNG Minister for Foreign Affairs and Immigration), Australia and PNG inaugural joint ministerial forum to oversee implementation of the regional resettlement arrangement, media release, 4 April 2014.
51. S Morrison (Minister for Immigration and Border Protection) and D Adeang (Nauru Minister for Justice), Australia and Republic of Nauru joint ministerial forum to oversee implementation of regional partnership between Australia and Nauru, media release, 11 April 2014.
56. M Bachelard, ‘Relations on edge as boats turned back’, Age, 7 May 2014, p. 2.
57. S Morrison (Minister for Immigration and Border Protection), Coalition Government will close Inverbrackie detention facility, media release, 8 May 2014.
58. S Morrison (Minister for Immigration and Border Protection), A new force protecting Australia's borders: address to the Lowy Institute for International Policy, Sydney, 9 May 2014.
60. Refugee Council of Australia, Government removes Refugee Council's core funding, media release, 30 May 2014.
61. S Morrison (Minister for Immigration and Border Protection), First refugees settled in Nauru, media release, 22 May 2014.
Zealand does not want to disregard this as an option if circumstances change. Any use by New Zealand of offshore processing centres would require legislative amendment‘.  

- 25 May 2014 — media reports on boats attempting to arrive in New Zealand.  
- 30 May 2014 — media reports of a confidential health report produced by medical experts for the bilateral Joint Advisory Committee on Regional Processing Arrangements in Nauru, outlining risks for women and children being detained on Nauru.  
- 1 June 2014 — the Minister refers to the death of a Sri Lankan national in the community on a bridging visa who suffered serious burns in Geelong on 31 May 2014.  
- 2 June 2014 — media reports of unrest and injury on Christmas Island.  
- 6 June 2014 — media reports of sexual assaults on Nauru.  
- 17 June 2014 — Caucus motion from MPs, Melissa Parke and Anna Burke, proposing that Labor abandons the policy of offshore processing is defeated on 17 June 2014.  
- 18 June 2014 — challenge to offshore processing judgement delivered. The High Court declares the Australian Government’s offshore processing arrangements to be valid.  
- 20 June 2014 — High Court delivers two judgements finding that the Minister’s instrument capping the number of protection visas that may be granted in a specified financial year to be invalid.  
- 21 June 2014 — media reports ‘return packages’ of $10,000 are being offered to Lebanese asylum seekers in PNG and Nauru. Other offers reportedly include $7,000 to Iranians, $4,000 to Afghans and $3,300 to Nepalese, Burmese and Sudanese.  
- 22 June 2014 — a refugee who had been settled in Nauru accidentally drowns.  
- 1 July 2014 — media reports that an asylum seeker who lost his right eye during the unrest inside the Manus detention centre in February is taking legal action against the Australian Government and the security firm G4S for alleged failures in their duty of care.  
- 2 July 2014 — media reports that a Sri Lankan navy vessel was heading towards a mid-ocean meeting with Australian authorities to take custody of Sri Lankan national asylum seekers who had almost reached Christmas Island from India before being intercepted. Sri Lankan passengers from two boats (one originating from India with about 150 on board and one from Indonesia with about 50 on board) were allegedly being screened by phone and transferred to a Sri Lankan navy vessel.  
- 3 July 2014 — launch of the Australian Customs and Border Protection Service’s (ACBPS) Strategic Border Command.  

65. S Morrison (Minister for Immigration and Border Protection), Postal of asylum seeker on bridging visa, visas for locally engaged Afghans, transcript of doorstop interview: Sydney, 1 June 2014.  
68. M Parke, ‘Spy motion on offshore processing was defeated. Where to now for Labor?’, Guardian (Australia), 18 June 2014; and P Landi, ‘Young Labor left revolt on asylum policy’, Newmatilda.com, 18 June 2014.  
70. See E Karlsen, High Court strikes down Minister’s decision to cap permanent visas for refugees, FlagPost, Parliamentary Library blog, 25 June 2014.  
74. P Taylor and A Hodge, Sri Lanka set for asylum handover at sea, Australian, 2 July 2014; and S Whyte and S Koutsoukis, Asylum seeker boats being screened at sea, Canberra Times, 3 July 2014.  
75. S Morrison, National Border Targeting Centre launched, media release, 3 July 2014.
• 5 July 2014 — more media reports of boats headed for New Zealand.  

• 7 July 2014 — a ministerial press release confirms that 41 Sri Lankan nationals (37 Sinhalese and 4 Tamils) had been handed over to the Sri Lankan Navy on 6 July 2014 after undergoing an ‘enhanced screening’ process. One passenger was ‘screened in’ (meaning the enhanced screening process identified protection issues that may have engaged Australia’s obligations) and referred for further determination, but the individual chose voluntary return, not transfer to Nauru or Manus. There was no mention at the time of the remaining passengers from the boat originating from India with 157 on board.

• 7 July 2014 — Justice Crennan of the High Court makes an order precluding action by the Minister or his delegates, particularly naval personnel, from removing the plaintiffs into the custody of the Sri Lankan Government, particularly naval personnel, at least until 4.00 pm the following day.

• 9 July 2014 — media reports increasing rates of self-harm in the immigration detention network.

• 14 July 2014 — National Border Targeting Centre launched.

• 14 July 2014 — media report that transfers from Christmas Island to Nauru continue.

• 22 July 2014 — permanent protection visa granted to Ethiopian stowaway (who was the plaintiff from one of the 20 June High Court rulings).

• 24 July 2014 — media reports that India is unlikely to accept back any Sri Lankan nationals on the intercepted boat.

• 25 July 2014 — Minister announces that the remaining 157 Sri Lankan asylum seekers who departed from the Port of Pondicherry in India would be transferred to the Australian mainland (Curtin Detention Centre). These passengers are counted as the first boat arrival for 2014.

• 26 July 2014 — Law firm Maurice Blackburn filed class action proceedings in the Supreme Court of Victoria on behalf of injured asylum seekers who have been held in detention on Christmas Island during the period 26 August 2011 until 26 August 2014. The class action is brought on behalf of asylum seekers who have been detained on Christmas Island and have suffered an injury or exacerbation of injury due to the Government’s failure to provide adequate health care. It seeks compensation for injuries as well as court orders that the Government and the Minister for Immigration provide the medical care that injured asylum seekers require. The lead plaintiff in the class action is a six year old girl.

• 30 July 2014 — media reports of protests on Nauru.

• 2 August 2014 — the Minister announces that the 157 Sri Lankan asylum seekers in detention in Curtin, including up to 50 children, had declined to speak to Indian consular officials and had been transferred to Nauru.

78. JARK (representing a class as defined in Paragraph 1 of “Nature of the Claim” in the Writ of Summons) v Minister for Immigration and Border Protection and Anor; SAS v Minister for Immigration and Border Protection and Anor, unreported, High Court of Australia, Crennan J, 7 July 2014, [2014] HCATrans 148. The following day the Minister’s legal representative gave the High Court an undertaking that the Government would not take any actions involving the surrender or delivery of any of the persons in question into the custody of the government of Sri Lanka, its military, navy, officers, agents or delegates without giving 72 hours’ written notice: JARK (representing a class as defined in Paragraph 1 of “Nature of the Claim” in the Writ of Summons) v Minister for Immigration and Border Protection and Anor; SAS v Minister for Immigration and Border Protection and Anor [2014] HCATrans 149 (8 July 2014).
80. S Morrison (Minister for Immigration and Border Protection), National Border Targeting Centre launched, media release, 14 July 2014.
85. Maurice Blackburn Lawyers, ‘Class action on behalf of people detained on Christmas Island’, Maurice Blackburn Lawyers website.
87. S Morrison (Minister for Immigration and Border Protection), Transfer of 157 IMAs from Curtin to Nauru for offshore processing, media release, 2 August 2014.
4 August 2014 — the Immigration Minister, Scott Morrison, reportedly calls for a reinterpretation of the *Refugee Convention* arguing the framework outlining countries’ obligations to those fleeing persecution is being used “as a tool by people smugglers to basically run death voyages”.  

6 August 2014 — media reports that Department of Defence documents had been obtained claiming that asylum seekers injured on board a *boat* as it was *turned around* in January 2014 by Navy personnel had burnt their hands while attempting to light a fire in the engine room.  

17 August 2014 — the Minister outlines the 2013–14 *Humanitarian Program* outcomes and the Government’s planned allocations for 2014–15. The announcement includes 4,400 places set aside in the 2014–15 financial year for people fleeing the crisis in Syria and Iraq, with another 4,500 places identified over the following three years.  

19 August 2014 — the Immigration Minister announces that the Government has approved new support arrangements for families and young children enabling their supported release into the community on *bridging visas* (BVEs) if they arrived by boat prior to 19 July 2013. Those who arrived after 19 July 2013 remain subject to offshore processing. The Minister’s press release states that the arrangements “extend the care and support that is provided in community based residential detention to those released on bridging visas”.  

20 August 2014 — media reports that some staff working in detention centres on *Christmas Island* are also experiencing mental health issues.  

25 August 2014 — release of Minister’s opening statement to the *National Inquiry into Children in Immigration Detention* wherein he states “This system is not without its faults ... There have been periods where the system has been exposed to tremendous stress and weaknesses have been exposed ... In each case we have moved to address those weaknesses as they have been identified. In most cases, we have been able to move on and improve the situation, but the one response that has had the greatest impact to remove the stress on the system that creates these weaknesses is to ensure that more people and importantly more children are not being added into the network by stopping the boats ... Nobody, and especially nobody in this government, wants to see children in detention if it can be avoided”.  

5 September 2014 — Minister reports on the *death* of an adult male from the *Manus* Offshore Processing Centre (OPC) who had been transferred to Australia for medical treatment on 27 August.  

10 September 2014 — in a speech to the National Press Club, the Minister suggests that *TPVs* could be utilised for those asylum seekers who arrived by boat between 19 July and 31 December 2013.  

18 September 2014 — the Immigration Minister, Scott Morrison, reported that in addition to the *boat arrival* with 157 Sri Lankan nationals on board in July 2014, 12 *boats*, with 383 people on board, had been ‘turned back’ at sea between 19 December 2013 and 20 May 2014.  

23 September 2014 — a formal *OECD complaint* is lodged against multinational security contractor G4S for allegedly failing to meet international standards and committing serious human rights violations in relation to conditions and abuse of asylum seekers detained at the Manus Regional Processing Centre.  

25 September 2014 — the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* is introduced proposing a suite of significant changes to existing laws.

---

89. P Farrell, “*Asylum seeker burned hands in attempt to light fire on boat, navy officer claims*”, *Guardian* (Australia), 6 August 2014.
90. S Morrison (Minister for Immigration and Border Protection), *Stopping the boats to help Iraqis and Syrians*, media release, media release, 17 August 2014.
95. S Morrison, *Restoring integrity and public confidence in immigration and border protection*, address to the National Press Club, Canberra, 10 September 2014.
96. S Morrison (Minister for Immigration and Border Protection), *A year of stronger borders*, media release, 18 September 2014.
• 26 September 2014 — the Cambodian Government agrees to resettle refugees from Nauru on a voluntary and permanent basis after the Australian and Cambodian Governments sign a Memorandum of Understanding (MOU) in Phnom Penh. The first four refugees are transferred from Nauru to Cambodia in June 2015.

• 2 October 2014 — Michael Pezzullo is appointed the new Secretary of DIBP, commencing 13 October 2014.

• 3 October 2014 — the Minister announces an independent review into allegations of inappropriate conduct by contracted service providers at the Nauru Offshore Processing Centre. The review is to be led by former integrity commissioner, Philip Moss.

• 6 October 2014 — Medical Journal of Australia article written by doctors with experience of detainee health issues on Christmas Island discusses the ethical dilemmas for health professionals working in detention centres.

• 9 October 2014 — an MOU is signed between the Immigration Department, the Australian Federal Police and the New South Wales Police Force, defining the role of the police during incidents in immigration detention facilities in NSW.

• 20 October 2014 — the media reports that due to a lack of public support, the Prime Minister of Papua New Guinea has instructed the preparation of new refugee resettlement policy.

• 22 October 2014 — Independent MP, Andrew Wilkie, requests the Office of the Prosecutor of the International Criminal Court to initiate a *proprio motu*, in accordance with Article 15(1) of the *Rome Statute*, into crimes against humanity perpetrated by members of the Australian Government against persons arriving in Australian waters who are seeking protection. The allegation was that members of the Australian Government are committing the following acts contrary to Article 7 (Crimes Against Humanity) including: imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law; deportation and other forcible transfer of population; and other intentional acts causing great suffering, or serious injury to body and mental and physical health.

• 22 October 2014 — media reports that the Minister has issued ‘conclusive certificates’ under paragraph 411(3)(b) of the *Migration Act* to prevent refugees granted temporary (humanitarian concern) visas being granted permanent protection visas and accessing merits review on national interest grounds.

• 4 November 2014 — PNG Minister for Foreign Affairs and Immigration issues a media release advising that the National Executive Council (NEC) had approved action to facilitate the registration andnaturalization of West Papuan refugees living in PNG. The Minister also stated the NEC had also approved for him to start making final decisions on the refugee status of asylum seekers at the Manus Regional Processing Centre. These people will not yet be permanently settled, rather the Government would ‘conduct a comprehensive program of public awareness raising and consultation about refugee settlement before developing a new National Refugee Settlement Policy for Cabinet’s endorsement’.

---

98. S Morrison (Minister for Immigration and Border Protection), *Restoring TPVs to resolve Labor’s legacy caseload*, media release, 25 September 2014.


101. S Morrison (Minister for Immigration and Border Protection), *Appointment of the Secretary of the Department of Immigration and Border Protection and CEO of the Customs and Border Protection Service*, media release, 2 October 2014.


104. S Morrison (Minister for Immigration and Border Protection), *Robust agreement defines police roles for immigration detention facilities in NSW*, media release, 9 October 2014.

105. H Davidson, *’PNG says refugee resettlement deal to be revised due to lack of public support’*, *Guardian* (Australia), 20 October 2014.


• 6 November 2014 — Australia and Nauru Government agreement that the Regional Processing Centre on Nauru will transition to an open centre model in early 2015.109

• 11 November 2014 — a Detention Assurance Team (DAT) is set up within DIBP to strengthen assurance oversight of the integrity and management of immigration detention services. DAT will operate independently from service providers and management arrangements and will undertake investigations and support inquiries.110

• 12 November 2014 — the Australian Information Commissioner releases its report investigating a privacy breach after access to personal information of approximately 10,000 asylum seekers was briefly made available on the DIBP website via a statistical report on the immigration detention population in February 2014.111

• 12 November 2014 — the Papua New Guinea Government hands down its first positive refugee status determinations to ten asylum seekers.112

• 15 November 2014 — a boat carrying 38 Sri Lankan nationals is intercepted near Cocos Islands. The passengers were assessed in person (not by phone) by protection officers under an enhanced screening process. In one case a referral for a refugee determination was recommended and the individual was to be transferred to an offshore processing centre. The other 37 individuals were transferred or ‘turned back’ at sea to Sri Lankan authorities on 26 November 2014.113

• 18 November 2014 — the Minister announces that asylum seekers registered with UNHCR in Indonesia on or after 1 July 2014 would no longer be eligible for resettlement in Australia.114 In response, Labor expresses its concerns and notes that the announcement raises serious questions about the implementation of Australia’s humanitarian program.115

• 24 November 2014 — Mr Andrew Goledzinowski is announced as Australia’s Ambassador for People Smuggling Issues.116

• 29 November 2014 — media reports of sexual assaults and incidents of self-harm in the processing centres on Nauru and Manus Island.117

• 29 November 2014 — Myanmar and Australia sign a five year Memorandum of Understanding (MOU) to assist Myanmar to ‘facilitate its increasing number of travellers while promoting compliance with entry and stay requirements, ultimately leading to stronger borders’.118

• 3 December 2014 — Navy personnel interviewed by the media report experiencing post-traumatic stress disorder from border protection operations.119

• 3 December 2014 — the Minister announces that on the passing of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, the Government would increase

---

109. S Morrison (Minister for Immigration and Border Protection), Getting on with the job on offshore processing and resettlement, media release, 6 November 2014.
110. S Morrison (Minister for Immigration and Border Protection), Detention assurance team to monitor service provider standards, media release, 11 November 2014.
111. Australian Information Commissioner, Department of Immigration and Border Protection: own motion investigation report, November 2014.
112. S Morrison (Minister for Immigration and Border Protection), More progress on PNG settlement arrangement as first refugee determinations handed down, media release, 12 November 2014.
113. S Morrison (Minister for Immigration and Border Protection), People smuggling venture returned to Sri Lanka, media release, 29 November 2014.
114. S Morrison (Minister for Immigration and Border Protection), Changes to resettlement another blow to people smugglers, media release, 18 November 2014.
115. R Marles (Shadow Minister for Immigration and Border Protection), Australia must not shirk its regional responsibilities, media release, 19 November 2014.
118. S Morrison (Minister for Immigration and Border Protection), New partner in border protection, media release, 29 November 2014.
the Humanitarian Program in the next Budget to 16,250 in 2017–18 and 18,750 in 2018–19 at a cost of $100 million.

- 4 December 2014 — on the last scheduled parliamentary sitting day for the year, the Government tables a report in Parliament on the regional processing arrangements for unauthorised maritime arrivals. The report provides details of the accommodation, education and health arrangements in the offshore processing centres; and also provides statistics on the asylum caseloads, including final determinations on Nauru.

- 5 December 2014 — the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 passes the Senate. The Bill broadens the maritime enforcement powers used to intercept and turn boats around; reintroduces Temporary Protection Visas (TPVs); introduces a new class of temporary protection visa, valid for five years, to be called a Safe Haven Enterprise Visa (SHEV); introduces a fast track review process for those who arrived on or after 13 August 2012; states that Australia’s non-refoulement obligations are irrelevant for the purposes of removing non-citizens and removes references to the 1951 Refugee Convention; expands the definition of ‘unauthorised maritime arrival’ to include babies born in Australia; enables the Minister to limit or ‘cap’ the number of protection visas that can be granted in a financial year; and removes the obligation on the Minister or the Refugee Review Tribunal (RRT) to make a decision on a protection visa within 90 days. In his second reading speech, Shadow Minister for Immigration and Border Protection, Richard Marles, noted that Labor was open to the question of turning back boats, but would be opposing the legislation due to several concerns, including the proposed introduction of Temporary Protection Visas (TPVs). The Bill passed with the support of the majority of cross-benchers including Senators Xenophon, Muir, Lazarus, Wang, Leyonhjelm, Day (Senators Lambie and Madigan and the Australian Greens voted against the passage of the Bill).

- 11 December 2014 — Senate Legal and Constitutional Affairs References Committee releases its report into the Incident at the Manus Island Detention Centre from 16 February to 18 February 2014.

- 12 December 2014 — announcement that the last of the detainees had departed Inverbrackie detention facility in preparation for its closure.

- 12 December 2014 — announcement that temporary visas available to Ukrainian nationals wishing to remain due to unrest in their home country would be extended.

- 17 December 2014 — the Minister opens a resettlement facility on Manus Island and announces that a further 40 refugee status determinations have been signed, bringing total determinations to 50.

- 18 December 2014 — the Minister announces that 31 babies born to IMAs who were transferred from Nauru to Australia before 4 December 2014 would be allowed to remain in Australia and have their protection claims assessed as part of the legacy caseload as a result of an agreement reached with Senator Ricky Muir.


125. Senate Legal and Constitutional Affairs References Committee, Incident at the Manus Island Detention Centre from 16 February to 18 February 2014, December 2014.

126. S Morrison (Minister for Immigration and Border Protection), Government closes Labor’s Inverbrackie detention centre, media release, 12 December 2014.

127. S Morrison (Minister for Immigration and Border Protection), Extending special visa arrangements for Ukrainian nationals, media release, 12 December 2014.

128. S Morrison (Minister for Immigration and Border Protection), Australia opens resettlement facility on Manus Island, media release, 17 December 2014.

129. S Morrison (Minister for Immigration and Border Protection), Babies born to IMAs transferred from Nauru to remain in Australia, media release, 18 December 2014.
• 21 December 2014 — the Minister announces that all children on Christmas Island had been transferred to the mainland, consistent with the Government’s commitment following the passage of legislation to resolve the asylum legacy caseload. A total of 194 people in family groups, including 94 children were transferred on three charter flights to Bladin Point facility in Darwin until arrangements could be made to release them into the community.130

• 21 December 2014 — Peter Dutton is appointed Minister for Immigration and Border Protection after a Cabinet reshuffle.131

2015

• 14 January 2015 — media reports on a visit by Australian and Cambodian officials to Nauru following the agreement between the Australian and Cambodian Governments to resettle refugees from Nauru on a voluntary and permanent basis made in September 2013.132

• 16 January 2015 — the new Minister acknowledges that transferees were engaged in a protest in the Manus Regional Processing Centre and a number were self-harming.133

• 22 January 2015 — media reports that one Iranian and one Pakistani who had been found to be refugees had moved into temporary accommodation as part of a first step by the Government of PNG to settle them.134

• 28 January 2015 — the Minister reports on 15 boat turnarounds or ‘turnbacks’ since 19 December 2013 when the practice commenced.135

• 9 February 2015 — the Minister reports on a further boat ‘turnback’ intercepted North-West of Cocos Island on 9 February 2015. The four passengers were returned to Sri Lankan authorities.136

• 10 February 2015 — Australian Customs and Border Protection Vessel (ACV) Arnhem Bay given to Malaysia.137

• 11 February 2015 — the Australian Human Rights Commission (AHRC) National Inquiry into Children in Immigration Detention report is tabled.138

• 19 February 2015 — the Minister visits Nauru and acknowledges progress made by the Government of Nauru to move towards an open model in the regional processing centre.139

• 5 March 2015 — media reports that the Australian Government would replace the orange lifeboats used in boat turnbacks with ten custom-made Vietnamese-built boats resembling south-east Asian fishing vessels, commissioned for this purpose.140

• 13 March 2015 — the Minister announces that the first refugees from Nauru are about to be relocated and resettled in Cambodia.141

• 26 March 2015 — a Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru is established to inquire into and report on the

130. S Morrison (Minister for Immigration and Border Protection), Last children removed from Christmas Island detention, media release, 21 December 2014.

131. T Abbott (Prime Minister), Changes to the ministry, media release, 21 December 2014.


133. P Dutton (Minister for Immigration and Border Protection), Unwavering commitment to regional processing in PNG, media release, 16 January 2015; and Ongoing unrest at the Manus Regional Processing Centre, media release, 19 January 2015.


135. P Dutton (Minister for Immigration and Border Protection), Operation Sovereign Borders delivers six months without a successful people smuggling venture, media release, 28 January 2015.

136. P Dutton (Minister for Immigration and Border Protection), People smuggling venture returned to Sri Lanka, media release, 19 February 2015.

137. P Dutton (Minister for Immigration and Border Protection), Australian vessel gifted to Malaysia, media release, 10 February 2015.


139. P Dutton (Minister for Immigration and Border Protection), Nauru visit reaffirms regional processing partnership, media release, 19 February 2015.

140. B Doherty and H Davidson, ‘Orange lifeboats used to return asylum seekers to be replaced by “fishing boats”’, Guardian (Australia), 5 March 2015.

141. P Dutton (Minister for Immigration and Border Protection), Refugee settlement in Cambodia moves forward, media release, 13 March 2015.
responsibilities of the Commonwealth Government on the management and operation of the Regional Processing Centre in Nauru.\footnote{See the Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, Committee website.}  

- 19 April 2015 — media reports the \textit{turnaround or ‘turnback’} of a boat carrying Vietnamese asylum seekers.\footnote{J Ireland, \textit{‘Asylum seekers “back in Vietnam”’}, \textit{Sunday Age}, 19 April 2015, p. 2.} On 5 May 2015 the Minister confirms that 46 Vietnamese nationals were returned to Vietnamese authorities.\footnote{P Dutton (Minister for Immigration and Border Protection), \textit{Operation Sovereign Borders update}, media release, 5 May 2015.}  

- 6 May 2015 — members of the UN Subcommittee on the Prevention of Torture visit Nauru and call on the Government of Nauru to set up an independent monitoring body to ensure Nauru meets its obligations.\footnote{UN News Centre, \textit{UN rights experts urge Nauru to set up monitoring body for asylum seekers detained on island}, UN website, 6 May 2015.}  

- 9 May 2015 — the Minister announces that the Department has established a Child Protection Panel to provide independent advice on child protection in immigration detention and regional processing centres (RPCs). The Panel will work to strengthen policies and procedures to ensure the ongoing safety and welfare of children in immigration detention and RPCs and will advise the Secretary on the response of the Department and its service providers in relation to their child protection frameworks. The Panel’s work will include reviewing allegations back to 2008 to ensure they have been handled appropriately by the Department and service providers.\footnote{P Dutton (Minister for Immigration and Border Protection), \textit{Child protection panel and extra police officers to start work}, media release, 9 May 2015.}  

- 12 May 2015 — \textit{Budget 2015–16}: the Minister confirms that the Humanitarian Program intake would remain at 13,750 for 2016–17, increasing to 16,250 in 2017–18 and 18,750 in 2018–19.\footnote{Budget review 2015–16, Parliamentary Library, Canberra, 2015.} Other immigration-related measures are outlined in the following Budget Review articles:  

  - Migration and humanitarian programs  
  - Responding to unauthorised arrivals and  
  - Border protection and counter-people smuggling measures.\footnote{P O’Neill (Prime Minister Papua New Guinea), \textit{Address}, Lowy Institute, Sydney, 14 May 2015.}  

- 14 May 2015 — Parliament passes legislation \textit{amalgamating} the Social Security Appeals Tribunal (SSAT) and the Migration Review Tribunal and the Refugee Review Tribunal with the Administrative Appeals Tribunal (AAT).\footnote{P Dutton (Minister for Immigration and Border Protection), \textit{Parliament passes the Tribunals Amalgamation Bill}, media release, 14 May 2015.}  

- 14 May 2015 — the Prime Minister of \textit{Papua New Guinea} delivers an address to the Lowy Institute in which he discusses some of the challenges the Government faces settling refugees in PNG.\footnote{Z Al Hussein (UN High Commissioner for Human Rights), \textit{Pushbacks endanger thousands in Bay of Bengal}, media release, 15 May 2015.}  

- 15 May 2015 — UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, reports that thousands of Rohingya and Bangladeshi migrants and asylum seekers are stranded at sea in the Bay of Bengal. The Commissioner notes that many are being \textit{pushed back}: ‘I am appalled at reports that Thailand, Indonesia and Malaysia have been pushing boats full of vulnerable migrants back out to sea, which will inevitably lead to many avoidable deaths. The focus should be on saving lives, not further endangering them’.\footnote{P Dutton (Minister for Immigration and Border Protection), \textit{Operation Sovereign Borders update}, media release, 5 May 2015.}  

- 20 May 2015 — the Minister re-launches the Council on Asylum Seekers and Detention.\footnote{P Dutton (Minister for Immigration and Border Protection), \textit{Operation Sovereign Borders update}, media release, 5 May 2015.}  

- 28 May 2015 — media reports that invitations to asylum seekers on bridging visas (the ‘legacy caseload’) to apply for Temporary Protection Visas through a fast track process has begun.\footnote{P Farrell, \textit{Asylum seeker fast-track processing to begin with temporary protection visas}, \textit{Guardian} (Australia), 28 May 2015. For further detail on fast tracking see Andrew and Renata Kaldor Centre for International Refugee Law, \textit{Fast tracking refugee status determination}, fact sheet, UNSW website, 20 August 2015.}  

- 29 May 2015 — media reports that the number of people being held in immigration detention centres after having their visas cancelled, including those cancelled on \textit{character grounds}, is increasing.\footnote{P Dutton (Minister for Immigration and Border Protection), \textit{Restoring integrity to refugee intake}, media release, 12 May 2015.}  

---

142. See the Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, Committee website.
145. UN News Centre, \textit{UN rights experts urge Nauru to set up monitoring body for asylum seekers detained on island}, UN website, 6 May 2015.
146. P Dutton (Minister for Immigration and Border Protection), \textit{Child protection panel and extra police officers to start work}, media release, 9 May 2015.
147. P Dutton (Minister for Immigration and Border Protection), \textit{Restoring integrity to refugee intake}, media release, 12 May 2015.
150. P O’Neill (Prime Minister Papua New Guinea), \textit{Address}, Lowy Institute, Sydney, 14 May 2015.
• 1 June 2015 — the Department releases a discussion paper seeking views on a proposed model for a Community Support Programme to replace the existing Community Proposal Pilot which commenced on 1 June 2013, providing up to 500 places within the offshore component of the Humanitarian Program. Proposed visa application charges for the sponsors under this program were approximately $30,000 for a family of five.154

• 4 June 2015 — the first four refugees are transferred from Nauru to Cambodia.156

• 5 June 2015 — the UNHCR announces it requires $13 million to respond to the needs of asylum seekers arriving by boat in Southeast Asia.157

• 24 June 2015 — a parliamentary inquiry on the payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats is established.158

• 26 June 2015 — the Minister announces that the first Australian Border Force Commissioner is to be Mr Roman Quaedvlieg.159

• 1 July 2015 — the new operational arm of the Department of Immigration and Border Protection, Australian Border Force (ABF), is launched.160

• 23 July 2015 — UNHCR (Canberra) issues its position on interception and turn back of boats carrying asylum seekers noting that requests for international protection should be considered within the territory of the intercepting state; individuals who seek asylum must be properly and individually screened for protection needs; and actions to intercept and turn back boats carrying asylum seekers are contrary to the spirit of the 1951 Refugee Convention.161

• 25 July 2015 — Labor’s humane and compassionate asylum seeker policy is released.162 The policy confirms Labor’s support of offshore processing and includes boat turnbacks as a policy option ‘to ensure that people smugglers are denied the opportunity to offer any incentive to vulnerable people to board unsafe boats to make the dangerous journey to Australia by sea. Provided it can be done safely, a future Labor Government will retain the option of turning boats around ...’.163

• 27 July 2015 — media reports that a group of approximately 46 Vietnamese passengers who arrived by boat near Dampier off the coast of Western Australia on 20 July 2015 are returned to Vietnam (a boat ‘takeback’).164

• 1 August 2015 — media reports on the death of an Afghan asylum seeker from a suspected heart attack at Yongah Hill immigration detention centre in Western Australia.165

• 6 August 2015 — the Minister announces there had been 20 boat ‘turnbacks’ with 633 people on board since December 2013.166

155. DIBP, Community Support Programme, discussion paper, DIBP website, June 2015.
156. DIBP, Operation Sovereign Borders monthly update: June 2015, DIBP website, 10 July 2015.
157. UNHCR, UN refugee agency seeks $13 million to beef up protections for boat arrivals in Southeast Asia, media release, UN News Centre website, 5 June 2015.
158. Senate Standing Committee on Legal and Constitutional Affairs, Payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats, inquiry website, 4 May 2016.
159. P Dutton (Minister for Immigration and Border Protection), Appointment of first Australian Border Force Commissioner, media release, 26 June 2015.
160. P Dutton (Minister for Immigration and Border Protection), A new era in border protection, media release, 1 July 2015.
• 19 August 2015 — media reports that Super fund, Hesta, sells its stake in Transfield due to human rights violations in offshore processing centres.167

• 22 August 2015 — media reports of more sexual assaults on Nauru.168

• 4 September 2015 — the Government appoints Mr Robert Cornall as the new Independent Reviewer of Adverse Security Assessments.169

• 6 September 2015 — the Government announces it would provide further assistance to people fleeing conflict in Syria and Iraq, but that the Humanitarian Program intake would not be increased.170

• 7 September 2015 — the ALP announces it would accept an additional 10,000 refugees fleeing the conflict in Syria if elected.171

• 9 September 2015 — the Government announces an increase to the Humanitarian Program for 2015–16 with an additional 12,000 places for refugees fleeing conflict in Syria and Iraq.172

• 14 September 2015 — Malcolm Turnbull is sworn in as Prime Minister and a new Coalition ministry is announced on 20 September 2015.173

• 18 September 2015 — asylum seekers on Manus Island in PNG write to the new Prime Minister requesting assistance.174

• 18 September 2015 — media reports many Syrian refugees will be resettled in regional areas.175

• 25 September 2015 — media reports Prime Minister Turnbull’s comments that there has been no change to Coalition policy and asylum seekers on Manus Island and Nauru will never be resettled in Australia.176

• 25 September 2015 — the UN Special Rapporteur on the human rights of migrants cancels visit to Australia over protection concerns, access to offshore centres and concerns over the provisions of the Border Force Act 2015.177

• 25 September 2015 — media reports that over 22,000 asylum seekers on bridging visas (the ‘legacy caseload’) had been granted work rights since January 2015.178

• 25 September 2015 — UNHCR publishes seven reasons explaining the mass movement of Syrians towards Europe.179

• 5 October 2015 — following an agreement between the Australia and Nauru Governments in November 2014, the Regional Processing Centre on Nauru moved to an open centre model. It was also announced by the Nauru Government that all remaining asylum seekers in the centre would have their protection claims processed within a week.180


170. T Abbott (Prime Minister), J Bishop (Minister for Foreign Affairs) and P Dutton (Minister for Immigration and Border Protection), Syrian humanitarian crisis, joint media release, 6 September 2015.


172. T Abbott (Prime Minister), J Bishop (Minister for Foreign Affairs), S Morrison (Minister for Social Services) and P Dutton, The Syrian and Iraqi humanitarian crisis, joint media release, 9 September 2015.

173. M Turnbull (Prime Minister), Changes to the ministry, media release, 20 September 2015.


179. UNHCR, Seven factors behind movement of Syrian refugees to Europe, briefing note, UNHCR website, 25 September 2015.

180. The Government of the Republic of Nauru, No more detention for Nauru asylum seekers, media release, 6 October 2015; and P Dutton, Australia welcomes Nauru open centre, media release, 5 October 2015.
• 6 October 2015 — media reports that the Australian Government may be negotiating with countries other than Cambodia (such as the Philippines) to pursue additional resettlement options for refugees.181

• 7 October 2015 — the Government of the Republic of Nauru publishes a media release stating that refugees in Nauru ‘are in no physical danger and stories of locals attacking them are largely fabricated to further political agendas and influence the Australian Government’.182

• 12 October 2015 — media reports that doctors at Melbourne’s Royal Children’s Hospital are refusing to discharge a woman and her baby if they are to be returned to Nauru.183

• 13 October 2015 — the Government of the Republic of Nauru publishes a media release stating that the Nauru Police Force has conducted a full investigation into allegations made by a 26-year-old Somali woman that she was raped and bashed by two men inside a cave in the Ewa district on 21 August 2015 and noting (as detailed by a physician at the Republic of Nauru Hospital) ‘there was no laceration or obvious bruising on the anterior body. There were no lacerations or bruising around the vaginal region and a spermatozoa test on the victim after a vaginal swab proved negative’. The investigating officer recommended to the Department of Public Prosecutions that the case be closed due to insufficient evidence. A similar recommendation was made by the Prosecutor.184

• 18 October 2015 — media reports the death of an asylum seeker on a bridging visa who allegedly takes his own life.185

• 26 October 2015 — Journalist with The Australian, Chris Kenny is the first journalist in nearly two years to be given permission to visit Nauru. His article ‘Nauru: sifting truth from spin’ is published on 26 October 2015.186

• 27 October 2015 — media reports the death of another asylum seeker on a bridging visa who reportedly takes his own life at Brisbane airport.187

• 27 October 2015 — the Office of the High Commissioner for Human Rights (OHCHR) releases a statement expressing concerns over ‘a growing number of sexual assault and rape allegations since Australia restarted its policy of transferring asylum seekers to Nauru for processing in 2012’.188

• 31 October 2015 — media reports that the Australian government is considering resettling refugees from Manus Island and Nauru in Kyrgyzstan.189

• 8 November 2015 — Minister for Immigration and Border Protection, Peter Dutton, indicates that Australia might consider offering further assistance to Syrian and Iraqi refugees in the future in addition to the 12,000 the Government had committed to resettle.190 At time of writing, the Government had not advanced this any further.

• 8 November 2015 — media reports of unrest on Christmas Island after the death of an Iranian asylum seeker.191

• 10 November 2015 — media reports that Labor MP, Melissa Parke, puts forward a motion to the Labor Caucus calling on the Government to abolish detention on Nauru and Manus Island unless greater human rights standards are met. An amended motion commits a future Labor Government to ensuring that ‘the...
conditions of offshore processing meet with human rights standards and negotiate with PNG and Nauru for independent oversight of these facilities and calls on the government to do the same'.  

- 13 November 2015 — media reports that a female refugee and her three children are released from Villawood Immigration Detention Centre after being detained for over three years due to an adverse ASIO security assessment.  

- 13 November 2015 — according to media reports, three of the ten Vietnamese fishing boats purchased by the Australian Government (as an alternative to the orange lifeboats used in the past) had been used to return (turnback) asylum seekers to Indonesia.  

- 15 November 2015 — the Senate refers an inquiry to the Standing Committee of Privileges on whether any false or misleading evidence was given to the former Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru.  

- 20 November 2015 — media reports on a boat intercepted at Christmas Island and turned back to Indonesia—the first boat to arrive in Australian waters since June 2014. Reports of the passengers on board a boat provided by Australian authorities later emerge in West Timor.  

- 22 November 2015 — the Secretary General of the United Nations expressed his concerns over the conditions in Australia’s offshore processing centres and encouraged the Prime Minister of Australia to reconsider the Operation Sovereign Borders regime.  

- 26 November 2015 — media reports that a fifth male refugee is resettled in Cambodia.  

- 3 December 2015 — Shadow Minister for Immigration and Border Protection, Richard Marles, makes a speech noting that ‘to really resolve the fate of the bulk of asylum seekers on Manus Island and Nauru there needs to be a credible third country option negotiated by the Australian Government’.  

- 31 December 2015 — the OSB monthly update for December states that there had been 23 boat turnbacks with 685 people on board since December 2013.  

2016  

- 1 January 2016 — Filippo Grandi elected by the UN General Assembly to be the 11th United Nations High Commissioner for Refugees. He was elected on 1 January 2016 to serve a five-year term, until 31 December 2020.  

- 5 January 2016 — media claims that there have been three boat turnbacks since Malcolm Turnbull became Prime Minister in September 2015.  

- January 2016 — media reports that offers by the New Zealand Government to resettle 150 refugees a year from PNG and Nauru (negotiated by the Gillard Government in 2013) continue to be declined by the Coalition Government.


195. Senate Standing Committee of Privileges, Inquiry into possible false or misleading evidence given to the former Nauru Select Committee, Senate Committee website.  


197. Readout of the Secretary-General’s meeting with H.E. Mr. Malcolm Turnbull, Prime Minister of the Commonwealth of Australia, Malaysia, UN website, 22 November 2015.  


199. R Marles (Shadow Minister for Immigration and Border Protection), Offshore processing: the way forward, speech to the Sydney Institute, 3 December 2015.  


201. UNHCR, The High Commissioner, UNHCR website.  

• February 2016 — a ‘Let them stay’ grass roots campaign builds momentum in support of 267 asylum seekers, including several babies, facing return to Nauru after medical treatment in Australia. Church leaders also offer sanctuary and several State Premiers and the Chief Minister of the ACT offer accommodation and support.204

• 19 February 2016 — the Nauru Government announces changes to visitor visas for Australians and New Zealanders entering Nauru as a result of some journalists allegedly ‘dishonestly entering Nauru on false documentation’.205

• 19 February 2016 — media reports that the Coalition Government is in the process of negotiating resettlement options for refugees in PNG and Nauru with several countries, including Malaysia, Indonesia and the Philippines.206

• 21 February 2016 — media reports that two male Syrian refugees who had spent three years in Nauru had been resettled in Canada after a family reunification visa application had been accepted.207

• 3 March 2016 — in an address to the National Press Club, the Prime Minister of Papua New Guinea, Peter O’Neill, states that ‘Manus Island refugee centre is a problem that I inherited from the previous government … it has done a lot more damage for Papua New Guinea than anything else’.208

• 8 March 2016 — media reports that two refugees resettled in Cambodia from Nauru had returned to their country of origin (Iran). Of the five refugees resettled, two reportedly remain after this return and one earlier return to Myanmar.209

• 10 March 2016 — media report on an alleged boat ‘takeback’. According to the reports six Bangladeshi passengers and two Indonesian crew members were rescued from a sinking vessel by Australian authorities and returned to Indonesia.210

• 12 March 2016 — the ‘Let them stay’ grass roots campaign continues to build momentum with over 100 churches in Australia prepared to offer sanctuary to the 267 asylum seekers facing return to Nauru.211

• 18 March 2016 — the Minister for Immigration and Border Protection states that, since December 2013, twenty five boats carrying 698 people had been turned back (25 boat turnbacks) and 57 potential people smuggling ventures had been disrupted.212

• 22–23 March 2016 — the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is held in Bali, Indonesia.213

• 4 April 2016 — the Minister announces that there are no children in onshore immigration detention centres (this statement does not refer to children and their families held under community detention arrangements).214

• 21 April 2016 — media reports that a boat is intercepted by the Sri Lankan Navy and the passengers returned to Sri Lanka.215

203. B Doherty and H Davidson, ‘New Zealand’s offer to resettle 150 offshore refugees a year never taken up’, Guardian (Australia), 11 January 2016; and H Davidson, “Turnbull urged to allow New Zealand to resettle refugees held on Nauru”, Guardian (Australia), 19 January 2016.  

204. See, for example, Let them stay: thousands gather around Australia to protest against asylum seekers being sent back to Nauru, ABC, 8 February 2016; and D Andrews, ‘It wasn’t a political stunt it was a moment of clarity’, Age, 12 February 2016.  


208. P O’Neill (Prime Minister, PNG), Address at the National Press Club, Canberra, 3 March 2016.  


211. E Colman, ‘Churches united on offer of sanctuary’, Australian, 12 March 2016, p. 5.  

212. P Dutton (Minister for Immigration and Border Protection), Boats stopped—threat constant, media release, 18 March 2016.  


• 26 April 2016 — PNG Supreme Court unanimously finds the detention of refugees and asylum seekers in the Australian-funded processing centre on Manus Island to be unconstitutional.216

• 27 April 2016 — the PNG Prime Minister, Peter O’Neill, announces that the Manus Island immigration detention will close, and Australia must make new arrangements for the 850 asylum seeker and refugee men held there.217

• 29 April 2016 — media reports on the death in a Brisbane hospital of an Iranian asylum seeker, critically injured from a self-immolation incident on Nauru.218

• 2 May 2016 — The Minister confirms that a woman critically injured in another self-immolation incident on Nauru is transferred to Australia for medical treatment.219

• 2 May 2016 — UNHCR issues a statement saying ‘UNHCR undertakes regular visits to offshore processing sites to monitor the situation of refugees and asylum seekers, including on seven separate occasions to Nauru since 2012 ... Despite efforts by the Governments of Papua New Guinea and Nauru, arrangements in both countries have proved completely untenable ... UNHCR’s principal concern today is that these refugees and asylum-seekers are immediately moved to humane conditions with adequate support and services’.220

• 3 May 2016 — during the 2016–17 Budget the Government announces that, over a four year period, it will close Perth Immigration Residential Housing, Maribyrnong Immigration Detention Centre (IDC) and Blaxland compound at Villawood IDC; and not renew the lease for Wickham Point Alternative Place of Detention (APOD) after it expires in November 2016.221 Immigration-related measures are outlined in further detail in the Budget Review article: ‘Immigration and border protection overview’.222

• 4 May 2016 — media reports on a boat arrival near Cocos Island carrying asylum seekers who are later returned to Sri Lanka.223

• 5 May 2016 — media reports that a fourth refugee resettled to Cambodia from Nauru leaves the country for Iran (only one refugee reportedly remains).224

• 12 May 2016 — media reports that asylum seekers and refugees are no longer in detention on Manus Island, according to a Papua New Guinea immigration official who has said they have freedom to leave the centre.225

• 20 June 2016 — the Australian television show A Current Affair is given rare access to film on Nauru and interview asylum seekers and refugees. Story presented by Caroline Marcus entitled ‘An exclusive look inside Nauru’.226

• 25 May 2016 — media reports that, if elected, one of the first acts of a Labor Prime Minister will be to engage with the UNHCR to identify resettlement countries for refugees from the offshore processing centres in PNG and Nauru, including traditional resettlement countries such as Canada.227

• 22 June 2016 — the Prime Minister confirms that 21 passengers on board a boat intercepted in the Timor Sea are returned to Vietnam.228


219. P Dutton (Minister for Immigration and Border Protection), Recent incidents in Nauru, media release, 3 May 2016.

220. UNHCR, ‘UNHCR calls for immediate movement of refugees and asylum-seekers to humane conditions’, media release, 2 May 2016.

221. P Dutton (Minister for Immigration and Border Protection), Strengthening our borders and boosting jobs and growth, media release, 3 May 2016.


228. M Turnbull (Prime Minister), Doorstop interview transcript, Bungalow, Queensland, 22 June 2016.
• 27 June 2016 — in a medical journal article, health professionals contracted to provide medical services in offshore processing centres describe the treatment of asylum seekers as torture. 229

• 1 July 2016 — New Zealand media reports that PNG’s Chief Justice Sir Salamo Injia has issued PNG Immigration a two-week deadline for the remaining asylum seekers on Manus Island to be processed. The court also insisted that asylum seekers now be called ‘residents’, after the recent Supreme Court ruling. 230

• 22 June 2016 — Prime Minister Malcolm Turnbull confirms that a total of 28 boats have been turned back carrying 734 people since the commencement of ‘Operation Sovereign Borders’ on 18 September 2013. 231

Key policy developments

Operation Sovereign Borders

During the 2013 election period the Coalition announced that a military-led, whole-of-government response, known as Operation Sovereign Borders (OSB), would be introduced to coordinate the Coalition’s offshore processing and anti-people smuggling measures. 232 On 18 September 2013 (the same day as the new Coalition Government was sworn in) the Abbott Government implemented Operation Sovereign Borders (OSB), its military-led border security operation, led by Lieutenant-General Angus Campbell. At the first OSB media briefing on 23 September 2013 Immigration Minister Scott Morrison stated that, under OSB, the Government would not be commenting on ‘operational matters’ but would be moving to transfer all ‘illegal’ maritime arrivals to Manus Island or Nauru within 48 hours of their arrival. 233

On 9 May 2014 the Minister for Immigration and Border Protection, Scott Morrison, announced in a speech to the Lowy Institute that an Australian Border Force (ABF) would be created within DIBP. The ABF would operate as ‘a single frontline operational border agency, to enforce our customs and immigration laws and protect our border’. 234 The details of an election commitment to merge the Australian Customs and Border Protection Service (ACBPS) into DIBP were also outlined—‘Having established a strong platform within the Australian Customs and Border Protection Service, it will then cease to exist on July 1 2015 and be superseded by the Australian Border Force’. 235

The ABF’s Strategic Border Command was launched on 3 July 2014 to ‘monitor movements in real time and support effective decision-making, enhancement of surveillance capabilities and the acquisition of six vessels suitable for inshore and coastal operations to support remote area patrols’. 236 On 14 July 2014 the Strategic Border Command’s National Border Targeting Centre was launched — ‘a 24/7 operations centre, bringing together nine border, law enforcement, national intelligence and regulatory partner agencies to analyse and target high-risk passengers and cargo within the Strategic Border Command’. 237

On 1 July 2015 the Department’s new operational arm, Australian Border Force (ABF), was officially launched and Customs merged with DIBP. The ABF absorbed the operational responsibilities previously held by both agencies (such as intercepting prohibited imports, conducting immigration compliance activities and maintaining immigration detention facilities) and would ‘continue the mission of Operation Sovereign Borders’. 238


231. M Turnbull (Prime Minister), Doorstop interview transcript, Bungalow, Queensland, 22 June 2016.


234. S Morrison (Minister for Immigration and Border Protection), A new force protecting Australia’s borders: address to the Lowy Institute for International Policy, Sydney, 9 May 2014.

235. Ibid.

236. Ibid. and S Morrison, A stronger border—establishment of an Australian Border Force, media release, 13 May 2014; and National Border Targeting Centre launched, media release, 14 July 2014.

237. S Morrison (Minister for Immigration and Border Protection), National Border Targeting Centre launched, media release, 14 July 2014.

238. P Dutton (Minister for Immigration and Border Protection), A new era in border protection, media release, 1 July 2015.
**Boat turnbacks**

Prior to the election, the then Leader of the Opposition, Tony Abbott, stated that within a week of taking office he would instruct the Australian Navy to turn back boats carrying asylum seekers and prevent them from entering Australian waters or arriving onshore. 239

On coming to power in September 2013, the Abbott Government immediately implemented this policy, but made it clear that it would not be providing any information on successful ‘on-water disruptions’ such as boat ‘turnbacks’ or ‘take-backs’, for operational reasons. 240 The Government defined ‘turnbacks’ as ‘the safe removal of vessels from Australian waters, with passengers and crew returned to their countries of departure’; and ‘take-backs’ as a transfer (often at sea) of passengers and crew to another sovereign authority (for example, the Sri Lankan Navy). 241 During these ‘on-water’ operations, passengers usually undergo an ‘enhanced screening’ process designed to identify whether anyone has a protection need before the vessel is returned. 242 According to the Department’s statistics, no asylum seekers have been transferred to an offshore processing facility (or screened-in) since December 2014. 243

Although information on turnbacks and take-backs since then has been sporadic, on a few occasions the Government has released information on some of the OSB ‘on-water’ activities that have occurred. 244 For example:

- 19 December 2013 — the first successful boat turnback by the Abbott Government took place. 245
- 15 January 2014 — the Australian Customs and Border Protection Service purchased a number of large (orange) lifeboats ‘to achieve the aims of Operation Sovereign Borders’. 246
- 18 September 2014 — in addition to a boat arrival with 157 Sri Lankan nationals on board in July 2014, 12 boats (with 383 people on board) were turned back at sea between 19 December 2013 and 20 May 2014. 247
- 28 January 2015 — there were 15 boat turnbacks since 19 December 2013. 248
- 9 February 2015 — another boat was intercepted north-west of Cocos Island on 9 February 2015. The four passengers were returned to Sri Lankan authorities (a take-back). 249
- 5 May 2015 — a boat carrying 46 Vietnamese nationals was returned to Vietnamese authorities (a take-back). 250
- 6 August 2015 — there were 20 boat turnbacks or take-backs with 633 people on board since December 2013. 251
- 31 December 2015 — the OSB monthly update for December stated that there had been 23 boat turnbacks with 685 people on board since December 2013. 252

---

239. T Abbott (Leader of the Opposition), *The Coalition’s plan for more secure borders*, Melbourne, speech, 27 April 2012.
244. For more detail on the exact dates of most of these incidents see J Phillips, *Boat arrivals and boat ‘turnbacks’ in Australia since 1976: a quick guide to the statistics*, op. cit.
245. S Morrison (Minister for Immigration and Border Protection), *A year of stronger borders*, media release, 18 September 2014.
247. S Morrison (Minister for Immigration and Border Protection), *A year of stronger borders*, op. cit.
248. P Dutton (Minister for Immigration and Border Protection), *Operation Sovereign Borders delivers six months without a successful people smuggling venture*, op. cit.
249. P Dutton (Minister for Immigration and Border Protection), *People smuggling venture returned to Sri Lanka*, op. cit.
• 18 March 2016 — since December 2013 there were 25 boat turnbacks carrying 698 people.  

• 22 June 2016 — Prime Minister Malcolm Turnbull confirmed that a total of 28 boats had been turned back carrying 734 people.

**Offshore processing and settlement**

During the 2013 election period the Coalition confirmed that offshore processing would remain under an Abbott Government. With the subsequent election of the Coalition Government in September 2013, offshore processing, including the tougher measures introduced previously by the Rudd Government in July 2013, remained in place.

Between July 2013 (when the previous Government announced that all, not some, maritime asylum seekers would be transferred to an offshore processing centre) and April 2014, the numbers of people being accommodated offshore rose to just under 2,500 in April 2014. Since then the numbers of people at the centres have gradually declined.

Key developments relating to the Government’s offshore processing regime include:

• 22 May 2014 — the first refugees (13) from the Nauru Offshore Processing Centre were settled in Nauru.

• 18 June 2014 — challenge to offshore processing judgement delivered. The High Court declared the Australian Government’s offshore processing arrangements to be valid.

• 1 August 2014 — by the end of July 2014 the Government of Nauru had completed 168 Refugee Status Determinations, of which 131 were positive (processing began on 19 March 2013).

• 26 September 2014 — the Cambodian Government formally agreed to resettle refugees from Nauru on a voluntary and permanent basis after the Australian and Cambodian Governments signed a Memorandum of Understanding (MOU) in Phnom Penh.

• 6 November 2014 — the Australian and Nauru Governments agreed that the Regional Processing Centre on Nauru would transition to an open centre model in early 2015.

• 12 November 2014 — the PNG Government handed down its first positive refugee status determinations to 10 asylum seekers (processing began on 8 July 2013).

• 17 December 2014 — the Minister opened a resettlement facility on Manus Island and announced that a further 40 refugee status determinations had been signed, bringing the total number of determinations in PNG to 50.

• 22 January 2015 — media reported that one Iranian and one Pakistani who had been found to be refugees had moved into temporary accommodation as part of a first step by the Government of PNG to settle them.

---


253. P Dutton (Minister for Immigration and Border Protection), *Boots stopped—threat constant*, op. cit.


258. S Morrison (Minister for Immigration and Border Protection), *First refugees settled in Nauru*, media release, 22 May 2014.


261. S Morrison (Minister for Immigration and Border Protection), *Getting on with the job on offshore processing and resettlement*, media release, 6 November 2014.


263. S Morrison (Minister for Immigration and Border Protection), *Australia opens resettlement facility on Manus Island*, media release, 17 December 2014.

• 13 March 2015 — the Minister announced that the first refugees from Nauru were to be relocated and resettled in Cambodia.265

• 4 June 2015 — the first four refugees were voluntarily transferred from Nauru to Cambodia for resettlement.266

• 5 October 2015 — following an agreement between the Australia and Nauru Governments made in November 2014, the Regional Processing Centre on Nauru moved to an open centre model.267

• 7 October 2015 — the Government of the Republic of Nauru published a media release stating that refugees in Nauru ‘are in no physical danger and stories of locals attacking them are largely fabricated to further political agendas and influence the Australian Government’.268

• 15 October 2015 — the Government of Cambodia began to integrate the first group of refugees for resettlement in the community after transferring them from transit accommodation.269

• 22 November 2015 — the Secretary General of the United Nations expressed his concerns over the conditions in Australia’s offshore processing centres and encouraged the Prime Minister of Australia to reconsider the Operation Sovereign Borders regime.270

• January 2016 — media reported that offers by the New Zealand Government to resettle 150 refugees a year from PNG and Nauru (negotiated by the Gillard Government in 2013) continued to be declined by the Coalition Government.271

• 3 March 2016 — in an address to the National Press Club, the Prime Minister of Papua New Guinea, Peter O’Neill, stated that ‘Manus Island refugee centre is a problem that I inherited from the previous government ... it has done a lot more damage for Papua New Guinea than anything else’.272

• 26 April 2016 — PNG Supreme Court unanimously found the detention of refugees and asylum seekers in the Australian-funded processing centre on Manus Island to be unconstitutional.

• 27 April 2016 — media reported that the Manus Island immigration detention would close, and Australia must make new arrangements for the 850 asylum seeker and refugee men held there.273

• 2 May 2016 — UNHCR issued a statement saying ‘... arrangements in both countries have proved completely untenable ... UNHCR’s principal concern today is that these refugees and asylum-seekers are immediately moved to humane conditions with adequate support and services’.274

• 5 May 2016 — media reported that a fourth refugee resettled to Cambodia from Nauru leaves the country and only one refugee reportedly remained in Cambodia.275

• 12 May 2016 — media reported that asylum seekers and refugees were no longer in detention on Manus Island, according to a Papua New Guinea immigration official who stated they were free to leave the centre.276

265. P Dutton (Minister for Immigration and Border Protection), Refugee settlement in Cambodia moves forward, media release, 13 March 2015.

266. DIBP, Operation Sovereign Borders monthly update: June 2015, DIBP website, 10 July 2015.

267. The Government of the Republic of Nauru, No more detention for Nauru asylum seekers, media release, 6 October 2015; and P Dutton (Minister for Immigration and Border Protection), Australia welcomes Nauru open centre, media release, 5 October 2015.


269. P Dutton (Minister for Immigration and Border Protection), Regional partnership enhanced, media release, 15 October 2015.

270. Readout of the Secretary-General’s meeting with H.E. Mr. Malcolm Turnbull, Prime Minister of the Commonwealth of Australia, Malaysia, UN Secretary General website, 22 November 2015.

271. B Doherty and H Davidson, ‘New Zealand’s offer to resettle 150 offshore refugees a year never taken up’, Guardian (Australia), 11 January 2016; and H Davidson, ‘Turnbull urged to allow New Zealand to resettle refugees held on Nauru’, Guardian (Australia), 19 January 2016.

272. P O’Neill (Prime Minister, PNG), Address at the National Press Club, Canberra, 3 March 2016.


274. UNHCR, ‘UNHCR calls for immediate movement of refugees and asylum-seekers to humane conditions’, media release, 2 May 2016.


• 1 July 2016 — media reported that PNG’s Chief Justice had issued PNG Immigration a two-week deadline for the remaining asylum seekers on Manus Island to be processed. The court also insisted that asylum seekers now be called ‘residents’, after the recent Supreme Court ruling.277

• 9 June 2016 — official statistics released by the DIBP indicated that 541 refugees on Manus Island had received a positive final determination as at 31 May 2016 and in Nauru 1194 asylum seekers had received a decision resulting in 915 persons being found to be refugees and 279 receiving a negative outcome.278

Temporary protection

In October 1999, the Howard Government formally introduced the practice of offering temporary, not permanent, protection for asylum seekers who had arrived unauthorised by boat and had been found to be refugees. However, in May 2008 the Rudd Government honoured an election commitment and abolished the Temporary Protection Visa (TPV) category for asylum seekers and granted permanent protection to those still in the country on these visas (around 1,000 at the time).279

Before the 2013 election the Coalition consistently stated that, under an Abbott Government, TPVs would be reintroduced as a deterrence measure and issued to any unauthorised asylum seeker arrival found to be a refugee onshore (that is, had not been transferred to an offshore processing centre). After coming to power in September 2013, the Coalition promptly began the process of re-introducing TPVs.280

However, the process proved to be problematic and lengthy. The key developments are documented below:

• 18 October 2013 — the new Abbott Government registered the Migration Amendment (Temporary Protection Visas) Regulation 2013.281 This Regulation provided for the re-introduction of TPVs. However, on 2 December 2013 the Australian Greens and ALP voted in the Senate to disallow the Regulation.282

• 4 December 2013 — in response to the Senate disallowance of the regulation reintroducing TPVs, the Immigration Minister announced that he had placed a limit or cap of 1,650 on the number of protection visas which could be issued in 2013–14 (which was the number which had been granted prior to the swearing in of the Coalition Government).283 This meant that no more permanent protection visas could be granted to any asylum seekers in 2013–14. The visa cap was achieved through legislative instrument under section 85 of the Migration Act, which was not subject to disallowance.284 However, this decision was subsequently revoked by the Government on 19 December 2013.285

• 14 December 2013 — the Government registered the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013.286 This Regulation amended the Migration Regulations 1994 to introduce a new visa criterion so that a permanent Protection visa could be granted to an unauthorised maritime arrival. However on 27 March 2014 the Australian Greens and ALP voted in the Senate to disallow the Regulation.287

• January 2014 — the Immigration Department issued a factsheet informing asylum seekers that ‘illegal arrivals who had lodged a protection visa application would have their application refused because the law had changed and they could not be granted a permanent protection visa. Those who were found to engage Australia’s protection obligations and satisfy all other requirements would be offered access to a temporary

278. DIBP, Operation Sovereign Borders monthly update: May 2016, DIBP website.
280. Ibid.
283. S Morrison (Minister for Immigration and Border Protection), Government acts swiftly to deny people smugglers’ promise of permanent visas, media release, 4 December 2013.
See also: S Morrison (Minister for Immigration and Border Protection), Labor and Greens once again vote to honour people smugglers’ promise, media release, 27 March 2014; and S Whyte, Senate rejects Scott Morrison’s temporary visa attempt, Sydney Morning Herald, (online edition), 27 March 2014.
humanitarian concern visa’. The fact sheet explains, a temporary humanitarian concern visa was valid for up to three years but persons issued with this type of visa could not apply for a permanent visa upon expiration. Also, this visa did not enable family members to be brought from overseas. A person could not apply for a temporary humanitarian concern visa, they must be invited to accept grant of this visa by the Minister. If the Minister decided to grant this visa, the person would first be invited to accept a temporary humanitarian stay visa (normally valid for seven days) which would then enable the grant of a temporary humanitarian concern visa. However, on 11 September 2014, the High Court unanimously held invalid the grant by the Minister of a temporary safe haven visa to the plaintiff, which had the effect of precluding him from making a valid application for a protection visa. This judgment is discussed further below under the heading ‘Case law’.

- 6 March 2014 — the Immigration Minister announced that he had placed a limit or cap of 2,773 on the number of permanent Protection visas which could be issued in 2013–14. The visa cap was again achieved through legislative instrument under section 85 of the Migration Act, which was not subject to disallowance. However, on 20 June 2014, this legislative instrument was subsequently found to invalid by the High Court in two concurrently heard matters: Plaintiff M150 of 2013 v Minister for Immigration and Border Protection and Plaintiff S297/2013 v Minister for Immigration and Border Protection.

- June 2014 — the Immigration Department issued a fact sheet informing asylum seekers that the immigration Minister ‘will decide whether to grant a permanent protection visa to illegal arrivals on a case-by-case basis, after personally considering their individual circumstances. If the minister decides that it is not in the ‘national interest’ to grant a permanent protection visa in a specific case, he or she may issue a conclusive certificate relating to his decision. If he or she does, their decision that it is not in the national interest to grant this visa cannot be reviewed by the RRT... Illegal arrivals refused a permanent protection visa under the national interest criterion will not be subject to removal from Australia and will have their protection needs met through other means, such as a temporary visa’.

- 10 September 2014 — in a speech to the National Press Club, the Minister suggested that TPVs could be utilised for those asylum seekers who arrived by boat between 19 July and 31 December 2013.

- 25 September 2014 — the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 was introduced. This Bill proposed a suite of changes to the existing laws including: reintroduction of TPVs, introduction of a new class of five year temporary protection visa (a Safe Haven Enterprise Visa); introduction of a fast track review process for some IMAs; introduction of a power to enable the Minister to limit or ‘cap’ the number of protection visas that can be granted in a financial year; removal of the obligation on the Minister or the RRT to make a decision on a protection visa within 90 days; and insertion of a provision that provides that certain applications for permanent protection visas be taken to be applications for temporary protection visas.


289. Ibid.


291. Granting of Protection Class XA Visas in 2013/2014 Financial Year. Commencement date is set out in the accompanying Explanatory Statement; S Morrison, Honouring our promise to provide more resettlement places to offshore humanitarian applicants, media release, 6 March 2014.


293. It is a criterion for a protection visa that ‘the Minister is satisfied that the grant of the visa is in the national interest’ (Regulation 866.226 Migration Regulations 1994). What constitutes the national interest is for the Minister to personally decide (the term is not defined in the Migration Act).


295. S Morrison (Minister for Immigration and Border Protection), Restoring integrity and public confidence in immigration and border protection, address to the National Press Club, Canberra, 10 September 2014.

296. S Morrison (Minister for Immigration and Border Protection), Restoring TPVs to resolve Labor’s legacy caseload, media release, 25 September 2014.

passed both houses of Parliament.\textsuperscript{298} Thus, TPVs were officially reintroduced on 16 December 2014, being the day after the Bill received Royal Assent.

- 22 June 2015 — 17 people had been granted a TPV from a potential caseload of about 30,000 by June 2015.\textsuperscript{299} TPV holders are eligible to stay for a period of three years, may work or study and have access to Medicare and certain other benefits.\textsuperscript{300}

- 4 April 2016 — media reports that 849 of the ‘asylum legacy’ caseload of about 30,000 had been granted TPVs as at March 2016.\textsuperscript{301}

**Fast-track processing of asylum claims**

Prior to the 2013 federal election, the then Opposition announced that a future Coalition Government would introduce a broader screening process that would apply to all boat arrivals by establishing ‘a new fast track assessment and removal process based on the United Kingdom's Detained Fast Track system to have protection claims assessed, immigration status resolved and removals undertaken as quickly as possible’.\textsuperscript{302}

As promised, the Coalition Government introduced a new ‘fast track’ processing system for certain caseloads with the commencement of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* on 18 April 2015. Although not a great deal of information was provided on the details of the fast-track process, it was clear that asylum seekers who arrived on a valid visa would continue to have access to Australia’s refugee status determination process, while those who arrived unauthorised by boat on or after 13 August 2012 but before 1 January 2014 were now subject to a ‘fast track’ assessment process if:

- they had not been taken to a regional processing country
- they had been invited by the Minister to make a valid application for a protection visa (that is, the Minister has exercised his personal discretion and lifted the subsection 46A(2) bar which prohibits them lodging a visa application) and
- the application was lodged with the Department after 18 April 2015.

The Minister also has the power to specify additional classes of persons to be ‘fast track applicants’ which has been done on a number of occasions. For example, to the approximately 1,000 UMAs transferred to a regional processing country prior to 19 July 2013 but who were progressively returned to Australia to create capacity for transferees following former Prime Minister Rudd’s announcement on 19 July 2013 that all UMAs would be processed offshore; for infants born on or after 1 January 2014 to UMA parents who subject to fast track processing; and of course, to children (and their immediate family members) born in Australia during the period 6 November 2013 and 5 December 2014 whose parents had entered Australia by boat after 19 July 2013 and who were subsequently taken to Nauru. This last category of fast track applicants arose out of an agreement reached between the Minister and former Senator Ricky Muir in the lead up to the passage of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.\textsuperscript{303}

Fast track applicants have no access to merits review through the Migration and Refugee Division of the Administrative Appeals Tribunal (AAT).\textsuperscript{304} Instead they now have access to a more limited review process conducted by an independent office within the Migration and Refugee Division of the AAT—the Immigration Assessment Authority (IAA).

Some asylum seekers (classified as ‘excluded fast track review applicants’) are not eligible to have their adverse fast track primary decision reviewed by the IAA. These persons include those who:

- come from ‘safe third countries’ or have ‘effective protection’ in another country


\textsuperscript{300} DIBP, *Temporary protection visa (subclass 785)*, DIBP website.

\textsuperscript{301} S Benson, ‘ALP boats failure still sinking in [Sunk by Labor’s asylum failure]’, *Daily Telegraph*, 4 April 2016, p. 1, 2.

\textsuperscript{302} S Morrison (Shadow Minister for Immigration and Citizenship), *Clearing Labor’s 30,000 illegal arrivals backlog*, media release, 16 August 2013.

\textsuperscript{303} The Migration and Refugee Division was established in July 2015 (previously the Migration Review Tribunal-Refugee Review Tribunal).
• previously entered Australia and made a protection visa application which was refused or withdrawn
• made an unsuccessful claim for protection in another country
• made an unsuccessful claim for protection with the Office of the United Nations High Commissioner for Refugees in another country
• provided ‘without reasonable explanation’ a ‘bogus document’ in support of their application or
• made, in the opinion of the Minister, a ‘manifestly unfounded’ claim.

A ‘manifestly unfounded claim’ is defined to include a claim that:
• has no plausible or credible basis
• is not able to be substantiated by any objective evidence (if the claim is based on conditions, events or circumstances in a particular country) or
• is made for the sole purpose of delaying or frustrating the fast track applicant’s removal from Australia.  

The IAA undertakes a limited form of merits review by conducting reviews ‘on the papers’. This means that with limited exceptions, it can only consider the material that was before the Department when it made its primary decision. There is no hearing.

While the IAA has no legal obligation to do so, it may get, request or accept new information that was not before the Department. If an applicant gives the IAA new information, the IAA can also only consider that information if the applicant can show that the new information:
• was not, and could not, have been provided to the Department before it made its decision to refuse the protection visa or
• is credible personal information which was not previously known and, had it been known, may have affected how the applicant’s protection claims were considered by the Department.

In limited circumstances, the IAA may invite an applicant to comment on the new information via an interview (conducted over the telephone) or in writing. The review process is expected to take 6 weeks to complete, or longer if new material is to be considered. The IAA can affirm the decision to refuse the applicant a protection visa, or remit the matter back to the Immigration Department for reconsideration with directions, including that the referred applicant is a ‘refugee’ within the meaning of subsection 5(1) of the Migration Act. The IAA has no power to grant a protection visa. Those who receive an adverse decision will have access to judicial review.

As at 20 February 2016, the Department had received 2,841 visa applications to be processed under the fast track process (8,105 invitations letters had been sent out). The Department had refused 41 applications and the IAA had completed 19 reviews (affirming the Department’s outcome in 11 decisions and remitting eight decisions back to the Department for reconsideration).
Key legal developments

Legislation

Government initiated legislation—Bills

Migration Amendment (Regaining Control over Australia’s Protection Obligations) Bill 2013
On 4 December 2013 the Government introduced the Migration Amendment (Regaining Control over Australia’s Protection Obligations) Bill 2013 into Parliament. The primary purpose of the Bill was to amend the Migration Act 1958 (Migration Act) to remove the statutory regime for assessing claims that may engage Australia’s non-refoulement (non-return) obligations arising under international human rights treaties, other than the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugees Convention).

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed without amendment. This Bill was never brought on for debate in the Senate and was discharged from the Senate Notice Paper on 15 October 2015. The Immigration Minister noted:

The government has considered the concerns raised by the Parliament and its relevant committees on certain aspects of the Bill. On balance the government considers that the best way forward is for the complementary protection provisions to remain in the Migration Act but be modified slightly as per the terms of this Bill [Migration Amendment (Complementary Protection and Other Measures) Bill 2015].

Migration Amendment Bill 2013
On 12 December 2013, the Government introduced the Migration Amendment Bill 2013. The purpose of the Bill was to amend the Migration Act to:

• resolve questions about the day and time at which certain decisions of the Minister (or his, or her delegate) are taken to be finally made and at which decisions of the Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT) are made and become final
• ensure that, once an application for a protection visa has been refused, or a protection visa has been cancelled, a person cannot apply for a protection visa on any other ground while in the migration zone
• make it a criterion for the grant of a protection visa in section 36 of the Migration Act that the applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security within the meaning of the Australian Security Intelligence Organisation Act 1979 (ASIO Act).

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed without amendment.

The Bill passed both houses on 14 May 2015 (without amendment) and became Act no. 30 of 2014.

Migration Legislation Amendment Bill (No. 1) 2014
On 27 March 2014, the Government introduced the Migration Legislation Amendment Bill (No. 1) 2014. The purpose of the Bill was to amend the Migration Act to:

114. Senate Legal and Constitutional Affairs Committee, Inquiry into the Provisions of the Migration Amendment Bill 2013, The Senate, Canberra, 12 February 2014, p. vii. Note that the Committee also recommended that the Immigration Department put in place policies and procedures which would support applicants to seek leave to stay out of time or apply for alternative forms of review in certain circumstances. The committee also recommended that the Government consider putting in place a regulatory framework to underpin the powers, authority and role of the Independent Reviewer of Adverse Security Assessments.
• clarify the restriction and scope on applying for further visas
• ensure that an application for a bridging visa does not prevent the removal of a detainee who is otherwise eligible for removal
• enable debt recovery from all persons convicted of people smuggling and illegal foreign fishing
• clarify and restrict the role of authorised recipients
• enable greater use of material and information obtained through a search warrant and
• clarify the scope of the procedural fairness requirements.

The Bills Digest examines the Bill (as introduced) in further detail.\(^{317}\) The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed without amendment.\(^{318}\)

The Bill passed both houses on 3 September 2014 (without amendment) and became Act no. 106 of 2014.\(^{319}\)

**Migration Amendment (Protection and Other Measures) Bill 2014**

On 12 December 2013, the Government introduced the Migration Amendment (Protection and Other Measures) Bill 2014.\(^{320}\) The purpose of the Bill was to amend the Migration Act to most significantly:

• clarify that it is the non-citizen and not the Minister who has the responsibility to specify all particulars of a protection claim and provide sufficient evidence to substantiate such claims

• create grounds to refuse a protection visa application when an applicant refuses or fails to establish their identity, nationality or citizenship, and does not have a reasonable explanation for doing so

• create grounds to refuse a protection visa application when an applicant provides bogus documents to establish their identity or either destroys or discards identity evidence, or has caused that evidence to be destroyed or discarded

• clarify that a family member of a protection visa holder cannot be granted a protection visa on the basis of being a family member if they apply after the initial visa has been granted

• provide that the Refugee Review Tribunal (RRT) must draw an unfavourable inference with regard to the credibility of claims or evidence that are raised for the first time before it if the review applicant has no reasonable explanation to justify why those claims and evidence were not raised before the primary decision was made by the Department

• clarify Australia’s interpretation of the likelihood of harm and the types of harm necessary to engage Australia’s non-refoulement obligations which will apply to certain ‘protection obligation’ determinations made under the Act, the regulations, administrative processes and so forth, irrespective of whether the assessment is conducted as a result of a visa application

• change the test for assessing complementary protection claims and raise the requisite threshold for return

• broaden the operation of the statutory bar that precludes unauthorised maritime arrivals (UMAs) from lodging valid visa applications by providing that UMAs who have been granted a bridging visa or a prescribed temporary visa will also be precluded from applying for a visa

• broaden the powers of the Principal Member of the Migration Review Tribunal (MRT) and the RRT to issue ‘practice directions’ to applicants and their representatives (including migration agents and legal practitioners) about the procedures they are to follow in relation to proceedings

• broaden the powers of the Principal Member of the MRT and RRT to issue ‘guidance decisions’ which Members of the Tribunal must comply with unless satisfied that the facts or circumstances of the decision under review is clearly distinguishable from the guidance decision

---

318. Senate Legal and Constitutional Affairs Committee, Inquiry into the Provisions of the Migration Legislation Amendment Bill (No. 1) 2014, The Senate, Canberra, 21 August 2014, p. vii. Note that the Committee also recommended that the Government consider whether additional safeguards are necessary to ensure that children and people with a mental impairment are not unfairly prevented from making a subsequent visa application in circumstances where they are unaware of a previous application having been made on their behalf.
319. Migration Legislation Amendment Act (No. 1) 2014.
• enable a Tribunal Member to provide an oral (as opposed to a written) statement of reasons when they make an oral decision and
• enable the MRT and RRT to dismiss an application where an applicant fails to appear before the Tribunal after being invited to attend.

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed without amendment.

The Bill passed both houses on 25 March 2015 with amendments and became Act no. 35 of 2015.

Migration Amendment (Character and General Visa Cancellation) Bill 2014
On 12 December 2013, the Government introduced the Migration Amendment (Character and General Visa Cancellation) Bill. The purpose of the Bill was to amend the Migration Act to:
• provide for mandatory cancellation of the visa of a person who is serving a prison sentence, where the Minister is satisfied that the person fails the character test as they have a substantial criminal record or have been found guilty of a sexually based offence involving a child
• broaden the power to refuse or cancel visas by including additional grounds on which a person will not pass the character test
• provide that a person does not pass the character test if there is a ‘risk’ (rather than the current ‘significant risk’) that they would pose a danger to the Australian community
• amend the definition of ‘substantial criminal record’ so that a person sentenced to terms of imprisonment totalling 12 months or more (rather than the current two years) will not pass the character test
• allow the Minister to set aside decisions by a delegate or a Tribunal and cancel a visa if the Minister thinks it is in the national interest
• enable the Minister to require heads of state or territory agencies to disclose personal information that relates to a particular person or a person included in a class of persons
• expand the grounds on which a visa may be cancelled under the general visa cancellation power
• expand the Minister’s personal powers to cancel a visa on section 109 or 116 grounds
• provide a mechanism to revoke a cancellation in certain circumstances and
• allow the Minister to substitute their own decision for a decision of a Tribunal or a delegate.

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed without amendment.

The Bill passed both houses on 26 November 2014 and became Act no. 129 of 2014.

Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014
On 25 September 2014 the Government introduced the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill. The purpose of the Bill was to change the way Australia manages and processes asylum seekers by amending the Maritime Powers Act to: provide clarity and
consistency in relation to powers to detain and move vessels and people; clarify the relationship between the Act and other laws; and provide for the Minister to give directions about the exercise of maritime powers.

The Bill also amended the Migration Act 1958 to: introduce temporary protection for those who engage Australia’s non-refoulement obligations and who arrive in Australia without authorisation; create the authority to make deeming regulations; create the Safe Haven Enterprise Visa class; introduce a fast track assessment process and remove access to the Refugee Review Tribunal (RRT); establish the Immigration Assessment Authority within the RRT to consider fast track reviewable decisions; clarify the availability of removal powers independent of assessments of Australia’s non-refoulement obligations; codify Australia’s interpretation of its protection obligations under the Refugees Convention; clarify the legal status of children of unauthorised maritime arrivals and transitory persons; and enable the Minister to place a statutory limit on the number of protection visas granted.

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed with amendment. The Bill passed both houses on 5 December 2014 and became Act no. 135 of 2014.

Australian Citizenship and Other Legislation Amendment Bill 2014
On 23 October 2014 the Government introduced the Australian Citizenship and Other Legislation Amendment Bill 2014. The purpose of the Bill was to amend the Australian Citizenship Act 2007 to: extend good character requirements; clarify residency requirements and related matters; clarify the circumstances in which a person’s approval as an Australian citizen may or must be cancelled; clarify the circumstances in which the minister may defer a person making the pledge of commitment to become an Australian citizen; clarify the circumstances in which a person’s Australian citizenship may be revoked; enable the minister to specify certain matters in a legislative instrument; enable the use and disclosure of personal information obtained under the Migration Act or the migration regulations; make technical amendments; and amend the Migration Act to enable the use and disclosure of personal information obtained under the Australian Citizenship Act 2007 or the citizenship regulations.

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed without amendment.

This Bill lapsed upon prorogation of the 44th Parliament.

Australian Border Force Bill 2015 and the Customs and Other Legislation Amendment (Australian Border Force) Bill 2015
On 25 February 2015 the Government introduced the Australian Border Force Bill 2015 and the Customs and Other Legislation Amendment (Australian Border Force) Bill 2015. The purpose of the Australian Border Force Bill was primarily to establish the statutory office and role of the Australian Border Force (ABF) Commissioner; provide for the exercise of powers of the commissioner and the ABF employees; provide for the issue of binding written directions in relation to the administration and control of the ABF and the department respectively, and the performance of functions or exercise of powers; provide the ability to require immigration and border protection workers to undergo alcohol and prohibited drug screening tests; establish secrecy and disclosure provisions; and provide for the management of serious misconduct by employees.

334. Senate Legal and Constitutional Affairs Committee, Inquiry into the Provisions of the Australian Citizenship and Other Legislation Amendment Bill 2014, The Senate, Canberra, 1 December 2014, p. vii. Note that the Committee drew the Government’s attention to Item 66 of Schedule 1 to the Bill and asks that the Minister confirm the basis and material upon which his decisions are to be exercised; and recommended that the Bill clarify the discretionary nature of the minister’s power to revoke citizenship under this provision.
The purpose of the Customs and Other Legislation Amendment (Australian Border Force) Bill 2015 was primarily to bring the DIBP within the jurisdiction of the Australian Commission for Law Enforcement Integrity and under a targeted integrity testing regime; provide the DIBP with access to investigative powers currently available to Customs; allow the ABF Commissioner to declare that specified provisions of Work Health and Safety Act 2011 do not apply, or apply subject to modifications; and amend the Migration Act to allow the ABF Commissioner to exercise certain powers under the Act.

The Bills Digest examines the Bills (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bills be passed without amendment.

Both Bills passed both houses on 14 May 2015 and became Acts no. 40 and 41 of 2015.

Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015
On 25 February 2015 the Government introduced the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015. The purpose of the Bill was to insert a statutory framework into the Migration Act for the use of force in specified circumstances within Australian immigration detention facilities. It also sets out complaint mechanisms and inserts a bar on commencing legal proceedings against the Commonwealth unless the powers are not exercised in good faith (though the original jurisdiction of the High Court is expressly retained).

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed subject to amendment. This Bill lapsed upon prorogation of the 44th Parliament.

Migration Amendment (Regional Processing Arrangements) Bill 2015
On 24 June 2015 the Government introduced the Migration Amendment (Regional Processing Arrangements) Bill 2015. The purpose of the Bill was to amend the Migration Act to provide retrospective statutory authority (through the insertion of section 198AHA) for the Commonwealth to provide assistance to other countries to carry into effect arrangements for the processing and management of unauthorised maritime arrivals who have been taken to regional processing countries, including the expenditure of Commonwealth money on these arrangements.

The Commonwealth would subsequently rely on section 198AHA as statutory authority for the Executive to give effect to the arrangement made between the Commonwealth and the Government of Nauru before the High Court in Plaintiff M68-2015 v Minister for Immigration and Border Protection.

The Bill passed both houses, the day after, on 25 June 2015 and became Act no. 104 of 2015.

Migration and Maritime Powers Amendment Bill (No. 1) 2015
On 16 September 2015 the Government introduced the Migration and Maritime Powers Amendment Bill (No. 1) 2015. The purpose of the Bill was to amend the Migration Act to:

- ensure that when an unlawful non-citizen is in the process of being removed to another country and the removal is aborted, or the person does not enter the other country, and is thus returned to Australia, then that person has a lawful basis to return to Australia without a visa
• ensure that when such a person returns to Australia they will be taken to have been continuously in the migration zone so that they will be precluded from making a valid application for certain visas
• improve consistency in the character related provisions, following recent amendments to the Migration Act
• provide that the events described in sections 82, 173 and 174 of the Migration Act that cause a visa that is in effect to cease will, as a general rule, cause a visa that is held, but not in effect, to be taken to cease
• clarify that a person who has previously been refused a protection visa application that was made on their behalf cannot make a further protection visa application and
• ensure that the Administrative Appeals Tribunal (AAT) can review certain character or security based decisions to refuse to grant a protection visa to a ‘fast track applicant’.

The Bill would also amend the Maritime Powers Act 2013 to confirm that powers under the Maritime Powers Act are able to be exercised in the course of passage through or above the waters of another country in a manner consistent with the 1982 United Nations Convention on the Law of the Sea.

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed without amendment. The Bill passed the Senate on 23 November 2015 with amendments. The House of Representatives did not consider the Senate amendments.

This Bill lapsed upon prorogation of the 44th Parliament.

Migration Amendment (Complementary Protection and Other Measures) Bill 2015
On 14 October 2015, the Government introduced the Migration Amendment (Complementary Protection and Other Measures) Bill 2015. The purpose of the Bill was to amend the Migration Act to align the complementary protection statutory framework with the statutory refugee framework, as amended by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014. More explicitly, the Bill will amend the Act to provide:
• protection is only available where the real risk of significant harm relates to all areas of a receiving country
• protection is not available if an applicant could take reasonable steps to modify their behaviour so as to avoid a real risk of significant harm (other than modification that would conflict with their innate or immutable characteristics or which is fundamental to the person’s identity or conscience)
• protection is only available where the real risk of significant harm is faced by a person personally, rather than being an indiscriminate risk of harm faced by the population generally in a receiving country
• protection is only available if effective protection measures are not available to an applicant through State or non-State actors in a receiving country and
• the ability of the Minister for Immigration and Border Protection to preclude merits review will be expanded to include an unsuccessful complementary protection applicant on character grounds.

The Bills Digest examines the Bill (as introduced) in further detail. The Senate Legal and Constitutional Affairs Committee recommended that the Bill be passed with amendments.

This Bill lapsed upon prorogation of the 44th Parliament.

Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016
The purpose of the Bill is to reintroduce statutory amendments similar to those initially introduced by Schedule 2 of the Migration and Maritime Powers Amendment Bill (No. 1) 2015 to amend the Migration Act to give full effect to the Migration Amendment (Character and General Visa Cancellation) Act 2014 in relation to mandatory visa cancellation-related powers and the lawful disclosure of non-citizens’ identifying information where a non-citizen is suspected of being of character concern.

For completeness, Schedule 4 of the Migration and Maritime Powers Amendment Bill (No. 1) 2015 was also subsequently reproduced in Schedule 6 of the Customs and other Legislation Amendment Bill 2016.

Both Bills lapsed upon prorogation of the 44th Parliament.

Regulations and other legislative instruments

Migration Amendment (Subclass 050 and Subclass 051 Visas) Regulation 2013
This Regulation commenced on 29 June 2013. The purpose of the Regulation was to amend the Migration Regulations 1994 to: create a discretionary power to cancel a Bridging E (Class WE) visa (BVE) held by a person who is convicted of, or charged with, an offence in Australia or another country, or who is the subject of an Interpol notice relating to criminal conduct or to threat to public safety; create a discretionary power to cancel a BVE where the Minister has been advised by an agency responsible for the regulation of law enforcement or security in Australia that the holder is under investigation by that agency and the head of that agency has advised the Minister that the holder should not hold a BVE; create a new discretionary visa condition to, when imposed, prohibit a person who has been granted a BVE from engaging in criminal conduct.

Migration Amendment (Temporary Protection Visas) Regulation 2013
This Regulation commenced on 18 October 2013. The purpose of the Regulation was to amend the Migration Regulations 1994 to establish new arrangements for dealing with people who have arrived in Australia without visas and claimed protection. In particular the Regulation reintroduced Temporary Protection (Subclass 785 (Temporary Protection)) visas (TPVs), to be the only protection visa available to people who, put simply:
- are unauthorised maritime arrivals
- otherwise arrived in Australia without a visa or
- were not immigration cleared on their last arrival in Australia.

On 2 December 2013 Senator Hanson-Young of the Australian Greens successfully moved a motion in the Senate to disallow the Regulation. The motion had the support of the Opposition.

Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year (IMMI 13/156)
This Instrument commenced on 4 December 2013. The purpose of the Legislative Instrument was to determine, pursuant to section 85 of the Act, the maximum number of visas that may be granted in the financial year 1 July 2013 to 30 June 2014 for Protection (Class XA) visas at 1650. Under section 44 of the Legislative Instruments Act 2003 the Instrument was exempt from disallowance. However, this Instrument was subsequently revoked by the Minister through Revocation of IMMI 13/156.
‘Granting of Protection Class XA Visas in 2013/2014 Financial Year’ (IMMI 13/159), which commenced on 20 December 2013.\(^{361}\)

Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013
This Regulation commenced on 14 December 2013.\(^{362}\) The purpose of the Regulation was to amend the Migration Regulations 1994 to introduce a new visa criterion so that a permanent Protection visa can only be granted to a person who, put simply:–

- held a visa that was in effect on their last entry into Australia
- is not an unauthorised maritime arrival and
- was immigration cleared on their last entry into Australia.

On 27 March 2014 Senator Hanson-Young of the Australian Greens successfully moved a motion in the Senate to disallow the Regulation. The motion had the support of the Opposition.\(^{363}\)

Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013
This Regulation commenced on 14 December 2013.\(^{364}\) The purpose of the Regulation was to amend the Migration Regulations 1994 to establish an enforceable code of behaviour for Bridging E visa (BVE) holders. In particular the Regulation:

- creates a Public Interest Criterion (‘PIC’) that requires certain applicants for a BVE to sign a code of behaviour to be eligible for the grant of the BVE. The PIC applies to applicants for BVEs who are over 18 and hold, or previously held, a BVE granted by the Minister under section 195A of the Act. Where the BVE holder has signed a code of behaviour, the Regulation also creates a visa condition that requires the holder to abide by the code of behaviour that they have signed. The actual code of behaviour is specified by the Minister in an instrument (see immediately below).

- prevents a person whose BVE has been cancelled due to criminal conduct or a breach of the code of behaviour from applying for a further BVE. The Regulation also prevents a person who previously held a visa that has been cancelled on one of the following grounds from applying for a further BVE:
  - persons convicted of, or charged with, an offence in Australia or another country or
  - persons who are the subject of an Interpol notice relating to criminal conduct or public safety threats or
  - persons who are under investigation by an agency responsible for the regulation of law enforcement or security.

On 14 July 2014 Senator Hanson-Young of the Australian Greens unsuccessfully moved a motion in the Senate to disallow the Regulation. The motion did not have the support of the Opposition.\(^{365}\)

Code of Behaviour for Public Interest Criterion 4022 (IMMI13/155)
This Instrument commenced on 14 December 2014.\(^{366}\) The purpose of the Instrument was to specify the wording of a code of behaviour that an applicant must sign, to meet the requirements of public interest criterion 4022. This includes expectations relating to:

- compliance with the laws of Australia
- values that are important to Australian society and
- co-operation with the department in regard to the resolution of an applicant’s status.

The Instrument operates to specify, for applicants seeking to satisfy the criteria for the grant of a Subclass 050 Bridging (General) visa, the required wording of the code of behaviour.

\(^{361}\) Revocation of IMMI 13/156 ‘Granting of Protection Class XA Visas in 2013/2014 Financial Year’. Commencement date is set out in the accompanying Explanatory Statement.

\(^{362}\) Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013.


\(^{364}\) Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013.


\(^{366}\) Code of Behaviour for Public Interest Criterion 4022.
Migration Amendment (Disclosure of Information) Regulation 2013
This Regulation commenced on 14 December 2013. This Regulation amends the Migration Regulations 1994 to authorise the disclosure of information, specifically name, residential address, sex, date of birth and immigration status, of Subclass 050 (Bridging (General)) or Subclass 051 (Bridging (Protection Visa Applicant)) visa holders (BVE holders) to the Australian Federal Police or the police force or police service of a state or territory. This disclosure will be authorised by the Minister for Immigration and Border Protection about individuals or whole classes of such BVE holders.

Granting of Protection Class XA Visas in 2013/2014 Financial Year (IMMI 14/026)
This Instrument commenced on 6 March 2014. The purpose of the Instrument was to set, pursuant to section 85 of the Act, the maximum number of permanent protection visas that may be granted in the financial year 1 July 2013 to 30 June 2014 at 2,773. Section 86 of the Act provides that, if there is a determination of the maximum number of visas of a class or classes that may be granted in a financial year, and the number of visas of the class or classes granted in the year reaches that maximum number, no more visas of the class or classes may be granted in the year.

Under section 44 of the Legislative Instruments Act 2003 the Instrument is exempt from disallowance.

This Legislative Instrument was subsequently found to invalid by the High Court in the case of Plaintiff S297/2013 v Minister for Immigration and Border Protection.

Migration Amendment (2014 Measures No. 1) Regulation 2014
This Regulation commenced on 22 March 2014. The purpose of the Regulation was to amend the Migration Regulations 1994 to:

- amend Public Interest Criterion (PIC) 4020 to introduce requirements relating to a visa applicant’s identity. In particular, the amendments will allow the Minister to refuse a visa application if the Minister is not satisfied as to the identity of the visa applicant, with the burden of proving an applicant’s identity to be on the applicant. These amendments also provide that, where a visa application is refused on this basis, there is a 10 year period where the applicant and any members of their family unit are unable to be granted any visa that requires an applicant to satisfy PIC 4020
- ensure that an applicant for a Subclass 202 (Global Special Humanitarian) visa who is proposed by a minor who holds, or has held, a permanent Protection visa or a Resolution of Status visa, is assessed by the Minister against the same criteria as an applicant who is proposed by an adult who holds, or has held, such a visa
- insert PIC 4020 into a number of visas to enable a decision-maker to refuse the grant of a visa where false or misleading information, such as fabricated evidence of visa eligibility or personal identifiers, is provided in association with a visa application
- authorise the disclosure of information of persons covered by residence determinations to the Australian Federal Police or the police force or police service of a state or territory. A residence determination is a determination that provides that a person is to reside at a specified place, instead of being detained. One of the conditions routinely specified in a residence determination is that the person covered by it must obey the law. If the person does not comply with that condition, the Minister may revoke the determination pursuant to subsection 197AD(1) of the Act.

On 17 July 2014, Senator Hanson-Young of the Australian Greens unsuccessfully moved a motion in the Senate to disallow the Regulation. The motion had the support of the Opposition.

Determination of Protection (Class XA) and Refugee Humanitarian (Class XB) Visas 2014 (IMMI 14/117)
This Determination commenced on 23 December 2014. The purpose of the Instrument was to make a determination of the minimum annual combined number of Protection (Class XA) visas and Refugee (Class XB) visas for the purposes of section 39A of the Act.

368. Granting of Protection Class XA Visas in 2013/2014 Financial Year.
372. Determination of Protection (Class XA) and Refugee Humanitarian (Class XB) Visas 2014.
The Instrument operates to specify the Minister’s determination of at least the minimum total combined number of Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas that the Minister must take all reasonable practicable measures to ensure are granted, for the financial year commencing 2015 is 13,750 visas; for the financial year commencing 2016 is 13,750 visas; for the financial year 2017 is 16,250 visas; and for the financial year commencing 2018 is 18,750.

Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016
This Regulation commenced on 16 April 2016 (substantive provisions commenced on dates specified in the instrument). The purpose of the Regulation is to amend the Migration Regulations 1994 to (amongst other things) correct an error in the criteria for the Subclass 202 (Global Special Humanitarian) visa by providing that the capacity of the Australian community to provide for persons such as the applicant, rather than the applicant individually, must be taken into consideration in deciding whether there are compelling reasons for giving special consideration to granting the applicant a permanent visa. Capacity is to be determined by reference to the number of ‘places’ the government has decided to make available under the humanitarian programme and the priorities set out in policy, rather than the capacity to provide for the particular applicant.

Non-government (privately sponsored) legislation
Migration Amendment (Visa Maximum Numbers Determinations) Bill 2013
On 9 December 2015 Australian Greens Senator Sarah Hanson-Young introduced the Migration Amendment (Visa Maximum Numbers Determinations) Bill 2013. The purpose of the Bill was to amend the Migration Act to provide that determinations made under section 85 (which determine the number of visas that can be granted in a particular subclass in any specified financial year) on or after 2 December 2013 be subject to disallowance by either House of the Parliament. A Parliamentary Library FlagPost blog examines the Bill (as introduced) in context.

This Bill lapsed upon prorogation of the 44th Parliament.

Migration Amendment (Ending the Nation’s Shame) Bill 2014
On 26 May 2014 Independent MP Andrew Wilkie introduced the Migration Amendment (Ending the Nation’s Shame) Bill 2014. The purpose of the Bill was to amend the Migration Act to afford specific rights to asylum seekers. The Bill was removed from the House of Representatives Notice Paper on 28 October 2014 in accordance with Standing Order 42.

This Bill lapsed upon prorogation of the 44th Parliament.

Migration Amendment (Protecting Babies Born in Australia) Bill 2014
On 18 June 2014 Australian Greens Senator Sarah Hanson-Young introduced the Migration Amendment (Protecting Babies Born in Australia) Bill 2014. The purpose of the Bill was to amend the Migration Act to provide that a person will have been deemed not to have entered Australia by sea if they entered the migration zone and landed in an aircraft or if the person was born in the migration zone. The Senate Legal and Constitutional Affairs Committee recommended that the Bill not be passed.

This Bill lapsed upon prorogation of the 44th Parliament.

Guardian for Unaccompanied Children Bill 2014
On 16 July 2015 Australian Greens Senator Sarah Hanson-Young introduced the Guardian for Unaccompanied Children Bill 2014. The purpose of the Bill was to establish the Office of the Guardian for Unaccompanied Non-citizen Children; provide for the appointment, functions and powers of the guardian; provide for staff, consultants and reporting requirements; and to amend the Immigration (Guardianship of Children) Act 1946 and

377. Ibid.
Migration Act 1958 to make consequential amendments. The Senate Legal and Constitutional Affairs Committee recommended that the Bill not be passed. 381

This Bill lapsed upon prorogation of the 44th Parliament.

Australian Security Intelligence Organisation Amendment (Restoring Merits Review) Bill 2014
On 1 September 2014 Independent MP Andrew Wilkie introduced the Australian Security Intelligence Organisation Amendment (Restoring Merits Review) Bill 2014. 382 The purpose of the Bill was to amend the Australian Security Intelligence Organisation Act 1979 to restore the right of asylum seekers to access merits review by the Administrative Appeals Tribunal if they are subject to an adverse or qualified security assessment. The Bill was removed from the House of Representatives Notice Paper on 3 March 2015 in accordance with Standing Order 42. 383

Migration Amendment (Humanitarian Visa Intake) Bill 2014
On 25 September 2014 Australian Greens Senator Sarah Hanson-Young introduced the Migration Amendment (Humanitarian Visa Intake) Bill 2014. 384 The purpose of the Bill was to prevent the preclusion of processing or granting a visa at any time in a financial year when fewer than 20,000 humanitarian visas have been granted; and require the minister to present to Parliament quarterly reports setting out the number of each class of humanitarian visas granted during the previous quarter.

This Bill lapsed upon prorogation of the 44th Parliament.

Migration Amendment (Mandatory Reporting) Bill 2015
On 12 October 2015 Shadow Minister for Immigration and Border Protection Labor MP Richard Marles introduced the Migration Amendment (Mandatory Reporting) Bill 2015. 385 The purpose of the Bill was to enhance the safety of children in immigration detention by mandating the reporting of child abuse in onshore and offshore immigration detention facilities. Specifically, the Bill requires staff and contractors to report any instances of child abuse they observe to the Australian Border Force Commissioner, who would in turn report the abuse to the relevant authorities (for example, AFP, Nauruan Police, state/territory police). A Parliamentary Library FlagPost blog examines the Bill (as introduced) in context. 386

This Bill lapsed upon prorogation of the 44th Parliament.

Migration Amendment (Free the Children) Bill 2016
On 2 March 2016 Australian Greens Senator Sarah Hanson-Young introduced the Migration Amendment (Free the Children) Bill 2016. 387 The purpose of the Bill was to amend the Migration Act to:

- provide that children detained under the Act not be held in immigration detention facilities but instead be placed, along with their immediate family members or guardians, in community residential housing for any requisite period of detention
- expand the residence determination process to ensure that the Minister must, within 30 days, determine that a minor is to reside at a specified place within the community rather than being held in detention
- expand the scope of protection afforded to minors held in regional processing countries, by ensuring that the Minister cannot affect the transfer of minors to any other country that intends to detain them, and by requiring the immediate return to Australia of any minor currently held in immigration detention offshore
- strengthen and codify international law within the Act by ensuring the primacy of the consideration of the child’s best interests: that minors must only be detained as a matter of last resort and for the shortest appropriate time possible, not as a matter of first and only resort as is the current practice.

This Bill lapsed upon prorogation of the 44th Parliament.

383. Ibid.
Case law

There have been many notable court judgments relating to asylum seekers and refugees delivered during the reporting period. These decisions influenced or have the potential to influence legislative or policy reform. Following is a brief outline of some of the most significant judgments.

2013

Plaintiff M76/2013 v Minister for Immigration, Multicultural Affairs and Citizenship388 (12 December 2013)

The High Court unanimously declared that an error of law affected the exercise of power by the Minister to determine whether to permit the plaintiff to make a valid application for a visa. The error of law was that a Departmental officer, in deciding not to refer the plaintiff’s case to the Minister for his consideration of whether to permit the plaintiff to make a valid application for a visa, acted upon an incorrect view of the law by considering an invalid regulation (the relevant public interest criterion for a protection visa contained in the Migration Regulations 1994 (Cth), PIC 4002) to be relevant to the decision. The High Court referred to its decision in Plaintiff M47-2012 v Director General of Security389 which had found PIC 4002 to be invalid, to find that the Department’s reliance on PIC 4002 was an error of law.

The plaintiff also argued that her continued detention was unauthorised. However, the Court held that, because the Minister, as a result of the error of law, had not yet completed his consideration of whether to permit the plaintiff to make a valid application for a visa, the plaintiff’s detention (being for the purpose of allowing that consideration to be completed according to law) was authorised by the Act. A majority of the Court, therefore, found it was unnecessary to decide the plaintiff’s constitutional claim or whether Al-Kateb v Godwin390 should be re-opened.391

2014

Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor392 (18 June 2014)

The plaintiff challenged the validity of sections 198AB and 198AD of the Migration Act on the ground that neither provision is supported by any constitutional head of power. Section 198AB provides that the Minister may designate that a country is a regional processing country. Section 198AD provides that ‘unauthorised maritime arrivals’ (UMAs) must be taken to a regional processing country. Where there are two or more regional processing countries, subsection 198AD(5) provides that the Minister must give a written direction to take a UMA, or a class of UMAs, to the regional processing country specified in the direction. The plaintiff also challenged the validity of the Minister’s decision to designate PNG as a regional processing country under section 198AB (the designation decision) and the Minister’s decision to give a written direction to take UMAs to PNG or to the Republic of Nauru (the direction decision).

The High Court unanimously held that sections 198AB and 198AD are valid under any constitutional head of power. Section 198AB provides that the Minister may designate that a country is a regional processing country and the direction decision. It held that there is nothing in the text or scope of subdivision B of Division 8 of Part 2 of the Migration Act to support the plaintiff’s argument that there were relevant considerations which the Minister was obliged to, but did not, take into account in making the designation decision.393

Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor394 (20 June 2014)

The High Court unanimously held that the Minister did not have the power under section 85 of the Migration Act to limit the number of protection visas that may be granted in a specified financial year. Section 85 of the Migration Act provides that the Minister may determine the maximum number of visas of a specified class that may be granted in a specified financial year. Under section 65, the Minister has a duty, after considering a valid application for a visa, to grant the visa if satisfied that certain conditions are met and to refuse to grant the visa if not so satisfied. Section 65A imposed a duty on the Minister to make a decision on protection visa applications within 90 days.

The plaintiff was neither granted nor refused a protection visa because of an instrument signed by the Minister on 4 March 2014, which purported to determine the maximum number of protection visas that may be granted in the financial year ending 30 June 2014. That maximum number having been reached, the grant of a protection visa to the plaintiff in this financial year would exceed that limit. The High Court held that the instrument limiting the number of protection visas was invalid. In light of the time limit imposed by section 65A, section 85 did not empower the Minister to determine the maximum number of protection visas that may be granted in a financial year. The Court ordered that the Minister consider and determine the plaintiff’s application for a protection visa according to law.395

FTZK v Minister for Immigration and Border Protection & Anor396 (27 June 2014)
The High Court unanimously allowed an appeal against a decision of the Full Court of the Federal Court and held that the Administrative Appeals Tribunal (the AAT) committed jurisdictional error in affirming the Minister’s decision to refuse the appellant a protection visa. In refusing the protection visa, the Minister found that notwithstanding that the appellant was a refugee within the meaning of Article 1A(2) of the Convention, he was excluded from protection under the Convention by Article 1F(b) on account of his alleged involvement in the crimes of kidnapping and murder in the People’s Republic of China in 1996. In the exercise of its review function, the AAT applied Article 1F(b) to affirm the Minister’s decision. The AAT recorded that it was not in dispute that the crimes alleged against the appellant were serious non-political crimes for the purposes of Article 1F(b). The AAT was satisfied, on the basis of several findings, that there were serious reasons for considering that the appellant had committed serious non-political crimes. The High Court unanimously held that the reasons of the AAT revealed jurisdictional error—that is, that the error of law in the AAT’s decision was such that it had acted outside the scope of its legal authority. The factors relied upon by the AAT were not logically probative of the appellant having committed one or more of the crimes alleged. Accordingly, the AAT misconstrued the test it had to apply.397

Plaintiff S4/2014 v Minister for Immigration and Border Protection398 (11 September 2014)
The High Court unanimously held invalid the Minister’s grant of a temporary safe haven visa to the plaintiff which had the effect of precluding the plaintiff making a valid application for a protection visa, in circumstances where the plaintiff’s detention had been prolonged for the purpose of the Minister considering the exercise of power to allow the plaintiff to make a valid application for a visa of his choice.

The High Court held that, where a person’s detention is prolonged for the purpose of considering the exercise of power under subsection 46A(2) (which gives the Minister the power to decide whether to permit a person to make a valid visa application), other powers given by the Act do not permit the making of a decision which would foreclose the exercise of the power under subsection 46A(2) before a decision is made, thus depriving the prolongation of detention of its purpose. The Court quashed the decision to grant two temporary visas to the plaintiff.399

Minister for Immigration and Border Protection v SZSCA & Anor400 (12 November 2014)
The High Court, by majority, held that the RRT failed to properly address whether an applicant for a protection visa had a well-founded fear of persecution. The Tribunal accepted that, if the respondent, a self-employed truck driver in Afghanistan, was again intercepted by the Taliban on the roads on which he usually travelled, he would face a real chance of serious harm and even death for a reason specified in the Refugees Convention. However, the Tribunal found that the risk of persecution would only arise on some roads, which could be avoided by the respondent. It therefore concluded that the respondent did not satisfy the criteria for the grant of a protection visa. The High Court unanimously held that the Tribunal did not fall into the same error identified in Appellant S395/2002 v Minister for Immigration and Multicultural Affairs401 (where the RRT failed to consider what might happen if the appellants had lived openly as a homosexual couple in Bangladesh and others became aware of their homosexuality). However, it found the Tribunal was required to address the ‘internal relocation principle’—whether a person could reasonably avail themselves of the real protection of their country of origin by relocating

to another part of that country. In this case, the Tribunal had to consider whether it would be reasonable to expect the respondent to remain in Kabul and not drive trucks outside it. A majority of the Court held that the Tribunal had failed to address that question and it was therefore unable to make a final determination as to whether the respondent had a well-founded fear of persecution. 402

2015

CPCF v Minister for Immigration and Border Protection 403 (28 January 2015)
A High Court majority held that a claim for damages for false imprisonment arising out of the plaintiff’s detention at sea on a Commonwealth vessel should be dismissed. The majority of the Court held that subsection 72(4) of the Maritime Powers Act 2013 404 authorised a maritime officer to detain the plaintiff for the purpose of taking him from Australia’s contiguous zone to a place outside Australia, being India. Subsection 72(4) states that a maritime officer may detain a person on a detained vessel and take the person, or cause the person to be taken, to a place outside Australia.

The Court found that the power under subsection 72(4) was not subject to an obligation to afford the plaintiff procedural fairness. The detention was lawful even though the maritime officer detained the plaintiff in implementation of a decision by the Australian Government, and without independent consideration of whether the detention should have taken place. The detention was also lawful even though, prior to the commencement of the taking of the plaintiff to India, no arrangement existed between Australia and India concerning the reception of the plaintiff in India. The majority found it unnecessary to determine whether the detention could have been authorised by the non-statutory executive power of the Commonwealth. 405

Minister for Immigration and Border Protection v WZAPN; WZARV v Minister for Immigration and Border Protection 406 (17 June 2015)
The High Court unanimously held that the likelihood of a period of temporary detention of a person for a reason mentioned in the Refugees Convention is not, of itself and without more, a ‘threat to liberty’ within the meaning of s 91R(2)(a) of the Migration Act. The High Court held that the question of whether a risk of the loss of liberty constitutes ‘serious harm’ for the purposes of section 91R requires a qualitative evaluation of the nature and gravity of the apprehended loss of liberty. 407

Minister for Immigration and Border Protection v WZARH 408 (4 November 2015)
The High Court unanimously upheld a decision of the Full Court of the Federal Court of Australia that the respondent, a Sri Lankan Tamil, had been denied procedural fairness during the independent merits review (IMR) of an adverse refugee status determination (RSD). WZARH had been initially heard by a reviewer who told him that she would undertake a re-hearing of his claims. The reviewer became unavailable to complete the IMR and a second reviewer assumed responsibility for its completion. WZARH was not informed of the change in the identity of the reviewer and the second reviewer did not conduct an interview but based his decision on a consideration of certain materials, including the transcript and an audio recording of the interview with the first reviewer. The Court held that procedural fairness required that WZARH be informed that the IMR process had changed so that he would have an opportunity to be heard on the question of how the IMR should proceed. 409

Plaintiff M64/2015 v Minister for Immigration and Border Protection 410 (17 December 2015)
The High Court unanimously held that the delegate’s decision to refuse to grant Refugee and Humanitarian (Class XB) (Subclass 202) visas (‘Subclass 202 visas’) to the plaintiff’s family was not affected by jurisdictional error. The plaintiff argued that the delegate misconstrued and misapplied subclause 202.222(2) of Schedule 2 to the Migration Regulations 1994, which provides for the grant of a subclass 202 visa if the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa. The plaintiff

---

also argued that the delegate unlawfully applied a Departmental policy that required that the lowest priority be accorded to the plaintiff’s family’s application on the basis of the type of visa that the plaintiff had been granted and the circumstance that he arrived in Australia as an ‘irregular maritime arrival’. The Court held that subclause 202.222(2) raises only one criterion for the grant of a visa: namely, that the Minister is satisfied that there are compelling reasons for giving special consideration to granting that visa. The capacity of the Australian community to provide for the permanent settlement of an applicant in Australia and the number of places in Australia’s Special Humanitarian Programme are considerations that may inform the Minister’s state of satisfaction. The Court also held that the departmental policy was not inconsistent with the Act or Regulations and that it had not been applied inflexibly.

2016

**Plaintiff M68-2015 v Minister for Immigration and Border Protection**

A High Court majority held that section 198AHA of the *Migration Act* authorised the Commonwealth’s participation, to the extent that the Commonwealth did participate, in the plaintiff’s detention. The plaintiff, a Bangladeshi national who had been taken to Nauru under subsection 198AD(2) of the Act, commenced proceedings in the original jurisdiction of the High Court seeking, amongst other things, a declaration that the Commonwealth’s conduct (summarised as the imposition, enforcement or procurement of constraints upon the plaintiff’s liberty, including her detention, or the Commonwealth’s entry into contracts in connection with those constraints, or the Commonwealth having effective control over those constraints) was unlawful by reason that such conduct was not authorised by any valid law of the Commonwealth.

The Court held, by majority, that the plaintiff was not entitled to the declaration sought. The conduct of the Commonwealth in signing the arrangement relating to persons who have travelled irregularly by sea to Australia and who Australian law authorises to be transferred to Nauru was authorised by section 61 of the *Constitution* (the Executive Power). The Court further held that the conduct of the Commonwealth in giving effect to these arrangements (including by entry into the Administrative Arrangements and the Transfield Contract) was authorised by section 198AHA of the Act, which was a valid law of the Commonwealth.

**Namah v Pato**

The PNG Supreme Court unanimously found the detention of refugees and asylum seekers in the Australian-funded processing centre on Manus Island to be unconstitutional. Integral to this decision was the requirement in subsection 42(1) of the PNG *Constitution* that, except in specified circumstances, ‘[n]o person shall be deprived of his personal liberty’. In reaching this decision, the Supreme Court rejected the argument that the detention of the refugees and asylum seekers on Manus Island (not of their own accord but as the result of agreement between Australia and PNG), fell within the exception provided for in paragraph 42(1)(g) of the PNG *Constitution* for detention ‘for the purpose of preventing the unlawful entry of a person into PNG’. The Supreme Court also held to be invalid the exemption included in the PNG Constitution by the *Constitution Amendment (No 37) (Citizenship) Law 2014* for detention ‘for the purposes of holding a foreign national under arrangements made by PNG with another country …’. Specifically, the Court held that, in qualifying an existing constitutional right (the right to personal liberty), the amendment did not satisfy the further requirement in section 38 of the PNG *Constitution*, that it specify whether or not the detention of asylum seekers could be in the public interest and reasonably justifiable in a democratic society. The amending legislation neither specified the purpose of the amendment or the right which it purported to limit.

**Plaintiff S99/2016 v Minister for Immigration and Border Protection**

Justice Bromberg of the Federal Court of Australia held that the Minister has a duty of care to the applicant (a young African refugee who was raped on Nauru whilst unconscious and suffering a seizure) to exercise reasonable care to discharge the responsibility he assumed to procure for her a safe and lawful abortion. His Honour also held that the proposed abortion for the applicant in PNG was attended by safety and lawfulness risks that a reasonable person in the Minister’s position would have avoided. Thus, the procuring of the abortion by the Minister did not discharge his duty of care. In light of the fact that there was reasonable apprehension that the Minister would fail to discharge his duty of care, His Honour issued an injunction to preclude the

---

Minister from procuring an abortion for the applicant in PNG but did not order the applicant be brought to Australia.

**Key reports and inquiries**

Following is a list of some of the key reports and inquiries established or completed during the reporting period:

- **September 2013** — former Attorney-General’s Department chief Robert Cornall: *Review into allegations of sexual and other serious assaults at the Manus Regional Processing Centre* (commissioned by the previous Immigration Department Secretary, Martin Bowles) is presented to the Immigration Department in September 2013 and released on the DIBP website later in 2013.\(^{416}\)

- **8 November 2013** — Keith Hamburger Review: Nauru review 2013: executive report of the review into the 19 July 2013 incident at the Nauru Regional Processing Centre, DIBP, 2013 is completed and later made available on the Immigration Department website.\(^{417}\)

- **27 November 2013** — UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013, report released.\(^{418}\)

- **27 November 2013** — UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013, report released.\(^{419}\)

- **11 December 2013** — Amnesty International releases a report on Manus: *This is breaking people: human rights violations at Australia’s asylum seeker processing centre on Manus Island, Papua New Guinea*. In May 2014, Amnesty International releases an update—*This is still breaking people: update on human rights violations at Australia’s asylum seeker processing centre on Manus Island, Papua New Guinea*.\(^{420}\)

- **5 March 2014** — the Senate passes a motion establishing an inquiry by the Legal and Constitutional Affairs References Committee into the violent incidents on Manus Island from 16 to 18 February 2014. The inquiry was to report by 5 December 2014, but the reporting date was extended to 11 December 2014.\(^{421}\)

- **5 March 2014** — the Senate referred the matter of a *Breach of Indonesian territorial waters* to the Foreign Affairs, Defence and Trade References Committee for inquiry and report.\(^{422}\) The Committee reported on 27 March 2014.\(^{423}\) The Government responded to the report on 27 June 2014.\(^{424}\)

- **23 May 2014** — the Robert Cornall: *Review into the events of 16–18 February 2014 at the Manus Regional Processing Centre* is released.\(^{425}\)

- **3 July 2014** — UNHCR releases: *Beyond detention: a global strategy to support governments to end the detention of asylum seekers and refugees 2014–2019*.\(^{426}\)

---

\(^{416}\) R Cornall, *Review into allegations of sexual and other serious assaults at the Manus Regional Processing Centre*, Report to the Secretary of the Department of Immigration and Border Protection, DIBP, [Canberra], 2013; and S Morrison (Minister for Immigration and Border Protection), *Release of independent review of Manus disturbance*, media release, 26 May 2014.


\(^{419}\) UNHCR, *UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013*, UNHCR Regional Representation, Canberra, 26 November 2013.

\(^{420}\) Amnesty International Australia (AIA), *This is breaking people: human rights violations at Australia’s asylum seeker processing centre on Manus Island, Papua New Guinea*, AIA, Broadway, 11 December 2013; and AIA, *This is still breaking people: update on human rights violations at Australia’s asylum seeker processing centre on Manus Island, Papua New Guinea*, AIA, Broadway, May 2014.

\(^{421}\) Senate Standing Committee on Legal and Constitutional Affairs, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*, inquiry website.

\(^{422}\) Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the breach of Indonesian territorial waters*, inquiry website.

\(^{423}\) Senate Foreign Affairs, Defence and Trade References Committee, *Inquiry into the breach of Indonesian territorial waters*, inquiry website.

\(^{424}\) Senate Foreign Affairs, Defence and Trade References Committee, *Breach of Indonesian territorial waters*, report, 27 March 2014.

• 30 July 2014 — Australian Churches Refugee Taskforce releases a report: *Protecting the lonely children*, recommending the replacement of the Immigration Minister as the guardian of unaccompanied asylum seeker children. 427

• 3 October 2014 — the Minister announces an independent review into allegations of inappropriate conduct by contracted service providers and reports of sexual assaults at the Nauru Offshore Processing Centre. The review is to be led by former integrity commissioner, Philip Moss. 428 The resulting *Review into recent allegations relating to conditions and circumstances at the regional processing centre in Nauru* (the Moss Report) is released on 20 March 2015. 429

• 12 November 2014 — the Australian Information Commissioner releases a report investigating a privacy breach after access to personal information of approximately 10,000 asylum seekers was briefly made available on the DIBP website via a statistical report on the immigration detention population in February 2014. 430

• 11 December 2014 — Senate Legal and Constitutional Affairs References Committee releases its *Manus Island unrest report* into the *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*. 431

• 23 December 2014 — the UN Committee against Torture (CAT) periodic report on Australia is critical of its treatment of asylum seekers, including mandatory detention, offshore processing and the practice of turning back boats. 432


• 6 March 2015 — a report from the UN Human Rights Council Special Rapporteur on torture and other cruel, inhuman or other degrading treatment or punishment states that, ‘by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre’, the Australian Government has ‘violated the right of asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment’. 435

• 20 March 2015 — the Moss Review: *Review into recent allegations relating to conditions and circumstances at the regional processing Centre in Nauru* (the Moss Report) is released. 436 The Review investigated allegations of sexual and physical assaults of transferees and confirmed that at least three incidents had occurred, but that others had not been reported for cultural reasons.

• 26 March 2015 — the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru is established by the Senate at the instigation of Senators Hanson-Young (Greens) and Gallacher (ALP). An interim report from the Select Committee on the Recent

---


429. P Moss, *Review into recent allegations relating to conditions and circumstances at the regional processing centre in Nauru* (Moss Review), DIBP, Canberra, 6 February 2015.

430. Australian Information Commissioner, op. cit.


432. United Nations Committee Against Torture (UNCAT), *Concluding observations on the combined fourth and fifth periodic reports of Australia*, UNCAT, December 2014.


Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru is subsequently tabled on 12 June 2015.  

- April 2015 — the UN Office on Drugs and Crime Southeast Asia and the Pacific releases its report: Migrant smuggling in Asia: current trends and related challenges.  
- 16 July 2015 — Human Rights Watch and Human Rights Law Centre report alleges that gay men are being mistreated in offshore processing centres by other detainees.  
- 31 August 2015 — the final report from the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru is tabled: Taking responsibility: conditions and circumstances at Australia’s Regional Processing Centre in Nauru.  
- 28 October 2015 — Amnesty International releases the report: By hook or by crook: Australia’s abuse of asylum seekers at sea. The report claims that the Australian Government paid people smugglers (on board a boat intercepted in May 2015) to turn back to Indonesia.  
- 29 October 2015 — the Scanlon Report 2015 is released. The report notes that concerns over immigration is at the lowest level recorded by the Scanlon Foundation surveys and Australians continue to demonstrate a high level of support for the proposition that ‘multiculturalism has been good for Australia’.  
- 3 November 2015 — UNHCR releases its report: I am here I belong: the urgent need to end childhood statelessness.  
- 15 January 2016 — DIBP releases the Review of recommendation nine from the Moss Review conducted by Adjunct Professor Christopher Doogan in June 2015. The review examined the Department’s decision in October 2014 to remove Save the Children staff from Nauru after allegations that the staff had actively encouraged protests and unrest. The Review found that information available at the time did not warrant the decision to remove staff.  
• 4 May 2016 — an interim report is released from the parliamentary inquiry on the Payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats (established on 24 June 2015). 450

• June 2016 — the Australian Women in Support of Women on Nauru (an organisation formed in 2015) releases its report: Protection denied, abuse condoned: women in Nauru at risk. 451

• July 2016 — No Business in Abuse release their second report: Association with abuse: the financial sector’s association with gross human rights abuses of people seeking asylum in Australia. 452

Parliamentary Library publications
The following Parliamentary Library research papers and quick guides also analyse some of the asylum and refugee law and policy developments during the period 18 September 2013 to 2 July 2016:


In addition, the following Parliamentary Library FlagPost blog entries were published during the reporting period:

• H Spinks, A return to Temporary Protection Visas?, 18 November 2013.

• C Hill, Total recall: the 2006 Papuan asylum seeker incident and Australia-Indonesia relations, 20 November 2013.


• J Phillips, Coalition and Labor asylum policies - how do they compare?, 28 February 2014.

• E Karlsen, Temporary Protection by hook or by crook, 4 March 2014.


• E Karlsen, High Court gets another chance to have the final word on regional processing, 18 June 2014.


• E Karlsen, High Court strikes down Minister’s decision to cap permanent visas for refugees, 25 June 2014.


• E Karlsen, Minister reports to Parliament on processing arrangements in Nauru and PNG for 2013–14, 8 December 2014.

• E Karlsen, Developments in refugee law and policy: 2014 in review, 8 January 2015.

• E Karlsen, High Court validates maritime interception powers but watch this space!, 12 February 2015.

450. Senate Standing Committee on Legal and Constitutional Affairs, Interim report, Payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats, Committee website, 4 May 2016.


• E Karlsen, *Is Australia pulling its weight when it comes to the resettlement of Syrian refugees?*, 2 April 2015.

• E Karlsen, *Is Australia any closer to returning failed asylum seekers to Iran?*, 30 April 2015.

• H Spinks, *The Department of Immigration: from building the nation to managing the border*, 12 June 2015.


• H Spinks, *Survey finds strong support for immigration and multiculturalism (but not for asylum seekers arriving by boat)*, 29 October 2015.


• E Karlsen, *Senate agitates for immigration detention reform*, 1 December 2015.

• E Karlsen, *'Politics is the art of the possible', but is Malcolm Turnbull likely to change the Government's hard-line approach to asylum seekers?*, 1 February 2016.