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RECENT CHANGES TO AUSTRALIAN REFUGEE POLICY

This brief summarises the many changes to Australia's refugee and asylum policies in recent years. These changes have largely been a political response to an increase in the number of people seeking asylum by boat (51,637 arrivals in the past five years) and in deaths at sea (at least 862 deaths over the same period).¹ Both of Australia's major political parties have responded by blocking access to protection in Australia and penalising those coming by boat.

Refugee and Humanitarian Program

For many years, Australia has set a number of visas under the Refugee and Humanitarian Program to resettle people for humanitarian reasons (offshore resettlement) and for grants of asylum in Australia (onshore protection).

In recent years, this was set at 13,750 places, excepting the 2012-13 financial year,² when it was increased to 20,000 (the largest increase to the program in 30 years).³ This reverted to 13,750 places with the change of government in September 2013, before increasing to 16,250 in 2017-18.⁴

In September 2015, the Australian Government announced a one-off intake of another 12,000 resettlement places for refugee fleeing the conflicts in Syria and Iraq.⁵ All of those visas were granted by March 2017.⁶ The Government has confirmed that in 2018-19 the Program will increase to 18,750, although this number is now referred to as a 'ceiling'.⁷

Immigration detention and community alternatives

Indefinite mandatory detention

People who arrive without a valid visa (by sea or air) must be detained by law without any time limit.⁸ As of 26 April 2018, 1,369 people were held in closed immigration detention facilities in Australia, 349 of whom had arrived by boat. The average length of detention in closed detention facilities was 434 days, with 461 people (34% of detention population) having been detained for over a year and 264 for more than two years. As of 26 April 2018, seven children were held in closed detention facilities in Australia.⁹

1 The political claims about deaths are analysed by Sara Davies, 'FactCheck: have more than 1000 asylum seekers died at sea under Labor?' The Conversation <<http://theconversation.com/factcheck-have-more-than-1000-asylum-seekers-died-at-sea-under-labor-16221>>.

2 The year to 30 June 2013.

3 Julia Gillard (Prime Minister of Australia) and Chris Bowen (Minister for Immigration and Citizenship), *Refugee Program Increased to 20 000 Places* (Media Release, 23 August 2012) <<http://webarchive.nla.gov.au/gov/20130904053958/http://www.minister.immi.gov.au/media/cb/2012/cb189459.htm>>.

4 *Migration Act 1958 - Determination of Protection (Class XA) and Refugee Humanitarian (Class XB) Visas 2014 - IMMI 14/117 2014* <<http://www.legislation.gov.au/Details/F2014L01819>>.

5 Tony Abbott (Prime Minister of Australia), Julie Bishop (Minister for Foreign Affairs), Peter Dutton (Minister for Immigration and Border Protection), and Scott Morrison (Minister for Social Services), *The Syrian and Iraqi Humanitarian Crisis* (Joint Media Release, 9 September 2015) <https://foreignminister.gov.au/releases/Pages/2015/jb_mr_150909a.aspx>.

6 Peter Dutton (Minister for Immigration and Border Protection), *12,000 Visa Issued to Syrian and Iraqi Refugees* (Media Release, 22 March 2017) <<http://minister.homeaffairs.gov.au/peterdutton/Pages/12000-visa-issued-to-syrian-and-iraqi-refugees.aspx>>.

7 Department of Home Affairs, *Portfolio Budget Estimates* (May 2018) <<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/budget/2018-19-pbs-department-home-affairs.pdf>>, 51.

8 *Migration Act 1958* (Cth) <http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/>, s 189.

9 Department of Home Affairs, *Immigration and Community Detention Statistics Summary* (26 April 2018) <<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-26-april-2018.pdf>>.

Community placements

Although people without a valid visa are to be detained by law, they can be released at the discretion of the Government into either community detention or the community on a bridging visa E (BVE).¹⁰

Between October 2010 and 2012, the Government increasingly released people into community detention, but since then people have been mainly released on BVEs.¹¹ As of 26 April 2018, there were 457 people (including 180 children) in community detention and 18,027 people living in the community after the grant of a BVE.¹²

People in community detention can move freely, but must live at an address specified by the Minister for Immigration and need permission to spend a night elsewhere. They are subject to curfews and other supervision arrangements.

BVEs allow people to live in the community while their protection claims are being decided. Most people on these visas have access to Australia's universal healthcare system, Medicare. In the past, most also received a basic living allowance equivalent to 89% of Centrelink Special Benefit (about \$35 a day for a single adult without children). In the past year however, the Government has significantly restricted eligibility criteria for accessing this support and there are further plans to reduce the numbers on support by an estimated 60%.¹³

Work rights

People seeking asylum who came by boat after 13 August 2012 did not have the right to work until December 2014, when the Government reversed this policy for people on BVEs. People in community detention still do not have the right to work.

While most seeking asylum now have the right to work, there remain difficulties in timely renewal of bridging visas and practical barriers to obtaining employment.¹⁴ There are still many people in the community who do not have work rights. On 31 January 2018, 6,790 people with a BVE did not have the right to work lawfully in the community.¹⁵

Access to support

For many years, there has been a government-funded support program for people waiting for their protection claims to be decided and who were unable to meet their basic healthcare and living needs. The program, now known as Status Resolution Support Services (SRSS), provides them with a basic living allowance, casework support, access to torture and trauma counselling and subsidised medication.

In recent years and especially since August 2017, the Australian Government has been making it harder for people to access this program. People who study full-time, those who transferred more than \$1000 to a bank account over a 12-month period and those who came by plane on another visa which is still valid are no longer eligible.¹⁶

As of 21 May 2018, 149 people who had been transferred from Nauru or Manus Island to Australia (usually for medical reasons) have also been transferred on to bridging visas without access to this support.¹⁷

The Government plans to cut support to more people in the next few months in 2018, and has indicated that there are likely to be fewer than 5000 people who will continue to receive support. This amounts to a 60% cut.

10 *Migration Act 1958* (Cth) <http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/>, ss 195-195A, 1977AA-197AG.

11 Refugee Council of Australia, 'Statistics for people in detention in Australia' Refugee Council of Australia <<https://www.refugeecouncil.org.au/getfacts/statistics/aust/asylum-stats/detention-australia-statistics/>>.

12 Department of Home Affairs, *Immigration and Community Detention Statistics Summary* (26 April 2018) <<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-26-april-2018.pdf>>.

13 Refugee Council of Australia, 'How cuts to support for people seeking asylum will affect people, states and local communities' *Refugee Council of Australia* <<https://www.refugeecouncil.org.au/asylum-community/srss-cuts-factsheet/>>.

14 Refugee Council of Australia, *With Empty Hands: How the Australian Government Is Forcing People Seeking Asylum to Destitution* (June 2018) <<https://www.refugeecouncil.org.au/publications/reports/with-empty-hands-destitution/>>.

15 Department of Home Affairs, *Answer to Question on Notice 83* (Senate Additional Estimates, No AE18/086, Senate Legal and Constitutional Affairs Committee, 26 February 2018) <<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeed6-Estimates-RoundId2-Portfoliold20-QuestionNumber83>>.

16 Department of Immigration and Border Protection, *Status Resolution Support Services Operational Manual* (April 2017) <<https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171100201-documents-released.pdf>>.

17 Department of Home Affairs, *Senate Estimates* (Transcript, Senate Legal and Constitutional Affairs Committee, 21 May 2018) <http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/0490c3ad-512d-453c-8526-3dff9705b43c/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2018_05_21_6144.pdf;fileType=application%2Fpdf#search=%22committees/estimate/0490c3ad-512d-453c-8526-3dff9705b43c/0000%22>.

The Government has indicated that people who have work rights and do not meet an extremely high threshold of vulnerability will lose SRSS support, whether they have a job or not.

Refugees with adverse security assessments

The Australian Security and Intelligence Organisation (ASIO) conducts a security assessment of all people found to be refugees in Australia before they are granted protection. If ASIO issues an adverse assessment, the person cannot be granted a protection visa. There is no right to appeal the assessment or receive reasons or evidence.¹⁸

Between January 2010 and November 2011, ASIO issued assessments to more than 50 refugees. These people were held in indefinite detention (some alongside their children) but could not be returned to their country of origin. In July 2013, the UN Human Rights Committee found that the indefinite detention of these refugees breached the International Covenant on Civil and Political Rights.¹⁹

Since 2015, many of these people have been released into the community after ASIO overturned the adverse assessments. However, a few remain in held detention (almost all reaching their eighth year). Those with overturned assessments have been asked to re-apply for a temporary protection visa, even though they would have been entitled to permanent protection when found to be refugees. Their claims for protection will be re-assessed according to new country information. For those yet to be released from detention, this can mean longer periods of arbitrary detention if the Government decides to release them only when they are granted a protection visa.

Visa cancellations

In December 2014, changes to section 501 of the Migration Act 1958 expanded the grounds on which a person's visa (temporary or permanent) can be cancelled on the basis of their 'character'.²⁰ If a visa is cancelled, the person is legally required to be detained before being removed from Australia. The new cancellation powers place people from refugee backgrounds at risk of prolonged indefinite immigration detention, as they cannot be returned to their countries of origin.

In some cases, which including where people have been sentenced to 12 months or more in prison, or have been convicted of offences relating to immigration detention, the visas are automatically cancelled unless and until the government, and in some cases the Minister personally, decides to revoke the cancellation.

These changes, as well as stricter policies, have led to a very significant increase in the number of people held in detention on the basis of visa cancellations, including of people from refugee backgrounds. After these changes, the total number of cancelled visas granted to refugees jumped from an average of 48 per year to 471 per year.²¹

This has also led to a significant change in the composition of people in detention, which has increased tensions and intensified the security measures employed to manage those centres.²²

Border Force Act

The Australian Border Force (ABF) Act took effect on 1 July 2015. Its secrecy and disclosure provisions made it a crime for an "en-trusted person" to make record of or disclose protected information. This was punishable by up to two years' imprisonment.²³

18 For more information, see Andrew & Renata Kaldor Centre for International Law, *Refugees with an Adverse Security Assessment by ASIO* (Factsheet, 23 May 2016) <<http://www.kaldorcentre.unsw.edu.au/publication/refugees-adverse-security-assessment-asio>>.

19 *FKAG v Australia* (2013) CCPR/C/108/D/2094/2011 108th sess <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fP-PRiCAqhKb7yhspbtffNXTkqvXTPJWIZn3vmvf%2bgscoARFGKPNv%2bPMYCeM3YrxalP9hWDPBUKNbiiWkR5LnOkAESKpBOPH%2fJpqnhdReN-5fonx%2bslYGXEXoU2vk7gawPVVcxNrTG5Q4hiQ%3d%3d>>; *MMM et Al v Australia* (2013) CCPR/C/108/D/2136/2012 108th sess <http://www.ccrprcentre.org/doc/2013/08/2136_2012-MMM-et-al-v-Australia_en.pdf>.

20 *Migration Amendment (Character Test and Visa Cancellation) Act 2014* (Cth) <<https://www.comlaw.gov.au/Details/C2014A00129>>.

21 Department of Home Affairs, *Answer to Question on Notice 84* (Senate Additional Estimates, No AE18/087, Senate Legal and Constitutional Affairs Committee, 28 February 2018) <<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-Estimates-Roundld2-Portfoliold20-QuestionNumber84>>.

22 Refugee Council of Australia, *Unwelcome Visitors: Challenges Faced by People Visiting Immigration Detention* (August 2017) <<http://www.refugeecouncil.org.au/publications/reports/detention-visitors/>>.

23 *Australian Border Force Act 2015* (Cth) <<http://www.legislation.gov.au/Details/C2016C00650>>, Pt 6.

Initially, an “entrusted person” could be an Immigration and Border Protection worker,²⁴ including people engaged or employed by the Department of Immigration. This could include social workers, educators, and others contracted by the Australian Government to perform services on behalf of the Department.²⁵ Ahead of a High Court challenge to these provisions,²⁶ in October 2016 the Australian Government exempted health professionals working in detention from the provisions but the High Court challenge continued.²⁷

In August 2017, the secrecy provisions were amended significantly.²⁸ It now only applies to information that may compromise Australia’s security, defence or international relations. The changes are retrospective, dating back to 1 July 2015 when the Border Force Act was enacted.

Refugee Status Determination (RSD) and legal advice

Excision policy

Under Australian law, a person seeking asylum who arrives by boat cannot apply for any visa, including a protection visa, unless the Minister for Immigration personally decides to ‘lift the bar’. This policy previously applied only to people who arrived on outlying territories of Australia (such as Christmas Island) excised from the migration zone, but since 2013 it has been extended to mainland Australia. This means any person seeking asylum by boat cannot apply for protection except at the discretion of the Minister for Immigration.²⁹

Delays in refugee determination and pressure to apply

From August 2012 until 2015, the government suspended refugee status determination (RSD) for people who arrived by boat after 13 August 2012. While the Government began allowing this group to apply for a protection visa in 2015, it only finished ‘lifting the bar’ for all groups in late 2016, and also removed most access to government-funded legal advice (see below). This resulted in long waiting lists (of up to a year) to access legal advice.

At the end of 2016, the then Department of Immigration started sending warning letters to people who had not yet applied for protection, including those on waiting lists. People were given 60 days to apply (with a possibility of a 30-day extension) and were told that, if they did not, they would lose any welfare payments, their bridging visas and the right to apply for protection.

On 21 May 2017, the Minister for Immigration announced that if people did not apply by 1 October 2017, they would be barred from applying for any visa in Australia and would be returned to their home countries.³⁰ Legal centres, pro bono lawyers and volunteers across Australia largely succeeded in meeting this arbitrary and extremely tight deadline, with all but 71 of the thousands still waiting applying by the deadline.³¹ As of March 2018, the Department of Immigration had only managed to decide about half of the cases.³²

24 *Australian Border Force Act 2015* (Cth) <<http://www.legislation.gov.au/Details/C2016C00650>>, s 4.

25 See Refugee Council of Australia, *Australian Border Force Bill 2015 & Customs and Other Legislation Amendment (Australian Border Force) Bill 2015* (Submission, Senate Legal and Constitutional Affairs Committee, April 2015) <<http://www.refugeecouncil.org.au/wp-content/uploads/2015/05/1504-ABF.pdf>>.

26 Sarah Whyte and Uma Patel, ‘Doctors to launch High Court challenge against detention secrecy laws’ *ABC News* (27 July 2016) <<http://www.abc.net.au/news/2016-07-27/doctors-to-launch-high-court-challenge-against-detention-secrecy/7662836>>.

27 Bianca Hall, ‘A huge win for doctors’: Turnbull government backs down on gag laws for doctors on Nauru and Manus’ *The Sydney Morning Herald* <<https://www.smh.com.au/politics/federal/a-huge-win-for-doctors-turnbull-government-backs-down-on-gag-laws-for-doctors-on-nauru-and-manus-20161020-gs6ecs.html>>.

28 *Australian Border Force Amendment (Protected Information) Act 2017* (Cth) <<https://www.legislation.gov.au/Details/C2017B00149>>.

29 *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013* (Cth) <<https://www.legislation.gov.au/Details/C2013A00035>>.

30 Hon Peter Dutton (Minister for Immigration and Border Protection), *Lodge or Leave - Deadline for Illegal Maritime Arrivals to Claim Protection* (Media Release, 21 May 2017) <<http://minister.homeaffairs.gov.au/peterdutton/2017/Pages/deadline-for-illegal-maritime-arrivals-to-claim-protection.aspx>>.

31 Department of Home Affairs, *Answer to Question on Notice 224* (Senate Supplementary Budget Estimates, No SE17/225, Senate Legal and Constitutional Affairs Committee, 23 October 2017) <<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-Estimates-Roundld1-Portfoliold13-QuestionNumber224>>.

32 ‘Fast tracking statistics’ *Refugee Council of Australia* <<https://www.refugeecouncil.org.au/getfacts/statistics/aust/fast-tracking-statistics/>>.



The 'fast track' process

Australia introduced a 'fast track' RSD process for people who arrived by boat between 13 August 2012 and 1 January 2014, and were not taken to Nauru or Papua New Guinea.³³ If their claims are rejected by the Department, they cannot have their claims reviewed by an independent merits review tribunal. Instead, the decisions will be referred to the Immigration Assessment Authority (IAA),³⁴ a body established in 2015, which provides a far more limited form of review.

In this review, people seeking asylum generally will not be interviewed and cannot provide new information other than in exceptional circumstances. If an applicant is specified as an "excluded fast track review applicant", they will be excluded from any form of merits review under the fast track system. Fast track applicants will usually have access to judicial review. However, court hearings can be months or years away, with some people now receiving court dates in 2021. The Minister for Immigration also has the power to issue a 'conclusive certificate' which prevents an initial decision from being changed or reviewed.

Other changes to RSD and how Australia defines 'refugee'

The Australian Government has made other changes to the processes for assessing asylum claims. These include: shifting the burden of proof to people seeking asylum; removing the references to the Refugee Convention from Australia's migration legislation; and removing the reasonableness test from consideration of relocation options for people facing persecution. Further, the Government has expanded the use of adverse credibility findings, and grounds for denying protection to people who provide false identity documents.³⁵

Removal of government-funded legal advice

Most people seeking asylum who arrive without valid visas are no longer eligible for government-funded legal advice. Those who arrive by plane with a valid visa and a small percentage of highly vulnerable people who came by boat are eligible for free legal advice at the primary stage of decision-making, but not at the merits review stage.³⁶

Amalgamation of review tribunals into the Administrative Appeals Tribunal

On 1 July 2015, the Migration Review Tribunal (MRT), Refugee Review Tribunal (RRT) and Social Security Appeals Tribunal (SSAT) merged with the Administrative Appeals Tribunal (AAT).³⁷ The amalgamated AAT is responsible for the independent review of a wide range of decisions made by the Australian Government, including the Department. Decisions that could be reviewed by the former MRT or RRT, or the cases referred to these review bodies before 1 July 2015 for which a decision was not made by that date, are now reviewed by the AAT's Migration and Refugee Division.

'Enhanced screening' of Sri Lankan and Vietnamese people seeking asylum

Since October 2012, people seeking asylum arriving by boat from Sri Lanka have been subject to 'enhanced screening'.³⁸ Under this process, these people are interviewed by two officers from the Department of Immigration about their reasons for travelling to Australia. If they raise concerns which suggest they may have a valid protection claim, they are 'screened in' so that their claims can be formally processed. If they do not raise any protection concerns, they are 'screened out' and returned to their country of origin without having the opportunity to formally lodge a protection claim.

33 *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) <<https://www.legislation.gov.au/Details/C2015C00219>>.

34 *Immigration Assessment Authority* <<http://www.iaa.gov.au/>>.

35 For a briefing on the full suite of changes to RSD and the other laws, see Refugee Council of Australia, *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014: What It Means for Asylum Seekers* (February 2015) <<http://www.refugeecouncil.org.au/wp-content/uploads/2015/02/1502-Legacy-Caseload.pdf>>.

36 Some unaccompanied children who arrived with valid visas and have been immigration cleared might be able to continue having access to free migration advice.

37 *Tribunals Amalgamation Act 2015* (Cth) <<http://www.legislation.gov.au/Details/C2015A00060>>.

38 Australian Human Rights Commission, *Tell Me About: The 'Enhanced Screening Process'* (26 June 2013) <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/tell-me-about-enhanced-screening-process>>.

This system lacks transparency and denies people the opportunity to have their claims fairly assessed. More than 1,000 people have been 'screened out' and returned to Sri Lanka since this system was introduced.³⁹

In July 2014, a group of 41 Sri Lankan people who had attempted to enter Australia by boat were intercepted by Australian authorities and screened at sea before being returned to Sri Lanka. Some subsequently fled to Nepal where they were found to be refugees by UNHCR.⁴⁰ Another group of 12 Sri Lankans whose boat was intercepted by the Australian authorities near Cocos Island in May 2016 were also screened at sea before being flown to Sri Lanka. They were reportedly arrested on arrival at Colombo airport.⁴¹

This 'enhanced screening' process has been expanded to people from Vietnam. In March and July 2015, two boats carrying Vietnamese people seeking asylum were intercepted by the Australian navy and their passengers underwent enhanced screening before being returned to Vietnam. Those on the first boat were held at sea for nearly a month. Some have reportedly been since tried in Vietnam and sentenced to two to three years in prison.⁴²

Offshore processing⁴³

Transfers to Nauru and Papua New Guinea

People seeking asylum by boat who came after 19 July 2013 are subject to offshore processing. Under this policy, they are transferred to regional processing centres (RPCs) in Nauru and Papua New Guinea's Manus Island where their claims are processed under the laws of those countries. If they are found to be refugees, they will be settled in a country other than Australia. Nauru is offering recognised refugees temporary visas, with permanent protection only if they choose to resettle in Cambodia (see below). While PNG has adopted a National Refugee Policy allowing for permanent settlement and a pathway to citizenship,⁴⁴ in practice the process of settlement remains fraught.

Nauru progressively introduced open centre arrangements from 25 February 2015⁴⁵ until 5 October 2015, when it declared the centre open.⁴⁶ Some refugees and people seeking asylum are now living in the community in Nauru. However, a number remain in the processing centres because there is not enough housing or because of a perceived lack of safety. As of 26 April 2018, there were still 255 people, including 22 children, at the Nauru RPC.⁴⁷

PNG also introduced open centre arrangements for Manus Island RPC. On 27 April 2016, a bus service commenced to assist movement between the Manus RPC, the Lorengau township, and the East Lorengau Refugee Transit Centre. Manus RPC closed at the end of October 2017 and people were transferred to other accommodation in Manus Island (see below).

39 Australian Human Rights Commission, *Asylum Seekers, Refugees and Human Rights: Snapshot Report 2013* (2013) <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/asylum-seekers-refugees-and-human-rights-snapshot>>.

40 David Corlett, 'Sinhalese asylum seekers' on-water claims accepted by UN' *The Saturday Paper* (31 January 2015) <<https://www.thesaturdaypaper.com.au/news/politics/2015/01/31/sinhalese-asylum-seekers-water-claims-accepted-un/14226228001441>>.

41 Ben Doherty, 'Asylum seekers deported from Cocos Islands arrested by Sri Lankan police' *The Guardian* (7 May 2016) <<http://www.theguardian.com/australia-news/2016/may/07/asylum-seekers-deported-from-cocos-islands-arrested-by-sri-lankan-police>>.

42 Ben Doherty, 'Vietnamese asylum seekers forcibly returned by Australia face jail' *The Guardian* (23 May 2016) <<http://www.theguardian.com/australia-news/2016/may/24/vietnamese-asylum-seekers-forcibly-returned-by-australia-face-jail>>.

43 For more detailed statistics related to offshore processing, see Refugee Council of Australia, 'Operation Sovereign Borders and offshore processing statistics' *Refugee Council of Australia* <<https://www.refugeecouncil.org.au/getfacts/statistics/operation-sovereign-borders-offshore-detention-statistics/>>.

44 Government of Papua New Guinea, *National Refugee Policy* (June 2015) <http://www.immigration.gov.pg/images/PNG_National_Refugee_Policy_FINAL_ENDORSED_BY_CABINET.pdf>.

45 The Government of the Republic of Nauru, *Nauru Commences Open Centre Arrangements* (25 February 2015) <<http://naurugov.nr/government-information-office/media-release/nauru-commences-open-centre-arrangements.aspx>>.

46 Peter Dutton (Minister for Immigration and Border Protection), *Australia Welcomes Nauru Open Centre* (Media Release, 5 October 2015) <<http://minister.homeaffairs.gov.au/peterdutton/2015/Pages/australia-welcomes-nauru-open-centre.aspx>>.

47 Department of Home Affairs, *Immigration and Community Detention Statistics Summary* (26 April 2018) <<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-26-april-2018.pdf>>.



The Department no longer regularly reports on the number of people living in the community in Nauru or in PNG. However, based on the information provided during Senate estimates, as of 21 May 2018, there are 1,655 people on both Nauru and PNG in various living arrangements.⁴⁸

Resettlement deal with Cambodia

On 26 September 2014, Australia and Cambodia signed an agreement providing for the relocation of refugees from Nauru to Cambodia.⁴⁹ Under this, people found to be refugees subject to offshore processing in Nauru could choose to resettle in Cambodia, where they would be provided with services and a path to citizenship. However, only seven refugees have chosen to take up this option, and it has been reported that only one is left.⁵⁰

Resettlement deal with the US

In November 2016, Australia announced a deal with the United States of America (US) which would allow some of the refugees in Nauru and Manus Island to resettle in the USA.⁵¹ Reports indicated the US would resettle up to 1,250 refugees.⁵² Prior to resettlement, people who expressed interest will be subject to security assessment, further interviews and medical checks.

The change of government in the USA created great uncertainty around the future of this deal. Departures did not start until September 2017.⁵³ As of 30 April 2018, 165 refugees from Nauru and 84 refugees from PNG have left for the US. So far, Iranian and Somali refugees have had the highest refusal rate for resettlement in the USA. While Iranians constitute the largest population of refugees on Nauru and Manus Island, only 15 Iranian nationals have been accepted for resettlement and 70 were refused.⁵⁴ This has created grave concerns that people from countries subject to USA's enhanced security screening will be denied a chance at resettlement.

The Australian Government has not identified options for resettlement other than the US or Cambodia. It has repeatedly turned down an offer by New Zealand to resettle 150 refugees.⁵⁵ A handful of people have also moved to other countries mainly through private sponsorship. This includes a father and son from Syria who were reunited with family members in Canada,⁵⁶ an Iranian man privately sponsored to Canada,⁵⁷ and an Iranian cartoonist, known by the pen name of *Eaten Fish*, who moved to a Northern European country after being granted artist's residency through the International Cities of Refuge Network.⁵⁸ The future is also uncertain for those who have been found not to be a refugee but are unable to return home (due to statelessness or inability to source travel documents).

48 Department of Home Affairs, *Senate Estimates* (Transcript, Senate Legal and Constitutional Affairs Committee, 21 May 2018) <http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/0490c3ad-512d-453c-8526-3dff9705b43c/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2018_05_21_6144.pdf;fileType=application%2Fpdf#search=%22committees/estimate/0490c3ad-512d-453c-8526-3dff-9705b43c/0000%22>. For updated statistics, see Refugee Council of Australia, 'Operation Sovereign Borders and offshore processing statistics' *Refugee Council of Australia* <<https://www.refugeecouncil.org.au/getfacts/statistics/operation-sovereign-borders-offshore-detention-statistics/>>.

49 *Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia, Relating to the Settlement of Refugees in Cambodia* (26 September 2014) <<http://www.minister.immi.gov.au/scottmorrison/files/cambodia-australia-mou-operational-guidelines.pdf>>.

50 *Cambodia Says Only One Refugee from Nauru Remains* *Radio New Zealand* (6 June 2018) <<https://www.radionz.co.nz/international/pacific-news/359011/cambodia-says-only-one-refugee-from-nauru-remains>>.

51 Hon Peter Dutton (Minister for Immigration and Border Protection), *Refugee Resettlement from Regional Process Centres* (Media Release, 13 November 2016) <<http://pandora.nla.gov.au/pan/143035/20171220-0959/www.minister.border.gov.au/peterdutton/Pages/Refugee-resettlement-from-Regional-Process-Centres.html>>.

52 Ben Doherty, 'White House says US will take up to 1,250 refugees under Australian deal' *The Guardian* (31 January 2017) <<http://www.theguardian.com/australia-news/2017/feb/01/white-house-australian-refugees-deal-resettle-extreme-vetting>>.

53 Ben Doherty, 'First Nauru refugees leave for US resettlement' *The Guardian* (27 September 2017) <<http://www.theguardian.com/australia-news/2017/sep/27/first-nauru-refugees-leave-for-us-resettlement>>.

54 Department of Home Affairs, *Senate Estimates* (Transcript, Senate Legal and Constitutional Affairs Committee, 21 May 2018) <http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/0490c3ad-512d-453c-8526-3dff9705b43c/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2018_05_21_6144.pdf;fileType=application%2Fpdf#search=%22committees/estimate/0490c3ad-512d-453c-8526-3dff-9705b43c/0000%22>.

55 'Australia refuses NZ offer on refugees' *BBC News* (5 November 2017) <<https://www.bbc.com/news/world-australia-41874826>>.

56 Jessica Longbottom, 'Asylum seekers leave Nauru 'black hole' for life in Canada' *ABC News* (21 February 2016) <<http://www.abc.net.au/news/2016-02-21/asylum-seekers-leave-nauru-for-life-in-canada/7187416>>.

57 Ben Doherty, 'Manus refugee who reached Canada last week says deaths are 'very likely'' *The Guardian* (6 November 2017) <<http://www.theguardian.com/australia-news/2017/nov/06/manus-refugee-who-reached-canada-last-week-says-deaths-are-very-likely>>.

58 Ben Doherty, 'Eaten Fish, Manus Island's refugee cartoonist, given sanctuary in northern Europe' *The Guardian* (18 December 2017) <<http://www.theguardian.com/australia-news/2017/dec/19/eaten-fish-manus-islands-refugee-cartoonist-moves-to-northern-europe>>.

Detention in PNG

In late April 2016, PNG's Supreme Court ruled that the transfer and detention of people seeking asylum on Manus Island violated the right to personal liberty in the PNG constitution. The Supreme Court ordered that immediate steps be taken to end the detention of people seeking asylum in PNG.⁵⁹ In mid-May 2017, people in the Manus Island detention centre were told that the centre would close on 31 October 2017.⁶⁰ The centre closed on that day.

The plan was to place them in different accommodation areas on Manus Island, based on their refugee status. Many refused to leave due to fears for their safety and concerns (confirmed by UNHCR) about the adequacy of the new accommodation. To force people to leave, a number of essential services, including electricity, water and healthcare, were withdrawn.⁶¹ However, people continued to remain. The standoff ended after three weeks when the PNG authorities cleared the facility by force.⁶²

Living conditions on Nauru and Manus Island

Since the start of offshore processing, many organisations including UNHCR and Amnesty International⁶³ have reported on the harsh living conditions, substandard services, and the physical and mental health impacts of indefinite detention. In its most recent report, Amnesty International highlighted the reduction of health services on Manus Island and withdrawal of counselling services, at a time they are needed most.⁶⁴

There have been many incidents of self-harm, protests and disturbances on both Nauru and Manus Island. There have been consistent and alarming reports of abuse (sexual and otherwise), including of those living in the community in Nauru, and of gay and lesbian people. There have been at least two deaths as a result of delays in medical treatment and multiple incidents evidencing woefully inadequate health care.⁶⁵

The Australian Government has repeatedly refused to bring people in urgent need of healthcare to Australia. When obliged to do so (for example by a court), it separates families to ensure the person returns. When treatment is not available in PNG and Nauru, Australia has transferred people to Taiwan. Several times, pregnant women who require termination and are unable to have the procedure on Nauru (as abortion is illegal in that country) have received inadequate and extremely delayed care.

Deaths on Manus Island and Nauru

So far 12 people have died on Nauru and Manus Island, mainly as a result of inadequate healthcare or by suicide.⁶⁶ They are:

- Reza Barati (Iran, 24 years old): beaten to death in February 2014, after security guards and police stormed Manus Island RPC and attacked people who were protesting
- Sayed Ibrahim Hussein (Pakistan): drowned while swimming in Nauru in June 2014
- Hamid Khazaei (Iran, 24 years old): died in September 2014 from a sepsis infection three weeks after he cut his foot at Manus Island RPC and received inadequate medical care
- Omid Masoumali (Iran, 23 years old): set himself on fire in late April 2016. After he self-immolated, it took over 24 hours for him

59 *Namah v Pato* [2016] PGSC 13 <<http://www.pacii.org/pg/cases/PGSC/2016/13.html>>.

60 Helen Davidson and Ben Doherty, 'Manus Island detainees told to 'consider options' as closure of centre begins' *The Guardian* (15 May 2017) <<http://www.theguardian.com/australia-news/2017/may/15/manus-island-detention-centre-to-close-by-30-june-detainees-told>>.

61 Michael Koziol, 'Food, water, power to be cut at Manus' *The Canberra Times; Canberra, A.C.T.* (21 October 2017).

62 Ben Doherty, 'Manus detention centre cleared of all refugees and asylum seekers' *The Guardian* (24 November 2017) <<http://www.theguardian.com/australia-news/2017/nov/24/manus-detention-centre-cleared-of-all-refugees-and-asylum-seekers>>.

63 See 'Monitoring Reports' *UNHCR The Refugee Agency* <<http://www.unhcr.org/en-au/search?comid=5811a3437&cid=49aea93ae2&cid=49aea93a6d&tags=monitoringreport>>; Amnesty International, *This Is Breaking People* (December 2013) <http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf>; Amnesty International, *Island of Despair: Australia's "Processing" of Refugees on Nauru* (No ASA 12/4934/2016, 17 October 2016) <<https://www.amnesty.org/en/documents/document/?indexNumber=asa12%2f4934%2f2016&language=en>>; Amnesty International, *Punishment Not Protection - Australia's Treatment of Refugees and Asylum Seekers in Papua New Guinea* (February 2018) <<https://www.amnesty.org/en/documents/document/?indexNumber=ASA34%2f7781%2f2018&language=en>>.

64 Amnesty International, *Health Care Cuts: Australia's Reduced Health Care Support for Refugees and Asylum Seekers in Papua New Guinea* (No ASA 34/8354/2018, 17 May 2018) <<https://www.amnesty.org/en/documents/document/?indexNumber=asa34%2f8354%2f2018&language=en>>.

65 See Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru* (31 July 2015) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report>; Senate Legal and Constitutional Affairs References Committee, *Serious Allegations of Abuse, Self-Harm and Neglect of Asylum Seekers in Relation to the Nauru Regional Processing Centre, and Any like Allegations in Relation to the Manus Regional Processing Centre* (No ISBN 978-1-76010-563-1, 21 April 2017) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report>.

66 Ben Doherty, Nick Evershed, Andy Ball, Ben Doherty, Nick Evershed, and Andy Ball, 'Deaths in offshore detention: the faces of the people who have died in Australia's care' *The Guardian* <<http://www.theguardian.com/australia-news/ng-interactive/2018/jun/20/deaths-in-offshore-detention-the-faces-of-the-people-who-have-died-in-australias-care>>; 'Australian Border Deaths Database' *Border Crossing Observatory* <<http://artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database/>>.



to be medically evacuated.

- Rakhib Khan (Bangladesh, 26 years old): died in May 2016 of a suspected heart attack while living in community in Nauru, with some alleged that he overdosed deliberately
- Kamil Hussain (Pakistan, 34 years old): drowned in August 2016 while swimming at a waterfall on Manus Island during a day trip from the immigration detention centre
- Faysal Ishak Ahmed (Sudan, 27 years old): died in Brisbane on Christmas Eve 2016, after urgent medical evacuation from Manus Island RPC, alleged after being denied medical treatment for months
- Hamed Shamshiripour (Iran, 31 years old): found dead in August 2017 in the forest near East Lorengau refugee transit centre on Manus Island, with suggestions that he committed suicide and with a known history of mental health issues
- Rajeev Rajendran (Sri Lanka, 32 years old): found dead in October 2017 in Lorengau hospital in Manus Island, after being admitted because of an attempted suicide
- Jahingir (Bangladesh, 29 years old): died in November 2017 after his motorbike collided with a car driven by a group of Nauruan locals
- Salim Kyawning (Rohingya, 52 years old): died in May 2018 on Manus Island after he jumped from a moving bus. He suffered from severe epilepsy for many years and had spent a few months in Australia for medical treatment
- Fariborz Karami (Iran, 26 years old): committed suicide in June 2018 after repeatedly asking for help for his deteriorating mental health.

Border protection

Operation Sovereign Borders

Soon after the change of government in September 2013, the Australian Government established 'Operation Sovereign Borders'. This is a military-style response to increases in people arriving by boat, led by a three-star commander reporting directly to the Minister for Immigration. Australian naval and customs officers were issued with orders to turn back boats carrying people seeking asylum "when it is safe to do so".

The Government reveals little information about turnback operations, claiming that doing so would jeopardise their success through providing intelligence to people smugglers. However, Australian Senate estimates revealed that since the first boat turnback on 19 December 2013 and until 26 February 2018, 32 boats carrying 800 people had been intercepted under Operation Sovereign Borders.⁶⁷ In June 2015, allegations were aired that officials of the Australian Security Intelligence Service had paid people smugglers to take 65 people intercepted at sea back to Indonesia. The Australian Government refused to comment on these claims "for security reasons".⁶⁸

Use of lifeboats

As part of turnback operations in 2013 and 2014, people seeking asylum were transferred from their boats to Australian vessels and forced to board fully-enclosed and "unsinkable" lifeboats which were then pushed back towards Indonesian territorial waters.⁶⁹

Detention at sea and transfers

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act, which passed in December 2014, gives the Immigration Minister the power to detain people at sea (including outside Australia's jurisdiction) and send them to other countries or vessels, even without the permission or knowledge of those countries.

In July 2014, 157 Sri Lankan nationals who attempted to enter Australia by boat and seek asylum were detained on an Australian customs vessel for four weeks before being brought to the mainland and then transferred to Nauru. The Government had been considering options to return them to India (their point of departure), including through inviting Indian consular officials to meet with them and training some of them to operate the "unsinkable" lifeboats used in turnback operations.⁷⁰ As noted earlier, the Australian Government has also detained Vietnamese people seeking asylum at sea.

67 Department of Home Affairs, *Senate Estimates* (Transcript, Senate Legal and Constitutional Affairs Committee, 21 May 2018) <http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/0490c3ad-512d-453c-8526-3dff9705b43c/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2018_05_21_6144.pdf;fileType=application%2Fpdf#search=%22committees/estimate/0490c3ad-512d-453c-8526-3dff-9705b43c/0000%22>.

68 Professor Jane McAdam and Sophie Duxson, *Paying People Smugglers* (Andrew & Renata Kaldor Centre for International Law, 1 July 2015) <<http://www.kaldorcentre.unsw.edu.au/publication/paying-people-smugglers>>.

69 David Wroe, 'To the lifeboats: Abbott plans to secure turn-backs' *The Sydney Morning Herald* (8 January 2014) <<http://www.smh.com.au/federal-politics/political-news/to-the-lifeboats-abbott-plans-to-secure-turnbacks-20140107-30fka.html>>.

70 Sarah Whyte, 'Asylum seekers suffered 'torturous journey' on ship: High Court - Government accused of false imprisonment of 157 Sri Lankans' *The Age* (15 October 2014) <<http://search.proquest.com/docview/1610990322?accountid=12763>>.

Temporary Protection Visas (TPVs)

Previous policy

TPVs were previously in place in Australia between 1999 and 2008. Granted to refugees who arrived by boat, they allowed people to remain in Australia for three years, after which they had to re-apply for protection. TPV holders could not travel outside Australia, sponsor family members for resettlement and had only limited access to services and support. The negative impacts of these conditions on the health, wellbeing and settlement outcomes of TPV holders have been well documented.⁷¹ In practice, the TPV policy proved impractical because few refugees with temporary status were ever able to return home safely. By the time it left office in late 2007, the Howard Government had quietly granted permanent protection to more than 9,500 of the 11,300 refugees previously on TPVs.⁷²

Reintroduction of TPVs

TPVs were re-introduced in 2014 for refugees who came to Australia without a prior valid visa (by sea or by air). TPVs allow a refugee to stay in Australia for a maximum of three years, after which their protection claims are reassessed. In contrast to the previous TPV policy, people with a TPV are only permitted to apply for another temporary visa and are never eligible for permanent residency.

Importantly, they cannot sponsor their family members to join them in Australia. Further, they cannot travel overseas and return without permission from the government, which will be granted only in compelling circumstances.

They can work in Australia and have access to Medicare, income support and English language tuition. They can also receive torture and trauma counselling and employment assistance. However, they are not eligible for the full range of settlement support services available to other humanitarian entrants. They can receive only a more limited form of income support known as Special Benefit, and not other benefits such as the Newstart Allowance, Youth Allowance or Austudy.

They are not eligible for federal programs that support students to finance tertiary study. People who want to do further or university study will lose their Special Benefit allowances if they take a course of more than 12 months.⁷³

Safe Haven Enterprise Visas (SHEVs)

This new temporary visa is similar to the TPV but will be issued for a period of five years. A refugee living on a SHEV needs to indicate an intention to work and/or study in a designated regional or rural area. All states and territories have now opted into the SHEV arrangement, although they have different arrangements for identifying regional or rural areas.

If SHEV holders undertake study or work without accessing income support for at least three-and-a-half years, they will be able to apply for another type of temporary or permanent visa (such as a skilled or family visa but *not* a permanent Protection visa). While SHEVs may provide a pathway to permanent residency for some refugees, most will be unable to satisfy the eligibility requirements for permanent visas.

Other measures

Use of term 'illegal maritime arrivals'

In October 2013, the Australian Government instructed staff and contractors to refer to people arriving by boat as "illegal maritime arrivals" (previously "irregular maritime arrivals").⁷⁴ This is despite the fact that it is not illegal to come to Australia to seek asylum under Australian and international law.

Denial of family reunion

Refugees who came to Australia by boat and are not yet citizens have virtually no opportunity for family reunion. Their family reunion applications are given "lowest processing priority", unless there are (undefined) 'special circumstances of a compassionate nature' or where processing of applications would otherwise be unreasonably delayed. This means that almost all applications have very little chance of success.⁷⁵

71 See: Refugee Council of Australia, *Temporary Protection Visas* (Policy Brief, Refugee Council of Australia, 24 September 2013) <http://www.refugeecouncil.org.au/r/pb/PB1324_TPVs.pdf>.

72 The Age, '9,500 refugees can apply to stay' *The Age* (13 July 2004) <<https://www.theage.com.au/articles/2004/07/13/1089484342243.html>>.

73 'Impact of university scholarships for TPV and SHEV Holders receiving Special Benefit income support' *Refugee Council of Australia* <<https://www.refugeecouncil.org.au/ourwork/settlement-ourwork/education/special-benefit-income-support-tpv-shev-holders/>>.

74 Emma Griffiths, 'Morrison defends use of term 'illegal arrivals'' *ABC News* (22 October 2013) <<http://www.abc.net.au/news/2013-10-21/immigration-minister-scott-morrison-defends-use-of-illegals-term/5035552>>.

75 Refugee Council of Australia, 'Ministerial Directives and family reunion' *Refugee Council of Australia* <<http://www.refugeecouncil.org.au/getfacts/settlement/family-reunion-ministerial-directives/>>.

TPV and SHEV holders cannot sponsor family members under any program and cannot become citizens unless the Minister grants them permanent residency or they are able to satisfy the eligibility criteria for a permanent Australian visa (for SHEV holders).⁷⁶

Citizenship delays and proposed changes to citizenship criteria

People of refugee background have been facing significant delays when applying for citizenship.⁷⁷ Despite having passed all legal requirements, including passing the citizenship test, many have not been invited to attend their citizenship ceremony. The ceremony is the final stage where applicants pledge to commit to Australia and receive their citizenship. One of the reasons for this delay is the change to the way the Department of Immigration confirms a person's identity. People whose cases need more thorough identity checks are put in a "complex case" group.⁷⁸

The Department of Home Affairs revealed during May 2018 Senate estimates that the average time of processing citizenship applications has increased from 12 months to 16 months.⁷⁹ In a survey of 1000 people conducted by Refugee Council of Australia, many refugees were waiting for up to three years for their citizenship applications to be finalised.⁸⁰

In 2017, the Australian Government proposed a number of changes to the citizenship criteria for Australian citizenship.⁸¹ These changes would have required a person to be a permanent for four years, and to pass an English test at a "competent" level, close to the standard required for entry to Australian universities. There would also have been changes to the citizenship test to assess applicants' 'Australian values', and a cap on the number of times a person could fail the test. The proposal was blocked by the Senate, but a new version is set to be reintroduced in 2018.⁸²

On 20 December 2017, the Department of Home Affairs was established.⁸³ It combined the Department of Immigration and Border Protection with national security, emergency management and criminal justice functions of the Attorney-General's Department, the Office of Transport Security from the Department of Infrastructure and Regional Development, multicultural affairs from the Department of Social Services, and the counter-terrorism coordination and cyber security policy functions from the Department of the Prime Minister and Cabinet.

76 For more detail, see Refugee Council of Australia, *Addressing the Pain of Separation for Refugee Families* (21 November 2016) <<http://www.refugeecouncil.org.au/publications/reports/family-separation/>>.

77 Asher Hirsch, *Delays in Citizenship Applications for Permanent Refugee Visa Holders* (Refugee Council of Australia, October 2015) <<http://www.refugeecouncil.org.au/wp-content/uploads/2015/10/1510-Citizenship-Delays-for-Permanent-Refugees.pdf>>.

78 Commonwealth Ombudsman, *Delays in Processing of Applications for Australian Citizenship by Conferral* (Investigation Report, No 3 of 2017, December 2017) <https://www.ombudsman.gov.au/__data/assets/pdf_file/0032/78980/Citizenship-own-motion-investigation-report.pdf>.

79 Department of Home Affairs, *Senate Estimates* (Transcript, Senate Legal and Constitutional Affairs Committee, 21 May 2018) <http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/0490c3ad-512d-453c-8526-3dff9705b43c/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2018_05_21_6144.pdf;fileType=application%2Fpdf#search=%22committees/estimate/0490c3ad-512d-453c-8526-3dff-9705b43c/0000%22>.

80 Asher Hirsch, *Delays in Citizenship Applications for Permanent Refugee Visa Holders* (Refugee Council of Australia, October 2015) <<http://www.refugeecouncil.org.au/wp-content/uploads/2015/10/1510-Citizenship-Delays-for-Permanent-Refugees.pdf>>.

81 *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017* (Statement of Compatibility) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>.7,17]]]]], "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}>



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