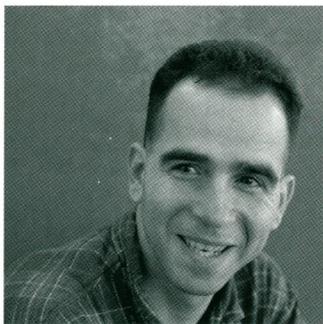
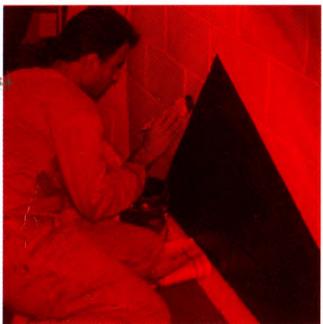
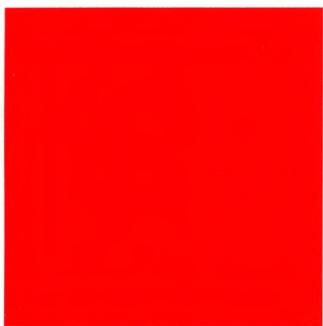
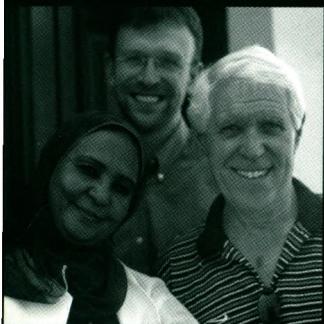
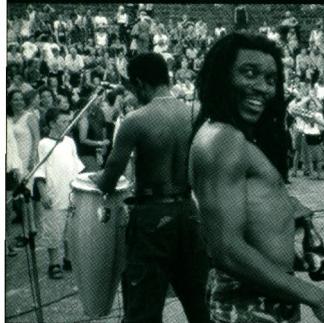




REFUGEE
AND ASYLUM
SEEKER ISSUES
IN AUSTRALIA





Brotherhood
of St Laurence

Working for an Australia free of poverty

EMC

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THE MYER
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REFUGEE AND
ASYLUM
SEEKER ISSUES
IN AUSTRALIA

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FORWARD

Dear Reader,

As a former asylum seeker and detainee of nearly two years, I was thinking of myself as an expert for refugee affairs. But after reading this booklet, I realised that I wasn't the expert I initially thought. This booklet addresses questions about refugees and asylum seekers that people ask themselves everyday but do not have enough information to answer.

Many Australian friends – when they know that I was an asylum seeker – ask me lots of questions about refugees and asylum seekers that I have no answers for. This booklet gives substantial answers for questions like these that have many people confused. Written in a question and answer format, the booklet submits accurate and credible information, addressing a range of issues from a variety of positions – whether from refugees themselves or documents from governments, human rights and specialised organisations for refugees and asylum seekers or from books written about field and so on. Indeed, the booklet in all respects reflects who refugees and asylum seekers are and what their situations are.

Importantly, this booklet is written from a non-party political perspective and as such is independent. It presents factual information in a neutral way. It doesn't give you theories or personal interpretation, analysis and judgement. It doesn't give you suggestions and solutions for the refugees' problems and dilemmas. It just gives you the truth, correct information of how things have happened and leaves the reader to be an arbitrator.

Linguistically, it seems to me that the booklet was designed for a multicultural society like Australia. Even new migrants (of course those who have some English language background) can understand it easily.

In conclusion, it is a booklet that maps the current issues concerning refugees, asylum seekers and Australia.

Yusuf Sheikh Omar

President of the Australian Somali Youth Association

1. WHO IS A REFUGEE?



1a. Who is a refugee?

A refugee perspective:

An Iranian woman resettled in rural New South Wales explained:¹

A 'refugee' is a person in the need of refuge. While the need for refuge continues, a person is a refugee. If that refuge is eventually found, the moment of being a 'refugee' passes. The condition of being a 'refugee' may be momentary. However, the label of being a 'refugee' remains attached on us by others, even as we try to move – or have moved – beyond it but without forgetting it. This label can cast dark shadows on our efforts to rebuild our lives.

The State perspective:

A refugee is a person who has been forced to leave his or her country for reasons of persecution and/or fear of persecution.

Under international law, a refugee status is accorded to persons who:²

(o)wning to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence, is unable or owing to such fear, is unwilling to return to it.

This legal definition comes from the 1951 United Nations (UN) Convention relating to the Status of Refugees frequently referred to as the Refugees Convention and the 1967 Protocol relating to the Status of Refugees.

The points widely considered important in this definition include:³

- refugees are **outside** their country of origin
- their reason for fleeing is **fear of persecution**

- persecution is a result of at least **one of the five grounds** listed in the definition: race, religion, nationality, membership of a particular social group, or political opinion
- fear of persecution is **well founded** because having experienced it in the past indicates that future persecution is possible or there is a real chance that they will experience this if they return
- they are **unwilling or unable to seek protection** from their own country.

The Australian Government uses the Refugees Convention and the 1967 Protocol to determine the legitimacy of refugees' claims for asylum in Australia.⁴ If it is found that they do have a legitimate claim, then the Australian Government is obliged under international law to provide them with protection.⁵

The important point to emphasise is that a person is a 'refugee' if he or she in fact meets the definition of a Convention refugee regardless of whether he or she has been recognised as such by a State party to the Refugees Convention and Protocol. Therefore, if a party-State does not conduct a status determination in respect of a person within its jurisdiction or gets the determination wrong, it puts itself at risk of breaching its treaty obligations.⁶

1b. What is the 1951 Convention relating to the Status of Refugees?

The 1951 Convention relating to the Status of Refugees is a part of international law – a treaty – that was drafted by country representatives at the UN and put forward for countries to ratify in 1951. It did not come into force until ratified by at least ten countries, which was not until 22 April 1954.⁷ Australia played a leading role in drafting the treaty and was one of the first ten countries to ratify it.

As a party to the Refugees Convention, Australia has voluntarily agreed to be legally obliged to provide protection to refugees in its territory.

1c. What are refugees' rights under international law?

All refugees have human rights. Some rights apply automatically simply because they are human. Others are applicable because of the circumstances in which they find themselves.

Human rights particularly relevant to refugees include:

- the right to life, liberty and security of person
- the right to freedom from torture or cruel or inhumane or degrading treatment or punishment
- the right to freedom of movement and residence within the borders of each state
- the right to freedom of thought, conscience and religion
- the right to freedom of opinion and expression
- the right to a standard of living adequate for the health and well being of the person and his or her family, including food, clothing, housing, medical care, and necessary social services
- the right to education
- freedom from discrimination
- respect for the unity of the family.

These rights are set out in the International Covenant of Civil and Political Rights (ICCPR), the International Covenant of Economic, Social and Cultural Rights (ICESCR), the Convention of the Rights of the Child (CRC) and other treaties to which the Australian Government is party.

The Refugees Convention gives refugees additional specific rights including:

- not to be returned to their country of origin if their safety cannot be assured – referred to as the principle of *non-refoulement*
- to be accorded in many respects the same treatment as the citizens of the country in which they are given refuge
- not to be penalised for illegally entering a country if they request asylum.

2. REFUGEE/ASYLUM SEEKER/MIGRANT?



WHAT IS THE DIFFERENCE?

2a. What is the difference between a migrant and a refugee?

'Migrant' and 'refugee' are terms often used interchangeably. However, they refer to people in different situations. Generally, refugees and migrants have different pre-departure and pre-arrival experiences. Therefore, these two groups of people have significantly different needs when arriving in Australia.⁸

Most people in refugee situations:⁹

- flee their homes in a hurry without time to prepare to leave and often flee in secrecy
- do not have time to pack their belongings, often leaving with only a change of clothes or what they can carry
- do not have the opportunity to say goodbye to family and friends
- do not have the time to prepare themselves mentally, emotionally and financially
- are running from life threatening situations and they frequently do not know where they are going
- even knowing their destination, usually do not have much information about what to expect on arrival.

A significant proportion have experienced trauma, if not also torture. Several studies undertaken in Australia found that:¹⁰

- more than 20% of refugees had experienced torture
- 33% of refugees had been imprisoned for political reasons
- 33% of refugees had family or friends who had been murdered.

People in migrant situations:¹¹

- choose to migrate to another country and choose which country they wish to go to
- have the opportunity to research and gather information about their destination
- take time to prepare themselves mentally, emotionally and financially for their new lives



- say goodbye to family and friends
- can pack their important and personal belongings to bring with them
- mostly can return home if things go wrong, which refugees cannot
- mostly have not experienced torture or trauma in their countries of origin.

2b. What is the difference between a refugee and an asylum seeker?

The terms 'refugee' and 'asylum seeker' are often used interchangeably when in fact they refer to people in different – but often overlapping – circumstances.

People in refugee situations:¹²

- have fled their country because of well-founded fear of persecution
- may or may not have had access to apply to a country for asylum as the country they may be in may not be signatory to the Refugees Convention. Also, they may be unable to access relevant embassies in that country and/or they may not wish to seek asylum in another country.

The term 'refugee' usually refers to people who have fled their countries whether or not they have been recognised as refugees by another country or by the United Nations High Commission for Refugees (UNHCR). Refugees who have been through formal recognition procedures and recognised as refugees under the Refugees Convention are frequently referred to as 'Convention refugees'.

When talking about refugees *in* Australia, 'refugee' usually relates to people already recognised as Convention refugees because they have been successfully through the Australian Government's refugee determination processes and recognised as in need of asylum. People in Australia whose applications for asylum are in process may be refugees, but they are generally referred to as 'asylum seekers' because they have not yet been officially recognised by the Australian Government to be Convention refugees.

People who are asylum seekers:¹³

- are applying to a country other than their own for legal protection
- must find the means to reach a country – or the embassy of a country – that is party to the Refugees Convention where they can apply for asylum. In the process, they usually face enormous risks to their safety.

Asylum seekers are in the process of applying for protection and have a legal status under international law. People who arrive in a country without prior authorisation have the right to apply for asylum from that country if that country has signed the Refugees Convention and to do so without being punished for their mode of arrival.¹⁴ As such, asylum seekers who arrive unauthorised and report to the government authorities are not criminals even if governments describe them as 'unauthorised', 'unlawful' or 'illegal'.

Importantly, under international law asylum seekers have the right to state protection during the time their asylum applications are being processed and until a solution is found to their situation.

2c. Who are illegal immigrants?

No person is illegal. It cannot be illegal to be a human being. A person may have an undocumented or illegal status in relation to a country.

In Australia, the largest group of people with illegal status are those who come to Australia legally and then overstay their visas. People in this

situation are referred to by the Australian Government as 'overstayers'. The two largest national groups in this category are British and American.

Asylum seekers are not 'illegal' since they have the right to apply for asylum in another country. It is clearly stated in Article 14 of the Universal Declaration of Human Rights (UDHR) that '(e)veryone has the right to seek and enjoy in other countries asylum from persecution'. Asylum seekers in Australia have a legal right under international and domestic law to stay in Australia while their application for refugee protection is being determined.

2d. How do asylum seekers come to be without appropriate documentation?

Circumstances that forcibly displace people from their homes are chaotic, disorderly and violent by nature. Most people in refugee-type situations flee their countries in haste and/or secrecy because of a well-founded fear of persecution. Under these circumstances:

- people may not have time to pack their documents or even return home to get them before leaving
- people may not have time to apply for passports and visas, which are often lengthy and expensive processes



- people may not be permitted by the government to apply for passports to travel externally. Many oppressive governments actively prevent access to normal migration processes
- people may not have access to the relevant government institution to apply for visas
- applying for travel documents from an oppressive government can alert the authorities from which they are fleeing of their intentions to escape, thus further endangering their lives.

2e. Why do many refugees travel illegally?

Fleeing persecution and attempting to apply for asylum ensnares the majority of refugees around the world in a 'Catch 22' situation.

Refugees flee usually under emergency conditions. Escaping state or state-sanctioned violence forces the majority of refugees to move across international borders without government permission and thus they move outside formal state-regulated travel regimes. The 'Catch 22' is that in running from persecution from their own state, they are thrown into a situation where they must travel without authorisation until they can find a state that is willing to offer them some form of protection. Most states, however, are reluctant to take responsibility for their protection and instead treat them as illegal entrants.

Consequently, many millions of people exist in state-controlled refugee camps and many millions more attempt to survive as undocumented migrants finding work in exploitative labour markets. Those who can may continue to travel until they reach a place where they can apply for asylum.

This is a problem that the UNHCR deals with constantly and for which it still has no adequate solution. Different countries deal with this problem in different ways. Australia's response is to mandatorily detain asylum seekers arriving without appropriate documentation in order to deter other would-be arrivals.

2f. How do most asylum seekers arrive in Australia?

Total number of protection visas applied for in Australia in 2001-2	10,191 ¹⁵
Asylum seekers without documents by plane in 2001-02	1,193 ¹⁶
Asylum seekers without documents by boat in 2001-02	1,212 ¹⁷

Plane arrivals:

The most common way for asylum seekers to arrive in Australia is by plane, departing from locations all around the world. Asylum seekers may arrive with valid visas and apply for asylum at a later date or they may arrive without appropriate documentation and request asylum upon arrival at the airport.

*Asylum seekers arriving by boat 1989-2002*¹⁸

Year	Total arrivals
1989-90	224
1990-91	158
1991-92	78
1992-93	194
1993-94	194
1994-95	1,071
1995-96	589
1996-97	365
1997-98	157
1998-99	921
1999-00	4,175
2000-01	4,137
2001-02	1,212
2002-	0
Total	13,475

It is difficult to know exactly how many asylum seekers arrived in Australia by plane with valid documentation and applied for asylum some time afterwards in 2001-02. Government statistics indicate that the vast majority of asylum seekers in Australia arrive with valid visas and apply for asylum once in Australia.

Asylum seekers who arrive in Australia with valid documentation and then apply for asylum are usually given a bridging visa and allowed to live in the community while their claims are being processed. People who arrive without appropriate documentation – and convince the airport authorities they are seeking asylum – are usually apprehended and transferred to city based immigration detention centres

at Villawood (Sydney), Maribyrnong (Melbourne) and Perth airport and are mandatorily detained until their applications for asylum have been decided.

Boat arrivals:

The second most common way asylum seekers arrive in Australia is by boat departing from Indonesia. The media often refer to these people as 'boat people'. Asylum seekers arriving this way do not have valid visas for entry into Australia. While they have committed no crime, they are also apprehended and mandatorily detained in immigration detention centres until their claims have been decided. Asylum seekers arriving by boat are usually detained in Australia's remote detention centres such as Baxter in Port Augusta, Port Hedland and previously Woomera and Curtin in Derby.

There has been a significant qualitative and quantitative shift in the picture of boat arrivals in the past few years. Seventy percent of the 13,475 asylum seekers to arrive by boat in Australia since 1989 have arrived since July 1999. This reflects a number of significant factors, such as conditions of war, oppression and instability in Afghanistan, Iran and Iraq in particular, as well as countries of first asylum for Afghanis and Iraqis. For example, governments in Pakistan, Iran and Jordan have been mistreating refugees and threatening them with expulsion. It was at this time that people smugglers began organising bigger boats with more passengers embarking from Indonesia to Australia.¹⁹ The Australian Government's introduction of its border control legislation and policy has significantly impacted on the capacity of boats organised to bring asylum seekers to Australian territory as no boat has landed since August 2001.²⁰



**3. UNAUTHORISED PEOPLE
IN AUSTRALIA
...ARE WE BEING 'FLOODED'?**

3a. How many people without appropriate documentation are there in Australia?

From a legal perspective, there are two main groups of people without valid visas in Australia:

1. Overstayers: those who having arrived legally in Australia, overstayed their visas and therefore are staying in Australia illegally
2. Asylum seekers: those who have lodged an asylum claim with the Australian Government and – under international and domestic law – have a legal right to stay while their claims are being decided

In 2001-02, the number of undocumented people in each category was:

Overstayers	60,103 ²¹	88%
Asylum seekers	8,122 ²²	12%

In recent years, there have been significant fluctuations in the number of asylum seekers arriving in Australia without valid documentation while the numbers of asylum seekers arriving with valid documentation and then applying for asylum has fluctuated less markedly.

Asylum seekers in the community vs detention:²³

Year	Immigration Detention	Living in the Community	Other	Total
1998/1999	1,098	7,247	45	8,390
1999/2000	4,371	7,904	438	12,713
2000/2001	4,911	8,110	108	13,129
2001/2002	1,942	5,942	238	8,122

3b. Where do most people without valid visas in Australia come from?

The largest group of people unauthorised to be in Australia are overstayers. The ten countries with the most overstayers at 30 June 2002 were:²⁴

Country of Citizenship	Male	Female	Total
UK	3,800	2,600	6,400
USA	3,200	2,200	5,400
Philippines	2,300	1,300	3,600
Indonesia	2,100	1,200	3,300
Rep Korea	1,600	1,200	2,800
Japan	1,400	1,300	2,700
Malaysia	1,200	800	2,000
Thailand	800	900	1,700
Germany	1,000	700	1,700

While 19% of people who overstay their visas are in Australia for less than one year, 27% have continued to stay for ten years or more.²⁵

Most asylum seekers arriving in Australia in 2001 were from Afghanistan, Iraq, China, Indonesia and Fiji.²⁶

3c. Are we being 'flooded' by refugees?

No. Consider the following facts:

How many refugees does Australia receive?

The UNHCR estimated that there were approximately 19.8 million 'persons of concern'²⁷ who fell under the UNHCR mandate worldwide in 2002.²⁸ In the global context, Australia received 1% of the world's asylum applications in 2001-02.²⁹

Is the rate of asylum seekers arriving in Australia increasing?

No. According to the UNHCR's January-December 2002 statistical report, the number of asylum seeker applications Australia received was 6,013, a decrease of 51% from last year.

The numbers of asylum seekers arriving by boat constitutes only a small portion of the total Refugee and Special Humanitarian program as most arrive on planes. However, the numbers of asylum seekers arriving by boat rose temporarily to peak roughly at one third the total Refugee and Special Humanitarian program in 2001. Even at this peak, the total number of asylum seekers – arriving by boat and plane – was 5,580.

How many people are accepted for resettlement in Australia each year?

Australia received approximately 12,000 refugees and persons of concern per year for the last five years. The table below gives the figures for the Australian Government's refugee intake by visa category between mid 1997 and mid 2002:³⁰

Category	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03 planning level
Refugee	4,010	3,990	3,800	4,000	4,160	
Special Humanitarian	4,636	4,350	3,050	3,120	4,258	
Special Assistance	1,821	1,190	650	880	40	
Onshore Humanitarian	0	0	0	160		
Onshore Refugees	1,588	1,830	2,460	5,580	3,885	
Safe Haven/Other	0	3,930	1,930	20	6	
Total Visa Grants	12,055	15,290	11,940	13,750	12,349	12,000

The allocation of 12,000 places to Australia's Refugee and Special Humanitarian program has remained constant over the past five years despite:

- having been set at much higher rates in the past³¹
- increases in human displacement globally
- increases in the Australian Government's planned migration intake.

How many asylum seekers does Australia have compared with other countries?

In 2001-02, Australia ranked 17 (slipping down from 14 in the previous year) in the list of asylum seeker receiving countries world-wide.³²

Australia receives relatively few asylum seekers compared with many other industrialised countries as the following selected figures indicate:³³

United Kingdom	88,300
United States	86,180
Canada	44,040
Australia	12,370
Ireland	10,330

There is no evidence to suggest that Australia is being or will be 'flooded'. At the end of the day, refugees will continue to flee their countries and make their way to countries of asylum when they are in fear of their lives.

3d. Where are most of the world's displaced people located?

As the table below shows, the burden of assisting the vast majority of the world's displaced people lies with the world's poorest countries.³⁴

Host Country	Refugee population : total population	No. of refugees
Gaza Strip	1:2	852,600
Jordan	1:3	1,643,900
Lebanon	1:11	389,500
Iran	1:26	2,558,000
Yugoslavia	1:27	400,000
Zambia	1:36	270,000
Pakistan	1:72	2,018,000
Tanzania	1:73	498,000
Thailand	1:225	227,000
Canada	1:443	70,000
United States	1:578	492,000
Germany	1:709	116,000
United Kingdom	1:972	61,700
Australia	1:900	21,800

The introduction of new democratic governments in war-torn countries is an important step to building peace. However, it is never an instant solution and many life threatening situations remain on-going. Political conflict and tensions in localised areas take years to lose their immediate threat. In very many cases, the reasons why individual refugees fled their countries have not in fact been resolved. These issues are extremely serious for the safety of refugees but are rarely reported in our media.

For example, the Taliban regime was not the only root cause of violence in Afghanistan before its overthrow. There is a long history in Afghanistan of colonisation, imperialism and political insurgency by many ethnic nationalities, the effects of which continue to play out today. Consequently, the new Afghan government only has partial control of the country. Zabihulla Mazoori, a Hazara Afghan, explained his fear of being forcibly returned to Afghanistan after the fall of the Taliban recently said:³⁷

If I am deported, I believe I will be persecuted. I don't believe that because the Taliban are not in power I won't have the same problem. The Hazara are a minority group in Afghanistan. We are always in danger.

There is no quick-fix solution to the dangerous problems that cause refugees to flee or the situations that are the consequences of a conflict's aftermath. Returning home for refugees is an extremely complex issue that must be considered seriously and patiently and must be undertaken on a genuinely voluntary basis.

4. WHAT IS AUSTRALIA'S REFUGEE AND SPECIAL HUMANITARIAN PROGRAM?



4a. What is Australia's Refugee and Special Humanitarian Program?

Refugees apply to Australia for asylum in one of two ways. They apply from:

- a) inside Australia through the onshore protection program
- b) outside Australia through the offshore protection program

The onshore and offshore protection programs combined make up Australia's Refugee and Special Humanitarian Program. However, the program is further separated into four main components, each important for the type of visa (and rights attached to the visa) issued to the successful applicants:

- a) Onshore Program
- b) Refugee Program
- c) Special Humanitarian Program (SHP)
- d) Secondary Movement Category

Australia accepts approximately 12,000 refugees and humanitarian category entrants annually through its Refugee and Special Humanitarian Program which is administered as a subsection of its broader migration program. Approximately 4,000 places are allocated to each of the onshore, refugee and SHP programs, although the actual figures in each category vary because the onshore and offshore programs are linked.

4b. What is the onshore protection program?

The onshore protection program is for refugees who apply to the Australian Government for asylum from *inside* Australia. Australia is obliged to treat refugees in accordance with the standards contained in the Refugees Convention and other international human rights treaties to which it is a signatory.

There is no humanitarian component to the onshore program. However, the Minister for Immigration does have the discretionary power to grant individual applicants protection visas on humanitarian grounds if he or she deems it to be in the public interest.

Asylum seekers arriving in Australia with valid visas, who then apply for refugee status, are permitted to live in the community on a bridging visa while waiting for their application to be processed. Asylum seekers who arrive in Australia without appropriate documentation are detained in immigration detention centres until their application has been decided.

4c. What is the offshore protection program?

The offshore protection program is for refugees who apply to the Australian Government for asylum from *outside* Australia. The offshore program is divided into three main components:

- **The Refugee Program:** This category is for asylum seekers who meet the Refugees Convention's definition of a refugee and have been identified in conjunction with the UNHCR as in need of resettlement.
- **The Special Humanitarian Program (SHP):** People applying under this category do not necessarily have to meet the Refugees Convention's definition of a refugee. They must, however, have a link within Australia prepared to sponsor them to Australia and have been 'subject to substantial discrimination amounting to gross violation of human rights in their home country'.³⁸
- **The Second Movement Category:** This category is for people who move from their first country of asylum to a second country and apply for protection from this second country. This category includes asylum seekers who arrive in Australian territory that has been excised from the operation of the *Migration Act* 1958.

The Australian Government's offshore program is not obligatory under international law; they operate this program by choice. The offshore program *is not* and *cannot* be a substitute for the onshore program because its legal foundations are different (see next section).

Australia is one of 14 countries to have a humanitarian offshore program. In 2001, 92,000 people worldwide were resettled through offshore resettlement programs (7% less than for 2000).³⁹ Approximately 94% of offshore resettlements worldwide in 2001 were to the US, Canada and Australia.⁴⁰

4d. Why are the onshore and offshore programs linked?

Country	Resettlement Intake
United States	68,000
Canada	12,000
Australia	6,500

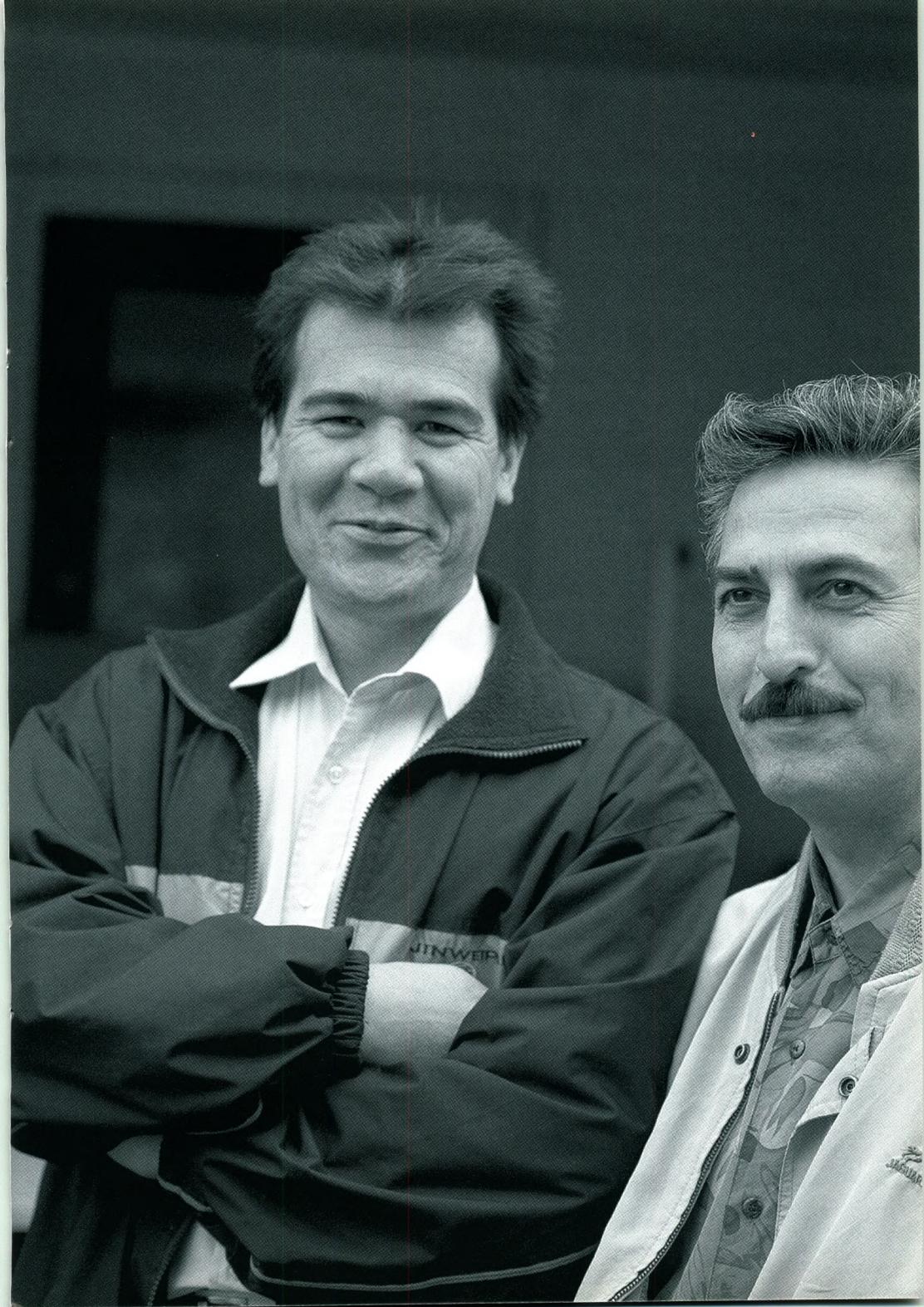
The linking of the onshore and offshore programs has the result that an increased demand for places in the onshore program reduces the

number of places made available in the offshore program. The Minister for Immigration argues that the Government links the onshore and offshore programs as a mechanism to plan and budget for the total number of refugees who resettle in Australia annually. The choice by the Australian Government to do this is arbitrary because even though they administer both programs under the Refugee and Special Humanitarian Program, these programs actually have different legal foundations.

The onshore program was created in accordance with Australia's obligations under the Refugees Convention and then legislated into Australian national law. The numbers of asylum seekers applying from inside Australia is completely irrelevant to Australia's legal obligation to provide them protection.

The offshore program was designed and implemented over time by the Australian Government on its own initiative. This program is administered in adherence only to Australian Government policy and is a program the Australian Government chooses to have. As such, the Australian Government can control the number of asylum seekers it chooses to accept under this program.

These programs do not need to be linked. The blurring of these two categories has led to common misunderstandings about Australia's responsibilities to asylum seekers both in Australia and overseas. It is on these misunderstandings that the idea of a 'queue' for refugees to come to Australia is built.



4e. How does Australia's refugee intake fit in the wider context of Australia's migration program?

Australia's Refugee and Special Humanitarian Program is administered as part of Australia's immigration program. It has been argued that because of their different legal bases, the onshore refugee program should be separated from the immigration program and administered under the Department of the Attorney-General rather than the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA).⁴¹ Nevertheless, Australia's onshore program is currently considered in relation to migration.

DIMIA's intake under the migration program for 2001-02 was 93,080 and is planned to be between 100,000-110,000 for 2002-03 and 2003-04.⁴²

Australia's migration program has continued to grow over the past decade. The Refugee and Special Humanitarian Program, however, which accounts for a small percentage of the total, has remained constant.

It is important to note that many refugees who arrive in Australia as asylum seekers have skills that are considered valuable under Australia's skilled migration scheme. They include doctors, scientists, university lecturers, engineers and others. However, it is very difficult for them to have their qualifications recognised in Australia.



**5. WHAT ARE THE
MAJOR CONCERNS ABOUT
AUSTRALIA'S ONSHORE PROGRAM?**

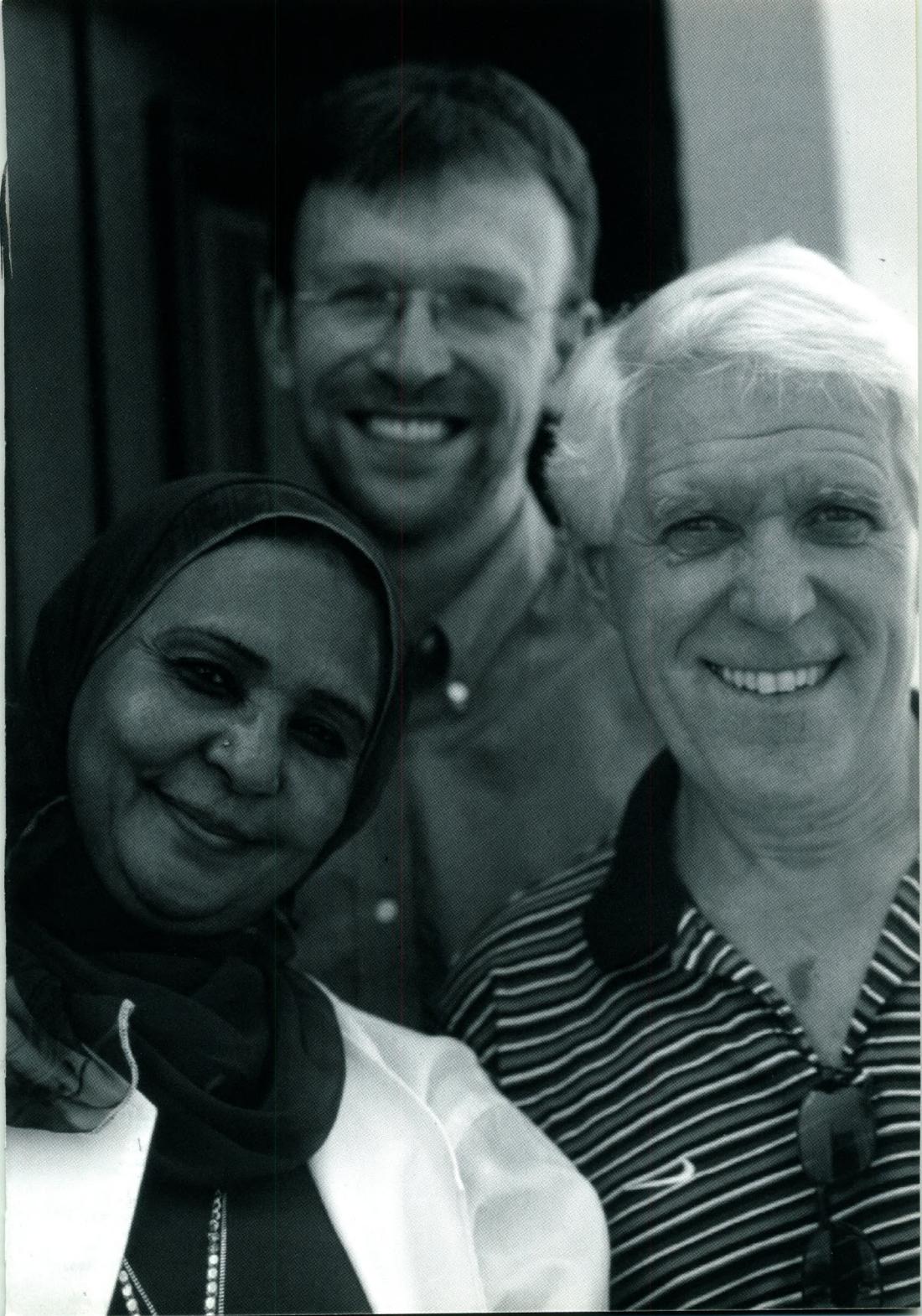
The Australian Government has legitimate concerns about the integrity of the onshore program. So do refugees and their advocates. The challenge for the Government and Australians more broadly is to maintain the integrity of the refugee determination process: not only from misuse by inappropriate applicants, but also from politicisation by the Australian Government and political parties. Each of these forms of system abuse – from above and outside – places refugees at even greater risk of being denied due protection.

As a consequence of globalisation processes, recent changes are further complicating the ways Australia's onshore program is operating:

- Australia is now reachable via plane and boat by more asylum seekers than any time previously in its history
- people smuggling as a transnational phenomenon is becoming increasingly large and complex. People smugglers are organising in response to, and take advantage of, asylum seekers' desperate need to find protection
- people in situations of poverty and desperation who are not Convention refugees are also engaging the services of people smugglers. Nevertheless, Australia may have protection obligations to some of these people under other human rights treaties
- amongst those seeking asylum are some people who are not refugees and who are taking advantage of Australia's obligations under the Refugees Convention.

Fraudulent use of Australia's refugee determination process does occur and appropriate measures should be taken to prevent this. However, it remains the responsibility of the Australian Government to ensure that 'efforts to detect fraud should be proportionate to its instance and must not impinge on the rights of the asylum seekers'.⁴³

In recent times, refugee and asylum seeker issues have become highly politicised – as was particularly apparent at the time of the November



2001 federal election campaign.⁴⁴ Party politics has come to place pressure on the refugee determination system to encourage politically expedient outcomes, often at the expense of integrity of the asylum determination process. The Refugee Council of Australia argues that:⁴⁵

(i) It is time for the Australian Government to take these critical issues out of the political arena and to work cooperatively with UNHCR, other governments and the community sector to seek ways in which those in need of protection can receive it without jeopardising Australia's sovereignty or dividing the community.

**6. APPLYING THROUGH
AUSTRALIA'S OFFSHORE
PROGRAM: IS THERE A QUEUE?**





6a. Applying through the offshore program

The notion of a queue implies that everyone who applies to resettle in Australia will get their turn, if they wait long enough. This is not the case.

First, many refugees are excluded from applying for resettlement because of the way the offshore application process is structured. Second, for those who can apply there are far fewer places available for resettlement than there are applicants. Third, some people accepted through the offshore SHP are not able to raise the money to buy air tickets to come here and are forced to forego their places.

Offshore program structure

In countries where there are large numbers of refugees and the host country has not signed the Refugees Convention, the responsibility usually falls on the UNHCR to determine refugee status. In situations of mass displacement, the UNHCR does not have the resources to conduct individual interviews to determine individuals' refugee status. When applicants apply to the Australian embassy for resettlement under the SHP, however, the Australian officials will not consider their cases unless they are registered with the UNHCR. As the Australian SHP falls outside the UNHCR mandate, UNHCR say they cannot help. This was frequently the situation Afghan refugees found themselves in when applying to Australia from Pakistan.⁴⁶



Insufficient places

There are approximately 37,000 applications for asylum currently with the Australian Government through the offshore program.⁴⁷ Only 8,464 places were granted in 2001-02.⁴⁸ That means offshore applicants have a 1:4 –1:5 chance of successfully being granted asylum in Australia. The Australian Government argues that this is why these places must be reserved for refugees in most need. However, as discussed in section 6b, the neediest are not necessarily selected for resettlement in Australia.

Unused places in the offshore program

Special humanitarian visas issued by Australian embassies have an expiry date before which time they must be used. People coming through the humanitarian program must source the finances to pay for their medical checks and airfares before their Australian visas validity expires. The amount of money required to cover these costs varies depending on where they are coming from. A family of five may be required to pay around AUD \$5,000 if coming from Southeast Asia or around AUD \$10,000 if coming from Africa. Sometimes, the sponsors in Australia will provide the money to cover these expenses; otherwise, successful humanitarian category applicants must find it themselves. If they are unable to find the money they must forgo their chance to resettle in Australia.

In reality, when applying for asylum to Australia – or any country for that matter – the odds of becoming a successful applicant are very low. At the same time, the need for asylum still remains for these individuals not accepted.

6b. Who is selected for resettlement through the offshore program?

The Australian Government uses specific criteria to select successful applicants coming through the offshore program. These criteria include assessments of what applicants can contribute to Australian society, e.g. English language and professional skills, financial resources and established links within the Australian community. It is not necessarily the neediest or the first in turn who are selected for resettlement, but those who are judged by immigration officials to fit the Australian Government's immigration policy. In other words, asylum seekers are not necessarily accepted into Australia based on the urgency of their need.

Additionally, asylum seekers with dis/abilities or who test positive for HIV/AIDS are not selected for resettlement. This amounts to discrimination that contravenes international treaties to which Australia is party.

6c. How difficult is it to apply for asylum to Australia from offshore?

Many factors prevent refugees from reaching Australian officials in overseas missions and prevent Australian officials from reaching refugees.

Access to Australian embassies in home country

Countries experiencing conflict that causes refugees to flee often have governments controlled by military or oppressive regimes. The Australian Government frequently does not have embassies in these countries. Even if it did, asylum seekers would risk arrest by physically going to the embassy, which is usually guarded by the authorities from which the asylum seeker is running.

Access to Australian embassies in host countries

- Australian embassies are usually located in major cities far from border regions, forcing refugees to travel long distances without legal documentation to reach them, placing them at risk of arrest



- most refugees have very little or no money and no legal documentation, both of which are needed to travel safely without being arrested
- countries hosting large numbers of refugees and undocumented migrants (often situations that are heavily blurred) usually have police and army checkpoints that stop and inspect all vehicles travelling along major roads, checking for identification
- refugees usually do not know the language of the host country nor have information about addresses of embassies or directions for how to get there – or even know of their existence.

The UNHCR refugee determination process

As noted above, the Australian Government requires refugees applying for asylum to be individually recognised by the UNHCR as 'a person of concern'. Obstacles to gaining UNHCR recognition may frequently occur including:

- corruption by local officials preventing access to UNHCR refugee determination processes (possibly starting with exorbitant bribes for entry into the UNHCR office demanded by local officials guarding the entrances)
- understaffing at UNHCR offices to the extent that they are unable to cope with the number of applications as well as other essential protection related duties
- pressure by the host government on the UNHCR to reject refugee claims. This may be accomplished by employing a percentage of host country nationals to conduct the UNHCR interviews and make case decisions.

7. IS IT
POSSIBLE TO
STOP THE
IRREGULAR
MOVEMENT OF
ASYLUM
SEEKERS?



Issues of 'facilitated' people movement are complex. They involve overlaps between human rights abuses, refugee flight, people smuggling, trafficking, transnational crime and national security. Refugees engage the services of people to facilitate their movement to places where they can seek asylum because they urgently need to escape their countries and find protection. They are in a vulnerable position in relation to people smugglers. They are frequently not told where they are going or how they are getting there. Their direction is determined by how much money they can raise to pay the smugglers – Australia is reported to be one of the cheaper destinations. For many reasons, engaging the services of people smugglers entails grave risks for refugees. However, their need for safety is even greater.

The Australian Government's policy responses to facilitated movement of asylum seekers derive from a criminal law enforcement and national security framework. These responses include the disruption of smuggling operations overseas, the interception of unauthorised asylum seekers in transit to Australia – at airports and at sea – criminal sanctions for individuals implicated in the smuggling process and deterrence of would-be asylum seekers through harsh conditions for asylum seekers in Australia. The human rights costs and implications of these responses and the financial costs highlight how disproportionate the Australian Government's responses are in relation to the size and scope of the actual problem. Moreover, it has raised questions concerning the efficacy of these policies considering they provide no guarantee of a permanent resolution – neither for Australia or asylum seekers.

Those well informed about the links between the complex character of people smuggling and forced migration argue that more effective and humane policies are required. Savitri Taylor reminds us that:⁴⁹

There is general agreement that the only policy response to people smuggling that is likely to be truly effective in the long run is dealing with the root causes of irregular migrant and asylum seeker flows. In other words, it is necessary to take resolute steps towards the elimination of poverty, armed conflict and human rights abuse in the countries that produce these flows.

**8. WHAT DOES THE AUSTRALIAN
GOVERNMENT CONTRIBUTE TO
ASSIST OVERSEAS POVERTY
REDUCTION AND REFUGEES?**



The Australian Government concurs with international opinion about what constitutes the root causes of displacement and refugee flight. It also acknowledges that actions must be taken to adequately address these root causes. To this end, in 2000 the Australian Government adopted the Millennium Development Goals that were developed after a decade of international development summits.⁵⁰ These goals are to be achieved in part through the adequate allocation of financial aid to relevant international agencies. In particular, these agencies include UN agencies established specifically to address development and human security issues.

Organisation for Economic Co-operation and Development (OECD) countries, including Australia, re-committed themselves to the goal of reducing global poverty and instability by promising to allocate 0.7% of their gross national income (GNI) to overseas development assistance (ODA).⁵¹ In reality, however, the Australian Government's contribution to ODA falls well below this agreed figure. Australia's aid budget figure for 2002-03 is 0.25% of its GNI and has been gradually and consistently in decline since its high point in the 1970s when international aid was only 0.5% of GNI.⁵² Australia currently ranks 14th out of the 22 OECD countries in terms of its percentage of GNI allocated to foreign aid.⁵³

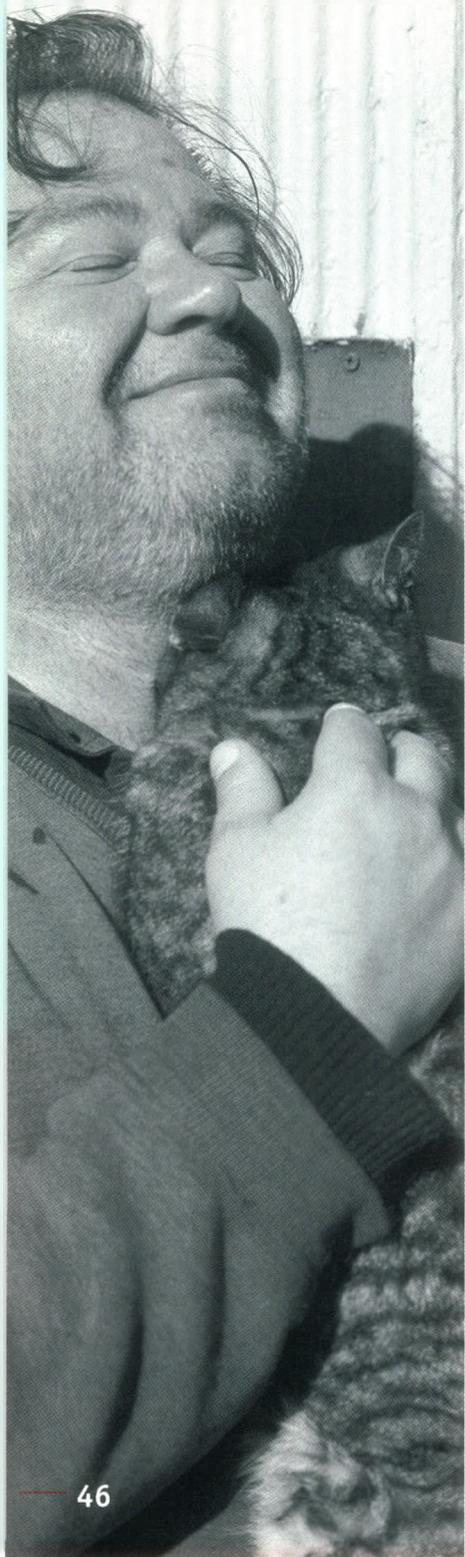
In particular, the Australian Government's support for the UNHCR – the UN agency mandated to specifically deal with refugee issues globally – is weak. The UNHCR has been critical in the last two years of the Australian Government's handling of asylum seekers. The Australian Government is thus conspicuous for halving its contribution to the UNHCR in the 2002-03 financial year from \$14.3 million to \$7 million.⁵⁴

It is extremely difficult for UN agencies, including the UNHCR and other agencies that address root causes of poverty and discrimination, to perform their duties when donor countries fail to contribute the financial resources promised.



**9. THE MV TAMPA CRISIS,
THE PACIFIC SOLUTION POLICY
AND NEW LEGISLATION**

WHY ARE THEY IMPORTANT?



9a. The Tampa crisis

In the days between 16-22 August 2001, two boats arrived at Christmas Island and one on Ashmore Reef carrying a total of 929 asylum seekers.⁵⁵ On 26 August 2001, 433 asylum seekers were rescued from a broken down vessel floating in the high seas by the Norwegian freighter the MV *Tampa* at the request of the Australian authorities. The MV *Tampa* was then refused entry into Australian territory by the Prime Minister, John Howard, to prevent the asylum seekers from disembarking at Christmas Island and applying for asylum. The freighter's crew and their sick and anxious passengers were forced to wait suspended in the Indian Ocean in a 'stand-off' until a solution was found.

After several days of negotiation, the Australian Government announced the 'Pacific Solution' policy, ordering the asylum seekers be transferred to the Australian Navy's HMS *Manoora* and transported to agreed Pacific islands for processing. New Zealand took 131 asylum seekers from the MV *Tampa*. The remainder were transported to immigration detention facilities hastily constructed on the island-state of Nauru and Papua New Guinea's Manus Island.

In the broader context of an upcoming federal election campaign and following the September 11 terrorist attacks in the United States, the *Tampa* crisis and its aftermath became intensely potent political issues. The long-term significance of the *Tampa* crisis is found in the broad-reaching changes in refugee policy that immediately followed.

9b. 'The Pacific Solution' policy

At the time of the *Tampa* crisis, the Australian Government approached several neighbouring countries in the Pacific region to receive the asylum seekers in what was called the 'Pacific Solution'. About 1,550 asylum seekers, mainly from Afghanistan and Iraq, were detained on Manus Island, Papua New Guinea (446) and Nauru (1,118). The costs of establishing and maintaining the camps was met by the Australian Government but the facilities were managed by the International Organization for Migration (IOM). On Manus Island, the processing of claims was conducted by Australian officials and on Nauru, it was conducted by Australian officials and the UNHCR.

Many concerns have been raised about the ethical and economic character of the 'Pacific Solution'. Reports on this policy and its aftermath have been released by Oxfam/CAA – *Adrift in the Pacific* (February 2002) and *Still Adrift* (August 2002).⁵⁶

9c. Border Protection policy

Since the time of the *Tampa* crisis, no unauthorised vessel has landed on Australian territory. However, this result has come at high cost to human life and dignity. Two significant incidents closely followed the *Tampa* crisis to which the new border protection policy was applied. First, the HMAS *Adelaide* was forced to rescue 219 asylum seekers from the *Olong* (Suspected Illegal Entry Vessel – SIEV 4) when it sank after Navy attempts to deter its entry into Australian waters on 7 October 2001. This became known as the 'Children Overboard Affair'. Second, a vessel referred to as the SIEV X sank on 18 October 2001 drowning 146 children, 142 women and 65 men. Public and political pressure on the Government to explain

its involvement in these incidents finally led to the Senate Select Committee's 'Inquiry into a Certain Maritime Incident', also known as the 'Children Overboard' inquiry.⁵⁷

9d. Legislative changes

Seven Acts were rushed through the Australian Parliament on 27 October 2001 in response to the *Tampa* crisis. They have been divided into two packages. The first package includes the *Border Protection (Validation and Enforcement Powers) Act 2001*, the *Migration Amendment (Excision from Migration Zone) Act 2001* and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001*.

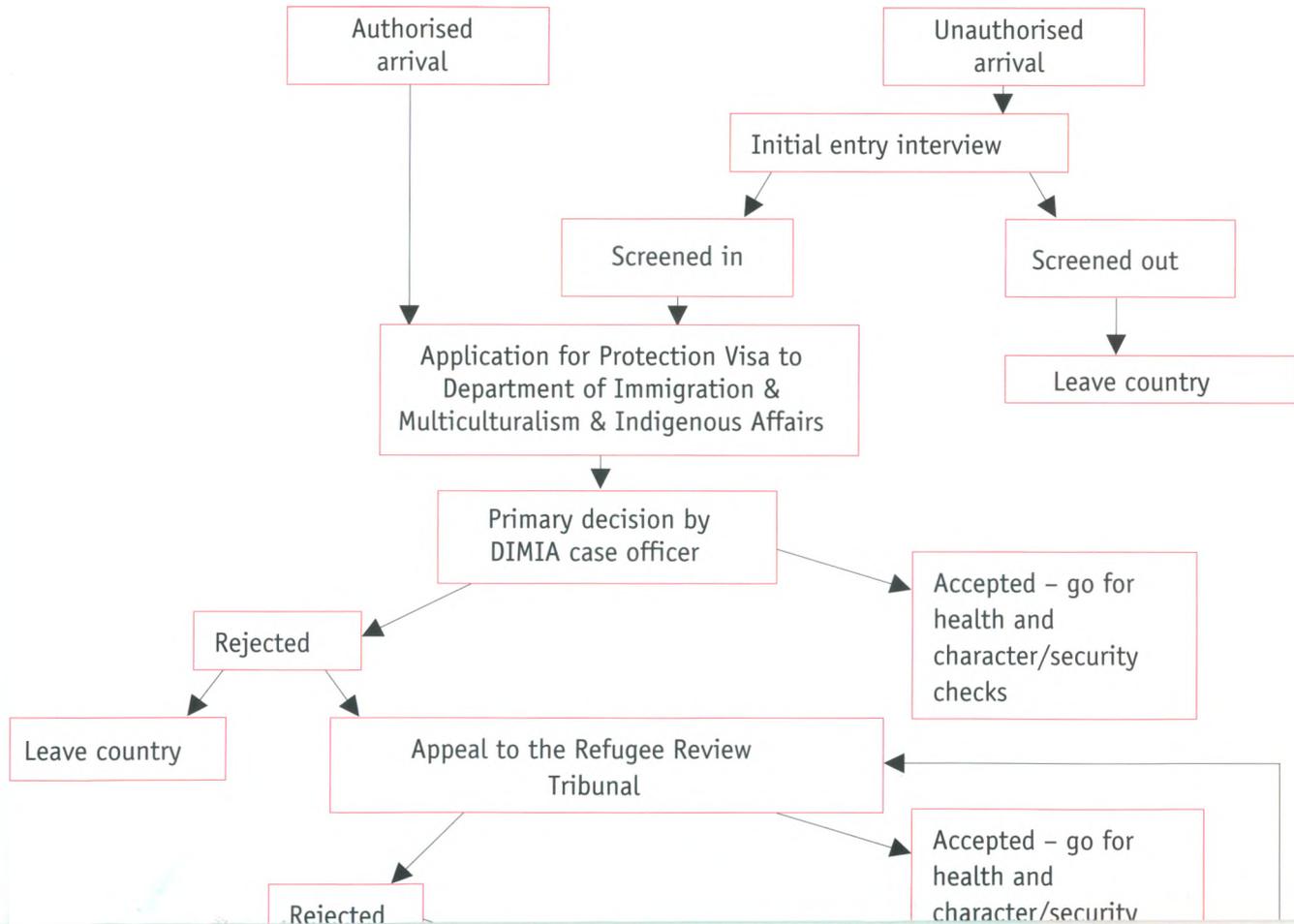
The purpose of the first package is to diminish asylum seekers' access to Australia's asylum processes through limiting the operation of the *Migration Act 1958* in certain Australian territories where asylum seekers most commonly arrive by boat. It does so by providing the Government with the authority to remove 'non-citizens' (asylum seekers) who arrive on 'offshore excised places' (Christmas Island, Ashmore Reef and Cocos Islands) to 'declared countries' (Nauru and Papua New Guinea) to have their asylum claims processed. Asylum seekers who cannot be taken to 'declared countries' for some reason can have their claims considered by DIMIA on an 'offshore excised place' under the same conditions used in 'declared countries'.

The second package includes the *Migration Legislation Amendment (Judicial Review) Act 1998* (passed in 2001), the *Migration Legislation Amendment Act (No 1) 2001*, the *Migration Legislation Amendment Act (No. 5) 2001* and the *Migration Legislation Amendment Act (No 6) 2001*. These Acts 'seek to narrow the definition of a refugee and restrict independent judicial scrutiny and review of administrative decisions'.⁵⁸

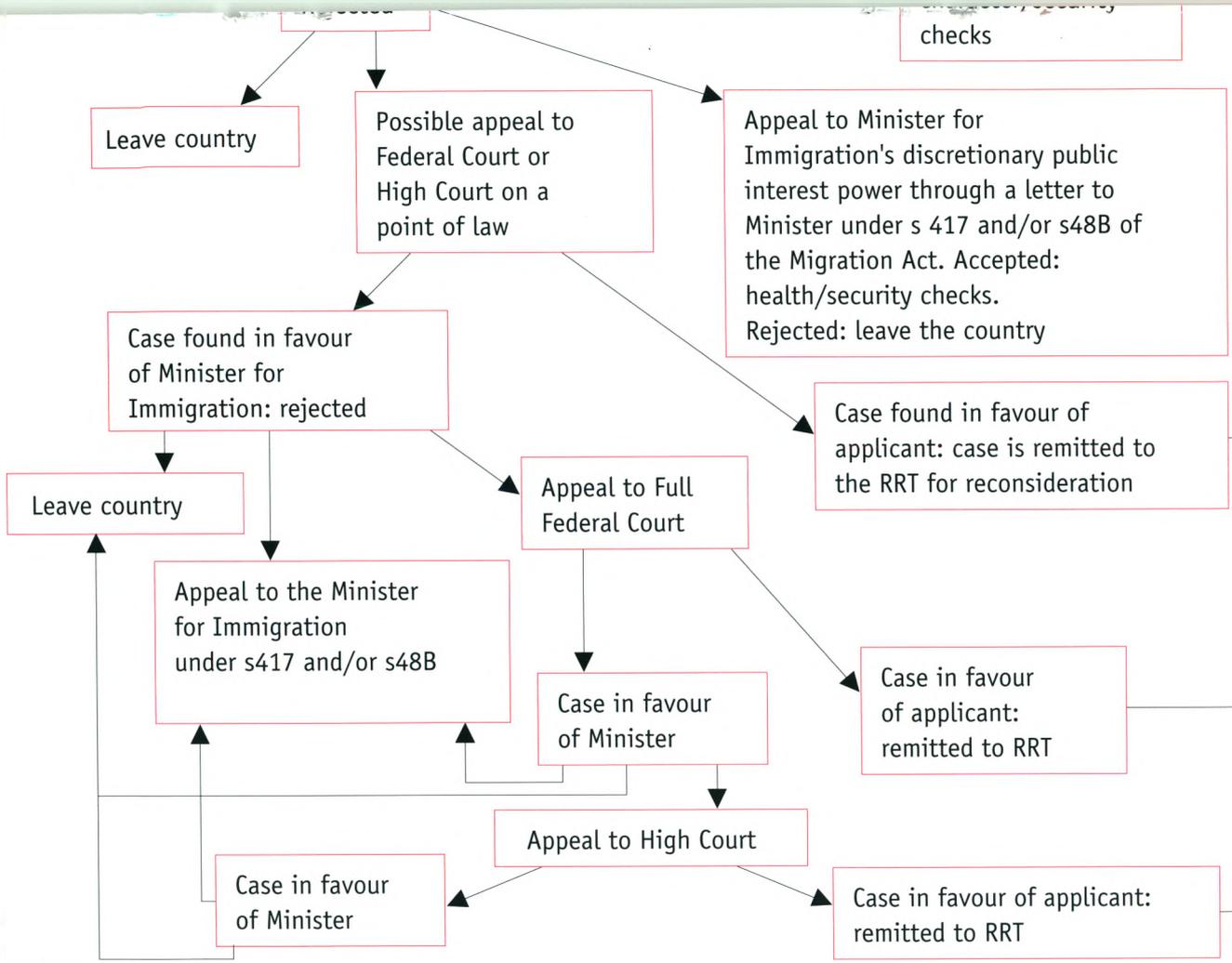
**10. WHAT IS THE
AUSTRIAN REFUGEE
DETERMINATION PROCESS?**



The Australian Onshore Refugee Determination Process⁶¹



health, security checks



10a. What is Australia's onshore refugee determination process? How do we know if asylum seekers are genuine or not?

Australian Government officials are charged with the responsibility of determining asylum seekers who are eligible for refugee protection from those who are not eligible. A clear refugee determination process is in place in Australia through which these decisions are made.⁵⁹ Below is a very brief summary of this process.

All onshore asylum seekers – whether in detention or in the community – go through the same asylum claims system managed by the Australian Government.

Step 1: The compliance interview

Asylum seekers who arrive unauthorised are given a compliance interview to determine if they will be 'screened' into the asylum process. This first interview is conducted by Australian Government officials usually at the point of arrival, possibly at the airport or upon arrival at a detention centre. For several reasons there are serious concerns that genuine refugees may be screened out at this stage. First, the onus is on the asylum seeker to convince the Australian authorities that he or she is making a valid claim for protection to the Australian Government. Second, the person being interviewed is usually not told the purpose of the interview and officials do not directly ask if a person is a refugee or seeking asylum. Third, for reasons relating to torture and trauma inflicted in their home countries, asylum seekers may be too afraid to tell government authorities their experiences as they fear the information will be relayed back to the governments they are fleeing.

Asylum seekers at airports who do not give a clear indication they are seeking asylum may be returned from whence they came on the next plane or within 72 hours of arrival. Asylum seekers who arrive in Australia's migration zones by boat and have not explicitly informed the officials they wish to seek asylum are removed to 'separation' detention without access to legal advice and isolated from other detained asylum seekers who may be able to explain to them the nature of their situation.

They do not have the opportunity to contact relatives or friends until their removal from Australia can be arranged.

Step 2: The formal application for refugee status

To formally apply for asylum, asylum seekers must lodge claim forms with DIMIA. Asylum seekers in the community must access relevant forms, either themselves or with the assistance of a migration agent, from DIMIA. It is the obligation of the immigration detention authorities to provide detained asylum seekers with application forms for applying for refugee protection or afford that person all reasonable facilities for obtaining legal advice for taking legal proceedings. However, they are not obliged to do so unless detainees ask for them. Confusion arises when detained asylum seekers are not aware and are not informed of these procedures.

Asylum seekers in detention are assisted with submitting a formal application for refugee status by government funded migration agents and interpreters. Community based asylum seekers have limited access to federally funded legal assistance. Their access to qualified legal advocacy depends on the financial resources they have to hand, connections and luck. All applications must be submitted in English or accompanied by accredited English translations.

Step 3: The primary decision

A decision on this first application is referred to as the primary decision. A primary decision is usually made by a case officer who is a delegate of the Minister for Immigration, i.e. a staff member at DIMIA who is qualified and entitled to make determinations.

An application may be accepted for refugee status on the grounds that:⁶⁰

- the applicant is recognised as meeting the Refugees Convention definition of a refugee
- the applicant is of 'good character'
- the applicant does not pose a direct or indirect threat to Australian national security
- the applicant would not prejudice the relationship between Australia and another foreign country and

- the Minister for Immigration is satisfied that granting the visa is in the public interest.

If an applicant is accepted, he or she is recognised as a Convention refugee and granted a protection visa – the type of which depends on the applicant's date and mode of arrival (see section 7f). If an application is rejected at the primary stage, an appeal can be lodged to have the case reviewed by the Refugee Review Tribunal (RRT).

Step 4: The Refugee Review Tribunal

Depending on the reasons for a decision to refuse refugee status, an appeal to the RRT, or possibly in some cases the Administrative Appeals Tribunal (AAT), can be lodged to challenge the legal or factual basis of the case officer's decision.⁶² An appeal to the RRT must be lodged within 28 days of rejection at the primary stage. Applicants in detention may have assistance from a government funded migration agent – often a different agent from the first – to assist them with their second submission.

A single RRT member will make a new decision on the merits of the case. If a favourable decision to the applicant cannot be made on the written submission alone, an interview may be called for.

If the application is successful the person will be recognised as a Convention refugee and granted a protection visa – the type of which depends on their date and mode of arrival in Australia. If not, the applicant must pay the RRT \$1,000 and leave the country. Alternatively, an application for judicial review can be lodged with the Federal Court, Federal Magistrates Court or High Court.

Step 5: The Federal Magistrates Court, the Federal Court and the High Court

After a negative decision from the RRT, an asylum seeker can appeal to the Federal Court or the Federal Magistrates Court to have his or her case reviewed.

These courts have the power to review questions of law, including a judicial review of RRT decisions. They do not have the authority to grant protection visas to asylum seekers, only to review their cases to ensure that the law has been properly applied. The Minister for Immigration is the only

decision-maker able to grant a visa for the purposes of fulfilling Australia's protection obligations under treaties other than the Refugees Convention.

If the judge or magistrate's decision is made in the applicant's favour, the case is remitted to the RRT for further review. If the case is found in favour of the Minister for Immigration, the applicant may either appeal to the High Court, write to the Minister for Immigration requesting him to use his discretionary power to grant a protection visa in the public interest, or must leave the country.

An appeal to the High Court is the last chance for appeal in the Australian court system. If the judge decides in favour of the applicant, the case is then remitted to the RRT for further consideration. If the case is found in favour of the Minister for Immigration, the asylum seeker may either apply to the Minister's discretionary power or must leave the country.

Step 6: Appeal to Minister for Immigration's discretionary public interest power

An asylum seeker may appeal to the Minister for Immigration's discretionary public interest power for a protection visa at any stage of the appeals process after a negative decision by the RRT. However, by doing so, he or she forfeits the right to further appeals through the Australian court system.

If the Minister does grant a protection visa, the applicant then proceeds to the process of relevant health and security checks. If he or she is denied a protection visa, they must leave the country.

10b. How do we know asylum seekers are not terrorists, or that terrorists will not sneak in with asylum seekers?

Security assessments are undertaken on asylum seekers before their applications are approved. According to the Director-General of the Australian Security Intelligence Organisation (ASIO) when reporting on 22 August 2002 to the Joint Standing Committee on Foreign Affairs and Trade, the following number of assessments were performed and asylum seekers found to be a risk:⁶³

Time period	Number of assessments	Number found to be a risk
2000-01	3,658	0
2001-02	2,281	0
July-August 2002	47	0
Total	5,986	0

On the contrary, asylum seekers coming to Australia are themselves fleeing the terrorism occurring in their own countries.

10c. What are the onshore and 'Pacific Solution' acceptance and rejection rates for asylum seekers?

It is difficult to ascertain the current rates of acceptances and rejections because this information is not made readily available by the Australian Government and the refugee situation, particularly in the last two years, is undergoing rapid change.

In 2001-02, 8,670 protection visas were applied for onshore in Australia, 4,457 less than in 2000-02.⁶⁴ According to the DIMIA Annual Report 2001-02, the total number of protection visas granted onshore in 2001-02 was 3,885 comprising 2,834 primary grants, 1,026 grants following RRT remittal (this includes remittal from the High Court and Federal Courts) and 25 grants following the Minister's use of his public intervention powers under section 417 of the *Migration Act* 1958.⁶⁵

In 2000-01, the immigration department finalised the cases of 14,672 asylum seekers who made on shore applications for refugee status and granted 5,577 protection visas.⁶⁶

The Refugee Review Tribunal

During 2001-02, the RRT processed 5,467 cases. The Government's decision was affirmed in 4,272 of the cases and 710 cases were found in favour of the applicant on the first appeal after the primary decision (before appeal to the court system). In this same time period:

- the RRT found in favour of 62% of all Afghan decisions appealed and 87% of all Iraqi decisions appealed

- the RRT finalised 855 detention cases of which 377 or 44% of all detention cases referred to it were found in favour of the applicant.⁶⁷

The Federal Court

Prior to legislative changes introduced in October 2001, asylum seekers could seek judicial review from the Federal Court if their case was rejected by the RRT. Through legislative changes in October 2001, the Australian Government tried to severely limit asylum seekers' access to judicial review at the Federal Court. Under certain circumstances, asylum seekers can still seek judicial review at the Federal Court because of recent decisions made in the High Court in February 2003.⁶⁸ In 2001-02, 18.2% of RRT decisions appealed to the Federal Court were set aside – that is, found in favour of the asylum seeker.⁶⁹

The 'Pacific Solution'

In total, 1,843 asylum seekers were intercepted and taken to Manus Island and Nauru under the Pacific Solution during late 2001 – early 2002. The processing of these asylum seekers' cases is now complete. A total of 750 asylum seekers were recognised as Convention refugees and offered resettlement in third countries. Many have been accepted for resettlement in New Zealand and a small number have been accepted for resettlement in Sweden and Australia.⁷⁰

Most Iraqis on Manus Island and Nauru were granted refugee status. One hundred Iraqis from the 219 asylum seekers rescued from the 'Children Overboard' crisis have subsequently been resettled in Australia⁷¹ despite Minister for Immigration Phillip Ruddock's claim that none would be accepted to Australia.⁷²

10d. What happens to asylum seekers while they wait for decisions on their applications?

Onshore

- asylum seekers who arrive with a valid visa and apply for protection are granted bridging visas and are permitted to live in the community while their applications are being processed. See Section 9

- asylum seekers who arrive without appropriate documentation are mandatorily detained in immigration detention centres. See Section 12.

Offshore

- Refugee camps and 'safe areas':

Asylum seekers waiting offshore for their claims to be processed are usually forced to live in hazardous health and safety conditions in refugee or 'safe area' camps. It is common for diseases such as TB, hepatitis and typhoid to be prevalent in these camps because of the cramped and poor conditions. People fear for their own health and welfare and that of their children while staying in these environments.

- 'Excised offshore places' and 'declared countries':

Asylum seekers held at 'excised offshore places' or in 'declared countries' are held in immigration facilities. Independent visitors to these facilities have noted the harsh physical conditions that detainees endure.⁷³ Poor conditions include over crowding in accommodation 'blocks' with plastic sheeting sides and corrugated iron roofs in a climate of high temperatures and humidity. Additionally, on Nauru, water, sanitation and electricity were lacking. Due to the way the 'Pacific Solution' policy was managed, the burden on resources for running the camps translated to resource shortages for the local Nauruan population.

- Other arrangements:

Some asylum seekers applying from offshore may live in a variety of other situations in the countries where they have submitted their application. For example, they may be supported on a minimal stipend by the UNHCR and live in the local community.

10e. What happens when asylum seekers' cases are accepted?

This section aims to give a very broad overview of visas. More general information about protection visas is explained on the Immigration Advice and Rights Centre web site at <http://www.iarc.asn.au/info/refugee/index.html#3>.

■ **Protection Visas:**

'Protection visa' is the general term referring to visas issued by the Australian Government that allow asylum seekers when, recognised as refugees, to stay legally in Australia. There are three main types of protection visas: permanent protection visas (PPVs), temporary protection visas (TPVs) and temporary safe haven visas.

■ **Permanent Protection Visas:**

PPVs allow asylum seekers who have been recognised as Convention refugees under particular circumstances (see below) to resettle in Australia with the same rights as a permanent resident. After two years, the holder can apply for citizenship.

■ **Temporary Protection Visas:**

TPVs allow asylum seekers who have been recognised as Convention refugees under certain circumstances to stay in Australia for a limited period of time. They have limited access to government funded services but no right to family reunion or to return to Australia if they leave. There is a range of TPVs varying according to the differing rights and conditions attached to them.

Between March 1994 and 19 October 1999, all refugees accepted for settlement in Australia – applying through both the onshore and offshore programs – were granted permanent residence in Australia. Once accepted, they could begin re-building their lives with some specialised government and community assistance programs available to them. As all successful Refugee and Special Humanitarian Program applicants were given visas carrying the right of permanent residence, there was no discrimination towards refugees based on their mode of arrival.

A new 'tiered' Refugee and Special Humanitarian visa regime was implemented as a result of legislative changes introduced in October 1999 and September 2001. These changes introduced a range of temporary protection visas issued according to the date and place of application. The purpose of implementing this 'tiered' visa regime, according to DIMIA, is to deter asylum seekers from coming to Australia.⁷⁴

10f. What happens if asylum seekers' cases are rejected?

If refugees – recognised or not by the Australian Government and/or the UNHCR – are returned to their country of origin, they are likely to face further persecution, imprisonment and/or death. This is particularly the case for individuals known to the state from which they are fleeing or belonging to a particular group which is being persecuted within the state. This is the precise reason why refugee protection mechanisms were created. There is an obvious and grave risk to the lives of refugees when a wrong decision is made and a refugee is not correctly recognised and is subsequently returned to a place of real possible danger.

When asylum seekers' applications are rejected and the appeals processes exhausted, their options are limited and so are those of the Australian Government. DIMIA will attempt to return rejected persons to their country of origin. They can also remove rejected asylum seekers to any safe third country that agrees to accept them.

However, this is often not possible because:

- a person's life may be endangered on return to his or her country because of obvious human rights abuses occurring there. DIMIA recognises this even if it rejects the individual's claim for refugee status
- successful removal of failed asylum seekers to their country of origin may not be possible unless Australia has a readmission agreement with that country. Many states that produce large numbers of refugees will not acknowledge nationals who have fled their regimes, especially if they do not have valid documentation.

Failed asylum seekers who consent to voluntary return to their own country or removal to another country but for whom the Australian Government cannot find a country to agree to receive them can apply to the Federal Court to be released under the *Habeas Corpus* principle (unlawful detention). Asylum seekers released under the *Habeas Corpus* decision are not granted visas of any kind and exist as 'alien non-citizens'. Despite their acute psychological and welfare needs as a consequence of long term detention, they have no access to any Federal Government funded services. Their legal and welfare situations remain unresolved.

**11. WHAT HAPPENS TO ASYLUM
SEEKERS IN THE
AUSTRALIAN COMMUNITY?**



11a. What are bridging visas?

Most people who arrive in Australia travelling on a valid visa, and apply for asylum from inside Australia, are granted a bridging visa. They are allowed to live in the community whilst their claims are being processed.

Very occasionally, the Federal Court has ordered the interlocutory release of asylum seekers from immigration detention. This is usually on the grounds of serious ill-health when it can be demonstrated that their condition cannot be treated in immigration detention. In these cases, asylum seekers are also issued bridging visas.

There are different types of bridging visas with different conditions attached to them. Under the current regime there are three main situations asylum seekers with bridging visas may find themselves in:⁷⁶

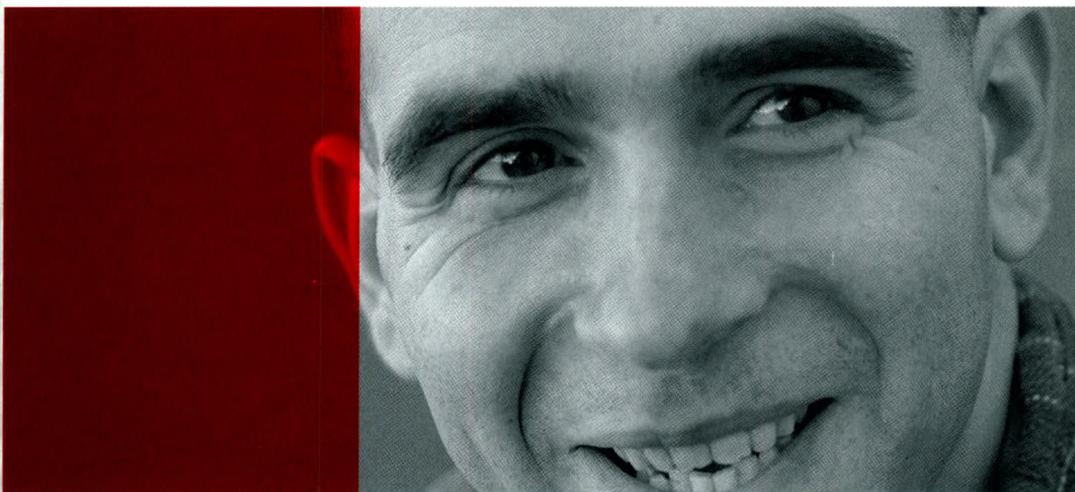
- those eligible to work, receive Medicare and access education at their own expense
- those (2,817 in 2001⁷⁷) receiving Federal Government support via the Australian Red Cross administered Asylum Seeker Assistance Scheme (ASAS). The ASAS averages 89% of the Centrelink Special Benefit
- those (about 1,000) denied all these rights, who are destitute and relying on charity for their survival.

11b. What rights do people with bridging visas have?

In 2001-02, over 8,000 asylum seekers were living in the Australian community. Asylum seekers on bridging visas:⁷⁸

- have no access to benefits from Centrelink
- after waiting 6 months for a primary decision from DIMIA, may qualify for assistance from the Red Cross administered ASAS. However, if they appeal a decision beyond the RRT, they lose access to the ASAS
- may get access to primary and secondary education following consultation and subject to State Government policy. Asylum seekers are effectively excluded from tertiary education as they are charged full international student fees up front

- cannot travel outside Australia as their application for protection would automatically be rendered void
- are eligible to apply for work rights only if they apply within 45 days of arriving in Australia. Others are not permitted work rights. Many asylum seekers are not aware of this condition as they have never been informed of it
- are not eligible for federally funded English language programs or translating and interpreter services
- are eligible for Medicare only if permitted to work. They are not eligible for health care cards or federally funded torture and trauma services
- are not eligible for government housing assistance



11c. How are these conditions impacting on people with bridging visas?

Many asylum seekers have spent all their resources in getting to Australia and paying legal fees once they get here. Asylum seekers, especially those without an income (this will eventually include those who were previously receiving ASAS or had work rights), are extremely vulnerable to homelessness, depression, ill health and disadvantage of all kinds unless they are gaining limited support through family, friends, or an agency. Asylum seekers, especially those with no access to benefits or the right to

work, suffer the effects of lowered self esteem. They await the outcome of their cases with a level of anxiety and uncertainty about their future: a future which may mean they are not able to stay in Australia and are forced to return to their countries with out any financial backing.

11d. Won't asylum seekers abscond if they stay in the community?

There is little information available about the rates of asylum seekers absconding while awaiting a decision on their claim, either in Australia or in other industrialised countries. What information is available strongly suggests that rates of absconding are very low. Recent research into rates of asylum seekers absconding in Australia found that:⁷⁹

- for the past seven years, the Hotham Mission Asylum Seeker Project in Melbourne has been providing assistance to asylum seekers living in the community, including approximately fifty people released from detention since late 2000. Not one of these asylum seekers has ever absconded
- no unauthorised asylum seeker released into the community on a bridging visa during 1996-98 absconded
- no security issues arose around the Woomera alternative detention trial. DIMIA reported that, '(t)here have been no escapes or attempted escapes and nobody has been returned to IRCP (immigration detention)'.

Research in Australia, the UK and the US suggests that high rates of compliance with asylum determination systems are related to:⁸⁰

- asylum seekers' very strong vested interest in pursuing the application process to its conclusion so they can gain full rights of protection by the state
- fair and just treatment by people working in the system. This includes the provision of good quality and timely information, so applicants understand what is happening with their case throughout the process, and treating asylum seekers with dignity and trust.

12. WHAT ABOUT REFUGEES IN THE AUSTRALIAN COMMUNITY?



12a. Refugees: permanent and temporary protection

Until October 1999, refugees recognised by the Australian Government were granted permanent protection. The exceptions to this were the Kosovans granted temporary protection on Temporary Safe Haven visas. These refugees were flown to Australia in pre-determined numbers.

Refugees who come to Australia through the offshore Refugee and Special Humanitarian categories, having applied from their countries of first asylum, are granted permanent visas, have access to government support systems and can apply for Australian citizenship after two years. People in this situation can move on from being refugees though what happened to them in the past is, of course, still part of them.

Asylum seekers recognised as Convention refugees from within Australia after October 1999, however, are now granted temporary protection visas (TPVs). TPVs are valid usually for three years.

There is now a contradictory situation in Australia where some refugees have full rights, while others do not. This is despite all of these people having been recognised by the Australian Government as refugees according to the same standards.

Refugees granted permanent protection in Australia continue to experience significant challenges in resettling in Australia. However, they have the permanent protection of the state. Their situation is fundamentally different from asylum seekers and TPV holders who remain suspended from full state protection.

Total TPVs issued⁸¹

1999-2000			871
2000-01			4,457
2001-02			3,143
June-Dec 2002			118
Total			8,589
	Iraqis	Afghans	Others
	4,113	3,597	879
	47.89%	41.88%	10.23%

Since its introduction in October 1999, over 8,500 TPVs have been issued to refugees in Australia. The majority of TPVs have been issued to Iraqis and Afghans whose countries are experiencing conflict and political instability.

12b. What rights do refugees with TPVs have?

Refugees living on TPVs:⁸²

- have no family reunion rights, even for spouses and children
- have no right to re-enter Australia, the TPV is void if they leave
- have access to the Centrelink Special Benefit for which eligibility criteria apply and a work test is imposed. They are ineligible for Newstart, Sickness Allowance, Parenting Payment, Youth Allowance and Austudy
- have access to primary and secondary education subject to State Government policy
- are effectively excluded from tertiary study as they are subject to full international student fees
- have no right to DIMIA funded settlement support services (except health screening and referral)
- have permission to work but find securing sustainable employment very difficult because of language barriers and the temporary nature of their protection which discourages employers
- have very limited access to job placement support and services
- have no access to federally funded English language classes or interpreting and translating services
- are eligible for Medicare and Health Care cards
- have no access to on-arrival accommodation assistance and limited access to state-provided public housing assistance.

12c. How are these experiences impacting on refugees with TPVs?

At first we welcomed the TPV... but the TPV has turned out to be a big problem. We live under the constant threat of deportation; the rejection is what we live with every day. We cannot plan for our futures.

Asraf Riyadh, 16 year old VCE student from Iraq.⁸³

The time limit imposed on their protection, combined with the restrictions on their rights to travel and lack of family reunion rights, severely

compromises the ability of refugees on TPVs to feel secure in their daily lives. Repeatedly, refugees with TPVs say that their major concern is about their future, and how to manage their present in consideration of such uncertain futures. They remain trapped in this state of temporariness and separation with an urgent need for permanence and reunion.

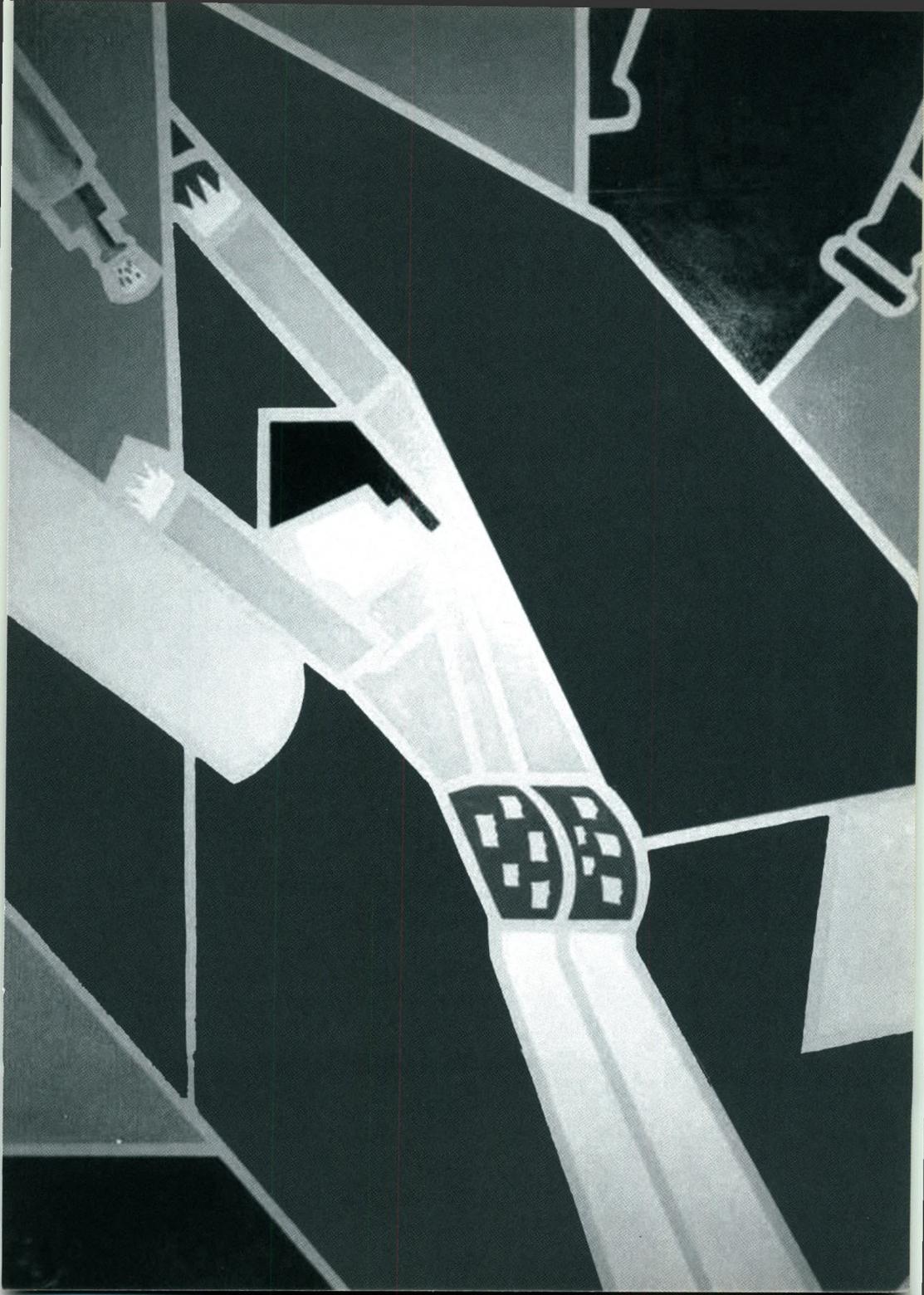
There is an accumulating body of evidence documenting the effects of TPVs on refugees. The Refugee Council of Australia writes that:⁸⁴

Many refugees with a TPV have poor psychological health. They are in a continual state of insecurity and feel discriminated against not only by the Government but also by the education system, employers and other welfare agencies. These on-going stresses interact with and exacerbate symptoms of anxiety, depression and Post-Traumatic Stress Disorder. Their experiences of persecution in their country of origin, the trauma of flight, and the impact of detention are compounded by their restricted access to most settlement services, the uncertainty of their status and their extended (and in some cases permanent) separation from their immediate family.

Moreover, in addition to these severe stresses that are the 'territory' of being a TPV holder, there are a number of 'at risk' groups that require urgent attention. These groups include unaccompanied minors; detached minors; families; women, particularly young single women; people with dis/abilities and; survivors of torture and trauma.⁸⁵ Of particular concern to many health and education professionals is the vulnerability of children on TPVs.⁸⁶

12d. What happens when a refugee's TPV runs out?

This question is important because TPVs began to be issued in October 1999 and since November 2002 have begun to expire. The review process to determine TPV holders' subsequent legal status in Australia was stalled at the administrative level but began in various cities in May 2003. Outcomes of this review process are yet to be decided.

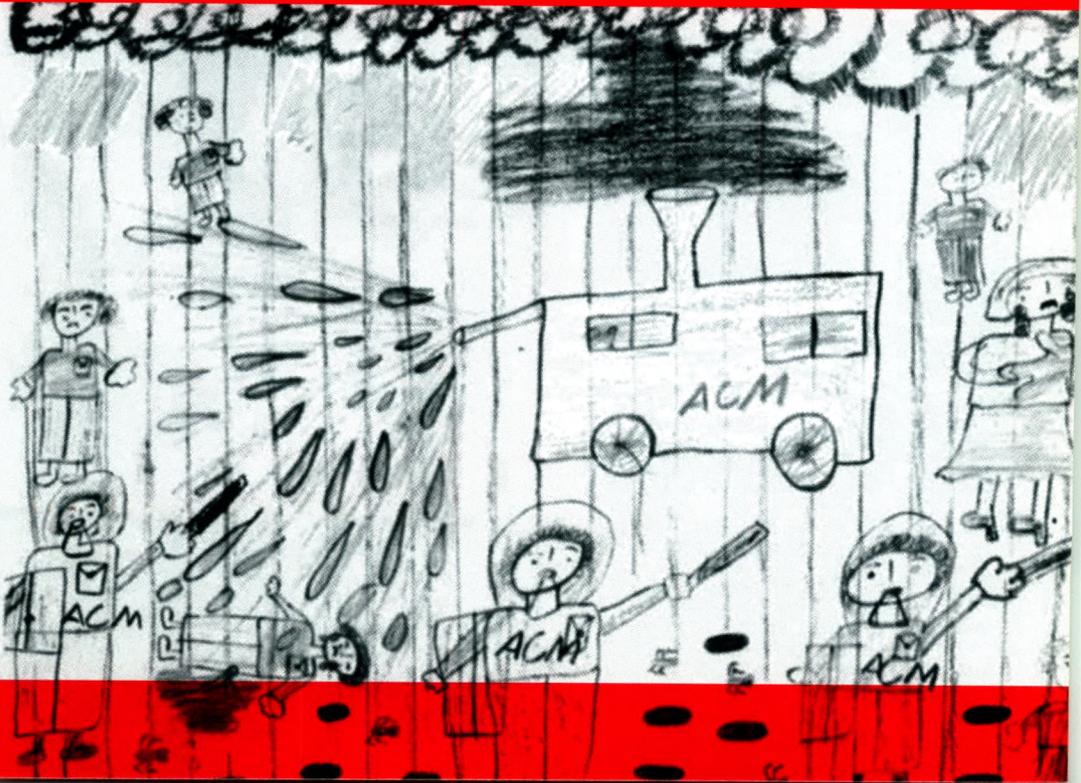


According to recent legislative changes, if DIMIA has not yet processed the new application before the current visa's expiry at 36 months (as is currently the case for all TPV holders whose visas have expired) the applicant is automatically issued a XC visa. The XC visa is valid for three years or until a final decision has been made on his or her case. The conditions attached to the XC visa are the same as for the TPV 785. Its primary purpose is to allow applicants to maintain their working rights while a decision is pending. The difference, however, is that refugees with XCs live daily with the knowledge that a decision to deny further protection could be imminent. One refugee in this situation recently said:⁸⁷

*The main issue these days is what is the next day going to be?
What is our future? What is going to happen? That's what we
want to know first and everything else is still with no priority.
The most priority is given to what will happen tomorrow?*

Moreover, the subjective fear of return to possible persecution that refugees in this situation are feeling is causing many to become re-traumatised.

13. WHAT IS IMMIGRATION DETENTION?



13a. What is the purpose of immigration detention?

The *Migration Act 1958* prescribes a regime of immigration detention for persons who have entered Australia without authorisation, even if they have not been arrested or detained on a criminal charge.⁸⁸ The UN concurs that it may be permissible for a state to detain those who arrive without valid documentation for the purposes of conducting identity checks and initial immigration screening functions. However, they argue that:⁸⁹

(a)ny deprivation of liberty must be proportionate to the aims pursued and a fair balance shall be struck between the conflicting interests of the state and the asylum seeker.

Immigration detention in Australia is both mandatory (compulsory) and non-reviewable (cannot be reviewed by the judiciary to determine if it remains necessary). It is argued that immigration detention as it is currently practiced in Australia contravenes international human rights law because it is non-reviewable, arbitrary and disproportionate to the

People held in detention as at 9 January 2003	
Villawood	477
Maribyrnong	69
Perth	25
Port Hedland	145
Baxter	239
Woomera	109
Christmas Island	11
Other facilities	101
Total	1,176

purpose of checking the security and health status of asylum seekers. The important point is that if detention is not to be arbitrary, a case-by-case assessment of necessity and proportionality must be made.⁹⁰

Mandatory and non-reviewable immigration detention was first introduced in Australia by the Labor Government in 1992.

13b. How many asylum seekers are in detention?

*Note: The figures above include people detained for breaching their visa conditions who are not applying for asylum.

The number of asylum seekers in detention at present continues to fall after peaking in 1999-2001. This correlates with the decrease in

number of arrivals of asylum seekers in Australia and because asylum seekers cases are being finalised. According to DIMIA, in January 2003 there were 1,176 people in detention of whom less than 600 arrived unauthorised by boat. These figures also include some asylum seekers who have had their applications for protection rejected and who remain detained indefinitely as they are unable to return to their countries of origin.⁹²

13c. What other countries mandatorily detain asylum seekers without judicial review?

None. Australia is the only country in the world to enforce mandatory and non-reviewable detention for people waiting for their asylum applications to be processed.

13d. How many immigration detention facilities are there in Australia and the region?

Six. Port Hedland, Baxter and Christmas Island facilities primarily hold asylum seekers arriving by boat. Villawood, Maribyrnong and Perth hold asylum seekers arriving by plane but also detain people in breach of their visa conditions and people refused entry at Australia's international airports.⁹³

13e. Where do the asylum seekers in the immigration detention facilities come from?

The five main nationalities of asylum seeker detainees in 2001-02 were Iranian, Afghan, Chinese, Indonesian and Sri Lankan. In 2000-01 the five main nationalities were Afghan, Iraqi, Iranian, Palestinian and Chinese.⁹⁴

13f. What about children in detention?

The UNHCR, in its revised guidelines on the detention of asylum seekers, states that: '*Minors who are asylum seekers should not be detained.*'⁹⁵

As of 13 December 2002, there were 120 minors held in immigration detention in Australia (not including Manus Island and Nauru). Of these minors 79 (54%) were under the age of twelve years.⁹⁶ In November 2002, 169 children were detained on Manus Island and Nauru.⁹⁷

Australian and regional immigration detention facilities

Location	Name	Capacity	Dates Opened/Closed
<i>Mainland Australia</i>			
Sydney, NSW	Villawood Immigration Detention Centre (IDC)	700	1976 –
Melbourne, VIC	Maribyrnong Immigration Detention Centre (IDC)	80	1966 –
Perth, WA	Perth Immigration Detention Centre (IDC)	64	1981 –
Port Hedland, WA	Port Hedland Immigration Reception and Processing Centre (IRPC)	748	1991 –
Port Augusta, SA	Baxter Immigration Reception and Processing Centre (IRPC)	880	July 2002 –
<i>Closed</i>			
Curtin, WA (Curtain Airbase)	Curtain Immigration Reception and Processing Centre (IRPC)	900+	Recommissioned September 1999 Closed 23 September 2002
Woomera, SA	Woomera Immigration Reception and Processing Centre (IRPC)	400	Nov 1999 – May 2003
Cocos Island			

<i>Excised Places</i>			
Christmas Island		800	Sept 2001 – mothballed March 2003
<i>Declared Countries</i>			
Nauru	Two separate sites known as Topside and State House	1,500	Sept 2001 –
Manus Island, Papua New Guinea	Lombrum Naval Base	1,000	21 Oct 2001 – closes October 2003
<i>Contingency Detention Facilities</i>			
Darwin	HMAS Coonawarra		
Near Singleton, NSW	Singleton Immigration Reception Centre		
<i>Future Detention Facilities</i>			
Brisbane, QLD	Brisbane Airport		Announced April 2002

The average length of time minors are held in detention as of December 2002 was 1 year, 3 months and 7 days. The longest period of time a child has ever been detained is 5 years, 5 months and 20 days.⁹⁸ During 2000-01, a total of 1,147 children were held in detention.⁹⁹

In a study conducted by four psychiatrists between December 2001-March 2002, a number of families in immigration detention centres were interviewed.¹⁰⁰ The psychiatrists observed that, in detention, children are denied basic human rights such as adequate education and opportunities for safe play and development. They are frequently exposed to violence and surrounded by the constant despair and hopelessness of their parents and other adults. There have been documented examples of detention centre staff being threatening and insulting to children. Some children have been placed in solitary confinement as a behaviour management strategy by detention staff. They are constantly surrounded by fences topped with razor wire.

The breakdown of family processes under the pressure imposed by the oppressive conditions of detention was identified as major contributing factor to children's risk of physical, emotional and psychological injury. The report argued that immigration detention:¹⁰¹

(p)rofoundly undermines the parental role, renders the parent impotent and leaves the child without protection or comfort in already unpredictable surroundings where basic needs for safe play and education are unmet.

13g. Who runs the immigration detention centres in Australia?

At the end of 1997, the Australian Government privatised the management of immigration detention centres and contracted out their operation to a private correctional management company. Until that time, immigration detention centres were managed by the Department of Immigration and operated on its behalf by Australian Protective Services (APS), a federal

government agency. At present, the private contractor, Australasian Correctional Management (ACM), operates the detention centres. ACM is a subsidiary of the American prisons management company, Wackenhut Corrections Corporation and their background has been in the confinement of convicted criminals. ACM is a private company which aims to make a profit from its operations.

In 2001, DIMIA announced that the contract for managing the immigration detention facilities was up for tender. On 22 December 2002, it announced that the tender for a four year contract was won by the Danish based correctional management company Group 4 Falck Global Solutions Pty Ltd (Group 4). Similarly, Group 4's businesses to date have been in the management of convicted criminals. It also is a private company which aims to make profits.¹⁰²

In March 2003, Group 4 gained majority control of Wackenhut Corrections Corporation and its subsidiary ACM, only to sell its Wackenhut interests in May 2003. The Government has not responded publicly to these recent developments leaving the future management arrangements for its immigration detention facilities uncertain.

13h. What are the arguments for and against using the current system of immigration detention?

DIMIA argues that the practice of detaining asylum seekers is:¹⁰³

(c)onsistent with the fundamental legal principle, accepted in Australian law, that in terms of national sovereignty, the state determines which non-citizens are admitted or permitted to remain and the conditions under which they may be removed.

While there is no question that Australia has the right to decide who remains and who is removed, it is how that process is carried out and what happens to asylum seekers during that process that is under scrutiny. There are four key areas of debate around immigration detention centres.

1. The lawfulness of immigration detention

The Human Rights and Equal Opportunity Commission (HREOC) has argued that the practice of detaining asylum seekers in immigration detention centres contravenes several international treaties to which Australia is a party. They argue that:

- the Refugees Convention does not prevent the use of detention during assessment but detention must be necessary
- the rights contained in the International Covenant on Civil and Political Rights are not being respected in Australian immigration detention centres
- the use of mandatory detention of asylum seekers who arrived unauthorised is arbitrary because it is an unreasonable, unnecessary and disproportionate response by the Australian Government
- children are detained on a mandatory basis which breaches the Convention on the Rights of the Child.

2. Treatment of asylum seekers in immigration detention

Reports from asylum seekers in detention centres indicate that their treatment by detention authorities does not correlate to the purpose for which they are detained. UN human rights monitoring bodies have released reports that support the testimonies of people who have experienced the Australian Government's immigration detention regime.¹⁰⁴ The UN Working Group on Arbitrary Detention that visited detention centres in Australian in mid-2002 found that:¹⁰⁵

The conditions of detention are in many respects similar to prison conditions; detention centres are surrounded by impenetrable and closely guarded razor wire; detainees are under permanent supervision; if escorted outside the centres they are, as a rule, handcuffed; escape from a centre constitutes a criminal offence under the law and the escapee is prosecuted.

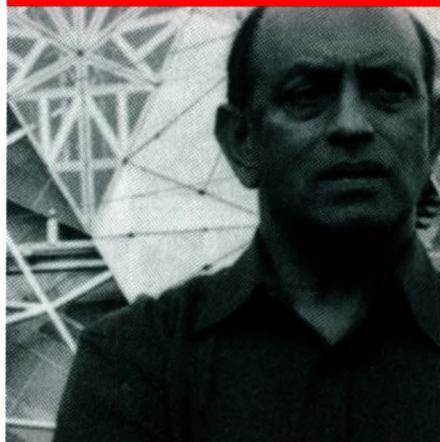
There have been a number of inquiries by the Australian Government and parliament into the operation of immigration detention centres, some of which have expressed concern at the conditions inside.¹⁰⁶

Additionally, the Australian Human Rights Register 2002, published by the Catholic Commission for Justice, Peace and Development, records several individual reports of human rights violations committed against detainees in immigration detention.¹⁰⁷

3. Impact on asylum seekers in detention

The oppressive treatment of asylum seekers in detention results in institutionalised structural violence that compounds the trauma asylum seekers already experience. Many asylum seekers carry physical injuries and chronic health conditions that do not receive adequate treatment and are exacerbated under the pressure of detention. The UN Working Group on Arbitrary Detention reported meeting a considerable number of detainees who, being detained indefinitely:¹⁰⁸

(m)anifested the signs of deep mental depression, distress, and even various physical ailments. Many of them have caused serious harm to themselves or attempted to commit suicide. Some detainees succeeded.



The impact of detention on children is particularly severe causing long term damage.¹⁰⁹ The UN Working Group made the following conclusion on the situation of children in detention:¹¹⁰

This environment, oppressive for everyone... causes recurrent behaviour problems such as refusing food, sleep problems, night terrors, regression to bed wetting, temper tantrums and, in the most serious cases, acts of self-mutilation (lacerating), and even suicide attempts.

4. Privatisation of immigration detention centres

Concerns have been expressed that the contracting out of the operation of immigration detention centres has resulted in unethical practices. A recent report on ACM's management of Woomera IRPC by the ABC's *Four Corners* exposed evidence of how under-staffing, inappropriate treatment of asylum seekers and inadequate living facilities were related to ACM's profit-making interests.¹¹¹

More importantly, however, there are concerns that contracting out management of immigration detention centres distances the Australian Government from its responsibilities to ensure the human rights of detainees are properly respected.

Serious issues of accountability and professional ethics have been raised by organisations and individuals who attempt to monitor the conditions in immigration detention facilities. For example, a group of Australian psychiatrists attempting to ascertain the mental health status of asylum seekers in immigration detention noted that:¹¹²

(1) there was no information about the extent of mental health problems in this population, no access to undertake such screening and no confirmed arrangements between DIMIA and state Departments of Health and Family and Community Services for provision of adequate mental health assessment and treatment for those families in need.

14. ARE THERE ALTERNATIVES TO IMMIGRATION DETENTION?



14a. Do successful alternative programs to immigration detention exist?

Yes. Alternative programs to immigration detention already exist and are being implemented or acknowledged by the Australian Government. They are:¹¹³

1. *Asylum Seeker Assistance Scheme (ASAS)*: Some asylum seekers in the community may be eligible to receive assistance through the ASAS. The ASAS has two components: income support which is calculated at 89% of the Centrelink Special Benefit and case management which is administered through the Australian Red Cross.
2. *Woomera Alternative Detention Project*: In August 2001, the Government commenced the Woomera Alternative Detention Project, managed by Australasian Correctional Management (ACM), that enables up to 25 women and children to be housed in the community with detention officers to supervise the residents. DIMIA is in the process of expanding this program to Port Augusta near Baxter IRPC and possibly Port Headland.
3. *Hotham Mission Asylum Seeker Project*: Approximately 200 asylum seekers living in the community who are denied access to welfare, Medicare or working rights are supported in some way under arrangements of the Hotham Mission Asylum Seeker Project. The project currently houses over 100 asylum seekers in 30 properties throughout metropolitan Melbourne.

14b. Is there an alternative model to the current system?

An alternative model to the current detention scheme has been developed and costed by the Justice for Asylum Seekers (JAS), an alliance of 25 Victorian based community groups. This model is called the *Reception and Transitional Processing System (RTP)*.¹¹⁴

According to the RTP system asylum seekers who arrive in Australia unauthorised would be initially detained for the purposes of conducting identity and health checks. At this stage, a caseworker would be assigned to each individual or family and a risk evaluation conducted to ascertain the likelihood of the asylum seeker absconding. Depending on the outcomes of the evaluations, asylum seekers could be referred to:

- community based accommodation and management for those considered low risk, where asylum seekers would live in the

community with regular contact with their case worker

- moderate security accommodation in hostels for those considered to be at medium risk of absconding or requiring intensive services
- continued detention for those considered at high risk of absconding
- towards the later stages of the determination process, especially towards the end of a final appeal, a further risk evaluation may refer the claimants return to detention

The RTP system aims to achieve six major goals:

1. Australian border security and integrity
2. Orderly processing of claims
3. Assisting successful asylum seekers establish new lives in Australia
4. Assisting unsuccessful applicants accept their decision and identify options for their future while maintaining security
5. Reducing incidents such as self harm
6. Minimising the cost to taxpayers of achieving the above.

14c. What are the pros and cons of the Reception and Transitional Processing System?¹¹⁵

Pros

1. Human cost savings

The RTP system addresses specific problems experienced in the current mandatory detention system including:

- high rates of self harm
- hunger strikes, riots and other expressions of distress
- psychological damage to children
- vulnerable groups such as families, single and pregnant women, the disabled and the traumatised being harmed by detention
- people being held in detention for lengthy periods, often longer than a year
- the difficulties surrounding voluntary repatriation when an asylum seeker's claim is unsuccessful.

2. Financial cost savings

An independent economic consulting company, Milbar Consultants, compared the cost of a notional group of 100 asylum seekers moving

through the refugee determination process while in mandatory detention with 100 asylum seekers managed through the RTP system. The Milbar report found that mandatory detention cost a total of \$20.05 million. The cost of the alternative system, including the additional expense of case management, was \$16.8 million. On economic grounds, the RTP system showed a cost saving of 18%.¹¹⁶

JAS believe that long term health, social and economic problems can be averted by the use of their model. An Institute of Public Affairs report examined the Swedish asylum system where case workers play a central role in assisting asylum seekers through their application processes. The report concluded that:¹¹⁷

(t)the cost of employing case workers would probably be offset by a reduction in expenses flowing from trauma, violence and destruction of property.

3. Better results and outcomes

- more humane treatment of asylum seekers
- high compliance rates from asylum seekers and lowered self-harm rates
- broader positive social and economic effects to the Government, the individuals and the Australian community

Cons

The success of the alternative model depends on accurate security/risk evaluations to maintain the low costs and low rates of absconding. While the RTP system proposes to introduce risk assessments of asylum seekers for all cases for the first time, DIMIA does already have precedents of conducting these types of risk assessments. In DIMIA's experience, their risk assessments have proved accurate. The DIMIA review of the Woomera community release trial concluded that:¹¹⁸

ACM in particular, but also DIMIA, has been able to make reliable risk assessments of the likelihood of detainees observing the rules of the alternative detention arrangements.

Furthermore, risk assessment techniques are already used in the Australian parole and corrections systems.¹¹⁹



**15. DO YOU WANT
MORE INFORMATION?**

There is a wide range of sources where more information on a broad spectrum of issues and perspectives concerning refugees and asylum seekers can be found. All major cities in Australia and many rural and regional centres host organisations and community groups that are concerned with refugee and asylum seeker issues. These groups often provide information specifically related to their local areas in addition to the international, national and state levels. The following web sites and organisations can be accessed as entry points to information networks on refugee and asylum seeker issues.

National level

Department of Immigration and Multicultural and Indigenous Affairs:

<http://www.immi.gov.au/>

Refugee Council of Australia – a peak refugee organisation for alternative policy position development

<http://www.refugeecouncil.org.au/>

Australians for Just Refugee Programs – a peak organisation for national campaign coordination

<http://www.justrefugeeprograms.com.au/>

Rural Australians for Refugees

<http://www.ruralaustraliansforrefugees.org/>

Web-based directories of refugee related organisations and activities in Australia

Brisbane Actionweb for Refugee Collaboration

<http://www.qcoss.org.au/barc/calendar.htm>

Refugees Australia National Directory

<http://www.refugeesaustralia.org/directory.htm>

Post-graduate study

Master of Arts (Refugees, Asylum and Forced Migration) and the Graduate Certificate in Refugee, Asylum and Forced Migration

<http://www.csu.edu.au/handbook/>

Migration Action journal

Migration Action is published three times a year and contains thinking and analysis of current refugee and asylum seeker issues in the Australian context. It receives contributions from a wide range of writers including legal practitioners, academics, people in refugee and asylum seeker situations, service providers and human rights advocates. For further information, email migrationaction@bsl.org.au or post c/o Migration Action, P.O. Box 1389, Collingwood VIC 3066.

Refugee and Asylum Seeker Issues in Australia on the web

An expanded version of this booklet will soon be available on

<http://www.refugee.org.au> or by email from emc@bsl.org.au.

More community education sources and school teaching aids

- Australian Red Cross, *People of Concern, Refugees and Asylum Seekers: A Global Issue*, Youth and Multicultural Affairs, Victorian Division, Australian Red Cross, 2002.
- John Kilner, *Australia and the Refugee/Asylum Seeker Issue*, The Age, 2003.
- Refugee Council of Australia Advocacy Kits for NSW and Victoria, *Settling In: A Group Program for Newly Arrived Refugee and Migrant Students*, available from <http://www.refugeecouncil.org.au/html/resources/advocateskit.html>.
- Katherine Goode, *Child Asylum Seekers – Living in limbo*. Available from the Law Society of South Australia, 2002.
- Centre for Multicultural Youth Issues, *All I ask for is Protection: Young People Seeking Asylum in Australia*, Paper 12, Centre for Multicultural Youth Issues, December 2002.

NOTES

- 1 Discussion with Iranian woman resettled in Australia in 1995.
- 2 Convention relating to the Status of Refugees of 28 July 1951, <http://www.unhcr.ch> as modified by article 1(2) of the Protocol relating to the Status of Refugees of 31 January 1967.
- 3 These points are taken from Refugee Council of Australia, *Frequently Asked Questions: Who is a Refugee?* http://www.refugeecouncil.org.au/html/facts_and_stats/facts.html#faq2, sourced 29 March 2003.
- 4 DIMIA, 'Fact Sheet 61: Seeking Asylum within Australia', <http://www.immi.gov.au/facts/61asylum.htm>, sourced 8 April 2003.
- 5 *Ibid.*
- 6 Comment contributed by Savitri Taylor.
- 7 Australian Treaty Series, *Australian Treaty Series 1954 No 5*, <http://www.austlii.edu.au>, sourced 21 January 2003.
- 8 Refugee Council of Australia, *Frequently Asked Questions: Who is a Refugee?*
- 9 *Ibid.*
- 10 Catholic Commission for Justice Peace and Development, 'Refugees: Record No.250, 20/5/2002', *The Australian Human Rights Register: Reports June 2001-December 2002*, Catholic Commission for Justice Peace and Development, Melbourne, December 2002.
- 11 Refugee Council of Australia, *Frequently Asked Questions: Who is a Refugee?*
- 12 *Ibid.*
- 13 Refugee Council of Australia, *Frequently Asked Questions: Who is a Refugee?*
- 14 Article 31 (1), Convention relating to the Status of Refugees of 28 July 1951.
- 15 UNHCR, 'Asylum Applications Lodged in Europe, North America, Australia and New Zealand, January 2002' and 'Trends in Asylum Applications September 2002: Europe, North America, Australia and New Zealand', <http://www.unhcr.ch>, sourced 27 January 2003.
- 16 DIMIA, 'Fact Sheet 74: Unauthorized arrivals by Air and Sea', <http://www.immi.gov.au/facts/74asylum.htm>, sourced 27 January 2003.
- 17 *Ibid.*
- 18 Peter Mares, *Borderlines*, second edition, Sydney: UNSW Press, p. 30.
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GLOSSARY

Asylum seeker

A person who is applying to a country other than their own for legal protection.

Bridging visa

A type of visa issued to a person who does not have appropriate documentation to be in a country that grants permission to stay while awaiting a decision from the government on his or her legal status.

Cessation clause

Clause 1(C) (1-5) of the Refugees Convention that discusses in generalised terms the conditions under which the Refugees Convention ceases to apply to refugees.

Convention refugee

A person who meets the conditions of a refugee as defined in Article (1a) of the Refugees Convention, regardless of whether the UNHCR or a country has recognised them as such.

Declared countries

Countries identified by the Australian Government that have agreed to receive asylum seekers who arrive at Australian excised offshore places or territorial waters for processing of their asylum claims. Declared countries include Nauru and Papua New Guinea.

Displaced people

People forcibly displaced from their homes by various forms of violence including armed conflict, ethnic persecution and extreme poverty.

Excised offshore places

Parts of Australian territory legislated by the Australian Government from where people cannot apply for asylum unless the Minister for

Excised offshore places	Immigration deems that it is in the public interest to do so. Excised offshore places include the Ashmore and Cartier Reefs and Christmas and Cocos Islands.
Immigration detention centres	Prison-like enclosures, some in geographically isolated locations, where people who arrive in Australia unauthorised are detained until the Government has made a decision concerning their legal status in Australia.
Migrant	A person who chooses to move to and live in another country other than their country of origin.
Non-refoulement	A fundamental principle of international customary human rights law whereby a country cannot return a person to another country where his or her life would be threatened or he or she could possibly experience persecution.
Offshore	Applying for asylum to Australia from outside Australian territory, on 'excised offshore places' or from 'declared countries'.
Onshore	Applying for asylum to Australia from inside Australia, excluding 'excised offshore places'.
Overstay	A person who arrives in Australia with a valid visa but stays longer than the visa is valid.
Resettlement	When a refugee or person of concern is granted permission through the Refugee and Special Humanitarian Program to settle permanently in Australia with the opportunity after a certain period to apply for citizenship.

**Pacific Solution
policy**

A policy devised in response to the *Tampa* crisis of August 2001 where countries in the Pacific region agreed to receive asylum seekers who arrived in Australian territorial waters for processing of their asylum claims in return for increased foreign aid.

**Permanent
Protection
Visa (PPV)**

A type of visa granted to asylum seekers recognised by the Australian Government as Convention refugees. It allows them to resettle permanently in Australia with the full rights of a permanent citizen. A refugee's eligibility for a PPV depends on the date and place of application.

Protection Visa (PV)

A type of visa granted to asylum seekers recognised by the Australian Government as Convention refugees in need of protection. There are many kinds of protection visas. The two main categories are permanent and temporary protection visas.

**Refugee and
Special
Humanitarian
Program**

Part of Australia's total migration program that accepts approximately 12,000 refugees and people of humanitarian concern recognised by the UNHCR as in urgent need of resettlement.

Refugee

A person who has been forcibly displaced from their home for reasons of conflict and fear of persecution. Who is considered a refugee may vary according to who is doing the naming and assessing the circumstances of any given situation. See also Convention Refugee.

**Refugees
Convention**

United Nations 1951 Convention relating to the Status of Refugees. Sometimes referred to as the 1951 Convention.

Secondary movement

A term used by governments to describe the movement of asylum seekers from the country of first asylum to a second country.

Temporary Protection Visa (TPV)

A type of visa granted to asylum seekers recognised by the Australian Government as Convention refugees that allows the holder to remain in Australia for a limited period (usually three years) with restricted rights. There are several types of TPVs issued depending on the date and place of application.

Unauthorised arrival

A person who arrives in Australian territory without appropriate travel documents, ie. a passport and valid entry visa.

Undocumented person

A person existing in a country without government authorisation.

UNHCR

The United Nations High Commission for Refugees is mandated to ensure that the protection of refugees under international law is upheld.

ACRONYMS

AAT	Administrative Appeals Tribunal
ACM	Australasian Correctional Management
APS	Australian Protective Services
ASAS	Asylum Seeker Assistance Scheme
ASIO	Australian Security Intelligence Organisation
CRC	Convention of the Rights of the Child
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs
DFAT	Department of Foreign Affairs and Trade
HREOC	Human Rights and Equal Opportunity Commission
GNI	Gross National Income
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
IDC	Immigration Detention Centre
IOM	International Organization for Migration
IRPC	Immigration Reception and Processing Centre
JAS	Justice for Asylum Seekers
PPV	Permanent Protection Visa
PV	Protection Visa
ODA	Overseas Development Assistance

OECD	Organisation for Economic Co-Operation and Development
RCoA	Refugee Council of Australia
RRT	Refugee Review Tribunal
SIEV	Suspected Illegal Entry Vessel
SHP	Special Humanitarian Program
TPV	Temporary Protection Visa
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commission for Refugees.
VCE	Victorian Certificate of Education



ABOUT THE IMAGES

Each image used in this booklet represents a multitude of stories as the information below indicates:

Given the Chance...

Zahra and Fadumo fled Somalia to escape the civil war and were accepted into Australia as refugees. Despite working hard to learn English and gaining qualifications, neither woman had any luck in finding jobs. As new arrivals to the community, they knew few people who could help them find work. 'I went for 50 jobs,' says Zahra. 'Nothing, not even an interview. I didn't know what to do.'

Zahra and Fadumo participated in *Given the Chance*, a project that works to create targeted education and employment opportunities for newly arrived refugees by linking refugees and mentors from business, community and government sectors. Targeting employment and education opportunities is central to newly arrived refugees' ability to settle and participate in Australian society.

Today Zahra holds her first professional position, while Fadumo is studying community work. 'Now I can believe I have a future,' says Fadumo.

Given the Chance was established by the Ecumenical Migration Centre in October 2002 and is funded by Victorian Government, the Victorian Women's Trust and the Invergowrie Foundation. For more information, please contact the EMC on (03) 9416 0044.

Ardeshir Gholipour

The painted images in this booklet are printed from photos of Ardeshir Gholipour's artwork produced in Port Hedland IRPC in Western Australia. Ardeshir fled Iran to seek asylum in Australia. He was detained in Woomera IRPC in South Australia for one year before being transferred to the Port Hedland IRPC where he has been detained for about two years. A welder by profession, Ardeshir began painting murals on the walls of the detention centre as a way to express his deep emotions in a positive way, to give fellow detainees positive activities to occupy their time and bring some beauty to the harsh detention environment. Today, Ardeshir remains detained in Port Hedland IRPC awaiting an outcome on his asylum application.

Fitzroy Learning Network (Melbourne) English language classes

The Fitzroy Learning Network provides, amongst many other programs, English language programs for people from all kinds of migrant and refugee-related backgrounds. Through their programs many friendships and links into the community have been forged.

Children in Detention

The picture on page 71 was drawn by a nine year old child in detention depicting experiences of life in the detention centre. It is reprinted from an article published by psychiatrists Sarah Mares, Louise Newman, Michael Dudley and Fran Gale, 'Seeking refuge, losing hope: parents and children in immigration detention', *Australasian Psychiatry*, Vol. 10, No. 2, June 2002.

