

Protecting Australia's Borders

Introduction

In the pre-election environment of 2001, the Australian Government introduced legislative changes allowing some of Australia's territory to be excised from the migration zone in order to discourage non-citizens from arriving unlawfully in Australia by boat. People attempting to do so since then have been intercepted at sea, where possible, and either returned to Indonesia or removed to third countries in the Pacific. Any claims made by those people for refugee status could then be processed by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) outside the jurisdiction of Australian courts, with no guarantee of a resettlement place in Australia.

These border protection measures have become known as the 'Pacific Solution'. They represent a change in the way that Australia is prepared to meet its obligations under the United Nations Convention Relating to the Status of Refugees 1951. This Research Note provides an overview of these measures and recent developments.

Background

In September 2001 the Migration Amendment (Excision from Migration Zone) Bill 2001 amended the *Migration Act 1958* to excise Christmas, Ashmore, Cartier and Cocos (Keeling) Islands from the migration zone.¹ As a result, any unlawful non-citizen attempting to enter Australia via one of these islands is now prevented from making an application for a



protection visa—i.e. refugee status—unless the Minister for Immigration determines that it is in the public interest for such a person to do so.²

These measures arose as a response to the controversial *Tampa* incident in August 2001 when 433 asylum seekers on route to Australia were rescued by a Norwegian freighter, the *Tampa*. These asylum seekers were refused entry to Australia, transferred to HMAS Manooora and (along with later arrivals) sent to the Pacific island of Nauru.

On 19 September 2001 Australia signed an Administrative Agreement with Nauru to accommodate asylum seekers for the duration of the processing of their applications. This was replaced by a Memorandum of Understanding (MOU) signed on 11 December 2001. Australia also signed an MOU with Papua New Guinea on 11 October 2001, allowing the construction of a processing centre to accommodate and assess the claims of asylum seekers on Manus Island. The centres have been managed by the International Organisation for Migration (IOM).

Developments

Only two boats have reached Australia since September 2001:

- 53 Vietnamese who entered Australian waters near Port Hedland on 1 July 2003 were taken to Christmas Island for processing, and found not to be refugees.
- 14 Turkish Kurds reached Melville Island on 4 November 2003. Regulations excising this and other northern islands from the migration zone were introduced the same day. These boat people were towed back by the Royal Australian Navy to Indonesia and placed in immigration detention.

The Australian Government clearly remains determined to deliver the message that illegal boat arrivals are not welcome in Australia.

Since September 2001, just over 1500 people have been accommodated in the Manus Island and Nauru offshore processing centres.³ Asylum claims have been processed by the United Nations High Commissioner for Refugees (UNHCR) and DIMIA using UNHCR procedures. Forty nine per cent of these asylum seekers (743 people) were recognised as refugees. Resettlement countries included New Zealand, Sweden, Canada, Denmark and Norway, but the majority of these asylum seekers have been resettled in Australia.

To the end of June 2003, 329 Temporary Protection Visas (TPVs) were issued to people with family in Australia and on 28 July the then

Minister, the Hon. Philip Ruddock, announced that the remaining refugees (50) would also be issued TPVs. As at mid November 2003, 411 failed asylum seekers had accepted the Government's reintegration package⁴ and 462 had returned voluntarily to their countries of origin. About 300 remain on Nauru.

The Costs

Protecting the border was a Budget priority in 2002–03, when \$353 million was allocated for this purpose, including funding for coastal surveillance, foreign aid and capital costs. According to the Immigration Department's 2002–2003 Annual Report, \$90 million was spent on offshore asylum seeker management in 2002–03. This compares with \$5 million spent on administering the entry of 4000 refugees under the offshore humanitarian program (assisted passage and medical clearance costs), and \$300 million onshore costs arising from the previous rate of unauthorised arrivals.⁵

Political Responses

The excision of Christmas and Cocos (Keeling) Islands, and Ashmore and Cartier Islands in September 2001 was effected with the support of both major political parties. This legislation included the provision to prescribe by regulation 'any other external territories or State or Territory islands'. However Labor joined with the Democrats and the Greens in June 2002 to disallow regulations to excise islands across a large area covering: Coral Sea Island Territory; Queensland islands north of latitude 12 degrees south; WA islands north of latitude 23 degrees south; and NT islands north of latitude 16 degrees south.

A Migration Legislation

Amendment (Further Protection Measures) Bill 2002 embodying these excisions was rejected for the second time on 16 June 2003. It now exists as a double dissolution

trigger. The recent gazettal of an even larger area (including Queensland islands down to latitude 21 degrees south), the refusal of the Government to hear asylum claims from the boat people who reached Melville Island, and Labor's indication that they will join with the Democrats and Greens in disallowing the most recent excision regulations in the Senate, have re-ignited a highly polarised debate.

International Reaction

Non-government agencies, such as Human Rights Watch, have been very critical of Australia's Pacific Solution:

Under this so-called 'Pacific Solution' or 'Offshore Strategy', Australia used third states and inter-governmental organizations as its agents, and in so doing, shirked its own responsibilities to refugees.⁶

The UNHCR, tolerant of earlier interceptions at sea, has drawn the line at the recent removal of asylum seekers who had reached Australian territory. At a time of increasing stress and criticism of the international asylum system, it is concerned at the example Australia is setting:

Australia's actions are at variance with the 1951 UN Refugee Convention and have in effect jeopardised the proper functioning of the international protection regime. This responsibility-shifting move sets a negative precedent worldwide ...⁷

Several governments and opposition parties in Europe have expressed support for the Australian Government's post-*Tampa* stance and have suggested that the European Union (EU) adopt similar measures to quell the annual tide of 400 000 unauthorised arrivals in their countries.⁸

1. Note: in June and December 2002 the Government proposed the excision of further offshore islands, but these measures were not implemented.

2. For more detail on these legislative changes see N. Hancock, Migration Amendment (Excision from Migration Zone) Bill 2001, *Bills Digest no. 69*, Department of the Parliamentary Library, 2001 and N. Hancock, Refugee Law—Recent Legislative Developments, *Current Issues Brief no. 5*, Department of the Parliamentary Library, 2001.
3. The Hon. P. Ruddock, MP [Pacific Strategy Caseload almost 80 per cent finalised](#), *Press Release*, 2 September 2003.
4. The package includes \$2000 for each adult and child, or up to \$10 000 per family. For more details of the Australian Government's reintegration package see the Senator the Hon. A. Vanstone, [First TPV Holders to Accept Package Return Home](#), *Press Release*, 23 January 2003.
5. \$300 million figure provided on the advice of DIMIA.
6. Human Rights Watch, [By invitation only: Australian asylum policy](#), Chapter 3, 2002.
7. UNHCR, 'UNHCR criticises Australia for turning boat people away', [Press Release](#), 11 November 2003.
8. The UK shadow home secretary, for example, has expressed support for an offshore processing centre for asylum seekers similar to Australia's Pacific Solution: [Letwin pledges to keep asylum seekers out](#), *The Guardian*, 8 October 2002.

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