



## Boat arrivals in Australia since 1976

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## Introduction

The term ‘boat people’ entered the Australian vernacular in the 1970s with the arrival of the first wave of boats carrying people seeking asylum from the aftermath of the Vietnam War. Over half the Vietnamese population was displaced in these years and, while most fled to neighbouring Asian countries, some embarked on the voyage by boat to Australia.<sup>1</sup>

The first boat arrived in Darwin in April 1976 carrying five Indochinese men. Over the next five years there were 2059 Vietnamese boat arrivals with the last arriving in August 1981.<sup>2</sup> The arrival of 27 Indochinese asylum seekers in November 1989 heralded the beginning of the second wave. Over the following nine years, boats arrived at the rate of about 300 people per annum—mostly from Cambodia, Vietnam and southern China.<sup>3</sup> In 1999, a third wave of asylum seekers, predominantly from the Middle East, began to arrive—often in larger numbers than previous arrivals and usually with the assistance of ‘people smugglers’.<sup>4</sup>

This background note provides a brief overview of the historical and political context surrounding boat arrivals in Australia since 1976. It includes background on the global context; government policy responses; trends in public opinion on the issues; and links to some of the key resources. This publication also includes boat arrival figures drawn from available sources, including media reports, ministerial press releases and figures supplied by the Department of Immigration and Citizenship (DIAC). It is envisaged that the boat arrival figures in Appendix A will be updated on a regular basis.

## The global context

The magnitude and complexity of the issues arising from the flow of asylum seekers globally poses huge challenges for the world’s ‘receiving’ countries—Australia included. When the United Nations High Commission for Refugees (UNHCR) was established in 1951, there were an estimated 1.5 million refugees internationally. By 1980 the number of refugees was estimated at 8.2 million. It is important to note that these figures are only estimates and do not include the number of internally displaced people (IDPs) or asylum seekers.<sup>5</sup>

Currently, the UNHCR collects statistics for several population categories collectively referred to as ‘persons of concern’. The categories in the annual UNHCR report, *Global Trends*, include:

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1. Department of Immigration and Multicultural Affairs (DIMA), *Immigration: federation to century’s end 1901–2000*, DIMA, Canberra, 2001, p. 51, viewed 23 January 2013, <http://www.immi.gov.au/media/publications/statistics/federation/>
  2. K Betts, ‘Boatpeople and public opinion in Australia’, *People and place*, vol. 9, no. 4, 2001, p. 34, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FACP56%22>
  3. *Ibid.*, p. 36; and D McMaster, *Asylum seekers: Australia’s response to refugees*, Melbourne University Press, Melbourne, 2001, p. 73.
  4. K Betts, *op. cit.*, p. 37.
  5. D McMaster, *op. cit.*, p. 9.

**Refugees:** individuals recognized under the *1951 Convention relating to the Status of Refugees*; its 1967 Protocol; the *1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa*; those recognized in accordance with the UNHCR Statute; individuals granted complementary forms of protection; or, those enjoying ‘temporary protection’. The refugee population includes people in a refugee-like situation.

**Asylum-seekers:** individuals who have sought international protection and whose claims for refugee status have not yet been determined. Those covered [by the UNHCR] refer to claimants whose individual applications are pending, irrespective of when they may have been lodged.

**Internally displaced persons:** people or groups of individuals who have been forced to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural- or human-made disasters, and who have not crossed an international border.<sup>6</sup>

While estimates of the numbers of ‘persons of concern’ fluctuate and the countries of origin of asylum seekers, IDPs and refugees vary year by year, the figures continue to climb. In 2007, the total population of concern to the UNHCR was estimated at 31.7 million people, including 11.4 million refugees.<sup>7</sup> By the end of 2008, the number of individuals requesting refugee or asylum status to the 51 European and non-European countries that report to the UNHCR increased by 12 per cent—41 600 more applications—compared to 2007.<sup>8</sup> In its *2008 Global Trends* report the UNHCR stated that:

There were some 42 million forcibly displaced people worldwide at the end of 2008. This includes 15.2 million refugees, 827 000 asylum seekers (pending cases) and 26 million internally displaced people (IDPs) ... Despite UNHCR’s efforts to find durable solutions during 2008, the total number of refugees and IDPs under its care remained high at roughly 25 million, almost unchanged compared to 2007, and together accounted for about three quarters of all people falling under the UNHCR mandate.<sup>9</sup>

In 2009 the figures were even higher:

At the end of 2009, some 43.3 million people worldwide were forcibly displaced due to conflict and persecution, the highest number since the mid-1990s. This included 15.2 million refugees, 27.1 million IDPs and close to 1 million individuals whose asylum application had not yet been adjudicated by the end of the reporting period.

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6. For more detail and a full list of these categories see UNHCR, *2009 Global trends: refugees, asylum-seekers, returnees, internally displaced and stateless persons*, UNHCR, June 2010, p. 23, viewed 23 January 2013, <http://www.unhcr.org/4c11f0be9.html>

7. UNHCR, *Statistical yearbook 2007*, UNHCR, December 2008, p. 7, viewed 23 January 2013, <http://www.unhcr.org/pages/4a02afce6.html>

8. UNHCR, *Asylum levels and trends in industrialized countries 2008*, UNHCR, March 2009, p. 3, viewed 23 January 2013, <http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf>

9. UNHCR, *2008 Global trends: refugees, asylum-seekers, returnees, internally displaced and stateless persons*, UNHCR, June 2008, pp. 3–6, viewed 23 January 2013, <http://www.unhcr.org/4a375c426.html>

The total number of refugees and IDPs under UNHCR's care remained high, standing at 26 million by end-year. While the number of refugees remained relatively stable at 10.4 million, the number of IDPs protected or assisted by UNHCR rose to an unprecedented 15.6 million.<sup>10</sup>

By the end of 2011, for the fifth consecutive year, the number of forcibly displaced people worldwide still exceeded 42 million.<sup>11</sup> The number of asylum applications in 2011 was also the highest for almost a decade:

An estimated 441 300 asylum applications were registered in 2011 in the 44 countries included in this report, some 73 300 claims or 20 per cent more than in 2010 (368 000). The 2011 level is the highest since 2003 when 505 000 asylum applications were lodged in the industrialized countries.<sup>12</sup>

It is clear from these figures that issues arising from the movement of displaced people are unlikely to wane any time soon. The UNHCR Regional Representative for Australia, New Zealand and the Pacific, Richard Towle, has pointed out in the past that further destabilisation of countries such as Afghanistan, Iraq and Sri Lanka, would inevitably lead to more people seeking asylum in our region regardless of national border protection policies or changes to migration legislation.<sup>13</sup> More recently, Towle has argued that this continues to be the case:

... the higher number of people taking dangerous and exploitative sea journeys is a symptom of the grave human insecurity that refugees face at home and the risks they are compelled to take to find safety for their families. It is no coincidence that most boat people come from Afghanistan, Iraq, Iran and Sri Lanka - places that are suffering, or have recently emerged, from long periods of serious human insecurity.<sup>14</sup>

## A balancing act

The rise in the number of people seeking asylum and, in particular, the 'unauthorised' or 'illegal' mode of their arrival across borders, has raised concerns globally for many decades. The governments of destination countries around the world universally struggle to maintain a reasonable balance between attending to the immediate needs of displaced people seeking assistance and controlling movements across national borders.

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10. UNHCR, *2009 Global Trends: refugees, asylum-seekers, returnees, internally displaced and stateless persons*, UNHCR, June 2010, p. 2, viewed 23 January 2013, <http://www.unhcr.org/4c11f0be9.pdf>
  11. UNHCR, *Global trends 2011*, UNHCR, 18 June 2012, p. 3, viewed 3 January 2013, <http://www.unhcr.org/4fd6f87f9.html>
  12. UNHCR, *Asylum levels and trends in industrialized countries 2011*, UNHCR, March 2012, p. 2, viewed 3 January 2013, <http://www.unhcr.org/4e9beaa19.html>
  13. T Arup, 'Increase in boat people predicted: UN blames global turmoil for rise', *The Age*, 11 April 2009, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1O9T6%22>
  14. R Towle, *Asylum seekers: let's have a mature discussion*, media release, 13 September 2012, viewed 3 January 2013, [http://unhcr.org.au/unhcr/index.php?option=com\\_content&view=article&id=265:asylum-seekers-lets-have-a-mature-discussion&catid=35:news-a-media&Itemid=63](http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=265:asylum-seekers-lets-have-a-mature-discussion&catid=35:news-a-media&Itemid=63)

In the case of Australia, concerns over 'unauthorised' boat arrivals or 'boat people' (also referred to as 'irregular maritime arrivals') have occupied successive governments since the 1970s. However, many argue that the number of boat arrivals in Australia is very small in comparison to the significant flows of 'unauthorised' arrivals in other parts of the world over the last few decades.<sup>15</sup> In the US, for example, it is estimated that more than 500 000 'illegal aliens' arrive each year.<sup>16</sup> Similarly, parts of Europe struggle to monitor and control the large influxes from Africa and the Middle East each year.<sup>17</sup> In 2011 in Italy alone there were over 61 000 irregular arrivals by sea from North Africa, Greece and Turkey.<sup>18</sup>

In previous peak boat arrival years of the 1970s and 1999–2001, asylum seeker arrival numbers in Australia were very small compared to other destination countries. In 2000, for example, when approximately 3000 'boat people' arrived in Australia, Iran and Pakistan each hosted over a million Afghan refugees. More recently, in 2011 (when there were 4565 boat arrivals in Australia) Pakistan hosted 1.7 million and Iran hosted 886 500 refugees.<sup>19</sup> So, while there have been significant increases in the number of unauthorised boat arrivals in Australia (and Europe) in recent years, in fact, the burden of assisting the world's asylum seekers mostly falls to some of the world's poorest countries.<sup>20</sup>

In terms of refugee resettlement, only about 20 nations worldwide currently participate in UNHCR resettlement programs and accept quotas of refugees on an annual basis. Australia is one of the countries formally participating and for many years the Government has allocated around 13 000 available places through the Department of Immigration and Citizenship's Humanitarian Program. In 2011, Australia accepted the third largest number of refugees for resettlement in the world (9200) after the USA (51 500) and Canada (12 900) under the UNHCR resettlement program.<sup>21</sup> Australia's contribution is set to increase further with the Government's announcement that the Humanitarian Program will be increased to 20 000 places in 2012–13.<sup>22</sup>

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15. D McMaster, op. cit., p.125.

16. See J Van Hook, F Bean and J Passel, *Unauthorized migrants living in the United States: a mid-decade portrait*, Migration Information Source, 2005, viewed 23 January 2013,

<http://www.migrationinformation.org/feature/display.cfm?ID=329>

17. See for example 'Italy illegal immigration soars', *BBC News*, 15 August 2008, viewed 23 January 2013,

<http://news.bbc.co.uk/2/hi/europe/7564584.stm>

18. UNHCR, *All in the same boat: the challenges of mixed migration*, UNHCR website, viewed 3 January 2013,

<http://www.unhcr.org/pages/4a1d406060.html>

19. UNHCR, *Global trends 2011*, op. cit., p.15.

20. J Phillips, *Asylum seekers and refugees: what are the facts?*, Background note, Parliamentary Library, 2011,

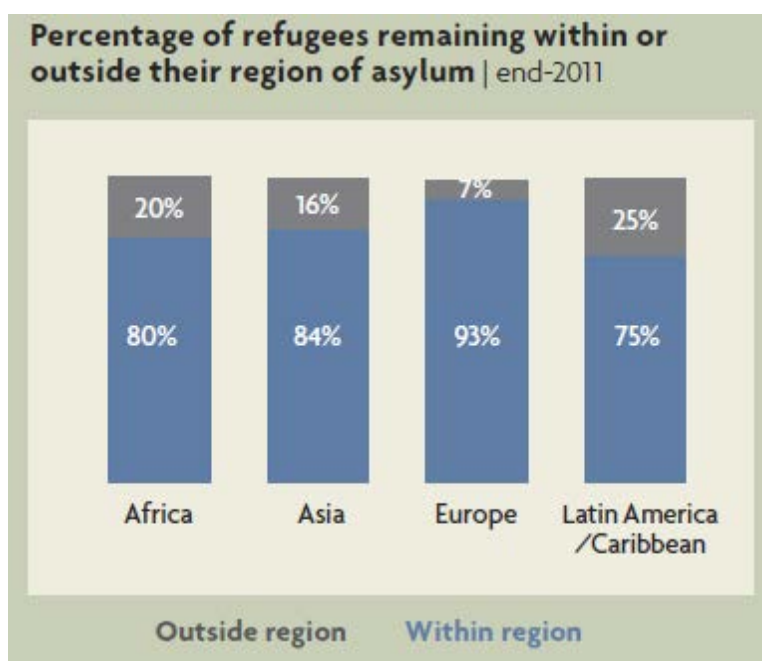
[http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/HGNW6/upload\\_binary/HGNW6.pdf;fileType=application/pdf](http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/HGNW6/upload_binary/HGNW6.pdf;fileType=application/pdf)

21. UNHCR, *Global trends 2011*, op. cit., p.19.

22. This includes additional places for people referred by the UNHCR from within Indonesia, and 1000 places for mainly Iraqi refugees caught up in the conflict in Syria. See J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Refugee program increased to 20 000 places*, media release, Canberra, 23 August 2012, viewed 4 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb189459.htm> and C Bowen (Minister for

However, in terms of the total number of ‘people of concern’ globally, the UNHCR’s resettlement program contributes to resettling only a small proportion of the world’s refugees —less than 1 per cent of the world’s refugees are resettled under this program.<sup>23</sup> About 75 to 90 per cent of refugees actually remain in their region of origin placing the burden on neighbouring countries:

Available statistical evidence demonstrates that most refugees having fled to neighbouring countries remain in the same region. The major refugee-generating regions hosted on average between 75 and 93 per cent of refugees from within the same region. UNHCR estimates that some 1.8 million refugees (17 per cent of the total of 10.4 million) live outside their region of origin.<sup>24</sup>



Source: UNHCR, *Global trends 2011*, op. cit., p. 11.

The neighbouring countries hosting the highest number of refugees are usually developing countries.<sup>25</sup> In 2011, for example, Pakistan was host to the largest number of refugees worldwide (1.7 million), followed by Iran (887 000) and Syria (755 400).<sup>26</sup>

The UNHCR provides statistics on asylum applications per population and GDP per capita as an indicator of the capacity of destination countries to host asylum seekers. In terms of individual share

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Immigration and Citizenship), *Priority regions announced for refugee intake boost*, media release, Canberra, 26 October 2012, viewed 4 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb191007.htm>

23. UNHCR, *Global trends 2011*, op. cit., p.17.

24. *Ibid.*, p.11.

25. *Ibid.*, p.15.

26. *Ibid.*, pp. 3 and 15. For discussion of the challenges for neighbouring countries see N Kelly, ‘International refugee protection challenges and opportunities’, *International journal of refugee law*, vol. 19, no. 3, 1 October 2007, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FR3NP6%22>

in the total number of asylum applications received per 1000 inhabitants, of the 44 countries that are currently included in the UNHCR report *Asylum levels and trends in industrialized countries 2011*, Australia was ranked number 18 (0.5 per 1000 inhabitants), and number 14 per 1 USD/GDP per capita for 2011.<sup>27</sup> The less prosperous countries of Malta and Cyprus received the highest and second highest number of applications compared to their national populations in 2011. France and the USA received the highest number of applications per capita compared to their national economies.<sup>28</sup> While the total number of asylum applications in Australia has increased over the last two years (11 510 applications in 2011), numbers still remain relatively low compared to, for example, 74 000 in the USA, 51 900 in France and 45 700 in Germany in 2011.<sup>29</sup>

Some commentators argue that as global conflict escalates and refugee numbers rise, destination countries globally should be focusing more on refugee resettlement measures and less on border control:

As government policy becomes more punitive, escalation of global conflict has forced many refugees to flee persecution, increasing pressure on countries such as Britain and Australia ... Whilst migration is not a new phenomenon—on the contrary, both countries have long histories of immigration and settlement—the concept of ‘asylum’ has moved from a positive image of the ‘settler refugee’ to the refugee ‘burden’ ... This article questions ... whether it might be possible to have ‘a more progressive agenda based on a commitment to human rights’ rather than a fixation on control and restriction.<sup>30</sup>

## Boat arrivals and public opinion

Opinion poll data show that boat arrivals have always been an issue of concern to the Australian public, and opposition to boat arrivals has increased steadily over the last four decades. While the first wave of ‘boat people’ (1976–81) was initially received by the Australian public with sympathy, continuing arrivals quickly became a matter of increasing concern. Public discussion soon focused on such issues as rising unemployment and the impact of people ‘jumping the immigration queue’.<sup>31</sup> Boat arrivals were a dominant topic in the news at the time of the 1977 federal election, with widespread claims that Australia was losing control of migrant selection.<sup>32</sup> As the numbers of people arriving by boat increased, opposition grew, with references in the press to an ‘invasion’, ‘flood’ and ‘yellow peril’.<sup>33</sup> Dissatisfaction with the numbers of ‘boat people’ arriving in Australia and being allowed to stay spread to the trade union movement, with the Darwin branch of the Waterside

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27. UNHCR, *Asylum levels and trends in industrialized countries 2011*, op. cit., p. 20

28. Ibid., p.13.

29. Ibid., pp. 9 and 20.

30. M White, ‘Asylum policy in the UK and Australia: a pathway to social exclusion?’, *Migration action*, vol. 26, no. 1, 2004, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F32AD6%22>

31. E Richards, *Destination Australia: migration to Australia since 1901*, University of New South Wales Press, Sydney, 2008, p. 263.

32. K Betts, op. cit., p. 34.

33. N Viviani, *The long journey: Vietnamese migration and settlement in Australia*, Melbourne University Press, Carlton, 1984, p. 79.

Workers' Federation in 1977 calling for strikes to protest at the 'preferential treatment' refugees were receiving.<sup>34</sup> Concern over the boat arrivals focused not only on the perceived lack of control over Australia's borders, but also on whether the arrivals were 'genuine refugees', with some claiming that they were pirates, rich businessmen, drug runners, and communist infiltrators.<sup>35</sup>

The second wave of boat arrivals (1989–98) was initially a dominant news topic due primarily to the fact that those arriving in this way were now routinely being held in detention, often for long periods.<sup>36</sup> However, the issue was largely forgotten as time went on, as periods spent in detention were reduced and most arrivals were sent back.<sup>37</sup> Boat arrivals once again became highly newsworthy with the start of the third wave in 1999, as numbers began to increase dramatically.

In 2001, sociologist Katharine Betts analysed opinion poll data on the issue of boat arrivals from the previous 25 years and found that 'there was no sudden desire to close the door on boatpeople dating only to the last couple of years. This has been a slow and growing trend over the last quarter of a century'.<sup>38</sup> Her analysis showed that:

- in the late 1970s, 60 per cent of Australians wanted to let a limited number of refugees arriving by boat stay, between seven and 13 per cent wanted to let any number stay, and between 20 and 32 per cent wanted to stop them from staying
- in 1993, 44 per cent of people wanted to send 'boat people' straight back without assessing their claims, and 46 per cent approved of holding 'boat people' in detention while their claims were being assessed. Only 7 per cent believed boat arrivals should be allowed to stay
- in September 2001, 77 per cent of Australians supported the Howard Government's decision to refuse entry to the Tampa and 71 per cent believed boat arrivals should be detained for the duration of the processing of their asylum application and
- those who supported an 'open borders' approach to asylum seekers in 2001 did so mainly for humanitarian reasons, and also claimed that the Howard Government's hardline policies were damaging Australia's reputation overseas.<sup>39</sup>

There appeared to have been a subtle shift in public attitudes towards boat arrivals in the last few years of the Howard Government. In particular, mandatory immigration detention had increasingly been criticised as revelations came to light concerning cases of wrongful detention and mistreatment of detainees.<sup>40</sup> The dramatic decrease in boat arrivals between 2003 and 2007 also

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34. Ibid.

35. Ibid.

36. Immigration detention for boat arrivals at this time was permitted under the Migration Act, but mandatory detention was a matter of policy, not law—a migration officer had discretion to detain a suspected illegal entrant, but detention was not mandated by the Act. See below for an outline of the history of mandatory immigration detention.

37. K Betts, op cit, p. 37.

38. Ibid., p. 45.

39. Ibid., pp. 40–3.

40. For example see J Macken, 'High cost of detention hits home', *Australian Financial Review*, 25 May 2005, viewed 23 January 2013,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FXN4G6%22>

The two most high profile cases regarding wrongful detention were those of Australian resident Cornelia Rau and Australian citizen Vivian Alvarez (who was briefly detained before being deported to the Philippines). These cases were the subject of individual inquiries: *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*



meant that public debate on the issue received less attention, as boat arrivals largely dropped out of the news.

However, since late 2008, as boat arrivals have once more been on the rise, debate regarding how best to handle the issue has flared once again. Policy changes by the Rudd Labor Government concerning how asylum seekers were received and managed (discussed further below) contributed to this, and the issue became particularly prominent in the context of the 2010 federal election. An April 2009 *Newspoll* survey found that 37 per cent of voters believed the Government was doing a good job managing the asylum seeker issue, and only 36 per cent believed that tougher policies would make any difference in stopping the flow of unauthorised boat arrivals.<sup>41</sup> In July 2009 Amnesty International commissioned Nielson to conduct a poll on attitudes to asylum seekers. The results of the poll indicated that there was a great deal of misinformation and confusion concerning asylum seekers arriving by boat, with the majority of respondents believing that 80 per cent of asylum seekers in Australia arrive by boat. Despite this, 69 per cent of respondents agreed that asylum seekers should be given the same rights regardless of their mode of arrival.<sup>42</sup> However polling conducted by the Lowy Institute in 2010 found that 78 per cent of Australians were either somewhat concerned or very concerned about asylum seekers coming to Australia by boat.<sup>43</sup> Similarly, the 2010 Scanlon Foundation survey *Mapping Social Cohesion* asked a series of questions about asylum seekers arriving by boat and concluded that 'the arrival of boats is met with a high level of negativity'.<sup>44</sup>

Polling since 2010 has continued to follow this trend, with the majority of Australians responding positively towards refugees arriving under Australia's Humanitarian Program, but continuing to respond negatively towards asylum seekers arriving by boat.<sup>45</sup> Interestingly, however, this negativity towards boat arrivals may not necessarily affect the way in which people vote. One analysis of several 2010 pre-election polls argued that:

What the polls over the past two months have shown very clearly is that when people say they favour tougher asylum seeker policies ... that attitude doesn't appear to be translating into how

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(Palmer Report), viewed 23 January 2013, <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf> and *Inquiry into the Circumstances of the Vivian Alvarez Matter* (Comrie Report), viewed 23 January 2013, [http://www.immi.gov.au/media/publications/pdf/alvarez\\_report03.pdf](http://www.immi.gov.au/media/publications/pdf/alvarez_report03.pdf)

41. P Maley and L Taylor, 'Boatpeople regime has nation divided', *The Australian*, 21 April 2009, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FSLBT6%22>
42. Amnesty International, *Australians support equal rights for asylum seekers*, 12 August 2009, viewed 23 January 2013, <http://www.amnesty.org.au/refugees/comments/21533/>
43. F Hanson, *Lowy Institute Poll 2010 Australia and the world: public opinion and foreign policy*, Lowy Institute for International Policy, 2010, p. 3.
44. A Markus, *Mapping Social Cohesion 2010*, Monash Institute for the Study of Global Movements, 2010, p. 39.
45. A Markus, *Asylum seekers*, Fact sheet 4, October 2012, Scanlon Foundation Social Cohesion Research Program, Monash University, viewed 7 January 2013, <http://www.arts.monash.edu.au/mapping-population/--documents/asylum-seekers-fact-sheet.pdf>

they will vote ... the figures suggest the electoral impact of the issue will be mild or non-existent.<sup>46</sup>

Similarly, an analysis of polls conducted by the Australian National University on issues of electoral importance found that in 2005 asylum and refugee issues ranked fifteenth (health care, taxes and an ageing population were considered to be the most important issues amongst voters) and in 2008 only six per cent of respondents considered immigration to be an issue of major importance.<sup>47</sup>

## The political debate and policy responses

The arrival of 'boat people' and the policy responses of successive governments has been a hot political issue since boats first began arriving in Australia in the 1970s. This has particularly been the case over the last two decades, which have seen the introduction of what have been considered by many to be 'hard-line' policies, such as mandatory detention for unauthorised boat arrivals introduced by the Keating Government, and the various policies of subsequent governments all aimed at curbing boat arrivals. Some of these are discussed in more detail below. Early responses to boat arrivals, such as the resettlement of large numbers of Indochinese refugees in the 1970s and 1980s, generally enjoyed bipartisan support. This continued through to the 1990s, with both parties supporting the introduction of mandatory detention. However, throughout the years of the Howard Government, party responses to the issue became gradually more differentiated and the issue more divisive. The significance of boat arrivals to the political scene in Australia was perhaps never more evident than in 2001 when, according to some commentators, the Howard Government's tough stance on asylum-seekers and boat arrivals swept it to victory in the November federal election.<sup>48</sup>

The political and policy response to boat arrivals has typically been twofold: emphasising the importance of ensuring that those arriving unauthorised by boat meet the Convention definition of a refugee (see glossary in Appendix C) and returning those who do not; and attempting to stop further flows of people from reaching Australia in this way. For instance, successive governments have focused on engaging other countries and international organisations in an attempt to stop the flow of refugees at the source, or on arranging for refugee processing to occur elsewhere. In 1977–78 approaches were made to regional governments to hold vessels in transit to allow refugee processing in camps. The Government also increased the number of Indochinese refugees accepted for resettlement from camps in Southeast Asia in an effort to reduce the number of people likely to attempt the journey by boat.<sup>49</sup> In 1982 the Fraser Government introduced individual determination of status procedures in order to ensure only 'genuine' Indochinese refugees were admitted to

46. P Browne, 'Boats and votes: more evidence on the opinion gap', *Inside Story*, online only, 16 July 2010, viewed 23 January 2013, <http://inside.org.au/boats-and-votes-more-evidence-on-the-opinion-gap/>

47. A Markus and R Rajjman, 'Immigration and public opinion', in A Markus, ed, *Immigration and nation building: Australia and Israel compared*, Edward Elgar Publishing, Cheltenham, 2010, pp.115–40.

48. I McAllister, 'Border protection, the 2001 Australian election and the Coalition victory', *Australian journal of political science*, vol. 38, no. 3, November 2003, pp. 445–63; and K Betts, 'Boatpeople and the 2001 election', *People and place*, vol. 10, no. 3, 2002, pp. 36–54.

49. N Viviani, op. cit., p. 80.

Australia.<sup>50</sup> In 1983, the Hawke Government endorsed the 'durable solutions' to the Indochinese refugee problem proposed by the UNHCR: first, voluntary repatriation; second, social integration in the country of first asylum; and as only the last resort, resettlement in third countries such as Australia.<sup>51</sup> In 1989 Australia, along with 77 other countries, endorsed the Comprehensive Plan of Action for Indochinese Refugees, which was designed to achieve a durable solution to the continuing outflows of Indochinese in the region. The Plan required first asylum countries in South-East Asia to continue to grant temporary refuge to all asylum seekers and to screen all new arrivals against internationally-recognised criteria to determine whether they were bona fide refugees. Persons deemed not to be refugees were returned to their country of origin; persons in camps throughout the region who arrived prior to cut-off dates for screening were resettled in third countries along with those accepted as refugees; and the orderly departure arrangement was expanded as the safest and preferred means of departure from Vietnam.<sup>52</sup>

The 1990s through to the mid 2000s saw an increase in policies aimed at deterring asylum seekers from coming to Australia by boat including the introduction of mandatory detention laws, the excision of external territories from the migration zone and offshore processing for those arriving at such places and the introduction of temporary protection visas. These measures have been complemented by more traditional 'border security' measures such as enhanced coastal surveillance, and increased engagement with transit countries such as Indonesia and Malaysia in an attempt to stop people smuggling at its source.

Upon coming to power in November 2007 the Rudd Government ended some of the policies put in place by the Howard Government to discourage unauthorised arrivals and initially focused its attention largely on border security measures designed to disrupt the work of people smugglers. For example, the Government announced \$654 million in the 2009–10 federal Budget 'to fund a comprehensive, whole-of-government strategy to combat people smuggling and help address the problem of unauthorised boat arrivals'.<sup>53</sup> While the Rudd Government abandoned some of the Howard Government's deterrence policies, others were retained. For example, the Pacific Solution (discussed below) was abandoned, however the excision of offshore places from Australia's migration zone was retained and offshore processing of unauthorised boat arrivals has continued on Christmas Island.

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50. I Macphree (Minister for Immigration and Ethnic Affairs), 'Ministerial Statement: Refugee policy', House of Representatives, *Debates*, 16 March 1982, p. 991, viewed 25 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F1982-03-16%2F0058%22>

51. Department of Immigration and Ethnic Affairs, *Review '83*, Australian Government Publishing Service, Canberra, 1983, p. 31.

52. W Robinson, 'The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: sharing the burden and passing the buck', *Journal of Refugee Studies*, vol.17 no.3, 2004, pp. 319–33.

53. B Debus (Minister for Home Affairs), *\$1.3 billion to combat people smuggling and strengthen Australia's national security*, media release, Canberra, 12 May 2009, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FGELT6%22>

As boat arrivals continued to increase in the lead up to the 2010 federal election, the Gillard Government turned its attention back to policies designed to deter asylum seekers arriving by boat, proposing a regional solution built on a regional processing centre in East Timor. However, this proposal was soon abandoned in favour of an arrangement with Malaysia, whereby up to 800 boat arrivals would be sent from Australia to Malaysia, and 4000 refugees would be resettled to Australia from Malaysia over four years. This arrangement was signed by both countries on 25 July 2011.<sup>54</sup> On 31 August 2011, before any transfers had been made under the arrangement, the High Court found it to be invalid.<sup>55</sup> Unable to get support from either the Opposition or the Greens for legislation to enable the arrangement to proceed, the Government was forced to abandon it.

Faced with an increasing number of boat arrivals, and a political impasse regarding the Government's attempts to respond to them, Prime Minister Gillard announced in June 2012 the creation of an Expert Panel on Asylum Seekers.<sup>56</sup> The Panel, led by former Chief of the Defence Force, Angus Houston, was charged with considering the best way forward on managing the issue of asylum seekers arriving by boat. The report of the Panel, presented to the Government on 13 August 2012, made 22 recommendations on possible policy options.<sup>57</sup> The recommendations constituted an integrated approach aimed at reducing pressure on Australia's humanitarian program, providing disincentives for irregular migration, and furthering regional engagement strategies, including regional processing.

The Gillard Government acted swiftly in implementing some, although not all, of the recommendations of the Expert Panel. In particular, it acted quickly to reopen offshore processing centres in the Pacific—this was a significant policy shift for Labor (discussed in further detail below).

The Gillard Government also focused its efforts on removing people who are found not to be owed protection, and those who make no protection claim. In January 2011 the Government signed a Memorandum of Understanding (MOU) with the Government of Afghanistan and UNHCR allowing for failed Afghan asylum seekers to be involuntarily returned to Afghanistan.<sup>58</sup> The Government has acknowledged that the MOU is intended to act as a deterrent to unauthorised boat arrivals, with the Minister for Immigration stating that 'in order to dissuade people from risking their lives by joining

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54. C Bowen (Minister for Immigration and Citizenship), *Australia and Malaysia sign transfer deal*, media release, Canberra, 25 July 2011, viewed 15 January 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb168739.htm>
55. Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship [2011] HCA 32, viewed 15 January 2013, <http://www.austlii.edu.au/au/cases/cth/HCA/2011/32.html>
56. J Gillard (Prime Minister), *Transcript of joint press conference*, Canberra, media release, Canberra, 28 June 2012, viewed 22 January 2013, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-29>
57. Expert Panel on Asylum Seekers (A Houston, chair), *Report of the Expert Panel on Asylum Seekers*, Australian Government, Canberra, August 2012, viewed 22 January 2012, [http://expertpanelonasyumseekers.dpmc.gov.au/sites/default/files/report/expert\\_panel\\_on\\_asylum\\_seekers\\_full\\_report.pdf](http://expertpanelonasyumseekers.dpmc.gov.au/sites/default/files/report/expert_panel_on_asylum_seekers_full_report.pdf)
58. C Bowen (Minister for Immigration and Citizenship), *Migration and humanitarian cooperation MOU signed with Afghanistan and UNHCR*, media release, Canberra, 17 January 2011, viewed 23 January 2013, <http://www.minister.immi.gov.au/media/cb/2011/cb157303.htm>  
Full text of the MOU can be viewed at [http://www.minister.immi.gov.au/media/media-releases/\\_pdf/mou-with-afghanistan-unhcr.pdf](http://www.minister.immi.gov.au/media/media-releases/_pdf/mou-with-afghanistan-unhcr.pdf)

people smuggling ventures, it is important that Afghans found not to be owed protection by Australia are returned to Afghanistan'.<sup>59</sup> As at the end of 2012, two people had been involuntarily returned to Afghanistan under this arrangement, however neither of these were boat arrivals. Rather, they were asylum seekers who had arrived by air, been processed onshore, and had their claims rejected by both DIAC and the Refugee Review Tribunal.<sup>60</sup>

Large numbers of Sri Lankan boat arrivals have also been removed from Australia in recent months, both voluntarily and involuntarily. In particular, the Government has emphasised the fact that large numbers of Sri Lankan arrivals have been returned without having made any protection claims, citing this as evidence of its tough approach to so-called 'economic migrants'.<sup>61</sup> Some observers have criticised the Government's actions in this regard, claiming that Sri Lankan arrivals are being 'screened out' without sufficient opportunity to raise a protection claim.<sup>62</sup>

## Mandatory detention

Prior to 1992 unauthorised boat arrivals were held in detention under the *Migration Act 1958*, but on a discretionary basis. Mandatory immigration detention for unauthorised arrivals was introduced by the Keating Government in 1992 under the *Migration Amendment Act 1992*, as part of the codification of migration policy.<sup>63</sup> The rationale given by the then immigration minister, Gerry Hand, was that detention would facilitate the processing of refugee claims, prevent de facto migration and save the cost of locating people in the community.<sup>64</sup> Mandatory detention for *all* unlawful non-citizens (that is, any non-citizen who does not hold a valid visa) was introduced under the *Migration Reform Act 1992*, the majority of which commenced on 1 September 1994. The intention behind the extension of mandatory detention to all unlawful non-citizens was to effectively regulate not only the determination of refugee status but also the removal of people who do not establish an entitlement to be in Australia.<sup>65</sup> Under the current legislation, if a migration officer reasonably suspects that a person is an unlawful non-citizen, the officer must detain the person.<sup>66</sup>

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59. C Bowen, *Migration and humanitarian cooperation MOU signed with Afghanistan and UNHCR*, op. cit.

60. C Bowen (Minister for Immigration and Citizenship), *Second man removed to Afghanistan under returns agreement*, media release, Canberra, 17 December 2012, viewed 15 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb192491.htm>

61. C Bowen (Minister for Immigration and Citizenship), *Sri Lankan returns, people smugglers, boat arrivals, Malaysia agreement*, Interview with John Stanley, 2UE Mornings, Transcript, Canberra, 17 December 2013, viewed 23 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb192509.htm>

62. P Lloyd, *Asylum seekers not told of their rights: lawyer*, ABC website, 16 October 2012, viewed 23 January 2013, <http://www.abc.net.au/news/2012-10-16/immigration-rejecting-boat-arrivals-without-hearing-cases/4316670>

63. For more detail see J Phillips and H Spinks, *Immigration detention in Australia*, Background note, Parliamentary Library, 2012, [http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1311498/upload\\_binary/1311498.pdf;fileType=application/pdf](http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1311498/upload_binary/1311498.pdf;fileType=application/pdf)

64. G Hand 'Second reading speech: Migration Amendment Bill 1992', House of Representatives, *Debates*, 5 May 1992, p. 2370.

65. G Hand, 'Second reading speech: Migration Reform Bill 1992', House of Representatives, *Debates*, 4 November 1992, p. 2620.

66. *Migration Act 1958*, s.13.

Detention is mandated for all unlawful non-citizens in Australia, and historically people in immigration detention have been predominantly visa overstayers, unauthorised air arrivals, and those whose visa has been cancelled, rather than those who have arrived unauthorised by boat. The exceptions to this in the past have been the period between 1999 and 2002, which saw a spike in the numbers of boat arrivals in detention, and the period from the middle of 2009 to the present as boat arrivals have increased once more. Outside of these periods, the largest single category of persons in immigration detention has generally been visa overstayers. Despite this, the policy debate surrounding mandatory detention has consistently focused on its application with regards to asylum seekers arriving by boat.

A 1998 report from the Human Rights and Equal Opportunity Commission (HREOC) on the policy of mandatory detention argued that the policy breached international human rights standards and that when detention was prolonged many of the conditions in which people were detained became unacceptable and breached Australia's human rights obligations.<sup>67</sup> The report also called for children and other vulnerable people to be detained only in exceptional circumstances.

In 2004 HREOC published *A last resort? The report of a national inquiry into children in immigration detention*, which was highly critical of the mandatory detention of children. The inquiry found that 'Australia's immigration laws, as administered by the Commonwealth, and applied to unauthorised arrival children create a detention system that is fundamentally inconsistent with the *Convention on the Rights of the Child* (CRC).<sup>68</sup> The inquiry further found that children in long term immigration detention were at risk of serious mental harm and that failure to remove children from detention together with their parents constituted cruel, inhumane and degrading punishment.<sup>69</sup>

The Howard Government rejected the findings and recommendations of the report and in June 2004 reaffirmed its commitment to the policy of mandatory detention, including that of children.<sup>70</sup> The then Immigration Minister, Senator Vanstone, stated that 'to release all children from detention in Australia would be to send a message to people smugglers that if they carry children on dangerous boats, parents and children will be released into the community very quickly'.<sup>71</sup>

Despite the Government's initial rejection of the report's recommendations, the following year Prime Minister Howard, following significant pressure from his backbench, announced a softening of

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67. Human Rights and Equal Opportunity Commission, *Those who've come across the seas: Detention of unauthorised arrivals*, Commonwealth of Australia, May 1998, viewed 23 January 2013, [http://www.hreoc.gov.au/pdf/human\\_rights/asylum\\_seekers/h5\\_2\\_2.pdf](http://www.hreoc.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf)

68. Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention*, Commonwealth of Australia, April 2004, viewed 23 January 2013, [http://www.hreoc.gov.au/human\\_rights/children\\_detention\\_report/index.html](http://www.hreoc.gov.au/human_rights/children_detention_report/index.html)

69. *Ibid.*, p. 855.

70. A Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs), *HREOC Inquiry into children in immigration detention report tabled*, media release, Canberra, 13 May 2004, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2TKC6%22>

71. A Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs), *Government committed to detention regime*, media release, Canberra, 10 June 2004, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FAZ2D6%22>

immigration detention policy, including the release of families with children into community detention arrangements.<sup>72</sup> The changes announced on 17 June 2005 were presented as preserving the broad framework and principle of mandatory detention, but with a 'softer edge'. Other changes included: the introduction of a three month time limit to apply to both the primary protection visa decision and the merits appeal decision by the Refugee Review Tribunal; Ombudsman's reports and recommendations concerning people in detention longer than two years to be tabled in Parliament; and, the extension of the immigration minister's discretionary powers to grant visas. The *Migration Amendment (Detention Arrangements) Act 2005* came into force on 29 June 2005. In his second reading speech the Minister for Citizenship and Multicultural Affairs emphasised that while greater flexibility was being introduced, the broad framework of the Government's approach to unauthorised arrivals remained unaltered. The Government remained committed to mandatory detention along with the excision of territory for migration purposes, offshore processing and, if necessary, turning boats around at sea.<sup>73</sup>

Upon coming to power in November 2007 the Rudd Government took a new policy direction regarding the mandatory detention of unauthorised arrivals. On 29 July 2008 the then Minister for Immigration and Citizenship, Senator Chris Evans, announced an overhaul of the policy of mandatory detention. The new policy dictates that people will be detained as a 'last resort', rather than as standard practice. Unauthorised arrivals are detained on arrival for identity, health and security checks, but once these have been completed the onus is on the Department to justify why a person should continue to be detained. Ongoing detention is justified for people considered to pose a security risk or those who do not comply with their visa conditions, but policy is for the majority of people to be released into the community while their immigration status is resolved. The policy also states that children, and where possible their families, will not be held in immigration detention centres.<sup>74</sup>

Despite this change in policy rhetoric however, long-term mandatory detention has continued under the Rudd and Gillard Governments. The increase in boat arrivals since 2009 has placed significant pressure on immigration detention facilities. The Government initially responded to this pressure by moving detainees from Christmas Island to mainland detention facilities, and announcing the expansion of existing centres along with the opening of new centres.<sup>75</sup>

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72. J Howard (Prime Minister), *Immigration detention*, media release, Canberra, 17 June 2005, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FKWDG6%22>

73. P McGauran (Minister for Citizenship and Multicultural Affairs), 'Second reading speech: Migration Amendment (Detention Arrangements) Bill 2005', House of Representatives, *Debates*, 21 June 2005, p. 55.

74. C Evans (Minister for Immigration and Citizenship), *New directions in detention: restoring integrity to Australia's immigration system*, speech delivered to Centre for International and Public Law, Australian National University, 29 July 2008, viewed 23 January 2013, <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>

75. For example see C Bowen (Minister for Immigration and Citizenship), *Additional immigration detention accommodation*, media release, Canberra, 17 September 2010, viewed 23 January 2013, <http://www.minister.immi.gov.au/media/media-releases/2010/cb10064.htm>

Since then, the Government has introduced several other significant policy changes and initiatives in response to the increase in arrivals.<sup>76</sup> In particular, in October 2011 the Gillard Government announced that some boat arrivals would be issued with bridging visas (just like most air arrivals) and released from detention into the community while their claims are processed.<sup>77</sup> On 25 November 2011 the Minister for Immigration and Citizenship announced that the first group of asylum seekers—all long term detainees—was to be released on bridging visas under this arrangement.<sup>78</sup> As at 15 October 2012, over 6100 bridging visas had been issued to irregular maritime arrivals.<sup>79</sup>

While the Government's New Directions in Detention policy dictates that children will not be held in immigration detention centres, large numbers of children are still detained in 'alternative places of detention', and some confusion exists concerning the differences between various places of alternative detention. In October 2010 the Immigration Minister announced that children would be progressively moved out of detention facilities into community-based accommodation by June 2011. Under community detention arrangements people are able to live in the community, supported by community organisations, with the requirement that they live at a certain address and report regularly to the immigration department.<sup>80</sup> As at 31 October 2012, 758 children were being held in community detention, with another 762 being held in 'alternative places of detention' in the community, 25 in immigration transit accommodation and 10 in immigration residential housing.<sup>81</sup>

## The 'Pacific Solution'

In the pre-election environment of 2001, the Howard 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, removed to third countries in the Pacific, or sent to Australia's immigration facilities at Christmas Island. Any claims

76. For more detail see J Phillips and H Spinks, *Immigration detention in Australia*, op. cit.

77. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Transcript of joint press conference*, media release, Canberra, 13 October 2011, viewed 18 October 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1162009%22>

78. C Bowen (Minister for Immigration and Citizenship), *Bridging visas to be issued for boat arrivals*, media release, 25 November 2011, viewed 28 November 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm>

79. Senate Legal and Constitutional Affairs Legislation Committee, Immigration and Citizenship Portfolio, Supplementary Budget Estimates, 15 October 2012, p. 22, viewed 7 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fa41a5fdb-967c-42a4-b0f4-6ac936ebb9dc%2F0000%22>

80. C Evans (Minister for Immigration and Citizenship), *Government to move children and vulnerable families into community-based accommodation*, media release, Canberra, 18 October 2010, viewed 23 January 2013, <http://www.minister.immi.gov.au/media/cb/2010/cb155484.htm>

81. DIAC, *Immigration detention statistics summary*, op. cit. Alternative temporary detention in the community includes detention in the community in private houses, correctional facilities, watch houses, hotels, apartments, foster care, and hospitals accompanied by a person designated under the Migration Act. Community detention arrangements do not require people to be accompanied by a designated person. For more detail see DIAC, 'About the facilities', DIAC website, viewed 28 January 2013, <http://www.immi.gov.au/managing-australias-borders/detention/facilities/about/>



made by those people for refugee status could then be processed by the Immigration Department outside the jurisdiction of Australian courts, and with no guarantee of a resettlement place in Australia. These border protection measures were officially known as the Pacific Strategy, although they became colloquially known as the 'Pacific Solution'.<sup>82</sup>

The so-called 'Pacific Solution' was a response to the events of August 2001 when 433 asylum seekers en route to Australia were rescued from their sinking vessel by the Norwegian freighter, MV *Tampa*. The *Tampa* was refused entry to Australia although the ship's master eventually defied this order and did enter Australia's territorial waters where it was interdicted by the Special Air Service (SAS). The asylum seekers were subsequently transferred to HMAS *Manoora* and sent to the Pacific island of Nauru.

In September 2001 Parliament passed the *Migration Amendment (Excision from Migration Zone) Bill 2001* and *The Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001*, giving legislative effect to the Pacific Solution. The Bills amended the *Migration Act 1958* to excise Christmas, Ashmore, Cartier and Cocos (Keeling) Islands from the migration zone. As a result, any unlawful non-citizen attempting to enter Australia via one of these islands was now prevented from making a valid application for a protection visa unless the Minister for Immigration determined that it was in the public interest for that person to do so.

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 were managed by the International Organisation for Migration (IOM).

Under the 'Pacific Solution' unauthorised arrivals at excised places were transferred to the Offshore Processing Centres on Nauru and Manus Island where they were detained while their asylum claims were processed. Claims were not processed under Australian law and claimants had no access to legal assistance or judicial review. Rather claims were processed by Australian immigration officials, and in some cases UNHCR officials in accordance with the criteria of the Refugee Convention. Persons who were found to be owed protection were eventually resettled either in Australia or in a third country (with the emphasis being on trying to find resettlement solutions in a third country in preference to Australia). Some asylum seekers were also processed on the excised offshore territory of Christmas Island.

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82. A Millbank and J Phillips, *Protecting Australia's borders*, Research note, no. 22, 2003–04, Parliamentary Library, Canberra, 2003, [http://parlinfo.parlInfo/download/library/prsub/YDZA6/upload\\_binary/ydza66.pdf;fileType=application/pdf#search=%22phillips%22](http://parlinfo.parlInfo/download/library/prsub/YDZA6/upload_binary/ydza66.pdf;fileType=application/pdf#search=%22phillips%22)

The 'Pacific Solution' was widely criticised by refugee advocacy and human rights groups as being contrary to international refugee law, unjustifiably expensive to implement, and psychologically damaging for detainees.<sup>83</sup>

On 8 February 2008 the 'Pacific Solution' formally ended, as the last 21 asylum seekers detained at the Offshore Processing Centre in Nauru were resettled in Australia. The Rudd Government announced that the centres on Manus and Nauru would no longer be used, and that future unauthorised boat arrivals would be processed on Christmas Island, which would remain excised from Australia's migration zone.<sup>84</sup>

Between 2001 and February 2008 a total of 1637 people had been detained in the Nauru and Manus facilities. Of these, 1153 (70 per cent) were ultimately resettled in Australia or other countries. Of those who were resettled 705 (around 61 per cent) were resettled in Australia.<sup>85</sup>

The abandonment of offshore processing proved to be temporary. In response to a significant increase in arrivals, and as recommended in the Report of the Expert Panel on Asylum Seekers, the Gillard Government announced its decision in August 2012 to resume offshore processing of some asylum seekers arriving by boat under arrangements with the governments of Nauru and Papua New Guinea (PNG).<sup>86</sup> As a result, the processing of asylum seekers offshore in third countries in the Pacific, not onshore in Australia, is once again the preferred solution to the 'problem' of unauthorised boat arrivals as it was under the Howard Government.

Under the new offshore processing arrangements, any asylum seeker arriving in Australia by boat after 13 August 2012 may be transferred to Regional Processing Centres (RPCs) in Nauru or Manus Island (PNG) for processing, subject to a pre-transfer assessment being conducted by the Department of Immigration and Citizenship to determine whether it is 'reasonably practicable' for the person to be transferred.<sup>87</sup> As at the end of 2012, 155 people had been transferred to Manus Island, and 414 to Nauru, under these arrangements.<sup>88</sup>

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83. For example, see K Bem, N Field, N Maclellan, S Meyer and T Morris, *A price too high: the cost of Australia's approach to asylum seekers*, A Just Australia and Oxfam Australia, August 2007, viewed 23 January 2013,

<http://pandora.nla.gov.au/pan/76526/20070910-1523/www.oxfam.org.au/media/files/APriceTooHigh.pdf>

84. C Evans (Minister for Immigration and Citizenship), *Last refugees leave Nauru*, media release, Canberra, 8 February 2008, viewed 23 January 2013,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FYUNP6%22>

85. C Evans, *Last refugees leave Nauru*, op. cit.

86. J Gillard (Prime Minister) and C Bowen (Minister for Immigration and Citizenship), *Australia signs memorandum of understanding with Nauru*, media release, Canberra, 29 August 2012, viewed 7 January 2013,

<http://www.minister.immi.gov.au/media/cb/2012/cb189579.htm>

87. See Department of Immigration and Citizenship (DIAC), *Departmental guidelines for assessment of persons prior to transfer pursuant to Section 198AD(2) of the Migration Act 1958*, DIAC, Canberra, 14 October 2012, viewed 15 January 2013,

<http://www.immi.gov.au/visas/humanitarian/pdf/s198ad-2-guidelines.pdf>

88. Figures compiled by the authors using information supplied in Department of Immigration and Citizenship press releases between September and December 2012.

Asylum seekers transferred to RPCs will have their protection claims assessed by the government of the host country, under that country's legal framework, and those who are found to be refugees will be eligible for resettlement to Australia. However, the Minister for Immigration and Citizenship has repeatedly stated that such people would be subject to a 'no advantage' principle, meaning that they would not be resettled any sooner than they would have been had they not travelled to Australia by boat.<sup>89</sup> What this means in practice is unclear, with the Government refusing to be drawn on exactly how long people may have to wait for resettlement. Refugee advocates have expressed concern that the 'no advantage' principle may lead to genuine refugees being left in limbo in Nauru and Papua New Guinea for many years, waiting to be resettled.<sup>90</sup>

It remains to be seen whether this strategy is only pursued in the short-term as suggested by the Expert Panel on Asylum Seekers, or whether it becomes entrenched as long-term policy. If that becomes a reality, and the Government holds firm to its 'no advantage principle', asylum seekers may once again find themselves spending prolonged periods of time in offshore processing centres in the Pacific as they once did during the Howard Government's 'Pacific Solution'.<sup>91</sup>

## Temporary Protection Visas

In October 1999, the Howard Government introduced Temporary Protection Visas (TPVs) for asylum seekers who arrived unauthorised and were subsequently assessed by the immigration department to be refugees.<sup>92</sup> A TPV was valid for three years, after which time a person's need for protection would be reassessed. Holders of TPVs were provided with access to medical and welfare services, but given only reduced access to settlement services, no access to family reunion, and no travel rights. If a person who held a TPV left Australia their visa could be cancelled. Approximately 11 000 TPVs were issued between 1999 and 2007, and approximately 90 per cent of TPV holders eventually gained permanent visas.<sup>93</sup>

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89. For example, see C Bowen (Minister for Immigration and Citizenship), *Designating Nauru as a regional processing country, transfers to Nauru, asylum seeker boats, the Greens*, media release, 10 September 2012, viewed 15 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb189747.htm>

90. Amnesty International, *Manus and 'No Advantage' announcement squib refugee protection*, media release, 21 November 2012, viewed 24 January 2013, <http://www.amnesty.org.au/news/comments/30507/>

91. For more detail see J Phillips, *The 'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island*, Background note, Parliamentary Library, 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprpub%2F1893669%22>

92. J Phillips, *Temporary Protection Visas*, Research note, no. 51, 2003–04, Parliamentary Library, Canberra, 2004, viewed 23 January 2013, [http://parlinfo.parlInfo/download/library/prpub/B7GC6/upload\\_binary/b7gc66.pdf;fileType=application/pdf#search=%22phillips%22](http://parlinfo.parlInfo/download/library/prpub/B7GC6/upload_binary/b7gc66.pdf;fileType=application/pdf#search=%22phillips%22)

93. In an answer to a Question without Notice in the Senate on 15 May 2008, Senator Chris Evans stated that there were '11 000-odd TPVs' granted by the previous government. C Evans, 'Questions without notice: asylum seekers', Senate, *Debates*, 15 May 2008, p. 2008, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2008-05-15%2F0147%22>

In May 2008 the Rudd Government announced that it would abolish the system of temporary protection.<sup>94</sup> This meant that around 1000 people in Australia on TPVs would be granted permanent protection (provided they met security and character requirements), and from 2008–09 all people found to be refugees would be granted permanent protection. The TPV system was formally ended by amendments to the Migration Regulations on 9 August 2008.

Some, including members of the current Opposition, have attributed the recent increase in the number of unauthorised boat arrivals to the abolition of TPVs (along with the ending of the Pacific Solution), claiming that TPVs were an effective deterrent to boat arrivals.<sup>95</sup> However, large numbers of people (the highest numbers prior to 2010) continued to arrive unauthorised by boat in the financial year in which TPVs were introduced, and the financial year immediately following (see figures in Appendix A).<sup>96</sup> The former Minister for Immigration and Citizenship, Chris Evans, has argued, along with many refugee advocates and journalists, that the introduction of TPVs was ineffective in reducing the number of unauthorised boat arrivals. They argue that it actually led to an increase in women and children undertaking the risky journey to Australia by boat, as TPVs did not provide family reunification rights (meaning that families could not rely on men travelling to Australia alone and bringing their wives and children out to join them once they had been granted protection):

... the temporary protection visa regime was introduced in late 1999. Following that there was a small drop-off in arrivals. From December 1999 to November 2000 there were only 2,900 arrivals, as compared with 3,000 before that. So there was a small drop of about 100 to 2,900. From December 2000, a year after its introduction, until November 2001 there were 6,540 boat arrivals in the second year of the operation of the TPV regime. The claim that the TPV introduction halted arrivals is not supported by the evidence. ... In fact, in the period after that there was a huge surge. Our figures show that in that period the percentage of women and children went from around 25 per cent to around 40 per cent. We saw more women and children taking the very perilous journey to come to Australia by unlawful boat arrivals.<sup>97</sup>

The Labor Government has countered the argument that the recent increase in boat arrivals is due to policy changes such as the abolition of TPVs, blaming it instead on ‘push factors’ which have led to

94. C Evans (Minister for Immigration and Citizenship), *Budget 2008–09: Rudd Government scraps temporary protection visas*, media release, 13 May 2008, viewed 23 January 2013, <http://www.minister.immi.gov.au/media/media-releases/2008/ce05-buget-08.htm>

95. For example see J Kerin, ‘Turnbull rocks Canberra’s boat’, *Australian Financial Review*, 21 April 2009, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F5QBT6%22>

96. For a detailed breakdown of arrivals two years before and two years after the introduction of TPVs see Senate Legal and Constitutional Affairs Legislation Committee, Answers to Questions on notice, Immigration and Citizenship Portfolio, Budget Estimates 21–24 May 2012, QuestionBE12/265, viewed 7 January 2013, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/bud-1213/diac/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud-1213/diac/index.htm)

97. C Evans (Minister for Immigration and Citizenship), Senate Legal and Constitutional Affairs Legislation Committee, Immigration and Citizenship Portfolio, Additional Estimates, 24 February 2009, pp. 72–3, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F11640%2F0001%22>

an increase in the numbers of refugees worldwide.<sup>98</sup> The Government has consistently rejected calls by the Opposition for a return to the use of TPVs.<sup>99</sup> However, in an apparent softening of this position, the Prime Minister, Julia Gillard, has told the Opposition that the Government is prepared to review temporary protection visas and their deterrence value.<sup>100</sup> In addition, on 21 November 2012, the Minister for Immigration and Citizenship announced that people who had arrived by boat after 13 August 2012 would not necessarily be transferred offshore. However, if found to be refugees they would not be issued with permanent protection visas, but issued with bridging visas, possibly without work rights.<sup>101</sup> The use of bridging visas has been characterised by some observers as a return to temporary protection, under a different name.<sup>102</sup>

## Conclusion

A widespread perception in the community that Australia is being swamped by asylum seekers arriving by boat continues to strongly influence government policy and to be an emotive and divisive political issue. As a result, for many years the Labor Government, and before it the Coalition Government, have been pressured to adopt and maintain effective measures to address border security concerns, combat people smuggling and 'stop the boats'.

With a return to offshore processing in the Pacific and a proposal that certain temporary protection measures be introduced, the policy differences between Labour and the Coalition are minimal. In fact, both sides of politics are in agreement on most of the measures in place to deal with these issues (including mandatory detention for unauthorised boat arrivals).

One notable policy difference between the two major parties is the insistence by the Leader of the Opposition, Tony Abbott, that within a week of taking office he would instruct the Australian Navy to turn boats back to international waters:

Within a week of taking office, I would give new orders to the navy that, where it is safe to do so, under the usual chain-of-command procedures, based on the advice of commanders-on-the-spot, Indonesian flagged, Indonesian crewed and Indonesian home-ported vessels without lawful

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98. For example see A Hayward, 'Govt denies blame for increase in boat people', *The Canberra Times*, 23 January 2013, viewed 20 May 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F12AT6%22> and T Arup, 'Increase in boat people predicted', *The Age*, 11 April 2009.
99. For example see C Bowen (Minister for Immigration and Citizenship), 'Matters of public importance: asylum seekers', House of Representatives, *Debates*, 23 November 2010, p.3447, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-11-23%2F0049%22>
100. J Gillard (Prime Minister), *Asylum seekers*, Statements on indulgence, 27 June 2012, viewed 7 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F3e4e9532-bf3c-4623-bc6b-c0e926ad7cec%2F0116%22>
101. C Bowen (Minister for Immigration and Citizenship), *No advantage onshore for boat arrivals*, media release, 21 November 2012, viewed 7 January 2013, <http://www.minister.immi.gov.au/media/cb/2012/cb191883.htm>
102. M Dodd and L Wilson, 'Worse off now than in Howard years: Le', *The Australian*, 14 October 2011, p. 6, viewed 24 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1150436%22>

reason to be headed to Australia would be turned around and escorted back to Indonesian waters.<sup>103</sup>

Although there were only ever a few instances of successful boat 'turnarounds' during the term of the Howard Government, due in part to the practical complexities involved, the Coalition is confident that turning boats around would be an effective option 'in the right circumstances'.<sup>104</sup> It remains to be seen whether a Coalition Government in reality would successfully implement this policy.

Boat arrival numbers in Australia have fluctuated significantly over the last 30 years in response to global events. With predictions that further instability in countries like Afghanistan will result in increased displacement in the coming years, it is likely that increased asylum flows into our region will continue for the foreseeable future.<sup>105</sup>

Government responses over the years from both sides of politics have included measures aimed at ensuring that those arriving by boat are genuine refugees, policies aimed at protecting our borders, including through cooperation with neighbouring countries, and policies aimed at deterring unauthorised boat arrivals. The debate in both public and political arenas is likely to continue as governments seek to address these issues.

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103. T Abbott (Leader of the Opposition), *Landmark speech: the Coalition's plan for more secure borders*, Address to the Institute of Public Affairs, Melbourne, 27 April 2012, viewed 23 January 2013, <http://www.tonyabbott.com.au/LatestNews/Speeches/tabid/88/articleType/ArticleView/articleId/8689/Landmark-Speech--Address-to-the-Institute-of-Public-Affairs-Melbourne.aspx>
104. T Abbott (Leader of the Opposition), *Restoring sovereignty and control to our borders*, media release, 27 May 2010, viewed 23 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FIMUW6%22>
105. STATT, 'Afghan migration in flux', *Synapse*, Issue 10, January 2013, STATT website, viewed 23 January 2013, <http://www.statt.net/wp-content/uploads/2013/01/STATT-Synapse-Issue-10-Afghan-Migration-in-Flux.pdf>

## Appendix A: Boat arrivals since 1976 by calendar year

Year	Number of boats	Number of people
1976		111
1977		868
1978		746
1979		304
1980		0
1981		30
1982–88		0
Year	Number of boats	Number of people (excludes crew)
1989	1	26
1990	2	198
1991	6	214
1992	6	216
1993	3	81
1994	18	953
1995	7	237
1996	19	660
1997	11	339
1998	17	200
1999	86	3721
2000	51	2939
2001	43	5516
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161

Year	Number of boats	Crew	Number of people (excludes crew)
2009	60	141	2726
2010	134	345	6555
2011	69	168	4565
2012	278	392	17 202

**Sources:**

**1976–1988:** K Betts, '[Boatpeople and public opinion in Australia](#)', *People and place*, vol. 9, no. 4, 2001, p. 34. Numbers of boats and crew members not specified.

**1989–2008:** DIAC advice provided to the Parliamentary Library on 22 June 2009 (excludes crew members).

**2009–2012:** Customs and Border Protection advice provided to the Parliamentary Library on 7 January 2013.

## Appendix B: Boat arrivals since 1976 by financial year

Year	Number of boats	Number of people
1975–76	1	5
1976–77	7	204
1977–78	43	1423
1978–79	6	351
1979–80	2	56
1980–81	1	30
1981–82 to 1988–89	0	0
1989–90	3	224
1990–91	5	158
1991–92	3	78
1992–93	4	194
1993–94	6	194
1994–95	21	1071
1995–96	14	589
1996–97	13	365
1997–98	13	157
1998–99	42	921
1999–00	75	4175
2000–01	54	4137
2001–02	19	3039
2002–03	0	0
2003–04	3	82
2004–05	0	0
2005–06	8	61
2006–07	4	133
2007–08	3	25

Year	Number of boats*	Number of people (excludes crew)*	Number of people (includes crew)**
2008–09	23	985	1033
2009–10	117	5327	5609
2010–11	89	4730	4940

Year	Number of boats	Crew	Number of people (excludes crew)
2011–12	110	190	7983
2012–13 (to 31.12.12)	205	153	11 896

### Notes:

\*DIAC figures. \*\*Figures compiled from ministerial and departmental press releases. Data from 2001–02 onwards includes arrivals at both excised and non-excised places, but excludes boats returned from whence they came (boat turnarounds).



Deaths at sea in Australian waters may or may not be included in the figures provided by DIAC, but are included in figures compiled by the authors. Deaths in recent years include 5 deceased at sea 16 April 2009; 12 deceased at sea 1 November 2009; 1 crew member who allegedly drowned on 20 November 2011; and the estimated 48 who drowned during the boat tragedy on 15 December 2010 where a boat sank on approach to Christmas Island (42 people were rescued, 30 bodies were recovered and an estimated 18 people drowned). For further detail see M Hutton, *Drownings on the public record of people attempting to enter Australia irregularly by boat 1998–2011*, sievx.com website, viewed 25 January 2013, <http://sievx.com/articles/background/DrowningsTable.pdf>

Arrival figures do not include; two arrivals in an ‘esky’ on 17 January 2009; four on Deliverance Island with no boat on 29 April 2009; and 78 on board MV *Oceanic Viking* intercepted in Indonesian waters in November 2009.

**Sources:**

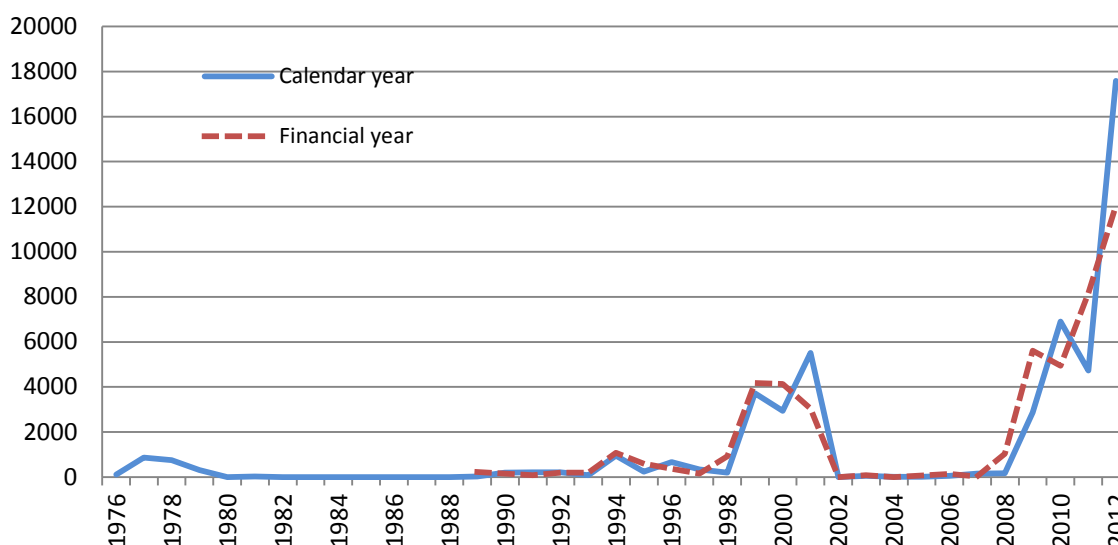
**1975–76 to 2007–08:** DIAC, [Submission](#) to the Joint Select Committee on Australia’s Immigration Detention Network inquiry (no. 32), Figure 2, p. 18, 1 September 2011, viewed 25 January 2013, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctte/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/submissions.htm) Numbers of crew members not specified or not included.

**2008–09 to 2010–11:** Ibid. (excludes crew members 2008–09 to 2010–11); and figures compiled from ministerial and departmental press releases (includes crew members). Note: not all press releases specify the number of crew members versus IMAs; and not all boat arrivals may be subject to ministerial press releases. As a result there may be discrepancies with our figures and DIAC or Customs and Border Protection data.

**2011–12 and 2012–13:** figures compiled from ministerial and departmental press releases. Note: not all press releases specify the number of crew members versus IMAs; and not all boat arrivals may be subject to ministerial press releases. As a result there may be discrepancies with our figures and DIAC or Customs and Border Protection data. Figures include 10 Chinese asylum seekers attempting to travel to NZ by boat in April 2012 who were taken to Darwin after making a distress call and the 18 deceased recovered midway between Christmas Island and Indonesia by Australia search and rescue vessels on 21 and 27 June 2012.

All these figures are represented in graph format below:

**Boat arrivals by calendar year 1979 to 2012 and financial year 1989-90 to 2012-13 (to 31.12.12)**



**Notes:**

- Some detailed boat arrival statistics, including country of origin, age, familial status and gender, were provided in Attachment 5 of the *Report of the Expert Panel on Asylum Seekers*, op. cit.
- Other detailed boat arrival statistics were provided in answers to questions 262 and 265 taken during Senate Budget Estimates in May 2012. Senate Legal and Constitutional Affairs Legislation Committee, Answers to Questions on notice 262 and 265, Immigration and Citizenship Portfolio, Budget Estimates 21–24 May 2012, viewed 25 January 2013, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/bud\\_12\\_13/diac/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud_12_13/diac/index.htm)
- Several chronologies of irregular maritime arrivals since August 2008 were provided by DIAC in answers to questions taken in Senate Estimates in 2009 and 2010. The chronologies vary (sometimes providing crew members and sometimes not). As a result, they do not tally exactly with the figures above sourced from ministerial press releases (that usually include crew members). The chronologies are available on the Senate Legal and Constitutional Affairs Committee Estimates webpage, viewed 25 January 2013, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/index.htm):
  - 20 October 2009: answers to QON numbers 50 and 86
  - 9 February 2010: tabled documents, item number 5 (note: includes data on country of origin since 2008) and answer to QON number 49
  - May 2010: Tabled documents, item no. 4.
- Older figures have been provided by DIAC in the past such as:
  - 1989–90 to 2000–01: DIMIA, *Unauthorised arrivals by air and sea*, Fact sheet no. 73, October 2004 (numbers of crew members not specified)
  - 2001–02 to 2007–08: Senate Legal and Constitutional Affairs Legislation Committee, Immigration and Citizenship Portfolio, Additional Estimates, 23–24 February 2009, pp. 48–51; and Senate Legal and Constitutional Affairs Legislation Committee, Answer to Questions on notice, 16, Immigration and Citizenship Portfolio, Additional Estimates, 23–24 February 2009, viewed 25 January 2013, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/add\\_0809/diac\\_tabled\\_docs/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_0809/diac_tabled_docs/index.htm) (numbers of crew members not specified, figures include arrivals at both excised and non-excised places).

## Appendix C: Glossary

### Department of Immigration and Citizenship (DIAC) and United Nations High Commissioner for Refugees (UNHCR) definitions

Asylum seekers	People who have left their country of origin, applied for recognition as a refugee in another country, and are awaiting a decision on their application. <sup>106</sup> Each year people already in Australia claim asylum and make applications for protection (refugee status). These include people who arrived ‘lawfully’ with a valid visa and people who have arrived ‘unlawfully’ in Australia by sea or air without a valid visa. If asylum seekers are found to be owed protection by Australia (having met the UNHCR definition of a refugee, as defined in the <i>1951 Convention and 1967 Protocol relating to the Status of Refugees</i> ) they will be granted a permanent Protection visa, provided they meet all health and character requirements. <sup>107</sup>
‘Boat people’	A term used in the media and elsewhere to describe asylum seekers who arrive by boat or attempt to arrive by boat without authority to enter Australia. DIAC uses the term ‘unauthorised boat arrivals’ or ‘unlawful boat arrivals’. <sup>108</sup>
Displaced people	People who flee their homes to escape conflict, violence, human rights abuses or other disasters. An Internally Displaced Person (IDP) may have been forced to flee their home for the same reasons as a refugee, but has not crossed an internationally recognised border. Many IDPs are in refugee-like situations and face the same problems as refugees. <sup>109</sup>
Excised offshore entry	In 2001 the Government introduced legislation which excluded some of Australia’s territory from the migration zone. These measures prohibit people who arrive at excised places from making a valid visa application. These excised offshore places include the Ashmore and Cartier Islands, Christmas Island and Cocos (Keeling) Islands. However, the Minister for Immigration and Citizenship has a discretionary power to allow a valid application to be made by a person who arrives on an excised offshore place. <sup>110</sup>
Humanitarian program	Australia's Immigration Program has two streams; the Migration Program for skilled and family migrants and the Humanitarian Program for refugees. The Humanitarian

106. UNHCR, ‘Definitions and obligations’, UNHCR website, viewed 11 June 2009,

<http://www.unhcr.org.au/basicdef.shtml>

107. DIAC, *Seeking asylum within Australia*, fact sheet no. 61, DIAC, viewed 23 January 2013,

<http://www.immi.gov.au/media/fact-sheets/61asylum.htm>

108. DIAC, *Processing unlawful boat arrivals*, fact sheet no. 75, DIAC, viewed 11 June 2009,

<http://www.immi.gov.au/media/fact-sheets/75processing-unlawful-boat-arrivals.htm>

109. UNHCR, ‘Definitions and obligations’, op. cit.

110. DIAC, *New humanitarian visa system*, fact sheet no. 65, DIAC, viewed 11 June 2009,

<http://www.immi.gov.au/media/fact-sheets/65humanitarian.htm>

	Program grants both offshore and onshore places to those deemed to be in need of protection. <sup>111</sup>
Offshore resettlement	Australia's Humanitarian Program grants offshore protection visas for the resettlement of people in humanitarian need for whom other durable solutions cannot be found. The offshore resettlement component comprises two categories of permanent visa; <b>Refugee</b> (which includes the Refugee, In-country Special Humanitarian, Emergency Rescue and Woman at Risk sub-classes); and <b>Special Humanitarian Program (SHP)</b> for people outside their home country who are subject to substantial discrimination amounting to gross violation of human rights in their home country. A proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia, must support applications for entry under the SHP. <sup>112</sup>
Onshore protection	Australia's Humanitarian Program also includes an onshore component for those people already in Australia seeking Australia's protection. <sup>113</sup>
Refugees	<p>The 1951 <i>Convention Relating to the Status of Refugees</i> defines a refugee as a person who:</p> <p>...owing to 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 nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.</p> <p>This is the definition used by Australia when assessing claims for protection. The majority of applicants who are considered for resettlement in Australia as refugees are identified and referred to Australia by the UNHCR.<sup>114</sup></p>
Unauthorised arrivals	Any person arriving or attempting to arrive without authorisation or a valid visa.
Unlawful non-citizen	An unlawful non-citizen is a national from another country who does not have the right to be in Australia; that is they do not hold a valid visa. The majority of unlawful non-citizens in Australia at any given time have either overstayed the visa issued to them or are people who have had their visa cancelled. Some unlawful non-citizens will have entered Australia without a visa. <sup>115</sup>

111. DIAC, *Australia's refugee and humanitarian program*, fact sheet no. 60, DIAC, viewed 23 January 2013, <http://www.immi.gov.au/media/fact-sheets/60refugee.htm>

112. Ibid

113. Ibid.

114. Ibid.

115. DIAC, *Overstayers and other unlawful non-citizens*, fact sheet no. 86, DIAC, viewed 23 January 2013, <http://www.immi.gov.au/media/fact-sheets/86overstayers-and-other-unlawful-non-citizens.htm>

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