ASYLUM SEEKER RESOURCE CENTRE
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Asylum seekers and refugees

myths FACTS + *solutions*

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MYTHS AND FACTS

SOLUTIONS

MYTH 1 ASYLUM SEEKERS ARE 'ILLEGAL IMMIGRANTS'

Asylum seekers are not immigrants. Immigrants leave by choice and are able to return home at any time. Asylum seekers leave because they are forced to for fear of persecution and cannot return due to that fear.

Yet even those asylum seekers who enter Australia without a valid visa by sea or plane are not illegal. They are permitted to enter without prior authorisation because this right is protected by Article 31 of the 1951 Refugee Convention which recognises they have good cause for entering without a visa[1]. Like a speeding ambulance, asylum seekers are exempt from the usual application of the law because they are in an emergency situation. Furthermore, no offence under Australian law criminalises the act of arriving in Australia without a valid visa for the purposes of seeking asylum[2]. This is true even if asylum seekers travel through a transit country before reaching Australia as UNHCR's Geneva Expert Roundtable long ago clarified[3].

The phrase 'illegal immigrant' is therefore highly misleading. Given this, the Australian Press Council, responsible for promoting good standards of media practice, released a set of advisory guidelines for media reporting on asylum seekers which state that,

> *"great care must be taken to avoid describing people who arrived by boat without a visa in terms that are likely to be inaccurate or unfair... if the terms can reasonably be interpreted as implying criminality or other serious misbehaviour... terms such as 'illegal immigrants' or 'illegals' may constitute a breach of the Council's Standards of Practice... The risk of breach can usually be avoided by using a term such as 'asylum seekers'"*[4].

The Government's policy of detaining unauthorised asylum seekers is not evidence of criminality: detention is justified on administrative and not punitive grounds[5]. In other words, asylum seekers who arrive without a visa are detained for identity, security & health checks and to prevent absconding while their legal status is resolved, rather than as a punishment for breaking the law. However, the conditions endured by asylum seekers during long-term detention have been proven to cause a great deal of physical and mental anguish which is tantamount to punishment.[6]. This is unjustifiable, especially since it is unnecessary and counterproductive and there are viable cheaper arrangements available *(see solution 2)*.

There is nothing wrong in doing whatever you can to secure freedom and there is nothing illegal about seeking asylum.

MYTH 2 'BOAT PEOPLE' ARE NOT 'GENUINE REFUGEES'

There is no such thing as a 'genuine' or 'non-genuine' refugee. Either you are a refugee with the legal right of protection or you are not a refugee at all. In any case, the allegation that boat arrivals are not genuine in their appeals for protection from persecution is untrue. In any one year since the late 1990s, between 70 and 97 per cent of asylum seekers arriving by boat have been found to be refugees and granted protection. The average in recent years is closer to 90 per cent.[7]

The most recent immigration data shows that 93.4% of asylum seekers who arrived by boat in the 2011-12 financial year and have been processed were granted refugee status (see figure 1). Figures from 2010-11 show similarly high rates (figure 2). These results have been produced within Australia's strict processing regime.

From time to time, the media quotes high rejection rates of boat arrivals at the primary stage to give the impression that asylum seekers are not 'genuine'. In 2011, there was much media attention around the fact that 50% of Afghan asylum seekers had been rejected by the Department of Immigration and Citizenship (DIAC)[8]. There are many reasons why higher than usual rejection rates appear from time to time at the primary stage, largely resulting from the fact that DIAC is not an independent body (see myth 3). In any case, the focus on the primary rejection rate is misleading.

The refugee status determination process includes not just a primary assessment with DIAC but also a secondary review process with a relatively more independent tribunal, followed by the possibility for appeal to the Federal Court and also the Minister of Immigration. As mentioned above, history indicates that at the end of the refugee status determination process, including appeals, the vast majority of boat arrivals are found to be in need of protection.

The most recent statistics from DIAC reinforce this fact. In financial year 2011-2012, 82 per cent of failed protection visa applicants at the primary stage were overturned upon independent review (figure 3).These figures do not include further appeals to the Federal Court or the Minister of Immigration which could result in even higher final overturn rates. High rejection rates at the primary level are not unusual.

Given the lack of integrity in the refugee status determination process (see myth 3), the biggest concern is not that some asylum seekers might slip through the system illegitimately but the risk that those who are genuine in their claims could be denied protection. In the past Australia has deported asylum seekers back to dangerous situations where they have subsequently been killed – including children.[9] Australia has screened many Tamils out of the refugee determination process and returned them to Sri Lanka, despite evidence that they continue to face persecution at the hands of the government.[10]

Figure 1: Cohort of IMA's who arrived in 2011-12

Status of IMA's who arrived in 2011-2012 as at end March 2013

Citizenship	Number of IMSa	Primary Grants	Primary refusals	Primary Grant Rate	Final Grants	Final Refusals (POST REVIEW OUTCOME)	Finally determined GRANT RATE	% of IMA's finalised
Afghanistan	3363	2223	598	78.8%	2469	65	97.4%	75.3%
Iran	1401	711	441	61.7%	921	115	88.9%	73.9%
Iraq	360	193	89	68.4%	233	26	90%	71.9%
Pakistan	727	388	142	73.2%	456	19	96%	65.3%
Sri Lanka	1356	55	568	8.8%	61	78	43.9%	10.3%
Stateless	622	340	121	73.8%	413	20	95.4%	69.6%
Other	214	101	13	88.6%	107	4	96.4%	51.9%
Total	**8043**	**4011**	**1972**	**67%**	**4660**	**327**	**93.4%**	**62%**

Figure 2: Status of boat arrivals who arrived in 2010-11

Citizenship	Number of IMSa	Primary Grants	Primary refusals	Primary Grant Rate	Final Grants	Final Refusals (POST REVIEW OUTCOME)	Overhand (review)	% of post primary caseload granted visas
Afghanistan	1312	738	526	58.4%	995	14	194	82.7%
Sri Lanka	245	3	105	2.8%	3	2	88	3.2%
Stateless	798	365	368	49.8%	476	56	170	67.8%
Iraq	463	217	203	51.7%	268	21	105	68%
Iran	1590	649	748	46.4%	772	68	434	60.6%
Other	257	95	94	50.3%	104	2	74	57.8%
Total	**4665**	**2067**	**2045**	**50.3%**	**2618**	**163**	**1065**	**68.1%**

Figure 3: Overturn rate by country of citizenship

Citizenship	2010-11	2011-12	Jun Qtr 2011–12	Mar Qtr 2012–13
Afghanistan	87.1%	90.1%	87.4%	86.5%
Iran	78.7%	79.2%	79.7%	58.2%
Iraq	75.0%	75.4%	69.2%	71.4%
Pakistan	83.3%	72.0%	77.8%	80.4%
Sri Lanka	69.7%	81.6%	72.1%	47.2%
Stateless	84.0%	82.3%	81.4%	72.7%
Total	**83.0%**	**82.4%**	**77.9%**	**72.3%**

Source: Department of Immigration and Citizenship (DIAC), 'Asylum Statistics-Australia: Quarterly tables-March Quarter 2013,' available from, http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-stats-march-quarter-2013.pdf.

MYTH 3 ASYLUM SEEKERS HAVE ONLY THEMSELVES TO BLAME FOR LENGTHY DETENTION BECAUSE THEY LODGE ENDLESS APPEALS

Given that a negative decision can literally be a life and death matter for an asylum seeker, an independent review process is essential for ensuring the correct assessment is made. This is all the more important given that the initial assessment of asylum claims is undertaken by the Department of Immigration and Citizenship (DIAC) which is susceptible to political interference and the ills of the bureaucracy.

A damning senate inquiry in 2005, led by former Australian Federal Police Commissioner Mick Palmer, found a culture within DIAC "that ignores criticism and is unduly defensive, process motivated and unwilling to question itself."[11] The result of this incompetence led to no fewer than 201 cases of unlawful arrest and detention between July 2000 and April 2005. The most famous case was that of Ms Solon-Alvarez, an Australian citizen who had not only been unlawfully detained but also removed from Australia.[12]

Unfortunately, for asylum seekers, little has changed since that review. On occasion and with little justification, DIAC will engage in extraordinarily high rejection rates of asylum seekers from certain countries which are inconsistent with country information. These decisions are routinely overturned upon independent review. In October 2010, it was revealed that one of the key sources used by DIAC to reject Afghan asylum seekers was deeply flawed. Astonishingly, this source stated that ethnic Hazaras from Afghanistan were living in a "golden age," contrary to the bulk of evidence and expert academic advice that pointed to a deteriorating situation in that war-torn country.[13]

Even the 'independent' review process is troublesome. There have been numerous instances in which the various review mechanisms for asylum seekers have been found to be bias. In one case in 2009, a Federal Court judge found the Refugee Review Tribunal "twisted facts and ignored evidence" and was "guilty of bias" in its treatment of a gay Bangladeshi couple.[14] More recently, in November 2011, the Federal Magistrates Court ruled that a reviewer, who rejected the claims of many Afghan boat arrivals, took a "sausage machine" approach and concluded he likely held a bias against Hazaras fleeing persecution which "infected" his decisions.[15] A second magistrate reached the same verdict about this reviewer in February of 2012 but DIAC still failed to take any action against him.[16]

It is largely because of this flawed refugee status determination process and the strains it places on the review mechanisms that there are so many asylum seekers facing long-term detention. In October 2011, it was revealed by the Department of Immigration's Chief Lawyer, Ms Jenny Hardy, that it took asylum seekers between 18 months and two years in order to undergo the entire review process.[17] The government have not yet finalised the claims of anyone who has arrived by boat since August 13th 2013. This has left these people either unsupported and waiting for processing in the community, or locked up in indefinite detention on the mainland or Nauru and Manus Islands.

As of 27th of May 2013, 55 refugees have remained in detention after receiving adverse security assessments from ASIO.[18] These people remain in indefinite detention. They do not have access to full details of ASIO's charges against them, and have no right of appeal.

The consequences of these delays can be deadly. On 25 October 2011, Shooty Vikadan committed suicide after learning that his request to be placed on day release to celebrate a Hindu festival had been rejected by Immigration. He had already been found to be a refugee but was still awaiting ASIO clearance. He had been detained for two years.[19]

There is no justification in blaming asylum seekers for long delays they are forced to endure in detention because of a flawed refugee status determination process and the nature of mandatory detention that is arbitrary and without a time limit.

MYTH 4 WHEN ASYLUM SEEKERS DESTROY THEIR DOCUMENTATION THEY ARE CHEATING THE SYSTEM

It is recognised by both the Refugee Convention and the Australian Government that asylum seekers are not to be punished for their 'illegal' entry or irregular travel because they have good cause (*see Myth 1*). This is because asylum seekers will often have to flee quickly and are unable to obtain the necessary documentation before leaving; especially if that requires approaching their home government who may be the source of their persecution. At other times, asylum seekers will destroy their documentation because they fear being sent back home or are forced to do so by people smugglers who want to ensure there is no paper trail that might lead authorities to their eventual arrest.

The point is that the vast majority of asylum seekers do not arrive without documentation in an attempt to cheat the system. This is further evidenced by the fact that not only are the vast majority of boat arrivals found to be refugees – over 90 per cent – but arriving without documentation only delays the resolution of their legal status and prolongs their stay in detention. If you are an asylum seeker in genuine need of protection, the majority of whom are, there is no advantage in arriving undocumented.

It is often assumed that boat arrivals to Australia originally held a valid passport and visa in order to fly into Indonesia. Such asylum seekers, it is argued, must destroy this documentation in order to intentionally deceive Australian authorities .This disregards the fact that many asylum seekers obtain false documentation in order to gain entry into Indonesia by plane and, unable to seek adequate protection there, later escape to Australia by boat.

Furthermore, many asylum seekers first arrive in Malaysia which does not require visas from entrants from other Muslim countries. They then make their way to Indonesia before getting on a boat to Australia. Non-Muslims, such as asylum seekers from Sri Lanka, are forced to bribe Malaysian immigration officials in order to gain entry into the country and - if they can escape detection and incarceration by authorities – will then attempt to make the dangerous journey to Australia by boat via Indonesia.[20]

The fact that many asylum seekers who arrive by boat are without documentation does not preclude adequate security checks from being undertaken. Appearing before the Joint Select Committee on Australia's Immigration Detention Network, David Taylor Irvine, Director-General of ASIO, reported that "we have other intelligence means of finding out information about people... it is not solely dependent on identity." Irvine goes on to state that despite the lack of documentation for the majority of boat arrivals, "by the end of the process where we are issuing an adverse assessment we have a very clear idea of who the person is and what that person's past has been."[21]

In any case, the concerns about undocumented asylum seekers should be seen in its proper context. Consider that at any given moment in Australia, there are approximately 60 000 tourists and temporary migrants who have overstayed their visa.[22] Many wilfully avoid being detected and so remain unlawful while living in Australia. Asylum seekers, on the other hand, will approach authorities in order to apply for permanent protection because they want to regularise their status. The tens of thousands of visa overstayers raises no concern in the media and amongst the general public. The same measured response should be applied to fears about asylum seekers whose numbers are far smaller.

MYTH 5 BOAT ARRIVALS MIGHT BE TERRORISTS OR POSE OTHER SECURITY RISKS

No terrorist has ever gained entry into Australia by boat. Boat arrivals are subject to the most scrutinised security checks of all arrivals. The very act of arriving without documentation alerts authorities to undertake rigorous security checks. As counter-terrorism expert Dr Michael McKinley has previously stated, the chance of terrorists arriving by boat is "infinitesimally small."[23]

Historically, the number of adverse security assessments issued for boat arrivals has been miniscule. Between 2000-2009, ASIO conducted 7181 security checks, yet they issued just one adverse assessment. In 2010 and 2011, out of the nearly 7000 security assessments undertaken by ASIO, 54 refugees – mostly Sri Lankan Tamils – were denied permanent visas because ASIO had labelled them a security risk.[25]

While these adverse assessments represent just 0.8% of all security checks undertaken in those two years, they have come under severe criticism. The negative assessments are most likely due to associations with the Tamil Tigers (LTTE), a political separatist organisation who fought for an independent state in Sri Lanka. However, as terrorism expert Professor Clive Williams has stated, many of these associations are likely to be innocuous and therefore pose no risk to Australia's security:

> "You know, many Tamils were involved in some way or other with the LTTE. Now, it might be different if someone was involved in a hit squad, for example and was responsible for a number of murders or for injuring people, but if the person had been simply a fellow traveller for the LTTE I can't really see a reason for giving a negative assessment."[26]

The Australian office of the United Nations High Commissioner for Refugees says it simply does not believe the ASIO decisions are warranted, and its own assessment has found the refugees don't reach "that serious level of threshold" that would exclude a person from refugee protection on security grounds under the Refugee Convention.[27] Serious questions have been raised about the integrity of ASIO's assessments, including by a former Australian diplomat to Sri Lanka, with allegations that ASIO has sought back-channel advice from Sri Lankan military intelligence to assess the claims of asylum seekers who were victims of Sri Lanka's crimes.[28]

ASIO has been found guilty of such practices in the past. In 2004, ASIO was forced to pay approximately $200,000 in compensation to a refugee it falsely classified a national security risk, causing him to be locked up for two years. At the time, ASIO refused to release any details or say which overseas agency provided them with the information used to make their assessment. It was later revealed that the agency had relied solely on information provided by the same secret police who had persecuted the asylum seeker in question, and from a country with a dubious human rights record.[29] In another case in 2005, two asylum seekers were forced to spend five years each in detention after receiving an adverse security assessment that was later found to be mistaken.[30]

Just before Christmas in 2011, a suicidal teenager, locked up for a year and repeatedly hospitalised - including after trying to hang himself from a double bunk bed - was the first minor deemed a security risk by ASIO. It is very likely that the boy, who arrived by boat as an unaccompanied 16 year old, will never be released under the current policy.[31] In May 2012, a Sri Lankan women named Ranjini, along with her children aged 6 and 8, were separated from their husband and father and taken into detention after receiving an adverse security assessment from ASIO. Ranjini, who has since given birth to a third child, cannot return to Sri Lanka because she has been found to be a refugee and so must remain in detention, with her children, indefinitely.[32] There are over 50 refugees who are in the same situation and face the prospect of remaining in detention for life.

By denying natural justice to refugees, ASIO's decisions are undermining the very freedoms they are sworn to protect. A recent government inquiry into Australia's immigration detention network made this point unequivocally clear:

> "the Committee resolutely rejects the indefinite detention of people without any right of appeal. Such detention, effectively condemning refugees who have not been charged with any crime to detention for the term of their natural life, runs counter to the basic principles of justice underpinning Australian society."[33]

In 2004, the House of Lords in the UK came to a similar conclusion when it struck down a law which provided for indefinite detention of refugees who were suspected of being terrorists. In the final decision, Lord Hoffmann declared,

> "In my opinion, such a power in any form is not compatible with our constitution. The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these".[34]

In January 2012, the UNHCR urged the federal government to introduce some oversight to ASIO's decisions on refugees. It has provided details on how New Zealand, Canada and Britain allow a court or special advocate to review security assessments and give the subject a summary of the case against them. Richard Towle, the UNHCR's regional representative, says this is a basic fairness, that can be balanced with national security and the need to protect classified information.[35]

David Taylor Irvine, Director-General of ASIO, stated before the Joint Select Committee on Australia's Immigration Detention Network in November 2011 that ASIO would be prepared to work with a review process should the government introduce it into law. Dr Vivienne Thom, Inspector-General of Intelligence and Security also stated before the Joint Select Committee that he believes it is appropriate to re-examine the proposal for introducing legislation to provide a determinative review process for refugee applicants.[36] This review has now been undertaken by former federal court judge Justice Margaret Stone.[37]

MYTH 6 BOAT PEOPLE ARE QUEUE JUMPERS; THEY TAKE THE PLACE OF REFUGEES PATIENTLY WAITING IN OVERSEAS CAMPS

There is no just and orderly queue. Only a tiny fraction of the world's refugees have access to resettlement options. In any case, over the last five years the number of places allocated in our migration intake to refugees overseas awaiting resettlement does not reduce when visas are granted to refugees who arrive in Australia by boat or plane. The Australian government sets the number of refugees to be resettled from overseas each year (in 2012/13 there are 12,000 places[38]), and this number has remained constant despite increased numbers of boat arrivals.

Australia also allocates a certain number of places each year (in 2012/13 there are 8000[39]) under its Special Humanitarian Program (SHP) for two further groups of people. The first group is for non-immediate family members (siblings and cousins) of refugees who have been resettled from overseas. The second group is for people who are overseas and subject to 'substantial discrimination' – a lower threshold than persecution - but who do not fit the description of a refugee.[40]

For each boat arrival that is granted a visa, one place is deducted from this Special Humanitarian Program not the refugee resettlement program, which remains the same. The bottom line is that the number of boat or plane arrivals in Australia does not negatively impact the hundreds of thousands of refugees overseas who have been referred by UNHCR and who are waiting for resettlement.[41]

The linking of onshore arrivals with the Special Humanitarian Program would be problematic because it pits the needs of two vulnerable groups against each other: special humanitarian entrants versus those seeking protection onshore. However, it is not boat or plane arrivals but government policy that is directly responsible for this unjust outcome. No other country in the world links its onshore and offshore program in this way.[42]

The policy could easily be changed so that Australia accepts all successful onshore applicants in addition to the fixed number of special humanitarian places already allocated. This would not result in unsustainable numbers. In 2011-12 Australia granted 4766 visas to boat arrivals and 2272 visas to plane arrivals.[43] That would have constituted an increase of 3.8 % to Australia's permanent migration program over the same period that was, by comparison, 184,998.[44]

It is also false to assert that boat or plane arrivals 'jump the queue'.

To begin with, it is unreasonable to expect asylum seekers to wait patiently in countries of first asylum given the conditions. Many asylum seekers who arrive by boat to Australia do so after escaping from Malaysia and/or Indonesia. Neither of these countries have signed the Refugee Convention which means that asylum seekers have no formal legal status in the country – they are actually illegal – unlike in Australia. Consequently, they are forced to wait with no formal rights until they are resettled to a third country. Tragically, the wait is long. Because demand far exceeds supply, it takes five years to get on the resettlement list for those who UNHCR have already found to be a refugee.[45] Some refugees have been waiting in Indonesia for eight or nine years.[46]

During this excruciating wait, asylum seekers may be detained and denied basic human rights such as adequate health care, the right to work and the right to education. Even worse, asylum seekers face the possibility of persecution equal to that which they originally fled. Amnesty International in its report, Malaysia: Abused and Abandoned: Refugees denied rights in Malaysia, describes how refugees are "abused, exploited, arrested... detained in squalid conditions, tortured and otherwise ill-treated, including by caning."[47] Amnesty reports that 6000 refugees are caned in Malaysia every year and are also at risk of being returned to a country where they may be killed.[48] Indonesia is also unsafe for asylum seekers. In early 2012, it was revealed that a 28 year old Afghan asylum seeker was bound, tortured and beaten to death with a blunt object by security guards while in detention.[49]

It is also important to understand that resettlement is only an option for a very small percentage of all refugees in the world. In 2011, 7 million refugees were found to be in protracted situations where the average wait was 20 years.[50] In 2012, governments will offer only 80 000 places for resettlement.[51] Ultimately, there is no just and orderly queue for asylum seekers to wait in.

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4 & 5

Would you wait for years in this queue?

1, & 2: Asylum seekers beaten by guards at Surabaya detention centre in Indonesia.
3. Kalidares Qaratina detention centre in West Jakarta, Indonesia.
4. Man being caned in Malaysia. Asylum seekers face up to six strokes of the cane.
5. Poor conditions and overcrowding at a Malaysian detention centre.

Sources: Jessie Taylor, 'Behind Australian Doors: Examining the Conditions of Detention of Asylum Seekers in Indonesia,'3 November 2009, http://www.law.monash.edu.au/castancentre/news/behind-australian-doors-report.pdf; Gavin Fang, 'Malaysia asylum crackdown violates rights, says Amnesty,' ABC News, 11 Feb 2011, http://www.radioaustralianews.net.au/stories/201102/3136437.htm; Mat Brown, 'Asylum seeker beaten to death in detention,' ABC Lateline, 1 March 2012, http://www.abc.net.au/news/2012-03-01/asylum-seeker-beaten-to-death-in-detention/3863582.

MYTH 7 ASYLUM SEEKERS DON'T USE THE PROPER CHANNELS – THEY COME VIA 'THE BACK DOOR'

Those who seek asylum onshore in Australia are in fact applying via the 'front door.' By definition, you cannot be a refugee unless you are outside of your home country.[52] That means all asylum seekers must cross an international border to seek asylum. You cannot apply for refugee status if you are inside your own country. Applying for asylum after you have entered another country - not lining up in a 'queue' to be resettled elsewhere - is the standard way to seek asylum. It is how the vast majority of the world's asylum seekers find protection.

It is also the only path protected in international law. Australia is obligated by its commitments to the UN Refugee Convention to provide protection to refugees who arrive on its shores or via its airports. It has no obligation to resettle refugees waiting in overseas camps. That is a voluntary program undertaken by Australia because it recognises that it receives so few asylum seekers onshore and has a responsibility to share more of the international burden.

To understand just how small Australia's international burden is, consider that in 2012 developing countries hosted over 80 per cent of the worlds refugees. The poorest countries were providing asylum to 2.4million refugees. Pakistan was host to the largest number of refugees worldwide (1.6 million), followed Iran (868,200), Germany (589,700) and Kenya (565,000). Australia has 30,000, or 0.3% of the global total.[53]

The reality is that irregular people movements are - as the name suggests - inherently disorderly. Refugees must often flee their homes spontaneously or else suffer persecution. They have to go somewhere and fast. Consequently, the vast majority of asylum seekers, some 75-95%, cross a neighbouring border and stay there.[54] Because most asylum seekers originate from countries in the developing world, crossing a neighbouring border means entering another developing nation.

Effectively, this means that those with the least capacity to assist refugees shoulder the burden of protecting the vast majority of them. These developing countries do not have the luxury of an orderly migration program for refugees. They MUST accept the millions of refugees who spontaneously cross their borders without prior authorisation or else they place those asylum seekers at risk of imminent persecution or death.

Given these facts, it would be hypocritical for Australia to unilaterally end its practice of providing protection to onshore arrivals and force them to wait in overseas camps or worse dump them in PNG, while it knows that most other countries cannot. Such a policy would not create equitable outcomes for all refugees but succeed only in transferring the costs of reception and processing back to the developing world which is where our rejected asylum seekers will ultimately be made to wait. This would also mean forcing asylum seekers to wait for years in intolerable situations where their basic rights are not protected.

An 'orderly migration program' is a code word for shifting Australia's responsibilities to developing countries who already shoulder the greatest burden for what is an international problem. Australia needs to accept the reality that as long as there is war, poverty and political unrest there will be refugees looking for protection. Ultimately though, those who arrive spontaneously by boat or plane do not undermine Australia's orderly migration program as they are still processed by authorities and undergo the same identity, health and security checks as offshore entrants.

How Australia Compares (Refugees)

Australia's World Ranking (2012)

By total number of refugees	49th
Compared to our population size (per capita)	62nd
Compared to our national wealth GDP (PPP) per capita	87th

Australia's Ranking of 44 Industrialised Countries (2012)

Compared to Australia's population size (per capita)	15th
Compared to Australia's national wealth GDP (PPP)	14th

Category	Global Total	Australia Total	Australia's Share and Rank
Refugees under UNHCR mandate	10,500,241	30,083	0.29% (49th)
Refugees resettled from other countries	88,600	5,900	6.66% (3rd)

How Australia Compares (Asylum Seekers)

Australia's World Ranking (2012)

By total number of asylum claims	20th
Compared to our population size (per capita)	29th
Compared to our national wealth GDP (PPP) per capita	52nd

Australia's Ranking of 44 Industrialised Countries (2012)

By total number of asylum claims	12th
Compared to our population size (per capita)	16th
Compared to our national wealth GDP (PPP) per capita	14th

Category	Global Total	Australia Total	Australia's Share and Rank
Asylum applications received in 2012	2,011,334	29,610	1.47% (20th)
Asylum seekers recognised as refugees in 2012	1,361,816	8,367	0.61% (28th)

Statistics at a glance

45.2 million people displaced, as at 31 December 2012

Refugees	15.4 million
Asylum Seekers	893,700
Internall displaced persons	28.8 million

Source: Refugee Council of Australia (RCOA), http://www.refugeecouncil.org.au/r/stat-int.php stats from United Nations High Commissioner for Refugees annual publications Global Trends, Statistical Yearbook and Projected Global Resettlement Needs. (Last updated June 2013)

MYTH 8 ASYLUM SEEKERS ARE 'COUNTRY SHOPPERS'; THEY COULD HAVE STOPPED AT SAFE PLACES ALONG THE WAY

Many of the asylum seekers who arrive onshore in Australia are not secondary movers. Consider those who originate from our region of the world such as China, Sri Lanka, Mynamar (Burma), Timor Leste (East Timor) and West Papua. Nonetheless, it is true that many asylum seekers who arrive from Africa, the Middle East and South Asia travel through intermediary countries before arriving in Australia. However, there is nothing unjust or deceiving in their attempt to do so.

This is because the so called 'safe places' along the way to Australia are either not safe, not signatories to the Refugee Convention or do not have the capacity or the will to deal humanely with the large numbers of refugees they receive. As UNHCR's Geneva Expert Roundtable long ago clarified, asylum seekers are under no obligation to remain in a country that cannot provide effective protection.[55]

Consider that around two-thirds of the world's 10.5 million or so refugees are in protracted situations where their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. The average stay in such conditions is 20 years.[56] Many refugees in these countries still face protection issues that equal those they originally fled. Sexual and physical violence is common. The majority of asylum seekers who arrive in Australia by boat have come through Indonesia and Malaysia where they have no legal status and are at risk of being arrested, exploited, tortured or returned to a country where they may be killed (see myth 6). Under such conditions, it is only natural that asylum seekers will attempt to look elsewhere for adequate protection.

Secondary movements arise primarily because the disproportionate burden of protecting refugees falls on countries least able to assume them. Take the developing nations of Pakistan and Iran. Both these nations generously opened their borders to millions of Afghan refugees after the Soviet invasion of Afghanistan in 1979. The Iranian government offered refugees access to free education, health services, employment and subsidies on basic amenities with almost no international support.[57]

Iran continues to spend approximately USD 2 billion per year on its Afghan refugee population, mostly for transport, health, fuel and education.[58] The equivalent per capita financial burden on Australia would be USD 7.5 billion per year. Similarly, both Syria and Jordan have spent USD 1 billion per year each on their mainly Iraqi refugee populations since the invasion of Iraq in 2003.[59] The equivalent per capita burden on Australia would be USD 8.8 billion and USD 7.6 billion per year respectively.[60] These are massive costs for countries that have severe developmental problems of their own.

UNHCR notes that since the 1990s it has experienced budget shortfalls as donor countries have become less willing to share the refugee burden assumed by host countries in the developing world.[61] In 2011, UN High Commissioner for Refugees, Antonio Guterres, reiterated this fundamental problem:

"The world is failing these people, leaving them to wait out the instability back home and put their lives on hold indefinitely. Developing countries cannot continue to bear this burden alone and the industrialised world must address this imbalance".[62]

Until that time when Australia (and the rest of the international community) pull their weight to lift the burden from the countries of first asylum, we have no moral grounds for refusing to accept those in need of our protection.

MYTH 9 ASYLUM SEEKERS ARE 'CASHED UP' AND 'CHOOSE' TO COME HERE

Economic status does not preclude you from needing to seek asylum. IIn other words, you can be wealthy and still be tortured or otherwise persecuted. In fact, in some countries it might be more likely for authorities to target the well educated (and therefore more wealthy) because they're often the greatest threat to an authoritarian regime. In any case, an expensive boat or plane trip does not necessarily indicate that those who take such a path are affluent.

While the cost of a journey may appear to suggest that those paying are 'cashed up', the opposite is often true. Many asylum seekers will sell their life savings and turn to family and friends for help in raising the money necessary for escape. Many are unable to afford to bring their families with them. Subsequently, a single member of the family (usually the male) must make the decision to leave his wife and children behind in often dangerous circumstances in the hope of finding protection. That people are prepared to pay so much for a journey known to be extremely unsafe provides additional evidence of the level of desperation driving people from their home countries.

As for asylum seekers 'choosing' Australia, it is important to remember that, in the first instance, asylum seekers are running **from** and not **to**. No one chooses to be an asylum seeker. Contrary to popular opinion, asylum seekers don't want to come to Australia, or go anywhere else for that matter. According to UNHCR, "the great majority of today's refugees would themselves prefer to return home once the situation stabilises."[63]

Furthermore, many of the countries in our region are not signatories to the Refugee Convention, including Indonesia and Malaysia, where most boat arrivals to Australia come from. Even those countries that are signatories do not necessarily provide effective protection. For example, China has not implemented the Refugee Convention into its national law and Cambodia was recently implicated in the forcible deportation of asylum seekers to China (a gross contravention of international refugee law). [64]

> Ultimately, it is hypocritical to persist in stigmatising those refugees who flee to come to Australia and other developed countries simply because they have the means and choose to take the risk. As Professor James Hathaway points out,
>
> "Because we know that there is, in fact, no 'protection' worthy of the name being provided in most of the less developed world today, it is dishonest to stigmatise as 'less needy' those refugees who either have the resources, or who mortgage their future to smugglers, to seek protection in a place where they believe they will be treated fairly, where their children can learn, and where they are free to think and speak as they wish. Which one of us, confronted with the need to flee, would not make the same choice?"[65]

Figure 4: 2013 Human Development Index of signatories to Refugee Convention (Asia-Pacific)

Country	HDI (of 187)	GNI per capita (PPP)
Australia	2	$44,462
New Zealand	6	$31,499
China	101	$9,233
The Philippines	114	$4,413
Timor-Leste	134	$1,709
Laos	138	$2,926
Cambodia	138	$2,494
Papua New Guinea	156	$2,898

Source: United Nations Human Development Report (2013);' http://hdr.undp.org/en/countries/

MYTH 10 PEOPLE SMUGGLERS ARE 'EVIL' AND THE 'VILEST FORM OF HUMAN LIFE'

The harsh policies and demonising of people smugglers is both misleading and unjust. Many people smugglers are in fact motivated for altruistic reasons. While callous and exploitative people smugglers do exist and deserve to be brought to justice for their crimes, Australia's 'border security' policies largely capture innocent and impoverished Indonesian fisherman who are often under-age. In reality, it is Australia's draconian 'border security' policies that contribute to the creation of a people smuggler's market and the very evils they are supposed to be preventing.

History is full of revered people smugglers who took great personal risks in order to save the lives of others. Such notables include individuals like Oskar Schindler and Dietrich Bonhoeffer who together saved countless Jews from the Nazis during the Holocaust. Australia too has produced praiseworthy people smugglers. Former Australian diplomat, Bruce Haigh, smuggled numerous victims out of Apartheid South Africa in the 1970s.[66] Under current Australian law, they would all have been jailed for similar actions today.[67] While many people smuggling organisers operating out of Indonesia in recent times have been ruthless, this is not true of all of them. Iraqi refugee, Ali Al Jenabi, described as the 'Oskar Schindler of Asia', was driven largely by humanitarian concerns when he smuggled over 500 asylum seekers on 7 boats to Australia in the early 2000s.[68]

The vast majority of people who are prosecuted on people smuggling charges in Australia are not the 'vilest form of human life' who should 'rot in hell', as Prime Minister Rudd famously said.[69] Nor are they profiteering millionaires as Shadow Minister for Immigration Scott Morrison implied.[70] As the Australian Federal Police have conceded, of the 493 individuals arrested in Australia on people-smuggling charges during 2009, 2010 and 2011, 483 were simply working as crew on boats leaving from Indonesian ports. Only 10 individuals were organisers.[71]

Almost all of these crew members are poor Indonesian fishermen – including many children – who have been misled by people smuggling ringleaders into doing no more than cooking rice on a boat without truly knowing what they were doing. The Aus Government has imprisoned minors for up to 3 year on people smuggling charges. These mandatory sentencing laws imposed by legislation have come under severe criticism, including from 10 Australian judges as well as legal and human rights bodies, who argue they target the wrong people and impose incredible hardship on those imprisoned and their families.[72]

In her doctoral thesis, Boats to Burn, Dr Natasha Stacey points out that Australia has long denied Indonesian fisherman their traditional right to access areas they had previously fished for centuries, depriving them of their livelihoods and forcing them into illegal activities.[73] The Australian government insists on confiscating and then burning these poor fisherman's boats, trapping them further in the poverty cycle. Some of these deprived fisherman turn to people smuggling in order to survive.

In 2009, an Indonesian fisherman by the name of Muslimin was charged and had his boat destroyed by Australian authorities for illegally fishing in Australian waters. The High Court found he had in fact been wrongfully convicted and sent him back to Indonesia without charge. With his fishing boat destroyed, he was deprived of his only means to feed his family and send his kids to school. In such dire circumstances, he was driven to accept a deal from a people smuggler to crew a boat of asylum seekers to Australia. Muslimin's wife agreed that it was worth the 5 year jail term risk: "How can you live happily with your husband if you can't eat? If we live long enough, we will be able to meet again."[74]

Ako Lani was 15 years old when captured by Australian authorities on charges of people smuggling in 2010. Ako, along with his cousin, Ose Lani, and their 16 year-old friend, John Ndollu, were tricked by people smuggling organisers into being cooks on an asylum seeker boat bound for Australia (see Figure 5). Ako lived on a wage of just $25 per month. Both of Ose's parents died when he was very young while his older brother had recently died leaving him in a desperate situation. They all came from a village where there is no electricity and people often have just one meal a day.[75]

The boys were offered the equivalent of 2 years wages for the job but they had no idea they were smuggling asylum seekers or that they were even headed for Australia. After just 24 hours, they were captured by the Australian navy and eventually sent to an adult prison in Brisbane. They cried every night. Children thought to be as young as 13 years have been arrested, sentenced and imprisoned in maximum-security adult jails in Australia for similar 'people smuggling' activities.[76]

The ringleaders and profiteers of people smuggling operations must certainly be brought to justice for their crimes. However, the vast majority of those who bear the brunt of Australia's 'border security' policies are not these criminals. They are innocent victims of their own destitution and draconian Australian 'border protection' laws.

Figure 5: People smuggler millionaires? The 'vilest form of human life?'

1. Ako and Ose Lani's family. The photo was taken while the young boys were both in jail in Australia.
2. Mother of John Ndollu. She is carrying rice through the village to her home.
3. The home of Ako Lani on Rote Island in Indonesia.

Source: Hagar Cohen and Rebecca Henschke, 'Causalities in the war on people smuggling,' Radio National Background Briefing, 30 October 2011, http://www.abc.net.au/radionational/programs/backgroundbriefing/casualties-in-the-war-on-people-smuggling/3601454#transcript.

MYTH 11 AUSTRALIA IS LOSING CONTROL OVER ITS BORDERS

No country in the world has greater control over its borders than Australia. While most countries share at least one border with another country and usually many more, Australia is an island continent with vast amounts of surrounding sea. These natural barriers make it difficult for irregular migration to occur. In the United States, it is estimated that there are approximately 11.2 million illegal migrants living inside the country. In the European Union, the number is somewhere between 3-6 million. The UK alone has between 310,000 and 570,000 illegal migrants. The numbers are even greater in parts of the developing world.[77]

In comparison, Australia has only around 60,000 people unlawfully in the country at any one time, mostly tourists and temporary migrants who have overstayed their visas. As for asylum seekers, there were 7,379 unauthorised boat arrivals who lodged asylum claims in 2011-12.[78] Clearly, Australia is not losing control of its borders, even when taking into consideration the recent increase in boat arrivals.

Even when removing Australia from the international context, the number of boat arrivals is relatively small. While 7036 asylum seekers arrived in Australia by boat in 2011-12, at the same time, 184,998 people permanently migrated to Australia.[79] That is, boat arrivals constituted less than 4% of the total permanent intake into Australia in 2011-12.

Finally, asylum seekers who do arrive unauthorised by boat do not attempt to avoid authorities in order to live unlawfully in the country as the majority of the 60,000 visa over-stayers do. They want to regularise their status and are processed upon arrival where identity, security and health checks are performed. Australian authorities always remain in total control.

Taking all these facts into consideration, out of almost all of the nations on earth, Australia has the least to fear about losing control over its borders.

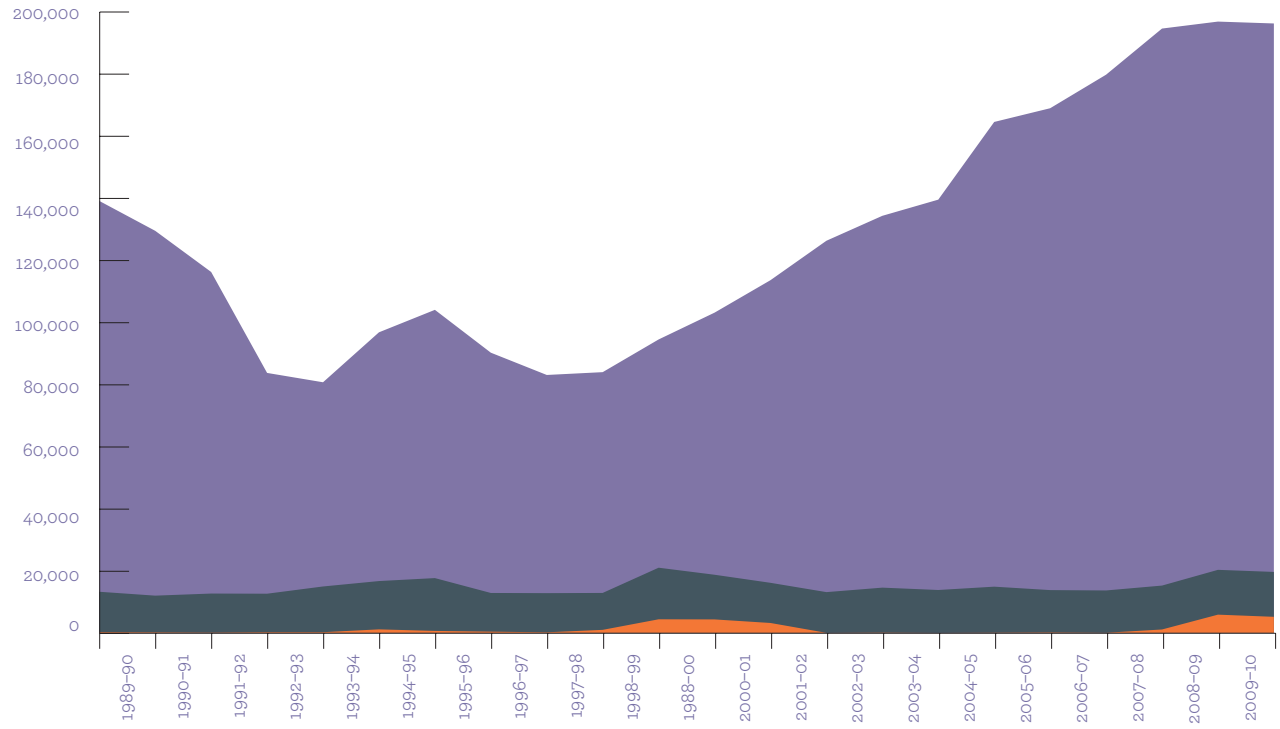


Figure 6

- Total Migration
- Humanitarian Program
- Boat Arrivals

MYTH 12 IF WE ARE TOO 'SOFT' THERE WILL BE A FLOOD OF ASYLUM SEEKERS

Refugees flee their homes because they are unsafe. This is often due to war, poverty and political unrest which are sometimes referred to as 'push factors'. They are the driving forces behind refugee movements. To the degree that 'pull factors' have an impact, it is geography and family links, not the specific domestic policy of any one nation, that determine the final destination of asylum seekers. The evidence for this is overwhelming.

UNHCR's most recent study of detention found that there is no evidence that the threat of being placed in detention discourages persons from seeking asylum.[80] These findings are corroborated by a joint research project conducted by the International Detention Coalition and the La Trobe Refugee Research Centre.[81] As reported in this study, existing evidence and government statements from around the world suggest a policy of detention is not effective in deterring asylum seekers, refugees and irregular migrants. Instead, this report and numerous others demonstrate that:

- The principle aim of asylum seekers and refugees is to reach a place of safety.
- Asylum seekers have a very limited understanding of the migration policies of destination countries before arrival.
- Asylum seekers are often reliant on people smugglers to choose their destination.
- Those asylum seekers who are aware of detention believe it is an unavoidable part of the journey.

The factors that most impact on the choice of destination are:

- The prospect of being reunited with family or friends.
- Safety, tolerance and democracy.
- Historical links with their country of origin.

Familiarity with the language.

No matter what action the government takes it will not have a significant impact on asylum seeker flows. Even the Department of Immigration recognises this. As Andrew Metcalfe, Secretary of the Department of Immigration, has unequivocally stated:

"Detaining people for years has not deterred anyone from coming... Will moving away from detaining people for very long periods of time serve as an attraction for more people to come? My view is no... The views I have expressed are not simply my views. They are the views of people like me who have over 30 years experience in the portfolio."[82]

There is also the persistent myth that the introduction of offshore processing, Temporary Protection Visas (TPVs) and the so-called Pacific Solution together stopped the boats. This is clearly not the case as boat arrivals increased after the introduction of TPVs in 1999 and continued to arrive after the establishment of the detention centre on Nauru in September 2001 (see myths 13& 14).

The reason for the reduction of boat arrivals after 2002 is explained by the unique set of events that transpired around that time including the sinking of the SIEV X with the deaths of 353 asylum seekers and the overthrow of the Taliban which resulted in the repatriation of over 2 million refugees to Afghanistan. Together these events, along with the forced return of boats (which is no longer feasible and was never desirable) resulted in only a very small number of people arriving by boat after 2002.

Even if a more humane and compassionate approach to asylum seekers were to cause an increase in asylum seekers to Australia, there is no reason to suggest the numbers would become large or unsustainable. Consider that there are 10.5 million refugees in the world. Despite this, over the last 20 years, no matter which party was in power or what border protection policy was in place, Australia has consistently received a relatively small number of asylum seekers in any one year. Why then, haven't we experienced millions or even tens of thousands asylum seekers racing to get here?

The most significant reason why Australia receives so few asylum seekers onshore is because Australia is relatively isolated. There is only one country in the world – Pakistan– which hosts more than one million refugees. The high number of refugees there is largely the result of prolonged conflict in Afghanistan. Worldwide, the most common way that refugees travel to a country of asylum is overland, not on planes or boats. Overland arrivals are impossible in Australia because, being an island, it has no land borders with any other country.

Furthermore, there are many countries between Australia and most of the world's largest refugee producing regions. This complicates the process of those needing to get here. Asylum seekers must navigate their way through countries that have not signed the Refugee Convention by living in the shadows in order to avoid detection by authorities. Many get caught, are incarcerated and are forced to endure inhumane conditions.

This reality is acknowledged by the Australian government. As Garry Fleming, First Assistant Secretary for Border Security in the Department of Immigration and Citizenship stated before the Senate Estimates Committee,

"The overwhelming majority of forcibly displaced persons do not actually seek asylum in an industrialised country,and Australia's number is small for a number of reasons, including our physical distance and the difficulty in getting to us".[83]

So while there might be more refugees seeking Australia as their final destination if Australia were to adopt a more compassionate and humane policy towards asylum seekers, there's no reason to suggest we will be 'flooded' or that it wouldn't be manageable..

Out of control?

> Much of the media grossly exaggerates the danger from what is a relatively small number of boats.

MYTH 13 OFFSHORE PROCESSING IS THE SOLUTION TO BOAT ARRIVALS

As part of the governments 'No Advantage' policy framework, offshore processing has been reintroduced as a method of discouraging asylum seekers arriving by boat in Australian territory. However, migration experts and refugee organisations agree that the number of boat arrivals depends on conditions in the countries from which refugees flee rather than domestic policy.[84] 'Push factors' including persecution, discrimination, ethnic conflict, human rights abuses and civil war impact far greater on the numbers seeking asylum at any one time. It is therefore misleading to suggest that the Pacific Solution under Howard resulted in a smaller number of boat arrivals, when globally there was a decrease in asylum seeker movement.

It is true that under the Pacific Solution the Australian government was able to secure the 'voluntary' return of many asylum seekers by a "mixture of inducements and threats" even though it was not safe to return. In 2004 and 2006, the Edmund Rice Centre tracked a number of returned asylum seekers from Nauru and found that many were living in perilous conditions and several had been killed, including children.[85] The ERC returned in 2012 to find another 3 had been killed while the vast majority of the rest were living in "extreme danger".[86] A decade after the arrival of the Tampa, The Age spent six months tracking those who were sent back to Afghanistan from Nauru and found that many,

> "have simply disappeared: walked to work one day and never come back. Others have fled again, to Iran, Pakistan, Tajikistan, on to Europe or back to Australia. Some - it has been reported as many as 20 - have been killed by the Taliban in their homes and villages. Others have died trying to escape again."[87]

As Andrew Metcalfe, Secretary of the Department of Immigration confirms, Nauru was ineffective in deterring asylum seekers from leaving Indonesia for Australia. This, he says, is "not just a view of my department; it is the collective view of agencies involved in providing advice in this area." Metcalfe goes on to cite why the evidence of this is clear:

> "We all know what happened with the people who were taken to Nauru [the majority were eventually resettled in Australia or New Zealand]. We know that Nauru filled up very quickly. We know that the government needed to establish new facilities at Manus because people kept coming. In fact, 1,700 people came after the Tampa arrived."[88]

It is for these reasons that the High Court of Australia struck down the government's proposal and confirmed that deporting asylum seekers to Nauru or Manus Island would breach our obligations under both the international Refugee Convention and our own Migration Act.[89] The fact that Nauru has signed the Refugee Convention does not mean they are an appropriate place to process asylum seekers. The High Court was clear that if a country signs the Convention but is unable or unwilling to live up to it then that's not acceptable.

In spite of all this offshore processing has been reintroduced as of August 2012, and the damaging implications of this rehashed policy have been immediate. In December 2012, Amnesty International reported that Nauru was a facility of leaking tents in a monsoon affected island that was full of people suffering from physical and mental ailments. Nauru as a facility for offshore processing is unsuitable with inhumane conditions of vulnerable people and is ill equipped to continue as a place to set up offshore processing.[90]

In 2013, the Department of Immigration itself noted that the conditions on Manus Island were not appropriate for housing and processing asylum seekers. Conditions such as humidity, cramped space, and sparse electricity, as well as lack of teaching resources for children could result in prolonged mental and physical issues.[91] These concerns were echoed once more by a UNCHR report in July 2013.[92]

Offshore processing is even more expensive than detention on the mainland because of the increased cost of delivering services to remote locations. The Pacific Solution, which saw asylum seekers detained on Manus Island and Nauru, cost more than 1 billion dollars over five years.[93] The costs of offshore processing under the current arrangements are alarming. In 2013, Martin Bowles, the Secretary of DIAC stated that processing asylum seekers in Australia costs 20% of the amount required to process someone offshore.[94] It is estimated that each asylum seeker will cost $1 million when infrastructure is taken into account.[95]

Practically, financially, legally and, most important of all, ethically, offshore processing is not an acceptable solution - there are genuine alternatives to the damaging and ineffective policy.

MYTH 14 ONSHORE ASYLUM SEEKERS ONLY NEED TEMPORARY PROTECTION VISAS

UNHCR's governing body stresses that temporary protection should be used only in exceptional circumstances where a sudden and large influx of refugees means that it is not immediately practicable to grant permanent protection. Australia's previous use of temporary protection visas (TPVs) had no international precedent and was condemned by numerous human rights organisations such as Amnesty International and Human Rights Watch.[96] TPVs grant temporary protection to those deemed to be refugees, and reassess such claims at a later date in the hope that the Australian government can remove such people back to their persecuting homelands; refugees are forced to prove their refugee status twice.[97]

There are a number of reasons why TPVs are not suitable as a standard procedure for asylum seekers. The first is that vast numbers of asylum seekers, including the majority that arrive in Australia by boat, come from countries where there are protracted situations of conflict or political upheaval and therefore long periods of time pass before it is safe to return. For example, the Hazara population has been persecuted in Afghanistan for so long that many refugees have spent decades in neighbouring Pakistan and Iran.

This fact was demonstrated during Australia's TPV program under the Howard government when 90% of those who were initially given a TPV were eventually granted a permanent visa as it was still not safe to go home many years after they had arrived.[98] The Secretary of the Department of Immigration puts the number at 8,000 or so who were eventually allowed to stay in Australia permanently.[99]

Temporary visas are just not practical for refugees who come from protracted situations. It places undue stress on those seeking asylum by creating an unbearably insecure situation. The disastrous mental health effects suffered by refugees on TPVs have been well documented by medical experts in various studies.[100] Research by the University of NSW found that refugees on TPVs were highly traumatised, at risk of ongoing mental illness and had a 700 per cent increase in the risk for developing depression and post-traumatic stress disorder compared to refugees with permanent protection. Refugees on TPVs experienced many of the same mental health effects as those in detention such as self-harm and suicidal ideation. This was caused by their prolonged situation of limbo which created an overwhelming sense of insecurity, uncertainty and exclusion from society.

Temporary protection was a concept first proposed by Pauline Hanson's One Nation Party in 1998. The then Minister for Immigration, Phillip Ruddock, responded to the proposal with fierce criticism, accurately predicting the mental anguish and experience of social exclusion that eventually came to pass:

> "Can you imagine what temporary entry would mean for them? It would mean that people would never know whether they were able to remain here. There would be uncertainty, particularly in terms of the attention given to learning English, and in addressing the torture and trauma so they are healed from some of the tremendous physical and psychological wounds they have suffered. So, I regard One Nation's approach as being highly unconscionable in a way that most thinking people would clearly reject".[101]

In October 1999, one year after these prescient critical observations, Ruddock under the Howard government proceeded to introduce the temporary protection visa regime.

Even worse than One Nation's proposal, refugees on TPVs under the Howard government's regime were also denied family reunion rights. The prospect of not being able to see their spouse or children without forfeiting the right to protection consumed refugees with guilt and worry about their families. Furthermore, rather than deter arrivals, it was because TPVs denied the right of family reunion that pushed the wives and children of asylum seekers onto boats in an attempt to be reunited with their families. While less than a thousand 'unauthorised arrivals' applied for humanitarian protection in 1999 when TPVs were introduced, the number rose to more than 4,000 in 2001.[102]

This fact was tragically realised in the SIEVX disaster of October 2001 when 353 asylum seekers drowned on their way to Australia. Most of the 288 women and children aboard the SIEV X were family members of TPV holders already in Australia. They risked and lost their lives on the perilous journey because there was no other way for their families to be reunited. As Ghazi Al-Ghazi, a former TPV holder describes:

> "If they allowed us to bring our families this would not have happened... I had no other choice, that was my last option after it became obvious that I had lost hope of seeing my children because of the cruel condition of TPV. There was no other way but the sea to bring my wife and four children".[103]

Al-Ghazi lost 14 members of his family who drowned in the destroyed ship. He lost his wife and his four children (ages 10 years, 8 years, 7 years, and 4 years) along with his wife's sister and her children, and her brother and his children. Because of restrictions on his TPV, Al-Ghazi was forbidden to go to Indonesia to bury his dead family members else he risk never being allowed to return to Australia.

The Liberal party has demonstrated that it intends to reinstate TPVs as part of their policy toolkit.[104]

Temporary Protection Visas leave vulnerable refugees in limbo

> "[Temporary Protection Visas are] highly unconscionable in a way that most thinking people would clearly reject." – Former Immigration Minister Phillip Ruddock

Image Source: Flickr Creative Commons

MYTH 15 CHARITY BEGINS AT HOME; WE CAN'T PRIVILEDGE ASYLUM SEEKERS OVER 'OUR OWN' DISADVANTAGED

Australia has an overwhelming capacity to deal both with the disadvantaged at home and those who arrive seeking protection from overseas. The two problems have no correlation. There is no reason to expect that if the numbers of asylum seekers were to reduce so would the number of homeless and disadvantaged in Australia. Yet even if resources were stretched, a humane refugee policy is more cost effective than mandatory detention and offshore processing (see solution 2). So the best way to conserve resources to deal with Australia's disadvantaged groups is to adopt a more humane approach to asylum seekers.

It is often assumed (largely due to inaccuracies in the media) that asylum seekers receive greater benefits than ordinary Australians in need of assistance. Nothing could be further from the truth. Asylum seekers and refugees in detention receive no monetary payments from the government. Many of those living in the community have no access to Centrelink benefits.[105]

Asylum seekers living in the community who are vulnerable and assessed as 'unfit to work' are eligible to receive a payment of $221 p/w through either the Asylum Seeker Assistance Scheme (ASAS) or the Community Assistance Scheme (CAS) which is distributed by the Red Cross and funded by the Department of Immigration. This is equal to 89% of the Newstart allowance. Those on CAS are also eligible for an additional $55 p/w rental assistance. As of July 2013, only 23 per cent of clients at the Asylum Seeker Resource Centre are currently receiving ASAS or CAS.[106] The remainder receive no financial assistance from the government whatsoever. In comparison, a single unemployed or low income Australian is eligible to receive $310 p/w ($248 + $62 rent assistance). The aged pension for a single Australian adult is $445 p/w including rent assistance. This places asylum seekers who are eligible for income assistance well below the poverty line (see Figure 7).

Asylum seekers living in the community also have no access to a healthcare card while others are prevented from accessing Medicare. They have no access to public housing. With barely enough money to acquire accommodation in the private rental market, many asylum seekers are reliant upon the charity and goodwill of the community to supplement their income for day to day expenses such as housing, food, travel and health costs. As a consequence, many are forced below the poverty line and constantly move in and out of homelessness. Coupled with past experiences of torture and trauma, this insecurity only compounds their mental health issues.[107]

The government also has a process of community detention for a select group of asylum seekers which differs from those who live in the community on a bridging visa as described above. Asylum seekers in detention who are deemed 'most vulnerable', such as unaccompanied minors and children with families, can be placed into community detention at the government's discretion. Despite the extensive damage caused by detaining children, as of 30 April 2013 there are 1632 children held in immigration detention.[108]

Asylum seekers in community detention are provided with accommodation as well an allowance of $174 per week because they are not allowed to work and therefore unable to support themselves. The allowance is used to cover all day-to-day expenses such as food, transport costs, utility bills, school books etc. The standard of accommodation is basic, not luxury. According to Kate Pope, First Assistant Secretary of DIAC, it is equivalent to what a "poor university student" might live in.[109] These asylum seekers are transitioned into the community and onto a bridging visa when the government assesses that it is beneficial to do so or after they are found to be refugees.

Once asylum seekers are granted refugee status, they are entitled to the same rights and incur the same responsibilities as other Australians. No more, no less. While there have been a number of concerns raised within parts of the Australian community that more assistance is provided to refugee entrants than to other Australians such as pensioners or the homeless, as the Department of Immigration clearly states on its website, "there is no truth to these claims."[110]

Moreover, it is those who work tirelessly to face the horrors of poverty everyday that hold some of the most compassionate views on the plight of asylum seekers. Organisations like the Salvation Army, St Vincent de Paul Society, Anglicare, Brotherhood of St Laurence and numerous others who work endlessly to eradicate poverty in Australia have long advocated for a more humane refugee policy.[111]

In a report on homelessness, the Salvation Army specifically mention asylum seekers as constituting one of the most alienated and persecuted disadvantaged groups in Australia.[112] The report goes onto highlight that the biggest obstacles to eradicating poverty are structural such as housing, an unfair and outdated social security system, discrimination and the lack of political will. Nowhere in their report do they mention asylum seekers as contributing to the problem. It would seem that those who call upon Australia to 'help our own first' are not the ones who are doing the helping. We should listen to those that are.

There are rising numbers of asylum seekers being released into the community without adequate support or the right to work. As of May 2013 there are approximately 15,000 asylum seekers in the community on bridging visas, and 7,256 of these people are without work rights.[113]

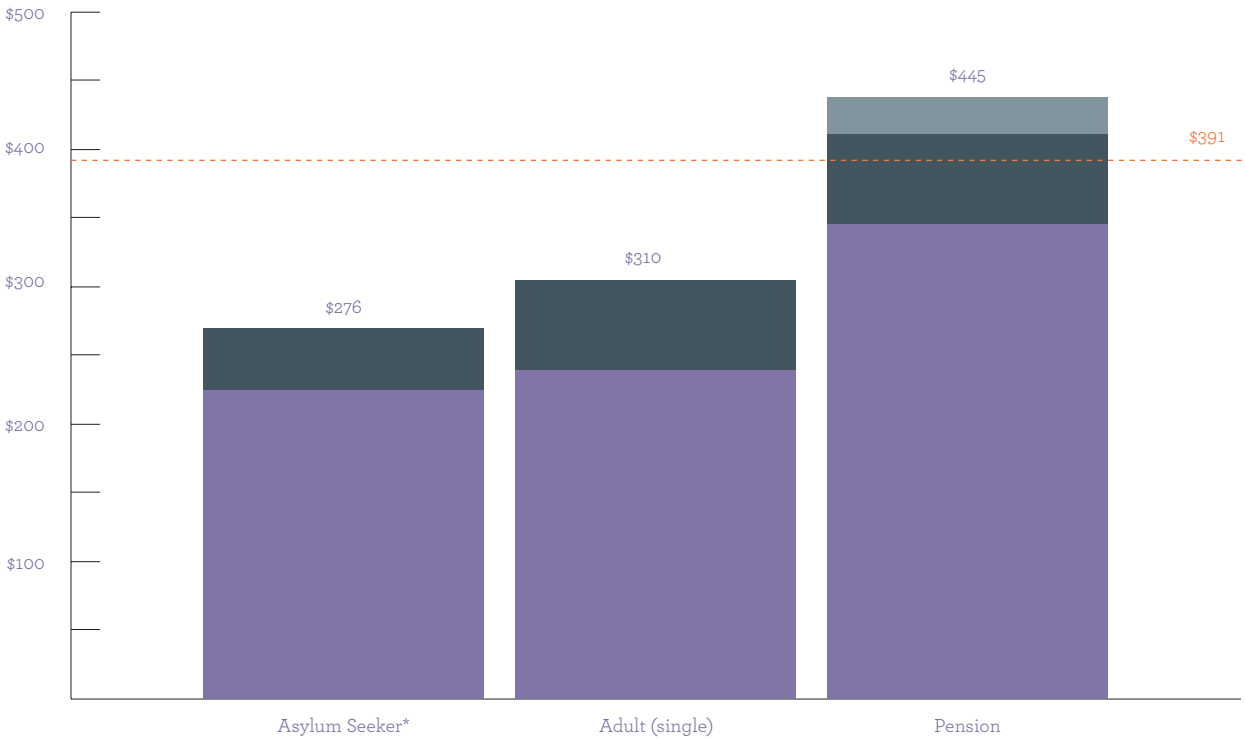


Figure 7: Australian Welfare Entitlements vs Community-based Asylum Seeker Assistance (per week)

- Income Support
- Rent Assistance
- Additonal Income Support
- Poverty LIne**

* Denotes asylum seekers living under community-based processing and with access to income support. Note that only a minority of these asylum seekers receive any income assistance at all. As of July 2013, only 23% of the 1255 clients at the Asylum Seeker Resource Centre were eligible for any type of income support from the Department of Immigration.

**Poverty line accurate as of December 2011 'Poverty Lines: Australia (December Quarter 2011)', Melbourne Institute of Applied Economic and Social Research, http://melbourneinstitute.com/downloads/publications/Poverty%20Lines/Poverty-Lines-Australia-Dec-2011.pdf; Centrelink payments accurate as of 20 March 2012, see http://www.centrelink.gov.au.

MYTH 16 REFUGEES WILL STRAIN OUR ECONOMY AND THREATEN 'OUR WAY OF LIFE'

Fears about refugees threatening our way of life are vastly exaggerated when you consider the numbers. There were 184,998 people who permanently migrated to Australia last financial year (2011-12). Boat and plane arrivals together constituted 7,038 or 3.8% of visas granted. Even the entire refugee and humanitarian program was only 20,000 or 10.8% of the entire permanent migration program, a drop in the ocean. Nonetheless, numerous studies conducted over the decades have consistently demonstrated that each new wave of refugee arrivals have made an invaluable contribution to the economic and cultural life of Australia.

Refugees bring unique skills and economic opportunities to Australia. Vietnamese refugees who arrived during the 1970's and 1980's brought with them myriad business and cultural knowledge and skills which have developed into vital trade links with much of South-East Asia, undoubtedly boosting our economy and improving our wealth.[114] The same is true for more recent arrivals. A study conducted in 2003 revealed that Afghan refugees within Australia worked extremely hard in labour-intensive jobs, the outcome of which generated greater income for the businesses that employed them, and the tax benefits attributed to the government as a result were substantial.[115]

Contrary to common belief, various waves of refugee resettlement in Australia have not led to a drain on the economy. In 2011, Professor Graeme Hugo from the University of Adelaide, on behalf of the Department of Immigration and Citizenship, undertook an extensive study into the ways in which each of the various waves of humanitarian arrivals – eastern Europeans post-World War II, Southeast Asians in the 80s and 90s and recent arrivals from Africa and the Middle East– have contributed to Australian society.[116]

In particular, the research found that humanitarian entrants have a higher rate of setting up a new business, filling niches in the labour market and, for those between 15 and 25, higher levels of educational participation than for other migrants and the Australian born population. Professor Hugo writes that humanitarian migration in particular is "selective of risk takers, people who question the status quo, recognise and take up opportunities... humanitarian migrants have made, and continue to make, a distinct contribution through their role as entrepreneurs."[117] With a small investment to begin with, humanitarian entrants eventually result in a net contribution to Australian economic, social and civic life.

It is natural to expect in the early years of resettlement that humanitarian entrants will experience higher levels of unemployment and lower levels of workforce participation than other migrants. This is because those who come from refugee backgrounds face far greater obstacles than other migrants for a variety of reasons, not least of which is recovery needs from experiences of torture and trauma. However, as Professor Hugh's research points out, these levels of employment converge towards the rest of the Australian born population with increased residence. Eventually, especially within the second generation, humanitarian entrants match and in many cases exceed Australian-born levels of economic and social contribution.

Much anxiety about refugees 'threatening our way of life' has been directed at fears about Muslim migration overwhelming Australia, however, the numbers have been vastly exaggerated. Consider that Muslim Australians make up less than 2% of our population (only a fraction of which are refugees) while over 80% speak English proficiently and over a third are Australian born.[118] More importantly, unfounded fears about recent waves of migrants being unable to successfully integrate into 'Australian culture' are not new. Social researcher and director of Ipsos Mackay Research, Dr Rebecca Huntley, made the following insights after investigating Australia's historical documents on previous waves of migration:

> "There isn't a thing that people said about Italians, negative things, that people don't say now about new migrants: they're criminal, they're going to come and take our jobs, they work too hard, they're going to just sit on welfare and do nothing, they form enclaves, they refuse to learn the English language, they treat their women badly, they come from a culture that doesn't share our same values, they're going to swamp and overtake us".[119]

Refugees, fighting for survival and overcoming great traumas, have risked it all to make it to Australia. They express immense gratitude to their adoptive nations. While it is a natural human response to fear social change, lessons from our own history illustrate that, if managed properly under effective government leadership, this change can be undertaken successfully. After a remarkable reversal of the White Australia Policy, Australia led the world in its multicultural transformation under the National Agenda for a Multicultural Australia in 1989. Unfortunately, with a decline of government leadership since that time, Australia's embrace of multiculturalism has lost strength, credibility and depth.

While it's clear that refugees are not threatening 'our way of life', the harsh and exaggerated response to their arrival is threatening Australia's international reputation. As a visiting forced migration expert from the UK, Dr Khalid Koser, has pointed out, the international community is "amazed that Australia has reached almost a hysterical fervour pitch over still a relatively small number of people arriving by boat." Europeans and others around the world are "perplexed" and "frustrated" that Australians are allowing "party politics to stand in the way of finding a solution to a humanitarian crisis". Dr Koser observes that it's "incredible to many people from the outside world", who experience far greater numbers of asylum seekers, that Australia hasn't come up with a "firm, fair and fast" processing system for asylum seekers "rather than leave them in detention."[120]

Cultural diversity has been a hallmark of Australia's modern history. We should continue embracing difference and providing genuine opportunities for everyone to constructively contribute to this nation. A basic starting point would be to offer all asylum seekers the right to work, which would lessen the burden on Australia's welfare system. Asylum seekers are not asking for handouts, they simply want to rebuild their lives and do whatever it takes to become an active participant in the Australian society. This situation presents not a threat, but an opportunity.

MYTH 17 THE 'NO ADVANTAGE' PRINCIPLE IS AN EFFECTIVE REPONSE TOWARDS ASYLUM SEEKER BOAT ARRIVALS

The Australian government's 'no advantage' principle seeks to act as a deterrent against people who embark on dangerous boat journeys bound for Australia in search of asylum. Its goal is to establish a regime whereby those who are compelled to make the perilous journey are assessed in the same manner had they utilised 'regular migration pathways'.[121] This has resulted in over 20,000 asylum seekers who arrived by boat since August 2012 being left in a state of complete limbo, with the government refusing to begin processing their applications until July 2013.

The thinking behind this policy can be attributed to the recommendations made in the Houston Report, which was produced upon government request in order to explore ways of mitigating deaths at sea. The report calls on the Australian government to enforce:

> "The application of a 'no advantage' principle to ensure that no benefit is gained through circumventing regular migration arrangement"[122] and "...send a coherent and unambiguously clear message that disincentives to irregular maritime migration to Australia will be immediate and real."[123]

The report encouraged part of the 'no advantage' principle to include a removal of family reunification rights[124] and once again reopened the door for offshore processing. It is clear that 'no advantage' is a policy discrimination and disadvantage imposed on asylum seekers according to the mode of arrival. Although the report stresses the importance of creating incentives for asylum seekers to utilise 'regular pathways' (which as we know are often non-existent; see Myth 6), thus far the Government's focus has been squarely on what are effectively punitive measures.

The rise in boat arrivals since the 'no advantage' policy came into effect demonstrates that it is based on very misleading assumptions; that asylum seekers take the decision to embark on dangerous boat journeys lightly, and that implementing punitive measures such as arbitrary offshore detention will stop them. The policy ignores the plight of asylum seekers in transit countries such as Indonesia, where these people are locked up like prisoners and denied basic human rights, as Indonesia does not have the capacity to cope with the new arrivals. The current processing arrangements in Indonesia are so inadequate they verge on being non-existent.

Asylum seekers are often compelled to embark on dangerous boat journeys because they find themselves in a state of complete hopelessness. 'No advantage' pushes even more people on to boats as the removal of family reunification separates loved ones indefinitely from each other. Most countries within our region (including Indonesia and Malaysia) are not signatories to the UN Refugee Convention. This equates to no protection, no work rights and no durable solution. 'No advantage' adds yet another cruel and unnecessary burden to those who are entitled to Australia's protection. It makes little sense and does not work.

As the Government itself admits it has not given a clear definition of 'no advantage' or how it will be implemented[125], it is placing incredible strain on criticcally ufunded service providers and the even more on the lives of asylum seekers. With no criteria set up to determine how long asylum seekers must wait for their applications to be processed[126] asylum seekers could face long term detention or living in the community off just 30 dollars a day. For asylum seekers living in the community, service providers are noticing a social underclass developing because of 'no advantage', with increasing worries around mental health issues and further ongoing social issues.[127]

MYTH 18 ASYLUM SEEKERS ARE ECONOMIC MIGRANTS

Over 90 per cent of asylum seekers who arrive by boat are ultimately deemed to be refugees and are eventually granted a protection visa (figure 1). The notion that asylum seeker movements to Australia are primarily based on economic considerations and not the genuine search for protection has no factual support.

There have been inaccurate portrayals by politicians in the media that asylum seekers from countries such as Iran are essentially motivated by economic opportunities.[128] However Professor Gillian Triggs, President of the Australian Human Rights Commission says there is no evidence to support the claim that a large number of Iranian asylum seekers are economic migrants:

> "When we were assessing asylum seeker claims up until August 13 last year, approximately 90 per cent of claims for refugee status were found to be valid. They were assessed by the Australian processes genuinely to be refugees. Now that suggests that at least until the moment when the Government stopped assessing claims, the genuineness of the overwhelming majority of them was very clear on the evidence." July 2013[129]

This false rhetoric which stems from various politicians seeks to delegitimise the plight of asylum seekers and shirk Australia's international moral and legal obligations. It demonstrates an overall attempt to avoid the reality that people seeking asylum do so for overwhelmingly genuine reasons.

It should be noted that the economic status of an asylum seeker is a completely separate debate from their application for protection (see Myth 9). Conflating the two seriously misrepresents the entire issue.

SOLUTION 1 END MANDATORY DETENTION

The majority of asylum seekers in Australia are found to be refugees fleeing persecution, and for boat arrivals this number stands at over 90%. They have committed no crime by coming to Australia yet they are forced to endure mandatory detention, including in offshore locations. The catastrophic mental health consequences associated with long-term detention have been confirmed by multiple international studies. As UNSW clinical psychologist Dr Zachary Steel explains, "there is something about taking people who have committed no criminal offence and keeping them confined and under the control of other people that eventually breaks them."[130] Experiences of torture and trauma, worry and guilt about family back home and the threat of return to a country where your life is in danger all compound to progressively break asylum seekers down. The UNHCR continues to express their concerns over the conditions in Australia's offshore processing facilities.[131]

Being locked up inside an overcrowded detention centre creates the sense of being treated like an object, like a number, not like a human being. The length of time taken to process asylum seeker applications only fuels the frustration among the detainees who feel like no one understands and no one is listening. Then there is the interminable boredom. It is no wonder that there are occasional outbursts of rooftop protests and rioting inside detention centres.[132] It is a desperate call for help.

Yet because few are listening, many asylum seekers turn to harming themselves. The most recent parliamentary investigation into the mental health of asylum seekers found that almost 90 per cent of detainees suffer from clinically significant depression, half have been diagnosed with post-traumatic stress disorder and a quarter report suicidal thoughts.[133] Self-harming rates in detention are a constant crisis and numerous asylum seekers have taken their own lives as the depression becomes too great to bear.[134]

Asylum seekers initially arrive in Australia hopeful to start a better life for themselves and their families, but they soon reach despair and helplessness as the time they spend in detention grows. While asylum seekers escape some of the most brutal regimes in the world, after losing all hope, some fail to survive Australia's detention regime. Far from 'living in paradise' as some media reporting would have us believe, detention destroys hopes and dreams and leaves asylum seekers as ghosts of their former selves.

Given these facts, the Asylum Seeker Resource Centre advocates that mandatory detention of asylum seekers, regardless of their mode of entry, should be abolished. Instead, the decision to detain should be assessed on an individual basis and not as a blanket policy for all unauthorised arrivals. If the Department of Immigration deem detention necessary for a particular individual because of security or other relatable concerns, such a decision should be subject to judicial review after 28 days and every 7 days thereafter. Asylum seekers, like other permanent residents, should have the right to challenge the merits of any adverse security assessment. Children, on the other hand, should not be detained under any circumstances. All of these changes must be incorporated into the law to ensure they are free from political interference.[135]

Such policy recommendations are in line with UNHCR's detention guidelines for asylum seekers which state that "as a general principle asylum seekers should not be detained" except under exceptional circumstances where it must be "subject to judicial or administrative review to ensure that it continues to be necessary."[136] Australia is an exception within the international community when it comes to its use of mandatory detention.[137] If many other nations manage to treat asylum seekers humanely without the need for draconian detention policies, surely Australia can too.

While there is a need to conduct health, identity and security checks of all asylum seekers, there is no reason why this should result in long-term detention. In its annual report to parliament, Australia's Security Intelligence Organisation (ASIO) confirmed that:

> "It is not a requirement under the Australian Security Intelligence Organisation Act 1979 that irregular maritime arrivals (IMAs) remain in detention during the security assessment process. The detention of IMAs is managed by the DIAC, in accordance with Australian Government policy".[138]

Every year, more than four million non-citizens enter Australia on a temporary basis. They do so after undertaking a brief health and security check. If, at a later time, they apply for permanent residency while in Australia, including a protection visa, they are required to obtain a full security clearance by ASIO and are free to remain in the community whilst doing so. There is no reason why this system couldn't be implemented for all asylum seekers also.

SOLUTION 2 ADOPT COMMUNITY PROCESSING AS THE NORM

Community processing is an existing, workable alternative to processing asylum seekers in detention centres. In fact, asylum seekers who arrive in Australia by plane are permitted to live freely in the community while their claims are assessed. Those who claim asylum after entering the country on a valid visa, such as a tourist or student/work visa, are not taken into detention. They are provided with bridging visas after their existing visa expires to permit them to live in the community while their claims are processed. While the existing community processing system is inadequate in many ways (see myth 15), with the right support services, it can easily be transformed into an ideal system for processing all asylum seekers.

The same system of community processing for those who arrive by plane can be adopted for those who arrive by sea. The 'no advantage' policy is unjust as it discriminates against asylum seekers simply because they arrive in Australia by boat. They have justifiable reasons for doing so and it is their legal right under the Refugee Convention (see myth 1). Their mode of arrival should illustrate the desperate nature of their situation and compassion, not punishment, should be our response.

Community based alternatives are more cost effective than mandatory detention, and this is particularly true when it comes to offshore processing. An international survey by UNHCR found that "almost any alternative measure will prove cheaper than detention."[139] In Australia, estimates vary depending on the number of people in detention and the length of their stay. The operating costs of detention centres for 5622 asylum seekers in 2010/11was $772 million or $137,317 per detainee.[140]

In comparison, the total cost of the government's community detention program over the same period was $15.7 million. The Asylum Seeker Resource Centre in 2011/12 provided 25 programs for 1250 asylum seekers, with 40 paid staff and over 700 volunteers and a total operating budget of 2.6 million dollars.[141]

Offshore processing is even more expensive than detention on the mainland because of the increased cost of delivering services to remote locations. A report by Oxfam and A Just Australia put the cost of the Pacific Solution, which saw asylum seekers detained on Manus Island and Nauru, at more than $1 billion over five years, or $500,000 per person.[142] An infrastructure report released by the Department of Immigration found that it would cost nearly $2 billion over four years to resume the processing of asylum seekers in Nauru.[143] Meanwhile, the Christmas Island detention centre was to cost 1 billion dollars over 5 years to 2013/14[144], but has increase now costing 2.5 billion dollars.[145]

The cost to tax payers of the detention system extends beyond the exuberant establishment and management costs to operate these facilities. In a report by the Yarra Institute released in 2011, economist Dr Tony Ward demonstrates how the effects of prolonged detention result in significant additional mental health costs after people are released. He conservatively judged that trauma sufferers who have experienced prolonged detention will have lifetime mental health costs 50 per cent more than the average Australian - amounting to an extra $25,000 per person.[146] Add this to the fact that offshore processing is clearly not achieving its goal of acting as a 'deterrent', and we see how it is truly a costly policy in a number of ways.

Community arrangements are far more cost effective because they do not require purpose built detention facilities which have to be staffed, maintained and operated with security guards 24 hours a day. This fact is widely recognised. An international survey by UNHCR found that "almost any alternative measure will prove cheaper than detention."[147] Even the Department of Immigration recognises this reality. The head of DIAC, Andrew Metcalfe, states categorically that community processing is far more cost effective:

> "Can we confidently assume that not keeping people in high security detention centres is more expensive than having people on bridging visas? The answer is, yes, there is a good evidence-based reason for those costs to be different".[148]

More specifically, Jackie Wilson, Deputy Secretary of DIAC, revealed in senate estimates that the shift to move 30% of the detention population into community processing in 2012-13 is expected to result in savings of $400 million in the federal budget.[149]

While the financial costs of locking up asylum seekers behind razor wire are immense, the human costs are incalculable. Clinical psychologists are still treating children and parents today from the trauma they suffered in detention over a decade ago.[150] Unfortunately, history is repeating itself. As the President of the Australian Medical Association in the Northern Territory, Dr Paul Bauret, said in response to long-term detention in 2012: "once again, it looks as though we're producing a cohort of Australian citizens who can be permanently damaged because of what we are doing to them."[151]

Finally, asylum seekers who are free from detention are more likely to successfully integrate into the Australian community. As Kate Pope, First Assistant Secretary of DIAC explains, this is because asylum seekers in the community:

> "have more responsibility for managing their own lives, can be expected to experience better mental health because they are living and operating as a person normally would. Improved family relationships are a consequence as well. Clients also have the opportunity to regain some of the living skills that they would have lost in the journey and in, potentially, their time in Indonesia, in detention and so on... a better understanding of life in Australia and opportunities to learn some English, make connections in the community and so on, should enhance their settlement prospects".[152]

Step 1

Presume detention is not necessary.

CAP operates on the basis of a presumption against detention, and is a safeguard against arbitrary detention and ensures that detention is applied only as a last resort. This includes a presumption against detention, detention as a last resort and a mandate to explore alternatives.

Step 2

Screen and assess each case individually.

Understanding population's subject to or at risk of immigration detention through individual screening and assessment assists in the identification of needs, strengths, risks and vulnerabilities in each case. Screening includes legal obligations, identify, health and security checks, vulnerability and individual case factors, including community ties.

Step 3

Assess the community context.

Assessment of the community context in order to understand the individual's placement in the community and to identify any support mechanisms needed so that the person remains engaged in immigration proceedings. This includes ability to meet basic needs, legal advice, documentation and case management.

Step 4

Apply conditions to realise if necessary.

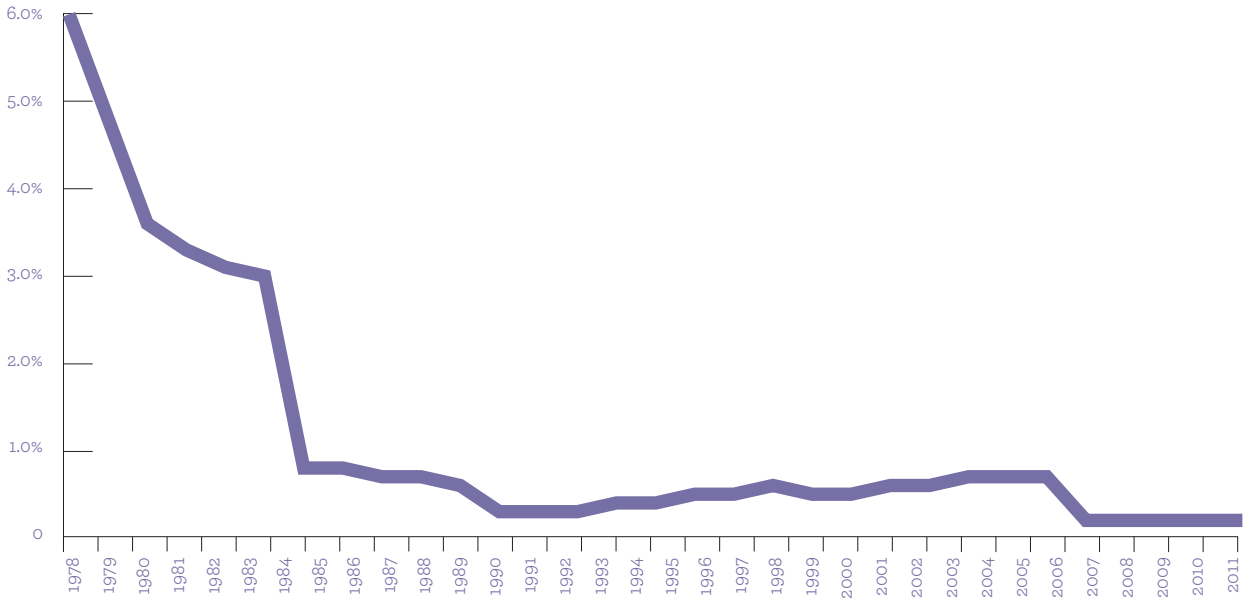
Further conditions such as reporting requirements or supervision may be introduced to strengthen the community setting and mitigate identified concerns. This includes individual undertakings, monitoring, supervision, intensive case resolution and negative consequences for non-compliance.

Step 5

Detain only as the best resort in exceptional cases.

If conditions are shown to be inadequate in the individual case, detention in line with internationsl standards including judicial review and limited duration may be the last resort.

% World Refugees Hosted By Australia



There are alternatives

The International Detention Coalition (IDC) has published a comprehensive handbook on alternatives to detention. Drawing on over 2 years of research and a number of international examples, the handbook describes a range of pragmatic mechanisms governments can take to prevent unnecessary detention. In five clear steps, the Community Assessment and Placement (CAP) model provides a workable approach to both upholding the individual rights and dignity of asylum seekers while at the same time addressing the legitimate migration management concerns of governments. The handbook can be downloaded from http://idcoalition.org/cap/.

Source: UNHCR, 'Total Refugee Population by Country of Asylum,' excel tables, http://www.unhcr.org/statistics/Ref_1960_2010.zip

SOLUTION 3 EQUITIBLY SHARE THE INTERNATIONL REFUGEE BURDEN

Australia partakes in a refugee resettlement program with countries of first asylum in order to help share the international refugee burden. However, this program is miniscule compared to the burden held by most of the developed and developing world. In particular, Australia's resettlement from Indonesia and Malaysia, where almost all asylum seekers transit before arriving in Australia by boat, is very poor.

There are an estimated 10,000 people residing in Indonesia that are in desperate need of protection which Indonesia is unable to provide[153]. This number blows out to 100,000 in the case of Malaysia. In 2012, Australia resettled a total of less than 1,800 from both of these countries combined.[154] The conditions asylum seekers endure in these countries is deplorable.[155] Australia's recent increase in its humanitarian program to 20,000 is a step in the right direction, but as the numbers above indicate it is simply not enough.

The international response to the refugee crisis in Indochina in the late 1970s provides a model for what can be achieved. Governments around the world collectively responded to the crisis by more than doubling resettlement pledges and monetary donations to the UNHCR, while regional countries gave assurances to temporarily host millions of refugees as 'countries of first asylum.'[156]

Australia too played an important part under the Fraser government in responding to the crisis in Southeast Asia. With bi-partisan support, Australia resettled 150,000 refugees from Indochina along with another 90,000 family members who followed.[157] With the cooperation of regional countries, nearly two million refugees were resettled from Southeast Asia by developed nations in the years that followed under the 'Comprehensive Plan of Action'.[158]

The world has demonstrated in the past that by working together vast numbers of people in need can be accommodated. The problem today isn't the large numbers of refugees in the world but the lack of political will to implement a solution. As forced migration experts, Gil Loescher and James Milner, point out,

> "The contemporary response to protracted refugee situations stands in stark contrast with the international response to long-standing refugee populations during the Cold War, when the geo-political interests of the West led to large-scale engagement with prolonged refugee crises... The international community was able to resolve refugee situations as complex as those of displaced people remaining in Europe long after the Second World War, of millions of Indo-Chinese refugees and of the Central American refugee situation of the 1980s".[159]

Australia has shown the political will in the past to address this issue, it can do so again today.

SOLUTION 4 INVEST IN A SERIOUS REGIONAL PROTECTION FRAMEWORK

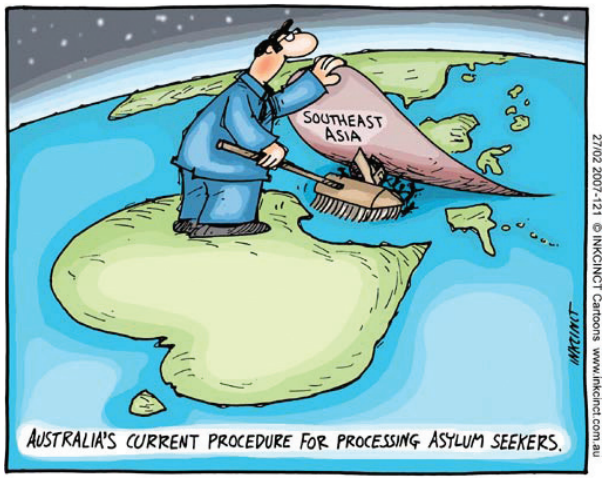
Instead of investing in a regional protection framework to raise human rights standards in the region, Australia spends tens of millions of dollars on strengthening punitive measures against asylum seekers. Detention centres in Indonesia are funded by Australia despite regular reports of asylum seekers and refugees being maltreated.[160]

In Malaysia, a country where asylum seekers and refugees are caned and generally maltreated, Australia has also spent millions of dollars to help beef up 'border security'. In October 2010, for example, Australia provided $1 million worth of hardware, including patrol boats and night vision equipment to Malaysia's maritime enforcement agency to help crack down on the people smuggling trade.[161] Malaysian human rights campaigner, Irene Fernandez, says this support implicates the Australian government in Malaysia's maltreatment of asylum seekers. Australia, she says, "is pushing its problem further away from itself."[162] The 'Regional Resettlement Arrangement' between Australia and PNG is yet another extension of these inhumane punitive measures.

As Human Rights Watch have suggested, instead of a "continued emphasis on punitive crackdowns on people smuggling... Australia should be doing more to protect and promote the rights of people in Southeast Asia."[163] We should be investing in these countries to encourage them to pursue better human rights standards in their treatment of asylum seekers and refugees. Improving these standards would remove a large part of the incentive for asylum seekers to board dangerous boats to Australia.

The Refugee Council of Australia (RCOA) recommends that Australia support short-term reforms in these countries including the granting of legal status to refugees and asylum seekers, affording right of stay, protection against arrest, detention and deportation, permission to work and access to educational opportunities and basic health services. The CEO of the RCOA, Paul Power, states that "these initial measures could provide a stepping stone to more comprehensive, longer-term reforms such as developing domestic asylum laws and procedures for refugee status determination."[164]

By investing in capacity building, Australia could take the lead in developing genuine burden sharing arrangements in the region, ensuring that asylum seeker flows are managed equitably within a human rights framework.



SOLUTION 5 PROVIDE ALTERNATIVE LEGAL PATHWAYS TO SEEK ASYLUM

It has been long-standing Australian government policy to prevent any person from travelling to Australia in order to lodge a claim for refugee status. This is true whether they attempt to enter authorised or unauthorised, by boat or by plane. By shutting down legal pathways of entry, Australia drives asylum seekers into the hands of people smugglers.

Australia is not alone in this respect. Many of the wealthiest countries in the world have erected migration walls around their territories, which inevitably drive asylum seekers into the hands of people smugglers, although none is as radical or 'successful' as Australia's.[165]

Australia has put in place a number of offshore immigration restriction processes that include interceptions, interdictions and airport turnarounds that effectively create an offshore border for Australia.[166] Whilst ostensibly implemented to improve Australia's border security and management, they also make it very difficult for anyone fleeing persecution from gaining entry to Australia in order to lodge a protection application.

For example, Airline Liaison Officers (ALOs) are placed at various international airports to prevent those with irregular documentation from flying to Australia. Asylum seekers are also caught up in this process, even though the Refugee Convention expressly allows them to travel to our shores without prior permission. Even for those who hold a valid visa, Australia will not permit declared asylum seekers to board a flight on route to Australia. As former Immigration Minister, Phillip Ruddock, bluntly stated, "if you tell us you are going to make a claim then we won't put you on the plane."[167] People from Afghanistan, Iran, Iraq and Sri Lanka are routinely denied visas that would enable them to arrive in Australia legitimately by air because they may be in need of Australia's protection obligations.[168]

Perhaps the most egregious demonstration of Australia's punitive response to shutting down escape routes for asylum seekers is its repeated attempts at 'disruption activities' to prevent boats carrying asylum seekers to Australia. In 1977, Immigration officer Greg Humphries admitted to boring holes in the bottom of asylum seeker boats to prevent them from leaving Malaysia. At the time, the sinking of boats and deliberate sabotage was an Immigration Department strategy.[169] The Howard government also engaged the Australian Federal Police in 'disruption activities' off the coast of Indonesia. There are many unanswered questions as to whether these activities were responsible for the deaths of 353 mostly women and children asylum seekers aboard the SIEVX on 19 October 2001.[170]

If Australia were serious about addressing people smuggling and held genuine concerns for the lives of the asylum seekers on board, the government would begin by providing alternative safe and legal pathways for those who need to get to Australia to lodge an application for protection. As Professor James Hathaway, one of the world's leading experts in international refugee law, has previously stated,

> "This whole human-smuggling thing is a false issue. We created the market for human smuggling. If you could lawfully come to Australia and make a refugee claim without the need of sneaking in with a boat, people would do it. But we make it illegal and create the market that smugglers thrive on".[171]
>
> With only 1% of the world's refugees having access to resettlement, Australia's 'migration wall' has driven asylum seekers into the hands of people smugglers who offer the only alternative to navigating these barriers to entry.

While every country has a right to ensure its borders are protected and to control immigration flows, as a signatory to the Refugee Convention Australia acknowledges it has a responsibility to provide adequate access for asylum seekers to find effective and durable protection. Increasing Australia's resettlement intake and investing in a genuine regional protection framework, as described in Solutions 3 and 4 above, would go a long way in ensuring this responsibility is fulfilled.

SOLUTION 6 TAKE SERIOUS ACTION TO PREVENT DEATHS AT SEA

Australia must take serious action to prevent further asylum seeker deaths at sea. By one estimate, approximately 1000 people have died in the last 10 years leading up to 2012 attempting the boat journey to Australia.[172] That is a tragedy of horrific proportions that must be addressed. However, simply 'turning back the boats' is not a solution. While solely stopping the boats might prevent further deaths at sea, it does nothing to address the legitimate protection needs of those on board and only serves to shirk Australia's international legal obligations and other responsibilities to our neighbouring countries. There are solutions to both these issues should the government choose to shoulder its regional responsibilities equitably.

The specific policy of turning boats back is not a viable policy option. As Andrew Metcalfe, Secretary Head of the Department of Immigration has said, "I do not believe that tow-backs are operationally feasible... Indonesia has indicated at, I think, senior government official level that it would not regard tow-backs as being an act of a friendly neighbour."[173] Chief of the Navy, Admiral Ray Griggs, who has been in charge of several tow-backs in the past, concurs with Metcalfe. So too does the Australian Customs and Border Protection Service whose advice to the government is that turning back asylum seeker boats is "illegal, costly and would expose Australian naval personnel to harm."[174]

Apart from the danger and impracticality of forced returns, the policy is illegal under international law. United Nations High Commissioner for Refugees, Antonio Guterres, has stated that 'pushbacks' are 'clearly a violation in relation to the [Refugee] Convention.'[175] The European Court of Human Rights ruled in early 2012 that pushing back asylum seekers at sea breached international law.[176]

While both major political parties claim that the need to 'stop the boats' is driven by a concern for asylum seeker deaths at sea, this is clearly not their prime concern. If it were, Australia would be focussing its attention on ensuring asylum seekers arrive here safely, not that they cease to arrive here at all. In any case, as Professor James Hathaway argues, allegedly humanitarian steps taken to shut down escape routes for asylum seekers are not only unlawful but paternalistic. In the absence of a viable alternative, Hathaway points out that, "It is the refugee's right – not the prerogative of any state or humanitarian agency – to decide when the risks of staying put are greater than the risks of setting sail."[177]

In any case, as Professor William Maleyhas noted, successfully deterring boat arrivals is nothing to celebrate as it will not put an end to the loss of life at sea, it will only force asylum seekers to take perilous voyages elsewhere:

> "What is more likely to happen is that Afghan refugees, instead of heading eastward towards Australia, will head westward, only to risk drowning in the waters of the Mediterranean Sea. Only the most cynical politician could take pleasure in such an outcome".[178]

The government should provide alternatives so that asylum seekers are not left to make the harrowing decision between remaining in dire circumstances in countries of first asylum or risking their lives at sea in the hope of finding an adequate solution. Current measures aimed solely at stopping the boats fails to address the inhumane conditions asylum seekers are forced to endure while waiting in countries that are not signatories to the Refugee Convention such as Malaysia and Indonesia (see Figure 8).

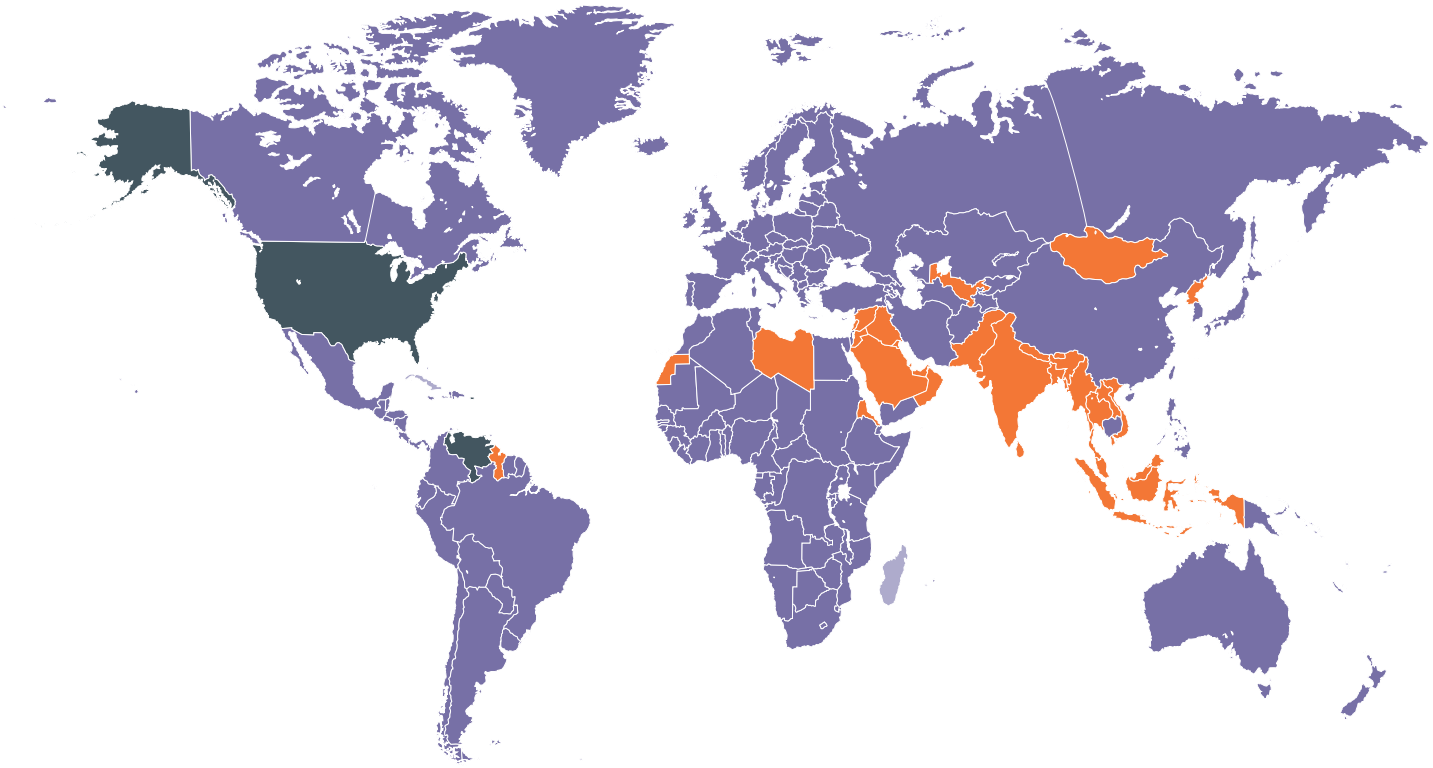
Investing in a serious regional protection framework would go a long way in providing an alternative, safe and legal pathway for asylum seekers to find protection. It would demonstrate Australia is both committed to fulfilling its international and regional responsibilities and serious about doing everything it can to prevent further loss of life at sea.

There are other, more immediate actions the government could also take to help prevent further deaths at sea. One is to remove its harsh people smuggling sentencing laws along with the policy of confiscating asylum seeker boats. These policies only incentivise people smugglers to utilise vessels that are unseaworthy, overcrowded and manned by inexperienced, uninformed and often desperate and underage Indonesians, altogether increasing the risk of a tragedy at sea.

The other is to improve Australia's search and rescue procedures. When the SIEX X sunk in 2001, resulting in the deaths of 353 mostly women and children, it was later revealed through a senate inquiry that the federal police had withheld critical information about the boat being overdue for four hours to protect the classified source who provided the information. Unfortunately, almost a decade after the tragic sinking of the SIEV X, the same mistakes are being made. On the 3 October 2009, authorities became aware that an asylum seeker boat was in distress and taking on water. Yet, once again, the federal police and customs waited four hours before passing on that information to maritime safety to mount a rescue so that they could protect their source. The 105 asylum seekers on board all perished.[179]

When a boat capsized in June 2012, the Australian authorities left the Indonesian search and rescue agency in charge without adequate information and even though they were hopelessly under-equipped to mount a rescue. Vice-Marshal Daryatmo, head of Indonesia's search and rescue agency, said his organisation was "hopelessly under-equipped for ocean rescue and needed help from Australia if it were to save asylum seekers at sea."[180] Ninety asylum seekers drowned.

Even over a decade since the SIEV X disaster and multiple governmental inquiries, mistakes continue to be repeated time and again. It is time Australia got its priorities straight regarding the safety and wellbeing of asylum seekers. We must work towards establishing the conditions whereby people are presented with other genuine opportunities before being forced to risk their lives at sea.



> Turn back boats to where? Most of the countries in Australia's region are not parties to the refugee convention.

Figure 8

- Parties only to 1967 Protocol
- Parties to both Convention and Protocol
- Non-signatories

SOLUTION 7 RECOGNISE THERE IS NO SIMPLE 'SOLUTION'

Australia must recognise that asylum seekers and refugees are an inevitable part of a world where war and oppression exist. In such a global environment, there are no final 'solutions', only effective and ineffective methods of managing what is an ongoing problem. Greater attention on the endemic issues of war and oppression in refugee producing countries must be a part of this effective management strategy, particularly in those parts of the world where Australia has a direct involvement.

The invasion of Iraq, of which Australia was a participant, resulted in 4.7 million Iraqis being uprooted, forcing the poor surrounding nations to bear the brunt of this massive humanitarian crisis. Australia bears special responsibility for dealing with the aftermath of this invasion. So too with the protracted security and human rights situation for Afghans, the largest source of refugees from any one nation. After having been militarily involved in Afghanistan for over 10 years, Australia must ensure the freedom and human rights of ordinary Afghans, and not just Australia's security or U.S. alliance obligations, are a prime concern when formulating its foreign policy goals.

Australia also has special regional responsibilities in Southeast Asia where a lack of human rights standards has forced hundreds of thousands of people to flee from persecution. In a recent letter to Australia's Foreign Minister, Human Rights Watch (HRW) criticised Australia for placing economic interests ahead of human rights concerns and pointed out that "trade alone will not bring the necessary improvements to people in the region who are denied their basic freedoms." Instead, HRW called Australia to use its unique position as a long-standing democracy with close economic partnerships in the region to advocate for an improvement in human rights standards:

> "Australia should leverage this position in the region and use every opportunity to raise human rights concerns, sensitively and constructively, as part of its bilateral and multilateral relations, as well as showing by example that it fully respects the human rights of all, including migrants and indigenous people in Australia."[181]

If Australia is not willing to implement the solutions outlined here and shoulder its international and regional responsibilities, we should at least bear our onshore protection obligations gracefully and with compassion. Especially given that Australia is in no position to plead hardship when the number of asylum seekers we receive is miniscule compared to other developing countries.

By complaining about the relatively small number of asylum seekers we receive, Australia is developing a reputation throughout Asia as an intolerant and selfish nation. According to Richard Woolcott, an esteemed diplomat and former secretary of the Department of Foreign Affairs and Trade, Australia's refusal to take responsibility for asylum seekers that reach our shore is contributing to our poor image in the region. After returning from a tour of Asia in 2011, Woolcott reported that in contrast to their own densely populated countries, the view of Australia is one of a large continent with a small population. Why, they ask, are you trying to push them back to us?[182] For example, the agreement between Australia and PNG is harming our relationship with Indonesia who views it as yet another attempt by Australia to avoid its humanitarian obligations.

As for the people smugglers, if Australia continues to fail to provide alternative legal pathways, we should recognise that people smuggling is both inevitable and - sadly - critical to ensuring the right of refugees to seek out durable protection in any way they can. Which one of us, if confronted with a desperate need to flee but

facing seemingly impossible barriers, would want the only avenue for escape to be permanently shut down?

SOLUTION 8 GRANT ASYLUM SEEKERS THE RIGHT TO WORK

The right to work for asylum seekers is a fundamentally human one which Australia must respect. Australia is a party to seven core international human rights treaties.[183] The right to work and rights in work are contained in articles 6(1), 7 and 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In November 2012 the then Minister for Immigration and Citizenship Chris Bowen announced a change in policy for asylum seekers who arrived by boat after 13 August 2012 and who were released into the community on a bridging visa. Under the 'no advantage' policy (see Myth 17), these asylum seekers are not eligible to work.

Based on boat arrival numbers in 2012 and community release figures so far for 2013, it is estimated that 10,000 asylum seekers will be released into the community this year without the right to work. There is no guarantee of the level of support that will be provided to these people, and indications are that the government intends to maintain its policy of no work rights.[184]

We know that asylum seekers do not want to live off welfare payments; they want to work so they are able to support their families and contribute to their community. Asylum seekers see meaningful employment as vital in providing a greater sense of belonging and value to their lives as they settle in Australia.[185]

There is an economic benefit that asylum seekers contribute – by being gainfully employed they spend money and pay tax. Having an underclass of asylum seekers who are homeless, desperate and depressed is not good for the Australian community. By simply giving asylum seekers the opportunity to demonstrate their

capacity to contribute to Australian society, work rights will also help foster healthier community attitudes (see Myth 16).

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