



## **FEDERAL JUSTICE POLICY PLATFORM**

Community legal centres have been working for more than thirty-five years to advance human rights and social justice. Centres integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and preventative in outcome.

Community legal centres work to develop a fairer legal system that better responds to the needs of the disadvantaged. The Federation's membership structures ensure that the voices and concerns of the sector and its clients are communicated in an effective way to support change.

This Policy Platform sets out how we believe the federal justice system should be improved. These policy positions have been endorsed by our membership.

We look forward to collaborating with federal elected representatives and candidates to work towards greater social justice and human rights, through the implementation of the changes to laws, policies and systems outlined in this document.

### **About the Federation of Community Legal Centres (Victoria)**

The Federation is the peak body for fifty two community legal centres across Victoria. The Federation leads and supports community legal centres to pursue social equity and to challenge injustice.

The Federation:

- provides information and referrals to people seeking legal assistance
- initiates and resources law reform and policy work to develop a fairer legal system that better responds to the needs of the disadvantaged
- works to build a stronger and more effective community legal sector
- provides services and support to community legal centres
- represents community legal centres with stakeholders

The Federation assists its diverse membership to collaborate for justice. Workers and volunteers throughout Victoria come together through working groups and other networks to exchange ideas and develop strategies to improve the effectiveness of their work.

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## **About community legal centres**

Community legal centres are independent community organisations that provide free legal services to the public. Community legal centres provide free legal advice, information and representation to more than 100,000 Victorians each year.

Generalist community legal centres provide services on a range of legal issues to people in their local geographic area. There are generalist community legal centres in metropolitan Melbourne and in rural and regional Victoria.

Specialist community legal centres focus on groups of people with specific needs or on particular areas of law (eg; mental health, disability, consumer law, environment).

Community legal centres receive funds and resources from a variety of sources including state, federal and local governments, philanthropic foundations, pro bono contributions and donations. Centres also harness the energy and expertise of hundreds of volunteers across Victoria.

Community legal centres provide effective and creative solutions to legal problems based on their experience within their community. It is our community relationship that distinguishes us from other legal providers and enables us to respond effectively to the needs of our communities as they arise and change.

Community legal centres are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia.

## **The importance of our justice policy work**

Community legal centre policy and law reform work is critical to maintaining a fair and responsive justice system.

Community legal centres are experts in working with excluded and disadvantaged communities and people from culturally and linguistically diverse backgrounds. The client groups we serve often cannot effectively represent their needs and interests to government. Our policy work allows governments to hear the views of the disadvantaged, the minorities and the voiceless and contributes their perspectives to the shaping of our legal system. It results in important improvements to laws, policies and practices. It promotes debate and democracy and allows governments to better target their resources to address areas of need.

The importance of this work continues to be recognised. In 2007, the report of the joint Federal and NSW Government review into the NSW Community Legal Centres Funding Program found that the program is “an effective use of public funds and should continue to be supported by government.”

It stated that centres’ “involvement in law reform...represents an effective use of CLSP resources, delivering benefits to far more clients than through information, advice and casework services alone.”

## **Key principles in our justice policy work**

### **1. An accessible justice system**

An accessible justice system is a necessary component of a strong community. Access to justice means:

- a legal system that is fair, welcoming and easy for all members of the community to use.
- all members of the community have an understanding of the legal system, their rights within it and their options for achieving justice.
- all members of the community have access to legal advice to assist them to take or defend a legal action or pursue other options for achieving justice.
- adequate remedies are available to address violations of rights and injustice.

### **2. Guaranteed human rights protection**

Respect for human rights is a fundamental component of a just society. Human rights protection should be guaranteed. We believe that:

- the human rights contained in major international human rights instruments should be recognised and protected by law and promoted through community education.
- to give these rights substantial meaning there should be adequate remedies to address human rights breaches, including an individual right of action and the power to award damages.

### **3. Economic, social and cultural rights**

A strong society delivers justice and equity for its vulnerable and disadvantaged communities. It values diversity and invests in addressing disadvantage. Economic, social and cultural justice includes:

- adequate standards of living, including housing and income.
- justice and equity for Aboriginal and Torres Strait Islander people.
- social supports to enable people with special needs to fully participate in all aspects of community life.
- financial penalties (eg; traffic fines) that are commensurate with income.
- adequate support for victims of crime.
- a focus on addressing crime prevention and reducing reoffending by tackling the root causes of crime and by promoting rehabilitation.

### **4. Civil and political rights**

Respect for the rule of law and fundamental civil liberties are necessary components of a vibrant democracy. Civil and political justice includes:

- respect for fundamental civil and political rights to maintain our democracy despite the threat of terrorism.
- the right of women and children to be free from violence.
- humane treatment for people who encounter the criminal justice system.
- legal protection for the right to protest and for freedom of speech about matters of public interest, political debate and dissent.
- safe public spaces for the enjoyment of all members of the community.

## FEDERAL POLICY POSITIONS

### An accessible justice system

All Australians, regardless of income and location, should have access to the legal services and advocacy necessary to protect their rights and interests, and should be entitled to equality before the law.<sup>1</sup> Community legal centres provide free legal advice, information and representation to more than 100,000 Victorians each year. Overwhelmingly, community legal centre clients are low income, with most receiving some form of pension or benefit. Community legal centres also assist a considerable number of people from culturally and linguistically diverse communities and provide a bridge between disadvantaged and marginalised communities and the justice system. The ongoing strengthening and provision of resources to community legal centres assists in making Victoria's justice system more accessible for all Victorians.

The Federation calls for:

- the strengthening and modernisation of community legal centre infrastructure as a resource for building stronger communities.
- the allocation of more funding and resources to expand community legal centre service delivery to the disadvantaged, in particular: culturally and linguistically diverse communities; refugee and newly arrived communities; rural and regional communities; women experiencing family violence; prisoners; and older persons.
- greater provision of legal aid resources across all areas of law including civil, criminal and administrative law.
- strengthening of community legal centre capacity to continue to develop appropriate and accessible legal information tools for disadvantaged communities.
- reforms to practices and processes to ensure that courts are accessible for diverse communities.

### Guaranteed Human Rights Protection

Human rights need protection through an entrenched Bill or Charter of Rights at the federal level. This would ensure that human rights are considered in all Federal Government decisions and would give expression to Australia's obligations under international human rights conventions.

The Federation calls on the Federal Government to remove its reservations to international human rights conventions. The Federation supports the ratification of all optional protocols to international human rights conventions, including the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*.

The Federation supports:

- a Bill of Rights to give expression to all major international human rights conventions, in particular the right to Indigenous self-determination and rights contained in the *International Covenant on Economic, Social and Cultural Rights*; and to confer an individual right of remedy that may result in damages, compensation and other remedies such as apologies.

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<sup>1</sup> Stephen Bottomley and Stephen Parker, *Access to Justice* (1997) 82.

- the preservation of the Human Rights and Equal Opportunity Commission as an independent and effective advocate for human rights.
- a comprehensive and ongoing education strategy promoting human rights, in collaboration with communities and community leaders.
- the legislative entrenchment of a Human Rights Impact Statement to ensure that legislation, policy and other decisions accord with human rights principles.
- the waiver of fees and costs in relation to human rights and discrimination cases at the Federal Court.
- the prohibition of discrimination on the basis of a person's criminal record, low income status and homelessness, and the establishment of adequate and enforceable remedies including compensation and reinstatement.
- legal provisions protecting people from racial and religious vilification.

## Employment Law

Labour laws and the statutory protection of employment have changed dramatically since the *Workplace Relations Amendment (Work Choices) Act* 2005 was enacted. A system that favours individual agreement-making can disadvantage vulnerable members of the community. The Federation is concerned about the potential erosion of minimum standards under Work Choices compared with relevant award protections. In 2006, the Office of the Employment Advocate reported that of 250 Australian Workplace Agreements sampled, all abolished at least one protected award provision and 22% did not provide a pay rise for the life of the agreement.<sup>2</sup>

The Federation supports:

- protecting fundamental rights and freedoms contained in Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights* and International Labour Organisation Conventions.
- protecting systems of collective bargaining between employers and employees.
- fair and comprehensive minimum terms and conditions of employment.
- scrutiny of Australian Workplace Agreements and collective agreements by an independent umpire.
- an independent umpire to determine termination matters.
- establishment of adequate legal mechanisms to handle complaints and grievances from workers.
- strengthening legal mechanisms to ensure that workers are not forced to work in dangerous conditions.
- adequate legal protection for all employees against unfair, harsh, unjust or unreasonable termination of employment.
- legislative protection for worker privacy.
- changes to AWAs legislation to make it necessary to review submitted agreements.
- increased protection for workers with a carer role in their family or community.

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<sup>2</sup> Evidence to Senate Estimates Employment, Workplace Relations and Education Committee, Parliament of Australia, Canberra, 29 May 2006, 138, 141 (Peter McIlwain).

## **Social Security**

The right to social security and social insurance is set out in Article 9 of the *International Covenant on Economic, Social and Cultural Rights*. The Federation calls on the Federal Government to fulfil these rights for all Australians.

The Federation supports:

- legislative enshrinement of the fundamental right to adequate social security for all people of working age in Australia.
- calls for the special needs of homeless people to be addressed to ensure that their living condition does not disqualify them from receiving social security payments.
- the removal of compulsory activity or participation requirements for people in receipt of social security payments, in favour of positive alternative approaches on a voluntary basis based on increased investment in the provision of opportunities and assistance for retraining, education packages and wage subsidy packages.
- the removal of financial penalties for breaches of participation requirements.
- the rationalisation and simplification of the system of concessions to better meet the needs of people on workforce age payments. This should include the extension of a range of concessions such as transport, utilities and telephone allowance, to social security recipients and others currently eligible for only a limited range of concessions.
- calls for Centrelink to be provided with additional staffing and other resources so that the social security system can be administered in an individualised and personal manner necessary for its integrity.
- calls for a review of the effects of differential rates of social security payment based on marital status under the *Social Security Act 1991* (Cth), with the view to ensuring that adequate assistance is provided to people in all circumstances.
- removal of barriers to accessing government health and welfare benefits for people who may not have access to identifying documentation, such as homeless persons and children under 18.

## **Housing and Tenancy**

Many of the Federation's clients come from disadvantaged backgrounds and have limited access to housing. Being either homeless or in sub-standard housing affects a person's ability to access employment, welfare and legal assistance. Difficulty in finding adequate housing can also affect other sectors of life, such as family and education.

The Federation calls for the promotion of a more inclusive attitude to homelessness within society so that being homeless does not lead to discrimination. The Federal Government should commit to support low income earners in their search for accommodation and should target more resources towards the elimination of homelessness in Australia. The Federation calls for increased adherence to Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, which requires all state parties to take appropriate steps to ensure the right of everyone to an adequate standard of living.

## **Consumer Credit**

Regulation of consumer credit provides important protection for all consumers. The nature of consumer credit transactions and the significant impact such transactions can have on consumers requires proper and fair management. This is particularly the case for vulnerable and disadvantaged consumers.

There are fundamental problems with the regulation of credit in Australia. Since the implementation of the Uniform Consumer Credit Code, little attention has been paid to identifying areas where the legislation has failed to properly protect consumers, or to providing a legislative response where such areas have been identified. One of the defining features of regulation of consumer credit in Australia is the extent to which the Credit Code is avoided by providers.

The Federation supports the expansion of the jurisdiction of the Uniform Consumer Credit Code to strengthen consumer protection provisions. There is also a need for increased consumer awareness and financial literacy, especially in disadvantaged and vulnerable communities.

The Federation supports:

- the development and expansion of not-for-profit community 'No Interest Loan Schemes' with government support.
- the expansion of the jurisdiction of the Uniform Consumer Credit Code to include commercial micro-finance/micro-credit products such as payday lenders, short-term lenders, cash advance credit providers, pawnbrokers and finance brokers and intermediaries.
- a review of the Uniform Consumer Credit Code advertising provisions in order to strengthen consumer protection provisions and penalties for breaches, and to provide a 'positive obligation' to credit providers to assess capacity to repay.
- the development of guidelines that standardise creditor provider assessments of borrower capacity to repay loans.
- the enactment of regulations requiring all credit providers, finance brokers and intermediaries to be licensed and to belong to an Alternative Dispute Resolution Scheme.
- adequate resourcing of the regulator in order to monitor compliance and pursue enforcement of consumer credit contracts and practices.

## **Family Law**

The Federation calls for the family law system to be consistent with Australia's human rights obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women*, the Beijing Platform of Action, the *Convention on the Rights of the Child* and other international human rights agreements. At all times, the best interests of the child must be the paramount consideration in family law matters. Both children and their family members have the right to live free from violence and abuse. This right must have priority over requirements to ensure that children spend time with both of their parents and the perceived right of parents to spend time with children.

The Federation supports:

- the *Family Law Act 1975* (Cth) enshrining the best interests of the child as the paramount consideration in decision making about who children live, spend time and communicate with. The primacy of the best interests of the child should not be derogated from by requiring particular types of parenting arrangements such as "equal time" or "substantial and significant time" arrangements to be considered over and above other parenting arrangements.
- the application of non-litigious dispute resolution mechanisms, as long as these are not compulsory and do not compound existing power imbalances or family violence issues.

- access to legal advice and representation in family law matters for all women experiencing family violence.

## **Child Support**

The Federation believes that all children have the right to financial support from their parents regardless of their parent's past marital status. The child support system must be adequately resourced to ensure just outcomes for children, young people and their families and to meet the diverse needs of those with mental illness or disability and members of other disadvantaged communities.

The Federation supports:

- changes to the child support scheme that are enacted after broad consultation with the community and that improve the financial position of the household in which children primarily reside.
- a child support scheme that is calculated on all of the costs of raising children.
- child support payments that meet the actual costs of raising children and that are not based on a parent's actual contact with their children.
- adequate resourcing of the Child Support Agency to permit it to take all steps necessary to enforce correctly calculated arrears of child support, with the goal of reducing the Gross Child Support debt owed to the Commonwealth by at least 10% per year.
- the creation and adoption of policy by the Child Support Agency to consider the impact of family violence on the ability and willingness of parents to apply for child support and to seek changes to child support.
- the enactment of legislation and policy to require the Child Support Agency to advise people to seek legal advice before:
  - registering a child support agreement with the Child Support Agency made privately or through a Family Relationship Centre;
  - electing to privately collect ongoing child support under an assessment or agreement; or
  - electing to privately collect child support arrears under an assessment or agreement.
- improved access to specialist legal advocacy, information and support for parents negotiating the child support system, through expansion of the child support advocacy program in community legal centres.

## **Family Violence**

The Federation supports the right of all women and children to live free from violence, as outlined in the United Nations *Declaration on the Elimination of Violence Against Women*.

The Federation supports:

- work by government and community agencies towards a coordinated and integrated justice system response to family violence across government and community. This requires a collaborative approach to policy and protocol development, working from a basis of shared principles and using mechanisms for ongoing monitoring and review of systemic responses and supporting structures to create systemic change.
- the justice system adopting a variety of processes to create a more flexible system that is better equipped to deal with complex and diverse behaviours, and that is accessible to diverse communities.



- allocating significant new and ongoing resources to family violence prevention and support programs, including for community legal centres to consolidate and expand the family violence lawyers network.
- a comprehensive and ongoing education strategy in collaboration with communities and community leaders, promoting both awareness and prevention of domestic violence.
- increased funding to refuges, safe houses and other community organisations that assist people escaping family violence.

## **Children and Young People**

The Federation supports:

- the establishment of a Federal Children and Young People's Commission, independent of government, to ensure that the rights and wellbeing of children and young people are protected and promoted.
- independent representation of children and young people affected by legal proceedings in a manner consistent with the evolving capacity of the child, to ensure their opinion is taken into account by the courts.
- preventative policy and education programs targeted to ensure that children and young people understand their legal rights and have the supports to exercise them.
- the meaningful participation of children and young people in decision-making across all levels of government and in the non-government sector.
- increased resources for the child protection system, including support services to vulnerable families and parents with disabilities.
- expanded resources to ensure that advocacy services are available at the first point of contact with child protection services and especially specialist advocacy for vulnerable groups.
- reinstatement of a Federal youth minister and a youth parliamentary secretary.

## **People with a Disability, Mental Illness or Cognitive Impairment**

People with a disability continue to face barriers to their participation as equal members of society. The Federation supports the rights of people with a disability as outlined in the United Nations *Convention on the Rights of Persons with Disabilities*. Protection for people with a disability, mental illness or cognitive impairment can also be ensured through increased adherence to the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. We believe that people with mental illness have the right to the highest standard of support and least aversive treatment possible, and that every effort should be made to avoid involuntary treatment. Federal Government support for mental health is crucial to increasing the wellbeing of the community.

The Federation supports:

- Australia's immediate ratification of the United Nations *Convention on the Rights of Persons with Disabilities*.
- introduction of enforceable advance directives or living wills to enable people with a psychiatric disability to make decisions in advance about their treatment and personal affairs that will be respected if and when they are deemed to have lost capacity.
- introduction of safe mental health services, including by the establishment of separate specialist services for women and girls.

## Same-Sex Couples

Same-sex couples face significant discrimination in federal legislation. In many pieces of legislation, 'de facto spouse', 'partner' or 'couple' is defined as being two people of the opposite sex, which prevents same-sex couples from qualifying for government benefits and entitlements. Same-sex couples are denied access to a wide range of tax concessions and rebates, workplace entitlements, Medicare and PBS safety nets for families, and Veterans pensions and benefits.<sup>3</sup> As a result of the *Marriage Legislation Amendment Act 2004* (Cth), it is also not possible for courts or State legislatures to legalise same-sex marriage under the *Marriage Act 1961* (Cth). The inability of same-sex couples to legally marry, coupled with the above definitions, means that same-sex couples are denied the same rights enjoyed by heterosexual couples.

Discrimination against same-sex couples breaches Australia's international obligations under the *International Covenant on Civil and Political Rights*. Article 26 states that all persons are entitled to the equal protection of the law, and requires that all persons be protected against discrimination on any ground. Australia's federal laws need amending to ensure that same-sex couples have equal access to social, economic and governmental support.

The Federation calls for:

- legislation amending the *Marriage Act 1961* (Cth) to include marriage between two people of the same sex, repealing the 2004 amendment which enshrines marriage as being between a man and a woman 'to the exclusion of all others' (s 5(1)).
- Amendment to the definition of 'de facto spouse', 'partner' and 'member of a couple' in relevant Federal legislation (eg; *Social Security Act 1991*, *Income Tax Assessment Act 1936*, *Medicare Levy Act 1986* and *National Health Act 1953*) to include two people of the same sex.

## Justice for Aboriginal and Torres Strait Islander People

The Federation is strongly committed to justice for Aboriginal and Torres Strait Islander people.

Despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody, Aboriginal and Torres Strait Islander people are still over-represented at every level of the criminal justice system. The overwhelming cause of this is social, economic and cultural disadvantage. This disadvantage results from Aboriginal and Torres Strait Islander people having been dispossessed from their land and culture and being forcibly removed from their families. Any attempt to address the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system must address the disadvantage that underlies it.

The Federation supports:

- calls for the Federal Government to commence the process of developing a fair and just settlement of the grievances between Aboriginal and Torres Strait Islander and non-ATSI Australians, culminating in formal Treaties between our peoples.
- processes that broker genuine agreements which respect Aboriginal and Torres Strait Islander self-determination.

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<sup>3</sup> Human Rights and Equal Opportunity Commission, *Same-Sex: Same Entitlements* (2007).

## Anti-Terrorism Laws

Current anti-terrorism legislation does not strike the right balance between protection of civil liberties and an appropriate response to the threat of terrorism. This legislation, enacted in 2001, was intended as an extraordinary measure to deal with particular historical circumstances, and in many ways represents a departure from traditional legal principles and practices.<sup>4</sup> These laws have a significant impact on civil liberties, and disproportionately impact on the Muslim community.<sup>5</sup> It is not clear, however, that these legislative measures more effectively deal with the threat of terrorism in Australia.

The Federation supports:

- the guarantee of the rule of law and fundamental civil liberties – including the right to demonstrate, to critique government, to obtain a fair trial, to equality before the law, to freedom from arbitrary detention, to remain silent when questioned by police, to be presumed innocent, and to freedom of association and membership of organisations of choice – despite the threat of terrorism.
- adherence to Australia's international obligations under the *International Covenant on Civil and Political Rights* relating to freedom of association (Article 22), and specifically the abolition of the power to list organisations as "terrorist organisations" under the *Criminal Code Act 1995* (Cth).
- opposition to the introduction of procedures to the civil law system, intended to overcome the threat of terrorism, that will reduce the operation of open and accountable administration of justice, breach the fundamental principle of the separation of powers and limit access to civil compensation.
- opposition to the expanded power of the Australian Defence Force to intervene in civilian disputes in Australia.

## Citizenship

The Federation recognises the importance of Australian citizenship as a unifying force in our culturally diverse nation. Citizenship comes with many rights, and it is therefore important that all applicants have equal opportunity to access those rights.

The Federation supports:

- procedures for procuring citizenship which embrace cultural, linguistic and religious diversity and are not discriminatory in effect. The application process should ensure that applicants from non-English speaking backgrounds are not disadvantaged, and special provision should be made for categories of persons who would face particular difficulty in their applications, such as applicants with a cognitive impairment, elderly applicants, and applicants who have been granted asylum in Australia.
- the removal of any provisions in electoral law which impair the right of all citizens to vote, including provisions in the *Electoral and Referendum Amendment (Electoral*

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<sup>4</sup> Marika Dias on behalf of the Federation of Community Legal Centres, *Submission of the Federation of Community Legal Centres (Vic) Inc to the Parliamentary Joint Committee on Intelligence and Security: Response to the Recommendations of the Security Legislation Review Committee (The Sheller Inquiry)* (2006).

<sup>5</sup> Marika Dias and Vicki Sentas on behalf of the Federation of Community Legal Centres, *Submission of the Federation of Community Legal Centres (Vic) Inc to the Senate Legal and Constitutional Committee: Anti-Terrorism Bill (No.2) 2005 (Cth)* (2005).

*Integrity and Other Measures*) Act 2006 (Cth) that have discriminatory effects on the rights of young people, citizens residing overseas, and incarcerated citizens.

- protection of the privacy rights of Australians if a form of national “Access Card” or identity card is introduced. This should be achieved through: mechanisms ensuring that there is no capacity for information sharing or cross matching of data across government departments; a legislative guarantee that information to be held in the register database, including photographs, will not be used for public surveillance or policing purposes; and the use of appropriate technology to keep information secure.

## **Refugee and Immigration Law**

The Federation is working to ensure that Australia's policies on refugees, asylum seekers and migrants are fair, just and equitable and are consistent with Australia's international human rights obligations. Federal legislation does not currently adhere to important articles in the *International Covenant on Civil and Political Rights*, the *Convention Relating to the Status of Refugees* and other international human rights treaties.

The Federation supports:

- the end of mandatory detention of asylum seekers in Australia.
- calls for conditions in detention centres to conform to basic human rights standards and to be appropriate to the social, educational, mental and physical health needs of detainees.
- the abolition of Temporary Protection Visas so that Temporary Protection Visa holders are given the same rights and benefits as Permanent Protection Visa holders.
- the provision of proper social and financial assistance and services for asylum seekers, refugees, migrants and Temporary Protection Visa holders.
- universal access to independent quality legal advice, and access to genuine merits review by the Refugee Review Tribunal and judicial review by the courts, for all asylum seekers regardless of their mode of arrival into Australia.
- expansion of Australia's family migration program and the abolition of restrictions that result in hardship, disadvantage and discrimination.
- reforms designed to improve the legal knowledge and ethical standards of migration agents, provided that such reforms do not interfere with agents' professional capacity.
- opposition to legislative schemes which sanction migration agents according to “high visa refusal rates”.
- the Federal Government giving all persons who enter Australia's territorial waters the opportunity to apply for asylum under Australian law.